

THE EXECUTIVE COMMITTEE OF THE PAKISTAN BAR COUNCIL CONSIDERED THE DRAFT OF PROPOSED 26TH CONSTITUTIONAL AMENDMENTS AND SUGGESTED THE FOLLOWING AMENDMENTS.

DRAFT OF 26 TH CONSTITUTIONAL AMENDMENTS RECEIVED BY THE PAKISTAN BAR COUNCIL FROM THE GOVERNMENT	AMENDMENTS/CHANGES PROPOSED BY THE PAKISTAN BAR COUNCIL
5. Amendment of Article 63A of the Constitutional. In the Constitution, in Article 63A,-- (i) in clause (1), in paragraph (b), after the word “votes”, the expression, “which shall be counted”, shall be inserted; (ii) in clause (4), after the full stop, the following explanation shall be added: <i>Explanation.</i>— For removal of doubt and notwithstanding any judgment of any court including the Supreme Court or a High Court, the vote cast by a member contrary to any direction issued by the Parliamentary Party under paragraph (b) of clause (1) shall be counted and not disregarded.”; and (iii) in clause (5), for the words “Supreme Court”, the words “Federal Constitutional Court” shall be substituted.	5. Amendment of Article 63A of the Constitutional. In the Constitution, in Article 63A,-- (i) in clause (1), in paragraph (b), after the word “votes”, the expression, “which shall be counted”, shall be inserted; (ii) in clause (4), after the full stop, the following explanation shall be added: <i>Explanation.</i>— For removal of doubt and notwithstanding any judgment of any court including the Supreme Court or a High Court, the vote cast by a member contrary to any direction issued by the Parliamentary Party under paragraph (b) of clause (1) shall be counted and disqualified for five years.”; and (iii) in clause (5), for the words “Supreme Court”, the words “Federal Constitutional Court” shall be substituted.
6. Amendment of Article 68 of the Constitution. In the Constitution, in Article 68, after the words “Judge of”, the expression “the Federal Constitutional Court”, shall be inserted.	6. Amendment of Article 68 of the Constitution. In the Constitution, in Article 68, after the words “Judge of”, the expression “the Federal Constitutional Court”, shall be inserted but discussion may take place with regard to the judgment passed by this Court.

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

(ix) in clause (1),

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

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

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

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

(i)	Chief Justice of the Federal Constitutional Court;	Chairperson
(ii)	Two most senior Judges of the Federal Constitutional Court	Members
(iii)	Chief Justice and two most senior Judges of the Supreme Court	Members
(iv)	Federal Minister for Law and Justice;	Member
(v)	Attorney-General for Pakistan;	Member
(vi)	A Senior Advocate or an advocate having not less than twenty years of practice in the Supreme Court to be nominated by the Pakistan Bar Council for a term of two years;	Member
(vii)	Two members from the Senate and two members from the National Assembly of whom two shall be from the Treasury Benches, one from each House, and two from the Opposition Benches, one from	Members

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

(ix) in clause (1),

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

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

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

(i)	Chief Justice of the Federal Constitutional Court;	Chairperson
(ii)	Two most senior Judges of the Federal Constitutional Court	Members
(iii)	Chief Justice and two most senior Judges of the Supreme Court	Members
(iv)	Federal Minister for Law and Justice;	Member
(v)	Attorney-General for Pakistan;	Member
(vi)	A Senior Advocate or an advocate having not less than twenty years of practice in the Supreme Court to be nominated by the Pakistan Bar Council for a term of two years;	Member
(vii)	Two members from the Senate and two members from the National Assembly of whom two shall be from the Treasury Benches, one from each House, and two from the Opposition Benches, one from	Members

	each House. The nomination from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition; Provided that during the time when the National Assembly stands dissolved, the remaining two members, for the purpose of this paragraph, shall be nominated from the Senate in the manner as aforesaid, for such period.			each House. The nomination from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition; Provided that during the time when the National Assembly stands dissolved, the remaining two members, for the purpose of this paragraph, shall be nominated from the Senate in the manner as aforesaid, for such period.	
			(viii)	Chief Justice of the concerned High Court and Chief Justice, Federal Shariat Court, as the case may be	Member
			(ix)	Senior puisne Judge of that High Court and Senior Puisne Judge of the Federal Shariat Court, as the case may be;	Member
			(x)	Provincial Minister for Law;	Member
			(ix)	an Advocate having not less than fifteen years of practice as advocate in the High Court to be nominated by the concerned Provincial Bar Council for a term of two years;	Member
			Provided that for the appointment of Chief Justice of the High Court the most senior Judge mentioned in (ix) shall not be member of the Commission.		
(xi)	after clause (2), substituted as aforesaid, the following new clause (2A), shall be inserted, namely:-			(xi) after clause (2), substituted as aforesaid, the following new clause (2A), shall be inserted, namely:-	

“(2A) For the appointment of the Judges of the Federal Constitutional Court, the members in paragraph (iii) of clause (2) shall be substituted by three most senior Judges of the Federal Constitutional Court who are next in seniority below the Judges referred to in paragraph (ii) of clause (2).” (xii) after clause (2A), inserted as aforesaid, the following new clause (2B), shall be inserted; “(2B) For the appointment of the Judges of the Supreme Court, the Chief Justice of the Supreme Court shall be the Chairperson of the Commission in clause (2) and five next most senior Judges of that Court shall be its members. The members in paragraphs (iv), (v), (vi) and (vii) of clause (2) shall be the other members of the Commission.” (xiii) after clause (2B), inserted as aforesaid, the following new clause (2C), shall be inserted: “(2C) Notwithstanding anything contained in clause (1) or clause (2), the Chief Justice of the Federal Constitutional Court shall be appointed, on recommendation of the National Assembly Committee, from amongst the three most senior Judges of the Federal Constitutional	“(2A) For the appointment of the Judges of the Federal Constitutional Court, the members in paragraph (iii) of clause (2) shall be substituted by three most senior Judges of the Federal Constitutional Court who are next in seniority below the Judges referred to in paragraph (ii) of clause (2).” (xii) after clause (2A), inserted as aforesaid, the following new clause (2B), shall be inserted; “(2B) For the appointment of the Judges of the Supreme Court, the Chief Justice of the Supreme Court shall be the Chairperson of the Commission in clause (2) and five next most senior Judges of that Court shall be its members. The members in paragraphs (iv), (v), (vi) and (vii) of clause (2) shall be the other members of the Commission. The Members and Chairperson mentioned in clauses (i), (ii) & (iii) shall be excluded.” (xiii) after clause (2B), inserted as aforesaid, the following new clause (2C), shall be inserted: “(2C) The Committee for the first appointment of three (3) Judges including Chief Justice of the Federal Constitutional Court shall be appointed, on the recommendations of the Committee comprises on:-
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Court. The National Assembly Committee, constituted for the aforesaid purpose, shall send the name of the nominee to the Prime Minister who shall forward the same to the President for appointment: Provided that the first Chief Justice of the Federal Constitutional Court shall be appointed by the President, on the advice of the Prime Minister: Provided further that the first appointment of the Judges of the Federal Constitutional Court shall be made by the President, in consultation with the Chief Justice of the Federal Constitutional Court: <i>Note.</i> The provisos to clause (2C) shall cease to form part of the Constitution and shall stand repealed on the appointment of the first Chief Justice of the Federal Constitutional Court and the appointment of the Judges under the second proviso."; (xiv) after new clause (2C), the following new clauses shall be inserted: "(2D) The National Assembly Committee, hereinafter in this Article referred to as the Committee, shall consist of eight members nominated by the Speaker of the National Assembly.	<table><tr><td>(i)</td><td>Four members from the Parliament with equal representation of the Treasury and Opposition Benches, two members from the Treasury and two members from the Opposition.</td></tr><tr><td>(ii)</td><td>Federal Minister for Law and Justice;</td></tr><tr><td>(iii)</td><td>Nominee of Pakistan Bar Council having qualification as prescribed in proposed Amendments of clause (2) of Article 175A of the Constitution;</td></tr></table> The aforesaid appointments shall be made by the President on the advice of Prime Minister. Provided that the Committee shall recommend the names by majority of its total membership. The Committee shall be constituted within seven days of the assent of the Constitutional Bill and shall make recommendations within seven days thereof.	(i)	Four members from the Parliament with equal representation of the Treasury and Opposition Benches, two members from the Treasury and two members from the Opposition.	(ii)	Federal Minister for Law and Justice;	(iii)	Nominee of Pakistan Bar Council having qualification as prescribed in proposed Amendments of clause (2) of Article 175A of the Constitution;
(i)	Four members from the Parliament with equal representation of the Treasury and Opposition Benches, two members from the Treasury and two members from the Opposition.						
(ii)	Federal Minister for Law and Justice;						
(iii)	Nominee of Pakistan Bar Council having qualification as prescribed in proposed Amendments of clause (2) of Article 175A of the Constitution;						

(2E) Each Parliamentary Party shall, as far as practicable, have proportional representation on the Committee. (2F) The Committee, by majority of its total membership, within seven days prior to the retirement of the respective Chief Justice shall send the nomination as provided in clauses (2C) and (3) of this Article. (2G) No action or decision taken by the Commission or Committee shall be invalid or called in question only on the ground of existence of a vacancy therein or of the absence of any member from any meeting thereof. (2H) The meetings of the Committee shall be held in camera and the record of its proceedings shall be maintained. (2I) The provisions of Article 68 shall not apply to the proceedings of the Committee. (2J) The Committee may make rules for regulating its procedure." (xv) for clause (3), the following shall be substituted: "(3) Notwithstanding anything contained in clause (1) or clause (2), the Chief Justice of the Supreme Court shall be appointed, on recommendation of the Committee, from amongst the three most senior	(xv) for clause (3), the following shall be substituted: "(3) The appointment of Chief Justice of the Supreme Court or Chief Justice of High Courts shall be made on recommendations of the
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Judges of the Supreme Court. The Committee, constituted for the aforesaid purpose, shall send the name of the nominee to the Prime Minister who shall forward the same to the President for appointment.”;	Commission as provided, in clause (2B) of Article 175A from amongst the three most senior Judges of the Supreme Court of Pakistan or concerned High Court as the case may be.						
(xvii) in clause (6), (A) In paragraph (i), the word “and” shall be omitted; (B) after paragraph (ii), the following new paragraphs shall be added: <table><tr><td>“(iii)</td><td>an advocate having not less than fifteen years of practice in the High Court to be nominated by the Islamabad Bar Council for a term of two years; and</td><td>Member</td></tr><tr><td>(iv)</td><td>a Federal Minister nominated by the Prime Minister</td><td>Member”;</td></tr></table>	“(iii)	an advocate having not less than fifteen years of practice in the High Court to be nominated by the Islamabad Bar Council for a term of two years; and	Member	(iv)	a Federal Minister nominated by the Prime Minister	Member”;	Provided that for the appointment of Chief Justices, the nominees shall not be members of the Commission.
“(iii)	an advocate having not less than fifteen years of practice in the High Court to be nominated by the Islamabad Bar Council for a term of two years; and	Member					
(iv)	a Federal Minister nominated by the Prime Minister	Member”;					
14. Insertion of new Article 1758 of the Constitution. In the Constitution, after Article 175A, amended as aforesaid, the following new Article 1758, shall be inserted, namely:- "175B. Constitution of Federal Constitutional Court. (1) The Federal Constitutional Court shall consist of a Chief Justice to be known as the Chief Justice of the Federal Constitutional Court of Pakistan and so many other Judges as may be determined by Act of Majlis-e-Shoora (Parliament) or, until so determined, as may be fixed by the President:	(xvii) in clause (6), The amendments so proposed in this clause shall be omitted. 14. Insertion of new Article 1758 of the Constitution. In the Constitution, after Article 175A, amended as aforesaid, the following new Article 1758, shall be inserted, namely:- "175B. Constitution of Federal Constitutional Court. (1) The Federal Constitutional Court shall consist of a Chief Justice to be known as the Chief Justice of the Federal Constitutional Court of Pakistan and so many other Judges as may be determined by Act of Majlis-e-Shoora (Parliament):						

Provided that each Province shall have equal number of Judges in the Federal Constitutional Court. (2) The President may, by Order, make necessary provisions for the matters consequential or ancillary to the establishment and functioning of the Federal Constitutional Court."	Provided that each Province shall have equal number of Judges in the Federal Constitutional Court. (2) This clause shall be omitted.
19. Insertion of new Article 178A of the Constitution. In the Constitution, after Article 178, the following new Article 178A, shall be inserted, namely:- "178A. Retiring Age. A Judge of the Federal Constitutional Court shall hold office until he attains the age of sixty-eight years, unless he sooner resigns or is removed from office in accordance with the Constitution: Provided that where a person who has held the office of a Judge of the Supreme Court is appointed as a Judge of the Federal Constitutional Court, he shall hold the office for a term of three years unless he sooner resigns or is removed from office in accordance with the Constitution. If such a Judge is appointed as the Chief Justice, his term as the Chief Justice shall end on completion of the aforesaid three-year term:	19. Insertion of new Article 178A of the Constitution. In the Constitution, after Article 178, the following new Article 178A, shall be inserted, namely:- "178A. Retiring Age. A Judge of the Federal Constitutional Court shall hold office until he attains the age of sixty-eight years, unless he sooner resigns or is removed from office in accordance with the Constitution: There is no need of 1st proviso, so the same shall be omitted.

Provided further that the term of the Chief Justice of the Federal Constitutional Court shall be three years or unless he sooner resigns or attains the age of sixty-eight years or is removed from his office in accordance with the Constitution, whichever is earlier: Provided also that the Chief Justice of the Federal Constitutional Court of Pakistan on completion of his term of three years shall stand retired notwithstanding his age of superannuation.”	Provided further that the term of the Chief Justice of the Federal Constitutional Court shall be three years unless he sooner resigns or attains the age of sixty-eight years or is removed from his office in accordance with the Constitution, whichever is earlier: Provided also that the Chief Justice of the Federal Constitutional Court of Pakistan on completion of his term of three years shall stand retired notwithstanding his age of superannuation.”
20. Amendment of Article 179 of the Constitution. In the Constitution, in Article 179, the following new proviso shall be inserted: "Provided that the term of the Chief Justice of the Supreme Court shall be three years or unless he sooner resigns or attains the age of sixty-five years or is removed from his office in accordance with the Constitution, whichever is earlier."	20. Amendment of Article 179 of the Constitution. In the Constitution, in Article 179, the following new proviso shall be inserted: "Provided that the term of the Chief Justice of the Supreme Court shall be three years unless he sooner resigns or attains the age of sixty-five years or is removed from his office in accordance with the Constitution, whichever is earlier; Provided also that the Chief Justice of the Supreme Court on completion of his term of three years shall stand retired notwithstanding his age of superannuation.”
27. Substitution of Article 186A of the Constitution. In the Constitution, for Article 186A, the following shall be substituted:	27. Substitution of Article 186A of the Constitution. In the Constitution, for Article 186A, the following shall be substituted:

"186A. Power of Federal Constitutional Court and Supreme Court to transfer cases.- (1) The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings, other than the proceedings under Article 199, pending before any High Court to any other High Court. (2) The Federal Constitutional Court shall have the power to transfer any proceedings instituted under Article 199 before any High Court to any other High Court or to itself."	"186A. Power of Federal Constitutional Court and Supreme Court to transfer cases.- (1) The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings, other than the proceedings under Article 199, pending before any High Court to any other High Court. (2) The Federal Constitutional Court in the interest of justice shall have the power to transfer any proceedings instituted under Article 199 before any High Court to any other High Court or to itself"
34. Amendment of Article 193 of the Constitution. In the Constitution, in Article 193, in clause (2), (i) for the rider provision and paragraphs (a) and (b), the following shall be substituted: "(2) A person shall not be appointed as a Judge of a High Court unless he is a citizen of Pakistan and does not hold citizenship of a foreign State, is not less than forty years of age, and-	34. Amendment of Article 193 of the Constitution. In the Constitution, in Article 193, in clause (2), (i) for the rider provision and paragraphs (a) and (b), the following shall be substituted: "(2) A person shall not be appointed as a Judge of a High Court unless he is a citizen of Pakistan, is not less than forty-five years of age, and-
45. Amendment of Article 215 of the Constitution. In the Constitution, in Article (i) in clause (1),	45. Amendment of Article 215 of the Constitution. In the Constitution, in Article. The amendments so proposed in this Article shall be omitted.

(A) after the existing first proviso, the following new proviso shall be inserted: "Provided further that the Commissioner and a member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon the office:"; and (B) in the existing second proviso, for the word "further", the word "also" shall be substituted; (C) after clause (1), amended as aforesaid, the following new clause (1A) shall be inserted: "(1A) A person who has held office as the Commissioner or a member may, by a resolution passed by each House by the votes of the majority of the members present and voting, be reappointed to the same office for another term.".	
52. Amendment of Fourth Schedule of the Constitution. In the Fourth Schedule, in PART I,	52. Amendment of Fourth Schedule of the Constitution. In the Fourth Schedule, in PART I,

(1) in entry 2, after the expression "cantonment areas," the expression "local taxes, fees in respect of any services, cess, charges, tolls in such areas," shall be inserted; and (ii) in entry 55, for the words “supreme Court”, occurring twice, the words “the Federal Constitutional Court and the Supreme Court” shall be substituted.	The amendments so proposed in the Fourth Schedule of the Constitution, shall be omitted.
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