SUPREME COURT OF PAKISTAN

JUDICIAL ESTACODE

(Constitutional Provisions, Acts, Ordinances, Rules, SROs and Notifications relating to Supreme Court of Pakistan)

EDITION 2019

PUBLISHED By:

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SUPREME COURT OF PAKISTAN

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Foreword

It is a matter of immense pleasure for me that for the first time in the history of this Court "The Supreme Court of Pakistan Judicial Estacode, 2019" is going to be published. Great efforts appear to have been made in putting together several legal documents in one volume which are relevant to the working of the Supreme Court of Pakistan and were previously scattered in number of books and files. I am sure that this compendium will be of great help to the Hon'ble Judges and the Court staff in discharge of their duties and in streamlining official work on daily basis.

Prior to this compendium it was a time consuming exercise to search out relevant legal instruments. This compendium, which contains all the relevant legal instruments such as Constitutional provisions, statutes, Presidential Orders, Court judgments, rules, SROs, policies and guidelines issued from time to time, will relieve the user of unnecessary hassle in locating documents relevant for disposal of routine Court matters.

I appreciate the initiative taken in the matter by Hon'ble Mr. Justice Mushir Alam and the efforts made by Mr. Saleem Ahmad, Librarian and his team in undertaking this exercise. I am sanguine that in future this "Estacode" will go through continuous periodic revision with a view to updating it by incorporating all future amendments in the legal instruments included in the Estacode.

Asif Saeed Khosa

Justice Asif Saeed Khan Khosa
Chief Justice of Pakistan

Islamabad.
October 02, 2019

SUPREME COURT OF PAKISTAN JUDICIAL ESTACODE

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Chapter 1

Introduction

CHAPTER 1
Introduction
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1.1 INTRODUCTION TO SUPREME COURT OF PAKISTAN

The Constitution of Pakistan, 1973 provides for Parliamentary system of governance whereby the separation of powers between organs of state i.e. Legislature, Executive and Judiciary is assured through a scheme of checks and balances. The Constitution is supreme and all the organs have to remain within their sphere. The legislature makes law. The executive executes the law. The judiciary is entrusted with the responsibility to interpret the law and to ensure harmony and balance between the three pillars of the state. The Constitution envisages that the state shall ensure inexpensive and expeditious justice and provides for independence of judiciary.

The Constitution provides for the establishment of Supreme Court of Pakistan. The Supreme Court of Pakistan is the highest appellate court of the country and the court of last resort. It is the final arbiter of the law and the Constitution. Its orders/decisions are binding on all other courts in the country. All executive and judicial authorities are bound to act in aid of the Supreme Court. The Constitution contains elaborate provisions on the composition, jurisdiction, powers and functions of the Court. The qualifications for and mode of appointment of judges, the age of retirement, the grounds and procedure for removal and the terms and conditions of service of judges are elaborately prescribed. As guardian of the Constitution, the Court is required to preserve, protect and defend this basic document.

The Supreme Court exercises original, appellate, advisory and review jurisdiction. It possesses exclusive original jurisdiction for the settlement of intergovernmental disputes between Federal and Provincial Government(s) or Provincial Governments inter se. Under this jurisdiction, the Court pronounces declaratory judgments. The Supreme Court can also exercise original jurisdiction, with respect to the enforcement of fundamental rights, if the case involves an issue of public importance. The Court also exercises advisory jurisdiction, where under the President may obtain its opinion on a question of law. Under its appellate jurisdiction, the Court entertains appeals against orders and decisions of High Courts and other special courts/tribunals.

The Supreme Court was first created under the Constitution of 1956. It succeeded the Federal Court, set up in 1948, which was successor to the Federal Court of India, established in 1937. Since its creation in 1956, the Supreme Court has retained its name and jurisdiction through the successive legal instruments including the Constitution of 1973.

The Supreme Court of Pakistan consists of the Chief Justice and 16 Judges. The permanent seat of the Court is at Islamabad, but the Court also sits, from time to time, at the provincial headquarters; namely, Lahore, Karachi, Peshawar and Quetta. The Constitution stipulates the qualifications of Judges of the Supreme Court. Such qualifications are: to be a citizen of Pakistan and having 5 years experience as Judge of a High Court or 15 years practice as Advocate High Court.

The Chief Justice and the Judges of the Supreme Court of Pakistan are appointed by the President on the nomination of Judicial Commission of Pakistan and approval of the Parliamentary Committee. A Judge holds office until attaining the age of 65 years, unless he resigns earlier or is removed from office, in accordance with the Constitution.

No Judge can be removed from office except on grounds specified by the Constitution; namely, "physical or mental incapacity", or "misconduct", to be determined by the Supreme Judicial Council.

The Constitution provides for the "independence of judiciary" and its "separation from the executive." Consequently, there prevails in the country, full institutional and decisional judicial independence.

1.2 BRANCH REGISTRIES

On 25th November, 1974 Karachi, Lahore and Peshawar were appointed to be the places where a Bench of the Supreme Court of Pakistan may sit for two years. On 22nd January, 1976, HCJ was pleased to direct that petitions for special leave to appeal from the judgments and orders of the respective High Courts would be received and entertained in the Branch Registries at Lahore, Peshawar and Karachi till 31st March, 1976 and that the petitions filed in the Branch Registries thereafter would be registered and disposed of at Rawalpindi.

It was notified on 6th February, 1976 that the petitions for special leave to appeal would continue to be received and entertained in the Branch Registries till the commencement of the long vacation of 1976. In March, 1976 it was decided that petitions for leave to appeal may be received and entertained at Branch Registries till 31.12.1976 and that Judges may visit these stations after 31.12.1976 till the petitions filed upto 31.12.1976 are disposed of. On 31st December, 1976, the circuit system and registration of petitions for leave to appeal at Branch Registries was extended upto the 30th June, 1977.

In January, 1977 it was decided that the Court may sit at Karachi, Lahore and Peshawar for the disposal of the petitions filed after 31st December, 1976 for a period of three years. In November, 1977 it was decided that the Supreme Court may sit at Karachi, Lahore, Peshawar and Quetta.

Today, the Court with its Principal Seat at Islamabad has Branch Registries at all the four provincial capitals. The Branch Registries at Lahore, Karachi, Peshawar and Quetta have been established for the convenience of the public and for providing justice at the doorstep.

Branch Registry at Lahore

When the Main Registry was moved to Rawalpindi in 1974, a Branch Registry was established at Lahore in a borrowed wing of the Lahore High Court building at Lahore. Later, the old State Bank Building located at Nabha Road was acquired and renovated to house the Branch Registry. The new building has three courtrooms, Chief Justice chamber, six other chambers, library, conference room, bar room and Registry offices. A Rest House for lodging Judges during Court sessions has also been acquired, which is situated on 12-C, Aikman Road, GOR-I, Lahore.

All petitions instituted in the Branch Registry are heard at Lahore, subject to any special order by the Court. Petitions, appeals and miscellaneous applications are instituted in the Branch Registry arising out of judgments and decisions of:-

1. Lahore High Court excluding those of the Rawalpindi Bench;
2. The Federal Shariat Court at Lahore;
3. The Federal Service Tribunal at Lahore;
4. The Punjab Service Tribunal.

Previously all appeals by leave of the Court, or direct appeals, presented in the Registry, used to be transferred to the Main Registry for registration, completion and hearing. However since 10-12-2008 all appeals, except those of Tax, Custom and Revenue mattes are being registered, completed and heard at the Branch Registry.

Branch Registry at Karachi

This Registry was established on 14th October 1957 in a borrowed wing of the building of the High Court of Sindh. The Registry remained housed, for some time, in Karachi Development Authority (KDA) Rest House, Stadium Road opposite PTV Centre and later the old State Bank building situated at M.R. Kayani Road, was acquired and renovated to house the Registry. All petitions instituted in the Branch Registry are heard at Karachi, subject to any special order by the Court. Previously all appeals by leave of the Court, or direct appeals, presented in the Registry, used to be transferred to the Main Registry for registration, completion and hearing. However since 10-12-2008 all appeals, except those of Tax, Custom and Revenue mattes are being registered, completed and heard at the Branch Registry. Petitions, appeals and miscellaneous applications are instituted in the Branch Registry arising out of judgments and decisions of:

1. High Court of Sindh;
2. Federal Shariat Court at Karachi;
3. Federal Service Tribunal at Karachi; and
4. Sindh Service Tribunal.

As a special measure, it has been provided that the cases which may be instituted and heard at the Branch Registry at Quetta may also be instituted and heard at the Branch Registry at Karachi due to the shortage of Advocates-on-Record at Quetta.

Branch Registry at Peshawar

The Registry at Peshawar was established on 28th October 1960 in a borrowed wing of the building of the Peshawar High Court. With the passage of time it was felt that there should be an independent and self-sufficient building for housing the Peshawar Branch Registry at Peshawar. To fulfill this need it was decided to construct a suitable building for the Branch Registry at the site of old Radio Pakistan Building located on Khyber Road. The foundation stone of the building was laid on 17th, November 2001. The building was completed in February, 2004 and Branch Registry was shifted to the new building on 11th September 2004. This new building contains two Court rooms; six judge's chambers; one library room; one

conference room; one Bar Room; eight staff rooms; a servant block and one mosque for prayer. A rest house for lodging judges during court sessions at Peshawar has also been built.

All petitions instituted at the Branch Registry are heard at Peshawar, subject to any special order by the Court. Previously all appeals by leave of the Court, or direct appeals, presented in the Registry, used to be transferred to the Main Registry for registration, completion and hearing. However since 10-12-2008 all appeals, except those of Tax, Custom and Revenue mattes are being registered, completed and heard at the Branch Registry. Petitions, appeals and miscellaneous applications are instituted at the Branch Registry when they arise out of judgments and decisions of:

1. Peshawar High Court;
2. Federal Shariat Court at Peshawar;
3. Federal Services Tribunal at Peshawar; and
4. *Khyber Pakhtunkhwa Service Tribunal*.

Branch Registry at Quetta

The Registry was established on 19thNovember 1978 in a borrowed wing of the building of the High Court of Balochistan, and is still functioning there. However, for construction of its own building for housing Branch Registry at Quetta, the old Circuit House situated on Shahra-i-Zarghoon, Quetta was handed over/transferred to the Supreme Court of Pakistan and in this connection the Earth Breaking Ceremony for construction of new building was held on 04.12.2013. A Rest House for lodging Judges during Court sessions has been acquired, which is also situated on Shahra-i-Zarghoon, Quetta.

All petitions instituted in the Branch Registry are heard at Quetta, subject to any special order. Previously all appeals by leave of the Court, or direct appeals, presented in the Registry, used to be transferred to the Main Registry for registration, completion and hearing. However since 10-12-2008 all appeals, except those of Tax, Custom and Revenue mattes are being registered, completed and heard at the Branch Registry. Petitions, appeals and miscellaneous applications are instituted in the Branch Registry arising out of judgments and decisions of:

1. High Court of Balochistan;
2. Federal Shariat Court at Quetta;
3. Federal Service Tribunal at Quetta; and
4. Balochistan Service Tribunal.

Chapter 2

THE JUDICATURE

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Judicature
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2. THE JUDICATURE

(Extract form the Constitution of Pakistan, 1973)

THE COURTS

2.1 Establishment and jurisdiction of courts

175. (1) There shall be a Supreme Court of Pakistan, a High Court for each Province[1][and a High Court for the Islamabad Capital Territory] and such other courts as may be established by law.

[2][*Explanation*.—The word "High Court" wherever occurring the Constitution shall include the High Court for the Islamabad Capital Territory.]

(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

(3) The Judiciary shall be separated progressively from the Executive within [3][fourteen] years from the commencing day:

[4][Provided that the provisions of this Article shall have no application to the trial of persons under any of the Acts mentioned at serial No. 6, 7, 8 and 9 of sub-part III of Part I of the First Schedule, who claims, or is known, to belong to any terrorist group or organization using the name of religion or a sect.

Explanation: In this proviso, the expression 'sect' means a sect of religion and does not include any religious or political party regulated under the Political Parties Order, 2002.]

2.2 Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court

[5][**175A.** (1) There shall be a Judicial Commission of Pakistan, herein after in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as herein after provided.

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

(i)	Chief Justice of Pakistan;	Chairman
(ii)	[6][four] most senior Judges of the Supreme Court;	Members

---

1 Ins. by the Constitution (Eighteenth Amdt.) Act, 2010 (X of 2010).

2 Explanation added *ibid.*

3 Subs. by P.O.No.XIV of 1985, Art. 2 and Sch., for "five".

4 Ins. by the Constitution (Twenty-first Amendment) Act, 2015 (I of 2015) and shall cease to form part of the Constitution and shall stand repealed on the expiration of two years.

5 New Article 175A ins.by Act X of 2010,s. 67.

6 Substituted by the Constitution (Nineteenth Amendment) Act, 2011(I of 2011) s.4 for "two".

(iii)	A former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the [1][four] member Judges, for a term of two years;	Member
(iv)	Federal Minister for Law and Justice;	Member
(v)	Attorney-General for Pakistan; and	Member
(vi)	A Senior Advocate of the Supreme Court Of Pakistan nominated by the Pakistan Bar Council for a term of two years.	Member

(3) Notwithstanding anything contained in clause(1) or clause (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

(4) The Commission may make rules regulating its procedure.

(5) For appointment of Judges of a High Court, the Commission in clause(2) shall also include the following, namely:—

(i)	Chief Justice of the High Court to which the appointment is being made;	Member
(ii)	the most senior Judge of that High Court;	Member
(iii)	Provincial Minister for Law; and	Member
[1][(iv)	an advocate having not less than fifteen years practice in the High Court to be nominated by the concerned Bar Council for a term of two years:	Member

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

Provided further that if for any reason the Chief Justice of High Court is not available, he shall be substituted by a former Chief Justice or former Judge of that Court, to be nominated by the Chief Justice of Pakistan in consultation with the four member Judges of the Commission mentioned in paragraph (ii) of clause (2).]

(6) For appointment of Judges of the Islamabad High Court, the Commission in clause (2) shall also include the following, namely:—

(i)	Chief Justice of the Islamabad High Court;	Member and
(ii)	the most senior Judge of that High Court:	Member

1. Substituted by the Constitution (Nineteenth Amendment) Act, 2011(I of 2011)

Provided that for initial appointment of the [1][Chief Justice and the] Judges of the Islamabad High Court, the Chief Justices of the four Provincial High Courts shall also be members of the Commission:

Provided further that subject to the foregoing proviso, in case of appointment of Chief Justice of Islamabad High Court, the provisos to clause (5) shall, *mutatis mutandis*, apply.

(7) For appointment of Judges of the Federal Shariat Court, the Commission in clause (2) shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its members:

Provided that for appointment of Chief Justice of Federal Shariat Court, the provisos, to clause(5) shall, *mutatis mutandis*, apply.

(8) The Commission by majority of its total membership shall nominate to the Parliamentary Committee one person, for each vacancy of a Judge in the Supreme Court, a High Court or the Federal Shariat Court, as the case maybe.

(9) The Parliamentary Committee, here in after in this Article referred to as the Committee, shall consist of the following eight members, namely:—

(i) four members from the Senate; and

(ii) four members from the National Assembly:

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

(10) Out of the eight members of the Committee, four shall be from the Treasury Benches, two from each House and four from the Opposition Benches, two from each House. The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition.

(11) Secretary, Senate shall act as the Secretary of the Committee.

(12) The Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed:

---

1. Substituted by the Constitution (Nineteenth Amendment) Act, 2011 (I of 2011).

[1][Provided that the Committee, for reasons to be recorded, may not confirm the nomination by three-fourth majority of its total membership within the said period:]

[2][Provided further that if a nomination is not confirmed by the Committee it shall forward its decision with reasons so recorded to the Commission through the Prime Minister:

Provided further that if a nomination is not confirmed, the Commission shall send another nomination.]

[1][(13) The Committee shall send the name of the nominee confirmed by it or deemed to have been confirmed to the Prime Minister who shall forward the same to the President for appointment.]

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

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

(16) The provisions of Article 68 shall not apply to the proceedings of the Committee.]

[2][(17)] The Committee may make rules for regulating its procedure.

THE SUPREME COURT OF PAKISTAN

2.3 Constitution of Supreme Court

176. The Supreme Court shall consist of a Chief Justice to be known as the Chief Justice of Pakistan and so many other Judges as may be determined by Act of [3][Majlis-e-Shoora (Parliament)] or, until so determined, as may be fixed by the President.

2.4 Appointment of Supreme Court Judges

177. [4][(1) The Chief Justice of Pakistan and each of the other Judges of the Supreme Court shall be appointed by the President in accordance with Article 175A.].

---

1 Substituted by the Constitution (Nineteenth Amendment) Act, 2011(I of 2011).

2 Inserted and re-numbered by Act I of 2011.

3 Subs .by the Revival of the Constitution of 1973 Order, 1985 (P.O.No. XIV of 1985), Art.2 for "Parliament".

4 Subs.by the Constitution (EighteenthAmdt.) Act, 2010 (X of 2010), for "clause (1)".

(2) A person shall not be appointed a 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 (including a High Court which existed in Pakistan at any time before the commencing day); or

b) has for a period of, or for periods aggregating, not less than fifteen years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day).

2.5 Oath of Office

178. Before entering upon office, the Chief Justice of Pakistan shall make before the President, and any other Judge of the Supreme Court shall make before the Chief Justice, oath in the form set out in the Third Schedule.

Chief Justice of Pakistan or of a High Court or Judge of the Supreme Court or a High Court.

[Articles 178 and 194]

بِسۡمِ ٱللَّهِ ٱلرَّحۡمَٰنِ ٱلرَّحِيمِ

(In the name of Allah, the most Beneficent, the most Merciful)

I, _____, do solemnly swear that I will bear true faith and allegiance to Pakistan:

That, as Chief Justice of Pakistan (or a Judge of the Supreme Court of Pakistan or Chief Justice or a Judge of the High Court for the Province or Provinces of ……..…….), I will discharge my duties, and perform my functions, honestly, to the best of my ability, and faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan and the law:

That I will abide by the code of conduct issued by the Supreme Judicial Council:

That I will not allow my personal interest to influence my official conduct or my official decisions:

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan:

And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

[May Allah Almighty help and guide me (A'meen).

2.6 Retiring age

[1][**179.** A Judge of the Supreme Court shall hold office until he attains the age of sixty-five years, unless he sooner resigns or is removed from office in accordance with the Constitution.].

2.7 Acting Chief Justice

180. At any time when—

a) the office of Chief Justice of Pakistan is vacant; or
b) the Chief Justice of Pakistan is absent or is unable to perform the functions of his office due to any other cause,

the President shall appoint [2][the most senior of the other Judges of the Supreme Court] to act as Chief Justice of Pakistan.

2.8 Acting Judges

181. (1) At any time when—

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

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

[3][*Explanation*.—In this clause, 'Judge of a High Court' includes a person who has retired as a Judge of a High Court.]

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

2.9 Appointment of ad-hoc Judges

182. If at any time it is not possible for want of quorum of Judges of the Supreme Court to hold or continue any sitting of the Court, or for any other reason it is necessary to increase temporarily the number of Judges of the Supreme Court, the Chief Justice of Pakistan [1][, in Consultation with the Judicial Commission as provided in clause (2) of Article 175A,] may, in writing,

1. Inserted by the Constitution (Nineteenth Amendment) Act, 2011(I of2011).
2. Article 179 subs .by the Constitution (Seventeenth Arndt.) Act, 2003 (III of 2003)
3. Subs .by P.O. No .XIV of 1985.Art.2 and Schedule.
4. Explanation added by the Constitution (Amdt.) Order, 1982 (P.O.No.II of 1982).

a) with the approval of the President, request any person who has held the office of a Judge of that Court and since whose ceasing to hold that office three years have not elapsed ; or

b) with the approval of the President and with the consent of the Chief Justice of a High Court, require a Judge of that Court qualified for appointment as a judge of the Supreme Court,

to attend sittings of the Supreme Court as an *ad hoc* Judge for such period as may be necessary and while so attending an *ad hoc* Judge shall have the same power and jurisdiction as a Judge of the Supreme Court.

2.10 Seat of the Supreme Court

183. (1) The permanent seat of the Supreme Court shall, subject to clause (3), be at Islamabad.

(2) The Supreme Court may from time to time sit in such other places as the Chief Justice of Pakistan, with the approval of the President, may appoint.

(3) Until provision is made for establishing the Supreme Court at Islamabad, the seat of the Court shall be at such place as the President may [1]appoint.

2.11 Jurisdiction of Supreme Court
Original Jurisdiction of Supreme Court

184. (1) The Supreme 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 Supreme Court shall pronounce declaratory judgments only.

(3) Without prejudice to the provisions of Article 199, the Supreme 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.

---

1 For appointment of Rawalpindi as the seat of the Supreme Court, *see* Gaz.of Pak., 1974,Pt. 11,p. 1387.

Appellate jurisdiction of Supreme Court

185. (1) Subject to this Article, the Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of a High Court.

(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 death or to transportation for life or imprisonment for life ; or, on revision, has enhanced a sentence to a sentence as aforesai; 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 [1][Majlis-e- Shoora (Parliament)] and 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; or

f) if the High Court certifies that the case involves a sub- stantial question of law as to the interpretation of the Constitution.

(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.

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[1] Subs .by the Revival of the Constitution of 1973 Order, 1985 (P.O.No. XIV of 1985), Art.2 for "Parliament"

Advisory Jurisdiction

186. (1) If, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration.

(2) The Supreme Court shall consider a question so referred and report its opinion on the question to the President.

Power of Supreme Court to transfer cases

[1][**186A.** 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.]

Issue and execution of processes of Supreme Court

187. (1) [2][Subject to clause (2) of Article 175, the] Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province.

(3) If a question arises as to which High Court shall give effect to a direction, order or decree of the Supreme Court, the decision of the Supreme Court on the question shall be final.

Review of judgments of orders by the Supreme Court

188. The Supreme Court shall have power, subject to the provisions of any Act of [3][Majlis-e-Shoora (Parliament)] and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it.

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1 New Art.186A ins.by P.O.No XIV of 1985,Art. 2 and Sch.,

2 Subs.by the Constitution (Fifth Amdt.) Act, 1976 for "The" (w.e.f.the 13th September, 1976)

3 Subs .by the Revival of the Constitution of 1973 Order, 1985 (P.O.No. XIV of 1985), Art.2 for "Parliament"

Decisions of Supreme Court binding on other Courts

189. 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.

Action in aid of Supreme Court

190. All executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court.

Rules of procedure

191. Subject to the Constitution and law, the Supreme Court may make rules regulating the practice and procedure of the Court.

2.12 Appeal to the Supreme Court against the decision of Federal Shariat Court

Article 203F.(1) Any party to any proceedings before the Court under Article 203D aggrieved by the final decision of the Court in such a proceedings may, within 60 days of such decision, prefer an appeal to the Supreme Court.

[Provided that an appeal on behalf of the Federation or of a Province may be preferred within six months of such decision]

(2)The Provisions of clauses (2) and (3) of Article 203D and clauses (4) to (8) of Article 203E shall apply to and in relation to the Supreme Court as if reference in those provisions to Court were a reference to the Supreme Court.

(2A.) An appeal shall lie to the Supreme Court from any judgment, final order or sentence of the Federal Shariat Court –

(a) if the Federal Shariat Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or imprisonment for life or imprisonment for a term exceeding fourteen years; or, on revision, has enhanced a sentence as aforesaid; or

(b) if the Federal Shariat Court has imposed any punishment on any person for contempt of the Court.

(2B) An appeal to the Supreme Court from a judgment, decision, order or sentence of the Federal Shariat Court in a case to which the preceding clauses do not apply shall lie only if the Supreme Court grants leave to appeal.

(3) For the purpose of the exercise of the jurisdiction conferred by this Article, there shall be constituted in the Supreme Court a Bench to be called the Shariat Appellate Bench and consisting of-

(a) three Muslim Judges of the Supreme Court; and

(b) not more than two Ulema to the appointed by the President to attend settings of the bench as ad hoc members thereof from amongst the Judges of the Federal Shariat Court or from out of a panel of Ulema to be drawn up by the President in consultation with the Chief Justice.

(4) A person appointed under paragraph (b) of clause (3) shall hold office for such period as the President may determine.

(5) Reference in clauses (1) and (2) to "Supreme Court" shall be construed as a reference to the Shariat Appellate Bench.

(6) While attending sittings of the Shariat Appellate Bench, a person appointed under paragraph (b) of the clause (3) shall have the same power and jurisdiction, and be entitled to the same privileges, as a Judge of the Supreme Court and be paid such allowances as the President may determine.

2.13 Contempt of Court

Article 204. (1)In this Article, "Court" means the Supreme Court or a High Court.

(2) A Court shall have power to punish any person who -

(a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;

(b) scandalizes the court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;

(c) does anything which tends to prejudice the determination of a matter pending before the Court; or

(d) does any other thing which, by law, constitutes contempt of the Court.

(3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court.

2.14 Supreme Judicial Council

Article 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 High Courts.

"*Explanation*.—For the purpose of this clause, the inter seniority of the Chief Justices of the High Courts shall be determined with reference to their dates of appointment as Chief Justice otherwise than acting Chief Justice, and in case the dates of such appointment are the same, with reference to their dates of appointment as Judges of any 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 is unable to act due to illness or any other cause, then:-

(a) If such member is a 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) 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, 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 have been guilty of misconduct, the President shall direct the Council to, or the Council may, on its own motion, inquire into the matter.

(6) If, after inquiring into the matter, the Council reports to the President that it is of the opinion:-

(a) That the Judge is incapable of performing the duties of his office or has been guilty of misconduct, and

(b) That 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 of the High Courts.

2.15 Administrative Courts and Tribunals

Article 212(3). An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal.

Chapter 3

APPOINTMENT AND REMOVAL OF THE HON'BLE JUDGES RULES

CHAPTER 3
Judicature
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3.1 JUDICIAL COMMISSION OF PAKISTAN RULES, 2010

In exercise of powers conferred by clause (4) of Article 175A of the Constitution of the Islamic Republic of Pakistan, the Judicial Commission of Pakistan is pleased to make the following rules, namely, -

1. Short title and commencement. – (1) These rules may be called the Judicial Commission of Pakistan Rules, 2010.

(2) These rules shall come into force at once.

2. Definitions. – (1) In these rules, unless the context otherwise requires,-

(a) "Chairman" means Chairman of the Commission;

(b) "Commission" means the Judicial Commission of Pakistan, established under Article 175A of the Constitution of the Islamic Republic of Pakistan;

(c) "Committee" means a Committee constituted by the Chairman from amongst the members of the Commission;

(d) "Member" means a member of the Commission; and

(e) "Secretary" means the Registrar Supreme Court or any other person authorized as such by the Chairman.

3. Nominations for Appointments. (1) For each anticipated or actual vacancy of a Judge in the Supreme Court or the Chief Justice of Federal Shariat Court or the Chief Justice of a High Court, the Chief Justice of Pakistan shall initiate nominations in the Commission for appointment against such vacancy.

(2) For each anticipated or actual vacancy of a Judge in the Federal Shariat Court or Judge in the High Court, the Chief Justice of the respective Court shall initiate and send nomination for appointment against such vacancy to the Chairman for convening meeting of the Commission.

4. The Chairman shall regulate the proceedings of the Commission.

5. Proceedings of the Commission.- (1) Whenever a nomination is received under Rule 3, the Chairman shall call a meeting of the Commission on a date, time and place determined by him and notified by the Secretary to each member.

(2) The Commission may call for any information or record required by it from any person or authority for the purposes of carrying out its functions.

(3) The Secretary shall forward the nominations made by the Commission to the Secretary of the Parliamentary Committee constituted under clause (9) of Article 175A of the Constitution.

(4) The proceedings of the Commission shall be held in camera. A record of the proceedings shall be prepared and maintained by the Secretary duly certified by the Chairman under his hand.

6. The Chairman may constitute one or more committees of members for such purpose as may be deemed necessary.

7. A retired Chief Justice or retired Judge Supreme Court and a retired Chief Justice or a retired Judge of High Court, while attending a session of the Commission, shall be entitled to TA/DA and accommodation as admissible to Judge of Supreme Court, or Judge of High Court, as the case may be.

8. Relaxation of Rules.– Without prejudice to the foregoing, the Chairman may relax strict application of these rules in the public interest.

3.2 PARLIAMENTARY COMMITTEE ON JUDGES APPOINTMENT IN THE SUPERIOR COURTS RULES, 2010

[Gazette of Pakistan, Extraordinary, Part II, 6th January, 2011]

S.R.O. 11(1)2011, dated 6-1-2011.— In exercise of the powers conferred by Article 175A of the Constitution of the Islamic Republic of Pakistan, the Parliamentary Committee on Judges appointment in the superior courts is pleased to make the following rules, namely:-

1. Short title and commencement.-- (1) These rules may be called the Parliamentary Committee on Judges Appointment in the Superior Courts Rules, 2010.

(2) These rules shall come into force at once.

2. Definitions.--- (1) In these rules, unless the context otherwise requires:

(a) **"Chairman"** means Chairman of the Parliamentary Committee;

(b) **"Committee"** means the Parliamentary Committee on Judges appointment in the superior courts constituted under clause (9) of Article 175-A of the Constitution of the Islamic Republic of Pakistan.

(c) **"Member"** means a member of the Parliamentary Committee; and

(d) "**Secretary**" means the Secretary Senate of Pakistan and includes any person for the time being performing duties of Secretary Senate.

(2) The words and expressions used but not defined in these rules shall, unless the context otherwise, requires, have the same meanings as assigned to them in the Constitution of the Islamic Republic of Pakistan.

[1][**3. Powers of the parliamentary Committee.—**(1) The Committee shall have powers to summon, invite or interview any person, including the person nominated for vacancy of a judge, or call for any information or record required by it from any person or authority for the purpose of carrying out its functions:

Provided that if a person nominated for vacancy of a judge invited for an interview, fails to appear before the Committee, his/her nomination shall be deemed to be not confirmed.

(2) Any person summoned or invited by the Committee under sub-rule (1) may be required to give a statement or be examined on oath, prescribed by the Committee.]

4. Functions of the Parliamentary Committee.— (1) A nomination received by the Secretary from the Judicial Commission shall be placed before the Chairman who shall call a meeting of the Committee on a date, time and place determined by him in consultation with the members of the Committee, to be notified by the Secretary.

(2) The Committee after considering the nomination from the Judicial Commission for an actual or anticipated vacancy of a Judge in the superior courts may confirm the nominee by a majority of its total membership within fourteen days of the receipt of the nomination, failing which the nomination shall be deemed to have been confirmed.

[1] Subs. by S.R.O. 1488(I)/2019, dated 29-11-2019

[1][(3) The Committee for reasons to be recorded, may not confirm the nomination by three-fourth majority of its total membership within the said period.

(4) The Committee shall, in case of non–confirmation of as provided in sub-rule (3), forward its decision with reasons so recorded to the Commission through the Prime Minister and thereafter the Commission shall send another nomination.]

[2][(5)] The Secretary shall send the name of the person confirmed (or deemed to have been confirmed) to the Prime Minister for approval by the President.

[3][**5. Legality of decisions and proceedings of the Committee**.—(1) Notwithstanding the Judgment of any court, Decision of the Committee shall not be called in any court on any ground whatsoever.

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

6. Chairman of the Committee.—(1) The Chairman of the Committee shall be elected by the Committee from amongst its members for a period of six months, who may be re-elected thereafter:

Provided that the election of the Chairman Committee shall be held afresh after each general election to the National Assembly or an election to fill the seats in the Senate on the expiry of the term of half of the total membership of the Senate, as the case may be.

(2) If the Chairman of the Committee is not present at any sitting, the Committee shall choose one of its members present to act as Chairman for that sitting.]

General Provisions

7. Chairman of the Committee.-- (1) The Chairman of the Committee shall be elected by the Committee from amongst its members:

Provided that the election of the Chairman committee shall be held afresh after each general election to the National Assembly or an election to fill the seats in the Senate on the expiry of the term of half of the total membership of the Senate, as the case may be.

(2) If the Chairman of the Committee is not present at any sitting, the Committee shall choose one of its members present to act as Chairman for that sitting.

[1][**7A. Sub-Committee.—** The Chairman may constitute sub-committees consisting of three members of the Committee with such terms of reference as may be determined by him.

7B. **Discharge of members due to absence.—**If a member is absent from three or more consecutive meetings of the Committee, such member shall cease to be the member of the Committee:

Provided that the Committee may, on application by the Member, after being satisfied that the absence was due to the reasons beyond the control of the member, for reasons to be recorded condone the absence of the member.]

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[1] Subs. and inserted by S.R.O. 1488(I)/2019, dated 29-11-2019 (Note: Ibid mistakenly uses words" inserted" instead of substitution and insertion)

[2] Renumbered by S.R.O. 1488(I)/2019, dated 29-11-2019

[3] Subs. by S.R.O. 1488(I)/2019, dated 29-11-2019

8. Quorum of a meeting. —The quorum to constitute a sitting of the Committee shall be the majority of total membership of the Committee including the Chairperson.

9. Proceedings of the Committee.—The proceedings of the Committee shall be held in camera. However, a record of the proceedings shall be maintained by the Secretary [1][which shall be classified]

10. Travel.-- A member while attending a meeting of the Committee shall be entitled to the TA/DA as admissible to him under the provisions of Members of Parliament (Salaries and Allowances) Act, 1974 (XXVII of 1974).

11. Amendment of the rules.-- The Committee shall have power to amend any of the provisions of these rules with [2][majority of the membership] of the Committee.

12. Residuary powers,— All matters for which no provision or no sufficient provision has been made in these rules, shall be regulated in such manner as the Committee may deem fit.

[1] Inserted by S.R.O. 1488(I)/2019, dated 29-11-2019 (Note: Ibid mistakenly referred rule 8 instead of rule 9)
[2] Subs. by S.R.O. 1488(I)/2019, dated 29-11-2019 (Note: Ibid mistakenly referred rule 10 instead of rule 11)

3.3 CODE OF CONDUCT TO BE OBSERVED BY JUDGES OF THE SUPREME COURT OF PAKISTAN AND OF THE HIGH COURTS OF PAKISTAN

*(*Supreme Judicial Council*)*

NOTIFICATION

Islamabad, the 2nd September, 2009

No.F.SECRETARY-01/2009/SJC.- ln exercise of powers conferred by Article 209(8) of the Constitution of Islamic Republic of Pakistan, 1973, the Supreme Judicial Council in its meeting on 8th August, 2009 approved the addition of a new Article No. XI in the Code of Conduct for Judges of the supreme Court and High Courts and in its meeting on 29th August, 2009 decided to publish the full text of amended Code of Conduct in the Gazette of Pakistan (Extraordinary) for information of all concerned as under:-

Code of Conduct for Judges of the Supreme Court and High Courts *(Framed by the Supreme Judicial Council under Article 128 (4) of the 1962 Constitution as amended upto date under Article 209 (8) of the Constitution of Islamic Republic of Pakistan 1973).*

The prime duty of a Judge as an individual is to present before the public an image of Justice of the nation. As a member of his court, that duty is brought within the disciplines appropriate to a corporate body.

The Constitution, by declaring that all authority exercisable by the people is a sacred trust from Almighty Allah, makes it plain that the Justice of this nation is of Divine origin. It connotes full implementation of the high principles, which are woven into the Constitution, as well as the universal requirements of natural justice. The oath of a Judge implies complete submission to the Constitution and under the Constitution to the law. Subject to these governing obligations, his function of interpretation and application of the Constitution and the Law is to be discharged for the maintenance of the Rule of Law over the whole range of human activities within the nation.

To be a living embodiment of these powers, functions, and obligations calls for possession of the highest qualities of intellect and character. Equally, it imposes patterns of behavior, which are the hallmark of distinction of a Judge among his fellow-men.

In this code, an attempt is made to indicate certain traditional requirements of behavior in the Judges of the Superior Courts, conducive to the achievement of a standard of justice worthy of the nation.

ARTICLE-I

On equiponderance stand the heavens and the earth. By equiponderance, oppression, meaning unjust and unequal burdens, is removed. The Judge's task is to ensure that such equality should prevail in all things.

ARTICLE–II

A Judge should be God-fearing, law-abiding, abstemious, truthful of tongue, wise in opinion, cautious and forbearing, blameless, and untouched by greed. While dispensing justice, he

should be strong without being rough, polite without being weak, awe inspires in his warnings and faithful to his word, always preserving calmness, balance and complete detachment, for the formation of correct conclusions in all matters coming before him.

In the matter of taking his seat and of rising from his seat, he shall be punctilious in point of time, mindful of the courtesies, careful to preserve the dignity of the Court, while maintaining an equal aspect towards all litigants as well as lawyers appearing before him.

ARTICLE - III

To be above reproach, and for this purpose to keep his conduct in all things, official and private, free from impropriety is expected of a Judge.

ARTICLE- IV

A Judge must decline resolutely to act in a case involving his own interest, including those of persons whom he regards and treats as near relatives or close friend.
A Judge must rigidly refrain from entering into or continuing any business dealing, howsoever unimportant it may be, with any party to a case before him. Should the dealing be unavoidable, he must discontinue his connection with the case forthwith. A judge must refuse to deal with any case in which he has a connection with one party or its lawyer more than the other, or even with both parties and their lawyers.

To ensure that justice is not only done, but is also seen to be done, a Judge must avoid all possibility of his opinion or action in any case being swayed by any consideration of personal advantage, either direct or indirect.

ARTICLE- V

Functioning as he does in full view of the public, a Judge gets thereby all the publicity that is good for him. He should not seek more. In particular, he should not engage in any public controversy, least of all on a political question, notwithstanding that it involves a question of law.

ARTICLE- VI

A Judge should endeavor to avoid, as far as possible, being involved, either on his own behalf or on behalf of others, in litigation or in matters which are liable to lead to litigation such as industry, trade or speculative transactions.

To employ the influence of his position to gain undue advantage, whether immediate or future, is a grave fault.

A Judge must avoid incurring financial or other obligations to private institutions or persons such as may embarrass him in the performance of his functions.

ARTICLE- VII

Extra-Judicial duties or responsibilities, official or private, should be generally avoided. He should equally avoid being a candidate, for any elective office in any organization whatsoever.

ARTICLE- VIII

Gifts are to be received only from near relatives and close friends, and only such as are customary. Everything in the way of favours in consequence of the office must be refused. In accepting any entertainment offered, whether general or particular, care should be taken that its real purpose does not conflict with a Judge's duty to maintain detachment from likely litigants, and from partisan activity.

ARTICLE- IX

In his judicial work, and his relations with other Judges, a Judge should act always for the maintenance of harmony within his own Court, as well as among all Courts and for the integrity of the institution of justice. Disagreement with the opinion of any Judge, whether of equal or of inferior status, should invariably be expressed in terms of courtesy and restraint.

ARTICLE- X

In this judicial work a Judge shall take all steps to decide cases within the shortest time, controlling effectively efforts made to prevent early disposal of cases and make every endeavor to minimize suffering of litigants by deciding cases expeditiously through proper written judgments. A Judge who is unmindful or indifferent towards this aspect of his duty is not faithful to his work, which is a grave fault.

ARTICLE- XI

No Judge of the superior judiciary shall render support in any manner whatsoever, including taking or administering oath in violation of the oath of office prescribed in the Third Schedule to the Constitution, to any authority that acquires power otherwise than through the modes envisaged by the Constitution of Pakistan.

By order of the Council,

DR. FAQIR HUSSAIN,
Secretary.

3.4 THE SUPREME JUDICIAL COUNCIL (PROCEDURE OF INQUIRY), 2005

SUPREME COURT OF PAKISTAN
[SUPREME JUDICIAL COUNCIL]

NOTIFICATION

Islamabad, the 22nd November, 2005

No.P.Reg.113/2005-SJC:--- (SUPREME JUDICIAL COUNCIL PROCEDURE OF ENQUIRY 2005). Pursuant to the decision taken by the Supreme Judicial Council, in its Meeting on 24th September 2005, the Supreme Judicial Council is pleased to lay down the following procedure for effective performance of functions vested in it under Article 209 of the Constitution of Islamic Republic of Pakistan.

1. Title and application:

(1) The procedure of enquiry shall be called "The Supreme Judicial Council Procedure of Enquiry 2005".
(2) It shall only apply to the Supreme Judicial Council and proceedings.

2. Scope:
The Procedure shall provide for effective implementation of Article 209 of the Constitution and regulate all inquiries required to be undertaken and all other matters which need to be addressed there under.

3. Definitions:

In the present Procedure, unless the context provides otherwise, the following expressions used in the Procedure will have the meanings as assigned to them hereunder;

(a) **"Any matter"**, includes all matters and facts associated with the enquiry that the Council may carry out.

(b) **"Any other source"**, includes all sources through which information is received in respect of the conduct of a Judge.

(c) **"Code of conduct"**, means the code of conduct issued by the Supreme Judicial Council in terms of Article 209(8) of the Constitution of Islamic Republic of Pakistan.

(d) **"Chairman"**, means and includes the Chief Justice of Pakistan.

(e) **"Incapacity"**, will include all forms of physical or mental incapacity howsoever described or narrated, which render the Judge incapable of performing the duties of his office.

(f) **"Conduct"**, will include series of facts associated with the matter being inquired into by the Council, including the facts which are attributed to the person of the Judge.

(g) **"Guilty"**, will include arriving at an opinion by the Council that a Judge has been guilty of misconduct.

(h) **"Opinion"**, will include arriving at a conclusion by the Council, that misconduct has or has not taken place.

(i) **"Information"**, includes any material, facts, documentation, photographs, video or audio tapes, affidavits, letters or any other reasonable evidence that has come to the knowledge of any Member of the Council or the Council itself sufficient to initiate an enquiry.

(j) **"Enquiry"**, means the consideration of any matter, in relation to conduct of a Judge, by the Council, or any Member of the Council.

(k) **"Member"**, means Member of the Supreme Judicial Council.

(l) **"Misconduct"**, Includes,

(i) Conduct unbecoming of a Judge
(ii) Is in disregard of the Code of Conduct issued under Article 209(8) of the Constitution of Islamic Republic of Pakistan,
(iii) Is found to be inefficient or has ceased to be efficient

(m) **"Report of the Council"**, includes the findings of the enquiry proceedings carried out by the Council including recommendations for the President of Pakistan for removal of the Judge or otherwise.

(n) **"Secretary"**, means the Registrar, Supreme Court or any person appointed by the Council.

(o) **"Supreme Judicial Council"**, means the Supreme Judicial Council as constituted by Article 209 of the Constitution of Islamic Republic of Pakistan.

4. The Headquarters of the Council shall be at Islamabad, but the Council may hold its meeting or enquiry into reference or a complaint at any other place in Pakistan, as the Chairman may deem convenient.

5. Receiving of Information: -- (1) Any member of public may bring to the notice of the Council or any of its Members or the Secretary, information alleging incapacity or misconduct of a Judge.

(2) The allegation may be supported by material which is sufficient in the opinion of the Council to commence enquiry.

(3) The person providing the said information shall identify himself properly.

(4) The information may be received through any mode by the Council or any Member of the Council, without being restricted to any of the following sources such as;

(a) Print or electronic media;

(b) Written Complaint.

(5) Information received under sub-para (4) shall be entered in the Register maintained by the Secretary.

6. Cognizance by the Council: -- Without prejudice to the general requirement of receiving information in the manner provided for above, nothing in this Procedure shall be read to curtail or limit the jurisdiction of the Council to initiate an enquiry against a Judge.

7. Procedure for scrutinizing information:-- (1) Once any information in respect of enquiry into the conduct of a Judge is received by any Member or the Council, it shall be presented to the Chairman of the Council, who shall

(a) Refer the same to any Member of the Council to look into the said information; and to express his opinion in relation to sufficiency or otherwise of the information.

(b) If the Council is satisfied that the information *prima facie* discloses sufficient material for an enquiry, it shall proceed to consider the same.

(2) The Member, to whom the Chairman has referred the information, will examine the same and ascertain if the information so received discloses specific particulars of misconduct, and provides factual details necessary to form *prima facie* opinion in respect of the guilt of the Judge.

(3) If the Member forms an opinion that the information does reveal sufficient material to commence enquiry, he shall inform the Council accordingly and the information shall be placed before the Council.

(4) If the Member comes to a conclusion that the information is false, frivolous, concocted or untrue, he shall inform the Council accordingly and may recommend action against the person who initiated the information.

8. Enquiry by the Council: - (1) The Chairman may call the meeting of the Council for discussion and enquiry into the information received.

(2) The information in respect of the conduct of a Judge shall be placed before the Council for examination.

(3) If the Council is of the view that before forming an opinion, it should also hear the Judge under enquiry, it shall require the said Judge to present himself before the Council. The Council shall provide him the information and material received against him.

(4) If the Council is of the opinion that it requires more material or seeks additional information before it can form any opinion, it shall direct accordingly.

(5) The Council may, if necessary, secure the attendance of the person who has provided the information, for enquiry into any aspect of the information provided.

(6) The Council may summon any expert, where the enquiry is in respect of the incapacity of a Judge and may order any medical investigation by local or foreign expert.

(7) Without prejudice to the foregoing, the Council shall have inherent powers to adopt any procedure specific to the enquiry which is considered by the Council to be just and proper in the circumstances.

9. (1) If the Council decides to proceed against a Judge, a show cause notice shall be issued to him along with supporting material calling upon him to explain his conduct within 14 days.

(2) On receipt of reply from the Judge, Council shall convene its meeting to proceed further with the matter.

10 (1) The Attorney-General for Pakistan and in his absence a senior counsel of the Supreme Court, instructed by him, shall conduct a reference.

(2) The Council may require the Attorney-General for Pakistan or any other counsel to appear and assist the Council in relation to smooth and efficient conduct of its proceedings.

11. Procedure of Council:--(1) In the event of a difference of opinion amongst the members of the Council regarding, further enquiry, granting right of hearing to the Judge concerned, securing attendance of the persons providing information and related matters, opinion of the majority shall prevail.

(2) In the event of a difference of opinion amongst the members of the Council whether the Judge concerned is guilty of misconduct, opinion of the majority shall prevail.

12. Report to the President of Pakistan:- If the Council in its meeting, on conclusion of the proceedings forms an opinion, that the Judge concerned has been guilty of misconduct or incapacitated in the performance of his duties properly, it shall express its views accordingly and the same shall be communicated by the Chairman to the President as a Report of the Council for action under Article 209(6) of the Constitution of Islamic Republic of Pakistan.

13. Proceedings of the Council not to be reported:- (1) Proceedings of the Council shall be conducted in camera and shall not be open to public.

(2) Only the findings of the proceedings shall be allowed to be reported.

(3) Proceedings of the meetings of the Council or any other steps that Council may take shall not be reported, unless directed otherwise.

14. Punishment for frivolous information:- (1) Whenever the Council finds that the information or evidence provided to it was false in material particulars or with the sole intention to malign a Judge, or scandalizing the Court or to undermine it in any form whatsoever, it may direct action against all those who are found to have provided the said information, or evidence as the case may be.

(2) For this purpose, the Council may direct the Secretary of the Council to pursue the course of action against the offender.

15. Council Secretariat:- (1) The Council shall have a permanent secretariat and in order to carry out the affairs and functions, the Council may appoint such officials and staff as deemed fit and proper.

(2) The Council shall have a perpetual seal which shall be retained in the custody of the Secretary.

(3) The Secretary of the Council shall be the custodian of the record and proceedings of the Council.

16. Powers to issue directions:- The Council shall have the power to issue any directive, pass any order and prescribe the procedure for achieving the objects of the Council.

17. This procedure shall, *mutatis mutandis,* apply to proceedings against other office holders, who can be removed from office in the manner prescribed by Article 209 of the Constitution.

Chapter 4

SUPREME COURT RULES 1980

THE SUPREME COURT RULES, 1980
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SUPREME COURT OF PAKISTAN
NOTIFICATION
Rawalpindi, the 20th November, 1980
THE SUPREME COURT RULES, 1980

[1][Gazette of Pakistan, Extraordinary, Part II, 23rd November, 1980]

S.R.O.1159(I)/80.- In exercise of the powers conferred under Article 191 of the Constitution of the Islamic Republic of Pakistan (hereinafter called the Constitution), the Supreme Court makes the following Rules :-

PART I
GENERL
ORDER I
INTERPRETATION

1. (1) These Rules shall be called the Supreme Court Rules, 1980, and shall come into force at once.

(2) The Supreme Court Rules, 1956, are hereby revoked.

2. - (1) In these Rules, unless the context otherwise requires:-

"Advocate" means a person entitled to appear and plead before the Supreme Court.

"Advocate-on-Record" means an Advocate, who is entitled, under these Rules, to act and plead for a party in the Supreme Court;

"Article" means Article of the Constitution;

"Attorney-General" means the Attorney-General for Pakistan;

"Chief Justice" means the Chief Justice of Pakistan;

"Code" means the Code of Civil Procedure, 1908;

"Court" and "this Court" means the Supreme Court of Pakistan;

"Court appealed from" includes a tribunal and any other judicial body from which an appeal is preferred to the Court;

"Gazette" means the Gazette of Pakistan;

"Judge" means a Judge of the Court;

"High Court" means the High Court of a Province;

"Party" and all words descriptive of parties to proceedings before the Court (such as "appellant", "respondent", "plaintiff", "defendant" and the like) include, in respect of all acts proposed to be done by an Advocate-on-Record, Advocate-on-Record of the party in question, when it is represented by an Advocate-on- Record ;

"Prescribed" means prescribed by or under these Rules;

[2]['Registrar' means 'Registrar of the Court' and 'Registry' means 'Main Registry' of the

[1] Published in the Gazette of Pakistan, Part II, dated 23rd November, 1980 at page 2231-2292

[2] Sub. by Notification No. F.59/80 SCA dated. 27.08.2003. Before sub. the originals words are: [Registrar and Registry means respectively the Registrar and Registry of the Court]

Court.]

"Branch Registry" means a Branch Registry of the Court set up by the Chief Justice at any seat of a High Court and notified in the Gazette;

"Respondent" includes an intervener;

"Senior Advocate" means an Advocate enrolled as such by the Court; and

"Signed", save in the case of a judgment and decree includes stamped.

(2) Unless the context otherwise requires, the General Clauses Act, 1897, shall apply to the interpretation of these Rules as it applies to the interpretation of a Federal Act.

3. Where by these Rules or by any order of the Court any step is required to be taken in connection with any cause, matter or appeal, before the Court, that step shall, unless the context otherwise requires, be taken in the Registry or in the appropriate Branch Registry.

4. Where any particular number of days is prescribed by these Rules, the same shall be computed in accordance with the provisions of the Limitation Act, 1908.

5. Save as otherwise expressly provided by these Rules, the provisions of the Code shall not apply to any proceedings in the Court.

[1] [ORDER II
OFFICES OF THE COURT: SITTINGS AND VACATION

1. Except during the vacation and on Court holidays and subject to any order of

---

[1] Sub. vide office order No. F. 59/80-SCA, dated 21.10.1984 for "Order II". The original Order II was as follows:

Order II. Offices of the Court : Sittings and Vocation

1. Except during the vacation and on Court holidays and subject to any order of the Chief Justice, the offices of the Court shall remain open daily from 8.30 a.m. to 3.30 p.m. on week days; and from 8.30 to 1.00 pm on Thursdays:
   Provided that no matter, unless of an urgent nature, shall be received within one hour of the closing time.
2. The offices of the Court shall be open during the vocation, except on Thursdays and holidays.
3. The Judicial Year of the Court shall commence on the first Saturday in October each year, or if that is a Court holiday, then on the next working day, and continue until the commencement of the Vocation in the year next following.
4. Summer vocation of the Court shall continue on such date as may be fixed in each year by the Chief Justice and notified in the Gazette.
5. *[The Court shall not ordinarily sit on Thursdays (or any other day that may be set apart for writing of Judgments), nor during the winter holidays, that is to say, December 24 to January 6, both days inclusive and on any other days notified in the Gazette as Court Holidays.]

   * Rule 5 subs. by Corrigendum published in Gazette of Pakistan, Extraordinary, Part II, dated 12th January 1980 at page 44.

6. A Judge shall be nominated by the Chief Justice before the commencement of vacation and winter holidays for the hearing of all matters which may require to be immediately or promptly dealt with and whenever necessary a Bench of the Court of two or more Judges may likewise be constituted by the Chief Justice for the disposal of cases during the vacation and winter holidays

Notification No. F. 59/80-SCA, dated 20-6-1984 substitute the original Order II as follows:

Order II. Offices of the Court : Sittings and Vocation

1. Except during the vacation, on Fridays and Saturdays, and on other Court holidays and subject to any order of the Chief Justice, the offices of the Court shall remain open daily from 8.00 a.m. to 4.30 p.m. with the break of thirty minutes from 1.30 p.m to 2. p.m.:
   Provided that no matter, unless of an urgent nature, shall be received within one hour of the closing time.
2. Except holidays, the offices of the Court shall be open during the vocation and the winter holidays.
3. The Judicial Year of the Court shall commence on the first Sunday in October each year, or if that is a Court holiday, then on the next working day, and continue until the commencement of the Vocation in the year next following.
4. Summer vocation of the Court shall continue on such date as may be fixed in each year by the Chief Justice and notified in the Gazette.
5. The Court shall not sit on Fridays and Saturdays, nor during winter holidays, that is to say, December 24 to January 6, both days inclusive, and any other days notified in Gazette as Court holidays.
   Provided that the Chief Justice may direct sittings of the Court on any Court Holiday.:

the Chief Justice, the offices of the Court shall remain open daily from 8.30 a.m. to 3.30 p.m. on week days; and from [1][8.30 a.m. to 12:00 Noon on Friday:]

Provided that no matter, unless of an urgent nature, shall be received within one hour of the closing time.

2. Except holidays [2][***], the offices of the Court shall be open during the vacation and the winter holidays.

[3][3. The judicial year of the Court shall commence on the second Monday in September each year, or if that day is a Court holiday, then on the next working day, and continue until the commencement of the vacation in the year next following.

4. Summer vacation of the Court shall commence on the 15th June or on such date as may be fixed in each year by the Chief Justice and notified in the Gazette.]

5. [4][The Court shall not ordinarily sit on Saturdays or on any other day that may be set apart for writing of judgments, nor during winter holidays, that is to say, December 18 to 31, both days inclusive, and on any other days notified in the Gazette as Court holidays.]

6. A Judge shall be nominated by the Chief Justice before the commencement of vacation and winter holidays for the hearing of all matters which may require to be immediately or promptly dealt with and whenever necessary a Bench of the Court of two or more Judges may likewise be constituted by the Chief Justice for the disposal of cases during the vacation and winter holidays.

ORDER III
OFFICERS OF THE COURT

1. The Registrar shall be the executive head of the Office. He shall have the custody of the records of the Court and shall exercise such powers as are assigned to him by these Rules.

2. The Registrar shall not be absent from the Court without leave of the Chief Justice, and any other officer of the Court without leave of the Registrar.

3. In the absence of the Registrar, [5][the Additional Registrar and in the absence of the Additional Registrar,] the Deputy Registrar or in the absence of the Deputy Registrar, the Assistant Registrar shall perform all the functions of the Registrar, under these Rules.

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[1] Sub. by Notification No. F. 59/80-SCA, dated 27.08.2003. Before Subs. the original words are" 8-30 a..m. to 1-00 p.m. on Thursdays:"

[2] Omitted by Notification No. F. 59/80-SCA, dated 27-08-2003 for "and Thursday"

[3] Subs. by Notification No. F.59/80-SCA, dated 11-01-2000 for " The judicial year of the Court shall commence on the first Saturday in October each year, or if that day is a Court holiday, then on the next working day, and continue until the commencement of the vacation in the year next following."

[4] Subs. by Notification No. F.59/80-SCA, dated 24-4-2000 for "The Court shall not ordinarily sit on Thursdays or on any other day that may be set apart for writing of judgments, nor during winter holidays, that is to say, December 24 to January 6, both days inclusive, and on any other days notified in the Gazette as Court holidays."

[5] Ins. by Notification No. F-59/80 SCA, dated 27.08.2003

4. The Chief Justice may assign and the Registrar may, with the approval of the Chief Justice, delegate to [1][an Additional Registrar or] a Deputy Registrar or an Assistant Registrar, any functions required by these Rules to be performed by the Registrar.

5. The Registrar shall, subject to any directions by the Chief Justice, allocate the duties of the Registry among the officers of the Court, and shall, subject to these Rules, and to any such direction as aforesaid, supervise and control the officers and servants of the Court.

6. The Seal of the Court shall be such as the Chief Justice may direct, and shall be kept in the custody of the Registrar.

7. Subject to any directions by the Chief Justice, Seal of the Court shall not be affixed to any writ, rule, order, summons or other process save under the authority in writing of the Registrar.

8. The Seal of the Court shall not be affixed to any certified copy issued by the Court, save under the authority in writing of the Registrar.

9. The Registrar shall keep a list of all cases pending before the Court and shall subject to these Rules and any directions given by the Chief Justice, prepare the list of cases ready for hearing and shall cause notice to be given thereof and of the day if any, assigned for the hearing of any case or cases in the list.

10. In addition to any other powers under the Rules, and subject to any general or special orders of the Chief Justice, the Registrar shall have the following powers namely:-

(a) to require any plaint, petition of appeal, petition for leave to appeal or other matters presented to the Court, to be amended in accordance with the practice and procedure of the Court or to be represented after such requisition as the Registrar thinks proper in relation thereto, has been complied with;

(b) to fix the dates of hearing of appeals, petitions or other matters, and issue notices thereof;

(c) to settle the index;

(d) to direct any formal amendment of record.

ORDER IV
ADVOCATES AND ADVOCATES-ON-RECORD

[1][1. There shall be kept separately, a Roll of Senior Advocates, of Advocates and of Advocates-on-Record.

2. A Senior Advocate, an Advocate and an Advocate-on- Record shall be entitled to appear and plead before the Court on signing his respective Roll;

[1] Subs. by Notification No. F.59/80 SCA, dated 14-02-1988

Provided that an Advocate shall not be allowed to sign the Roll unless he produces a certificate of enrolment from the Pakistan Bar Council; and

Provided further that the Chief Justice and the Judges may refuse to allow a person to sign the Roll or remove his name from the Roll after affording him an opportunity of oral hearing if he has, at any time, been adjudged guilty of professional misconduct or is otherwise considered unfit to be enrolled or allowed to remain as an advocate.

3. A Senior Advocate shall have precedence over other Advocates and the provisions of the First Schedule to the Rules shall apply to Senior and other Advocates.

4. A person shall not be qualified for being enrolled as an Advocate unless he:-

(a) has been for not less than 1[seven] years enrolled as an Advocate in a High Court;

(b) has been certified in a duly authenticated form by the Chief Justice and Judges of the High Court that he is a fit and proper person to appear and plead as an Advocate before the Supreme Court:

Provided that the Chief Justice and Judges may grant the enrollment of a person not qualified as aforementioned, if in their judgment, he is qualified by knowledge, ability and experience to be enrolled as an Advocate.

5. The Chief Justice and the Judges may [2][***] select, from time to time, from among those whose names are on the Roll of the Advocates, persons who are judged, by their knowledge, ability and experience, to be worthy of being granted the status of Senior Advocate and on signing the Roll of Senior Advocates shall assume the said status. [3][A Senior Advocate shall pay an enrollment fee of Rs.5000/-].

6. No Advocate other than an Advocate-on-Record shall appear or plead in any matter unless he is instructed by an Advocate-on-Record.

7. The Rolls of Senior Advocates, Advocates, and Advocates- on-Record shall be kept by the Registrar and shall contain such particulars as the Court may, from time to time, require.

8. The dress for Senior Advocates, Advocates, and Advocates-on-Record shall be short coat or *sherwani* of black material. [4][The Senior Advocates shall wear the gowns throughout the year.]"

[1] Subs. by Notification No. F. 59/80-SCA, dated 28-12-2015 for words "ten".
[2] Omitted by Notification No. F. 59/80-SCA, dated 11.01.2000. The omitted words are ", on application or otherwise"
[3] Ins. by Notification No. F.59/80-SCA dated 03..05.1989
[4] Subs. by Notification No. F.59/80-SCA dated 11.01.2000 for "Wearing of gowns shall be during the winter months, i.e from the 1st of November, to the 31st March."

9. A signing fee of Rs. 1[200/-] and Rs. 2[1000/-] shall be charged from Senior Advocates and Advocates, respectively.

10. The Attorney-General shall have precedence over all Advocates and Senior Advocates in the Court.

11. The Advocate-General of a Province shall have precedence immediately after the Attorney-General:

Provided that the seniority of Advocates-General of Provinces inter-se shall be determined in accordance with the dates of appointment to their respective offices.

12. The Attorney-General, a Deputy Attorney-General, an Advocate-General and an Additional Advocate-General shall, by virtue of their offices, have the status of a Senior Advocate in the Supreme Court, notwithstanding that their names are not borne on the Roll of Senior Advocates.

13. Subject to the preceding rules of this Order, an Advocate appearing before the Court shall have precedence among the Senior or other Advocates, as the case may be, according to the date of his enrolment as a Senior or other Advocate, in the Court.

14. An Advocate of five years standing in the Supreme Court shall be qualified to be registered as an Advocate-on-Record, on making an application in this behalf.

15. No Advocate other than an Advocate-on-Record shall be entitled to act for a party in any proceedings in the Court.

16. No Senior Advocate shall be registered as Advocate-on- Record.

17. Every Advocate-on-Record shall --

(i) Subscribe before the Registrar a declaration in Form 2 or Form 3 of the Forms in the Sixth Schedule to the Rules, as may be appropriate to his case, undertaking to observe the Rules, Regulations, orders and practice of the Court, and to pay all fees or charges due and payable in any cause, matter or appeal in the Court;

(ii) subscribe similarly an indemnity bond in Form 4 of the Forms in the said Schedule; and

(iii) pay an enrolment fee of Rs. [3][1000/-].

18. Every Advocate shall, before signing his Roll, produce before the Registrar an authenticated copy of his enrollment certificate from the Pakistan Bar Council and a certificate that he is still an Advocate of the High Court.

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[1] Subs. by Notification No. F.59/80-SCA dated 03.05.1989 for "10"

[2] Subs. by Notification No. F.59/80-SCA dated 14.07.1998 for "5"

[3] Subs. by Notification No. F.59/80-SCA dated 03.05.1989 for "250".

19. Every Advocate-on-Record shall have an office at the seat of the Main Registry or at the seat of any Branch Registry and shall notify the Registrar of the address of his office and of any change of address, and any notice, writ, summons or other documents delivered or sent through post to the Advocate-on- Record at the address so notified by him shall be deemed to have been properly served.

20. Two or more Advocates-on-Record may enter into partnership with one another, and any one of them may act in the name of the partnership, provided that the firm has an office at the seat of the Main Registry or a Branch Registry and is registered with the Registrar. The undertaking prescribed in rule 17 hereinbefore contained in this Order, shall be subscribed separately by all the partners on behalf of the firm. Any change in the composition of the firm shall be intimated to the Registrar. Any firm of Advocates-on-Record may, in addition to principal office at the seat of the Court or a Branch Registry, also maintain Branch Office at any district headquarters or other center of litigation, provided that such Branch Offices is under the management and control of a member of the firm who has received training at the principle office of the firm for a period of not less than one year.

21. An Advocate-on-Record who wishes to have his name removed from the Roll of Advocates-on-Record shall apply by petition, verified by an affidavit, entitled " In the matter of ……. an Advocate-on-Record in this Court", and stating the date of his enrolment as an Advocate-on-Record, the reasons why he wishes his name to be removed, that no application or other proceeding in any Court is pending , or is likely to be instituted against him, and that no fees are owing to the Court for which he is personally liable.

22. Every Advocate-on-Record shall, before acting on behalf of any person or party, file in the Registry a power of attorney in the prescribed form authorizing him to act.

23. No person having an Advocate-on-Record shall file a power of attorney authorizing another Advocate-on-Record to act for him in the same case save with consent of the former Advocate-on- Record or by leave of the Court, unless the former Advocate-on- Record is dead, or is unable by reason of infirmity of mind or body to continue to act.

[1][Provided that where a person is not represented by an Advocate-on-Record or has been permitted by the Court to appear in person, he shall subject to the same discipline and restrictions as are applicable to an Advocate on Record.]

24. No. Advocate-on-Record shall without leave of the Court withdraw from the conduct of any case by reason only of non- payment by his client of fees, costs and other charges.

25. Every Advocate-on-Record in the case shall be personally liable to the Court for due payment of all fees and charges payable to the Court.

26. No person having an Advocate-on-Record in the case shall be heard in person save by special leave of the Court:

[1] Proviso added by Notification No. F.59/80 SCA dated, 16-07-1987

Provided that where a person is not represented by an Advocate-on-Record or has been permitted by the Court to appear in person, he shall be subject to same discipline and restrictions as are applicable to an Advocate-on-Record.

27. No Advocate-on-Record shall authorize any person, except another Advocate-on-Record to do any act in his name in any case. The authorization shall be in writing.

28. Where a party changes his Advocate-on-Record, the new Advocate-on-Record shall give notice of the change to all parties concerned.

29. A Senior Advocate, or an Advocate or an Advocate-on- Record who wishes to suspend his practice by reason of his appointment to any office of profit under the Gove rnment, or his being engaged in another profession or for any other reason, shall give intimation thereof to the Registrar.

30. Where, on the complaint of any person or otherwise, the Chief Justice or the Court is of the opinion that a Senior Advocate or an Advocate or an Advocate-on-Record has been guilty of misconduct or conduct unbecoming of an Advocate, with regard to any matter concerning the Court, the Chief Justice or the Court may either after affording him an opportunity of oral hearing, take such disciplinary action, including suspension and removal form practice of the Court, against him as it may deem fit, or refer to the Pakistan Bar Council for inquiry and action under the Legal Practitioners and Bar Council Act, 1973.

31. In an appropriate case, where the Chief Justice or the Court is of the opinion that a Senior Advocate or an Advocate-on-Record is unfit to act and plead as such, the Chief Justice or the Court may, after providing him an opportunity of oral hearing, direct removal of his name from the Roll of Senior Advocates or of Advocates- on-Record, as the case may be.

32. Nothing in this Order shall be deemed to limit or otherwise affect the inherent powers of the Court to make such order and take such action as may be necessary for the conduct and proceedings of the Court.]

HISTORY OF ORDER IV

Before substitution the original Order IV was as follows:

1. There shall be kept separately, a Roll of Senior Advocates, of Advocates and of Advocates-on-Record.
2. A Senior Advocate, an Advocate and an Advocate-on- Record shall be entitled to appear and plead before the Court on signing his respective Roll;

Provided that an Advocate shall not be allowed to sign the Roll unless he produces a certificate of enrolment from the Pakistan Bar Council; and

Provided further that the Chief Justice and the Judges may refuse to allow a person to sign the Roll or remove his name from the Roll after affording him an opportunity of oral hearing if he has, at any time, been adjudged guilty of professional misconduct or is otherwise considered unfit to be enrolled or allowed to remain as an advocate.

3. A Senior Advocate shall have precedence over other Advocates and the provisions of the First Schedule to the Rules shall apply to Senior and other Advocates.
4. A person shall not be qualified for being enrolled as an Advocate unless he:-

(a) has been for not less than five years enrolled as a Advocate in a High Court;
(b) has been certified in a duly authenticated form by the Chief Justice and Judges of the High Court that he is a fit and proper person to appear and plead as an Advocate before the Supreme Court:

Provided that the Chief Justice and Judges may grant the enrollment of a person not qualified as aforementioned, if in their judgment, he is qualified by knowledge, ability and experience to be enrolled as an Advocate.

5. The Chief Justice and the Judges may on application or otherwise , select, from time to time, from among those whose names are on the Roll of the Advocates, persons who are judged, by their knowledge, ability and experience, to be worthy of being granted the status of Senior Advocate and on signing the Roll of Senior Advocates shall assume the said status.

6. No Advocate other than an Advocate-on-Record shall appear or plead in any matter unless he is instructed by an Advocate-on-Record.

7. The Rolls of Senior Advocates, Advocates, and Advocates- on-Record shall be kept by the Registrar and shall contain such particulars as the Court may, from time to time, require.

[1][8. The dress for Senior Advocates, Advocates, and Advocates-on-Record shall be short coat or *sherwani* of black material. Wearing of gowns shall be optional during the winter months, i.e from 1st of November, to the 31st of March]

[2][9. A signing fee of Rs. 10/- and Rs. 5/- shall be charged from Senior Advocates and Advocates, respectively].

10. The Attorney-General shall have precedence over all Advocates and Senior Advocates in the Court.

11. The Advocate-General of a Province shall have precedence immediately after the Attorney-General:

Provided that the seniority of Advocates-General of Provinces *inter se* shall be determined in accordance with the dates of appointment to their respective offices.

12. The Attorney-General, a Deputy Attorney-General, an Advocate-General and an Additional Advocate-General shall, by virtue of their offices, have the status of a Senior Advocate in the Supreme Court, notwithstanding that their names are not borne on the Roll of Senior Advocates.

13. Subject to the preceding rules of this Order, an Advocate appearing before the Court shall have precedence among the Senior or other Advocates, as the case may be, according to the date of his enrolment as a Senior or other Advocate, in the Court.

14. An Advocate of five years standing in the Supreme Court shall be qualified to be registered as an Advocate-on-Record, on making an application in this behalf.

15. No Advocate other than an Advocate-on-Record shall be entitled to act for a party in any proceedings in the Court.

16. No Senior Advocate shall be registered as Advocate-on- Record.

17. Every Advocate-on-Record shall --

(i) subscribe before the Registrar a declaration in Form 2 or Form 3 of the Forms in the Sixth Schedule to the Rules, as may be appropriate to his case, undertaking to observe the Rules, Regulations, orders and practice of the Court, and to pay all fees or charges due and payable in any cause, matter or appeal in the Court;

(ii) subscribe similarly an indemnity bond in Form 4 of the Forms in the said Schedule; and

(iii) pay an enrolment fee of Rs

18. Every Advocate shall, before signing his Roll, produce before the Registrar an authenticated copy of his enrollment certificate from the Pakistan Bar Council and a certificate that he is still an Advocate of the High Court.

19. Every Advocate-on-Record shall have an office at the seat of the Main Registry or at the seat of any Branch Registry and shall notify the Registrar of the address of his office and of any change of address, and any notice, writ, summons or other documents delivered or sent through post to the Advocate-on- Record at the address so notified by him shall be deemed to have been properly served.

20. Two or more Advocates-on-Record may enter into partnership with one another, and any one of them may act in the name of the partnership, provided that the firm has an office at the seat of the Main Registry or a Branch Registry and is registered with the Registrar. The undertaking prescribed in rule 17 hereinbefore contained in this Order, shall be subscribed separately by all the partners on behalf of the firm. Any change in the composition of the firm shall be intimated to the Registrar. Any firm of Advocates-on-Record may, in addition to principal office at the seat of the Court or a Branch Registry, also maintain Branch Office at any district headquarters or other center of litigation, provided that such Branch Offices is under the management and control of a member of the firm who has received training at the principle office of the firm for a period of not less than one year.

21. An Advocate-on-Record who wishes to have his name removed from the Roll of Advocates-on-Record shall apply by petition, verified by an affidavit, entitled " In the matter of ……. an Advocate-on-Record in this Court", and stating the date of his enrolment as an Advocate-on-Record, the reasons why he wishes his name to be removed, that no application or other proceeding in any Court is pending , or is likely to be instituted against him, and that no fees are owing to the Court for which he is personally liable.

22. Every Advocate-on-Record shall, before acting on behalf of any person or party, file in the Registry a power of attorney in the prescribed form authorizing him to act.

23. No person having an Advocate-on-Record shall file a power of attorney authorizing another Advocate-on-Record to act for him

[1] Rule 8 subs. by Corrigendum published in Gazette of Pakistan, Extraordinary, Part II , dated 12th January 1981, p.44

[2] Rule 9 deleted ibid. Rule 10 renumbered as Rule 9 and subsequent rules of the Order upto rule 31 renumbered accordingly by ibid.

in the same case save with consent of the former Advocate-on-Record or by leave of the Court, unless the former Advocate-on-Record is dead, or is unable by reason of infirmity of mind or body to continue to act.

24. No. Advocate-on-Record shall without leave of the Court withdraw from the conduct of any case by reason only of non-payment by his client of fees, costs and other charges.

25. Every Advocate-on-Record in the case shall be personally liable to the Court for due payment of all fees and charges payable to the Court.

26. No person having an Advocate-on-Record in the case shall be heard in person save by special leave of the Court:
Provided that where a person is not represented by an Advocate-on-Record or has been permitted by the Court to appear in person, he shall be subject to same discipline and restrictions as are applicable to an Advocate-on-Record.

27. No Advocate-on-Record shall authorize any person, except another Advocate-on-Record to do any act in his name in any case. The authorization shall be in writing.

28. Where a party changes his Advocate-on-Record, the new Advocate-on-Record shall give notice of the change to all parties concerned.

29. An Advocate or any Advocate-on-Record who wishes to suspend his practice by reason of his appointment to any office of profit under the Government, or his being engaged in another profession or for any other reason, shall give intimation thereof to the Registrar.

30. Where, on the complaint of any person or otherwise, the Court is of the opinion that a Senior Advocate or an Advocate or an Advocate-on-Record has been guilty of misconduct or conduct unbecoming of an Advocate, the Court may refer the matter to the Pakistan Bar Council for inquiry and action under the Legal Practitioners and Bar Council Act, 1973.

ORDER V
BUSINESS IN CHAMBERS

1. The powers of the Court in relation to the following matters may be exercised by the Registrar:-

(1) Application for reviver or substitution.

(2) Application for discovery and inspection.

(3) Application for delivery of interrogatories.

(4) Certifying of cases as fit for employment of Advocates.

(5) Application for substituted service.

(6) Registration of petitions, appeals, suits and other matters.

(7) Application for time, to plead, for production of documents and generally relating to conduct of cause, appeal or matter and to allow from time to time any period or periods not exceeding six weeks, in the aggregate, and for doing any other act necessary to make a cause, petition or appeal complete.

(8) Approval of Translator.

(9) Approval of Interpreter.

(10) Application for payment in to Court.

(11) Application for change of Advocate-on- Record.

(12) Application by Advocate-on-Record for leave to withdraw.

(13) Application for search, inspection or getting copies of any document or record by parties to proceedings and third parties on payment of prescribed fees and charges.

(14) Application for return of documents.

(15) Determination of the quantum of court fee payable in respect of any document.

(16) Application for issue of a refund certificate in respect of excess court fee paid by mistake.

(17) Application for a transcript record instead of printed record.

(18) Application for production of documents outside Court premises.

(19) Application for further particulars, better statement of claim or defence.

(20) Application for payment of money out of Court or handing over or discharge of security.

(21) Application for enforcing payment of costs.

(22) Application for extending returnable dates of warrants.

(23) Application for taxation and delivery of bill of costs, and for the delivery by an Advocate-on-Record of documents and papers.

(24) Application for bringing on record the legal representatives of a deceased party.

(25) Show-cause notice to the parties who fail to prosecute or defend appeals, petitions or matters pending before the Court with due diligence.

(26) Application for permission to exhibit or use documents in a language other than Urdu or English.

(27) Application for permission to get paper- books prepared outside the Court.

(28) Application for extension of time limit for filing affidavits.

(29) Application for security for costs.

(30) Application for assignment of Security Bonds.

(31) Setting down, cause, appeal or matter ex-parte

2. The power of the Court in relation to the following matters may be exercised by a Single Judge, sitting in Chambers, but subject to re-consideration, at the instance of any aggrieved party by a Bench of not less than three Judges, which may include the Judge who dealt with the matter:-

(1) Application for leave to compromise or discontinue a pauper appeal.

(2) Application for striking out or adding a party.

(3) Application for separate trials of causes of action.

(4) Application for separate trials to avoid embarrassment.

(5) Rejection of plaint.

(6) Application for setting down for judgment in default of written statement.

(7) Application for striking out any matter in a pleading.

(8) Application for amendment of pleading.

(9) Application for enlargement of time to amend.

(10) Application for withdrawal of suit, appeal or petition, for rescinding leave to appeal and for dismissal for non-prosecution.

(11) Application to tax bills returned by Taxing Officer.

(12) Application for costs of taxation where one- sixth is taxed off.

(13) Application for review of taxation by Court

(14) Application for enlargement or abridgement of time except those covered by item 7 of Rule 1 and application for condonation of delay in filing petition for leave to appeal.

(15) Application for issue of commissions.

(16) Application for order against clients for payment of costs.

(17) Application for production of evidence by affidavit.

(18) Application for stay of execution of a decree or order in Civil proceedings.

(19) Application for stay of execution of a sentence or order in Criminal proceedings.

(20) Application for grant of bail.

(21) Application to set aside ex-parte orders.

(22) Consent petitions.

3. An appeal shall lie from the Registrar in all cases to the Judge in Chambers.

4. An application for reconsideration under rule 2 and an appeal under rule 3 shall be filed within thirty days of the date of the order complained of.

5. The Registrar may, and if so directed by the Judge in Chambers, shall at any time adjourn any matter and place it before the Judge in Chambers, and the Judge in Chambers may at any time refer any matter to the Court, and the Court may direct that any matter shall be transferred from the Registrar or the Judge in Chambers to the Court.

ORDER VI
NOTICES OF MOTION

1. Save as otherwise provided by law or these Rules, all applications shall be made before the Court on motion after notice to the parties affected thereby. Where the delay caused by notice would or might entail prejudice or hardship, an application may be made duly supported by an affidavit, for an ad-interim order ex-parte, and the Court, if satisfied that the delay caused by notice would entail prejudice or hardship, may make order ex-parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may deem just, pending orders on the main application by notice of motion.

2. A notice of motion shall be instituted in the suit or matter in which the application is intended to be made and shall state the time and place of application and the nature of the order asked for and shall be addressed to the party or parties intended to be affected by it and their Advocate-on-Record, if any, and shall be signed by the Advocate-on-Record of the party moving, or by the party himself where he acts in person.

3. Save by leave of the Court, the notice of motion together with the affidavit in support thereof, shall be served on the opposite party not less than 8 days before the day appointed for the motion and the affidavit of service together with the acknowledgement receipt of the service of the notice shall be filed in the Registry at least 3 days before the day appointed for the motion. Counter affidavits, if any, shall be filed in the Registry during office hours not later than one hour before the closing of the Registry on the day preceding the day of hearing and copies of those affidavits shall be served on the other parties to the motion and

the affidavits shall not be accepted in the Registry unless they contain an endorsement of service signed by the other party or parties.

4. Notice shall be given to the other party or parties of all grounds intended to be urged in support of, or in opposition to, any motion.

5. Save by leave of the Court, no affidavit in support of the application beyond those specified in the notice of motion, nor any affidavit in answer or reply filed later than the time prescribed in these Rules shall be used at the hearing or allowed on taxation.

6. Save as otherwise ordered, the costs of a motion in a suit or proceedings shall be treated as costs in that suit or proceeding.

ORDER VII
DOCUMENTS

1. The officers of the Court shall not received any pleading, petition, affidavit or other document, except original exhibits and certified copies of public documents, unless it is fairly and legibly transcribed on one side of standard petition paper, demy- foolscap size. Copies of documents, if not forming part of the record of the Court appealed from, filed for the use of this Court, shall be certified to be true copies by the Advocate-on-Record for parties presenting the same.

2. Any document in a language other than Urdu or English shall be accompanied by its translation in either of the two languages in accordance with the Rules.

3. Every document required to be translated shall be translated by a translator nominated or approved by the Court on payment of prescribed fees:

Provided that a translation attested by the Advocate-on- Record for both parties, may be accepted.

4. Every translator shall before acting, make an oath or affirmation that he will translate correctly and accurately all documents given to him for translation, and at the end of the documents he shall certify in writing, signed by him, that the translation is correct.

5. Except as otherwise provided in these Rules all plaints, petitions, appeals and other documents shall be presented in person by the party or by an Advocate-on-Record duly appointed by the party.

6. Except as otherwise provided in these Rules or by any law for the time being in force, the Court fees set out in the Third Schedule to these Rules shall be payable on all documents mentioned therein.

7. The Registrar may decline to receive any document which is presented otherwise than in accordance with these Rules.

ORDER VIII
AFFIDAVITS

1. The Court may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court deems reasonable:

Provided that no such order shall be passed where it appears to the Court that either party bona fide desires the production of a witness for cross-examination and that such witness can be produced, without unreasonable delay or expense.

2. Upon an application evidence may be given by affidavit, but the Court may, at the instance of the other party, order the attendance of the deponent in the Court for cross-examination, unless he is exempt from personal appearance or the Court otherwise directs.

3. Every affidavit shall be entitled in the cause, matter or appeal in which it is sworn.

4. Every affidavit shall be drawn up in first person, and shall be divided into paragraphs to be numbered consecutively, and shall state the description, occupation, if any, and the true place of abode of the deponent.

5. Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statement of his belief may be admitted, provided that the grounds thereof are stated.

6. The costs occasioned by any unnecessary prolixity in the title to an affidavit or otherwise shall be disallowed by the Taxing Officer.

7. An affidavit requiring interpretation to the deponent shall be interpreted by an interpreter nominated or approved, by the Court, if made at the seat of the Court, and if made elsewhere shall be interpreted by a competent person who shall certify that he has correctly interpreted the affidavit to the deponent.

8. Affidavits for the purposes of any cause, matter or appeal before the Court may be sworn before any authority mentioned in section 139 of the Code or before the Registrar of this Court, or before a commissioner generally or specially authorized in that behalf by the Chief Justice.

9. Where the deponent is a pardahnashin lady shall be identified by a person to whom she is known and that person shall prove the identification by a separate affidavit.

10. Every exhibit annexed to an affidavit shall be marked with the title a number of the cause, matter or appeal and shall be initialed and dated by the authority before whom it is sworn.

11. No affidavit having any interlineations, alteration or erasure shall be filed in the Court unless the interlineations or alteration is initialed or unless in the case of an erasure the

words or figures written on the erasure are rewritten in the margin and initialed, by the authority before whom the affidavit is sworn.

12. The Registrar may refuse to receive an affidavit where, in his opinion, the interlineations, alterations or erasures are so numerous as to make it expedient that the affidavit should be rewritten.

13. Where a special time limit is prescribed for filing affidavits, no affidavit, filed after that time shall be used except by leave of the Court.

14. In this Order "affidavit" includes a petition or other document required to be sworn and "sworn" shall include "affirmed".

ORDER IX
INSPECTION, SEARCH, ETC

1. Subject to the provisions of these Rules, a party to any cause, matter or appeal, who has appeared shall be allowed to search, inspect or get copies of all pleadings and other documents or records in the case, on payment of the prescribed fees and charges.

2. The Court, at the request of a person not a party to the cause, matter or appeal, may on good cause shown allow such search or inspection or grant such copies as is or are mentioned in the last preceding rule, on payment of the prescribed fees and charges.

3. A search or inspection under the last two preceding rules during the pendency of a cause, matter or appeal, shall be allowed only in the presence of an officer of the Court and after 'twenty- four' hours notice in writing to the parties who have appeared, and copies of documents shall not be allowed to be taken, but notes of the search or inspection may be made.

4. Copies required under any of the preceding rules of this Order may be certified as correct copies by any officer of the Court authorized in that behalf by the Registrar.

5. No record or document filed in any cause, matter or appeal shall, without the leave of the Court, be taken out of the custody of the Court.

ORDER X
JUDGMENTS, DECREES AND ORDERS

1. The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their Advocates- on-Record and the decree or order shall be drawn up in accordance therewith.

2. Subject to the provisions contained in Order XXVI, a judgment pronounced by the Court or by majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.

3. Certified copies of the judgment, decree or order shall be furnished to the parties on application made for the purpose and at their expense.

4. Every decree or order made by the Court shall be drawn up in the Registry and be signed by the Registrar or [1][Additional Registrar or] Deputy Registrar or Assistant Registrar and sealed with the Seal of the Court and shall bear the same date as the judgment.

5. Every order made by the Registrar or other Officer shall be drawn up in the Registry and signed by the Registrar or other Officer as the case may be.

6. In case of doubt or difficulty with regard to a decree or order made by the court, the Registrar shall, before issuing the draft, submit the same to the Judge in Chambers.

7. Where a draft of any decree or order is required to be settled in the presence of the parties, the Registrar shall, by notice in writing, appoint a time for settling the same and the parties shall attend accordingly and produce their briefs and such other documents as may be necessary to enable the draft to be settled.

8. Where any party is dissatisfied with any decree or order as settled by the Registrar, the Registrar shall not proceed to complete the decree or order without allowing that party sufficient time to apply by motion to the Court.

9. The decree passed or order made in every appeal and a direction or writ issued in any matter by the Court shall be transmitted by the Registrar to the Court, tribunal or other authority concerned from whose judgment, decree or order the appeal or matter was brought, and any such decree, order or direction shall be executed and enforced as if it had been made and issued by the High Court of the appropriate province.

10. Any order as to the costs of proceedings in the Court, as soon as the amount of the costs to be paid is ascertained, shall be transmitted by the Registrar to the Court or tribunal appealed from or to any other authority concerned, and shall be given effect to by that Court, tribunal or authority as if it were an order made by the High Court of the appropriate province.

11. If any question arises as to which High Court shall give effect to the decree, order, direction or writ of this Court, it shall be decided by the Court.

[1] Ins. by Notification No. F.59/80-SCA dated 27.08.2003

ORDER XI
CONSTITUTION OF BENCHES

Save as otherwise provided by law or by these Rules every cause, appeal or matter shall be heard and disposed of by a Bench consisting of not less than three Judges to be nominated by the Chief Justice:

[1][Provided that

(i) all petitions for leave to appeal [2][***] , [3][***]

(ii) appeals from appellate and revisional judgments, and orders made by a Single Judge in the High Court, [4][and]

[5][(iii) appeals from judgments/orders of the Service Tribunals or Administrative Courts, and appeals involving grant of bail/cancellation of bail, may be heard and disposed of by a bench of two Judges, but the Chief Justice may, in a fit case, refer any cause or appeal as aforesaid to a larger Bench.]

Provided further that if the Judges hearing a petition or an appeal are equally divided in opinion, the petition or appeal, as the case may be, shall, in the discretion of the Chief Justice, be placed for hearing and disposal either before another Judge or before a larger Bench to be nominated by the Chief Justice.

PART-II

APPELLATE JURISDICTION
ORDER XII
CIVIL APPEALS UNDER ARTICLE 185(2) (d) (e) and (f) OF THE CONSTITUTION

1. No notice of motion in relation to a Civil Appeal under this Order shall be entertained unless it is accompanied by a certificate issued by the High Court concerned that the case involves a substantial question of law as to interpretation of the Constitution or by a certificate as set out in Form 13 or 14 of the Sixth Schedule to these Rules.

2. The petition of appeal shall be presented within thirty days from the date of the grant of the certificate by the High Court or the date of impugned judgment, decree or final order of the High Court:

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[1] Subs. by Notification No. F.59/80-SCA, dated 11.01.2000 for " Provided that the petitions for leave to appeal , other than those directed against acquittal, and appeals form appellate or revisional judgments and orders made by a Single Judge in the High Court, may be heard and disposed of by a bench of two Judges , but the Chief Justice may, in a fit case , refer any cause or appeal as aforesaid to a Larger Bench:

[2] Omitted by Notification No. F.59/80-SCA, dated 08.11.2017 and shall be deemed to have taken effect from 11.09.2017. The omitted words are "except petitions against acquittal"

[3] The word "and" omitted, ibid.

[4] Inserted by by Notification No. F.59/80-SCA, dated 08.11.2017 and shall be deemed to have taken effect from 11.09.2017.

[5] Added by Notification No. F-59/8, dated 10-07-2002.

Provided that the Court may for sufficient cause extend the time.

3. The petition of appeal shall set forth the appellant's objections to the decision of the High Court and the appellant shall not, except by leave of the Court, urge or be heard in support of any other ground, but the Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the petition of appeal or urged by the leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the appeal on that ground.

4. The petition of appeal shall be accompanied by:

(i) certified copies of the judgment and decree or final order appealed against, and of Courts below;

(ii) a certified copy of the certificate granted under Article 185 (2) (f) where that certificate is not embodied in the judgment; and

(iii) an affidavit of service of copy of the petition of appeal on the respondent.

5. Within thirty days of the service on him of the petition of appeal, a respondent may, if he so desires, file in the Court his objections, if any, to the grounds taken by the appellant in his petition of appeal, and to the appellant's right to raise in the appeal any question other than those bearing on the question of law to which the certificate relates.

6. The liability of the parties to pay court-fee in this Court, unless otherwise ordered by this Court, shall not be affected by any order for consolidation of appeals made by the High Court or by this Court.

7. The provisions contained in the succeeding Orders in this Part of the Rules shall apply *mutatis mutandis* to appeals under this Order.

[1][8. The provisions contained in this Order shall apply *mutatis mutandis* to the appeals which are filed under other laws for the time being in force]

ORDER XIII
PETITIONS FOR LEAVE TO APPEAL IN CIVIL PROCEEDINGS

1. A petition for leave shall be lodged in this Court within sixty days of the judgment, decree or final order sought to be appealed from or as the case may be, within thirty days from the date of the refusal of grant of certificate under Article 185 (2) (f) by the

[1] Ins. by Notification No. F-59/80 SCA, dated 27-08-2003

High Court:

Provided that the Court may for sufficient cause extend the time.

2. A petition for leave to appeal shall state succinctly and clearly [1][all points of law which arise for determination and], all such facts as it may necessary to state in order to enable the Court to determine whether such leave ought to be granted, and shall be signed by the counsel and or Advocate-on-Record for the petitioner or by the party himself if he appears in person. The petition shall deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which leave to appeal is sought and where petition is moved through an Advocate-on-Record, it shall cite all previous decisions of the Court, which to the best of his knowledge, bear on the question sought to be raised in the petition.

3. The petitioner shall lodge at least three copies, unless required otherwise by the Court , of:-

(i) his petition for leave to appeal;

(ii) the judgment, decree, final order sought to be appealed from, one copy of which shall be certified as correct, together with grounds of appeal or application before the High Court;

(iii) paper book of the High Court, if any, and the other record duly attested by the Advocate-on-Record of the petitioner;

(iv) the order of the High Court refusing grant of certificate, if any, under Article 185 (2) (f);

(v) an affidavit in support of allegations of fact prescribed by Rule 4 of Order XVII, hereinafter contained; and

(vi) unless a caveat, as prescribed by Order XVII, Rule 2, has been lodged by the other party, who had appeared in the courts below, an affidavit of service of notice of the intended petition upon such party. The petitioner shall, on demand, furnish to other parties, at their expense, on the prescribed charges,copies of all or any of the documents filed by him in the Court.

4. In an appropriate case the Registrar may require the petitioner to supply, in advance of the hearing of the petition, copies of the orders made in the case by all Courts subordinate to the High Court as well as grounds of the petition of any earlier appeal in case these documents are not already included in the paper book or record of the appeals as mentioned in Rule 3 of this Order.

[1] Added by Notification No. F.59/80-SCA, dated 18.8.1981 and published in Gazette of Pakistan Extraordinary, Part III.

5. Save in cases where caveat as prescribed by Rule 2 of Order XVII has been lodged by the other party who appeared in the Court appealed from, petitions for leave to appeal shall be heard *ex-parte*, but the Court may direct the petitioner to issue notice to the other party as it may deem fit, and adjourn the hearing of the petition which shall be posted for hearing after service of notice on the party concerned and upon affidavit of service by the petitioner. Where the other party who has appeared in the Court appealed from has lodge a caveat as aforesaid, notice of the hearing of the petition shall be given to the caveator, but a caveator shall not be entitled to costs of the petition unless the Court otherwise orders.

6. Where the Court grants leave to appeal it shall, in its order, give such directions, as it may deem fit, for the provision of security by the petitioner for the costs of the respondents as may be awarded by the Court on the disposal of the appeal as well as for printing charges. These directions, as far as they relate to security for costs, shall be subject to modifications at the instance of any party, at any time prior to the hearing of the appeal.

7. Subject to the provisions of these Rules no appeal by leave of this Court shall be fixed for hearing unless the amount of security has first been deposited and subject to any directions of the Court in this behalf, the deposit shall be made within a period of one month from the date of grant of leave to appeal, failing which the leave shall stand rescinded unless otherwise ordered by the Court.

8. Except where otherwise ordered by the Court, the security shall be deposited in cash in the State Bank of Pakistan, under a challan to be issued by the Registrar.

9. Where the appellant has lodged security for the costs of the respondent as well as for the printing charges of the paper-book, the Registrar shall deal with such security in accordance with the directions contained in the order of the Court determining the appeal.

10. After the grant of leave to appeal by this Court, the case shall be registered as an appeal and the Registrar shall transmit a certified copy of the order of the Court to the Registrar of the Court appealed from.

11. Where a petitioner, who has obtained leave to appeal desires, prior to the receipt of the original record of the appeal in this Court, to withdraw his petition, he shall make an application to that effect to the Court and the Court may thereupon make an order dismissing the petition. The security, if entered into by the appellant, shall be dealt with in such manner as the Court may deem fit to direct.

12. Save as otherwise provided by the preceding rules of this Order, the provisions of Order XVII hereinafter contained shall apply *mutatis mutandis* to petitions for leave to appeal.

13. The provisions contained in Order XXI shall apply, as far as applicable, in the case of any person seeking leave to appeal to the Court as a pauper.

ORDER XIV
PREPARATION OF RECORD

1. As soon as a petition of appeal has been lodged in the Registry under Order XII or the Court has made an order granting leave to appeal under Order XIII, the appeal shall be registered and the appellant shall, within 60 days, file in the Registry the required number of copies of the record and of the additional documents, [1][***] [2]["If so ordered by the Court, otherwise the appellant shall without delay take all necessary steps to have a printed/cyclostyled record prepared in the Registry.]

2. Where an appeal has been admitted by an order of this Court, the Registrar shall notify the respondents of the order of this Court granting leave to appeal, and shall also transmit a certified copy of the order to the Registrar of the High Court concerned.

3. The Registrar shall then send for the original record from the High Court, and the Registrar of the High Court shall, with all convenient speed, arrange for the transmission of such record to the Registrar of this Court. If printed-paper books had been prepared for use in the High Court, at least twelve copies thereof shall also be transmitted along with the original record.

4. (i) Where the appellant fails to have the record prepared with due diligence, the Registrar shall call upon him to explain his default, and, if no explanation is offered or if the explanation offered is in the opinion of the Registrar, unsatisfactory, the Registrar may issue a summons to the appellant calling upon him to show cause before the Court at a time to be specified in the said summons why the leave to appeal should not be rescinded. The respondent shall be entitled to be heard before the Court in the matter of the said summons and to ask for his costs and such other relief as he may be advised. The Court may, after considering the matter of the said summons, rescind the grant of leave to appeal, or give such other directions as the justice of the case may require.

(ii) The respondent shall show due diligence in the matter so far as is required of him, but negligence on his part will not excuse delay in completion of the record for which the appellant is primarily responsible.

5. In the preparation of the record the printed paper books prepared for the use of the High Court may be included, if sufficient number of such paper books is available.

6. Within thirty days from the date of grant of leave to appeal, the appellant shall pay Court Fee in respect of the appeal according to the scale laid down in item No.2 of Part I of the Third Schedule to these Rules.

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[1] The words "if any" omitted by Notification No.F.59/80-SCA dated 26.07.1982, published in the Gazette of Pakistan, Extraordinary, Part, III.
[2] Added by Notification No.F.59/80-SCA dated 26-03-1982

7. Every appellant and each respondent, who has entered an appearance, shall be entitled to receive for his use, a number of copies of the paper book not exceeding three.

8. The parties shall be severally responsible for placing on the paper book to be used at the hearing all documents that may be necessary for the due appreciation of the case. In case of objection by any party to the inclusion or non-inclusion of any document which is desired by any other party, such document shall be included but at the cost of the party desiring such inclusion, provided that if the Court, when deciding the appeal, considers that any document so included, was either inadmissible in evidence, or wholly irrelevant or unnecessary for the purpose of the appeal, the costs incur red in respect of such document shall be borne exclusively by the party at whose instance such document was included.

9. For purpose of completion of the record it shall be necessary to include certified copies of the documents, and in case they are not available copies certified by the Advocate-on-Record to be a true copy shall be filed.

10. As soon as the record has been made ready, the Registrar shall require the parties, who have entered appearance, to certify the record to be correct and complete. The parties shall, thereafter, under the directions of the Registrar take, with due diligence, further steps required to be taken under these Rules preliminary to the hearing of the appeal.

[1][11. Except where otherwise ordered by the Court, the provisions contained in these Rules shall not be applicable where a petition on grant of leave to appeal has been converted into an appeal by the Court and disposed of accordingly. The appeal shall, however, be registered.]

ORDER XV
WITHDRAWAL OF APPEAL, NON-PROSECUTION OF APPEAL, CHANGE OF PARTIES

1. Where an appellant desire to withdraw his appeal he shall make an application to that effect to the Court. The costs of the appeal and the security, entered into by the appellant, if any, shall then be dealt with in such manner as the Court may deem fit.

2. If an appellant fails to take any steps in the appeal within the time fixed for the same by these Rules, or, if no time is specified, it appears to the Registrar that the appellant is not prosecuting his appeal with due diligence, the Registrar shall call upon him to show cause why the appeal should not be fixed before the Court for dismissal on account of non-prosecution.

3. The Registrar shall send a copy of the summons mentioned in the last preceding rule to every respondent who has entered an appearance and every such respondent shall be entitled to be heard before the Court and to ask for his costs and other relief.

[1] Added by Notification No.F.59/80-SCA dated 16.07.1987

4. The Court may, after hearing the parties, dismiss the appeal for non-prosecution or give such other directions thereon as the justice of the case may require.

5. An appellant whose appeal has been dismissed for non- prosecution may, within thirty days of the order, present a petition praying that the appeal may be restored and the Court may, after giving notice of such application to the respondent, who had entered appearance in the appeal, restore the appeal if sufficient cause is shown on such terms as to costs or otherwise as it deems fit:

Provided that the Court may for sufficient cause extend the time for making such an application.

6. Where at any time after the grant of leave to appeal the record is found to be or becomes defective by reason of the death or change of status of a person who was a party to the decree or other decision by the lower Court, it shall be the duty of the appellant to make an application in that behalf, and the Court, may on such application, or on application by any other person interested, grant a certificate showing who in the opinion of the Court, is the proper person to be substituted or entered on the records, in place of, or in addition to, the party on the record, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid.

7. An application to bring to record the legal representatives of an appellant or a respondent, who has died or suffered a charge of status, shall be made within 90 days of such occurrence:

Provided that the Court may, for sufficient cause extend the time.

ORDER XVI
APPEARANCE BY RESPONDENT

1. The respondent shall enter an appearance within 30 days of the receipt of notice from the Registrar regarding grant of leave to appeal to the appellant, under Rule 2, Order XIV, but he may enter an appearance at any time before the hearing of the appeal on such terms as the Court may deem fit.

2. The respondent shall forthwith after entering an appearance give notice thereof to the appellant and endorse a copy of such notice to the Registry.

3. Where there are two or more respondents, and only one, or some, of them enter an appearance, the Appearance Form shall set out the names of the appearing respondents.

4. Two or more respondents may, at their own risk as to costs, enter separate appearances in the same appeal.

5. A respondent who has not entered appearance shall not be entitled to receive

any notice relating to the appeal from the Registrar.

6. Where a respondent fails to enter appearance in an appeal within 30 days of service upon him of the notice issued by the Registry under Rule 10 of the Order XIV of the Rules the appeal may be set down *ex-parte* as against the said non-appearing respondent. The Registrar shall give notice of the appeal having been set down *ex-parte* to the non-appearing respondent:

Provided that the Court may condone the delay and grant such further time to the non-appearing respondent as it may deem fit.

ORDER XVII
PETITIONS GENERALLY

1. All petitions shall consist of paragraphs numbered consecutively and shall be fairly and legibly written, type-written or lithographed on one side of standard petition paper demy-foolscap size or on paper ordinarily used in High Courts for transcribing Petitions, with quarter margin and endorsed with the name of the Court appealed from, the full title and Supreme Court number of the appeal to which the petition relates, or the full title of the petition as the case may be an the name and address of the Advocate-on-Record, if any, of the petitioner or of the petitioner where the petitioner intends to appear in person. Unless the petition is a Consent Petition within the meaning of Rule 8 of this Order at least three copies thereof shall be filed.

2. Where petition is expected to be filed or has been filed, which does not relate to any appeal pending in the Registry, any person claiming a right to appear before this Court on the hearing of such petition may lodge a caveat in the matter thereof, and shall thereupon be entitled to receive from the Registrar notice of the filling of the petition, if at the time of the lodging of the caveat such petition has not yet been filed and, if and when the petition has been filed, to require the petitioner to serve him with a copy of the petition and to furnish him, at his own expense, with copies of any papers filed, by the petitioner in support of his petition. The caveater shall forthwith, after lodging his caveat give notice thereof to the petitioner, if the petition has been filed.

3. Where a petition is filed in the matter of any appeal pending in the Registry, the petitioner shall serve any party who has entered an appearance in the appeal, with a copy of such petition and the party so served shall thereupon be entitled to require the petitioner to furnish him, at the expense of the said party, with copies of any papers filed by the petitioner in support of his petition.

4. A petition not relating to any appeal pending in the Registry and any other petition containing allegations of fact which cannot be verified by reference to the record or any certificate or duly authenticated statement of the Court appealed from, shall be supported by an affidavit. Where the petitioner prosecutes his petition in person, the said affidavit shall be sworn by the petitioner himself and shall state therein that to the best of the deponent's knowledge, information and belief, the allegations contained in the petition

are true. Where the petitioner is represented by an Advocate-on-Record the said Affidavit may be sworn by such Advocate-on-Record and shall, besides stating that, to the best of the deponent's knowledge, information and belief, the allegations contained in the petition are true, show how the deponent obtained his instructions and the information enabling him to present the petition.

5. The Registrar may refuse to receive a petition on the grounds that it has not been filed in accordance with the Rules or is frivolous or contains scandalous matter, but the petitioner may appeal from such refusal to the Judge in Chambers within fourteen days.

6. As soon as a petition and all necessary documents are filed the petition shall be registered.

7. Subject to the provisions of Rule 5 of Order XIII, and the next following rule, the Registrar shall as soon as the Court, has appointed a day for the hearing of a petition, notify all parties concerned of the day so appointed.

8. Where the prayer made in a petition is consented to in writing by the opposite party, or where a petition is of a formal and non-contentious character, the Court may, if it deems fit, make an order thereon, without requiring the attendance of the opposite party, and the Registrar shall not in any such case issue notice as provided by the last preceding rule, but shall, with all convenient speed, after the Court has made its order, notify the parties concerned that the order has been made and the date and nature of such order.

9. A petitioner who desires to withdraw his petition, shall give notice in writing to that effect to the Registrar. Where the petition is opposed, the opponent shall, subject to any agreement between the parties to the contrary, be entitled to apply to the Court for his costs, but where the petition is un-opposed, or where, in the case of an opposed petition, the parties have come to an agreement as to the costs of the petition, the petition may, if the Court deems fit, be disposed of in the same way *mutatis mutandis* as a Consent Petition under the provisions of the last preceding rule.

10. Where a petitioner unduly delays bringing a petition to a hearing, the Registrar shall call upon him to explain the delay and if no explanation is offered, or if the explanation offered is, in the opinion of the Registrar, unsatisfactory, the Registrar may, after notifying all parties interested, place the petition before the Court for such directions as the Court may deem fit to give thereon.

11. At the hearing of a petition not more than one counsel shall be allowed to be heard on one side.

[1][12. Where in the opinion of the Court a petition or application, is frivolous or vexatious, the Court may direct the petitioner or applicant to deposit forthwith a specified amount as costs of the proceedings, which may be forfeited or paid to the opposite party in the discretion of the Court.]

[1] Added by Notification No.F.59/80-SCA dated 06.07.1986.

ORDER XVIII
LODGING OF CONCISE STATEMENT AND SUPPLEMENTAL PROCEEDINGS

1. The appellant and the respondent may lodge in the Registry the required number of copies of their concise statements of the facts of the case and of the arguments upon which they propose to rely at any time before the appeal is set down for hearing.

2. Two or more respondents may, at their own risk as to costs, file separate concise statements in the same appeal.

3. Each party shall after filing his concise statement, forthwith give notice thereof to the other party and shall thereafter be entitled to receive two copies of the concise statement filed by the opposite party on his applying therefore.

4. The concise statement shall consist of paragraphs numbered consecutively and shall state, as precisely as possible, in chronological order, the principal steps in the proceedings leading up to the appeal from the commencement thereof down to the admission of the appeal, and thereafter, the contentions to be urged by the party filing the same, and the reasons, therefore, and shall be printed or neatly typed with quarter margin, on one side of standard petition paper, of the same size as the printed record. Reference by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed or typed in the margin, and care shall be taken to avoid, as far as possible, the reproduction in the concise statement of long extracts from the record. The counsel preparing the concise statement shall also cite all previous decisions of the Supreme Court to the best of their knowledge, bearing on the questions proposed to be raised in the appeal. The taxing Officer in taxing the costs of the appeal shall, either of his own motion, or at the instance of the opposite party, enquire into any unnecessary prolixity in the concise statement, and may disallow the costs occasioned thereby.

5. The paper book of the appeal shall be arranged in the following order:-

(1) Printed or type record;

(2) Supplementary record, if any;

(3) Appellant's concise statements, if any; and

(4) Respondent's concise statement, if any

The front cover shall bear a printed label stating the title and Supreme Court number of the appeal, the contents of the volume and the names and addresses of the parties' Advocates-on- Record. The short title and Supreme Court number of the appeal shall also be shown at the back.

ORDER XIX
HEARING OF APPEALS

1. All appeals filed in the Registry shall, as far as possible, be heard in the order in which they are set down.

2. Adjournment of cases of all kinds for hearing shall only be granted on proper application filed by Advocate-on-Record except where it is sought by a party conducting his case in person.

3. The Registrar shall, subject to the provisions of Order XVI notify the parties to the appeal of the date fixed for the hearing.

4. Subject to the directions of the Court, at the hearing of an appeal not more than two Advocates shall be heard on one side.

5. The appellant shall not, without the leave of the Court, rely at the hearing on any grounds not specified in his petition of appeal and the concise statement.

6. Where the Court, after hearing an appeal, decides to reserve its judgment therein, the Registrar shall notify the parties concerned of the day appointed by the Court for the announcement of the judgment.

ORDER XX
MISCELLANEOUS

1. The filing of a petition for leave to appeal or an appeal shall not prevent execution of the decree or order appealed against, but the Court may, subject to such terms and conditions as it may deem fit to impose, order a stay of execution of the decree or order, or order a stay of proceedings, in any case under appeal to this Court.

2. A respondent may apply for the Summary determination of an appeal on the ground that it is frivolous or vexatious, or has been brought for the purpose of delay, and the Court shall make such order thereon as it deems fit.

3. A party to an appeal who appears in person shall furnish the Registrar with an address for service and all documents left at that address, or sent by registered post to that address, shall be deemed to have been duly served.

ORDER XXI
PAUPER, APPEALS, PETITIONS, ETC.

1. The provisions of Order XLIV in the First Schedule to the Code shall, with necessary modifications and adaptations, apply in the case of any person seeking to appeal to the Court as a pauper.

2. An application for permission to proceed as a pauper shall be made on petition, setting out concisely in separate paragraphs, the facts of the case and the relief prayed, and shall be accompanied by a certificate of counsel that the petitioner has reasonable grounds of appeal. It shall be also accompanied by an affidavit from the petitioner disclosing all the property to which he is entitled and the value thereof, other than his necessary wearing apparel and his interest in the subject- matter of the intended appeal, and stating that he is unable to provide sureties, and pay Court- fees. The Registrar on satisfying himself that the petition is in order, may himself enquire into the pauperism of the petitioner after notice to the other parties in the case and to the Attorney- General, or refer the matter to the Registrar of the High Court, and the High Court either itself or by a Court subordinate to the High Court investigate into the pauperism after notice to the parties interested and make a report thereon within thirty days after the receipt of the reference from this Court:

Provided that no reference as aforesaid shall be necessary where the petitioner had been permitted to prosecute his appeal in *forma pauperis* in the Court appealed from.

3. The Court may allow an appeal to be continued in *forma pauperis* after it has begun in the ordinary form.

4. Where the petitioner obtains leave of the Court to appeal as a pauper he shall not be required to pay court-fees or to lodge security for the costs of the respondent.

5. Where the appellant succeeds in the appeal, the Registrar shall calculate the amount of court-fees which would have been paid by the appellant if he had not been permitted to appeal as a pauper and incorporate it in the decree or order of the Court; such amount shall be recoverable by the Federal Government from any party ordered by the Court to pay the same, and shall be the first charge on the subject-matter of the appeal.

6. Where the appellant fails in the appeal or is dispaupered the Court may order the appellant to pay the Court- fees, which would have been paid by him if he had not been permitted to appeal as a pauper.

7. The Federal Government shall have the right at any time to apply to the Court to make an order for the payment of proper court-fees under the last two preceding rules.

8. In every pauper appeal the Registrar shall, after the disposal thereof, send to the Federal Government a memorandum of the court-fees due and payable by the pauper.

ORDER XXII
CRIMINAL APPEALS UNDER ARTICLE 185(2) OF THE CONSTITUTION

1. Criminal Appeals under sub-clauses (a), (b) and (c) of clause (2) of Article 185 shall be lodged within thirty days from the date of the judgment or final order appealed from and in case of criminal appeals under sub-clause (f) *ibid*, within thirty days from the date of the certificate of the High Court:

Provided that the Court may for sufficient cause extend the time.

2. The appeal shall be in the form of a petition in writing, which shall be accompanied by a certified copy of the judgment or final order appealed against and in the case of an appeal under Article 185(2) (f), also by a certified copy of a certificate granted by the High Court. The appellant shall file at least twelve copies of his petition and the accompanying documents for inclusion in the paper book of the appeal.

3. The appellant, if he is in jail, may present his petition of appeal and the accompanying document to the Officer- in-Charge of the jail, who shall forward them forthwith to the Registrar of this Court.

4. On receipt of the petition of appeal, the Registrar shall cause notice of the appeal to be given to the Attorney-General for Pakistan or the Advocate-General of the Province concerned, or to both, as the case may require, and in cases where the appeal is by the Government to the accused and shall also furnish the Attorney- General for Pakistan and or the Advocate-General of the province concerned or the accused, as the case may be, with a copy of the petition of appeal and the accompanying documents.

5. In the case of an appeal arising out of proceeding under the Foreign Exchange Regulation Act, 1947, the Registrar shall cause notice of the appeal to be given also to the Governor of the State Bank of Pakistan, where the said Bank is not impleaded as a party.

6. The Registrar shall thereafter send a copy of the petition of appeal to the High Court concerned for its record, and require the Registrar of the High Court to transmit to this Court the original record of the appeal alongwith the records of the Courts below with all convenient speed. In case where paper books of the appeal were printed/typed for use in the High Court, 12 copies thereof, or such lesser number as the Registrar may specify, shall also be transmitted alongwith the original record. The record shall be prepared at the expense of the appellant, unless the Court orders otherwise, but in appeals involving sentence of death, or imprisonment for life the record shall be prepared at the expense of the Government of the Province concerned.

[1][7. In a proper case, the Court may direct the engagement of an Advocate for an accused person out of the panel of advocates maintained for the purpose. In such a case the engagement of an Advocate-on-Record to instruct the Advocate shall not be necessary.

1Subs. by Notification No.F.59/80-SCA for "In a proper case, the Court may direct the engagement of an Advocate for an accused person at the cost of the Government. In such a case the engagement of an Advocate-on-Record to instruct the Advocate shall not be necessary. The fee of Advocate so engaged shall be as specified in Part IV of the Second Schedule" dated 12-05-2006 and made to take effect from 19-01-2006.

The fee of Advocate so engaged shall be [1][twenty five] thousand rupees or such amount as may be fixed by the Court hearing the petition/appeal.]

8. Due notice shall be given to the parties concerned of the date fixed for the hearing of the appeal. The accused may, where he so desires, present his case by submitting his arguments in writing and the Court shall consider the same at the hearing of the appeal.

9. The Court may, where it thinks fit so to do in the interests of justice, direct the production of an accused person at the hearing of the appeal.

10. After the disposal of the appeal the Registrar shall, with the utmost expedition, send a copy of the Court's judgment or order to the High Court concerned.

11. Pending the disposal of any appeal under this Order the Court may order that the execution of the sentence or order appealed against be stayed on such terms as the Court may think fit.

12. In criminal proceedings, no security for costs shall be required to be deposited and no court fee, process fee or search fee shall be charged except copying charges and in case of appeals filed through the jail authorities, the copying fee shall also not be charged.

13. Save as aforesaid the provisions contained in the preceding Orders in this Part shall, *mutatis mutandis* apply, so far as may be, to criminal appeals under this Order, except that concise statement will not be filed in Criminal Appeals unless ordered by the Court.

ORDER XXIII
PETITIONS FOR LEAVE TO APPEAL AND APPEALS ARISING THERE FROM IN CRIMINAL PROCEEDINGS

1. Save as hereinafter provide the provisions with respect to petitions for leave to appeal in civil proceedings contained in Order XIII of this Part shall *mutatis mutandis* apply to petitions for leave to appeal in criminal matters except that no court fee, process fee or search fee shall be charged but the copying fee shall be charged except in petitions through jail.

2. A Petition for leave to appeal in criminal matter shall be lodged within thirty days from the date of judgment or final order sought to be appealed from, or as the case may be, from the date of the order refusing certificate under sub-clause (f) of clause (2) of Article 185 of the Constitution:

Provided that the period limitation for a petition for leave to appeal by the Attorney-

1 Subs. by Notification No.F.59/80-SCA for "fifteen" dated 10-05-2016. It was also subs. before for "six" dated 22-8-2014 by Notification No.F.59/80-SCA.

General or the Advocate-General of a Province against the judgment or order of acquittal shall be sixty days from the date of such judgment or order:

Provided further that the Court may, for sufficient cause shown, extend the time.

3. The petitioner, if he is in jail, may present his petition for leave to appeal in respect of his own conviction alongwith the accompanying documents, including any written arguments which he may desire to advance, to the Officer- in-charge of the Jail who shall forthwith forward them to the Registrar.

4. Except in cases involving the sentence of death, the Registrar shall place the petition and the accompanying documents so received before the Court, and the Court may, upon perusal of the papers, reject the petition summarily without hearing the petitioner in person, if it considers that there is no sufficient ground for granting leave to appeal.

5. In the case of a petition for leave to appeal involving a sentence of death, the Registrar shall, as soon as the petition is filed or received from the Office- in-charge of a Jail, intimate the fact of the petition having been filed/received in the Court to the Government of the Province concerned and thereupon the execution of the sentence of death shall be stayed pending the disposal of the petition, without any express order of the Court in this behalf:

Provided that unless otherwise ordered by the Court this rule shall not apply to the petitions filed on behalf of a condemned prisoner, who has exhausted all his legal remedies by way of petition for leave to appeal, appeal or review in this Court and whose mercy petition has been rejected by the concerned authorities.

6. As soon as necessary documents are available the Registrar shall, if the petitioner has been sentenced to death, assign an Advocate from a panel of *amicus curie* Advocates, and place the petition before the Court for hearing. The fee of the Advocate so assigned shall be [1][2[twenty five] thousand rupees] or such amount as may be fixed by the Court hearing the petition.

7. In the case of a petition for leave to appeal in respect of a proceeding under the Foreign Exchange Regulation Act, 1947, the Registrar shall cause notice of the petition also to be given to the Governor of the State Bank of Pakistan, where the said Bank is not impleaded as a party.

8. Pending the disposal of a petition under this Order, the Court may direct that execution of any order for imprisonment or fine, against which leave to appeal is sought, be stayed, on such terms as the Court may deem fit:

Provided that unless surrender is first made to an order of imprisonment, as above, the

[1] Subs. For " Rs. 1000" by Notification No.F.59/80-SCA, dated. 12-05-2006 & shall be deemed to have taken effect from 19-01-2006
[2] Subs. for the word "fifteen" by Notification No. F.59/80-SCA, dated. 10-05-2016. It was also subs. before for "six" dated 22-8-2014 by Notification No.F.59/80-SCA.

petition shall not be entertained:

Provided further, petitions involving bail before arrest may be entertained and posted for hearing if the petitioner undertakes to appear and surrender in Court.

9. In case the Court grants leave to appeal in a petition against acquittal, the Court may direct that the respondent shall be arrested forthwith and detained in judicial custody pending final disposal of the appeal. During such detention, the respondent shall be treated as an under-trial prisoner.

10. After the grant of petition or application for leave to appeal by the Court the Registrar shall transmit a certified copy of the order to the Court appealed from. The Court appealed from shall then arrange for the transmission of the original record of the appeal including the records of the Courts below with all convenient speed. In cases where paper books of the appeal were printed/typed for use in the High Court, 12 copies thereof, or such lesser number as the Registrar may specify, shall also be transmitted, alongwith the original record.

11. The paper books for use in the Supreme Court shall be prepared at the expense of the appellant unless otherwise ordered by the Court, but in cases involving sentence of death or imprisonment for life, these shall be prepared at the expense of the Government of the Province concerned.

12. The provisions contained in Order XXII shall so far as practicable, apply to criminal appeals arising under this Order except that the record shall be prepared at the expense of the appellant.

PART III

ORDER XXIV

PETITIONS FOR LEAVE TO APPEAL UNDER ARTICLE 212(3) OF THE CONSTITUTION

1. A petition for leave to appeal from the judgment, decree or order of an Administrative Court or Service Tribunal shall specify succinctly in separate paragraphs, the substantial questions of law of public importance upon which leave is sought and, in other respects, the provisions of Orders XIII to XXI of these Rules shall apply *mutatis mutandis* to such petition or appeal, as the case may, except that no security for costs shall be required to be deposited and no Court Fee, Process Fee, Search Fee or Copying Fee shall be charged.

ORDER XXV
APPLICATIONS FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS UNDER ARTICLE 184(3) OF THE CONSTITUTION

Habeas Corpus

1. An application for a writ of *habeas corpus* shall be filed in the Registry and shall be accompanied by an affidavit by the person restrained, stating that the application is made at his instance and setting out the nature and circumstances of the restraint. The application shall also state whether the applicant has moved the High Court concerned for the same relief and, if so, with what result:

Provided that where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person, which shall state the reason why the person restrained is unable to make the affidavit himself.

2. The application shall be heard by a Bench consisting of not less than two Judges.

3. If the Court is of opinion that a *prima facie* case for granting the application is made out, a rule *nisi* shall be issued calling upon the person of persons against whom the order is sought, to appear on a day to be named therein to show cause why such order should not be made and at the same time to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law.

4. On the return day of such rule or any day to which the hearing thereof may be adjourned, the Court shall, after hearing such parties as are present and wish to be heard, make such order as in the circumstances it considers to be just and proper.

5. In disposing of any such rule, the Court may, in its discretion, make such order for costs as it may consider just.

Mandamus, Prohibition, Certiorari, Qua Warranto, etc.

6. An application for the enforcement of any other fundamental right shall be filed in the Registry. It shall set out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and shall be accompanied by an affidavit verifying the facts relied on, and at least eight copies of the said application and affidavit shall be lodged in the Registry. It shall also state whether the applicant has moved the High Court concerned for the same relief and, if so, with what result. The application shall be made by notice of motion, but the Registrar may in appropriate cases put up the application before the Court for orders as to the issue of notice.

7. Such application shall be heard by a Bench consisting of not less than two Judges of the Court. Unless the Court otherwise directs, there shall be at least eight clear days

between the service of the notice of motion and the day named therein for the hearing of the motion.

8. Copies of the said application and the affidavit in support thereof shall be served with the notice of motion and every party to the proceeding shall supply to any other party, on demand and on payment of the proper charges, copies of any affidavit filed by him.

9. The notice shall be served on all persons directly affected, and on such other persons as the Court may direct:

Provided that on the hearing of any such motion, any person who desires to be heard in opposition to the motion and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with the notice of motion and shall be liable to costs in the discretion of the Court.

10. The Court may in such proceedings impose such terms as to costs and as to the giving of security as it deems fit.

11. The provisions of Order XVII relating to petitions shall, so far as may be applicable, apply to applications under this Order.

PART IV
ORDER XXVI
REVIEW

1. Subject to the law and the practice of the Court, the Court may review its judgment or order in a Civil proceeding on grounds similar to those mentioned in Order XLVII, rule I of the Code and in a criminal proceeding on the ground of an error apparent on the face of the record.

2. Application for review shall be filed in the Registry within thirty days after pronouncement of the judgment, or, as the case may be, the making of the order, which is sought to be reviewed. The applicant shall, after filing the application, for review, forthwith give notice thereof to the other party and endorse a copy of such notice to the Registry.

3. Every application for review shall be accompanied by a certified copy of the judgment or order complained of, and when the application proceeds on the ground of a discovery of fresh evidence, certified copies of the documents, if any, relied upon, shall be annexed to the application together with an affidavit setting forth the circumstances under which such discovery has been made.

4. The Advocate signing the application shall specify in brief the points upon which the prayer for review is based and shall add a certificate to the effect that consistently with the law and practice of the Court, a review would be justifiable in the case. The certificate shall be in the form of a reasoned opinion.

5. In case the Court comes to the conclusion that the Review Application filed was vexatious or frivolous, the Advocate or the Advocate-on-Record, drawing the application shall render himself liable to disciplinary action.

[1][6. Except with the special leave of the Court, no application for review shall be entertained unless it is drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made. Nor shall any other Advocate, except such Advocate, be heard in support of the application for review, unless the Court has dispensed with the requirement aforesaid.]

[2][7. No application for review shall be entertained unless party seeking review furnishers a cash security of Rs.10,000/-, which shall stand forfeited, if the Review Petition is dismissed or shall be paid to the opposite-party, if the Review Petition is contested.]

8. As far as practicable the application for review shall be posted before the same Bench that delivered the judgment or order sought to be reviewed.

9. After the final disposal of the first application for review no subsequent application for review shall lie to the Court and consequently shall not be entertained by the Registry.

PART V
ORDER XXVII
PROCEEDING IN RELATION TO THE CONTEMPT OF COURT

1. The Court may take cognizance of its contempt *suo motu* or on a petition by any person:

Provided that where the alleged contempt consists of willful disobedience of any judgment, decree, direction, order, writ, or other process of the Court or a breach of an undertaking given to the Court or a Judge in Chambers, the Court may take cognizance *suo motu* or on a petition by the aggrieved person.

2. A petition for proceedings under this Order shall be registered as original petition and the provisions of Order VI Part I shall apply as nearly as may be.

3. The petition shall state succinctly and clearly all relevant facts constituting the contempt of the Court and shall be supported by affidavit of the petitioner, if any.

4. Notice of the petition along with the statement of allegations and affidavit, if any, shall be served on the person complained against hereinafter called the

[1] Subs. by Notification No.F.59/80-SCA, dated 03-07-1989 for "Except with the special leave of the Court, no application shall be drawn by any Advocate other than the Advocate who appeared at the hearing of the case in which the Judgment or order, sought to be reviewed, was made. Such Advocate shall, unless his presence has been dispensed with by the Court, be present at the hearing of the application for review.

[2] Subs vide Notification No.F.59/80-SCA, dated 14-07-1998 for " No application for a Review in civil proceedings shall be entertained unless the party seeking review furnishes a cash security amounting to Rs. 2,000 for the cost of the opposite-party."

respondent. The notice shall require the respondent to appear in person and unless the Court otherwise directs, he shall appear on each subsequent hearing and, if so required, shall enter into recognizance with one or more sureties.

5. Where the alleged contempt consists of willful disobedience of a judgment, decree, direction, order, writ or other process of the Court or a breach of an undertaking given to the Court or a Judge in Chambers by a company registered under the Companies Act, 1913 or a statutory corporation or a partnership firm, the notice shall be served upon each director or partner as the case may be, and such other person who at the time of alleged contempt were incharge of or responsible for the conduct of the company, corporation or firm as the case may be.

6. Where the Court is satisfied by an affidavit or otherwise, that the respondent is avoiding service, it may direct issuance of bail able or non-bail able warrants for his arrest.

7. (1) Where the contempt consists of words or acts of visible signs which tend to prejudice a party to a proceeding before the Court or tend to scandalize the Court or any Judge or otherwise tend to bring the Court or a Judge in relation to his office into hatred, ridicule or contempt, the matter shall, in the first instance, be placed before the Chief Justice and such Judges as the Chief Justice may nominated to consider the expediency or propriety of taking action in the matter.

(2) If the Chief Justice and the Judges referred to in sub-rule (I) decide that action should be taken in the matter, a notice of the proceedings shall issue to the Attorney-General who shall in that event be under a duty to conduct the proceedings.

8. (1) The respondent shall, on the first hearing, file a written statement in answer to the allegations against him and shall be afforded reasonable opportunity to adduce evidence in his defence.

(2) No oath shall be administered to the respondent unless he chooses to appear as his own witness.

9. Notwithstanding anything contained in this Order, where the contempt is committed in the face of the Court or a Judge in chambers, the Court or the Judge, as the case may be, may proceed forthwith to determine the guilt of the respondent and award him punishment under the law.

10. If at any time during the pendency of the proceedings under this Order or thereafter but before the execution of the sentence, the respondent tenders unqualified apology, the Court may consider such apology and make such order as it considers fit.

11. The Court may award such costs as it deems fit in the circumstances of the case. The costs if any, shall be recovered as fine under the Code of Criminal Procedure, 1898.

PART VI
ORDER XXVIII
A. COSTS

1. Subject to any provisions of any statute or of these Rules, the costs of an incidental to all proceedings shall be in the discretion of the Court. Unless the Court otherwise orders an intervener shall not be entitled to costs.

2. Where it appears that the hearing of any appeal or matter cannot conveniently proceed by reason of the neglect of the Advocate-on-Record of any party to attend personally, or by some proper person on his behalf, or because of his omission to deliver any paper necessary for the use of the Court which ought to have been delivered, the Advocate-on-Record shall personally pay to all or any of the parties such costs as the Court may think fit to award.

[1][3. Where it appears to the Court that an Advocate or a party seeks adjournment for which sufficient cause is not shown, the Court may impose compensatory costs on the Advocate or, as the case may be, the party seeking such adjournment. Costs may also be imposed on a party who files false or vexatious appeal or other proceedings and thereby wastes the time of the Court.]

B. TAXATION

1. The Registrar, [2][an Additional Registrar,] a Deputy Registrar and an Assistant Registrar shall be the Taxing Officer, the Deputy Taxing Officer and the Assistant Taxing Officer of the Court respectively.

2. The Chief Justice may assign and the Taxing Officer may, with the approval of the Chief Justice, delegate to [3][an Additional Taxing Officer or] a Deputy Taxing Officer or an Assistant Taxing Officer any functions required under the Rules, to be exercised the Taxing Officer.

3. The Court may, in any proceedings where costs are awarded to any party, direct payment of a sum in gross in lieu of taxed costs, and may direct by and to whom that sum shall be paid.

4. Where in the opinion of the Taxing Officer the maximum fee allowed by these Rules is insufficient or a fee ought to be allowed for any matter not provided for in these rules he may refer the matter to the presiding Judge of the Bench hearing the appeal, cause or matter and the Judge may make such order thereon as to the allowance of the whole or any part of the amount proposed by the Taxing Officer as he thinks fit.

5. Where the Taxing Officer is of opinion that any costs have been injuriously or unnecessarily occasioned by the negligence or improper conduct of any Advocate-on-Record

[1] Inserted by Notification No.F.59/80-SCA, dated 21-06-2006
[2] Inserted by No.F.59/80-SCA, dated 27-08-2003
[3] Inserted by No.F.59/80-SCA, dated 27-08-2003.

he shall not allow any charge for the same.

6. In all cases of taxation as between party and party, the bill shall be lodged for taxation as between party and party and, unless the client expresses his desire to the Contrary in writing, also as between Advocate-on-Record, and client.

7. Every bill of costs lodged for taxation shall specify the exact number of folios contained in the bill lodged.

8. Every bill of costs shall be properly dated throughout and shall show in a column for the purpose the money paid out of pocket.

9. Every bill of costs shall be certified by the signature of the Advocate-on-Record from whose office it is issued.

10. The fees for taxation and registration of every bill of costs shall be paid in court-fee stamps when the bill is lodged for taxation.

11. Every bill of costs shall, whenever possible, be accompanied by vouchers, and every item of disbursement and the cause thereof shall be distinctly specified, and no payment out of pocket shall be allowed except on production of the necessary voucher, or in the case of Advocate's fees, without the receipt of the Advocate that the fee has been paid:

Provided that a Taxing Officer may dispense with the production of a receipt of the fee paid to the Attorney-General for Pakistan or the Advocate-General of a Province.

12. Within one month from the date of the signing of the judgment or order awarding costs, or within such further time as the Taxing Officer may for good cause allow, the party to whom the costs have been awarded shall lodge in the Registry the bill of costs and vouchers accompanied by a certified copy of the decree or formal order drawn up in the case. Where in the opinion of the Taxing Officer the filing of a bill of costs has been unduly delayed, the Taxing Officer may return the bill and shall not receive or tax the same except by order of the Court.

13. The Party having the charge of the bill shall, within fourteen days or within such further period as the Taxing Officer may for good cause allow, serve on the opposite party a copy of the bill of costs and file in the Registry an affidavit of service. In default of the filing of such affidavit within the time aforesaid or within the further period allowed by the Taxing Officer, the Taxing Officer may return the bill and vouchers and shall not thereafter receive or tax the bill except by order of the Court:

Provided that, where the Taxing Officer is satisfied that the party having the charge of the bill has made all reasonable efforts to have the copy of the bill served and has failed, the Taxing Officer may dispense with such affidavit, and may receive and tax the bill.

14. As soon as the affidavit of service referred to the last preceding rule has been filed, the Taxing Officer shall fix a date for taxation of the bill and shall notify the

parties of the date fixed.

15. The Taxing Officer shall allow such costs of procuring the advice on evidence of an Advocate, and of employing an Advocate to settle pleadings and affidavits, as the Taxing Officer in his discretion thinks just and reasonable.

16. In case of taxation as between Advocate-on-Record and client where the fees are payable by the client personally or out of a fund belonging entirely to him, the Taxing Officer shall allow, as fees to Advocates, all sums actually paid, but not exceeding those set out in the Second schedule to these Rules, unless the written consent of the client is produced.

17. Where an Advocate-on-Record acts for different parties to the same suit, appeal or matter, only one set of attendance shall be allowed, unless the Court otherwise orders.

18. Where two or more appeals arising out of a single proceeding are heard together and cost are awarded in both or all of them only one set of counsel's fee shall be allowed for the hearing unless the presiding Judge of the Bench hearing the appeals otherwise directs.

19. Where on the taxation of a bill of costs payable out of a fund or out of the assets of a company in liquidation, the amount of the professional charges and disbursements contained in the bill is reduced by a sixth part or more, no costs shall be allowed to the Advocate-on-Record lodging the bill for taxation for drawing or copying it, nor for attending the taxation.

20. Where on taxation of an Advocate-on-Record's bill of costs as between Advocate-on-Record and client, the amount of the bill is reduced by a sixth part or more, the Advocate-on-Record shall pay the costs of taxation including the cost of the Advocate-on-Record if any, employed in contesting the bill and the same shall be deducted by the Taxing Officer, but the Taxing Officer may certify any special circumstances relating to the bill or taxation and the Court may upon application by the Advocate-on-Record whose bill has been taxed make any such order as the Court may think just and equitable with respect to the costs of the taxation.

21. No Court fees shall be payable by an applicant to proceed in forma pauperis except the fee for the petition to proceed.

22. In the taxation of costs as between party and party, the costs of and incidental to the attendance of an Advocate on summons or other matters in Chambers shall not be allowed unless the court certified that it was a fit case for the employment of an Advocate.

23. Unless specially allowed by the Taxing Officer, no allowance shall be made in party and party taxation for work done before the commencement of proceedings in the Court, except for necessary letter of demand and the reply thereto, if any, for receiving instructions to sue to defend, or to appeal, and searches necessary for the purpose of instituting or defending proceedings.

24. In every case of taxation as between Advocate-on-Record and client, the client shall be duly summoned by the Taxing Officer to attend the taxation, unless the Taxing Officer shall see fit to dispense with his attendance taxation, unless the Taxing Officer shall see fit to dispense with his attendance.

25. No retaining fee to an Advocate shall be allowed on taxation as between party and party.

26. Any party who is dissatisfied with the allowance or disallowance by the Taxing Officer of the whole or any part of the items in a bill of costs may apply to the Taxing Officer to review the taxation in respect thereof.

27. An application n to review shall be made within a week from the date of the passing of the bill by the Taxing Officer.

The application shall contain objections in writing specifying concisely therein items or parts of the bill allowed or disallowed and grounds for the objection.

28. The Taxing Officer shall serve fourteen days notice of the application on the opposite party. A copy of the application shall accompany the notice.

29. Objections which were not taken in at the time of the taxation shall not be taken in at the stage of review unless allowed by Taxing Officer.

30. The Taxing Officer may, where he thinks fit, issue, pending the consideration of any objections, a preliminary allocation for or on account of the remainder of the bill of costs.

31. Upon application to review the Taxing Officer shall re- consider his taxation upon the objections carried in and may, where he thinks fit, receive further evidence in respect thereof, and shall state in a certificate the grounds of his decision thereon and any special facts or circumstances relating thereto.

32. Any party dissatisfied with the decision of the Taxing Officer on review may, not later than seven days from the date of the decision or within such further time as the Taxing Officer or the Court may allow, apply to the Court for an order to review the decision of the Taxing Officer and the Court may thereupon make such order as may seem just, but the taxation the Taxing Officer shall be final and conclusive as to all matters which shall not have been objected to in the manner aforesaid.

33. No evidence shall be received by the Court upon the review of the Taxing Officer's decision which was not before the Taxing Officer when he taxed the bill or reviewed his taxation unless the Court otherwise directs.

34. The certificate of the Taxing Officer by whom a bill of costs has been taxed shall unless it is set aside or altered by the Court be final as to the amount of costs covered thereby.

35. Expect as otherwise specially provided in these Rules the fees set out in the Second and Fourth Schedules to these Rules may be allowed to Advocates, Advocates-on-Record and officers of the Court.

36. In defended appeals, the first day's hearing fee shall be allowed in full as fixed under the Second Schedule, for the first four and a half hours of the hearing or part thereof, subject to the provisions contained in rules 38 and 39.

37. No refresher shall be allowed unless the hearing has lasted for more than four and a half hours and the Taxing Officer shall have discretion to reduce the refresher or to allow an additional refresher having regard to the duration of the hearing after the first four and a half hours. The refresher shall however not be reduced by more than one half.

38. Where the hearing of a part-heard case is held up on account of the Court being occupied with any other matter, the time taken in the hearing of such matter shall be taken into consideration by the Taxing Officer for purposes of a refresher.

39. In cases involving less than fifty thousand rupees in value, the Taxing Officer shall have discretion to reduce the fees, including the first day's hearing fee and the fee of the Advocate- on-Record suitably according to the nature of the case.

40. Save as otherwise provided in these Rules, the fees provided in the Second Schedule, other than items I and 2 of part I, shall be subject to reduction in the discretion of the Taxing Officer according to the nature of the case.

41. The allowances to be made to witnesses per diem shall be such as the Taxing Officer may think reasonable having regard to the profession or status of the witnesses, but shall not exceed Rs.50 per diem unless the Court otherwise directs.

42. Witnesses residing more than five miles from the place where the Court sits shall be allowed traveling expenses according to the sums reasonable and actually paid by them and shall also be allowed such a sum for subsistence money and carriage hire as the Taxing Officer, having regard to the daily allowance fixed under rule,41 considers reasonable.

43. Every person summoned to give evidence shall have tendered to him with the summons a reasonable sum for his traveling expenses (if any) and for the first day's attendance and shall, if obliged to attend for more than one day, be entitled before giving his evidence, to claim from the party by whom he has been summoned the appropriate allowance and expenses for each additional day that he may be required to attend.

44. Witnesses who have not been paid such reasonable sums for their expenses as the Court allows by its Rules may apply to the Court at any time in person to enforce the payment of such sum as may be awarded to them.

45. For the purposes of this Order a folio shall consist of one hundred words;

seven figures shall be counted as one word; and part of a folio exceeding fifty words shall be reckoned as a folio. A document consisting of less than one hundred words count as one folio.

46. Where the party having the charge of the bill does not appear on the date fixed for taxation, the Taxing Officer may make an order that bill be rejected. An application for the restoration of the bill shall be made within fourteen days from the date of the rejection of the bill, and the Taxing Officer may for sufficient cause shown received and tax the bill.

47. A party dissatisfied with the order of the Taxing Officer under the last preceding rule may, not later than seven days from the date of order, or within such further time as the Taxing Officer or the court may allow, apply to the Court for an order that the bill be restored.

48. Subject to any agreement in writing to the contrary, the rules regulating the taxation of the costs between party and party shall be applicable as far as may be to taxation between Advocate- on-Record and client.

49. If an Advocate-on-Record makes an agreement in writing with his client as to his remuneration in respect of any business done or to be done by him in any proceedings in this Court the amount payable under the agreement shall not be received by the Advocate-on-Record until the agreement has been examined and allowed by the Taxing Officer and if the Taxing Officer is of opinion that the amount is unfair or unreasonable, he may seek the direction of the presiding Judge of the bench hearing the appeal, cause or matter and the Judge may reduce the amount payable there under, or order the agreement to be cancelled and the costs covered thereby to be taxed as if the agreement had never been made.

50. Where a dispute arises between the Advocate-on-Record and his client as to fees and charges payable to the Advocate-on- Record in any proceeding before the Court, either party may apply to the Taxing Officer for an order to have the bill taxed in accordance with the provisions of this Order. The application, when made by the Advocate-on-Record shall be accompanied by a copy of the bill sought to be taxed.

51. The Advocate-on-Record whose bill against his client has been taxed may apply to the Court for an order against his client or his legal representative for payment of the sum allowed on taxation or such sum thereof as may remain due to him. The order so made may be transmitted for execution to such Court or tribunal as the Court may direct.

52. Where it is necessary to enforce payment of costs under direction of the Registrar, an order for that purpose shall be obtained form a Judge. Application for such orders may be made, without notice, by petition, supported by a certificate of the Registrar.

53. The Court may on the application of a client or his representative in interest direct an Advocate-on-Record to deliver up any documents or papers to the possession of which the applicant may be entitled, and pass such other order in this behalf as the circumstances of the case may require, including orders as to the costs of the application.

PART VII
MISCELLANEOUS
ORDER XXIX
NOTICE OF PROCEEDINGS TO LAW OFFICERS OF THE STATE

1. The Court may direct notice of any proceeding to be given to the Attorney-General or to Advocate-General of any Province, and the Attorney-General or the Advocate-General to whom such notice is given may appear, and shall do so if required by the Court.

2. The Attorney-General or the Advocate General of any Province may apply to be heard in any proceedings before the Court and the Court may, if in its opinion the justice of the case so requires, permit the Attorney-General or any Advocate-General so applying to appear and be heard, subject to such terms as to costs or otherwise as the Court may think fit.

3. For the purpose of this Order, the expression "Attorney- General of Pakistan" includes a Deputy Attorney-General.

ORDER XXX.
FORMS TO BE USED

1. Every writ , summons, order, Warrant or other mandatory process shall be signed by the Registrar with the day and the year of signing, and shall be sealed with the Seal of the Court.

1. The forms set out in the Sixth Schedule to these Rules, or forms substantially to the like effect with such variations as the circumstances of each case may require, shall be used in all cases where those forms are appropriate.

ORDER XXXI
SERVICE OF DOCUMENTS

1. Except where otherwise provided by Statute or prescribed by these Rules, all notices, order or other documents required to be given to, or served on any person shall be served in the manner provided by the Code for the service of summons.

2. Service of any notice, order or other document on the Advocate-on-Record of any party may be effected by delivering it to the Advocate-on-Record or by leaving it at his place of business or by sending to his address by registered post.

3. Service of any notice, order or other document upon a person, other than an Advocate-on-Record, residing at a place within the territories of Pakistan, between which place and the seat of the Court there is communication by registered post, may be effected by posting a copy of the document, required to be served in a pre-paid envelope registered for acknowledgment, address to the party or person at the place where he ordinarily resides.

Provided that the Registrar may direct in a particular case or class of cases, that the service shall be effected in the manner provided by the Code for the service of summons.

4. A document served by post shall be deemed to be served at the time at which it could have been delivered in the ordinary course of post.

5. Expect where the notice or process has been served through the Registry, the party required to effect the service shall file an affidavit of service, along with such proof thereof as may available, stating the manner in which the service has been effected.

6. Where the notice, order or other document has been served through another Court, the service may be proved by the deposition or affidavit of the service officer made before the Court through which the service was effected.

7. Service effected after Court hours shall for the purpose of computing any period of time subsequent to that service be deemed to have been effected on the following day.

ORDER XXXII
COMMISSIONS

1. Order XXVI in the First Schedule to the Code with respect to commission shall apply except rules 13,14,19,20,21 and 22.

2. An application for the issue of a commission may be made by summons in Chambers after notice to all parties who have appeared, or ex-parte where there has been no appearance.

3. The Court may, when the commission is not one examination on interrogatories, order that the commissioner shall have all the powers of a Court under Chapter X of the Evidence Act, 1872, to decide questions as to the admissibility of evidence and to disallow any question put to a witness.

4. The commissioner shall record a question disallowed by him and the answer thereto, but the same shall not be admitted in evidence until the Court so directs.

5. Unless otherwise ordered the party, at whose instance the commission is ordered to issue, shall lodge in the Court copies of the pleading and issues in the case within twenty-four hours of the making of the order and those copies shall be annexed to the commission when issued.

6. Any party aggrieved by the decision of the commissioner refusing to admit documentary evidence may apply to the Court within a period of fourteen days of the date of the submission of the report to set aside the decision and for direction to the commissioner to admit the evidence.

7. After the deposition of any witness has been taken down and before it is signed by him, it shall be read over and, where necessary, translated to the witness. Every page of the disposition shall be signed by him and left and left with the commissioner who shall subscribe his name and the date of the examination.

8. Commission shall be made returnable within such time as the Court may direct.

ORDER XXXIII
INHERENT POWERS

1. The Court or any Judge or Judges thereof may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matter of practice and procedure as it shall consider just and expedient.

2. An application to be excused from compliance with the requirements of any of the Rules shall be addressed in the first instance to the Registrar, who shall take the directions of the Court or of any Judge or Judges thereof and communicate the same to the party or parties as the case may be.

3. The Court may enlarge or abridge any time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

4. The court may at any time, either of its own motion or on the application of any party, make such orders as may be necessary or reasonable in respect of any of the matters mentioned in these Rules, may issue summons to persons whose attendance is required either to give evidence or to produce documents, or order any fact to be proved by affidavit.

5. The Court shall have powers to pass any decree and make any order which ought to have been passed or made and pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

6. Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

7. Where at any stage of the proceedings in the Court, there has been a failure to comply with these rules, the failure shall be treated as an irregularity and shall not nullify the proceedings or the judgment. The Court may, on such terms as to costs or otherwise, as it thinks just set aside either wholly or in part the proceedings in which such failure has occurred.

ORDER XXXIV
DESTRUCTION OF RECORDS

1. There shall be an index of the records in every case in the form prescribed below:-

Index of Papers

CIVIL APPEAL NO. OF 19

(or Criminal Appeal No. or Petition No.

CAUSE TITLE

Sr. No	Date of filling the Paper in the record	Description of papers	No. of the part to which it belongs	Remarks

2. The record in each case shall be divided into two parts, Part I to be preserved permanently and Part II to be preserved for a period of three years.

3. Each paper as and when it is filed in the record, shall be numbered and entered in the Index and classified under the appropriate part to which it belongs.

4. The Period for which any particular records is to be preserved shall be reckoned form the date of the final decree or order in the proceeding to which the record belongs, and in case a Review is filed against the decree or order, from the date of the final decree or order made in review. In the case of registers, the period shall be reckoned from the date of the last entry in the Register.

5. The Registrar may direct that any paper assigned to Part II be transferred to Part I for being preserved permanently.

6. Records which do not fall under Part I or Part II as classified below, shall be referred to the Registrar who shall decide the part under which they should be included.

7. When any record is ripe for destruction, it shall either be burnt or sold as waste-paper, as the Registrar may in his discretion direct.

8. Where the record is sold as waste-paper, the sale proceeds shall be credited to Government.

9. As soon as a record is destroyed, a note shall be made in the Index against the record showing that it has been destroyed and the date of destruction.

PART I

10. The following papers shall be included under Part I (to be preserved permanently):-

1. Index
2. Judgment
3. Decree of Order
4. Order for Costs.
5. Pleadings (plaint, written statement, set-off and counter- claim)
6. Authenticated copy of the printed record.
7. Petition of appeal.
8. Concise Statement.
9. Original Petitions including leave petitions.
10. Interlocutory applications other than applications for condonation of delay and other formal application
11. Orders on petitions.
12. Memorandum of compromise
13. Title deeds, if any, remaining un-returned to any party.
14. Any other records or papers which the Registrar may direct to be included in this part.

Registers:-

1. Minutes Books
2. Registers of Civil and Criminal appeals, leave petition, and miscellaneous petitions and matters.
3. Rolls of Senior Advocates, Advocates and Advocates-on- Record and enrolment files.

PART II

The following papers shall be included in a Part II and shall be destroyed after a period of three years as indicated below:

1. Power of Attorney and memo of appearance.
2. Affidavits.
3. Application for condonation of delay and such other formal applications.
4. Correspondence in cases.

5. Unclaimed documents filed by parties other than title deeds.
6. Office notices in the case files, Registers, files and miscellaneous.
7. Taxation files including bills of costs.
8. Register of bills of costs.
9. Dispatch Registers.
10. Surplus copies of printed records, and of pleadings and petitions.
11. Copies of summons and notices.
12. Copying Register.

[1][ORDER XXXV
APPEALS AND PETITIONS UNDER ARTICLE 203F OF THE CONSTITUTION

1. Subject to the provision of this Order, the provisions contained in the other Orders of these Rules relating to civil and criminal appeals, petitions review petitions and jail petitions and other petitions, applications and proceedings and all orders or instructions form time to time issued relating to practice and procedure of the court shall, *mutatis mutandis*, apply to appeals, petitions, review petitions and jail petitions and other petitions, applications and proceedings filed under or in respect of jurisdiction conferred by Article 203F of the Constitution:

Provided that no Court fee, process fee or search fee or security for costs shall be charged:

Provided further that copying fee shall be charged except in petitions through jail.

2. Not less than twelve copies of the appeals and six copies of the petitions, other than the jail petitions, and the accompanying documents shall be filed, but in appropriate cases the Registrar may require the appellants or the petitioner to supply more copies.

3. The Chief Justice shall nominate such number of Muslim Judges of the Court to be the Members of the Shariat Appellate Bench as are specified in paragraph (a) of clause (3) of Article 203F, and senior most of whom shall be the Chairman of the Bench.

4. (1) Save as otherwise provided by law or by these Rules, the Chief Justice shall from time to time nominate Members from the Shariat Appellate Bench for hearing and disposal of cases as follows:-

(1) For appeals and petitions against acquittal, not less than three members including one ad hoc Member of the Shariat Appellate Bench; and

(2) For petitions other than those against acquittal, not less than two Members:

[1] Added by Notification No.F.59/80-SCA, dated 10-01-1983

Provided the Chief Justice may direct that any particular case or cases shall be placed for hearing and disposal before more or all the Members of the Bench.

(2) An application for stay of execution or for bail shall be laid before the Chairman of the Shariat Appellate Bench or, in his absence, the senior most Member of the Bench, who shall either himself pass order on such application or mark it to another Member for disposal in Chambers.

5. An appeal filed against the final decision of the Federal Shariat Court under Article 203D of the Constitution shall not be dismissed on account of absence of the appellant nor shall it abate in the event of the death of any of the parties to it.

6. (1) The Shariat Appellate Bench may direct issue of notice in any case to any person well-versed in Islamic laws to appear before the Bench and to give it such assistance as it may consider necessary. The Bench shall also draw up and maintain a panel of Ulema and Jurisconsults form amongst person who have:-

(a) qualified from one of the recognized seats of "Muslim learning in Pakistan or abroad;

(b) obtained a degree from a recognized University in Islamiat, Arabic of Islamic Law;

(c) obtained a Diploma in Maulvi Fazil in Arabic from the Board of Intermediate and Secondary Education; or

(d) gained recognition for their knowledge, understanding and appreciation of Islam.

(2) The enrolment for a panel may be made *suo motu* or on an application of an *Aalim* or Jurisconsult.

7. The *Aalim*, Jurisconsult or Expert who appears before the Bench to assist it shall be:-

(a) paid honoraria to be determined by the Court in each case; and

(b) entitled to traveling and daily allowance facilities ordinarily not exceeding those admissible to a Grade 20 Officer of the Government as may be determined by the Bench in each case.

8. The Chief Justice may make such orders as are not inconsistent with the provisions of Chapter 3A of the Constitution and these Rules for carrying out day to day business of the Shariat Appellate Bench as he thinks fit]

[1][2][ORDER XXXVI

[1] Added by Notification No. 59/80-SCA, dated 08-10-1987.
[2] Omitted by Notification No. 59/80-SCA, dated 27-08-2003 for "Order XXXVI". The Omitted Order XXXVI which was added by Notification No. 59/80-SCA, dated 08-10-1987 was as follows;

ORDER XXXVI
Appeals under *[Ordinance II of 1987]

1. Save, as hereinafter provided\, the provisions contained in the preceding Orders shall, as far as practicable, apply to appeals under this Order.
2. An appeal shall be lodged within seven days from the date of final judgment passed by the Special Court and it shall be heard and disposed of by the Court within three months.
3. The appellant shall file at least twelve copies of the paper book containing petition of appeal and the accompanying documents at the time of lodging the appeal.
4. The appeal shall normally be heard at the Main Seat of the Court unless otherwise ordered by the Chief Justice.
5. After the disposal of a case under the Ordinance, the Special Court concerned shall, within seven days, forward the original record to the Registrar.
6. On receipt of the petition of appeal, the Registrar shall cause notice of appeal to be given to the respondents with a copy of the petition of appeal and the accompanying documents. The respondents may thereafter file twelve copies of additional documents, if necessary, within seven days.
7. An appeal under this order may be heard and disposed of by a Bench of two Judges:
   Provided that an appeal, involving sentence of death or imprisonment for life, shall be heard by a Bench consisting of at least three Judges:
   Provided that an appeal, involving sentence of death or imprisonment for life, shall be heard by a Bench, to be nominated by him.
8. In a proper case the Court may direct the engagement of an Advocate for an accused person at the cost of the Provincial Government concerned.

*Ordinance II of 1987 is Special Courts for Speedy Trials Ordinance, 1987

FIRST SCHEDULE
SENIOR AND OTHER ADVOCATES

1. A senior or other Advocate shall not appear or plead unless he is instructed by an Advocate-on-Record.

2. A Senior Advocate shall not accept instructions to draw pleadings, affidavits, advice on evidence or to do any drafting work of an analogous kind, but this prohibition shall not extend to settling any such matters as aforesaid in consultation with a junior.

3. A Senior Advocate appearing with another Senior Advocate senior to himself shall be entitled to, and shall be paid, a fee not less than two-thirds of the fee marked on the brief of that other Advocate, and junior appearing with a senior Advocate or with any other Advocate senior to himself shall be entitled to, and shall be paid, a fee not less than one-third and not more than two- thirds of the fee marked on the brief of the Senior or other Advocate, but this rule shall not apply in the case of a second junior.

4. A Senior Advocate may inform the Court that he will not accept any brief, or any brief of a specified class, without a special fee of a named amount, in addition to the ordinary fee marked on the brief, and shall not so long as he does not inform the Court to the contrary accept a brief or a brief of the specified class without that special fee.

5. An Advocate appearing with a Senior Advocate whose brief is marked with a special fee in accordance with the last preceding rule shall only be entitled to his proper proportion of the ordinary fee marked on the Senior Advocate's brief and not to any proportion of the special fee.

[1] [6. The Court shall maintain a panel of counsel to be selected by a Committee of the Judges and approved by the Chief Justice from time to time for the purpose of providing representation to underrepresented accused.

7. A counsel engaged under paragraph 6 shall be entitled to a fee of rupees one thousand per case for the first day on which the case proceeds, and rupees five hundred for each subsequent day on which the case proceeds, to be paid by the Registrar on production of a *certificate of his appearance signed by the senior member] of the Bench hearing the petition/appeal. If a case does not proceed the counsel shall be paid rupees two hundred and fifty only.

* CERTIFICATE

Certified that Mr._____, Advocate, has appeared before the Court in Jail Petition/ Criminal Appeal No.___ fixed for ___ at Srl. No._____ to defend the pauper accused. This case was adjourned/dismissed/allowed.

Date:

[1] Added by Notification No. 59/80-SCA dated 22-03-2001.

JUDGE

8. The Court may direct payment of any amount according to its discretion to a counsel in a particular case]

[1][9.] Any dispute arising under this Schedule shall be referred to and determined by the Chief Justice.

SECOND SCHEDULE.
FEES TO ADVOCATES
PART I

			Fee on brief	Refresher
			Not exceeding Rs.	Not exceeding Rs.
1	Defended Appeals	Senior … …	800	400
		Junior when himself pleading without a senior. …	400	200
		Junior when appearing along with a Senior (and not pleading himself).	200	100
2	Undefended Appeals	Leading Senior Advocate.	400	No refresher.
		Leading Junior Advocate Senior.	200	No refresher.
3	Leave petitions	Senior … …	400	
		Junior when himself pleading without a senior. …	200	
		Junior when appearing along with a Senior (and not pleading himself).	100	No refresher.
4	Miscellaneous petitions when opposed	Senior (if allowed …	200	
		Junior …	100	No refresher.

[1] Paragraph 6 renumbered as "9" by Notification No. 59/80-SCA, dated 22-03-2001

5	Miscellaneous petitions when un-opposed	Senior (if allowed) … …	200	No refresher.
		Junior ….	50	No refresher.
6	Chamber applications when opposed	One fee only Senior (if allowed).	200	No refresher.
		Junior …. …	100	
7	Chamber applications when un-opposed or ex-parte.	One fee only Senior (if allowed).	200	
		Junior …. …	50	No refresher.
8	Review Petitions.	Senior … …	200	No refresher.
		Junior … ….	100	
9	Attending taxation (Advocate-on-fee)		30	No refresher.

Part II

		Rs.
1.	To Junior Advocate for drawing leave petitions of affidavits in support thereof … …	75.00
	To the Senior for Settling the above. … …	100.00
2.	To Junior Advocate for drawing other petitions or affidavits (except petitions of formal nature, e.g., condonation of delay etc., and affidavits connected therewith). … …	30.00
3.	To Junior Advocate for drawing concise statement in appeals:	50.00
	(a) when settled by Senior. … ...	50.00
	(b) When not settled by Senior. … …	to 100.00
	To Senior Advocate for settling the above … …	100.00
4.	Conference with Advocate-on-Record if allowed … …	50.00

PART III

Fee set out in Parts I & II of this Schedule for junior advocates shall be allowed to Advocates on Record where admissible under the Rules.

THIRD SCHEDULE
TABLE OF COURT FEE
PART I
APPELLATE JURISDICTION

		Rs. Ps.
1.	Filling and lodging petition for leave to appeal …	250.00
2.	On the appeal as provided by order XIV rule 6, where the amount or value of the subject-matter in dispute on appeal is Rs.15,000 or below that sum …	250.00
	For every Rs.1,000 in excess of Rs.15,000 ...	5.00
	In cases where it is not possible to estimate at money Value the subject matter in dispute …	For every thousand rupees or part thereof 250.00
	Provided (i) That the maximum fee payable in any case shall not exceed Rs. 2000/- (ii) That where an appeal is brought by leave granted by this Court credit shall be given to the appellant for the amount of court fee paid by him on the petition for leave to appeal.	
3.	Filing and lodging concise statement or caveat …	10.00
4.	Application for Review of Judgment or order including filing. …	Half of the fee paid on the original proceeding
5.	Petition to proceed in *forma pauperis*	1.00

PART II
MISCELLANEOUS

		Rs. Ps.
1.	Entering in register of appeal or matters names of representatives of a deceased party or of a substituted or added party. … …	2.00

		Rs. Ps.
2.	Summons or notice to defendant or his representative or a respondent to a petition or to a memorandum of Appeal, for not more than five persons (with an additional Fee of Rs.1for every person in excess of five) ... …	10.00
3.	Entering appearance ... …	2.00
4.	Amending appearance	2.00
5.	Power of Attorney ... …	4.00
6.	Filing-fee for every document for which a fee is not specially provided, including document annexed asexhibits, if any, or produced with plaint or used in evidence, each document ... …	2.00
7.	Every application to the court not specially provided for. .. .	5.00
8.	Every application to a Judge in chambers, the Registrar, or Taxing Officer, not specially provided for ...	5.00
9.	Every requisition to draw up an order including fee for filling the order ... …	5.00
10.	Warrant, writ, summons or other process not specially provided for, for not more than five persons (with an additional fee of Rs.1 for every person in excess or five).	10.00
11.	Every certificate or report of a Judge in Chamber or of Registrar on an investigation ... …	10.00
12.	Every other certificate for which a fee which a fee is not specially provided ... …	3.00
13.	Commission to examine witnesses or other commission ...	10.00
14.	Production by an Officer of the court in any other court or before commissioner of records of any suit, matter or appeal, 10.00 exclusive of travelling expenses, and halting charges. … …	10.00
15.	For production of records by post, exclusive of postage, registration and insurance fees	5.00

		Rs. Ps.
16.	For enquiry into sufficiency of security ... …	8.00
17.	For every search or examination of records	3.00
18.	Every affidavit affirmed or sworn ... …	2.00
19.	For every oath or affirmation administered to witness ...	2.00
20.	For every certified copy of decree, judgment or other document in addition to the folio or other charges.	5.00
21.	Every requisition for duplicate or other copy of any document ... …	1.00
22.	For copies of any document, per folio, less requisition fee paid ... …	0.62
23.	For amending pleadings or other proceedings under the order of the court per folio ... …	2.00
24.	Upon all moneys or securities paid to the Registrar or deposited with him. ... …	A commission of 1 per cent and 2 - 1/2 percent on interest drawn on invested money .
25.	Every requisition for translation ... …	1.00
26.	Summon by Taxing Officer ... …	3.00
27.	Certificate by Taxing Officer ... …	2.00
28.	Taxing each bill not exceeding 10 folios ... …	10.00
29.	For every other folio ... …	1.00
30.	Registering every bill of costs ... …	1.00
31.	Certificate on review of taxation ... …	10.00

FOURTH SCHEDULE

FEES TO ADVOCATE-ON-RECORD

		Rs. Ps.
1.	Receiving instructions for special affidavits or Petitions ... …	5.00 to10.00
2.	Drawing affidavits, petitions and all other necessary documents not specially provided for) exclusive of copies inserted therein upto ten folios … …	5.00 to 15.00
	Thereafter per folio	0.62
3.	Drawing Security bond ... …	15.00
4.	Drawing notice of motion and other necessary notice except notice to witnesses ... …	8.00
5.	Drawing notice on opposite parties of entering appearance or lodging petition of appeal or concise statement ... …	2.00
6.	Drawing observations or instructions for Advocate to accompany brief (to be shown at taxation) ... …	20.00 to 50.00
7.	Drawing particulars of claim, set-off or counter-claim where required ... …	4.00 to 10.00
8.	(a) Preparing copies of documents other than tabulated statements and accounts whether written or typed, first copy per folio ... …	0.25 Receipt to produce where work done outside the office of the Advocate-on-record
	(b) Preparing carbon copies of above, if legible, per Folio ... …	0.12
	(c) Preparing copies of tabulated statements and Accounts, per folio ... …	0.50
	(d) Preparing carbon copies of above, per folio ... …	0.25
	(e) Preparing printed copies per folio for each	

	copy ...	0.31
	(f) Preparing photographed copies ... …	Actual charges.
9.	Serving every necessary notice, summons to a witness or other judicial process which may be served by Advocate-on Record or his clerk or by post. ... …	2.00
	When required to serve outside the Municipal limits of the seat of the Court (besides travelling expenses Actually incurred) ... …	10.00
10.	Receiving, filing or depositing any papers from or in the Registry ... …	2.00
11.	Attendance before the Court or Judge or an Officer of the Court not otherwise provided for (if allowed). ... …	10.00 to 20.00
12.	Attending every application to Registrar when contested (if allowed) ... …	10.00
	Attending every application to Registrar when un-contested (if allowed) ... …	5.00
13.	Attendance on client or opposite party at the office of the Advocate-on-Record of either party where a letter would not suffice ... …	10.00 to 20.00
	Where a letter would suffice ... …	3.00
14.	Receiving and perusing necessary letters ...	2.00
15.	Perusing documents received from opposite party or obtained from the Court, where necessary, in the discretion of the Taxing Officer upto ... …	8.00
16.	Perusal and approval of draft orders of decree ... …	2.00 to 4.00
17.	Attending execution of Security Bond at the Advocate Record's house or office or at the Court House....	4.00
18.	Attending Court upon the swearing of the necessary affidavit (including attendance to the Interpreter to have same explained	2.00

19.	Attendances in the Registry, if necessary, inspecting documents, books and accounts by Advocate –on-Record per hour	10.00
20.	Attending searches in Registry (if allowed)	10.00
21.	Attending, obtaining and filing copies of decree or order in the Registry ...	2.00
22.	Attending Advocate delivery brief with instructions.	16.00
	Attending Advocate delivering additional briefs ...	8.00
23.	Attending Advocate, paying fee	2.00
24.	Attending Advocate, fixing time for consultation or conference	2.00
	(a) Attendance at hearing of appeals, or matters, each day if contested	Rupees fifty per hour or part thereof, subject to maximum of Rs. 150.
	(b) Attendance at hearing of appeals, or matters, each day, if uncontested.	Half the above rates.
25.	Attendance in Court when appeal or matter or motion is on day's list for hearing if not called on, per day.	25.00
26.	Attending Court to hear judgment where judgment is reserved, if Advocate is not briefed.	15.00
	If Advocate is briefed	5.00
27.	Attending taxation per hour.	15.00
28.	Attending Judge in Chambers or Registrar at hearing or enquiry on review of taxation before Taxing Officer, if Advocate is not briefed, per hour	15.00
	Where Advocate is briefed	5.00

29.	Attending on local enquiry or commission to examine witness within the municipal limits of the seat of the Court, where personal attendance of Advocate-on- Record is required per hour	7.00
30.	Writing or answering necessary letters ...	2.00 to 5.00
31.	Writing letters to witness, for each witness ...	2.00
32.	Writing letter of instructions to legal practitioner attending examination of witness on commissions, when Advocate-on-Record cannot attend personally	2.00 to 7.00
33.	Necessary translations made by translators approved by Court, per folio	0.75
34.	Receiving instructions to appeal, including petitions.	25.00 to 50.00
35.	Receiving instructions to sue, or defend and or to counterclaim	25.00
36.	Drawing special case	16.00
37.	Drawing interrogatories	8.00 to 25.00
38.	Drawing Bill of costs in appeals, or matters	5.00 to 10.00
39.	Consultation with Advocate (if allowed)	25.00
40.	Making transcript or copying papers for the press where necessary for preparing paper book, including examination, per folio	0.62
41.	Printing Paper book	Actual cost at a reasonable rate to be allowed by the Taxing Officer.
42.	Examination proofs, per folio	0.25
	(a) Comparing transcript record per folio	0.12
43.	Preparation of the case and other unforeseen works. ...	Discretionary.

FEES TO OFFICERS OF COURT

1.	Fees of interpreter for explaining at the house of a party or any place other than the Court House, pleadings and other documents except affidavits or affirmations, where not exceeding 20 folios	8.00
	Where over 20 folios for every 10 folios or part thereof ...	2.00

2.	Fees of Registrar for taking bonds at the house of a Party or any place other than the Court House:- For the first bonds, where within the municipal ,limits of the seat of the Court	16.00
	Where beyond such limits	24.00
	For every bond taken at the same time and place after the first, in the same, appeal or matter	8.00
3.	Fees of Registrar and commissioners for taking affidavits or affirmations at the house of a party or any place other than the Court house: For the first affirmation where within the municipal limits of the seat of the Court.	16.00
	Where beyond such limits	24.00
	For every affidavit, oath or affirmation taken at the same time and place after the first in the same, appeal or matter	8.00
4.	Fees of Registrar and commissioners for receiving affidavits, oath s or affirmation at the Court House for every affidavit oath or affirmation	2.00
5.	Fees of interpreter for explaining bonds, affidavits or petitions at the house of a party or any place other than the Court House	Half the fees allowed to Registrar or Commissioner

FIFTH SCHEDULE

RULES AS TO PRINTING OF RECORD

1. All records and other proceedings in appeals or other matters pending before the Supreme Court shall be printed in the form known as Demy Quarto.

2. The size of the paper used shall be such that the sheet when folded and trimmed, will be 11 inches in length and 8 inches is width.

3. The type to be used in the text shall be pica Type, but long Primer shall be used in printing accounts tabular matter and notice. The number of lines in each page of Pica Type shall be 47 or there about and every tenth line shall be numbered in the margin.

4. Records shall be arranged in two parts in the same volumes, where practicable, viz:-

Part 1:- The pleadings and proceedings, the transcript of the evidence of the

witnesses, the judgments decrees, etc., of the Courts below down to the order admitting the appeal.

Part II:- The exhibits and documents:

5. The index to Part I shall be in chronological order and shall be placed at the beginning of the volume.

The index to Part II shall follow the order of the exhibit mark, and shall be placed immediately after the index to Part I.

6. Part I shall be arranged strictly in chronological order, i.e., in the same order as the index.

Part II shall be arranged in the most convenient way for the use of the Court, as the circumstances of the case require. The documents shall be printed as far as suitable in chronological order. Each document shall show its exhibits mark, and whether it is a plaintiff's or defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter such as:-

(a) a series of correspondence, or

(b) proceedings in a suit other than the one under appeal shall be kept together. The order in the record of the documents in Part-II will probably be different from the order of the index, and the proper page number of each document shall be inserted in the printed index.

The parties will be responsible for arranging the record in proper order for the Court, and in difficult cases counsel may be asked to settle it.

7. The documents in Part I shall be numbered, consecutively.

The documents in Part II shall not be numbered, apart from the exhibit mark.

8. Each document shall have a heading which shall consist of the number of exhibit mark and the description of the document in the index, without the date.

9. Each document shall have marginal note which shall be repeated on each page over which the document extends, viz.

PART I

(a) Where the case has been before more than one Court, the short name of the court shall first appear. Where the case has been before only one court, the name of the court need not appear.

(b) The marginal note of the document shall then appear consisting of the number and the description of the documents in the index, with the date, except in the case of oral evidence.

(c) In the case of oral evidence, "Plaintiffs evidence" or "Defendant's evidence" shall appear beneath the name of the court, and then the marginal note consisting of the number in the index and the witness's name, with "Examination", "Cross-Examination", or "re-Examination", as the case may be.

PART II

The word "Exhibits" shall first appear.

The marginal note of the exhibit shall then appear consisting of the exhibit mark and the description of the document in the index with the date.

10. The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the index and in the record), if desired, with the word "not printed" against it.

A long series of documents such as accounts, rent rolls, inventories, etc., shall not be printed in full, unless counsel so advises, but the parties shall agree to short extracts being printed as specimens.

11. In case where maps are of an inconvenient size or unsuitable in character, the appellant shall, in agreement with the respondent, prepare maps drawn property to scale and of reasonable size, showing as far as possible, the claims of the respective parties, in different colours.

12. Charges for cyclostyling the record:-

(i) For preparing rough estimate or printing/ typing charges …	32.00
(ii) Typing charges for first 12 copies ... .. …	6.00 per page
(iii) For every additional copy other than the first 12 copies….	6.00 per page
(iv) Preparation of index for every ten entries…...	4.00
(v) Binding charges (with card-board sides) ..	10.00 per copy

SIXTH SCHEDULE
FORMS
No.1
SUPREME COURT OF PAKISTAN
Certificate of enrolment of Advocate or Advocate-on- Record.

(ORDER IV)

No…….....

This is to certify, that
has this day been admitted and enrolled (as a senior Advocate/as an Advocate) (and an Advocate-on-Record) in the Supreme Court of Pakistan.

Date this the day of 19

REGISTRAR.

No.2
UNDERTAKING ADVOCATE-ON-RECORD
(ORDER IV)

I, the undersigned, do hereby solemnly affirm and declare that I will observe, submit to, perform and abide by all and every orders, rules, regulations, and practice of the Supreme Court now in force or hereafter from time to time to be made, and also to pay and discharge, from time to time, when the same shall be demanded, all fees, charges, and sums of money due and payable in respect of any appeal, cause or other matter in
and upon which I shall appear as such Advocate -on-Record, and that I shall maintain a regular account for each case in each form as the Court may prescribe in respect of all sums received or disbursed on behalf of my client in respect of any such appeal, cause or other matter.

No.3
UNDERTAKING BY ADVOCATE-ON-RECORD
(ORDER IV)

I, the undersigned, a partner in the firm _____ do hereby solemnly affirm and declare that I will observe, submit to perform, and abide by all and every orders, rules, regulations, and practice of the Supreme Court now in force or hereafter from time to time to be made, and also to pay and discharge, on behalf of myself and the firm, from time to time, when the same shall be demanded, all fees, charges and sums of money due and payable in respect of any appeal, cause or other matter in and upon which I shall appear as an Advocate-on-Record/partner of the firm, and that the firm shall maintain a regular Account for each case in such form as the Court may prescribe in respect of all sums received or disbursed on behalf of the client of the firm in respect of any such appeal, cause or other matter.

No.4
INDEMNITY BOND BY ADVOCATE-ON-RECORD
(ORDER IV)

Whereas I,_____ (name, description and address) have subscribed to an undertaking to pay and discharge on behalf of myself or of the firm namely _____ Advocate -on-Record in which I am a partner from time to time and as and when the same shall become due or be demanded, all fees, charges, costs and other sums of money due or payable in respect of any appeal, cause or other matter filed by me or by the said Firm or in which I or the said Firm shall have appeared or filed any power as an Advocate-on Record or as a Firm of Advocate-on-Record.

Now, therefore, by these presents I agree and consent to pay and always to keep the Court indemnified against all such fees, charges, costs and other sums as may be found to be due or payable in respect of any one such appeal, cause or other matter or as may be demanded from me or from the said Firm upto the extent or Rupees Five Thousand (Rs.5,000), and in the event of the same not being paid within seven days (7) days of the service of the notice of demand or within such further time as may be allowed by the Court, execution may issue forthwith against me, heirs, executors and administrators, goods and chattels for a sum not exceeding Rupees Five thousand (Rs.5,000).

In witness whereof I have on this the
----------day of ----------
affixed my hand and seal.

Seal & signature of Advocate-on-Record.

Witnesses:-

1._____

2._____

No. 5
"POWER OF ATTORNEY" TO ADVOCATE-ON-RECORD
(ORDER IV)

In the Supreme Court of Pakistan.
(Appellate Jurisdiction)
(Original Jurisdiction)

Case No. of 19

(A. B.) (Appellant)
(Petitioner)
(Province of A. B.) (Plaintiffs)

versus

(C.D) (Respondent)
(Defendants)
(Province of C.D.) (Opposite party)

I (we) A. B. of (residence and address of place) Plaintiff(s)/ Appellant (s)/ Petitioner (s)/ Defendant(s) / Respondent(s)/Opposite Party

In the above suit/Appeal/Petition/Reference do hereby appoint and Constitute Mr. _____ Advocate-on-Record Supreme Court, the Advocate-on-Record for the aforesaid appellant [or plaintiff(s) or petitioner(s) or respondent(s) or defendant(s) or opposite party] to commence and prosecute (or to appear and defend) this action appeal/suit/petition/reference on my (our) behalf and all proceedings that may be taken in respect of any application connected with the same including proceedings in taxation and applications for review, to draw and deposit money, to file and take back documents, to accept the processes of the Court, to appoint and instruct counsel, to represent the aforesaid appellant for plaintiff(s) or petitioner(s) or respondent(s) or defendant(s) or opposite party in the above matter and to do all things incidental to such acting for the aforesaid appellant [or plaintiff(s) or petitioner(s) or respondent(s) or defendant(s) or opposite party]. The aforesaid appellant [or plaintiff(s) or petitioner(s) or respondent(s) or defendant(s) or opposite party] agree(s) to ratify all acts done by the aforesaid Advocate-on-Record in pursuance of this authority.

In witness whereof I (we) do hereunto set my (our) hand(s) this the day of .

(*Signature*)

The address for service of the said Advocate-on-Record is ……...

No.6
FORM OF SUMMONS FOR AN ORDER IN CHAMBER
(ORDER V)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)
(Original Jurisdiction)
Case No. of 19

(A. B.) (Appellant)
(Province of A. B.)

versus

(C.D) (Respondent)
(Province of C. D (Defendants)

Let all parties concerned attend before in Chambers at the Court House on the day of 19 at o'clock in the afternoon on the hearing of an application on the part of the above-named (state on whose behalf the application is made and the precise object of the application)

Date this the day of 19

This summons was taken out by Advocate-on-Record for the appellant.

To (insert the name of the Advocate-on-Record for the persons to be served e.g., B. Advocate - on-Record for the defendants).

To the plaintiffs or defendants or appellant A.B. or as the case may be.

GROUNDS

(Here insert a list of the materials relied on, e.g., affidavit of X.Y.Z. etc.).

No.7

NOTICE OF APPEAL FROM REGISTRAR

(ORDER V)

In the Supreme Court of Pakistan.
(Appellate Jurisdiction)
(Original Jurisdiction)

Case No. of 19

(A.B.) (Appellant)
(Province of A. B.) (Plaintiffs)

versus

(C.D.) (Respondent)
(Province of C.D.) (Defendants)

Take notice that the above-named plaintiff (or as the case may be) intends to appeal against the decision of the Registrar given on the day of (ordering or refusing to order) that

And further take notice that you are required to attend before the Judge in Chambers at the Court House (Lahore) on the day of 19 at o'clock in the forenoon, on the hearing of an application by the said plaintiff (or as the case may be) that (here state the order sought to be obtained).

To etc.

(*Signed etc.)*

No.8

NOTICE OF MOTION

(ORDER VI)

In the Supreme Court of Pakistan.
(Appellate Jurisdiction)
(Original Jurisdiction)

Case No. of 19

(A.B.) (Appellant)
(Province of A. B.) (Plaintiffs)

versus

(C.D.) (Respondent)
(Province of C.D.) (Defendants)

Take notice that the Court will be moved on the day of 19 at o'clock in the forenoon or so soon thereafter as counsel can be heard (state by whom, and on whose behalf the motion is to be made as thus: by Mr. A. Counsel on the part of the above-name defendants C.D. or by the above named defendants C.D. in person or, on the part of G.F. or (insert place of residence, description and addition of applicant, if not a party to the proceedings), that (here state the precise object of the motion, as thus: this action may stand dismissed for want of persecution).

Date this the day of 19

(State name, etc., of Advocate-on-
Record party or person giving notice).

To,

(State name of the Advocate-on-Record or party to whom the notice is given).

No.9
FORM OF OATH BY TRANSLATOR.
(ORDER VII)

In the Supreme Court of Pakistan,
In the matter of a translator.

I, solemnly affirm and say that I will translate

correctly and accurately all documents given to me for translation.

Before, the 19

Registrar.

No. 10
APPLICATION FOR PRODUCTION OF RECORD
(ORDER IX)

In the Supreme Court of Pakistan.
(Appellate Jurisdiction)
(Original Jurisdiction)
Case No. of 19

(A.B) (Appellant)
(Province of A. B.) (Plaintiffs)

versus

(C.D.) (Respondent)
(Province of C.D.) (Defendants)

To
The Registrar,
Supreme Court of Pakistan.

Sir,
Please produce the record of the above case before on
(signed)

Dated this the day of 19

No.11

NOTICE TO PARTIES OF THE DAY FIXED FOR DELIVERY OF JUDGMENT (ORDER X)

IN THIS SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)
(Original Jurisdiction)
Case No. of 19

(A.B) (Appellant)
(Province of A. B.) (Plaintiffs)

versus

(C.D.) (Respondent)
(Province of C.D.) (Defendants)

To
(Name of parties or their Advocate-on-Record).

Take notice that the Court will deliver judgment in the above-named case on the day of 19 at o'clock in the forenoon, or as soon thereafter as may be convenient to the Court.

Dated this the day of 19
Registrar.

No.12

NOTICE TO RESPONDENT OF LODGING OF APPEAL
(ORDER XV)

IN THE SUPREME COURT OF PAKISTAN.
(Appellate Jurisdiction)
Case No. of 19

Appeal from the Judgment (or decree or final order) of the High Court of at dated the of 19 in case No.
(here give number of case in High Court) was presented by the above-named appellant on the day of 19 and has been registered in this Court as Criminal Appeal No. _____ of _____

dated this the day of 19

REGISTRAR.

No. 13
CERTIFICATE FROM ADVOCATE-ON-RECORD IN RESPECT OF VALUE OF SUBJECT MATTER OF LITIGATION IN APPEAL FILLED UNDER ORDER XII, RULE 1, S. C. R.

IN THE SUPREME COURT.
(Appellate Jurisdiction)
Civil Appeal No. of 19

(A.B) (Appellant)
versus
(C.D) (Respondents)

CERTIFICATE

I, ---------- Advocate-on-Record for the appellant in the above-cited appeal do hereby certify that the amount value of the subject matter in dispute in the Court of first instance was, and also in dispute in appeal, is not less than fifty thousand rupees.

Dated this the day of 19
Advocate-on-Record
Address for service.

No. 14

CERTIFICATE FROM ADVOCATE-ON-RECORD IN RESPECT OF VALUE OF SUBJECT MATTER OF LITIGATION PROPERTY IN APPEAL FILLED UNDER ORDER XII, RULE 1(ii) S. C. R.

IN THE SUPREME COURT.
(Appellate Jurisdiction)
Civil Appeal No. of 19

(A.B) . (Appellant)

versus

(C.D) (Respondents)

CERTIFICATE

I, ---------- Advocate -on-Record for the appellant in the above -cited appeal do hereby certify that the judgment/decree/final order involves directly/indirectly a claim/question respecting property of the value of not less than Rupees fifty thousand and that the judgment/decree final order appealed from has varied/set aside, the judgment/decree/final order of the court immediately below.

Dated this the _____ day of _____ 19

Advocate -on-Record.

No. 15

MEMORANDUM OF APPEARANCE IN PERSON

Case No. of 19

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)
(A.B) (Appellant)

versus

(C.D) (Respondents)

To

The Registrar,

Please enter an appearance for me (name of respondent) the respondent above - named in this appeal.

Dated this the day of 19

(Signature of Respondent)
Address for service.

No. 16

NOTICE TO PARTIES OF THE DAY FIXED FOR HEARING OF APPEAL
(ORDER XIX)

Case No. of 19

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

(A. B.) ---------- Appellant
versus
(C.D.) ---------- Respondent

To
(Name of parties and their Advocate-on-Record)
Take notice that the above appeal is fixed for hearing on the day of 19, and shall be taken up for hearing by the Court on that day at O'clock in the forenoon or as soon thereafter as may be convenient to the Court.

Dated this the day of 19

REGISTRAR.

No. 17
SUMMONS TO ATTEND TAXATION
(ORDER XXVIII)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)
(Original Jurisdiction)

Case No. of 19

(A.B) (Appellant)
(Province of A. B.) (Plaintiffs)
versus
(C.D.) (Respondent)
(Province of C.D.) (Defendants)

Bill No. of 19 Here state the names of the parties to the bill

Wheras Mr. Advocate-on-Record for the appellant (or Plaintiffs, respondents or defendants) has lodged a bill of costs (copy appended hereto) for taxation as between (party and party and also as between Advocate-on-Record and client) notice is hereby given that the Taxing Officer of the Court will proceed to tax the said bill on the day of 19 at, o'clock in the forenoon when you may attend before

the taxing Officer in his office in the Court House and contest the said bill on any items therein.

Dated this the day of 19

TAXING OFFICER

No.18

CERTIFICATE OF TAXATION

IN THIS SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)
(Original Jurisdiction)

Case No. of 19

(A.B) (Appellant)
(Province of A. B.) (Plaintiffs)

versus

(C.D.) (Respondent)
(Province of C.D.) (Defendants)

Bill No. of 19

Here state the names of parties to the bill

I do hereby certify that I have taxed the above bill of coasts lodged in this Court by Mr.E F. Advocate -on-Record for appellant (or plaintiffs or respondents or defendants) against (here insert name of party or client) and do allow, as between (Party and party and also as between) Advocate-on-Record and client the sum of (amount in figures and words) only.

Dated this the day of 19

TAXING OFFICER.

No.19

NOTICE OF PROCEEDINGS TO THE ATTORNEY- GENERAL FOR PAKSITAN OR THE ADVOCATE- GENERAL OF A PROVINCE

IN THIS SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)
(Original Jurisdiction)

Case No. of 19

(A. B.) (Appellant)
(Province of A. B.) (Plaintiffs)

versus

(C.D.) (Respondent)
(Province of C.D.) (Defendants)

To
The Attorney-General for Pakistan.
The Advocate-General of a Province.

Take notice that the above-named case has been filed in this Court (and is fixed for hearing on the day of 19 and shall be taken up for hearing by the Court on that day, at o'clock in the forenoon or as soon thereafter as may be convenient to the Court, (and shall be fixed for hearing on a suitable date of which the service will be given to you).

As the case raises (an) important question(s) (here state briefly the question(s) involved notice is hereby given to you so that you may appear and take such part in the proceedings before this Court as you may be advised).

Dated this the day of 19

Registrar

No.20

AFFIDAVIT OF SERVICE OF SUMMONS

IN THIS SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)
(Original Jurisdiction)

Case No. of 19

(A. B.) (Appellant)
(Province of A. B.) (Plaintiffs)
versus
.
(C.D.) (Respondent)
(Province of C.D.) (Defendants)

Advocate-on-Record for the above named
make oath and say as follows:-
Solemnly affirm

I did on the day of 19 , serve Mr Advocate-on-Record for the above-named in this action for appeal with a true copy of the summons now produced and shown to me marked, by leaving it, before the hour of four in the afternoon at the (office or dwelling house) of the said situate (being the address for service in this action (or appeal) with his clerk or his servant, or as may be there), or by posted at the post office at in a duly registered envelope addressed to this said at being the address for service in this action (or appeal).

Sworn at this day of 19 before me.

This Affidavit is filed on behalf of th

No.21
AFFIDAVIT OR SERVICE BY POST

IN THIS SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)
(Original Jurisdiction)

Case No. of 19

(A. B.) (Appellant)

(Province of A. B.) (Plaintiffs)

versus

(C.D.) (Respondent)
(Province of C.D.) (Defendants)

Advocate-on-Record for the above named
Make oath and say as follows:-
Solemnly affirm

I did serve the Advocate-on-Record for the above-named in this Appeal action for the above-named (if he has appeared in person) with the summons (or notice or other document) now produced and shown to me marked A, by posting on the day of 19 at (name of Post Office) a true copy of the said summons or as may be (in a prepaid envelope registered for acknowledgement addressed to the said Advocate-on-Record or respondent or as may be) at which is his address for service. The postal acknowledgement is attached hereto.

Sworn at this day of 19 before me.

This affidavit is filed on behalf of the

Chapter 5

PAY, PENSION AND OTHER PRIVILEGES OF THE HON'BLE JUDGES OF THE SUPREME COURT

CHAPTER 5
Pay, Pension and other Privileges of the Hon'ble Judges of the Supreme Court
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5.1 SUPREME COURT JUDGES (LEAVES, PENSIONS AND PRIVILEGES) ORDER, 1997

PRESIDENT'S ORDER No. 2 of 1997

WHEREAS Paragraph 2 of the Fifth Schedule to the Constitution of Islamic Republic of Pakistan relating to the Supreme Court provides that every Judge of the Supreme Court shall be entitled to such privileges and allowances, and to such rights in respect of leave of absence and pension, as may be determined by the President;

NOW, THEREFORE, in exercise of the said powers the President is pleased to make the following Order: -

PART I **– PRELIMINARY**

1. Short title and commencement. — (1) This Order may be called the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997.

(2) It shall come into force at once and paragraph 16 shall be deemed to have taken effect on the 27th July, 1991.

2. Definitions. In this Order, unless there is anything repugnant in the subject or context,-

(a) "acting Chief Justice" means a Judge appointed under Article 180 of the Constitution to act as Chief Justice;

(b) "acting Judge" means a Judge of a High Court appointed under Article 181 of the Constitution to act temporarily as a Judge;

(c) "actual service" means the time spent by a Judge on duty as such or in the performance of such other functions as he may perform under the Constitution and law, or at the request of the President, and includes vacations;

(d) "Chief Justice" means the Chief Justice of the Supreme Court;

(e) "High Court" means the High Court of a Province and shall include a High Court which existed in Pakistan at any time before the commencement of the Constitution, 1973;

(f) "Judge" means a Judge of the Supreme Court and includes the Chief Justice, an acting Chief Justice and an acting Judge;

(g) "Judge of a High Court" includes the Chief Justice of a High Court;

(h) "service as Judge" means service rendered as a Judge either in the Supreme Court only or in that Court and in one or more of the High Courts;

(i) "service for pension" means actual service and includes thirty days of the amount actually taken, whichever is less of each period of leave on full allowance;

(j) "Supreme Court" means the Supreme Court of Pakistan and shall include the Supreme Court which existed in Pakistan at any time before the commencement of the Constitution; and

(k) "vacation" means a vacation fixed by or under the Rules of the Supreme Court.

PART II – **LEAVE**

3. Kinds of leave.— (1) Subject to the provisions of this Order, leave granted to a Judge may, at his option, be either-

(a) leave on full salary; or
(b) leave on half salary; or
(c) leave partly on full salary and partly on half salary.

(2) For the purposes of this part, any period of leave on full salary, shall be reckoned as double that period of leave on half salary.

4. Leave account.— A leave account shall be kept for each Judge showing therein the amount of leave due to him in terms of leave on half salary and in such account there shall be-

(i) credited to him in two separate columns

(a) a period equal to one-fourth of actual service; and

(b) where any duties are assigned to a Judge and, for reasons of such assignment, the Judge does not avail of any vacation or avails of less than thirty days of vacation in any calendar year, in addition to the leave credited under the preceding sub-clause, a further period equal to double the period by which the vacation availed of by him falls short of thirty days; and

(ii) debited to him the period of all leave on full or half salary granted to him:

Provided that the opening credit at the commencement of this order shall not exceed six months in the case of any Judge.

5. Aggregate amount of leave.— (1) The aggregate amount of leave granted to a Judge during his whole period of service as such shall not exceed, in terms of leave on half salary, thirty-six months

(2) The aggregate amount of leave on full salary granted to a Judge during his whole period of service as such shall not exceed one twenty-fourth of the period spent by him on actual service, but the leave credited to a Judge under sub-clause (b) of clause (i) of paragraph 4 shall not be subject to the limit herein specified.

(3) The period of leave granted at any one time shall not exceed, in the case of leave on full salary six months and, in the case of leave of any other kind specified in paragraph 3, sixteen months.

6. Grant of leave not due.— Subject to the maximum limit specified in sub-paragraph (1) of paragraph 5, leave on half salary may be granted to a Judge in excess of the amount at his credit—

(a) on a medical certificate; and
(b) for a period not exceeding six months and not more than once during the whole period of his service as Judge, otherwise than on medical certificate.

7. Leave salary. — (1) The monthly rate of leave salary payable to a Judge while on leave on full salary shall be equal to the monthly rate of his salary.

(2) The monthly rate of the leave salary payable to a Judge while on leave on half-salary shall be equal to half the monthly rate of his salary.

(3) A Judge appointed after the commencement of this Order, shall not be entitled to draw his leave salary, otherwise than in Pakistan rupees unless he, immediately before such appointment, was entitled, in the service of Pakistan to draw leave salary in foreign exchange in which case he may draw leave salary in foreign exchange on the same terms and conditions as were applicable to him as a person in the service of Pakistan.

(4) A Judge who was holding office as such immediately before the commencement of this Order may draw leave salary in foreign exchange in respect of any period of leave spent outside Pakistan as if he were a Federal Government servant recruited prior to the 17th May, 1958.

8. Encashment of leave.— A Judge who has, at the time of retirement, three hundred and sixty-five days leave on full salary to his credit, shall be paid [1][twelve months] salary in lieu of leave not availed of.

9. Extraordinary leave.— (1) Leave in excess of any leave admissible under the foregoing provisions of this Order may be granted to a Judge for a period not exceeding six months and not more than once during the whole period of his service.

(2) No leave under sub-paragraph (1) shall be granted to a Judge so as to terminate with his retirement nor after he has tendered his resignation.

[1] Subs. by P.O 1 of 2014 dated 27-1-2014

(3) No leave salary shall be payable to a Judge in respect of the period of leave granted under sub-paragraph (1).

10. Combining leave with vacation.— A Judge may be permitted to combine vacation with leave of any kind if the leave is either at the commencement or at the end of vacation but not at both:

Provided that no such permission shall be granted to a Judge if it becomes necessary thereby to appoint an Acting Judge.

11. Overstaying leave or vacation.— If a Judge overstays his leave or any vacation, whether combined with leave or not, he shall receive no salary for the period of his absence in excess of the leave granted to him or beyond the end of the vacation, as the case may be:

Provided that, if such absence is due to circumstances beyond his control, the period thereof may be treated as leave admissible to him.

12. Abeyance of acting appointments in vacation.— Nothing in this Order shall be construed as authorising any acting Chief Justice or acting Judge to continue to hold his acting appointment during vacation.

13. Special Disability Leave.— Special disability leave may be granted to a Judge when he is disabled by injury intentionally inflicted or caused in, or in consequence of, the due performance of his official duties or in consequence of his official position and the provisions of Fundamental Rule 83 shall, so far as may be, apply to a Judge as they apply to a Government servant under the rule making power of the President.

14. Authority competent to grant leave.— The authority competent to grant or refuse leave, or to revoke or curtail leave already granted, shall, in the case of the Chief Justice, be the President and, in the case of other Judges, the Chief Justice.

PART- III.
PENSION

15. Entitlement.— A Judge shall, on his retirement, resignation or removal, be paid a pension in accordance with the provisions of this Order if he has —

(c) attained the retiring age; [1][or]

(b) completed not less than ten years' service as Judge or not less than seven years' service for pension and before attaining the retiring age resigned [2][or sought retirement]; or

(c) completed not less than five years' service as Judge or not less than three years' service for pension and, before attaining the retiring age, resigned, his resignation having been medically certified to be necessitated by ill health or been removed for physical or mental incapacity [2][or been allowed by the President for sufficient cause to retire].

---

1. Subs. by P.O III of 2001 dated: 5-7-2001
2. Added vide P.O. 3 of 2001 dt. 5.7.2001.

16. Payable pension.— (1) Subject to sub-paragraph (2), the Chief Justice and a Judge on his retirement or resignation as provided in paragraph 15 shall be entitled to the minimum amount of pension equal to seventy per cent of the salary determined by the President from time to time payable to the Chief Justice, or as the case may be, a Judge plus five per cent of the said salary for each completed year of service either as the Chief Justice or as the Judge not exceeding the maximum amount of pension equal to eighty-five per cent of the said salary:

Provided that for the period between twenty-seven day of July, 1991 and the thirty-first day of May, 1994 the minimum and the maximum amounts shall refer to the amounts specified in the Pension of Judges of Superior Courts Order, 1993 (P.O. 2 of 1993).

[1][Explanation.— The expression 'salary' means the salary referred to in paragraph 1 of the Fifth Schedule to the Constitution of the Islamic Republic of Pakistan or such higher salary as the President may determine from time to time [2][and shall include a Superior Judicial Allowance] but shall not include any [2][other] allowance or amount representing any privilege or facility.]

[3]**[16A. Pension on re-employment etc. —** [4][(1) Where a retired Judge in receipt of pension is appointed to, or is holding, a post in connection with the affairs of the Federation or a Province or a body owned or controlled by the Federal Government or a Provincial Government, he shall be entitled to receive full pension in addition to pay, allowances and privileges of the post on which he is re-employed in accordance with the Rules applicable on re-employment to retired Civil Servants.

(2) Where a Judge who is receiving a pension **—**

(a) is appointed to act an arbitrator by the Federal Government or a Provincial Government or a Commission of Inquiry; or

(b) is required by such Government to give a legal opinion in any matter,he shall not receive any fee or compensation for so acting or tendering a legal opinion except reimbursement of out-of-pocket expenses.

(3) Nothing contained in subparagraphs (1) and (2) shall apply to a Judge who is in receipt of a pension before the commencement of the Supreme Court Judges (Leave, Pension and Privileges) (Amendment) Order, 1998, and opts not to have his pension increased as a consequence of the increase in salaries provided thereby]

[5] **[17. Commutation of pension.—** (1) Subject to paragraphs (2) and (3) the Civil Pension (Commutation) Rules shall, with necessary modifications, apply to a Judge.

1. Added vide. P.O 2 of 1998 dt. 3.10.1998.
2. Inserted vide P.O. No. 1 of 2008 dt. 1.1.2008.
3. Inst. Vide P.O. No.2/98 dt. 3.10.1998.
4. Subs. Vide P.O. No. 2 of 2000 dated 6.12.2000 for clause (1) which reads as under.

"(1) Where a Judge in receipt of a pension is appointed to a post in connection with the affairs of the Federation or a Province or a body owned or controlled by any such Government or is holding any such post he shall draw the pay sanctioned for the post minus his gross pension."

5. Subs. Vide P.O No. 2/98 dt.17.10.1998 for para 17 which reads as under:

"17. Commutation of pension. The Civil Pension (Commutation) Rules shall, with necessary modification, apply to a Judge."

(2) Where the pension of Judge increases at any time after his retirement on account of a subsequent increase of salaries payable to Judges, he shall not be entitled to have the differential of the pension payable to him at the time of his retirement and the subsequent increase in pension commuted.

---

(3) A Judge at the time of his appointment to a High Court was in receipt of a pension in respect of any post and had got any part of the said pension commuted, the amount of commutation so paid shall be deducted from the amount of commutation arrived at under sub-paragraph (1)]

18. Extraordinary pension.— The Central Civil Services (Extraordinary Pension) Rules shall apply to a Judge, who may suffer injury or die as a result of violence as they apply to an officer of the Federal Government subject to the modification that reference in those rules to tables relating to injury gratuities and pensions and family gratuities and pensions, shall be construed as reference to the corresponding tables in the Schedule to this Order.

19. Subsidiary conditions of service.— Subject to the provisions of this Order and such other provisions as the President may make in this behalf, other privileges and rights of a Judge shall be determined by the rules for the time being applicable to an officer appointed by the President holding the rank of Secretary to the Federal Government:

Provided that nothing in this paragraph shall have effect so as to give to a Judge who is a member of a civil service less favorable terms in respect of his conditions of service than those to which he would be entitled as a member of such service if he had not been appointed as a Judge, his service as a Judge being treated as service for the purpose of determining those privileges and rights.

20. Official residence.— (1) Judge shall be entitled, without payment of rent, to the use of a residence throughout his term of office and for a period of [1][One Hundred and Eighty] days thereafter and no charge shall fall on him personally in respect of its maintenance.

(2) Where a Judge chooses to reside in a house not provided by Government, he shall be entitled to be paid a monthly allowance of [2][Sixty Eight Thousand] rupees and his residence shall also be, maintained at government expense.

Explanation.- In this paragraph —

(a) maintenance in relation to a residence includes the payment of local rates and taxes and the provision of electricity, gas and water; and

(b) residence includes the staff quarters and other building appurtenant to, and the gardens of the residence.

[3][**20-A. Temporary residence-cum-office.—** If the official residence of the Chief Justice provided under paragraph 20, is located at a place other than Islamabad, he shall be entitled, without payment of rent, to the use of a designated house, i.e. the Chief Justice House, as a temporary residence-cum-office and no charge shall fall on him personally in respect of its maintenance.]

[4][**20-B.** A Judge shall also be entitled throughout his term of office, without payment of rent, to the use of single accommodation consisting of at least one bedroom, office, study, living room etc., duly furnished and maintained at the government expense in all the Rest Houses of the Supreme Court located at Islamabad, if his residence whether official or private is located at a place other than Islamabad.]

---

[5]**21. Official car.—** (1) A Judge shall be entitled to the use of two official cars maintained at Government expense, one at principal seat and one at provincial headquarters where he is transferred for duty, but shall have to bear the cost of petrol used in both the cars during a month in excess of an aggregate of six hundred liters:

Provided that the provision of the second car shall be met from the existing pool of cars of the Supreme Court:

Provided further that the second cars shall not be available for purchase on depreciated value, or otherwise, on retirement of a Judge.

(2) The cars provided for the use of a Judge shall be used by him until he retires, subject to their replacement earlier, either because of their having completed the specified number of years of service or distance to be covered or of their having become unserviceable in accordance with rules.

---

1. Sub. vide P.O. 7 of 2009 and shall be deemed to have taken effect on 21.05.2007 for the word "thirty".
2. Sub. vide P.O. 2 of 2007 dated 3.8.2007 w.e.f 01.07.2007 for the words "Fifty Five Thousand" which were substituted vide P.O. 3 of 2005 dated 10.12.2005 w.e.f. July 2005 for the words "Twenty Eight Thousand Seven Hundred and Fifty" which were substituted by P.O. 3 of 2003 for the words "Twenty Five Thousand".
3. Inserted vide P.O. 2 of 2004 w.e.f. 1.6.2004.
4. Inserted vide P.O. 8 of 2009 dated 19.11.2009 and shall be deemed to have taken effect on 06.02.2007.
5. Subs. vide P.O. 4 of 2013 dated 19-6-2013

[1][**22. Superior judicial allowance.—** A Judge shall be entitled to be paid monthly, a superior judicial allowance amounting to [2][three hundred eighty nine thousand one hundred twenty-seven] rupees.

Explanation.- For the purposes of this paragraph "Judge" shall include "the Chief Justice" or "An Acting Chief Justice"].

[3][**23.xxxx]**

24. Exemption from Income Tax.— No Income Tax shall be payable in respect of the allowance admissible to a Judge under paragraph 20 or paragraph 22 [3][xxx] or the other benefits and perquisites to which a Judge is entitled under the said paragraph 20 or paragraph 21 [4][or medical allowance admissible under paragraph 19]

---

1. Subs by P.O.No.2 of 1998 dated: 3.10.1998 for para 22 which reads as under
"22. Superior Judicial Allowance. A Judge shall be entitled to be paid monthly, a superior judicial Office allowance amounting to three thousand and six hundred rupees in the case of Chief Justice and three thousand and five hundred rupees in case of every other judge.
Explanation.- For the purposes of this paragraph, "Chief Justice" includes "Acting Chief Justice".

2 Subs. vide P.O No. 05 of 2018 dated, 09-10-2018 for the words "three hundred seventy thousand five hundred ninety-seven" which were substituted by P.O. No. 03 of 2017, dated 15-08-2017 (w.e.f.01.07.2017) for the words " three hundred thirty six thousand nine hundred six" which were substituted by P.O. 03 of 2016, dated: 7-10-2016 (w.e.f. 01.07.2016) for the words "three hundred six thousand two hundred seventy eight" which were Substituted by P.O. 9 of 2015 dated: 24-11-2015 w.e.f 01-07-2015 for the words "two hundred eighty four thousand nine hundred ten" which were Substituted by P.O. 3 of 2015 dated: 22-01-2015 w.e.f 1-07-2014 for the words "two hundred fifty nine thousand nine" which were Substituted by P.O. 7 of 2013" dated: 7-10-2013 w.e.f 1-07-2013 for the words "two hundred thirty five thousand four hundred sixty three" which were substituted b y P.O.2 of 2013 dated: 1-02-2013 w.e.f 1-07-2012 for the words " one hundred ninety six thousand two hundred nineteen" which were substituted Vide P.O.3 of 2011 dated 11.10.2011 w.e.f 01.07.2011 for the words "one hundred seventy thousand six hundred twenty five" which were substituted vide P.O.6 of 2010 dated 23.12.2010 w.e.f 01.07.2010 for the words "one hundred thirteen thousand seven hundred & fifty" which were sub. Vide P.O. 2 of 2010 dated 10.03.2010 w.e.f 01.07.2009 for the words "eighty thousand five hundred" which were sub. Vide P.O 2 of 2009 dated 10.01.2009 for the words "fifty thousand" which were sub. Vide P.O 1 of 2008 dated 01.01.2008 dated 01.01.2008 for the words "fifteen thousand" which were sub. Vide P.O 3 of 2005 dated 10.12.2005 w.e.f 01.07.2005 for the words "eleven thousand" which were sub vide P.O 2 of 2003 dated 02.12.2003 w.e.f 01.07.2003 for the words "Seven thousand" which were sub vide P.O 2 of 1998 dated 03.10.1998

3. Omitted by P.O. 2 of 1998 dated: 3.10.1998.

4. Inserted vide P.O 1 of 2011 dated 25.01.2011 w.e.f 01.07.2010.

[1]**[25. Facilities to retired Judges.**— (1) A Judge on retirement, and after his death, his widow, shall be entitled to the following benefits and perquisites at government expense, namely:—

a) [2][the services of driver and an orderly or to draw a Special Additional Pension equal to the pay and allowances of a contingent driver and an orderly as admissible from time to time to the employees of same scale of the Supreme Court of Pakistan:

Provided that the Chief Justice shall also be entitled to the services of an Assistant Private Secretary (BS-16):

Provided further that his widow shall not be entitled to the facility of Assistant Private Secretary;].

b) [3][3000] (three thousand) free local telephone calls per month;

c) [3][2000] units of electricity as well as [4][25 HM^3 of Gas] per month and free supply of water; and

d) [3][300] liters of petrol per month.

[5][e) at the residence of a retired Judge during his lifetime deployment of one security guard by concerned police round the clock so that after every eight hours a new security guard replaces the former security guard:

Provided that widow of the retired Judge shall not be entitled to such security facility under this clause.]

[6][(1a) If during service a judge dies or has died before the commencement of this Order, his widow shall also be entitled to the benefits and perquisites provided in sub-paragraph (1).]

(2) No income tax shall be payable in respect of benefits and perquisites to which a judge or a widow, as the case may be, is entitled under this paragraph.

(3) A judge on retirement opting to avail the facilities specified in sub-paragraph (1) shall undertake to perform the work of arbitration involving Government interest if assigned to him without charging any fee.]

26. Repeal.—The Supreme Court Judges (Leave, Pension and Privileges) Order, 1968 is hereby repealed.

---

1. Sub. By P.O No. 1 of 2001 dt. 18.01.2001, for Para 25 which read as under:

"25. Facilities to retired Judges. – A judge on retirement shall be entitled at Government expense to the services of either a driver or an orderly at his option. The service of driver or an orderly as the case may be, will remain available, after the death of a judge to his widow."

2. Amended vide P.O. 7 of 2016, dated: 16-11-2016 for the words "or to opt Special Additional Pension @ Rs. 12.000/- pm in lieu of services of an orderly and Rs. 10,000/-pm in lieu of services of a driver" which were inserted vide P.O. 6 of 2016 dated 4-11-2016

3. Subs. For the figure "1000" in clause (b), "1000" in clause (c) and "200" in clause (d) by P.O 3 of 2008 dated. 14.3.2008.

4. Subs. by P.O 2 of 2001 dated 15.02.2001.

5. Added by P.O 5 of 2016 dated: 3-11-2016

6. Added by P.O 2 of 2001 dated 15.02.2001

THE SCHEDULE

(*See* paragraph 18)

INJURY GRATUITIES AND PENSIONS

Officer	**Gratuity**	**Annual Pension Higher Scale**	**Annual Pension Lower Scale**
The Chief Justice or a Judge of the Supreme Court	Rs.37,500	Rs.7,700	Rs.5,000

FAMILY GRATUITIES AND PENSIONSS

A - WIDOWS

Officer	**Gratuity**	**Annual Pension**
The Chief Justice or a Judge of the Supreme Court	Rs.20,600	Rs.8,000

B – CHILDREN

If child is motherless:	Rs.1,300
If child is not motherless:	Rs.600

5.2 PAYMENT OF COMMUTATION IN RESPECT OF JUDGES OF SUPREME COURT.

OFFICE OF THE
ACCOUNTANT GENERAL PAKISTAN REVENUES
G-8/4, ISLAMABAD

No. PN-II/Supreme Court/Policy/2001-2002/276, Dated: 15-03-2002

To,
The Controller General of Accounts,
Islamabad.

Sub:- PAYMENT OF COMMUTATION IN R/O JUDGES OF SUPREME COURT.

Kindly refer to President Order No.2of 2002 dated 27-2-2002 regarding salary of Judges of Superior Court Order 2001 which came into force from the 1st day of December 2001 (Copy enclosed).

2. The President of Pakistan vide above referred order has revised salary of Judges of Superior Courts. The Presidential order does not clarify the application of pension commutation table introduced vide Finance Division Regulation Wing O.M. No. F.1.(5)Imp/2001 dated 4 Sep 2001 or O.M.No.F.10(3)-Reg (6)/86 dated 1st July 1986. It is pointed out that the commutation table of 1-7-1986 has been amended by finance division office memorandum dated 04 Sep 2001.

3. Para-2 of the Finance Division's O.M. No. F.5(2)R-3/98-760 dated 4-12-2001 (copy enclosed) addressed to Secretary M/o Law & Justice states that the pension will be restricted to 70% of the revised pay scales and option for new salary & pension will also be required.

4. It is pertinent to say salaries as well as pension of Judges of the Superior Courts are governed under the fifth schedule of the Constitution of Pakistan amended from time to time through the Presidential orders. This office may be advised whether the pension of Judges may be calculated in the light of Finance Division O.M. referred above and revised commutation table be applied or otherwise.

Sd/-

(S. M. AWAIS)

DIRECTOR GENERAL PAKISTAN REVENUES

OFFICE OF THE
CONTROLLER GENERAL OF ACCOUNTS
10-D West Taimure Chamber, Blue Area.
ISLAMABAD

No. 161/CGA/Reg/1-1/2001
Dated: 26-03-2002

To:
The Accountant General,
Pakistan Revenues,
Islamabad.

Subject: **PAYMENT OF COMMUTATION IN RESPECT OF JUDGES OF SUPREME COURT.**

Kindly refer to your letter No.PN-II/Supreme Court Policy/2001-02/2760, dated 15-03-2002, on the above subject.

2. In this context it is clarified that the Salary and Pension of the Judges of the Superior Court are governed/regulated by the Presidential Order and not by the order/O.M's of the Finance Division. Hence the Finance Division O.M., dated 4.9.2001 are not applicable in the instant case.

3. Please issue PPO accordingly.

4. This issues with the approval of Controller General of Accounts.

Sd/-
(Syed Sajjad Hussain Shah)
Accounts Officer (Reg.)

5.3 WARRANT OR PRECEDENCE OF PAKISTAN

Government of Pakistan
Ministry of Interior
*****

Islamabad the 6th July, 1970.

N O T I F I C A T I O N

No.1/17/67-Public: - In suppression of the Home Affairs Division's Notification No.21/2/61-Public dated the 7th March 1963 as amended from time to time, the following Warrant of Precedence for Pakistan is published for general information:-

Article No.	Warrant of Precedence
1.	President of Pakistan Prime Minister of Pakistan, immediately after the President.
2.	Chairman of the Senate of Pakistan (above the speaker) Speaker of the National Assembly of Pakistan. Vice President of Pakistan (Not in position now)
3.	Chief Justice of the Supreme Court of Pakistan. Senior Minister.
4.	Governors of the Provinces (within their respective charges) Chief Minister, in his own Province, immediately next to the Governor of the same Province. Leader of the Opposition in the National Assembly.
5.	Leader of the House in the Senate. Leader of the Opposition in the Senate. Ministers of the Government of Pakistan. Attorney General for Pakistan (if of the status of Minister) Governors and Chief Ministers, outside their charge, after the Federal Ministers, Ministers of State and Special Assistants to the P.M. with Cabinet Rank. Secretary General to the President. Dy. Chairman, Planning Commission.

	Governor, State Bank of Pakistan. Rector of the International Islamic University. Chairman Consultative Committee on Economic Policy. Ambassador –at- Large. Deputy Chairman, Senate of Pakistan. Deputy Speaker, National Assembly of Pakistan.
6.	Advisors to the President with Cabinet Rank (Not in position now). Chairman, Joint Chiefs of Staff Committee (to rank senior to the Chiefs of Staff of the Armed Forces) Chief of Army Staff. Chief of Naval Staff. Chief of Air Staff.
7.	Ambassadors and High Commissioners accredited to Pakistan (according to their respective dates of accreditation).
8.	Ex-President of Pakistan. Ex-Prime Minister of Pakistan.
9.	Deleted.
10.	Ministers of State. Governor State Bank of Pakistan. Chairman, Secretaries and Exchange Commission of Pakistan. Special Assistants to the Prime Minister. Advisors to the Prime Minister. The Auditor General of Pakistan. Secretaries General. Chairman Federal Public Service Commission. (The inter-se seniority of dignitaries in Article 10 will be determined in the orders

	as indicated above).
11.	Envoys Extraordinary and Ministers Plenipotentiary accredited to Pakistan.
12.	Chief Election Commissioner. Wafaqi Mohtasib (Ombudsman). Judges of the Supreme Court of Pakistan. Chief Justice, Federal Shariat Court. Chairman of the Council of Islamic Ideology (if he is, or has been a Judge of the Supreme Court of Pakistan). Chief Ehtesab Commissioner.
13.	Chief Justice of High Courts.
14.	Full General, Admiral and Air Chief Marshal.
15.	Speakers of the Provincial Assemblies. Ministers of the Provincial Governments. Visiting Ambassadors/High Commissioners of the foreign countries not accredited to Pakistan. Vice Chief of Naval Staff (if holding the rank of Vice Admiral). Vice Chief of Air Staff (if holding the rank of Air Marshal).
16.	Chairman of the Council of Islamic Ideology (if he is or has been a Judge of the High Court). Comptroller General of Pakistan. Inspector General of Police who had been promoted to Grade 22 and had been previously given the rank and status of Secretary to the Federal Government. Members of the Central Zakat Council. Members of the Senate/Members of the National Assembly (to take precedence overall others in the said group). Officers of the rank of Lt. General and equivalent.

	Puisne Judges of High Courts. Secretaries to the Government of Pakistan, In charge of Ministries and Divisions, including Secretary to the President and Officers granted the rank and status of the Federal Secretary in Grade 22. Secretary General of National Assembly. Secretary General of Senate. Director Pakistan Institute of Development Economics. Director General of Intelligence Bureau.
17.	Attorney General of Pakistan.
18.	All Gun-Salute Rulers of State merged in or acceded to Pakistan (No longer applicable now).
19.	Charge' d' affairs en pied of Foreign Countries. Vice Chief of the Naval Staff & Deputy Chief of the Air Staff, if of the rank of Rear Admiral/Air Vice Marshal. Members, Planning Commission. Visiting Ambassador/High Commissioners of Pakistan, if on duty. Vice Chancellors of Universities.
20.	All Officers of the rank of Major General, Rear Admiral And Air Vice Marshal. Chief Secretaries to the Provincial Governments.
21.	Acting Secretaries to the Government of Pakistan. Chief Commissioner, Islamabad Capital Territory, Islamabad (within the limits of Islamabad Capital Territory). Additional Secretaries to the Federal Government. Additional Chief Secretaries to the Provincial Government. Charge' d' affaires, ad interim, of Foreign Countries. Chairman of Statutory Bodies set up by the Government, if declared of the status of

	Secretaries to the Federal Govt. Inspector General of Police. Members, Board of Revenue (Provincial). Principal, Administrative Staff College.
22.	Ministers and Deputy High Commissioners (of the rank of Ministers in Embassies and High Commissions located in Pakistan).
23.	All non-gun salute Rulers of State acceded to/merged in Pakistan (No longer applicable now).
24.	Advocate General of Provinces. Additional Inspectors General of Police. Chairman, Public Service Commissions of Provinces. Chief Economist in the Planning Commission. Chief Engineer, Advisor. Chief Engineer, Pak. P.W.D Chief of Protocol. Chief Controller of Import and Exports (if of the status of Joint Secretary to the Central Government). Commissioners of Divisions. Consuls General. Counselors of Embassies and legation and High Commissioner of Foreign and Commonwealth Governments. Deputy High Commissioners (not holding the rank of Ministers). Director, Civil Service Academy. Director, Finance Service Academy. Director, Islamic Research Institute Director, General Health.

	Director General, Investment Promotion and Supplies. Director General, Post Offices. Director General, Public Relation/Director General Radio Pakistan (if of the status of Joint Secretary to the Federal Government). Director General, Telegraph and Telephones. Draftsman to the Government of Pakistan. Economic Advisor, Ministry of Finance. Education Advisor to the Government of Pakistan. Financial Advisor (if of status of Joint Secretay) to the Federal Govt. Financial Advisor (Army) Joint Secretaries to the Government of Pakistan (Including Joint Secretary of the National Assembly). Members, Central Board of Revenue (if of the status of Joint Secretaries to the Federal Government). Mayor of the Corporation. Members, Central Public Service Commission. Members, Provincial Assemblies (to take precedence over all others in this group within their own Province). Members of Provincial Zakat Council. Officers of the rank of Brigadier, Commodore and Air Commodore. Secretaries to the Provincial Government (if of the Status of Joint Secretary to the Federal Government). Solicitor to the Government of Pakistan (if of the Status of Joint Secretary to the Federal Government). Visiting Ministers Plenipotentiary of Foreign Countries. Director General, Military Lands and Cantonment. • Within the same Article the Mayor will take precedence as per rules but

	after the Commissioner of the Division.
25.	Director General, Civil Aviation. Military, Naval and Air Attaches to Embassies and Legations and Military, Naval and Air Advisors to High Commissioners. Senior Trade Commissioners of Foreign and Commonwealth Government. Station Commanders of the rank of Colonel and equivalent.
26.	Accountants General. Chief Commercial Manager, Railways. Chief Conservator of Forests. Chief Controller of Stores, Railways. Chief Engineer Provincial, PWD. Chief Engineer, Railways, Telephones and Telegraphs. Chief Mechanical Engineer of Railways. Chief Medical and Health Officers, Railways. Chief Operating Superintendent, Railways. Chief Traffic Manager, Railways. Consuls and First Secretaries to Embassies, High Commissioners and Legations of Foreign and Commonwealth Governments. Colonels and equivalent. Deputy Auditor General (if of the status of Accountant General) Deputy Director Intelligence Bureau. Deputy Inspector General of Police. Director of Agriculture. Director of Health Services. Director of Public Instructions.

	Director Railways Wing. Director General, Geological Survey. Financial Advisor and Chief Accounts Officers, Railways. Government Inspector of Railways. Inspector General of Forests, Government of Pakistan. Inspector General Prisons. Military Accountant General. Principal and Professors of Medical Colleges and Head of Department of Universities (if of status of Professors). Surveyor General of Pakistan. Secretaries to the Provincial Governments (if below the status of Joint Secretary to the Federal Government). Trade Commissioners of Foreign and Commonwealth Government.
27.	Agricultural Development Commissioner, Government of Pakistan. Animal Husbandry Commissioner, Government of Pakistan. All Lt. Colonels and equivalent ranks of Navy and Air Force. Chairman District Council. Chairman of the District Zakat Committee. Chairman Karachi Port Trust. Chairman Municipal Committee. Commissioners of Income Tax. Collectors, District Magistrates and Deputy Commissioners. Collectors of Customs. Command Controllers of Military Accounts.

	Director of Ordnance Factories. District and Sessions Judges. Political Agents. President of Income Tax Appellate Tribunal. Principal Officer, Mercantile Marine Department, Karachi. Postmaster General. Registrar Cooperative Societies. Secretary to the Provincial Assembly. Secretaries, Provincial Railway Boards. Superintendent of Police with service more than 17 years.
28.	All Majors and equivalent rank of Navy and Air Force. Chief Controller of Imports and Exports (if of the status of Deputy Secretary to the Federal Government). Chief Judge of the Small Causes Courts, Karachi. Collectors of Central Excise and Land Customs. Deputy Director General, Investment Promotion and Supplies Department. Deputy Director General Telegraphs and Telephones Department. Deputy Secretaries to the Government of Pakistan. Deputy Secretary to the National Assembly. Deputy Secretary to the President. * Within the same article the Chairman District Council will take precedence as per rules but above the Deputy Commissioner. ** Within the same article Chairman Municipal Committee will take precedence as per rules but below the Deputy Commissioner. Deputy Financial Advisor (if of the status of Deputy Secretary to the Federal

	Government). Director of Inspection, Income Tax. Director General, Radio Pakistan (if of the status of Deputy Secretary to the Federal Government). Deputy Chief Engineer and Superintending Engineer in Special Grade. Financial Advisor (Air Force), (Navy) and POF (Wah) (if of the status of Deputy Secretaries to the Federal Government.) Joint Financial Advisors. Joint Secretaries to the Provincial Governments. Members, Provincial Public Service Commissions. Principal Information Officer. Superintendent of Police with Service less than 17 years.
29.	Holders of President's Award of Pride of Performance.

EXPLANATORY NOTES.

1. The entries in the above table which are in alphabetical order in each article, apply exclusively to the persons entered therein, and, while regulating their relative precedence with each other accordingly to the number of the article, do not give them any precedence over members of the non-official community resident in Pakistan, who shall take their place according to usage.

2. Officers in the above table will take precedence in order of the number of the entries. These included in one number will take precedence inter-se according to the date of entry into that number. When two or more officers enter an article on the same date, their inter-se seniority will be fixed on the basis of length of Class-1 service. Officers of the Defence Services will rank inter-se in accordance with their seniority.

3. When an officer holds more than one position in the table he will be entitled to the highest position accorded to him.

4. An officer on entering an article by virtue of a charge in his office, to an article lower than that which was occupied by him immediately preceding this change, will take his seniority in the lower article with effect from the date of his entry into the higher article; provided that if he re-enters a lower article in which he was included earlier, he will take his seniority in that lower article from the original date of his entry into it.

5. (i) All officers not mentioned in the above table, whose rank is regulated by comparison with rank in the Army, will have the same rank with reference to civil servants as is enjoyed by military officers of equal grades.

(ii) All persons not mentioned in the above table, who hold any ex-officio rank, will be placed in the same article as persons holding that rank.

6. All ladies, unless by virtue of holding an appointment themselves, they are entitled to a higher position in the table, will take place according to the rank herein assigned to their husbands.

7. The inter-se seniority of the gun-salute Rulers will be determined on the basis of the gun-salute admissible to each Ruler. In case two or more Rulers having equal number of gun-salute, their inter-se seniority will be determined with reference to the date of accession to the 'Gaddi'. In the case of other Rulers, who are not entitled to gun-salute, their inter-se seniority will be determined on the basis of accession to the Gaddi (No longer applicable now).

8. All other persons who may not be mentioned in this table will take rank according to general usage, which is to be explained and determined by the President in case any question shall arise.

9. Retired Civil and Military officers will be placed at the end of the articles in which they were included immediately before their retirement.

Sd/-
A.M. S. Ahmad
Secretary

5.4 SUPREME COURT JUDGES (PENSIONARY BENEFITS) ORDER, 2000

CHIEF EXECUTIVE'S ORDER NO. 2 OF 2000
(Gazette of Pakistan, Extraordinary, Part-1
Islamabad the 1st February, 2000)

An order to provide for the pensionary benefits to the Judges of the Supreme Court who ceased to continue to hold office of the Judges in pursuance of Article 3 of the Oath of office (Judges) Order, 2000.

No. 2-3/2000-Min.1.— WHEREAS it is expedient to provide for pensionary benefits to the Judges of the Supreme Court and to provide for matters connected therewith or ancillary thereto.

Now therefore, in pursuance of the Proclamation of the Fourteenth day October, 1999, and the Provisional Constitution Order No. 1 of 1999, and in exercise of all powers enabling him in that behalf, the Chief Executive of Pakistan is pleased to make and promulgate the following Order:-

1. **Short title and commencement.—** (1) This order may be called the Supreme Court Judges (Pensionary Benefits) Order, 2000.

(2) It shall come into force at once.

2. **Interpretation.—**In this Order "Judge" means a Judge of the Supreme Court and includes the Chief Justice of Pakistan.

3. **Order to override the other laws.—** The provisions of this Order shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

4. **Entitlement to the pensionary benefits.—** A Judge of the Supreme Court who does not or has not taken oath and ceases to continue to hold office in pursuance of Article 3 of the Oath of Office (Judges) Order, 2000 (Order No.1 of 2000), shall, for the purpose of pension, be deemed to have retired from his office on attaining the age of 65 years and shall be entitled to receive full pension and all benefits calculated on that basis:

[1][Provided that commutation of pension shall be admissible to such Judge on the basis of his actual age]

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1. Substituted and added by C.E.O No 4 of 2000 dated 30.03.2000 (w.e.f. 01.02.2000)

5.5 SUPREME COURT JUDGES (PENSIONARY BENEFITS) ORDER, 2007

President's Order No. 9 of 2007
Islamabad the 14th December, 2007

An order to provide for the Pensionary benefits to the Judges of the Supreme Court of Pakistan

WHEREAS it is expedient to provide for pensionary benefits to the Judges of the Supreme Court who have ceased to hold office as Judges in pursuance of Article 3 of the Oath of Office (Judges) Order, 2007 and matters connected therewith or ancillary thereto;

Now, THEREFORE, in pursuance of the Proclamation of the 3rd day of November, 2007, and the Provisional Constitution Order No. 1 of 2007 read with the Fifth Schedule to the Constitution of the Islamic Republic of Pakistan and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Order: —

1. **Short title and commencement.—** (1) This order may be called the Supreme Court Judges (Pensionary Benefits) Order 2007.

(2) It shall come into force at once and shall be deemed to have taken effect on and from the 3rd day of November, 2007.

2. **Interpretation.—** In this order "Judge" means a Judge of the Supreme Court and includes the Chief Justice of Pakistan.

3. **Order to override the other laws.—** The provisions of this Order shall have effect notwithstanding anything contained in any other law for the time being in force.

4. **Entitlement to the pensionary benefits.—** A Judge of the Supreme Court who have ceased to hold office in pursuance of Article 3 of the Oath of Office (Judges) Order, 2007 shall be entitled to full pension and other retirement benefits calculated on that basis:

Provided that commutation of pension shall be admissible to such Judge on the basis of his actual age as on the 3rd day of November, 2007.

5.6 REMUNERATION AND TERMS AND CONDITIONS OF SERVICES OF JUDGES (FIFTH SCHEDULE OF THE CONSTITUTION OF PAKISTAN, 1973)

CONSTITUTION OF PAKISTAN, 1973
[1]FIFTH SCHEDULE
[Article 205]

REMUNERATION AND TERMS AND CONDITIONS OF SERVICE OF JUDGES OF THE SUPREME COURT

1. There shall be paid to the Chief Justice of Pakistan a salary of Rs.[2][9,900] per mensem and to every other Judge of the Supreme Court a salary Rs. [2][9,500] per mensem [3][, or such higher salary as the President may, from to time, determine.]

2. Every Judge of the Supreme Court shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension, as may be determined by the President, and until so determined, to the privileges, allowances and rights to which, immediately before the commencing day, the Judges of the Supreme Court of Pakistan were entitled.

[4][3. The pension payable to a retired Judge of the Supreme Court per mensem shall not be less or more than the amount specified in the table below, depending on the length of his service as Judge in that Court or a High Court:

Provided that the President may, from time to time, raise the minimum or maximum amount of pension so specified:-

Judge	Minimum amount	Maximum amount
Chief Justice	Rs.7,000	Rs.8,000
Other Judge	Rs.6,250	Rs.7,125]

1. w.e.f .1-12-2001, the salary of the Chief Justice of Pakistan and other Judges of the Supreme Court has been determined by the President to be Rs. 55,000 and Rs. 52,000 respectively vide P.O. No. 2 of 2002, paragraph 2(1), which was previously amended by P.O No. 9 of 1991, P.O No. 3 of 1995 and P.O No. 4 of 1995.
(W.e.f 27-07-1991, vide P.O 2 of 1997) the Chief Justice and a Judge of the Supreme Court on his retirement or resignation shall be entitled to the minimum amount of pension equal to 70% to the Chief Justice of his salary or as the case may be, a judge plus 5% of salary of each completed year of service either as the Chief Justice or as the Judge not exceeding the maximum amount of pension equal to 85% of the said salary.

2. Subs. By the Constitution (Twelfth Amdt) Act, 1991 (14 of 1991), s.3 for "7,900" and "7,400", which was previously amended by P.O No.6 of 1985, Art. 2 (w.e.f 1-7-1983).

3. Added ibid,

4. Subs. by the Constitution (Twelfth Amdt) Act 1991 (14 of 1991) for para 3rd.

[1][4. The widow of a Judge of the Supreme Court shall be entitled to a pension at the following rates, namely:-

(a) if the Judge dies after retirement—50 percent of the net pension payable to him ; or

(b) if the Judge dies after having rendered not less than three years service as Judge and while still serving as such— 50 per cent of the pension admissible to him at the minimum rate.

5. The pension shall be payable to the widow for life or, if she remarries, until her marriage.

6. If the widow dies, the pension shall be payable—

(a) to the sons of the Judge who are less than twenty-one years age, until they attain that age; and

(b) to the unmarried daughters of the Judge who are less than twenty-one years of age, until they attain that age or are married, whichever first occurs.]

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1. Added by P.O No. 6 of 1985, Art. 2(w.e.f the 1st July, 1981)

No.F. 2(2)-Reg. 6/96
Government of Pakistan
Finance Division
(Regulations Wing)
****

Islamabad, the 3rd July 1997

OFFICE MEMORANDUM

SUBJECT: **FURTHER LIBRALIZATION OF LIBRALIZED PENSION RULES FOR CIVILANT SERVANTS – FAMILY PENSION**

The undersigned is directed to refer to this division's O.M No.1(13)-R.6/83 dated the 23rd October, 1983 on the subject noted above and to state that for clause (iii) of sub-para (2) of para 8 thereof, the following may please be substituted w.e.f. 01.07.1997

"(iii) failing (i) and (ii) to the eldest surviving unmarried daughter till her marriage; if the eldest daughter marries or dies the next eldest daughter till her marriage."

5.7. THE SALARY OF JUDGES OF THE SUPREME COURT ORDER, 2018, DATED: 09-10-2018

No.F.2(2)/2017-Pub.- The following President's Order promulgated by the President is herby published for general information:-

PRESIDENT'S ORDER NO. 03 OF 2018

AN

ORDER

WHEREAS under first paragraph of the Fifth Schedule to the Constitution of the Islamic Republic of Pakistan, relating to the Supreme Court, such higher salary other than that specified in the said paragraph shall be paid to a Judge of the Supreme Court as the President may, from time to time, determine;

Now, THEREFORE, in exercise of the powers conferred by the aforesaid paragraph, the President of the Islamic Republic of Pakistan is pleased to make the following order:-

1. **Short title and commencement**.— (1) This order may be called the Salary of Judges of the Supreme Court Order, 2018.

(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day of July, 2018.

2. Salary.— There shall be paid to the Chief Justice of Pakistan a salary of Rs.931,204 per mensem and to every other judge of the Supreme Court a salary of Rs.879,669 per mensem.

3. Repeal. — The salary of Judges of the Supreme Court Order, 2017 (P.O .No.1of 2017), is hereby repealed.

DR. ARIF ALVI
PRESIDENT

JUSTICE(R)
ABDUL SHAKOOR PARACHA
SECRETARY

***Note: Repealed P.O. 1 of 2017 effective from 01.07.2017 to 30.06.2018 which reads as under:-**

1. **Short title and commencement**.— (1) This order may be called the salary of Judges of the Supreme Court Order, 2017.

(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day of July, 2017.

2. Salary.— There shall be paid to the Chief Justice of Pakistan a salary of Rs. 846,549 per mensem and to every other judge of the Supreme Court a salary of Rs. 799,699 per mensem.

3. Repeal. — The salary of Judges of the Supreme Court Order, 2016 (P.O .No.1 of 2016) is hereby repealed.

***Note: Repealed P.O. 1 of 2016 effective from 01.07.2016 to 30.06.2017 which reads as under:-**

2. **Short title and commencement**.— (1) This order may be called the salary of Judges of the Supreme Court Order, 2016.

(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day of July, 2016.

2. Salary.— There shall be paid to the Chief Justice of Pakistan a salary of Rs.769,590 per mensem and to every other judge of the Supreme Court a salary of Rs.726,999 per mensem.

3. Repeal. — The salary of Judges of the Supreme Court Order, 2015 (P.O .No.7 of 2015) is hereby repealed.

***Note: Repealed P.O. 7 of 2015 effective from 01.07.2015 to 30.06.2016 which reads as under:-**

1. **Short title and commencement**. — (1) This order may be called the salary of Judges of the Supreme Court Order, 2015.

2. Salary.- There shall be paid to the Chief Justice of Pakistan a salary of Rs.699,627/- per mensem and to every other Judge of the Supreme Court a salary of Rs.660,908/- per mensem.
3. **Repeal.-** The Salary of Judges of Superior Courts Order, 2015 (P.O.No.2 of 2015), in its application to the Judges of the Supreme Court, is hereby repealed.

***Note: Repealed P.O 2 of 2015 effective from 01.07.2014 to 30.06.2015 which reads as under:-**
1. Short title and commencement.-(1) This Order may be called the Salary of Judges of Superior Courts Order, 2015.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day of July, 2014.
2. Salary.- (1) The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.650,816/- and that to paid to every other Judge of the Supreme Court shall be Rs.614,798/-.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs. 603,196/- and that to be paid to every other Judge of a High Court shall be Rs.579,997/-.
3.Repeal.- The Salary of Judges of Superior Courts Order, 2013 (P.O.No.6 of 2013), is hereby repealed.]

***Note: Repealed P.O 6 of 2013 effective from 01.07.2013 to 30.06.2014 which reads as under:-**
1. Short title and commencement. (1) This Order may be called the salary of Judges of Superior Courts Order, 2013.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day of July, 2013.
2. Salary.- (1) The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.591,651/- and that to paid to every other Judge of the Supreme Court shall be Rs.558,907/-
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs. 548,360/- and that to be paid to every other Judge of a High Court shall be Rs.527,270/-.
3.Repeal.- The Salary of Judges of Superior Courts Order, 2013 (P.O.No.1 of 2013), is hereby repealed.]

***Note: Repealed P.O 1 of 2013 effective from 01.07.2012 to 30.06.2013 which reads as under:-**
1. Short title and commencement. (1) This Order may be called the salary of Judges of Superior Courts Order, 2013.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day of July, 2012.
2. Salary.- (1) The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.537,865/- and that to paid to every other Judge of the Supreme Court shall be Rs.508,097/-
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs. 498,509/- and that to be paid to every other Judge of a High Court shall be Rs.479,336/-.
3. Repeal.- The Salary of Judges of Superior Courts Order, 2011 (P.O.No.2 of 2011), is hereby repealed.

***Note: Repealed P.O 2 of 2011 effective from 01.07.2011 to 30.06.2012 which reads as under:-**
1. Short title and commencement. — (1) This order may be called the salary of Judges of Superior Courts Order, 2011.
(2) It shall come into force at once and shall be deemed to have taken effect and from the 1st day of July, 2011.
2. Salary: - (1) The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.448,221 and that to be paid to every other judge of the Supreme Court shall be Rs.423,514.
(2) The salary to be paid per mensem to the Chief Justice of High Courts shall be Rs.415,424 and that to be paid to every other judge of the Supreme Court shall be Rs.399,447
3. Repeal: -- The salary of Judges of the Supreme Court order, 2010 (P.O No.7 of 2010) is hereby repealed.

***Note: Repealed P.O 7 of 2010 effective from 01.07.2010 to 30.06.2011 which reads as under:-**
1. Short title and commencement:- (1)This Order may be called the Salary of Judges of Superior Courts Order, 2010.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the 1st day of July, 2010.
2. Salary: - (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.3,89,757/. and that to be paid to every other Judge of the Supreme Court shall be Rs.3,68,186/.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs.3,61,238/.and that to be paid to every other Judge of the High Court shall be Rs.3,47,345/.
3. Repeal:- The salary of Judges of the of Superior Courts Order, 2010 (P.O. No.1/2010), is hereby repealed.

***Note: Repealed P.O .1 of 2010 effective from 01.07.2009 to 30.06.2010 which reads as under:-**
1. Short title and commencement:- (1) This Order may be called the salary of Judges of Superior Courts Order, 2010.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the 1st day of July, 2009.
2. Salary:- (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.2,59,838/. and that to be paid to every other Judge of the Supreme Court shall be Rs.2,45,457/.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs.2,40,825/.and that to be paid to every other Judge of the High Court shall be Rs. 2,31,563/.
3. Repeal:- The salary of Judges of Superior Courts Order, 2009 (P.O.No.1/2009), is hereby repealed.

***Note: Repealed P.O .1 of 2009 effective from 10.01.2009 to 30.06.2009. which reads as under:-**
1. Short title and commencement:- (1) This Order may be called the salary of Judges of Superior Courts Order, 2009.
(2) It shall come into force with immediate effect.
2. Salary: - (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.1,99,875/. and that to be paid to every other Judge of the Supreme Court shall be Rs.1,88,813/.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs.1,85,250/.and that to be paid to every other Judge of the High Court shall be Rs.1,78,125/.
3. Repeal:- The salary of Judges of Superior Courts Order, 2007 (P.O. No.1/2007), is hereby repealed.

***Note: Repealed P.O.1/2007 effective from 01.07.2007 to 09.01.2009. which reads as under:-**
1. Short title and commencement:- (1) This Order may be called the salary of Judges of Superior Courts Order, 2007.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day of July, 2007.
2. Salary: - (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.1,33,250/. and that to be paid to every other Judge of the Supreme Court shall be Rs.1,25,875/.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs.1,23,500/.and that to be paid to every other Judge of the High Court shall be Rs.1,18,750/.
3. Repeal:- The salary of Judges of Superior Courts Order, 2006 (P.O. No.3 of 2006), is hereby repealed

***Note: Repealed P.O .3 of 2006 effective from 01.07.2006 to 30.06.2007 which reads as under:-**
1. Short title and commencement:- (1) This Order may be called the salary of Judges of Superior Courts Order, 2006.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day July, 2006.
2. Salary:- (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.106600/. and that to be paid to every other Judge of the Supreme Court shall be Rs.100700/.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs.98800/.and to be paid to every other Judge of the High Court shall be Rs.95000/.
3. Repeal: - The salary of the Judges of the of Superior Courts Order, 2005 (P.O No.2/2005), is hereby repealed.

***Note: Repealed P.O .2 of 2005 effective from 01.07.2005 to 30.06.2006 which reads as under:-**
1. Short title and commencement:- (1) This Order may be called the salary of Judges of Superior Courts Order, 2005.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day July, 2005.
2. Salary: - (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.92700/. and that to be paid to every other Judge of the Supreme Court shall be Rs. 87600/. (2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs. 85900and to be paid to every other Judge of the High Court shall be Rs. 82600/.
3. Repeal:- The salary of the Judges of the of Superior Courts Order, 2004 (P.O No.3/2004) is hereby repealed.

***Note: Repealed P.O. 3 of 2004 effective from 01.07.2004 to 30.06.2005 which reads as under:-**
1. Short title and commencement: - (1) This Order may be called the salary of Judges of Superior Courts Order, 2004.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day July, 2004.
2. Salary:- (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.77200/. and that to be paid to every other Judge of the Supreme Court shall be Rs.73008/. (2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs. 71604/.and to be paid to every other Judge of the High Court shall be Rs. 68796/.
3. Repeal:- The salary of the Judges of the of Superior Courts Order, 2003 (P.O No.2/2003) is hereby repealed.

***Note: Repealed P.O.1/2003 effective from 01...07.2003 to 30.06.2004 which reads as under:-**
1. Short title and commencement: - (1) This Order may be called the salary of Judges of Superior Courts Order, 03.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day July, 2003.
2. Salary:- (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.66000/. and that to be paid to every other Judge of the Supreme Court shall be Rs.62400/.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs. 61200/.and to be paid to every other Judge of the High Court shall be Rs. 58800/.
3. Repeal:- The salary of the Judges of the of Superior Courts Order, 2002 (P.O No.2/2002) is hereby repealed.

***Note: Repealed P.O.2/2002 effective from 01.12.2001 to 30.06.2003 which reads as under:-**

1. Short title and commencement:- (1) This Order may be called the salary of Judges of Superior Courts Order, 2002.
(2) It shall come into force at once and shall be deemed to have taken effect on and from the first day of December, 2001.

2. Salary:- (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be fifty five thousands rupees and that to be paid to every other Judge of the Supreme Court shall be fifty two thousands rupees.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be fifty one thousands rupees and to be paid to every other Judge of the High Court shall be forty nine thousands rupees.

3. Repeal:- The salary of the Judges of the of Superior Courts Order, 1998 (P.O No.1 of 1998) is hereby repealed.

***Note: Repealed P.O. 1/1998 effective from 30.10.1998 to 30.11.2001 which reads as under: -**

1. Short title and commencement: - (1) This Order may be called the salary of Judges of Superior Courts Order, 1998.
(2) It shall come into force at once.

2. Salary:- (1)The salary to be paid per mensem to the Chief Justice of Pakistan shall be Rs.43000/. and that to be paid to every other Judge of the Supreme Court shall be Rs.40000/.
(2) The salary to be paid per mensem to the Chief Justice of a High Court shall be Rs. 39000/.and to be paid to every other Judge of the High Court shall be Rs. 38000

5.8 SUPREME COURT JUDGES (TRAVELLING ALLOWANCE), RULES, 1958

No.F.10(5)/56-F.C., dated the 7th February, 1958.– In pursuance of sub-paragraph (2) of paragraph 1 of the Third Schedule to the Constitution, the President is pleased to make the following Rules regulating the traveling allowances of the Judges of the Supreme Court, namely:

THE SUPREME COURT JUDGES (TRAVELLING ALLOWANCE), RULES, 1958

1. Short title and commencement.(1) These Rules may be called the Supreme Court Judges (Traveling Allowance), Rules,1958.

(2) They shall come into force at once, and shall be deemed to have taken effect on and from the first day of May, 1957.

2. Definition. In these Rules, except where it is otherwise expressly provided or the context otherwise requires, "Judge" means a judge of the Supreme Court and includes the Chief Justice of Pakistan, an Acting Chief Justice and an Acting Judge.

3. Journey on joining post by rail or steamer. (1)When a Judge of a High Court is appointed to be a Judge of the Supreme Court, he shall be entitled in respect of his journey to join his new post to draw traveling allowance at the rates and to enjoy traveling facilities provided for a journey on transfer by the rules applicable to him immediately before his appointment.

(2) When a person appointed to be a Judge is already in the service of Pakistan travels by railway or steamer to join his post, he may, at his option and in lieu of drawing traveling allowance under the rules governing a journey on transfer applicable to him, claim actual expenses, or travel in a reserved first class four-berth compartment or in a reserved coupe compartment in an air-conditioned coach or in a reserved first class cabin, if available:
Provided that when any such person, avails himself of this concession he must pay to Government the fare, which he would have paid, if no accommodation had been reserved, and shall, in addition pay in cash to the station master of the station, from which the journey commences, the fares for any members of his family accompanying him, in case they share his reserved accommodation. When Government pays full tariff rates for the accommodation, all such fares shall be credited to Government.

(3) When a person who is not already in the service of Pakistan, is appointed to be a Judge, he shall be entitled, when traveling by railway or by steamer to join his post to actual expenses or may travel in a reserved first class four-berth compartment or in a reserved coupe compartment in an air-conditioned coach or in a reserved first class cabin, if available, on the conditions prescribed in the proviso to sub-rule (2).

(4) If any such person as is mentioned in the preceding sub-rules is appointed to be the Chief Justice of Pakistan or an acting Chief Justice, he may travel in a saloon, if available.

Explanation.– The expression "actual expenses" shall be limited to the transport of the following persons and goods:

(i) The judge and any members of his family normally resident with him at first class rates. The family of the judge means his wife and his children including his step-children residing with him;

(ii) Personal servants, not exceeding three in number, by rail and/ or steamer at the lowest class rates;

[1][(iii) the cost of carriage of personal effects not exceeding, [2][four Thousand and five hundred kilograms] if he has a family and [2][two thousand two hundred and forty kilograms] if he has no family at the rates of [2][paisa [3](0.083) per kilometer (or [3](1.66) paisa per kilometer per unit of twenty kilograms)], from the residence of the Judge at the old station to his residence at the new station, irrespective of the mode by which the personal effects are carried and without being required to produce receipts in support of his claim of cost of transportation of personal effects. In this clause, "family" has the same meaning as in clause (i);

(iv) a motor-car by passenger train and/or by steamer at owner's risk.

4. Journey on joining post by air. When a person appointed to be a judge travels by public air transport service to join his post, he shall be entitled to:-

(i) the actual air fares at first class rates paid for himself and any members of his family as defined in the Explanation to rule 3; and

(ii) the facilities provided in clauses (ii), (iii) and (iv) of the said Explanation.

[4]**[4A. Transfer grant.** Upon the transfer of the seat of the Supreme Court from one place to another, a Judge shall be granted a transfer Grant [5][equal to one month's pay if he has a family] and [5][half month's pay if he has no family:]

5. Journey on duty.[4][(1)] When a Judge travels on duty, he shall be entitled:-

(a) when traveling by railway or steamer, to one reserved first class four-berth compartment or a reserved coupe compartment in an air-conditioned coach, or in reserved first class Cabin:

Provided that the Chief Justice or an Acting Chief Justice, when traveling by railway will, if he so chooses, be provided with a saloon, if available, in which case the Chief Justice or the acting Chief Justice shall not be entitled to any fares for the servants:

Provided further that if any person accompanying a Judge in the accommodation reserved for him under this clause, fares shall be payable by him on their account and the fares so paid shall, if full tariff rates have been paid by the Government for the reserved accommodation, be credited to Government;

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1. Subs. by S.R.O. 1701(1)/73, dated. 4-12-73
2. Subs. by S.R.O. 225(1)/81, dated 21-03-81
3. Subs. by M.O Justice of P.A Notification, dated 18-10-89
4. Re-numbered and Ins. by S.R.O. 1305(1)/74, dated 12-10-74
5. Subs. by S.R.O. No.1190 (1)/91, dated 20-10-91

(b) When traveling by a public air transport service, to the first class fare actually paid for himself and the cost of transporting luggage up to [1][forty-six kilograms], inclusive of the free allowance given by the air company, and the railway or steamer fares of the lowest class for servants not exceeding four in number[1][;]

[1][* * * * * * * * * *]

(c) When traveling by road on duty, to a mileage allowance at the rate of[2][twelve rupees] per [1][kilometer]:

Explanation.- For the purpose of this clause all journeys to and from headquarters shall be deemed to commence and terminate at the Judge's residence at headquarters or out stations. For short journeys by road within [3][sixteen kilometers] of the Judge's residence at headquarter no mileage allowance will be admissible unless he actually proceeds to a point outside the [3][sixteen kilometers] radius. At out stations, no mileage allowance will be admissible for short road journeys within[3][sixteen kilometers] of the Judge's temporary residence in addition to the daily allowance to which a Judge may be entitled under these rules;

(d) to a traveling allowance limited to the actual expenses incurred by the Judge not exceeding one and one-half of first class railway fare in the case of rail journey;

[4][(e) to a daily allowance in respect of any period of halt on duty outside the Headquarters of the Supreme Court (including [5][Fridays] and holidays) at the following rates:-

(i) Rs.[6][1200] or

(ii) Rs.[6][700] Where the Chief Justice or acting Chief Justice stays in a railway saloon reserved for him:

Provided that daily allowance at the rates of Rs.[7][8000] per diem shall be admissible at Hyderabad, Islamabad, Karachi, Lahore, [5][Faisalabad], Multan, Peshawar, Quetta and Rawalpindi.

(f) a Judge who stays, in a hotel [5][, Inspection bungalow or inspection lodge or in a guest house, rest house or residential club] shall, in addition to the daily allowance mentioned in paragraph (i) of clause (e), be allowed reimbursement of actual single room rent, subject to the production of [8][receipts or vouchers of the hotel, Inspection bungalow, Inspection lodge, guest house, rest house or residential club] upto the following maximum per day:-

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1. Subs. and omitted by S.R.O.225(1)/81, dated 21-03-1981
2. Subs. by S.R.O. (1)/2013, dated 19-06-2013 for the words "six rupees" which were Substituted for the words "three rupees and fifty paisas" by S.R.O. F.3(1)/2006 All, dated 08.06.2006 a nd shall be deemed to have been so made on the first day of July,2005.
3. Subs. by S.R.O.1190(1)/91, dated 20-10-1991
4. Subs. by S.R.O. 1701(I)/73, dated 12-4-73
5. Subs. and instd. By S.R.O. 641(I)/79, dated 15-07-79
6. Subs. for the figure "555, 475 and 715" in sub-clausee (i), (ii) and provision of clause (c) respectively by Notification No.F.3(1)/2004-All, dated 28-11-2005 w.e.f. 1-7-2005 which were previously subs. for the Figure "430, 380 and 520" respectively vide Notification no F3(10/200-All, dated 6-4-2002. w.e.f. 01-12-2001.
7. Subs. by S.R.O. …….(1)/2017, dated 14-09-2017 for the figure "5000" which were Subs. by S.R.O. 582(1)/2013, dated 19-06-2013 for the figure "3000" which were Subs. for the figure "1500" vide S.R.O. No. 291 (1)/2008 dated 14.03.2008
8. Subs. and Ins. by S.R.O. 641(1)/79, dated 15-7-79

(i) Localities where special rate of daily allowance is admissible-[1] [three times] the amount of special allowance.

(ii) Other localities.– Equal to [1][one and one half times] the amount of daily allowance.

[2] [(ff) * * * * * * * * * * * *]

(g) When traveling on duty by air, steamer or railway, otherwise than in a Saloon, to-

(i) the fares at lowest class rates by steamer or railway for personal servants not exceeding four:

Provided that if a personal servant or a peon accompanies the Judge by air, the number of personal servants to be transported by railway or steamer shall not exceed three;

[3](ii) the haulage of a motor car by passenger train or steamer or partly by passenger train and partly by steamer at owner's risk and, if he does not take a motor car with him, to hire a taxi at Government expense subject to the condition that the total amount recoverable for hire charges does not exceed the cost of such haulage [4][:]]

[5][Provided that the Chief Justice may relax the rule and allow actual taxi-hire charges incurred in excess of the cost of haulage, in cases where he is satisfied that this is necessary.]

(iii) freight for transport by goods train and or steamer of personal effects not exceeding [6][two thousand two hundred and forty kilograms] in weight;

(h) In the case of the Chief Justice or an acting Chief Justice, when travelling by railway in a saloon, to:-

(i) the concession in sub-clause (g) of this rule, and

(ii) subject to like conditions, the freight for transport of such portion of the personal effects mentioned in sub-clause (iii) of clause (g) of this rule as cannot be carried in the saloon.

Note:- A return air-ticket will be purchased, wherever possible.

[7](2) The following provisions shall apply to the payment of daily allowance, namely:-

(i) Daily allowance for each calendar day shall be admissible for the period of absence on duty from headquarters, including the time spent in transit.

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1. Subs. and Ins. by S.R.O. 641(1)/79, dated 15-7-79
2. Clause (ff) omitted by S.R.O. 1305(1)/74, dated 12-10-74
3. Subs. by Notification No. F.4(1)/65-Admn, dated 05-08-65
4. Subs. and added by Notification No. F.4(1)/65-AI, dated 07-08-72
5. Subs. and added Notification No. F.4(I)65-AI, dated 07-08-72
6. Subs. S.R.O. 225(1)/81, dated 21-03-81
7. Added S.R.O.1305(1)/74, dated 12-10-74

No more than one daily allowance shall be admissible on any calendar day, a fraction of a calendar day being reckoned as a calendar day.

Explanation.- In this clause, "calendar day" means a day beginning on one midnight and ending on the next midnight.

(ii) In case of departure from Headquarters, the rate of daily allowance during transit shall be the same as admissible at the station of immediate destination and, in the case of return to Headquarters, the rate shall be the one admissible at the last station of temporary duty before return to Headquarters.

(iii) The period of absence from Headquarters shall commence from the time of departure of the Judge from his office or residence, as the case may be, till the time of his return to his office or residence, as the case may be.

(iv) The period of forced delays in transit shall be treated as part of the total transit period.

(v) Extra daily allowance for arrival at and departure from the place of temporary duty shall not be admissible.]

[2] [(j) If a Judge while on Circuit bench does not avail of a car of the Provincial Government or a hired one by the Supreme Court, he will have the option to be reimbursed for additional petrol to the extent of five liters per day for the period during which his roaster is fixed at a Bench outside Islamabad plus two days for arrival and departure if the same do not fall within the roaster (excluding the day of departure, from and arrival at Islamabad) provided the Honourable Judge concerned is unable to meet his total monthly requirement of the petrol within the limit of 400 liters.]

[1][**5A Concessions on long tours.** When proceeding on a tour within Pakistan exceeding five days in duration, a judge may:-

(a) take his wife with him in his railway saloon, or other reserved accommodation, by rail or sea, without payment of fare; and

(b) if accompanied by his wife on a journey by air, charge one extra fare of the class by which [3][the spouse] actually travels, but no charge for extra luggage transported by air, beyond the free allowance may be made.

Note.-- A return air-ticket will be purchased for the wife, wherever possible.]

[4][Further, the condition of time limitation exceeding five days shall not be applicable on the tours of the Chief Justice along with spouse within and outside Pakistan.]

6. Recall from vacation or leave. When the Chief Justice or any Judge is recalled for a period of duty in the course of any vacation or of any period of sanctioned leave (other than casual leave) and is required to perform a journey from any place where he may be spending his vacation or leave, to the place where the Court is to sit, such journey and a return journey to the same place, on completion of the aforesaid period of duty, shall be treated as journeys on duty for the purpose of rule 5.

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1. Inserted by Notification No.F.6(2)/63-AI, dated 17-02-1964
2. Added vide S.R.O.No.1067(1)2006, dated 20-10-2006
3. Subs. for the word "she" vide S.R.O. No. 291(1)2008, dated 14-03-2008
4. Added by Notification No. F.3(1)/2019-A.II, dated 22-04-2019

[1]**[7. Journey on return from leave, etc**. When the Chief Justice or a Judge travels by railway, when proceeding on or returning from leave (including vacation spent in or outside Pakistan), the Chief Justice may travel in a saloon, if available, and a Judge in a reserved first class four-berth compartment or in a reserved coupe compartment in an air-conditioned coach, on the conditions prescribed in the proviso to sub-rule(2) of rule 3. The facilities will be available up to and from the port of embarkation of debarkation or the place of residence in Pakistan, as the case may be.]

[1][7A. * * * * * * * * *]

[1]**[7B. Travelling allowance for journey on retirement.** (1) A Judge shall be allowed traveling allowance to the extent specified below, in respect of the Journey from the place of his last posting to his home town, performed during leave preparatory to retirement on or after retirement:-

(i) when traveling by railway or by steamer, to the privileges under clauses (a), (b) and (c) of rule 5, and

(ii) when traveling by air, to the reimbursement of his air fare actually paid and the reimbursement of air fare for his wife and children including his step-children ordinarily residing with him:

(iii) cost of transportation of personal effects to the extent indicated in Explanation No.(iii) rule3(4);

(2) Advanced payment for expenditure under sub-rule(1) shall be made and be treated as final payment.

(3) The home town shall be determined either according to the entries pertaining to the permanent address of the Judge in the records of the High Court or according to the declaration made by him for that purpose.

(4) The term "retirement," shall mean retirement on attaining the age of superannuation, or on completing the prescribed service limit or on invalid pension.]

8. **Controlling officer.** For purposes of these rules, a Judge shall be his own controlling officer**.**

9. Revocation of old rules. With the commencement of these Rules, the Federal Court Judges (Travelling Allowance) Rules, 1937, shall be deemed to have been revoked**.**

1. Subs. and omitted by S.R.O.1305(1)/74, dated 12-10-1974
2. Ins. by S.R.O. 1701(1)/74, dated 04-12-1973

5.9 THE FEDERAL SERVICE MEDICAL ATTENDENCE RULES, 1990

Islamabad the 11th August, 1990

No.F.20-5/88-MF(I)- In exercise of powers conferred by Section 25 of the Civil Servants Act, 1973 (LXXI of 1973) and in supersession of the Central Services (Medical Attendance) rules, 1958, the President is pleased to make the following rules, namely:-

1. (i) These rules may be called the Federal Services Medical Attendance Rules, 1990.
   (ii) They shall apply to all Government servants other than those in railway service whose conditions of service are prescribed by rules made or deemed to be made by the Federal Government when they are on duty or on leave or under suspension in Pakistan or on foreign service in Pakistan.

2. In these rules, unless there is anything repugnant in the subject or context:

(a) "Government servant"means the serving and the retired Government servants.

(b) "authorized medical attendant"means:-

   (i) In the case of Government servants in BPS 1 to 15 "Medical Officer", and
   (ii) In the case of Government servants in BPS 16 and above, Civil Surgeon, Associate Physician and Assistant Surgeon.

(c) "District" means the district in which the Government Servants falls ill.

(d) "family" means parents, husband, wife, legitimate children and step children of Government servant's parents sister and minor brothers residing with and wholly dependent upon him.

Explanation (1) Wife of a Government servant shall be deemed to be wholly dependent upon him so long as she is not judicially separated, and where the wife herself is a government servant(that is,the servant of the Central or a Provincial Government) the husband shall be entitled to claim any benefit admissible to him in respect of the wife if she does not claim the benefit in her own right as a Government servant.

Explanation (2) Sons and step-sons of Government servant shall be deemed to be wholly dependent upon him till they complete the age of eighteen years, and shall thereafter be deemed to be so dependent only if he certifies that they are wholly dependent upon him.

Explanation (3) Daughters and step-daughters of a Government servant shall be deemed to be wholly dependent upon him till they are married, and thereafter shall normally be assumed to have ceased to be so dependent unless he certifies that they are wholly dependent upon him.

**Explanation (* 4) In case of more than one wife, the wife nominated by the Government servant to receive medical attendance and treatment will be entitled to it.

*. Explanation (4) declared against the injunction of Islam. Pl. see PLD 1993 SC 464 and fixed the date when this provision cease to have effect as 31st of August, 1993

Explanation (5) The expression "residing with"shall not be so construed as to exclude any member of the family of a government servant wholly dependent upon such servant but not actually resident with him, a for example, the so nor daughter of a government servant studying at a place other than his head quarters or the wife of a Government servant temporarily away from such headquarters

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(e) "the Government" means:-

i. In respect of Islamabad the Federal Government.
ii. In respect of a province the Provincial Government, unless the Federal Government medical hospital is available

(f) "Government Hospital" means a hospital maintained by Government or under autonomous arrangement under the Government by a local authority, and includes any military hospital for the treatment of Government servant.

(g) "Medical Attendance"means:-

i. in respect of Government servants specified in sub- clause (ii) to clause (b), in Rule 2 an attendance in hospital or at the residence of the Government servant, including such pathological, bacteriological, radiological or other methods of examination for the purpose of diagnosis as are available in any Government hospital in the district, and are considered necessary by the authorized medical attendant, and such consultation with a specialist or other medical officer in the service of the Government stationed in the Province as the authorized medical attendant certifies to be necessary to such extent and in such manner as the specialist or medical officer may, in consultation with the authorized medical attendant, determine;

ii. in respect of any other Government servant in BPS 1 to 15, attendance at a hospital or in case of illness which compels the patient to be confined to his residence, at the residence of the Government servant, including such methods of examination for purposes of diagnosis as are available in the nearest Government hospital and such consultation with a specialist or other medical officer of the Government stationed in the district as the authorized medical attendant certifies to be necessary to such extent and in such manner as the specialist or medial officer may, in consultation with the authorized medical attendant, determine;

(h) "Patient"means a Government servant to whom these Rules apply and who has fallen ill;

(i) "Province"means the Province in which a patient has fallen ill;

(j) "treatment" means the use of all medical and surgical facilities available at the Government hospital in which a Government servant is treated and includes: —

i. The employment of such pathological, bacteriological radiological or other methods as are considered necessary by the authorized medical attendant;

ii. The supply of such medicines, vaccines, sera or other therapeutic substances as are ordinarily available in the hospital;

iii. The supply of such medicines, vaccines, sera or other the rapeutic substances not ordinarily so available as the authorized medical attendant may certify in writing to be essential for the recovery or for the prevention of serious deterioration in the condition of the Government servant;

iv. Such accommodation as is ordinarily provided in the hospital and is suited to his status. In case of retired Government servant his status will be determined by the last appointment held;

v. Such nursing as is ordinarily provided to inpatient by the hospital;

vi. The specialist consultation described in clause (g), but does not include provision of the request of the Government servant of accommodation superior to that described in sub-clause (iv);

vii. "Dental treatment" which includes treatment of alveolar (gum and jaw bone) disease, extraction of teeth, treatment for dental caries, gingivitis Pyorrhoea and filling (temporary or permanent) of dental cavities including root canal treatment scaling, but does not include dental implants, orthodontic appliances, bridging crowning and provision of dentures;

(viii) The provision of artificial limbs, joints and implants;

(ix) The facility of circumcision.

3. (1) A Government servant shall been titled, free of charge, medical attendance by the authorized medical attendant.

(2) Where a Government servant is entitled under sub-rule (1) of rule 3 free of charge, to receive medical attendance, any amount paid by him on account of such treatment shall, on production of a certificate in writing by the authorized medical attendant in his behalf and after necessary verification, be reimbursed to him by the Federal Government.

4. (1) When the place at which a patient falls ill is not the headquarters of the authorized medical attendant:-

i. the patient shall be entitled to traveling allowance for the journey to and from such headquarters; or
ii. if the patient is too ill to travel, the authorized medical attendant shall be entitled to traveling allowance for the journey to and from the place where the patient is.

(2) Applications for traveling allowance under sub-rule (1) (a) shall be accompanied by a certificate in writing by the authorized medical attendant stating that medical attendance was necessary, and if the application is under clause (1)(b) of that sub-rule the patient was too ill to travel.

5. (1) If the authorized medical attendant is of opinion that the case of a patient is of such a serious or special nature as to require medical attendance by some person other than himself, and such attendance or treatment which is not available at the place where the patient has fallen ill he may, with the approval of the Medical Superintendent of the hospital (which shall be obtained before hand unless the delay involved entails danger to the health of the patient):-

(a) send the patient to the nearest specialist or other medical officer as provided in clause (g) of rule 2,by whom in his opinion medical attendance is required for the patient.

(b) If the patient is too ill to travel, summon such specialistor other medical officer to attend upon the patient.

(2) A patient sent under clause (a) of sub-rule (1) shall on production of a certificate in writing by the authorized medical attendant in this behalf, be entitled to traveling allowance for him and attendant if recommended by authorized medical attendant for the journeys to and from the headquarters of the specialist or other medical officer or the place where he is sent for treatment.

(3) A specialist or other medical officer summoned under clause (b) of sub-rule (1), shall, on production of certificate in writing by the authorized medical attendant in this behalf be entitled to traveling allowance for the journey to and from the place where the patient is.

6. (1) A Government servant shall be entitled, free of charge:

(i) to treatment;

(a) in such Government hospital being a hospital maintained by Government, at or near the place where he falls ill as can, in the opinion of the authorized medical attendant provide the necessary and suitable treatment; or

(b) if there is no such hospital as is referred to in sub-clause(a),in such other Government hospital at or near that place as can in the opinion of the authorized medical attendant, provide the necessary and suitable treatment;

(ii) To get medical treatment from any unauthorized/private hospital/clinic in emergency if in the opinion of the authorized medical attendant it was necessary.

(iii) A Government servant shall also be entitled to ambulance charges if actually provided with an ambulance and the hospital authorities consider such provision to be necessary.

(2) Where a Government servant is entitled under sub-rule (1) free of charge to treatment in a hospital any amount paid by him on account of such treatment, shall on production of a certificate in writing by the authorized medical attendant in this behalf, be reimbursed to him by the Federal Government.

7. (1) If the authorized medical attendant is of opinion that owing to the absence or remoteness of a suitable hospital or to the severity of the illness, a Government servant cannot be given treatment as provided in clause (1) or sub-rule (i) of rule 6, the Government servant may receive treatment at his residence.

(2) A Government servant receiving treatment at his residence under sub-rule (1) shall be entitled to receive towards the cost of such treatment incurred by him a sum equivalent to the cost of such treatment he would have been entitled, free of charge, to receive under these rules if he had not been treated at his residence.

(3) Claims for sums admissible under sub-rule (2) shall be accompanied by a certificate in writing by the authorized medical attendant stating:-

(a) his reasons or the opinion referred to in sub-rule(1);

(b) the cost of similar treatment referred to in sub-rule(2).

8. (1) Charges for services rendered in connection with but not included in medical attendance on or treatment, of, patient entitled free of charge, to medical attendance or treatment under these rules, shall be determined by the authorized medical attendant and paid by the patient.

(2) If any question arises as to whether any service is included in medical attendance or treatment, it shall be referred to the Government and the decision of the Government shall be final.

9. The controlling officer of a patient may require that any certificate required by these rules to be given by the authorized medical attendant for traveling allowance purpose shall be countersigned:-

(a) in the case of a certificate, given by the "medical officer" by the Civil Surgeon or the Associate Physician.

(b) in the case of certificate given by the Civil Surgeon or Associate Physician by the Medical Superintendent of the hospital.

10. The Family of a Government servant shall be entitled, free of charge, to medical attendance and treatment, on the scale and under the conditions allowed to the Government servant himself, at hospitals including recognized hospitals at which the Government servant is entitled to receive treatment free of charge. This shall include confinement of a Government servant's wife in a hospital but not prenatal or post natal treatment at a Government servant's residence.

NO.F.8-6/93-PSDM
Government of Pakistan
Ministry of Health, Special Education and Social Welfare,
(HEALTH DIVISION)
****

Islamabad, the 24th May, 1993.

OFFICE MEMORANDUM

Subject:- **REIMBURSEMENT OF MEDICAL CHARGE.**

The undersigned is directed to refer to the subject noted above and to clarify the following position as hereunder:-

i) **TREATMENT FROM MILITARY HOSPITALS AND COMBINED MILILARY HOSPITALS.**

Under the Medical Attendance Rules, 1990 these hospitals were declared as authorized hospitals for Federal Government Servants. Now these hospitals have been deleted from the definition of Government Hospitals. Therefore all Federal Government Servants including M.N.As/Senators are not entitled for medical treatment in Military Hospitals directly. It is made clear that M.N.As/Senators are entitled for the same medical facilities as per with civil servants. The treatment from these hospitals can be taken only on the basis of a reference made by the Authorized Medical Attendant.

ii) **GYNAE WARD OF PAKISTAN INSTITUTE OF MEDICAL SCIENCES, ISLAMABAD AS PAYING WARD.**

The Gynae Ward of Pakistan Institute of Medical Science, Islamabad is a paying ward as allowed by this Division. The expenditure incurred in this regard may be reimbursed to the Federal Government Servants.

iii) SIGNATURE ON PROFORMA-II BY THE AUTHORIZED OFFICER.

There is great confusion in this regard. To wave of such confusion it has been decided that following officers will sign proforma-II of the claim:-

i) Section Officer (Admn) or equivalent if the employee is in BPS 1-16.

ii) Deputy Secretary (Admn) or equivalent if the employees is in BPS 17 and above.

BPS of the claimant must be indicated in proforma-I of the claim.

(MAJ. (RETD) FIDA HUSSAIN)
SECTION OFFICER (PSDM)

5.10 * THE SUPERIOR COURTS (COURTS DRESS AND MODE OF ADDRESS) ORDER, 1980

PRESIDENT'S ORDER NO.15 OF 1980

No.F.17(2)/80-Pub.– The following Order made by the President is hereby published for general information:—

Whereas in a meeting attended by the Chief Justices of the Superior Courts in June, 1979, certain decisions were taken having regard to the views of the Pakistan Bar Council relating to Court dress and the mode of address in the Superior Courts;

AND WHEREAS it is expedient to make provision in respect of the aforesaid matters;

NOW, THEREFORE, in pursuance of the proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No.1 of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make the following order:-

1. **Short Title, Extent And Commencement**.— (1) This order may be called the Superior Courts (Courts Dress and Mode of Address) Order, 1980.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on the day of November, 1980, which is the first day of the Fifteenth Century Hijri.

2. **Interpretation.—** In this Order, "Superior Court" means the Supreme Court of Pakistan or a High Court or the Federal Shariat Court and "Judge" includes Chief Justice or, in the case of the Federal Shariat Court, the Chairman or a member thereof.

[1]**[3.Court Dress etc.— (1)** A Judge of the Superior Court shall wear-

(a) While he is attending sittings of the Court, a black suit with a white shirt, a black tie and a black gown; and

(b) While he is attending State or ceremonial functions, a black suit with a white shirt and a black tie.

(2) A lady judge of the Superior Court shall wear--

(a) While she is attending the sittings of the Court, white dress with winged color white shirt, black coat and black gown: and

(b) While she is attending the State or ceremonial functions, white dress with winged color white shirt and black coat.]

(4) Mode of Address.— The use of the expressions "My Lord" and "Your Lordship" and the like, in relation to a Judge shall be discontinued and he shall only be addressed as "Sir" or "Janab-e-Wala" or "Janab-e-Aali" or referred to in judgments, correspondence or other instruments as "Mr. Justice" so and so or the like.

---

* Repealed by Ordinance No. XIX of 2019 dated 31-10-2019.

1. Subs. Vide Chief Executive's Order No.42 of 2002. Dated: 11-12-2002.

5.11 PROVISION OF STAFF CAR FOR HON'BLE JUDGES

Government of Pakistan
Law, Justice and Human Rights Division

No.F.5(2)/87-AII Islamabad, the 7th of June, 2007

From: Mr. Mumtaz Ahmad,
Section Officer

To : The Acting Registrar,
Supreme Court of Pakistan, Islamabad

Subject:- **PROVISION OF STAFF CAR VEHICLES TO THE HONOURABLE JUDGES OF THE SUPREME COURT.**

Dear Sir,

I am directed to refer to the Supreme Court of Pakistan's letter No.DR(A)/2006-SCA, dated 22nd May, 2007, on the above subject and convey approval of the Prime Minister for enhancement of entitlement of staff cars for Judges of the Supreme Court so that they would now be entitled to staff cars upto 1800cc.

Yours faithfully,

Sd/
(Mr. Mumtaz Ahmad)
Section Officer

5.12 PURCHASE OF OFFICIAL CARS BY RETIRED JUDGES OF SUPREME COURT AND HIGH COURTS AT DEPRECIATED PRICE

(Government of Pakistan Law and Justice Division No.F.5(2)/91-AII.Islamabad, the 13th May, 1991)

I am directed to refer to the above subject and to state that the following guidelines have been approved by the competent authority for disposal of pending and future cases regarding purchase of official cars by the Judges who retired from the Supreme Court, High Courts and the Federal Shariat Courts:-

(a) The amount of depreciation shall be calculated on the basis of the actual period from the date of purchase of the staff car to the date of retirement of the Judge. Depreciation for each month would be 1/12th of the assumed rate. A period of 15 days or more would count as one month. Less than 15 days would be ignored.

(b) The concession for purchase of an official car at depreciated price shall be admissible to a retiring Judge of the superior court only if he has not availed the facility previously.

(c) The concession for purchase of an official car would be extended to a Judge who has served the superior court for at least three years.

(d) The retired Judges who possess a private car would also be eligible to enjoy the facility.

5.13 SALE OF OFFICIAL CAR TO THE HONORABLE CHIEF JUSTICE OF PAKISTAN AT DEPRECIATED VALUE ON RETIREMENT

Government of Pakistan
Law, Justice and Human Rights Division

No F. 5(2)/91-A-II(Vol-II) Islamabad the 10th July, 2014.

From **Izaz-ul-Haq Shah**
Section Officer

To **The Registrar,**
Supreme Court of Pakistan,
Islamabad.

Subject:- SALE OF OFFICIAL CAR TO THE HONORABLE CHIEF JUSTICE OF PAKISTAN AT DEPRECIATED VALUE ON RETIREMENT.

Dear Sir,

Reference previous correspondence on the subject captioned above.

2. I am directed to convey the approval of worthy Prime Minister vide No.2252/SPM/2014 dated 07.07.2014 regarding the entitlement of Chief Justice of Pakistan to purchase official vehicle at depreciated price since the entitlement of the Chief Justice of Pakistan for the use of locally assembled/manufactured staff car has been enhanced from 1800cc to 2400.

Yours faithfully,

(Izaz-Ul-Haq Shah)

Section Officer
Ph. 9221307

Government of Pakistan
Law, Justice and Human Rights Division

No F. 5(2)/91-A-II (Vol-II) Islamabad the 14th July, 2014.

From **Izaz-ul-Haq Shah**
Section Officer

To **The Registrar,**
Supreme Court of Pakistan,
Islamabad.

Subject: - **SALE OF OFFICIAL CAR TO THE HONORABLE CHIEF JUSTICE OF PAKISTAN AT DEPRECIATED VALUE ON RETIREMENT.**

Dear Sir,

Reference previous correspondence on the subject captioned above.

2. In supersession of this Division's letter of even number dated 10th July, 2014, the entitlement of the Chief Justice of Pakistan to purchase official vehicle has been enhanced from 1800cc to 2400cc

Yours faithfully,

(Izaz-Ul-Haq Shah)
Section Officer
Ph. 9221307

5.14 FLYING OF PAKISTAN FLAG ON VEHICLES

Ministry of Interior
Islamabad, the 27th February, 1997

No.8/4/97-Public.— In partial modification of this Ministry's Notification No. 5/2/89-Public, dated 13th April, 1989, rule 5(i) of Flags Rules shall read as under.

Only the following persons shall be entitled to fly the Pakistan Flags on their Motor cars, vessels and aeroplanes, when the dignitaries themselves are seated:-

(1) President of Pakistan.
(2) Prime Minister of Pakistan.
(3) Chairman of the Senate of Pakistan.
(4) Speaker of the National Assembly of Pakistan.
(5) Chief Justice of the Supreme Court of Pakistan.
(6) Chief Justices of the High Courts.
(7) Governors of the Provinces.
(8) Chief Ministers of the Provinces.

M. HUSSAIN CHAUDHRY,
Deputy Secretary.

Law and Justice Division
Islamabad, the 14th July, 2009

No.F.12(3)/79-A.II.— The Prime Minister has been pleased to allow that the Chief Justice, Federal Shariat Court shall be entitled to fly the Pakistan Flag on his car.

Mumtaz Ahmed
Section Officer

5.15 REIMBURSEMENT OF AMOUNTS SPENT ON ACCOUNT OF PURCHASE OF MEDICINES BY THE HON'BLE JUDGES

No.F.3(1)/2009-A.II(Pl.II) Islamabad, the 20th January, 2011

From: Malik Zulfiqar Hussain,
Section Officer

To The Accountant General,
Pakistan Revenues,
Islamabad.

Subject: **REIMBURSEMENT OF AMOUNTS SPENT ON ACCOUNT OF PURCHASE OF MEDICINES BY THE HON'BLE JUDGES (BOTH SERVING AND FORMER) AND THEIR FAMILY MEMBERS AS OUTDOOR PATIENT.**

Dear Sir,

I am directed to state that Finance Division vide their O.M. No.F.1(1)imp/2010-624 and O.M.No.F.16(1)-Reg.6/2010-778 dated 5th July, 2010 have granted medical allowance in lieu of outdoor treatment and reimbursement of medical expenses to the serving and retired Government servants in BPS-16 to 22 @ Rs.15% and 20% respectively with effect from 01.7.2010.

2. The above allowance is automatically admissible to the serving and former Judges of the Supreme Court of Pakistan under Federal Services Medical Attendance Rules 1990 as provided in paragraph 19 of the Supreme Court Judges (Leave, Pension and Privileges) Order 1997 (P.O.No.2 of 1997) which is reproduced as under:-

Subsidiary conditions of service:- Subject to the provisions of this Order and such other provisions as the President may make in this behalf, other privileges and rights of a Judge shall be determined by the rules for the time being applicable to an officer appointed by the President holding the rank of Secretary to the Federal Government.

3. The Full Court Meeting of the Supreme Court has unanimously opted for getting Medical Allowance for the Hon'ble Judges at the rate of 15% of their basic pay in lieu of Outdoor Treatment and reimbursement of medical expenses as has been granted to the officers from BPS-16 to 22 and Medical Allowance for Hon'ble former Judges of this Court @20% of the Pension drawn w.e.f. 01.7.2010.

Yours faithfully,
(Malik Zulfiqar Hussain)
Section Officer

Copy to the Registrar, Supreme Court of Pakistan, Islamabad with reference to letter No.F.1/17/2000-SCA dated 29.11.2010.

-Sd/-
(Malik Zulfiqar Hussain)

---

*. The proviso of Paragraph 19 of the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997 (P.O.No.2 of 1997) has not been provided /reproduced which is hereby provided for easy reference.

"Provided that nothing in this paragraph shall have effect so as to give to a Judge who is a member of a civil service less favorable terms in respect of his conditions of service than those to which he would be entitled as a member of such service if he had not been appointed as a Judge, his service as a Judge being treated as service for the purpose of determining those privileges and rights.

5.16 CIRCULAR TO ADDRESSED FORMER JUDGE INSTEAD OF RETIRED JUDGE

No.F.1/2/2009 - SCA
Supreme Court of Pakistan

Islamabad, November 24, 2009

CIRCULAR

The Full Court in its meeting held on 22.10.2009 has resolved, inter alia, as under:-

> *"It was resolved that the word "retired" as prefix to Judge is not appropriate, hence, in future such Judges of superior Courts, may be addressed as "former" Judges in all official correspondence and otherwise."*

2. Accordingly, all concerned are required to implement the above said decision of the Full Court in letter and spirit.

3. This issues with the approval of the Competent Authority.

(MUHAMMAD AFZAL)
ASSISTANT REGISTRAR (ADMN)
FOR REGISTRAR

All concerned.

Chapter 6

SUPREME COURT ESTABLISHMENT SERVICE RULES

CHAPTER 6
Supreme Court Establishment Service Rules
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6.1 SUPREME COURT ESTABLISHMENT SERVICE RULES 2015

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*SUPREME COURT OF PAKISTAN ESTABLISHMENT SERVICE RULES 2015

SUPREME COURT OF PAKISTAN

NOTIFICATION

Islamabad, the 15th July 2015

S.R.O. 773(1)2015.- In exercise of the powers conferred by Article 208 of the Constitution, the Supreme Court, with the approval of the President, hereby makes the following Rules with respect to the terms and conditions of service of persons serving on the staff attached to the Supreme Court of Pakistan.

RULES

PART I

Short title, application and commencement

1. Short title, application and commencement: - (1) These Rules may be called the Supreme Court Establishment Service Rules, 2015.

(2) These Rules shall apply to all persons serving on the staff attached to the Supreme Court of Pakistan.

(3) These Rules shall come into force at once.

PART II

Establishment and appointment

2. Establishment of Supreme Court. (1) The establishment of the Supreme Court shall consist of posts mentioned in the first column, their scales of pay as specified in the second column, mode of appointment as provided in the third column, qualifications and experience as prescribed in the fourth column and conditions for next promotion as mentioned in the fifth column of the Schedule to these Rules.

(2) The Chief Justice may, by order, create, abolish, upgrade, downgrade or change the nomenclature of any post, temporary or permanent, and the Schedule to these Rules shall stand amended accordingly.

*Published in Gazette of Pakistan Extraordinary Part II, Islamabad on page 2845 on August 6, 2015.

3. Appointment. – (1) Appointments to the posts in connection with the affairs of the Supreme Court, whether by initial recruitment, promotion, transfer or on deputation, shall be made in the prescribed manner by the Chief Justice or by a person authorized by him in that behalf.

(2) The Chief Justice may constitute from time to time one or more Departmental Selection Committees to make selections for appointments by initial recruitment, and one or more Departmental Promotion Committees to make selections for appointments by promotion to posts in BPS-1 to BPS-22, and may himself make the appointment or promotion, as the case may be, to such posts where no such Committee is constituted.

(3) All persons serving on the staff of the Supreme Court, who possess the qualifications and experience prescribed for a higher post reserved under these Rules for departmental promotion, shall be considered for promotion to a higher post in the manner and subject to the prescribed conditions.

(4) The rules and orders issued by the Federal Government regarding advertisement, age limit, physical fitness, verification of character and antecedents, nationality, regional/female quota, etc. shall be followed, as nearly as possible, in making initial recruitment of staff of the Court:

Provided that the maximum age limit for initial recruitment inB-19 and above will be 45 years.

(5) A Committee headed by the Chief Justice and comprising two most Senior Judges may relax any of the prescribed conditions of appointment in cases where the Committee considers it desirable to do so in the interest of public service.

4. Terms and conditions of service. - (1) Subject to any special provisions contained in these Rules, the rules and orders for the time being in force and applicable to civil servants of corresponding scale of pay of the Federal Government shall regulate the terms and conditions of service of members of staff of the Supreme Court.

Provided that the powers exercisable under the said rules and orders by the President, or by any authority subordinate to the President, shall be exercisable by the Chief Justice of Pakistan or by such person as he may, by general or special order, direct.

(2) Any question arising as to which rules or orders are applicable to the case of any person serving on the staff attached to the Supreme Court shall be decided by the Chief Justice.

PART III

Efficiency and discipline

5. Grounds for disciplinary action. – Where in the opinion of the Chief Justice, a member of staff of the Court in BPS-19 and above, or in the opinion of the Registrar, any other member of staff of the Court –

(a) is inefficient or has ceased to be efficient; or

(b) is guilty of misconduct; or

(c) is corrupt, or may reasonably be considered corrupt because –

i. he is, or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property disproportionate to his known sources of income; or

ii. he has assumed a style of living beyond his ostensible means; or

iii. he has a persistent reputation of being corrupt; or

(d) is engaged, or is reasonably suspected of being engaged, in subversive activities, or reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person, and his retention in service is, therefore, prejudicial to national security, the Chief Justice or the Registrar, as the case may be, may impose on him one or more of the penalties provided hereafter.

6. Penalties. – (1) The minor and major penalties are as follows: –

(a) **Minor Penalties**: -

i. Censure;

ii. Withholding, for a specific period, promotion or increment, otherwise than for unfitness;

iii. Stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; and

iv. Recovery from pay of the whole or any part of any pecuniary loss caused to Government by negligence or breach of orders.

(b) **Major Penalties: -**

(i) Reduction to a lower post or time-scale, or to a lower stage in a time-scale;

(ii) Compulsory retirement;

(iii) Removal from service; and

(iv) Dismissal from service.

(2) Removal from service does not, but dismissal from service does, disqualify for future employment.

(3) In this rule, removal or dismissal from service does not include the discharge of a person —

i. appointed on probation, during or on the expiry of the period of probation; or

ii. appointed otherwise than under a contract, to hold a temporary appointment, on the expiration of the period of appointment; or

iii. engaged under a contract, in accordance with the terms of the contract.

7. Opportunity of showing cause.(1) When an action proposed to be taken against a member of staff of the Court under rule 5, he shall be informed in writing of the action proposed to be taken in regard to him and the grounds of the action and he shall be given a reasonable opportunity of showing cause against that action:

Provided that no such opportunity shall be given when the Chief Justice or the Registrar, as the case may be, is satisfied that in the circumstances of the case, it is not expedient in the public interest to give such opportunity:

Provided further that pending action against a member of staff of the Court, he may be suspended or required to proceed on leave with the approval of Chief Justice or the Registrar, as the case may be, and any continuation of such suspension or leave shall require approval of the Chief Justice or the Registrar, as the case may be, after every 3 months:

Provided further that on expiry of said period of 3 months, the member of staff of the Court who has been placed under suspension or forced to proceed on leave would be deemed to have been reinstated unless before the expiry of said period, approval of the Chief Justice or the Registrar, as the case may be, to his continuing to be under suspension or on leave has been obtained.

(2) In an appropriate case, an inquiry may be conducted through an Inquiry Officer, who shall be appointed by the Chief Justice or the Registrar, as the case may be.

8. Powers of the Inquiry Officer. (1) For the purpose of an inquiry under these Rules, the Inquiry Officer shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits; and

(d) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these Rules shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).

9. Inquiry Proceedings. (1)When an Inquiry Officer is appointed, the Registrar or any other officer above the rank of the person against whom proceedings are initiated authorized by the Chief Justice, he shall —

i. frame charge and communicate it to the accused together with a statement of the allegations explaining the charge and any other relevant circumstances which are proposed to be taken into consideration;

ii. require the accused within a reasonable time, which shall not be less than seven days or more than fourteen days from the day the charge has been communicated to him, to put in a written defence and to state at the same time whether he desires to be heard in person;

iii. inquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witness against him; and

iv. hear the case from day-to-day and no adjournment shall be given except for reasons to be recorded in writing.

(2) Where the Inquiry Officer is satisfied that the accused is hampering, or attempting to hamper, the progress of the inquiry he shall administer a warning, and thereafter if he is satisfied that the accused is acting in disregard of the warning, he shall record a finding to that effect and proceed to complete the inquiry in such manner as he thinks best suited to do substantial justice.

(3) The Inquiry Officer shall within ten days of the conclusion of the proceedings or such longer period as may be allowed by the Registrar, submit his findings and the grounds thereof to the Registrar.

10. Inquiry Report. A copy of the report of the Inquiry Officer shall be supplied to the accused person, allowing him not more than seven days to offer his explanation with regard to the findings adverse to him, after which the Registrar shall place the case before the Chief Justice, if the accused person is an officer of BPS 19 and above, and in all other cases, the Registrar shall himself be competent to pass orders.

11. Rejoining of duty. – If no penalty is imposed on an accused person who was suspended or required to proceed on leave in pursuance of an order under rule 8, he may be required to rejoin duty and the period of such suspension or leave may be treated as duty, or as may be directed.

12. Reversion of a person on deputation. – (1) The Chief Justice may, in any case where it appears to him that the circumstances so require, suspend any member of staff lent for service on the staff attached to the Supreme Court, and may order an inquiry to be made into the conduct of that member of staff.

(2) If after inquiry the Chief Justice is of opinion that a penalty should be imposed on the member of staff, he shall direct that the member of staff shall revert to the lending authority with a recommendation about the penalty to be imposed:

Provided that if such member of staff was promoted in the Court, the Chief Justice may order his reversion to the lower post from which he was promoted.

13. Imposition of penalty on the Registrar. –The Chief Justice alone shall have power to impose a penalty on the Registrar of the Court and where an inquiry is held against him, the Inquiry Officer shall submit his findings to the Chief Justice.

14. Appeal. – Where any penalty is imposed by the Registrar, an appeal shall lie from his order to the Chief Justice, and where any penalty is imposed by the Chief Justice, otherwise than on appeal from an order of the Registrar, an appeal shall lie from his order to a Bench of three available senior most Judges of the Court.

15. Review. –Any aggrieved person may file a review against the decision on appeal if there is error apparent on the face of the record.

16. Limitation. – An appeal under rule 14 and a review under rule 15 may be filed within thirty days from the date of the order complained of.

17. **Bar against appearance of counsel. –**At no stage of the proceedings under these Rules, the person concerned shall be represented by an Advocate.

PART IV
Miscellaneous

18. Relaxation. –A Committee headed by the Chief Justice and comprising two most Senior Judges may relax any of the provisions of these rules if it is satisfied that a strict application of the rule will cause undue hardship and its decision shall be final in such matter.

19. Delegation of Power. – The Chief Justice may delegate all or any of his powers under these rules to any Judge or officer of the Supreme Court.

20. Repeal and savings. – The Supreme Court (Appointment of Officers and Servants and terms and conditions of service) Rules, 1982 are hereby repealed:

Provided that this repeal shall not affect any appointment made or anything done under the said Rules, prior to this repeal.

SCHEDULE

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Registrar	22	Promotion/Deputation Direct recruitment of a member of the Bar/known academician on contract for a period of 3 years terminable on one month's notice	- Law Degree with 12 years standing	-
Additional Registrar	21	Promotion/Deputation or Direct recruitment of a member of the Bar/known academician on contract for a period of 3 years terminable on one month's notice	- - Law Degree with 10 years standing	25 years in B-17 & above including 2 years in B-21 OR 22 years in B-18 & above in case of direct recruitment in B-18 OR 20 years in B-19 in case of direct recruitment in B-19
Deputy Registrar	20	Promotion of Assistant Registrar of the Supreme Court/Transfer/Deputation /Direct recruitment on contract for a period of 3 years terminable on one month's notice.	- Law Degree with 10 years standing	1. Subject to vacancy 2. Seniority-cum-fitness 3. Length of service for promotion: 22 years in B-17 & above including 2 years in B-20 OR 18 years in B-18 & above in case of direct recruitment in B-18 OR 15 years in B-19 in case of direct recruitment in B-19
Assistant Registrar	19	Promotion of PS/ SrPS and CA/Sr.CA in rotation	-	1. Subject to vacancy 2. Seniority-cum-fitness 3. Length of service for promotion: 17 years in B-17 & above including 3 years in B-19 OR 15 years in B-18 & above in case of direct recruitment in B-18 OR 12 years in B-19 in case of direct recruitment in B-19 The AR will be required to complete prescribed training course before or after promotion as DR: Provided that he will not be confirmed in B-20 unless he has completed the prescribed training.

RESEARCH WING

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Additional Registrar Research	21	Promotion/Deputation/ Direct on contract up to 3 years	- Law Degree with 10 years standing	-
Deputy Registrar Research	20	Promotion/ Transfer/ Deputation/ Direct on contract up to 3 years terminable on one month's notice	- - Law Degree with 10 years standing	1. Subject to vacancy 2. Seniority–cum-fitness 3. 22 years in B-17 & above OR 18 years in B-18 & above in case of direct recruitment in B-18 OR 15 years in B-19 in case of direct recruitment in B-19
Research Officer	19	Promotion/ Deputation/ Direct on contract up to 3 years terminable on one month's notice	- Law Degree with 5 years experience as a lawyer, judicial officer, researcher or teacher relaxable in case of suitable candidates; Proficiency in MS Office including online access to legal databases; and 2 sample legal academic writings	1. Subject to vacancy 2. Seniority–cum-fitness 3. 17 years in B-17 & above OR 15 years in B-18 in case of direct recruitment in B-18 OR 10 years in B-19 in case of direct recruitment in B-19 4. The RO will be required to complete prescribed training course before or after further promotion: [1][5. A Research Officer (BS-19), after having completed 10 years service in BS-19, will be upgraded to BS-20 and nomenclature will be Senior Research Officer.] Provided that he will not be confirmed in B-20 unless he has completed the prescribed training.
Assistant Research Officer	17	Promotion of Research Assistant /Deputation/ Direct	- Law Degree with 3 years experience and proficiency in MS Word including access to search engines/legal data bases	Incumbent on completion of 5 years service in B-17 will be upgraded to B-18 and will further be upgraded to B-19 on completion of 12 years service in B-17 & above ARO will be promoted as Research Officer B-19: 1. Subject to vacancy 2. Seniority–cum-fitness 3. 12 years in B-17 & above
Research Assistant	16	Direct	1. Law Degree 2. Proficiency in MS Office/online access to legal databases	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years service in B-16 4. Incumbent, if not promoted, will be upgraded to B-17 after 5 years in B-16 4. Incumbent will be required to complete prescribed training course before or after promotion as ARO: Provided that he will not be confirmed as ARO unless he has completed the prescribed training course

[1] Inserted by Notification No. F.1/15/2015-SCA, dated 27-07-2019 w.e.f 15-07-2019

HUMAN RIGHTS CELL

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Director General	21	Deputation	-do-	-
Director	[1][19]	Deputation	Judicial officer	-
[2][Assistant Registrar	19	Promotion of PS/SrPS and CA/Sr.CA in rotation	-	1. Subject to vacancy 2. Seniority –cum-fitness 3. Length of service for promotion: 17 years in B-17 & above including 3 years in B-19 OR 15 years in B-18 & above in case of direct recruitment in B-19 OR 12 years in B-19 in case of direct recruitment in B-19 The AR will be required to complete prescribed training course before or after promotion as DR: Provided that he will not be confirmed in B-20 unless he has completed the prescribed training.]
Assistant Registrar	19	Transfer	-	-
Superintendent	18	Transfer	-	-
Judicial Assistant Intern	17 [Fixed pay]	Transfer FG Pool	- -	- -

PERSONAL STAFF OF CHIEF JUSTICE

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Secretary to Chief Justice	20	Direct or otherwise in the discretion of the Chief Justice	-	-
Private Secretary to Chief Justice	19	Transfer/Deputation of an officer of B-18 or B-19 in the discretion of the Chief Justice	-	The incumbent will draw pay and allowances of B-19 during the period he performs duty with the Chief Justice and maintain his seniority on his original post
Staff Officer to Chief Justice	19	Transfer/Deputation of an officer of B-18 or B-19 in the discretion of the Chief Justice	-	The incumbent will draw pay and allowances of B-19 during the period he performs duty with the Chief Justice and maintain his seniority on his original post
Driver to Chief Justice	8	Transfer/Deputation of Driver in the discretion of the Chief Justice	-	The incumbent will draw pay and allowances of B-8 during the period he performs duty with the Chief Justice and maintain his seniority on his original post

[1] Subs. by Notification No. F.1/58/2019-SCA for "20" dated. 27-06-2019.
[2] Subs. by Notification No. F.1/15/2015-SCA for "Deputy Director" dated. 24-11-2015.

PRIVATE SECRETARIES

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Private Secretary	17	By promotion of APS By deputation	- -	Incumbent on completion of 5 years service in B-17 will be upgraded to B-18 and will further be upgraded to B-19 after 12 years service in B-17 & above and nomenclature of the post will be Sr.PS PS/Sr.PS will be promoted as Assistant Registrar B-19 in rotation with CA/Sr.CA: 1. Subject to vacancy and 2. Seniority-cum-fitness 3. 12 years service in B-17 & above
Assistant Private Secretary	16	30 % Promotion of Stenotypist 70 % Direct	- Bachelor Degree + shorthand speed 110 wpm plus proficiency in MS Office including typing speed 40 wpm in case of direct recruitment	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years service in B-16 4. Incumbent, if not promoted, will be upgraded to B-17 after 5 years in B-16 5. Incumbent will be required to complete prescribed training course including proficiency test in shorthand/typing before or after promotion as PS: Provided that he will not be confirmed as PS unless he has completed the prescribed training course.
Stenotypist	14	Direct	Intermediate + shorthand speed 80 wpm plus proficiency in MS Office including typing speed 40 wpm	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years service in B-14 4. Incumbent, if not promoted, will be upgraded to – B-15 after 5 years and B-16 after 10 years service in B-14 & above

COURT ASSOCIATES

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Court Associate	17	By promotion of JA	-	Incumbent on completion of 5 years service in B-17 will be upgraded to B-18 and will further be upgraded to B-19 on completion of 12 years service in B-17 and above and nomenclature of the post will be Sr.CA CA/Sr.CA will be promoted as Assistant Registrar B-19 in rotation with PS/Sr.PS: 1. Subject to vacancy 2. Seniority-cum-fitness 3. 12 years service in B-17 & above

Judicial Assistant	16	Direct	1. Law Degree 2. Proficiency in MS Office	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years service in B-16 4. Incumbent, if not promoted, will be upgraded to B-17 after 5 years in B-16 5. Incumbent will be required to complete prescribed complete prescribed training course before or after promotion as CA: Provided that he will not be confirmed as CA unless he has completed the prescribed training course.

LIBRARY

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Librarian	18-19	Promotion Deputation or Direct on contract for a period of 3 years terminable on one month's notice	- - Second class Master Degree with Diploma in Library Science or Bachelor of Library Science and 7 years experience plus proficiency in MS Office	The B-18 incumbent will be upgraded to – B-19 after 7 years in B-18 and B-20 after 14 years in B-18 & above and nomenclature will be Senior Librarian The B-19 incumbent will be upgraded to B-20 after 7 years in B-19 and nomenclature will be Senior Librarian
[1]Consultant Library Affairs	18	-	-	-
Deputy Librarian	17-18	By promotion	-	1. Subject to vacancy 2. Seniority-cum-fitness 3. 7 years service in B-16 4. Incumbent, if not promoted, will be upgraded to – B-18 after 7 years in B-17 and B-19 after 12 years in B-17 & above and nomenclature will be Senior Deputy Librarian
Assistant Librarian	16	50% by promotion 50% by direct recruitment	Second class Master Degree with Diploma in Library Science or Bachelor of Library Science and 3 years experience plus proficiency in MS Office/online access to legal databases in case of direct recruitment.	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent, if not promoted, will be upgraded to – B-17 after 7 years in B-16 and B-18 after 12 years in B-16 & above

[1]Added by Notification No. F.24/359/83-SCA dated. 15-02-2017.

Library Assistant	14	66% by promotion 33% by direct recruitment	- Second class Bachelor Degree with Diploma in Library Science or Bachelor of Library Science and proficiency in MS Office	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent, if not promoted, will be upgraded to B-15 after 5 years in B-14
Junior Library Assistant	11	50% by promotion 50% by direct recruitment	- Intermediate with certificate in Library Science and proficiency in MS Office including 35 wpm typing speed in case of direct recruitment	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent, if not promoted, will be upgraded to – B-12 after 5 years in B-11 and B-13 after 8 years in B-11 & above
Library Clerk	9	33% by promotion by selection from amongst the Court staff 66 % by direct recruitment	Intermediate with certificate in Library Science and proficiency in MS Office including 35 wpm typing speed	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent, if not promoted, will be upgraded to – B-10 after 5 years in B-9 and B-11 after 8 years in B-9 & above
Book Binder	5	Direct	Matriculate and 2 years experience	Incumbent will be upgraded to- B-6 after 5 years in B-5 B-7 after 5 years in B-6 [1][B-8 after 5 years in B-7 B-9 after 7 years in B-8 B-10 after 33 years service in B-5 and above till retirement]

IT WING

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Director IT	18-19	Promotion/ Deputation/ Direct on contract for 3 years terminable on one month's notice	- - BS 4 years or MCS or MS (Network/Software/Web) and 5-7 years experience	The B-18 incumbent will be upgraded to – B-19 after 7 years in B-18 and B-20 after 14 years in B-18 & above and nomenclature will be Senior Director IT The B-19 incumbent will be upgraded to B-20 after 7 years in B-19 and nomenclature will be Senior Director IT
Deputy Director Network/Software/ Web	17-18	Promotion	-	1. Subject to vacancy 2. Seniority-cum-fitness 3. 7 years service in B-17 4. The incumbent, if not promoted, will be upgraded to – B-18 after 7 years in B-17 and B-19 after 12 years in B-17 & above and nomenclature will be Senior Deputy Director

[1] Inserted by Notification No. F.1/15/2015-SCA dated 03-09-2019 w.e.f 27-08-2019.

Webmaster	17	Direct	BS (CS) 4 years or MCS or MS (CS) Preference will be given to persons possessing 2 years experience of the field in a well reputed organization/IT Industry	The incumbent, if not promoted, will be upgraded to – B-18 after 7 years in B-17 and B-19 after 12 years in B-17 & above and nomenclature will be Senior Webmaster
Assistant Director Network/Software/ Web	16	Direct	BS 4 years or MCS or MS (Network/Software/Web)	1. Subject to vacancy 2. Seniority-cum-fitness 3. 7 years service in B-16 4. The incumbent, if not promoted, will be upgraded to– B-17 after 7 years in B-16 and B-18 after 12 years in B-16 & above and nomenclature will be Senior Assistant Director
IT Assistant	14	Promotion by selection from the Court staff Direct recruitment	PGD (IT)	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent will be upgraded to – B-15 after 5 years in B-14 and B-16 after 10 years in B-14 & above and nomenclature will be Senior IT Assistant
Computer Supervisor	16	No fresh induction	Not applicable	Incumbent will be granted B-17 after 5 years in B-16 and to B-18 after 7 years in B-17
Data Coder	14	No fresh induction	Not applicable	Incumbent DCs will be upgraded to – B-15 after 5 years and B-16 after 8 years in B-14 & above
Data Entry Operator	12	No fresh induction	Not applicable	Incumbent DEOs will be upgraded to – B-13 after 5 years and B-14 after 8 years & above

ACCOUNTS SECTION

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Accounts Officer	17-18	Promotion/ Deputation/ Direct on contract basis for 3 years terminable on one month's notice	- - M. Com Proficiency in MS Office and 5 years experience	The B-17 incumbent will be upgraded to – B-18 after 7 years in B-17 and B-19 after 12 years in B-17 & above and nomenclature will be Senior Accounts Officer The B-18 incumbent will be upgraded to B-19 after 7 years service in B-18
Assistant Accounts Officer	16	Promotion/ Deputation	-	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years in B-16 4. Incumbent, if not promoted, will be upgraded to - B-17 after 7 years in B-16 and B-18 after 12 years in B-16 & above

Accounts Assistant	14	Selection from the Court staff OR Direct recruitment	- B. Com Proficiency in MS Office for direct recruitment	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years in B-14 in case of direct recruit 4. Incumbent, if not promoted, will be upgraded to – B-15 after 5 years in B-14 and B-16 after 10 years in B-14 & above

PROTOCOL OFFICERS

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Protocol Officer	17-18	Promotion/ Deputation/ Contract for 3 years terminable on 1 month's notice	-	The B-17 incumbent will be upgraded to – B-18 after 5 years in B-17 and B-19 after 12 years in B-17 & above and nomenclature will be Senior Protocol Officer. The B-18 incumbent will be upgraded to – B-19 after 7 years in B-18 and nomenclature will be Senior Protocol Officer, and B-20 after 7 years in B-19
Assistant Protocol Officer	16	50% by promotion 50% by direct	Second class Master Degree or Bachelor Degree with 5 years experience and proficiency in MS Office in case of direct recruitment	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years experience 4. Incumbent, if not promoted, will be upgraded to – B-17 after 5 years in B-16 and B-18 after 12 years in B-17 & above
Protocol Assistant	14	80% promotion 20% direct	- Bachelor Degree and proficiency in MS Office in case of direct recruitment with special aptitude/experience	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years in B-14 in case of direct recruit 4. Incumbent, if not promoted, will be upgraded to – B-15 after 5 years service in B-14 and B-16 after 10 years in B-14 & above
Junior Protocol Assistant	11	33% promotion by selection from amongst the Court staff 66 % direct recruitment	Aptitude and experience Intermediate and proficiency in MS Office in case of direct recruitment	1. Subject to vacancy 2. Seniority-cum-fitness 3. 5 years experience 3. Incumbent, if not promoted, will be upgraded to – B-12 after 5 years in B-11 and B-13 after 8 years in B-11 & above

PUBLIC RELATIONS OFFICER

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Public Relations Officer	17-18	Direct/ Deputation/ Contract upto 3 years terminable on one month's notice	Bachelor Degree in Journalism/Mass Communication with 7 years	The B-17 incumbent will be upgraded to – B-18 after 5 years in B-17 and B-19 after 12 years in B-17 & above

			experience or Master Degree with 5 years	The B-18 incumbent will be upgraded to B-19 after 7 years in B-18

CURATOR

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Curator	17-18	Direct/ Deputation/ Contract for 3 years terminable on one month's notice.	Master Degree in Archeology with 5 years experience OR Bachelor Degree in Museology with 7 years experience	The B-17 incumbent will be upgraded to – B-18 after 5 years in B-17 and B-19 after 12 years in B-17 & above The B-18 incumbent will be upgraded to B-19 after 7 years in B-18

TRANSLATION WING

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Translator	18	Promotion/ Deputation/ Direct on contract upto 3 years terminable on one month's notice.	- - Master Degree in Urdu Language or Literature with 5 years experience AND Proficiency in MS Office and Urdu word processing software	Incumbent will be upgraded to B-19 after 7 years in B-18
Deputy Translator	17	50% Promotion 50% Direct/ Deputation	- Master Degree in Urdu Language or Literature with 3 years experience OR Bachelor Degree in Urdu Language or Literature with 5 years experience AND Proficiency in MS Office and Urdu word processing software	1. Subject to vacancy 2. Seniority-cum-fitness 3. 7 years service in B-17 4. Incumbent, if not promoted, will be upgraded to B-18 after 7 years in B-17
Assistant Translator	16	Direct/ Deputation	Master Degree in Urdu Language or Literature with 1 years experience OR Bachelor Degree in Urdu Language or Literature with 3 years experience and proficiency in MS Office and Urdu word processing software	1. Subject to vacancy 2. Seniority-cum-fitness 3. 7 years service in B-16 4. Incumbent, if not promoted, will be upgraded to B-17 after 7 years in B-16

SENIOR ASSISTANTS

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Senior Assistant	16	100% Promotion	-	Incumbent will be upgraded to B-17 after 5 years in B-16
Assistant Incharge	16	100 % Promotion	-	-
Assistant	14	100% Promotion	-	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent, if not promoted earlier, will be upgraded to – B-15 after 5 years in B-14
Editor of Paper Books	11	100% Promotion	-	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent, if not promoted earlier, will be upgraded to – B-12 after 5 years in B-11 and B-13 after 8 years in B-11 & above
Upper Division Clerk Incharge	9	100% Promotion	No fresh induction	-
Upper Division Clerk	9	100% Promotion	-	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent, if not promoted earlier, will be upgraded to – B-10 after 5 years in B-9 and B-11 after 8 years in B-9 & above
Urdu Typist	8	Direct	As above	Seniority with LDCs for promotion as UDC Incumbent, if not promoted earlier, will be upgraded to – B-9 after 5 years in B-8
Lower Division Clerk	7	90% Direct 10% Promotion by selection from the Court staff	1. Matriculation 2. One year Diploma in IT/proficiency in MS Office 3. Typing speed 40 wpm 4. Preference for Urdu word processing software	1. Subject to vacancy 2. Seniority-cum-fitness 3. Incumbent, if not promoted earlier, will be upgraded to – B-8 after 5 years in B-7 and B-9 after 8 years in B-7 & above

OTHERS

(1)	(2)	(3)	(4)	(5)
Designation	**BPS**	**Mode of Appointment**	**Qualification & experience**	**Conditions for next promotion**
Khateeb	15	Direct/ Promotion	Qari, Hafiz-e-Quran and Fazil Dars-e-Nizami	Incumbent will be upgraded to – B-16 after 5 years in B-15 and to B-17 after 5 years in B-16
Moazzin	8	Direct/ Promotion	Qari or Hafiz-e-Quran or sufficient knowledge in the discretion of Chief Justice	Incumbent will be upgraded to – B-9 after 7 years and B-10 after 15 years
Catering Supervisor	12	Direct/ Promotion of Cook with 15 years service	Sufficient experience in the field	Incumbent will be upgraded to – B-13 after 5 years in B-12 and B-14 after 10 years in B-12 & above

Head Cook	11	Promotion/ Direct recruitment	5 years experience in a Five Star Hotel.	The incumbent, if not promoted, will be upgraded to B-12 after 5 years in B-11.
Cook	3	Direct	Primary School Certificate and 5 years experience in a reputed hotel/restaurant	Incumbent will be upgraded to – B-4 after 5 years in B-3 B-5 after 5 years in B-4 [2][B-6 after 7 years in B-5 B-7 after 7 years in B-6 B-8 after 33 years service in B-3 and above till retirement]
Garage Supervisor	12	Direct	Intermediate with Diploma in Automobile	Incumbent will be upgraded to – B-13 after 5 years in B-12 and B-14 after 10 years in B-12 & above
Caretaker	11	Direct	Matriculation and 3 years experience in the field	Incumbent will be upgraded to – B-12 after 5 years in B-11 and B-13 after 10 years in B-11 & above
Telephone Operator	9	Direct	Intermediate and knowledge/experience of handling PBX system of at least 50 lines	The incumbent with 5 years service will be upgraded to B-10, with 10 years to B-11, with 15 years to B-12, with 20 years to B- 13 and with 25 years to B-14
Motor Mechanic	7	Direct	Sufficient experience in the field	Incumbent will be upgraded to – B-8 after 5 years and B-9 after 10 years in B-7 & above
[1][Operators-cum-Technicians for CCTV System	7	Direct	Intermediate. Short Course:- Ms Office/ Electronics/ Computers/ Electrical. Additional Requirement: Experienced in Operating CCTV Cameras will be given preference.]	-
Driver/HTV Driver Despatch Rider	5	Direct/ Deputation Direct	Instructions issued by the Establishment Division from time to time to be followed as far as practicable	Incumbent will be upgraded to – B-6 after 5 years in B-5 B-7 after 5 years in B-6 B-8 after 5 years in B-7 [2][B-9 after 7 years in B-8 B-10 after 33 years service in B-5 and above till retirement] Driver of Chief Justice will draw pay and allowances of B-8 during the period he performs duty with the Chief Justice
Duplicating Machine Operator	5	-	-	Incumbents will be upgraded to – B-6 after 5 years in B-5 [2][B-7 after 5 years in B-6 B-8 after 5 years in B-7 B-9 after 7 years in B-8 B-10 after 33 years service in B-5 and above till retirement]
[3][Record Sorter	3	No fresh appointment	-	Incumbent will be upgraded to- B-4 after 5 years in B-3 B-5 after 5 years in B-4] [2][B-6 after 7 years in B-5 B-7 after 7 years in B-6 B-8 after 33 years service in B-3 and

[1] Added vide Notification No. F.1/11/2009-SCA, dated 04-12-2015, w.e.f 30-11-2015.
[2] Inserted by Notification No. F.1/15/2015-SCA dated 03-09-2019 w.e.f 27-08-2019.
[3] Added vide Notification No.F.1/15/2015-SCA, dated 29-03-2018, w.e.f 15-07-2015.

				above till retirement]
Qasid Daftry	3	Promotion	-	Incumbent will be upgraded to – B-4 after 5 years in B-3 B-5 after 5 years in B-4 [1][B-6 after 7 years in B-5 B-7 after 7 years in B-6 B-8 after 33 years service in B-3 and above till retirement]
Naib Qasid	2	Direct	-	1. Subject to vacancy 2. Seniority-cum-fitness Incumbent will be upgraded to – B-3 after 5 years in B-2 [1][B-4 after 5 years in B-3 B-5 after 7 years in B-4 B-6 after 7 years in B-5 B-7 after 33 years service in B-2 and above till retirement]
Chowkidar Mali Sweeper Cleaner	2	Direct	-	Incumbent will be upgraded to – B-3 after 5 years in B-2 B-4 after 5 years in B-3 [1][B-5 after 7 years in B-4 B-6 after 7 years in B-5 B-7 after 33 years service in B-2 and above till retirement]

[1] Inserted by Notification No. F.1/15/2015-SCA dated 03-09-2019 w.e.f 27-08-2019.

6.2 THE GOVERNMENT SERVANTS (CONDUCT) RULES, 1964

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The Government Servants (Conduct) Rules, 1964

5th June, 1964

In exercise of the powers conferred by paragraph (a) of clause (2) of Article 178 and clause (1) of Article 179 of the Constitution and of all powers enabling him in that behalf, the President is pleased to make the following rules, namely:-

I. Short title mid commencement.-(1) These rules may he called the Government Servants (Conduct) Rules, 1964.

(2) They shall come into force at once.

2. Extent of application.-These rules apply to every person, whether on duty or on leave within or without Pakistan, serving in a civil capacity in connection with the affairs of the Center and to the members of an All-Pakistan Service during their employment under the Provincial Governments or while on deputation with any other Government, agency, institution or authority:

Provided that the Central Government may, by a notification in the official Gazette, exempt any class of Government servants from the operation of all or any of these rules.

1. Definitions.-(1) In these rules, unless there is anything repugnant in the subject or context,-

(a) Government' means the Central Government and in respect of officers of All-Pakistan Service serving in Province, the Provincial Government;

(b) Government servant' means a person to whom these rules apply; and (c) 'member of a Government servant's family includes

(i) his wife, child or step-child, whether residing with the Government servant or not; and

(ii) any other relative of the Government servant or his wife, when residing with an wholly dependent upon the Government servant, but does not include a wife legally separated from the Government servant, or a child or step-child who is no longer in any way dependent upon him, or of whose custody the Government servant has been deprived by law.

(2) Reference to a wife in clause (c) of sub-rule (1) shall he construed as reference to a husband where the Government servant is a woman.

4. Repeal of previous Conduct Rules.-The Government Servants Conduct Rules made under section 96-B of the Government of India Act, I'm, and the Secretary of State Service

(Conduct) Rules, 1942, made under sections 247(1), 250 and 269 of the Government of India Act, 1935 in so far as they applied to the person to whom these rules apply are hereby repealed, but such repeal shall not affect anything duly done or suffered under those rules.

5. Gifts--[(1) Save as otherwise provided in this rule, no Government servant shall, except with the previous sanction of the Government, accept or permit any member of his family to accept, from any person any gift the receipt of which will place him under any form of official obligation to the donor. If, however, due to very exceptional reasons, a gift cannot he refused, the same may, under intimation to the Cabinet Division, he kept for official use in the Department or Organization in which he is working]; and

(2) If any question arises whether receipt of a gift places a Government servant under any form or official obligation to the donor, the decision of the Government thereon shall he final.

(3) If any gift is offered by the head or representative of a foreign State, the Government servant concerned should attempt to avoid acceptance of such a gift, if he can do so without giving offence. If, however, he cannot do so, he shall accept the gift and shall report its receipt to the Establishment Division for orders as to its disposal.

(4) Government servants are prohibited from receiving gift of any kind for their person or for members of their families from diplomats, consular and other foreign Government representatives or their employees who are stationed in Pakistan. If, however, due to very exceptional reasons, a gift cannot he refused, it should invariably be deposited in the Toshakhana.

(5) Government servants, except those belonging to Grades 1 to 4, are prohibited from accepting cash awards offered by the visiting foreign dignitaries. In case, however, it becomes, impossible to refuse without causing offence to the visiting dignitary, the amount may be accepted and immediately deposited in the Treasury under the proper head of account. ;

(6) The responsibility for reporting the receipt of a gift shall devolve on the individual recipient. All gifts received by a Government servant, irrespective of their prices, must be reported to the Toshakhana in the Cabinet Division. However, the responsibility for reporting to the Cabinet Division receipt of gifts, including the names of recipients, from foreign dignitaries or delegations who come to Pakistan or when Pakistan dignitaries or delegations go abroad, shall lie with the Chief of Protocol or his representative in the former case, and with the Ambassador concerned in the later case. In the case of foreign delegation or visiting dignitaries with whom the Chief of Protocol is not associated, the Ministry sponsoring the visit shall be responsible to supply the details of gifts, if received, and the list of recipients to the Cabinet Division and the Ministry of Foreign Affairs.

(7) The value of gifts shall be assessed by the Cabinet Division and the monetary limits up to which and the condition subject to which, the gifts may he allowed to be retained by the recipient shall be as follows :--

(a) gifts valued up to Rs. 1,000 may be allowed to be retained by the recipient;

(b) gifts valued between Rs. 1,000 and Rs. 5,000 may be allowed to be retained by a recipient on his paying 25% of the value of the gift in excess of Rs. 1,000 ; and

(c) gifts of value exceeding Rs. 5,000 may, be allowed to be retained by a recipient in his paying 25% of so much of the value as exceeds Rs. 1,000 hut does not exceed Rs. 5,000 and 15% of so much of the value as exceeds Rs. 5,000.

2. Acceptance of foreign award.-No Government servant shall, except with the approval of the President, accept a foreign award, title or decoration.

Explanation.-For the purposes of this rule, the expression 'approval of the President' means prior approval in ordinary cases and ex post facto approval in special cases where sufficient time is not available for obtaining prior approval.

7. Public demonstration in honour of Government servants.-(1) No Government servant shall encourage meetings to be held in his honour or presentation of addresses of which the main purpose is to praise him.

(2) Notwithstanding anything contained in sub-rule (1)-

(a) a Government servant may, with the previous permission of his next higher officer, take part in the raising of funds to be expended for any public or charitable purpose ;

(b) a Government servant may take part, with the previous sanction of the Government in the raising of funds to be expended for any public or charitable object connected with the name of any other Government servant or a person who has recently quitted the service of the Government;

(c) the Head of a Pakistan Mission abroad while so posted, may attend a public meeting or entertainment held in his honour.

(3) When a Government servant takes part in the raising of funds in accordance with the provision of clauses (a) and (6) of sub-rule (2) he shall he required to keep regular accounts and submit them to his next higher officer for scrutiny.

(4) Clauses (a) and (b) of sub-rule (2) shall not apply to officers of the Police Service of Pakistan and the Pakistan Taxation Service.

8. Gift to medical officer.-Subject to the departmental rules governing the question, a medical officer may accept any gift of moderate value offered in good faith by any person or body of persons in recognition of his professional services.

9. Subscriptions. 'Subject to rule 7, no Government servant shall, except with the previous sanction of the Government, ask for or accept or in any way participate in the raising of any subscription or other pecuniary assistance of any object whatsoever.

10. Lending and borrowing.-(1) No Government servant shall lend money to, or borrow money from, or place himself under any pecuniary obligation to, any person within the local limits of his authority or any person with whom he has any official dealings:

Provided that the above rule shall not apply to dealing in the ordinary course of business with a joint stock company, hank or a firm of standing.

(2) When a Government servant is appointed or transferred to post of such a nature that a person from whom he has borrowed money or to whom lie has otherwise placed himself under-a pecuniary obligation will be. subject to his official authority, or will reside, possess immovable property, or carry on business within the local limits of such authority, tie shall forthwith declare the circumstances to the Government through the usual channel.

Non-gazetted Government servants shall make the declaration referred to in sub-rule (2) to the head of their office.

(3) This rule, in so far as it may he construed to relate to loans given to or taken from cooperative societies registered under the Co-operative Societies Act, 1912 (II of 1912), or under any law for the time being in force relating to the registration of Cooperative Societies, by the Government servants, shall, be subject to any general or special restrictions or relaxations made or permitted by the Government

11. Buying and selling of movable and immovable property.-(1) A Government servant who intends to transact any purchase, sale or disposal by other means of movable or immovable property exceeding in value [Rs. 25,000 Twenty five thousand rupees)] with any person shall apply for permission to the Head of the Department of the Secretary to the Government, as the case may be. When the Government servant concerned is himself the Head of Department or Secretary to the Government, he shall apply through the Secretary of the Ministry such application shall state fully the circumstances, the price offered or demanded and, in the case of disposal otherwise than by sale, the method of disposal. Thereafter such Government servant shall act in accordance with such orders as may bepassed by the Government:

Provided that all transactions with a person who is an official subordinate of the Government servant, should he reported to the next higher authority. **Explanation.**-In this rule, the term 'property' includes agricultural or urban land, bonds, shares and securities hut does not include a plot purchased for building a house from a cooperative housing society or a Government housing scheme.]

(2) Notwithstanding anything contained in sub-rule (1), a Government servant who is about to quit the station, district or other local limits for which he has been appointed may, without reference to any authority, dispose of any of his movable property by circulating lists of it generally or by causing to he sold by public auction.

12. Declaration of immovable property.- (1) Every Government servant shall, at the time of entering Government service make a declaration to the Government, through the usual channel, of all immovable properties which may be held by him or by a member of his family dependent upon him. Such declaration shall state the district within which the property is situated and shall give such further information as the Government may, by general or special order, require.

(2) All accretions made subsequent to the declaration filed under sub-rule (1) shall he brought to the notice of the Government, through the usual channel, within three months of such accretion.

13. Disclosure of assets immovable and liquid.-A Government servant shall disclose all his assets, immovable as well as liquid, when required to do so by the Government.

14. Speculation and investment.-(1) No Government servant shall speculate in investments. For the purpose of this sub-rule, the habitual purchase and sale of securities of notoriously fluctuating value shall be deemed to be speculation in investments.

(2) No Government servant shall make, or permit any member of his family to make, any investment likely to embarrass or influence him in the discharge of his official duties.
(3) No Government servant shall make any investment the value of which is likely to be affected by some event of which information is available to him as a Government servant and is not equally available to the general public. (4) If any question arises whether a security or an investment is of the nature referred to in any of the foregoing sub-rules, the decision of the Government thereon shall he final.

15. Promotion and management of companies, etc.--No Government servant shall, except with the previous sanction of the Government take part in the promotion, registration or management of any bank or company : Provided that a Government servant may, subject to the provisions of any general or special order of the Government, take part in the promotion, registration or management of a Cooperative Society registered under the Cooperative Societies Act, 1912 (II of 1912), or under any similar law.

16. Private trade, employment or work.-(l) No Government servant shall. except with the previous sanction of the Government, engage in any trade or undertake any employment or work, other than his official duties: Provided that he may, without such sanction, undertake honorary work of a religious, social or charitable nature or occasional work of a literary or artistic character, subject to conditions that his official duties do not thereby suffer and that the occupation or undertaking does not conflict or is not inconsistent with the position or obligations as a Government servant; but he shall not undertake or shall discontinue such work if so directed by the Government. A Government servant who has any doubt about the propriety of undertaking any particular work should refer the matter for the orders of the Government.

(2) Notwithstanding anything contained in sub-rule (1), no Government servant shall associate himself with any private trust, foundation or similar other institution which is not sponsored by the Government.

(3) This rule does not apply to sports activities and membership of recreation clubs.

17. Insolvent and habitual indebtedness.-A Government servant shall avoid habitual indebtedness. If a Government servant is adjudged or declared insolvent or if the whole or that portion of his salary which is liable to attachment is frequently attached for debt, has been continuously so attached for a period of two years, or is attached for a sum which in ordinary

circumstances, he cannot repay within a period of two years, he shall be presumed to have contravened this rule unless he proves that the insolvency or indebtedness is the result of circumstances which, with the exercise of ordinary diligence, he could not have foreseen or over which he had no control and has not proceeded from extravagant or dissipated habits. A Government servant who applies to be or is adjudged or declared insolvent shall forthwith report his insolvency to the Head of the office or Department or to the Secretary of the Ministry, as the case may be, in which he is employed.

17-A. Intimation of involvement and conviction in a criminal case.-If a Government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction, as the case may be, to the notice of the Head of the Office or Department immediately or, if he is arrested and released on hail, soon after such release.

18. Unauthorised communication of official documents or information .-No Government servant shall, except in accordance with any special or general order of the Government, communicate directly or indirectly any official document or information to a Government servant unauthorised to receive it, or to a non-official person, or to the Press.

19. Approach to members of the Assemblies, etc.-No Government servant shall, directly or indirectly, approach any Member of the National Assembly or a Provincial Assembly or any other non-official person to intervene on his behalf in any matter.

20. Management etc., of newspapers or periodicals.-No Government servant shall, except with the previous sanction of the Government, own wholly or in part, or conduct or participate in the editing or management of, any newspaper or other periodical publication.

21. Radio broadcasts and communications to the Press.-No Government servant shall, except with the previous sanction to the Government or any other authority empowered by it in this behalf, or in the bona fide discharge-of his duties, participate in a radio broadcast or contribute any article or write any letter, either anonymously or in his own name or in the name of any other person to any newspaper or periodical : Provided that such sanction shall generally he granted if such broadcasts or such contribution or letter is not, or may not be considered likely to jeopardize the integrity of the Government servant, the security of Pakistan or friendly relations with foreign States, or to offend public order decency or morality, or to amount to contempt of Court, defamation or incitement to an offence :

Provided further that no such sanction shall he required if such broadcast or such contribution or letter is of a purely literary, artistic or scientific character.

22. Publication of information and public speeches capable of embarrassing the Government.-No Government servant shall, in any document published, or in any communication made to the Press, over his own name, or in any public utterance, or radio broadcast delivered by him, make any statement of fact or opinion which is capable of embarrassing the Government:

Provided that technical staff (both gazetted and non-gazetted) may publish research papers on technical subjects, if such papers do not express views on political issues Or on Government policy and do not include any information of a classified nature.

[22-A. Where a Government servant submits the draft of a literary artistic or scientific article or hook for obtaining previous sanction for its publication, he shall he informed within three months of his doing so whether he has or has not such sanction: and, if no communication is issued to him within that period he shall he entitled to presume that the sanction asked for has been granted.]

23. Evidence before committees .-(1) No Government servant shall give evidence before a public committee except with the previous sanction of the Government.

(2) No Government servant giving such evidence shall criticize the policy or decision of the Central or a Provincial Government.

(3) This rule shall not apply to evidence given before statutory committees which have power to compel attendance and the giving of answers, not to evidence given in judicial inquiries.

24. Taking part in politics and elections.-(1) No Government servant shall take part in, subscribe in aid of or assist in any way, any political movement in Pakistan or relating to the affairs of Pakistan.

(2) No Government servant shall permit any person dependent on him for maintenance or under his care or control to take part in, or in any way assist, any movement or activity which is, or tends directly or indirectly to he, subversive of Government as by law established in Pakistan.

(3) No Government servant shall canvass or otherwise interfere or use his influence in connection with or take part in any election to a legislative body, whether in Pakistan or elsewhere:
Provided that a Government servant who is qualified to vote at such election may exercise his right to vote ; but if he does so, he shall give no indication of the manner in which he proposes to vote or has voted.

(4) No Government servant shall allow any member of his family dependent on him to indulge in any political activity, including forming a political association and being its members, or to act in a manner in which he himself is not permitted by sub-rule (3) to act.

(5) A Government servant who issues an address to electors or in any other manner publicly announces himself or allows himself to be publicly announced as a candidate or prospective candidate for election to a legislative body shall be deemed for the purpose of sub-rule (3) to take part in an election to such body.

(6) The provisions of sub-rules (3) and (5) shall, so far as may he, apply to elections to local authorities or bodies, save in respect of Government servants required or permitted by or under law, or order of the Government, for the time being in force, to be candidates at such ejections.

(7) If any question arises, whether any movement or activity falls within the scope of this rule, the decision of the Government thereon shall be final.

25. Propagation of sectarian creeds, etc.-No Government servant shall propagate such secretarian creeds or take part in such secretarian controversies or indulge in such sectarian partiality and favouritism as are likely to affect his integrity in the discharge of his duties or ,to embarrass the administration or create feelings of discontent or displeasure amongst the Government servants in particular and amongst the people in general.

25-A. Government servant not to express views against ideology of Pakistan. 'No Government servant shall express views detrimental to the ideology or integrity of Pakistan.

25-B. Government servant not to take part in or assist, any public demonstration against Government decisions etc.-No Government servant shall take part in, or in any manner assist, any public demonstration directed against a Government decision or permit any member of his family dependent on him to do so.

26. Nepotism, favouritism and victimization, etc.-No Government servant shall indulge in provincialism, parochialism, favouritism, victimization and wilful abuse of office.

27. Vindication by Government servants of their public acts or character.-A Government servant may not, without the previous sanction of the Government, have recourse to any Court or to the Press for the vindication of his public acts or character from defamatory attacks. In granting sanction, the Government, will ordinarily hear the cost of the proceedings and in other cases leave the Government servant to institute them at his own expense. In the latter case, if he obtains a decision in his favour, the Government may reimburse him to extent of the whole or any part of the cost.
Nothing in this rule limits or otherwise affects the right of a Government servant to indicate his private acts or character.

28. Membership of service associations.-No Government servant shall he a member, representative or officer of any association representing or purporting to represent, Government servants or any class of Government servants, unless such association satisfies the following conditions, namely :-

(a) Membership of the association and its office-bearers shall he confined to a distinct class of Government servants and shall be open to all Government servants of that class.
(b) The association shall not be in any way connected with, any political party or organization, or engage in any political activity.

(c) The association shall not be in any way connected with, or affiliated to any association which does not, or any federation of association which do not, satisfy condition (a).

(d) The association shall not

(i) issue or maintain any periodical publication except in accordance with any general or special order of the Government;

(ii) except with the previous sanction of the Government, publish any representation on behalf of its members, whether in the Press or otherwise.

(e) The association shall not, in respect of any election to a legislative body, or to a local authority or body, whether in Pakistan or elsewhere--

(i) pay, or contribute towards, any expenses incurred in connection with his candidature by a candidate for such election ;

(ii) by any means support the candidature of any person for such election ; or

(iii) undertake or assist in the registration of electors, or the selection of a candidate for such election.

(f) The association shall not-

(i) maintain, or contribute towards the maintenance, of any member of a legislative body, or of any member of a local authority or body, whether in Pakistan or elsewhere ;
(ii) pay, or contribute towards the expensed of any trade union which has constituted a fund under section 16 of the Trade Unions Act, 1926 (XVI of 1926).

29. Use of political or other influence.-Ho Government servant shall bring or attempt to bring political or other outside influence, directly or indirectly, to bear on the Government or any Government servant in support of any claim arising in connection with his employment as such.

30. Approaching foreign missions and aid-giving agencies.-No Government servant shall approach, directly, or indirectly, a foreign Mission in Pakistan or any foreign aid-giving agency to secure for himself invitations to visit a foreign country or to elicit offers of training facilities abroad.

31. Delegation of power.-The Government may, by general or special order, delegate to any officer or authority subordinate to it all or any of its powers under these rules and may, by such order, prescribe the channel through which reports shall be made to the Government and the officers receipt by Whom of such reports shall be regarded as receipt of the report by the Government within the meaning of these rules.

32. Rules not to be in derogation of any law, etc.-Nothing in these rules shall derogate from the provisions of any law, or of any order of any competent authority, for the time being in force, relating to the conduct of Government servants.

6.3 THE GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 1973

In exercise of the powers conferred by section 25 of the Civil Servants Ordinance, 1973 (No.XIV of 1973), the President is pleased to make the following rules, namely: -

1. Short title, commencement and application. -(1) These rules may be called the Government Servants (Efficiency and Discipline) Rules, 1973.

(2) They shall come into force at once and shall apply to every civil servant.

2. Definitions. - In these rules unless the context otherwise requires,-

(1) **accuse** means a Government servant against whom action is taken under these rules;

(2) **authority** means the appointing authority prescribed in rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973.

Provided that in the case of disciplinary proceedings already initiated against a Government servant before 14th June, 2000, the powers of authority shall be exercised by the officer designated as such before the aforesaid date.

(3) **authorised** officer means an officer authorized by the authority to perform functions of an authorized officer under these rules or, if no officer is so authorized, the authority;

(4) **misconduct** means conduct prejudicial to good order or service discipline or contrary to Government Servants (Conduct) Rules, 1964 or unbecoming of an officer and, a gentlemen and includes any act on the part of a Government servant to bring for attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government officer in respect of any matter relating to the appointment, promotion , transfer, punishment, retirement or other conditions of service of a Government servant; and

(5) **Penalty** means a penalty which may be imposed under these rules.

3. **Grounds for penalty**.-Where a Government servant, in the opinion of the authority-

(a) is inefficient or has ceased to be efficient; or

(b) is guilty of misconduct; or

(c) is corrupt, or may reasonably be considered corrupt because-

(i) he is, or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property disproportionate to his known sources of income; or

(ii) he has assumed a style of living beyond his ostensible means; or

(iii) he has persistent reputation of being corrupt; or

(d) is engaged , or is reasonably suspected of being engaged, in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person and his retention in service is, therefore, prejudicial to national security, the authority may impose on him one or more penalties.

4. Penalties.-(1) The following are the minor and major penalties, namely-

(a) **Minor Penalties**:

censure;

(i) withholding, for a specific period, promotion or increment, otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post.

(ii) stoppage, for a specific period, at an efficiency bar in the time scale, otherwise than for unfitness to cross such bar;

(iii) recovery from pay of the whole or any part of any pecuniary loss cause to Government by negligence or breach of orders;

(b) **Major Penalties**:

(i) reduction to a lower post or time-scale, or to a lower stage in a time scale;

(ii) compulsory retirement;

(iii) removal from service; and

(iv) dismissal from service.

(2) Removal from service does not, but dismissal from service does, disqualify for future employment

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` (3) In this rule removal or dismissal from service does not include the discharge of a person-

(a) appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or

(b) appointed, otherwise than under a contract, to hold a temporary appointment, on the expiration of the period of appointment; or

(c) engaged under a contract in accordance with the terms of the contract.

5. Inquiry Procedure.-(1) The following procedure shall be observed when a Government servant is proceeded against under these rules:-

(i) In case where a Government servant is accused of subversion, corruption or misconduct, the authorized officer may require him to proceed on leave or, with the approval of the authority suspend him, provided that any continuation of such leave or suspension shall require approval of the authority after every three months.

Provided further that where the authority is President or Prime Minister, the Powers of the authority under this clause shall be exercised by the Secretary, Establishment Division.

(ii) The authorized officer shall decide whether in the light of facts of the case or the interests of justice an inquiry should be conducted through an Inquiry Officer or Inquiry Committee. If he so decides, the procedure indicated in rule 6 shall apply.

(iii) If the authorized officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall-

(a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of the action; and

(b) give him a reasonable opportunity of showing cause against that action: Provided that no such opportunity shall be given where the authority is satisfied that in the interest of the security of Pakistan or any part thereof it is not expedient to give such opportunity.

(iv) On receipt of the report of the Inquiry Officer or Inquiry Committee ,or where no such officer or Committee is appointed, on receipt of the explanation of the accused, if any, the authorized officer shall determine whether the charge has been proved. If it is proposed to impose a minor penalty he shall pass orders accordingly. If it is proposed to impose a major penalty, he shall forward the case to the authority along with the charge and statement of allegations served on the accused, the explanation of the accused, the findings of the Inquiry officer or Inquiry Committee, if appointed, and his own recommendations regarding the penalty to be imposed. The authority shall pass such orders as it may deem proper.

(2) The exercise of powers under clauses (i) and (iv) of sub-rule (1) by the authorized officers in the Pakistan Missions abroad shall, unless already so provided, always be subject to the approval of the authority.

6. Procedure to be observed by the Inquiry Officer and Inquiry Committee.- Where an Inquiry Officer or Inquiry Committee is appointed, the authorized Officer shall-

(1) Frame a charge and communicate it to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration.

(2) Require the accused within a reasonable time, which shall not be less than seven days or more than fourteen days from the day the charge has been communicated to him, to put in a written defence and to state at the same time whether he desires to be heard in person.

(3) The Inquiry Officer or the Committee as the case may be, shall enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him.

(4) The Inquiry Officer or the Committee, as the case may be, shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing. However, every adjournment, with reasons there for shall be reported forthwith to the authorized officer. Normally no adjournment shall be for more than a week.

(5) Where the Inquiry Officer or the Committee, as the case may be, is satisfied that the accused is hampering, or attempting to hamper, the progress of the enquiry he or it shall administer a warning, and if thereafter he or it is satisfied that the accused is acting in disregard of the warning, he or it shall record a finding to that effect and proceed to complete the enquiry in such manner as he or it thinks, best suited to do substantial justice.

(6) The Inquiry Officer or the Committee, as the case may be, shall within ten days of the conclusion of the proceedings or such longer period as may be allowed by the authorized officer, submit his or its findings and the ground thereof to the authorized officer.

6-A Revision. (1) Subject to sub-rule (2), the authority may call for the record of any case pending before, or disposed of by, the authorized officer and pass such order in relation thereto as it may deem fit;

(2) No order under sub-rule (1) shall b passed in respect of an accused unless the authorized officer to be designated by the authority has informed him in writing of the grounds on which it is proposed to make the order and has been given an opportunity of showing cause against it, including an opportunity of personal hearing if requested by the accused or is otherwise necessary in the interest of justice, in particular, when the authority contemplates to pass an order adverse to the interest of the accused:

Provided that no such opportunity shall be given where the authority, for reasons to be recorded in writing, is satisfied that, in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity.

7. Powers of Inquiry Officer and Inquiry Committee.-(1) For the purpose of an inquiry under these rules, the Inquiry Officer and the Inquiry Committee shall have the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (XLV of 1860).

8. Rule 5 not to apply in certain cases.- Nothing in rule 5 shall apply to a case-

(a) where the accused is dismissed or removed from service or reduced in rank, on the ground of conduct which has led to a sentence of fine or of imprisonment; or

(b) Where the authority competent to dismiss or remove a person from service, or to reduce a person in rank, is satisfied that, for reasons to be recorded in writing by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause.

8-A. Action in respect of Government servant required to proceed on leave. -If a Government servant proceeding on leave in pursuance of an order under sub-rule (1) of rule 5 is not dismissed, removed from service, reduced in rank or compulsory retired, he shall be required to rejoin duty and the period of such leave shall be treated as duty on full pay.

9. Procedure of inquiry against government servants serving in Provincial Governments or working on deputation outside their department or service to which they belong.- When a government servant, to whom these rules apply, is serving under a Provincial government or in a department, outside the department or service to which he belongs, or in a statutory organization, corporate body, or local authority, and the borrowing authority wants to initiate disciplinary proceedings against such government servant under these rules, the borrowing authority shall forward to the concerned lending authority a report with supporting documents on the basis of which disciplinary proceedings are proposed, and, if considered necessary, it may with the approval of the lending authority place him under suspension or send him on forced leave. On receipt of report from the borrowing authority, the lending authority shall take action as prescribed by these rules.

10. Appeal.-A person on whom a penalty is imposed shall have such right of appeal as may be prescribed under Civil Servants (Appeal) Rules, 1977:

Provided that, where the penalty is imposed by order of the President, there shall be no appeal but the person concerned may apply for review of the order.

10-A. Appearance of Counsel.-No party to any proceedings under these rules before the authority, the authorized officer, and Inquiry Officer or an Inquiry Committee shall be represented by an advocate.

11. Repeal. -The Government Servants (Efficiency and Discipline) Rules, 1960 in their application to the Government servants to whom these rules apply and the Civilian Employees in Defense Services (Classification, Control and Appeal) Rules, 1961 are hereby repealed, but the repeal thereof shall not affect any action taken or any thing done or suffered there under.

6.4 A GUIDE TO PERFORMANCE EVALUATION

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SECTION 1

INTRODUCTION

`But Allah is not unmindful of what ye do!"
(Al-Quran S. II-140).

1.1 `Performance Evaluation' may be termed as a system of making judgments about performance of officials of various levels by their superiors in order to guide selections and other personnel decisions. Evaluation Reports (Form S. 121-A to G) rendered by reporting officers, on the performance of officials serving under them constitute the most important basis of Evaluation. The character roll dossier maintained for the purpose contains a systematically prepared and carefully assembled performance record of the official concerned.

1.2 The Establishment Division of the Government of Pakistan is responsible for issue of policy directions for preparation and maintenance of the confidential records and standardisation of report writing forms. A centralised policy control ensures uniformity of practice and procedure throughout the range of the Federal Government. It is also responsible for maintenance of Character Rolls of officers of the All-Pakistan Unified Grades, the cadres administratively controlled by it *e.g.,* Office Management and Secretariat Groups, and duplicate PER dossiers of other BPS- 17 and above officers. Detailed instructions on all important aspects of the reporting system have already been issued from time to time. Instructions of current application have been reproduced in this Hand Book after suitable editing. Some of the important points have also been printed on the Forms itself for convenience of the reporting/countersigning officers and others responsible for custody of the character roll.

1.3 Since the Evaluation reports constitute an aid to selections for training, appointments/transfers, promotions, confirmations or screening of officials, it is essential that they are written most carefully. A reporting officer before he embarks on the report writing work should try to comprehend the characteristics listed in the Evaluation Report Forms. The report should give a clear picture of the officer reported upon *viz* personal qualities, standard of performance, dealings with others, potential growth and his suitability for promotion to special posts according to individual aptitude. Similarly, the countersigning officers should scrutinise the report scrupulously, in accordance with the prescribed procedure before countersigning it.

1.4 The revised performance evaluation report form (S- 121 -G) was introduced by the Establishment Division in 1982 to reflect an officer's strong and weak points more objectively and to ensure that such performance evaluation effectively serves its true purpose. The revised form is by now well understood and generally accepted to have improved the quality of reporting. The new form and promotion policy in fact constitute the key elements in personnel administration but their usefulness is ultimately dependent on objective reporting. The attention of the reporting officers/countersigning officers is drawn to the deficiencies commonly noted in such reports.

(1) **Assessment by Reporting Officer**

Many reporting officers are overly generous in their assessment. In some extreme cases, reporting officers have rated all officers serving with them as "very good" which is obviously a misjudgement. Such reporting places equally good officers of the same group working elsewhere at a disadvantage since their work is evaluated under more objective and stricter criteria. This also applies to cases where all entries under Parts II, III and IV of the PER Form (S-121-G) are recorded as uniformly superlative.

(2) **Counselling**

Adverse remarks are often recorded by the reporting officers without prior counselling to the officer reported upon. This is contrary to the existing instructions and is, in fact, a reflection on the reporting officer. They are expected to counsel an officer about his weak points and advise him how to improve. Adverse remarks should normally be recorded only when the officer fails to improve despite counselling.

(3) **Countersigning**

It has been noticed time and again that countersigning officers, when differing with the assessment or remarks given by a reporting officer, neither score these out nor do they give their own assessment in red ink against the relevant remarks. These entries, particularly on "quality and output of work" and "integrity" are of crucial importance when considering an officer for promotion. Further, some countersigning officers do not initial the appropriate boxes in Part VI of the reports on overall grading and fitness for promotion.

(4) Countersigning officer does not underline in red ink the remarks which in his opinion are adverse.

1.5 It is hoped that reporting and countersigning officers will avoid these deficiencies in reporting. It may be added that the President had been pleased to direct that any casual or intemperate writing of PERs should also be brought to his notice.

[Establishment Secretary's D.O. No. 6/1/84-PP. II dated February 12, 1984. May be read with Establishment Division's OMs No. 1/l0/2000-DS (Coord) dated 18-8-2000, 17-10-2000 and 25-10-2001 (Paras 6.6, 6.7, and 6.8]

SECTION 2

WRITING OF PERFORMANCE EVALUATION REPORTS (ANNUAL AND SPECIAL)

Importance of writing Evaluation reports and precautions to be taken

2.1 The preparation of Evaluation reports is an important and responsible duty. The manner in which Evaluation reports are written will be taken into account in judging the qualities of the reporting officer. The opinions which are expressed should represent the result of careful consideration objective assessment, so that, if called upon, the reporting officer could justify the assessment of his subordinate made by him.

2.2 Reports should be rendered without reference to previous reports by reporting officers. Neither the reporting nor the countersigning officer should pass to another officer any notes or copies of his reports which he may have made.

2.3 Although the reporting officers, should write the Evaluation reports initially without reference to the previous reports to facilitate unbiased judgement, they may afterwards consult previous reports particularly to ensure whether any additional comments are required on points previously reported on.

[c.f. Paras 7-8 of O.M. No. F. 5/3/48-Estt. (SE), dated 1-8-1949.]

2.4 Evaluation reports on officers are of the greatest importance when appointments or promotions have to be made. The necessity of preparing these reports with the utmost care cannot therefore be over emphasised. The following points need to be invariably checked when the reports are written :

(a) The period under review should be clearly stated.

(b) If the report mentions a remediable fault, which is to be or has been communicated, this should always be stated.

(c) The remarks, if written in hand, should be written very legibly.

(d) The initials, name and the designation of the reporting officer being clearly written in block letters or typed under the signature and date on which the report is signed being clearly shown.

(e) If the report mentions an apparently remediable fault, which has not been communicated, the highest authority handling the report should be asked by a note, whether or not this should be done. The decision not to do so, or the letter in which this communication is made, should form Part of the file.

[c.f. Para 2 of O.M. No. 5/3/48-SE. l, dated 12-9-1951.]

2.5 It has been noticed that despite clear instructions regarding writing of PERs and maintenance of character rolls issued by the Establishment Division from time to time and printed on the PER Form itself, a large number of Character Rolls submitted to the various Departmental Promotion Committees, Selection Boards and FPSC etc. by the Ministries/Divisions are neither complete nor upto-date. This causes great difficulty in assessing the suitability of candidates for promotion etc. A few general defects which have frequently come to the notice are given below :-

(i) In a number of cases, the reports for the last 5-10 years are not complete nor is any reason recorded for the missing report of a year.

(ii) Evaluation reports are neither page numbered in ink nor placed in chronological order.

(iii) Due care is not taken while recording assessment and pen picture of the official/officer in PER. Form and writing the remarks in other Parts of the PER with the result that assessment recorded in different parts of that PER. Forms are not inconformity with each other.

(iv) In some cases particulars of officers given in their Character Rolls do not tally with the service and other particulars of the officers furnished separately to F.P.S.C.

(v) Sometimes there is no record to show whether or not the adverse remarks have been communicated to the officers concerned.

(vi) In certain reports names and designations of reporting officers and countersigning officers are not indicated clearly in block letters or typed or rubber stamped below the signature as required under rules.

(vii) Medical examination reports are not regularly sent.

2.6 Evaluation Reports are of extreme importance and the need to prepare them with utmost care can not be over emphasised. It should therefore, be impressed on the officers concerned that the reports should be written and maintained strictly in accordance with the relevant instructions.

[c.f. D.O. Letter No. 6/3/73-A, 11, dated 14-6-1973.]

2.7 Superintendents and non-gazetted staff.-In order to ensure uniformity in the procedure for the preparation, custody etc., of the PERs in respect of officers and other staff, it has been decided that the basic rules printed on the PER form for officers [Form S. 121-G (i)

(ii) & (iii)] and the provisions of the following Office Memoranda shall also henceforth be applicable in cases of other staff including superintendents:

(1) Last sentence of para 6 of O.M No. 8/4/59 E.O.M. dt. 16-1-1960 .....
(2) No. 3/3/60-C dt. 10-6-1960 .....
(3) No. 1/8/60-C dt. 9-2-1961.....
(4) No. 6/14/61-C dt. 7-8-1961 .....
(5) No. 6/16/61-A. II dt. 20-1-1962 .....
(6) Para 5 of O.M. No. 2/17/61-A. IV dt. 31-10-1961 .....
(7) No. 6/5/66-A. II dt. 14-9-1966 .....
(8) No. 4/3/66-A. II dt. 7-1-1967 .....
(9) No. 6/1/67-A. II dt. 20-2-1967 .....
(10) No. 126/1/27-O&M dt. 12-7-1967 .....

(Para 5.20) *Omitted (Para 4.5) (Para 7.4) [Para 2.10) (Para 4.9) (Para 2.59) (Paras 3.35-37) (Para 2.33)
[Para 3.3(iii) (a)]

[c.f. O.M. No. 6/6/65-A. 11, dated 4-11-1965.]

How to write and countersign the Reports

2.8 Instructions for the Reporting Officers.-

(i) While reporting on your subordinates:

(1) Be as objective as possible.
(2)Be as circumspect as possible.
(3) Be clear and direct, not ambiguous or evasive in your remarks.
(4)Avoid exaggeration and gross understatement.

*Note.- For latest instructions see para 7.

(ii) State whether any of the defects reported have already been brought to the notice of the officer concerned and also whether he has or has not taken steps to remedy them.

(iii) Fill the form in duplicate by initialling the relevant boxes in both the original and the duplicate copies. You may, if necessary, have your views under "Pen Picture" typed; in that case affix your signature at the end of the "Pen Picture".

[c.f. PER Form S. 121-A (Rev) Page 4, Section C.]

*[(iv) The President had desired that undue generosity or harshness in the PERs should be pointed out to the reporting/countersigning officers.

(v) It has to be kept in view that too generous reporting places equally good officers of the same group working elsewhere at a disadvantage.]

*[c.f. Estt. Secy's DO. No. 2/6/82-PD-11, dated 15th April, 1982 and D.O. No. 2/23/82-PD. 11, dated

27th May, 1982.]

(vi) The special entry regarding the fitness of a Government servant for continued retention in service will commence 3 years before he is due to complete 25 years. These instructions apply to Gazetted Officers only.

[c.f. O.M. Nos. 6/4/78-PD-II, dated the 13th February, 1979 and dated the 2nd May, 1979.]

2.9 Manner and style of dress of officers.-Attention is invited to para 8 of the President's Directive issued *vide* Cabinet Division letter No. 8/503/ 79-Imp, dated 7th November 1979. The reporting officers are required to indicate in the pen picture of an officer's PER whether his manner and style of dress etc. is ostentatious or foppish to the point of being objectionable. This will take effect from the PERs for the year 1979. Instructions may be issued to all concerned for strict compliance.

[c.f. O.M. No. 1/2/79-A. II, dated 18th December, 1979.]

2.10 *(a) Use of typewriter in preparation of the* Reports.-According to the existing orders the Evaluation Reports on Gazetted Officers should be written in duplicate. The Evaluation Reports (both original and duplicate) are normally required to be written in the reporting officer's own hand. It has now been decided that while the reporting officer must continue to initial the relevant boxes in both original and the duplicate copies of the reports, the views expressed under pen picture may be typed and signed by the reporting officer.

[Extract from O.M. No. 6/16/61-A. 11, dated 20-1-1962.]

(b) Name and designation of the Reporting Officer.-In many cases the signature of the reporting officers on the reports are illegible. This means that after some time it may, in such cases, be impossible to identify the reporting officer. The name and designation of the reporting officer should, therefore, invariably be typed or written in block letters on the evaluation reports.

[Extract from D.O. Letter No. 9(5)/52-SE. III, dated 11-2-1953.]

2.11 The Establishment Division have been requesting all concerned that remarks in the Evaluation Reports of Government employees, if written in hand, should be legible, the name and designation of the reporting Officer should be clearly written in block letters or typed just below their signatures and the date on which the report is signed should also be indicated.

2.12. Cases, however, continue to come to notice in which these instructions are not followed. It may be partly due to the fact that the officers, who at an earlier stage were not entitled to write out Evaluation Reports, were not kept posted with the relevant instructions on the subject.

It is, therefore, requested that:

(a) The relevant instructions in this regard may kindly be once again brought to the notice of all the existing reporting officers for their compliance in future.

(b) Instructions should be issued that any officer who is to begin writing the evaluation reports for the first time should in each case be apprised of the relevant instructions on the subject and asked to follow the same strictly.

[Extract from D.O. Letter No. 12/1/59-Con. dated 19-2-1959.]

2.13. *Instructions for the Countersigning Officers.- (i)* The Countersigning Officers should weigh the remarks of the RO against their personal knowledge of the officer under report and then give their assessment in Part V. In case of disagreement, the Countersigning Officers should give specific reasons in Part V. Similarly, if the Countersigning Officers differ with the grading or remarks given by the Reporting Officer in Part III they should score it out and give their own grading by initialling the appropriate box.

(ii) The Countersigning Officers should make an unbiased evaluation of the quality of performance evaluation made by the RO by categorizing the reports as exaggerated, fair or biased. This would evoke a greater sense of responsibility from the reporting officers.

(iii) The Countersigning Officers should underline, in red ink, remarks which in their opinion are adverse and should be communicated to the officer reported upon. All adverse remarks whether remediable or irremediable should be communicated to the officer underreport, with a copy of communication placed in the CR dossier. Reporting Officers should ensure that proper counselling is given to the officer under report before adverse remarks are recorded.

(iv) The Reporting and Countersigning Officers should be clear, direct, objective and unambiguous in their remarks. Vague impressions based on inadequate knowledge or isolated incidents should be avoided.

(i) Reports should be consistent with the pen picture and overall grading.

[c.f. Guidelines for filling up the PER form printed on S-121-G (i).]

(vi) The Countersigning Officers should weigh the remarks of the RO against their personal knowledge of the officer under report, compare him with other officers of the same grade working under different Reporting Officers, but under the same Countersigning Officer, and then give their overall assessment of the officer. In case of disagreement with the assessment done by the Reporting Officer, specific reasons should be recorded by the Countersigning Officers in Part IV (2).

(vii) The Countersigning Officers should make an unbiased evaluation of the quality of performance evaluation made by the RO by categorizing the reports as exaggerated, fair or biased. This would evoke a greater sense of responsibility from the reporting officers.

(viii) The Countersigning Officers should underline, in red ink, remarks which in their opinion are adverse and should be communicated to the officer reported upon. All adverse remarks whether remediable or irremediable should be communicated to the officer under report, with a copy of communication placed in the CR dossier. Reporting Officers should ensure that they properly counsel the officer under report before adverse remarks are recorded.

(ix) The Reporting and Countersigning Officers should be clear, direct, objective and unambiguous in their remarks. Vague impressions based on inadequate knowledge or isolated incidents should be avoided.

(i) Reports should be consistent with the pen picture, overall grading and comparative grading.

[c.f. Guidelines for filling up the PER form printed on S-121-G (ii).]

(xi) After countersigning the form, return it to the Officer responsible for the custody of the character roll.

(c.f. Page 4, Section D of Form S. 121-A Revised.]

2.14 Utmost care should be taken by the reporting officer while assessing the qualities and work of their subordinates. Biased or evasive reports are likely to cause incalculable damage to the officers reported upon. The whole purpose of Evaluation reports is defeated unless the reporting Officers judge the performance of their sub-ordinates from an absolutely detached and objective point of view. To achieve this objective, it has been provided in the revised form that the countersigning officer should assess the report itself and categorise it as very good/ reasonably good/strict/lenient/biased. This would be conducive to greater sense of responsibility on the part of the Reporting Officer.

[c.f. Para 4 of O.M. No. 8/4/59-EOM, dated 16-1-1960.]

2.15 *PER Gradings.-(i)* The following two points have been raised in connection with writing of Evaluation reports of officers :-

(a) How to determine the performance assessment of an officer in Part III of the Evaluation report form when the assessment of any other officer in the same grade is not known to the reporting/ countersigning officer?

(b) Whether the assessment in Part III of the PER form in respect of officer's performance is to be determined with reference to his assessment in Part-II of the form?

(ii) With regard to the first point it has been decided that where there is only one officer in a particular grade his assessment of performance in Part III may be made independently.

(iii) As regards the second point, it has been observed that in some cases the assessment of an officer in Part II and Part III of the PER form [S. 121-A (Revised)] are not co-related. This inconsistency causes a lot of inconvenience to the DPCs as well as the CSB while reviewing the cases of such officers for promotion to higher grade posts. To remove this inconsistency, the assessment of an officer in Part III should, as far as possible, be based on the assessment made about his personal traits and on-the-job performance in Part II. If the major number of entries in Part II are `good' and in Part III the officer is classified `average' the reporting officer should give detailed reasons for his `average' assessment. Normally these should be identical.

[Extract from D.O. Letter No. 6/1/77-A. 11, dated 18-1-1978.]

2.16 (i) It has been observed in a large number of cases that Reporting and Countersigning officers award intermediate gradings in Part III e.g. "between Very Good and Good" and "between Good and Average" etc. It is requested that Reporting and Countersigning Officer may be directed to adhere to the gradings provided in the PER Form [S. 121-A (Revised)] and not to deviate from these.

(ii) It has also been observed that Countersigning Officers while assessing the reports given by Reporting Officer and having assessed these as "strict" or "lenient" do not give their final grading themselves which leads to complications. It is requested that Countersigning Officers may be advised that when they assess the report as "strict" or "lenient" they must record their overall assessment of the officer reported upon in their remarks clearly and also preferably change the overall assessment in Part III of the report [Form S-121-A (Revised)].

[c.f. O.M. No. 6/2/80-A. II, dated 16th January, 1980.]

2.17 1. In May, 1985 when a new entry for "outstanding" was introduced in the PER proforma, the Establishment Division had emphasized that an officer should be graded outstanding in exceptional cases and only where such grading was fully justified. The relevant portion from the d.o. letter No. * 10(10)/ 85-CP-I, dated 15-5-1985 written by the Establishment Secretary is reproduced below:

"In exceptional cases where the reporting/countersigning officers want to rate an officer as `outstanding', they may draw in their own hand another box in Part VI of the PER form, initial it and write `outstanding' on the descriptive side. They would also be required to fully justify this assessment in Part V(c) (by the reporting officer) and Part VII(a) (by the countersigning officer). Unless so justified, the assessment would only be deemed to be `very good' carrying 8 marks."

2. It has been observed that the assessing Officers rating a subordinate as `outstanding' do not give detailed justification. In many cases officers who were rated as "average" or only "good" till the preceding year suddenly become "outstanding". Obviously such assessments are overgenerous and unjustifiable.

3. The Establishment Division reiterate the instructions reproduced in para 1 of this letter. It has also been decided that the reporting officer assessing an officer as "outstanding" can be called upon to explain as to how the officer has suddenly become so if he had been rated as `average' or `good' till the previous year.

*Pl. See promotion policy

[cf. Establishment Division D. 0. letter No. 6/25/90-PD-II dated 28th June, 1990.]

Rating of Performance Evaluation Reports as "Outstanding"

2.18 It is clarified that in future the Performance Evaluation Reports are not to be adjudged as "Outstanding" by the Reporting/Countersigning Officers. In case a Reporting Officer still wishes to rate an officer as "Outstanding" he would be required to inform his Countersigning Officer and Establishment Division at least three months prior to the writing of the report. The Countersigning Officer would then be required to keep the concerned officer under close observation for these three months. After the end of the observation period if the report has been rated as "Outstanding" the Countersigning Officer would assess whether the rating has been fully justified by the Reporting Officer or otherwise. If the Countersigning Officer is satisfied with the rating, he/she will provide his/her own justification in the relevant column and rate the report as Outstanding. However, if the Countersigning Officer is not satisfied with the rating, he/she would down grade the report suitably. Upon receipt of the PER in the Establishment Division it would again be scrutinized to confirm the "Outstanding" rating.

2. On similar lines, if the Countersigning officer wants to rate an officer as Outstanding, he/she would be required to inform the Establishment Division at least three months prior to the writing of the PER. Upon receipt of the PER in the Establishment Division it would be scrutinized and down graded suitably if proper justification has not been provided by the Countersigning Officer.

3. It is requested that the above clarifications may also be brought to the notice of offices under administrative control of Ministries/Divisions.

[c.f. Establishment Division's O.M. No. 1/10/2000-D.S. (Coord), dated 11-04-2001.]

Rating of Performance Evaluation Reports as "Outstanding" and "Very Good"

2.19 Reference Establishment Division O.M. of even number dated 11th April, 2001. During the review of Performance Evaluation System held by the Chief Executive, the competent authority was pleased to direct that the `outstanding' and `very good' rating in the

Performance Evaluation Reports should be given under exceptional circumstances and only after due justification has been provided by the Reporting/Countersigning Officers.

2. The above instructions may also be brought to the notice of offices under administrative control of Ministries/Divisions.

[c.f. Establishment Division's O.M. No. 1/10/2000-D.S. (Coord), dated 04-09-2001.]

2.20 Reference Establishment Division O. M. No. 1/10/2000. DS (Coord) dated 11-4-2001, it has been decided to withdraw with immediate effect, the condition of three months prior notice for rating an officer in exceptional cases as "Outstanding" in the PER of an officer by his Reporting/Countersigning Officers. It is however, further clarified that the Reporting/Countersigning Officer shall fully justify such assessment in the PER of the officer concerned.

2. Ministries/Divisions/Departments and Provincial Governments are requested to bring these instructions to the notice of the offices under their administrative control.

[c.f. Establishment Division's O.M. No. 1/10/2000-D.S. (Coord) CP. 9, dated 01-06-2004.]

2.21 *Avoidance of personal remarks in writing PERs.*-It may be impressed upon the reporting officers that, in writing such reports, they should take utmost care to ensure that personal remarks are avoided and that reports are written in an objective manner. If, subsequently, despite these instructions, any reporting officer indulges in subjective reporting, it will be open to his superior officers to report adversely on him for having failed to record his remarks in an objective manner.

[c.f. D.O. letter No. 9(4)/54-SE III, dated 5-10-1954.1

2.22 *Dealing with the public and interest in socio-economic reforms.-The* merit of an officer for promotion will henceforth be judged, apart from other considerations from the manner in which the Government servant conducts himself in his dealings with the public and zeal and enthusiasm which he shows in carrying out Government's programme of reforms. The reporting officer should make special mention in the "Pen Picture" of the Evaluation report very clearly and specifically, about the Government servant's dealing with the public and his attitude towards Government's socio-economic reforms.

[c.f. Para 2 of D.O. letter No. D. 3168/72-DS(R), dated 27-6-1972.]

2.23 *Maintenance of a `Katcha' Register-A* 'Katcha' register should be maintained by every reporting officer for keeping rough notes relating to the work of his subordinates including cases of outstanding good or poor work. Another advantage of this register will be that the officer concerned will be able to comment on the representations against adverse remarks and quote instances of poor work.

2.24 A proforma of this register is given below. The register will not be a permanent record but will be destroyed as soon as it has outlived its utility:

Page No .....

Name of officer .....

Date…… Remarks

[Extract from O.M. No. 6/4/64-A. 11, dated 30-6-1964]

2.25 Placing Government servants on Special Reports.-Whenever the Head of Ministry/Division/Department is convinced, on good grounds, that the work of a particular Government servant is not satisfactory, the former could put the Government servant concerned, with simultaneous intimation to him, on a special report. A Special Report on the latter's work would, in such an eventuality, be drawn on the expiry of six months, irrespective of the fact whether the annual report on him becomes due during this period.

2.26 If such a special report does not indicate any improvement in the work of the Government servant concerned it would be open to the competent authority to take such action against him as may be permissible under the existing rules.

[Extract from O.M. No. 9(1)/58-SE III, dated 9-10-1958.]

When to write the Reports

2.27 General Instructions.-The reports should be prepared annually at the close of each calendar year also on the departure of the Government servants/reporting officer concerned on transfer, if this occurs more than three months after the annual report has been recorded.
[Extract from Para 6 of O.M. No. F-5/3/48-Estt. (S.E.), dated 1-8-1949.]

2.28 (i) The words "more than three months" occurring in the preceding paragraph include a period of just three months under a particular reporting officer for the purpose of calculating the period of three months.

[Extract from D.O. Letter No. 6/1/68-A. II, dated 19-10-1968.]

(ii) It has been decided that the period spent on leave on average pay will not be included in this period and the period of three months will mean and include the actual period in which the work, performance and conduct of an officer has been seen by the reporting officer.

[c.f. O.M. No. 6/1/80-A. II, dated 31st May, 1980.]

(iii) The period of Performance Evaluation Report of two calendar years cannot be combined to form single report for the purpose of report writing.

[c.f. U.O. No. 6/1/80-A, 11, dated 23-10-1980.]

2.29 (i) It is stated that, under the existing instructions, Evaluation reports on an officer are required to be written annually at the close of each calendar year and also for part periods if the period of report is three months or more. The question of quantification of such part reports initiated during a calendar year has been under consideration in the Establishment Division for some time past. In order to bring about uniformity in the matter, it has been decided that if more than one Evaluation report has been initiated on an officer during a calendar year, the average/arithmetic mean of all ratings of various such reports earned during the year will be worked out for the purpose of quantifying the overall grading for that year. For example, in 1982 three reports were initiated on the performance of an officer for periods each of 3 months or more with the following ratings:

Period of report	*Overall assessment*	*Marks*
1.1.82 to 4.4.82	Good	7
2.6.82 to 10.9.82	Average	4
1.10.82 to 31.12.82	Very good	10

Average/Mean 21/3=7

The mean so worked out will be taken as the overall grading earned by the officer during that particular year for the purpose of quantification.

(ii) It has also been observed that sometime an Evaluation report is written to cover part periods covering two calendar years. It is *not* permissible to do so, as in terms of para 2.29 (iii) of "A Guide to Performance Evaluation", the period of two calendar years cannot be combined to form a single report for the purpose of report writing. *If a civil servant has served under a reporting officer in two calendar years for a period aggregating to* reports one each for the period of 3 months or more in a calendar year *confidential report should be written for such periods*. If the period under report in one calendar year is 3 months or more and less than 3 months in the other year, the report for the former period only should be written. If the continuous period of service under a reporting officer is spread in two years but the part period in each year is *3 months or more, two* Evaluation reports-one each for the period of 3 months or more in a calendar year - should be written.

(iii) The instructions in para 2.29 (ii) may in future be strictly observed and in no case should the period in two calendar years be combined. As for such reports already written, quantification of an Evaluation report covering a period which falls in two calendar years will be done as follows:-

(a) If each of the part periods of the report falling in two calendar years is 3 months or more the report will be treated as two part reports instead of one. The grading of the single report will hold good for the part periods falling in the two calendar years. In other words, the single report, for purposes of quantification, will be deemed to comprise two part reports - one for each calendar year. These part reports will be considered in their respective years alongwith other part reports, if any, for the purpose of quantification as in para 2.29(i) above.

(b) If only one of the part periods of report is three months or more, this part report will be considered as the report for the period of the year in which the said period falls, and will be counted alongwith other part reports of the year, if any, as in para 2.29 (i) above.

(c) If the period of report in each calendar year is less than 3 months, such reports shall be ignored for purposes of quantification.

[c.f. Estt. Division O.M. No. 10(3)/84-CP 1, dated 9-1-1985.]

2.30 According to Promotion Policy issued *vide* Establishment Secretary's d.o. No. 10(10)/85-CP I, dated 15-5-1985 (SI. No. 154 Chapter 11 of Estacode), the overall grading in PERs are allocated the following marks:

Overall Grading	*Marks*
(i) Outstanding	10
(ii) Very Good	8
(iii) Good	7
(iv) Average	5
(v) Below Average	1
(vi) Poor	0

2.31 In order to bring about uniformity in the matter in the Federal and Provincial Governments it has been decided that the discretion allowed to write Evaluation reports for periods less than three months may be withdrawn, particularly in the case of centrally controlled cadres. This should be without prejudice to such reports already written.

[Para 3 of D.O. No. 4(2)/66 A. 11, dated 26-08-1968.]

2.32 The writing and keeping on record of reports for periods of less than three months was irregular according to the relevant instructions on the subject. In order to bring about uniformity in practice for those already written and for future it has been decided that all such reports which have found their way in the character roll dossiers of the officers should be removed from the character roll dossiers and destroyed. A note at the appropriate place in the dossier should be kept stating that the Evaluation report for the period, such and such, which was for less than three months and earlier included in the character roll at page (such and such) has been removed in accordance with the relevant instructions. This would avoid the necessity of renumbering the pages and eliminate the risk of removal of other reports.

[Extract from D.O. No. 6/1/69-A. II, dated 6-2-1969.]

2.33 It is not necessary to write a report on officers in the event of transfer of the countersigning officer.

[Extract from O.M. No. 6/1/67-A. 11, dated 20-2-1967.]

2.34 An Evaluation report is required to be written on an officer if the period of report is three months or more. It has no specific relevance with the transfer of the reporting officer or officer reported upon.

[Extract from O.M. No. 6/1/69-A. 11, dated 16-8-1969.]

Linking of Performance Evaluation of C.B.R. Employees with Financial Year instead of Calendar Year

2.34-A The Establishment Division has agreed to CBR's proposal to link performance evaluation with the currency of the financial year instead of the present practice of writing PERs on a calendar year basis. In future, PERs of all CBR employees will,

therefore, be initiated in July instead of January and the timetable for writing PERs will be as follows:

(i) Reporting Officer by 20th July

(ii) Countersigning Officer by 31st July

It may also be noted that those supervisory officers who fail to write the PERs within the prescribed time period will be asked to explain as to why this was not done and may have to forego their bonus if found negligent on this account. It may be further noted that PERs initiated in July 1998 must clearly reflect the targets that were set for the employee for the year 1997-98 and the actual collection achieved alongwith remarks of the reporting officers. Similarly, in the case of employees who are posted in positions other than the field, all reporting officers would be expected to assess the performance of their subordinates on as objective a basis as is possible. It may be remembered that the Board would like to link performance with record and therefore, PERs must be written in a way that they ensure a fair and correct assessment of the subordinate.

In view of Establishment Division's approval the PERs of CBR employees will be written for the period 1-1-98 to 30-6-98 this time. In the future, however, these will be written for the period ending June *i.e.* according to the financial year.

[c.f CBR Circular No. I(1)M(Admn)/98, dated 18-6-1998 communicated *vide* Estt Divn. U.O. Note No. 3/1/2003-CP-11, dated 26-11-2004]

2.35 *(i) Reports to be written in* time.-Inspite of laying repeated emphasis on the importance of observing instructions on the subject, little improvement is visible. PERs are still not written in time and in many cases are in arrears for a number of years. It will be appreciated that in the absence of up-to-date PERs, the performance evaluation of officers due for promotion, etc. cannot be properly judged and cases of promotions, appointments are thus considerably delayed for want of up-to-date PERs. This is unfair to government servants.

[Extract from D.O. letter No. 1/1/74-A. 11, dated 14.11.1974.]

(ii) It has come to the notice of the President that the PER dossier files of the officers are incomplete in many cases despite the best efforts of the Establishment Division. Reminders sent to various Divisions/Provincial Governments requesting for the missing PER have been ignored. This state of affairs must be put right without delay. In this regard, reference is invited to President's Secretariat, Establishment Division letter No. 6/9/62-A. II, dated 15th November, 1962 *(See* para 2.42).

(iii) The President is pleased to direct that the reporting officers concerned will be held responsible for ensuring that the reports of the officers working under them are written in time and sent to the Establishment Division/Administrative Ministry concerned when due with the least delay.

(iv) In case the President received further complaints in this regard, serious notice will be taken thereof and defaulting officers will be liable to disciplinary action.

(v) Secretary of a Ministry/Division is responsible for ensuring that these instructions are complied with by all officers working in the Division/Ministry/Department under him and PERs are sent to Establishment Division when required under rules.

[c.f. D.O. No. 2/78-JS (CP) dated 7th October, 1978.]

2.36 (i) In pursuance of President's Directive on the importance of proper career planning for civil servants, all the Ministries/Divisions and the Provincial Governments had been asked to prepare Individual Career Planning Charts for the occupational groups and cadres administered by them. The Establishment Division is maintaining I.C.P. Charts for officers belonging to the occupational groups controlled by it. Since I.C.P. Charts alongwith C.R. Dossiers are frequently submitted to the President in all cases involving transfers, promotion, training and discipline, they should reflect the correct and up-to-date position in respect of each officer. Unfortunately, the C.R. Dossiers and the I.C.P. Charts on most of the officers are incomplete as their PERs have not been sent by the Reporting/ Countersigning officers despite our repeated reminders to all Divisions and Provincial Governments.

(ii) In this regard, attention is invited to the Cabinet Secretary's letter No. 2/78-JS (CP), dated 7th October, 1978 [para 2.35 (ii, iii, iv & v)]. Despite clear instructions, no significant improvement is found in the flow of missing PERs to the Establishment Division. A concerted effort should be made to send the outstanding PERs to the Establishment Division.

[c.f. Estt. Secretary's D.O. No. 1/2/81-A.11, dated 15th April, 1981.]

(iii) The President has taken a serious view about the incomplete ICP Charts and C.R. Dossiers of officers despite repeated directives issued on the subject.

(iv) All Divisions/Provincial Governments should ensure that PERs of all officers are written and sent to the Establishment Division in time. It is re-emphasised that no proposal pertaining to posting, promotion, discipline, deputation and foreign training is to be entertained unless it is accompanied by C.R. Dossiers and ICP Charts which are complete in all respects.

[c.f. Estt. Secretary's d.o. No. 1/2/81-A 11, dated 9th September, 1981 and dated 5th July, 1982.]

2.37 *Time schedule for sending PERs to the Establishment Division.*-It has been decided to lay down the following procedure which the Ministries/Divisions are requested to strictly adhere to:

(a) PERs must reach Establishment Division according to the following schedule:

(1) Officers of Grade 21 and 20 ..... 31st January

(2) Officers of Grade 19 .....28th February

(3) Officers of Grade 18 and 17 ..... 31st March

(b) Ministries/Divisions will forward grade-wise lists of officers held on their strength on 01 January each year as follows:-

(1) List A.-Will contain names of all those officers whose PERs are being forwarded on due date. Period of report will be mentioned in each case.

(2) List B.-Will give names of all those officers whose PERs have been forwarded earlier, giving reasons and period covered in each case.

(3) List C.-Will state names of all those officers whose reports cannot be initiated on 31st December, with reasons and dates on which reports will be initiated in each case.

The Secretaries, Additional Secretaries and Joint Secretaries concerned are requested to ensure that delays do not occur.

[c.f. O.M. No. 1/7/78-CP 1, dated 21.12.1978.]

Timely Return of Performance Evaluation Reports of officers in BS-17 and above

2.38 It has been generally observed, that the schedule given in Para 2.37 is not adhered to strictly. This not only disturbs the proper maintenance of PERs but also cause delay in the submission of cases for promotion.

2. The PERs duly complete in all respects may be furnished in respect of officers of DMG, Secretariat Group, PSP and OMG, to the Establishment Division and of other Federal employees to the concerned controlling Ministry/Division/Department strictly according to the laid down schedule ensuring that:

(i) The basic rules/provisions printed on page-7* of PER (Form-S12 1 -G) has been followed.

(ii) The PERs are examined by the administration responsible for its dispatch and are free from any fault/ambiguity. The PERs are strictly forwarded at least at Deputy Secretary level and be sent to an officer by name not lower than a Deputy Secretary as laid down in paras 5.8 and 5.9 of the booklet "A Guide to Performance Evaluation".

(iii) A certificate (specimen below) duly signed by Deputy Secretary (Admn) may be added on reverse of Page-7* of the PER Form, to ensure its completion.

3. All Ministries/Divisions/Provincial Governments *etc.* are requested to kindly ensure that the reports are written strictly in accordance with the relevant instructions.

[c.f. Establishment Division O.M. No. 1/4/96-PD 11, dated 12-2-1997]

(SPECIMEN OF CERTIFICATE TO BE ATTACHED WITH EACH PER)

Government of Pakistan Ministry of.....
(Admn. Wing)

F. No…… Dated……..

This is to certify that PER of Mr. _____an officer of _____ (BS-)for the period _____initiated and countersigned by the officers both being concerned with the work of the person reported upon during the said period.

2. The report has been examined and found complete in all respect.

Deputy Secretary (Admn)

*In the present context the revised Form of PER S-121-G (i), (ii) and (iii) respectively.

Forwarding of PERs to Establishment Division in respect of officers in BS-17 and above

2.39 Reference is invited to the instructions issued from time to time on the subject. It has been observed that Performance Evaluation Reports in respect of officers in BS-17 and above are delivered at Establishment Division by hand and without covering letter etc. This is a gross violation of procedure as laid down in the Secretariat Instructions and the Security Booklet which contain specific instructions concerning handling of confidential correspondence.

2. The competent authority has taken a serious view of the matter, and it has been decided that hence-forth no PER without a covering letter will be entertained in Establishment Division.

3. Further, the instructions issued *vide* this Division's O.M. No. 1/4/ 96-PD. II dated 12.02-1997 (Para 2.38) are to be observed strictly.

4. All Ministries/Divisions/Departments and Provincial Governments are requested to bring these instructions to the notice of all concerned Officers and ensure strict compliance.

[c.f. Establishment Division's O.M. No. 7/2/2004-CP. 9, dated 17-2-2004

2.40 *Keeping PER Dossiers complete and up-to-date.*-It is unfair to officers, who are worthy of promotion if they are not promoted or if their promotions are delayed simply because the Ministries/Departments concerned have either failed to maintain their C.R. Dossiers up-to-date or allowed them to be misplaced or lost. Steps should be taken in every Ministry/Department for a careful examination, by a competent officer, of the character roll dossiers of all the officers under their control, with a view to checking whether these are completed or not. If they are not complete, the missing character rolls should be completed or re-constructed to the maximum extent possible, so that the Departmental Promotion Committee/Selection Board are able to assess an officer's capability on the basis of reports for the last 10 years where the officer is an optee and for maximum period of his service if he has been appointed after the independence.

2.41 Secretaries/Joint Secretaries-in-Charge of the Ministry when approving a proposal to be sent to the Establishment Division for the consideration of the Central/Special Selection Board, should satisfy themselves that the character rolls in support of the proposal are complete and up-to-date before they are sent to the Establishment Division.

[c.f. Paras 2-3 of O.M. No. 8(2)-55-SE III, dated 21-12-1955.

2.42 *Return about completion of* PER.-The annual evaluation reports should be written at the close of each calendar year. It appears however, that these instructions are not being properly followed with the result that evaluation reports on a number of officers have not been written for several years. In order to ensure proper maintenance of the Character Rolls, it has been decided that every Ministry/Division should report to the Establishment Division in the 1st week of April every year, whether or not the annual evaluation reports for preceding year in respect of officers and members of staff in the Ministry and its Attached/ Subordinate offices have been completed and forwarded to the appropriate authority, with reasons for delay in respect of outstanding evaluation reports.

[Extract from O.M. No. 6/9/62-A II, dated 15-11-1962.]

Who should write and/or countersign?

2.43 The report should be initiated by the next higher officer and countersigned by an officer higher than the reporting officer, both being concerned with the work of the officer reported upon; for example :-

Officer reported upon	Reporting officer	Countersigning officer
Ministries/Divisions:		
(i) Section Officer	ii) Deputy Secretary	Deputy Secretary concerned

Joint Secretary concerned	Jt. Secretary concerned (or Secretary, if there is no Jt. Secretary). Secretary (if there is no Jt. Secretary, report should be initiated by Secretary himself and countersigned by the Minister-in-charge).	

Attached Departments and Subordinate Offices:

(i) All officers other than Head and Deputies to Heads of the Departments/ Offices. Officer reported upon	Reporting officer Head of the Department	Countersigning officer Deputy Secretary, Jt. Secretary; or Secretary of the Administrative Ministry, according to the status of the Head of the Deptt.
(ii) Deputies to Head Deptt/Office.	Deputy Secretary, Jt. Secretary or Secretary of the administrative Ministry, according to the status of the officer reported upon.	Secretary of the administrative Ministry (or Minister-in-charge) when the report has been initiated by the Head of the administrative Ministry.
(iii) Head of Deptt/	Next higher officer concerned	Officer higher than the reporting officer concerned with the wor

2.46. *More than one countersigning officers.-Where* there are more than one countersigning officers during a year, the one who has seen the performance of his subordinates for the major part of the year is entitled to countersign their evaluation reports.

Extract from O.M. No. 6/1/69-A. 11, dated 7-10-71 and 13-3-1972.]

2.47. Officers under suspension/absent from duty.-There is no need to record an evaluation report on an officer/official for the period during which he remained under suspension/absent from duty.

[c.f. O.M. No. 6/1/79-A. Il, dated 13-5-1979.]

2.48. *Writing/countersigning of PER by Officers under suspension.-A* question has arisen whether an officer under suspension may initiate or countersign the PER of his subordinates. The matter has been considered in the Establishment Division and it has been decided that officers under suspension may not be allowed to write or countersign the PERs of their subordinates during the period of their suspension.

[c.f. O.M. No. 6/1/80-A. 11, dated 3-2-1980.]

2.49. Officers in Pakistan Diplomatic Missions.-The Reporting Officers in the case of Officers in BPS-17 and above on the Diplomatic side shall be the Head of the Pakistan Mission concerned abroad and the Countersigning Officer shall be the Foreign Secretary/Additional Foreign Secretary.

2.50. As regards Evaluation Reports on officers belonging to other Ministries/Departments such as Ministry of Information, Ministry of Defence, Ministry of Commerce (holding the posts of Press Attache, Commercial Attache, Military Attaches, *etc.)* the existing practice, that the report on these officers is to be written by the Head of the Mission concerned and sent directly to the respective Head of Department unless there is something in the report to be brought to the attention of the Foreign Secretary, will continue to be followed.

[Extract from Ministry of Foreign Affairs Circular No. SS(A)-1/3/67, dated 9-5-1968.]

2.51. *Officers retired under MLR 58 and MLR 114.-The* question as to who should write or countersign the evaluation reports which the officers retired under MILR 58 and MLR

114 were supposed to write had they not been compulsorily retired, has been considered in the Establishment Division and it has been decided that the following procedure should be followed in getting the reports in question written or countersigned :-

(i) The Reporting Officers who have been compulsorily retired will not write or countersign any report on their subordinates. In such cases the next higher officer may initiate the report provided he has seen the performance of the officer reported upon for a minimum period of 3 months.

(ii) The report initiated under sub-para (i) above will be countersigned by the officer higher than the reporting officer, if available, provided that the former has personal knowledge about the performance of the officer concerned. In case no countersigning officer be available to countersign, the report will not be countersigned and the circumstances under which the report could not be countersigned will be mentioned in Part-IV of the report indicating the name of the officer who was supposed to countersign the report had he not been retired under MLR 58 and MLR 114.

(iii) In case both the reporting officer and the countersigning officer have been compulsorily retired, the officer higher than both of them, if available, may initiate the report and the next higher officer, if any, will countersign it. In a case like this both the reporting and the countersigning officers should have personal knowledge about the officer concerned. In case no countersigning officer be available, the fact should be noted in Part IV of the form.

(iv) When no officer is available to write or countersign the report, the Administrative Division may make a reference to the Establishment Division, as to how the situation can be met. It is, however, to be ensured as far as practicable, that the report, does not remain unwritten.

[Extract from O.M. No. 6/1/70-A. 11, dated 2-3-1970 and O.M. No. 6-5-72-A. 11, dated 17-6-72.1

2.52. (i) *Other Officers retired compulsorily.-It* has been decided that officers compulsorily retired under Efficiency and Discipline Rules or on completing 25 years service or under FR 10-A may not be allowed to write or countersign the PERs of their subordinates.

[c.f. O.M. No. 6/1/77-A, 11, dated 1-11-1977.]

(ii) A question has arisen whether officers retired compulsorily under Efficiency and Discipline Rules or on completing 25 years of service or under FR 10-A should not be allowed to write or countersign the PERs of their subordinates. Officers can write PERs during the leave preparatory to retirement. After due consideration it has been decided that such officers, if allowed leave preparatory to retirement, should not be allowed to write/countersign PERs of their subordinates. In that case the procedure laid down in this Division's O.M. No. 6/1/70-A. II, dated 17th June, 1972 and No. 43/1/78-CP I, dated 21st December, 1978 may be followed for writing of the PERs of the affected officials.

[c.f. O.M. No. 6/7/78-A, 11, dated 11th June, 1979.]

(iii) A question has arisen whether officers retired under article 13(i) of Civil Servants Act, 1973 can initiate/countersign Performance Evaluation Reports of their subordinates or not. After a careful consideration it has been decided that officers so retired may not be allowed to write Annual Evaluation Reports of their subordinates. For writing of PERs of affected subordinates procedures laid down in this Division's Office Memoranda No. 6/1/70-A. II, dated 17th June, 1972 and No. 43/l/78-CP-I, dated 21st December, 1978 may be followed.

[c.f. O.M. No. 6/1/79-A, II, dated 24th June, 1979.]

2.53. (i) *Writing/ countersigning of PERs by retired or expired Officers.*- It has been decided that as in the case of Government Officers who are transferred, the officers proceeding on retirement, whether voluntary or on attaining the age of superannuation, should be asked to write/countersign reports on the officers and staff who have worked under them for more than three months, before their retirement. If an officer proceeds on retirement without writing/ countersigningthe reports and cannot be contacted or fails to oblige despite repeated requests, the following procedure should be adopted:

(1) The officer who would have countersigned, had the report been initiated by the retired officer, should initiate the report provided he has seen work of the officer reported upon, for a minimum period of three months. The next higher officer, if any, should countersign it.

(2) If the report has already been initiated but the countersigning officer has retired, the next higher officer, if any, should countersign, provided he has personal knowledge of the work of the officer concerned.

(3) If both the initiating and the countersigning officers have retired, the officer next higher than both of them, if any, should initiate and the next higher officer, if any, Should countersign it. In such cases both the initiating and countersigning officers must have personal knowledge of the work of the officer reported upon.

(4) In case the report cannot be initiated at all, a suitable note to this effect be recorded in the C.R. dossier. If the report has been initiated but cannot be countersigned, the reasons, therefore, be recorded in Part IV of the PERs.

[c.f. O.M. No. 43/1/78- CP. I dated 21st December, 1978.]

(ii) These instructions shall apply, *mutatis mutandis,* to cases where the reporting/countersigning officers have expired.

[c.f. O.M. No. 43/1/78- CP. I dated 31st December, 1978.]

Completion of PERs of Officers/ Officials working in the Ex-Prime Minister's Secretariat

2.54. Reference CMLA's Secretariat (Public) O.M. No. F. 17(2)-Estt/ 78, dated the 30th January, 1979 it is stated that in accordance with the procedure in vogue, the Political figures who cease to hold offices and compulsorily retired officers are not allowed to write/countersign PERs on their subordinates. In such cases a certificate to this effect stating the reason and the names of the reporting/ countersigning officers who had to initiate/countersign the reports are recorded by the competent authority in part IV of the PERs.

[c.f. Establishment Division's O.M. No. 6/1/79-A. 11. dated 20-02-1979.]

Completion of PERs of Officers/Officials

2.55 It has been noticed that contrary to the procedure contained in instructions issued by Establishment Division *vide* O.M. No. 6/1/79-A, II, dated 20-2-1979, some of the political figures who casesed to hold office from 5-11-1996 are still initiating/countersigning the Performance Evaluation Reports in respect of the officers who worked under them. -

2. This is to reiterate in line with the instructions in force that the PERs initiated/countersigned by any political figure ceasing to hold office on 5-11-1996 and/or received after that date (although dated prior to 5-11-1996) will neither be treated as valid nor count towards assessment of officers covered by such reports.

3. To prevent the report period from being treated as blank, the assessment made by the last career civil servant prior to the remarks of the political figure shall be treated as final.

4. The above position may be brought to the notice of all officers working under your control for strict observance/compliance.

[c.f. Establishment Division's D.O. No. 6/1/79-A. 11, dated 28-04-1999.]

2.56 *East Pakistani Officers.-Please see* Para 2.40 of A Guide to Performance Evaluation Edition, 1991.

2.57. Officers on deputation to foreign organizations.-It is not advisable to call for reports on officers who are serving with foreign organizations because the work of such officers is deemed to be satisfactory as long as they continue to work in those organisations.

[Extract from U.O. No. 6/1/63-A. II, dated 1-5-1963.]

2.58. It has been decided, with the approval of the President, not to call any evaluation reports on all officers for the period they remain on deputation to the Foreign Governments/International Organizations.

[Extract from O.M. No. 6/2/79-A. II. dated 10-7-1979.]

2.59. *Clarification.-The* Establishment Division O.M. No. 6/5/66-A. II, dated 14.9.1966 was superseded by the O.M. No. 6/2/79-CPI, dated 22-2-1979 which was in turn cancelled vide O.M. No. 6/2/79-A. II, dated 10-7-1979 (Para 2.58).

2.60. Instances have come to the notice of the Establishment Secretary wherein evaluation reports received from foreign governments were placed on the C.R. dossiers of the officers in contravention of the standing instructions.

In a certain case an evaluation report containing adverse remarks was communicated to the officer and his representation was also referred to a foreign government for comments. This practice would create an embarrassing situation for the Government. The Ministries/Divisions are requested to ensure that such reports, if received from foreign governments, should not find place in the C.R. dossiers of the officers concerned.

[Extract from O.M. No. 6/5/66-A. 11, dated 28-11-1972.]

2.61.(i) Many reports have been received which have not been seen by the senior officer in the Ministry higher than the Reporting Officer. This is clearly undesirable; they should always be countersigned by him in token that he accepts the report, if he does.

[Para 2 (b) (iii) of Establishment Secretary's D.O. No. 5/3/48-SE. 1, dated 9 -6-1951.]

(ii) *Countersignature of Reports initiated by the Federal Secretaries.*- The President was pleased to direct that all Secretaries should be informed that the annual evaluation reports initiated by the Federal Secretaries should invariably be countersigned by the Minister concerned as required under the standing instructions.

[c.f. D.O. Letter No. 6/13/80-A, 11, dated 10th August, 1980.]

2.62. It appears from the instructions contained in part vii (a) of the Performance Evaluation Report (S-121-G) that the countersigning officer should give reasons if he disagrees with the assessment of a reporting officer besides commenting on any aspect not touched upon by the Reporting Officer. He is also required to indicate how closely he has watched the work of the officer reported upon. Thus it is always desirable for a countersigning officer to record his own assessment of the officer even when he agrees with the reporting officer.

[c.f. Estt. Division D.O. No. 6/32/87-PD-I1, dated 13-10-1987.]

2.63. *PERs on Secretaries to Government.*- Secretaries to Government are invariably very senior officers who have reached at stage in their careers where their work and conduct are well known. It is indeed because of their proved ability that they are appointed to these posts. It would, therefore, serve little or no purpose for evaluation reports to be written on such officers.

[Extract from D.O. No. 5(11)/Cord/49, dated 20-8-1949.]

2.64.(i) Officers of the status of Secretary.-It has been decided that no annual evaluation report should be recorded on officers enjoying the status of Secretary to the Federal Government. It has also been decided that performance evaluation reports on officers of the status of Acting Secretary appointed Heads of Semi-Autonomous Organisations/Attached Departments should be written by the Secretary of the Ministry concerned.

[Extract from O.M. No. 6/1/64-A. 11, dated 16-11-1965.]

(ii) PERs of Chairmen of Autonomous Bodies of the Federal Government are required to be written with the exception of those who are in Grade-22.

[c.f. O.M. No. 6/1/79-A. 11, dated 28-3-1977.]

(iii) A question was raised whether Performance Evaluation Reports of Grade-22 officers, not having the status of Secretaries to the Federal Government are required to be written. It has been decided that Performance Evaluation Reports of Grade-22 officers need not be written. It partially modifies this Division's O.M. No. 6/1/64-A. II, dated the 16th November, 1965.

[c.f. O.M. No. 6/1/79-A. Il, dated 16-4-1979.]

(iv) PERs of Additional Secretaries and Joint Secretaries on deputation to Autonomous Bodies/Semi Autonomous Bodies who are not heads of the organizations are not required to be countersigned by the Minister-in-charge.

[c.f. O.M. No. 6/1/79-A. II. dated 28-3-1979.]

(v) The existing procedure of writing of performance evaluation reports in respect of lent officers has been examined and it has been decided that the PERs on the Chief Secretary to the Azad Kashmir Government will in future be initiated by the Chief Executive Azad Kashmir and countersigned by the Minister for Kashmir Affairs Division. Similarly the PERs on other Federal Government Officers in Azad Kashmir will be initiated by the Chief Secretary and countersigned by the Chief Executive. The Minister for Kashmir Affairs will be the second countersigning officer.

[c.f. Estt. Secretary D.O. No. 6/15/81-PD-II, dated 28th October, 1981.]

2.65. *Additional Secretaries/Additional Secretaries Incharge.-* It *is* clarified that performance evaluation reports on Additional Secretaries should be written by their Secretaries and Countersigned by the Ministers concerned. In the case of Additional Secretaries-Incharge of the Ministries/Divisions, the Reports should be written by their Ministers.

[c.f. Estt. Secretary D.O. No.. 6/1/74-A-11, dated 14th July, 1981.]

2.66. *Joint Secretaries to the Federal Government.- PERs* on Joint Secretaries who are working under Additional Secretaries should be initiated by the latter and countersigned by the Secretary of the Ministries/Divisions concerned. Minister incharge will be the second countersigning officer in such cases. Where a Joint Secretary is working directly under the Secretary, his PERs will be initiated by the Secretary and be countersigned by the Minister-in-charge.

[c.f. Estt. Secretary D.O. No. 6/3/81-PD-II, dated 21st January, 1982.]

2.67. In the case of Joint Secretaries who have independent charge of Ministries/Divisions, their Performance Evaluation Reports should, of course, be written up by the Minister.

[Extract from D.O. letter No. 16/2/59-Con., dated 24-12-1959.]

2.68. (i) *Officers of the rank of Joint Secretary and above serving in the Provinces.-* Performance Evaluation Reports on officers of the rank of Joint Secretary and above to the Federal Government written by the Chief Secretary, will be submitted to the Governor for favour of his countersignature and remarks, if any.

[Extract from E.P. letter No. C.A. VIII Conf-180/70/563, dated 17-6-1971.]

(ii) It has been decided that PERs of officers should be initiated only by such officers who have the opportunity of seeing the performance of the subordinate officers closely. For example, it is not practicable for Chief Secretary of a Province to supervise the performance of a Chief Engineer of a Development Authority.

[c.f. letter No. 6/11/80-A. 11, dated 23rd September, 1980.]

2.69. *Ex-C.S.P. Officers of Judicial Branch.-Proposal* regarding maintenance of triplicate copies of the Character Rolls of ex-C.S.P. Officers of the Judicial Branch by the High Court is agreed to.

[Extract from D.O. letter No. 6/1/67-A. 11, dated 20-2-1967.]

2.70. Section Officers holding current charge of Deputy Secretary.- According to para 2.43 of this booklet, a reporting officer should be of next higher status and concerned with the work of the officer reported upon. It will not, therefore, be proper to allow a Section Officer to write PERs on other Section Officers while holding current charge of the duties of a Deputy Secretary whatever may be the duration of such charge. If he gives some adverse comments on the performance of an officer and if the officer so reported upon represents challenging the authority of the Reporting Officer on the ground that he is not the next higher officer according to rule, it will be difficult to ignore such an argument. As a working arrangement the officer can give his impression informally to the next senior officer who can take those into account when writing his report.

2.71. Section Officers working directly under the Secretary.- Reports on the Section Officers working directly under the Secretary will be initiated by him. Part IV of those reports may remain without counter-signature as Minister need not be bothered for a junior officer like Section Officer. The circumstances under which C.R. could not be countersigned may be indicated thereon.

[Extract from O.M. No. 6/3/70-A. 11, dated 13-5-1970.]

2.72. S.O. (F&A)/D.S. (F&A).- After obtaining the views of the Ministries/ Divisions and in consultation with the Ministry of Finance, it has been decided that the Performance Evaluation Report on a Section Officer (Finance and Accounts) should be initiated by the Deputy Secretary (Admn) in a Ministry/ Division and countersigned by the Joint Secretary-in-charge of Administration and that of Deputy Secretary (Finance and Accounts) should be initiated by the Joint Secretary-in-charge of Administration and countersigned by the Secretary of the Ministry/Division.

[Extract from O.M. No. 6/1/70-A. II, dated 10-11-1970.]

2.73 (i) The question as to who should countersign the Performance Evaluation Reports of the officers of the Division under the charge of the President has been examined and it has been decided with President's approval that these would be countersigned by the Principal Staff Officer to the President when these reports are written by the Secretary of the Division.

[Extract from D.O. letter No. 6/4/70-A. 11, dated 13-2-1971.]

(ii) The President has been pleased to direct that the Performance Evaluation Reports initiated by the Secretaries of Ministries/Divisions which are directly under the charge of the President, would be countersigned by the COS to the President.

[c.f. D.O. letter No. 6/13/80-A. 11, dated 28th February, 1981.]

(iii) A question has now arisen as to who should countersign Performance Evaluation Reports initiated by the Secretaries of Ministries/Divisions which are directly under the Charge of the Prime Minister. It has been decided with the approval of the Prime Minister that the requirements of countersigning of PERs recorded by the Secretaries of the Ministries/Divisions under the Charge of the Prime Minister should be dispensed with.

[c.f. Estt. Division O.M. No. 6/13/80-A. 11, dated 15-11-1987.]

2.74. Personal staff of Ministers.-Performance Evaluation Reports on the Personal Staff of the Ministers/Ministers of State/Special Assistants to the Prime Minister are to be written by the Ministers/Ministers of State/Special Assistants to the Prime Minister and need not be countersigned.

[Extract from O.M. No. 6/1/76-A. II, dated 25-2-1976.]

2.75 Private Secretaries/Personal Assistants/Stenographers.-The questions as to whether the Performance Evaluation Reports on Private Secretaries, Personal Assistants, Stenographers *etc.* should be countersigned by an officer higher than the reporting officer has been considered in the Establishment Division. It has been decided that the Performance Evaluation Reports on these officials need not be countersigned by the next higher officer as they are not expected to have any personal knowledge of the performance of these officials.

[Extract from O.M. No. 6/1/71-A. 11, dated 26-3-1971.]

2.76 Armed Forces Officers.-It has been decided that PERs on the Armed Forces Officers, while in civil employ should be written on the form prescribed for the civilian officers.

[Extract from O.M. No. 6/1/73-A. II, dated 8-10-1973.]

2.77 District Officers.-It has been decided by the Government of Pakistan that every year the Deputy Commissioner should write an evaluation report on District Officers of other Departments serving in his District and send it to the Division Heads of the Departments concerned with a copy to the Commissioner. The Divisional Officers should forward the report for inclusion in the character roll of the officer reported upon with his own remarks if any.

2.78 The Performance Evaluation Reports of these officers by the Deputy Commissioner should be written on the following points :

(i) The general behaviour of the officer concerned.

(ii) His co-operation with other Departments and his relations with the public.

(iii) The interest taken in development work.

(iv) In the case of the Superintendent of Police, the measure of co operation received by the D.M. from him in the maintenance of law and order.

2.79 These orders will apply *mutatis mutandis* to the writing of performance evaluation reports by the Divisional Commissioner on Divisional Officers of other Departments serving in his area. These reports should be sent to the Provincial Head of the Department and should form part of the character roll of the officer reported upon.

[Extract from letter No. 6/2/61-C, dated 11-4-1961.]

2.80 *Writting of Performance Evaluation Reports of Deputy Commissioner- The* proposal of the Provincial Government regarding countersigning of PERs of Deputy Commissioners/Political Agents by Chief Secretary to Provincial Government in addition

to Member Board of Revenue has been examined in the Establishment Division and it has been decided that no change is considered necessary in the existing channel of reporting. Chief Secretary to the Government of a Province may record his appreciation of or displeasure over the work of Deputy Commissioners/Political Agents, as considered necessary. This measure should prove equally effective as such appreciations/displeasures will go on record in the CR dossiers of the officers concerned.

[c.f. O.M. No. 6/4/79-A. 11, dated 19-4-1979.]

2.81 *Question whether or not Deputy Commissioner in Grade 18 can record Evaluation Report of an officer under him but having a personal* Grade-18.-Attention is also invited to para 2.43 of this booklet which says that a reporting officer should be of next higher status and concerned with the work of officer reported upon. This means that a Deputy Commissioner can initiate reports on all officers working under him *e.g.* Additional Deputy Commissioners *etc.,* although such officers may be in the same grade of pay as the Deputy Commissioner. Similarly a Secretary to the Provincial Government can write PER of the Directors, Chief Engineers *etc.* of the departments under him though the later may be in the same grade of pay as the Secretary. Also the Director of a department can write reports on his Deputy Directors *etc.*

[c.f. letter No. 6/4/75-A. 11, dated the 17th July, 1979 and subsequent change resultant in the PER Form.]

Authorities for Initiation/Countersigning and expunction of adverse remarks in respect of DCOs, EDOs and District Officers

2.81-A. In pursuance to the provision of Punjab Local Government Ordinance, 2001 as envisaged under Section 34, authorities for initiation/ countersigning and expunction of adverse remarks in respect of D.C.Os, E.D.Os and District Officer under the administrative control of S&GA Department are hereby notified as shown below :

[c.f. Govt. of Punjab Notification No. SOR.IV(S&GAD)14-1/76(P), dated Lahore the 5th March, 2003 communicated *vide* Estt Division U.O. Note No. 3/1/2003-CPll dated 26-11-20041

2.82 Officer holding charge of two posts.-There is no harm in having two reports on an officer for the same period when he has performed two different jobs. When a question arises as to which of the reports is to be accepted while considering the merit of the officer, reference may be made to the countersigning officer provided both the reports are countersigned by the same officer. In case, countersigning officers are different, the matter is to be decided by the Head of the Department or the Secretary of the Ministry/Division concerned.

[Extract note, dated 25-1-1971, File No. 6/1/71-A.II.]

2.83 *PERs initiated by Heads of Autonomous Bodies.-It* has been decided that all PERs initiated by Chairman of Corporations/Autonomous Bodies will be countersigned by the Secretary of the Ministry concerned.

[c.f. O.M. No. 6/7/75-A. 11, dated 1st November, 1978.]

2.84 *(i) Members of the Services Tribunal.*-It has been decided that PERs on Chairman and Members of the Services Tribunal are not to be rendered.

[c.f. O.M. No. 6/17/78-CP. I. dated 24-4-1979.]

(ii) *Members of Income Tax Appellate Tribunal* (ITAT).- PERs on Judicial and Accountant Members of the Income Tax Appellate Tribunal shall be written by the Chairman of the Income Tax Appellate Tribunal and countersigned by the Secretary, Ministry of Justice and Parliamentary Affairs.

[c.f. Estt. Division's O.M. No. 6/9/84-PD. 11, dated 16th June, 1985.]

2.85 *Officers of Northern Areas.-It* has been decided that the PERs of the under mentioned officers of Northern Areas will be routed through the MLA Zone "E" who may countersign these reports in his capacity as Chief Executive.

(a) Resident and Commissioner.

(b) Deputy Commissioners of the three Districts.

(c) Development Commissioner.

(d) Director of Education.

(e) Deputy Directors of Education.

[c.f. O.M. No. 43/4/78-CP. 1, dated 24-4-1979.1

2.86 *Re-employed Officers.-Matter* relating to writing of PERs on the work and conduct of re-employed officers/officials has been considered in the Establishment Division and it has been decided that such Officers/Officials must also be reported upon and medically examined like other officers/officials of the Government of Pakistan.

[c.f. O.M. No. 6/7/80-A. 11, dated 24th May, 1980.]

2.87 Officers on Special Duty.- Evaluation Reports on Officers on Special Duty who have been assigned any job are to be written in the normal manner. Reports on officers who are awaiting posting cannot be written for the obvious reason that they have not been assigned any work. A note to this effect, however, should always be placed in their PER dossiers so that no break occurs in their record.

[c.f. letter No. 6-1-79-A. II, dated 22nd August, 1979.]

2.88 *Performance Evaluation Reports non-official Members, Directors etc. of Corporations/Autonomous Bodies under the Government, appointed on contract basis.-The* question of writing of Performance Evaluation Reports on the work and conduct of non-official Members, Directors *etc.,* of Corporations/Autonomous bodies under Government, appointed on contract, has been considered in the Establishment Division. It

has been noted that the contracts of such non-official Members, Directors *etc.,* are generally for long terms, and at times renewable. In such cases, the services of these officers take the nature of career appointments. It has accordingly been decided that Performance Evaluation Reports may be recorded on the work and conduct of such Members. Directors *etc.,* (including retired Government Servants appointed as such) also.

[c.f. O.M. No. 6/6/80-A 11, dated 13th July, 1980.]

2.89 *PERs on Finance Directors serving in Corporations controlled by the Government.* The Finance Member/Finance Directors will be treated as nominees of the Finance Division which would be ultimately responsible for assessment of their performance. Their reports shall be countersigned by Finance Secretary instead of Secretary of the Ministry concerned.

[c.f. para 'C' of Estt. Division O.M. No. 16/2/79-A. V. dated 1st March, 1979 read with O.M. No. 6/14/78-A 11, dated 25th January, 1983.]

2.90 *PERs-Service Financial Advisers.-It* is stated that, on the recommendation of the Committee appointed by the President under the Chairmanship of the Secretary General, Defence to examine the Financial Management and Accounting in Defence Services, it has been decided that:

"At the end of the year, the Service Chief may write a D.O. letter to the Secretary Finance about the performance of the Service FA particularly with regard to the assistance rendered by him to the Service and the understanding developed by him of the needs of the Services. Secretary Finance may add his comments on the letter which should then be filed in the PER Dossier in the normal way."

These instructions shall take effect from the 1st January, 1982.

[c.f. Estt. Division's O.M. No. 6/4/82-PD 11, dated 21st November, 1982.)

2.91 *(i) PERs of Assistant Collectors and Appraisers under the* CBR.-The Chairman or a Member of Central Board of Revenue is free to enter his remarks wherever some special features or circumstances come to their notice but they need not be formally designated as second countersigning officers.

(ii) The Establishment Division have no objection to designate the Member, CBR and the Collectors as second countersigning officers for reports on Assistant Collectors and Appraisers respectively.

[c.f. Estt. Division's D.O. No. 6/7/83-PD 11, dated 10th April, 1984 addressed to the Chairman, CBR, Islamabad.]

SECTION 3
PROCEDURE REGARDING ADVERSE REMARKS

I. SUMMARY OF INSTRUCTIONS REGARDING ADVERSE REMARKS

3.1 (i) (a) When a report is built on the individual opinions of the reporting and countersigning officers, it is only the opinion as accepted by the latter which should be communicated.

(b) All adverse remarks whether remediable or irremediable should be communicated in writing to the officer reported upon and copy of the communication placed in the dossier.

(ii) Countersigning Officer should under-line in red ink remarks which, in his opinion, are adverse and should be communicated to the officer concerned.

(iii) Remarks in cases where the Head of a Department/countersigning or other higher officer suspends judgment, should not be communicated.

(iv) (a) When an adverse remark is made in the evaluation report of any officer, a copy of the whole report should be furnished to him at the earliest opportunity, and in any case within one month from the date the report is countersigned, with a D.O. letter, a copy of which should be signed and returned by him in acknowledgement of the report. A serious view should be taken of any failure on the part of the officials concerned to furnish a copy of the report containing adverse remarks to the officer reported upon, within the stipulated period. Nevertheless, the adverse remarks should be communicated to the officer concerned even at the belated stage.

(b) The officers making representation against adverse remarks recorded in their evaluation reports should not make any personal remarks or remarks against the integrity of the reporting officer. Violation of this rule will be considered a misconduct and will also render the representation liable to be summarily rejected.

(v) Any remarks to the effect that the officer reported upon has or has not taken steps to remedy the defects pointed out to him in a previous year, should also be communicated.

Establishment Division (O&M Wing) O.M. No. 126/1/10-EOM, dated 20-11-1963.

(i) The adverse remarks should be communicated by the Head of Ministry/Division/Department/Office in the case of Grade-17 and above officers and by the senior officer-in-charge of establishment matters in the case of other officers.

(ii) An evaluation report containing adverse remarks should not be taken into consideration until they have been communicated in writing to the officer concerned and a decision taken on his representation, if any.

II. INSTRUCTIONS REGARDING ADVERSE REMARKS

3.2 Communication of adverse remarks.-The question of communication to subordinate officers in civil employ of such unfavourable remarks as may be made in regard to them by their superiors at the time of annual reports or on other occasions has been under consideration for some time. This is a matter of great importance both in the interest of the efficiency of administration and of the officers of Government themselves and it is necessary that it should be dealt with on uniform lines. While it may not be considered desirable to lay down any hard and fast rules in this matter, there should be no difficulty in giving general effect to the broad principles that should appropriately govern it.

3.3 The following principles are laid down for guidance:

(i) when a report is built up on the individual opinions of different departmental superiors in gradation it is only the opinion as accepted by the highest authority which need to be considered from the point of view of communication;

(ii) as a general rule in no case should an officer be kept in total ignorance for any length of time that his superiors after sufficient experience of his work are dissatisfied with him; in cases where a warning might eradicate or help to eradicate a particular fault, the advantages of prompt communication are obvious; where criticism is proposed to be withheld, the final authority to consider the report should record instructions, with reasons, according to the nature of the defects discussed as to the period for which communication is to be kept back.

(iii) (a) Adverse remarks should be communicated to the officer concerned, mainly to enable the officer to make efforts for improvement.

(b) When any adverse remark is made in the evaluation report of any officer, a copy of the whole report should be furnished to him at the earliest opportunity, and in any case within one month from the date the report is countersigned, with a D.O. letter, a copy of which should be signed and returned by him in acknowledgement of the report. A serious view should be taken of any failure on the part of the officials concerned to furnish a copy of the report containing adverse remarks to the officer reported upon within the stipulated period. Nevertheless, the adverse remarks should be communicated to the officer concerned even at belated stage.

[Note:- In case of advisory remarks, only the remarks and not the whole report will be communicated.]

(iv) the reporting officer should specifically state whether the defects reported have been already brought in another connection to the notice of the officer concerned;

to be written.

[Paras 4-5 of O.M. No. F. 5/3/48-Estt (SE) dated 1-8-49 read with corrigendum No. 6/1/66-A 11, dated 9-9-1966 and O.M. No. 126/1/27 O&M dated 12-7-1967.]

3.4 Attention is drawn to the following faults which (in addition to unpunctuality in reporting) have come frequently to notice:

Failure to communicate adverse remarks.-Please see paragraphs 4 & 5 of the Office Memorandum No. F. 5/3/48-Estt (SE), dt. 1-8-1949. The Procedure briefly should be:

(j) adverse remarks should be communicated to the officers reported upon;

(ii) the fact of communication must be recorded on the evaluation reports;

(iii) adverse remarks should be communicated by the Head of Department in the case of Grade- 17 and above officers and by head of offices in other cases;

(iv) copies of the letters communicating adverse entries should also be kept in the officers' personal files.

3.5 In too many cases it has been noticed that there is no remark to show whether any such communication has or has not been made. In the absence of such a remark one must presume that this has not been done. If, later, it is proposed to pass the officer over or to take other action on the basis of such reports, he will be entitled to complain.

[Para 3 of D.O. letter No. 5/3/48-SE I, dated 9-6-1951 read with O.M. No. 126/1/27 O&M dated 12-7-1967.]

3.6 The following procedure should be adopted so far as former CSP and GAR officers are concerned:

(i) The final authority to consider the report should record on all the copies of the evaluation report concerned whether the adverse remarks should not be communicated; and if not, why not?

(ii) If the adverse entry is to be communicated in writing, a copy of that communication and any reply thereto should be placed in the character roll and copies should be sent to the Establishment Secretary.

(iii) If the remarks are communicated verbally, the fact should be recorded by the officer who communicates the remarks on all copies of the evaluation report.

3.7 The same principles should also be followed in evaluation reports on officers of other occupational groups.

[Extract from letter No. 5/3/48-SE 1, dated 14-6-1952.]

3.8 It has come to the notice of the Government in connection with screening of Government servants that instructions issued by the Establishment Division from time to time, *vide* that Division's Office Memoranda No. F. 5/3/ 48-Estts (SE) dt. 1-8-1949, No. 5/3/48-SE I. dt. 9-6-1951 & No. 5/3/ 48-SE I dt. 14-6-1952, in regard to the communication of adverse remarks in the evaluation reports of Government servants are not being followed strictly. While this omission is obviously unfair to the Government servants reported on adversely, it is considered harmful to the interests of Government to hold back from their employees information which would enable them to try to better themselves for their jobs. All concerned are requested to ensure that adverse remarks occurring in the Performance Evaluation Reports of Government employees are invariably conveyed to them in accordance with the existing instructions.

[Extract from O.M. No. 12/1/59-Con., dated 18-4-1959.]

3.9 Adverse remarks to be underlined in red ink by Countersigning Officer-In a large number of cases, it has been observed that the Countersigning Officers do not underline in red ink the remarks which in their opinion are adverse and should be communicated to the person concerned, though they are required to do so according to the instruction 11 printed on page 7 of the PER form. This leads to confusion on the part of the Administrative Ministries concerned in deciding whether certain remarks should be considered adverse or not. This was considered in a meeting of the Secretaries Committee and their recommendation was that the rule on the subject should be strictly followed by all Countersigning Officers.

[Extract from O.M. No. 126/1/27 O&M (1), dated 10-12-1968 with necessary verbal changes.]

3.10 (1) The presumption that if an adverse entry is not underlined in red ink, it is not to be communicated, is not quite in order. Marking in columns "C" "below average" and "D" "poor" do create an unfavourable impression on the members of the Selection Committee/Board while scrutinizing the service record of an officer. Unless an officer is informed about such entries, he will remain in the dark without making any effort for improvement and yet suffer for the adverse entries.

[Extract from U.O. No. 6/4/69-A 11, dated 9-9-1972.]

(ii) Entries which may tend to create an unfavourable impression about an officer should be communicated even if the reporting officers or countersigning officers do not underline them in red ink.

(iii) Under the existing instructions, remarks once recorded in evaluation reports cannot be altered. If a reporting/countersigning officer changes his views about the officer reported upon, the changed views can be incorporated only in the next year's report.

[c.f. O.M. No. 6/4/69-A 11, dated the 17th March, 1975.]

3.11 (i) **Unlikely to progress further/unfit for further promotion-* .A question has been raised whether or not the remarks "*unlikely to progress further/unfit for further promotion has reached his ceiling*" in an evaluation report are adverse and should be communicated.

The point has been given due consideration and it has been decided that the remark should be considered as adverse and should be communicated to the officer reported upon.

[Extract from O.M. No. 2/6/68-A 11, dated 27-4-1968 with necessary verbal changes]

*Added keeping in view this entry in the Existing PER Form S-121-G(i).

(ii) The question whether the remarks "*Not yet fit for promotion, but likely to become fit in course of time* " in Part-III of the PER under the caption "Fitness for promotion" are to be treated as adverse in the case of an officer who fulfils the condition of length of service for promotion to the next higher grade has been considered. It has been decided that the remarks should be considered as adverse in the case of an officer who fulfils the condition of length of service for promotion to the next higher grade and should be communicated to him.

[c.f. O.M. No. 6/9/78-A 11, dated the 21st August, 1978.]

(iii) It has been decided that if an officer is adjudged *unfit for continued retention in service* such an entry should be treated as adverse and should be communicated to the officer concerned.

[c.f. O.M. No. 6/4/78-A 11, dated the 21st September, 1978.]

(iv) It has been decided that the remarks against item IV of PART VI (b) of the existing Performance Evaluation Report Form (S-121-G) under the caption "Unlikely to progress further" should be considered as adverse and communicated to the officer reported upon as required under the rules.

[c.f. Estt. Division O.M. No. 6/1/83 PD-II, dated 25th October, 1983.]

3.12 (i) *Officers with average reports.-An* officer who is superseded or whose promotion is deferred comes to know about it automatically when his juniors are promoted to higher scale posts. He need not, therefore, be informed of average reports, unless the Countersigning Officer decides otherwise. The cases of officers whose promotion is deferred may be reconsidered on the basis of their PERs for the next year.

[c.f. O.M. No. 32/4/76-A IV, dated 6-7-1976 read with notes in File No. 6/2/73-A 11.]

(ii) It is clarified that if any or all entries in Part II of the existing PER form No. S. 121-A. (Rev.) are initialled in the column headed B, *i. e.* Average, the assessment does not become adverse in nature and is, therefore not to be treated and processed as an adverse report is. PERs with average entries in Part II of the PER form would continue to be treated in accordance with the instructions contained in this Division O.M. No. 32/4/76-A. IV, dated 6th July, 1976 [*see* para 3.12 (i).]

[c.f. O.M. No. 4/13/79-A 11 dated 28-6-1980.]

3.13 *Effect of communication of adverse* remarks.-Paragraph 4 (vii) of the Establishment Division Office Memorandum No. F. 5/3/48-Estt (SE), dated the 1st August, 1949 lays down that;

"the effect of the communication of adverse entries should be carefully watched and the reporting officer should, when drawing up a report in next year, state whether the officer reported upon has or has not taken steps to remedy defects to which his attention has been drawn in a previous year. Such remarks should also be communicated to him, so that he may know that his efforts to improve have not passed un-noticed. The method of communication in either case should be the same."

3.14 It has been observed that wherever any adverse remarks are communicated to any officer, no mention is made in the next year's report whether the officer concerned has or has not taken steps to remedy defects. This defeats the very purpose for which the system of communicating adverse remarks had been introduced.

[c.f. O.M. No. 1/1/63-A 11, dated 3-10-1963.]

3.15 *Advisory remarks.-Advisory* remarks are not to be treated as adverse for the purpose of promotion unless it has been established that the officer concerned has not paid any heed to the piece of advice given to him and has failed to show any improvement.

[c.f. letter No. 6/16/78-CP 1, dated 20-5-1979.]

3.16 *Un-finalized departmental proceedings.-In* the case of an officer against whom departmental proceedings are in progress, no mention whatsoever should be made about it in his Performance Evaluation Report. Only when such proceedings have been finalized, and the punishment if any has been awarded should be mentioned in his evaluation report. In such a case a complete copy of the final order may be placed, as is usually done, on his character roll.

[Extract from D.O. letter No. 9 (1)/58-SE III, dated 8-5-1958.]

3.17 According to the Establishment Division instruction *[vide* para 3.16] no mention should be made in the evaluation report of a Government servant, of the departmental proceedings which may be in progress against him, unless such proceedings have been finalised, and the punishment, if any, has been awarded. There is no bar to a government servant being considered for promotion during the pendency of departmental proceedings against him. However, in such cases, a copy each of the charge sheet and the statement of allegations should be placed before the Central Selection Board or the Departmental Promotion Committee, as the case may be, *vide* Establishment Division's O.M. No. 2/20/67-D. I, dated the 13th November, 1967 [printed at serial No. 118 of Chapter V, page 615 of ESTACODE].

3.18 It is the responsibility of the departmental representatives who attend the meetings of the Departmental Promotion Committee/Central Selection Board to apprise the Committee/Board whether or not any departmental proceedings are pending against the Government servants whose cases are being considered by the Committee/Board. A serious view should be taken if the departmental representatives do not give this information to the Committee/Board and if later it comes to notice that a Government servant was promoted notwithstanding the fact that disciplinary proceedings were pending against him.

[c.f. O.M. No. 6/4/74-A II, dated 6-7-1974.]

3.19 According to the instruction contained in the Establishment Division's letter No. 9(1)/58-SE. III, dated the 8th May, 1958 (para 3.16) no mention whatsoever can be made about a departmental inquiry pending against an officer in the evaluation report. However, there should be no harm in making a mention about a criminal case pending against an officer in his C.R.

[Extract of note, dated the 24-6-1971.]

3.20 *Evaluation Reports.- If* there are any adverse remarks in the evaluation reports prepared by NIPA and Administrative Staff College, Lahore, on officers who received in-service training at these institutions, Ministries/Divisions concerned will communicate them to the officer, place a copy of the letter on the character roll and endorse another copy of it to the Establishment Division. In case the officer concerned makes a representation against these remarks, the Ministries/Divisions should forward the representation to the Head of the training institution concerned for his comments in order to substantiate the correctness of the adverse remarks. After hearing from the training institutions, the authority concerned should take a decision whether or not the adverse remarks occurring in the evaluation reports should be expunged. The Establishment Division are to be informed of the decision.

[c.f. paras 3 and 4, O.M. No. 6/9/63-A 11, dated 6-12-1963.]

Communication of Adverse Remarks in the Evaluation Reports of Training Institution.

3.21 The PD-Wing of Establishment Division may convey the adverse remarks in writing, in the Evaluation Reports prepared by the Training Institutions, to the officer concerned and process further action as per rules/instructions, in respect of APUG officers.

[c.f. Establishment Division's U.O. No. 3/1/2003-CP 5, dated 18-10-2003.]

3.22 Deputationists.- The question whether the borrowing Government/Department should communicate the adverse remarks recorded in the P.E.Rs of the civil servant who is on deputation, and who should dispose of his representation for expunction of such

remarks has been considered in the Establishment Division in consultation with the Provincial Governments.

It has been decided that the borrowing Government/Department should communicate the adverse remarks to the civil servant concerned and take further action thereon in accordance with the existing instructions on the subject. The borrowing Government/Department should, however, keep the lending Government/ Department informed of the adverse remarks communicated to the civil servant concerned during the period of his deputation, and of the decision of the competent authority to expunge such remarks, by furnishing a copy each of such communications/orders to the lending Government/Department. A copy of such communications may also be furnished to the Establishment Division in respect of officers of the Federal Government in Grade-17 and above.

[Extract from O.M. No.6/2/74-A. **11,** dated 12-2-1977.]

3.23 *Probationers.*- So far the practice has been that the adverse remarks recorded by the Director of Academy/Institution in the evaluation reports of the Probationers were not communicated to them. As the evaluation reports are part of the PERs dossiers, it has been decided that the adverse remarks, if any, recorded in these reports should be communicated to the Probationers concerned. This would enable the Officer (Probationer) to take remedial action in respect of the deficiencies noticed.

3.24 This supersedes earlier instructions on the subject as contained in the Establishment Division O.M. No. 2/4/6 6-A. II, dt. 29-10-1968.

[c.f. O.M.No.6/5/77-A-II, dated 29-3-1978.]

3.25 Punishment orders.- A question was raised whether and how any facts regarding punishments in departmental enquiries should be recorded in the character rolls of officers.

3.26 (a) The answer is that, in such cases, only a copy of the order awarding punishment should be filed in the character roll of the officer concerned. In case an appeal is preferred, a note may be recorded on the copy of the punishment order filed in the character roll, stating the decision taken on the appeal, and a reference to the relevant records.

[c.f. O.M. No. 9(4)/54-SE. 111, dated 27-9-1954.]

(b) (i) On initiation of disciplinary proceedings against an officer, a copy of original order/show cause notice should be placed on his CR Dossier.

(ii) If an officer is exonerated or some punishment is awarded, a copy of the final order should be placed on the dossier as per instruction mentioned at para *3.26* (a)

[c.f. Estt. Division O.M. No. 6/9/83-PD. 11, dated 4th July, 1983.]

(c) It is clarified that the instructions mentioned at para *3.26 (b) (i) &* (ii) will also be applicable to non-gazetted staff.

[c.f.Estt.Division O.M. No. 6/9/83-PD, 11, dated 5th May, 1984.]

*3.27 Orders conveying warning/displeasure in the character roll.*It has been decided that copies of orders conveying warning and Government's displeasure should be kept in the character rolls of the officers concerned in the same way as copies of the orders awarding punishment to officers are kept in the PERs.

[c.f. O.M. No. 6/l/68-A.11,dated 20-6-1968.]

3.28 Warning order.- A warning order to be placed in the C.R. dossier of the Government servant concerned, should have the approval of the competent authority.

3.29 A warning issued by an officer, who is not competent authority in respect of the Government servant concerned cannot be placed in PER file of the Government servant without specific approval of the competent authority *i.e.* appointing authority.

[Extract from O.M. No.4/2/74-D. 1, dated 30-3-1974.]

III. REPRESENTATIONS FOR EXPUNCTION OF ADVERSE ENTRIES

3.30 The officers making representations against adverse remarks recorded in their evaluation reports should not make any personal remarks or remarks against the integrity of the Reporting Officer. Violation of this rule will be considered a misconduct and will also render the representation liable to be summarily rejected.

[Extract from O.M. No. 126/1/27-O&M., dated 12-7-1967.1

3.31 Comments of the Reporting/Countersigning Officers should be obtained only after a representation has been made by the officer adversely reported upon. These comments are meant for the senior officers competent to take final decision on such representations. They are, in no case, to be divulged to the individual concerned before or after he has made a representation to avoid generating avoidable controversy between such officer/ official and the reporting officer.

[c.f. O.M. No. 6/1/74-A.11,dated 8-7-1976.]

3.32 According to existing instructions, there is scope for only one representation against adverse remarks, which should be submitted, if desired, by the officer concerned, within * [30 days] of the receipt of those remarks.

3.33 It has been observed that the instructions as in para 3.32 are not being strictly followed. It is therefore, being re-emphasised that only one representation against adverse remarks should be entertained if submitted within the prescribed period of * [30 days]. Representation received after that period may be filed without any action.

[Extract from O.M. No. 6/1/69-A.11. dated 24-9-1969.]

3.34 A few cases have come to notice where adverse remarks have been expunged from evaluation reports after the lapse of several years and that too has been done rather casually by the Ministries/Divisions/Departments concerned. This is not consistent with the rules regarding expunction of adverse remarks. It is of utmost importance that decision on the representation against adverse remarks should be taken by the competent authority as quickly as possible and within a reasonable period of time.

[c.f. D.O. No. 6/7/72-A.11, dated 27-5-1974.]

**Subs, vide* Estt. Division O.M. No. 6/2/84-PD.11 dated 4-9-84.

3.35 References to officers who have retired or proceeded on LPR.-Representations against adverse remarks recorded by officers, who have retired or have proceeded on L.P.R., should not ordinarily be referred to them for comments, unless the representation contains certain points which, in the opinion of the administrative authority concerned, cannot be dealt with properly without inviting the views of the Reporting/Countersigning Officer. In such cases, a reference on these points only should be made to the Reporting/Countersigning Officer, giving him a reasonable time limit for reply. If no reply is received within the given time limit it may be assumed that the officer has `nothing to say against the points raised in the representation, which may then be disposed of by the administrative authority on its merits.

3.36 In deciding whether a reference contemplated in the preceding paragraph would or would not bring any fruitful result in any individual case, the Ministries/Divisions should use their own judgment and discretion, keeping in view the general reputation of the retired officers.

3.37 In no case, a reference in connection with representations against adverse remarks, should be made to a Reporting/Countersigning Officer after one year of the date of his retirement or proceeding on leave preparatory to retirement.

[c.f. O.M.No.4/3/66-A.II, dated 7-1-1967.1.

IV. PROCEDURE FOR EXPUNCTION OF ADVERSE ENTRIES

3.38 The question has been raised by what exact procedure adverse entries in the evaluation reports of Government servants should be expunged, if it is decided by the competent authority to do this.

3.39 In such cases the adverse entry should be scored through, but not in such a way as to make it illegible. A marginal note should be added showing the file number and date of the orders under which the entry has been expunged. In no circumstances should any entry in an evaluation report be made illegible or any papers be physically removed from a file of evaluation reports.

3.40 The words `competent authority' in the last sentence of para 3.38 mean an authority next higher than the countersigning officer. All decisions on the

representations against adverse entries in evaluation reports should be taken by such an authority.

[Extract from Memoranda Nos. 5/51-SE. 1, dated 18-8-1951 and 2/1/66-A.1I dated 9-9-1968.]

"Note:- *In this para, the authority next above the Secretary means the Minister-in-charge and where there is no Minister-in-charge in a Ministry/Division, the Minister of State/Advisor to the Prime Minister (with the rank and status of Minister). The authority next above the Minister in charge/Minister of State/Advisor to the Prime Minister (with the rank and status of Minister) will be the Prime Minister of Pakistan".*

[Added *vide* Establishment Division O.M.No.3/8/2005-CP.II, dated 30.11.2005].

3.41 *Revised Gradings of expunged Remarks.-Under* the existing promotion policy, the following columns are taken into account for quantification of an officer's PERs for his promotion to a higher grade:

(i) Integrity
(ii) Quality & Output of Work
(iii) General Assessment (over all grading)

In the case of a representation against adverse remarks, a competent authority while expunging these remarks does not revise their grading. This creates problem in the quantification of such reports. It has now been decided that competent authority while allowing representation against adverse remarks would give his own assessment about the expunged entries.

[c.f. Establishment Division's O. M. No. 6/45/87-PD-II dated the 17th February, 1988.]

3.42 The columns of "Quality & Output of Work and Integrity" are no longer in the revised Performance Evaluation Report Form. As a result, only the quantified score of officers in "Overall Assessment" shall, henceforth, be taken into account by the Central Selection Board (CSB) while considering promotion of officers to next grade.

[c.f. Establishment Division's O.M. No.3/11/2003-CP.11, dated 19-12-2003.

SECTION 4

ANCILLARY DOCUMENTS TO BE PLACED ON C.R. DOSSIERS

Letters of appreciation from Government

4.1. Letters of appreciation from Government or from the Head of a Department may be filed in the Character Roll of the officers who do special work outside their ordinary function.

4.2. In the case of Committees/Commissions set up by Government, not only letters of appreciation issued by such Committees/Commissions to Government officers serving with them but also attested copies of such remarks or paragraphs concerning them which have been embodied in their reports may be placed in the Character Rolls of the Officers concerned.

[Extract from letter No. 9(1)/57-SE. Ill, dated 27-3-1957, read with para 4 of O.M. No. 25/2/61-CV, dated 13-2-1961.]

4.3. In modification of the earlier instructions, it has been decided that the letters of commendation which may be issued to the officers in recognition of their meritorious work or commendable efficiency, should be placed on the C.R. dossiers of the officers concerned, and a copy should be endorsed to the officers concerned.

[c.f. O.M. No. 6/5/76-A. II, dated 17-5-1976.]

Remarks by Ministers/Senior Officers

4.4. (i) There is no objection in placing the remarks recorded by a Minister in appreciation of the work of an officer on his character.

[Extract from U. O. No. 114/60-E XXII, dated 26-2-1960.]

(ii) A senior officer should not be debarred from writing his remarks in the evaluation report of a subordinate, if he so desires even after it has been countersigned by the officer higher than the reporting officer.

[Extract from D.O. letter No. 6/13/71-A. 11, dated 23-8-1971.]

Entries regarding honoraria/awards

4.5. If an officer has received any honorarium/award, a suitable entry should be made in his character roll and a copy of the citation placed in it.

[Extract from letter No. 1/8/60 C, dated 9-2-1961.]

Suggestions accepted by Idea Award Committee

4.6. The Idea Award Committee considered a suggestion and agreed that a record should be kept in the character roll of the person concerned if an idea presented by him is accepted by that Committee. It has accordingly been decided that a copy of the communication conveying the acceptance and commendation of the Committee together with a copy of the actual suggestion accepted, should be kept in the character roll of the person concerned.

[c.f. O.M. No. 6/10/64-A. 11, dated 11-11-1964.]

Request for posting out of officers

4.7. It has been decided that requests for posting out of officers from Ministries/Divisions will not be entertained in future unless specific grounds are given. It has also been decided that such requests will then be placed in the CR Dossier of the officer concerned.

[c.f. D.O. letter No. 6/5/76-A. 11, dated 24-12-1979.]

Reflection in Performance Evaluation Report of Extraneous Influence by Government Servants in respect of Service Matters

4.8. The Establishment Division issued instructions *vide* D.O. letter No. 5/4/82-D.I, dated 5th July, 1995 reminding the government servants of the provisions under the rules and emphasising upon them the need to refrain from bringing any extraneous influence in service matters and directing all the competent authorities to bring, immediately, to the notice of the Prime Minister's Secretariat cases of defaulting civil/government servants for seeking orders for initiating disciplinary proceedings on case-to-case basis through the Establishment Division. It has, however, been observed that although the practice is still continuing but not a single case has been reported to the Establishment Division by the Ministries/ Divisions/Departments for seeking the orders of the Prime Minister's Secretariat in such cases.

2. It has been decided that the civil/government servants be advised once again in their own interest, to scrupulously observe the provisions contained in the Conduct Rules and the E&D Rules. If any civil servant attempts to bring extraneous influence in respect of his posting, transfer, deputation, promotion, *etc,* a note to this effect shall be placed in his C.R. dossier, besides initiating the disciplinary action under intimation to this Division.

3. It may please be brought to the notice of all civil/government servants working under the Ministries/Divisions/Departments, *etc.*

[c.f. Establishment Division's D.O. letter No. 5/4/82-D.1, dated 18-04-1996.]

Evaluation reports on the trainees at NIPAs, P.A.S.C. etc.

4.9. Evaluation reports on the trainees should be prepared by the Training Institutions. Copies of the evaluation reports should be sent to the sponsoring Ministries/Provincial Governments for being placed on the Character Roll dossiers of the officers. The evaluation reports may be taken into consideration at the time of promotion and given such weight, alongwith other factors, as the relevant authorities may deem fit.

[c.f. Para 5 of letter No. 2/17/61-A. IV, dated 31-10-1961.]

4.10. With a view to ensuring that officers take their training seriously, evaluation reports from the training institutions should be given the same importance as the performance evaluation reports are given. In view of this, Heads of training institutions will send evaluation reports in duplicate to the Ministries/Divisions where the officer was employed last before coming to the training institution. The Ministries/ Divisions will place one copy of the report in the character roll dossier of the officer concerned, available with them, and send the other copy of the report to the Establishment Division for placing on the character roll of the officer maintained in that Division.

[c.f. Paras 1 and 2 of O.M. No. 6/9/63-A. 11, dated 6-12-1963.]

4.11. It has been observed that the documents received in the Establishment Division from Ministries/Divisions/Provincial Governments for placing in the C.R. dossiers of officers are not evaluation reports prepared by the training institutes. These are either Degrees/Certificates or in the form of general letters issued to the officers concerned after completion of training and as such these cannot be placed in the CR dossiers. Such Degrees, Certificates, *etc,* can only be filed in the personal files of officers and necessary entries regarding training they underwent, can be made in the relevant column of the PER Form [S.121G]. Therefore, to avoid unnecessary correspondence in this regard, it is requested that only "evaluation reports" prepared by the Training Institutions are sent to the Establishment Division for placement in the C.R. dossiers of the officer concerned.

[c.f. O.M. No. 6/11/72-A. II, dated 28-3-1974 with necessary verbal changes]

Reports on officers detailed for training abroad

4.12. In accordance with the principles initiated in the Establishment Division's letter No. 2/17/61-A. IV, dated the 31st October, 1961 (para (4.9) (full text at pages 299-301 Chapter IX, Establishment Manual, Ed. 1992) reports on officers detailed for training courses abroad at various Institutes will be placed on the C.R. dossiers of the officers.

[c.f. letter No. F.1/29/62-A. 111, dated 19-11-1962 read with No. 1/29/62-A. 111, dated 18-4-1963.]

Nomination Forms under the Central Employees Benevolent Fund and Group Insurance Act, 1969

4.13. (i) One copy of the nomination forms duly signed by the Head of the Office is to be returned to the employee, one to be placed in the CR/Service Book, of gazetted/non-gazetted employee respectively and one to be sent to the Director, Regional Board in whose jurisdiction an employee is serving.

[c.f. O.M. No. 1(4)-BT-A/RP/70, dated 24th August. 1971.]

(ii) Ministries/Divisions are requested to obtain such nomination forms from the officers serving under their control and furnish the same to the Establishment Division, for record.

[c.f. Estt. Division O.M. No. 6/17/81-A-11, dated 23rd November, 1981.]

Annual Medical Examination Reports

4.14. Government of Pakistan has decided that every officer in the employ of the Federal Government should be medically examined every year and the report of such examination be recorded in the performance evaluation reports/ service record of the officer.

4.15. The medical examination will be conducted as follows:

1. For Officers posted at Karachi (Heart Clinic, Jinnah Central Hospital).	(a) Officers of the rank of Joint Secretary and above, Professors of Medicines, Dow College- Incharge, Heart Clinic, Karachi. (b) Other Officers in Grade-17 or above, Associate Physicians, Assistant Professors of Medicines, Jinnah Central Hospital.
2. For Officers posted at Rawalpindi (Central Government Hospital);	(a) Officers of the rank of Joint Secretary and above. Their authorised medical attendants. (b) Other Officers in Grade-17 or above, Physicians of the Hospital.
3. Other places.	Civil Surgeons at District Head quarters

[N.B.-Officers would be examined only at the station of their posting.]

4.16. The report of the medical examination will be in the form attached and will be furnished by the examining officer direct to the Head of the Office/ Department concerned.

4.17. It is proposed to divide the officers in the following categories on the basis of their medical fitness:

(i) Category A	An officer who has not been definitely disabled on account of a serious defect.
(ii) Category B	An officer who suffered from serious defect which has disabled him partially but permanently, provided he is fit to perform certain types of duties, such as sedentary duties.
(iii) Category C	An officer who is completely incapacitated.

4.18. The report will be disclosed to the officer. If he contests the medical category assigned to him by the Medical Officer conducting the medical examination he may be placed before a Medical Board.

4.19. The above decision has been taken in the interest of the officers themselves so that their physical defects are discovered at an early stage and an easy treatment is assured. An officer who is completely incapacitated and placed in "C" Category would still be given such treatment as may be possible. There will be no categorisation of jobs and the Establishment Division/Service Department concerned will take the medical report into consideration while considering particular appointment.

[c.f. Health Division O.M. No. 9/18/60-M, dated 10-1-1961.]

4.20. Re-employed/superannuated officers.-The intention of the orders issued in the Ministry of Health O.M. No. F. 9/18/60-M, dated the 10th January, 1961 (Para 4.14-19) is to ensure that officers in Government service are fit and as such all Grade-17 and above officers including those re-employed after retirement, should be medically examined annually.

4.21. Army officers in civil employ.-If they are serving officers, seconded to the Civil, they will be examined by the Army medical authorities. If they have given up connection with Army and are retired *etc.* They will be examined by the Civil medical authorities.

4.22. Maintenance of Medical Rolls with the C.R. Dossiers.- According to the instruction contained in the Health Division O.M. No. 9/18/60M, dated 10th January, 1961 (Para 4.14) annual medical reports in respect of all Grade- 17 and above officers are required to be placed in the C.R. Dossiers of the officers concerned. Experience has, however, shown that mixing of medical reports with evaluation reports in the C.R. Dossiers creates confusion at the time of examination of C.R. Dossiers for purposes of career planning, promotion *etc.,* of the officer. It has, therefore, been decided that medical reports should henceforth be placed in a separate folder to be called "Medical Roll" attached with the C.R. Dossier of the officer.

4.23. As regards medical reports from 1961 to 1970 which have been placed in the C.R. Dossiers, these may also be removed from the dossiers and placed in the Medical Rolls.

[c.f. O.M. No. 6/1/70-A. 11, dated 27'-5-1971.]

4.24. According to the existing instructions, Annual Medical Reports in respect of all officers of Grade- 17 and above are required to be placed in their C.R. dossiers and that, instead of mixing the medical reports with the evaluation reports in the P.E.R.s, the medical reports should be placed in a separate folder to be called Medical Roll which should be attached to the C.R. dossier of the officer concerned.

4.25. It has, however, been noticed that the annual medical reports are not being sent to the Establishment Division regularly alongwith the C.Rs. with the result that the C.R. dossiers of the officers concerned maintained in this Division remain incomplete. The medical reports are very important documents and are taken into account for considering the question of continued retention of officers in service and also for consideration of the proposals for

their promotion to higher posts which involves the discharge of heavy and strenuous duties. It is accordingly requested that great care and vigilance may please be exercised in getting the officers medically examined every year and in furnishing their medical reports to the Establishment Division by 31st March, positively. Serious action may be taken against the officer who evade the annual medical examination. If there are any cogent or plausible reasons for which the officer could not be examined medically during a particular year or years, the circumstances, in which they could not or did not undergo the annual medical check up, should be intimated to the Establishment Division. The Officer-in-charge of the administration in the Ministries/Divisions may be directed to ensure that every officer of the Ministry/Division undergoes the medical examination at the appropriate time.

[c.f. O.M. No. 1/1/76-A. 11, dated 27-3-1976.]

4.26. Medical reports on officers on deputation to international organisations (U.N., RCD, etc.).-It has been decided in consultation with the Health Division that the medical reports on such officers should be dispensed with, and the officers concerned deemed to be medically fit unless a report to the contrary is received from the foreign organisation concerned.

[c.f. O.M. No. 6/1/73-A, 11, dated 19-7-1973.]

Strictures passed by Courts against Government servants

4.27. The question whether strictures passed by Courts of Law against a Government servant render him liable to departmental action has been under the consideration of the Establishment Division for some time. It has been held that when a Court passes any strictures against a Government servant, it should not necessarily be assumed that he is guilty of some misconduct or breach of rules or an act of omission or commission. The nature of the action to be taken should be decided after careful consideration of the facts and circumstances of each individual case. If the strictures are such as to merit disciplinary action against the Government servant concerned, he should be dealt with departmentally in the light of Government Servant's (Efficiency and Discipline) Rules. No Government servant should, however, be punished on the basis of the strictures without drawing up necessary proceedings in accordance with the aforesaid rules. An entry may be made in the Character Roll of the Government servant concerned or a copy of the strictures placed therein only when specific orders are passed to that effect by the competent authority. In no other case, strictures should find a place in the Character Roll of the Government servant.

[c.f. O.M. No. 3/110/59-EV, dated 28-4-1960.]

SECTION 5

SAFE CUSTODY, PROPER MAINTENANCE AND MOVEMENT OF PERFORMANCE EVALUATION REPORTS/CHARACTER ROLL DOSSIERS

Safe custody-General Instructions

5.1. Reports will be kept in the safe custody of the next higher officer-incharge of administration. In no case should an officer have access to his own reports.

[c.f. para 10 of O.M. No. 5/3/48-Estt. (SE), dated 1-8-1949.]

5.2. Secretaries to Government should satisfy themselves that no officer in a Ministry or in an Attached Department or Subordinate Office has custody of his own Character Roll.

[Extract from D.O. No. F.5/3/48-Estt. (SE.1), dated 24-6-1950.]

5.3. Except for the communication of adverse remarks, according to the existing instructions the contents of the reports will not be divulged to the Government servants concerned.

[c.f. para 9 of O.M. No. 5/3/48-Estt. (SE), dated 1-8-1949.]

5.4. There is too much reason to believe that some Ministries do not take sufficient care to preserve the secrecy of these reports. Some have reached the Establishment Division under covering notes signed by very junior officers. The most scrupulous care is taken here in regard to their secrecy and it is requested that the reports should be kept in the personal custody of senior officers.

[c.f. para 3(d), D.O. Letter No. 5/3/48-SE.1, dated 9-6-1951.]

5.5. *Evaluation record to be page-numbered.-In* order to minimise the possibility of any of these reports being tampered with, it is necessary that the sheets in evaluation record should be page-numbered in ink.

[Extract from O.M. No. F.5/3/48-Estt(SE. 1), dated 2-10-1950.]

5.6. *Character Rolls of Retired Officers.-It* has been decided as a general principle that the character rolls may not be given to retired officers.

[Extract from O.M. No. 6/1/70-A. 11, dated 30-11-1970.]

5.7. Character Rolls of Government servants no longer in service.- It has been decided that in case of death or resignation of officers, the Character Rolls may be preserved for five years after their death and resignation and in other cases for ten years after their retirement, removal, discharge or dismissal *etc.* or until they attain the age of 65 years, whichever is earlier.

[Extract from O.M. No. 6/1/70-A. 11, dated 27-2-1970.]

5.8. *Forwarding and returning of character rolls.-In* order to maintain complete secrecy, Ministries/Divisions *etc.* are requested that on both occasions while forwarding the evaluation reports/character rolls and obtaining the character rolls from the Establishment Division, the correspondence should always be, at least, at Deputy Secretary's level.

[Extract from O.M. No. 6/1/67-A. 11, dated 1-3-1967.]

5.9. Evaluation reports should always be sent to an officer by name not lower than a Deputy Secretary.

[c.f. para 3, D.O. letter No. 9(5)-52/SE. 111, dated 25-2-1953.]

Where to be kept-Character Rolls of different category of officers

5.10. *Secretariat Officers.-Character* Rolls of all officers of the rank of Section Officer/Assistant Secretary and above should be kept with the Establishment Division. The PERs of all such officers, if any, with the Ministries/ Divisions may be sent to the Establishment Division for record, after being brought up-to-date.

[Extract from O.M. No. 3(2)F.O./48, dated 11/14-6-1948.]

5.11. *Officers of the Attached Departments.-A* question has been raised whether or not the evaluation reports on the officers of the Attached Departments in respect of which the Secretaries are the countersigning officers, should be kept in the Ministry or passed on to the Head of the Department concerned. It has been decided that such reports should be retained by the Ministry concerned, except those which are required to be maintained by the Establishment Division.

[Extract from O.M. No. 6/1/69-A, II, dated 14-6-1969.]

5.12. Duplicate P.E.R. Dossiers: former CSP and PCS Officers.- Inconvenience is caused when it is desired to get an officer from a Province owing to the delay in obtaining his character roll for the Selection Board. Provinces have been asked to adopt a system by which duplicate files of former CSP Officers will be kept both at the Centre and in the Provinces. This will entail all reports being made in duplicate a copy being sent to the Centre when an officer is serving in Province. When the officer is deputed from the Centre to a Province the

duplicate set of reports will be sent with him. It is requested, therefore, that all future reports should be sent in duplicate. The same should apply in the case of ex-PCS Officers serving at the Centre; it is obviously desirable that the Provincial Governments should be informed each year of their progress.

[Extract from para 4 of D.O. letter No. 5/3/48-SE. 1, dated 9-6-1951.]

5.13. (1) One copy of every former CSP Officer's character roll (kept up-to-date by the addition of duplicate copies of evaluation reports received from the Provincial Governments and the Federal Ministries from time to time) must always be kept available with the Establishment Secretary.

(2) If an officer is transferred from a Province to the Centre, the Provincial Government will transfer his character roll to the Central Government.

(3) If an officer is deputed from the Centre to a Province, a copy of the character roll with the Establishment Secretary will be sent to the Province to which the officer is deputed.

(4) If an officer is transferred from one Province to another (under the orders of the Federal Government), the Provincial Government under whom the officer was serving before transfer will send his character roll to the other Provincial Government, direct.

[Extract from para 2 of D.O. letter No. 5/3/48-SE. 1, dated 28-8-1951.]

5.14. The objective is for each former CSP Officer and former GAR Officer to have two exactly similar Character Rolls and two only. One, the original, will remain with the Establishment Secretary and the other, the duplicate, will, so to speak, move with the officer wherever he is posted. It should be noted that in some cases copies of Character Rolls sent by Provinces to the Establishment Division are now being treated as original in order to reduce unnecessary further movement of the Character Rolls.

[c.f. para 3 of D.O. letter No. 9(3)/52-SE. III, dated 11-8-1952.]

5.15. Section Officer, other than former CSP, PCS and GAR Officers.-The original copy of performance evaluation report should be sent to the Establishment Division and the duplicate kept by the Ministry/Division concerned.

5.16. *Officer of the former PCS serving at the Centre.-One* copy of the report should be sent to the Establishment Division and the other to the Provincial Government concerned as already laid down in para 5.12 above.

5.17. All remaining Grade-17 and above officers serving in the Federal Secretariat, Attached and Subordinate Offices.-One copy of report should be sent to the Establishment Division and other maintained by the authority administratively concerned.

[c.f. paras l(a), (b) & (c) of O.M. No. 1/38/61-A. 11, dated 16-1-1962.]

5.18. *Character Rolls of officers of* ex-PA&AS, ex-PMAs, *ex-PTS, etc.-The* performance evaluation reports of the officers will be written, maintained and passed on as specified below:

Pool Officers			**Non-Pool Officers**	
Comptroller and Auditor General PRAS.		.	Comptroller and Auditor General of Pakistan.	Establishment Division.
PMAS	-do-	Financial Adviser, Military Finance.	Financial Adviser, C.B.R.	-do Military Finance.
PTS & PC & ES	-do-	C.B.R.		-do

[Extract from O.M. No. 6/1/64-A. 11, dated 10-9-1964, as amended.]

5.19. (i) Duplicate PERs of Assistant Accounts Officers.- Establishment Division agree to the proposal that duplicate copies of evaluation reports in respect of the Assistant Accounts Officers should continue to be maintained in the Office of the Auditor General, in relaxation of the existing instructions.

[Extract from letter No. 6/7/74-A. 11, dated 10-11-1974.]

(ii) Duplicate PERs of officers of Railway Accounts Department.- The existing arrangement for maintenance of duplicate copies of C.R. dossiers in respect of officers Grade-17 and above of Departmental Cadre of the Railway Accounts Department in the Finance Directorate of the Railway Board is acceptable to the Establishment Division in relaxation of the existing instructions.

[c.f. Establishment Division O.M. No. 6/25/80-A-11, dated 30-12-1980.]

5.20. Duplicate PERs of all Grade 17 officers and above.- To eliminate the risk of loss of evaluation reports and to provide for the safe custody of the dossiers containing the evaluation reports, it has been decided that every evaluation report should be written in duplicate and in the case of all Grade- 17 officers and above one copy should be sent to the Establishment Division even if that Division is not concerned with the Services to which the officers concerned belong. A special Secret Section is being created in the Establishment Division:

(a) to remind Ministries/Divisions/Departments periodically that evaluation reports of their officers should be written well in time and placed in the relevant dossiers;

(b) to keep duplicate dossiers of evaluation reports of all Grade-17 officers and above and to make available for use in case any dossier containing original reports is lost or misplaced;

(c) to draw the attention of Ministries and Divisions to the desirability of prompt decisions on representations made against adverse remarks.

In the case of Grade- *16* officers, duplicate dossiers should be maintained in the respective Ministries.

[c• f:-Para 6 of O.M. No. 8/4/59-EOM, dated 16-1-1960.]

5.21. Performance evaluation reports should be kept in newly designed folders The utility of folders and envelopes is explained below:-

(a) The entries on the front and the fourth page of the folder will provide the number and pages of the reports in the dossier and indicate the names of the officers responsible for the custody of reports from time to time.

(b) The entries on the second and third page of the folder will give the record of employment of the officer at a glance.

(c) The photograph of the officer for which space has been provided on the second page will give an idea of the appearance and personality of the officer.

5.22. The dossiers of evaluation reports should be kept in the specially designed envelopes. These envelopes are to be retained by the officer responsible for the custody of the reports, when the dossier is sent out. The entries on the envelopes will enable the officer-in-charge to keep track of the movement of the dossier.

[c.f. - Para 7, O.M. No, 8/4/59-EOM, dated 16-1-1960.]

5.23. *(i) Duplicate C.R. Dossiers not to be requisitioned from the Establishment* Division.- Ministries/Divisions have been asking for the duplicate copies of the C.R. Dossiers of officers of Grade-17 and above, from the Establishment Division, on the plea that the original C.R. dossiers were not readily available or had been misplaced/lost. In -quite a number of such cases, the Establishment Division's copies of the C.R. dossiers were sent to the Ministries/ Divisions, who did not return them promptly. On the other hand, the Establishment Division require the C.R. dossier of officers at short notice for submission to the Central Selection Board, the Establishment Minister and the Prime Minister. If the C.R. dossiers are not readily available in such cases, it causes a lot of embarrassment and delay.

(ii) In view of the circumstances explained in the preceding paragraph, it would not be possible in future to send the C.R. dossiers belonging to the Establishment Division to the various Ministries/Divisions who may kindly ensure that their copies of the C.R. dossiers are properly maintained and are readily available.

[Extract from O.M. No. 6/1/74-A. 11, dated 28-3-1974.]

(iii) C.R. dossiers maintained by the Establishment Division primarily for its own use cannot be made available to other Ministries/Divisions. In view of the above, it is requested that the Establishment Division may not be approached for obtaining PER dossiers of officers.

[c.f. O.M. No. 6/81/80-CPI, dated 25-9-1980.]

5.24. It is once again emphasised that PER dossiers will not be sent out of this Division. Ministries/Divisions may please consult the dossiers in this Division through appointment with the Deputy Secretary (Career Planning) or the Joint Secretary concerned.

[c.f. O.M. No. 6/19/78-CPI, dated 31-12-1978.]

Proper maintenance of character rolls

5.25. It has been noticed that a large number of character rolls are not only incomplete, but also defective in as much as relevant instructions have been followed in their preparation. A few instances are quoted below:

1. In many cases the remarks of the reporting/countersigning officers are not legible, their names and designations are not clearly written in block letters or typed below their signatures, as required under the rules.

2. Many irrelevant papers such as copies of U.O. notes, forwarding D.O. letters *etc.,* which have no connection with evaluation reports found their place in a large number of character rolls in complete disregard to Government instructions.

3. Sometimes both original and duplicate copies of the same evaluation reports are placed in the same dossier, though according to instructions one copy should be sent to the Establishment Division and the other copy placed in the dossier maintained by the Ministry concerned.

4. The character rolls received from Ministries/Divisions in connection with cases are sometimes found to be torn, shabby and without being page numbered or indexed.

5. Last but not the least, the character rolls are not up-to-date in most cases. This causes great difficulty in assessing suitability of candidates for promotion *etc.*

5.26. The importance of the performance evaluation report can hardly be over emphasized. Their defective preparation without proper care is likely to reduce their value. It will, therefore, be appreciated if proper care is taken to avoid such omissions in the performance evaluation reports and necessary steps are taken to ensure that the reports are written and maintained strictly in accordance with the rules.

[Extract from O.M. No. 6/1/69-A. 11, dated 16-8-1969]

Affixing of photographs on Character Rolls

5.27. According to the instructions contained in the Establishment Division Office Memorandum No. 8/4/59-EOM, dated 16th January, 1960 (para 5.21) the Ministries/Divisions were asked to affix photographs in the character rolls of Gazetted officers with a view to giving an idea of their appearance and personality. Specific space has been provided for the same on second page of the revised character roll folder No. S. 121-(A)(I) with printed instructions underneath that the photograph should be replaced after

every ten years. It has been observed that in many cases these instructions have not been followed by the Ministries/ Divisions concerned with the result that no photographs have been affixed in character roll of several officers. The President's Secretariat have specifically pointed out such omissions. Ministries/Divisions' are therefore, requested to ensure that photographs of all officers are affixed in both the folders of the character roll dossiers.

[c.f. D.O. letter No. 6/1/70-A. II, dated 16-3-1970]

5.28. A serious view has been taken by the President's Secretariat (Public) that photographs of officers are not always affixed in their character rolls. It is, therefore, requested that the officers responsible for the custody of character rolls may please see that photographs of all officers are affixed at page 2 of respective character roll folders (both the copies) irrespective of their rank and status. A copy each of recent photograph of all Grade-17 officers and above working in different Ministries/Divisions/Attached Departments may also be sent to Establishment Division, for record.

[c.f. O.M. No. 6/1/70-A. 11, dated 26-2-1970.]

5.29. Inspite of the instructions noted in the margin, in a quite large number of cases, photographs of officers are not affixed to their C.R. dossiers. In some cases the photographs have become too old, although according to instruction photographs should be replaced after every ten years.

O.M. No. 6/l/70-A.11 dated 26-2-1970 (para 5.28).

D.O. No. 6/1/70-A. II dated 16-3-1970 (para 5.27).

5.30. It may be ensured that the latest photographs of all officers are affixed immediately to their Character Roll Dossiers. Copies of the latest photographs may also be supplied to the Establishment Division.

[cf. D.O. letter No. 6/1/70-A. ll, dated 8-11-1973.]

5.31. Certain `Purdah' observing officers have objected to supply their photographs for affixing them on their C.R. dossiers. The matter has been considered in Establishment Division. It has been decided that such officers will have the option to supply or not to supply their photographs for the purpose. In respect of officers who do not like to supply their photographs, a certificate that they observe purdah will have to be given by the Head of the Institution where they serve.

[c.f. O.M. No. 6/6/77-A. 11, dated 17-1-1978.

SECTION 6

STANDARDISED FORMS-PERFORMANCE EVALUATION REPORTS

6.1. *(i) Standardised PER Forms of ministerial staff.*-After examination of the various forms at present in use, it has been decided that the attached forms Forms S-121 B, S-121 C, S-121 *D & S-121 E will be the most suitable in so far as officers and staff in the Secretariat and Attached Departments are concerned.

(ii) In addition to the general instructions regarding the preparation of the reports, as reproduced in section 2, special instructions relating to the particular forms are given on each form.

(iii) No departure should be made from the headings in the standard forms that have been prescribed. In cases, however, where considering the special nature of the duties entrusted to officers, it is necessary to bring out any `special' qualities in the evaluation reports, suitable additions may be made to the `Listed' heading in the form.

(iv) Staff Car Drivers/Despatch Riders.-Form S. 121-F is meant for writing PERs of Staff Car Drivers/Despatch Riders.

[c.f. paras 1-3 of O.M. No. F.5/3/48-Estt. (SE), dated 1-8-1949.]

6.2. In consultation with the Establishment Division it has been decided to introduce a new form for writing performance evaluation report on Stenographers/ Stenotypists (S-121-E Revised).

[c.f. 0 & M Division O.M. No. 10/5/77-RO. III, dated 29-10-1979.]

6.3. In consultation with the Establishment Division it has been decided to introduce a new form for writing performance evaluation report on Assistants, Upper Division Clerks and Lower Division Clerks (S-121-C Revised).

[c.f. 0 & M Division O.M. No. 10/5/77-R.O. III, dated 22-9-1979.]

6.4. *Revised PER Form for Officers in Grade-17 and above.-It* has been felt for sometime that the present PER form has failed to serve as an adequate index of a civil servant's qualities, attitudes and performance for the purpose of career planning, training, promotion *etc.* The Establishment Division undertook an exercise to devise a new performance evaluation form which would reflect an officer's strong and weak points more objectively and ensure that such performance evaluation effectively serves its true purpose.

*The form (S-121 D) has since been discontinued.

6.5. The President has been pleased to approve the form prepared by the Establishment Division. This form will be used for evaluating the performance of all civil servants in Grade 17 and above. It will be introduced from the 1st January, 1983 and all PERs for 1982 onwards will be recorded in the new Form (S-121-G).

(c.f.-Estt. Secretary's d.o. letter No. 6/9/79(CP. 11) dated 8-8-1982]

Revised Performance Evaluation Form S-121-G.

6.6. The competent authority has been pleased to approve a revised and separate PER format for officers in BS-17/18, BS-19/20 and BS-21 (S-121-G i, ii & iii).

2. It may be observed that PER forms have been trifurcated and colour coded. This is indicative of the fact that evaluation criteria for lower management, middle management and higher management posts is clearly distinguishable and in line with the job requirements of the posts at different levels.

3. It may be intimated that the revised format of PER shall come into force *w.e.f.* 1st January, 2001, meaning thereby that PERs for the year 2000 shall be initiated in the revised format.

[c.f.-Estt. Division's O.M. No. 1/10/2000-DS(Coord.), dated 18-8-2000].

6.7. Reference Establishment Division O.M. No. 1/10/2000-DS (Coord) dated the 18th August, 2000. A detachable certificate shall be affixed to the revised format of the PERs. Samples of certificate already provided to Secretaries/ Additional Secretaries Incharge of Ministries/Divisions.

2. The officers being reported upon would be required to fill in the name/designation of their reporting and countersigning officers and dispatch the certificate to the officer in charge entrusted with the maintenance of their evaluation records on the same date the PER is forwarded to the reporting officers.

3. This shall enable the controlling Ministries/Divisions/Authorities to ensure follow-up and prompt retrieval of PERs from the Reporting/Countersigning Officers.

4. The guidelines for filling up the PERs shall be printed on the reverse of the PER proformae.

[c.f.-Estt. Division's O.M. No. 1/10/2000-DS (Coord) dated 17-10-2000.1

6.8. Reference is made to Establishment Division's letter of even number dated 17th October, 2000.

2. In a briefing given to the Chief Executive on the performance evaluation system, the competent authority has been pleased to direct that the comparative grading column (top 10%, next 20% and next 70%) in the PERs for officers in BPS- 19, 20 and 21 should be deleted.

3. Accordingly, revised samples of PERs (without the comparative grading column) have been prepared and are forwarded for information. These amended revised PERs shall be introduced w *e f.* January 1st, 2002 for initiating the PERs for the year, 2001.

4. As per previous practice requisite indents may be placed with the Department of Stationery and Forms, Cabinet Division and the printed forms may be distributed among officers working under Administrative control of Ministries/ Divisions.

[c.f.-Estt. Division's O.M. No. 1/10/2000-DS(Coord), dated 25-10-2001].

SECTION 7

MISCELLANEOUS INSTRUCTIONS

P.E.Rs not a Condition of service

**7.1. [Omitted].*

**7.2. [Omitted].*

**Note:- These paras have been omitted as the instructions contained therein were in conflict with the judgment of the Supreme Court (1981 SCMR-840) in which it was held that the Performance Evaluation Reports were very much a part of the terms and conditions of the service: hence, appeal against remarks in Performance Evaluation Reports were competent before Services Tribunal and such Tribunal competent to expunge such remarks.*

**7.3. {Omitted].*

*[Establishment Division's Letter No. 6/24/87-PD. lI dated 20-10-1987].

Guarding against personal likes and dislikes

7.4. It has been decided that with a view to guarding against personal likes and dislikes, an officer receiving adverse remarks for two successive years from the same reporting officer should be placed under another reporting officer.

[c.f. letter No. 6/14/61-C, dated 7-8-1961.]

Cost of photographs affixed on the C.Rs

7.5. Government servants are required to furnish their photographs on official account or for official purposes on various occasions. In the past specific instructions regarding reimbursement of his expenditure have been issued on each occasion when it arose. In order to obviate the need to issue occasional instructions, it has been decided that the actual cost of such photographs, whenever required to be furnished on official account or for official purposes, may be reimbursed to government servants on the production of cash memos or receipts.

[c.f. Finance Division O.M. No. F-3(6) R. 12/78, dated 1st July, 1978.]

7.6. Queries have been raised from different quarters seeking clarification with regard to payment of cost of the standing cabinet size photographs. The matter has been considered and it has been decided that, as a special case, the cost of photographs will be re-imbursed in the case of officers who have made their own arrangements. In this connection it should be clearly understood that no TA/DA will be admissible for journeys, if made on this account.

[c.f. O.M. No. 1/3/78-A. 11, dated the 10th July, 1978.]

Performance Evaluation Report Form for Officers in BPS-16.

GOVERNMENT OF_____

_____

(Name of the Ministry/Division/Department/Office)

_____

Occupational Group

ANNUAL / SPECIAL REPORT FOR THE PERIOD 20 TO 20

PART-I

1. Name (in block letters) _____
2. Designation _____
3. Academic Qualifications _____
4. Date of birth: _____ Place of birth: _____
5. Total Service _____
6. Knowledge of Languages _____
7. Special training _____

Posts held during the period

Post and BPS	Period	Pay and Scale

S 121-A (Rev.)

PLEASE SEE INSTRUCTIONS OF THIS FORM.

PART II

The rating should be recorded by initialling the appropriate column or box.

'A1' Very good; 'A' Good, 'B' Average; 'C' Below Average; 'D' Poor.

		A1	A	B	C	D	Remarks
1.	Intelligence and mental alertness						
2.	Judgement and sense of proportion						
3.	Initiative and drive						
4.	Power of expression:						
	(a) Writing						
	(b) Speech						
5.	Ability to plan, organise and supervise work						
6.	Quality and output of work						
7.	Perseverance and devotion to duty						
8.	Capacity to guide and train sub-ordinates						
9.	Co-operation and tact						
10.	Integrity:						
	(a) Intellectual						
	(b) Moral						
11.	Sense of responsibility						
	(a) General						
	(b) In financial matters						
12.	Personality						
**13.							
**14.							
**15.							
**16.							
**17.							

*18.	Interest in social welfare	Takes interest in social welfare activities..... ☐	Is inclined to treat this aspect of his duty as routine function..... ☐
*19.	Interest in economic development	Is interested in planning and execution of development schemes..... ☐	Is inclined to treat this duty as routine function..... ☐
*20.	Behaviour with public	Is modest and helpful..... ☐	Is inclined to be arrogant..... ☐
21.	Standard of living	Lives within known means of income..... ☐	Reported to be living beyond known means of income..... ☐
22.	Observance of security measures	Takes reasonably good care..... ☐	Inclined to be negligent..... ☐
23.	Punctuality	Punctual..... ☐	Unpunctual..... ☐
24.	Touring	Adequate and systematic. ☐	Inadequate or unsystematic..... ☐

*To be initialled only when applicable.
**Please *see* instruction A-1.

PART III

Comparing him with other officers of the same grade, give your general assessment of the officer by initialling the appropriate column below:

Very Good	Good	Average	Below Average	Poor	Remarks on special aptitude, if any, *e.g.*, for secretariat, executive, judicial, development or diplomatic work.

FITNESS FOR PROMOTION
(Initial the appropriate box below)

(a)	Recommended for accelerated promotion	☐
(b)	Fit for promotion	☐
(c)	Recently promoted; assessment for further promotion premature	☐
(d)	Not yet fit for promotion, but likely to become fit in course of time	☐
(e)	Unfit for further promotion, has reached his ceiling	☐
(f)	Fitness for retention after 25 years service	Fit ☐ Unfit

Pen Picture

Date_____20 *Signature, name and designation.*

Official Stamp

PART IV

REMARKS OF THE COUNTERSIGNING OFFICER

I consider that the assessment made by the Reporting Officer is very good/reasonably good/ strict/lenient/biased*.
The remarks underlined in red ink should be communicated in writing.**
I have the following remarks to add:

Date_____20 *Name and designation of countersigning officer*

Official Stamp

*Strike out the entries which are inapplicable.
**Strike out this sentence if there are no adverse remarks to be communicated.

A. INSTRUCTIONS FOR MINISTRIES, DEPARTMENTS, ETC.

1. This form has been designed to cover the basic qualities of an officer. Where necessary, comments on other qualities required of an officer belonging to a specialised service or employed on a particular kind of duties, should be made in the blank space provided against items 13-17 of Part-II, Ministries/ Departments/ Provincial Governments, *etc.,* should issue administrative instructions in this behalf to the reporting officers under them indicating the specific qualities required for any particular group or post deserving special mention in the evaluation reports. Suitable entry headings relating to these qualities should be typed in the space provided against items 13 to 17 when the form is initially prepared by office for individual officers.

2. The report should be initiated by the next higher officer and countersigned by an officer higher than the reporting officer both being concerned with the work of the officer reported upon.

3. (i) When an adverse remark is made in the evaluation report of any officer, a copy of the whole report should be furnished to him, at the earliest opportunity, and in any case within one month from the date the report is countersigned, with a d.o. letter, a copy of which should be signed and returned by him in acknowledgement of the report. A serious view should be taken of any failure on the part of the officials concerned to furnish a copy of the report containing adverse remarks to the officer reported upon.

(ii) The officers making representation against adverse remarks recorded in their evaluation reports should not make any personal remark or remarks against the integrity of the Reporting Officers. Violation of this rule will be considered a misconduct and will also render the representation liable to be summarily rejected.

4. When a report is built up on the individual opinions of the reporting and countersigning officers, it is only the opinion as accepted by the latter which should be communicated.

5. Remarks in cases where the reporting/countersigning officer suspends judgment, should not be communicated.

6. Any remarks to the effect that the officer reported upon has or has not taken steps to remedy the defects pointed out to him in a previous year, should also be communicated.

7. The adverse remarks should be communicated by the senior officer incharge of establishment matters.

8. An evaluation report containing adverse remarks should not be taken into consideration until they have been communicated in writing to the officer concerned and a decision taken on his representation, if any.

B. INSTRUCTIONS FOR THE OFFICERS RESPONSIBLE FOR THE CUSTODY OF CHARACTER ROLLS

1. Arrange for the completion of the routine part of form and send it to the reporting officer concerned.

2. On receipt of the completed form from the reporting officer, submit it alongwith relevant character roll, to the countersigning officer concerned.

3. Go through each report carefully in order to see it there are any adverse remarks underlined in red ink. If so, arrange to have them communicated to the officer concerned immediately with the direction that his representation, if any, should be submitted within a fortnight of the receipt of those remarks by him.

4. Fill column 4 of the folder and watch receipt of representation. Arrange to obtain a decision on the representation, if any, and communicate it to the officer concerned within one month. Place a copy of the decision in the dossier.

5. In case of officers in BPS-16 send the duplicate copies of the evaluation reports to the administrative Department/Ministry concerned. If the officer belongs to the Ministry, keep the duplicate as well as the original in your own office.

6. Place the report in the folder [(S-121-A(i)] and make necessary entries thereon. Place the folder in the envelope [S-121-A(ii)] and make entries in the columns

Provided thereon, when you have to send the dossier out make entries in the relevant columns of the envelope and retain it with you.

7. If an officer has been receiving adverse remarks for two successive years from the same reporting officer, take up the question of placing him under another reporting officer.

C. **INSTRUCTIONS FOR THE REPORTING OFFICER**

I . While reporting on your subordinates:

(i) Be as objective as possible. (ii) Be as circumspect as possible.
(iii) Be clear and direct, not ambiguous or evasive in your remarks. (iv) Avoid exaggeration and gross understatement.

2. State whether any of the defects reported have already been brought to the notice of the officer concerned and also whether he has or has not taken steps to remedy them.

3. Fill this form in duplicate by initialling the relevant boxes in both the original and the duplicate copies. You may, if necessary, have your views under "Pen Picture" typed but in that case, affix your signature at the end of the "Pen Picture."

4. Where two or more qualities are bracketed together in Part II and the officer reported upon possesses only one of them, bring this fact out in "Remarks" column, e.g. if an officer is cooperative but not tactful, say so.

5. After completing Parts II and III, send the form to the officer having custody of the relevant character roll in your office.

D. INSTRUCTIONS FOR THE COUNTERSIGNING OFFICER

1. Weigh the remarks of the Reporting Officer against (a) your personal knowledge, if any, of the officer reported upon; (b) the previous reports in his character roll, and then give your own remarks in Part-IV.

2. If you consider that a particular remark of the Reporting Officer is wrong and should be expunged, score it out in red ink, initial the scoring and any other remark which you may consider appropriate. If you do not wholly agree with remark, give your own remarks either against the relevant entry in the "Remarks" column in Part-II or under "Remarks of the Countersigning Officer" in Part-IV

3. See whether any adverse remarks were communicated to the officer in a previous year and, if so, whether or not he has taken steps to remedy the defects pointed out to him. Comment on this aspect unless the Reporting Officer has already done so.

4. Underline in red ink remarks which, in your opinion, are adverse and should be communicated to the officer concerned. Please see also instructions 3 to 6 under A.- Instructions for Ministries, Departments, *etc.*

5. After countersigning the form, return it to the officer responsible for the custody of the character roll.

PERFORMANCE EVALUATION REPORT FORM FOR SUPERINTENDENT/ASSISTANT INCHARGE

GOVERNMENT OF PAKISTAN

Name of Ministry/Division/Department/Office

Annual/Special Report for the period from_____20 to_____20

PART-I

Name_____Date of Birth _____

Designation_____BPS_____Basic Pay_____

Date of entry into Government Service_____Date of appointment to the present BPS_____

Qualifications_____

Training course, attended, if any_____

Nature of duties on which employed_____

PART-II

A. **Performance**	**A1**	**A**	**B**	**C**	**D**	**Remarks**
1. Regularity and punctuality in attendance						
2. Knowledge of procedure and regulations.						
3. Capacity for ensuring prompt disposal of work						
4. Submission of cases in proper order						
5. Ability to handle: (i) difficult cases						
(ii) simple cases						
6. Maintaining discipline in the Section						
7. Standard of work: (a) quality						
(b) output						
B. Superintendence of Work						
8. Capacity to train/help and advise less experienced staff						
9. Allocation of work so that no man is unduly burdened						
10. Maintenance of Record (including recording and indexing)						
11. Maintenance of tidiness in premises						
C. Personal Traits						
12. Intelligence						
13. Perseverance and devotion to duty						
14. Cooperation and tact						
15. Amenability to discipline						
16. Integrity						
17. Trustworthiness in confidential and secret matters						

Note.—The rating should be recorded by initialling the appropriate box.
'A1' Very good, 'A' Good, 'B' Average, 'C' Below Average, 'D' Poor.

S-121-B (Revised).

PART-III

GENERAL ASSESSMENT

(Appraise in the present grade by initialling the appropriate column below)

Very Good	Good	Average	Below Average	Poor	Special aptitude, if any

PART-IV

SUITABILITY FOR PROMOTION

(Initial the appropriate box below)

(a) Recommended for accelerated promotion. ☐

(b) Fit for promotion. ☐

(c) Recently promoted/appointed, consideration for Promotion premature. ☐

(d) Not yet fit for promotion. ☐

(e) Unfit for further promotion. ☐

PEN-PICTURE

Date:_____20 *Signature, Name & Designation of Reporting Officer*

Official Stamp

PART-V

REMARKS OF THE COUNTERSIGNING OFFICER

Date:_____20 *Signature, Name & Designation*

Official Stamp

A. **INSTRUCTIONS FOR MINISTRIES, DEPARTMENTS, ETC.**

1. The reports will be initiated by the Branch/Section Officer and will be countersigned by the next higher officer, both being concerned with the work of the person reported upon.

2. When an adverse remark is made in the evaluation report of the official reported upon a copy of the whole report should be furnished to him, at the earliest opportunity, and in any case within one month from the date the report is countersigned, with a memorandum, a copy of which should be signed and returned by him in acknowledgement of the report and be in turn placed in the character roll for record. A serious view should be taken of any failure on the part of the officials concerned to furnish a copy of the report containing adverse remarks to the person reported upon.

3. The officials making representation against adverse remarks recorded in their evaluation reports should not make any personal remark or remarks against the integrity of the Reporting Officers. Violation of this rule will be considered a misconduct and will also render the representation liable to be summarily rejected.

4. When a report is built up on the individual opinions of the reporting and countersigning officers, it is only the opinion as accepted by the latter which should be communicated.

5. Remarks in cases where the reporting/countersigning officer suspends judgment, should not be communicated.

6. Any remarks to the effect that the persons reported upon has or has not taken steps to remedy the defects pointed out to him in previous year, should also be communicated.

7. The adverse remarks should be communicated by the senior officer incharge of establishment matters in the Ministry/Division/Department/ Office concerned.

8. Performance evaluation report containing adverse remarks should not be taken into consideration until they have been communicated following rule A-2 above and a decision taken on the representation.

B. INSTRUCTIONS FOR THE OFFICERS RESPONSIBLE FOR THE CUSTODY OF CHARACTER ROLLS

1. Arrange for the completion of the routine part of form and send it to the reporting officer concerned.

2. On receipt of the completed form from the reporting officer, submit it alongwith relevant character roll, to the countersigning officer concerned.

3. Go through each report carefully in order to see if there are any adverse remarks underlined in red ink. If so, arrange to have them communicated to the person concerned immediately with the direction that his representation, if any, should be submitted within a fortnight of the receipt of those remarks by him.

4. Arrange to obtain a decision on the representation, if any, and communicate it to the official concerned within one month. Place a copy of the decision in the dossier.

5. Keep the duplicate as well as original copies of the evaluation reports in your office.

6. If an official has been receiving adverse remarks for two successive years from the same reporting officer, take up the question of placing him under another reporting officer.

C. **INSTRUCTIONS FOR THE REPORTING OFFICER**

1. While reporting on, your subordinates:

(i) Be as objective as possible

(ii) Be as circumspect as possible

(iii) Be clear and direct, not ambiguous or evasive in your remarks

(iv) Avoid exaggeration and gross understatement

2. State whether any of the defects reported have already been brought to the notice of the person concerned and also whether he has or has not taken steps to remedy them.

3. Fill this form in duplicate and affix your signature in both, at the end of the general remarksf any, of the person reported upon.

4. After making relevant entries, send the form to the officer responsible for custody of character roll in your office.

D. INSTRUCTIONS FOR THE COUNTERSIGNING OFFICER

1. Weigh the remarks of the Reporting Officer against (a) your personal knowledge, if any, of the person reported upon; (b) the previous reports in his character roll, and then give your own remarks at the end of the report.

2. If you consider that a particular remark of the Reporting Officer is wrong and should be expunged, score it out in red ink, initial the scoring and add any other remark which you may consider appropriate. If you do not wholly agree with a remark, give your own remark either against the relevant entry or at the end of the report.

3. See whether any adverse remarks were communicated to the person concerned in a previous year and, if so, whether or not he has taken steps to remedy the defects pointed out to him. Comment on this aspect unless the Reporting Officer has already done so.

4. Underline in red ink remarks which, in your opinion, are adverse and should be communicated to the person reported upon. Please see also instructions 2 and 4 to 6 under A.-Instructions for Ministries, Departments, etc.

5. After countersigning the form, return it to the officer responsible for the custody of the character roll.

S. 121-B (Revised)

PERFORMANCE EVALUATION REPORT FORM
FOR
ASSISTANTS/U.D.Cs./L.D.Cs.

GOVERNMENT OF PAKISTAN

Name of Ministry/Division/Department/Office

Annual/Special Report for the period from_____20 to _____20

PART-I

Name_____Date of Birth _____

Designation_____BPS_____Basic Pay_____

Date of entry into Government Service_____Date of appointment to the

Present BPS_____

Qualifications_____

Training courses, attended, if any_____

Nature of duties on which employed_____

PART-II

A. PERFORMANCE	A1.	A	B	C	D	Remarks
1. Referencing and paging of notes and correspondence						
2. Keeping of files and papers in tidy conditions						
3. Maintenance of records (including recording and indexing)						
4. Skill in noting and drafting, where applicable						
5. Other duties; e.g. Cashier duties, preparation of bills, statements and returns, etc.						
6. Other Clerical duties e.g. typing, diary/ despatch/disbursement of cash, statements/returns						
7. Regularity and punctuality in attendance						
8. Standard of work: (a) quality						
(b) output						
B. PERSONAL TRAITS						
9. Intelligence						
10. Perseverance and devotion to duty						
11. Co-operation and tact						
12. Amenability to discipline						
13. Integrity						
14. Trustworthiness in confidential and secret matters		Yes			No	

Note.—The rating should be recorded by initialling the appropriate box:
'A1' Very good, 'A' Good, 'B' Average, 'C' Below Average, 'D' Poor.

S-121-C. (Revised).

PART-III

GENERAL ASSESSMENT

(Appraise in the present grade by initialling the appropriate column below)

Very Good	Good	Average	Below Average	Poor	Special aptitude, if any

PART-IV

SUITABILITY FOR PROMOTION

(Initial the appropriate box below)

(a) Recommended for accelerated promotion. ☐

(b) Fit for promotion. ☐

(c) Recently promoted/appointed, consideration for Promotion premature. ☐

(d) Not yet fit for promotion. ☐

(e) Unfit for further promotion. ☐

(f) Fitness for retention after 25 years service Fit ☐ ☐ Unfit

PEN-PICTURE

_____

_____

_____

Date: _____20 *Signature, Name & Designation of Reporting Officer*

Official Stamp

PART-V

REMARKS OF THE COUNTERSIGNING OFFICER

_____

_____

_____

Date: _____20 *Signature, Name & Designation*

Official Stamp

PART-III

GENERAL ASSESSMENT

(Appraise in the present grade by initialling the appropriate column below)

Very Good	Good	Average	Below Average	Poor	Special aptitude, if any

PART-IV

SUITABILITY FOR PROMOTION

(Initial the appropriate box below)

(a) Recommended for accelerated promotion. ☐

(b) Fit for promotion. ☐

(c) Recently promoted/appointed, consideration for Promotion premature. ☐

(d) Not yet fit for promotion. ☐

(e) Unfit for further promotion. ☐

(f) Fitness for retention after 25 years service Fit ☐ ☐ Unfit

PEN-PICTURE

_____

_____

_____

Date: _____20 *Signature, Name & Designation of Reporting Officer*

Official Stamp

PART-V

REMARKS OF THE COUNTERSIGNING OFFICER

_____

_____

_____

Date: _____20 *Signature, Name & Designation*

Official Stamp

A. INSTRUCTIONS FOR MINISTRIES, DEPARTMENTS, ETC.

1. The reports will be initiated by the Branch/Section Officer and will be countersigned by the next higher officer, both being concerned with the work of the person reported upon.

2. When an adverse remark is made in the evaluation report of the official reported upon a copy of the whole report should be furnished to him, at the earliest opportunity, and in any case within one month from the date the report is countersigned, with a memorandum, a copy of which should be signed and returned by him in acknowledgement of the report and be in turn place in the character roll for record. A serious view should be taken of any failure on the part of the officials concerned to furnish a copy of the report containing adverse remarks to the person reported upon.

3. The officials making representation against adverse remarks recorded in their evaluation reports should not make any personal remark or remarks against the integrity of the Reporting Officers. Violation of this rule will be considered a misconduct and will also render the representation liable to be summarily rejected.

4. When a report is built up on the individual opinions of the reporting and countersigning officers, it is only the opinion as accepted by the latter which should be communicated.

5. Remarks in cases where the reporting/countersigning officer suspends judgment, should not be communicated.

6. Any remarks to the effect that the persons reported upon has or has not taken steps to remedy the defects pointed out to him in previous year, should also be communicated.

7. The adverse remarks should be communicated by the senior officer incharge of establishment matters in the Ministry/Division/Department/ Office concerned.

8. An evaluation report containing adverse remarks should not be taken into consideration until they have been communicated following rule A-2 above and a decision taken on the representation, if any, of the person reported upon.

B. INSTRUCTIONS FOR THE OFFICERS RESPONSIBLE FOR THE CUSTODY OF CHARACTER ROLLS

1. Arrange for the completion of the routine part of form and send it to the reporting officer concerned.

2. On receipt of the completed form from the reporting officer, submit it along with relevant character roll, to the countersigning officer concerned.

3. Go through each report carefully in order to see if there are any adverse remarks underlined in red ink. If so, arrange to have them communicated to the person concerned immediately with the direction that his representation, if any, should be submitted within a fortnight of the receipt of those remarks by him.

4. Arrange to obtain a decision on the representation, if any, and communicate it to the official concerned within one month. Place a copy of the decision in the dossier.

5. Keep the duplicate as well as original copies of the evaluation reports in your office.

6. If an official has been receiving adverse remarks for two successive years from the same reporting officer, take up the question of placing him under another reporting officer.

C. INSTRUCTIONS FOR THE REPORTING OFFICER

1. While reporting on your subordinates:

(i) Be as objective as possible

(ii) Be as circumspect as possible

(iii) Be clear and direct, not ambiguous or evasive in your remarks

(iv) Avoid exaggeration and gross understatement

2. State whether any of the defects reported have already been brought to the notice of the person concerned and also whether he has or has not taken steps to remedy them.

3. Fill this form in duplicate and affix your signature in both, at the end of the general remarks.

4. After making relevant entries, send the form to the officer responsible for custody of character roll in your office.

D. INSTRUCTIONS FOR THE COUNTERSIGNING OFFICER

I. Weigh the remarks of the Reporting Officer against (a) your personal knowledge, if any, of the person reported upon; (b) the previous reports in his character roll, and then give your own remarks at the end of the report.

2. If you consider that a particular remark of the Reporting Officer is wrong and should be expunged, score it out in red ink, initial the scoring and add any other remark which you may consider appropriate. If you do not wholly agree with a remark, give your own remark either against the relevant entry or at the end of the report.

3. See whether any adverse remarks were communicated to the person concerned in a previous year and, if so, whether or not he has taken steps to remedy the defects pointed out to him. Comment on this aspect unless the Reporting Officer has already done so.

4. Underline in red ink remarks which, in your opinion, are adverse and should be communicated to the person reported upon. Please see also instructions 2 and 4 to 6 under A.-Instructions for Ministries, Departments, etc.

5. After countersigning the form, return it to the officer responsible for the custody of the character roll.

S. 121-C (Revised)

PERFORMANCE EVALUATION REPORT FORM
FOR
STENOGRAPHERS/STENOTYPISTS

GOVERNMENT OF PAKISTAN

_____
Name of Ministry/Division/Department/Office

ANNUAL/SPECIAL REPORT FOR THE PERIOD FROM____20 to ____20

PART-I

Name_____Date of Birth _____

Designation_____BPS_____Basic Pay_____

Date of entry into Government Service_____Date of appointment to the present BPS_____

Qualifications_____

Training courses, attended, if any_____

PART-II

A. PERFORMANCE	A1	A	B	C	D	Remarks
1. Standard of Shorthand/Typing: (a) Speed (b) Accuracy						
2. Attending Telephones: (a) Etiquette (b) Checking unnecessary intrusion (c) Economy						
3. Maintenance of officers engagement diary and conducting of visitors						
4. Movement of files and records of suspense cases.						
5. Dress and cleanliness						
6. Other duties, *e.g.*, tour arrangements, provision of amenities, etc.						
7. Regularity and punctuality in attendance						
B. PERSONAL TRAITS						
8. Intelligence						
9. Perseverance and devotion to duty						
10. Cooperation and tact						
11. Amenability to discipline						
12. Integrity						
13. Trustworthiness in confidential and secret matters		Yes			No	

Note.—The rating should be recorded by initialling the appropriate box:
'A1' Very good, 'A' Good, 'B' Average, 'C' Below Average, 'D' Poor.

S-121-E. (Revised).

PART-III

GENERAL ASSESSMENT

(Appraise in the present grade by initialling the appropriate column below)

Very Good	Good	Average	Below Average	Poor	Special aptitude if any

PART-IV

SUITABILITY FOR PROMOTION

(Initial the appropriate box below)

(a) Recommended for accelerated promotion. ☐

(b) Fit for promotion. ☐

(c) Recently promoted/appointed, consideration for Promotion premature. ☐

(d) Not yet fit for promotion. ☐

(e) Unfit for further promotion. ☐

(f) Fitness for retention after 25 years service Fit ☐ ☐ Unfit

PEN-PICTURE

_____

_____

_____

_____

Date: _____20

Signature, Name & Designation of Reporting Officer

Official Stamp

A. INSTRUCTIONS FOR MINISTRIES, DEPARTMENTS, ETC.

1. The reports will be initiated by the officer to whom the stenographer/ stenotypist is attached.

2. When an adverse remark is made in the performance evaluation report of the official reported upon a copy of the whole report should be furnished to him, at the earliest opportunity, and in any case within one month from the date the report is countersigned, with a memorandum, a copy of which should be signed and returned by him in acknowledgment of the report and be in turn placed in the character roll for record. A serious view should be taken of any failure on the part of the officials concerned to furnish a copy of the report containing adverse remarks to the person reported upon.

3. The officials making representation against adverse remarks recorded in their performance evaluation reports should not make any personal remark or remarks against the integrity of the Reporting Officers. Violation of this rule will be considered a misconduct and will also render the representation liable to be summarily rejected.

4. Any remarks to the effect that the persons reported upon has or has not taken steps to remedy the defects pointed out to him in a previous year, should also be communicated.

5. The adverse remarks should be communicated by the senior officer incharge of establishment matters in the Ministry/Division/Department/ Office concerned.

6. Annual performance evaluation report containing adverse remarks should not be taken into consideration until they have been communicated following rule A-2 above and a decision taken on the representation, if any, of the person reported upon.

B. INSTRUCTIONS FOR THE OFFICERS RESPONSIBLE FOR THE CUSTODY OF CHARACTER ROLLS

1. Arrange for the completion of the routine part of form and send it to the reporting officer concerned.

2. Go through each report carefully in order to see if there are any adverse remarks underlined in red ink. If so, arrange to have them communicated to the person concerned immediately with the direction that his representation, if any, should be submitted within a fortnight of the receipt of those remarks by him.

3. Arrange to obtain a decision on the representation, if any, and communicate it to the official concerned within one month. Place a copy of the decision in the dossier.

4. Keep the duplicate as well as original copies of the evaluation reports in your office.

5. If an official has been receiving adverse remarks for two successive years from the same reporting officer, take up the question of placing him under another reporting officer.

C. **INSTRUCTIONS FOR THE REPORTING OFFICER**

1. While reporting on your subordinates:

(i) Be as objective as possible

(ii) Be as circumspect as possible

(iii) Be clear and direct, not ambiguous or evasive in your remarks

(iv) Avoid exaggeration and gross understatement

2. State whether any of the defects reported have already been brought to the notice of the person concerned and also whether he has or has not taken steps to remedy them.

3. Fill this form in duplicate and affix your signature in both, at the end of the general remarks.

4. After making relevant entries, send the form to the officer responsible for custody of character roll in your office.

S. 121 E (Revised)

PERFORMANCE EVALUATION REPORT FORM FOR STAFF CAR DRIVERS/DESPATCH RIDERS

Report for the year ending 31st December 20

PART I

Name:_____Date of birth:_____BPS:_____
Present Pay:_____Type of Licence held:_____
Type of Vehicle Driven:_____

PART II

Initial the appropriate Column.

STANDARD OF PERFORMANCE/PERSONAL TRAITS		YES	NO
1.	Whether he is conversant with the rules for the staff cars and observes them rigidly.		
2.	Whether he possesses adequate knowledge of the mechanism of cars and their engines, and is competent to do minor running repairs and replacement of spares.		
3.	Whether he has been careful in observing the ordinary courtesies and rules of traffic.		
4.	Whether he has been involved in any road accident or traffic offence and whether there has been any adverse entry in his Driving Licence during the period under review.		
5.	Whether he is co-operative and tactful.		
6.	Whether he is polite and courteous.		
7.	Whether he puts up clean appearance and bearing.		
8.	Is he amenable to discipline.		
9.	Is he regular and punctual in attending office and appointed place of duty.		
10.	Whether he takes due care of the documents of the vehicle issued to him.		
11.	Whether he keeps the Car/M./Cycle in neat and tidy condition and keeps watch of the timely servicing/ change of oil/parts according to the service manual.		
12.	*While driving motor cycle/scooter, does he make use of crash helmet; sun glasses.		
13.	*Does he take proper care of the mail/packages/ documents on his charge and takes signature of the recipient at the time of handing them over?		

*For despatch riders only.

S. (2). (F)

General Rermarks of the Reporting Officer:

Date_____20 Signature

Rermarks of the Countersigning Officer:

Date_____20 Signature

A. INSTRUCTIONS FOR MINISTRIES, DEPARTMENTS, ETC.

1. The reports will be initiated by the officer incharge and will be countersigned by the next higher officer, both being concerned with the work of the person reported upon.

2. When an adverse remark is made in the evaluation report of the official reported upon a copy of the whole report should be furnished to him, at the earliest opportunity, and in any case within one month from the date the report is countersigned, with a memorandum, a copy of which should be signed and returned by him in acknowledgement of the report and be in turn placed in the character roll for record. A serious view should be taken of any failure on the part of the officials concerned to furnish a copy of the report containing adverse remarks to the person reported upon.

3. The officials making representation against adverse remarks recorded in their performance evaluation reports should not make any personal remark or remarks against the integrity of the Reporting Officers. Violation of this rule will be considered a misconduct and will also render the representation liable to be summarily rejected.

4. When a report is built up on the individual opinions of the reporting and countersigning officers, it is only the opinion as accepted by the latter which should be communicated.

5. Remarks in cases where the reporting/countersigning officer suspends judgment, should not be communicated.

6. Any remarks to the effect that the persons reported upon has or has not taken steps to remedy the defects pointed out to him in a previous year, should also be communicated.

. The adverse remarks should be communicated by the senior officer incharge of establishment matters in the Ministry/Division/Department/ Office concerned.

8. Annual evaluation report containing adverse remarks should not be taken into consideration until they have been communicated following rule A-2 above and a decision taken on the representation, if any, of the person reported upon.

B. INSTRUCTIONS FOR THE OFFICERS RESPONSIBLE FOR THE CUSTODY OF CHARACTER ROLLS

1. Arrange for the completion of the routine part of form and send it to the reporting officer concerned.

2. On receipt of the completed form from the reporting officer, submit it alongwith relevant character roll, to the countersigning officer concerned.

3. Go through each report carefully in order to see if there are any adverse remarks underlined in red ink. If so, arrange to have them communicated to the person concerned immediately with the direction that his representation, if any, should be submitted within a fortnight of the receipt of those remarks by him.

4. Arrange to obtain a decision on the representation, if any, and communicate it to the official concerned within one month. Place a copy of the decision in the dossier.

5. Keep the duplicate as well as original copies of the evaluation reports in your office.

6. If an official has been receiving adverse remarks for two successive years from the same reporting officer, take up the question of placing him under another reporting officer.

C. INSTRUCTIONS FOR THE REPORTING OFFICER

1. While reporting on your subordinates:

(i) Be as objective as possible

(ii) Be as circumspect as possible

(iii) Be clear and direct, not ambiguous or evasive in your remarks

(iv) Avoid exaggeration and gross understatement

2. State whether any of the defects reported have already been brought to the notice of the person concerned and also whether he has or has not taken steps to remedy them.

3. Fill this form in duplicate and affix your signature in both, at the end of the general remarks.

4. After making relevant entries, send the form to the officer responsible for custody of character roll in your office.

D. INSTRUCTIONS FOR THE COUNTERSIGNING OFFICER

1. Weigh the remarks of the Reporting Officer against (a) your personal knowledge, if any, of the person reported upon; (b) the previous reports in his character roll, and then give your own remarks at the end of the report.

2. If you consider that a particular remark of the Reporting Officer is wrong and should be expunged, score it out in red ink, initial the scoring and add any other remark which you may consider appropriate. If you do not wholly agree with a remark, give your own remark either against the relevant entry or at the end of the report.

3. See whether any adverse remarks were communicated to the person concerned in a previous year and, if so, whether or not he has taken steps to remedy the defects pointed out to him. Comment on this aspect unless the Reporting Officer has already done so.

4. Underline in red ink remarks which, in your opinion, are adverse and should be communicated to the person reported upon. Please see also instructions 2 and 4 to 6 under A.-Instructions for Ministries, Departments, etc.

5. After countersigning the form, return it to the officer responsible for the custody of the character roll.

S. 121-F (Revised)

CERTIFICATE

Certified that I _____ **(Name of Officer)** **Personnel Number (if allotted)**

_____have on_____submitted my **(Group/Service) (BPS)** **(Date)**

Performance Evaluation Report for the period_____

To_____
(Name/Designation of Reporting Officer)

My countersigning officer is_____
(Name/Designation of Countersigning Officer)

Signatures_____

Designation/Department _____

Note.- **This certificate is required to be dispatched by the officer being reported upon to the Officer Incharge entrusted with the maintenance of his/her C.R. dossier on the same date the PER is forwarded to his/her reporting officer.**

S. 121-G (i)

FOR OFFICERS IN BPS 17 & 18 **CONFIDENTIAL**

اسکیل ۱۷ اور ۱۸ کے افسران کے لیے بصیغہ راز

GOVERNMENT OF PAKISTAN

حکومت پاکستان

Ministry/Division/ _____ **Service/Group** _____

Department/Office _____ سروس/گروپ

وزارت/ڈویژن/محکمہ/دفتر

PERFORMANCE EVALUATION REPORT

کارکردگی رپورٹ

FOR THE PERIOD 20 TO 20

۲۰ء تا ۲۰ء برائے عرصہ

PART I

حصہ اول

(TO BE FILLED IN BY THE OFFICER REPORTED UPON)

(متعلقہ افسر خود پُر کریں)

1. Name (in block letters) _____
   نام (واضح حروف میں)
2. Personnel number _____
   افسر نمبر
3. Date of birth _____
   تاریخ پیدائش
4. Date of entry in service _____
   ملازمت اختیار کرنے کی تاریخ
5. Post held during the period (with BPS) _____
   زیرِ نظر عرصہ میں عہدہ (مع اسکیل)
6. Academic qualifications _____
   تعلیم
7. Knowledge of languages (Please indicate proficiency in speaking (S), reading (R) and writing (W))
   زبانوں کا علم (بولنے (ب)، پڑھنے (پ)، اور لکھنے (ل) کی صلاحیت)

_____

_____

_____

8. **Training received during the evaluation period**
متعلقہ عرصہ کے دوران حاصل کی گئی تربیت

Name of course attended کورس کا نام	Duration with dates تاریخوں کے ساتھ دورانیہ	Name of institution and country ادارے اور ملک کا نام

9. **Period served**
عرصہ ملازمت

(i) In present post _____
موجودہ عہدہ پر

(ii) Under the reporting officer_____
رپورٹنگ افسر کے ماتحت

PART II
حصہ دوم

(TO BE FILLED IN BY THE OFFICER REPORTED UPON)
(متعلقہ افسر خود پُر کریں)

1. Job description
ذمہ داریوں کی تعمیل

2. **Brief account of performance on the job during the period supported by statistical data where possible. Targets given and actual performance against such targets should be highlighted. Reasons for shortfall, if any, may also be stated.**
پیش نظر عرصہ میں کارکردگی کو اعداد و شمار کے ساتھ مختصر بیان کریں۔ دیے گئے اہداف اور کارکردگی کو نمایاں طور پر لکھیں۔ اہداف نامکمل رہ جانے کی وجہ بھی بیان کریں۔

PART III
حصہ سوم

(EVALUATION BY THE REPORTING OFFICER)
(رپورٹنگ افسر کا جائزہ)

The rating in Part III should be recorded by initialling the appropriate box.
The ratings denoted by alphabets are as follows:
'A' Very Good, 'B' Good, 'C' Average, 'D' Below Average
حصہ سوم میں کارکردگی کا اندراج متعلقہ خانے میں مختصر دستخط سے کیا جائے۔ حروف کے لحاظ سے درجہ بندی حسب ذیل ہے:
الف: اعلیٰ ب: اچھا ج: اوسط د: اوسط سے کم
For uniform interpretation of qualities, two extreme shades are mentioned against each quality
صفات کے یکساں مفہوم کے لیے ہر صفت کے دو انتہائی درجوں کا ذکر کیا گیا ہے:

		A الف	B ب	C ج	D د	
1.	Intelligence ذہانت Exceptionally bright; excellent comprehension انتہائی ذہین اور صاحب فہم					Dull; slow کند ذہن، سست فہم

		A الف	B ب	C ج	D د	
2.	**Confidence and will power** خوداعتمادی اورقوت ارادی Exceptionally confident and resolute انتہائی پُراعتماداور مستقل مزاج					Uncertain; hesitant عدم اعتماداور ہچکچاہٹ کا شکار
3.	**Acceptance of responsibility** ذمہ داری اٹھانے کی آمادگی Always prepared to take on responsibility even in difficult cases مشکل معاملات میں بھی ذمہ داری اٹھانے کے لیے ہمیشہ آمادہ					Reluctant to take on responsibility; will avoid it whenever possible. ذمہ داری اٹھانے سے گریز کرنے والا
4.	**Reliability under pressure** دباؤ کی حالت میں کام کرنے کی صلاحیت Calm and exceptionally reliable at all times ہرحالت میں قابل اعتماد					Confused and easily flustered even under normal pressure پریشان، معمولی دباؤ میں حواس باختہ
5.	Financial responsibility مالی معاملات میں احساس ذمہ داری Exercises due care and discipline احتیاط سے کام لیتا/لیتی ہے، قواعد وضوابط کا خیال رکھتا/رکھتی ہے					Irresponsible غیرذمہ دار
6.	Relations with تعلقات (i) Superiors اعلیٰ افسران کے ساتھ Cooperative and trusted معاون اور قابل اعتماد					Un-cooperative غیرمعاون

	(ii) Colleagues رفقائے کار کے ساتھ Works well in a team مل جل کر اچھا کام کرتا/کرتی ہے					Difficult colleague مشکل رفیق کار
	(iii) Subordinates ماتحتوں کے ساتھ Courteous and effective; encouraging خوش اخلاق، مؤثر اور حوصلہ دینے والا/والی					Discourteous and intolerant; بداخلاق
7.	**Behaviour with public** عوام کے ساتھ رویہ Courteous and helpful خوش اخلاق اور معاون					Arrogant, discourteous and indifferent مغرور اور لاتعلق
8.	**Ability to decide routine matters** روزمرہ معمولات کے فیصلے کرنے کی صلاحیت Logical and decisive منطقی اور فیصلہ کن					Indecisive; vacillating غیر منطقی اور ڈانواں ڈول
9.	Knowledge of relevant laws, rules, regulations, instructions and procedures متعلقہ قوانین، قواعد، ضوابط، ہدایات اور طریق کار سے واقفیت Exceptionally well informed, keeps abreast of latest developments قوانین و ضوابط پر غیر معمولی عبور، تازہ ترین صورتحال سے آگاہ					Ignorant and uninformed لاعلم اور ناواقف

PART IV
حصہ چہارم

(REPORTING OFFICER'S EVALUATION)
(رپورٹنگ افسر کا جائزہ)

1. Please comment on the officer's performance on the job as given in Part II(2) with special reference to knowledge of work, quality and quantity of output. How far was the officer able to achieve targets? Do you agree with what has been stated in Part II (2)?

حصہ دوم (۲) میں بیان کی گئی کارکردگی کا جائزہ لیں۔ کام سے متعلق افسر کے علم اور کارکردگی کے معیار و مقدار کے حوالے سے بھی رائے دیں۔ اہداف کو پورا کرنے میں افسر کس حد تک کامیاب رہا/رہی؟ کیا آپ حصہ دوم (۲) میں دی گئی معلومات سے متفق ہیں؟

2. **Integrity** (Morality, uprightness and honesty)
دیانت (راست بازی، ایمانداری)

3. **Pen picture with focus on the officer's strengths and weaknesses not covered in Part III** (Weakness will not be considered as adverse entries unless intended to be treated as adverse).

قلمی خاکہ: افسر کی خوبیوں اور کمزوریوں کا جائزہ لیں (کوتاہی کو اس وقت تک منفی تصور نہیں کیا جائے گا جب تک رپورٹنگ افسر ضروری تصور نہ کرے)

4. **Special aptitude**
خصوصی استعداد

5. **Recommendations for future training**
آئندہ تربیت کے لیے سفارشات

6. Overall grading

مجموعی درجہ

		Reporting Officer رپورٹنگ افسر	Countersigning Officer کاؤنٹر سائننگ افسر
(i)	Very Good اعلیٰ		
(ii)	Good اچھا		
(iii)	Average اوسط		
(iv)	Below Average اوسط سے کم		

7. Fitness for promotion

ترقی کے لیے مناسبت

		Reporting Officer رپورٹنگ افسر	Countersigning Officer کاؤنٹر سائننگ افسر
(i)	Fit for promotion ترقی کے لیے موزوں		
(ii)	Recently promoted/appointed, Assessment premature حال میں ترقی ہو چکی ہے/ مزید ترقی قبل از وقت ہے		
(iii)	Not yet fit for promotion ترقی کے لیے ابھی موزوں نہیں		
(iv)	Unlikely to progress further مزید ترقی کے قابل نہیں		

Name of the reporting Officer _____ Signature _____

(Capital letters) _____ دستخط

رپورٹنگ افسر کا نام (واضح حروف میں)

Designation _____ Date _____

عہدہ تاریخ

PART V
حصہ پنجم

(REMARKS OF THE COUNTERSIGNING OFFICER)

(کاؤنٹر سائننگ افسر کی رائے)

1. **How well do you know the officer? If you disagree with the assessment of the reporting officer, please give reasons.**

آپ افسر کو کس حد تک جانتے ہیں؟ اگر آپ رپورٹنگ افسر کی رائے سے متفق نہیں تو وجہ بیان کریں۔

2. **Evaluation of the quality of assessment made by the reporting officer**

رپورٹنگ افسر کے جائزہ کے معیار کے بارے میں کاؤنٹر سائننگ افسر کی رائے

Exaggerated (مبالغہ آمیز)	Fair (مناسب)	Biased (جانب دار)

Name of the Countersigning Officer **Signature** _____

(Capital letters) _____ دستخط

کاؤنٹر سائننگ افسر کا نام (واضح حروف میں)

Designation _____ **Date** _____

عہدہ تاریخ

PART VI
حصہ ششم

REMARKS OF THE SECOND COUNTERSIGNING OFFICER (IF ANY)
دوسرے کاؤنٹر سائننگ افسر (بشرط موجودگی) کی رائے

Name _____ Signature _____

نام دستخط

Designation _____ Date _____

عہدہ تاریخ

GUIDELINES FOR FILLING UP THE PER

 After initiating their PERs, the officers under report should immediately fill up the detachable certificate' giving names of the RO/CO and send the same to the Officer Incharge of their respective confidential records. This exercise will ensure proper follow-up of the pending performance evaluation reports by the concerned Ministry/Division/Provincial Government etc.

 Forms should be filled in duplicate. Parts I and II are to be filled by the officer under report and should be typed. Parts III and IV will be filled by the Reporting Officer while the Countersigning/Second Countersigning Officers will fill Parts V and VI respectively.. The ratings in Part III should be recorded by initialling the appropriate box.

 Each Division, Department, autonomous body and office etc. is required to prepare specific job descriptions giving main duties of each job to be mentioned in Part-II (1). The job descriptions may be finalized with the approval of the Head of the Organization or any person authorized by him.

 The officer under report should fill Part II(2) of the form as objectively as possible and short term and long term targets should be determined/ assigned with utmost care. The targets for each job may be formulated at the beginning of the year wherever possible. In other cases, the work performed during the year needs to be specifically mentioned.

 Assessment by the Reporting Officers should be job-specific and confined to the work done by the officer during the period under report. They should avoid giving a biased or evasive assessment of the officer under report, as the Countersigning Officers would be required to comment on the quality of the assessment made by them.

 The Reporting Officers should support their assessment in Part IV through comments against each characteristic. Their opinions should represent the result of careful consideration and objective assessment so that, if called upon, they could justify the remarks/comments. They may maintain a record of the work done by the subordinates in this regard.

 The Countersigning Officers should make an unbiased evaluation of the quality of performance evaluation made by the RO by categorizing the reports as exaggerated, fair or biased. This would evoke a greater sense of responsibility from the reporting officers.

 The Countersigning Officers should underline, in red ink, remarks which in their opinion are adverse and should be communicated to the officer reported upon. All adverse remarks whether remediable or irremediable should be communicated to the officer under report, with a copy of communication placed in the CR dossier. Reporting Officers should ensure that proper counselling is given to the officer under report before adverse remarks are recorded.

 The Reporting and Countersigning Officers should be clear, direct, objective and unambiguous in their remarks. Vague impressions based on inadequate knowledge or isolated incidents should be avoided.

 Reports should be consistent with the pen picture and overall grading.

IMPORTANT

 Parts I and II of the PER should be duly filled and dispatched to the Reporting Officer not later than the 15th of January. The ROs should forward the report to the Countersigning Officer within two weeks of receipt after giving their views in Parts III and IV. The COs should then finalize their comments in Part V within two weeks of receipt of PER. The Second Countersigning Officers, if any, should also complete their assessment within a period of two weeks.

 Name and designation of Reporting/Countersigning Officers should be clearly written. Comments should be legible and in the prescribed format and which can be easily scanned.

 Personnel Number is to be filled in by the officer under report, if allotted.

 Proforma has been devised in English/Urdu to provide flexibility to RO/ CO in the choice of language

.

CERTIFICATE

Certified that _____ _____
(Name of Officer) **Personnel Number (if allotted).**

6.5 INITIAL APPOINTMENT TO CIVIL POSTS (RELAXATION OF UPPER AGE LIMIT) RULES, 1993.

Government of Pakistan
Cabinet Secretariat
Establishment Division

NOTIFICATION

Islamabad, the 4th November, 1993.

S.R.O. 1079(I)/93.- In pursuance of rule 12 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, the President is pleased to make the following rules , namely:-

PART 1-GENERAL

(1) These Rules may be called the Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 1993.

(2) They shall come into force with immediate effect

Provided that nothing in these rules shall apply to the appointment to the posts in BPS-17 to be filled through C.S.S. Competitive Examination.

PART- II- GENERAL RELAXATION

(3) Maximum age limit as prescribed in the recruitment rules shall be relaxed in respect of the candidates mentioned in column (2) below to the extent mentioned against each under column (3):-

Sl.No.	Category of candidates	Age relaxation admissible
1	2	3
i)	(a). Candidates belonging to Scheduled Castes, Buddhist Community, recognized tribes of the Tribal Areas, Azad Kashmir and Northern Areas for all posts under the Federal Government	3 years.
	(b) Candidates belonging to Sindh(R) and Balochistan for posts in BPS-15 and below under the Federal Government	3 years.
ii)	Released or Retired Officers / personnel of the Armed Forces of Pakistan	15 years or the number of years actually served in the Armed Forces of Pakistan, whichever is less.
iii)	Government servants who have completed 2 years continuous Government service on the closing date for receipt of applications.	10 years, upto the age of 55 years.

iv)	Disabled persons for appointment to posts in BPS-15 and below.	10 years
v)	Widows, son or daughter of a deceased civil servant who dies during service	5 years

(4) Where a candidate is entitled to age relaxation under more than one categories specified in rule 3 , he shall be allowed relaxation in age only in one category.

[4A] (1) Subject to sub-rule(2), the maximum age limit prescribed for initial appointment under any rules for the time being in force shall be relaxed by a period of five years:

(2) The relaxation in upper age limit shall be over and above the relaxation of age admissible to candidates specified in rule 3 or in any other rules for the time being in force].

[4B] Notwithstanding the provisions contained in these rules or any other rules for the time being in force, the President or the Prime Minister may, on extreme compassionate grounds, grant age relaxation to an individual candidate for a period not exceeding three years over and above the relaxation in upper age limit already admissible, if any].

[4C] Notwithstanding anything contained in these rules, or any other rules for the time being in force, one time relaxation in the upper age limit shall be admissible to the persons appointed to the posts, on ad-hoc basis, from the Ist October, 1981, to the 31st December, 1995, to the extent they are overage for initial appointment to the posts, held by them, as and when advertised by the Federal Public Service Commission.]

[4D.] Notwithstanding anything contained in these rules or any other rules for the time being in force, the President or the [Prime Minister] may grant age relaxation to the widow, son or daughter of a deceased civil servant who dies during service for such period as may be considered appropriate.]

(5) **Repeal:-** All existing rules, orders and instructions relating to age relaxation issued from time to time are hereby repealed

6.6 DECLARATION OF INCOME AND ASSETS PERFORMA

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

DECLARATION OF INCOME AND ASSETS
Financial Year Ending on 30th June _____

1. Name

NIC No

N.T.No.

2. Basic Pay Scale **Occupation Group**

Service

Present Position Held

3. Present Residential Address

Phone (R) **Mobile**

4. **Salary** **Rental Income** **Agri income**

5. **I**

Rs. **Rs** **Rs.**

Other sources (dividend, profit, prize money, gift, loan etc) **Total**

Rs. **Rs**

(During the Financial year)

5. Expenses (Approx.)

	Utilities (Electricity, Gas, Telephone etc.)								**Total Household expenses**								
Rs.								**Rs.**									

6. Private Foreign Traveling (Self, Spouse & Children During F.Y _____ **Country / Countries visited** **Period of Stay From ___ to _____** **Approx. expenses Rs.**

7. Children's Education (inland & Abroad) **Name(s) of children** **Educational institutions attended during F.Y. _____**

8. Club Membership **Name of Club(s)** **Membership No**

ASSETS & LIABILITIES

9. Immovable Assets (Agri & Non-Agri lands, House properties, Commercial & Industrial properties, Open plots of all types)

	Identification & nature of Asset(s)	Mode of acquisition/year	Cost of acquisition
a)			
b)			
c)			
d)			
e)			
f)			
g)			
h)			
i)			
j)			
k)			
l)			
m)			

10. Movable Assets (Cash in hand, Motor vehicles, Jewellery, Household items, Equipment, Business capital etc.)

	Identification & nature of Asset(s)	Mode of acquisition/year	Cost of acquisition
a)			
b)			
c)			
d)			
e)			
f)			
g)			
h)			
i)			
j)			
k)			
l)			
m)			

11. Assets held as Attorney

	Identification & nature of Asset(s)	Nature of Power of Attorney (Revocable/Irrevocable)	Nature & Address of the Legal Owner
a)			
b)			

12. Assets disposed off during the year

	Identification & nature of Asset(s)	Date of disposal	Amount received as Sales proceed (Rs.)
a)			
b)			
c)			
d)			

13. **Investments** (Bonds, Shares, Certificates, deposits/Advances, Loans granted etc.)

	Details of Bonds held		Investments	
	Bond No.(s)	Denomination Rs.		Rs.
a)				Rs.
b)				Rs.
c)				Rs.
d)				Rs.

14. **Bank Accounts** (Current, Saving, Deposit A/c & F.C. A/cs)

	A/c No. & Bank Branch	Year of Opening	Main source of deposits	Balance as on 30.6 (Rs.)
a)				
b)				
c)				
d)				

15. **Total Assets (9-14)**

Rs._____

16. **Liabilities** (Departmental/Bank loans, Over drafts, Mortgages secured, private loans etc.)

	Outstanding liabilities **(A)**		Liabilities paid off during the year**(B)**	
a)		Rs.		Rs.
b)		Rs.		Rs.
c)		Rs.		Rs.
d)		Rs.		Rs.

15-16 (A)) **Net worth** **Rs.**_____

As on 30.6._____

Net worth declared previously **Rs.**_____

As on 30.6._____

Signature_____

Name_____

Designation_____

Name of the Organization/Deptt._____

_____

Place_____

Date_____

INSTRUCTIONS

1. If the space provided in the form is found inadequate or some explanation is required, a separate page may be attached/annexed.

2. All assets should be valued at cost and in the cases of assets acquired through gift name, address of the donor and donees relationship with him is to be declared.

3. Income declared at Serial 4 must include income earned by the spouse & children as well.

4. Information requested must be complete. No column should be left blank. Columns which are not applicable should be crossed.

5. All assets owned by the officer & his family members (Family as defined in Rule 3(1)(c) of Conduct Rules 1964) should be declared. Assets acquired by major children dependents & others where funds have been provided by the officer are also to be declared.

6. Assets owned partly or acquired on "Hire purchase Agreement" or installment should also be declared.

7. If any exact figure cannot be inserted an estimated/approx figure may be given.

8. Sale proceeds of assets disposed off during the relevant financial year must be declared under the head "other sources" (Serial 4).

9. If there is no change in Assets over the previous year (for which the declaration had been filed) relevant columns (Serial 9, 10, & 11) may be marked "**As Before**".

10. At Serial 11 assets held by others as attorney on behalf of declarant, his spouse or dependent children are also to be declared.

11. Expenses against utilities (Serial 5) should include bills paid against all meters (Gas & Electricity installed on the residence) and telephone connections (including Mobile) in use of the officer, spouse & dependent children.

12. Notwithstanding the applicability of any other law for the time being in- force, this declaration is being filed under Conduct Rule 1964 and any breach thereof (including concealment of assets or giving wrong information) is punishable under RSO 2000

Chapter 7

SUPREME COURT CASES WITH REGARD TO APPOINTMENT OF HON'BLE JUDGES AND STAFF

CHAPTER 7
Supreme Courts Cases with regard to Appointment of Judges and staff
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7.1 2013 S C M R 1062

[Supreme Court of Pakistan]

Present: Khilji Arif Hussain, Tariq Parvez, Ejaz Afzal Khan, Gulzar Ahmed and Sh. Azmat Saeed, JJ

NADEEM AHMED ADVOCATE---Petitioner

Versus

FEDERATION OF PAKISTAN---Respondent

Constitutional Petition No.126 of 2012, decided on 14th December, 2012.

(Under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973.)

Per Khilji Arif Hussain, J.; Tariq Parvez, Gulzar Ahmed and Sh. Azmat Saeed, JJ., agreeing, Ejaz Afzal Khan, J. differing on certain points.

(a) Constitution of Pakistan---

----Arts. 175A(8) & 184(3)---Constitutional petition under Art.184(3) of the Constitution concerning non-issuance of appointment orders of two Judges of the Islamabad High Court by the President---Judicial Commission, composition of---Nomination of a name by Judicial Commission by its majority---Scope---Judicial Commission nominating names for appointment of Judges of the Islamabad High Court in the absence of the most senior Judge of Islamabad High Court in the proceedings of the Commission---Legality---Judicial Commission, under the provisions of Art.175A of the Constitution, recommended names of two Judges for appointment, one as a Judge of Islamabad High Court and the other as an Additional Judge of Islamabad High Court for a period of six months, from the date of expiry of their tenure as Additional Judges of the said High Court---Parliamentary Committee on receipt of the said nominations from the Judicial Commission unanimously confirmed the same, and sent the matter to the Prime Minister to forward the same to the President for appointment---President did not issue orders for appointment of said two Judges for the reasons that Judge of Islamabad High Court who sat, voted and took part in the proceedings of the Judicial Commission was not the most senior Judge of Islamabad High Court, therefore, he was a non-entity; that Judicial Commission could not be said to have been properly constituted in the absence of the most senior Judge of Islamabad High Court, therefore, nominations made by the Judicial Commission did not have any legal or constitutional sanctity---Validity---Judicial Commission after deliberations nominated names of Judges by a majority of 7 to 2---Even if it was accepted

that Judge of Islamabad High Court who attended the meeting of the Judicial Commission was not the most senior Judge of the said Court, it was established from the record that on the date when the meeting of the Commission was called, the most senior Judge of Islamabad High Court was on ex-Pakistan leave and Judge who attended the proceedings of the Commission was the most senior Judge available---Term "most senior Judge" had not been defined by the Constitution---Even if it was accepted that the Judge of Islamabad High Court who attended the meeting of the Judicial Commission, was not eligible to sit in the meeting, Art.175A(8) of the Constitution stipulated that the decision of the nomination of a person for any vacancy of a Judge of the superior court was to be taken by the Commission, by majority of its total members and as such, attendance of said Judge in the meeting did not vitiate the entire proceedings or made the nominations invalid---Proceedings of the Judicial Commission were not vitiated because of the attendance of a Judge who was not the most senior Judge of Islamabad High Court---Supreme Court directed the concerned authorities to issue notifications, thereby appointing one of the recommended names as a Judge of Islamabad High Court, and the other as an Additional Judge of Islamabad High Court, for a period of six months, giving effect from the date of expiry of their earlier notifications---Constitutional petition was converted into appeal and allowed accordingly.

Managing Director, SSGC Ltd. v. Ghulam Abbas PLD 2003 SC 724 and Muhammad Saleem and 12 others v. Secretary Prosecution, Government of Punjab, Lahore and another 2010 PLC (C.S.) 1 rel.

Anderson v. City of Persons 496, P.2d 1333-Kan: Supreme Court 1972; R v. Bow Street Metropolitan Stipendiary Magistrate (1999) UK (H.L. 52) and Sindh High Court Bar Association's case PLD 2009 SC 879 ref.

Per Ejaz Afzal Khan, J.

(b) Constitution of Pakistan---

----Arts. 175A & 48---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Nominations made by the Judicial Commission---Discretion of the President of Pakistan to send name of a nominee for reconsideration---Scope---Nomination originating from the Judicial Commission, confirmed by the Parliamentary Committee was not an advice in terms of Art.48 of the Constitution, nor was it open to the incidence of return for reconsideration because Art.175A of the Constitution did not envision any such thing---President had no power to return a nomination to any of the tiers it had passed from, even if it was violative of the Constitution or the law.

(c) Interpretation of statutes---

----Casus omissus, doctrine of---Scope---Casus omissus could, in no case, be supplied by the court of law as that would amount to altering the provision---Court of law was not entitled to read words into the Constitution or an Act of Parliament unless clear reason was found within the four corners of either of them.

Attorney General v. Bihari, re Australia Factors Limited (1966) 67 S.R. (N.S.W.) 150 ref.

(d) Constitution of Pakistan---

----Art. 175A, 177, 193 & 42---Appointment of Judges to the Supreme Court and High Courts---Judicial Commission and Parliamentary Committee nominating name of a Judge in contravention of the Constitution and the law---Power of the President of Pakistan to not appoint such a nominee---Scope---President before appointing a person as Judge or a Chief Justice of a High Court or a Judge of the Supreme Court should ensure that his nomination so made was in accordance with the Constitution and the law---President should not appoint a person as a Judge of the Supreme Court or a Judge or Chief Justice of a High Court, whose nomination, in his opinion, was against the Constitution and the law---Where nomination sent to the President for appointment in terms of Art.175A of the Constitution was against the Constitution and the law, a deadlock would inevitably be the consequence as the President could neither return the nomination to the source it had originated from or processed through nor could he appoint the person, thus nominated---Only way out of such a deadlock would be recourse to an advisory or adjudicatory jurisdiction of the Supreme Court---If the Supreme Court upheld the opinion of the President, the Commission should initiate proceedings de novo in accordance with the opinion of the Court, but if the opinion of the President was not upheld by the Court, he should appoint the person so nominated. [Different view].

(e) Constitution of Pakistan---

----Art. 192(1)---Inter se seniority of Judges of the High Court appointed/elevated on the same date/day---Determination---Established practice and yardstick for determining seniority amongst the Judges of a High Court, elevated on the same day, was seniority in age except in the case of Judges from service whose inter se seniority remained intact even on their elevation irrespective of their age---Such principle merited respect and reverence because it not only ruled out personal whim and caprice of the person at one peak or another and shut doors and

windows for manipulation at ministerial level but also created an environment which was conducive for the rule of law, supremacy of the Constitution and independence of Judiciary.

Federal Ministry of Justice and Parliamentary Affairs' Letter No.F.12(5)/86-AII, dated 30-4-1987 ref.

(f) Constitution of Pakistan---

----Arts. 175A, 192(1) & 184(3)---Constitutional petition under Art.184(3) of the Constitution concerning non-issuance of appointment orders of two Judges of the Islamabad High Court by the President---Appointment of Chief Justice of the High Court---Legitimate expectation of the most senior Judge of a High Court to be appointed as Chief Justice of that High Court---Scope---Judicial Commission nominating a Judge of Islamabad High Court as Chief Justice of said Court, who was not the most senior Judge of that Court---Legality---Practice/convention that the senior most Judge of the High Court, in the absence of any concrete and valid reason had to be appointed as the Chief Justice of the High Court was esteemed, honoured and also had the approval of the Supreme Court---First proviso to Art.175A(5)(iv) of the Constitution, which provided that for appointment of the Chief Justice of a High Court the most senior Judge of that High Court should not be Member of the Judicial Commission, unmistakably indicated that the most senior Judge of the High Court should be nominated as Chief Justice in the absence of any valid reason---Most senior Judge of Islamabad High Court, therefore, had a legitimate expectancy to be appointed as Chief Justice, and that subject to any valid reason which was yet to berecorded by the Commission, he would be entitled to be appointed as such Premises recorded by the Commission for departing from the well established principle of determining seniority were not correct---Constitutional petition was converted into appeal and allowed accordingly. [Minority view].

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324; Munir Hussain Bhatti v. Federation of Pakistan PLD 2011 SC 407 and Malik Asad Ali and others v. Federation of Pakistan and others PLD 1998 SC 33 ref.

Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and Justice, Islamabad v. Sindh High Court Bar Association through President and another PLD 2012 SC 1067 distinguished.

(g) Constitution of Pakistan---

----Art. 192(1)---Inter se seniority of Judges of High Courts, determination of---President of Pakistan, power of---Scope---President of Pakistan could not determine the seniority of Judges of the High Courts.

(h) Constitution of Pakistan---

----Arts. 175A(8), (14) & 184(3)--- Constitutional petition under Art.184(3) of the Constitution concerning non-issuance of appointment orders of two Judges of the Islamabad High Court by the President---Judicial Commission, composition of---Judicial Commission nominating names for appointment of Judges of the Islamabad High Court in the absence of the most senior Judge of Islamabad High Court in the proceedings of the Commission---Legality---Plea that Judge of Islamabad High Court who sat, voted and took part in the proceedings of the Judicial Commission was not the most senior Judge of Islamabad High Court; that Judicial Commission could not be said to have been properly constituted in the absence of the most senior Judge of Islamabad High Court, therefore, nominations made by the Judicial Commission would not have any legal or constitutional sanctity, notwithstanding that they had been confirmed by the Parliamentary Committee, sent to the Prime Minister and then forwarded to the President---Validity---Failure of most senior Judge of Islamabad High Court to attend the meeting of the Judicial Commission would not vitiate the proceedings of the Commission---Article 175A(14) of the Constitution clearly provided that no action or decision taken by the Commission or Committee would be invalid or called in question only on the ground of the existence of a vacancy therein or of the absence of any Member from any meeting thereof---Accepting that Judge of Islamabad High Court who sat, voted and took part in the proceedings of the Commission culminating in the nomination of Judges, was a non-entity, yet it would not vitiate the proceedings when the Judicial Commission, in view of Art.175A(8) of the Constitution, had nominated the Judges by majority of its total membership---Proceedings of the Commission would have been vitiated or materially affected if it had nominated the Judges with a margin of one, but where the Commission nominated the Judges by a majority of 7 against 2, the presence or participation of a Judge, who was not the most senior Judge of Islamabad High Court, in the meeting would not be of any consequence--- Constitutional petition was converted into appeal and allowed accordingly.

Managing Director, Sui Sourthrn Gas Company Ltd. Karachi v. Ghulam Abbas and others PLD 2003 SC 724 ref.

Regina v. Bow Street Metropolitan Stipendiary Magistrate and others Ex parte Pinochet Ugarte (No.2) [1999] AU E.R. 577, [1999] 2 WLR 272 distinguished.

(i) Constitution of Pakistan---

----Arts. 175A & 184(3)---Constitutional petition under Art.184(3) of the Constitution concerning non-issuance of appointment orders of two Judges of the Islamabad High Court by the

President---Proceedings of Judicial Commission held in camera---Propriety---Plea that proceedings in the Judicial Commission could not be held in camera when the legislature purposely provided otherwise so as to ensure complete transparency and open scrutiny---Validity---Members of the Judicial Commission not only represented all the essential segments of the Bar and Bench but also those of the Federation and the Province through Attorney-General for Pakistan, Minister for Law and Justice of the Federation and Minister for Law of the Province---Scrutiny was open in the truest sense of the word when each member was at liberty to present his point of view one way or the other---Transparency in the proceedings could not be affected by holding it in camera if every member consciously and conscientiously gave his input in the nomination, keeping in view its overall impact on the institution on the one hand and society at large on the other---Constitutional petition was converted into appeal and allowed accordingly.

M. Akram Sheikh, Senior Advocate Supreme Court, Sanaullah Zahid, Advocate Supreme Court, Barrister Sajeel Sheryar and Ch. Hassan Murtaza Mann for Petitioner.
Irfan Qadir, A.-G. for Pakistan, Dil Muhammad Alizai, D.A.-G. and Barrister Shehryar Riaz Sh., Advocate for Respondent.
Date of hearing: 14th December, 2012. (Judgment Reserved)

JUDGMENT

KHILJI ARIF HUSSAIN, J.---The above petition was accepted by our short orderdated 21-12-2012 and these are the reasons of the same.

2. Through this petition, filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 [hereinafter referred to as 'the Constitution'], the petitioner seeks the following relief:--

"(a) to issue appropriate directions to the respondent for issuance of notifications;

(b) to declare that till issuance of the notifications, being a mere clerical/ministerial formality, the honourable Judges of honourable High Court mentioned at (a) and (b) of paragraph above, may continue to function as Judges of honourable Islamabad High Court without having to depend on issuance of notification(s);

(c) Any other better or more appropriate consequential relief may also be granted in the interest of justice, especially to ensure that in future, the respondent may not use this kind of hindrance to the smooth functioning of judicial organ."

3. Facts necessary to dispose of the listed petition, not in dispute, briefly stated are that when the tenure of Mr. Shaukat Aziz Siddiqui; Mr. Noor-ul-Haq N. Qureshi; and Mr. Muhammad Azeem Khan Afridi, who were initially appointed as Additional Judges of Islamabad High Court, Islamabad, for a period of one year with effect from the date they took oath of their offices was nearing expiry, their cases were referred to the Commission and after deliberations it nominated the names of Mr. Shaukat Aziz Siddiqui, as a Judge of Islamabad High Court, Islamabad with a vote of 8 to 2 and unanimously nominated Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge of Islamabad High Court, Islamabad, for further period of six months from the date of expiry of his present term, whereas the nameof Mr. Muhammad Azeem Khan Afridi was dropped as was not nominated.

4. The meeting of the Commission was attended by Mr. Justice Muhammad Anwar Khan Kasi, as most senior Judge of Islamabad High Court, Islamabad.

5. On receipt of nominations, in respect of Mr. Shaukat Aziz Siddiqui, as a Judge of Islamabad High Court, Islamabad; and Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge of Islamabad High Court, Islamabad, for a period of six months from the date of expiry of his tenure, the Parliamentary Committee [hereinafter referred to as 'the Committee'], after due consideration unanimously endorsed the nomination made by the Commission and sent the same to the Prime Minister of Pakistan to forward them to the President of Pakistan for issuance of requisite notifications.

6. Mr. Muhammad Akram Sheikh, learned Senior Advocate Supreme Court appearing on behalf of the petitioner contended that once the Judicial Commission nominated Mr. Justice Shaukat Aziz Siddiqui for appointment and Mr. Justice Noor-ul-Haq Qureshi for extension for a period six months as Judges of the Islamabad High Court and their nomination after having been confirmed by the Parliamentary Committee has been sent to the Prime Minister and then forwarded to the President for appointment, the President has no other option but to do the needful. The learned counsel next contended that Mr. justice Muhammad Anwar Khan Kasi being the most Senior Judge rightly participated in the meeting of the Judicial Commission nominating the appointment and extension of the Judges mentioned above, therefore, the President has no power whatever to delay or decline the appointment on any pretext if seen in the light of Eighteenth and Nineteenth Amendment. Even if, it is assumed, added the learned

counsel, that the Judge participating in the meeting was a non-entity it would not materially affect the result if the doctrine of severance is applied. The learned counsel to support his contention placed reliance on the case Managing Director, SSGC Ltd. v. Ghulam Abbas (PLD 2003 Supreme Court 724). The learned counsel next contended that had the decision been made by a margin of one, the argument of the learned counsel for the President and the judgment rendered in the case of "Regina v. Bow Street Metropolitan Stipendiar Magistrate and others Ex parte Pinochet Ugarte (No.2)" would have had some relevance but where the decision is 7/2, absence of persona designate or participation of a non-entity would be of little consequence. When we asked what course of action would be open before the President if a person nominated for appointment of a Judge of Supreme Court does not fulfil the requirements laid down by Article 177(2) or a person nominated for appointment of a Judge of the High Court does not fulfil the requirements laid down by Article 193(2) of the Constitution, the learned counsel except referring to the stance taken by the Government in C.M.A. No.1602 of 2010 in Constitution Petition No.11 of 2010 could not state anything more.

7. Learned Attorney-General appearing on the notice of the Court contended that the Judicial Commission was not properly constituted, as persona designate did not attend the meeting and the person who attended the meeting was just a non-entity, therefore, the whole process shall stand vitiated. The President, the learned Attorney-General submitted, is not bound to appoint a nominee of such Judicial Commission notwithstanding nomination so made was confirmed by the Parliamentary Committee and forwarded to the President by the Prime Minister on its receipt. The learned Attorney-General next contended that where in the judgment rendered in the case of Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 Supreme Court 879), this Court annulled the appointment of many Judges for want of recommendation by the consultee, a nomination originating from the Judicial Commission which was not properly constituted has to be given alike treatment. The learned Attorney-General by referring to the commentary on the Constitution of India by Durga Das Basu argued that the President is not a robot placed in the President House nor a Computer controlled automation, nor a figure head nor ornamental piece placed in the show window of the nation called the President's House. Instead, the learned Attorney General submitted; he is a living human who on being selected by the nation is endowed with all dignity, honour and prestige as head of the republic for upholding the Constitution and the laws, therefore, his role as such cannot be doubted in any situation. Seen from such an angle, the learned Attorney-General concluded, the President cannot be kept out of the affairs regulating the appointment of Judges.

8. We have taken into consideration contentions raised by the learned counsel for the parties and perused the record.

9. The President of Pakistan filed a reference under Article 186 of the Constitution of Islamic Republic of Pakistan, 1973 seeking advice of this Court on various questions including the question whether the Judicial Commission was properly constituted as per provisions of Article 175A of the Constitution as Mr. Justice Muhammad Anwar Kasi who participated in meeting was not a member thereof and was a stranger to the proceeding. We have answered the question in Reference No.1 of 2012 in detail and the reasons which are recorded in reply to this question which is the only issue in this petition. We would like to reproduce the same as under:-

"78. As regards question No.(iv) "Whether JCP was properly constituted as per provision of Article 175-A of the Constitution as Mr. Justice Kasi who participated in the meetingwas not a Member thereof and was a stranger to the proceedings". Mr. Justice Muhammad Anwar Khan Kasi attended the meeting of the Commission, dated 22-10-2012. The Chief Justice of Islamabad High Court, Islamabad, initiated the names of Mr. Shaukat Aziz Siddiqui, as a Judge and Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge [for a period of six months] of Islamabad High Court, Islamabad. For this reason, the notifications in respect of these learned Judges were not issued. The Commission after deliberations nominated the above named learned Judges by majority of 7 to 2. Even if it is accepted that Mr. Justice Muhammad Anwar Khan Kasi was not the most senior Judge of Islamabad High Court, Islamabad, and attended the meeting of the Commission, it is established from the record that on the date when the meeting of the Commission was called for the purpose of considering the appointment of three Additional Judges of the High Court, Mr. Justice Riaz Ahmad Khan was on ex-Pakistan Leave and the former (Mr. Justice Muhammad Anwar Khan Kasi) was the most senior Judge available of the said High Court. The terms "Chief Justice" and "Acting Chief Justice" have been defined by the Constitution, whereas the term "most senior Judge" has not been defined. However, even if it is accepted that Mr. Justice Muhammad Anwar Khan Kasi, was not eligible to sit in the meeting of the Commission, Clause 8 of Article 175A stipulates that the decision of the nomination of a person for any vacancy of a Judge of the superior Court is to be taken by the Commission, by majority of its total members and as such, his attending the said meeting does not vitiate the entire proceedings or makes the nomination invalid.

79. In the case of Managing Director, SSGC Ltd. v. Ghulam Abbas (PLD 2003 Supreme Court 724), it was held that:-

"Perusal of subsection (1) of section 3-A of the Act, 1973 reveals that "minimum strength of a Bench to exercise or perform functions of the Tribunal is two Members, including the Chairman," meaning thereby that while conducting hearing, the status of a Chairman is also of a Member. Whereas under clause (a) of section 3-A(2), decisions are to be pronounced by the majority of the Members. Clause (b) of section 3-A(2) further provides that in case of division between Members of the Bench or in case of equal division of the Members, the case shall be referred to the Chairman and whatever opinion is expressed by him, would have supremacy and constitute the decision of the Tribunal. In this case impugned judgment has been authored by the Chairman and all the Members have concurred with him, therefore, presuming that Mr. Aftab Ahmed joined proceedings without lawful authority but nevertheless impugned judgment can sustain, as it has been rendered by the Bench comprising of more than two Members of the Service Tribunal and apprehension of influencing the judgment by Mr. Aftab Ahmed (Retired Member) stands excluded as it was authored by a former Judge of High Court being the Chairman of the Service Tribunal.

In addition to above legal position, the impugned judgment can be treated to have been delivered validly under de facto doctrine.
Thus endorsing the principles discussed in above paras, the impugned judgment is declared to have been passed validly because Mr. Aftab Ahmed immediately before his retirement had been performing same functions, therefore, it would be deemed that in exercise of same powers in good faith he associated himself in the proceedings.

Besides above conclusion, the inclusion of Mr. Aftab Ahmed as a Member of the Bench, had also not caused prejudice to any of the parties because he has not authored the judgment nor there is any likelihood of his having influenced the judgment in any manner as it was authored by the Chairman and remaining two Members of the Bench had concurred with him. No useful purpose as such would be served by remanding the case to the Service Tribunal for fresh decision because dispute is lingering on between the parties for the last so many years, therefore, justice demands that now cases should be decided finally unless remand of the cases is inevitable under the circumstances of each case."

80. In the case of Muhammad Saleem and 12 others v. Secretary Prosecution, Government of Punjab, Lahore and another (2010 PLC (C.S.) 1), a three member Bench of the Lahore High Court, while dealing with the question that the committee which conducted, the interviews of the petitioners did not comprise all the four members, appointed by the Chief Minister of Punjab vis -a-vis the persons (strangers), who have participated in the interview process, applied the rule of severance excluded the marks given by the stranger and held that whatever result emerges on account of the exclusion ofthe stranger's marks, shall be taken to be the result of the committee, as quorum of the selection committee was complete.

81. In the case of Aderson v. City of Persons (496, P.2d 1333-Kan: Supreme Court 1972), the Supreme Court of Kansas while dealing with a question, "The appellants' first point involves an alleged conflict of interest arising from the fact that City Commissioners Myer S. Freshman and Barton Dean and all of the five urban renewal commissioners owned property within the general urban renewal area at the time they voted on various resolutions during the progress of the urban renewal program. The legislature provided in the urban renewal law for a special conflict of interest section to disqualify any officer or employee of the city or of the urban renewal board who owned property included or planned to be included in an urban renewal project." noted as under:-

"It is undisputed in the evidence that on May 16, 1966, at the time the resolutions were passed by the city commission declaring certain areas of Parsons to be "slum and blight areas" and creating and appointing the urban renewal agency, two of the three Parsons city commissioners owned real estate in the slum or blight areas. The same two commissioners continued to own their properties at the time the urban renewal plan was adopted. The two commissioners mentioned were Myer S. Freshman and Barton Dean. On January 22, 1969, the city commission by resolution approved the urban renewal project. At that time commissioners Freshman and Dean owned property within the urban renewal area but did not own any land within the area covered by the urban renewal project. As pointed out heretofore, at all stages in the development of the urban renewal program, all of the five urban renewal commissioners had an interest in property located within the general urban renewal area. The first issue to be determined is whether or not the various actions of the urban renewal board in establishing and developing the urban renewal program and the various actions of the Parsons city commissioners in approving the urban renewal plan and in approving the urban renewal project were so tainted with conflict of interest within the meaning of K.S.A. 17-4758 as to

completely invalidate ab initio all of the actions and steps taken by the urban renewal board and by the city commissioners in developing the Parsons urban renewal program. It should be emphasized that each of the commissioners made afull disclosure of his property interest in the urban renewal area before participating in any action of his board.

We, of course, recognize the common law principle that a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interests of the public. If he acquires any interest adverse to those of the public, without a full disclosure it is a betrayal of his trust and a breach of confidence. (United States v. Carter, 217 U.S. 286, 54 L.Ed. 769, 30 S.Ct. 515.)

The law, however, does not forbid the holding of an office and exercising powers thereunder because of a possibility of a future conflict of interest. (Reilly v. Ozzard, 33 N.J. 529, 166 A.2d 360, 89 A.L.R.2d 612.) It has generally been held that the vote of a council or board member who is disqualified because of interest or bias in regard to the subject matter being considered may not be counted in determining the necessary majority for valid action. There are many cases cited in the annotation in 42 A.L.R. 698 in support of this principle. It is also the rule that where the required majority exists without the vote of the disqualified member, his presence and vote will not invalidate the result and further that a majority vote need not be invalidated where the interest of a member is general or of a minor character. (Beale v. City of Santa Barbara, 32 Cal.App. 235, 162 P. 657; Corliss v. Village of Highland Park, 132 Mich. 152, 93 N.W. 254, adhered to on rehearing 132 Mich, 159, 95 N.W. 416; 56 Am.Jur.2d, Municipal Corporations, Etc. Section 172.)

82. As regards Pinochet case (R v. Bow Street Metropolitan Stipendiary Magistrate (1999) UK (H.L.52), the House of Lords on allegation that one of the Law Lords member of majority decision had links with Amnesty International complaining of the extradition of Gen. Pinochet, set aside his earlier majority decision by 3 to 2."

10. In the case of Sindh High Court Bar Association (PLD 2009 SC 879) it was held that "The appointment of Judges of the superior Courts indeed is a matter of great significance in ensuring the independence of the judiciary. The Constitution provides that appointment of Judges of the Supreme Court shall be made by the President in consultation with the Chief

Justice of Pakistan, while that of Judges of the High Court shall be made in consultation with the Chief Justice of Pakistan, the Governor of the Province and the Chief Justice of the concerned High Court. The consultative process was mandatory and without it no appointment or confirmation could be made and that in absence of consultation as contemplated and interpreted, the appointment/ confirmation of a Judge in the superior Court shall be invalid. The independence of the judiciary was inextricably linked and connected with the constitutional process of appointment of Judges of the superior judiciary. An Acting Chief Justice was not a consultee as envisaged by the relevant Articles of the Constitution and, therefore, mandatory constitutional requirement of consultation would not be fulfilled by consulting an Acting Chief Justice except where the permanent Chief Justice concerned was unable to resume his functions within 90 days from the date of commencement of his sick leave because of his continuous sickness. Since consultation for the appointment/confirmation of a Judge of a superior Court by the President/Executive with consultees mentioned in the relevant Article of the Constitution was mandatory, any appointment/confirmation made without consulting any of the consultees interpreted above would be violative of the Constitution and, therefore, would be invalid". This Court declared appointment of Judges of the superior Courts unconstitutional as Mr. Abdul Hameed Dogar, J, in the presence of Chief Justice Pakistan from 3-11-2007 till 16-3-2009, was neither a permanent Chief Justice nor an Acting Chief Justice, therefore, he could not validly be "consulted" for appointment of Judges of the superior. Courts under Articles 177 and 193 of the Constitution. The consultative profess was mandatory and without it no appointment or confirmation could be made, and in absence of it appointment of a Judge in the superior Courts shall be invalid.

11. The opinion on President's Reference (Reference No.1 of 2012) completely covers the disposal of Constitution Petition No.126 of 2012, wherein the question of law agitated by the petitioner is identical to the legal proposition answered by us in the Reference. The petition is converted into appeal and allowed in terms of our short order which reads as under:--

"Through this petition, filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 [hereinafter referred to as 'the Constitution'], the petitioner seeks following relief:-

"(a) to issue appropriate directions to the respondent for issuance of notifications;

(b) to declare that till issuance of the notifications, being a mere clerical/ministerial formality, the honourable Judges of honourable High Court mentioned at (a) and (b) of paragraph above, may continue to function as Judges of honourable Islamabad High Court without having to depend on issuance of notification(s);

(c) Any other better or more appropriate consequential relief may also be granted in the interest of justice, especially to ensure that in future, the respondent may not use this kind of hindrance to the smooth functioning of judicial organ."

(2) From the perusal of material made available before us it appears that the Judicial Commission of Pakistan [hereinafter referred to as 'the Commission'] in its meeting held on 22-10-2012, under the provisions of Article 175-A of the Constitution, recommended Mr.Shaukat Aziz Siddiqui, as a Judge and Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge for a period of six months of Islamabad High Court, Islamabad, from the date of expiry of their tenure as Additional Judges of the said High Court. The Parliamentary Committee on receipt of the aforesaid nominations from the Commission, in terms of Article 175-A(13) of the Constitution, after unanimously confirming the same, sent the matter to the Prime Minister of Pakistan to forward the same to the President of Pakistan for appointment. The President of Pakistan apparently not issued orders for appointment allegedly for the reason that one of the participants out of ten was not qualified to attend the meeting of the Commission.

(3) We are of the view that even if it is assumed that one of the members, being non entity sat, voted and took part in the proceedings culminating in nomination, but it would not vitiate the proceedings when the Judicial Commission in view of Clause 8 of Article 175A of the constitution has nominated by majority of its membership. We are supported in our view from the judgment reported as Managing Director, Sui Southern Gas Company LTD, Karachi v. Ghulam Abbas and others (PLD 2003 SC 724).

(4) After hearing Mr. Muhammad Akram Sheikh, learned Senior Advocate Supreme Court representing the petitioner and the learned Attorney-General for Pakistan, and for the reasons to be recorded later, we accept this petition and direct the concerned authorities to issue notifications, thereby appointing Mr. Shaukat Aziz Siddiqui, as a Judge of Islamabad High Court, Islamabad, and Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge of Islamabad High

Court, Islamabad, for a period of six months giving, effect from the date of expiry of their earlier notifications."

Sd/- Khilji Arif Hussain, J.

Sd/- Tariq Parvez, J.

I agree for the reasons recorded in my separate note in response.

Sd/- Ejaz Afzal Khan, J.

Sd/- Gulzar Ahmed, J.

Sd/- Sh. Azmat Saeed, J.

EJAZ AFZAL KHAN, J.---I have gone through the judgment authored by my brother Mr. Justice Khilji Arif Hussain. I have also gone through the answers to the questions and the reasons recorded therefor. I am not inclined to agree with some of them and thus answer the questions in my note recorded as under.

2. Brief facts leading to the institution of the reference and the Constitution Petition are that a vacancy occurred in this Court on the retirement of Mr. Justice Mian Shakirullah Jan. In order to fill the said vacancy, the Judicial Commission of Pakistan in its meeting held on 27-9-2012 nominated Mr. Justice Iqbal Hameed-ur-Rehman as a Judge of this Court. His nomination as such necessitated the nomination of a Judge of the said High Court for appointment as Chief Justice. Mr. Justice Muhammad Anwar Khan Kansi was nominated for appointment as Chief Justice of the High Court on the ground that he was the most Senior Judge of the said Court. His nomination was confirmed by the Parliamentary Committee and sent to the Prime Minister, who forwarded it to the President for appointment. The President having serious reservations to the status of Mr. Justice Muhammad Anwar Khan Kasi as the most Senior Judge declined to appoint him and thus filed the reference raising the questions recounted above. Constitution Petition mentioned above is also a corollary of the same episode.

3. Mr. Waseem Sajjad, learned Senior Advocate Supreme Court while appearing on behalf of the President contended that when the principle underlying determination of seniority of the Judges elevated on the same day is seniority in age, Mr. Justice Riaz Ahmed Khan, being senior in age is the most Senior Judge to be nominated as Chief Justice, Islamabad High Court. This practice the learned counsel added, being more than a century old has been consistently followed in the Indian sub-continent and even after its partition. The learned counsel to substantiate his argument referred to the letter No.F.12(5)/86-All, dated 30-4-1987, Government of Pakistan, Ministry of Justice and Parliamentary Affairs (Justice Division). The learned counsel by elaborating his argument contended that when according to the dictum laid down by this Court in the case of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (PLD 1996 SC 324), the most senior Judge of a High Court has a legitimate expectancy to be appointed as Chief Justice, Mr. Justice Riaz Ahmed Khan being the most senior Judge of the High Court, would be entitled to be nominated for appointment as Chief Justice in the absence of any valid reason and that the nomination of Mr. Justice Muhammad Anwar Khan Kasi is not only an out right departure from the century's old practice but also against the law of the land, therefore, the President is not bound to appoint such person as Chief Justice. The learned counsel next contended that the Judicial Commission, nominating Mr. Justice Shaukat Aziz Siddiqui for appointment and Mr. Justice Noor-ul-Haq N. Qureshi for extension as Judges of the High Court, cannot be said to have been properly constituted in the absence of most senior Judge, therefore, their nomination will not have any legal or constitutional sanctity notwithstanding it having been confirmed by the Parliamentary Committee was sent to the Prime Minister and then forwarded to the President. This nomination would be all the more without any legal and Constitutional sanctity, argued the learned counsel, when the proceedings before the Commission have not been conducted in the manner prescribed by the Constitution. The learned counsel to support his contention referred to the cases of "Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010, (Action taken on news clippings regarding Fast Food Outlet in F-9 Park, Islamabad). (PLD 2010 Supreme Court 759), and "Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others" (PLD 1992 SC 757(K). The fact, maintained the learned counsel, that a non-entity, sat, voted and took part in the proceedings of the Judicial Commission would alone call fortheir annulment. The learned counsel to support his contention placed reliance on the case of "Regina v. Bow Street Metropolitan Stipendiary Magistrate and others, Ex-parte Pinochet Ugarte (No.2). Even otherwise, the learned counsel submitted, the President being appointing authority is duty

bound to ensure obedience to the Constitution and the law cannot appoint a person who has not been nominated in accordance with the provisions of the Constitution.

4. During the course of arguments I asked the learned counsel for the President that when the proceedings in the house in view of the provision contained in Article 67 of the Constitution do not become invalid on the ground that some persons who were not entitled to sit, vote or otherwise take part in the proceedings, sat, voted and took part therein, how a proceedings of the Commission can become invalid on this score, the reply of the learned counsel was that the proceedings in the former case do not become invalid because it has been so provided in the aforesaid Article but there is nothing of that sort in Article 175-A of the Constitution. The learned counsel by referring to Article 48 of the Constitution contended that despite insertion of Article 175-A in the Constitution, the President still has the power to send back a nomination to the Judicial Commission for reconsideration. But when asked whether a nomination originating from the Judicial Commission, confirmed by the Parliamentary Committee, and forwarded by the Prime Minister to the President could be treated as an advice and returned as such for reconsideration in terms of Article 48 of the Constitution when it does not provide for any such eventuality, the learned counsel did not give any satisfactory answer. The fact is that his own reply to our query with reference to Article 67 of the Constitution barricaded his way to take a U-turn. Though he swang to yet another argument by submitting that the Constitutional provisions have to be interpreted as a whole and not in isolation but that would not be of any help to him. The learned counsel further contended that if the principle of seniority and that of legitimate expectancy linked therewith, are ignored without reasons to be recorded, it would give rise to the whim and caprice of the person sitting at the peak which is not conducive for independence of judiciary. The learned counsel also waxed eloquent by asking this Court to redefine the mode and manner of appointing judges but when I observed that all these questions have been elaborately dealt with in the case of "Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another" (PLD 2011 SC 407), the learned counsel submitted that they have been, but since they have been dealt with collaterally, the judgment so rendered being obiter dicta will not have a binding force. I would have agreed with the learned counsel for the President but he could not point out anything striking or significant in the judgment which went un-noticed and unattended. It is, therefore, not obiter dicta by any attribute. This judgment could have been treated as sub-silentio: a precedent not fully argued, but again the learned counsel could not advert to any legal or Constitutional aspect of the case which escaped the notice of the Bench rendering the judgment, so as to relegate it to the status of sub-silentio.

The learned counsel next contended that Mr. Justice Muhammad Anwar Khan Kasi could not be held as most senior Judge on the strength of the judgment rendered in the case of "Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and Justice, Islamabad v. Sindh High Court Bar Association through President and another" (PLD 2012 Supreme Court 1067), as it does not provide any premises for such conclusion. How the proceedings in the Judicial Commission could be held in camera, asked the learned counsel, when the legislature in its wisdom purposely provided otherwise, so as to ensure complete transparency and open scrutiny. What would be the criterion, asked the learned counsel, for elevating a Judge or a Chief Justice of a High Court to the Supreme Court and how far the inter se seniority of the Judges or the Chief Justices of the High Courts would be relevant in this behalf?.

5. Mr. Muhammad Akram Sheikh, learned Senior Advocate Supreme Court appearing on behalf of the petitioner contended that once the Judicial Commission 'nominated Mr. Justice Shaukat Aziz Siddiqui for appointment and Mr. Justice Noor-ul-Haq Qureshi for extension for a period six months as Judges of the Islamabad High Court, the Parliamentary Committee after having confirmed their nomination sent it to the Prime Minister and the Prime Minister forwarded it to the President for appointment, the President has no other option but to do the needful. The learned counsel next contended that Mr. Justice Muhammad Anwar Khan Kasi being the most Senior Judge rightly participated in the meeting of the Judicial Commission nominating the Judges mentioned above, therefore, the President has no power whatsoever to delay or decline the appointment on any pretext if it is seen in the light of Eighteenth and Nineteenth Amendment. Even if it is assumed, added the learned counsel, that the Judge participating in the meeting was a non-entity, it would not materially affect the result if the doctrine of severance is applied. The learned counsel to support his contention placed reliance on the case "Managing Director, Sui Southern Gas Company Ltd., Karachi v. Ghulam Abbas and others" (PLD 2003 SC 724). The learned counsel next contended that had the decision been made by a margin of one, the argument of the learned counsel for the President and the judgment rendered in the case of "Regina v. Bow Street Metropolitan Stipendiary Magistrate and others, Ex parte Pinochet Ugarte (No.2) would have had some relevance but where the decision is by the majority of 7 against 2, absence of the persona designate or participation of a non-entity would be of little consequence. When I asked what course of action would be open before the President if a person nominated for appointment of a Judge of the Supreme Court does not fulfil the requirements laid down by Article 177(2) or a person nominated for appointment of a

Judge of the High Court does not fulfil the requirements laid down by Article 193(2) of the Constitution, the learned counsel except referring to the stance taken by the Government in C.M.A. No. 1602 of 2010 in Constitution Petition No.11 of 2010 could not state anything more.

6. Learned Attorney-General appearing on the Court's notice contended that the Judicial Commission was not properly constituted, as the persona designata did not attend the meeting and the person who attended the meeting was just a non-entity therefore, the whole process shall stand vitiated. The President, the learned Attorney General submitted, is not bound to appoint a nominee of such Judicial Commission notwithstanding his nomination was confirmed by the Parliamentary Committee and forwarded to the President by the Prime Minister on its receipt. The learned Attorney General next contended that when in the judgment rendered in the case of "Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others" (PLD 2009 SC 379), this Court annulled the appointment of many Judges for want of recommendation by the consultee, a nomination originating from the Judicial Commission which was not properly constituted has to be given alike treatment. The learned Attorney-General by referring to the commentary on the Constitution of India by Durga Das Basu argued that the President is not a robot placed in the President House nor a Computer controlled automation, nor a figure head nor ornamental piece placed in the show window of the nation called the President's House. Instead, the learned Attorney General submitted, he is a living human who on being selected by the nation is endowed with all dignity, honour and prestige as head of the republic for upholding the Constitution and the laws, therefore, his role as such cannot be doubted in any situation. Seen from such angle, the learned Attorney-General concluded, the President cannot be kept off the affairs regulating the appointment of Judges.

7. Mr. Makhdoom Ali Khan, learned Senior Advocate Supreme Court appeared as Amicus Curiae on Court's notice. The learned counsel in the first instance addressed the Court as to the binding nature of an advice rendered by this Court in the exercise of its advisory jurisdiction. The learned counsel by referring to the relevant paragraph of the judgment rendered in "Reference No.2 of 2005 by the President of Pakistan" (PLD 2005 Supreme Court 873) submitted that though an opinion given by the Court on a reference filed by the President is not a decision between the parties but since it is handed down after undertaking an extensive judicial exercise and hearing of Advocates it has a binding force. Such advice, the learned counsel submitted has to be accepted and acted upon with utmost respect. The learned counsel then by referring to

various Articles of the Constitution in general and Article 175-A in particular contended that mode and manner of appointing Judges of the superior Courts has undergone a change and that the whole process from the inception to the last is now regulated by the latter. The learned counsel argued that once Judicial Commission has nominated a person, the Parliamentary Committee after having confirmed his name has sent it to the Prime Minister and the Prime Minister has forwarded it to the President for appointment, the President will have no choice but to appoint him. While commenting on the mode and manner of appointment of Judges and things ancillary thereto, the learned counsel submitted that an exhaustive exercise has been taken in the cases of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra), and "Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another" (supra), therefore, yet another exercise is hardly called for. The learned counsel, however, submitted that the principle and practice of appointing most Senior Judge as Chief Justice is not open to any dispute and thus cannot be departed from without reasons to be recorded as held in the case "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra). The President or for that matter any other person performing in the affairs of Federation, the learned counsel submitted, is duty bound to protect the Constitution and that the instant reference appears to be an effort in this behalf. When asked, whether the President shall appoint a person a Judge of the Supreme Court, if he does not fulfil the requirements laid down by Article 177(2) or a Judge of a High Court ifhe does not fulfil the requirements laid down by Article 193 of the Constitution,notwithstanding Clause 13 of Article 175-A of the Constitution, the learned counsel readily replied in no. But when asked, how a deadlock occasioning due to refusal of the President to appoint a person nominated, who does not fulfil the requirements laid down by the Articles mentioned above, would be brought to an end especially when the President in view of the provision contained in Article 175-A cannot send the nomination back to the Commission for reconsideration, the learned counsel could not give any satisfactory reply.

8. Khawaja Haris Ahmed, Senior Advocate Supreme Court who was also asked to assist the Court as Amicus Curiae, highlighted the salient features of his written submissions. He by referring to Article 175-A of the Constitution submitted that the role of the President in appointment of Judges, is more or less ministerial when the Judicial Commission has nominated a person, the Parliamentary Committee after having confirmed his name has sent it to the Prime

Minister and the Prime Minister has forwarded it to the President for appointment. He by referring to the judgment rendered in the case of "Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another" (supra), submitted that where almost all of the questions raised in the reference have been answered in thejudgment, it would be just futile to rehear the same.

9. With regard to the question relating to seniority, the learned counsel submitted that the same being person specific is not one of law, therefore, this Court cannot afford to decide such question in its advisory jurisdiction. The learned counsel next contended that omission to mention the expression most senior Judge in the provision relating to appointment of Chief Justice of a High Court is significant and that in the absence of any express provision even the most senior Judge cannot have legitimate expectancy, as the Constitution on this score has remained the same even after the dictum laid down in the case of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra).

10. I have gone through the relevant record carefully and considered the submissions made by the learned counsel for the parties as well as amicus curiae.

11. Before I discuss the arguments addressed at the bar by the learned counsel and answer the questions raised in the reference and the petition, it is worthwhile to mention that the mode and manner of appointing Judges underwent a radical change after Eighteenth and Nineteenth Amendments of the Constitution. Almost all the process of appointing Judges, Chief Justices of the High Courts, the Federal Shariat Court and Judges of the Supreme Court has been capsuled in Article 175-A of the Constitution. A reference to the said Article would, therefore, be relevant which reads as under:--

"175-A, (1). There shall be a Judicial Commission of Pakistan, hereinafter in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as hereinafter provided.

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

(i) Chief Justice of Pakistan.

(ii) (four) most senior Judges of the Supreme Court;

(iii) a former Chief Justice .or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the (four) member Judges, for a term of two years;

(iv) Federal Minister for Law and Justice;

(v) Attorney-General for Pakistan; and

(vi) a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two years.

(3) Notwithstanding anything contained in clause (1) or clause (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

(4) The Commission may make rules regulating its procedure.

(5) For appointment of Judges of a High Court, the Commission in clause (2) shall also include the following, namely:----

(i) Chief Justice of the High Court to which the appointment is being made;

(ii) the most senior Judge of that High Court;

(iii) Provincial Minister for Law; and

(iv) an advocate having not less than fifteen years practice in the High Court to be nominated by the concerned Bar Council for a term of two years;

Provided that for appointment of the Chief Justice of a High Court the most Senior Judge mentioned in paragraph (ii) shall not be member of the Commission:

Provided further that if for any reason the Chief Justice of High Court is not available, he shall be substituted by a former Chief Justice or former Judge of that Court, to be nominated by the Chief Justice of Pakistan in consultation with the four member Judges ofthe Commission mentioned in paragraph (ii) of clause (2)].

(6) For appointment of Judges of the Islamabad High Court, the Commission in clause (2) shall also include the following, namely:----

(i) Chief Justice of the Islamabad High Court; Member and

(ii) the most senior Judge of that High Court;

Provided that for initial appointment of the [Chief Justice and the] Judges of the Islamabad High Court, the Chief Justices of the four Provincial High Courts shall also be members of the Commission:

Provided further that subject to the foregoing proviso, in case of appointment of Chief Justice of Islamabad High Court, the provisos to clause (5) shall, mutatis mutandis, apply.

(7) For appointment of Judges of the Federal Shariat Court, the Commission in clause (2) shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its member:

Provided that for appointment of Chief Justice of Federal Shariat Court, the provisos, to clause (5) shall, mutatis mutandis, apply.

(8) The Commission by majority of its total membership shall nominate to the Parliamentary Committee 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.

(9) The Parliamentary Committee, hereinafter in this Article referred to as the Committee, shall consist of the following eight members, namely:----

(i) four members from the Senate; and

(ii) four members from the National Assembly [:]

[Provided that when the National Assembly is dissolved, the total membership of the Parliamentary Committee shall consist of the members from the Senate only mentioned in paragraph (i) and the provisions of this Article shall, mutatis mutandis, apply.].

(10) Out of the eight members of the Committee, four shall be from the Treasury Benches, two from each House and four from the Opposition Benches, two from each House. The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition.

(11) Secretary, Senate shall act as the Secretary of the Committee.

(12) The Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed:

[Provided that the Committee, for reasons to be recorded, may not confirm the nomination by three-fourth majority of its total membership within the said period:]

[Provided further that if a nomination is not confirmed by the Committee it shall forward its decision with reasons so recorded to the Commission through the Prime Minister:

[Provided further that if a nomination is not confirmed, the Commission shall send another nomination.]

[(13) The Committee shall send the name of the nominee confirmed by it or deemed tohave been confirmed to the Prime Minister who shall forward the same to the President for appointment.]

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

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

(16) The provisions of Article 68 shall not apply to the proceedings of the Committee.]

[(17) The Committee may make rules for regulating its procedure.]"

12. A look at the above quoted provision would reveal that it prescribed the mode and manner as to how the Judicial Commission shall proceed to nominate a person for appointment as a Judge or Chief Justice of a High Court, the Federal Shariat Court or a Judge of the Supreme Court and how the Parliamentary Committee would look at such nomination while confirming or refusing to confirm it. Who is eligible to be appointed as a Judge or Chief Justice of a High Court, the Federal Shariat Court or a Judge of the Supreme Court and whether the person sought to be nominated possesses the caliber, capacity and conduct befitting the slot, are the questions to be considered by the tiers listed in the provision mentioned above. Once a person is nominated by the Judicial Commission his name, will go to the Parliamentary Committee. The Parliamentary Committee may confirm such nomination by majority of its total membership within fourteen days. If it fails to confirm a nomination within fourteen days it shall be deemed to have been confirmed. It may refuse to confirm a nomination by 3/4th and send it back to the Commission through the Prime Minister for reconsideration but after recording reasons therefor. The Commission shall, then, send another nomination. The Committee shall send the name of the nominee confirmed by it or deemed to have been confirmed to the Prime Minister who shall forward the same to the President for appointment.

13. Now the questions arise what is nomination in its pith and substance; whether it can be treated as an advice to the President and if so whether it can be returned for reconsideration to the source it has originated from or processed through. Before I answer these questions, a careful look at Article 48 of the Constitution would be quite advantageous. It, thus, reads as under:--

"President to act on advice, etc.

[48. (1) In the exercise of his functions, the President shall act [on and] in accordance with the advice of the Cabinet [or the Prime Minister]:

[Provided that [within fifteen days] the President may require the Cabinet or, as the case may be, the Prime Minister to reconsider such advice, either generally or otherwise, and the President shall [, within ten days,] act in accordance with the advice tendered after such reconsideration.]

(2) Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so [and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever].

(3) Clause (3) omitted.

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

(5) Where the President dissolves the National Assembly, notwithstanding anything contained in clause (1), he shall,---

(a) appoint a date, not later than ninety days from the date of the dissolution, for the holding of a general election to a Assembly; and

(b) appoint a care-taker Cabinet [in accordance with the provisions of Article 224 or, as the case may be, Article 224A]]

[(6) If at any time the Prime Minister considers it necessary to hold a referendum on any matter of national importance, he may refer the matter to a joint sitting of the Majlis-e -Shoora (Parliament)and if it is approved in a joint sitting, the Prime Minister may cause such matter to be referred to a referendum in the form of a question that is capable of being answered by either --- Yes" or --- Not.]

(7) An Act of Majlis-e-Shoora (Parliament) may lay down the procedure for the holding of a referendum and the compiling and consolidation of the result of a referendum.]

14. A bare reading of this Article would reveal that the President in the exercise of his functions shall act in accordance with the advice of the Cabinet or the Prime Minister. The President in view of the proviso to Article 48(1) has the power to require the Cabinet or the Prime Minister as the case may be, to reconsider such advice generally or otherwise. Similarly, the President, in view of the provision contained in Article 75 of the Constitution, has the power to return a bill, other than a money bill, presented to him for his assent, for reconsideration. A nomination originating from the Commission, confirmed by the Committee is also an advice in its pith and substance inasmuch as it is forwarded by the Prime Minister to the President for being acted upon. But since it originates from the Commission in terms of Article 175-A of the Constitution, it is not an advice in terms of Article 48 of the Constitution. Nor is it open to the incidence of return for reconsideration because Article 175-A of the Constitution does envision any such thing. This omission appears to be deliberate and purposeful. For whatever power the President had before Eighteenth and Nineteenth Amendments, including the power to return a nomination for reconsideration to the source it has originated from, has now been conferred on the Parliamentary Committee. If a power requiring the Prime Minister or the Cabinet to reconsider an advice, under Article 48, or a power requiring the Parliament to reconsider a bill, under Article 75 of the Constitution, has been conferred on the President, a power requiring the Commission or the Parliamentary Committee, to reconsider a nomination, too, could have been conferred on him, but it has not been conferred. When it has not been conferred, I am bound to take the Constitutional provisions as they are. A Casus Omissus can, in no case, be supplied by the Court of law as that would amount to altering the provision. "It is not our function, as was held by Mr. Justice Walsh, in the case of "Attorney-General v. Bihari, re Australia Factors Limited (1966) 67 S.R. (N. S. W) 150; to repair the blunders that are to be found in the legislation". They must be corrected by the legislator". A Court of law is not entitled to read words into the Constitution or an Act of Parliament unless clear reason is found within the four corners of either of them. Yes, the President can act in the exercise of his discretionary powers under Article 48(2) of the Constitution but the areas of such powers are well defined and well marked. He cannot return a nomination for reconsideration even under the garb of his discretionary power when it in its origin and specie is not an advice in terms of Article 48(1) of the Constitution. I, therefore, hold that the President has no power to return a nomination to any of the tiers it has passed from, even if it is violative of the Constitution or the law. But at

any rate the President shall not appoint a person a Judge of the Supreme Court or a Judge or Chief Justice of a High Court as the case may be, whose nomination, in his opinion, is against the Constitution and the law. For the Constitution which makes obedience to the Constitution and the law the inviolable obligation of every citizen would never ever require a person no less than the President to do something against the Constitution and the law. Nor would his oath of office, which requires him to discharge his duties and perform his functions in accordance with the Constitution and the law, permit him to do any such thing. Reference may well be made to Articles 177 and 193 of the Constitution and Oath of the President which read as under:--

"Article 177: Appointment of Supreme Court Judges.

[(1) The Chief Justice of Pakistan and each of the other Judges of the Supreme Court shall be appointed by the President in accordance with Article 175A.]

(2) A person shall not be appointed a 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 (including a High Court which existed in Pakistan at any time before the commencing day); or
>
> (b) has for a period of, or for periods aggregating, not less than fifteen years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day)".

"Article: 193: Appointment of High Court Judges

[(1) The Chief Justice and each of other Judges of a High Court shall be appointed by the President in accordance with Article 175A.]

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

(a) he has for a period of, or for periods aggregating, not less than ten years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day); or

(b) he is, and has for a period of not less than ten years been, a member of a civil service prescribed by law for the purposes of this paragraph, and has, for a period of not less than three years, served as or exercised the functions of a District Judge in Pakistan; or

(c) 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 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.]"

And

"OATHS OF OFFICE

President

[Article 42]

(In the name of Allah, the most Beneficent, the most Merciful.)

I, _____ do solemnly swear that I am a Muslim and believe in the Unity and Oneness of Almighty Allah, the Books of Allah, the Holy Quran being the last of them, the Prophethood of Muhammad (peace be upon him) as the last of the Prophets and that there can be no Prophet after him, the Day of Judgment, and all the requirements and teachings of the Holy Quran and Sunnah:

That I will bear true faith and allegiance to Pakistan:

That, as President of Pakistan, I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan:

That I will not allow my personal interest to influence my official conduct or my official decisions:

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan:

That, in all circumstances, I will do right to all manner of people, according to law, without fear or favor, affection or ill-will:

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as President of Pakistan, except as may be required for the due discharge of my duties as President.

[May Allah Almighty help and guide me (A'meen)]"

15. The above quoted provisions of the Constitution as well as the oath of his office would show that the President before appointing a person, a Judge or a Chief Justice of a High Court or a Judge of the Supreme Court shall ensure that his nomination is in accordance with the Constitution and the law. He shall not appoint a person, a Judge or a Chief Justice of a High Court or a Judge of Supreme Court, if his nomination does not conform to the Constitution and the law. Especially when there is no provision in Article 175-A of the Constitution, in para materia with that of Article 48 requiring the President to do the needful within ten days, or a deeming provision in para materia with that of Article 75 of the Constitution requiring the President to do the needful within ten days failing which the needful shall be deemed to have been done. A deadlock, would inevitably be the consequence as the President can neither return the nomination to the source it has originated from or processed through nor can he appoint the person, thus nominated. As the deadlock revolves around the constitutionality, legality or otherwise of the nomination recourse to an advisory or adjudicatory jurisdiction of this Court would be the only way out. If the Court upholds the opinion of the President, the Commission shall initiate proceedings de novo in accordance with the opinion of the Court. If it does not, the President shall appoint the person nominated accordingly.

16. Who is senior, what is the criterion for determining seniority amongst the Judges elevated on the same day and what is the way of deciding about the most senior Judge for appointment as Chief Justice? Answers to these questions have been provided in the letter of Law Department dated 30-4-1987 which reads as under:--

"No.F,12 (5) 186-All, Dated: 30-4-1987.

GOVERNMENT OF PAKISTAN MINISTRY OF JUSTICE AND PARLIAMENTARY AFFAIRS
(JUSTICE DIVISION)

SUBJECT: **SENIORITY LIST OF HIGH COURT JUDGES**

My dear Chief Justice,

Please refer to the correspondence resting with High Court of Sindh letter No. Gaz-IV, Z. 14(1) dated the 30th March, 1987, on the subject noted above.

(2) An equitable principle consistently adopted in this regard is that Judges whose appointments are made by a single order, take seniority according to age. If the appointment of two or more service candidates is also simultaneously made with that of candidate from the Bar, the service Judges will retain their existing seniority in the department regardless of their age which of course would be the determining factor in respect of their seniority vis-a-vis candidates from the Bar. This principle has the approval of the President.

(3) I am to request you to please confirm whether the seniority list of Sindh High CourtJudges has been prepared in the light of the above principle.

With kind regards.

Yours sincerely,
(Irshad Hassan Khan)"

17. A perusal of the letter reproduced above leaves no doubt that the established practice and the time honoured yardstick for determining seniority amongst the Judges of a High Court, elevated on the same day, is seniority in age except in the case of Judges from service whose inter se seniority remains intact even on their elevation irrespective of their age. This principle has been consistently followed hitherto without exception ever since the establishment of the High Courts in the Indian Subcontinent and also after its partition. This principle even otherwise merits respect and reverence because it not only rules out personal whim and caprice of the person at one peak or another and shuts doors and windows for manipulation at ministerial level but also creates an environment which is conducive for the rule of law,

supremacy of the Constitution and independence of Judiciary. This principle being too clear and conspicuous cannot be disputed. At times it has been departed from but that was only when there was something concrete against the Judge. This is what was laid down in the case of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra). The relevant paragraph would be germane to the case in hand which reads as under:--

> "It is true that in Article 193 of the Constitution which relates to inter alia to the appointment of a Chief Justice in a High Court, it has not been provided that most of the senior of Judges shall be made as the Chief Justice. The reason seems to be obvious, namely, it is possible that the senior most Judge, at the relevant time, may not be physically capable to take over the burden of the office or that he may not be willing to take upon himself the above responsibility. The Chief Justice of Pakistan, who is one of the consultees under Article 193 will be having expertise knowledge about the senior most Judges of a High Court. If the senior most Judge is bypassed for any of the above reasons, he cannot have any grievance but if he is superseded for extraneous considerations, the exercise of power under Article 193 of the Constitution will not be in accordance therewith and will be questionable.
>
> I am, therefore, of the view that keeping in view the provisions of the Constitution as a whole and the well-established convention as to the appointment of the senior most Judges in the High Court as the Chief Justice followed consistently in conjunction with the Islamic concept of 'Urf'. The most senior Judge of a High Court has a legitimate expectancy to be considered for appointment as the Chief Justice and in the absence of any concrete and valid reasons to be recorded by the President/Executive, he is entitled to be appointed as such in the Court concerned.
>
> Before parting with the discussion on the above question, I may observe that there seems to be wisdom in following the convention of seniority. If every Judge in a High Court aspires to become Chief Justice for the reason that he knows that seniority rule is not to be followed, it will adversely affect the independence of judiciary. The junior most Judges may feel that by having good terms with the Government in power he can become the Chief Justice. This will destroy the institution and public confidence in it. The Chief Justices of the High Courts have the power to fix the roster i.e. to decide when

> a case is to be fixed and before whom it is to be fixed. In other words, they regulate the working of the forum. It is, therefore, very important that the Chief Justices should not be pliable and they should act independently".

The word "Urf" used in the above quoted paragraph is of tremendous significance which means commonly known, commonly received and commonly approved of. This principle was reiterated in the case of "Malik Asad Ali and others v. Federation of Pakistan and others" (PLD 1998 SC 33), the relevant paragraph for the facility of reference is reproduced as under:--

> "6. This Court in case of Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 while interpreting the provisions of Article 193 of the Constitution, relating to the appointment of Chief Justice of a Provincial High Court, on the basis of convention followed in this behalf held, that the senior most Judge of the High Court, in the absence of any concrete and valid reason has to be appointed as the Chief Justice of the High Court. We are of the view that the above rationale laid down by this Court for appointment of the Chief Justice of High Court applied with greater force in the case of appointment of Chief Justice of Pakistan under Article 177 of the Constitution, in view of the more consistent practice and convention followed in this regard for appointment of Chief Justice of Pakistan in the past and especially in view of the provisions contained in Article 180 of the Constitution which recognizes the principle of seniority as the sole criteria for appointment of Acting Chief Justice of Pakistan."

This Court in the case of "Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another" (supra) while reaffirming the dicta laid down in the cases of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra) and "Malik Asad Ali and others v. Federation of Pakistan and others" (supra) held as under:--

> "31. At this stage, it would also be appropriate for us to note that the contention of the AAG that earlier judgments on the issue of appointment of Judges are irrelevant is a bit misconceived. The change in the appointment process has merely diversified decision making amongst the many members of the two new collegiate bodies, but essentially the roles of these bodies, looked at collectively, remains the same. So as such the principles of law enunciated in earlier judgments such as Al-Jehad Trust case, Malik Asad Ali and

> several others would continue to apply to the new mechanism with full force. In face, these principles can be said to be applicable even more strongly after the introduction of the newly constituted bodies under Article 175-A."

It, irresistibly, follows that this principle, practice or convention, whatever one may like to call it, besides being esteemed, honoured and upheld throughout has also been blessed with the approval of this Court in the judgments cited above. It is now a declared law of the land to all intents and purposes. I, therefore, do not see any reason much less tenable warranting any deviation therefrom.

18. Yet another provision contained in the first proviso to Clause 5(iv) of Article 175-A of the Constitution, which provides that for appointment of the Chief justice of a High Court the most senior Judge mentioned in Clause 5(ii) of the Article shall not be member of the Commission, unmistakably indicates that it has all along been taken for granted that it is the most senior Judge of the High Court who shall be nominated as Chief Justice in the absence of any valid reason. Otherwise, it would have been provided in the aforesaid clause that the Judge whose nomination for appointment as Chief Justice is in the offing shall not be member of the Commission. Therefore, the argument advanced by Kh. Haris Ahmed, learned Senior Advocate Supreme Court that the Constitutional provisions on this score have remained the same even after the dictum laid down in the case of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra) is without force. I am, therefore of the opinion, that Mr. Justice Riaz Ahmed Khan, being the most senior Judge of the High Court has a legitimate expectancy to be appointed as Chief Justice and that subject to any valid reason which is yet to be recorded by the Commission, he would be entitled to be appointed as such.

19. Next question in the sequence is as to who determines seniority amongst the Judges appointed on the same day? Again the answer can be found in the long standing practice. It is the Chief Justice of the respective High Court who determines inter se seniority of the Judges in the light of the principle mentioned above. It is, then, the Judicial Commission nominating the most Senior Judge for appointment as Chief Justice, which determines inter se seniority of the Judges so elevated. The President in this scheme does not figure anywhere. It is, however, a fact well worth remarking that seniority in this case has been determined by the Chief Justice of the Islamabad High Court and that Mr. Justice Riaz Ahmed Khan being senior in age has already

been declared the most senior Judge of the High Court. Needless to say that settling the principle underlying the determination of a question can never become person specific.

20. Then comes the question as to whether the well established principle underlying the determination of inter se seniority amongst the Judges has been departed from by the Commission on correct premises. Reference has been made to a paragraph from the judgment rendered in the case of "Federation of Pakistan v. Sindh High Court Bar Association through its President" (CPLA No. 1390 of 2012) (supra) which runs as under:--

> "..... It is for this reason that in number of judgments of the apex Court, out of which two have been referred to above, in service matters, concept of reinstatement into service with original seniority and back benefits has been developed and followed on case to case basis to give complete relief to an aggrieved party. Following the same equitable principle, while passing our short order, we have specifically mentioned that the issuance of notification for permanent appointment of the two Judges shall have its effect from 17-9-2011 when four other recommendees of the Commission in the same batch were notified after clearance by the Committee, so that they shall have their respective seniority and all other benefits as permanent judges of the High Court".

But a careful reading of the above quoted paragraph would reveal that it has not judicially laid down any criterion for determining, inter se seniority among the Judges appointed on the same day. Nor has it justified a deviation from the recognized course. It when read with reference to the context, deals with a situation different altogether. No such question was involved in that case, nor has it been decided as such. It would thus be ominous to draw a parallel between this case and that case or to treat them alike. I, therefore, have no hesitation to hold that the premises recorded by the Commission for departing from the well established principle of determining seniority are not correct.

21. The next question emerging for the consideration of this Court on its advisory as well as adjudicatory side is whether the Judicial Commission in this case was properly constituted in the absence of a persona designata and whether the presence or participation of a person, who was a non-entity in the Commission, could vitiate the nomination for the appointment of Mr. Justice Shaukat Aziz Siddiqui and extension of Mr. Justice Noor-ul-Haq Qureshi? Answers to these questions are simple and straightforward. Accepting that Mr. Justice Riaz Ahmed Khan

being the most Senior Judge was required to attend the meeting of the Commission but his failure to do so for any reason, would not vitiate the proceedings of the Commission. For clause 14 of Article 175-A of the Constitution clearly provides that no action or decision taken by the Commission or a Committee shall be invalid or called in question only on the ground of the existence of a vacancy therein or of the absence of any member from any meeting thereof. Accepting that Mr. Justice Muhammad Anwar Khan Kasi being a non-entity sat, voted and took part in the proceedings culminating in the nomination of the Judges mentioned above, yet it would not vitiate the proceedings when the Judicial Commission, in view of Clause 8 of Article 175-A of the Constitution, has nominated the Judges by majority of its total membership. It would have vitiated or materially affected the proceedings of the Commission if it had nominated the Judges for appointment and extension with a margin of one. But where the Commission nominated the Judges by majority of 7 against 2, the presence or participation of Mr. Justice Muhammad Anwar Khan Kasi in the meeting would not be of any consequence. The case of "Managing Director, Sui Southern Gas Company Ltd., Karachi v. Ghulam Abbas and others" (supra) may well be referred to in this behalf wherein it was held as under:--

"Perusal of subsection (1) of section 3-A of the Act, 1973 reveals that "minimum strength of a Bench to exercise or perform functions of the Tribunal is two Members, including the Chairman, meaning thereby that while conducting hearing the status of a Chairman is also of a Member. Whereas under clause (a) of section 3-A(2), decisions are to be pronounced by the majority of the Members. Clause (b) of section 3-A(2) further provides that in case of division between Members of the Bench or in case of equal division of the Members, the case shall be referred to the Chairman and whatever opinion is expressed by him, would have supremacy and constitute the decision of the Tribunal. In this case impugned judgment has been authored by the Chairman and all the Members have concurred with him, therefore, presuming that Mr. Aftab Ahmed joined proceedings without lawful authority but nevertheless impugned judgment can sustain, as it has been rendered by the Bench comprising of more than two Members of the Service Tribunal and apprehension of influencing the judgment by Mr. Aftab Ahmed (Retired Member) stands excluded as it was authored by a former Judge of High Court being the Chairman of the Service Tribunal."

22. The principle enunciated in the aforesaid judgment is not alien or extraneous, on any account, to our jurisprudence. It has also been recognized by Article 67 of the Constitution, which does not allow a proceedings of the House to become invalid simply because a person

who was not entitled to sit, vote or otherwise take part in the proceedings, sat, voted or took part therein. The case of "Regina v. Bow Street Metropolitan Stipendiary Magistrate and others, Ex parte Pinochet Ugarte (No.2), therefore, has no relevance to the case in hand.

23. Mr. Muhammad Akram Sheikh, learned Senior Advocate Supreme Court also referred to Establishment Manual but could not cite any clear and definite provision of law, rule or convention as could justify a deviation from the course which has been consistently followed till date. He failed to refer to any precedent much less relevant to support his stance. He also failed to bring anything exceptional, extraordinary or outstanding in our notice as could dilute, diminish or discount the binding force of the said principle. Even otherwise, I would not approve substitution or replacement of a principle which has unquestionably been accepted and acted upon throughout.

24. The argument addressed by the learned Attorney-General on the strength of "Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others" (supra) that if this Court annulled the appointment of many Judges for want of recommendation of the consultee, the nomination originating from the Judicial Commission which was not properly constituted has to be given alike treatment is wholly misconceived inasmuch as the status of the Chief Justice of Pakistan before the amendments has been brought at par with the status of a member after the amendments without appreciating that the Chief Justice of Pakistan before such amendments was the chief consultee. Even after the amendments he being the Chairman of the Commission is not only the chief consultee but no meeting of the Commission can be held in his absence. Whereas absence of any other member or vacancy in view of clause 14 of Article 175-A of the Constitution is of no consequence whatever.

25. The argument of the learned counsel for the President that such nomination would be all the more without any legal or constitutional sanctity when the proceedings before the Commission were not conducted in the manner prescribed by the Constitution is also devoid of force as this provision for want of envisaging the consequence of failure or neglect to comply therewith cannot be treated as mandatory.

26. The argument that the proceedings in the Judicial Commission could not be held in camera when the legislature purposely provided otherwise so as to ensure complete transparency and

open scrutiny appears to be ornamental as its members not only represent all the essential segments of the Bar and Bench but also those of the Federation and the Province through Attorney-General for Pakistan, Minister for Law and Justice of the Federation and Minister for Law of the Province. The scrutiny is open in the truest sense of the word when each member is at liberty to present his point of view one way or the other. Transparency in the proceedings cannot be affected by holding it in camera if every member consciously and conscientiously gives his input in the nomination, keeping in view its overall impact on the Institution on the one hand and society at large on the other. I do not understand what does the learned counsel for the President want to project by using the expressions "complete transparency and open scrutiny". If he by using theseexpressions wants the inclusion and intrusion of all and sundry, I am afraid, he is far off the lines drawn by the Constitution. It was in view of this backdrop, that the Judicial Commission while framing the rules in exercise of the powers conferred on it under clause 4 of Article 175-A of the Constitution provided for holding the proceedings in camera.

27. Question relating to criterion for elevating a Judge or Chief Justice of a High Court to the Supreme Court has been fully answered by Article 177 of the Constitution reproduced above. I, therefore, would not like to add anything thereto. The more so when the convention followed thus far is also in conformity with the letter and spirit of the Article mentioned above.

28. Having thus considered, I answer the questions raised in the reference accordingly. The detailed reasons for the Short Order dated 21-12-2012 in, the Constitution Petition No.126 of 2012 are also included in the Judgment.

29. While parting of the judgment, we would appreciate the enlightened assistance rendered by Mr. Makhdoom Ali Khan and Khawaja Haris Ahmed, learned Senior Advocates Supreme Court.

MWA/N-8/SC Petition allowed.

7.2 P L D 2011 SC 407

Present: Mahmood Akhtar Shahid Siddiqui, Jawwad S. Khawaja, Khilji Arif Hussain and Tariq Parvez, JJ

MUNIR HUSSAIN BHATTI, ADVOCATE and others---Petitioners

Versus

FEDERATION OF PAKISTAN and another---Respondents

Constitutional Petitions Nos.10 and 18 of 2011, decided on 4th March, 2011.

Per Mahmood Akhtar Shahid Siddiqui, J; Jawwad S. Khawaja, Khilji Arif Hussain and Tariq Parvez, JJ, agreeing--

(a) Constitution of Pakistan---

----Arts. 175A, 4, 69 & 184(3)---Constitution of Parliamentary Committee under Art.175A of the Constitution---Nature and Scope of functions of the Committee---Judicial review---Scope---Parliamentary Committee constituted under Art.175A of the Constitution could not be considered as a part of the legislature---Said Committee was not to have any connection or even semblance of relevance to the legislature or any form of parliamentary attribute---Parliamentary Committee owed its existence to Art.175A of the Constitution and not to the provisions relating to the Legislature or the Executive in the Constitution and was an Authority constituted under Art.175A of the Constitution---Any Authority created under a constitutional provision was bound to act within its specified mandate as per Art. 4 of the Constitution and there was no immunity from Judicial scrutiny reserved for the Committee under the Constitution and Art. 69 of the Constitution had no application---Principles.

"Parliamentary Committee", constituted under Article, 175A of the Constitution cannot even remotely be considered as a part of the legislature nor for that matter, any question relating to the supremacy of Parliament is involved in this case. The Judicial Commission and the

Parliamentary Committee are two limbs of one constitutional mechanism created by Article 175A. Both of them owe their existence to Article 175A and not to the provisions relating to the Legislature or the Executive in the Constitution. As such, they are entirely new authorities constituted under Article 175A of the Constitution. Any Authority created under a constitutional provision is bound to act within its' specified mandate as per Article 4 of the Constitution. There is thus no immunity from judicial scrutiny reserved for the Committee under the Constitution and Article 69 has no application in the present case.

Article 175A(16) further cements the intention that the Committee was not to have any connection or even semblance of relevance to the Legislature or any form of parliamentary attribute. It was meant simply to be a Committee working under the mandate of Article 175A, owing its existence to the said provision of the Constitution. Thus, its members, even if they are parliamentarians, are neither required nor permitted to participate in the proceedings of the Committee in their legislative capacity. Their background may have been imagined to make some fruitful contributions to the appointment process for judges, but their background was not to govern their mind while operating under the framework of Article 175A. To better understand this point, the Committee may in a sense be analogized to a special committee comprising of parliamentarians constituted, under the law, to make an inquiry or to give relief to the people. Could this special committee be said to enforce the will of the Parliament, or their electorate, over and above their duty of providing justice under the law to which they owe their existence? Some might take it so, but all norms of justice, law and fairness would say that they should act independently, fairly and in accordance with the law which has imposed a duty upon them and not with a free hand to do as they please, acting under the guise of the will of people.

The logical corollary of arguing otherwise would in fact put a very damaging and unfair disqualification clause on all parliamentarians. By an admission that parliamentarians, if tasked with a special duty, under any law, cannot shed their electoral inclinations could be a basis for their disqualification under such law.?

(b) Constitution of Pakistan---

----Arts.175A & 184(3)---Constitution of `Judicial Commission' and Parliamentary Committee' under Art.175A of the Constitution---Purpose---Scope---Refusal of Parliamentary Committee to confirm the nominations made by the Judicial Commission for the extension in the tenure of Additional Judges of the High Courts---Justiciable---Direction of Art.175A(12) of the Constitution is that the Parliamentary Committee, on receipt of a nomination from the Judicial Commission, can either confirm the nominee by a majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed, or reject the nomination on grounds falling within its domain for very strong reasons which shall be justiciable---In the present case, while coming to the conclusions, the reasoning adopted by the Committee was irrelevant, unjustified and improper under the law; therefore, it was without legal force or constitutional sanctity--- Committee had ignored its own constitutional boundaries and by doing so stepped over the rightful constitutional jurisdiction of the Commission---Supreme Court, in circumstances, issued directions to the Federation to notify the appointments on the recommendations received, in accordance with Art.175A of the Constitution, within a period of fourteen days---Principles.

In the present case while coming to the conclusions, the reasoning adopted by the Committee was irrelevant, unjustified and improper under the law; therefore, it was without legal force or constitutional sanctity. The Committee ignored its own constitutional boundaries and by doing so stepped over the rightful constitutional jurisdiction of the Commission.

The minutes of the meetings showed that the entire reasoning of the Committee was focused on no material other than that which had already been thrashed out and discussed in depth by the Judicial Commission. The Committee instead of giving its own reasons for not confirming the nominations, merely opted to usurp the territory reserved for the Commission by the Constitution; and in doing so they again passed judgment on the professional calibre, legal acumen, judicial skill and quality and the antecedents of the Judicial nominees. This exercise had already been done by the Commission. The Parliamentary Committee neither had the expertise nor the constitutional mandate to reverse the reasoning and findings of the Commission on these grounds; doing so would negate the purpose for creating a Commission as envisaged in Article 175A.?

The constitution of the Judicial Commission itself and the members comprising five sitting Judges of the Supreme Court, one former Judge of Supreme Court, the Chief Justice and the most senior Judge of the High Court, Federal Minister for Law and Attorney General of Pakistan, Law Minister of the concerned province and two senior advocates/ members of the Bar, gives a clear insight into the reasons for the creation of the Commission. It comprises of people having an immense background and stature in the field of law and the judicial system. The purpose then was that the discretion in making judicial appointments should not be the forte of one man, as in the old system, but should rather be devolved to a body comprised of people who could be trusted to make a just evaluation on the professional calibre, legal acumen, judicial skill and all other related criteria relevant for the appointment of a person as a Judge of the High Court. One was unable to see how the technical expertise, judged by a Commission comprising of people having spent decades in the legal field, could be better judged, or worse, reversed by the Parliamentary Committee. If this was intended by the legislature then there was simply no need to even constitute a Judicial Commission.?

Article 175A itself has not provided for the Chief Justice of a High Court to have any special role in the appointment process. He is just another member of the Judicial Commission and by the above said rules he has merely been provided the role to initiate the nominations. His duty is to initiate and send the nominations to the Chairman of the Judicial Commission. This act, of initiating and sending nominations, cannot be taken to be the "recommendation" itself, but is rather to be considered as an act of mere procedure. This is so because the whole object of Art.175A is to take away the powers of one person and make the process a collective effort. So, for instance, if the Rules are changed by the Commission and any other member of the Commission is given the task of setting the process of the Judicial Commission in motion, then that would not give this member a special place which is not envisaged for any other member in Article 175A. Therefore, even if a Chief Justice of the High Court is of the view that certain persons are not fit to be Judges of the High Court, it is possible that the Judicial Commission, by a majority, may come to the conclusion that they are and thus make such recommendation to the Committee. These recommendations would be valid and in accordance with the letter and spirit of Article 175A.?

The Committee could not consider that its function was to redo the entire exercise conducted by the Commission while determining the professional calibre, judicial skill, legal acumen and personal conduct, required as a Judge, of the nominees. More so, how could they arrive at a

conclusion, that the entire exercise of the Commission was flawed, based on the piecemeal views of one member of the Commission? Even these views did not last the Commission passed the nominations unanimously. Such was neither the function of the Parliamentary Committee, nor its mandate under Article 175A, and would amount to an incorrect and unconstitutional decision.

The technical evaluation of a person's calibre as Judge has to be made by the Commission, and once evaluated the recommendations of the Commission are to be looked as one. The views of the individual members of the Commission thus no more exist before the Committee. What the Commission has already assessed and held cannot be overturned on the basis of a dissenting view, note or discussion of any individual member. If this was allowed, it would render the whole working of the Judicial Commission as futile and make it nugatory under the Constitution. Doing so would be akin to refusing to recognize a resolution of the Parliament, or any law passed by it, on the basis of the minority view in the House. Such reasoning will lead to a deliberate breakdown of constitutional mechanisms and procedures.

Therefore, the Parliamentary Committee, on receipt of a nomination from the Commission, can either confirm the nominee by a majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed, or reject the nomination on grounds falling within its domain for very strong reasons which shall be justiciable. This is the clear direction of clause (12) of Article 175A.?

Since in the present case, the Committee had tried to assume the jurisdiction of the Commission, there was no option but to come to the conclusion that the Committee failed to perform its functions in terms of clause (12) of Article 175A. The consequence of this failure has been prescribed by the Constitution itself. The Committee must act within a period of fourteen 'days of receiving the nominations, "failing which the nomination shall be deemed to have been confirmed". So, while in any other case of failure to exercise jurisdiction, Supreme Court might have been required to send the issue back to the authority for consideration in accordance with law, here the Constitution had left with no such option because of a deeming provision.?

The mandatory consequence of the deeming clause mentioned above is that the name of the nominee confirmed by the Committee or "deemed to have been confirmed" shall be forwarded to the .President for appointment. The effect of a deeming provision was that it requires the

court to believe that something exists and has happened, though it may neither exist nor may have occurred in reality. It thus creates a legal fiction.?

Moreover the court, in such cases, is required to see for what purpose this deeming device has been used by the legislature. In the present case there can be little doubt that the purpose was the completion of this exercise as early as possible and the Constitutional time period of fourteen days sheds great light on the matter. Therefore, the failure of the Committee to perform its functions in accordance with its mandate results in the nomination "deemed to have been confirmed.

Supreme Court in circumstances, issued direction to the Federation to notify the appointments on the recommendations received, in accordance with Article 175A, within a period of fourteen days.?

The principles of law enunciated in earlier judgments such as Al-Jehad Trust's Case (PLD 1996 SC 324), Malik Asad Ali's case (PLD 19-? SC 161 and several others would continue to apply to the new mechanism with full force. In fact, these principles can be said to be applicable even more strongly after the introduction of the newly constituted bodies under Article 175A.?

The recommendations of the Judicial Commission are now on greater footing than the recommendations of the Chief Justice alone in the earlier system. These cannot be superseded for any extraneous considerations. Therefore, the Parliamentary Committee cannot simply brush aside the recommendations of the Commission without its own sound reasons. The Committee is to confine itself to the purpose for which it has been constituted, which is evidently the thrashing out of issues not related to the domain of the Commission. The Committee can, based on factual data and reasons, for instance, declare that a nominee is corrupt or is affiliated/partial making him a controversial choice, but judging the calibre of a nominee as a Judge rests with the Commission.?

The Judicial Commission had made recommendations for extension in tenure of Judges of High Courts. The Parliamentary Committee however, disagreed with the recommendations of the Judicial Commission and decided not to recommend the names of these Judges for appointment.?

Supreme Court declared that the decision of the Parliamentary Committee, whereby the names of the Judges were not confirmed for extension in their tenure, were not in accordance with the provisions of the Constitution; as a result of said' decision of the Parliamentary Committee, Supreme Court directed the Federation to implement the recommendations of the Judicial Commission in respect of said Judges of the High Courts and to issue notifications for the appointment of the said Judges in consonance with the recommendations of the Judicial Commission.?

Elahi Cotton Mills Ltd. v. Federation of Pakistan PLD 1997 SC 582; Federation of Pakistan v. Mian Muhammad Nawaz Sharif PLD 2009 SC 644; Malik Asad Ali's case PLD 1998 SC 33 and Al-Jehad Trust's case PLD 1996 SC 324 ref.

(c) Interpretation of Constitution---

----Deeming clause---Mandatory consequence.?

Per Jawwad S. Khawaja, J; Mahmood Akhtar Shahid Siddiqui, J., agreeing--

(d) Constitution of Pakistan---

----Arts. 184(3) & 175A---Constitutional petition before Supreme Court under Art.184(3) of the Constitution---Maintainability---Jurisdiction of Supreme Court---Scope---Petitions calling in question refusal of Parliamentary Committee to confirm judicial appointments in High Courts made by Judicial Commission was a matter of public importance and a fit occasion for Supreme Court to interpret Art.175A of the Constitution, thereby enabling constitutional bodies such as the Judicial Commission and the Parliamentary Committee (and their respective functionaries) to perform their roles in accordance with the Constitution---Such petitions were eminently suitable for the exercise of jurisdiction under Art.184(3) of the Constitution---Principles.

In the present case, two specific decisions of the Parliamentary Committee have been assailed by the petitioners under Art.184(3) of the Constitution. These decisions relate to the refusal of the Committee to confirm the nominations made by the Commission for the renewal of tenure of Judges of High Courts.?

A preliminary objection was raised against the maintainability of these petitions, with contention that the jurisdiction of Supreme Court under the said Article 184(3) of the Constitution can only be invoked where "a question of public importance with reference to the enforcement of any of the fundamental rights" is involved and that no such question arises in these petitions; and the same are, therefore, not maintainable.?

The nominations made by the Judicial Commission and the refusal of the Parliamentary Committee to confirm the same appeared to have generated considerable public interest, providing a great deal of material for debate in the public, the media and the legal fraternity. The Bar Associations of the High Courts in the country also debated the impugned decisions of the Committee. The Sindh High Court Bar Association, which is itself a petitioner, has placed on record its resolution "condemning" the action of the Committee. The proceedings in these petitions and the short order have also made headlines in the print and the electronic media. More so, critical comments on the said order have been carried prominently in the media. Contention that no question of public importance had arisen in the matter, had no substance in circumstances.?

Article 184(3) of the Constitution empowers Supreme Court to exercise jurisdiction thereunder whenever the Court considers a matter to: (i) be of public importance and (ii) that it pertains to the enforcement of fundamental rights. The determination on both these counts is to be made by Supreme Court itself, keeping the facts of the case in mind. Only an independent Judiciary can enforce the fundamental rights enshrined in the Constitution. Without an independent mechanism for enforcing fundamental rights, the contents of Chapter 1 (Fundamental Rights) of Part-II of the Constitution would become meaningless.
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In determining as to whether question of public importance had arisen in the matter the Court is not to be swayed by expressions of public sentiment nor is it to conduct an opinion poll to determine if the public has any interest in an issue being agitated before the Court under Article 184(3) of the Constitution. Instead, a whole range of factors need to be kept in mind, which have, over the years, been expounded in numerous precedents of Supreme Court. It is important to keep these precedents in view because, it is through the use of precedent that the contours of the law are constantly defined. The Constitution, through Article 189, recognizes the significance of judicial precedent in the acknowledged tradition of a Common Law jurisdiction.

"Overt expression of public interest" or "street demonstrations and vigorous media debate" are not necessary factors for the "exercise of jurisdiction over a case under the Article.

Therefore, questions which require the interpretation of newly added provisions (Art.175A) in the Constitution relating to judicial appointments would quite clearly be matters of publicimportance.?

The fact that independence of the Judiciary is a matter of public importance has also been firmly established in our jurisprudence. The Judiciary was... an affair of the public; any offence to its independence would be an encroachment on the right of the people to access justice and finally that the security of service and of the tenure of the Judges was critical for the said independence.?

Matters of public importance may be deduced on a case-by-case basis. However, even on a case-by-case basis, some general principles still emerge. Matters relating to the Judiciary have regularly been held to be of public importance. An issue that could considerably damage `the very fabric of independence and separation of Judiciary' amounted to a matter of great public importance. Questions of interpretation of the Articles of Constitution relating to the Judiciary were undoubtedly, a matter of pubic importance.?

Precedents which examine and pronounce upon the scope of the Article 184(3) of the Constitution remain relevant. Therefore, in line with Article 189 of the Constitution, the principles of law enunciated by Supreme Court in respect of Article 184 (3) of the Constitution provide the surest guidance that present petitions raise issues which must be decided by Supreme Court in the exercise of its jurisdiction under the said Article. Thus, under Art 184(3) of the Constitution, not only is Supreme Court possessed with the power to adjudicate present matter, but it must, as a matter of duty, exercise jurisdiction over the case.?

Judicial appointments in the High Courts, have been so far called in question in petitions. This is, therefore, a fit occasion for Supreme Court to interpret Article 175A of the Constitution, as amended; thereby enabling constitutional bodies such as the Judicial Commission and the Parliamentary Committee (and, their respective functionaries) to perform their roles in accordance with the Constitution.?

These petitions are eminently suitable for the exercise of jurisdiction under Article 184 (3) of the Constitution.?

Suo Motu Case No.10 of 2009 (2010 SCMR 885); Al-Jehad Trust through Raseesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others PLD 1996 SC 324; Chief Justice of Pakistan v. President of Pakistan, PLD 2010 SC 61; Watan Party v. Federation of Pakistan and others PLD 2006 SC 697; Malik Asad Ali and others v. Federation of Pakistan and others PLD 1998 SC 161; Sindh High Court Bar Association and another v. Federation of Pakinian and others (PLD 2009 SC 879; 1185; Shahida Zahir Abbasi v. President of Pakistan, PLD 1996 SC 632; Sharaf Faridi v. Federation of Pakistan PLD 1989 Kar. 404; Public Interest Litigation in Pakistan (Alam Rafay; Ed. Minshki, Alam & ""Raza, Platinum and Pakistan Law House 2000) and Abdul Matin Khan v. N.-W.F.P., PLD 1993 SC'187 ref.

Jamat-e-Islami through Amir and others v. Federation of Pakistan and others PLD 2008 SC 30; Munir Bhatti v. Federation of Pakistan (Constitutional 'Petition No. 10. of 2011); Manzoor Elahi v. Federation of Pakistan PLD 1915 SC 66; Shahida Zaheer Abbasi v. Federation of Pakistan PLD 1996 SC 632; Syed Zulfiqar Mehdi v. PIAC (1998 SCMR 793; Watan Party v. President of Pakistan PLD 2003 SC 74; Mian Muhammad Shahbaz Sharif v. Federation of Pakistan PLD 2004 SC 583 and APNS v. Federation of Pakistan PLD 2004 SC 600 distinguished.

Per Mahmood Akhtar Shahid Siddiqui, J. agreeing with Jawwad S. Khawaja, J.--

"I am in full agreement with his reasoning and conclusion on the question of maintainability and the other issues raised in these petitions."?

Per Jawwad S. Khawaja J. Mahmood Akhtar Shahid Siddiqui J. agr e e i n g . - -

(e) Interpretation of Constitution---

----Constitution has to be read holistically as an organic document---Rationale---Word `organic' in context of interpretation of Constitution---Connotation.?

Masnavi Maulana Jalaluddin Rumi; Mirrors by Eduardo Galeano; Tribe, Lawerence H; Dorf, Micheal C., Chap. 1; European Civil Law Tradition by Dr. Conrad and Indian Yearbook of International Affairs, 1967, p.375 ref.

(f) Constitution of Pakistan---

----Art.175A---Interpretation of Art.175A of the Constitution---Article 175A of the Constitution has to be read as part of, the larger constitutional scheme and not as an insular "bunch of separate clauses and provisions" or as a self-contained island within the Constitution, unconnected with its other parts.?

Masnavi Maulana Jalaluddin Rumi; Mirrors by Eduardo Galeano; Tribe, Lawerence H; Dorf, Micheal C., Chap. 1; European Civil Law Tradition by Dr. Conrad and Indian Yearbook of International Affairs, 1967, p.375 ref.

(g) Constitution of Pakistan---

----Arts. 175A & 184(3)---Decisions of Parliamentary Committee constituted under Art.175A of the Constitution---Justiciability---Scope---Intention of Parliament was not to oust the jurisdiction of Supreme Court to review the decisions of the Parliamentary Committee-Principles.

The repeatedly emphasized imperative of maintaining a record both of the proceedings of the Committee and of the "reasons" behind its decisions, in Article 175A of the Constitution very strongly suggests that the Committee's decisions were intended to be subject to judicial review. Otherwise, if the Committee's decisions were meant to be non-justiciable, and beyond judicial scrutiny, the insistence on recording reasons would not make much sense. It is an established rule of interpretation that Parliament does not waste words and redundancy should not be imputed to it. This principle would apply with even greater force to the Constitution the supreme law of the land. It will be seen that even an insular reading of this Article, leaves the impression that the decisions of the Committee are subject to review.

It was argued by counsel for the Federation that Supreme Court should infer that through the 19th Constitutional Amendment, it was intended by Parliament that decisions taken by the Parliamentary Committee should not be subject to judicial review. Such inference was sought

on the basis that the suggestion in the order of the larger Bench of the Supreme Court dated 21-10-2010 (Nadeem Ahmad and others v. Federation of Pakistan and others PLD 2010 SC 1165) as to justiciability was not incorporated in the amended Article. The argument of the counsel based on implication and not on the wording of Article 175A as amended, is contrary to the jurisprudence that has evolved in the jurisdiction of Supreme Court. Furthermore, the argument ignores the legal precept that the Constitution has to be construed as an organic whole.?

Court's jurisdiction may only be ousted through express words in a legal text. Ouster of jurisdiction should not be inferred. Ouster of jurisdiction is to be seen from express words which should not be implied except where absolutely necessary. Unless very explicit words are used in a legal provision to oust the jurisdiction of the Court, such an intention would not be normally imputed to the legislature. A strong leaning now exists against construing a statute so as to oust or restrict the jurisdiction of the superior Courts. This rule is applicable with even more rigour while interpreting constitutional provisions. There is need for greater strictness in a case where the bar to the jurisdiction of the courts relates to the interpretation of the provisions of the Constitution, a Constitution which by their oaths the Judges are bound to protect and preserve.?

Constitution of Pakistan is no stranger to ouster clauses. There are provisions in the Constitution which, through express wording purport to exclude the jurisdiction of the Court in certain matters.?

Even where such express language has been used in the Constitution, there is consistent precedent to demonstrate that such provisions have not been construed as providing for an absolute ouster of the Court's jurisdiction.

Supreme Court has exercised jurisdiction (though for limited purposes) notwithstanding the language purporting to oust its jurisdiction.?

On a review of the Constitution and the ouster clauses provided for in the various Articles of the Constitution and applying the ratio of the precedents it can be concluded that the absence of similar wording in Article 175A must be construed as reinforcing the, view that Parliament did not intend to oust the jurisdiction of Supreme Court to review the decisions of the Committee.?

It would be obvious from a plain reading of Art.69 of the Constitution that the limited ouster of jurisdiction stipulated therein is in respect of, inter alia, the proceedings and conduct of business of the Parliament. The decisions of the Committee (even if comprised of persons who are honourable members of Parliament) cannot be considered immune from judicial scrutiny by virtue of Article 69. This conclusion necessarily follows from the fact that the Committee is a creation of the Constitution and not of the Parliament. Furthermore, it is independent of and separate from Parliament notwithstanding its composition. It performs an executive function relating to the Judiciary and, therefore, has been placed in the Chapter relating to the Judicature rather than in Chapter 2 [The Majlis-e-Shoora (Parliament)] dealing with Parliament.

The justiciability of the decisions of the Parliamentary Committee can also be approached from another angle, which would be manifest from a holistic examination of the Constitution. The governance of State organs in Pakistan is based on checks and balances where the powers of each organ are counter-balanced by some other organ of the State. Thus, executive action taken by the various administrative and executive functionaries of the State can be called in question, inter alia, under Articles 199 and 184(3) of the Constitution. Such executive action may additionally be subject to Parliamentary review and over-sight in the parliamentary system of governance. Legislative action can also be called in question in Court, inter alia, on the touchstone that it is violative of the Constitution. Likewise, decisions rendered by Supreme Court can be modified or reversed by legislation (in recognized circumstances) and such legislation may also be retrospective. Thus each organ of the State, be it the Judiciary, the Executive or the Legislature, operates under constitutional constraints which effectively make these organs of State limited in their actions.?

Additional Collector II, Sales Tax v. Abdullah Sugar Mills Ltd. 2003 SCMR 1026; Muhammad Ismail and others v. The State PLD 1969 SC 241; Maxwell on the Interpretation of Statutes; Fazlul Qauder Chaudhry v. Muhammad Abdul Haq PLD 1963 SC 486; Central Board of Revenue and another v. S.I.T.E. PLD 1985 SC 97; Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President .of Pakistan and others PLD 2010 SC 61; Sardar Farooq Ahmad Khan Leghari and others v. Federation of Pakistan and others PLD 1999 SC 57 and Federation of Pakistan and another v. Malik Ghulam Mustafa Khar PLD 1989 SC 26 ref.

(h) Constitution of Pakistan---

----Arts. 175A & 184(3)---National Accountability Ordinance (XVIII of 1999), S.6(2)(i)---Decisions of Parliamentary Committee constituted under Art.175A of the Constitution---Justiciability---Contention of the counsel for Federation was that Supreme Court should infer that through the 19th Constitutional Amendment, it was intended by Parliament that decisions taken by the Parliamentary Committee should not be subject to judicial review; such inference was sought on the basis that the suggestion in the order of the larger Bench of the Supreme Court dated 21-10-2010 (Nadeem Ahmad and others v. Federation of Pakistan and others PLD 2010 SC 1165) as to justiciability was not incorporated in the amended Article---Held, contention of the counsel based on implication and not on the wording of Article 175A (as amended), was contrary to the jurisprudence that has evolved in the jurisdiction of Supreme Court and ignored the legal precept that the Constitution was to be construed as an organic whole.?

(i) Jurisdiction---

----Ouster of jurisdiction---Scope-Principles.
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(j) Constitution of Pakistan---

----Arts. 175A, 69 & 184(3)---Parliamentary Committee created under Art.175A of the Constitution---Status---Refusal of Parliamentary Committee to confirm the nominations made by the Judicial Commission for the extension in the tenure of Additional Judges of the High Courts---Judicial review---Scope---Independence of Judiciary, which the Constitution assures depends directly in the appointment, removal and security of tenure of Judges---Decisions of the Committee are by their nature, executive decisions---Committee's decisions have not been put beyond the pale of judicial review---Principles.

Decisions of the Committee are, by their nature, executive decisions. The fact that these decisions have been taken by persons who also happen to be parliamentarians, does not alter the nature of the decisions. The task which the Committee is meant to undertake is part of the process of making judicial appointments. The matter of making judicial appointments is, in essence, an executive function. Therefore, the Committee, must not be seen as a `parliamentary'

committee properly speaking; rather, in constitutional terms, it is a committee of parliamentarians, acting independently as a Constitutional body in an executive capacity.

Although the eight member Committee has been given the appellation of "Parliamentary Committee", it is important to bear in mind that the status of a constitutional body is not to be determined by the name given to it. This to be determined by the functions it performs and the place it occupies in the constitutional order. It is important to state with clarity the status of the Committee created under Article 175A and, in the process, to allay any misconceptions about it. For this purpose, we need to look no further than the Constitution itself.?

On the other hand, Article 175A has set up an independent constitutional body having a specific role assigned to it relating to the appointment of Judges of Supreme Court and of the High Courts. This constitutional body, has been referred to as a Parliamentary Committee but it is neither part of Parliament when acting under Article 175A nor is it elected by or answerable to Parliament. An examination of the Constitution and established Parliamentary practice will further demonstrate this distinction between the Committee set up under Article 175A and a parliamentary committee.?

The use of Committees by Parliament is an old and well established practice which was adopted during the colonial era and finally was given constitutional status under the 1973 Constitution. Legislation and parliamentary decision making are facilitated through consideration in Committee (rather than the entire House) of proposed legislation and the performance of other roles entrusted to Parliament. The role of a Parliamentary Committee is simply to examine such legislation or other proposed Parliamentary action. It is the Parliament alone which is empowered to pass legislation or exercise such functions which the Constitution entrusts to it. Thus, a Parliamentary Committee as properly understood in constitutional scheme simply facilitates Parliament in the performance of its legislative and constitutional functions acting as a mere delegate or in the case of the Finance Committee, as an advisor to the House which has elected it. Crucially though, for present discussion, a real parliamentary committee is elected by each of the Houses of Parliament and is a subordinate sub-set of the entire House, accountable to the House it belongs to.

In stark contrast, the Committee established under Article 175A(9) of the Constitution is comprised of eight Members (four front each House) who are neither elected by the Houses of

Parliament nor are they in any manner answerable or accountable to either of the said Houses. It is in this sense that the larger Bench of Supreme Court vide its order dated 21-10-2010 (Nadeem Ahmad and others v. Federation of Pakistan and others PLD 2010 SC 1165) has adverted to the Committee as a "Committee of Parliamentarians" to distinguish this constitutional body from a parliamentary committee as understood and defined in the rules of procedure and conduct of business of the two Houses. This distinction is also important to note while addressing the issues raised.

Essential distinction between a parliamentary committee (elected and answerable to Parliament) and a nominated Constitutional body, not answerable to Parliament has not been kept in view in the Federation's stance. If this fundamental distinction is considered in the light of Article 69 of the Constitution, this view will be further reinforced that the Committee's decisions have not been put beyond the pale of judicial review.?

It would be obvious from a plain reading of Art. 69 of the Constitution that the limited ouster of jurisdiction stipulated therein is in respect of, inter alia, the proceedings and conduct of business of the Parliament. The decisions of the Committee (even if comprised of persons who are honourable members of Parliament) cannot be considered immune from judicial scrutiny by virtue of Article 69. This conclusion necessarily follows from the fact that the Committee is a creation of the Constitution and not of the Parliament. Furthermore, it is independent of and separate from Parliament notwithstanding its composition. It performs an executive function relating to the Judiciary and, therefore, has been placed in the Chapter relating to the Judicature rather than in Chapter 2 [The Majlis-e-Shoora (Parliament)] dealing with Parliament.

The justiciability of the decisions of the Parliamentary Committee can also be approached from another angle, which would be manifest from a holistic examination of the Constitution. The governance of State organs in Pakistan is based on checks and balances where the powers of each organ are counter-balanced by some other organ of the State. Thus, executive action taken by the various administrative and executive functionaries of the State can be called in question, inter alia, under Articles 199 and 184(3) of the Constitution. Such executive action may additionally be subject to Parliamentary review and over-sight in the parliamentary system of governance. Legislative action can also be called in question in court, inter alia, on the touchstone that it is violative of the Constitution. Likewise, decisions rendered by Supreme Court can be modified or reversed by legislation (in recognized circumstances) and such

legislation may also be retrospective. Thus each organ of the State, be it the Judiciary, the Executive or the Legislature, operates under constitutional constraints which effectively make these organs of State limited in their actions.?

If it is accepted, that the decisions of the Committee are not amenable to judicial review, a truly unique status higher, than the Executive, the Judiciary and Parliament, will have to be accorded to this nominated Committee, outside the matrix of checks and balances that constrain the Parliament, the Executive and the Judiciary. This will be so because in such event, the Committee will not be subject to any check as it is already not answerable for its decisions either to Parliament or to the highest functionaries of the Executive, including the President and the Prime Minister. Such an interpretation of the Constitution, which places the decisions of the Committee beyond the pale of review by any other instrumentality or organ of the State would be contrary to the scheme of the Constitution and will, in effect, vest the Committee with untrammelled powers. Bearing in mind the assurance in Parliament that "the fundamental principles of the Constitution are not altered", it will not be possible to ascribe such powers, to the Committee, while interpreting Article 175A of the Constitution.

To appreciate the above notion with clarity, we need to understand the implications of affording unbridled powers to the Committee. Contention of the counsel of Federation was that the Committee has the power to reject any nomination of the Judicial Commission (even one unanimously passed) for "any reason under the sun", and that such a rejection must, in all cases, be deferred to by Supreme Court. The implication of this extraordinary submission would be that even where a decision of the Committee has the effect of eroding and undermining the independence of the Judiciary, Supreme Court will be helpless in checking such erosion. The Committee is not required to send its decision to the Parliament for approval, the role and discretion of the Prime Minister and the President as previously envisioned in the Constitution "has been taken away". The eight-member nominated Committee or, rather a Committee of Parliamentarians cannot claim such unchecked authority. Given this, the operation of the Committee cannot be imagined, without the check of judicial review.?

Constitution contemplated the trichotomy of power between the three organs of the State, namely, the Legislature, the Executive, and the Judiciary... it was envisaged that the Judiciary would be independent and separate from the other organs of the State... The independence of

the Judiciary is a basic principle of the constitutional governance in Pakistan. The independence of the Judiciary was a basic and a salient feature of the Constitution.?

"Independence of the Judiciary" which the Constitution assures, depends directly on the process of the appointment, removal and security of tenure of Judges. The independence of Judiciary is inextricably linked and connected with the constitutional process of appointment of Judges of the superior Judiciary the terms, conditions and security of tenure of Judges is also central to the independence of the Judiciary. Security of office of Judges and of its tenure was a sine qua non for the independence of Judiciary. Indeed it is an undisputed tenet of the Constitutional scheme that in matters of appointment, security of tenure and removal of Judges the independence of the Judiciary should remain fully secured.?

The constitutional jurisprudence which relates specifically to the issue of appointment of Judges, reveals that prior to the 18th amendment, it was well settled as a principle that the executive organ of the State was obliged to give reasons for its decisions if it chose to differ with the opinion of the Chief Justice of Pakistan. It was also well settled that the reasons given by the executive organ of the State were justiciable. The touchstone and scope of justiciability and the limits of the executive authority to differ from the opinion expressed by the Chief Justice of Pakistan also came to be well defined in the context of Article 193 of the Constitution which related to the appointment of Judges of the High Courts. It is, thus, beyond doubt that the constitutional principles relating to the independence of the Judiciary were already well-settled at the time the 18th and the 19th Amendments were tabled in Parliament; these principles remain fundamentally unaltered even after the above-mentioned Amendments, notwithstanding the changes in the procedure for making judicial appointments.?

Parliamentary debates can also be resorted to (in certain situations) to ascertain the meaning of any legal text. Speech by Chairman of the Special Committee of the Parliament for constitutional Reforms, given on the floor of the National Assembly categorically clarified that it was not the intention of the 18th and 19th Amendments to alter the fundamental principles of the Constitution. He said: "... before I go into the details of this Article [175A], let me once again reiterate that one of the essential purposes rather two or three of the essential purposes which made up the basis for these constitutional reforms was to ensure that the fundamental principles of the Constitution are not altered. That whatever amendments are made, are made within the ambit of fundamental principles of the Constitution. And when dealing with various

institutions under the Constitution, their independence is not undermined. And that their independence as ensured in the Constitution of 1973 is reassured".

This reassurance indeed reflects the intention of Parliament and gives guidance to the Court as to the aims of Parliament in bringing about reforms in the procedure for appointment of Judges. It is precisely such reassurance which gives relevance to and enables Court to draw guidance from precedents, alluded to above, that, expound the principle of the independence of the Judiciary and its dependent relationship with the manner of judicial appointments. In other words, insofar as "the fundamental principles of the Constitution are not altered," the precedents that explain those principles are also relevant.

Once this is understood, task of interpreting the newly added provisions of the Constitution becomes relatively simple. Since the decisions of the Committee have a direct bearing on the practical manifestation of foundational constitutional principles, Court cannot possibly abdicate its jurisdiction and not examine their meaning. At the same time, however, Court remain cognizant that Parliament has, while adhering to the fundamental principles of the Constitution, made changes which should be given effect in furtherance of these principles. Looked at in this light, it is clear that the essence of the amendments is to bring about changes in the process of making judicial appointments, rather than in the structure and underlying values of the Constitution such as the independence of the Judiciary and one of its supporting pillars namely, judicial appointments.?

It is the constitutional mandate of Supreme Court to exercise judicial review over the decisions of the Committee, which, after all, are executive decisions that have great bearing on the independence of the Judiciary and the separation of powers between the different State organs.

Counsel for the Federation contended that the question of justiciability of the decisions of the Committee had yet to be decided by the seventeen-member larger Bench of the Supreme Court in the petitions filed to challenge the vires of the 18th Amendment. On this basis, he submitted that present Bench should await the decision of the larger Bench and, in the meanwhile, put the adjudication of these petitions on hold. Counsel was of the view that the present petitions were a back-door attempt to challenge the role of the Committee and to undermine such role even before the Full Court has had the opportunity of deciding the petitions challenging the 18th Amendment.

Supreme Court reiterated that the scope of 'these petitions was materially different from the scope of the petitions being heard by the larger Bench. The present petitions assume the validity of the 18th and 19th 'Amendments. The petitioners only seek judicial interpretation of these Amendments for the purpose of their challenge to the two decisions taken by the Committee. Put simply, while the present petitions seek judicial review of decisions of an executive body, purported to be taken under Article 175A of the Constitution, the petitions before the larger Bench challenge the very authority of Parliament to make the amendments challenged in such petitions. It is, therefore, evident that any adjudication in these petitions will relate only to the impugned decisions of the Committee and not to the validity of the Amendments in the Constitution.

The Committee, though comprised of members of Parliament, is not to be equated with Parliament or, even with a parliamentary committee elected by Parliament under the Senate Rules or the Assembly Rules.?

Al-Jehad Trust through Raseesul Mujahideen Habib-ul-Wahabb?ul-Khairi and others v. Federation of Pakistan and others PLD 1996 SC324; Sindh High Court Bar Association and another v. Federation of Pakistan and others PLD 2009 SC 879; Sharaf Faridi v. Federation of Islamic Republic (PLD 1989 Kar 404: Zafar Ali Shah's case PLD 2000 SC 869; Chief Justice of Pakistan Iftikhar M. Chaudary v. President of Pakistan through Secretary and others PLD 2010 SC 61; Mehram Ali's case PLD 1998 SC 1445; PLD 2010 SC 61; Hakim Khan and others v. Government of Pakistan and others PLD 1992 SC 595; A & B Food Industries Limited v. Commissioner of Income Tax/Sales, Karachi 1992 SCMR 663 and Messrs Gadoon Textile Mills and others v. WAPDA and others 1997 SCMR 641 ref.

(k) Constitution of Pakistan---

----Arts. 175A & 184(3)---National Accountability Ordinance (XVIII of 1999), S.6(2)(i)---Decisions of Parliamentary Committee constituted under Art.175A of the Constitution---Justiciability---Contentions of the counsel for the Federation were that the question of justiciability of the decisions of the Committee had yet to be decided by the seventeen-member larger Bench of the Supreme Court in the petitions filed to challenge the vires of the 18th Constitutional Amendment and that present Bench should await the decision of the larger Bench and, in the

meanwhile, put the adjudication of present petitions on hold-,Counsel was of the view that the present petitions were a back-door attempt to challenge the role of the Committee and to undermine such role even before the Full Court has had the opportunity of deciding the petitions challenging the 18th Amendment---Validity---Supreme Court observed that the scope of present petitions was materially different from the scope of the petitions being heard by the larger Bench---Present petitions assume the validity of the 18th and 19th Amendments---Petitioners, in the present petitions, only seek judicial interpretation of these Amendments for the purpose of their challenge to the two decisions taken by the Committee and seek judicial review of decisions of an executive body, purported to be taken under Article 175A of the Constitution while the petitions before the larger Bench challenge the very authority of Parliament to make the Constitutional Amendments---Any adjudication in the present petitions therefore, will relate only to the impugned decisions of the Committee and not to the validity of the Amendments in the Constitution.

(l) Constitution of Pakistan---

----Arts. 175A & 184(3)---Appointment of Judges of Supreme Court and High Courts---Interpretation of Art.175A of the Constitution and the principles on which said Article is based---Creation of `Judicial Commission' and `Parliamentary Committee' under Art.175A of the Constitution---Historical circumstances and reasoning---Roles envisaged for `Judicial Commission' and `Parliamentary Committee' in the Constitution---Scope---Parliamentary Committee though comprised of members of Parliament, is not to be equated with Parliament or, even with a Parliamentary Committee elected by Parliament under the Senate or Assembly Rules---Parliamentary Committee' cannot (without eroding judicial independence) be seen as a superior body sitting in appeal over the recommendations of the Judicial Commission with the ability to set aside or reverse the well-considered opinion of the members of the Judicial Commission-Decisions of Parliamentary Committee are executive in nature, having bearing on the independence of Judiciary and the separation of powers between the different State organs---Supreme Court under the constitutional mandate can exercise Judicial review over the decisions of the Committee--Principles.

In order to properly interpret the provisions of Article 175A and the principles upon which the Article is based, it is also necessary to have a closer look at the historical circumstances and the reasoning which informed the earlier precedents of Supreme Court. This context will help to appreciate the reasons why the two new institutions - the Commission and the Committee -

were created and what roles were envisaged for these constitutional bodies in the 18th and 19th Constitutional Amendments.

Previously, there were a very small number of constitutional functionaries (judicial and executive) who, through a process which was not very open, made decisions relevant to the appointment of Judges of Supreme Court and of the High Courts. Instances in constitutional history, therefore, tended either to create a tussle between the judicial consultees and the executive functionaries of the State or, as happened in certain cases, the judicial consultees felt over-whelmed, over-awed or ignored by the executive functionaries responsible for making and notifying judicial appointments. Since this situation was not consistent with the independence of the Judiciary, the matter was agitated, among others, in the Al-Jehad case (PLD 1996 SC 324). It is through elaborate reasoning in the said case and examination of the fundamentals of constitutional scheme, that a division of functions between the judicial consultees and the executive functionaries was delineated by Supreme Court. It was held that the judicial consultees are best suited to determine the calibre, competence, legal acumen and over-all suitability of a person for appointment to a tenured judicial office under the Constitution. The executive functionaries on the other hand were considered more suitable for ascertaining the antecedents of judicial appointees. A reasonably clear demarcation between the different roles, respectively, of the judicial consultees and the executive functionaries of the State was thus drawn. And with the passage of time this demarcation was further refined. In the latest pre-amendment judicial pronouncement on the question of appointment of Judges, made in the case of Sindh High Court Bar Association and another v. Federation of Pakistan and others (PLD 2009 SC 879), for instance, it was held that the opinion of the Chief Justice of Pakistan in respect of the suitability of a person to be appointed to constitutional judicial office had primacy and that this opinion was subjective and not open to challenge through judicial review.

It is in the foregoing context that the creation of the Commission and the Committee must be understood. It is quite possible that Parliament may have concluded that the Constitution as interpreted in the foregoing precedents, had concentrated in one person viz. the Chief Justice of Pakistan, enormous discretionary powers in the matter of making judicial appointments. Such concentration, although tempered by consultation with the Chief Justice of the High Court in which a particular appointment was to be made, could have been seen by Parliament as having the potential of leading to error of judgment or, possibly, even abuse. These, or similar concerns, can be of immense interest for the chosen representatives of the people. Such concerns

legitimately and eminently fall within the domain of. Parliament which may, therefore, decide to bring about a balance in the respective roles of the judicial and executive functionaries responsible for making judicial appointments, subject always to the avowed objective and the constitutional imperative of having an, independent Judiciary whose independence is to be "fully secured".

Therefore, apparently guided by this object, in the new dispensation, instead of one person, namely the Chief Justice, or at best two, namely the Chief Justice of Pakistan and the Chief Justice of the concerned High Court, taking a decision on the competence and suitability of a potential judicial appointee, the decision-making power has been diffused and spread over a collegium comprised of thirteen persons. A similar diffusion appears to have been intended for the executive role in judicial appointments by constituting the Parliamentary Committee.

In this light, if we consider further the composition of the Commission, it will lead us closer to understanding the role envisaged for it. It is clear that each member of the Commission is directly and substantially connected with the courts in one way or another. The members of the Commission thus have the occasion of assessing first hand, the legal abilities and performance of persons who potentially could be appointed as Judges. In the ex Officio appointments of the Minister of Law and Parliamentary Affairs and of the Attorney General for Pakistan, the Judicial Commission now also has the additional ability to make an assessment as to the antecedents of a nominee through access to the information and executive resources of the State which otherwise, may not be available to the other members of the Judicial Commission. What is also worth noting is that barring the one former Judge of Supreme Court and the advocates who are members of the Commission, all others are ex Officio constitutional functionaries making the Commission a continuous body with changing membership, the preponderant majority whereof, being ex Officio, is not dependent on any separate process for their own appointment.

This composition of the Commission immediately highlights two things. Firstly, that the expertise and core competence of the members of the Commission will facilitate the identification and nomination of appointees to judicial office based on calibre, competence, legal acumen, antecedents and over-all suitability -of a person for appointment as a, Judge. Secondly, the composition of the Commission will ensure diverse inputs on account of the diversity and the continuous changing nature of its membership, thus tending to make the Commission's

nominations more objective and not dependent on the personal opinion of one or, at best, two individuals. It does not take a great deal of imagination or a leap of logic to conclude that the role (as defined by precedent) which was assigned previously to the judicial consultees is now to be performed by the Commission as a collegiate body.

It will be seen that in the original Articles 177 and 193, a Judge of the Supreme Court and Judges of a High Courts were to be appointed by the President after consultation with the Chief Justice of Pakistan and other consultees mentioned in Article 177 and Article 193(1) respectively. These provisions, in relevant part, have been replaced by Articles 177(1) and 193(1), as amended, which stipulate, inter alia, that Judges of the Supreme Court and the High Courts shall now be appointed by the President in accordance with Article 175A. When clause (1) of Article 175A is considered; a bare reading of the same shows that the Commission has been created for the appointment of Judges of the Constitutional Courts. Thus, while the President previously made the appointments on the advice of the Prime Minister, both have now been left with nominal ministerial roles and their powers, in the words of the Chairman of the Constitutional Body, "have been taken away". The Prime Minister is now obliged to simply forward the confirmation made or deemed to have been made by the Committee to the President and the President equally is obliged to make the appointment on the basis of such confirmation. The Prime Minister and President, under the new constitutional dispensation, thus have no power or authority to differ with the decision of the Parliamentary Committee. The role which they were performing in the previous legal setup, as examined above, is now, logically, to be performed by the Committee. It is, therefore, evident that the purpose the raison d'etre - of the Commission and the Committee is the appointment of Judges albeit in accordance with the procedure laid down in Article 175A.

Given this dispensation and the above referred historical context, the Committee cannot (without eroding judicial independence) be seen as a superior body sitting in appeal over the recommendations of the Commission with the ability to set aside or reverse the well considered opinion of the members of the Commission. The fact that Parliament was fully aware of the state of the law, as judicially interpreted, and yet did not define or demarcate the respective roles inter se of the Commission and the Committee, provides very strong manifestation of the intention of Parliament "that the fundamental principles of the Constitution are not altered". The distinction between the legal acumen and suitability of an appointee, and his antecedents is so well recognized in our constitutional jurisprudence that it is not possible to assume that it

was not in the mind of Parliament when it decided to amend the Constitution. From the absence of role-definition in Article 175A, in respect of the Commission and Committee, it can safely be inferred that Parliament intended to preserve the delineation of powers in the previous dispensation, but vest the roles in more diffused bodies than was previously the case.
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It is the constitutional mandate of Supreme Court to exercise judicial review over the decisions of the Committee, which, after all, are executive decisions that have great bearing on the independence of the judiciary and the separation of powers between the different State organs.?

The Committee, though comprised of members of Parliament, is not to be equated with Parliament or, even with a parliamentary committee elected by Parliament under the Senate Rules or the Assembly Rules.

Sindh High Court Bar Association and another v. Federation of Pakistan and others PLD 2009 SC 879 ref.

(m) Constitution of Pakistan---

----Arts. 175A & 184(3)---Constitutional petitions before Supreme Court under Art.184(3) of the Constitution assailing the decisions of the Parliamentary Committee created under Art.175A of the Constitution---Maintainability---Exercise of power of Judicial review by Supreme Court---Rules which define the exercise of such power and source from which these rules are to be derived exhaustively explained--Constitutional petitions were maintainable under Art.184(3) of the Constitution since these petitions involved issues of public importance and were related to the enforcement of Fundamental Rights and independence of Judiciary---Decisions of Parliamentary Committee were subject to Judicial review of the Supreme Court---Said decisions of the Committee in the present case were based on an erroneous understanding of the law and the Constitution---Such decisions of the Committee were unconstitutional without lawful authority, therefore, they were of no legal effect---Principles.

Decisions of the Committee are justiciable and subject to Supreme Court's power of judicial review. The foremost source for determination of the rules which define the exercise of such powers and source from which these rules are to be derived must be the Constitution itself which has created Supreme Court as well as the two constitutional bodies viz. the Commission and the Committee. The basis of judicial review in these cases thus must be firmly anchored in

the Constitution. Article 5(2) of the Constitution declares that "obedience to the Constitution and law is the inviolable obligation of every citizen ..." This means that the Committee too is obliged to ensure that its decisions are in accordance with the law and the Constitution. Whether this obligation has been duly discharged would be a matter reviewable by Supreme Court. The touchstone for such review is conformity with the Constitution and the law. This is in line with Article 184(3) read together with Article 199(l)(a)(ii), which confer upon Supreme Court the authority to make, in appropriate cases, an order declaring that "any act done ... in connection with the affairs of the Federation ... has been done without lawful authority" and is, therefore, "of no legal effect." It follows that what the Supreme Court needs to determine presently is whether the impugned decisions of the Committee conform with the requirements of the Constitution and the law, and whether such decisions have been taken while remaining within lawful authority. The grounds upon which Supreme Court can adjudge this issue flow directly from these constitutional provisions themselves; they have also been elaborated upon in a number of precedents.?

Grounds for exercise of Court's power of judicial review are `illegality', `irrationality' and 'procedural impropriety.' What is important for deciding the present petitions is the scope and nature of 'illegality', which, is measured on the consideration... that the decision-maker must understand correctly the 'law that regulates his decision-making power and must give effect to it. Whether he has or not is par-excellence a justiciable question to be decided, in the event of dispute, by those persons - the Judges by whom judicial power of the State is exercisable. Thus any decision based on an incorrect understanding of the law that .regulates the decision-maker's decision-making power, would be an illegal decision, and it could be corrected through judicial review. What must be emphasized here is that in disputed cases, it is for the courts to definitively interpret the law and thereafter to test the administrative decision on the touchstone of the law so interpreted.

In the present case, the Committee has taken a decision in accordance with its own understanding of Article 175A.?

The Commission performed its function s of nomination and appointment of the High Court Judges, in accordance with the provisions set out in clauses (1) to (8) of Article 175A of the Constitution.

The Committee, after receiving the nominations including the recommendations for renewal of tenure of Judges, took the decision not to confirm their nominations. It is important to note that the Committee chose to disregard the unanimous nominations made by the Judicial Commission. For this, committee appears to have relied only on the contents of brief pro formas which had been filled in by the Chief Justices of the High Courts. These pro formas appear to have been designed by the Commission for the purpose of obtaining particulars and general information about the persons being considered for appointment as Judges. The material column in the pro forma, for the purpose of the present petitions, relates to the evaluation made by the Chief Justice of the concerned High Court in respect of a potential nominee, based on criteria such as integrity, knowledge of laws, performance etc. The pro forma also contains the opinion of the Chief Justice of the concerned High Court as to whether or not a person being considered should be recommended to judicial office. In the case of the one group of Additional Judges, the recommendation made in the pro forma was that their tenure be renewed for a period of one year. However, in respect of the two Additional Judges of the High Court, the opinion stated by the Chief Justice was that their tenure should not be extended. Nevertheless; after deliberation by the Judicial Commission as a collegiate constitutional body, even the Chief Justice of the High Court agreed that the two Additional Judges of his Court should be recommended for renewal of their respective tenures for a further period of one year. The Committee chose, nonetheless, to turn these nominations down, relying solely on the earlier views expressed by the chief justices of the High Courts.

From this review of the facts, it seems clear that the Committee took Article 175A to mean that it is a constitutional body sitting in appeal over the decisions of the Commission. This, is far from being the case. Such an interpretation is borne out neither by the text of Article 175A nor by its context. Foundational principles of Constitution, are independence of the Judiciary and separation of powers, in the light of which Article 175A must be interpreted. The historical evolution of this Article and the legislative intent behind it, demonstrates that while power has been devolved from persons to collegial institutions, the essential demarcation of duties between judicial consultees and executive functionaries, chalked out by precedent, has remained largely intact. All constitutional provisions have to be interpreted accordingly. The independence of Judiciary is now not merely one of the general principles of the Constitution of Pakistan; it is part of its substantive provisions and the relevant constitutional provisions must be construed accordingly to ensure the independence of the Judiciary. The provisions of Part-VII of the Constitution must be taken as giving elect to …that general principle. Review of

these factors, which collectively provide the context in which to read Article 175A, allows to conclusively arrive at a more organic interpretation of the said Article. And, this interpretation does not support the expansive manner in which the Committee has construed its own power,- nor does it support the dismissive way in which the Judicial Commission's unanimous recommendations have been treated. The Committee's decision, based on an incorrect understanding of the constitutional provision regulating its decision-making powers, travelled much beyond its lawful authority. On this ground alone, it may be held that the decisions of the Committee impugned, were taken without lawful authority and are thus unconstitutional.?

To ensure the independence of the Judiciary, it is important that the process of making judicial appointments remains independent of the Executive and the Legislature, except for such executive inputs in decision-making which can ensure and advance the independence of the Judiciary. In the present case, the Committee has not provided any such input.?

Thirteen members of the Commission are law-knowing and law related persons who can make an objective evaluation of the suitability of a nominee for judicial office. From members of the Committee, it is not expected that they will have first hand information about a nominee or that they will have the same level of expertise as the Commission, to evaluate the suitability of a nominee for appointment to high judicial office. The Committee, however, is not a meaningless or redundant body. It has the ability to add value to the process of making judicial appointments by taking into account information which is different from and may not have been available with the Commission.?

The two bodies namely, the Commission and the Committee were coordinate bodies, neither of which was subordinate to the other. If, however, it is conceded either that the decisions of the Committee are not justiciable or that it has the power to review and reverse the findings of the Commission, an anomalous and even absurd situation can result. It would not be possible or justifiable (without adversely affecting the independence of the Judiciary) to interpret Article 175A in a manner which grants a virtual veto to the Committee enabling it to reverse the recommendations of the Commission, for considerations which have already received the attention of the Commission in its deliberations. This is so because of the composition of the two bodies. It cannot he seen as the intention of the Constitution as amended, that the thirteen members of the Commission who amongst them include the five senior-most members of the Judiciary in the country together with a former Judge of Supreme Court and the Chief Justice of

the High Court concerned, should be trumped in their views about the competence and suitability of a nominee, by six members of Parliament who, are not supposed to be equipped with the core ability for evaluating, inter alia, legal acumen and competence.?

The two constitutional bodies also cannot be seen as adversaries serving antagonistic and conflicting ends. That the object of both bodies is to ensure the selection and appointment of the most suitable persons as Judges of the High Court, which, in turn, is essential to secure fully the independence of the Judiciary.?

There is another way in which the Parliamentary Committee's decision can be shown to be based on an erroneous understanding of the law and also violative of the spirit of the Constitution, as, amended. One of the fundamental aspects of the 18th and 19th Constitutional Amendments, and the changes intended to' be brought about thereby, was to do away with the subjective opinions of one or two persons. This object was to be achieved through the creation of a thirteen-member collegium which could, through consideration of varying opinions, make a collective decision by majority of its membership. In the present case, the collegium which is the Commission has, after deliberation, made nominations which arc unanimous and include also the concurrence therein of the respective Chief Justices of the High Courts.

In the foregoing circumstances, it would negate the very purpose of the 18th and 19th Amendments, if the Committee were to have the power to rely upon the opinion of just one member of the Commission, and that too, expressed prior to collective deliberations, to nullify the ultimate collective views of the Commission. The purpose of diffusing the decision-making process and spreading it over a collegium comprising of thirteen persons was to ensure that an objective and balanced opinion emerges from the deliberations of the Commission. This process was meant to ensure, to a great degree, objectivity in the nominations made after discussion and inputs from all members of the Commission.?

Counsel appearing for the Federation, wished to emphasize the fact that the Chief Justice of the High Court was most suitable and was eminently qualified to make an evaluation as to competence etc. of a nominee. He seemed to suggest that since the Parliamentary Committee had relied on the views expressed by the Chief Justices of the respective High Courts to which the concerned Judges were nominated, this lent weight to the Committee's decision. This is an argument which is flawed on three counts:

Firstly, it is relevant to note that the pro forma filled in by the Chief Justices of the two High Courts was at best a mechanism for tabling the particulars of a nominee which would enable the Commission (acting collectively) to have a meaningful and purposive discussion leading to an informed decision about recommending such nominee. It is not necessary in the facts of the present petitions to embark on a scrutiny of the evaluations of the Chief Justices, made in respect of the Judges whose nominations are in question, because after considering each nomination, the Commission (including the Chief Justices of the High Courts) has unanimously made its recommendation that their tenures be renewed. The pre-deliberation evaluations of the Chief Justices of the High Courts do not now need to be considered because, as a matter of law, such evaluations disappeared when they mergedinto the final recommendation of the Commission made by a majority of its members and which, in the present case, has been made unanimously.

Secondly, this argument does not take into account the express wording of Article 175A which mandates a collective decision of the Judicial Commission and leaves no room for individual opinions of any one member of the Judicial Commission. It should he clear by now that the Constitution, in its amended form, recognizes only the collective decision of the Commission. The Constitution does not accord any primacy or special weightage to the opinion of any one member of the Judicial Commission. This is particularly so when such opinion is a purely individual opinion without benefit of the views of other members of the Judicial Commission. If anything, the amendments in the Constitution appear consciously and deliberately to have eliminated reliance on the views of a single person. Weightage, if any, which may attach to the opinions of the individual members of the Judicial Commission, is a matter for consideration by the Judicial Commission alone because the Constitution as amended, does not recognize individual opinions as to the competence, antecedents or over-all suitability of a nominee.

Thirdly, the argument does not 'take into account the larger ramifications of such a ruling for the future of constitutional system. If it is held today that the Parliamentary Committee may give primacy to the opinion expressed by the High Court Chief Justice sitting in the Commission, tomorrow, there would be little justification left for objecting, if the Parliamentary Committee relied on the individual and varying opinions of any one of the thirteen members of the Judicial Commission. So, if things were left to proceed in that direction, even a 12-1 majority decision of the Judicial Commission could easily be negated by the Parliamentary Committee,

relying on the one note of dissent that they find therein. This would effectively grant the Parliamentary Committee a veto in the appointment of Judges a situation contemplated neither by the Constitution nor palatable to any of the organs of the State, including the Parliament itself.

Petitions are maintainable under Article 184(3) since they do involve issues of public importance and are related to the enforcement of fundamental rights.?

Decisions of the Parliamentary Committee are subject to judicial review in Supreme Court.?

Impugned decisions of the Committee are based on an erroneous understanding of the law and the Constitution; since these decisions were taken without lawful authority, they are of no legal effect.

Supreme Court observed that there is nothing unusual or exceptional about differences as to constitutional questions cropping up between constitutional bodies or State functionaries in a democratic dispensation. Such differences may arise particularly when new provisions are incorporated in the Constitution. However, as nations mature and polities evolve, theirmaturity is reflected in the manner in which such differences are resolved in accordance with the governing compact, which is the Constitution. The differences of opinion between the Commission and the Committee, in this context, cannot be seen as adversarial turf-wars between the two bodies, or as matters of prestige. Both bodies, have the common aim of ensuring that "... the will of the People of Pakistan to establish an order ... wherein the independence of the Judiciary is fully secured," which is an objective set out in the Constitution itself, is accepted as a command of the People and is implemented, both in letter and in spirit with due humility and sincerity.

Article 28 and 251 of the Constitution highlight the Constitutional imperative of promoting languages other than English. In order to fulfil this need a gist of present opinion is (without need for intermediaries) made accessible to a wider section of those who are unable tounderstand the language of present opinion.?

Makhdoom Ali Khan, Senior Advocate Supreme Court, Faisal Hussain Naqvi, Advocate Supreme Court, Arshad Ali Ch. Advocate-on-Record, Khurram Hashmi, Umair Malik, Ilyder Ali Khan and Saad Hashmi, Advocates for Petitioners (in Const. P. No.10 of 2011).

Anwar Mansoor Khan, Senior Advocate Supreme Court, Abid S. Zuberi, Advocate Supreme Court and Asim Mansoor Khan, Advocate for Petitioners (in Const.P.No.18 of 2011).

A K.K. Agha, Addl. A.G. for Pakistan and M.S. Khattak, Advocate-on-Record for Respondent No. 1.

Iftikharullah Babar, Acting Secretary, Senate for Respondent No.2.

Maulvi Anwar-ul-Haq, Attorney General for Pakistan (On Court's call).

Dates of hearing: 24th, 28th February, 1st, 3rd and 4th March, 2011.

JUDGMENT

MAHMOOD AKHTAR SHAHID SIDDIQUI, J.---These two Constitutional Petitions, bearing Nos.10 and 18 of 2011, have been filed under Article 184(3) of the Constitution of Pakistan challenging the two specific decisions of the Parliamentary Committee, constituted under Article 175A, whereby it refused to confirm the nominations made by the Judicial Commission, also constituted under the aforementioned Article, for the extension in the tenure of four additional judges of the Lahore High Court and two additional judges of the Sindh High Court. Since they involved similar constitutional and legal issues, they were heard and decided together and a short order was announced on 4-3-2011. These are the detailed reasons for the same.

2. Constitutional Petition No. 10 of 2011 has been preferred by Mr. Munir Hussain Bhatti, an Advocate and member of the Lahore High Court Bar Association and Mr. Kamran Murtaza, a former Senator, former Vice Chairman of the Balochistan Bar Council and an Advocate of this Court. Constitutional Petition No. 18 of 2011 has been filed by the Sindh High Court Bar Association, Karachi through its General Secretary Mr. Abid S. Zuberi and Mr. Anwar Mansoor Khan/President. The prayer in Constitution Petition No.10 of 2011 is as under:--

> "It is, therefore, respectfully prayed in the interests of justice that this Hon'ble Court may be pleased to accept this petition, quash the recommendations of the Parliamentary Committee in respect of the four learned Judges of Hon'ble Lahore High Court, Lahore, named above and direct the respondents to implement the recommendations of the Judicial Commission and issue a Notification in consonance therewith."

3. Whereas the prayer made by Sindh High Court Bar Association in Constitution Petition No.18 of 2011 is as under:--

> "It is prayed on behalf of the petitioners above named that this Hon'ble Court may be pleased to restrain the respondents from issuing any notification in pursuance of the decision made by the Parliamentary Committee dated 22-2-2011 or interfering in any manner whatsoever in the performance of all judicial functions by the two additional judges namely Mr. Justice Muhammad Tasnim and Mr. Justice Salman Hamid of Sindh High Court and extend their tenure as recommended by the Judicial Commission till disposal of this petition by the Hon'ble Supreme Court."

4. Mr. Makhdoom Ali Khan, learned Sr. Advocate Supreme Court, without touching the vires of Article 175A of the Constitution, argued that the nominations/recommendations made by the Judicial 'Commission regarding the competence, eligibility and suitability of judges for appointment/extension of tenure is exclusively within the domain of the Judicial Commission. The members of the Judicial Commission, before making recommendations had scrutinized in detail, both reported and unreported decisions of the said judges and considered in depth their judicial conduct while holding court. Therefore, the Parliamentary Committee cannot be allowed to assume the same functions and come to a conclusion different from that held by the members of Judicial Commission. Assuming otherwise, according to him, will put the Judicial Commission, which consists of, amongst others, the Chief Justice of Pakistan, four senior most judges of this court, the Chief Justice of the concerned High Courts, Federal Minister for Law, Justice and Parliamentary Affairs, Attorney General for Pakistan and representatives of the Bar, in a subordinate position to that of the Parliamentary Committee; making its recommendation subject to review by the Committee whose domain of expertise is completely different.

5. He further argued that in the setup prior to the 18th and 19th amendment, the CJP, as repeatedly held by this court, was the pater laminas of the judiciary and so the recommendation of a commission headed by him in respect of the competency and ability of judges could not be reviewed or rejected by the Executive Head/Parliamentary Committee.

6. Learned counsel for the petitioner, confining himself to the judicial aspect of the recommendations, also described the action of the Parliamentary Committee as corum non judice and without jurisdiction. Therefore, he prayed, that the reasons given by the

Parliamentary Committee, for rejecting the recommendations of the Judicial Commission, were to be held as illegal and void ab initio. Lastly, he argued that the constitutional requirement of giving reasons, makes the decisions, of the Parliamentary Committee automatically subject to judicial review and its recommendations cannot be sustained if they do not meet the test of independent judicial scrutiny.

7. Mr. Anwar Mansoor Khan learned Sr. Advocate Supreme Court and Mr. Abid S. Zuberi, Advocate Supreme Court, took up the stance that the unanimous recommendations for extending the tenure of the two judges of Sindh High Court were binding on the Parliamentary Committee and its rejection without assigning valid and cogent reasons was opposed to the principle of independence of judiciary.

8. Mr. K.K. Agha, learned Additional Attorney General, on the other hand, first objected to the maintainability of these petitions on the ground that the jurisdiction of this Court under Article 184(3) of the Constitution was not attracted. On this score, I have had the benefit of seeing the concurring opinion of my learned brother Jawwad S. Khawaja, J. and I am in full agreement with his reasoning and conclusions on the question of maintainability and the other issues raised in these petitions.

9. Now we consider another objection of the A.A.-G. He was somehow of the view that the Parliamentary Committee represented the will of the Parliament and thus had supremacy over all other bodies. He also argued that its decision could not be subject of judicial review as the Parliament was the supreme law making institution and its decisions could not be reviewed by any Court.

10. We have considered this argument in detail and find this view to be utterly against the newly added provisions of the Constitution itself. We cannot comprehend how this "Parliamentary Committee", constituted under Article, 175A, can even remotely be considered as a part of the legislature or how, for that matter, any question relating to the supremacy of Parliament is involved in this case. The Judicial Commission and the Parliamentary Committee are two limbs of one constitutional mechanism created by the newly added Article 175A. Both of them owe their existence to Article 175A and not to the provisions relating to the Legislature or the Executive in the Constitution. As such, they are entirely new authorities constituted under Article 175A of the Constitution of Pakistan, 1973. Any authority created under a

Constitutional provision is bound to act within its specified mandate as per Article 4 of the Constitution of Pakistan. There is thus no immunity from judicial scrutiny reserved for the Committee under the Constitution of Pakistan, 1973 and Article 69 has no application in the instant case. Indeed, none was claimed before us by the Federation.

11. Article 175A(16) further cements the intention that the Committee was not to have any connection or even semblance of relevance to the Legislature or any form of parliamentary attribute. It was meant simply to be a Committee working under the mandate of Article 175A, owing its existence to the said provision of the Constitution of Pakistan, 1973. Thus, its members, even if they are parliamentarians, are neither required nor permitted to participate in the proceedings of the Committee in their legislative capacity. Their background may have been imagined to make some fruitful contributions to the appointment process for judges, but their 'background was not to govern their mind while operating under the framework of Article 175A. To better understand this point, the Committee may in a sense be analogized to a special committee comprising of parliamentarians constituted, under the law, to make an inquiry or to give relief to the people. Could this special committee be said to enforce the will of the Parliament, or their electorate, over and above their duty of providing justice under the law to which they owe their existence? I do admit that unfortunately some might take it so, but all norms of justice, law and fairness would say that they should act independently, fairly and in accordance with the law which has imposed a duty upon them and not with a free hand to do as they please, acting under the guise of the will of the people.

12. The logical corollary of arguing otherwise would in fact put a very damaging and unfair disqualification clause on all parliamentarians. By an admission that parliamentarians, if tasked with a special duty, under any law, cannot shed their electoral inclinations could be a basis for their disqualification under such law. We felt that the learned A.A.-G need not have put the matter in this manner, conveying to us a sense of essential, eternal and assertive political agenda in the performance of a soleman Constitutional duty.

13. We now turn to the facts of the case. In the case of Lahore High Court, the Hon'ble Chief Justice of the High Court initiated and sent nominations to the Chairman of the Commission for convening a meeting of the Commission. The Hon'ble Chief Justice of Pakistan, Chairman of the Commission, called a meeting of the Commissioner which was held on January 22, 2011. All the

members duly attended the said meeting. It is necessary to reproduce paragraph No.2 of the minutes of the meeting in order to appreciate the issues at hand. It stated as follows:

> "(2) The Chairman requested the Chief Justice, Lahore High Court to brief the members of the Commission about the nominations initiated by him. The Chief Justice, Lahore High Court stated that he had recommended two persons for confirmation, namely Mr. Justice Asad Munir and Mr.' Justice Ch. Muhammad Tariq (Sr. Nos. 1 and 13) who are going to retire on attaining the age of superannuation before the end of the year 2011 while the Additional Judges at Serials Nos. 3, 5, 7, 14, 16, 18, 19, 21, 33 and 34 above have beenrecommended to be dropped. For rest of the Additional Judges, he has recommended that their tenure may be extended for a period of one year". (The underlining is ours)

14. The Commission discussed the matters in detail. The findings of the Commission are contained in paragraph 3, relevant portions of which are also reproduced here:--

> "(3) The Commission had in-depth discussions about their professional caliber, legal acumen, judicial skill, quality and quantum of judgments, commitment/devotion to duty, efforts made for expeditious disposal of cases, number of reserved/pending judgments, and also examined their antecedents and decided as under:--
>
> (A) The Additional Judges at Serials Nos. 2, 4, 6, 8 to 12, 15, 17, 20 and 22 to 32 require further grooming/improvement, therefore, their tenure may be extended for a period of one year with effect from the date their present tenure expires:
>
> (B) The tenure of the Additional Judges at Serials Nos. 1 and 13 be extended from the date of expiry of their present tenure till the date of their superannuation". (The underlining is ours)

15. The Secretary of the Judicial Commission forwarded the unanimous nominations of the commission to the Parliamentary Committee, in accordance with Article 175A(8) thereof, through letter dated 22-1-2011, which also contained the nominations of the four judges under discussion. It must be stressed here that the Chief Justice of the Lahore High Court had also recommended these four judges for extension while completing the pro forma discussed below,

and had not at all made any recommendations for their names to be dropped; and after making various observations in different columns of the "pro forma required to be prepared for the initiation of this process, the Hon'ble Chief Justice of the Lahore High Court still decided to recommend them for an extension as per his noting at the end of the "pro forma".

16. After receiving the nominations for extension of tenure of the Additional Judges of the Lahore High Court, the meeting of Parliamentary Committee was held on 2nd of February 2011. The Committee confirmed all other' nominations of the Commission except for the four judges namely Mr. Mamoon Rashid Sheikh, J., Mr. Muhammad Farrukh Irfan Khan, J., Mr. Syed Mazahar Ali Akbar Naqvi, J. and Mr. Muhammad Yawar Ali, J. Paragraphs 4 and 5 of the minutes of the aforementioned meeting contained the reasons for their refusal to confirm the nominations, as conveyed to the Judicial Commission of Pakistan by the Principal Secretary to the Prime Minister through letter dated 17-2-2011. In the case of Mamoon Rashid Sheikh, J., the Committee reasoned that the views of the Chief Justice of the High Court contained in the columns of "General Reputation in Public, bench and bar", "Disposition of quick disposal" and "Outlook" of "PRO FORMA FOR INITIATION OF NOMINATION FOR APPOINTMENT AS JUDGE OF THE LAHORE HIGH COURT LAHORE" were material and therefore his proposal for extension was not justified. In the case of Muhammad Farrukh Irfan Khan, J., the Committee reasoned that the views of the Chief Justice of the High Court contained in the columns of "General' Reputation in Public, bench and bar". "Disposition of quick disposal" and "knowledge of laws" of the same pro forma were, also material and therefore his proposal for extension was also not justified. For similar reasons, the Committee further rejected the proposals of the Commission in relation to Syed Mazahar Ali Akbar Naqvi, J. and Muhammad Yawar Ali, J.

17. In. the case of the High Court of Sindh, the Hon'ble Chief Justice of the High Court initiated and sent the nominations to the Chairman of the Commission for convening a meeting of the Commission in terms of Rule 3(2) of the Judicial Commission of Pakistan Rules, 2010. The Hon'ble Chief Justice of Pakistan/Chairman of the Commission called a meeting of the Judicial Commission of Pakistan which was held on February 19, 2011. All the members duly attended the said meeting. It is necessary to reproduce paragraph No.2 of the minutes of the meeting in order to appreciate the issues at hand:

> "(2) The Chairman requested the Chief Justice, High Court of Sindh to brief the membersof the Commission about the nominations initiated by him. The Chief Justice,

High Court of Sindh stated based on their performance and behavior/conduct he has duly recommended the Additional Judges at Serial Nos. 3, 4, 7 and 9 for extension, in their tenure whereas the Additional Judges at Serial Nos. 1, 2, 5, 6 and 8 are to be dropped". (The underlining is ours)

18. The Commission discussed the matters in detail. The findings of the Commission are contained in paragraph 3, relevant portions of which are also reproduced here:--

(3) The Commission had in-depth discussions about professional caliber, legal acumen, judicial skills, quality and quantum of judgments, commitment/devotion to duty, efforts made for expeditious disposal of cases, number of reserved/pending judgments of each of the aforesaid Additional Judges, and also examined their antecedents. As regards Additional Judges at Serial Nos.6 and 8, the members of the Commission observed that they are professionally competent, therefore, their names may also be recommended for extension. As regards their conduct/behavior, reported in the performa, it was observed that given their capabilities and potential to prove good judges they would be able to overcome such shortcomings with proper coaching and guidance to be provided to them by the Hon'ble Chief Justice/senior judges of the High Court of Sindh. The Commission therefore, unanimously decided as under:--

(A) The Additional Judges at Serial Nos. 1, 2 and 5 are dropped as their performance has not been found up to the mark together with their other antecedents and as such their cases are not recommended for confirmation or extension.

(B) The Additional Judges at Serials Nos.3, 4, 6 to 9 have been found efficient and competent but require further grooming/improvement, therefore, it is recommended that their tenure be extended for a period of one year with effect from 18-2-2011". (The underlining is ours).

19. The Secretary of the Judicial Commission forwarded the unanimous nominations of the Judicial Commission to the Parliamentary Committee through letter dated 19-2-2011, which also contained the nominations of the two judges under discussion namely Mr. Muhammad Tasnim, J. and Mr. Salman Hamid, J. After receiving the nominations for an extension of tenure of the Additional Judges of Lahore High Court the meeting of Parliamentary Committee was held on

22nd of February 2011. The Parliamentary Committee confirmed all other nominations of the Commission except for the aforesaid two judges. The paragraphs 4 and 5 of the minutes contained the reasoning for this refusal, as conveyed to the Judicial Commission of Pakistan by Acting Principal Secretary to the Prime Minister through letter dated 24-2-2011. In case of Muhammad Tasnim, J., the Committee reasoned that the views of the Chief Justice of the High Court contained in the columns of "General Reputation in Public, bench and bar" and column of "General Remarks" of the "PRO FORMA FOR INITIATION OF NOMINATION FOR APPOINTMENT AS JUDGE OF THE HIGH COURT OF SINDH, KARACHI" were material and therefore his proposal for extension was not justified. Similarly, in the case of Salman Hamid, J., the Committee reasoned that the views of the Chief Justice of the High Court of Sindh contained in the columns of "General Reputation in Public, bench and bar", and column of "General Remarks" of the same "PRO FORMA", were material and therefore his proposal for extension was also not justified.

20. After having considered the facts of this case, we must now advert to the most important question raised before us. Whether the Committee has the power to reject the approved nominations of the Judicial Commission? Or alternatively, does the Committee have unbridled and arbitrary power to review the decisions of the Commission? It has been urged before us that while coming to the conclusions, which are the bone of contention inthis case, the reasoning adopted by the Committee was irrelevant, unjustified and improper under the law; therefore, it is without legal force or-constitutional sanctity. We agree. The Committee ignored its own constitutional boundaries and by doing so stepped over the rightful constitutional jurisdiction of the Commission.????

21. It is clear from a preliminary reading of the minutes of the aforementioned meetings that the entire reasoning of the Committee is focused on no material other than that which had already been thrashed out and discussed in depth by the Judicial Commission. The Committee instead of giving its own reasons for not confirming the nominations, merely opted to usurp the territory reserved for the Commission by the Constitution; and in doing so they again passed judgment on the professional caliber, legal acumen, judicial skill and quality and the antecedents of the Judicial nominees. As noted above, this exercise had already been done by the Commission. The Parliamentary Committee neither had the expertise nor the Constitutional mandate to reverse the reasoning and findings of the Commission on these grounds; doing so would negate the purpose for creating a Commission as envisaged in Article 175A.

22. The constitution of the Judicial Commission itself and the members comprising five sitting judges of the Supreme Court, one former judge of Supreme Court, the Chief Justice and the most senior Judge of the High Court, Federal Minister for law and Attorney General of Pakistan, Law Minister of the concerned province and two senior advocates/members of the Bar, gives us a clear insight into the reasons for the creation of the Commission. It comprises of people having an immense background and stature in the field of law and the judicial system. The purpose then was that the discretion in making judicial appointments should not be the forte of one man, as in the old system, but should rather be devolved to a body comprised of people who could be trusted to make a just evaluation on the professional caliber, legal acumen; judicial skill and all other related criteria relevant for the appointment of a person as a judge of the High Court. We are thus unable to see how the technical expertise, judged by a Commission comprising of people having spent decades in the legal field, could be better judged, or worse, reversed by the Parliamentary Committee. If this was intended by the legislature then there was simply no need to even constitute a Judicial Commission.

23. Another issue which is relevant to note is that Article 175A itself has not provided for the Chief Justice of a High Court to have any special role in the appointment process. He is just another member of the Judicial Commission and by the above said rules he has merely been provided the role to initiate the nominations. His duty is to initiate and send the nominations to the Chairman of the Judicial Commission. This act, of initiating and sending nominations, cannot be taken to be the "recommendation" itself, but is rather to be considered as an act of mere procedure. This is so because the whole object of the new legislation is to take away the powers of one person and make the process a collective effort. So, for instance, if the Rules are changed by the Commission and any other member of the Commission is given the task of setting the process of the Judicial Commission in motion, then that would not give this member a special place which is not envisaged for any other member in Article 175A. Therefore, even if a Chief Justice of the High Court is of the view that certain persons are not fit to be judges of the High Court, it is possible that the Judicial Commission, by a majority, may come to the conclusion that they are and thus make such recommendation to the Committee. These recommendations would be valid and in accordance with the letter and spirit of Article 175A.

24. Given this discussion, we do not understand how the. Committee could consider that its function was to redo the entire exercise conducted by the Commission while determining the

professional caliber, judicial skill, legal acumen and personal conduct, required as a judge, of the nominees. More so, how could they arrive at a conclusion, that the entire exercise of the Commission was flawed, based on the piecemeal views of one member of the Commission? And it might be added here that even these views did not last the Commission passed the nominations unanimously. Let us assume, however, that the unanimity present in these decisions of the Commission was not there. Let us further assume, for the sake of argument, that the Attorney-General of Pakistan objected to a particular nomination and the Judicial Commission still, by a majority of its total membership, as mandated by clause (8) of Article 175A, decided to nominate that person to the Parliamentary Committee. Could the Parliamentary Committee reject this nomination simply on the reason that they trust the evaluation of the Attorney General of Pakistan and not of the other judges? We strongly believe that such is neither the function of the Parliamentary Committee, nor its mandate under Article 175A, and would amount to an incorrect and unconstitutional decision.

25. The technical evaluation of a person's caliber as judge has to be made by the Commission, and once evaluated the recommendations of the Commission are to be looked as one. The views of the individual members of the Commission thus no more exist before the Committee. What the Commission has already assessed and held cannot be overturned on the basis of a dissenting view, note or discussion of any individual member. If this was allowed, it would render the whole working of the Judicial Commission as futile and make it nugatory under the Constitution. Doing so would be akin to refusing to recognize a resolution of the Parliament, or any law passed by it, on the basis of the minority view in the House. Such reasoning will lead to a deliberate breakdown of our Constitutional mechanisms and procedures.

26. Therefore, the Parliamentary Committee, on receipt of a nomination from the Commission, can either confirm the nominee by a majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed, or reject the nomination on grounds falling within its domain for very strong reasons which shall be justiciable. This is the clear direction of clause (12) of Article 175A.

27. Since in the present case, as already discussed above, the Committee has tried to assume the jurisdiction of the Commission, there is no option but to come to the conclusion that the Committee failed to perform its functions in terms of clause (12) of Article 175A. The consequence of this failure has been prescribed by the Constitution itself. I The Committee must

act within a period of fourteen days of receiving the nominations, "failing which the nomination shall be deemed to have been confirmed". So, while in any other case of failure to exercise jurisdiction, we might have been required to send the issue back to the' authority for consideration in accordance with law, here the Constitution leaves us with no such option because of a deeming provision.

28. The mandatory consequence of the deeming clause mentioned above is that the name of the nominee confirmed by the Committee or "deemed to have been confirmed" shall be forwarded to the President for appointment. The effect of a deeming provision has been laid down time and again by the Courts and it has generally been held that it requires the court to believe that something exists and has happened, though it may neither exist nor may have occurred in reality. It thus creates a legal fiction. Reference in this regard may conveniently be made to judgments of this court in Elahi Cotton Mills Ltd. v. Federation of Pakistan (PLD 1997 SC 582 at page 677) and Federation of Pakistan v. Mian Muhammad Nawaz Sharif (PLD 2009 SC 644 at page 687).

29. Moreover the court, in such cases, is required to see for what purpose this deeming device has been used by the legislature. In the present there can be little doubt that the purpose was the completion of this exercise as early as possible and the Constitutional time period of fourteen days sheds great light on the matter. Therefore, the failure of the Committee to' perform its functions in accordance with its mandate results in the nomination "deemed to have been confirmed".

30. In such circumstances, we are inclined to issue a direction to the Federation to notify the appointments on the recommendations received, in accordance with Article 175A, within a period of fourteen days. Such directions, to notify, have been given in the past and reference may be made to the Malik Asad Ali case (PLD 1998 SC 33).

31. At this stage, it would also be appropriate for us to note that the contention of the A.A.-G that earlier judgments on the issue of appointment of judges are irrelevant is a bit misconceived. The change in the appointment process has merely diversified decision making amongst the many members of the two new collegiate bodies, but essentially the roles of these bodies, looked at collectively, remains the same. So as such the principles of law enunciated in earlier judgments such as Al-Jehad Trust case, Malik Asad Ali and several others would continue to

apply to the new mechanism with full force. In fact, these principles can be said to be applicable even more strongly after the introduction of the newly constituted bodies under Article 175A.

32. The recommendations of the Judicial Commission are now on greater footing than the recommendations of the Chief Justice alone in the earlier system. These cannot be superseded for any extraneous considerations as already discussed above. Therefore, the Parliamentary Committee cannot simply brush aside the recommendations of theCommission without its own sound reasons. The Committee is to confine itself to the purpose for which it has been constituted, which is evidently the thrashing out of issues not related to the domain of the Commission. The Committee can, based on factual data and reasons, for instance, declare that a nominee is corrupt or is affiliated/partial making him a controversial choice, but judging the caliber of a nominee as a judge rests with the Commission.

33. These, read together with the reasons set out in the concurring opinion of Jawwad S. Khawaja, J. are the reasons for our short order dated 4-3-2011, which is reproduced below for ease of reference:--

> "We have heard these two constitutional petitions at great length. These petitions relate to the functions of two institutions newly introduced into our Constitution namely, the Judicial Commission of Pakistan and the Parliamentary Committee. These two bodies have been created in the newly added Article 175A of the Constitution.
>
> 2. Very briefly stated the petitioners have challenged inter alia, the two decisions of the Parliamentary Committee one in respect of four Additional Judges of the Lahore High Court and the other in respect of two Additional Judges of the Sindh High Court. The Judicial Commission had made recommendations for extension in tenure of these six Judges as Judges respectively of the Lahore and Sindh High Courts. The Parliamentary Committee has, however, disagreed with the recommendations of the Judicial Commission and has decided not to recommend the names of these six Judges for appointment as Judges respectively of the Lahore and Sindh High Courts.
>
> 3. During extensive arguments advanced by learned counsel for the parties including the preliminary objection raised by the learned Additional Attorney General objecting to the maintainability of these petitions, we have examined the newly added constitutional

provisions and more specifically Article 175A of the Constitution. We have also considered the case law copiously cited before us. We have, however, consciously confined our consideration of these petitions and arguments advanced, to the specific facts and circumstances of these cases. Having considered the same, for detailed reasons to be recorded later, these petitions are allowed in the following terms:-

(a)? We declare that the decision of the Parliamentary Committee, whereby the names of the aforesaid six Judges were not confirmed for extension in their tenure, are not in accordance with the provisions of the Constitution;

(b) as a result of the above, we set aside the decision of the p Parliamentary Committee dated 2-2-2011 in respect of four Additional Judges of the Lahore High Court namely, Justice Mamoon Rashid Sheikh, Justice Muhammad Farrukh Irfan Khan, Justice Syed Mazahar Ali Akber Naqvi and Justice Muhammad Yawar Ali and the decision of the Parliamentary Committee dated 22-2-2011 in respect of two Additional Judges of the Sindh High Court namely, Justice Salman Hamid and Justice Muhammad Tasnim;

(c) consequently, we direct the respondents to implement the recommendations of the Judicial Commission in respect of the four above named Judges of the Lahore High Court and the recommendations of the Judicial Commission in respect of the two above named Judges of the Sindh High Court and to issue notifications for the appointment of the said Judges in consonance with the recommendations of the Judicial Commission".

Sd/- Mahmood Akhtar Shahid Siddiqui, J.

I have added a concurring opinion setting out my additional reasons in support of the Order of 4-3-2011.

Sd/- Jawwad S. Khawaja, J.

I agree with the opinion recorded by my learned brother Jawwad S. Khawaja, J.

Sd/- Khilji Arif Hussain, J.

I have had the benefit of going through the detailed reasons given by my learned brothers Mr. Justice Mehmood Akhtar Shahid Siddiqui and Mr. Justice Jawwad S. Khawaja. I am in agreement with the opinion and reasons recorded by my learned brothers. However, I withhold my comments to that part of the reasoning of Mr. Justice Jawwad S. Khawaja, which deals with the status of the Parliamentary Committee with reference to Article 69 of the Constitution of Islamic Republic of Pakistan for the reason that this issue is subjudice before 17-member bench of this Court seized of challenge made to 18th Amendment of the Constitution.

Sd/- Tariq Parvez, J

JAWWAD S. KHAWAJA, J.---I have had the benefit of going through the reasoning of my learned brother M.A. Shahid Siddiqui, J. in support of the short order dated 4-3-2011. I am in agreement with his conclusions but am adding this concurring opinion setting out my additional reasons in support of the aforesaid order dated 4-3-2011.

2. These two constitutional petitions concern the functioning of two institutions newly introduced into our Constitution: the Judicial Commission of Pakistan ("Commission") and the Parliamentary Committee ("Committee"), The petitions are being heard and decided together because they raise similar legal and constitutional issues.

3. The Commission consists of, among others, the Chief Justice of Pakistan, the four senior-most Judges of this Court, the Chief Justice of the concerned High Court, the Federal Minister for Law and Parliamentary Affairs, the Attorney General .for Pakistan and the representatives of the legal fraternity [Article 175A(2)]. The Committee consists of eight parliamentarians divided equally between the Treasury Benches and the Opposition Benches [Article 175A (9) and (10)]. Both, the Commission and the Committee were created under Article 175A of the Constitution which assigned specified functions to the two Constitutional bodies through the Constitution (18th Amendment) Act, 2010 as amended by the Constitution (19th Amendment) Act, 2010. These constitutional amendments changed the earlier process for making judicial appointments in the Supreme Court, the Federal Shariat Court and the High Courts. Article 175A along with certain other provisions in the Constitution are separately' subject to challenge in a number of Constitutional Petitions which have been heard, and are still under consideration before a larger seventeen-member Bench of this Court.

4. In the present cases, however, the petitioners have not questioned the wires of these constitutional amendments. Therefore, the validity of these amendments, which created the Commission and the Committee, is assumed. The challenge in these petitions is directed instead at the functioning of the Committee. In particular, two specific decisions of the Committee have been assailed by the petitioners. In brief, these decisions relate to the refusal of the Committee to confirm the nominations made by the Commission for the renewal of tenure of four additional Judges of the Lahore High Court and two Additional Judges of the Sindh High Court. By means of a short order dated 4-3-2011, we have allowed these petitions and, as 'a consequence, have set aside the impugned decisions. This opinion provides my reasons in support of the short order.

5. To facilitate understanding, the reasons in this opinion have been divided into sections. The first relates to the maintainability of, these petitions; the second section sets out the relevant rules of Constitutional interpretation; the third section deals with the question of justifiability and the basis, for exercising our power to review the decisions of the Committee; and the fourth and final section states the ground on which we exercise review and applies all the constitutional principles discussed in the earlier sections, to the circumstances in which these petitions have arisen, justifying the short order of 4-3-2011.

MAINTAINABILITY

6. We must first address a preliminary objection against the maintainability of these petitions, which has been raised by the learned Additional Attorney General on behalf of the Federation. The petitioners have invoked the jurisdiction vested in this Court under Art. 184(3) of the Constitution. Mr. K.K. Agha, learned Additional Attorney General for Pakistan has argued that the jurisdiction of this Court under the said Article can only be invoked where "a question of public importance with reference to the enforcement of any of the fundamental rights" is involved. He submitted that no such question arises in these petitions; and the same are, therefore, not maintainable. For facility of reference, Article 184(3) of the Constitution is reproduced as under:-

> (3) Without prejudice to the provisions of Article 199, the Supreme 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 ".

7. The learned Additional Attorney General further argued that an issue could only be agitated before this Court, under the aforesaid Article, if "public importance" in relation to such issue had been proved by the overt demonstration of interest therein by the general public; either by people openly demonstrating their interest, possibly by coming out on the streets, or by engaging in animated debates in the print and electronic media. And, since, according to the learned Additional Attorney General, the impugned decisions of the Parliamentary Committee have not generated any such demonstrations of public interest, this matter may not be considered as one which involves "public importance".

8. To begin with, the factual veracity of this claim made on behalf of the Federation is questionable. The nominations made by the Judicial Commission and the refusal of the ,Parliamentary Committee to confirm the same appear to have generated considerable public interest, providing a great deal of material for debate in the public, the media and the legal fraternity. The Bar Associations of the High Courts in the country have also debated the impugned decisions of the Committee. The Sindh High Court Bar Association, which is itself a petitioner in Constitution Petition No.18 of 2011, has placed on record its resolution dated 23-2-2011 "condemning" the action of the Committee. The proceedings in these petitions and the short order of 4-3-2011 have also made headlines in the print and the electronic media. More so, critical comments on our order dated 4-3-2011 have been carried prominently in the media. We, therefore, find little substance in the factual assertion advanced by Mr. K.K. Agha.

9. More importantly, however, under the law, this factual claim is quite irrelevant for answering the present question, which is: does the case before us involve "a question of public importance with reference to the enforcement of any of the Fundamental Rights"? Article 184(3) ibid empowers this Court to exercise jurisdiction thereunder whenever the Court considers a matter to: (i) be of public importance and'(ii) that it pertains to the enforcement of fundamental rights. The determination on 'both these counts is to be made by this Court itself, keeping the facts of the case in mind. That this case involves a question which relates to the "enforcement of fundamental rights" has not been seriously questioned. The learned Additional Attorney General acknowledged that only an independent Judiciary can enforce the fundamental rights enshrined in our Constitution. He also conceded that without an independent mechanism for

enforcing fundamental rights, the contents of Chapter 1 (Fundamental Rights) of Part-II of the Constitution would become meaningless. A wealth of jurisprudence is also available on this subject. The issue, therefore, which has to be addressed while deciding the respondent's preliminary objection is whether or not these petitions raise issues of public importance.

10. Furthermore; in making this determination, the Court is not to be swayed by expressions of public sentiment nor is it to conduct an opinion poll to determine if the public has any interest in an issue being agitated before the Court under Article 184(3) of the Constitution. Instead, a whole range of factors need to be kept in mind, which have, over the years, been expounded in numerous precedents of this Court. It is important to keep these precedents in view because, as noted in an earlier judgment, "[i]t is through the use of precedent that the contours of the law are constantly defined. The Constitution of Pakistan, through Article 189, recognizes the significance of judicial precedent in the acknowledged tradition of a Common Law jurisdiction." (Re: Suo Motu Case No.10 of 2009 reported as 2010 SCMR 885, 921). A review of the precedents that enunciate the scope of Article 184(3) makes it clear that contrary to the import of Mr. Agha's submission, "overt expression of public interest" or "street demonstrations and vigorous media debate" have not been considered necessary factors for the exercise of jurisdiction over a case under the said Article.

11. The precedents which were referred to, in this regard, by Mr. Makhdoom Ali Khan, learned counsel for the petitioners, can now be briefly adverted to. In the first Al-Jehad case reported as Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others (PLD 1996 SC 324) a five member Bench of this Court observed that the process of making judicial appointments was inextricably linked with the independence of the Judiciary; and since the latter was a matter of public importance, in the circumstances, it was held that the petitioner had "rightly invoked the jurisdiction of this Court under Article 184 (3) of the Constitution". Therefore, questions which require the interpretation of newly added provisions in the Constitution relating to judicial appointments would quite clearly be matters of public importance.

12. The fact that independence of the judiciary is a matter of public importance has also been firmly established in our jurisprudence. In one of the more recent cases on the issue, Khalil ur Rehman Ramday, J., expressed this point eloquently as follows: the judiciary was... an affair of the public; any offence to its independence would be an encroachment on the right of the

people to access justice and finally that the security of service and of the tenure of the judges was critical for the said independence. (Chief Justice of Pakistan v. President of Pakistan, PLD 2010 SC 61 at page 121). Similar views have been expressed inter alia, in Watan Party v. Federation of Pakistan and others (PLD 2006 SC 697), Malik Asad Ali and others v. Federation of Pakistan and others (PLD 1998 SC 161 at page 247 para 55) and Sindh High Court Bar Association and another v. Federation of Pakistan and others (PLD 2009 SC 879 at page 1143, 1185).

13. Here we may also refer to an academic comment on this Court's past precedents, dealing with the interpretation of Art 184(3). The well researched and referenced comment in `Public Interest Litigation in Pakistan (Alam, Rafay; ed. Minski, Alam and Raza, Platinum and Pakistan Law House 2000) reproduced below demonstrates that cases dealing with judicial appointments have consistently been considered matters of public importance:--

> "[the] Supreme, Court has decided [in], Shahida Zahir Abbasi v. President of . Pakistan, PLD 1996 SC 632, at p.659, per Saiduzzaman Siddiqui J, that matters of public importance may be deduced on a case-by-case basis... However, even on a case-?by-case basis, some general principles still emerge. Matters relating to the judiciary have regularly been held to be of public importance. This was, for example, already held by Ajmal Mian, C.J. (as he then was) in Sharaf Faridi v. Federation of Pakistan, PLD 1989 Kar. 404, at p. 425. In Abdul Matin) Khan v. N.-W.F.P., PLD 1993 SC 187, at p.191, it was held by Muhammad Afzal Zullah CJ that an issue that could considerably damage `the very fabric of independence and separation of judiciary' amounted to a matter of great public importance. This position was confirmed more recently in Al-Jehad Trust v. Federation of Pakistan, PLD 1996 SC 324, p. -425 by Sajjad Ali Shah CJ, holding that questions of interpretation of the Articles of Constitution relating to the judiciary were undoubtedly a matter of pubic importance. "(ibid. 55)

14. In response, the learned Additional Attorney General has submitted that the case law cited by the learned counsel for the petitioners is not applicable in the present case because it relates to the previous process for appointment of Judges; and, therefore, after the 18th and the 19th Amendments, it is no longer relevant. This contention is misconceived. There has been no change or amendment made in Article 184 (3) of the Constitution. Thus, precedents which examine and pronounce upon the scope of the said Article remain relevant. Therefore, in line

with Article 189 of the Constitution, the principles of law enunciated by this Court in respect of Article 184 (3) of the Constitution provide the surest guidance that these petitions raise issues which must be decided by this Court in the exercise of its jurisdiction under the said Article. Thus, under Art 184(3) of the Constitution, not only is this Court possessed with the power to adjudicate this matter, but it must, as a matter of duty, exercise jurisdiction over this case.

15. In addition to the above considerations, we would like to note that judicial appointments in two provinces, namely the Punjab and Sindh, have been so far called in question in these two petitions. This is, therefore, a fit occasion for this Court to interpret Article 175A of the Constitution, as amended; thereby enabling Constitutional bodies such as the Commission and the Committee (and their respective functionaries) to perform their roles in accordance with the Constitution.

16. Before parting with our discussion on the maintainability of these petitions we may note that there have been cases where this Court has declined to exercise jurisdiction under Article 184 (3) of the Constitution. Mr. K.K. Agha referred to the case titled Jamat-e-Islami through Amir and others v, Federation of Pakistan and others (PLD 2008 SC 30) wherein exercise of jurisdiction had been declined. Mr. Makhdoom Ali Khan provided us a list of six other reported cases (referred to below) where the Supreme Court decided that the circumstances did not warrant exercise of jurisdiction under Article 184(3) ibid as the petitions in those cases did not meet the dual criteria of (a) public importance and (b) enforcement of fundamental rights. These cases are Munir Bhatti v. Federation of Pakistan (Constitutional Petition No. 10 of 2011), Manzoor Elahi v. Federation of Pakistan (PLD 1975 SC 66 at page 79, 128, 144 and 159), Shahida Zaheer Abbasi v. Federation of Pakistan (PLD 1996 SC 632 at page 659 and 662 sideline G and H), Syed Zulfiqar Mehdi v. PIAC (1998 SCMR 793 at page 799, 800, 801 sideline A, B, C and D),, Watan Party v. President of Pakistan (PLD 2003 SC 74 at page 81, sideline D and E), Mian Muhammad Shahbaz Sharif v. Federation of Pakistan (PLD 2004 SC 583 at page 596 para 18-19, page 597, 598 para 22) and APNS v. Federation of Pakistan (PLD 2004 SC 600 at 619W, 621AA). None of these seven cited cases, however, related to the independence of the Judiciary or to the process of judicial appointments, the same are distinguishable on this ground alone.

170 Based on the foregoing discussion and review of precedents, we are not left in any doubt that these cases are eminently suitable for the exercise of jurisdiction under Article 184(3) of the Constitution.

CONSTITUTIONAL INTERPRETATION:

18. Having decided the question of maintainability, we must now proceed to the task of interpreting Article 175A, which is the subject of contention in the present petitions. A great deal of stress was placed by the learned Additional Attorney General representing the Federation, on the decontextualised wording of this Article. His argument has been separately dealt with in a later part of this opinion, but can be summarized here. According to him, because Article 175A does not provide for the justiciability of the decisions of the Committee, and to this extent, deviates from the Order dated 21-10-2010 (considered below) passed by a seventeen-member Bench of this Court,, we should construe Article 175A as ousting the jurisdiction of this Court and its power to call in question the decisions of the Committee. The learned Additional Attorney General's submission, however, finds no force in our constitutional jurisprudence, where it is by now well settled that the Constitution has to be read holistically as an organic document. For this we need to go no further than the opinion expressed in the Al-Jehad case supra.--

> "a written Constitution is an organic document designed and intended to cater the need for all times to come. It is like a living tree, it grows and blossoms with the passage of time in order to keep pace with the growth of the country and its people. Thus, the approach, while interpreting a constitutional provision should be dynamic, progressive, and oriented with the desire to meet the situation, which has arisen, effectively. The interpretation cannot be a narrow and pedantic. But the Court's efforts should be to construe the same broadly, so that it may be able to meet the requirements of ever changing society. The general words cannot be construed in isolation but the same are to be construed in the context in which, they are employed. In other words, their colour and contents are derived from their context." [A1-Jehad Trust case (PLD 1996 SC 324 at page 429)1.

19. Here it may also be added that notwithstanding the reliance of the learned Additional Attorney General on Article 175A as a stand-alone provision, the Attorney General in his written submissions made before the above-referred larger Bench, acknowledged as a well settled legal rule "that the Constitution is to be read as a whole and that it is the duty of the Court to have recourse to the whole instrument in order to ascertain the true intent and meaning of any particular provision".

20. But what does the word `organic' connote when referring to the Constitution? Although the term has been repeatedly used in various precedents from our own jurisdiction, the meaning, implication and rationale of requiring the Constitution to be read as an `organic document' has not been explained fully. It is thus necessary to define this concept in order to examine and interpret Article 175A which has now been added in the Constitution.

21. We have been guided by precedent to follow the rule that individual Articles or clauses of the Constitution, if read in isolation from the rest of the Constitution, may mislead the reader. This is so because the meaning of the Constitution is to be gathered from the Constitution as an integrated whole, based on reason. The logic and wisdom of this approach should be self evident, but can be highlighted for the edification of those inclined to a contrary view focused solely on an insular reading of Article 175A. This can be done by narrating a simple tale from the enlightened tradition of our sages. In his Masnavi Maulana Jalaluddin Rumi recounts the story of five men on a dark night who, groping and touching different parts of an elephant's anatomy, construct an image of the animal variously as a fan (by the one who managed to touch only its ears), a tree trunk (by the other getting a feel of its leg), a gargoyle (by yet another who touched and felt its snout) and so forth. The inability of each man to look at the elephant holistically is obvious. As the Maulana says, these men in the dark did not have a lamp to show them that the elephant was one composite organism, whose constituent components were to be seen together if the whole was to be understood, without errors of perception. The Greek ancient, Hippocrates (quoted by Eduardo Galeano in his book "Mirrors"), in the same vein, said that "the nature of the parts of the body cannot be understood without grasping the nature of the organism as a whole". It is, therefore, crucial for us, consistent with reason, to look at the Constitution as a whole if we are to make sense of Article 175A `organically'. Looking at the Constitution any other way would lead the reader astray.

22. The rationale for this rule is also universal and transcends the divide between the various prevalent systems of law. Thus it is that we have common law constitutionalists such as Laurence Tribe and Michael Dorf warning us against "approaching the Constitution in ways that ignore the salient fact that its parts are linked into a whole that it is a Constitution, and not merely an unconnected` bunch of separate clauses and provisions with separate histories that must be interpreted. "(Tribe, Lawrence H.; Dorf, Micheal C., "Chapter 1: how not to read the Constitution" on reading the Constitution, Harvard University Press, Cambridge, 1991). This

very same logic also informs the comment of a scholar like Dr. Conrad from the European Civil Law tradition, who reminds judges and lawyers "that there is nothing like safe explicit words isolated from a general background of understanding and language. This is particularly so in the interpretation of organic instruments like a Constitution where every provision has to be related to the systemic plan, because every grant and every power conferred is but a contribution to the functioning of an integrated machinery... it will not do to discuss such concepts as [mere] `political theory' irrelevant to textual construction ". ("Limitation of Amendment Procedures and the Constituent Power;" the Indian Yearbook of International Affairs, 1967. P.375)

23. Undeniably, Article 175A fits into, and has to be read as part of, the larger Constitutional scheme and not as an insular "bunch of separate clauses and provisions", or as a self-contained island within the Constitution, unconnected with its other parts. The importance of reading the Constitution as an organic whole, in the context of these petitions, will become more apparent in the succeeding sections of this opinion.

JUSTICIABILITY

24. Having set out the basic principle of Constitutional interpretation, we can now proceed to consider if this Court is empowered to judicially review the decisions of the Parliamentary Committee. The petitioners in these cases have argued that the decisions of the Committee are justiciable while the Federation's stance is that this Court has no power to review such decisions. As a fall-back, it was submitted by the learned Additional Attorney General that even if the Court concludes it has the power, it should exercise restraint in these cases and decline to, interfere in the two decisions being assailed by the petitioners.

25. To resolve the first contention raised above, we must start by examining the text of the Constitution itself, as amended by the 18th and 19th Amendments, because the text suggests an answer to the question before us. To facilitate understanding, Article 175A as originally worded (to the extent relevant to our discussion), is juxtaposed alongside the Article as amended by the 19th Amendment.

Eighteenth Amendment			Nineteenth Amendment		
175A			175A		
Appointment of judges to the Supreme Court, High Courts and the Federal Shariat Court:			Appointment of judges to the Supreme Court, High Court and the Federal Shariat Court.		
(1)		....	(1)		
(2)		....	(2)		
(3)		....	(3)		
(4)		....	(4)		
(5)		....	(5)		....
(6)		....	(6)		
(7)		....	(7)		
(8)		....	(8)		
(7)		...	(7)		
(8)		...	(8)		
(9)		The Parliamentary Committee, hereinafter in this Article referred to as The Committee, shall consist of theFollowing eight members, namely :-	(9)		The Parliamentary Committee, hereinafter in this Article referred to as the Committee, shall consist of the following eight members, namely:-
	(i)	Four members from the Senate; and		(i)	four members from the Senate; and
					four members from the National Assembly.
	(ii)	Four members from The National Assembly.		(ii)	
					Provided that when the National Assembly is dissolved, the total membership of the Parliamentary Committee shall consist of the members of the Senate only mentioned in paragraph (i) and the provisions of this Article shall, mutatis mutandis apply.

(10)	(10)
(11) ...	(11)
(12) The Committee on receipt of a nomination from the Commission may confirm the nominee By majority of its Total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed:	(12) The Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed:
Provided that the Committee may not confirm the nomination by three fourth majority of its total membership within the said period, in which case the Commission shall send another nomination.	Provided that the Committee, for reasons to be recorded, may not Confirm the nomination by three-fourth majority of its total membership within the said period:?? Provided further that if a nomination is not confirmed by the Committee it shall forward its decision with reasons, so recorded to the Commission through the Prime Minister:? Provided further that if a nomination is not confirmed, the Commission shall send another nomination.
(13)	(13)
(14) ...	(14)
(15)	(15) The meetings of the Committee shall be held In camera and the record of its proceeds shall be maintained.
	(16)
	(17) ....

It will be noticed that the 19th Amendment has inter alia, added the following two provisos to clause (12) of Article 175A:

> "Provided that the Committee, for reasons to be recorded, may not confirm the nomination by three-fourth majority of its total membership within the said period;

> Provided further that if a nomination is not confirmed by the Committee it shall forward its decision with reasons so recorded to the Commission through the Prime Minister..."

?

Also, a new clause. (15) has been added to Article 175A which states:--

> "The meetings of the Committee shall be held in camera and record of its proceedings shall be maintained." (Emphasis supplied)

26. The repeatedly emphasized imperative of maintaining a record both of the proceedings of the Committee and of the "reasons" behind its decisions, very strongly suggests that the Committee's decisions were intended to be subject to judicial review. Otherwise, if the Committee's decisions were meant to be non-justiciable, and beyond judicial scrutiny, the insistence on recording reasons would not make much sense. It is an established rule of interpretation that Parliament does not waste words and redundancy should not be imputed to it. This principle would apply with even greater force to the Constitution the supreme law of the land. On this point Mr. K. K. Agha was hard pressed to respond. It will be seen that even an insular reading of this Article, leaves the impression that the decisions of the Committee are subject to review. He, however, argued that even though the 19th amendment had required the Committee to give reasons for its decisions, it did not make any provision for these decisions to be challenged in a court of law.

27. The above submission was augmented by Mr. K. K. Agha, by adverting to the Order of the seventeen-member Bench dated 21-10-2010 wherein it had, inter alia, been said that "in case of rejection of nomination by the Parliamentary Committee ... [it] shall have to state reasons which shall be justiciable". The gist of this argument appears to be that in view of the order of the larger Bench, this Court should infer that through the 19th amendment, it was intended by Parliament that decisions taken by the Parliamentary Committee should not be subject to judicial review. Such inference was sought on the basis that the suggestion in the aforesaid Order as to justiciability was not incorporated in the amended Article. The argument of the learned Additional Attorney General, based on implication and not on the wording of Article 175A as amended, is contrary to the jurisprudence that has evolved in our jurisdiction. Furthermore, the argument ignores the legal precept explained above that the Constitution has to be construed as an organic whole.

28. There is a vast body of precedent in our legal corpus which has consistently held that the Court's jurisdiction may only he ousted through express words in a legal text. This principle of law is by now well waled. Even Mr. Agha did not give any valid reason to question this legal principle or to show that it does not apply to the circumstances of this case. On the other hand, any number of cases can be cited in support of the argument advanced by learned counsel for the petitioners that while interpreting a legal text, ouster of jurisdiction should not be inferred. Reference, however, may be made to just a few cases decided by this Court: the first being Additional Collector Sales Tax v. Abdullah Sugar Mills Ltd. (2003 SCMR 1026), wherein it was held that ouster of jurisdiction is to he seen from express words which should not be implied except where absolutely necessary. Likewise, in the case titled Muhammad Ismail and others v. The State (PLD 1969 SC 241 at page 246A) it was held that unless very explicit words are used in a legal provision to oust the jurisdiction of the Court, such an intention would not be normally imputed to the legislature. Maxwell on the Interpretation of Statutes was also cited wherein it has been commented that "...a [strong] leaning now exists against construing a statute so as to oust or restrict the jurisdiction of the superior Courts" (11th Edition page 122). This rule is applicable with even more rigour while interpreting Constitutional provisions. As was held by this Court in Faziul Quader Chaudhry v. Muhammad Abdul Haq "[t]here is need for greater strictness in a case where the bar to the jurisdiction of the courts relates to the interpretation of the provisions of the Constitution,' a Constitution which by their oaths the judges are bound to protect and preserve. "(Faziul Qauder Chaudhry v. Muhammad Abdul Haq PLD 1963 SC 486)".

29. Furthermore, in line with the rationale for considering the Constitution holistically, it may, at this point, be added that our Constitution is no stranger to ouster clauses. Mr. Makhdoom Ali Khan has drawn our attention to no less than seventeen provisions in the Constitution which, through express wording purport to exclude the jurisdiction of the Court in certain matters. Some of these provisions can briefly be adverted to, with the object of showing that whenever it has been intended to oust the jurisdiction of the Court, express provision has been made in the Constitution for this purpose. Article 41(6) stipulates that "the validity of the election of the President shall not be called in question by or before any Court or authority". Article 48(3), inter alia, provides that questions relating to advice tendered to the President by the Cabinet "shall not be inquired into in, or by, any Court ..." Article 165A(2) similarly stipulates, inter alia, that orders etc., made prior to the commencement of the Constitution (Amendment) Order, 1985 "... shall not be called in question in any Court including the Supreme Court and a High Court, on any ground whatsoever".

30. There are several other provisions in the Constitution such as Article 211, Article 236(2), Article 245(2) and Article 270A which contain wording purporting to expressly oust the jurisdiction of a court in respect of matters specified in these provisions. It must, however, be noted that even where such express language has been used in the Constitution, there is consistent precedent to demonstrate that such provisions have not been construed as providing for an absolute ouster of the Court's jurisdiction. In this respect, reference may be made to the cases of Central Board of Revenue and another v. S.I.T.E. (PLD 1985 SC 97) and Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of .Pakistan and others (PLD 2010 SC 61), Sardar Farooq Ahmad Khan Leghari and others v. Federation of Pakistan and others (PLD 1999 SC 57) and Federation of Pakistan and another v. Malik Ghulam Mustafa Khar (PLD 1989 SC 26). In these cases the Court did exercise jurisdiction (though for limited purposes) notwithstanding the language purporting to oust its jurisdiction.

31. On a review of the Constitution and the ouster clauses provided for in the various Articles of the Constitution and applying the ratio of the precedents cited above, we can only conclude that the absence of similar wording in Article 175A must be construed as reinforcing the view that Parliament did not intend to oust the jurisdiction of this Court to review the decisions of the Committee.

32. At this point it will also be useful to understand the nature of the decisions of the Committee, which have been assailed before us. As argued by the petitioners, and not contested by the learned Additional Attorney General, these decisions of the Committee are, by their nature, executive decisions. The fact that these decisions have been taken by persons who also happen to be parliamentarians, does not alter the nature of the decisions. Although this issue was not contested, we nonetheless would like to supplement our conclusion with reasons. The task which the Committee is meant to undertake is part of the process of making judicial appointments. The nature of such task has previously been the subject of contention and adjudication in this Court wherein it has been held that the matter of making judicial appointments is, in essence, an executive function. Reference in this behalf may be made inter alia, to the Al-Jehad and Sindh High Court Bar cases. Therefore, the Committee, for reasons to be explained shortly, must not be seen as a `parliamentary' committee properly speaking; rather, in constitutional terms, it is a committee of parliamentarians, acting independently as a Constitutional body in an executive capacity.

33. Although the eight member Committee has been given the appellation of "Parliamentary Committee", it is important to bear in mind that the status of a constitutional body is not to be determined by the name given to it. This to be determined by the functions it performs and the place it occupies in the Constitutional order. It is important to state with clarity the status of the Committee created under Article 175A and, in the process, to allay any misconceptions about it. For this purpose, we need to look no further than the Constitution itself. Article 50 thereof creates Parliament by stipulating that "[t]here shall be a Majlis-e-Shoora (Parliament) of Pakistan consisting of the President and two houses to be known respectively as a National Assembly and the Senate". The said Article and each subsequent Article of the Chapter relating to Parliament (Chapter 2 of Part III) do not envision or refer to the Committee under Article 175A. The only committees mentioned in this Chapter are the Finance Committees of the two Houses recognized under Article 88 (2) of the Constitution. Article 88(2) stipulates that "[t]he Finance Committee shall consist of the Speaker or, as the case may be, the Chairman, the Minister of Finance and such other members as may be elected thereto by the National Assembly or, as the case may be, the Senate". The Finance Committees are part of the two Houses which elect them and act merely to render advice. Article 88 thus provides a very significant pointer towards the status, nature and essential features of a committee, which can properly be designated as a parliamentary committee.

34. On the other hand, Article 175A has set up an independent constitutional body having a specific role assigned to it relating to the appointment of Judges of this Court and of the High Courts. This constitutional body, as adverted to above, has been referred to as a s Parliamentary Committee but it is neither part of Parliament when acting under Article 175A nor is it elected by or answerable to Parliament. An examination of the Constitution and established Parliamentary practice will further demonstrate this distinction between the Committee set up under Article 175A and a parliamentary committee. By virtue of Article 67 of the Constitution, each House of Parliament may "make rules for regulating its procedure and the conduct of its business". This authority has been exercised by both Houses of Parliament and as a result, rules have been framed. The upper House has framed the "Rules of Procedure and Conduct of Business in the Senate 1988" (the `Senate Rules') while the National Assembly has adopted its own rules known as the "Rules of Procedure and Conduct of Business in the National Assembly, 2007" (the `Assembly Rules'). From the Senate Rules and the Assembly Rules, it is very clear that a parliamentary committee is a body elected by the respective houses of

Parliament and" answerable to such houses. For instance, the Assembly Rules in Rule 200, state that "[e]xcept as otherwise provided in these rules, each Committee shall consist of not more than seventeen members to be elected by the Assembly within thirty days after the ascertainment of the Leader of the House." Likewise, the Senate Rules in Rule 145(1) provide that "[e]ach Committee shall consist of not less than six members and not more than twelve members to be elected by the Senate..."

35. The use of Committees by Parliament is, an old and well established practice which was adopted during the colonial era and finally was given Constitutional status under the 1973 'Constitution. Legislation and parliamentary decision making are facilitated through consideration in Committee (rather than the entire House) of proposed legislation and the performance of other roles entrusted to Parliament. The role of a Parliamentary Committee is simply to examine such legislation or other proposed Parliamentary action. It is the Parliament alone which is empowered to pass legislation or exercise such functions which the Constitution entrusts to it. Thus, a Parliamentary Committee as properly understood in our Constitutional scheme simply facilitates Parliament in the performance of its legislative and Constitutional functions-acting as a mere delegate or in the case of the Finance Committee, as an advisor to the House which has elected it. Crucially though, for our present discussion, a real parliamentary committee is elected by each of the Houses of Parliament and is a subordinate sub-set of the entire House, accountable to the House it belongs to.

36. In stark contrast, the Committee established under Article 175(9) of the Constitution is comprised of eight Hon'ble Members (four from each House) who are neither elected by the houses of Parliament nor are they in any manner answerable or accountable to either of the said houses. It is in this sense that the larger Bench of this Court vide its order dated 21-10-2010 has adverted to the Committee as a "Committee of Parliamentarians" to distinguish this constitutional body from a parliamentary committee as understood and defined in the rules of procedure and conduct of business of the two houses. This distinction is also important to note while addressing the issues raised in these petitions.

37. It appears to us that the essential distinction between a parliamentary committee (elected and answerable to Parliament) and a nominated Constitutional 'body, not answerable to Parliament has not been kept in view in the Federation's stance before us. If this fundamental distinction is considered in the light of Article 69 of the Constitution, we will be further

reinforced in our opinion that the Committee's decisions have not been put beyond the pale of judicial review. Article 69 ibid, for ease of reference is reproduced as under in relevant part:

> "69. Courts not to inquire into proceedings of [Majlis-e-Shoora (Parliament)].--- (1) The validity of any proceedings in [Majlis?e-Shoora (Parliament)] shall not be called in question on the ground of any irregularity of procedure.
>
> (2) No officer or member of [Majlis-e-Shoora (Parliament)] in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in [Majlis-e-Shoora (Parliament)], shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers ".

38. It would be obvious from a plain reading of the above provisions that the limited ouster of jurisdiction stipulated therein is in respect of, inter alia, the proceedings and conduct of business of the Parliament. The decisions of the Committee (even if comprised of persons who are honorable members of Parliament) cannot be considered immune from judicial scrutiny by virtue of Article 69. This conclusion necessarily follows from the fact that the Committee is a creation of the Constitution and not of the Parliament. Furthermore, it is independent of and separate from Parliament notwithstanding its composition. It performs, as noted above, an executive function relating to the Judiciary and, therefore, has been placed in the Chapter relating to the Judicature rather than in Chapter 2 [The Majlis-e-Shoora (Parliament)] dealing with Parliament.???

39. The justiciability of the decisions of the Parliamentary Committee can also be approached from another angle, which would be manifest from a holistic examination of the Constitution. The governance of state organs in Pakistan is based on checks and balances where the powers of each organ are counter-balanced by some other organ of the State. Thus, executive action taken by the various administrative and executive functionaries of the State can be called in question, inter alia under Articles 199 and 184(3) of the Constitution. Such executive action may additionally be subject to Parliamentary review and over-sight in our parliamentary system of governance. Legislative action can also be called in question in Court, inter alias on the touchstone that it is violative of the Constitution. Likewise, decisions rendered by this Court can be modified or reversed by legislation (in recognized circumstances) and such legislation may also be retrospective. Thus we see that each organ of the State, be it the Judiciary, the Executive

or the Legislature, operates under constitutional constraints which effectively make these organs of State limited in their actions.

40. If it is accepted, as urged by the learned Additional Attorney General, that the decisions of the Committee are not amenable to judicial review, a truly unique status higher than the Executive, the Judiciary and Parliament, will have to be accorded to this nominated Committee, outside the matrix of checks and balances that constrain the Parliament, the Executive and the Judiciary. This will be so because in such event, the Committee will not be subject to any check as it is already not answerable for its decisions either to Parliament or to the highest t functionaries of the Executive, including the President and the Prime Minister. Such an interpretation of the Constitution, which places the decisions of the Committee beyond the pale of review by any other instrumentality or organ of the State would be contrary to the scheme of the Constitution and with, in effect, vest the Committee with untrammelled powers. Bearing in mind the assurance in Parliament that "the fundamental principles of the Constitution are not altered", it will not be possible to ascribe such powers to' the Committee, while interpreting Article 175A of the Constitution.

41. To appreciate the above notion with clarity, we need to understand the implications of affording unbridled powers to the Committee. Here we must make note of the submission made by the learned Additional Attorney General that the Committee has the power to reject any nomination of the Judicial Commission (even one unanimously passed) for "any reason under the sun", and that such a rejection must, in all cases, be deferred to by this Court. The implication of this extraordinary submission would be that even where a decision of the Committee has the effect of eroding and undermining the independence of the Judiciary, this Court will be helpless in checking such erosion. We have already noted that the Committee is not required to send its decision to the Parliament for approval and, as rightly observed by Mr. Raza Rabbani on the floor of the House during the debate on the 18th &.19th amendments, the role and discretion of the Prime Minister and the President as previously envisioned in the Constitution "has been taken away". We have not been able to find any precedent or Constitutional principle, and none was suggested by the learned Additional Attorney General, which would justify the conclusion that the eight-member nominated Committee or, rather a Committee of Parliamentarians can claim such unchecked authority. Given this, the operation of the Committee cannot be imagined, in my humble opinion, without the check of judicial review.

42. This matter may also be decided by looking at the general and historical background to our Constitution and the case-law which has emerged from it. It is our review of this aspect which helps us conclusively determine the respective roles of the various constitutional institutions involved in this case - and thus decide whether, and how far, the decisions of the Committee are subject to judicial review.

43. Historically, the independence of the judiciary and the separation of powers have been held to be two of the undeniable foundational principles of our constitutional scheme. Although, these are principles which also found a place in the 1956 and 1962 Constitutions, the same have been given unparalleled importance by the framers of the, 1973 Constitution. This is demonstrated, inter alia, by an extract from the aide memoire of late Mr. Zulfiqar Ali Bhutto no less, written in defense of the Draft Constitution Bill of 1972 and presented in the process of finalizing the Constitution which was passed in 1973. It gives us a good insight into the intent of the framers. The aid memoire declares unambiguously that: "the Judiciary shall be completely independent of the executive... Indeed, for the first time substantive provision has been made in the Constitution for the separation of the Judiciary from the executive ..." (ibid). These principles received recognition in various subsequent judgments of the superior courts, amongst others, in Sharaf Faridi v. Federation of Islamic Republic (PLD 1989 Kar 404 at p. 427, 428), wherein the Court observed that the 1973 Constitution "contemplated the trichotomy of power between the three organs of the state, namely, the legislature, the executive, and the judiciary... it was envisaged that the judiciary would be independent and separate from the other organs of the state... ". Later, in the Al-Jehad Trust case, this Court dealt with these principles in detail wherein the Court observed in clear terms, "... that the Judiciary shall be independent." (Pg. 429; para 23) And again in Zafar Ali Shah's case (PLD 2000 SC 869), the Court declared: "The independence of the judiciary is a basic principle of the constitutional governance in Pakistan." More recently, in 'Chief Justice of Pakistan Iftikhar Muhammad Chaudary v. President of Pakistan through Secretary and others (PLD 2010 SC. 61): on page 173, it was held "... that [the] independence of the judiciary was a basic and a salient feature of the constitution."

44. Similarly, the Courts have repeatedly declared that this "independence of the judiciary" which the Constitution assures us, depends directly on the process of the appointment, removal and security of tenure of judges. In the Al-Jehad Trust case, this Court reiterated that "... the independence of Judiciary is inextricably linked and connected with the Constitutional process

of appointment of Judges of the superior Judiciary" (ibid 429). In the Mehram Ali case (PLD 199$ SC 1445 at page 1477), this Court further held that the terms, conditions and security of tenure of Judges is also central to the independence of the judiciary. And, recently in the Chief Justice's case, it was reaffirmed that: "security of office of judges and of its tenure was a sine qua non for the independence of judiciary..." (PLD 2010 SC 61). Indeed it is an undisputed tenet of our Constitutional scheme that in matters of appointment, security of tenure and removal of Judges the independence of the Judiciary should remain fully secured. We are in respectful agreement with these tenets as expounded in the cited precedents.

45. If we also consider the constitutional jurisprudence of this Court which relates specifically to the issue of appointment of judges, we notice that prior to the 18th amendment, it was well settled as a principle that the executive organ of the State was obliged to give reasons for its decisions if it chose to differ with the opinion of the Chief Justice of Pakistan. It was also well settled that the reasons given by the executive organ of the State were justiciable. The touchstone and scope of justiciability and the limits of the executive authority to differ from the opinion expressed by the Chief Justice of Pakistan also came to be well defined in the context of Article 193 of the Constitution which related to the appointment of Judges of the High Courts. It is, thus, beyond doubt that the constitutional principles relating to the independence of the judiciary were already well-settled at the time the 18th and the 19th amendments were tabled in Parliament; and for reasons adverted to above and to be further explained shortly, these principles remain fundamentally unaltered even after the above-mentioned amendments, notwithstanding the changes in the procedure for making judicial appointments.

46. To appreciate the continuing relevance of the above-mentioned foundational principles in the interpretation of Article 175A, we can advert to the debate on the floor of the National Assembly during the passage of the 18th Amendment. It may be clarified in passing that in our jurisprudence, it is by now well established that Parliamentary debates can also be resorted to (in certain situations) to ascertain the meaning of any legal text. Thus, in the case titled Hakim Khan and others v. Government of Pakistan and others (PLD 1992 SC 595), A and B Food Industries Limited v. Commissioner of Income Tax/Sales, Karachi (1992 SCMR 663) and Messrs Gadoon Textile Mills and others v. WAPDA and others (1997 SCMR 641), the Court looked at legislative debates to ascertain the meaning of, and to resolve the issues arising from, legal provisions being considered by the Court. Indeed, the learned Additional Attorney General also agreed, and was quite insistent, that resort should be made to such debates.

47. In the context of the present petitions, of particular significance is a speech made by Mr. Raza Rabbani, Chairman of the Special Committee of the Parliament for Constitutional Reform, given on the floor of the National Assembly. He' was quite categorical in clarifying that it was not the intention of the 18th and 19th amendments to alter the fundamental principles of the Constitution. He said: "... before I go into the details of this Article [175A], let me once again reiterate that one of the essential purposes rather two or three of the essential purposes which made up the basis for these constitutional reforms was to ensure that the fundamental principles of the Constitution are not altered. That whatever amendments are made, are made within the ambit of fundamental principles of the Constitution. And when dealing with various institutions under the Constitution, their independence is not undermined. And that their independence as ensured in the Constitution of 1973 is reassured" (Parliamentary debates).

48. This reassurance indeed reflects the intention of Parliament and gives guidance to this Court as to the aims of Parliament in bringing about reforms in the procedure for appointment of Judges. It is precisely such reassurance which gives relevance to and enables us to draw guidance from precedents, alluded to above, that expound the principle of the independence of the Judiciary and its dependent relationship with the manner of judicial appointments. In other words, insofar as "the fundamental principles of the Constitution are not altered," the precedents that explain those principles are also relevant.

49. Once this is understood, our task of interpreting the newly added provisions of the Constitution becomes relatively simple. We recognize at once that since the decisions of the Committee have a direct bearing on the practical manifestation of our foundational constitutional principles, this Court cannot possibly abdicate its jurisdiction and not examine their meaning. At the same time, however, we remain cognizant that Parliament has, while adhering to the fundamental principles of the Constitution, made changes which should be given effect in furtherance of these principles. Looked at in this light, it is clear that the essence of the amendments is to bring about changes in the process of making judicial appointments, rather than in the structure and underlying values of the Constitution such as the independence of the Judiciary and one of its supporting pillars namely, judicial appointments.

50. In order to properly interpret the provisions of Article 175A and the principles upon which this Article is based, it is also necessary to have a closer look at the historical circumstances and

the reasoning which informed the earlier precedents of this Court. This context will help us appreciate the reasons why the two new institutions the Commission and the Committee were created and what roles were envisaged for these constitutional bodies in the 18th and 19th Amendments.

51. Previously, there were a very small number of constitutional functionaries (judicial and executive) who, through a process which was not very open, made decisions relevant to the appointment of Judges of this Court and of the High Courts. Instances in our constitutional history, therefore, tended either to create a tussle between the judicial consultees and the executive functionaries of the State or, as happened in certain cases, the judicial consultees felt over-whelmed, over-awed or ignored by the executive functionaries responsible for making and notifying judicial appointments. Since this situation was not consistent with the independence of the Judiciary, the matter was agitated, among others, in the Al-Jehad case. It is through elaborate reasoning in the said case and examination of the fundamentals of our constitutional scheme, that a division of functions between the judicial consultees and the executive functionaries was delineated by this Court.

52. In brief, it was held that the judicial consultees are best suited to determine the caliber, competence, legal acumen and over-all suitability of a person for appointment to a tenured judicial office under the Constitution. The executive functionaries on the other hand were considered more suitable, for ascertaining the antecedents of judicial appointees. A reasonably clear demarcation between the different roles, respectively, of the judicial consultees and the executive functionaries of the State was thus drawn. And with the passage of time this demarcation was further refined. In the latest pre-amendment judicial pronouncement on the question of appointment of Judges, made in the case of Sindh High Court Bar Association and another v. Federation of Pakistan and others (PLD 2009 SC 879), for instance, it was held that the opinion of the Chief Justice of Pakistan in respect of the suitability of a person to be appointed to constitutional judicial office had primacy and that this opinion was subjective and not open to challenge through judicial review.

53. It is in the foregoing context that the creation of the Commission and the Committee must be understood. It is quite possible that Parliament may have concluded that the Constitution as interpreted in the foregoing precedents, had concentrated in one person viz. the Chief Justice of Pakistan, enormous discretionary powers in the matter of making judicial appointments. Such

concentration, although tempered by consultation with the Chief Justice of the High Court in which a particular appointment was to be made, could have been seen by Parliament as having the potential of leading to error of judgment or, possibly, even abuse. These, or similar concerns, can be of immense interest for the chosen representatives of the people. Such concerns legitimately and eminently fall within the domain of Parliament which may, therefore, decide to bring about a balance in the respective roles of the judicial and executive functionaries responsible for making judicial appointments, subject always to the avowed objective and the Constitutional imperative of having an independent Judiciary whose independence is to be "fully secured".

54. Therefore, apparently guided by this object, in the new dispensation, instead of one person, namely the Chief Justice, or at best two, namely the Chief Justice of Pakistan and the Chief Justice of the concerned High Court, taking a decision on the competence and suitability of a potential judicial appointee, the decision-making power has been diffused and spread over a collegium comprised of thirteen persons. A similar diffusion appears to have been intended for the executive role in judicial appointments by constituting the Parliamentary Committee. This, however, will be examined shortly.

55. In this light, if we consider further the composition of the Commission, it will lead us closer to understanding the role envisaged for it. It is clear that each member of the Commission is directly and substantially connected with the Courts in one way or another. The members of the Commission thus have the occasion of assessing first hand, the legal abilities and performance of persons who potentially could be appointed as Judges. In the ex Officio appointments of the Minister of Law and Parliamentary Affairs and of the Attorney General for Pakistan, the-Judicial Commission now also has the additional ability to make an assessment as to the antecedents of a nominee through access to the information and executive resources of the State which otherwise, may not be available te5the other members of the Judicial Commission. What is also worth noting is that barring the one former Judge of this Court and the advocates who are members of the Commission, all others are ex Officio Constitutional functionaries making the Commission a continuous body with changing membership, the preponderant majority whereof, being ex Officio, is not dependent on any separate process for their own appointment.

56. This composition of the Commission immediately highlights two things. Firstly, that the expertise and core competence of the members of the Commission will facilitate the

identification and nomination of appointees to judicial office based on caliber, competence, legal acumen, antecedents and over-all suitability of a person for appointment as a Judge. Secondly, the composition of the Commission will ensure diverse inputs on account of the diversity and the continuous changing nature of its membership, thus tending to make the Commission's nominations more objective and not dependent on the personal opinion of one or, at best, two individuals. It does not take a great deal of imagination or a leap of logic to conclude that the role (as defined by precedent) which was assigned previously to the judicial consultees is now to be performed by the Commission as a collegiate body.

57. We can now come to the erstwhile role of the other functionaries involved in the appointment process. It will be seen that in the original Articles 177 and 193, a Judge of the Supreme Court and Judges of a High Courts were to be appointed by the President after consultation with the Chief Justice of Pakistan and other consultees mentioned in Article 177 and Article 193 (1) respectively. These provisions, in relevant part, have been replaced by Articles 177 (1) and 193 (1), as amended, which stipulate, inter alia, that Judges of the Supreme Court and the High Courts shall now be appointed by the President in accordance with Article 175A. When clause (1) of Article 175A is considered, a bare reading of the same shows that the Commission has been created for the appointment of Judges of the Constitutional Courts. Thus, while the President previously made the appointments on the advice of the Prime Minister, both have now been left with nominal ministerial roles and their powers, in the words of Mr. Raza Rabbani, "have been taken away". The Prime Minister is now obliged to simply forward the confirmation made or deemed to have been made by the Committee to the President and the President equally is obliged to make the appointment on the basis of such confirmation. The Prime Minister and President, under the new constitutional dispensation, thus have no power or authority to differ with the decision of the Parliamentary Committee. The role which they were performing in the previous legal setup, as examined above, is now, logically, to be performed by the Committee. It is, therefore, evident that the purpose the raison d'etre of the Commission and the Committee is the appointment of Judges albeit in accordance with the procedure laid down in Article 175A.

58. Given this dispensation and the above referred historical context, the Committee cannot (without eroding judicial, independence) be seen as a superior body sitting in appeal over the recommendations of the Commission with the ability to set aside or reverse the well considered opinion of the members of the Commission. The fact that Parliament was fully aware of the

state of the law, as judicially interpreted, and yet did not define or demarcate the respective roles inter se of the Commission and the Committee, provides very strong manifestation of the intention of Parliament "that the fundamental principles of the Constitution are not altered". The distinction between the legal acumen and suitability of an appointee, and his antecedents is so well recognized in our constitutional jurisprudence that it is not possible to assume that it was not in the mind of Parliament when it decided to amend the Constitution. From the absence of role-definition in Article 175A, in respect of the Commission and Committee, it can safely be inferred that Parliament intended to preserve the delineation of powers in the previous dispensation, but vest the roles in more diffused bodies than was previously the case.

59. In view of the foregoing discussion, we may conclude that it is the constitutional mandate of this Court to exercise judicial review over the decisions of the Committee, which, after all, are executive decisions that have great bearing on the independence of the judiciary and the separation of powers between the different State organs.

60. Before moving on to the next section of this opinion, we may also address a number of arguments made on the issue of justiciability by the learned Additional Attorney General. He argued, firstly, that the question of justiciability of the decisions of the Committee had yet to be decided by the seventeen-member larger Bench: of the Court in the petitions filed to challenge the wires of the 18th Amendment. On this basis, he submitted that this Bench should await the decision of the larger Bench and, in the meanwhile, put the adjudication of these petitions on hold. The learned Additional Attorney General was of the view that the present petitions were a back-door attempt to challenge the role of the Committee and to undermine such role even before the full Court has had the opportunity of deciding the petitions challenging the 18th Amendment. We have considered these submissions and reiterate that the scope of these petitions is materially different from the scope of the petitions being heard by the larger Bench. We are clear, as stated earlier, that the present petitions assume the validity of the 18th and 19th amendments. The petitioners only seek judicial interpretation of these amendments for the purpose of their challenge to the two aforementioned decisions taken by the Committee. Put simply, while the present petitions seek judicial review of decisions of an executive body, purported to be taken under Article 175A of the Constitution, the petitions before the larger Bench challenge the very authority of Parliament to make the amendments challenged in such petitions. It is, therefore, evident that any adjudication in these petitions will relate only to the

impugned decisions of the Committee and not to the validity of the amendments in the Constitution.

61. Mr. K. K. Agha, the learned Additional Advocate General then argued that public airing of, and debate on, the reasons given by the Committee for rejecting a nomination would undermine the sanctity of the judicial office. Also, if the decisions of the Committee were set aside and the Judges concerned were called upon to perform their judicial functions, they would be confronted with an unsavory working environment; always haunted by the cloud of allegations which found favour with the Committee. According to the learned Additional Attorney General, public examination of such reasons would further create friction between the Chief Justice of the High Court and the Judges concerned, which would not be conducive to the effective and independent administration of justice. Moreso, such an environment would generate, amongst the litigating public, a Mack of confidence in the fairness and competence of the concerned Judges. These submissions raise issues of propriety rather than legality and appear to have been made in support of the plea that the Court should exercise restraint and decline to exercise jurisdiction, even if it decides it has the power to review the decisions of the Committee.

62. There may be some justification for the foregoing submissions. We are, however, cognizant, as was the learned Additional Attorney General himself, that during the period of transition from the previous to the present system of judicial appointments, some issues will surely arise. We are confident, though, that very soon conventions and precedents will develop which will evolve into a modus vivendi et operandi and will smoothen the working of the Commission and the Committee in the roles envisaged for the two bodies under Article 175A of the Constitution. For now, these concerns expressed by Mr. Agha, even if not exaggerated, are more than counter-balanced by the ideal, espoused by the Constitution, of an independent judiciary whose independence is to be fully secured.

63. Lastly, we would like to address the submission made on behalf of the Federation that Parliament represented the will of the people and such will had to be respected. It goes without saying that this Court, as a matter of Constitutional propriety makes every effort to defer to the legislative and constitutionally mandated actions of Parliament and endeavors to save and uphold such actions. This principal of deference is generally adhered to in recognition of the democratic ethos of our Constitution and to acknowledge that Parliament as a whole is

comprised of "the chosen representatives of the people". Notwithstanding this legal principle, Courts undeniably have and do exercise the power of judicial review to strike down legislation and other Parliamentary action, wherever required in terms of the Constitution. Therefore, as noted earlier, these petitions should not be seen as a challenge to Parliament's authority or to it's representative status. Our task is much simpler. We are engaged merely in ascertaining the intent of the Constitution and enforcing it, under the well established rules and conventions of judicial review. We may add that deference to Parliament does not extend to bodies having a separate status even where such bodies are comprised of persons who may be members of Parliament. To illustrate this point, reference may be made to Article 91 of the Constitution. It provides inter alia, that "[t]here shall be a Cabinet of Ministers, with the Prime Minister as its head, to aid and advise the President in the exercise of his functions". In our parliamentary system of government, the Prime Minister and other ministers in the Cabinet are all members of Parliament, yet the Cabinet cannot be equated with Parliament or be accorded the same status as Parliament. The Committee likewise, though , comprised" of members of Parliament, is not to be equated with Parliament or, as earlier discussed, even with a parliamentary committee elected by Parliament under the Senate Rules or the Assembly Rules.

GROUNDS OF REVIEW AND CONCLUSIONS

64. Having determined that the decisions of the Committee are justiciable and subject to this Court's power of judicial review, we need to determine the rules which should define the exercise of such power and the sources from which these rules are to be derived. The foremost source must be the Constitution itself which has created this Court as well as the two constitutional bodies viz. the Commission and the Committee. The basis of judicial review in these cases thus must be firmly anchored in the Constitution. Article 5(2) of the Constitution declares that "obedience to the Constitution and, law is the inviolable obligation of every citizen ..." This means that the Committee too is obliged, to ensure that its decisions are in accordance with the law and the Constitution. Whether this obligation has been duly discharged would be a matter reviewable by this Court. The touchstone for such review is conformity with the Constitution and the law. This is in line with Article 184(3) read together with Article 199(l)(a)(ii), which confer upon this Court the authority to make, in appropriate cases, an order declaring that "any act done ... in connection with the affairs of the Federation ... has been done without lawful authority" and is, therefore, "of no legal effect.'' It follows that what the Court needs to determine presently is whether the impugned decisions of the Committee conform

with the requirements of the Constitution and the law, and whether such decisions have been taken while remaining within lawful authority. The grounds upon which this Court can adjudge this issue flow directly from these constitutional provisions themselves; they have also been elaborated upon in a number of precedents.

65. A classical analysis of the grounds on which administrative decisions are subjected to judicial review was presented in an English case, Council of Civil Service Union v. Minister, by Lord Diplock. This analysis has also been frequently adverted to in our jurisprudence on the judicial review of executive action. A recent instance can be found in the opinion of Ch. Ijaz Ahmad; J. in the case of the Chief Justice of Pakistan, supra at pages 232 to 238. The analysis in the case of the Civil Service Union supra is equally applicable to the circumstances of these petitions. Lord Diplock stated three grounds for exercise of the Court's power of judicial review. These are `illegality', `irrationality' and `procedural impropriety.' Council of Civil Service Union v. Minister ([1984] 3 All ER 935, 950-952) What is important for deciding the present petitions is the scope and nature of `illegality', which, in the language of the aforesaid case, is measured on the consideration" ... that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par-excellence a justiciable question to be decided, in the event of p dispute, by those persons the Judges by whom judicial power of the State is exercisable" (ibid). Thus any decision based on an incorrect understanding of the law that regulates the decision-maker's decision-making power, would be an illegal decision, and it could be corrected through judicial review. What must be emphasized here is that in disputed cases, it is for the Courts to definitively interpret the law and thereafter to test the administrative decision on the touchstone of the law so interpreted.

66. In the present case, the Committee has taken a decision in accordance with its own understanding of Article 175A. We need to point out what the understanding adopted was, and then determine whether it was the correct one. To answer this question, we now take a detailed look at the facts of the Committee's decision, and the run up to it.

67. It is apparent from the record that on 22-1-2011, when the Commission assembled for the purpose of making nominations/appointments to the Lahore High Court, all thirteen of its members were present-. They had a meeting where all factors relevant for such appointments were reviewed. This is evident from the letter which the Secretary of the Commission sent to the Secretary of the Committee, dated 22-1-2011. In relation to nominations to the Lahore High

Court, it said "the Commission had in depth discussions about [the] professional caliber, legal acumen, judicial skills, quality/quantum of judgments, commitment/devotion to duty, efforts made for expeditious disposal of cases, number of reserved/pending judgments and also examined [the] antecedents of 24 Judges nominated by Judicial Commission for appointment as Judges of the Lahore High Court". It is not necessary to reproduce the names of all 24 Judges nominated for appointment by the Commission. It will suffice for the present to note that the Commission performed its functions of nomination and appointment of the aforesaid Judges, in accordance with the provisions set out in clauses (1) to (8) of Article 175A of the Constitution. A similar exercise was undertaken by the Commission in respect of the nominations made for the Sindh High Court as is clear from the letter of the Secretary of the Commission dated 19-2-2011 written to the Secretary of the Committee, which letter is along the lines of the letter dated 22-1-2011, referred to above.

68. The Committee, after receiving the nominations including the recommendations for renewal of tenure of the above mentioned six Judges, took the decision not to confirm their nominations. It is important to note that the Committee chose to disregard the unanimous nominations made by the Judicial Commission. For this, it appears to have relied only on the contents of brief pro formas which had been filled in by the Chief Justices of the Lahore and Sindh High Courts respectively. For reasons which are examined below, it is in our opinion, of the greatest relevance to consider the significance of such pro formas. These pro formas appear to have been designed by the Commission for the purpose of obtaining particulars and general information about the persons being considered for appointment as Judges. The material column in the pro forma, for the purpose of the present petitions, relates to the evaluation made by the Chief Justice of the concerned High Court in respect of a potential nominee, based on criteria such as integrity, knowledge of laws, performance etc. The pro forma also contains the opinion of the Chief Justice of the concerned High Court as to whether or not a person being considered should be recommended to judicial office. In the case of the four Hon'ble Additional Judges of the Lahore High Court, the recommendation made in the pro forma was that their tenure be renewed for a period of one year. However, in respect of the two Hon'ble Additional Judges of the Sindh High Court, the opinion stated by the Hon'ble Chief Justice was that their tenure should not be extended. Nevertheless, after deliberation by the Judicial Commission as a collegiate constitutional body, even the Hon'ble Chief Justice of the Sindh High Court agreed that the two Hon'ble Additional Judges of his Court should be recommended for renewal of their respective tenures for a further period of one year. The Committee chose, nonetheless, to

turn these nominations down, relying solely on the earlier views expressed by the Chief Justices of the High Courts.

69. From this review of the facts, it seems clear that the Committee took Article 175A to mean that it is a constitutional body sitting in appeal over the decisions of the Commission. This, as we have shown earlier, is far from being the case. Such an interpretation is borne out neither by the text of Article 175A nor by its context. Earlier in this opinion we have reviewed the foundational principles of our Constitution, namely independence of the judiciary and separation of powers, in the light of which Article 175A must be interpreted. We have also reviewed the historical evolution of this Article and the legislative intent behind it, which demonstrates that while power has been devolved from persons to collegial institutions, the essential demarcation of duties between judicial consultees and executive functionaries, chalked out by precedent; has remained largely intact. All constitutional provisions have to be interpreted accordingly. Justice Fazal Karim, a former .Judge of this Court can today be counted amongst the foremost scholars and academics on constitutional law. In his seminal book "Judicial Review of Public Actions", he has examined a number of precedents from our jurisdiction to support his comment that "the independence of Judiciary is now not merely one of the general principles of the Constitution of Pakistan; it is part of its substantive provisions and the relevant constitutional provisions must be construed accordingly to ensure the independence of the Judiciary. The provisions of Part-VII of the Constitution must be taken as giving efect to ... that general principle" (Karim, Fazal "Judicial Review of Public Actions" Vol. 1, p.110). Our review of these factors, which collectively provide the context in which to read Article 175A, allows us to conclusively arrive at a more organic interpretation of the said Article. And, this interpretation does not support the expansive manner in which the Committee has construed its own power, nor does it support the dismissive- way in which the Judicial Commission's unanimous recommendations have been treated. The Committee's decision,' based on an incorrect understanding of the constitutional provision regulating its decision-making powers, travelled much beyond its lawful authority. On this ground alone, it may be held that the decisions of the Committee impugned before us, were taken without lawful authority and are thus unconstitutional.

70. It should be clear from the earlier discussion and established precedent that, to ensure the independence of the Judiciary, it is important that the process of making judicial appointments remains independent of the executive and the legislature, except for suchexecutive inputs in

decision-making which can ensure and advance the independence of the Judiciary. In the case at hand, the Committee has not provided any such input.

71. It also needs to be reiterated that the thirteen members of the Commission are law-knowing and law related persons who can make an objective evaluation of the suitability of a nominee for judicial office. From members of the Committee, it is not expected that they will have first hand information about a nominee or that they will have the same level of expertise as the Commission, to evaluate the suitability of a nominee for appointment to high judicial office. The Committee, however, is not a meaningless or redundant body. It has the ability to add value to the process of making judicial appointments by taking into account information which is different from and may not have been available with the Commission.

72. Even the learned Additional Attorney General contended that the two bodies namely, the Commission and the Committee were coordinate bodies, neither of which was subordinate to the other. If, however, it is conceded either that the decisions of the Committee are not justiciable or that it has the power to review and reverse the findings of the Commission, an anomalous and even absurd situation can result. It would not be possible or justifiable (without adversely effecting the independence of the Judiciary) to interpret Article 175A in a manner which grants a virtual veto to the Committee enabling it to reverse the recommendations of the Commission, for considerations which have already received the attention of the Commission in its deliberations. This is so because of the composition earlier discussed, of the two bodies. It cannot be seen as the intention of the Constitution as amended, that the thirteen members of the Commission who amongst them include the five senior-most members of the Judiciary in the country together with a former Judge of this Court and the Chief Justice of the High Court concerned, should be trumped in their views about the competence and suitability of a nominee, by six members of Parliament who, it may be stated with great respect, are not supposed to be equipped with the core ability for evaluating, inter alia, legal acumen and competence.

73. The two constitutional bodies also cannot be seen as adversaries serving antagonistic and conflicting ends. We are in agreement with the learned Additional Attorney General and learned counsel for the petitioners that the object of both bodies is to ensure the selection and appointment of the most suitable persons as Judges of the High Court, which, in turn, is essential to secure fully the independence of the Judiciary.

74. With the above considerations in mind we also need to avoid giving overly broad or sweeping statements on Article 175A as amended by the 19th amendment. We are not here engaged in an academic exercise or in a discourse to expound general constitutional principles of political philosophy. Our job here is to determine the fate of the petitionsbefore us. And the outcome of these petitions is determined, ultimately, by their own facts and circumstances.

75. There is another way in which the Parliamentary Committee's decision can be shown to be based on an erroneous understanding of the law and also violative of the spirit of the Constitution, as amended. One of the fundamental aspects of the 18th and 19th constitutional amendments, and the changes intended to be brought about thereby, was to do away with the subjective opinions of one or two persons. This object was to be achieved through the creation of a thirteen-member collegium which could, through consideration of varying opinions, make a collective decision by majority of its membership. In the present case, the collegium which is the Commission has, after deliberation, made nominations which are unanimous and include also the concurrence therein of the respective Chief Justices of the Lahore and. Sindh High Courts.

76. In the foregoing circumstances, it would negate the very purpose of the 18th and 19th amendments, if the Committee were to have the power to rely upon the opinion of just one member of the Commission, and that too, expressed prior to collective deliberations, to nullify the ultimate collective views of the Commission. The purpose of diffusing the decision-making process and spreading it over a collegium comprising of thirteen persons was to ensure that an objective and balanced opinion emerges from the deliberations of the Commission. This process was meant to ensure, to a great degree, objectivity in the nominations made after discussion and inputs from all members of the Commission.

77. The learned Additional Attorney General wished to emphasize the fact that the Chief Justice of the High Court was most suitable and was eminently qualified to make an evaluation as to competence etc. of a nominee. He seemed to suggest that since the Parliamentary Committee had relied on the views expressed by the Chief Justices of the respective High Courts to which the concerned judges were nominated, this lent weight to the Committee's decision. This is an argument which is flawed on three counts.

78. Firstly, it is relevant to note that the pro forma filled in by the Chief Justices of the two High Courts was at best a mechanism for tabling the particulars of a nominee which would enable the Commission (acting collectively) to have a meaningful and purposive discussion leading to an informed decision about recommending such nominee. As stated above, it is not necessary in the facts of the present petitions to embark on a scrutiny of the evaluations of the Hon'ble Chief Justices, made in respect of the six Hon'ble Judges whose nominations are in question, because after considering each nomination, the Commission (including the Chief Justices of the two High Courts), has unanimously made its recommendation that their tenures be renewed. The pre-deliberation evaluations of the Chief Justices of the Sindh High Court and the Lahore High Court do not now need to be considered because, as a matter of law, such evaluations disappeared when they merged into the final recommendation of the Commission made by a majority of its members and which, in the present case, has been made unanimously.

79. Secondly, this argument does not take into account the express wording of Article 175A which mandates a collective decision of the Judicial Commission and leaves no room for individual opinions of any one member of the Judicial Commission. It should be clear by now that the Constitution, in its amended form, recognizes only the collective decision of the Commission. The Constitution does not accord any primacy or special weightage to the opinion of any one member of the Judicial Commission. This is particularly so when such opinion is a purely individual opinion without benefit of the views of other members of the Judicial Commission. If anything the amendments in the Constitution appear consciously and deliberately to have eliminated reliance on the views of a single person. Weightage, if any, which may attach to the opinions of the individual members of the Judicial Commission, is a matter for consideration by the Judicial Commission alone because the Constitution as amended, does not recognize individual opinions as to the competence, antecedents or over-all suitability of a nominee.

80. Thirdly, the argument does not take into account the larger ramifications of such a ruling for the future of our constitutional system. If it is held today that the Parliamentary Committee may give primacy to the opinion expressed by the High Court Chief Justice sitting in the Commission, tomorrow, there would be little justification left for objecting, if the Parliamentary Committee relied on the individual and varying opinions of any one of the thirteen members of the Judicial Commission. So, if things were left to proceed in that direction, even a 12-1 majority decision of the Judicial Commission could easily be negated by the Parliamentary Committee,

relying on the one note of dissent that they find therein. This would effectively grant the Parliamentary Committee a veto in the appointment of judges a situation contemplated neither by the Constitution nor palatable to any of the organs of the State, including the Parliament itself.

81. In the end, to facilitate understanding, we may recapitulate the key arguments, elaborated in this opinion, which bring us to reaffirm the short order pronounced earlier. First, we have held that these petitions are maintainable under Article 184(3) since they do involve issues of public importance and are related to the enforcement of fundamental rights. Next, we have laid out the principles which guide us in our task of constitutional interpretation. After this, by applying these principles while interpreting Article 175A, and by viewing it in the context of its historical genesis and the foundational principles of our Constitution, we arrive at a correct and organic interpretation of the said Article. This has allowed us to determine that the decisions of the Parliamentary Committee are subject to judicial review in this Court; and it has also helped us better appreciate the relative roles assigned by the Constitution, as amended, to the various institutions and functionaries involved in the process of appointment of judges. Finally, the facts of the present petitions have been scrutinized using the well-understood principles of judicial review. This scrutiny reveals that the impugned decisions of the Committee are based on an erroneous understanding of t the law and the Constitution; since these decisions were taken without lawful authority, they are of no legal effect.

82. While concluding this opinion, I may add that there is nothing unusual or exceptional about differences as to constitutional questions cropping up between constitutional bodies or State functionaies in a democratic dispensation. Such differences may arise particularly when new provisions are incorporated in the Constitution. However, as nations mature and polities evolve, their, maturity is reflected in the manner in which such differences are resolved in accordance with the governing compact, which is the Constitution. The differences of opinion between the Commission and the Committee, in this context, cannot be' seen as adversarial turf-wars between the two bodies, or as matters of prestige. Both bodies, as noted earlier, have the common aim of ensuring that "... the will of the People of Pakistan to establish an order ... [w]herein the independence of the judiciary is fully secured,"which is an objective set out in the Constitution itself, is accepted as a command of the People and is implemented, both in letter and in spirit with due humility and sincerity.

83. Lastly, I would like to refer to Articles 28 and 251 of the Constitution. These provisions highlight the Constitutional imperative of promoting languages other than English. In order to fulfil this need, I have made a humble attempt (as Annexed, that a gist of this opinion is (without need for intermediaries) made accessible to a wider section of those who are unable to understand the language of this opinion.

Sd/-
Jawwad S. Khawaja, J

(Limitation of Amendment Procedures and the Constituent Power, The India Yearbook of International Affairs, 1967, p. 375)

(Tribe, Lawrence H., Dorf, Micheal C., "Chapter 1: How not to read the Constitution" or On reading the Constitution, Harvard University Press, Cambridge, 1991)

7.3 P L D 2013 SC 279

Present: Khilji Arif Hussain, Tariq Parvez, Ejaz Afzal Khan, Gulzar Ahmed and Sh. Azmat Saeed, JJ

REFERENCE NO.01 OF 2012

[Reference by the President of Pakistan under Article 186 of the Constitution of Islamic Republic of Pakistan, 1973]

Reference No.1 of 2012, heard on 14th December, 2012 (Reserved).

Per Khilji Arif Hussain, J; Tariq Parvez, Gulzar Ahmed and Sh. Azmat Saeed, JJ, agreeing, Ejaz Afzal Khan, J. differing on certain point.

(a) Constitution of Pakistan---

----Art. 175A---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Suitability of a candidate, determination of---Judicial Commission, powers of---Scope---Suitability of a candidate regarding his ability, legal competency and integrity, was to be determined by the Judicial Commission.

(b) Constitution of Pakistan---

----Art. 175A---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Suitability of a candidate, determination of---Role of most senior Judges of the Supreme Court/High Courts as members of the Judicial Commission---Scope---For purposes of selecting the best person as a Judge of the superior Courts, the most senior Judges of the Supreme Court and the High Courts, being members of the Judicial Commission, having one vote each, were supposed to form their opinions independently about the ability, legal competency, integrity and administrative skill of the person, whose name was initiated by the Chief Justice of Pakistan or by the Chief Justice of the High Court.

(c) Constitution of Pakistan---

----Arts. 213(1) & (2A) & 218 (2)(b)---Appointment of Chief Election Commissioner and members of the Election Commission---Discretion of the President of Pakistan---Scope---Although the President had to appoint the Chief Election Commissioner and members of the Election Commission, (but) he had no discretion except to appoint the "person" whose name was confirmed by the Parliamentary Committee.

(d) Constitution of Pakistan---

----Art. 224(1A)---Appointment of care-taker Prime Minister---Discretion of the President of Pakistan---Scope---Although the President had to appoint the care-taker Prime Minister but he was only a symbolic appointing authority with no discretion, and had to appoint the person nominated by the outgoing Prime Minister and the Leader of the Opposition as care-taker Prime Minister.

(e) Constitution of Pakistan---

----Art. 242 (1A)---Chairman of Federal Public Service Commission, appointment of---President of Pakistan to act on advice of Prime Minister---Scope---For purposes of appointment of Chairman of Federal Public Service Commission, the President had to act on the advice of Prime Minister and he might require the Prime Minister to re-consider such advice.

(f) Constitution of Pakistan---

----Art. 243(4)---Chiefs of the Armed Forces, appointment of---President of Pakistan to act on advice of Prime Minister---Scope---For purposes of appointment of Chiefs of the Armed Forces, the President had to act on the advice of Prime Minister and he might require the Prime Minister to re-consider such advice.

(g) Constitution of Pakistan---

----Art. 175A---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Discretion of the President of Pakistan---Scope---After the nomination of a name for appointment by the Parliamentary Committee, the President had no discretion except to appoint the nominee.

(h) Constitution of Pakistan---

----Art. 175A---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Advice of Prime Minister--- Scope---For appointment of Judges in the superior Courts, the advice of the Prime minister was not required.

Muhammad Younas Tahir and another v. Shaukat Aziz Advocate, Muzaffarabad and others PLD 2010 SC(AJK) 42 ref.

(i) Constitution of Pakistan---

----Arts. 213 & 218---Appointment of Chief Election Commissioner and members of the Election Commission---Advice of Prime Minister---Scope---For appointment of Chief Election Commissioner and members of the Election Commission, the advice of the Prime Minister was not required.

(j) Interpretation of Constitution---

----Principles---Constitution being a living organ for all times was to be interpreted dynamically, as a whole, to give harmonious meaning to every Article of the Constitution---Constitution being an organic document had been conceived in a manner so as to apply to the situations and conditions which might arise in the future, therefore the words and expressions used in the Constitution, in such sense, had no fixed meaning and must receiveinterpretation based on the experience of the people in the course of working of the Constitution.

(k) Interpretation of statutes---

----Function of court---Scope---Function of the court, while interpreting the statute, was to discover the true legislative intent, and after having done so, the court must strive to interpret

the statute as to promote/advance the object and purpose of the enactment--- For such purpose, where necessary, the court might even depart from the rule that plain words should be interpreted according to their plain meaning.

(l) Words and phrases---

----"Forward"---Meaning.

Concise Oxford Dictionary (9th Edn.) ref.

(m) Constitution of Pakistan---

----Arts. 175A (13) & 48---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Role of Prime Minister---Scope---When Parliamentary Committee confirmed the name of a nominee of the Judicial Commission or the same was deemed to have been confirmed by it, the Prime Minister was left with no discretion but to forward the same to the President of Pakistan for appointment---Prime Minister after confirmation of the name of the nominee by the Parliamentary Committee was not required to advise the President, under Art.48 of the Constitution or vice versa since no advice was given by the Prime Minister to return the same for reconsideration.

Munir Hussain Bhatti v. Federation of Pakistan PLD 2011 SC 407 and Al-Jehad Trust v. Federation of Pakistan PLD 1997 SC 84 ref.

(n) Constitution of Pakistan---

----Arts. 175A---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Process---Role of the President and Prime Minister of Pakistan---Scope---Role of the Prime Minister and the President in the appointment of Judges of the superior Courts was nothing but ministerial, and after receiving the nominations from the Parliamentary Committee, the Prime Minister and the President had no discretion but to forward/appoint the nominees.

(o) Constitution of Pakistan---

----Art. 192(1)---Inter se seniority of Judges of the High Court appointed/elevated on the same date/day---Determination---Recognized principle for determining seniority amongst the Judges of High Courts appointed on the same day irrespective of their appointments from subordinate Judiciary or Bars, was the seniority in age.

(p) Constitution of Pakistan---

----Art. 192(1)---Inter se seniority of Judges of the High Court---Determination---Notification of appointment of Judges by the Law Secretary---Significance---Law Secretary who issued the notifications of appointment (of Judges) had no lawful authority to determine the seniority amongst Judges of the High Court nor did the serial-wise appearance of names in the notification have any nexus with the determination of seniority.

Federal Ministry of Justice and Parliamentary Affairs' Letter No.F.12(5)/86-AII, dated 30-4-1987 ref.

(q) Constitution of Pakistan---

----Arts. 176, 192(1) & 175(3)---Inter se seniority of Judges of superior Courts---Determination---President of Pakistan, power of---Scope---Neither the Constitution nor any law authorized the President of Pakistan, who was a symbolic appointing authority, to decide the inter se seniority of Judges, which even otherwise was not only against the principles of independence of Judiciary but also violated Art.175(3) of the Constitution, which provided for separation of the Judiciary from the Executive.

(r) Constitution of Pakistan---

----Arts. 175A(1), 176 & 192(1)---Inter se seniority of Judges of superior Courts---Determination---Judicial Commission, authority of---Scope---Judicial Commission wascreated by the Constitution and could not be given the status of a court to decide the issue of inter se seniority between two persons---Judicial Commission had no mandate to decide the inter se seniority of Judges.

Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan PLD 2010 SC 61 ref.

(s) Constitution of Pakistan---

----Arts. 175A, 192(1), 196 & 186---Judicial Commission of Pakistan Rules, 2010, R.3(1)---Reference to Supreme Court under Art.186 of the Constitution by the President of Pakistan---Appointment of Chief Justice of the High Court---Legitimate expectation of the most senior Judge of a High Court to be appointed as Chief Justice of that High Court---Scope---Judicial Commission nominating a Judge of Islamabad High Court, who was not the most senior Judge of that Court , as Chief Justice of Islamabad High Court---Legality---Question of suitability for appointment of the Chief Justice of the High Court was to be decided by the Judicial Commission---Neither Art.175A(5) nor Art.196 of the Constitution made it mandatory that in the case of a vacancy, the most senior Judge of the High Court would be appointed as Chief Justice of that High Court---Articles 175A(3) & (5) of the Constitution read with R.3 of the Judicial Commission of Pakistan Rules, 2010indicated that instead of making it mandatory to appoint the most senior Judge as Chief Justice of the High Court, the matter was left to the discretion of the Chief Justice of Pakistan to initiate the name for Chief Justice of the High Court and the Commission by majority of its total membership nominated one person for the said post---Although the practice of appointment of a Judge, other than the most senior Judge, as Chief Justice of the High Court was against the convention and might not be in the interest of the judiciary, however, such an appointment could not be termed as violative of the Constitution---Question of nomination by the Judicial Commission and confirmation by the Parliamentary Committee of a Judge, who was not the most senior Judge, as Chief Justice of the High Court, could not be answered in advisory jurisdiction of the Supreme Court and might be adjudicated upon in other jurisdiction---Reference under Art.186 of the Constitution was answered accordingly.

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324; Munir Hussain Bhatti v. Federation of Pakistan PLD 2011 SC 407; Budget Reference: PLD 1989 SC 85; Ghulam Hyder Lakho v. Federation of Pakistan PLD 2000 SC 179; Supreme Court Bar Association v. Federation of Pakistan PLD 2002 SC 939; AIR 1994 SC 268 and Tariq Aziz-ud-Din: in re 2010 SCMR 1301 ref.

(t) Interpretation of statutes---

----Words/phrases in a statute, interpretation of---Scope---While interpreting statutes, it was presumed that the Legislature choose its words carefully, therefore, if a word or phrase had been added somewhere, such addition was not to be deemed redundant; conversely, if a word or phrase had been left out somewhere, such omission was not be deemed inconsequential---Change in language (of a statute) implied a change in the intent.

Maxwell on the Interpretation of Statutes, 11th Edn. 1962, p.311 ref.

(u) Constitution of Pakistan---

----Arts. 175A(8) & 186---Reference to Supreme Court under Art.186 of the Constitution by the President of Pakistan---Judicial Commission, composition of---Judicial Commission nominating names for appointment of Judges of the Islamabad High Court in the absence of the most senior Judge of Islamabad High Court in the proceedings of the Commission---Legality---Contentions on behalf of Referring Authority (the President) were that Judge of Islamabad High Court who sat, voted and took part in the proceedings of the Judicial Commission was not the most senior Judge of Islamabad High Court; that Judicial Commission could not be said to have been properly constituted in the absence of the most senior Judge of Islamabad High Court, therefore, nominations made by the Judicial Commission would not have any legal or constitutional sanctity, notwithstanding that they had been confirmed by the Parliamentary Committee, sent to the Prime Minister and then forwarded to the President---Validity---Judicial Commission after deliberations nominated names of Judges by majority of 7 to 2---Even if it was accepted that Judge of Islamabad High Court who attended the meeting of the Judicial Commission was not the most senior Judge of the said Court, it was established from the record that on the date when the meeting of the Commission was called, the most senior Judge of Islamabad High Court was on ex-Pakistan leave and Judge who attended the proceedings of the Commission was the most senior Judge available---Term "most senior Judge" had not been defined by the Constitution---Even if it was accepted that the Judge of Islamabad High Court who attended the meeting of the Judicial Commission, was not eligible to sit in the meeting, Art.175A(8) of the Constitution stipulated that the decision of the nomination of a person for any vacancy of a Judge of the superior Court was to be taken by the Commission, by majority of its total members and as such, attendance of said Judge in the meeting did not vitiate the entire proceedings or made the nominations invalid---Proceedings of the Judicial Commission,

whereby nominations were made for appointment as Judges of Islamabad High Court, were not vitiated because of the attendance of a Judge who was not the most senior Judge of Islamabad High Court---Reference under Art.186 of the Constitution was answered accordingly.

Human Rights Cases Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759); Federation of Pakistan v. Aftab Ahmad Khan Sherpao PLD 1992 SC 723; Regina v. Bow Street Metropolitan Stipendiary Magistrate and others Ex parte Pinochet Ugarte (No.2) [1999] 1 AU E.R. 577, [1999] 2 WLR 272; Federation of Pakistan v. Sindh High Court Bar Association PLD 2012 SC 1067; Sindh High Court Bar Association v. Federation of Pakistan PLD 2009 SC 879; Managing Director SSGC Ltd. v. Ghulam Abbas PLD 2003 SC 724 and Anderson v. City of Persons (496, P.2d 1333-Kan: SC 1972 ref.

Ghulam Hyder Lakho v. Federation of Pakistan PLD 2000 SC 179 and Muhammad Saleem and 12 others v. Secretary Prosecution, Government of Punjab Lahore and another 2010 PLC (C.S.) 1 rel.

(v) Constitution of Pakistan---

----Arts. 175A & 186---Reference to Supreme Court under Art.186 of the Constitution by the President of Pakistan---Appointment of Judges of superior Courts---Power of Supreme Court to review role and parameters of Judicial Commission and Parliamentary Committee in its advisory jurisdiction---Scope---Roles of Parliamentary Committee and Judicial Commission as well as the parameters before the Committee for confirmation of a nomination by the Commission in terms of Art.175A(12) of the Constitution could not be reviewed by the Supreme Court in its advisory jurisdiction---Reference under Art.186 of the Constitution was answered accordingly.

Cauvery Water Disputes Tribunal AIR 1992 SC 522 ref.

(w) Constitution of Pakistan---

----Art. 175A---Judicial Commission of Pakistan Rules, 2010, R.3---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Power of the Chief Justice of the Court to initiate nomination for appointment against anticipated or actual vacancy---Scope---No

member of the Judicial Commission, except the Chief Justice of Pakistan or the Chief Justice of the Federal Shariat Court or of a High Court, could initiate the nomination for appointment against anticipated or actual vacancy therein---Chief Justice of Pakistan or the Chief Justice of the concerned High Court was the best person to practically/technically evaluate a person's caliber to be nominated as a Judge, including his legal competence and integrity---Except initiating the nomination of a person, the Chief Justice of Pakistan or the Chief Justice of the High Court had no other special role in the appointment process and was just like any other member of the Commission and merely because he initiated the nomination, the same itself could not be recommended, but was to be considered as an act of mere procedure---Commission after deliberations and technical/professional evaluation of a person's caliber as a Judge, nominated the name of such person to be appointed as Judge of the superior Courts by majority of its total membership.

Sindh High Court Bar Association, Sukkur through President v. Pakistan through Secretary, Ministry of Law, Parliamentary Affairs and Justice, Islamabad and another PLD 2012 Sindh 531 ref.

(x) Constitution of Pakistan---

----Art. 175A---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Nominations made by the Judicial Commission---Discretion of the President of Pakistan to send name of a nominee for reconsideration---Scope---In terms of Art.175A of the Constitution, the President of Pakistan had no discretion to send the name of nominee of the Judicial Commission, who was confirmed by the Parliamentary Committee, for reconsideration.

Per Ejaz Afzal Khan, J.

(y) Constitution of Pakistan---

----Arts. 175A & 48---Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court---Nominations made by the Judicial Commission---Discretion of the President of Pakistan to send name of a nominee for reconsideration---Scope---Nomination originating from the Judicial Commission, confirmed by the Parliamentary Committee was not an advice in terms of Art.48 of the Constitution, nor was it open to the incidence of return for

reconsideration because Art.175A of the Constitution did not envision any such thing--- President had no power to return a nomination to any of the tiers it had passed from, even if it was violative of the Constitution or the law.

(z) Interpretation of statutes---

----Casus omissus, doctrine of---Scope---Casus omissus could, in no case, be supplied by the Court of law as that would amount to altering the provision---Court of law was not entitled to read words into the Constitution or an Act of Parliament unless clear reason was found within the four corners of either of them.

Attorney General v. Bihari, re Australia Factors Limited (1966) 67 S.R. (N.S.W.) 150 ref.

(aa) Constitution of Pakistan---

----Art. 175A, 177, 193 & 42---Appointment of Judges to the Supreme Court and High Courts--- Judicial Commission and Parliamentary Committee nominating name of a Judge in contravention of the Constitution and the law---Power of the President of Pakistan to not appoint such a nominee---Scope---President before appointing a person as Judge or a Chief Justice of a High Court or a Judge of the Supreme Court should ensure that his nomination so made was in accordance with the Constitution and the law---President should not appoint a person as a Judge of the Supreme Court or a Judge or Chief Justice of a High Court, whose nomination, in his opinion, was against the Constitution and the law---Where nomination sent to the President for appointment in terms of Art.175A of the Constitution was against the Constitution and the law, a deadlock would inevitably be the consequence as the President could neither return the nomination to the source it had originated from or processed through nor could he appoint the person, thus nominated---Only way out of such a deadlock would be recourse to an advisory or adjudicatory jurisdiction of the Supreme Court---If the Supreme Court upheld the opinion of the President, the Commission should initiate proceedings de novo in accordance with the opinion of the Court, but if the opinion of the President was not upheld by the Court, he should appoint the person so nominated. [Different view].

(bb) Constitution of Pakistan---

----Art. 192(1)---Inter se seniority of Judges of the High Court appointed/elevated on the same date/day---Determination---Established practice and yardstick for determining seniority amongst the Judges of a High Court, elevated on the same day, was seniority in age except in the case of Judges from service whose inter se seniority remained intact even on their elevation irrespective of their age---Such principle merited respect and reverence because it not only ruled out personal whim and caprice of the person at one peak or another and shut doors and windows for manipulation at ministerial level but also created an environment which was conducive for the rule of law, supremacy of the Constitution and independence of Judiciary.

Federal Ministry of Justice and Parliamentary Affairs' Letter No.F.12(5)/86-AII, dated 30-4-1987 ref.

(cc) Constitution of Pakistan---

----Arts. 175A, 192(1) & 186---Reference to Supreme Court under Art.186 of the Constitution by the President of Pakistan---Appointment of Chief Justice of the High Court---Legitimate expectation of the most senior Judge of a High Court to be appointed as Chief Justice of that High Court---Scope---Judicial Commission nominating a Judge of Islamabad High Court as Chief Justice of said Court, who was not the most senior Judge of that Court---Legality---Practice/convention that the senior most Judge of the High Court, in the absence of any concrete and valid reason had to be appointed as the Chief Justice of the High Court was esteemed, honoured and also had the approval of the Supreme Court--- First proviso to Art.175A(5)(iv) of the Constitution, which provided that for appointment of the Chief Justice of a High Court the most senior Judge of that High Court should not be member of the Judicial Commission, unmistakably indicated that the most senior Judge of the High Court should be nominated as Chief Justice in the absence of any valid reason---Most senior Judge of Islamabad High Court, therefore, had a legitimate expectancy to be appointed as Chief Justice, and that subject to any valid reason which was yet to be recorded by the Commission, he would be entitled to be appointed as such---Premises recorded by the Commission for departing from the well established principle of determining seniority were not correct---Reference under Art.186 of the Constitution was answered accordingly. [Minority view].

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324; Munir Hussain Bhatti v. Federation of Pakistan PLD 2011 SC 407 and Malik Asad Ali and others v. Federation of Pakistan and others PLD 1998 SC 33 ref.

Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and Justice, Islamabad v. Sindh High Court Bar Association through President and another PLD 2012 SC 1067 distinguished.

(dd) Constitution of Pakistan---

----Art. 192(1)---Inter se seniority of Judges of High Courts, determination of---President of Pakistan, power of--- Scope---President of Pakistan could not determine the seniority of Judges of the High Courts.

(ee) Constitution of Pakistan---

----Arts. 175A(8) & (14) & 186---Reference to Supreme Court under Art.186 of the Constitution by the President of Pakistan---Judicial Commission, composition of---Judicial Commission nominating names for appointment of Judges of the Islamabad High Court in the absence of the most senior Judge of Islamabad High Court in the proceedings of Judicial Commission---Legality---Contentions on behalf of Referring Authority (the President) were that Judge of Islamabad High Court who sat, voted and took part in the proceedings of the Judicial Commission was not the most senior Judge of Islamabad High Court; that Judicial Commission could not be said to have been properly constituted in the absence of the most senior Judge of Islamabad High Court, therefore, nominations made by the Judicial Commission would not have any legal or constitutional sanctity, notwithstanding that they had been confirmed by the Parliamentary Committee, sent to the Prime Minister and then forwarded to the President---Validity---Failure of most senior Judge of Islamabad High Court to attend the meeting of the Judicial Commission would not vitiate the proceedings of the Commission---Art.175A(14) of the Constitution clearly provided that no action or decision taken by the Commission or Committee would be invalid or called in question only on the ground of the existence of a vacancy therein or of the absence of any member from any meeting thereof---Accepting that Judge of Islamabad High Court who sat, voted and took part in the proceedings of the Commission culminating in the nomination of Judges, was a non-entity, yet it would not vitiate the proceedings when the

Judicial Commission, in view of Art.175A(8) of the Constitution, had nominated the Judges by majority of its total membership---Proceedings of the Commission would have been vitiated or materially affected if it had nominated the Judges with a margin of one, but where the Commission nominated the Judges by a majority of 7 against 2, the presence or participation of a Judge, who was not the most senior Judge of Islamabad High Court, in the meeting would not be of any consequence---Reference under Art.186 of the Constitution was answered accordingly.

Managing Director, Sui Sourthrn Gas Company Ltd. Karachi v. Ghulam Abbas and others PLD 2003 SC 724 ref.

Regina v. Bow Street Metropolitan Stipendiary Magistrate and others Ex parte Pinochet Ugarte (No.2) [1999] AU E.R. 577, [1999] 2 WLR 272 distinguished.

(ff) Constitution of Pakistan---

----Arts. 175A & 186---Reference to Supreme Court under Art.186 of the Constitution by the President of Pakistan---Proceedings of Judicial Commission held in camera---Propriety---Contention on behalf of Referring authority (the President) was that proceedings in the Judicial Commission could not be held in camera when the legislature purposely provided otherwise so as to ensure complete transparency and open scrutiny---Validity---Members of the Judicial Commission not only represented all the essential segments of the Bar and Bench but also those of the Federation and the Province through Attorney General for Pakistan, Minister for Law and Justice of the Federation and Minister for Law of the Province---Scrutiny was open in the truest sense of the word when each member was at liberty to present his point of view one way or the other---Transparency in the proceedings could not be affected by holding it in camera if every member consciously and conscientiously gave his input in the nomination, keeping in view its overall impact on the institution on the one hand and society at large on the other---Reference under Art.186 of the Constitution was answered accordingly.

Wasim Sajjad, Senior Advocate Supreme Court, Abdul Latif Yousafzai, Senior Advocate Supreme Court, Idrees Ashraf, Advocate and Mehr Khan Malik, Advocate-on-Record for President.

Irfan Qadir, A. G. for Pakistan, Dil Muhammad Alizai, DAG, Barrister Shehryar Riaz Sh. Advocate Mrs. Shafaq Mohsin, Advocate and Faisal Hussain, Advocate for Federation.

Makhdoom Ali Khan, Senior Advocate Supreme Court, Khurram M. Hashmi, Advocate, Umair Majeed Malik, Advocate, Hyder Ali Khan, Advocate, Saad M. Hashmi, Advocate and Mrs. Asma Hamid, Advocate and Khawaja Haris Ahmed, Senior Advocate Supreme Court, Assisted by:

i) Kh. Zaheer Ahmed, Advocate

ii) Syed Ali Shah Gilani, Advocate, Amici Curiae.

Date of hearing: 14th December, 2012. (Reserved)

OPINION

KHILJI ARIF HUSSAIN, J.---Briefly stating the facts, relevant to give opinion on the questions referred to by the President of Pakistan, through Reference No.1 of 2012, under Article 186 of the Constitution of Islamic Republic of Pakistan, 1973 [hereinafter referred to as 'the Constitution'], are that in a meeting of the Judicial Commission of Pakistan[hereinafter referred to as 'the Commission'], held on 27-9-2012 to fill a vacancy, the Chief Justice of Pakistan initiated the names of Mr. Justice Iqbal Hameed-ur-Rahman, the Chief Justice of Islamabad High Court, Islamabad, as a Judge of this Court. After deliberations, the Commission nominated Mr. Justice Iqbal Hameed-ur-Rahman as a Judge of this Court.

2. In another meeting of the Commission, on the same day, which was attended by Mr. Justice Iqbal Hameed-ur-Rahman, the Chief Justice of Islamabad High Court, Islamabad, the Chief Justice of Pakistan initiated the name of Mr. Justice Muhammad Anwar Khan Kasi, as Chief Justice of Islamabad High Court, Islamabad, who after deliberations and with majority of 7 to 2, was nominated.

3. When the tenure of Mr. Shaukat Aziz Siddiqui; Mr. Noor-ul-Haq N. Qureshi; and Mr. Muhammad Azeem Khan Afridi, who were initially appointed as Additional Judges of Islamabad High Court, Islamabad, for a period of one year with effect from the date they took

oath of their offices was nearing expiry, their cases were referred to the Commission and after deliberations it nominated the names of Mr. Shaukat Aziz Siddiqui, as a Judge of Islamabad High Court, Islamabad with a vote of 8 to 2 and unanimously nominated Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge of Islamabad High Court, Islamabad, for further period of six months from the date of expiry of his present term, whereas the name of Mr. Muhammad Azeem Khan Afridi was dropped he was not nominated.

4. The meeting of the Commission was attended by Mr. Justice Muhammad Anwar Khan Kasi, as most senior Judge of Islamabad High Court, Islamabad.

5. On receipt of nominations, in respect of Mr. Justice Iqbal Hameed-ur-Rahman, as a Judge of this Court; Mr. Justice Muhammad Anwar Khan Kasi, as Chief Justice of Islamabad High Court, Islamabad; Mr. Shaukat Aziz Siddiqui, as a Judge of Islamabad High Court, Islamabad; and Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge of Islamabad High Court, Islamabad, for a period of six months from the date of expiry of his tenure, the Parliamentary Committee [hereinafter referred to as 'the Committee'], after due consideration unanimously endorsed the nominations made by the Commission and sent the same to the Prime Minister of Pakistan to forward them to the President of Pakistan for issuance of requisite notifications. The President of Pakistan, after receipt of the aforesaid nominations, instead of issuing the notifications, by way of filing a Reference (Reference No.1 of 2012) under Article 186 of the Constitution, sought opinion of this Court on the following questions of law, considering them to be of public importance:--

"(i). Whether in view of the decision by the Chief Justice of the IHC that Mr. Justice Riaz was the senior most judge of the IHC, which decision of the Chief Justice was also confirmed by the President of Pakistan, Mr. Justice Kasi could be treated as most senior Judge of the IHC?

(ii) Whether Mr. Justice Riaz had a legitimate expectancy to be appointed as Chief Justice of the IHC on the ground that he was the most senior Judge of that Court in the light of the judgment of the Supreme Court in the Al-Jehad case referred to above?

(iii) Whether the JCP acted in accordance with the Constitution and conventions thereof in recommending a junior Judge as Chief Justice of the IHC?

(iv) Whether JCP was properly constituted as per provision of Article 175-A of the Constitution as Mr. Justice Kasi who participated in the meeting was not a Member thereof and was a stranger to the proceedings?

(v) Whether the President who is bound by oath of office to preserve, protect and defend the Constitution is obliged to make the appointments which are not in accordance with the provisions of the Constitution?

(vi) What should be the manner, mode and criteria before the Judicial Commission with respect to the nomination of a person as a Judge of High Court, Supreme Court and Federal Shariat Court in terms of Clause (8) of Article 175-A of the Constitution of Islamic Republic of Pakistan, 1973?

(vii) What is the proper role of the Judicial Commission and Parliamentary Committee under the Constitution of Pakistan with respect to appointment of Judges of Supreme Court, High Court and Federal Shariat Court?

(viii) What should be the parameters before the Parliamentary Committee for the confirmation of the nominee of the Judicial Commission in terms of Clause (12) of Article 175-A of the Constitution of Islamic Republic of Pakistan, 1973?

(ix) Whether the Constitution prohibits reconsideration of the nominations by JCP and confirmed by the Parliamentary Committee in the light of the observations made by the President?

(x) What should be the criteria for elevating a Judge/Chief Justice of the High Court to the Supreme Court? Is it, their seniority inter- se as Judge of the High Court or their seniority inter-se as Chief Justice of respective High Court be the consideration for elevation to the Supreme Court?

(xi) Whether the Constitution of Pakistan prohibits individual Members of the JCP to initiate names for appointments of Judges to the Supreme Court, the High Courts and the Federal Shariat Court?

(xii) The Parliamentary Committee under Article 175-A of the Constitution may confirm or may not confirm a nomination in accordance with the provisions stated therein. What is the true import and meaning of the word "confirm" and what is the effect of the proviso to Clause 12 of Article 175-A which reads as follows:

"Provided further that if nomination is not confirmed, the Commission shall send another nomination"

(xiii) Whether by not providing in camera proceeding for JCP in Article 175-A of Constitution of Pakistan, the intention of the legislature is to ensure complete transparency and open scrutiny?"

6. As the subject matter of the Reference is of utmost importance with regard to the independence of the Judiciary and the principle of trichotomy of powers, this Court decided to seek the assistance of some senior Lawyers and thus appointed Mr. Makhdoom Ali Khan, learned Senior Advocate Supreme Court and Khawaja Haris Ahmed, learned Advocate Supreme Court, as amicus.

7. Mr. Waseem Sajjad, learned Senior Advocate Supreme Court while appearing on behalf of the Referring Authority contended that the principle underlying the determination of seniority of Judges, elevated on the same day is seniority in age, Mr. Justice Riaz Ahmed Khan, being senior in age is the most Senior Judge and thus is to be nominated as Chief Justice, Islamabad High Court. This practice, the learned counsel added, being more than a century old has been consistently followed in the Indian sub-continent and even after its partition. The learned counsel, to substantiate his argument, referred to the letter No.F.12(5)/86-AII, dated 30-4-1987, Government of Pakistan, Ministry of Justice and Parliamentary Affairs (Justice Division). The learned counsel by elaborating his argument contended that when according to the dictum laid down in the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 Supreme Court 324), the most senior Judge of a High Court has a legitimate expectancy to be appointed as Chief Justice, in the absence of any concrete reason, Mr. Justice Riaz Ahmed Khan being the most senior Judge was entitled to be nominated for appointment as Chief Justice and that the nomination of Mr. Justice Muhammad Anwar Khan Kasi was not only an out right departure from the century old practice but also against the law of the land, therefore, the President is not bound to appoint such person as Chief Justice. The learned counsel next contended that even the Judicial Commission, nominating Mr. Justice Shaukat Aziz Siddique for appointment and Mr. Justice

Noor-ul-Haq Qureshi for extension as Judges of the High Court, cannot be said to have been properly constituted in the absence of the most senior Judge, therefore, their nominations will not have any legal or constitutional sanctity, notwithstanding it having been confirmed by the Parliamentary Committee, sent to the Prime Minister and then forwarded to the President. It would be all the more without any legal and Constitutional sanctity, argued the learned counsel, when it does not conform to the manner prescribed by the Constitution. The learned counsel to support his contention referred to the cases of Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 Supreme Court 759) and Federation of Pakistan v. Aftab Ahmad Khan Sherpao (PLD 1992 Supreme Court 723). The fact, maintained the learned counsel, that a non-entity, sat, voted and took part in the proceedings would also call for its annulment on this score alone. The learned counsel to support his contention placed reliance on the case of "Regina. v. Bow Street Metropolitan Stipendiary Magistrate and others, Ex-parte Pinochet Ugarte (No.2) [1999] 1 AU E.R. 577, [1999] 2 WLR 272. Even otherwise, the learned counsel submitted, that the President being appointing authority is duty bound to ensure obedience to the Constitution and the law cannot appoint a person who has not been nominated in accordance with the provisions of the Constitution.

8. The learned counsel further contended that if the principle of seniority and that of legitimate expectancy linked therewith, are ignored without reasons to record, it would give rise to the whim and caprice of the person sitting at the peak which is not conducive for independence of judiciary. The learned counsel also waxed eloquent by asking this Court to redefine the mode and manner of appointing Judges but when we observed that all these questions have been elaborately dealt with in the case of Munir Hussain Bhatti v. Federation of Pakistan (PLD 2011 Supreme Court 407), the learned counsel submitted that since they have been dealt with collaterally the judgment so rendered being obiter dicta will not have binding force. We would have agreed with the learned counsel for the President but he could not point out anything striking or significant in the judgment which went un-noticed or unattended. It is, therefore, not obiter dicta by any attribute. This judgment could have been treated as sub-silentio a precedent not fully argued, but again the learned counsel could not advert to any legal or Constitutional aspect of the case which escaped the notice of the Bench, rendering the judgment, so as to relegate it, to the status of sub-silentio. The learned counsel after taking us through various parts of the judgment rendered in the case of Federation of Pakistan v. Sindh High Court Bar Association (PLD 2012 Supreme Court 1067), contended that its reference in the minutes of the meeting of the Judicial Commission, to justify the inference that Mr. Justice Muhammad Anwar

Khan Kansi is the most Senior Judge of the High Court, is absolutely uncalled for, as it, when read carefully, does not support any such inference. How could the proceeding in the Judicial Commission be held in camera, asked the learned counsel, when the legislature in its wisdom purposely provided otherwise so as to ensure complete transparency and open scrutiny. What would be the criterion asked the learned counsel, for elevating Judges or a Chief Justice of a High Court to the Supreme Court and whether it is inter se seniority of the Judges or the Chief Justices of the High Courts which constitutes a determining factor?

9. Learned Attorney General appearing on the notice of the Court contended that the Judicial Commission was not properly constituted, as persona designata did not attend the meeting and the person who attended the meeting was just a non-entity, therefore, the whole process shall stand vitiated. The President, the learned Attorney General submitted, is not bound to appoint a nominee of such Judicial Commission notwithstanding nomination so made was confirmed by the Parliamentary Committee and forwarded to the President by the Prime Minister on its receipt. The learned Attorney General next contended that where in the judgment rendered in the case of Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 Supreme Court 879), this Court annulled the appointment of many Judges for want of recommendation by the consultee, a nomination originating from the Judicial Commission which was not properly constituted has to be given alike treatment. The learned Attorney General by referring to the commentary on the Constitution of India by Durga Das Basu argued that the President is not a robot placed in the President House nor a Computer controlled automation, nor a figure head nor ornamental piece placed in the show window of the nation called the President's House. Instead, the learned Attorney General submitted, he is a living human who on being selected by the nation is endowed with all dignity, honour and prestige as head of the republic for upholding the Constitution and the laws, therefore, his role as such cannot be doubted in any situation. Seen from such an angle, the learned Attorney General concluded, the President cannot be kept out of the affairs regulating the appointment of Judges.

10. Mr. Makhdoom Ali Khan, learned Sr. ASC appeared as Amicus Curiae on notice of the Court. The learned counsel in the first instance addressed the Court as to the binding nature of an advice rendered by this Court in the exercise of its advisory jurisdiction. The learned counsel by referring to the relevant paragraph of the judgment rendered in Reference No.02 of 2005 by the President of Pakistan (PLD 2005 Supreme Court 873), submitted that though an opinion given by the Court on a reference filed by the President is not a decision between the parties but

since it is handed down after undertaking an extensive judicial exercise and hearing of Advocates it has a binding force. Such advice, the learned counsel submitted has to be esteemed and accepted with utmost respect. The learned counsel then by referring to various Articles of the Constitution in general and Article 175-A in particular contended that the mode and manner of appointing Judges of the superior Courts has undergone a change and that the whole process from the inception to the end is now regulated by the latter. The learned counsel submitted that after a person has been nominated by the Judicial Commission, his name has been confirmed by the Parliamentary Committee, sent to the Prime Minister and then forwarded by the latter to the President for appointment, the President will have no choice but to appoint him. While commenting on the mode and manner of appointment of Judges and things ancillary thereto, the learned counsel submitted that an exhaustive exercise has been taken in the cases of Al-Jehad Trust (supra) and Munir Hussain Bhatti (supra), therefore, yet another exercise is hardly called for. The learned counsel, however, submitted that the principle and practice of appointing the most Senior Judge as Chief Justice is not open to any dispute and thus cannot be departed from without reasons to be recorded as held in the case of Al-Jehad Trust (supra). The President or for that matter any other person performing the affairs of Federation, the learned counsel submitted, is duty bound to protect the Constitution and that the instant reference appears to be an effort in this behalf.

11. Khawaja Haris Ahmed, Senior Advocate Supreme Court who was also asked to assist the Court as Amicus Curiae, highlighted the salient features of his written submissions. Heby referring to Article 175-A of the Constitution of Pakistan submitted that the role of the President in the appointment of Judges is more-or-less ministerial, once a nomination originating from the Judicial Commission and confirmed by the Parliamentary Committee has been sent to the Prime Minister and then forwarded to the President. He by referring to the judgment rendered in the case of Munir Hussain Bhatti (supra), submitted that where almost all of the questions raised in the reference have been answered in the judgment it would be futile to reiterate the same.

12. With regard to the question relating to seniority, the learned counsel submitted that the same being person specific is not one of law, therefore, this Court cannot afford to decide such question in its advisory jurisdiction. The learned counsel next contended that the omission to mention the expression most senior Judge in the provision relating to appointment of the Chief Justice of a High Court is significant and that in the absence of any express provision even the

most senior Judge cannot have legitimate expectancy, as the Constitution on this score has remained the same even after the dictum laid down in the case of Al-Jehad Trust (supra).

13. In order to give an opinion on the questions referred to by the President of Pakistan and reproduced hereinabove, we would like to discuss the legislative history of various Articles of the Constitution.

14. The first document that served as the Constitution of Pakistan was the Government of India Act, 1935. The constituent assembly, elected in the year 1946, after nine years adopted the first Constitution of 1956, which was abrogated in October, 1958 by Gen. (R) Ayub Khan. The 1962 Constitution was abrogated on 25-3-1969 by second Martial Law Administrator Gen. (R) Muhammad Yahya Khan. In December, 1970, elections were held, however, due to various reasons, which we would not like to comment upon, the National Assembly did not meet due to widespread disturbance in East Pakistan and Mr. Zulfiqar Ali Bhutto was sworn in on 20-12-1971 as President of Pakistan. After gaining power, Mr. Zulfiqar Ali Bhutto invited the leaders of political parties to meet on 19-7-1972, which after intensive discussions resulted in an agreement. A Committee of 25 Members was appointed to prepare a draft for a permanent Constitution of Pakistan and after deliberations; the Assembly passed a bill unanimously on 19-4-1973. The Constitution of Pakistan, 1973 came into effect on 14-8-1973, providing ParliamentaryForm of Government, based on the trichotomy of power.

15. Prior to Constitution (Eighteenth) Amendment, the procedures for appointment of a Judge of the superior Courts mentioned in the Constitutions of Islamic Republic of Pakistan, 1962 and 1973 were identical to some extent. Before Constitution (Eighteenth) Amendment, the Articles 177 and 193 of the Constitution empowered the President of Pakistan to appoint the Chief Justice of Pakistan; the Chief Justices of the High Courts; and the Judges of the superior Courts. From perusal of the said Articles, it appears that though appointment of a Judge of the superior Courts was to be made by the President, but after consultation with the Chief Justice of Pakistan, the Governor concerned and the Chief Justice of the concerned High Court (except where the appointment is that of a Chief Justice). The appointment of a Judge of the superior Courts is a constitutional appointment and mode thereof is provided by the Constitution itself. The "consultation", as envisaged prior to the Constitution (Eighteenth and Nineteenth) Amendments, required by the President of Pakistan from the consultees was not a formality,

but was mandatory and no appointment or confirmation of a Judge of the superior Courts could be made without resorting to the consultative process.

16. In the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 Supreme Court 324), it was held that if the Chief Justice of the High Court and the Chief Justice of Pakistan give a positive opinion about the suitability of a candidate, but the Governor on the basis of information received about his antecedents gives a negative opinion, the President is empowered to decline the appointment of the candidate. On the other hand, if the Chief Justice of the High Court and the Chief Justice of Pakistan give a negative opinion about a candidate on the basis of their expert opinion that the candidate cannot be appointed, then the opinion of the Chief Justice cannot be ignored and due weight is to be given to his opinion. It was further held that the President/ Executive does not have a final say in the matter of appointment of the Judges of the superior Courts and if the opinion of the Chief Justice is ignored, the President/ Executive should give reasons which could be juxtaposed with the reasons of the Chief Justice to find out as to what reasons are in the public interest.

17. Immediately, after the pronouncement of judgment in the case of Al-Jehad Trust (supra), the President of Pakistan filed a Reference (Reference No.2 of 1996) under Article 186 of the Constitution seeking opinion of this Court whether the President's powers to make the appointment of Judges of the superior Courts, such appointment is subject to the provisions of Article 48(1), which prescribed that in the exercise of his functions, the President shall act in accordance with the advice of the Prime Minister. This Court, vide judgment reported as Al-Jehad Trust v. Federation of Pakistan (PLD 1997 Supreme Court 84), after discussing all aspects of the matter, in detail, came to the conclusion that in respect of appointment of the Judges as contemplated under Articles 177 and 193 of the Constitution, the advice of the Cabinet/Prime Minister under Article 48 (1) is attracted. In the said case at page 141, it was held as under:--

"74. After considering the arguments advanced for and against the proposition on the point whether for making appointments of Judges under Articles 177 and 193, which are special provisions, advice of the Prime Minister to the President under general provision of Article 48 is attracted or not, we are of the considered opinion that there is no apparent conflict in Articles 48 on one side and 177 and 193 on the other side because Articles 177 and 193 are to be read in conjunction with Article 48 (1) which is omni potent provision being special characteristic of Constitution of 1973 which envisages Parliamentary Form of Government. If the Constitution-

makers intended even after promulgation of Eighth Amendment to exclude Article 48(1) from application to Articles 177 and 193, then they could have expressly mentioned in Articles 177 and 193 that the President while performing his functions under these Articles is allowed to act in his discretion excluding advice of the Prime Minister and would be deemed to be acting under Article 48(2). For such reasons we are of the view that there is no conflict as appointments under Articles 177 and 193 of the Constitution are made in conjunction with Article 48(1) of the Constitution always attracting and applying advice of the Prime Minister to the President."

18. After the pronouncement of the authoritative decision by this Court in the case of Al-Jehad Trust (ibid) by Constitution (Eighteenth) Amendment Act, 2010 (Act 10 of 2010), the appointment procedures of the Judges of the superior Courts were radically changed.

"175A. Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court.--(1) There shall be a Judicial Commission of Pakistan, hereinafter in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as herein after provided.

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

(i) Chief Justice of Pakistan; Chairman

(ii) two most senior Judges of theSupreme Court; Members

(iii) a former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the two member Judges, for a term of two years; Member

(iv) Federal Minister for Law and Justice Member

(v) Attorney-General for Pakistan; and Member

(vi) a Senior Advocate of the SupremeCourt of Pakistan to be nominated by the Pakistan Bar Council for a term of two years.

(3) Notwithstanding anything contained in clause (1) or clause (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

(4) The Commission may make rules regulating its procedure.

(5) For appointment of Judges of a High Court, the Commission in clause (2) shall also include the following, namely: ---

(i) Chief Justice of the High Court to which the appointment is being made; Member

(ii) the most senior Judge of that High Court; Member

(iii) Provincial Minister for Law; and Member

(iv) a senior advocate to be nominated by the Provincial Bar Council for a term of two years: Member

Provided that for appointment of the Chief Justice of a High Court, the most senior Judge of the Court shall be substituted by a former Chief Justice or former Judge of that Court, to be nominated by the Chief Justice of Pakistan in consultation with the two member Judges of the Commission mentioned in clause (2):

Provided further that if for any reason the Chief Justice of High Court is not available, he shall also be substituted in the manner as provided in the foregoing proviso.

(6) For appointment of Judges of the Islamabad High Court, the Commission in clause (2) shall also include the following, namely:---

(i) Chief Justice of the Islamabad High Court; and Member

(ii) the most senior Judge of that High Court: Member

Provided that for initial appointment of the Judges of the Islamabad High Court, the Chief Justices of the four Provincial High Courts shall also be members of the Commission:

Provided further that subject to the foregoing proviso, in case of appointment of Chief Justice of Islamabad High Court, the provisos to clause (5) shall, mutatis mutandis, apply.

(7) For appointment of Judges of the Federal Shariat Court, the Commission in clause (2) shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its members:

Provided that for appointment of Chief Justice of Federal Shariat Court, the provisos to clause (5) shall, mutatis mutandis, apply.

(8) The Commission by majority of its total membership shall nominate to the Parliamentary Committee 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;

(9) The Parliamentary Committee, hereinafter in this Article referred to as the Committee,shall consist of the following eight members, namely:---

(i) four members from the Senate, and

(ii) four members from the National Assembly.

(10) Out of the eight members of the Committee, four shall be from the Treasury Benches, two from each House and four from the Opposition Benches, two from each House. The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition.

(11) Secretary, Senate shall act as the Secretary of the Committee.

(12) The Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed:

Provided that the committee may not confirm that nomination by three-fourth majority of its total membership within the said period, in which case the Commission shall send another nomination.

(13) The Committee shall forward the name of the nominee confirmed by it or deemed to have been confirmed to the President for appointment.

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

(15) The Committee shall make rules for regulating its procedure."

The Constitution (Eighteenth) Amendment was called in question through various petitions in this Court and after hearing, an interim short order was passed; for convenience sake relevant portion therefrom, reads as under:--

"While doing so we take note of the fair stand taken by Mian Raza Rabbani, Chairman of the Special Committee of the Parliament for Constitutional Reforms and the Attorney General for Pakistan to which reference has been made in Para-12 above and hold that Article 175A shall be given effect to in the manner as under:--

(i) In all cases of an anticipated or actual vacancy a meeting of the Judicial Commission shall be convened by the Chief Justice of Pakistan in his capacity as its Chairman and the names of candidates for appointment to the Supreme Court shall be initiated by him, of the Federal Shariat Court by the Chief Justice of the said Court and of the High Courts by the respective Chief Justices.

(ii) The Chief Justice of Pakistan as head of the Judicial Commission shall regulate its meetings and affairs as he may deem proper.

(iii) The proceedings of the Parliamentary Committee shall be held in camera but a detailed record of its proceedings and deliberations shall be maintained. The Parliamentary Committee shall send its approval of recommendations of the Judicial Commission to the Prime Minister

for onward transmission to the President for necessary orders. If the Parliamentary Committee disagrees or rejects any recommendations of Judicial Commission, it shall give specific reasons and the Prime Minister shall send copy of the said opinion of the Committee to the Chief Justice of Pakistan and the same shall be justicable by the Supreme Court.

19. In the light of the interim order, the Constitution (Nineteenth) Amendment Act of 2011 was passed and to some extent, the observations made by this Court were accepted and Article 175A was amended, which reads as under:--

175A. Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court.--

(1) There shall be a Judicial Commission of Pakistan, hereinafter in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as hereinafter provided.

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

(i) Chairman Chief Justice of Pakistan;

(ii) Members four most senior Judges of the Supreme Court;

(iii) Member a former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the four member Judges, for a term of two years;

(iv) Member Federal Minister for Law and Justice;

(v) Member Attorney-General for Pakistan; and

(vi) Member a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two years.

(3) Notwithstanding anything contained in clause (1) or clause (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

(4) The Commission may make rules regulating its procedure.

(5) For appointment of Judges of a High Court, the Commission in clause (2) shall also include the following, namely:-

(i) Member Chief Justice of the High Court to which the appointment is being made;

(ii) Member the most senior Judge of that High Court;

(iii) Member Provincial Minister for Law; and

(iv) Member An advocate having not less than fifteen years practice in the High Court to be nominated by the concerned Bar Council for a term of two years:

Provided that for appointment of Chief Justice of a High Court, the most senior Judge mentioned in paragraph (ii) shall not be Member of the Commission:

Provided further that if for any reason the Chief Justice of High Court is not available, he shall be substituted by a former Chief Justice or former Judge of that Court, to be nominated by the Chief Justice of Pakistan in consultation with the four member Judges of the Commission in paragraph (ii) of clause (2):

(6) For appointment of Judges of the Islamabad High Court, the Commission in clause (2) shall also include the following, namely:-

(i) Member Chief Justice of the Islamabad High Court;

and

(ii) Member the most senior Judge of that High Court.

Provided that for initial appointment of the Chief Justice and the Judges of the Islamabad High Court, the Chief Justices of the four Provincial High Courts shall also be members of the Commission:

Provided further that subject to the foregoing proviso, in case of appointment of Chief Justice of Islamabad High Court, the provisos to clause (5) shall, mutatis mutandis, apply.

(7) For appointment of Judges of the Federal Shariat Court, the Commission in clause (2) shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its members:

Provided that for appointment of Chief Justice of Federal Shariat Court, the provisos to clause (5) shall, mutatis mutandis, apply.

(8) The Commission by majority of its total membership shall nominate to the Parliamentary Committee 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.

(9) The Parliamentary Committee, hereinafter in this Article referred to as the Committee, shall consist of the following eight members, namely:-

(i) Four members from the Senate; and

(ii) Four members from the National Assembly:

Provided that when the National Assembly is dissolved, the total membership of the Parliamentary Committee shall consist of the members from the Senate only mentioned in paragraph (i) and the provisions of this article, shall, mutatis mutandis, apply.

(10) Out of the eight members of the Committee, four shall be from the Treasury Benches, two from each House and four from the Opposition Benches, two from each House. The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition.

(11) Secretary, Senate shall act as the Secretary of the Committee.

(12) The Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed:

Provided that the Committee, for reasons to be recorded, may not confirm the nomination by three-fourth majority of its total membership within the said period:

Provided further that if a nomination is not confirmed by the Committee it shall forward its decision with reasons so recorded to the Commission through the Prime Minister:

Provided further that if a nomination is not confirmed, the Commission shall send another nomination.

(13) The Committee shall send the name of the nominee confirmed by it or deemed to have been confirmed to the Prime Minister who shall forward the same to the President for appointment.

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

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

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

(17) The Committee may make rules for regulating its procedure.

It is in this background that thirteen questions have been framed and are placed before this Court seeking opinion under Article 186 of the Constitution.

20. We are recording this opinion without touching the vires of Article 175A which is subject matter of various petitions pending before this Court.

21. First of all, we would like to give our opinion on questions Nos.(v) & (ix) although framed separately but are interconnected. These are as under:--

(v) Whether the President who is bound by oath of office to preserve, protect and defend the Constitution is obliged to make the appointments which are not in accordance with the provisions of the Constitution? and

(ix) Whether the Constitution prohibits reconsideration of the nominations by JCP and confirmed by the Parliamentary Committee in the light of the observations made by the President?

22. The suitability of a candidate about his ability, legal competency and integrity, which was to be determined by the Chief Justice of Pakistan and the Chief Justice of the concerned High Court prior to the Constitution (Eighteenth and Nineteenth) Amendments now is to be determined by the Commission, a body consisting of experts from all stakeholders i.e. the Judiciary, the Executive and Bars, created by Article 175A of the Constitution. Although each Member of the Commission is equal, including the Chief Justice of Pakistan/ Chief Justice of the concerned High Court having one vote each, yet the Constitution Framers in their wisdom gave decisive vote to the Judiciary, as out of 11 Members of the Commission 08 Members are from the Judiciary along with one retired Judge of the Supreme Court, nominated by the Chief Justice of the Pakistan.

23. To discharge the duty put on their shoulders by the Constitution Makers, to select the best person as a Judge of the superior Courts, the most senior Judges of the Supreme Court and the High Courts, being Members of the Commission, having one vote each, are supposed to form their opinions independently about the ability, legal competency, integrity and administrative skill of the person, whose name is initiated by the Chief Justice of Pakistan or the Chief Justice of the High Court, without which, the fundamental rights of theCitizens cannot be secured.

24. The President of Pakistan makes appointment to various (non-elective) constitutional offices besides appointing the High Court and Supreme Court Judges like the Auditor General of Pakistan; the Chief Election Commissioner and its Members; the Chairman, Federal Public Service Commission; Care Taker Prime Minister, Members of Islamic Council and the Chiefs of

Armed Forces. We would like to reproduce hereinbelow the relevant Articles of the Constitution to appreciate the questions involved:--

"Audit and Accounts

168. (1) There shall be an Auditor-General of Pakistan, who shall be appointed by the President.

(2) Before entering upon office, the Auditor-General shall make before the Chief Justice of Pakistan oath in the form set out in the Third Schedule.

(3) The Auditor-General shall, unless he sooner resigns or is removed from office in accordance with clause (5), hold office for a term of four years from the date on which he assumes such office or attains the age of sixty-five years, whichever is earlier.

(3A) The other terms and conditions of service of the Auditor- General shall be determined by Act of Majlis-e-Shoora (Parliament); and, until so determined, by Order of the President.]

(4) A person who has held office as Auditor-General shall not be eligible for further appointment in the service of Pakistan before the expiration of two years after he has ceased to hold that office.

(5) The Auditor-General shall not be removed from office except in the like manner and on the like grounds as a Judge of the Supreme Court.

(6) At any time when the office of the Auditor-General is vacant or the Auditor-General is absent or is unable to perform the functions of his office due to any cause, [the President may appoint the most senior officer in the Office of the Auditor-General to] act as Auditor- General and perform the functions of that office.

Appointment of Supreme Court Judges.

177. (1) The Chief Justice of Pakistan and each of the other Judges of the Supreme Court shall be appointed by the President in accordance with Article 175A.

(2) A person shall not be appointed a 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 (including a High Court which existed in Pakistan at any time before the commencing day); or

(b) has for a period of, or for periods aggregating, not less than fifteen years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day).

Appointment of High Court Judges.

193. [(1) The Chief Justice and each of other Judges of a High Court shall be appointed by the President in accordance with Article 175A.]

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

(a) he has for a period of, or for periods aggregating, not less than ten years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day); or

(b) he is, and has for a period of not less than ten years been, a member of a civil service prescribed by law for the purposes of this paragraph, and has, for a period of not less than three years, served as or exercised the functions of a District Judge in Pakistan; or

(c) 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 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.]

(3) In this Article, "District Judge" means Judge of a principal civil court of original jurisdiction.

Chief Election Commissioner and Election Commissions

213. (1) There shall be a Chief Election Commissioner (in this Part referred to as the Commissioner), who shall be appointed by the President.

(2) No person shall be appointed to be Commissioner unless he is, or has been, a Judge of the Supreme Court or is, or has been, a Judge of a High Court and is qualified underparagraph (a) of clause (2) of Article 177 to be appointed a Judge of the Supreme Court.

(2A) The Prime Minister shall in consultation with the Leader of the Opposition in the National Assembly, forward three names for appointment of the Commissioner to a Parliamentary Committee for hearing and confirmation of any one person.

(2B) The Parliamentary Committee to be constituted by the Speaker shall comprise fifty percent members from the Treasury Benches and fifty percent from the Opposition Parties, based on their strength in Majlis-e-Shoora (Parliament), to be nominated by the respective Parliamentary Leaders:

Provided that in case there is no consensus between the Prime Minister and the Leader of the Opposition, each shall forward separate lists to the Parliamentary Committee for consideration which may confirm any one name:

[Provided further that the total strength of the Parliamentary Committee shall be twelve members out of which one-third shall be from the Senate:

Provided also that when the National Assembly is dissolved and a vacancy occurs in the office of the Chief Election Commissioner, the [total membership of the Parliamentary Committee shall consist of] the members from the Senate only and the foregoing provisions of this clause shall, mutatis mutandis, apply.]

(3) The Commissioner shall have such powers and functions as are conferred on him by the Constitution and law.

Time of Election and bye-election

224(1)(1A) On dissolution of the Assembly on completion of its term, or in case it is dissolved under Article 58 or Article 112, the President, or the Governor, as the case may be, shall appoint a care-taker Cabinet:

Provided that the care-taker Prime Minister shall be appointed by the President in consultation with the Prime Minister and the Leader of the Opposition in the outgoing National Assembly, and a care-taker Chief Minister shall be appointed by the Governor in consultation with the Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly:

"224A. Resolution by Committee or Election Commission.-

(1) In case the Prime Minister and the "Leader of the Opposition in the outgoing National Assembly do not agree on any person to be appointed as the care-taker Prime Minister, within three days of the dissolution of the National Assembly, they shall forward two nominees each to a Committee to be immediately constituted by the Speaker of the National Assembly, comprising eight members of the outgoing National Assembly or the Senate, or both, having equal representation from the Treasury and the Opposition, to be nominated by the Prime Minister and the Leader of the Opposition respectively.

(2) In case a Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly do not agree on any person to be appointed as the care-taker Chief Minister, within three days of the dissolution of that Assembly, they shall forward two nominees each to a Committee to be immediately constituted by the Speaker of the Provincial Assembly, comprising six members of the outgoing Provincial Assembly having equal representation from the Treasury and the Opposition, to be nominated by the Chief Minister and the Leader of the Opposition respectively.

(3) The Committee constituted under clause (1) or (2) shall finalize the name of the care-taker Prime Minister or care-taker Chief Minister, as the case may be, within three days of the referral of the matter to it:

Provided that in case of inability of the Committee to decide the matter in the aforesaid period, the names of the nominees shall be referred to the Election Commission of Pakistan for final decision within two days.

Composition, etc., of Islamic Council.

228. (1) There shall be, constituted within a period of ninety days from the commencing day a Council of Islamic Ideology, in this part referred to as the Islamic Council.

(2) The Islamic Council shall consist of such members, being not less than eight and not more than [twenty] as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.

(3) While appointing members of the Islamic Council, the President shall ensure that-

(a) so far as practicable various schools of thought are represented in the Council;

(b) not less than two of the members are persons each of whom is, or has been a Judge of the Supreme Court or of a High Court;

(c) not less than [one third] of the members are persons each of whom has been engaged, for a period of not less than fifteen years, in Islamic research or instruction; and

(d) at least one member is a woman.

[(4) The President shall appoint one of the members of the Islamic Council to be the Chairman thereof.]

(5) Subject to clause (6), a member of the Islamic Council shall hold office for a period of three years.

(6) A member may, by writing under his hand addressed to the President, resign his office or may be removed by the President upon the passing of a resolution for his removal by a majority of the total membership of the Islamic Council.

Public Service Commission

242. (1) Majlis-e-Shoora (Parliament) in relation to the affairs of the Federation, and the Provincial Assembly of a Province in relation to the affairs of the Province may, by law provide for the establishment and constitution of a Public Service Commission.

(1A) The Chairman of the Public Service Commission constituted in relation to the affairs of the Federation shall be appointed by the President on the advice of the Prime Minister.

(1B) The Chairman of the Public Service Commission constituted in relation to affairs of a Province shall be appointed by the Governor on advice of the Chief Minister.]

(2) A Public Service Commission shall perform such functions as may be prescribed by law.

Armed Forces

243. (1) The Federal Government shall have control and command of the Armed Forces.

(2) Without prejudice to the generality of the foregoing provision, the Supreme Command of the Armed Forces shall vest in the President.

(3) The President shall subject to law, have power-

(a) to raise and maintain the Military, Naval and Air Forces of Pakistan; and the Reserves of such Forces; and

(b) to grant Commissions in such Forces.

(4) The President shall, on advice of the Prime Minister, appoint-

(a) the Chairman, Joint Chiefs of Staff Committee ;

(b) the Chief of the Army Staff;

(c) the Chief of the Naval Staff; and

(d) the Chief of the Air Staff,

and shall also determine their salaries and allowances]"

25. A bare reading of the Article 168 prior to Constitution (Eighteenth and Nineteenth) Amendments, reveals that Clause 3 of Article 168 was substituted by Sub-Clause 3 of Article 168(1) of the Constitution, as adopted in 1973 Constitution by providing a term of office of the Auditor General of Pakistan.

26. Articles 177(1) and 193(1) were amended by Constitution (Eighteenth and Nineteenth) Amendments by providing that the Chief Justice of Pakistan and Chief Justices of the Provincial High Courts and Judges of superior Courts will be appointed by the President of Pakistan, in accordance with Article 175A of the Constitution, which Article gives a complete process and mechanism for the appointment of Judges of the superior Courts.

27. Article 213 for appointment of Chief Election Commissioner and its Members was amended by inserting new Clauses 2A & 2B by Constitution (Eighteenth) Amendment and proviso to clause 2B by Constitution (Nineteenth) Amendment. By Clause 2B of Article 213 of the Constitution, a Parliamentary Committee (to some extent identical to Parliamentary Committee in the matter relating to appointment of Judges of the superior Courts) has been constituted to confirm one person out of three names each proposed by the Prime Minister and the Leader of the Opposition, if there is no consensus between them on three names. The 'discretion' of the President to appoint the Chief Election Commissioner, as provided in the 1973 Constitution was omitted from sub clause 1 of Article 213 of the Constitution, which means that though the President of Pakistan has to appoint the Chief Election Commissioner and its Members, he now has no discretion except to appoint the "person" whose name is confirmed by the Parliamentary Committee, as provided by Article 175A(13) of the Constitution for appointment of Judges of the superior Courts. He is completely ousted from the process of nomination of name and the

only role left for him is to "appoint" the nominee of the Committee and or of Prime Minister and Leader of Opposition as the case may be.

28. Article 224(1A) is inserted by Constitution (Eighteenth) Amendment, whereas Article 224A is inserted by Constitution (Twentieth) Amendment providing for appointment of care-taker Cabinet/ Prime Minister. On dissolution of the Assembly on completion of its term or in case it is dissolved under Article 58 or Article 112, the President or the Governor, as the case may be, shall appoint a care-taker Prime Minister in consultation with the Prime Minister and the Leader of Opposition in the outgoing National Assembly. The proviso of Article 224(1A) inserted by Constitution (Eighteenth) Amendment made it mandatory to appoint the person as care-taker Prime Minister, nominated by the Prime Minister and the Leader of the Opposition. In case, the Prime Minister and the Leader of the Opposition in the outgoing National Assembly do not agree on any person, they shall forward two nominees each to a committee comprising 8 members of the outgoing National Assembly or the Senate or both, having equal representation from the Treasury and the Opposition, to be nominated by the Prime Minister and the Leader of the Opposition, respectively. The Committee shall finalize the name of the care-taker Prime Minister within 3 days of the referral of the matter to it. If committee is unable to finalize the name of care-taker Prime Minister within 3 days of the referral, the name of the nominee shall be referred to the Election Commission for final decision within two days.

29. Although, the President of Pakistan has to appoint the care-taker Prime Minister but by Constitution (Eighteenth & Twentieth) Amendments, now he is only a symbolic appointing authority with no discretion, but to appoint the person nominated by the outgoing Prime Minister and the Leader of the Opposition as care-taker Prime Minister within 3 days of the dissolution of National Assembly and if they do not agree then by the Committee comprising 8 Members of the outgoing National Assembly or the Senate or by the Election Commission, as the case may be, as in the matter of appointment of Judges of the Superior Courts.

30. The Chairman of Public Service Commission and Chiefs of Armed Forces now by Constitution (Seventeenth) Amendment are to be appointed by the President on the advice of the Prime Minister instead of "in his discretion".

31. From the perusal of different Articles referred to above for appointments of various constitutional offices, by the President in the matter of appointment of Chairman, Public Service

Commission, Chiefs of Armed Forces, it appears that the President has to act on the advice of Prime Minister and he may require the Prime Minister to re-consider such advice whereas, in the matter of appointment of Judges in the Superior Courts; Chief Election Commissioner and Members of the Commission; and care-taker Prime Minister, the advice of Prime Minister is not required and after the nomination of name for appointment, by the Committee, the President has no discretion except to appoint the nominee.

32. We would like to mention here that the Azad Jammu and Kashmir Interim Constitution Act, 1974 provides that a Judge of the Supreme Court or High Court shall be appointed by the President on the advice of a Council after consultation with the Chief Justice of the Azad Jammu and Kashmir. The Prime Minister or the person nominated by him is one of the members of the council along with six members to be elected by the Assembly, including five members nominated by the Prime Minister of Pakistan and others. In the case of Muhammad Younas Tahir and another v. Shaukat Aziz, Advocate, Muzaffarabad and others (PLD 2010 SC AJK 42) while dealing with question whether advice of Prime Minister is required while appointing Judges of superior courts it was held that since a Judge in the Supreme Court is appointed by the President on the advice of the "Council" and after consultation with the Chief Justice of Azad Jammu and Kashmir and the Chief Justice of the High Court the advice of Prime Minister is not relevant for the purpose of appointment of judges.

33. The Constitution, being a living organ for all times is to be interpreted dynamically, as a whole, to give harmonious meaning to every Article of the Constitution.

34.The function of the Court, while interpreting the statute, is to discover the true legislative intent. Having ascertained the intention, the Court must strive to interpret the statute as to promote/advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rules that plain words should be interpreted according to their plain meaning. The Constitution was framed by its Framers, keeping in view the situations and conditions prevailing at the time of its making, but being an organic document it has been conceived in a manner so as to apply to the situations and conditions which might arise in the future. The words and expressions used in the Constitution, in that sense, have no fixed meaning and must receive interpretation based on the experience of the people in the course of working of the Constitution.

35. The general principle of interpretation of statutes is equally applicable while interpreting any provision of the Constitution. However, while interpreting a provision of the Constitution, great caution has to be taken by the Court, as the Constitution is supreme law, which creates the Legislature itself which makes ordinary law and statutes with respect to which canons of statutory interpretation have been formulated by the Courts. The task of expounding a Constitution is crucially different from that of construing a statute. An ordinary statute can easily be enacted or repealed by a simple majority of the Members of the Parliament, whereas any provision of the Constitution can be amended only by 2/3rd majority of both the Houses.

36. In the case of Munir Hussain Bhatti v. Federation of Pakistan (PLD 2011 Supreme Court 407), this Court held that the Parliamentary Committee under Article 175A of the Constitution cannot be equated with the Parliament nor can it be treated as a sub set of the Parliament in the manner in which a Parliamentary Committee elected and answerable to the Parliament can be considered to be part of the Parliament. The role of the Parliamentary Committee has been dealt with in detail in the said judgment and the Review Petition filed there-against by the Federation of Pakistan. We would like to reproducehereinbelow paras.15 and 16 of the judgment, under review, dated 24-4-2011:--

"15. Let me say at once that the Committee has and can exercise the powers which under the earlier dispensation were exercisable by the Prime Minister. We have specifically held that " [t]he role which they [the Prime Minister and President] were performing in the previous legal set up ... is now logically to be performed by the Committee". Therefore, if the Prime Minister's role in the previous appointment mechanism was not considered to be meaningless, we fail to see how the Committee, charged with performing the same role, can be considered redundant. That the Committee is only an "institutionalized forum" for performing the functions which were previously the domain and province of the Prime Minister is made clear in our judgment more than once. This can be further buttressed if one considers the speeches of Mr. Raza Rabbani, Chairman of the Parliamentary Committee on Constitutional Reform (PCCR), on the floor of Parliament at the time the 18th Amendment bill was being debated. On 6-4-2010, for instance, with the object of convincing the members of the National Assembly to approve Article 175A, Mr. Rabbani said, "in actual fact what is happening is that the functions that were being performed by the Prime Minister in terms of the present [pre amendment] system of appointment of Judges would be taken over by this Parliamentary Committee". The very same intention was repeated six days later on the floor of the Senate on 12-4-2010 when Mr. Rabbani,

with the same clarity of expression and intent stated that "what in actual fact has been done here [in Article 175A] is, that the role that was assigned to the Prime Minister in terms of appointment of Judges ... has now been assigned to this Parliamentary Committee".

16. It may be noted here that Mr. Raza Rabbani was not just any member of Parliament making any odd speech on the floor of the Houses of Parliament to put forward his own point of view. He was the Chairman of the PCCR. It was he who was steering the Constitutional amendments through Parliament. We can presume that within the PCCR, comprised of 27 members, there would have been discussion and divergent points of view on Article 175A before it was given the shape it finally took in the 18th Amendment. These divergent views were sorted out which resulted in the view expressed by Mr. Rabbani while explaining the function of the Committee. It has not been suggested and, in any event, there would be no warrant for the premise that the intent of Parliament was anything different from what was stated by Mr. Rabbani in Parliament, in the solemn proceedings effecting important provisions of the Constitution. It would, therefore, be reasonable to rely on Mr. Raza Rabbani, as providing evidence of Parliamentary intent. It is such intent after all, which we are engaged in ascertaining and in this effort we are immeasurably benefited by what Mr. Rabbani said. We have already commented on the relevance of Parliamentary proceedings as an aid to interpretation of statutory text. While considering the domain and functions of the Committee we should also note that Mr. Rabbani was unambiguous in informing Parliament that the members of the PCCR "were also mindful of the fact that the manner in which the trichotomy of power has been defined in that [Sindh High Court Bar Association] judgment, the balance of that should not be upset". Our judgment under review has ensured that this balance is maintained."

37. The President of India under Article 143 of Constitution of India, sought the opinion ofthe Indian Supreme Court as to whether the expression "consultation with the Chief Justiceof India" in Articles 217(1) and 222(1) requires consultation with a plurality of Judges in the formation of opinion of the Chief Justice of India or does the sole individual opinion of the Chief Justice of India constitute consultation within the meaning of the said Articles. It gave its opinion as under:--

"19. It is, we think, reasonable to expect that the collegiums would make its recommendations based on a consensus. Should that not happen, it must be remembered that no one can be appointed to the Supreme Court unless his appointment is in conformity with the opinion of the

Chief Justice of India. The question that remains is: what is the position when the Chief Justice of India is in a minority and the majority of the collegiums disfavor the appointment of a particular person? The majority judgment in the second Judges case has said that if "the final opinion of the Chief Justice of India is contrary to the opinion of the senior Judges consulted by the Chief Justice of India and the senior Judges are of the view that the recommendee is unsuitable for stated reason, which are accepted by the President, then the non-appointment of the candidate recommended by the Chief Justice of India would be permissible". This if the majority of the collegiums is against the appointment of a particular person, that person shall not be appointed, and we think that this is what must invariably happen. We hasten to add that we cannot easily visualize a contingency of this nature; we have little doubt that if even two of the Judges forming the collegiums express strong views, for good reasons, that are adverse to the appointment of a particular person the Chief Justice of India would not press for such appointment.

20. The majority judgment in the second Judges case contemplates the non-appointment of a person recommended on the ground of unsuitability. It says that such non- appointment "must be for good reasons, disclosed to the Chief Justice of India to enable him to reconsider and withdraw his recommendation on those considerations. If the Chief Justice of India does not find it necessary to withdraw his recommendation even thereafter, but the other Judges of the Supreme Court who have been consulted in the matter are of the view that it ought to be withdrawn, the non-appointment of that person for reasons to be recorded, may be permissible in the public interest..... However, if after due consideration of the reasons disclosed to the Chief Justice of India, that recommendation is reiterated by the Chief Justice of India with the unanimous agreement of the Judges of the Supreme Court consulted in the matter, with reasons for not withdrawing the recommendation, then that appointment as a matter of healthy convention ought to be made". It may be that one or more members of the collegium that made a particular recommendation have retired or are otherwise unavailable when reasons are disclosed to the Chief Justice of India for the non-appointment of that person. In such a situation the reasons must be placed before the remaining members of the original collegium plus another Judge or Judges who have reached the required seniority and become one of the first four puisne Judges. It is for this collegium, so re-constituted, to consider whether the recommendation should be withdrawn or reiterated. It is only if it is unanimously reiterated that the appointment must be made. Having regard to the objective of securing the best available men for the Supreme Court, it is imperative that the number of Judges of the Supreme

Court who consider the reasons for non-appointment should be as large as the number that had made the particular recommendation (AIR 1999 Supreme Court 1).

38. The Parliament, keeping in view the principle laid down by this Court in Al-Jehad Trust case (i.e. the opinion of the Chief Justice of Pakistan, being pater-familias about suitability of a candidate's ability, legal competency and integrity deserves due deference and that the President/Executive should give justicable reasons, which could be juxtaposed with the reasons of the Chief Justice, if the opinion of the Chief Justice of Pakistan is ignored) and the principle laid down by Supreme Court of India that instead of nomination by Chief Justice of India, the nomination will be made by the collegiums of Judges with majority, amended the process of appointment, by constituting a Commission having members from the Judiciary, Bars and the Executive to nominate one person each for each vacancy of a Judge in the Supreme Court, High Courts or the Federal Shariat Court, as the case may be, by majority of its members. Now instead of the President/Executive, under the old dispensation, the Parliamentary Committee either confirm the nomination by a majority of its total membership within fourteen days on receipt of a nomination from the Commission, failing which the nomination shall be deemed to have been confirmed or for justifiable reasons, to be recorded, may not confirm the nomination by a three-fourth majority of its total membership within fourteen days.

39. In the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1997 Supreme Court 84) [Reference No.2 of 1996, filed by the President of Pakistan], it was held that if the Prime Minister within the time-frame fixed in the judgment of this Court fails to tender his advice, he or she, shall be deemed to have agreed to the recommendations of the Chief Justice of Pakistan and the Chief Justice of Provincial High Court, as the case may be, and the President may proceed to make the final appointment on that basis. Keeping in view the authoritative decision given by this Court in the said case, the Constitution Framers by Clause 12 of Article 175A of the Constitution provided that if the Parliamentary Committee on receipt of a nomination from the Commission fails to confirm the nominee or to record reasons for not confirming the same by three- fourth majority of its total membership within said period, the nomination shall be deemed to have been confirmed. Clause 12 of Article 175A of the Constitution read with the law laid down in the cases of Munir Hussain Bhatti and Al-Jehad Trust leaves no room of doubt that the advice of the Prime Minister for the appointment of Judges of the superior Courts, which was binding upon the President under Article 48(1) of the Constitution, is now conferred upon the Committee and it is for thisreason that Clause 13 of Article 175A of the Constitution

provided that the Prime Minister shall forward the nominee confirmed by the Committee to the President of Pakistan for appointment. It does not require that the Prime Minister shall then advice the President for appointment.

40. To appreciate the proposition, it would be advantageous to reproduce hereinbelow the definition of the word "forward" as defined in 'The Concise Oxford Dictionary (Ninth Edition), which is the foremost authority on current English Language:--

Onward so as to make progress (not getting any further forward); send (letter etc.) on to a further destination.

41. From a bare reading of Clause 13 of Article 175A of the Constitution, it appears that the Committee, if confirms the name of a nominee of the Commission or the same is deemed to have been confirmed by it, the Prime Minister is left with no discretion but to forward the same to the President of Pakistan for appointment. The Prime Minister after confirmation of the name of the nominee by the Committee is not required to advice the President, under Article 48 of the Constitution or vice versa since no advice is given by the Prime Minister to return the same for reconsideration.

42. The role of the Prime Minister and the President of Pakistan in the appointment of Judges of the superior Courts is nothing but ministerial, and after receiving the nominations from the Committee the Prime Minister and the President have no discretion but to forward/appoint the nominees.

43. If Article 175A along with the Scheme of the Constitution, keeping in view its Preamble, which refers to an independent judiciary as well as Article 175(3) of the Constitution, which aims to separate the Judiciary from the Executive, is examined, it will lead to an irresistible conclusion that the role of the Executive in the appointment process of the Judges of the Superior Courts has become more-or-less ministerial and the entire process of appointment revolves around two bodies, created by/under the Constitution i.e. the Judicial Commission and the Parliamentary Committee.

44. Neither the learned Sr.ASC for the Referring Authority nor the learned Attorney General for Pakistan pointed out that the method of selecting Judges by the Commission in its meetings

dated 27-9-2012 and 22-10-2012 and by the Committee thereafter wasviolative of Article 177(2) or 193(2) of the Constitution or any provision of the Constitution. The questions are answered in above terms.

45. Now we would revert to question No. (i), to give my opinion on the same, which for convenience sake is reproduced hereinbelow:--

(i). Whether in view of the decision by the Chief Justice of the IHC that Mr.Justice Riaz was the senior most judge of the IHC, which decision of the Chief Justice was also confirmed by the President of Pakistan, Mr. Justice Kasi could be treated as most senior Judge of the IHC?

46. Mr. Justice Riaz Ahmad Khan was born on 15-5-1952. He qualified C.S.S. Examination in the year 1977 and joined Civil Services Academy Lahore. At the time, when he was posted at Peshawar, the PCS (Judiciary) Exam was announced in KhyberPakhtunkhwa (the then N.-W.F.P.) and he participated in the said examination and qualified the same. On his request, his services were transferred from Federal Government to the Provincial Government of Khyber Pakhtunkhwa and was posted as Civil Judge at Kohat, Haripur, and Peshawar and lastly as Senior Civil Judge at D.I. Khan. He resigned from the said post and started practicing law. He was elevated to the Bench on 4-1-2011 as an Additional Judge of Islamabad High Court, Islamabad and was confirmed on 21-11-2011 as a Judge of the said High Court.

47. Conversely, Mr. Justice Muhammad Anwar Khan Kasi was born on 28-11-1956. He was enrolled as an Advocate in 1982 and joined the Judicial Service of Balochistan as a Civil Judge in May, 1986. He was appointed as an Additional District and Sessions Judge in 1991 and as a District and Sessions Judge in 1997. He was elevated as an Additional Judge of Islamabad High Court, Islamabad on 4-1-2011 and was confirmed as a Judge of the said High Court on 21-11-2011.

48. Both the learned Judges were appointed through the same Notification, issued by the Ministry of Law, Justice and Parliamentary Affairs, Government of Pakistan, Islamabad, wherein the name of Mr.Justice Muhammad Anwar Khan Kasi appeared at Sr.No.1, whereas the name of Mr. Justice Riaz Ahmed Khan appeared at Sr.No.2. The Hon'ble Chief Justice of Islamabad High Court, Islamabad, while fixing their seniority, vide his order dated 22-12-2011 treated Mr. Justice Riaz Ahmad Khan, being elder in age, as senior to Mr. Justice Muhammad

Anwar Khan Kasi. Mr. Justice Muhammad Anwar Khan Kasi made a representation to the Chief Justice of Islamabad High Court, Islamabad, against the determination of his seniority, which was forwarded to the Secretary Ministry of Law, because the appointment notification issued by the said Ministry had placed the name of Mr. Justice Muhammad Anwar Khan Kasi at a senior serial number of the notification, to resolve the dispute of inter se seniority at the earliest. The President of Pakistan decided the representation and declared Mr. Justice Riaz Ahmad Khan senior to Mr. Justice Muhammad Anwar Khan Kasi in the seniority of the Judges of Islamabad High Court, Islamabad.

49. The letter No.F.12(5)/86-Add, dated 30-4-1987, issued by the Ministry of Law for the purpose of laying down the principle for inter se seniority of the Judges appointed on the same day, is nothing more than an equitable principle consistently adopted but is not backed by any provision of the Constitution or law. However, the convention of inter se seniority of a Judge is on the basis of 'senior in age', which by passage of time has become convention and ought to have been respected. We would like to reproduce herein below the letter dated 30-4-1987:--

"No.F.12(5)/87-AII Dated 30.04.1987.

GOVERNMENT OF PAKISTAN
MINISTRY OF JUSTICE AND PARLIAMENTARY
AFFAIRS(JUSTICE DIVISION)

Subject:- SENIORITY LIST OF HIGH COURT JUDGES

My dear Chief Justice,

Please refer to the correspondence resting with High Court of Sindh letter No.Gaz-IV, Z, 14(i) dated the 30th March, 1987, on the subject noted above.

2. An equitable principle consistently adopted in this regard is that Judges whose appointments are made by a single order take seniority according to age. If the appointment of two or more service candidates is also simultaneously made with that of candidate from the Bar, the service Judges will retain their existing seniority in the department regardless of their age which of

course would be the determining factor in respect of their seniority vis- -vis candidates from the Bar. This principle has the approval of the President.

3. I am to request you to please confirm whether the seniority list of Sindh High Court Judges has been prepared in the light of the above principle.

With kind regards.

Yours sincerely,

(Sd.)

(Irshad Hussain Khan)"

50. We have gone through various seniority lists of the Judges of the superior Courts and notifications of their appointments which leave no room for doubt that the recognized principle for determining seniority amongst the Judges of High Courts appointed on the same day irrespective of their appointments from Subordinate Judiciary or Bars, is theseniority in age, and the Law Secretary who issues the notifications of appointment has no lawful authority to determine the same nor does the serial-wise appearance of names in the notification have any nexus with the determination of seniority. We would like to reproduce hereinbelow, as illustration, some of the notifications, issued by Ministry of Law, Justiceand Parliamentary Affairs, Government of Pakistan, Islamabad and seniorities as determined by the High Courts:--

"As shown in the Notification, dated 14-9-2009, issued by Ministry of Law, Justice and Parliamentary Affairs Government of Pakistan, Islamabad	As placed in the seniority list, prepared by the Lahore High Court, according to their dates of birth:--

1.	Syed Mansoor Ali Shah	Mr. Justice Sagheer Ahmed Qadri	2-12-1951
2.	Sh. Najam ul Hassan	Mr. Justice Nasir Saeed Sheikh	12-12-1951
3.	Mr. Manzoor Ahmad Malik	Mr. Justice Sh. Najam ul Hassan	15-3-1952

4.	Mr. Asad Munir	Mr. Justice Kh. Imtiaz Ahmed	30-3-1953
5.	Mr.Ijaz ul Ahsan	Mr. Justice Manzoor Ahmed Malik	1-5-1956
6.	Hafiz Abdul Rehman Ansari	Mr. Justice Sardar Tariq Masood	11-3-1959
7.	Sardar Tariq Masood	Mr. Ijaz ul Ahsan	5-8-1960
8.	Mr. Tariq Javaid	Mr. Justice Saed Mansoor Ali Shah	28-11-1962
9.	Mr. Nasir Saeed Sheikh		
10.	Mr. Mansoor Akbar Kokab		
11.	Khawaja Imtiaz Ahmad		
12.	Mr. Sagheer Ahmad Qadri		

"As shown in the Notification, dated 11-5-2011, issued by Ministry of Law, Justice and Parliamentary Affairs Government of Pakistan, Islamabad	As placed in the seniority list, prepared by the Lahore High Court, according to their dates of birth:--

1.	Syed Kazim Raza Shamsi	Mr. Justice Altaf Ibrahim Qureshi	6-3-1953
2.	Mr. Abdul Waheed Khan	Mr. Justice Abdus Sattar Asghar	20-3-1953
3.	Syed Iftikhar Hussain Shah	Mr. Justice Mehmood Maqbool Bajwa	27-5-1954
4.	Mr. Abdus Sattar Asghar	Mr. Justice Amin-ud-Din	1-12-1960
5.	Ch. Muhammad Younus	Mr. Justice Muhammad Ameer Bhatti	8-3-1962
6.	Mr. Mehmood Maqbool Bajwa	Mr. Justice Ch. Muhammad Younus	16-9-1951
7.	Syed Ijaz Hussain Shah	Mr.Justice Iftikhar Hussain Shah	1-4-1953

8.	Mr. Amin-ud-Din Khan	Mr. Justice Syed Muhammad Kazim Raza Shamsi	6-9-1956
9.	Mr. Muhammad Ameer Bhatti	Mr. Justice Malik Shahzad Ahmed Khan	15-3-1963
10.	Mr. Altaf Ibrahim Qureshi		
11.	Malik Shahzad Ahmad Khan		

As shown in the Notification, dated 24-10-2005, issued by Ministry of Law, Justice and Parliamentary Affairs Government of Pakistan, Islamabad	As placed in the seniority list, prepared by the High Court of Sindh, according to their dates of birth:--

1.	Mr. Justice Munib Ahmed Khan	Mr.Justice Shamsuddin Hisbani	1-12-1946
2.	Mr. Justice Muhammad Athar Saeed	Mr. Justice Munib Ahmed Khan	8-5-1949
3.	Mr. Justice Faisal Arab	Mr. Justice Muhammad Athar Saeed	29-9-1949
4.	Mr. Justice Sajjad Ali Shah	Justice Mrs. Yasmeen Abbasey	5-1-1950
5.	Mr. Justice Nadeem Azhar Siddiqui	Justice Mrs. Qaiser Iqbal	13-12-1949
6.	Mr. Justice Shamsuddin Hisbani	Mr. Justice Ali Sain Dino Metlo	1-3-1950
7.	Justice Mrs. Yasmeen Abbasey	Mr. Justice Faisal Arab	5-11-1955
8.	Justice Mrs.Qaiser Iqbal	Mr.Justice Sajjad Ali Shah	14-8-1957
9.	Mr. Justice Ali Sain Dino Metlo	Mr. Justice Nadeem Azhar Siddiqui	22-1-1959

As shown in the Notification, dated 24-9-2009, issued by Ministry of Law, Justice and Parliamentary Affairs Government of Pakistan, Islamabad	As placed in the seniority list, prepared by the High Court of Sindh, according to their dates of birth:--

1.	Mr. Justice Shahid Anwar Bajwa	Mr. Justice Bhajandas Tejwani	1-1-1950
2.	Justie Ms. Rukhsana Ahmed	Mr. Justice Shahid Anwar Bajwa	5-10-1950

	Malik		
3,	Mr.Justice Ghulam Sarwar Kurai	Mr.Justice Ali Bin Adam Jaffery	14-1-1952
4.	Mr. Justice Ahmed Ali Sheikh	Mr. Justice Ghulam Sarwar Korai	5-4-1952
5.	Mr.Justice Ali Bin Adam Jaffery	Justice Ms. Rukhsana Ahmed Malik	15-4-1957
6.	Mr. Justice Bhajandas Tejwani	Mr. Justice Tufail H. Ibrahim	10-5-1958
7.	Mr. Justice Irfan Saadat Khan	Mr. Justice Ahmed Ali Sheikh	3-10-1961
8.	Mr.Justice Aqeel Ahmed Abbasi	Mr. Justice Irfan Saadat Khan	7-2-1963
9.	Mr.Justice Muneeb Akhtar	Mr. Justice Aqeel Ahmed Abbasi	16-6-1963
10.	Mr. Justice Tufail H. Ibrahim	Mr.Justice Muneeb Akhtar	14-12-1963"

51. Likewise neither the Constitution nor any law authorizes the President of Pakistan, who is a symbolic appointing authority, to decide the inter se seniority of Judges, which even otherwise is not only against the principles of Independence of Judiciary but also violativeof Article 175(3) of the Constitution, which provides for separation of the Judiciary from the Executive.

52. Like the Supreme Judicial Council, a forum created by the Constitution, as held "not a Court" in case of Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan (PLD 2010 Supreme Court 61), the Judicial Commission is also created by the Constitution and cannot be given the status of a Court to decide the issue of inter se seniority between two persons. The Commission, which is assigned the function of nominating the names of the candidates for appointment of Chief Justices of High Courts and the Judges of superior Courts by taking in consideration their legal competency etc, who meet the minimum qualification provided by Articles 177(2) and 193(2) of the Constitution has no mandate to decide the inter se seniority of Judges. Anyone, if aggrieved, by the determination of his seniority by the Chief Justice of the High Court and or by the Chief Justice of Pakistan being paterfamilias in the absence of rules, can seek remedy from the Court of competent jurisdiction. However, in the absence of specific guideline it is expected from the constitutional functionaries to regulate the exercise of their discretionary power in the matter as per norms emerging from the actual practice and convention, and legitimate expectancies.

53. Since no rules have been framed for determining the inter se seniority of Judges in superior Courts appointed on same day, we endeavor to draw out a criterion of inter se seniority from the example of a neighboring country.

54. According to the seniority norm in India, a judge (X) is considered to be senior to another judge (Y) if X was appointed to the court prior in time to Y. The presumption here is that both X and Y are appointed to the same court. If, say, X is appointed to the Bombay High Court, and then Y is appointed to the Calcutta High Court, it's not entirely clear if X is senior to Y. So let's assume that X and Y are both appointed to the Bombay High Court. What if they are appointed on the same date? If one of them is a lawyer being appointed to the court, and another is a subordinate court judge, the lawyer is considered senior to the subordinate judge, though they're appointed on the same date. This is entirely based on convention, however, at one point it was not - the Indian High Courts Act, 1861, said that "Judges of each High Court shall have Rank and Precedence according to the Seniority of their appointments". This provision was also seen in the Government of India Act, 1915, and in the Government of India Act, 1935.

55. Interestingly, in the U.S. Supreme Court as well as in Pakistan, associate justices have "precedence according to the seniority of their commissions", and then according to age if they're appointed on the same date; the same rule applies to US federal circuit court Judges.

56. Though it is not relevant for the purposes of giving opinion on the questions referred to, but time has come to avoid such an unpleasant situation in the future, instead of relying upon the opinion of Law Secretary given in the year 1987 rules should be framed by the superior Courts as to what should be the criteria for inter se seniority between (a) Judges appointed on the same day?; (b) A lawyer and a Judge from the District Service? Should it be date of appointment, age or date of registration as an advocate.

57. To record our opinion on question Nos. (ii); (iii); and (x), the same are reproduced hereinbelow:--

(ii) Whether Mr. Justice Riaz had a legitimate expectancy to be appointed as Chief Justice of the IHC on the ground that he was the most senior Judge of that Court in the light of the judgment of the Supreme Court in the Al-Jehad case referred to above;

(iii) Whether the JCP acted in accordance with the Constitution and conventions thereof in recommending a junior Judge as Chief Justice of the IHC; and

(x) What should be the criteria for elevating a Judge/Chief Justice of the High Court to the Supreme Court? Is it, their seniority inter-se as Judge of the High Court or their seniority inter-se as Chief Justice of respective High Court be the consideration for elevation to the Supreme Court?

58. The Hon' ble Chief Justice of Pakistan initiated the name of Mr.Justice Iqbal Hameed-ur-Rahman, the Chief Justice of Islamabad High Court, Islamabad, for appointment as a Judge of this Court, in terms of Rule 3(1) of the Judicial Commission of Pakistan Rules, 2010 framed in exercise of powers conferred on the Commission by Clause 4 of Article 175A of the Constitution. After deliberation and taking into consideration various aspects of the matter including the criteria for elevation of a Judge in Supreme Court, he was nominated as a Judge of this Court. In another meeting, held on the same day, which was attended by Chief Justice of Islamabad High Court, Islamabad, the name of Mr. Justice Muhammad Anwar Khan Kasi was initiated for appointment as Chief Justice of the Islamabad High Court, Islamabad and after deliberation he was nominated for Chief Justice of Islamabad High Court, Islamabad and send the same to the Parliamentary Committee.

59. The names of Mr. Justice Iqbal Hameed-ur-Rahman, as a Judge of this Court and Mr. Justice Muhammad Anwar Khan Kasi, as Chief Justice of Islamabad High Court, Islamabad, were confirmed by the Committee.

60 As regards the legitimate expectancy of the most senior Judge to be appointed as Chief Justice of the High Court, in the case of Al-Jehad Trust (supra) it was held as under:-

"Article 193 of the Constitution empowers the President of Pakistan to appoint the Chief Justice of the High Court. Apparently there is no constitutional requirement to appoint senior most Judge as Chief Justice of the High Court whenever permanent vacancy occurs in the High Court, but to secure the independence of Judiciary from the Executive, it is necessary to advert to the Constitutional convention which has developed by the continuous usage and practice over a long period of time. The Constitutional convention to appoint most Senior Judge of the High Court as a Chief Justice, had been consistently followed in the High Courts since before partition of the sub-continent. The senior most Judge has an edge over rest of the Judges of the High Court on the basis of his seniority and entertains a legitimate expectancy to be considered for appointment as Chief Justice against permanent vacancy of the office of the Chief Justice.

Apparently there is wisdom in following the Constitutional convention of appointing most senior Judge of the High Court as permanent Chief Justice, otherwise a junior most Judge in the High Court may aspire to become Chief Justice of the High Court by bypassing his seniors and to achieve this object resort to undesirable conduct by going out of his way to oblige the Government in power. It he succeeds in securing his appointment as Chief Justice by superseding his seniors, by resorting to such measures he will endanger the independence of Judiciary and destroy the public confidence in the Judiciary. If a departure to follow the established convention of appointing the senior most Judge is to be made, the appointing authority should record reasons for not appointing most senior Judge as Chief Justice of the High Court. The complexion of the Institution is likely to be impaired by so doing."

61. Having notice of the principles laid down by this Court in the case of Al-Jehad Trust (ibid) that the most senior Judge has the legitimate expectancy to be appointed as Chief Justice of the High Court, the Parliament in its wisdom, while making it mandatory that the most senior Judge of the Supreme Court will be appointed as the Chief Justice of Pakistan under Article 175A(3) of the Constitution, left the question of suitability for appointment of the Chief Justice of the High Court to be decided by the Judicial Commission, a forum created by the Constitution, having four most senior Judges of this Court along with the Chief Justice of Pakistan and Chief Justice of the concerned High Court with one vote each. The contention of the learned counsel that if the principles of seniority and legitimate expectancy linked therewith are ignored, it would give rise to the whim and caprice of the person initiating the name, which will affect the independence of the judiciary and its working. At first sight, it seems to have force, but on a careful perusal of Clause 5 of Article 175A of the Constitution, it appears that the process of nomination by one person, prior to Constitution (Nineteenth) Amendment now vests in a body consisting of all stakeholders i.e. the Judiciary, the Representatives of Bars and the Executive. The four most senior Judges of this Court, the Chief Justice of the High Court, a retired Judge of Supreme Court, persons of integrity, who have first hand information about the administrative skill and other related matters, decide who is the most suitable person to be appointed as Chief Justice of the High Court. Knowing well the principles laid down by this Court in Al-Jehad Trust case, if the Commission decides to nominate someone other than the most senior Judge as Chief Justice, it may give cause to question before an adjudicatory forum, and the issue may be decided there, but not in this (Reference) jurisdiction.

62. In the Budget Reference (PLD 1989 Supreme Court 85), this Court said "it cannot in this (reference) jurisdiction decide the matter as a lis between the parties, wherein exercise of other powers is available to the Court including discretionary and taking other consequential actions". But on this count nomination cannot be termed as violative of the Constitution.

63. We may mention here that after Al-Jehad Trust case and even after Constitution (Nineteenth) Amendment, the President of Pakistan appointed the Chief Justices of Lahore and Peshawar High Court, who were not the most senior Judges of that Courts.

64. The Constitution is an organic law which creates the very Legislature which makes ordinary statutes.

65. Prior to the Constitution (Nineteenth) Amendment, the Chief Justice of Pakistan being the head of the judiciary nominates a candidate for the post of Chief Justice of the High Court or Judges of the Superior Courts. The "ability, competency, knowledge and suitability" of the nominee were held to be determined by the Chief Justice of Pakistan being pater familias, his view deserved due deference, which power now is exercised by the Judicial Commission consisting of Senior Judges, including Chief Justice of the High Court, Representative of Bar, Attorney General for Pakistan and the Law Minister. The power to appoint a Judge of the superior Courts was initially vested in the Chief Justice of Pakistan prior to Constitution (Nineteenth) Amendment, which then devolved upon the Judicial Commission. As held in the case of Munir Hussain Bhatti, (supra) that the principle laid down in the authoritative decision of Al-Jehad Trust case is still applicable. In the said case, it was held that in the matter of Judges the "satisfaction" of the Chief Justice of Pakistan (now Judicial Commission of Pakistan) is "subjective" and that such satisfaction is not subject to judicial review. In the case of Ghulam Hyder Lakho v. Federation of Pakistan (PLD 2000 Supreme Court 179), it was held that satisfaction of the Chief Justice of Pakistan is "subjective" and was not justifiable. This view was again reaffirmed in the case of Supreme Court Bar Association v. Federation of Pakistan (PLD 2002 Supreme Court 939).

66. Although minutes of meeting of Judicial Commission have been placed on record by referring authority. We are not taking note of it nor making any comments on it for the reason that satisfaction of the Chief Justice of Pakistan prior to 19th Constitutional Amendment and of

Judicial Commission now is "subjective" as held in the cases of Al-Jehad Trust, Ghulam Hyder Lakho and Munir Ahmed Bhatti and not open to judicial review.

67. In this view of the matter, when this Court, time and again, by authoritative decisions held that the "satisfaction" in the appointment of Judges of the superior Courts including the Chief Justice of the High Court is "subjective" and not open to Judicial Review, the question of nomination by the Commission and confirmation by the Committee of a Judge who is not the most senior Judge of that Court as Chief Justice of High Court, cannot be answered in advisory jurisdiction and may be adjudicated upon in other jurisdiction. Although the practice of appointment of a Judge other than most senior Judge is against the convention and may not be in the interest of the judiciary, however, the appointment of a Judge not most senior as Chief Justice of the High Court cannot be termed as violative of the Constitution.

68. Proviso to Sub-clause 5(iv) of Article 175A provided that for the appointment of a Chief Justice of the High Court the most senior Judge mentioned in paragraph (ii) shall not be a member of the Commission have wisdom in it. If it is supposed that the Judicial Commission decided to nominate most senior Judge of the High Court as a Chief Justice, it is not desirable that he should be a part of such nomination process being one of the interested parties and in case the Judicial Commission decided not to nominate the most senior Judge as the Chief Justice to avoid embarrassment to him because of his presence in the Commission, as various issues may be related to him come under discussion.

69. In this view of the matter, the Advisory Jurisdiction of the Court is not suitable for such a determination, as the person whose rights are likely to be affected is not before us.

70. When we analyze Clauses 3 and 5 of Article 175A along with Articles 180 and 96 of the Constitution, it appears that the Constitution Framers made it mandatory under Clause 3 of Article 175A that the most senior Judge of the Supreme Court shall be appointed as Chief Justice of Pakistan and during the absence of the Chief Justice of Pakistan, the most senior Judge of the Supreme Court shall be appointed as Acting Chief Justice of Pakistan, whereas in the case of Chief Justice of the High Court neither Clause 5 of Article 175A nor Article 196 of the Constitution make it mandatory that in the case of a vacancy, the most senior Judge of the High Court will be appointed as Chief Justice of the High Court and in case of absence of the Chief

Justice of the High Court, the most senior Judge of the High Court shall be appointed as Acting Chief Justice.

71. It is a principle of legal policy that law should be altered deliberately rather than causally. When the Legislature provided two different modes of appointment of the Chief Justice of Supreme Court and the Chief Justice of the High Court, then so long as the Article of the Constitution is not amended or in adjudicatory jurisdiction, the Court has to follow the same criteria as in the case of the Chief Justice of Pakistan, the appointment of a Judge other than most senior Judge cannot be held, in Advisory Jurisdiction, against the Constitution.

72. As regards the criteria for the appointment of a Judge of the Supreme Court, the Chief Justice of Pakistan, pater familias of the Judiciary, in terms of Rule 3 of the Judicial Commission of Pakistan Rules, 2010, initiates nomination of a Judge in the Supreme Court, keeping in view the number of sitting Judges from different High Courts and in this Court, work load of High Courts, their administrative difficulties and other related issues. The Supreme Court is the highest Court of Pakistan and its Judges should reflect the geographic diversity of Pakistan i.e. Judges are appointed to the Supreme Court by taking into account all the Provincial High Courts and Islamabad High Court. Justice Ahmadi while disagreeing with the majority view in second Judge case (AIR 1994 Supreme Court 268) held that the seniority norm ought to be deviated from while appointing Judges to the Supreme Court of India in order to achieve a more representative course.

73. The Judicial Commission consisting of four most senior Judges of this Court; a retired Judge of Supreme Court; a senior Advocate nominated by the Pakistan Bar Council; the Law Minister; and the Attorney General for Pakistan, after deliberations, in terms of Clause 8 of Article 175A, by majority decides whether to nominate or not to nominate the candidate whose name was initiated by the Chief Justice of Pakistan.

74. Generally, in interpreting statutes, it is presumed that the Legislature chooses its words carefully. Therefore, if a word or phrase has been added somewhere, such addition is not to be deemed redundant; conversely, if a word or phrase has been left out somewhere, such omission is not be deemed inconsequential. Instead, a change in language implies a change in intent. Maxwell, an authority on statutory interpretation remarks: "When precision is required, no

safer rule can be followed than always to call the same thing by the same name." (P.311, Maxwell on the Interpretation of Statures, Eleventh Edition, 1962)

75. In any case, we work on the understanding that the Parliament and its draftsmen are not so careless that they would, within the space of a single article, make such a fatal error. We owe the Legislature more deference that the Legislature is presumed to have chosen its words even more carefully in this case, since we are not talking of some obscure procedural statute over here; we are dealing with a document no less sacred than the Constitution itself.

76. Although due consideration of every legitimate expectation in the decision making process is a requirement of the rule of non-arbitrariness therefore, it is expected that this norm to be observed, while initiating the name in term of Rule 3 of Judicial Commission Rules, 2010 and then by the Judicial Commission. A three Member Bench of this Court in the case of Tariq Aziz-ud-Din: in re (2010 SCMR 1301) held as under:--

"Suffice to observe as is pointed out hereinabove, as well, that posting a junior officer to hold the charge of a senior post, ignoring seniors who are eligible for promotion, does not advance the object of achieving good governance because the rules framed on the subject, noted hereinabove, are not redundant in any manner, therefore, same need to be respected and followed accordingly. It is a settled principle of law that object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness and openness in consonance with the command of the Constitution enshrined in different Articles including Articles 4 and 25. Once it is accepted that the Constitution is the supreme law of the country, no room is left to allow any authority to make departure from any of its provisions or the law and the rules made thereunder. By virtue of Articles 4 and 5 (2) of the Constitution, even the Chief Executive of the country is bound to obey the command of the Constitution and to act in accordance with law and decide the issues after application of mind with reasons as per law laid down by this Court in various pronouncements [Federation of Pakistan through Secretary, Establishment Division v. Tariq Pirzada (1999 SCMR 2744)]. It is also a settled law that even Chief Executive of the country is not above the Constitution [Ch. Zahur Ilahi v. Mr. Zulfikar Ali Bhutto (PLD 1975 SC 383)]. It is the duty and obligation of the competent authority to consider the merit of all the eligible candidates while putting them in juxtaposition to find out the meritorious amongst them otherwise one of the organs of the State

i.e. Executive could not survive as an independent organ which is the command of the Constitution. Expression 'merit' includes limitations prescribed under the law. Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these thresholdrequirements are considered arbitrary and misuse of power [Director Food, NWFP v. M/s Madina Flour and General Mills (Pvt) Ltd. (PLD 2001 SC 1)]. Equally, discretionary power conferred on Government should be exercised reasonably subject to existence of essential conditions, required for exercise of such power within the scope of law. All judicial, quasi judicial and administrative authorities must exercise power in reasonablemanner and also must ensure justice as per spirit of law and seven instruments which havealready been referred to above regarding exercise of discretion. The obligation to act fairlyon the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of justice Mansukhlal Vithaldas Chauhan v. State of Gujarat [1997 (7) SCC 622]."

However, a perusal of Clause 3 of the Article 175A read in juxtaposition with Clause 5 of Article 175A along with its proviso indicates that instead of making it mandatory to appoint the most senior Judge as Chief Justice of the High Court, as provided in Clause 3 of Article 175A read with Rule 3 of the Judicial Commission of Pakistan Rules, 2010, the matter is left to the discretion of the Chief Justice of Pakistan to initiate the name for Chief Justice of the High Court and the Commission by majority of its total membership to nominate one person for said post. When the Constitution Framers in the case of the appointment of the Chief Justice of Pakistan made it mandatory that only the most senior Judge of Supreme Court shall be appointed as Chief Justice of Pakistan, it left room to appoint a person, who may not be the senior most Judge as Chief Justice of the High Court. Appointment of a Judge other than most senior Judge though may be violative of the convention and is not desirable, but cannot be termed as violative of the Constitution. However, it may give cause to the aggrieved person to seek remedy before the adjudicatory forum, and question can be answered in said jurisdiction.

77. As regards question No.(iv) "Whether JCP was properly constituted as per provision of Article 175-A of the Constitution as Mr. Justice Kasi who participated in the meeting was not a Member thereof and was a stranger to the proceedings". Mr. Justice Muhammad Anwar Khan Kasi attended the meeting of the Commission, dated 22-10-2012. The Chief Justice of Islamabad

High Court, Islamabad, initiated the names of Mr. Shaukat Aziz Siddiqui, as a Judge and Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge [for a period of six months] of Islamabad High Court, Islamabad. For this reason, the notifications in respect of these learned Judges were not issued. The Commission after deliberations nominated the above named learned Judges by majority of 7 to 2. Even if it is accepted that Mr. Justice Muhammad Anwar Khan Kasi was not the most senior Judge of Islamabad High Court, Islamabad, and attended the meeting of the Commission, it is established from the record that on the date when the meeting of the Commission was called for the purpose of considering the appointment of three Additional Judges of the High Court, Mr. Justice Riaz Ahmad Khan was on ex-Pakistan Leave and the former (Mr. Justice Muhammad Anwar Khan Kasi) was the most senior Judge available of the said High Court. The terms "Chief Justice" and "Acting Chief Justice" have been defined by the Constitution, whereas the term "most senior Judge" has not been defined. However, even if it is accepted that Mr. Justice Muhammad Anwar Khan Kasi, was not eligible to sit in the meeting of the Commission, Clause 8 of Article 175A stipulates that the decision of the nomination of a person for any vacancy of a Judge of the superior Court is to be taken by the Commission, by majority of its total members and as such, his attending the said meeting does not vitiate the entire proceedings or makes the nomination invalid.

78. In the case of Managing Director, SSGC Ltd. v. Ghulam Abbas (PLD 2003 Supreme Court 724), it was held that:-

"Perusal of subsection (1) of section 3-A of the Act, 1973 reveals that "minimum strength of a Bench to exercise or perform functions of the Tribunal is two Members, including the Chairman," meaning thereby that while conducting hearing, the status of a Chairman is also of a Member. Whereas under clause (a) of section 3-A(2), decisions are to be pronouncedby the majority of the Members. Clause (b) of section 3-A (2) further provides that in case of division between Members of the Bench or in case of equal division of the Members, the case shall be referred to the Chairman and whatever opinion is expressed by him, would have supremacy and constitute the decision of the Tribunal. In this case impugned judgment has been authored by the Chairman and all the Members have concurred with him, therefore, presuming that Mr. Aftab Ahmed joined proceedings without lawful authority but nevertheless impugned judgment can sustain, as it has been rendered by the Bench comprising of more than two Members of the Service Tribunal and apprehension of influencing the

judgment by Mr. Aftab Ahmed (Retired Member) stands excluded as it was authored by a former Judge of High Court being the Chairman of the Service Tribunal.

In addition to above legal position, the impugned judgment can be treated to have been delivered validly under de facto doctrine.

Thus endorsing the principles discussed in above paras, the impugned judgment is declared to have been passed validly because Mr. Aftab Ahmed immediately before his retirement had been performing same functions, therefore, it would be deemed that in exercise of same powers in good faith he associated himself in the proceedings.

Besides above conclusion, the inclusion of Mr. Aftab Ahmed as a Member of the Bench, had also not caused prejudice to any of the parties because he has not authored the judgment nor there is any likelihood of his having influenced the judgment in any manner as it was authored by the Chairman and remaining two Members of the Bench had concurred with him. No useful purpose as such would be served by remanding the case to the Service Tribunal for fresh decision because dispute is lingering on between the parties for the last so many years, therefore, justice demands that now cases should be decided finally unless remand of the cases is inevitable under the circumstances of each case."

79. In the case of Muhammad Saleem and 12 others v. Secretary Prosecution, Government of Punjab, Lahore and another (2010 PLC (C.S.) 1), a three member Bench of the Lahore High Court, while dealing with the question that the committee which conducted the interviews of the petitioners did not comprise all the four members, appointed by the Chief Minister of Punjab vis- -vis the persons (strangers), who have participated in the interview process, applied the rule of severance, excluded the marks given by the stranger and held that whatever result emerges on account of the exclusion of the stranger's marks, shall be taken to be the result of the committee, as quorum of the selection committee was complete.

80. In the case of Anderson v. City of Persons (496, P.2d 1333-Kan: Supreme Court 1972), the Supreme Court of Kansas while dealing with a question, "The appellants' first point involves an alleged conflict of interest arising from the fact that City Commissioners Myer S. Freshman and Barton Dean and all of the five urban renewal commissioners owned property within the general urban renewal area at the time they voted on various resolutions during the progress of

the urban renewal program. The legislature provided in the urban renewal law for a special conflict of interest section to disqualify any officer or employee of the city or of the urban renewal board who owned property included or planned to be included in an urban renewal project." noted as under:--

"It is undisputed in the evidence that on May 16, 1966, at the time the resolutions were passed by the city commission declaring certain areas of Parsons to be "slum and blight areas" and creating and appointing the urban renewal agency, two of the three Parsons city commissioners owned real estate in the slum or blight areas. The same two commissioners continued to own their properties at the time the urban renewal plan was adopted. The two commissioners mentioned were Myer S. Freshman and Barton Dean. On January 22, 1969, the city commission by resolution approved the urban renewal project. At that time commissioners Freshman and Dean owned property within the urban renewal area but did not own any land within the area covered by the urban renewal project. As pointed out heretofore, at all stages in the development of the urban renewal program, all of the five urban renewal commissioners had an interest in property located within the general urban renewal area. The first issue to be determined is whether or not the various actions of the urban renewal board in establishing and developing the urban renewal program and the various actions of the Parsons city commissioners in approving the urban renewal plan and in approving the urban renewal project were so tainted with conflict of interest within the meaning of K.S.A. 17-4758 as to completely invalidate ab initio all of the actions and steps taken by the urban renewal board and by the city commissioners in developing the Parsons urban renewal program. It should be emphasized that each of the commissioners made a full disclosure of his property interest in the urban renewal area before participating in any action of his board.

We, of course, recognize the common law principle that a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interests of the public. If he acquires any interest adverse to those of the public, without a full disclosure it is a betrayal of his trust and a breach of confidence. (United States v. Carter, 217 U.S. 286, 54 L.Ed. 769, 30 S.Ct. 515.)

The law, however, does not forbid the holding of an office and exercising powers thereunder because of a possibility of a future conflict of interest. (Reilly v. Ozzard, 33 N.J. 529, 166 A.2d

360, 89 A.L.R.2d 612.) It has generally been held that the vote of a council or board member who is disqualified because of interest or bias in regard to the subject matter being considered may not be counted in determining the necessary majority for valid action. There are many cases cited in the annotation in 42 A.L.R. 698 in support of this principle. It is also the rule that where the required majority exists without the vote of the disqualified member, his presence and vote will not invalidate the result and further that a majority vote need not be invalidated where the interest of a member is general or of a minor character. (Beale v. City of Santa Barbara, 32 Cal.App. 235, 162 P. 657; Corliss v. Village of Highland Park, 132 Mich. 152, 93 N.W. 254, adhered to on rehearing 132 Mich. 159, 95 N.W. 416; 56 Am.Jur.2d, Municipal Corporations, Etc. Section 172.)

81. As regards Pinochet case (R v Bow Street Metropolitan Stipendiary Magistrate (1999) UK (H.L.52), the House of Lords on allegation that one of the Law Lords member of majority decision had links with Amnesty International complaining of the extradition of Gen. Pinochet, set aside his earlier majority decision by 3 to 2.

82. Consequently, in our opinion, in view of the principle laid down in the cases of Ghulam Abbas and Muhammad Saleem (supra), the proceedings of the Judicial Commission, thereby nominating the names of two, mentioned above, as Judges of Islamabad High Court, Islamabad, are not vitiated because of the attendance of Mr. Justice Muhammad Anwar Khan Kasi in the meeting.

83. Attending to questions Nos. (vi), (vii), (viii) & (xii) reproduced hereinbelow, which are interconnected and require to be answered together:--

(vi) What should be the manner, mode and criteria before the Judicial Commission with respect to the nomination of a person as a Judge of High Court, Supreme Court and Federal Shariat Court in terms of Clause (8) of Article 175- A of the Constitution of Islamic Republic of Pakistan, 1973;

(vii) What is the proper role of the Judicial Commission and Parliamentary Committee under the Constitution of Pakistan with respect to appointment of Judges of Supreme Court, High Court and Federal Shariat Court;

(viii) What should be the parameters before the Parliamentary Committee for the confirmation of the nominee of the Judicial Commission in terms of Clause (12) of Article 175- A of the Constitution of Islamic Republic of Pakistan, 1973; and

(xii) The Parliamentary Committee under Article 175-A of the Constitution may confirm or may not confirm a nomination in accordance with the provisions stated therein. What is the true import and meaning of the word "confirm" and what is the effect of the proviso to Clause 12 of Article 175-A which reads as follows:

"Provided further that if nomination is not confirmed, the Commission shall send another nomination;

Clause 9 of Article 175A of the Constitution provides for the constitution of a Parliamentary Committee and Clause 10 thereof provides for quorum of the Committee, whereas Clause 12 of the said Article provides that the Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed. Proviso to Clause 12 of Article 175A of the Constitution provides that the Committee, for reasons to be recorded, may not confirm the nomination by three-fourth majority of its total membership within the said period and shall forward its decision with reasons so recorded to the Commission through the Prime Minister. The role of the Committee after receipt of nominations from the Commission has been discussed in depth by a four Member Bench of this Court in the case of Munir Hussain Bhatti (supra) and it was held as under:--

"The nominations made by the Judicial Commission and the refusal of the Parliamentary Committee to confirm the same appear to have generated considerable public interest, providing a great deal of material for debate in the public, the media and the legal fraternity. The Bar Associations of the High Courts in the country have also debated the impugned decisions of the Committee. The Sindh High Court Bar Association, which is itself a petitioner in Constitution Petition No.18 of 2011, has placed on record its resolution dated 23-2-2011 "condemning" the action of the Committee. The proceedings in these petitions and the short order of 4-3-2011 have also made headlines in the print and the electronic media. Moreso, critical comments on our order dated 4-3-2011 have been carried prominently in the media. We, therefore, find little substance in the factual assertion advanced by Mr. K. K. Agha.

"26. The repeatedly emphasized imperative of maintaining a record both of the proceedings of the Committee and of the "reasons" behind its decisions, very strongly suggests that the Committee's decisions were intended to be subject to judicial review. Otherwise, if the Committee's decisions were meant to be non-justiciable, and beyond judicial scrutiny, the insistence on recording reasons would not make much sense. It is an established rule of interpretation that Parliament does not waste words and redundancy should not be imputed to it. This principle would apply with even greater force to the Constitution - the supreme law of the land. On this point Mr. K. K. Agha was hard pressed to respond. It will be seen that even an insular reading of this Article, leaves the impression that the decisions of the Committee are subject to review. He, however, argued that even though the 19th amendment had required the Committee to give reasons for its decisions, it did not make any provision for these decisions to be challenged in a court of law.

27. The above submission was augmented by Mr. K. K. Agha, by adverting to the Orderof the seventeen-member Bench dated 21-10-2010 wherein it had, inter alia, been said that "in case of rejection of nomination by the Parliamentary Committee ... [it] shall have to state reasons which shall be justiciable". The gist of this argument appears to be that in view of the order of the larger Bench, this Court should infer that through the 19th amendment, it was intended by Parliament that decisions taken by the Parliamentary Committee should not be subject to judicial review. Such inference was sought on the basis that the suggestion in the aforesaid Order as to justiciability was not incorporated in the amended Article. The argument of the learned Additional Attorney General, based on implication and not on the wording of Article 175A as amended, is contrary to the jurisprudence that has evolved in our jurisdiction. Furthermore, the argument ignores the legal precept explained above that the Constitution has to be construed as an organic whole."

34. On the other hand, Article 175A has set up an independent constitutional body having a specific role assigned to it relating to the appointment of Judges of this Court and of the High Courts. This constitutional body, as adverted to above, has been referred to as a Parliamentary Committee but it is neither part of Parliament when acting under Article 175A nor is it elected by or answerable to Parliament. An examination of the Constitution and established Parliamentary practice will further demonstrate this distinction between the Committee set up under Article 175A and a parliamentary committee. By virtue of Article 67 of the Constitution, each House of Parliament may "make rules for regulating its procedure and the conduct of its

business". This authority has been exercised by both Houses of Parliament and as a result, rules have been framed. The upper House has framed the "Rules of Procedure and Conduct of Business in the Senate 1988" (the 'Senate Rules') while the National Assembly has adopted its own rules known as the "Rules of Procedure and Conduct of Business in the National Assembly, 2007" (the 'Assembly Rules'). From the Senate Rules and the Assembly Rules, it is very clear that a parliamentary committee is a body elected by the respective houses of Parliament and answerable to such houses. For instance, the Assembly Rules in Rule 200, state that "[e]xcept as otherwise provided in these rules, each Committee shall consist of not more than seventeen members to be elected by the Assembly within thirty days after the ascertainment of the Leader of the House." Likewise, the Senate Rules in Rule 145(1) provide that "[e]ach Committee shall consist of not less than six members and not more than twelve members to be elected by the Senate...

38. It would be obvious from a plain reading of the above provisions that the limited ouster of jurisdiction stipulated therein is in respect of, inter alia, the proceedings and conduct of business of the Parliament. The decisions of the Committee (even if comprised of persons who are honorable members of Parliament) cannot be considered immune from judicial scrutiny by virtue of Article 69. This conclusion necessarily follows from the fact that the Committee is a creation of the Constitution and not of the Parliament. Furthermore, it is independent of and separate from Parliament notwithstanding its composition. It performs, as noted above, an executive function relating to the Judiciary and, therefore, has been placed in the Chapter relating to the Judicature rather than in Chapter 2 [The Majlis-e-Shoora (Parliament)] dealing with Parliament.

39. The justiciability of the decisions of the Parliamentary Committee can also be approached from another angle, which would be manifest from a holistic examination of the Constitution. The governance of state organs in Pakistan is based on checks and balances where the powers of each organ are counter-balanced by some other organ of the State. Thus, executive action taken by the various administrative and executive functionaries of the State can be called in question, inter alia, under Articles 199 and 184(3) of the Constitution. Such executive action may additionally be subject to Parliamentary review and over-sight in our parliamentary system of governance. Legislative action can also be called in question in Court, inter alia, on the touchstone that it is violative of the Constitution. Likewise, decisions rendered by this Court can be modified or reversed by legislation (in recognized circumstances) and such legislation may

also be retrospective. Thus we see that each organ of the State, be it the Judiciary, the Executive or the Legislature, operates under constitutional constraints which effectively make these organs of State limited in their actions.

84. The principles laid down in the said case were reiterated by another four Members Bench of this Court in the case of Federation of Pakistan v. Sindh High Court Bar Association (PLD 2012 Supreme Court 1067).

85. The roles of the Committee and the Commission as well as the parameters before the Committee for confirmation of a nomination by the Commission in terms of Clause 12 of Article 175A of the Constitution are well settled by the reading of the Constitution itself and also by the principles laid down by this Court in the afore-referred two judgments and in Advisory Jurisdiction the same cannot be reviewed.

86. In the matter of Cauvery Water Disputes Tribunal (AIR 1992 Supreme Court 522), the Supreme Court of India declined to answer the question of law under Article 148 of the Indian Constitution, which is parallel to Article 186 of the Constitution and held that:--

"when the Supreme Court in its adjudicatory jurisdiction pronounces its authoritative opinion on a question of law, it cannot be said that there is any doubt about the question of law or the same is res integra so as to require the President to know what the true position of law on the question is. The decision of the Supreme Court on a question of law is binding on all Courts and authorities and under the said clause the President can refer a question of law only when this Court has not decided it. Secondly, a decision given by the Supreme Court can be reviewed only under Article 137 read with Rule 1 of Order XL of the Supreme Court Rules, 1966 and on the conditions mentioned therein. When, further, the Supreme Court overrules the view of the law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and productive of public mischief. Under the Constitution such appellate jurisdiction does not vest in the Supreme Court, nor can it be vested in it by the President under Article 148 of the Indian Constitution".

87. For the foregoing reasons, it is not necessary to answer questions Nos.(vi), (vii), (viii) and (xii), as the same have already been answered in the above referred cases.

88. Now coming to questions Nos.(xi) & (xiii),which read as under:--

(xi) Whether the Constitution of Pakistan prohibits individual Members of the JCP to initiate names for appointments of Judges to the Supreme Court, the High Courts and the Federal Shariat Court; and

(xiii) Whether by not providing in camera proceeding for JCP in Article 175-A of Constitution of Pakistan, the intention of the legislature is to ensure complete transparency and open scrutiny?

Clause 1 of Article 175A of the Constitution provides that there shall be a Judicial Commission of Pakistan for the appointment of the Judges of the Supreme Court, High Courts and the Federal Shariat Court. The composition of the Commission is provided in Clauses 2 and 5 of Article 175A of the Constitution for appointment of Judges of the Supreme Court and of the High Courts, respectively, and Clause 6 thereof relates to the composition of the Commission for appointment of Judges of the Islamabad High Court, whereas Clause 7 of the Article deals with the appointments of Judges of the Federal Shariat Court. The Constitution itself has not provided a mechanism by which the name of the proposed Judge for appointment in the Supreme Court, High Courts or Federal Shariat Court can be placed before the Commission except providing qualification in terms of Articles 177(2) and 193(2). However, Clause 4 of Article 175A of the Constitution confers powers upon the Commission to make rules regulating its procedure and Clause 15 thereof empowers the Committee to make rules to regulate its proceeding.

89. The Commission, in exercise of the powers conferred on it by Clause 4 of Article 175A (1), framed the Judicial Commission of Pakistan Rules, 2010, which were duly published in the Gazette of Pakistan, dated 8-11-2010. Rule 3 of the said Rules reads as under:-

"3. Nominations for Appointments.(1) For each anticipated or actual vacancy of a Judge in the Supreme Court or the Chief Justice of Federal Shariat Court or the Chief Justice of a High Court, the Chief Justice of Pakistan shall initiate nominations in the Commission for appointment against such vacancy.

(2). For each anticipated or actual vacancy of a Judge in the Federal Shariat Court or Judge in the High Court, the Chief Justice of the respective Court shall initiate and send nomination for appointment against such vacancy to the Chairman for convening meeting of the Commission.

5(4). The proceedings of the Commission shall be held in camera. A record of the proceedings shall be prepared and maintained by the Secretary duly certified by the Chairman under his hand."

Till date, the said Rules are not amended. No Member of the Commission, in terms of the Rules duly framed and not in conflict with any provision of Article 175A, except the Chief Justice of Pakistan or the Chief Justice of the Federal Shariat Court or of a High Court, can initiate the nomination for appointment against anticipated or actual vacancy therein.

90. In terms of the said Rules, the Commission itself in its wisdom decided and rightly so that for each anticipated or actual vacancy of a Judge in the Supreme Court, High Courts and Federal Shariat Court, the Chief Justices of the said Courts shall initiate nomination in the Commission for appointment against such vacancy of a person duly qualified in terms of Articles 177(2) and 193(2) of the Constitution and sent to the Chairman of the Commission. The Chairman of the Commission shall then call a meeting of the Commission where such nomination shall be discussed and deliberated upon and then either it will be approved or rejected. The wisdom behind the Rules framed by the Commission is that the Chief Justice of Pakistan or the Chief Justice of the concerned High Court is the best person to practically/ technically evaluate a person's caliber to be nominated as a Judge, including his legal competence and integrity. The Chief Justice of the High Court holding the highest office in the judicial hierarchy of the Province is the best person to know about all the Judicial Officers working in the Province and Advocates appearing before the High Court and on the basis of such personal knowledge, information and material before him, he recommends a person to be appointed as a Judge of the superior Courts.

91. Except initiating the nomination of a person, the Chief Justice of Pakistan or the Chief Justice of the High Court has no other special role in the appointment process and is just like any other member of the Commission and merely because he initiates the nomination, the same itself cannot be recommended, but to be considered as an act of mere procedure. The name initiated

by the Chief Justice of Pakistan or the Chief Justice of the Provincial High Court is discussed in the Commission comprising all members from different spheres including the Executive, Representatives of Bars and Senior Judges of the Supreme Court and the High Courts. After deliberations and technical/professional evaluation of person's caliber as a Judge, the Commission nominates the name of such person to be appointed as a Judge of the superior Courts by majority of its total membership of the Commission.

92. In the case of Sindh High Court Bar Association, Sukkur through President v. Pakistan through Secretary, Ministry of Law, Parliamentary Affairs & Justice, Islamabad and another (PLD 2012 Sindh 531), the learned High Court of Sindh while dealing with the question of nominating a person as a Judge or an Additional Judge, in the meeting of the Commission held as under:--

"We had the benefit of going through the judgment proposed to be delivered by our learned brother Maqbool Baqar J. We are in agreement with the conclusion drawn by him. However we intend to append our own reasoning in order to clarify that initial nomination for appointment as Additional Judge or a Judge in the High Court is to be made exclusively by the Chief Justice of the concerned High Court and after receiving the initial nomination, the Chairman, convenes meeting of the Judicial Commission of Pakistan where the nomination is considered. Judicial Commission then either recommends or rejects such nomination but on its own does not initiate the process of nomination. The reasons for stating so are as follows.

Appointment of Judges of the superior courts are made under the provisions of Article 175-A of the Constitution. The said Article provides the procedure that is to be followed by the Parliamentary Committee but it does not provide the procedure that is to be followed by the Judicial Commission. Under sub- Article (4) of Article 175-A of the Constitution it was left to the Judicial Commission to devise its procedure by framing its own rules. Such rules were framed by the Judicial Commission described as JudicialCommission of Pakistan Rules, 2010. Rule 3(2) of the said Rules provide that for each vacancy of a Judge in a High Court, nomination for appointment is to be initiated by the Chief Justice of the concerned High Court. Hence under the new dispensation also it is the Chief Justice of the concerned High Court who initially proposes a name against an anticipated or actual vacancy in his Court and sends it to the Chairman of the Judicial Commission. The Chairman then convenes meeting of the Judicial

Commission. The nomination is discussed and deliberated and then either it is approved or rejected.

We may add here that in case it is interpreted in a way that initial nomination of the person as a Judge or Additional Judge can also be made by other members of the Judicial Commission then it might lead to a bizarre situation. The Judicial Commission for appointment in the High Courts comprises of thirteen members. Apart from five sitting judges of the Supreme Court and two of the concerned High Court, the other six members of the Judicial Commission comprise of a retired judge, Federal Law Minister, Provincial Law Minister, Attorney General and one representative each from Pakistan Bar Council and Provincial Bar council. If they as members of Judicial Commission also become entitle to nominate persons for the consideration of the Judicial Commission in addition to the nominations sent by the Chief Justice of the concerned High Court then each of such members would be coming up with his own list of nominees whom he might consider suitable for appointment. There is strong possibility that at a time scores of nominations would be before the Judicial Commission for consideration. Pressure groups might also emerge lobbying with certain members of Judicial Commission to initiate nomination of persons of their choice. The entire process of appointment might get confused and become unworkable. It is to avoid all this that Rule 3(2) of Judicial Commission of Pakistan Rules, 2010 provides that initial nomination for appointment, be it for a Judge or Additional Judge of a High Court, is to be sent to the Judicial Commission by the Chief Justice of the concerned High Court. This has always been the procedure in the previous dispensation and has also been recognized under the present dispensation under Rule 3(2) of Judicial Commission of Pakistan, Rules, 2010. The only change that has been brought about after the 18th amendment to the Constitution is that determination of capability of a nominee of the Chief Justice of the High Court is not left to be decided by the Chief Justice of the concerned High Court and the Chief Justice of Pakistan only but to a thirteen member body called Judicial Commission of Pakistan."

93. Rules being delegated Legislation are subject to certain fundamental factors. Underlying the concept of delegated legislation is the basic principle that the Legislature delegates because it cannot directly exert its will in every detail.

94. The Judicial Commission of Pakistan Rules, 2010 are not in contravention with or inconsistent or repugnant to any provision of the Constitution, and have been made and promulgated in exercise of the authority conferred on it by the Constitution.

95. On having dilated upon the questions referred to by the President of Pakistan and opinion recorded hereinabove, we are of the opinion that Mr. Justice Riaz Ahmad Khan is senior most Judge of the Islamabad High Court.

96. Though it is desirable that the most senior Judge of the High Court should be appointed as Chief Justice of that Court, however, in view of Clauses 2 and 3 of Article 175A read with Clause 5, appointment of a Judge not most senior Judge as a Chief Justice of the High Court is not violative of any provision of Constitution.

97. The recommendations made by the Judicial Commission in its meeting dated 22-10-2012 are not vitiated merely because Mr. Justice Muhammad Anwar Khan Kasi attended the said meeting.

98. In terms of Article 175A of the Constitution, the President of Pakistan has no discretion to send the name of nominee of the Judicial Commission and confirmed by the Parliamentary Committee for reconsideration.

99. The Judicial Commission in exercise of powers conferred by Clause 4 of Article 175A framed rules who can initiate .the name of a person as a Judge of the High Court, Federal Shariat Court and the Supreme Court and the Chief Justice of the High Courts and Federal Shariat Court, as the case may be.

100. The roles of the Parliamentary Committee and the Judicial Commission and parameters for the confirmation of the nominee of the Judicial Commission, have been dealt with, in detail, by this Court in the case of Munir Hussain Bhatti (supra).

(Sd.)

Khilji Arif Hussain Judge

(Sd.)
Tariq Parvez Judge

(Sd.)
Ejaz Afzal Khan Judge

(Sd.)
Gulzar Ahmed Judge

(Sd.)
Sh. Azmat Saeed, Judge

EJAZ AFZAL KHAN, J.---I have gone through the judgment authored by my brother Mr. Justice Khilji Arif Hussain. I have also gone through the answers to the questions and the reasons recorded therefor. I am not inclined to agree with some of them and thus answer the questions in my note recorded as under.

2. Brief facts leading to the institution of the reference and the Constitution Petition are that a vacancy occurred in this Court on the retirement of Mr. Justice Mian Shakirullah Jan. In order to fill the said vacancy, the Judicial Commission of Pakistan in its meeting held on 27-9-2012 nominated Mr. Justice Iqbal Hameed-ur-Rehman as a Judge of this Court. His nomination as such necessitated the nomination of a Judge of the said High Court for appointment as Chief Justice. Mr.Justice Muhammad Anwar Khan Kasi was nominated for appointment as Chief Justice of the High Court on the ground that he was the most Senior Judge of the said Court. His nomination was confirmed by the Parliamentary Committee and sent to the Prime Minister, who forwarded it to the President for appointment. The President having serious reservations to the status of Mr. Justice Muhammad Anwar Khan Kasi as the most Senior Judge declined to appoint him and thus filed the reference raising the questions recounted above. Constitution Petition mentioned above is also a corollary of the same episode.

3. Mr. Waseem Sajjad, learned Sr. ASC while appearing on behalf of the President contended that when the principle underlying determination of seniority of the Judges elevated on the same day is seniority in age, Mr. Justice Riaz Ahmed Khan, being senior in age is the most Senior Judge to be nominated as Chief Justice, Islamabad High Court. This practice, the learned

counsel added, being more than a century old has been consistently followed in the Indian sub-continent and even after its partition. The learned counsel to substantiate his argument referred to the letter No.F.12(5)/86-AII, dated 30-4-1987, Government of Pakistan, Ministry of Justice and Parliamentary Affairs (Justice Division). The learned counsel by elaborating his argument contended that when according to the dictum laid down by this Court in the case of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (PLD 1996 SC 324), the most senior Judge of a High Court has a legitimate expectancy to be appointed as Chief Justice, Mr. Justice Riaz Ahmed Khan being the most senior Judge of the High Court, would be entitled to be nominated for appointment as Chief Justice in the absence of any valid reason and that the nomination of Mr. Justice Muhammad Anwar Khan Kasi is not only an out right departure from the century's old practice but also against the law of the land, therefore, the President is not bound to appoint such person as Chief Justice. The learned counsel next contended that the Judicial Commission, nominating Mr. Justice Shaukat Aziz Siddique for appointment and Mr. Justice Noor-ul-Haq Qureshi for extension as Judges of the High Court, cannot be said to have been properly constituted in the absence of most senior Judge, therefore, their nomination will not have any legal or constitutional sanctity notwithstanding it having been confirmed by the Parliamentary Committee was sent to the Prime Minister and then forwarded to the President. This nomination would be all the more without any legal and Constitutional sanctity, argued the learned counsel, when the proceedings before the Commission have not been conducted in the manner prescribed by the Constitution. The learned counsel to support his contention referred to the cases of "Human Rights Cases Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010, (Action taken on news clippings regarding Fast Food Outlet in F-9 Park, Islamabad). (PLD 2010 Supreme Court 759), and "Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others" (PLD 1992 SC 757(K). The fact, maintained the learned counsel, that a non-entity, sat, voted and took part in the proceedings of the Judicial Commission would alone call for their annulment. The learned counsel to support his contention placed reliance on the case of "Regina. v. Bow Street MetropolitanStipendiary Magistrate and others, Ex-parte Pinochet Ugarte (No.2). Even otherwise, the learned counsel submitted, the President being appointing authority is duty bound to ensure obedience to the Constitution and the law cannot appoint a person who has not been nominated in accordance with the provisions of the Constitution.

4. During the course of arguments I asked the learned counsel for the President that when the proceedings in the house in view of the provision contained in Article 67 of the Constitution do not become invalid on the ground that some persons who were not entitled to sit, vote or otherwise take part in the proceedings, sat, voted and took part therein, how a proceedings of the Commission can become invalid on this score, the reply of the learned counsel was that the proceedings in the former case do not become invalid because it has been so provided in the aforesaid article but there is nothing of that sort in Article 175-A of the Constitution. The learned counsel by referring to Article 48 of the Constitution contended that despite insertion of Article 175-A in the Constitution, the President still has the power to send back a nomination to the Judicial Commission for reconsideration. But when asked whether a nomination originating from the Judicial Commission, confirmed by the Parliamentary Committee, and forwarded by the Prime Minister to the President could be treated as an advice and returned as such for reconsideration in terms of Article 48 of the Constitution when it does not provide for any such eventuality, the learned counsel did not give any satisfactory answer. The fact is that his own reply to our query with reference to Article 67 of the Constitution barricaded his way to take a U-turn. Though he swang to yet another argument by submitting that the Constitutional provisions have to be interpreted as a whole and not in isolation but that would not be of any help to him. The learned counsel further contended that if the principle of seniority and that of legitimate expectancy linked therewith, are ignored without reasons to be recorded, it would give rise to the whim and caprice of the person sitting at the peak which is not conducive for independence of judiciary. The learned counsel also waxed eloquent by asking this Court to redefine the mode and manner of appointing judges but when I observed that all these questions have been elaborately dealt with in the case of "Munir Hussain Bhatti, Advocate and others. v. Federation of Pakistan and another" (PLD 2011 SC 407), the learned counsel submitted that they have been, but since they have been dealt with collaterally, the judgment so rendered being obiter dicta will not have a binding force. I would have agreed with the learned counsel for the President but he could not point out anything striking or significant in the judgment which went un noticed and unattended. It is, therefore, not obiter dicta by any attribute. This judgment could have been treated as sub-silentio: a precedent not fully argued, but again the learned counsel could not advert to any legal or Constitutional aspect of the case which escaped the notice of the Bench rendering the judgment, so as to relegate it to the status of sub-silentio. The learned counsel next contended that Mr. Justice Muhammad Anwar Khan Kasi could not be held as most senior Judge on the strength of the judgment rendered in the case of "Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and Justice,

Islamabad v. Sindh High Court Bar Association through President and another". (PLD 2012 Supreme Court 1067), as it does not provide any premises for such conclusion. How the proceedings in the Judicial Commission could be held in camera, asked the learned counsel, when the legislature in its wisdom purposely provided otherwise, so as to ensure complete transparency and open scrutiny. What would be the criterion, asked the learned counsel, for elevating a Judge or a Chief Justice of a High Court to the Supreme Court and how far the inter se seniority of the Judges or the Chief Justices of the High Courts would be relevant in this behalf?

5. Mr. Muhammad Akram Sheikh, learned Sr. ASC appearing on behalf of the petitioner contended that once the Judicial Commission nominated Mr. Justice Shaukat Aziz Siddique for appointment and Mr.Justice Noor-ul-Haq Qureshi for extension for a period of six months as Judges of the Islamabad High Court, the Parliamentary Committee after having confirmed their nomination sent it to the Prime Minister and the Prime Minister forwarded it to the President for appointment, the President has no other option but to do the needful. The learned counsel next contended that Mr. Justice Muhammad Anwar Khan Kasi being the most Senior Judge rightly participated in the meeting of the Judicial Commission nominating the Judges mentioned above, therefore, the President has no power whatsoever to delay or decline the appointment on any pretext if it is seen in the light of Eighteenth and Nineteenth Amendment. Even if it is assumed, added the learned counsel, that the Judge participating in the meeting was a non entity, it would not materially affect the result if the doctrine of severance is applied. The learned counsel to support his contention placed reliance on the case of "Managing Director, Sui Southern Gas Company Ltd., Karachi v. Ghulam Abbas and others" (PLD 2003 SC 724). The learned counsel next contended that had the decision been made by a margin of one, the argument of the learned counsel for the President and the judgment rendered in the case of "Regina v. Bow Street Metropolitan Stipendiary Magistrate and others, Ex-parte Pinochet Ugarte (No.2) would have had some relevance but where the decision is by the majority of 7 against 2, absence of the persona designata or participation of a non-entity would be of little consequence. When I asked what course of action would be open before the President if a person nominated for appointment of a Judge of the Supreme Court does not fulfil the requirements laid down by Article 177(2) or a person nominated for appointment of a Judge of the High Court does not fulfil the requirements laid down by Article 193 (2) of the Constitution, the learned counsel except referring to the stance taken by the Government in C.M.A. No. 1602 of 2010 in Constitution Petition No. 11 of 2010 could not state anything more.

6. Learned Attorney General appearing on the Court's notice contended that the Judicial Commission was not properly constituted, as the persona designata did not attend the meeting and the person who attended the meeting was just a non-entity therefore, the whole process shall stand vitiated. The President, the learned Attorney General submitted, is not bound to appoint a nominee of such Judicial Commission notwithstanding his nomination was confirmed by the Parliamentary Committee and forwarded to the President by the Prime Minister on its receipt. The learned Attorney General next contended that when in the judgment rendered in the case of "Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others" (PLD 2009 SC 379), this Court annulled the appointment of many Judges for want of recommendation by the consultee, a nomination originating from the Judicial Commission which was not properly constituted has to be given alike treatment. The learned Attorney General by referring to the commentary on the Constitution of India by Durga Das Basu argued that the President is not a robot placed in the President House nor a Computer controlled automation, nor a figure head nor ornamental piece placed in the show window of the nation called the President's House. Instead, the learned Attorney General submitted, he is a living human who on being selected by the nation is endowed with all dignity, honour and prestige as head of the republic for upholding the Constitution and the laws, therefore, his role as such cannot be doubted in any situation. Seen from such angle, the learned Attorney General concluded, the President cannot be kept off the affairs regulating the appointment of Judges.

7. Mr. Makhdoom Ali Khan, learned Sr. ASC appeared as Amicus Curiae on Court's notice. The learned counsel in the first instance addressed the Court as to the binding nature of an advice rendered by this Court in the exercise of its advisory jurisdiction. The learned counsel by referring to the relevant paragraph of the judgment rendered in "Reference No. 02 of 2005 by the President of Pakistan" (PLD 2005 Supreme Court 873) submitted that though an opinion given by the Court on a reference filed by the President is not a decision between the parties but since it is handed down after undertaking an extensive judicial exercise and hearing of Advocates it has a binding force. Such advice, the learned counsel submitted has to be accepted and acted upon with utmost respect. The learned counsel then by referring to various Articles of the Constitution in general and Article 175-A in particular contended that mode and manner of appointing Judges of the superior Courts has under gone a change and that the whole process from the inception to the last is now regulated by the latter. The learned counsel argued that

once Judicial Commission has nominated a person, the Parliamentary Committee after having confirmed his name has sent it to the Prime Minister and the Prime Minister has forwarded it to the President for appointment, the President will have no choice but to appoint him. While commenting on the mode and manner of appointment of Judges and things ancillary thereto, the learned counsel submitted that an exhaustive exercise has been taken in the cases of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others. v. Federation of Pakistan and others" (supra), and "Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another" (supra), therefore, yet another exercise is hardly called for. The learned counsel, however, submitted that the principle and practice of appointing most Senior Judge as Chief Justice is not open to any dispute and thus cannot be departed from without reasons to be recorded as held in the case "Al-Jehad Trust through RaeesulMujahideen Habib-ul-Wahabb-ul-Khairi and others. v. Federation of Pakistan and others" (supra). The President or for that matter any other person performing in the affairs of Federation, the learned counsel submitted, is duty bound to protect the Constitution and that the instant reference appears to be an effort in this behalf. When asked, whether the President shall appoint a person a Judge of the Supreme Court, if he does not fulfil the requirements laid down by Article 177(2) or a Judge of a High Court if he does not fulfil the requirements laid down by Article 193 of the Constitution, notwithstanding Clause 13 of Article 175-A of the Constitution, the learned counsel readily replied in no. But when asked, how a deadlock occasioning due to refusal of the President to appoint a person nominated, who does not fulfil the requirements laid down by the Articles mentioned above, would be brought to an end especially when the President in view of the provision contained in Article 175-A cannot send the nomination back to the Commission for reconsideration, the learned counsel could not give any satisfactory reply.

8. Khawaja Haris Ahmed, Sr. ASC who was also asked to assist the Court as Amicus Curiae, highlighted the salient features of his written submissions. He by referring to Article 175-A of the Constitution submitted that the role of the President in appointment of Judges, is more or less ministerial when the Judicial Commission has nominated a person, the Parliamentary Committee after having confirmed his name has sent it to the Prime Minister and the Prime Minister has forwarded it to the President for appointment. He by referring to the judgment rendered in the case of "Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another" (supra), submitted that where almost all of the questions raised in the reference have been answered in the judgment, it would be just futile to rehearse the same.

9. With regard to the question relating to seniority, the learned counsel submitted that the same being person specific is not one of law, therefore, this Court cannot afford to decide such question in its advisory jurisdiction. The learned counsel next contended that omission to mention the expression most senior Judge in the provision relating to appointment of Chief Justice of a High Court is significant and that in the absence of any express provision even the most senior Judge cannot have legitimate expectancy,as the Constitution on thisscore has remained the same even after the dictum laid down in the case of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra).

10. I have gone through the relevant record carefully and considered the submissions made by the learned counsel for the parties as well as amicus curiae.

11. Before I discuss the arguments addressed at the bar by the learned counsel and answer the questions raised in the reference and the petition, it is worthwhile to mention that the mode and manner of appointing Judges underwent a radical change after Eighteenth and Nineteenth Amendments of the Constitution. Almost all the process of appointing Judges,Chief Justices of the High Courts, the Federal Shariat Court and Judges of the Supreme Court has been capsuled in Article 175-A of the Constitution. A reference to the said Article would, therefore, be relevant which reads as under :-

"175-A, (1). There shall be a Judicial Commission of Pakistan, hereinafter in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as hereinafter provided.

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

(i) Chief Justice of Pakistan;

(ii) (four) most senior Judges of the Supreme Court;

(iii) a former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the (four) member Judges, for a term of two years;

(iv) Federal Minister for Law and Justice;

(v) Attorney-General for Pakistan; and

(vi) a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two years.

(3) Notwithstanding anything contained in clause (1) or clause (2), the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan.

(4) The Commission may make rules regulating its procedure.

(5) For appointment of Judges of a High Court, the Commission in clause (2) shall also include the following, namely :----

(i) Chief Justice of the High Court to which the appointment is being made;

(ii) the most senior Judge of that High Court;

(iii) Provincial Minister for Law; and

(iv) an advocate having not less than fifteen years practice in the High Court to be nominated by the concerned Bar Council for a term of two years;

[Provided that for appointment of the Chief Justice of a High Court the most Senior Judge mentioned in paragraph (ii) shall not be member of the Commission:

Provided further that if for any reason the Chief Justice of High Court is not available, he shall be substituted by a former Chief Justice or former Judge of that Court, to be nominated by the Chief Justice of Pakistan in consultation with the four member Judges of the Commission mentioned in paragraph (ii) of clause (2)].

(6) For appointment of Judges of the Islamabad High Court, the Commission in clause (2) shall also include the following, namely : ---

(i) Chief Justice of the Islamabad High Court; Member and

(ii) the most senior Judge of that High Court:

Provided that for initial appointment of the [Chief Justice and the] Judges of the Islamabad High Court, the Chief Justices of the four Provincial High Courts shall also be members of the Commission:

Provided further that subject to the foregoing proviso, in case of appointment of Chief Justice of Islamabad High Court, the provisos to clause (5) shall, mutatis mutandis, apply.

(7) For appointment of Judges of the Federal Shariat Court, the Commission in clause (2) shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its member:

Provided that for appointment of Chief Justice of Federal Shariat Court, the provisos, to clause (5) shall, mutatis mutandis, apply.

(8) The Commission by majority of its total membership shall nominate to the Parliamentary Committee 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.

(9) The Parliamentary Committee, hereinafter in this Article referred to as the Committee, shall consist of the following eight members, namely:---

(i) four members from the Senate; and

(ii) four members from the National Assembly [:]

[Provided that when the National Assembly is dissolved, the total membership of the Parliamentary Committee shall consist of the members from the Senate only mentioned in paragraph (i) and the provisions of this article shall, mutatis mutandis, apply.].

(10) Out of the eight members of the Committee, four shall be from the Treasury Benches, two from each House and four from the Opposition Benches, two from each House. The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition.

(11) Secretary, Senate shall act as the Secretary of the Committee.

(12) The Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed:

[Provided that the Committee, for reasons to be recorded, may not confirm the nomination by three-fourth majority of its total membership within the said period:]

[Provided further that if a nomination is not confirmed by the Committee it shall forward its decision with reasons so recorded to the Commission through the Prime Minister:

[Provided further that if a nomination is not confirmed, the Commission shall send another nomination.]

(13) The Committee shall send the name of the nominee confirmed by it or deemed to have been confirmed to the Prime Minister who shall forward the same to the President for appointment].

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

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

(16) The provisions of Article 68 shall not apply to the proceedings of the Committee.]

[(17)] The Committee may make rules for regulating its procedure.]"

12. A look at the above quoted provision would reveal that it prescribed the mode and manner as to how the Judicial Commission shall proceed to nominate a person for appointment as a Judge or Chief Justice of a High Court, the Federal Shariat Court or a Judge of the Supreme Court and how the Parliamentary Committee would look at such nomination while confirming or refusing to confirm it. Who is eligible to be appointed as a Judge or Chief Justice of a High Court, the Federal Shariat Court or a Judge of the Supreme Court and whether the person sought to be nominated possesses the caliber, capacity and conduct befitting the slot, are the questions to be considered by the tiers listed in the provision mentioned above. Once a person is nominated by the Judicial Commission his name will go to the Parliamentary Committee. The Parliamentary Committee may confirm such nomination by majority of its total membership within fourteen days. If it fails to confirm a nomination within fourteen days it shall be deemed to have been confirmed. It may refuse to confirm a nomination by 3/4th and send it back to the Commission through the Prime Minister for reconsideration but after recording reasons therefor. The Commission shall, then, send another nomination. The Committee shall send the name of the nominee confirmed by it or deemed to have been confirmed to the Prime Minister who shall forward the same to the President for appointment.

13. Now the questions arise what is nomination in its pith and substance; whether it can be treated as an advice to the President and if so whether it can be returned for reconsideration to the source it has originated from or processed through. Before I answer these questions, a careful look at Article 48 of the Constitution would be quite advantageous. It, thus, reads as under:--

"President to act on advice, etc.

[48. (1) In the exercise of his functions, the President shall act [on and] in accordance with the advice of the Cabinet [or the Prime Minister]:

[Provided that [within fifteen days] the President may require the Cabinet or, as the case may be, the Prime Minister to reconsider such advice, either generally or otherwise, and the

President shall [, within ten days,] act in accordance with the advice tendered after such reconsideration.]

(2) Notwithstanding anything contained in clause (1), the President shall act in his discretion in respect of any matter in respect of which he is empowered by the Constitution to do so [and the validity of anything done by the President in his discretion shall not be called in question on any ground whatsoever].

(3) Clause (3) omitted.

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

(5) Where the President dissolves the National Assembly, notwithstanding anything contained in clause (1), he shall,---

(a) appoint a date, not later than ninety days from the date of the dissolution, for the holding of a general election to a Assembly; and

(b) appoint a care-taker Cabinet [in accordance with the provisions of Article 224 or, as the case may be, Article 224A.]]

[(6) If at any time the Prime Minister considers it necessary to hold a referendum on any matter of national importance, he may refer the matter to a joint sitting of the Majlis-e-Shoora (Parliament) and if it is approved in a joint sitting, the Prime Minister may cause such matter to be referred to a referendum in the form of a question that is capable of being answered by either --- Yes" or --- Not".]

(7) An Act of Majlis-e-Shoora (Parliament) may lay down the procedure for the holding of a referendum and the compiling and consolidation of the result of a referendum.

14. A bare reading of this Article would reveal that the President in the exercise of his functions shall act in accordance with the advice of the Cabinet or the Prime Minister. The President in

view of the proviso to Article 48(1) has the power to require the Cabinet or the Prime Minister as the case may be, to reconsider such advice generally or otherwise. Similarly, the President, in view of the provision contained in Article 75 of the Constitution, has the power to return a bill, other than a money bill, presented to him for his assent, for reconsideration. A nomination originating from the Commission, confirmed by the Committee is also an advice in its pith and substance inasmuch as it is forwarded by the Prime Minister to the President for being acted upon. But since it originates from the Commission in terms of Article 175-A of the Constitution, it is not an advice in terms of Article 48 of the Constitution. Nor is it open to the incidence of return for reconsideration because Article 175-A of the Constitution does envision any such thing. This omission appears to be deliberate and purposeful. For whatever power the President had before Eighteenth and Nineteenth Amendments, including the power to return a nomination for reconsideration to the source it has originated from, has now been conferred on the Parliamentary Committee. If a power requiring the Prime Minister or the Cabinet to reconsider an advice, under Article 48, or a power requiring the Parliament to reconsider a bill, under Article 75 of the Constitution, has been conferred on the President, a power requiring the Commission or the Parliamentary Committee, to reconsider a nomination, too, could have been conferred on him, but it has not been conferred. When it has not been conferred, I am bound to take the Constitutional provisions as they are. A Casus Omissus can, in no case, be supplied by the Court of law as that would amount to altering the provision. "It is not our function, as was held by Mr. Justice Walsh, in the case of "Attorney General v. Bihari, re Australia Factors Limited (1966) 67 S.R. (N.S.W.) 150; to repair the blunders that are to be found in the legislation". They must be corrected by the legislator". A Court of law is not entitled to read words into the Constitution or an Act of Parliament unless clear reason is found within the four corners of either of them. Yes, the President can act in the exercise of his discretionary powers under Article 48(2) of the Constitution but the areas of such powers are well defined and well marked. He cannot return a nomination for reconsideration even under the garb of his discretionary power when it in its origin and specie is not an advice in terms of Article 48(1) of the Constitution. I, therefore, hold that the President has no power to return a nomination to any of the tiers it has passed from, even if it is violative of the Constitution or the law. But at any rate the President shall not appoint a person a Judge of the Supreme Court or a Judge or Chief Justice of a High Court as the case may be, whose nomination, in his opinion, is against the Constitution and the law. For the Constitution which makes obedience to the Constitution and the law the inviolable obligation of every citizen would never ever require a person no less than the President to do something against the Constitution and the law. Nor would his oath of

office, which requires him to discharge his duties and perform his functions in accordance with the Constitution and the law, permit him to do any such thing. Reference may well be made to Articles 177 and 193 of the Constitution and Oath of the President which read as under:--

"Article 177: Appointment of Supreme Court Judges.

[(1) The Chief Justice of Pakistan and each of the other Judges of the Supreme Court shall be appointed by the President in accordance with Article 175A.]

(2) A person shall not be appointed a 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 (including a High Court which existed in Pakistan at any time before the commencing day); or

(b) has for a period of, or for periods aggregating, not less than fifteen years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day) ".

"Article: 193: Appointment of High Court Judges.

[(1) The Chief Justice and each of other Judges of a High Court shall be appointed by the President in accordance with Article I75A.]

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

(a) he has for a period of, or for periods aggregating, not less than ten years been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day); or

(b) he is, and has for a period of not less than ten years been, a member of a civil service prescribed by law for the purposes of this paragraph, and has, for a period of not less than three years, served as or exercised the functions of a District Judge in Pakistan; or

(c) 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 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.]"

And

"OATHS OF OFFICE

President

[Article 42]

(In the name of Allah, the most Beneficent, the most Merciful.)

I,....., do solemnly swear that I am a Muslim and believe in the Unity and Oneness of Almighty Allah, the Books of Allah, the Holy Quran being the last of them, the Prophethood of Muhammad (peace be upon him) as the last of the Prophets and that there can be no Prophet after him, the Day of Judgment, and all the requirements and teachings of the Holy Quran and Sunnah:

That I will bear true faith and allegiance to Pakistan:

That, as President of Pakistan, I will discharge my duties, and perform my functions, honestly, to the best of my ability, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan:

That I will not allow my personal interest to influence my official conduct or my official decisions:

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan:

That, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will:

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as President of Pakistan, except as may be required for the due discharge of my duties as President.

[ay Allah Almighty help and guide me (A'meen)]"

15. The above quoted provisions of the Constitution as well as the oath of his office would show that the President before appointing a person, a Judge or a Chief Justice of a High Court or a Judge of the Supreme Court shall ensure that his nomination is in accordance with the Constitution and the law. He shall not appoint a person, a Judge or a Chief Justice of a High Court or a Judge of Supreme Court, if his nomination does not conform to the Constitution and the law. Especially when there is no provision in Article 175-A of the Constitution, in para materia with that of Article 48 requiring the President to do the needful within ten days, or a deeming provision in para materia with that of Article 75 of the Constitution requiring the President to do the needful within ten days failing which the needful shall be deemed to have been done. A deadlock, would inevitably be the consequence as the President can neither return the nomination to the source it has originated from or processed through nor can he appoint the person, thus nominated. As the deadlock revolves around the constitutionality, legality or otherwise of the nomination recourse to an advisory or adjudicatory jurisdiction of this Court would be the only way out. If the Court upholds the opinion of the President, the Commission shall initiate proceedings de novo in accordance with the opinion of the Court. If it does not, the President shall appoint the person nominated accordingly.

16. Who is senior, what is the criterion for determining seniority amongst the Judges elevated on the same day and what is the way of deciding about the most senior Judge for appointment as Chief Justice? Answers to these questions have been provided in the letter of Law Department dated 30-4-1987 which reads as under:--

"No.F.12(5)/86-AII. Dated . 30-4-1987.

GOVERNMENT OF PAKISTAN MINISTRY OF JUSTICE
AND PARLIAMENTARY AFFAIRS (JUSTICE DIVISION)

SUBJECT: SENIORITY LIST OF HIGH COURT JUDGES

My dear Chief Justice,

Please refer to the correspondence resting with High Court of Sindh letter No. Gaz-IV,Z,14(i) dated the 30th March, 1987, on the subject noted above.

2. An equitable principle consistently adopted in this regard is that Judges whose appointments are made by a single order, take seniority according to age. If the appointment of two or more service candidates is also simultaneously made with that of candidate from the Bar, the service Judges will retain their existing seniority in the department regardless of their age which of course would be the determining factor in respect of their seniority viz-a-viz candidates from the Bar. This principle has the approval of the President.

3. I am to request you to please confirm whether the seniority list of Sindh High Court Judges has been prepared in the light of the above principle.

With kind regards.

Yours sincerely,

(Sd.)

(Irshad Hassan Khan)"

17. A perusal of the letter reproduced above leaves no doubt that the established practice and the time honoured yardstick for determining seniority amongst the Judges of a High Court, elevated on the same day, is seniority in age except in the case of Judges from service whose inter se seniority remains intact even on their elevation irrespective of their age. This principle has been consistently followed hitherto without exception ever since the establishment of the High Courts in the Indian Subcontinent and also after its partition. This principle even

otherwise merits respect and reverence because it not only rules out personal whim and caprice of the person at one peak or another and shuts doors and windows for manipulation at ministerial level but also creates an environment which is conducive for the rule of law, supremacy of the Constitution and independence of Judiciary. This principle being too clear and conspicuous cannot be disputed. At times it has been departed from but that was only when there was something concrete against the Judge. This is what was laid down in the case of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra). The relevant paragraph would be germane to the case in hand which reads as under:--

"It is true that in Article 193 of the Constitution which relates to inter alia to the appointment of a Chief Justice in a High Court, it has not been provided that most of the senior of Judges shall be made as the Chief Justice. The reason seems to be obvious, namely, it is possible that the senior most Judge, at the relevant time, may not be physically capable to take over the burden of the office or that he may not be willing to take upon himself the above responsibility. The Chief Justice of Pakistan, who is one of the consultees under Article 193 will be having expertise knowledge about the senior most Judges of a High Court. If the senior most Judge is bypassed for any of the above reasons, he cannot have any grievance but if he is superseded for extraneous considerations, the exercise of power under Article 193 of the Constitution will not be in accordance therewith and will be questionable.

I am, therefore, of the view that keeping in view the provisions of the Constitution as a whole and the well-established convention as to the appointment of the senior most Judges in the High Court as the Chief Justice followed consistently in conjunction with the Islamic concept of 'Urf'. The most senior Judge of a High Court has a legitimate expectancy to be considered for appointment as the Chief Justice and in the absence of any concrete and valid reasons to be recorded by the President/Executive, he is entitled to be appointed as such in the Court concerned.

Before parting with the discussion on the above question, I may observe that there seems to be wisdom in following the convention of seniority. If every Judge in a High Court aspires to become Chief Justice for the reason that he knows that seniority rule is not to be followed, it will adversely affect the independence of judiciary. The junior most Judges may feel that by having good terms with the Government in power he can become the Chief Justice. This will destroy

the institution and public confidence in it. The Chief Justices of the High Courts have the power to fix the roster i.e. to decide when a case is to be fixed and before whom it is to be fixed. In other words, they regulate the working of the forum it is, therefore, very important that the Chief Justices should not be pliable and they should act independently".

The word "Urf" used in the above quoted paragraph is of tremendous significance which means commonly known, commonly received and commonly approved of. This principle was reiterated in the case of "Malik Asad Ali and others v. Federation of Pakistan and others"(PLD 1998 SC 33), the relevant paragraph for the facility of reference is reproduced as under:-

"6. This Court in case of Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 while interpreting the provisions of Article 193 of the Constitution, relating to the appointment of Chief Justice of a Provincial High Court, on the basis of convention followed in this behalf held, that the senior most Judge of the High Court, in the absence of any concrete and valid reason has to be appointed as the Chief Justice of the High Court. We are of the view that the above rationale laid down by this Court for appointment of the Chief Justice of High Court applied with greater force in the case of appointment of Chief Justice of Pakistan under Article 177 of the Constitution, in view of the more consistent practice and convention followed in this regard for appointment of Chief Justice of Pakistan in the past and especially in view of the provisions contained in Article 180 of the Constitution which recognizes the principle of seniority as the sole criteria for appointment of Acting Chief Justice of Pakistan."

This Court in the case of "Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another" (supra) while reaffirming the dicta laid down in the cases of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra) and "Malik Asad Ali and others v. Federation of Pakistan and others" (supra) held as under:--

"31. At this stage, it would also be appropriate for us to note that the contention of the AAG that earlier judgments on the issue of appointment of Judges are irrelevant is a bit misconceived. The change in the appointment process has merely diversified decision making amongst the many members of the two new collegiate bodies, but essentially the roles of these bodies, looked at collectively, remains the same. So as such the principles of law enunciated in earlier judgments such as Al-Jehad Trust case, Malik Asad Ali and several others would continue to apply to the

new mechanism with full force. In face, these principles can be said to be applicable even more strongly after the introduction of the newly constituted bodies under Article 175-A."

It, irresistibly, follows that this principle, practice or convention, whatever one may like to call it, besides being esteemed, honoured and upheld throughout has also been blessed with the approval of this Court in the judgments cited above. It is now a declared law of the land to all intents and purposes. I, therefore, do not see any reason much less tenable warranting any deviation therefrom.

18. Yet another provision contained in the first proviso to Clause 5(iv) of Article 175-A of the Constitution, which provides that for appointment of the Chief Justice of a High Court the most senior Judge mentioned in Clause 5(ii) of the Article shall not be member of the Commission, unmistakably indicates that it has all along been taken for granted that it is the most senior Judge of the High Court who shall be nominated as Chief Justice in the absence of any valid reason. Otherwise, it would have been provided in the aforesaid clause that the Judge whose nomination for appointment as Chief Justice is in the offing shall not be member of the Commission. Therefore, the argument advanced by Kh. Haris Ahmed, learned Sr. ASC that the Constitutional provisions on this score have remained the same even after the dictum laid down in the case of "Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others" (supra) is without force. I am, therefore of the opinion, that Mr. Justice Riaz Ahmed Khan, being the most senior Judge of the High Court has a legitimate expectancy to be appointed as Chief Justice and that subject to any valid reason which is yet to be recorded by the Commission, he would be entitled to be appointed as such.

19. Next question in the sequence is as to who determines seniority amongst the Judges appointed on the same day? Again the answer can be found in the long standing practice. It is the Chief Justice of the respective High Court who determines inter se seniority of the Judges in the light of the principle mentioned above. It is, then, the Judicial Commission nominating the most Senior Judge for appointment as Chief Justice, which determines inter se seniority of the Judges so elevated. The President in this scheme does not figure anywhere. It is, however, a fact well worth remarking that seniority in this case has been determined by the Chief Justice of the Islamabad High Court and that Mr. Justice Riaz Ahmed Khan being senior in age has already been declared the most senior Judge of the High Court. Needless to say that settling the principle underlying the determination of a question can never become person specific.

20. Then comes the question as to whether the well established principle underlying the determination of inter se seniority amongst the Judges has been departed from by the Commission on correct premises. Reference has been made to a paragraph from the judgment rendered in the case of "Federation of Pakistan v. Sindh High Court Bar Association through its President" (C.P.L.A. No.1390 of 2012) (supra) which runs as under:--

".....It is for this reason that in number of judgments of the apex Court, out of which two have been referred to above, in service matters, concept of reinstatement into service with original seniority and back benefits has been developed and followed on case to case basis to give complete relief to an aggrieved party. Following the same equitable principle, while passing our short order, we have specifically mentioned that the issuance of notification for permanent appointment of the two Judges shall have its effect from 17-9-2011 when four other recommendees of the Commission in the same batch were notified after clearance by the Committee, so that they shall have their respective seniority and all other benefits as permanent judges of the High Court".

But a careful reading of the above quoted paragraph would reveal that it has not judicially laid down any criterion for determining, inter se seniority among the Judges appointed on the same day. Nor has it justified a deviation from the recognized course. It, when read with reference to the context, deals with a situation different altogether. No such question was involved in that case, nor has it been decided as such. It would not thus be ominous to draw a parallel between this case and that case or to treat them alike. I, therefore, have no hesitation to hold that the premises recorded by the Commission for departing from the well established principle of determining seniority are not correct.

21. The next question emerging for the consideration of this Court on its advisory as well as adjudicatory side is whether the Judicial Commission in this case was properly constituted in the absence of a persona designata and whether the presence or participation of a person, who was a non-entity in the Commission, could vitiate the nomination for the appointment of Mr. Justice Shukat Aziz Siddique and extension of Mr. Justice Noor-ul-Haq Qureshi? Answers to these questions are simple and straightforward. Accepting that Mr. Justice Riaz Ahmed Khan being the most Senior Judge was required to attend the meeting of the Commission but his failure to do so for any reason, would not vitiate the proceedings of the Commission. For clause

14 of Article 175-A of the Constitution clearly provides that no action or decision taken by the Commission or a Committee shall be invalid or called in question only on the ground of the existence of a vacancy therein or of the absence of any member from any meeting thereof. Accepting that Mr. Justice Muhammad Anwar Khan Kasi being a non-entity sat, voted and took part in the proceedings culminating in the nomination of the Judges mentioned above, yet it would not vitiate the proceedings when the Judicial Commission, in view of Clause 8 of Article 175-A of the Constitution, has nominated the Judges by majority of its total membership. It would have vitiated or materially affected the proceedings of the Commission if it had nominated the Judges for appointment and extension with a margin of one. But where the Commission nominated the Judges by majority of 7 against 2, the presence or participation of Mr. Justice Muhammad Anwar Khan Kasi in the meeting would not be of any consequence. The case of "Managing Director, Sui Southern Gas Company Ltd., Karachi. v. Ghulam Abbas and others" (supra) may well be referred to in this behalf wherein it was held as under: -

"Perusal of subsection (1) of section 3-A of the Act, 1973 reveals that "minimum strength of a Bench to exercise or perform functions of the Tribunal is two Members, including the Chairman,' meaning thereby that while conducting hearing the status of a Chairman is also of a Member. Whereas under clause (a) of section 3-A(2), decisions are to be pronouncedby the majority of the Members. Clause (b) of section 3-A(2) further provides that in case of division between Members of the Bench or in case of equal division of the Members, the case shall be referred to the Chairman and whatever opinion is expressed by him, would have supremacy and constitute the decision of the Tribunal. In this case impugned judgment has been authored by the Chairman and all the Members have concurred with him, therefore, presuming that Mr. Aftab Ahmed joined proceedings without lawful authority but nevertheless impugned judgment can sustain, as it has been rendered by the Bench compromising of more than two Members of the Service Tribunal and apprehension of influencing the judgment by Mr. Aftab Ahmed (Retired Member) stands excluded as it was authored by a former Judge of High Court being the Chairman of the Service Tribunal."

22. The principle enunciated in the aforesaid judgment is not alien or extraneous, on any account, to our jurisprudence. It has also been recognized by Article 67 of the Constitution, which does not allow a proceedings of the House to become invalid simply because a person who was not entitled to sit, vote or otherwise take part in the proceedings, sat, voted or took

part therein. The case of "Regina v. Bow Street Metropolitan Stipendiary Magistrate and others, Ex-parte Pinochet Ugarte (No.2), therefore, has no relevance to the case in hand.

23. Mr. Muhammad Akram Sheikh, learned Sr. ASC also referred to Establishment Manual but could not cite any clear and definite provision of law, rule or convention as could justify a deviation from the course which has been consistently followed till date. He failed to refer to any precedent much less relevant to support his stance. He also failed to bring anything exceptional, extraordinary or outstanding in our notice as could dilute, diminish or discount the binding force of the said principle. Even otherwise, I would not approve substitution or replacement of a principle which has unquestionably been accepted and acted upon throughout.

24. The argument addressed by the learned Attorney General on the strength of "Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others" (supra) that if this Court annulled the appointment of many Judges for want of recommendation of the consultee, the nomination originating from the Judicial Commission which was not properly constituted has to be given alike treatment is wholly misconceived inasmuch as the status of the Chief Justice of Pakistan before the amendments has been brought at par with the status of a member after the amendments without appreciating that the Chief Justice of Pakistan before such amendments was the chief consultee. Even after the amendments he being the Chairman of the Commission is not only the chief consultee but no meeting of the Commission can be held in his absence. Whereas absence of any other member or vacancy in view of clause 14 of Article 175-A of the Constitution is of no consequence whatever.

25. The argument of the learned counsel for the President that such nomination would be all the more without any legal or constitutional sanctity when the proceedings before the Commission were not conducted in the manner prescribed by the Constitution is also devoid of force as this provision for want of envisaging the consequence of failure orneglect to comply therewith cannot be treated as mandatory.

26. The argument that the proceedings in the Judicial Commission could not be held in camera when the legislature purposely provided otherwise so as to ensure complete transparency and open scrutiny appears to be ornamental as its members not only represent all the essential

segments of the Bar and Bench but also those of the Federation and the Province through Attorney General for Pakistan, Minister for Law and Justice of the Federation and Minister for Law of the Province. The scrutiny is open in the truest sense of the word when each member is at liberty to present his point of view one way or the other. Transparency in the proceedings cannot be affected by holding it in camera if every member consciously and conscientiously gives his input in the nomination, keeping in view its overall impact on the Institution on the one hand and society at large on the other. I do not understand what does the learned counsel for the President want to project by using the expressions "complete transparency and open scrutiny". If he by using these expressions wants the inclusion and intrusion of all and sundry, I am afraid, he is far off the lines drawn by the Constitution. It was in view of this backdrop, that the Judicial Commission while framing the rules in exercise of the powers conferred on it under clause 4of Article 175-A of the Constitution provided for holding the proceedings in camera.

27. Question relating to criterion for elevating a Judge or Chief Justice of a High Court to the Supreme Court has been fully answered by Article 177 of the Constitution reproduced above. I, therefore, would not like to add anything thereto. The more so when the convention followed thus far is also in conformity with the letter and spirit of the Article mentioned above.

28. Having thus considered, I answer the questions raised in the reference accordingly. The detailed reasons for the Short Order dated 21-12-2012 in the Constitution Petition No. 126 of 2012 are also included in the Judgment.

29. While parting of the judgment, we would appreciate the enlightened assistance rendered by Mr. Makhdoom Ali Khan and Khawaja Haris Ahmed, learned Senior Advocates Supreme Court.

(Ejaz Afzal Khan)
Judge

MWA/R-1/S Order accordingly.

7.4 1997 S C M R 141

[Supreme Court of Pakistan]

Present: Saiduzzaman Siddiqui, Fazal Karim and
Mukhtar Ahmed Junejo, JJ

REGISTRAR, SUPREME COURT OF PAKISTAN,
ISLAMABAD---Appellant

versus

Qazi WALI MUHAMMAD ---Respondent

Civil Appeal No. 744 of 1995, decided on 8th November, 1995

(On appeal from the judgment of Federal Service Tribunal, Camp Officer, Karachi, dated 10-7-1994 passed in Appeal No. 261 (K)/93).

Per Saiduzzaman Siddiqui, J; Fazal Karim and Mukhtar Ahmed Junejo, JJ. agreeing---

(a) Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982---

----R. 4---Civil Servants Act (LXXI of 1973), S.2(1)(b)---Constitution of Pakistan (1973), Art.212(3)---Removal from service of employee of Supreme Court by the Chief Justice of Supreme Court---Validity---Leave to appeal was granted to consider as to whether view taken by the Federal Service Tribunal that persons serving in the Supreme Court of Pakistan were civil servants and thus a dispute relating to the terms and conditions of service of such persons was amenable to the jurisdiction of Service Tribunal, was in consonance with law.

(b) Constitution of Pakistan (1973)---

----Arts. 208 & 212---Supreme Court (Appointment of Officers and Servants and Terms' and Conditions of Service) Rules, 1982, R.4---Civil Servants Act. (LXXI of 1973), S.2(1)(b)---Service Tribunals Act (LXX of 1973), S.2(a)---Officers and servants of Supreme Court of Pakistan are not servants falling within the category of "civil servants" as defined in Civil Servants Act, 1973, S.2(1)(b) and Service Tribunals Act, 1973, S.2(a)---Legislature having not been given any role to determine the terms and conditions of the officers and servants employed in the establishment of the Supreme Court, it was not open to the Service Tribunal to treat such servants and officers as' civil servants and assume jurisdiction in the appeal filed by civil servant against the order of Chief Justice of Supreme Court of Pakistan---Person in "service of Pakistan" cannot be classed as a "civil servant" as well, as defined in Civil Servants Act, 1973 merely for the reason that he is in service of Pakistan---Service Tribunal established in pursuance of Art.212 of the Constitution of Pakistan has been conferred exclusive jurisdiction only in respect of the dispute relating to terms and conditions of the service of a "civil servant" as defined under the Civil Servants Act, 1973 and as such jurisdiction of Service Tribunal could not be extended to any other category.

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(c) Constitution of Pakistan (1973)---

----Arts. 260(1) & 212---Civil Servants Act (LXXI of 1973), S.2(1)(b)-- Expressions "service of Pakistan" occurring in Art.260(1) of the Constitution of Pakistan (1973) and "civil servants" in S.2(1)(b) of Civil Servants Act, 1973 are not synonymous---Distinction illustrated---Person being in "service of Pakistan" merely for that reason, cannot be classed as a "civil servant" as well, as defined in Civil Servants Act, 1973---Jurisdiction of., Service Tribunal cannot be extended to such category of persons "in service of Pakistan" ---[Civil service].

The two expressions 'service of Pakistan' and 'civil servants' are not synonymous. Service of Pakistan is defined in Article 260 of the Constitution as meaning, any service, post or office in connection with the affairs of Federation or a Province. This expression also includes an All Pakistan Service and service in the Armed Forces or any other service declared under an Act of

the Parliament or a Provincial Assembly as Service of Pakistan. The terms 'civil servant' is defined in the Civil Servants Act, 1973 as a person, who is a member of an All Pakistan Service or of a civil service of the Federation or a person holding a civil post in connection with the affairs of Federation, including a civil post connected with the defence. However, a person on deputation to the Federation from any Province or other authority, a person who is employed on a contract or on work-charge basis who is paid from contingencies and a person who is 'worker' or 'workman' as defined in the Factories Act, 1934 or the Workmen's Compensation Act, 1923, are expressly excluded from the category of 'civil servant'. On a careful examination of the definitions of 'Service of Pakistan' as given in Article 260 of the Constitution and the 'civil servant' as mentioned in the Civil Servants Act, 1973, it would appear that the two expressions are not synonymous. The expression 'Service of Pakistan' used in Article 260 of the Constitution has a much wider connotation than the term ' civil servant' employed in the Civil Servants Act. While a 'Civil servant' is included in the expression ' service of Pakistan', the vice versa is not true. 'Civil servant' as defined in the Civil Servants Act, 1973 is just a category of service of Pakistan mentioned in Article 260 of the Constitution. To illustrate the point, it is stated that members of Armed Forces though fall in the category of 'service of Pakistan' but they are not civil servants within the meaning of Civil Servants Act and the Service Tribunals Act.

A person may be in the service of Pakistan but for that reason he cannot be classed as a, 'civil servant' as well, as defined in the Civil Servants Act. The Service Tribunal established in pursuance of Article 212 of the Constitution has been conferred exclusive jurisdiction only in respect of the dispute relating to terms and conditions of the service of a 'civil servant' as defined under the Civil Servants Act, 1973 and as such the jurisdiction of the Tribunal could not be extended to any other category.

(d) Constitution of Pakistan (1973)---

----Art. 208---Supreme Court ('Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982, R.4---Civil Servants Act (LXXI of 1973), S.2(1)(b)---Service Tribunals Act (LXX of 1973), S.2(a)---Removal from service of employee of Supreme Court by the Chief Justice---Validity---Supreme Court had framed rules under Art. 208, Constitution of Pakistan which govern the terms and conditions of appointment of officers and servants of the Court--

Employee was appointed as Record and Reference Officer in the Supreme Court under the said Rules as such service of employee was not governed under any Act of Parliament passed under Art.240 of the Constitution of Pakistan and terms and conditions of his service were regulated under the Rules directly framed in pursuance 4f Art.208 of the Constitution of Pakistan---Such employee, therefore, could not fall in the category of "civil servant" as defined in the Civil Servants Act, 1973 and appeal of the employee against order of his removal from service by the Chief Justice was not cognizable by the Service Tribunal.

Government of Punjab v. Mubarak Ali Khan PLD 1993 SC 375 rel.

(e) Constitution of Pakistan (1973)---

----Art. 208---Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982, R.11-Rule of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 which bars any appeal against the penalty which may be imposed by the Chief Justice of Supreme Court on the employee of the Supreme Court does not conform to the rules of Islamic dispensation of justice and law barring right of appeal to an aggrieved person is repugnant to the Injunctions of Islam-- Supreme Court, in circumstances, recommended that R.11 of the Rules may be amended suitably to bring same in accordance with the law declared by Supreme Court in Federation of Pakistan v. Public at Large PLD 1988 SC 202 and Pakistan through Secretary, Ministry of Defence v. The General Public PLD 1989 SC 6.

Abbas v. Hon'ble Chief Justice 1993 SCMR 715 and, Hadi Bux v. Government of Sindh PLD 1994 SC 532 ref.

Per Fazal Karim, J; agreeing with Mukhtar Ahmed Junejo, J.---

(f) Constitution of Pakistan (1973)---

----Preamble---Constitution of Pakistan is a Federal Constitution and provides for a federal structure---Though there is no strict adherence to the concept of separation of powers in the

Constitution, which is a well-known fundamental political principle, yet, there can be discerned the vesting of the legislative, the executive and the judicial powers in three organs---From such separation is derived the doctrine that certain functions, because of their essential nature, may properly be exercised by only a particular branch of Government; that such function cannot be delegated to an other branch; and that one department may not interfere with another by usurping its powers or by supervising their .exercise.

American Constitutional Law by A. Thomas Mason and Willam M. Beaney, Fourth Edn., p. 55; McCulloch v. Maryland 17 U.S. (4 Wheat), 316, 4 L.Ed. 579; Hinds v. The Queen (1977) AC 195 and X Ltd. v. Morgan Grampian (Publishers) Lid. (199,1) 1 AC 1 ref.'

(g) Interpretation of Constitution---

---- Solution of a problem arising from a provision of the Constitution-- Principles---Problem that a provision in the Constitution raises cannot be solved by the Courts confining its attention to that specific provision---In seeking to interpret that provision, it is necessary not only to keep that specific provision in mind but also necessary implications arising from its subject-matter and the structure of the Constitution, including the concept of separation of powers which involves the independence of each organ of the other organs.

(h) Constitution of Pakistan (1973)---

----Arts. 208 & 212---Civil Servants Act (LXXI of 1973), S.2(1)(b)---Service Tribunals Act (LXX of 1973), S.2(1)---Interpretation and scope of Art. 208, Constitution of Pakistan (1973)---Parliament has no legislative role to play in respect of the officers and servants specially dealt with by Art.208 of the Constitution of Pakistan---Provisions of Civil Servants Act, 1973 and Service Tribunals Act, 1973, therefore, have no application to the servants and officers .of the Supreme Court, the Federal Shariat Court and High Court and such employees are not civil servants.

Article 208 occurs in Part VII of the Constitution. This Part deals with judicature and contains provisions for the method of appointment and security of the tenure of the members of the judiciary which are designed to assure to them a degree of independence from the two branches

of Government. The expression 'Judicial Power which is essentially a Constitutional concept and is to be contrasted with legislative and executive powers of the State has not been used in Constitution of Pakistan. But whether it is a written Constitution or not, if there is a trichotomy of sovereign powers between the executive, the legislative and the judiciary, as it is in Constitution of Pakistan, "then ex necessitate rei, from the nature of things the judicial power must be vested in the judiciary". There can therefore, be no doubt that it is the Constitutional concept. 'Judicial Power with which Part VII of the Constitution deals and that Article 208 of the Constitution is a part of the scheme which was designed to assure to the judiciary a degree of independence from the other two branches of Government. By that Article, the Supreme Court, the Federal Shariat Court with the approval of the President, and a High Court, with the approval of the Governor concerned, have been empowered to make rules "providing for the appointment by the Court of officers and servants of the Court and for their terms and conditions of employment". That the Parliament and the Executive may not even indirectly interfere with the Court's power under Article 208, the administrative expenses, including the remuneration payable to the officers and servants of the Supreme Court, are, by Article 81 of the Constitution, charged upon the Federal Consolidated Fund, and the administrative expenses, including the remuneration payable to the officers and servants of the High Courts by Article 121 charged upon the Provincial Consolidated Fund. This special provision granting power to the Supreme Court, the Federal Shariat Court and the High Courts to make law for the appointment of their officers and servants and the terms and conditions for their employment is to be contrasted with the Articles of the Constitution such as Articles 87, 221 and 240 of the Constitution. Article 87, by its clause (2), empowers the Parliament to make law for regulating the recruitment and the conditions of service of persons appointed to the Secretarial Staff of either House of Parliament; and until a law is so made by the Parliament; empowers by its clause (3) the Speaker or, as the case may be, the Chairman, with the approval of the President, to make rules regulating the recruitment, and the conditions of service of persons appointed to the Secretarial Staff of the National Assembly or the Senate.

Article 241 allowed the rules and order in force immediately before the commencing day to continue in force and to be amended from time to time by the Federal Government or, as the case may be, the Provincial Government, "until the Legislature makes a law under Article 240". It will be noticed that the powers granted to the Parliament and the Provincial Assemblies to

make law for the appointment and terms and conditions of services of persons in the service of Pakistan is "subject to the Constitution".

The Constitutional scheme, then, is that there are two broad categories of officers and servants of the State; the first category and that includes that generality of persons in the services of the Federation and the Provinces is dealt with by Article 240; as regards them, the power to make law has been granted to the Parliament; the second category is of those office servants in respect of whom, the Parliament and the Provincial Assemblies have no legislative power. While there is no doubt that the Parliament and the Provincial Assemblies are supreme in the sphere of the powers granted to them by Articles as such Articles 87, 221 and 240 of the Constitution, there is equally no doubt that the Parliament has no legislative role to play in respect of the officers and servants specially dealt with by Article 208 of the Constitution.

Now, the Civil Servants Act, 1973, was obviously enacted in exercise of the power vested in the Parliament by Article 240 of the Constitution. And as the presumption is that the Parliament did not, in making that law, exceed its powers, it does not, and was not intended to, apply to the officers and servants of the Courts. The Service Tribunals Act, 1973, which was indeed enacted under Article 212 of the Constitution, also applies to 'civil servants' as that expression is defined in the Civil Servants Act, 1973, namely a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973. It must follow inevitably that both these enactments have no application to the servants and officers of the Supreme Court, the Federal Shariat Court and the High Courts, and that they are not 'civil servants'.

State v. Zia-ur-Rehman PLD 1973 SC 49 Fuji Foundation's case PLD 1983 SC 455 ref.

(i) Constitution of Pakistan (1973)---

----Art. 201---Judgment of High Court proceedings on the supposition is not the same thing as deciding a question of law and enunciating a principle of law within meaning of Art. 201 of the Constitution of Pakistan.

(j) Constitution of Pakistan (1973)---

----Art. 208---Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982, R.4---Civil Servants Act (LXXI of 1973), S.2(1)(b)---Service Tribunals Act (LXX of 1973), S.2(a)---Removal from service of employee of Supreme Court of Pakistan by Chief Justice of Supreme Court under R.4, Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 was challenged before Service Tribunal---Validity---Held, conclusion reached by Service Tribunal which made the decision of the Chief Justice of Supreme Court, albeit in his administrative capacity, yet within the sphere of the enumerated powers of the Supreme Court, subject to review by Service Tribunal was not only Constitutionally dangerous, it also flew in the face of common sense.

Per Mukhtar Ahmed Junejo, J.; agreeing with Saiduzzaman Siddiqui, J.---

(k) Constitution of Pakistan (1973)---

----Arts. 208, 240 & 212---Delegation of authority to different functionaries to legislate or frame rules on certain subjects surveyed.

(l) Constitution of Pakistan (1973)---

----Art. 2600)---Civil Servants Act (LXXI of 1973), S.2(l)(b) --- Service Tribunals Act (LXX of 1973), S.2(a)---"Service of Pakistan"---Definition-- Definition of 'service of Pakistan' given under Art. 2600), Constitution of Pakistan is wider than the definition of 'civil servant' given in the Civil Servants Act, 1973, S.2(1)(b) and Service Tribunals Act (LXX of 1973), S.2(a) which shows that in spite of a person being in the 'service of Pakistan', he cannot move the Service Tribunal unless he is a 'civil servant' as defined in both the Acts.

Abbas v. Hon'ble Chief Justice 1993 SCMR 715; Hadi Bux v. Government of Sindh PLD 1994 SC 532 and Government of Punjab v. Mubarak Ali Khan PLD 1993 SC 375 ref.

Farooq H. Naek, Dy. A.-G. Pak. and Raja Abdul Ghafoor, Advocate- on-Record for Appellant.

Respondent in person.

Date of hearing: 17th October, 1995.

JUDGMENT

SAIDUZZAMAN SIDDIQUI, J.--The above appeal with the leave of this Court is filed by the Registrar, Supreme Court of Pakistan to call in question the order of Federal Service Tribunal dated 10-7-1994 whereby the learned Tribunal allowed service appeal of respondent and reinstated him in service.

The facts relevant for decision of the above appeal are, that respondent was appointed as Research and Reference Officer (BPS. 18) in Supreme Court of Pakistan on 26-7-1984. He was removed from service by the Hon'ble Chief Justice of Pakistan by order dated 1-9-1993 as a result of disciplinary proceedings initiated against him under Rule 4 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 (hereinafter to be called as the 'Rules' only). The respondent filed a review petition against the order dated 1-9-1993 before the Hon'ble Chief Justice of Pakistan, under Rule 11 of the Rules but the same was rejected on 9-11-1993. The respondent thereafter preferred a service appeal before Federal Service Tribunal, Islamabad, under section 4 of the Service Tribunals Act, 1973 (hereinafter to be referred as 'the Act' only) which was allowed on merits after overruling the preliminary objection raised in the appeal to the jurisdiction of the Tribunal to entertain appeal in respect of the employees of the Supreme Court of Pakistan, by order dated 10-7-1994. Leave was granted in the above appeal to consider the question: Whether the view taken by the Federal Service Tribunal that persons serving in the Supreme Court of Pakistan are 'Civil Servants' and thus a dispute relating to the terms and conditions of service of such persons is amenable to the jurisdiction of Service Tribunal, is in consonance with law.

The learned Deputy Attorney-General, in support of the appeal contended that employees of the Supreme Court do not fall within the category of 'Civil Servants' as defined in section 2(l) (b) of the Civil Servants Act, 1973 as the terms and conditions of their services are governed and regulated by the Rules which were framed under the Rule-making power conferred on the

Supreme Court of Pakistan by virtue of Article 208 of the 'Constitution of Islamic Republic of Pakistan (hereinafter to be referred as the 'Constitution' only), and not under any Act of Majlis-e-Shoora as contemplated under Article 240 of the Constitution. In support of his contention the learned Deputy Attorney-General relied on the case of Government of Punjab v. Mubarak Ali Khan (PLD 1993 SC 375).

The respondent, who appeared in person, on the other hand, contended that mere fact that the service of respondent was regulated under the Rules framed by the Supreme Court of Pakistan under Article 208 of the Constitution was not enough to lead to the conclusion that the respondent was not covered by the definition of Civil Servant as given in the Civil Servants Act, 1973. It is contended by the respondent that the employees of Supreme Court hold posts in connection with the affairs of the Federation and as such a dispute concerning the terms and conditions of their service will be amenable to the jurisdiction of Service Tribunal constituted under Article 212 of the Constitution to deal exclusively with the disputes relating to the terms and conditions of service of a Civil Servant. In support of his above contention the respondent relied on the cases of Abbas v. Hon'ble Chief Justice (1993 SCMR 715) and Hadi Bux v. Government of Sindh (PLD 1994 SC 532).

The learned Service Tribunal in arriving at the conclusion that respondent was a civil servant within the meaning of Civil Servants Act, 1973 and as such the appeal filed by him against the order of Chief Justice of Pakistan removing him from service, was maintainable before the Tribunal, mainly relied on the observations of this Court in the case of Hadi Bux (supra) which also considered the two earlier decision s of this Court reported as Abbas v Hon'ble Chief Justice (supra) and Government of Punjab v. Mubarik Ali Khan (supra). Since the sheet-anchor of the argument of respondent in the present appeal in the decision of this Court in Hadi Bux' case (supra) we would like to examine the facts of this case in some detail.

In Hadi Bux's ease, supra, the appellant was appointed as Additional Secretary in the Provincial Assembly of Sindh w.e.f. 19-12-1989 on the basis of the recommendations of the Selection Committee by notification dated 24-2-1990. On completion of his probationary period, the appellant's appointment was confirmed on 13-6-1990. The services of the appellant were terminated by the Speaker of Sindh Assembly by order dated 12-8-1991. This order of the

Speaker of Sindh Assembly was challenged 6y the appellant in a service appeal before they Sindh Service Tribunal which was dismissed on the ground that he was either a member of civil services of the Province nor he was holding any civil post in connection with the affairs of the Province. In appeal against the order of Sindh Service Tribunal, this Court held that the appellant was a civil servant within the meaning of Sindh Civil Servants Act, 1973 as he was holding a civil post in connection with affairs of the Province. The two earlier decisions of this Court reported as Abbas v. Hon'ble Chief `Justice and Government of Punjab v. Mubarik Ali Khan supra, were referred in the judgment in Hadi Bux's case, supra, in support of the conclusion that the appellant in Hadi Bux's case, supra, was a person holding the post in connection with the affairs of the Province of Sindh. We may mention here that in Abbas's case the appellant was held to be a civil servant as it was found -that the High Court Establishment Rules were deemed to have been framed under section 26 of the Sindh Civil Servants Act m view of Article 241 of the Constitution. For that reason it was held that the violation of the terms and conditions of service was justifiable before the Service Tribunal constituted under the Sindh Service Tribunals Act, 1973. In Hadi Bux's case, supra, the ratio laid down by this Court in treating the appellant in that case as civil servant was, that the terms and conditions of the services of the appellant in that case were-governed by rules framed under Civil Servants Act which stood incorporated in the rules framed by the Speaker of Sindh Assembly by reference. It is, therefore, quite clear that both in Hadi Bux's case as well as in Abbas's case supra, this Court reached the conclusion that the services of the appellants in both the above referred cases were governed under the rules which were framed or deemed to have been framed under the Civil Servants Act and as such the dispute relating to the terms and conditions of their services was amenable to the jurisdiction of the Service Tribunal established under the Sindh Service Tribunals Act, 1973. No doubt in the judgment in Hadi Bux's case, supra, reference was also made to the case of Government of Punjab v. Mubarik Ali Khan, supra, but this reference was made in the context that in Mubarik Ali Khan's case, supra, also the respondents were found to be the persons employed in connection with the affairs of the Province. The ratio in Mubarik Ali Khan's case, supra, however, unequivocally laid down that persons employed in the Provincial High Courts were not civil servants for the purpose of Civil Servants Act and the Service Tribunals Act. This ratio in Mubarik Ali Khan's case supra, has not been dissented so far in any other subsequent judgment of this Court. We may also mention here that Mubarik Ali Khan's case, supra was decided by a Bench of this Court which consisted of 5 learned Judges while

Abbas's case and Hadi Bux's case, supra, were decided by the Benches of this Court which consisted of only 3 learned Judges of this Court in each case. It is also pertinent to point out here, that in Abbas's case, supra, this Court refused to go into the question, whether the employees of the Sindh High Court were civil servants or not within the meaning of Sindh Civil Servants Act for the reasons that the appellant had himself chosen to invoke the jurisdiction of the Tribunal in that case and that the leave was not granted on this point. We reproduce here, with respect, the following observations of the Court in Abbas's case, supra, which appear at page 723 of the report:--

"18. As regards the penultimate submission, we would not undertake an examination of it because the Tribunal has not recorded any finding on it. Besides, the appellant having himself invoked the jurisdiction of the

Service Tribunal cannot be permitted to express doubts about it. Additionally, it is not a question on which leave to appeal has been granted under Article 212(3) of the Constitution."

The status of persons employed in the Provincial High Courts, Federal Shariat Court and the Supreme Court of Pakistan and whose terms and conditions were governed under the rules framed by virtue of Article 208 of the Constitution directly arose in the case of Government of Punjab v. Mubarik Ali Khan, supra, and the view taken by the High Court in that case that the employees of the Provincial High Court, Lahore, do not fall within the category of civil servants as defined in the Civil Servants Act was approved by this Court as follows:--

"The view taken by the High Court that the employees of the Provincial High Courts are not civil servants for the purpose of Civil Servants Act and Service Tribunals Act is correct."

It was also observed by this Court in Mubarik's case, supra, that the Legislature was not given any role to determine the terms and conditions of the employees including their remunerations and this exclusionary rule was found in conformity with the concept -of independence of judiciary as enshrined in the Constitution. The following observations were made by this Court in paragraph 15 of the judgment in Mubarik's case to highlight the point:

"15. In the context of the Constitutional provisions reproduced above, it is clear that in the matter of the officers and servants employed in the establishment of the Supreme Court of Pakistan and the High Courts the Legislature had not been given any role to determine the terms and conditions of the employees which of course would include their remuneration also. Such an exclusionary role was attributed to the requirement of maintaining the independence of judiciary in the case of Supreme Court Employees' Welfare Association v. Union of India and others (AIR 1990 SC 334). In exercise of this or its predecessor provision both the Supreme Court and the High Courts have framed Rules. Rules 17 and 22 of these Rules in respect of the High Courts are as under:--

17. Members of the High Court Establishment shall be entitled to pay (including special pay) and allowances as fixed by the Chief Justice, from time to time, with the approval of the Governor to these rules.

22. In respect of salaries, allowances, leave or pension; the members of the Establishment shall be governed by the Civil Service Rules (Punjab) as amended froth time to time'."

In view of the above categorical finding of this Court in the case of Government of Punjab v. Mubarik Ali Khan, supra, holding the employees of Provincial High Courts not falling within the category of civil servants as defined, in the Civil Servants Act and the Service Tribunals Act, it was not open to the Service Tribunal to treat the respondent as a civil servant and assume jurisdiction in the appeal filed by him against the order of Hon'ble Chief Justice of Pakistan. The learned Service Tribunal while holding the respondent as civil servant within the meaning of Civil Servants Act, 1973 completely overlooked the specific observations of this Court reproduced above in the case of Government of Punjab v. Mubarik Ali Khan, supra.

We would like to mention here that from the trend of arguments at the bar it appeared that the two expressions 'service of Pakistan' and 'Civil Servants' were treated as synonymous. This in our opinion is not so. Service of Pakistan is defined in Article 260 of the Constitution as meaning, any service, post or office in connection with the affairs of Federation or a Province. This expression also includes an All Pakistan Service and service in the Armed Forces or any other service declared under an Act of the Parliament or a Provincial Assembly as Service of

Pakistan. The terms 'Civil Servant' is defined in the Civil Servants Act, 1973 as a person, who is a member of an All Pakistan Service or of a civil service of the Federation or a person holding a civil post in connection with the affairs of Federation, including a civil post connected with the defence. However, a person on deputation to the Federation from any Province or other authority, a person who is employed on a contract or on work charge basis who is paid from contingencies and a person who is 'worker' or workman' as defined in the Factories Act, 1934 or the Workmen's Compensation Act, 1923, are expressly excluded from the category of 'Civil, Servant'. On a careful examination of the definitions of 'Service of Pakistan' as given in Article 260 of the Constitution and the 'Civil Servant' as mentioned in the Civil Servants Act, 1973, it would appear that the two expressions are not synonymous. The expression 'service of Pakistan' used in Article 260 of the Constitution has a much wider connotation than the term 'Civil Servant' employed in the Civil Servants Act. While a 'Civil Servant' is included in the expression 'service of Pakistan', the vice versa is not true. 'Civil Servant' as defined in the Civil Servants Act, 1973 is just a category of service of Pakistan mentioned in Article 260 of the Constitution. To illustrate lie point, we may mention here that members of Armed Forces though fall in the category of 'service of Pakistan' but they are not civil 'servants within the meaning of Civil Servants Act and the Service Tribunals Act. The scope of expression ' service of Pakistan' and Civil Servants' came up for consideration before this Court in the case of Syeda Abida Hussain v. Tribunal for N.A.69 (PLD 1994 SC 60). In that case the petitioner was disqualified from contesting the general elections of 1993 on the ground that she was a person who held the office of profit in the Service of Pakistan. It was contended by the petitioner in that case that she was appointed as an Ambassador on contract for two years and as a. person employed on contract was specifically excluded from the definition of civil servant the petitioner could not be disqualified. The contention was repelled by this Court in the above case as follows:--

"6. It is difficult to subscribe to the contention of the learned counsel. The expression 'service of Pakistan' has been defined in Article 260(1) of the Constitution. It reads as follows:---

Service of Pakistan' means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of Majlis-e-Shoora (Parliament) or of a Provincial Assembly, but does not include service as Speaker, Deputy

Speaker, Chairman, Deputy Chairman, Prime Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary or Chairman or Member of a Law Commission, Chairmilh or Member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Advisor to the Prime .Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister or Member of a House or a Provincial Assembly';"

Learned counsel for the petitioner rightly concedes that the post of an Ambassador is a post in connection with the affairs of the Federation. It will be seen that the definition does not take notice of the manner in which a post in connection with the affairs of the Federation or a Province may be filled. Thus, so far as the inclusion of a post in the service of Pakistan is concerned, it is immaterial whether the holder thereof has come to occupy it through a special contract or in accordance with the -recruitment rules framed under the Civil Servants Act; consequently, the mere fact that a person is not a civil servant within the meaning of the Civil Servants Act would not put him beyond the pale of the said Constitutional definition. The contention that the case of the petitioner was covered by sub-clause (n) ibid, is entirely misconceived as ex facie it does not apply to situations where the relationship of master and servant exists between the parties. Here the petitioner was a whole time employee of the Government and except for matters which were specifically provided in the letter of appointment she was governed by the ordinary rules of service applicable to the civil servants. It may perhaps be of interest to mention here that these rules were framed in pursuance of the provisions of Article 240 ibid. Thus, the assertion on her behalf that while serving as an Ambassador she could not be treated as one in the service of Pakistan merely because her appointment to the post owed its origin to a special contract cannot be accepted. Admittedly, a period of two years has not passed since she relinquished charge of the said post. Therefore, she has been rightly held to be suffering from the disqualification laid down in clause (k) ibid. We find no merit in this petition. It is hereby dismissed."

From the above discussion, it is quite clear that a person may be in the service of Pakistan but for that reason he cannot be classed as a 'Civil Servant' as well, as defined in the Civil Servants Act. The Service Tribunal established in pursuance of Article 212 of the Constitution has been conferred exclusive jurisdiction only in respect of the dispute relating to terms and conditions of

the service of a 'Civil Servant' as defined under the Civil Servants Act, 1973 and as such the jurisdiction of the Tribunal could not be extended to any other category.

In the case before us, it is not disputed that the Supreme Court of Pakistan has framed the Rules under Article 208 of the Constitution which governed the terms and conditions of appointment of officers and servants of the Supreme Court of Pakistan. It is also not disputed that the respondent in the case was appointed as Research and Reference Officer in the Supreme Court or Pakistan under these Rules. Since the service of the respondent was not government under any Act of Majlis-e-Shoora passed under Article 240 of the Constitution and terms and conditions of his service were regulated under the Rules directly framed in pursuance of Article 208 of the Constitution, he could not fall in the category of a civil servant as defined in the Civil Servants Act, 1973 in view or the rule laid down in the case of Government of Punjab v. Mubarik Ali Khan supra. Consequently, the appeal of respondent which related to the terms anti conditions of his service was not cognizable by the Federal Service Tribunal. The appeal is, accordingly, accepted and the order passed by the Service Tribunal is set aside.

Before parting with the case, we would however, like to mention here that Rule 11 of the Rules bars any appeal against the penalty which may be imposed by the Hon'ble Chief Justice of Pakistan on the employees of the Supreme Court. This rule, in our view, does not conform to the law laid down by the Shariat Appellate Bench of this Court in the case of Federation of Pakistan v. Public at Large (PLD 1988 SC 202) and Pakistan through Secretary, Ministry of Defence v. The General Public (PLD 1989 SC 6) wherein it was declared that under the Islamic dispensation of justice at least one right of appeal must be provided to an aggrieved person and that the law barring such right to an aggrieved person is repugnant to the Injunctions of Islam. We would accordingly, recommend that the provisions of Rule 11 of the Rules may be amended suitably to bring it in accordance with the aforesaid decision. The appeal stands disposed of with those observations.

(Sd.)

Saiduzzaman Siddiqui, J.

(Sd.)

Mukhtar Ahmed Junejo, J.

I agree with the conclusion but has appended my note.

(Sd.) Mukhtar Ahmed Junejo, J.

I respectfully agree, but have added my a note.

(Sd.) Fazal Karim, J.

FAZAL KARIM, J.--I respectfully agree. My justification for this note is the outstanding public importance of the question, which touches the independence of judiciary in the context of the maintenance of the rule of law.

2. Our Constitution is a Federal Constitution and provides for a Federal structure. Though there is no strict adherence to the concept of separation of powers, which is a well-known fundamental political principle in many modern democracies, yet, there can be discerned the vesting of the legislative, the executive and the judicial powers in three separate organs. And, as in America, from this separation "is derived the doctrine that certain functions, because or their essential nature, may properly be exercised by only a particular branch of Government; that such functions cannot be delegated to any other branch; and that one department may not interfere with another by usurping its powers or by supervising their exercise". (American Constitutional Law by A. Thomas Mason and William M. Beaney, Fourth Edition, p.55). In the words of the great Chief Justice Marshall in "McCulloch v. Maryland" (17 U.S. (4 Wheat), 316, 4 L.Ed. 579). "This Government is acknowledged by all, to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent; that

principle is now universally admitted". From McCulloch also emerges the principle that within the sphere of its enumerated powers each organ of Government is supreme. Even the Constitutions on the 'Westminster model' which is a convenient term used to describe Constitutions which have their origin in an Act of Parliament at Westminster or an Order in Council, deal, as does our Constitution, under separate Chapter headings with the Legislature, the executive and the judicature. As was said by Lord Diplock in 'Hinds v. The Queen' ((1977 AC 195, 212) these Constitutions "embody what is in substance an agreement reached between representatives of the various shades of political opinion in the State as to the structure of the organs of Government through which the plenitude of the sovereign power of the State is to be exercised in future. All of them were negotiated as well as drafted by persons natured in the tradition of that branch of the common law of England that is concerned with public law and familiar in particular with the basic concept of separation of legislative, executive and judicial power as it had been developed in the unwritten Constitution of the United Kingdom". Thus, in the sense that the legislative; the executive and the judicial power are vested in three separate organs, the basic concept of separation of powers is recognised even in the unwritten Constitution of the United Kingdom. How jealously the Courts in England now regard their judicial power and the independence of judiciary can be judged from a recent case "X Ltd. v. Morgan-Grampian (Publishers) Ltd. (1991) 1 AC 1. When that case. was in the Court of Appeal, Lord Donaldson M.R. said: "Any widespread refusal to obey the orders of the Courts is a threat to the authority of the Courts which is not any the less such a threat, because it is coupled with an acceptance that there will be a penalty to be paid. This is important in terms of the public interest, but what is much more important is that it is also a threat to the authority of Parliament, whose servants are the Courts". But when the case reached the House of Lords, Lord Bridge was quick to dispel the impression that the words 'whose servants are the Courts' were likely to create by observing:

"The maintenance of the rule of law is in every way as important in a free society as the democratic franchise. In our society the rule of law rests upon two in foundations: the sovereignty of the Queen in Parliament in making the law and the sovereignty of the Queen's Courts in interpreting and applying the law."

3. It is a settled principle of Constitutional interpretation, that the problem that a provision in the Constitution raises cannot be solved by the Court's confining its attention to that specific provision. In seeking to interpret that provision, it is necessary not only to keep that specific provision in mind but also the necessary implications arising from its subject-matter and the structure of the Constitution, including the concept of separation of powers which involves the independence of each organ of the other organs.

4. Article 208 occurs in Part VII of the Constitution. This Part deals with judicature and contains provisions for the method of appointment and security of the tenure of the members of the Judiciary which are designed to assure to them a degree of independence from the two branches of Government. Unlike the American and Australian Constitutions, the expression 'Judicial Power' which is essentially a Constitutional concept and is to be contrasted with legislative and executive powers of the State has not been used in our Constitution. But whether it is a written Constitution or not, if there is a trichotomy of sovereign powers between the executive, the legislative and the judiciary, as it is in our t Constitution, "then ex necessitate rei, from the nature of things the judicial power must be vested in the judiciary". (State v. Zia-ur-Rehman PLD 1973 SC 49, 69; Fauji Foundation case PLD 1983 SC 455, 635"). There can therefore, be no doubt that it is the Constitutional concept 'Judicial Power'-with which Part VII of the Constitution deals and that Article 208 of the Constitution is a part of the scheme which was designed to assure to the judiciary a degree of independence from the other two branches of Government. By that Article, the Supreme Court, the Federal Shariat Court with the approval of the President and a High Court, with the approval of the Governor concerned, have been empowered to make rules "providing for the appointment by the Court of Officers and servants of the Court and for their terms and conditions of employment". That the Parliament and the Executive may not even indirectly interfere with the Court's power under Article 208, the administrative expenses, including the remuneration payable to the officers and servants of the Supreme Court, are, by Article 81 of the Constitution, charged upon the Federal Consolidated Fund, and the administrative expenses, including the remuneration payable to the officers and servants of the High Courts are by Article 121 charged upon the Provincial Consolidated Fund. This special provision granting power to the Supreme Court, the Federal Shariat Court and the High Courts to make law for the appointment of their officers and servants and the terms and conditions for their employments is to be contrasted with the Articles of the Constitution such

as Articles 87, 221 and 240 of the Constitution. Article 87, by its clause (2), empowers the Parliament to make law for regulating the recruitment and the conditions of service of persons appointed to the Secretarial 'Staff of either House of Parliament; and until a law is so made by the Parliament; empowered by its clause (3) the Speaker or, as the case may be, the Chairman, with the approval of the President, to make rules regulating the recruitment, and the conditions of service of persons appointed to the Secretariat Staff of the National Assembly or the Senate., Article 221 reads:

"Until Majlis-e-Shoora (Parliament) by law otherwise provides, the (Election) Commissioner may, with the approval of the President, make rules providing for the appointment by the Commissioner of officers and servants to be employed in connection with the functions of the Commissioner or an Election Commission and for their terms and conditions of employment."

Article 240 which occurs in Chapter I of Services of Part XII--Miscellaneous of the Constitution runs as follows:

"Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined--

(a) in the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services, by or under Act of Majlis-e-Shoora (Parliament); and

(b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly."

Article 241 allowed the rules and order in force immediately before the' commencing day to continue in force and to be amended from time to time by the Federal Government or, as the case may be, the Provincial Government until the Legislature makes a law under Article 240". It will be noticed that the powers granted to the Parliament and the Provincial Assemblies to make law for the appointment and terms and conditions of services of persons in the service of Pakistan is "subject to the Constitution".

5. The Constitutional scheme, then, is that there are two broad categories of officers and servants of the State: the first category and that includes that generality of persons in the services of the Federation and the Provinces is dealt with by Article 240; as regards them, the power to make law has been granted to the Parliament; the second category is of those office servants in respect of whom, the Parliament and the Provincial Assemblies have no legislative power. While there is no doubt that the Parliament and the Provincial Assemblies are supreme in the sphere of the powers granted to them by Articles as such Articles 87, 221 and 240 of the Constitution, there is equally no doubt that the Parliament has no legislative role to play in respect of the officers and servants specially dealt with by Article 208 of the Constitution.

6. Now, the Civil Servants Act, 1973, was obviously enacted in exercise of the power vested in the Parliament by Article 240 of the Constitution. And as the presumption is that the Parliament did not, in making that law, exceed its powers, it does not, and was not intended to, apply to the officers and servants of the Courts. The Service Tribunals Act, 1973, which was indeed enacted under Article 212 of the Constitution, also applies to 'Civil Servants' as that expression is defined in the Civil Servants Act, 1973, namely a person who is. or has been, a Civil Servant within the meaning of the Civil Servants Act, 1973. It must follow inevitably that both these enactments have no application to the servants and officers of the Supreme Court, the Federal Shariat Court and the High Courts, and that they are not 'Civil Servants'.

7. As has been shown in the judgment of my learned brother, Saiduzzaman Siddiqui, J., in relying upon "Government of the Punjab v. Mubarik Ali Khan" (PLD 1993 SC 575), the learned Member of the Tribunal missed its ratio decidendi namely that the servants and officers of the Courts are not Civil Servants. As regards Abbas case (1993 SCMR 715) that indeed concerned the employees of Sindh High Court Establishment but as is plainly clear from the observations in para. 18 of the judgment of this Court, the question whether the servants and the officers of the High Court were Civil Servant was not allowed to be raised and was not decided. The remaining discussion in that judgment obviously proceeded on the supposition that the servants and officers of the High Court were civil servants but a supposition is not the same thing as deciding a question of law and enunciating a principle of law within the meaning of Article 201 of the Constitution. As regards Hadi Khan case (PLD 1994 SC 532), it was a case of an employee of the Sindh Provincial Assembly; it has been seen above that in respect of the

employees of the Parliament and the Provincial Assemblies, the power to make law vests in the Parliament or, as the case may be, in the Provincial Assemblies.

8. It must be held, therefore, that the conclusion reached by the Tribunal, which makes the decision of the Chief Justice of Pakistan, albeit in his administrative capacity, yet within the sphere of the enumerated powers of the Supreme Court, subject to review by the Service Tribunal is not only Constitutionally dangerous, it also flies in the face of common sense.

(Sd.)

(Fazal Karim, J.)

MUKHTAR AHMED JUNEJO, J.--I have gone through the draft judgment authored by my learned brother ,Saiduzzaman Siddiqui, J. and I agree with him that this appeal requires to be accepted. However, I wish to add this note of mine to the main judgment.

The facts have been clearly mentioned in' the leading judgment, and I need not reiterate the same.

It is worthy to note that inter alia there are three Articles in the Constitution of the Islamic Republic of Pakistan (hereinafter mentioned as the Constitution) which delegate the authority to different functionaries to legislate or frame Rules on certain subjects. Article 240 of the Constitution delegates to the Majlis-e-Shoora (Parliament) the power to pass an Act determining appointments to the service of Pakistan and the terms and conditions of service of persons in the service of Pakistan. Similar delegation of powers to frame an Act determining the appointments to the services of a Province and the conditions of service of persons in such service has been made to each of the concerned Provincial Assemblies. It is in pursuance of Article 240 of the Constitution that the Majlis-e-Shoora (Parliament) legislated Civil Servants Act, 1973. Another provision dealing with delegation of powers is Article 208 of the Constitution, which inter alia empowers the Supreme Court of Pakistan to make rules with approval of the President providing for the appointment by the Supreme Court of officers and

servants of the said Court and for their terms and conditions of employment. Similar powers have been vested in the Federal Shariat Court in respect of its officers and servants and to each of the High Courts in respect of its officers and servants. It is in pursuance of Article 208 that the Supreme Court of Pakistan has framed "Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982". This implies that the persons for whom the Rules are to be framed under Article 208 of the Constitution are excluded from the category of persons in respect of whom the Acts determining terms and conditions of service are to be legislated under Article 240. This position appears clear like daylight and there does not appear to be overlapping on inconsistency of any sort.

The third provision in the Constitution about delegation of powers is given under Article 212. Article 212(1) of the Constitution empowers appropriate Legislature to provide by an Act the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of the matters inter alia relating to the terms and conditions of persons who are or have been in service of Pakistan, including disciplinary matters. It is in I pursuance of this Article that the Majlis-e-Shoora enacted Service Tribunals Act;' 1973. It may be noted that Article 208 of the Constitution did not provide for establishment of any Administrative Court or Tribunal to exercise exclusive jurisdiction in respect of matters relating to terms and conditions of the persons who are covered by Article 208 of the Constitution. It may also be noted that opening words of Article 212(1) of the Constitution are "Notwithstanding anything hereinbefore contained". These words negativate any provision in the preceding Articles including Article 208; if inconsistent with any provision contained in Article 212(1). Article 212(1) delegates powers to the Majlis-e- Shoora (Parliament) to enact law providing for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of the matters mentioned in clauses (a), (b) and (c) below sub-Article- (1) of Article 212. Nowhere in sub-Article (1) of Article 212 of the Constitution, the word "civil servant" was used. However, the Majlis-e-Shoora in its wisdom chose to use the word "civil servant" and restricted right of a person in the service of Pakistan to invoke jurisdiction of the Service Tribunal only when he was covered by the definition of 'Civil Servant' given in the Civil Servants Act. There is no cavil with the view that definition of service of Pakistan given under Article 260 of the Constitution is

wider than the definition of civil servant given in the Civil Servants Act, 1973 and in clause (a) below section 2 of Service Tribunals Act. This shows that in spite of a person being in the service of Pakistan, he cannot move the Service Tribunal unless he is a civil servant as defined under said Act.

A somewhat similar situation arose in the case of Abbas (1993 SCMR 715) where case of a High Court employee was turned down by the Sindh Service Tribunal on the ground of lack of jurisdiction and when the matter came to this Court in appeal, a learned Bench of this Court declined to undertake an examination of the point on the ground that the Tribunal had not recorded any finding on it. However, the case was remanded to the Sindh Service Tribunal with an observation that the High Court Establishment Rules would be deemed to be rules framed under the Sindh Civil Servants Act and it was held that any violation of such rules is justifiable before the Service Tribunal. In the case of Hadi Bux (PLD 1994 Supreme Court 532) an employee of Provincial Assembly of Sindh was held to be holding a civil post in connection with affairs of the Province, although he was governed by Sindh Assembly Secretariat (Recruitment) Rules, 1974 framed under Article 87(3) read with Article 127 of the Constitution. In said case of Hadi Bux the view taken was that the rules framed under Sindh Civil Servants Act had been incorporated in the rules framed under Article 87(3) read with Article 127 of the Constitution and consequently the reasoning adopted in the case of Abbas (1993 SCMR 715) could be pressed into service in the case of Hadi Bux.

In the case of Government of Punjab v. Mubarik Ali Khan (PLD 1993 Supreme Court 375) decided by a learned Bench of five Judges of this Court note was taken of a case of Manzoor Hussain and others decided by the Lahore High Court where the view taken was that officers and servants of the High Court do not fall within the ambit of expression "civil servant" as

occurring in section 2(b) of the Punjab Civil Servants Act. Said judgment came before this Court twice but at no stage the question of jurisdiction was -adverted to directly or indirectly, as observed in the case of Mubarik Ali Khan. The question of jurisdiction was not adverted to in depth in the case of Mubarik Ali Khan but it was observed that the view taken by the High Court that the employees of the Provincial High Courts are not civil servants for the purpose of Civil Servants Act and the Service Tribunals Act is correct. In view of such weighty observations there is no scope for further discussion of this matter and following said view we have to hold that the Service Tribunal had no jurisdiction to entertain appeal of the respondent.

M.B.A./R-290/S Appeal accepted.

Chapter 8

MISCELLANEOUS

CHAPTER 8
Miscellaneous
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8.1 SUPREME COURT (NUMBER OF JUDGES) ACT, I997

ACT XXXIII of 1997

(Published in Gazette of Pakistan, Extraordinary Part I on 06-11-1997)

1. Short title and commencement.- (1) This Act may be called the Supreme Court (Number of Judges) Act. I997.

(2) It shall come into force at once.

2. Maximum number of Supreme Court Judges other than Chief Justice.—The number of Judges of the Supreme Courts of Pakistan other than the Chief Justice shall be [1][not be more than twenty nine].

[1]Substituted vided finance act 2008 dated 27-06-2008 for "sixteen" and shall be deemed to have taken effect from 03-11-2007.

8.2 FEDERAL JUDICIAL ACADEMY ACT 1997
XXVIII OF 1997

(Published in Gazette of Pakistan, Extraordinary Part I on 28th August, 1997)

1. Short title and commencement. – (1) This act may be called the Federal Judicial Academy Act, 1997.

(2) It shall come into force at once.

2. Definition. –

(a) "Academy" means the Federal Judicial Academy;
(b) "Board" means the Board of Governors of the Academy;
(c) "Chairman" means the Chairman of the Board;
(d) "Director-General" means the Director-General of the Academy;
(e) "Prescribed" means prescribed by rules made under this Act; and
(f) "staff" means members of the staff of the academy, including contract employees, part time employees and deputationist.

3 Name and location. – (1) The Academy shall be called the Federal JudicialAcademy.

(2) The Academy shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property both moveable and immovable and shall by the said name sue and be sued.

(3) The headquarters of the academy shall be at Islamabad.

4 **Aims and objects. ----** The aims and objects of the Academy shall be –

(a) orientation and training of new judges, Magistrates, law officers and Court personnel;
(b) in service training and education of judges, Magistrates, law officers and Court personnel;
(c) holding of conferences, seminars, workshops, and symposia for improvement of the judicial system and quality of judicial work; and
(d) publishing of journals, memoirs, research papers and reports.

5. **The Board. –** (I) The Board shall consist of ....

(i)	The Chief Justice of Pakistan	Chairman
(ii)	The Minister for Law, Justice and Human Rights	Vice-Chairman
(iii)	The Attorney–General for Pakistan	Member
(iv)	The Chief Justice of Lahore High Court	Member
(v)	The Chief Justice of High Court of Sindh	Member
(vi)	The Chief Justice of Peshawar High Court	Member
(vii)	The Chief Justice of Balochistan High Court.	Member
(viia)*	The Chief Justice of Islamabad High Court	Member
(viii)	The Secretary, Ministry of Law, Justice and Human Rights	Member
(ix)	The Director-General of the Academy.	Member/ Secretary

6. **Power and functions of the Board. –** For carrying out the aims and objects of the Academy, the Board shall, *inter alia,* exercise general supervision over the affairs of the Academy;

(a) lay down the policy and programme for training and approve courses of training;

(b) evaluate and examine the activities of the Academy;

(c) approve and consider the annual budget and revised budget estimates;

(d) receive grants-in-aid from the Federal Government, Provincial Governments and aid giving agncies;

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*. Inserted by Federal Judicial Academy (Amendment) Act, 2016

(f) cause proper books of account to be maintained for all sums of money received and expended by the Academy and arrange for audit by the Auditor-General of Pakistan;

(g) prescribed the terms and conditions of service of the Director General and member of the staff;

(h) create, abolish, suspend and upgrade posts;

(i) prescribed duties of the members of the staff;

(j) appoint, suspend punish, dismiss or remove from service any member of the staff;

(k) purchase, hire, construct or alter building for the Academy;

(l) hold, control and administer the moveable and immovable property, assets and funds of the Academy;

(m) regulate, determine and administer all matters concerning the Academy;

(n) affiliate with Provincial Judicial academies and other training and educational institutions; and

(o) decide any other matter ancillary and incidental to the aims and objects of the Academy.

7. Delegation of powers. – (I) The Board may delegate all or any of its powers and functions the Chairman, Vice-Chairman, any member of the Board, the Director-General or any Member of the staff.

(2) The Director-General may, in any emergency which in his opinion requires immediate action, exercise such powers as he may consider necessary in the circumstances, and shall report the action taken by him for approval of the Board at its next meeting.

8. Appointment of advisers, consultants and experts. – The Board may appoint advisers, consultants and experts for assisting the Board in fulfillment of its aims and objects.

9. **Meetings of the Board. –** (I) The meetings of the Board shall be called by the Chairman on such date and at such time and place as he may specify.

(2) Subject to sub-section (I) the intervening period between two meetings of the Board shall not exceed six months.

(3) The Chairman or, in his absence, the Vice-Chairman, or if the Vice-Chairman is also absent, the member elected by the members for the purpose, shall preside at a meeting of the Board.

(4) The Quorum for the meetings of the Board shall be four members.

(5) The Board may, from time to time, appoint such committees and working groups, from amongst its members or otherwise, as it may consider necessary.

10. **Director-General. –** (I) The Director-General shall be appointed by the Chairman on such terms and conditions as may be approved by the Board.

(2) The management of the Academy shall be carried on by the Director-General under the general directions of the Board.

(3) The Director-General shall be the academic and administrative head of the Academy and shall be responsible for the maintenance of good order and discipline.

(4) The Director-General shall be the Principal Accounting Officer of the Academy.

11. **Appointment of officers and members of staff of the Academy. –** (1) The members of the staff of the Academy shall be appointed by direct recruitment or transfer, or deputation or on contract basis or otherwise in such manner and on such terms and conditions as may be approved by the Board.

(2) All appointments of the members of the staff to posts in Basic Pay Scale 1 to 16 shall be made by the Director-General with the approval of the Chairman.

(3) Appointment of the members of the staff to posts in Basic Pay Scale 17 and above shall be made by the Chairman.

(4) Notwithstanding anything contained in any contract or agreement or in the conditions of service, all persons serving in connection with the affairs of the Academy immediately before the commencement of this Act, other than persons so serving on deputation, shall stand transferred to the Academy and become the employees of the Academy on the same terms and conditions to which they were entitled immediately before such commencement and shall, on such transfer, cease to be persons in the service of Pakistan.

12. **Funds of the Academy. –** (1) There shall be a Fund of the Academy to be known as the "Academy Fund" to which all its income shall be credited and from which all its expenditures shall be met.

(2) The following shall be the sources of income for the Academy Funds, -

(i) grants from the Federal Governments;

(ii) grants from the Provincial Governments;

(iii) sale and other proceeds of the Academy's publications;

(iv) aid from national and international agencies; and

(v) fees, charges and donations.

(3) The Academy Funds shall vest in the Board and the moneys to the credit of the Fund shall be kept in a personal ledger account in the Government Treasury or, with the approval of the Board, in a scheduled bank.

13. **Budget**. – (1) The Director-General shall, in respect of each financial year, submit for approval of the Board, by such date and in such form as may be prescribed, a statement showing the estimated receipts the current and development expenditures and the sums required as grant-in-aid from the Federal Government.

(2) The Director-General shall not incur any expenditure from the Fund which is not provided for in the Budget approved by the Board.

14. **Annual Reports, etc. –** (1) Within two months of the conclusion of each financial year, the Director-General shall submit the annual report to the Board in respect of various activities carried out by the Academy during the previous year.

(2) The Board shall submit an annual report to the Federal Government relating to the Academy Fund and the Academy's programmes.

15. **Power to make rules. –** The Board may, with the approval of the Federal Government, make rules for carrying out the purposes of this Act.

8.3 LAW AND JUSTICE COMMISSION OF PAKISTAN ORDINANCE, 1979

An ordinance to establish a law and justice commission of Pakistan

WHEREAS it is expedient to establish a Law and Justice Commission of Pakistan for a systematic development and reform of the laws and to provide for matters connected there with or incidental thereto;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

1. **Short title, extent and commencement**[1].- (1) This Ordinance may be called the Law and Justice Commission of Pakistan Ordinance, 1979.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions**.- In this Ordinance, unless there is anything repugnant in the subject or context:-

(a) "Chairman" means Chairman of the Commission.

(b) "Commission" means the Commission established under section 3;

(c) [2]"Fund" means Access to Justice Development Fund established under section 6- A; and

(d) "member" means member of the Commission.

3[3] **Composition of Commission**.-

(1) There shall be a Law and Justice Commission of Pakistan, consisting of –

(a) the Chief Justice of Pakistan who shall be the Chairman, ex-officio;

(b) the Chief Justice of the Federal Shariat Court, Member, ex-officio;

(c)[4] the Chief Justices of the High Courts, members, ex-officio; and

(d) Attorney General for Pakistan, Member, ex-officio;

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[1] Substituted by Ordinance No. LXX of 2002, sub-section (1) of section 1

[2] Inserted, ibid, clause (c) of section 1

[3] Substituted, ibid, sub-section (1) and (1A) of section 3

[4] Substituted and omitted by Act No. VIII of 2014

(e) the Secretary, Ministry of Law, Justice and Human Rights, Member, ex-officio;

(f) Chairperson for Commission on Women Status, Member, ex-officio;

(g)[1] four members, one from each province, to be appointed by the Federal Government, on the recommendation of the Chairman, in consultation with the chief justice of concerned High Court from amongst the persons who are or have been holders of a judicial or administrative office, eminent lawyers or jurists, persons of repute and integrity from civil society, members of the Council of Islamic Ideology or teachers of law in a university or college; and

(1A) In addition to the members referred to in sub-section (1), the Chairman may, in his discretion, appoint a suitable person or persons as member or members for a specified period to perform specified functions.

(2) A member, other than an ex-officio member, shall hold office for a term of three years but shall be eligible for re-appointment for another term.

(3) A member, other than an ex-officio member, may resign his office by writing under his hand addressed to the President.

4. **Head Office**. - The head office of the Commission shall be situated in Islamabad or at such other place as the Federal government may specify.

5. **Secretariat**.- (1) The Commission shall have a separate Secretariat to be headed by a Secretary, who shall be an officer of the Federal Government not inferior in rank to a Joint Secretary to the Federal Government.

(2) The Secretary and other officers and employees of the Commission shall be appointed by the Chairman on such terms and conditions as the Commission may determine.

(3) The Commission may, for the purpose of research, engage, for a specified period, as many persons as it considers necessary.

6. **Function of the Commission**.- (1) The Commission shall study and keep under review on a continuing systematic basis the statutes and other laws with a view to making recommendations to the Federal Government and the Provincial Governments for the improvement, modernization and reform thereof and , in particular, for-

[1] Substituted and omitted by Act No. VIII of 2014

(i) Making or bringing the laws into accord with the changing needs of the society, consistent with the ideology of Pakistan and the concept of Islamic social justice;

(ii) Adopting of simple and effective procedure for the administration of laws to ensure substantial, inexpensive and speedy justice;

(iii) Arranging the codification and unification of laws in order to eliminate multiplicity of laws on the same subject;

(iv) Removing anomalies in the laws;

(v) Repealing obsolete or unnecessary provisions in the laws;

(vi) Simplifying laws for easy comprehension and devising steps to make the society law-conscious;

(vii) Introduction of reforms in the administration of justice; and

(viii) Removing inconsistencies between the laws within the legislative competence of Parliament and those within the legislative competence of a Provincial Assembly.

(2)[1] The Commission shall take measures for-

(a) developing and augmenting human resources for efficient court administration and case management;

(b) co-ordination of judiciary and executive; and

(c) preparing schemes for access to justice, legal aid and protection of human rights.

(3) The Commission shall administer and manage the Access to Justice Development Fund;

(4) The Commission shall study the present system of legal education and make recommendations to the Federal Government for improving the standard of legal education.

(5) The Federal Government or a Provincial Government may refer to the Commission any matter relevant to its functions for opinion and advice.

(6)[2] The Commission may, with the approval of the Federal Government, enter into a Memorandum of Understanding with the Law Commission of any country or , as the case may be, with any legal or human rights body or organization of any country to-

[1] Inserted by Ordinance No. LXX of 2002, sub-section (2) and (3) of section 6

[2] Added by Act No. VIII of 2014

(i) collaborate , cooperate and participate through consultation in carrying out legal research in connection with their respective functions;

(ii) facilitate one another in the collection of data and materials in conducting legal research;

(iii) have bilateral and reciprocal exchange of reports , research material and other publications;

(iv) facilitate visits , training and exchange of delegates, members and officers of the respective Commissions or, as the case may be , the respective law or human rights body or organization; and

(v) mutually agree, on case by case basis , on financial arrangements for holding meetings undertaking exchange visits and other activities as envisaged in the Memorandum of Understanding .

Provided that the notification of any such Memorandum of Understanding shall be carried out with the approval of concerned Ministry of Federal Government.

6-A. Fund[1]. - (1) There shall be established for the purposes of this Ordinance a fund to be called the Access to Justice Development Fund.

(2) The fund shall consist of: -

(a) an endowment grant of initial amount equivalent to US $24 million by the Federal Government in installments;

(b) other grants and donations made by the Federal Government, Provincial Governments or a Local Government;

(c) donations and contributions made by the individuals or institutions; and

(d) sums raised by the Commission;

6-B. Expenditure to be charged on the Fund. –The annual income generated by investment of endowment grant under clause (a) of sub-section (2) of section 6-A shall be utilized for the purposes and to the extent provided as hereunder: -

(a) 60.3% shall be allocated to the provinces [2][and Islamabad Capital Territory] on population basis to be called [2][***] Judicial Development Fund for improving the capacity and performance of the subordinate courts and providing amenities and facilities to courts and litigants, as may be determined by the respective High [2][Courts];

[1] Inserted by Ordinance No. LXX 2002

[2] Inserted, omitted and substituted by Act IV of 2018 dated, 02-02-2018.

(b) 10 % shall be set aside for special projects in the under developed provinces and regions;

(c) not more than 4.5 % on Legal and Judicial Research;

(d) not more than 4.5 % on the activities of the Federal and Provincial [1]Judicial Academy not covered by its budgetary allocation;

(e) not more than minimum of 13.5 % with a cap of 20% for the legal empowerment of the poor and underprivileged persons for provision of legal aid or assistance to have access to justice, in accordance with the criteria to be laid by the Commission;

(f) not more than minimum of 4.5 % with a cap of 10% to be spent on innovations in or promotion of legal education;

(g) 2.7% shall be charged by the Commission for management of the Fund:

Provided that an amount allocated under clauses (a) to (g) if not spent for any category shall be carried forward for the same purposes for the next two years.

(h) all other fund other than provided in clause (a) of sub-section (2) of section 6-A and the proceeds thereof, shall be utilized by the Commission for discharging its duties and functions under this Ordinance.

6-C Constitution of Committees.- The Commission may constitute committees consisting of one or more of its members, as it thinks fit, and may refer to them any matter relevant to the functions of the Commission for consideration and report.

6-D Reports. - The Commission shall publish an annual report of its activities and such other periodic or special reports requiring legislative or implementation effect as it may consider necessary. The Commission shall submit the reports to the President of Pakistan.

7. Application of Act VI of 1956.- The provisions of the Pakistan Commissions of Inquiry Act, 1956 (VI of 1956), shall apply to the Commission as if the Commission were a Commission appointed under that Act to which all the provisions of section 5 thereof applied.

8. Assistance to Commission.- All executive authorities in Pakistan shall assist the Commission in the performance of its functions.

[1] Inserted by Act No. VIII of 2014

9. **Power to make rules**.-(1) The Commission may make rules for carrying out the purpose of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for payment to the members of a traveling allowance and daily allowance in respect of journeys performed in connection with the functions of the Commission.

8.4 MEMORANDUM OF AL-MIZAN FOUNDATION

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PART I
MEMORANDUM OF ASSOCIATION
AL-MIZAN FOUNDATION

(Registered under the Societies
Registration Act, 1860 (XXI of 1860)

NAME OF THE FOUNDATION

1. The name of the Foundation shall be "Al -Mizan Foundation", hereinafter referred to as the Foundation.

2. The Registered Office of the Foundation shall be at Islamabad. It may have office at such other place or places as may be determined from time to time.

OBJECTIVES

3. The object of the Foundation shall be the welfare of the beneficiaries herein specified and to establish, run and set up organizations, institutions and projects for the said purpose.

4. "Beneficiaries" mean citizens of Pakistan: -

(a) who have served in the Superior Judiciary of Pakistan; and

(b) who have served or are serving:-

(i) [1][in the subordinate Judiciary in the Provinces of Punjab, Sindh, Khyber Pakhtunwa, Baluchistan and of Islamabad Capital Territory; and

(ii) in the establishments of the Supreme Court, Federal Shariat Court, Lahore High Court, High Court of Sindh, Peshawar High Court, High Court of Balochistan, Islamabad High Court and the Courts subordinate to the aforesaid Courts;]

(c) and shall also include:

(iii) dependents of persons listed in clauses (a) and (b) above; and

(iv) dependents of all deceased beneficiaries.

[1] Subs. in the joint meeting held on 22.01.2011. Before Substitution it was as mentioned below;

(i) in the subordinate Judiciary in the Provinces of Punjab, Sind, North West Frontier and Balochistan Baluchistan; and

(ii) in the establishments of the Supreme Court, Federal Shariat Court, High Courts of Punjab, Sind, North West Frontier Province,Balochistan, and the Courts subordinate to the aforesaid Courts

5 We have hereby subscribed and signed this Memorandum on this23rd day of July, 1995 at Islamabad.

Sd./
JUSTICE SAJJAD ALI SHAH
CHIEF JUSTICE OF PAKISTAN

Sd./
JUSTICE NAZIR AHMAD BHATTI
CHIEF JUSTICE
FEDERAL SHARIAT COURT

Sd./
JUSTICE MUNAWAR AHMAD MIRZA
CHIEF JUSTICE
HIGH COURT OF BALOCHISTAN

Sd./
JUSTICE ABDUL HAFEEZ MEMON
ACTING CHIEF JUSTICE
HIGH COURT OF SINDH

Sd./
JUSTICE SYED IBNE ALI
ACTING CHIEF JUSTICE
PESHAWAR HIGH COURT

Sd./
JUSTICE IRSHAD HASSAN KHAN
ACTING CHIEF JUSTICE
LAHORE HIGH COURT

ISLAMABAD.
23rd July, 1995

Sd./
ASHIQ HUSSAIN
REGISTRAR
SUPREME COURT OF PAKISTAN

PART II

ARTICLES OF ASSOCIATION
AL-MIZAN FOUNDATION
PRELIMINARY

1. The Foundation shall be designated as Al-Mizan Foundation, hereinafter called the Foundation.

2. The Foundation shall be registered under the Societies Registration Act, 1860 (XXI of 1860).

3. The Foundation shall be a body corporate and shall sue and be sued in its name through its Secretary.

4. The Foundation shall be entitled to own, hold and possess all types of property and shall be entitled to dispose of, transfer or alienate it in any manner whatsoever.

DEFINITIONS

5. In these Articles unless there is anything repugnant in the subject or context: -

(**1**) "beneficiaries" mean citizens of Pakistan: -

(a) who have served in the Superior Judiciary of Pakistan; and

(b) who have served or are serving:-

(i) 1[in the subordinate Judiciary in the Provinces of Punjab, Sindh, Khyber Pakhtunwa, Baluchistanand of Islamabad Capital Territory; and

(ii) in the establishments of the Supreme Court, Federal Shariat Court, Lahore High Court, High Court of Sindh, Peshawar High Court , High Court of Baluchistan, Islamabad High Court and the Courts subordinate to the aforesaid Courts.]

(c) and shall also include:

(i) dependents of persons listed in clauses (a) and (b) above; and

(ii) dependents of all deceased beneficiaries:

---

[1]Subs. in the joint meeting held on 22.01.2011. Before Substitution it was as mentioned below;

(i) in the subordinate Judiciary in the Provinces of Punjab, Sind, North-West Frontier and Baluchistan; and

(ii) in the establishments of the Supreme Court, Federal Shariat Court, High Courts of Punjab, Sind, North-West Frontier Province, Baluchistan and the Courts subordinate to the aforesaid Courts.

(2) "Board" means the Advisory Board;

(3) "Chairman" means the Chairman of the Committee;

(4) "Committee" means the Committee of Administration;

(5) "Dependents" mean dependent parents, how highsoever, the wife or wives, and dependent sons and daughters how lowsoever of the beneficiaries; and

(6) "President" means the President of the Advisory Board.

ADMINISTRATION OF THE FOUNDATION

6. (1)[1]**[**The Foundation shall be administered and managed by the Committee which shall consist of seven members, each to be nominated by the Chief Justice of Pakistan, Chief Justice of the Federal Shariat Court and Chief Justices of High Courts respectively.]

Provided that the nominees as aforementioned shall be persons who have retired from the Judiciary as Judge of the Supreme Court or the Federal Shariat Court or a High Court or has been a District Judge.

(2) [2][The Chief Justice of Pakistan, the Chief Justice of Federal Shariat Court and the Chief Justices of High Courts of all the four Provinces and Islamabad Capital Territory shall in a meeting after having made the above mentioned nominations appoint a person from amongst the nominees appointed under sub-Article **(**1**)** above as Chairman of the Committee.]

(3) (a) The Chairman of the Committee shall hold office during the pleasure of the Board; and

(b) The Chairman may, by writing under his own hand and addressed to the Board, resign his office;

---

[1]Subs. in the joint meeting held on 22.01.2011. Before Substitution it was "The Foundation shall be administered and managed by the Committee which shall consist of six members, each to be nominated by the Chief Justice of Pakistan, Chief Justice of the Federal Shariat Court and Chief Justices of High Courts of all the four Provinces respectively."

[2]Subs, ibid. Before Substitution it was "The Chief Justice of Pakistan, the Chief Justice of Federal Shariat Court and the Chief Justices of High Courts of all the four Provinces shall in a meeting after having made the above mentioned nominations appoint a person from amongst the nominees appointed under sub-Article **(**1**)** above as Chairman of the Committee"

(4) The Committee shall in its first meeting after the Chairman has been appointed under sub-Article (2) elect from amongst themselves one Vice-Chairman.

(5) The Chairman and, in his absence, the Vice-Chairman may convene and preside over the meetings.

(6) The Committee shall meet at least twice a year.

(7) The decisions of the Committee shall be taken by the majority of members present and voting and in case of a tie the Chairman shall have a casting vote:

(8) The quOrum to constitute a meeting of the Committee shall be four members.

(9) The term of the Committee shall be co-terminus with the term of the Chairman.

(10) The Board may from time to time make such provisions as it may deem fit for the discharge of functions by the Committee and the Chairman.

POWERS AND DUTIES OF THE COMMITTEE OF ADMINISTRATION

7. (1) The administration and management of the Foundation and its affairs shall vest in the Committee which may exercise all powers and do all such acts and things as may be required to be done by the Committee for the objects of the Foundation and in accordance with the directions of the Board. The Committee shall keep the Board informed of the actions taken and decisions made by it.

(2) Nothing contained herein shall authorise the Committee to sell or mortgage the fixed assets of the Foundation having the book value of one hundred thousand rupees or above without the approval of the Board.

(3) The Committee shall cause to be prepared and to be laid before the Board in its general meeting such audited profit and loss accounts, income and expenditure accounts, balance sheets and reports.

(4) The balance sheet shall be made out every year and made up to date not more than five months before the general meeting and be accompanied by report of the Committee and the auditor as to the state of the affairs of the Foundation.

(5) The profit and loss account shall be arranged under the most convenient heads, the amount of gross income distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other similar matters.

(6) All expenditure chargeable against the yearly income shall be brought into account and, in case where any items of expenditure which may be distributed over several years has been incurred in any one year the whole amount of such items shall be stated with reasons thereof:

(7) A copy of the balance sheet and reports shall be sent to the members of the Board at least fourteen days before the meeting of the Board.

(8) The accounts of the Foundation shall be audited through the auditors to be nominated by the Auditor-General of Pakistan.

(9) No transaction/contract involving a sum of rupees two million or more shall be undertaken and entered into without the prior approval of the Board.

POWERS AND DUTIES OF THE CHAIRMAN

8. (1) The Chairman shall exercise such powers and perform such duties as may be specified in these Articles or may be conferred on him by the Board.

(2) In particular and without prejudice to the generality of the foregoing powers, the Chairman shall exercise and perform the following powers and functions, namely: -

make and give receipts, release and other discharges for money payable to the Foundation anf for the claims and demands of the foundation and to draw, accept, endorse, negotiate promissory notes, bills of exchange or other negotiable and transferable instruments;
sign on behalf of the Foundation, bills,' cheques, notes, receipts, acceptances, endorsements, releases, contracts and Other documents;

open accounts with any bank or bankers or with any company and to pay in and to withdraw moneys from such accounts from time to time.

(3) The Chairinan shall discharge his duties and perform his functions subject to supervision and control of the Board.

(4) The Chairman and in the absence of the Chairman, the Vice-Chairman shall exercise such powers and perform such functions as may be delegated to him by the Chairman.

SECRETARY OF THE FOUNDATION

9.(1) There shall be a Secretary of the Foundation to be appointed bythe Board and he shall also perform the duties of the Secretary of the Committee.

(2) The qualifications, remuneration and conditions of service of the Secretary shall be determined by the Board.

(3) The Secretary shall exercise such powers and perform such functions as may he assigned to him by the Board or the Committee from time to time and shall, inter-alia, include the following, namely: -

Sign and verify plaints, written statements, petitions, comprises and sign power of attorney, authorizing legal practitioners to act on behalf of the Foundation in Courts and Tribunals.

CONSTITUTION OF THE ADVISORY BOARD

10. (1) [6][The Board shall consist of the Chief Justice of Pakistan, Chief Justice, Federal Shariat Court and the Chief Justices of the Provincial High Courts and Islamabad Capital Territory].

(2) The President of the Board shall be the Chief Justice of Pakistan.

(3) In the absence of the President, the senior most Chief Justice of any High Court present shall preside over the meeting of the Board.

POWERS AND FUNCTIONS OF THE BOARD

11. (1) The Board shall provide guidance and exercise supervisory control over the affairs of the Foundation.

(2) In particular and without prejudice to the generality of the foregoing, the Board shall exercise and perform the following powers and functions, namely: -

[6]Subs. in the joint meeting held on 22.01.2011. Before Substitution it was "The Board shall consist of the Chief Justice of Pakistan, Chief Justice, Federal Shariat Court and the Chief Justices of the High Courts of Punjab, Sind, North-West Frontier Province and Baluchistan"

(a) issue directions from time to time to the Committee and the Chairman as may be deemed fit and such directions shall be binding on the Committee and the Chairman as the case may be;

(b) approve in its annual general meetings the audited balance sheet and profit and loss accounts laid before it by the Committee;

(c) appoint from time to time the auditors of the Foundation nominated by the Auditor-General of Pakistan and to fix their remuneration;

(d) approve the annual and revised budget estimates of the Foundation alongwith the performance reports of the projects and schemes functioning under the Foundation;

(e) approve the borrowing of money as may be required for the purpose of the Foundation and upon such terms as may be expedient;

(f) approve investments, disinvestments and contracts;

(g) determine honorarium, allowances and privileges for the Chairman, Vice-Chairman and Members of the Committee;

(h) (h) fix remuneration and terms and conditions of service of the Secretary and other officers and employees working under the Foundation and the Committee;

(i) approve rules of service of the officers, servants and employees of the Foundation, its projects and schemes;

(j) appoint appellate authority from amongst the Members of the Board to hear appeals against the orders of the Committee in disciplinary cases, against officers, employees and servants of the Foundation, its projects and schemes; and

(k) examine the structure of establishment of the Foundation and review its strength from time to time.

(3) The Board shall hold an annual general meeting once in every calendar year at such place as may be decided by it from time to time.

(4) The Board may hold meetings at any time whenever requisitioned by two members of the Board or requested for by the Committee or the Chairman.

(5) The quorum to constitute a meeting of the Board shall be four members provided that at least three Provinces are represented.

Sd./
JUSTICE SAJJAD ALI SHAH
CHIEF JUSTICE OF PAKISTAN

Sd./
JUSTICE NAZIR AHMAD BHATTI
CHIEF JUSTICE
FEDERAL SHARIAT COURT

Sd./
JUSTICE MUNAWAR AHMAD MIRZA
CHIEF JUSTICE
HIGH COURT OF BALOCHISTAN

Sd./
JUSTICE ABDUL HAFEEZ MEMON
ACTING CHIEF JUSTICE
HIGH COURT OF SINDH

Sd./
JUSTICE SYED IBNE ALI
ACTING CHIEF JUSTICE
PESHAWAR HIGH COURT

Sd./
JUSTICE IRSHAD HASSAN KHAN
ACTING CHIEF JUSTICE
LAHORE HIGH COURT

ISLAMABAD.
23rd July, 1995

Sd./
ASHIQ HUSSAIN
REGISTRAR
SUPREME COURT OF PAKISTAN

IN THE OFFICE OFREGISTRAR,
JOINT STOCKCOMPANIES,
ISLAMABAD CAPITAL TERRITORY

In the matter of "AL-MIZAN FOUNDATION" SUPREME COURT BUILDING, ISLAMABAD.

I hereby certify that the under noted document(s) has/have this day been duly filed, pursuant to the provisions of the Societies Registration Act, 1860.

Memo. of fees RS. 5/- (rupees five only).
Amendment in the constitution of the society meeting held on 23rd July, 1995.

No. Rs/ICT/153 dated Islamabad, the 29 - 8 – 1995

Forwarded to the Honorary Secretary of the " Al-Mizan Foundation" Supreme Court Building,Islamabad.

Sd./

AMJAD NAZIR

Seal Registrar
No. 5076 Joint Stock companies
Dated 29-8-1995 Islamabad Capital Territory.

MEMBERS OF ADVISORY BOARD

Mr. Justice Asif Saeed Khan Khosa Chief Justice of Pakistan.	President
Mr. Justice Muhammad Noor Meskanzai Chief Justice, Federal Shariat Court, Islamabad.	Member
Mr. Justice Sardar Muhammad Shamim Khan Chief Justice, Lahore High Court, Lahore.	Member
Mr. Justice Ahmad Ali Sheikh Chief Justice, Sindh HighCourt Karachi.	Member
Mr. Justice Waqar Ahmad Seth Chief Justice, Peshawar High Court, Peshawar.	Member
Ms. Justice Syeda Tahira Safdar Chief Justice, High Court of Balochistan, Quetta	Member

COMMITTEE OF ADMINISTRATION

Mr.Justice Ali Hussain Qazabash Former Judge, Supreme Court of Pakistan	Chairman
Mr. Justice Mian Mehboob Ahmad Former Chief Justice, Federal Shariat Court	Vice Chairman
Mr. Justice Abdul Haeez Cheema Former Judge, Lahore High Court	Member
Mr. Justice Abdul Ghani Sheikh Former Judge, High Court of Sindh	Member
Mr. Justice Muhammad Azam Khan Former Judge, Peshawar High Court	Member
Mr. Justice Fazal-ur-Rahman Former Judge, High Court of Balochistan	Member
Mr. Mazhar Hussain Minhas District and Session Judge ®	Member

22nd April, 2016

Khalid Amin Khan Tareen
Secretary

SUPREME COURT OF PAKISTAN