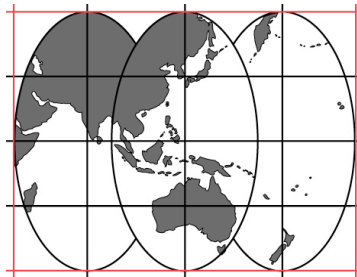


Report of LAWASIA Fact-finding Mission to Pakistan

17-21 July 2008



LAWASIA

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**LAWASIA FACT-FINDING MISSION TO PAKISTAN
17-21 JULY 2008**

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LAWASIA FACT-FINDING MISSION TO PAKISTAN 17-21 JULY 2008

1. EXECUTIVE SUMMARY

The observations and conclusions of the fact-finding mission to Pakistan can be summarised as follows:

- (a) The independence of the judiciary and how that relates to integrity of the Constitution of Pakistan have been underlying matters of considerable concern to the legal community of Pakistan in particular since October 1999 which saw a military takeover of government;
- (b) These matters relate directly to the rule of law and have impacted on democratic government in Pakistan;
- (c) The actions of President Musharraf in March 2007 in declaring Chief Justice Iftikhar Mohammad Chaudhry “non-functional” and the subsequent action taken against the Chief Justice and other members of the judiciary after a proclamation of a state of emergency on 3 November would seem to offer justification for these concerns;
- (d) The delay in restoring the judiciary to the position of 2 November 2007 according to the government’s undertaking in the Murree Declaration would seem to have exacerbated the situation. It has, however, further strengthened the resolve of the lawyers’ movement in support of a full restoration of judiciary and against further constitutional amendment other than a return to the constitutional position of 12 October 1999;
- (e) the proposed constitutional amendments include measures that can be viewed as attempts to curtail and limit the powers and independence of judiciary and do not appear to be necessary to resolve the issue of the restoration of the judiciary to the position of 2 November 2007;
- (f) the resolve of the deposed judges to maintain an independent judiciary, coupled with the support of the lawyers’ movement for their actions merit continued international attention in general but particularly deserve the practical support of the international legal community.

2. TERMS OF REFERENCE

2.1 It was resolved by the LAWASIA Executive Committee that LAWASIA should send a fact-finding mission to Pakistan, with the intent of developing an understanding of issues related to the rule of law, the independence of the judiciary and the independence of lawyers and the bar, following the change of government in February 2008.

2.2 The formal terms of reference are as follows:

1. *to meet with a wide range of key personnel in Pakistan's legal community and seek their reactions to the current situation as it pertains to rule of law, independence of the judiciary and the independence of lawyers and the bar;*
2. *to understand issues that confront the legal profession in the aftermath of the last 14 months where its strike action in support of an independent judiciary was a pivotal factor in rule of law outcomes in Pakistan;*
3. *to gain an impression of the future of the legal community and justice system under the new government;*
4. *to consider, based on its findings, how LAWASIA can best support and promote the interests of the Pakistan Bar Council and the legal community as a whole, and how it can best assist in supporting the rule of law and an independent judiciary and profession in Pakistan.*

3. MEMBERS OF THE LAWASIA FACT-FINDING MISSION

3.1 The members of the mission were:

Mr Mah Weng Kwai, president of LAWASIA and former president of the Malaysian Bar Council;

Mr Prashant Kumar, ExCo member of LAWASIA and honorary joint treasurer of the Bar Association of India;

Mr Christopher Leong, LAWASIA member and Council member of the Malaysian Bar Council;

Ms Janet Neville, CEO/Secretary-general of LAWASIA.

4. ACKNOWLEDGEMENTS

4.1 LAWASIA acknowledges with gratitude the support and interest of the Malaysian Bar

- Council in facilitating the attendance of Mr Leong as a member of the mission;
- 4.2 The mission notes with deep appreciation the invaluable support, advice and practical assistance provided by the Pakistan Bar Council;
- 4.3 It records its gratitude to the Lahore High Court Bar Association, the Supreme Court Bar Association of Pakistan, the Honourable Minister for Law, Justice and Human Rights, the Office of the Attorney-General of Pakistan, the Sindh High Court Bar Association and the Sindh Bar Council for arranging receptions for the mission;
- 4.4 It acknowledges with particular thanks the generosity, hospitality, wide-ranging assistance and encouragement provided by LAWASIA member, Mr Mohammad Akram Sheikh, in planning and reception of the mission;
- 4.5 It thanks the Chief Minister of Punjab, the Hon Mian Shab haz Sharif, the Hon Chief Justice Iftikhar Chaudhry and the Hon Chief Justice Sabihuddin Ahmad not only for their willingness to spend time with the mission but also for their kind hospitality;
- 4.6 Above all, LAWASIA records its sincere appreciation to the many in Pakistan who willingly and openly shared information, views and experiences with the mission.

5. PERSONS INTERVIEWED

- 5.1 The mission was able, at meetings and receptions arranged, to speak to many judges, lawyers and others. The listing below is indicative, not exhaustive:
- **Hon Senator Farooq Naek**, Minister of Law, Justice and Human Rights;
 - **Hon Mian Shab haz Sharif**, Chief Minister, Punjab;
 - **Hon Chief Justice Iftikhar Muhammad Chaudhry**, deposed Chief Justice of Pakistan;
 - **Hon Chief Justice Sabihuddin Ahmad**, deposed Chief Justice of Sindh High Court;
 - **Justice (ret'd) Rasheed A Razvi**, chairman, Executive Committee, Pakistan Bar Council, president of Sindh Court Bar Association;
 - **Justice (ret'd) Tariq Mahmood**, member legal team for Chief Justice Chaudhry;
 - **Mr Hamid Khan**, member, Pakistan Bar Council, member, legal team for Chief Justice Chaudhry;
 - Members of the Pakistan Bar Council, including, **Mr Muhammad Arshed**, secretary, **Senator Sardar Muhammad Latif Khan Khosa**, **Mr Aaqil Lodhi**, **Mr H Syed Rehman**;
 - President, **Mr Aitzaz Ahsan**, office-bearers and members of the Supreme Court Bar Association of Pakistan;
 - President, **Mr Anwar Kamal**, office-bearers and members of the Lahore High Court

Bar Association;

- President, **Mr Syed Muhammad Shah**, office-bearers and members of the Lahore Bar Association;
- **Mr Ashtar Ausaf Ali**, former Advocate-General, Punjab;
- **Ms Naheda Mahboob Ellahi**, Deputy Attorney-General for Pakistan;
- **Mr Syed Mohammad Farooq Shah**, Secretary to the Attorney-General's Office;
- **Dr Danishwar Malik**, Prosecutor-General, National Accountability Bureau;
- **Mr Muhammad Bilal**, senior advocate, former member of Pakistan Bar Council and former LAWASIA Councillor for Pakistan;
- **Mr Muneer Malik**, former president, Supreme Court Bar Association of Pakistan and Sindh High Court Bar Association, member, legal team for Chief Justice Chaudhry;
- **Mr Mohammed Akram Sheikh**, LAWASIA member, former president, Supreme Court Bar Association of Pakistan;
- In addition to the president, **Mr Rasheed A Razvi**, office-bearers and members of the Sindh High Court Bar Association;
- Vice chairman, **Mr Muzafar Ali Laghari**, office bearers and members of Sindh Bar Council;
- **Mr Haleem Siddiqui**, chairman, Executive Committee, Sindh Bar Council;
- **Ms Noor Naz Agha**, president, Pakistan Women Lawyers Association;
- **Mr Mahmood -ul-Hassan**, president, Karachi Bar Association;
- **Justice (ret'd) Khalid ur Rehman**, former Chief Justice of Punjab;
- **Mr Sahibzada Anwar Hamid**, vice president, Supreme Court Bar Association of Pakistan;
- **Mr Mohsin Nadeem**, president, Lahore Tax Bar Association;
- **Justice (ret'd) Mansoor Hussain Sial**, former judge, Supreme Court of Pakistan;
- **Mr Muhammad Amir Jawaid**, secretary, Supreme Court Bar Association, Pakistan;
- **Mr Raja Nias Ahmed Rathore**, former president, High Court Bar Association, Rawalpindi;
- **Justice (ret'd) Abdul Waheed Siddique**, former judge, Federal Shariah Court.

6. TIMELINE

The events leading up to LAWASIA mission:

- (a) Following a military takeover of the government of Pakistan led by General Pervez Musharraf on 12 October 1999, on 25 January 2000, judges of all Pakistan courts were required to take an oath of office under the *Oath of Office (Judges) Order, 2000*.

This obliged them to discharge their duties and perform their functions in accordance with the *Proclamation of Emergency* of 14 October 1999 and the *Provisional Constitutional Order*;

- (b) The then Chief Justice of Pakistan, Justice Saiduzzaman Siddiqui, five other Supreme Court judges and a number of provincial high court judges refused to take the oath and ceased to hold office;
- (c) A bench of 12 judges of the Supreme Court, headed by then Chief Justice Irshad Hassan Khan, dealt with a number of petitions against the military takeover and for the restoration of the Assemblies (national and provincial houses of parliament) and on 12 May 2000, announced their judgment which had the effect of justifying the military takeover and giving power to a military ruler to amend the Constitution. The judgment also indicated that the cases of the former Chief Justice and the judges of the High Court who did not take the oath could not be re-opened, according to a doctrine of past and closed transaction¹;
- (d) Justice Iftikhar Muhammad Chaudhry was among the judges who took their oath under *Oath of Office (Judges) Order, 2000*. He was elevated to the Supreme Court on 4 February 2000;
- (e) Following a controversial referendum held in Pakistan on 30 April 2002, which recorded a 97% approval rate to General Musharraf continuing as president for the next 5 years, the President promulgated a series of constitutional amendments via the *Legal Framework Order 2002*. These were rejected by lawyers' organisations on the grounds that there was no power vested in the President to amend the Constitution and that they would undermine the parliamentary system. Included in the amendments was Article 270C which declared that all judges who took the oath under the *Oath of Office (Judges) Order, 2000* were deemed to have been appointed under the Constitution²;
- (e) Justice Chaudhry was appointed Chief Justice of Pakistan on 7 May 2005 by President General Pervez Musharraf and assumed that office on 30 June 2005;
- (f) Chief Justice Chaudhry had, over a period of time, brought over 6000 *suo moto* cases before the courts which saw rulings delivered that were unfavourable to the government. Of particular note were cases involving the disappearances of Pakistan citizens illegally detained in relation to the "War on Terrorism" and a ruling against perceived governmental corruption as seen in the Pakistan Steel Mills case³;

¹ Hamid Khan, *Constitutional and Political History of Pakistan*, Oxford University Press, 2005, pp 492-4

² *op cit* pp 495-8

³ In 2006 the Supreme Court declared "void and of no legal effect," a government agreement to privatise the state-run Pakistan Steel Mills through a sale to Russian, Saudi and Pakistani firms. The agreement to sell the steel mills had been a cause of public concern because of extreme

- (g) On 9 March, 2007, Chief Justice Chaudhry was declared "non-functional" by President Musharraf, who also filed a "reference" (a legal case) against the Chief Justice for misconduct;
- (h) Justice Javed Iqbal was appointed acting Chief Justice;
- (i) The removal of Chief Justice Chaudhry was viewed as an attack on the independence of the judiciary and triggered widespread reaction from the legal community in particular. A number of lawyers and others took to the street in protest and were subject to baton-charges, tear-gassings, beatings and arrests. Lawyers undertook strike and boycott action in the various courts and in addition, filed a number of petitions in court challenging the Chief Justice's dismissal;
- (j) Chief Justice Chaudhry initially appeared before the Supreme Judicial Council, pursuant to the provisions of Article 9 of the Constitution, on 13 March 2007;
- (k) On 7 May 2007, the Supreme Court of Pakistan suspended the Supreme Judicial Council's inquiry into the charges against Chief Justice Chaudhry and took up the petition challenging his suspension;
- (l) On 28 June 2007, the then government agreed that charges against Chief Justice Chaudhry could be heard by the Supreme Court, instead of the Supreme Judicial Council. On 16 July 2007 government lawyers dropped charges of judicial misconduct against Chief Justice Chaudhry;
- (m) On 20 July 2007, Chief Justice Chaudhry was reinstated to his position as the Chief Justice in a ruling by a thirteen-member bench of the Pakistani Supreme Court, which also quashed the misconduct reference filed against him by President Musharraf. All thirteen of the sitting justices agreed that President Musharraf's action had been illegal, and ten of the thirteen ordered that Chief Justice Chaudhry was to be reinstated and that he "*shall be deemed to be holding the said office and shall always be deemed to have been so holding the same.*";
- (n) President Musharraf, as Chief of Army Staff (COAS), promulgated a *Provisional Constitution Order* (PCO) on 3 November 2007 and declared a state of emergency. Among the stated reasons for the need for the emergency were the actions and behaviour of the judiciary. Under the PCO, fundamental rights under Articles 9, 10, 15, 16, 17, 19 and 25 of the Constitution were suspended. Legal experts saw the declaration of emergency and suspension of the Constitution as tantamount to imposing martial law, as the Constitution provides for the President and not the COAS to declare a state of emergency;
- (o) Chief Justice Chaudhry ordered all civil and military personnel to ignore the PCO. He

variations in the selling price and the value of the enterprise and who that would benefit.

ordered all the Chief Justices of the High Courts and judges of the Supreme Court and the High Courts not to take the oath under the PCO;

- (p) Soon after, the Supreme Court was stormed by the 111th brigade of the Pakistan Army and Chief Justice Chaudhry, along with seven other judges of the Pakistan Supreme Court were removed from office and kept, with their families, under house arrest;
- (q) Justice Abdul Hameed Dogar was sworn in as Chief Justice of Pakistan on 3 November 2007 under the PCO. He took a fresh oath on 15 December 2007 under the Constitution;
- (r) All judges of the Supreme Court, the Federal Shariat Court and High Courts were required to take the oath under the *Oath of Office (Judges) Order 2007* in accordance with the PCO and the Proclamation of Emergency but, significantly, only a fraction did so:
 - in Punjab 12 out of 31
 - in Sindh 4 out of 27
 - in the North-West Frontier Province 7 out of 15
 - in Balochistan 5 out of 11
- (s) In addition to the detention of the judges, numerous leaders of the lawyers' movement were arrested, detained and maltreated by authorities. Many of those who had appeared as members of the Chief Justice's legal team in his battle to be reinstated after the March dismissal were among those detained;
- (t) On 15th November 2007 the National Assembly completed its tenure and a caretaker government was appointed, with the former Chairman of the Senate, Muhammad Mian Soomro as caretaker Prime Minister. The December 2007 assassination of Benazir Bhutto underscored the instability of Pakistan's political system;
- (u) The state of emergency and responses to it are attributed by critics to the controversies surrounding the re-election of President Musharraf during the presidential election on October 6, 2007, including his holding of both offices of President and COAS at the same time, a matter which sat before the courts with a verdict expected on 7 November 2007. The Supreme Court (comprised of PCO judges) eventually ruled on 22 November 2007 against a challenge to ratification of his election;
- (v) A general election was held in Pakistan on 18 February 2008, which saw electoral gains for the Peoples Party of Pakistan (PPP) and the Pakistan Muslim League-Narwaz (PML-N). The Pakistan Muslim League Quaid-e-Azam (PML-Q), the party which supports President Musharraf, lost considerable power;
- (w) On March 9 2008, the leader of the PML-N, Narwaz Sharif and the leader of the PPP, Asif Ali Zardari, signed the Murree Declaration, an instrument that saw a coalition

government formed of the two parties. In the second of its six points, the Murree Declaration stated that *“the deposed judges would be restored, on the position as they were on November 2, 2007, within 30 days of the formation of the federal government through a parliamentary resolution”*;

- (x) On Monday 23 March 2008 Prime Minister-elect Gilani, in his acceptance speech, announced that Chief Justice Chaudhry would be released from detention, which saw him go free immediately;
- (y) In May, the PPP component of government proposed a package of constitutional amendments, which would, *inter alia*, see the deposed judges restored. However, it was not supported by the coalition partners of PML-N and on 13 May, nine ministers from the PML-N faction of government resigned, citing disagreement with the proposed method of reinstating the judges by constitutional amendment as the reason. The proposed constitutional amendments, at the time of writing, are yet to be put before parliament;
- (z) In mid-June 2007, the government paid salaries for the last seven months to judges sacked in November 2007. This was seen by many as an indication of government acknowledgment of the continued judicial status of the deposed judges. The salaries, were, however, reported to have been paid from a discretionary fund of the Prime Minister, rather than from departmental funds usually earmarked for judicial salaries;
- (aa) On 9 June 2008, the lawyers’ movement mounted a Long March from Karachi to Islamabad to highlight the continued situation with the deposed judges, which was supported by thousands of lawyers and, significantly, by many members of the public throughout the country. It ended amid some controversy that it did not proceed to a sit-in at Pakistan’s parliament;
- (bb) The leaders of the Long March (bar association and bar council presidents and delegates) met again on 19 July 2008 to discuss how the lawyers’ movement would continue actions in support of the reinstatement of the judiciary. It was agreed to give the government until 14 August 2008 to reinstate the deposed judges. If the government did not meet this deadline, the lawyers’ movement would commence introduction of acts of civil disobedience.

7. THE CURRENT CONTROVERSY

- 7.1 On the face of things, both the government and the lawyers’ movement have indicated broad support of a restoration of the judiciary. The controversy appears in the method by which this could be achieved and the government’s delay in fulfilling its promise under the Murree Declaration;
- 7.2 The PPP, as senior member of the coalition, has tied the reinstatement of the Chief Justice and other judges to the passing of a constitutional package, a proposed 18th amendment to

the Pakistan Constitution of 1973;

- 7.3 The Minister of Law indicated a view that the Constitution talks only about the appointment of judges (articles 193 and 197) and does not talk about reinstatement, hence the need for constitutional amendment to restore the judges;
- 7.4 The Minister has also argued that a reinstatement of the judiciary to the position of 2 November 2007 would create further difficulties in how to deal with the current members of the Supreme Court judiciary, as appointed after 3 November 2007. Legislation would be needed to expand the size of the Supreme Court to accommodate both deposed and PCO judges. Equally, there would be a need to deal properly with a situation where there are, in effect, two Chief Justices of Pakistan;
- 7.5 A number of legal associations and the lawyers' movement generally have rejected the position where the restoration of the judiciary is tied to a constitutional package and continue to call for this issue to be dealt with singly by the government, according to its promise in the Murree Declaration;
- 7.6 Criticism of the proposed constitutional amendments include references to attempts to protect the judges who took the oath under the PCO via an amendment to Article 6, interference with the independence of the judiciary via amendments to article 177 and the introduction of Articles 177A and 193 A, both of which contemplate appointment of Judicial Commissions which would include (and in 193 A, be headed by) federal and provincial ministers. Critics argue that this gives rise to a perceived politicisation of judicial appointment and violates the doctrine of separation of powers;
- 7.7 Concern has been expressed that the PPP package is not a serious attempt to reinstate the deposed judges, as any constitutional amendment requires a two-thirds majority support and the PPP does not have numbers in parliament to effect that⁴;

8. UNDERCURRENTS

- 8.1 Above all, it must be noted that political positioning in Pakistan, a country that has not enjoyed a high level of democratic government over its 60 years of existence, is said to play a strong role in this controversy. LAWASIA is prohibited by its constitution from engaging in political activities. The mission's report does not seek to support any political view but acknowledges that to refrain from reporting on political views heard by the mission would indicate a naive understanding of the current situation;
- 8.2 In short, the mission was advised that the two political parties currently forming the government, the PPP and PML-N, are considered uneasy bedfellows and are seen to be protecting differing political and personal interests. Among the differences in their views

⁴ Human Rights Commission of Pakistan's study of the proposed constitutional package
<http://hrcpblog.wordpress.com/2008/06/10/hrcps-study-of-the-proposed-constitutional-package/>

are the way the deposed judges should be reinstated and how the government should deal with the President. PML-N has called for him to be impeached and tried for treason, PPP has taken a less confrontational stance. Developments subsequent to the mission's return indicate that some agreement on these matters may have been reached by coalition partners;

- 8.3 It has also been claimed that the fate of Pakistan's judiciary has been linked to earlier agreements by which the leaders of both PPP and PML-N were able to return to Pakistan. Outstanding corruption cases against PPP leader Zadhari had been quashed whereas some matters in court pertaining to PML-N leader, Nawaz Sharif remain;
- 8.4 The desire of the lawyers' movement to adhere to a strong position of constitutionalism as a means of ensuring a more democratically-ruled country is highly significant at this time and in this climate. There has been criticism that rulings of previous courts have not only legitimised military takeover of government but have also given power to a military president to alter the Constitution. The strength of and widespread support for a position of constitutional integrity appears to differentiate this movement from previous lawyer protest;
- 8.5 The resistance of the deposed judges to the actions of President Musharraf on 3 November 2007 marks a considerable strengthening of the position of the Pakistan judiciary, and that, in turn, has encouraged the lawyers' support for the institution.
- 8.6 The mission noted with concern comment on the suitability of appointments to the judiciary subsequent to 3 November 2007. In particular, it heard views that qualified and senior persons or members of the Bar had refused to take such appointments, resulting in junior and less suitable persons being appointed as judges. Further, the process of selecting, vetting and appointing judges after 2 November appeared hasty in comparison to usual practice in Pakistan. Views indicated that this not only had an adverse affect on public confidence in the judiciary as an institution but would lead to a backlog of cases, hampering the judiciary's ability to function adequately

9. MISSION CONCLUSIONS/RECOMMENDATIONS

- 9.1 The mission notes, above all, the importance of an independent judiciary as a marker of the rule of law in any country. It records its support for the Pakistan lawyers' movement in pursuit of this aim, which is in accordance with LAWASIA's own aims and objectives;
- 9.2 As stated at 8.1, it is not within the mission's remit to make comment on the political situation in Pakistan save that it was left with an impression that one factor that may be impeding a quick resolution of the judicial crisis is the existence of a political impasse or the absence of political consensus. It is the mission's hope that the quest for judicial independence does not fall victim to politics;
- 9.3 It does not sit with principles of democracy, independence of the judiciary and the rule of law that the judges could be removed or appointed by or under executive order or by a

Chief of Army Staff. It is not a question as to the fitness for office, quality or suitability of a particular person to hold or continue to hold judicial office but is a question of due process, independence of the judiciary and the rule of law. LAWASIA views this as fundamental.

- 9.4 It is offensive to the concept of constitutional democracy premised on the doctrine of separation of powers that a written constitution maybe amended or altered, not by parliament but by executive order or military decree;
- 9.5 The mission notes the historic significance of the lawyers' movement and comments that its success in seeing a strong and independent judiciary established in Pakistan will be pivotal in ensuring that the country can, in future, be governed in accordance with democratic principles and the rule of law;
- 9.6 The mission concludes that a number of members of the legal profession and their families have suffered considerably as a result of activity since March 2007. In addition to those who sustained physical injury during street protests and who were detained during the emergency, it is aware that adherence to strike and boycott activity has impacted considerably on lawyers' abilities to represent their clients properly in court and to earn a living, which in turn, interferes with the independence of the profession;
- 9.7 It notes its view that the detention of lawyers during the state of emergency and their treatment during detention were extreme and inhumane measures on the part of the authorities and expresses its strong condemnation of them;
- 9.8 It encourages the current government to make good its promise of the Murree Declaration to restore the deposed judges without further delay and to give heed to views that the appointment of new judges in haste has created practical problems for the institution of judiciary and may have impact on the quality of justice and capacity of the institution unless properly addressed;
- 9.9 It is not persuaded that the deadline of 14 August 2008 for complete restoration of the judiciary will be met and expresses its concern that any ensuing civil disobedience may result in violence;
- 9.10 It encourages the lawyers' movement to adhere to principles of non-violence as it undertakes any action it deems necessary subsequent to 14 August 2008;
- 9.11 It notes the current fluidity of the situation, with offers having been made to selected deposed judges of the Sindh High Court to re-take the oath of office before President Musharraf. These offers have not been taken up at the time of writing;
- 9.12 It concludes that LAWASIA should show all support to Pakistan Bar Council, as its member organisation and to the legal profession at large, in its determination to uphold the independence of the judiciary in Pakistan. This support can be offered in a variety of ways:
 - it could include publicising and discussion of resolutions and all other activity in

pursuit of this aim, so the legal community of the region can be kept informed of developments in the knowledge that international attention can be a factor in persuading governments to govern according to the rule of law;

- it could include support of informed discussion, especially in Pakistan, on the independence of the judiciary through providing qualified and expert advice from the international jurisdiction;
- it could include LAWASIA's encouragement to its member organisations and like-minded international legal associations to undertake action to indicate their own additional and independent support;
- it could include bringing this matter to particular attention of international fora and national governments;
- LAWASIA should also consider, as a priority, undertaking any other support that the Pakistan Bar Council requests of it.

9.13 The mission notes the existence of the *Beijing Principles of the Independence of the Judiciary, 1997*, an initiative of the LAWASIA Judicial Section, which represent an agreed position of thirty-two Chief Justices of the Asia Pacific region, including the then Chief Justice of Pakistan. It also notes the *Bangalore Principles of Judicial Conduct, 2002*. It encourages the government and the lawyers' movement to give these important principles every consideration as they work to establish strong and independent judicial conditions in Pakistan.

Signed by members of the mission

Dated the 15th day of August 2008

(signed)

Mah Weng Kwai
President, LAWASIA

(signed)

Prashant Kumar
ExCo member, LAWASIA and honorary joint treasurer of the Bar Association of India

(signed)

Christopher Leong
LAWASIA member, Council member of the Malaysian Bar Council

(signed)

Janet Neville
CEO/Secretary-general, LAWASIA

ANNEXURES

- 1. Proclamation of Emergency, issued November 3, 2007**
- 2. Provisional Constitution Order No 1 of 2007**
- 3. Oath of Office (Judges) Order, 2007, November 3, 2007**
- 4. Text of Murree Declaration**
- 5. Text of proposed constitutional amendments**
- 6. Resolution of Pakistan Bar Council of 22 June 2008**

**Proclamation of Emergency
Issued November 3, 2007**

WHEREAS there is visible ascendancy in the activities of extremists and incidents of terrorist attacks, including suicide bombings, IED explosions, rocket firing and bomb explosions and the banding together of some militant groups have taken such activities to an unprecedented level of violent intensity posing a grave threat to the life and property of the citizens of Pakistan;

WHEREAS there has also been a spate of attacks on State infrastructure and on law enforcement agencies;

WHEREAS some members of the judiciary are working at cross purposes with the executive and legislature in the fight against terrorism and extremism thereby weakening the Government and the nation's resolve and diluting the efficacy of its actions to control this menace;

WHEREAS there has been increasing interference by some members of the judiciary in government policy, adversely affecting economic growth in particular;

WHEREAS constant interference in executive functions, including but not limited to the control of terrorist activity, economic policy, price controls, downsizing of corporations and urban planning, has weakened the writ of the government; the police force has been completely demoralized and is fast losing its efficacy to fight terrorism and Intelligence Agencies have been thwarted in their activities and prevented from pursuing terrorists;

WHEREAS some hard core militants, extremists, terrorists and suicide bombers, who were arrested and being investigated were ordered to be released. The persons so released have subsequently been involved in heinous terrorist activities, resulting in loss of human life and property. Militants across the country have, thus, been encouraged while law enforcement agencies subdued;

WHEREAS some judges by overstepping the limits of judicial authority have taken over the executive and legislative functions;

WHEREAS the Government is committed to the independence of the judiciary and the rule of law and holds the superior judiciary in high esteem, it is nonetheless of paramount importance that the Honourable Judges confine the scope of their activity to the judicial function and not assume charge of administration;

WHEREAS an important Constitutional institution, the Supreme Judicial Council, has been made entirely irrelevant and non est by a recent order and judges have, thus, made themselves immune from inquiry into their conduct and put themselves beyond accountability;

WHEREAS the humiliating treatment meted to government officials by some members of the judiciary on a routine basis during court proceedings has demoralized the civil bureaucracy and senior government functionaries, to avoid being harassed, prefer inaction;

WHEREAS the law and order situation in the country as well as the economy have been adversely affected and trichotomy of powers eroded;

WHEREAS a situation has thus arisen where the Government of the country cannot be carried on in accordance with the Constitution and as the Constitution provides no solution for this situation, there is no way out except through emergent and extraordinary measures;

AND WHEREAS the situation has been reviewed in meetings with the Prime Minister, Governors of all four Provinces, and with Chairman Joint Chiefs of Staff Committee, Chiefs of the Armed Forces, Vice-Chief of Army Staff and Corps Commanders of the Pakistan Army;

NOW, THEREFORE, in pursuance of the deliberations and decisions of the said meetings:-

1. I, General Pervez Musharraf, Chief of the Army Staff, proclaim Emergency throughout Pakistan.
2. I hereby order and proclaim that the Constitution of the Islamic Republic of Pakistan shall remain in abeyance.
3. This Proclamation shall come into force at once.

Provisional Constitution Order No. 1 of 2007
Issued November 3, 2007
Amended November 15, 2007

Ed. note: The document presented here includes all amendments.

In pursuance of the Proclamation of the 3rd day of November, 2007, and in exercise of all powers enabling him in that behalf, the Chief of Army Staff under the Proclamation of Emergency of the 3rd day of November, 2007, is pleased to make and promulgate the following Order:-

1.

- (1) This Order may be called the Provisional Constitution Order No. 1 of 2007.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2.

(1) Notwithstanding the abeyance of the provisions of the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, Pakistan shall, subject to this Order and any other Order made by the President be governed, as nearly as may be, in accordance with the Constitution:

Provided that the President may, from time to time, by Order amend the Constitution and amend or repeal this Order, as is deemed expedient;

Provided further that the Fundamental Rights under Articles 9, 10, 15,16,17,19 and 25 shall remain suspended.

(2) Notwithstanding anything contained in the Proclamation of the 3rd day of November, 2007, or this Order or any other law for the time being in force all provisions of the Constitution of the Islamic Republic of Pakistan embodying Islamic injunctions including Articles 2, 2A, 31, 203A to 203J, 227 to 231 and 260 (3) (a) and (b) shall continue to be in force.

(3) Subject to clause (1) above and the Oath of Office (Judges) Order, 2007, all courts in existence immediately before the commencement of this Order shall continue to function and to exercise their respective powers and jurisdiction.

Provided that the Supreme Court or a High Court and any other court shall not have the power to make any order against the President or the Prime Minister or any person exercising powers or jurisdiction under their

authority.

(4) All persons who immediately before the commencement of this Order were in office as judges of the Supreme Court, the Federal Shariat Court or a High Court, shall be governed by and be subject to the Oath of Office (Judges) Order, 2007, and such further Orders as the President may pass.

(5) Subject to clause (1) above, the Majlis-e-Shoora (Parliament) and the Provincial Assemblies shall continue to function.

(6) All persons who, immediately before the commencement of this Order, were holding any service, post or office in connection with the affairs of the Federation or of a Province, including 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, or Chief Election Commissioner or Auditor General shall continue in the said service on the same terms and conditions and shall enjoy the same privileges, if any, unless these are changed under Orders of the President.

3.

(1) No court including the Supreme Court, the Federal Shariat Court, and the High Courts, and any tribunal or other authority shall call or permit to be called in question this Order, the Proclamation of Emergency of the 3rd day of November, 5007, the Oath of Office (Judges) Order, 2007 or any Order made in pursuance thereof.

(2) No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the President or the Prime Minister or any authority designated by the President.

4.

Notwithstanding the abeyance of the provisions of the Constitution, but subject to the Orders of the President, all laws other than the Constitution, all Ordinances, Orders, Rules, Bye-laws, Regulations, Notifications and other legal Instruments in force in any part of Pakistan, whether made by the President or the Governor of a Province, shall continue in force until altered, amended or repealed by the President or any authority designated by him.

5.

(1) An Ordinance promulgated by the President or by the Governor of a Province shall not be subject to any limitations as to duration prescribed in the Constitution.

(2) The provisions of clause (1) shall also apply to an Ordinance issued by the President or by a Governor which was in force immediately before the commencement of the Proclamation of Emergency of the 3rd day of November, 2007.

(3)

6.

The President may revoke the Proclamation of Emergency of the 3rd day of November, 2007 on such day as he may deem fit.

Source: Associated Press of Pakistan.

Oath of Office (Judges) Order, 2007
November 3, 2007

Whereas in pursuance of the Proclamation of Emergency of the 3rd day of November, 2007, and the Provisional Constitutional Order No. 1 of 2007, the Constitution of the Islamic Republic of Pakistan has been held in abeyance;

Whereas Pakistan is to be governed, as nearly as may be, in accordance with the Constitution and the President has, and shall be deemed always to have had the power to amend the Constitution;

Whereas all Courts in existence immediately before the commencement of this Order will continue to function and to exercise their respective powers and jurisdiction subject to the Proclamation of Emergency and the Provisional Constitutional Order No. 1 of 2007;

And Whereas to enable the Judges of the Superior Courts to discharge their functions, it is necessary that they take Oath of their office;

Now, Therefore, in pursuance of the aforesaid Proclamation and the Provisional Constitutional Order No. 1 of 2007, and in exercise of all other 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 Oath of Office (Judges) Order, 2007.
 - (2) It shall come into force at once.

2. Interpretation.

In this Order, 'Superior Court' means the Supreme Court of Pakistan, the Federal Shariat Court or a High Court, and 'Judge' includes Chief Justice.

3. Oath of Judges.

- (1) A person holding office immediately before this Order as Judge of the Supreme Court, the Federal Shariat Court, or a High Court shall cease to hold that office with immediate effect:

Provided that a person who is given and does make, Oath in the form set out in the Schedule, before the expiration of such time from such commencement as the President may determine or within such further time as may be allowed by the President shall be deemed to continue to hold the office of a Judge of the Supreme Court, the Federal Shariat Court or a High Court, as the case may be.

(2) A Judge of the Supreme Court appointed after the commencement of this Order shall, before entering upon office, make Oath in the form set out in the Schedule.

(3) A person referred to clause (1) and (2) who has made Oath as required by these clauses shall be bound by the provisions of this Order, the Proclamation of Emergency of the 3rd day of November, 2007, the Provisional Constitutional Order No. 1 of 2007, and notwithstanding any judgment of any court, shall not call in question or permit to be called in question the validity of any of the provisions thereof.

(4) A Judge of the Supreme Court or the Federal Shariat Court shall make oath before the President or a person nominated by him, and a Judge of the High Court shall make oath before the Governor or a person nominated by him.

THE SCHEDULE

CHIEF JUSTICE OF PAKISTAN, THE FEDERAL SHARIAT COURT OR A HIGH COURT OR JUDGES OF SUPREME COURT, THE FEDERAL SHARIAT COURT OR A HIGH COURT

(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, the Chief Justice of the Federal Shariat Court or a Judge of the Federal Shariat Court, or the Chief Justice or Judge of the High Court for the Province of _____, I will discharge my duties and perform my functions honestly and to the best of my ability and liability in accordance with the Proclamation of Emergency of the 3rd day of November, 2007, the Provisional Constitutional Order No. 1 of 2007, and the law.

That I will abide by the provisions of the Proclamation of Emergency of the 3rd day of November, 2007, the Provisional Constitutional Order No. 1 of 2007 and 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 decision.

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

May Allah Almighty help and guide me (Amen).

MURREE DECLARATION

Text of the six-point summit declaration regarding the formation of the government finalized between the Pakistan People's Party and the Pakistan Muslim League (N) at Murree on Sunday 9 March 2008.

1. Allied parties, the Pakistan People's Party and the Pakistan Muslim League (N) resolve to form a coalition government for giving a practical shape to the mandate, which was given to the democratic forces by the people of Pakistan on February 18, 2008.
2. This has been decided in today's summit between the PPP and the PML (N) that the deposed judges would be restored, on the position as they were on November 2, 2007, within 30 days of the formation of the federal government through a parliamentary resolution.
3. The parties agreed that all allied parties would fully support the candidate for the position of the prime minister, nominated by the PPP. The PML (N) suggested that the candidate for prime minister should be such person who can take ahead the common agenda of the allied parties.
4. The parties agreed that the speaker and the deputy speaker of the national assembly would be from the PPP while the speaker and the deputy speaker of the Punjab assembly would be from the PML (N).
5. Both the parties agreed that the PML (N) would be a part of the federal government while the PPP would be a part of the Punjab government.
6. This is the solid opinion of the leaderships of both the parties that the allied parties are ready for forming the governments and the sessions of the national and provincial assemblies be summoned immediately.

TEXT OF PROPOSED CONSTITUTIONAL PACKAGE

POINTS FOR DECISION

The provisions of the following Articles are subject to Decision after consultation with the Coalition Partners

- (1) Tenure of Judges (Article 179 and 195)
- (2) Article 243 and 243A.
- (3) Restoration of Judges (270CC)
- (4) Validation of Ordinances (Article 270AAA)

Draft

Note: This is not a Sacrosanct Document and can be changed or altered by Coalition Partners in the Parliament and others.

A Bill further to amend the Constitution of the Islamic Republic of Pakistan Whereas it is expedient further to amend the Constitution of the Islamic Republic of Pakistan for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Constitution (Eighteenth Amendment) Act, 2008.
- (2) It shall come into force at once.
2. Amendment of Article 1 of the Constitution.- In the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the

Constitution, in

Article 1, in clause (2), in paragraph (a), for the words “North West Frontier” the word “Pakhtunkhawa” shall be substituted.

3. Amendment of Article 6 of the Constitution.- In the Constitution, for Article 6, the following shall be substituted, namely:-

“(1) Any person who abrogates, subverts, suspends or holds in abeyance or attempts or conspires to abrogate, subvert, suspend or hold in abeyance the Constitution by use of force or show of

force or by other un-constitutional means shall be guilty of high treason.

(2) Any person aiding or abetting or any person or any court including a High Court and the Supreme Court condoning, affirming or validating the acts mentioned in clause (1) or violating oath of office specified in the Third Schedule shall likewise be guilty of high treason.

(3) Parliament shall by law provide for the punishment of persons found guilty of high treason.

4. Amendment of Article 41 of the Constitution.- In the Constitution in Article 41,-

(i) in clause (3), the words, brackets and figures "after the expiration of the term specified in clause (7)" shall be omitted; and (ii) clauses (7), (8) and (9) shall be omitted.

5. Amendment of Article 44 of the Constitution.- In the Constitution, in Article 44, for clause (2) the following shall be substituted, namely:-

"(2) Notwithstanding anything contained in the Constitution a person holding the office of the President shall be eligible for re-election to that office, but no person shall hold that office for more than two terms."

6. Amendment of Article 45 of the Constitution.- In the Constitution, in Article 45, after the word "authority" at the end, the words "or indemnify any act whatsoever" shall be added.

7. Amendment of Article 48 of the Constitution.- In the Constitution, in Article 48,- (i) in clause (1),-

(a) after the word "act" the words "on and" shall be inserted and after the word "Minister" at the end, the words and commas "and such advice shall be binding on him which shall be returned to the Cabinet or the Prime Minister as the case may be, within fifteen days" shall be added;

and

(b) in the proviso, after the word "shall" the commas and words "within seven days" shall be inserted. (ii) in clause (5), for the words "his discretion" the words "after consultation with the Speaker of the National Assembly and the Chairman, Senate" shall be substituted and in paragraph (b) of said clause before the word "Care-taker" the word "neutral" shall be inserted; and (iii) in clause (6), for the commas and words "the President, in his discretion, or on the advice of the Prime Minister," the words "Parliament in joint sitting" shall be substituted and for the word "President" occurring for the second time, the word "Parliament" shall be substituted.

8. Amendment of Article 50 of the Constitution.- In the Constitution, in Article 50, the words "the President and" shall be omitted.

9. Amendment of Article 55 of the Constitution.- In the Constitution, in Article 55, in clause (2), for the word "one-fourth" the word "one-sixth" shall be substituted.

10. Amendment of Article 58 of the Constitution.- In the Constitution, in Article 58, clauses

(2) and (3) shall be omitted.

11. Amendment of Article 59 of the Constitution.- In the Constitution, in Article 59,- (a) in clause (1), after the word “hundred” the words “and five” shall be substituted; and

(b) in paragraph (e),- (i) for the full stop at the end, the semicolon and word “;and” shall be substituted; and (ii) after paragraph (e), amended as aforesaid, the following new paragraph shall be added, namely:- (f) four seats for non-Muslims’ one, each from each Province to be elected by the respective Provincial Assembly and one’ seat for Federal Capital to be elected by the members of the Senate.

(c) in clause (3), after the proviso at the end, the following

Explanation shall be added, namely:-

Explanation:- “The amendments made in clause (1) by the Constitution (Eighteenth Amendment) Act, 2008, regarding seats for non-Muslims shall be effective from next election of the Senate.”

12. Amendment of Article 62 of the Constitution.- In the Constitution, in Article 62, in paragraph (h), for the semicolon and word “; and ” a full stop shall be substituted and paragraph (i) shall be omitted.

13. Amendment of Article 63 of the Constitution.- In the Constitution, in Article 63, in clause (1),- (a) in clause (d), the words “other than an office declared by law not to disqualify its holder” shall be omitted; (b) for paragraph (g) the following shall be substituted, namely:-

“(g) he is propagating any opinion or acting in any manner, prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or defames or brings into ridicule any Judge of Supreme Court or a High Court or Armed Forces of Pakistan other than the officers of Armed Forces holding civil posts”; and , (c) in paragraph (h), after the word “force” the comma and the words’ “, unless a period of five years has elapsed from the date of conviction” shall be added. (d) in paragraph (i), after the word “turpitude”, the comma and words “, unless a period of five years has elapsed from the date of his dismissal from service” shall be added; (e) in paragraph G), after the word “turpitude”, the comma and words “, unless a period of five years has elapsed from the date of his removal or compulsory retirement from service” shall be added; (f) paragraphs (m) and (P) shall be omitted; and (g) in paragraph (r) for the semicolon and word “;or” a full stop shall be substituted and thereafter paragraph “(s)” shall be omitted.

14. Amendment of Article 70 of the Constitution.- In the Constitution, in Article 70_- (i) in clause (2), for the words and figure “referred to a Mediation Committee constituted under Article 71 for consideration and resolution thereon” the words “considered in joint sitting” shall be substituted; and (ii) for clause (3), the following shall be substituted, namely:-

“(3) If a request is made under clause (2), the President shall summon joint sitting within thirty days; and, if the Bill is passed in the joint sitting, with or without amendment, by the votes of the majority of the total membership of the two Houses, it shall be presented to the President for assent.”.

15. Omission of Article 71 of the Constitution.- In the Constitution, Article 71 shall be omitted.

16. Amendment of Article 73 of the Constitution.- In the Constitution, in Article 73, in clause (1), in the proviso, for the word "seven" the word "fourteen" shall be substituted.

17. Amendment of Article 75 of the Constitution.- In the Constitution in Article 75, in clause (1), for the word "thirty" the word "fifteen" shall be substituted.

18. Substitution of Article 90 of the Constitution.- In the Constitution for Article 90, the following shall be substituted, namely:-

"90.- The Federal Government.- (1) Subject to the Constitution, the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, consisting of the Prime Minister and the Federal Ministers, which shall act through the Prime Minister who shall be the Chief Executive of the Federation.

(2) In the performance of his function under the Constitution, the Prime Minister may act either directly or through the Federal Ministers.

19. Amendment of Article 91 of the Constitution.- In the Constitution, in Article 91- (i) for clauses (2), (2A) and (3), the following shall be substituted, namely:-

"(2) The National Assembly shall meet on the thirtieth day following the day on which a general election to the Assembly is held, unless sooner summoned by the President.

(3) After the election of the Speaker and the Deputy Speaker, the National Assembly shall, to the exclusion of any other business, proceed to elect without debate one of its Muslim members to be the Prime Minister.

(4) The Prime Minister shall be elected by the votes of the majority of the total membership of the National Assembly:

Provided that, if the number of votes secured by two or more members securing the highest number of votes is equal, further poll shall be held between them until one of them secures a majority of votes of the members present and voting: Provided further that, if the number of votes secured by two or more members securing the highest number of votes is equal, further poll shall be held between them until one of them secures a majority of votes of the members present and voting.

(5) The member elected under clause (3) shall be called upon by the President to assume the office of Prime Minister and he shall, before entering upon the office, make before the President oath in the form set out in the Third Schedule.

20. Substitution of Article 95 of the Constitution.- In the Constitution, for Article 95, the following shall be substituted, namely:-

“95. Vote of no-confidence against the Prime Minister.- (1) A resolution for a vote of no-confidence moved by not less than twenty percent of the total membership of the National Assembly may be passed against the Prime Minister by the National Assembly.

(2) A resolution referred to in clause (1) shall not be moved in the National Assembly unless, by the same resolution, the name of another member of the Assembly is put forward as the successor.

(3) A resolution referred to in clause (1) shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the National Assembly.

(4) A resolution referred to in clause (1) shall not be moved in the National Assembly while the National Assembly is considering demands for grants submitted to it in the Annual Budget Statement.

(5) If the resolution referred to in clause (1) is passed by a majority of the total membership of the National Assembly, the President shall call upon the person named in the resolution as the successor to assume office and on his entering upon office his predecessor and the Federal Ministers and Ministers of State appointed by him shall cease to hold office.

(6) If a resolution referred to in clause (1) is not passed, another such resolution shall not be moved until a period of six months has elapsed.”.

21. Insertion of new Article 95A of the Constitution.- In the Constitution after Article 95, the following shall be inserted, namely:-

“95A.- Federal Minister performing functions of Prime Minister.- (1) In the event of the resignation of the Prime Minister or the office of Prime Minister becoming vacant by any reason or of his ceasing to be a member of the National Assembly, the Senior Federal Minister for the time being shall be called upon by the President to perform the functions of that office and the Federal Ministers and Ministers of State shall continue in office until a new Prime Minister has entered upon his office.

(2) If the National Assembly is in session at the time when the office of Prime Minister becomes vacant, the Assembly shall forthwith proceed to ascertain as to which member of the Assembly commands the confidence of majority of the members and if the Assembly is not in session the President shall for that purpose summon it to meet within fourteen days of the office becoming vacant to ascertain as to which member of the Assembly commands the confidence of the majority of the members.

(3) When the Prime Minister, by reason of absence from Pakistan or any other cause, is unable to perform his functions the Senior Federal Minister for the time being shall perform the functions of Prime Minister until the Prime Minister returns to Pakistan or, as the case may be, resumes his functions.

(4) In this Article, “Senior Federal Minister” means the Federal Minister for the time being

designated as such by the Prime Minister.

22. Insertion of new Article 99 of the Constitution.- In the Constitution in Article 99,- (i) in clause (2), for the word "President" occurring for the first time, the words "Federal Government" shall be substituted; and (ii) in clause (3), for the word "President" the words "Federal Government" shall be substituted.

23. Amendment of Article 100 of the Constitution.- In the Constitution, in Article 100, for the word "President" wherever occurs, the words "Federal Government" shall be substituted.

24. Amendment of Article 101 of the Constitution.- In the Constitution, in Article 101, in clause (1), for the words "after consultation with the Prime Minister" the words "from the respective Province" shall be substituted.

25. Amendment of Article 104 of the Constitution.- In the Constitution, in Article 104, after the word "cause" the words "the President may direct the Speaker of the Provincial Assembly to act as Governor and in case the Speaker ~ is not available" shall be inserted.

26. Amendment of Article 105 of the Constitution.- In the Constitution, in Article 105,-(i) in clause (1),-

(a) after the word "act" the words "on and" shall be inserted and after the word "Minister" at the end, the words and commas "and such advice shall be binding on him which shall be returned to the Cabinet or the Chief Minister, as the case may be, within fifteen days" shall be added;

and

(b) in the proviso after the word "shall" the commas and the words ",within seven days," shall be inserted. - (ii) clause (4) shall be omitted.

27. Amendment of Article 112 of the Constitution.- In the Constitution, in Article 112,- in clause (1),-

(a) in the Explanation, the words, brackets and figures "or who is continuing in office by virtue of clause (2) of Article 134 or a Provincial Minister performing the functions of Chief Minister under clause (1) or clause (3) of Article 135_ shall be omitted; and (b) Clauses (2) and (3) shall be omitted. -

28. Amendment of Article 116 of the Constitution.- In the Constitution, in Article 116, in clause (2), for the word "thirty" the word "fifteen" shall be substituted.

29. Amendment of Article 129 of the Constitution.- In the Constitution, for Article 129, the following shall be substituted, namely:-

"129. The Provincial Government.- (I) Subject to the Constitution, the executive authority of the Province shall be exercised in the name of the Governor by the Provincial Government, consisting of the Chief Minister and Provincial Ministers, which shall act through the Chief Minister who shall

be the Chief Executive of the Province.

(2) In the performance of his functions under the Constitution, the Chief Minister may act either directly or through the Provincial Ministers.”.

30. Amendment of Article 130 of the Constitution.- In the Constitution, in Article 130, for clauses (2), (2a) and (3), the following shall be substituted, namely:-

(2) The Provincial Assembly shall meet on the thirtieth day following the day on which a general election to the Assembly is held, unless sooner summoned by the Governor.

(3) After the election of the Speaker and the Deputy Speaker, the Provincial Assembly shall, to the exclusion of any other business, proceed to elect without debate one of its members to be the Chief Minister.

(4) The Chief Minister shall be elected by the votes of the majority of the total membership of the Provincial Assembly:

Provided that, if no member secure such majority in the first poll, a second poll shall be held between the members who secure the two highest numbers of votes in the first poll and the members who secures a majority of votes of the members present and voting shall be declared to have been elected as Chief Minister:

Provided further that, if the number of votes secured by two or more members securing the highest number of votes is equal, further polls shall be held between them until one of them secures a majority of votes of the members present and voting.

(5) The member elected under clause (3) shall be called upon by the Governor to assume the office of Chief Minister and he shall before entering upon the office make before the Governor oath in the form set out in the Third Schedule.

31. Insertion of new Article 133A of the Constitution.- In the Constitution, after clause 133, the following shall be substituted namely:- ,

“133A. Provincial Minister performing functions of Chief Minister.-

(1) In the event of the resignation of the Chief Minister or the office of Chief Minister becoming vacant by any other reason including his ceasing to be a member of the Provincial Assembly, the Senior Provincial Minister for the time being shall be called upon by the Governor to “perform the functions of that office and the Provincial Ministers shall continue in office until a new Chief Minister has entered upon his office.

(2) If the Provincial Assembly is in session at the time when the office of Chief Minister becomes vacant, the Assembly shall forthwith proceed to ascertain which one of the members commands the confidence of the majority of members, and if the Assembly is not in session the Governor shall for that purpose summon it to meet within fourteen days of the office becoming vacant to ascertain as to which member of the Assembly commands the confidence of the majority of the members.

(3) When the Chief Minister, by reason of absence from Pakistan or any other cause, is unable to perform his functions, the Senior Provincial Minister for the time being shall perform the functions of Chief Minister until the Chief Minister returns to Pakistan or, as the case may be, resumes his functions.

(4) In this Article, "Senior Provincial Minister" means the Provincial Minister for the time being designated as such by the Chief Minister.

32. Amendment of Article 136 of the Constitution.- In the Constitution in Article 136, for clauses (2) and (3), the following shall be substituted, namely:-

"(2) A resolution referred to in clause (1) shall not be moved in the Provincial Assembly unless, by the same resolution, the name of another member of the Assembly is put forward as the successor.

(3) A resolution referred to in clause (1) shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the Provincial Assembly.

(4) A resolution referred to in clause (1) shall not be moved in the Provincial Assembly while the Provincial Assembly is considering demands for grants submitted to it in the Annual Budget Statement.

(5) If the resolution referred to in clause (1) is passed by a majority of the total membership of the Provincial Assembly, the Governor shall call upon the person named in the resolution as the successor to assume office and on his entering upon office his predecessor and the Provincial Ministers appointed by him shall cease to hold office.

(6) If a resolution referred to in clause (1) is not passed, another such resolution shall not be moved until a period of six months has elapsed."

33. Substitution of Article 139 of the Constitution.- In the Constitution, in Article 139,- (i) in clause (2), for the word "Governor" occurring for the first time, the words "Provincial Government" shall be substituted; and (ii) in clause (3), for the word "Governor" the words "Provincial Government" shall be substituted.

34. Amendment of Article 153 of the Constitution.- In the Constitution, in Article 153,-(i) for clause (2), the following shall be substituted, namely:-

"(2) The members of the Council shall be-

(a) Prime Minister who shall be Chairman of the Council

(b) the Chief Ministers of the Provinces,

(c) Leader of the House and Leader of the Opposition in the Senate,

(d) Leader of Opposition in the National Assembly, and

(e) two members from Federal Government to be nominated by the Prime Minister and one member each from Provincial Government to be nominated by the Chief Minister. (ii) for clauses (3) and (4) the following shall be substituted, namely:-

“(3) The meetings of the Council shall be summoned by the Chairman or on requisition made by one-half members of the Council.

(4) The Council shall meet at least twice in a year and the quorum for meeting of the Council shall be one-half of the members. - (iii) after clauses (3) and (4) substituted as aforesaid, the following new clause shall be added, namely:-

“(5) The Council shall be responsible to the Parliament and shall submit reports of its meetings to each House for discussion and recommendations, if any.”

35. Amendment of Article 156 of the Constitution.- In the Constitution, in Article 156,-

(i) for clause (1), the following shall be substituted, namely:-

“(1) The President shall constitute National Economic Council consisting of the following members, namely:-

(a) Prime Minister who shall be Chairman of the Council,

(b) the Chief Ministers of the Provinces, and

(c) two members from Federal Government to be nominated by the Prime Minister and one member each from Provincial Government to be nominated by the Chief Minister.’ (ii) after clause (1), substituted as aforesaid, the following new clauses shall be added, namely:-

“(IA) The meetings of the Council shall be summoned by the Chairman or on requisition made by one-half members of the Council.

(IB) The Council shall meet at least twice in a year and the quorum for meeting of the Council shall be one-half of the members.”, (iii) after clause (2), the following new clause shall be added, namely:- ,

“(3) The Council shall be responsible to the Parliament and shall submit reports of its meetings to each House for discussion and recommendations, if any.”

36. Amendment of Article 160 of the Constitution.- In the Constitution, in Article 160, for the words “five years” the words “three years” shall be substituted.

37. Amendment of Article 175 of the Constitution.- In the Constitution, in Article 175,- (i) in clause (1), after the word “Province” the words and comma “and a High Court for the Islamabad Capital Territory” shall be inserted; and (ii) after clause (3), the following new clause shall be

added, namely:-

(4) No Court including the Supreme Court or a High Court shall have jurisdiction to validate any extra-constitutional measure or takeover by use of force or show of force or by other unconstitutional means as envisaged by Article 6.”

38. Amendment of Article 177 of the Constitution.- In the Constitution, in Article 177, in clause (1), for the words “after consultation with the Chief Justice” the words, figure and letter “in the manner provided in Article 177 A” Shall be substituted.

39. Insertion of new Article in the Constitution.- In the Constitution, after Article 177, the following new Article shall be inserted, namely:-

“177A. Procedure for appointment of Supreme Court Judges. -

(1) There shall be a Commission for the appointment of Chief Justice of Pakistan and other Judges of Supreme Court which shall consist of the following members, namely:-

(a) Chief Justice of Pakistan who shall be Chairman of the Commission;

(b) All Chief Justices of the Provincial High Courts and Chief Justice of Islamabad High Court failing which the senior most Judge of the respective High Court; and

(c) Federal Minister for Law and Justice.

Explanation:- For the purpose of this clause, the inter se seniority of the Judges of the respective High Courts shall be determined with reference to their dates of appointment as Judges, 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.

(2) In case of appointment of Chief Justice of Pakistan Federal Law Minister shall be the Chairman of the Commission.

(3) The Commission shall forward a panel of two names for each vacancy of a Judge to the Prime Minister, who shall forward one name to Joint Parliamentary Committee for confirmation through a transparent process.

(4) The Joint Parliamentary Committee referred to in clause (3) shall comprise of three members from the treasury benches and two from Opposition in the National Assembly to be nominated by the Leader of the House and the Leader of the Opposition, respectively and one member from Senate to be nominated by the Leader of the Opposition.”

40. Substitution of Article 179 of the Constitution.- In the Constitution, for. Article 179, the following shall be substituted, namely:-

“179. Retiring age.- (1) Subject to clause (2), a Judge of the Supreme 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.

(2) The Chief Justice of the Supreme Court whether appointed before or after the commencement of the Constitution (Eighteenth Amendment) Act, 2008 shall unless he sooner attains the age of sixty-eight years shall hold office for a term of..... years and shall thereafter have the option either-

(a) to retire from his office and receive the pension to which he would have been entitled if he had retired from office on attaining the age of sixty-eight years; or

(b) to assume the office of the Judge of the Supreme Court and to continue to receive the same salary which he was receiving while holding the office of Chief Justice.

A person who has once held office as Chief Justice of the Supreme Court, otherwise than under Article 180, shall not again be appointed to that office.”.

41. Amendment of Article 181 of the Constitution.- In the Constitution in Article 181,- (i) in clause (1), the Explanation shall be omitted;

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

“(2) The appointment under this Article shall continue in force for a period not exceeding one year unless it is earlier revoked by the President.”.

42. Amendment of Article 182 of the Constitution.- In the Constitution, in Article 182, for the words “for such period as may be necessary” the words “for a period not exceeding one year” shall be substituted.

43. Amendment of Article 183 of the Constitution.- In the Constitution, in Article 183,- (i) in clause (1), the commas, words and brackets “, subject to clause

(3),” shall be omitted; and (ii) clause (3) shall be omitted.

44. Amendment of Article 184 of the Constitution.- In the Constitution, in Article 184,- (i) in clause (3), for the words “public importance” the words “general public importance” shall be substituted and for the words “the nature” the words “declaratory nature” shall be substituted; and (ii) after clause (3), amended as aforesaid, the following new clause shall be added, namely:-

“(4) An application made under clause (3) shall be heard by a Bench comprising not less than five Judges to be constituted by the Chief Justice of Pakistan in consultation with two most senior Judges of the Supreme Court.”

45. Amendment of Article 185 of the Constitution.- In the Constitution, in Article 185, in clause (2),-

(a) in paragraph (a), the words “or to transportation for life” shall be omitted; and

(b) in paragraph(d), for the words “fifty thousand” the words “one million” shall be substituted.

46. Amendment of Article 192 of the Constitution.- In the Constitution, in Article 192, after clause (1), the following new clause shall be inserted, namely:-

“(1A) There shall be reserved in each High Court upto ten percent seats for women and at least thirty percent seats- for persons from the judiciary.”.

47. Amendment of Article 193 of the Constitution.- In the Constitution, in Article 193, for clause (1), the following shall be substituted, namely:-

“(1) The Chief Justice of a High Court and each of the other Judges shall be appointed by the President in the manner provided in Article 193A.”.

48. Insertion of new Article in the Constitution.- In the Constitution, after Article 193, the following new Article shall be inserted, namely:-

“193A. Procedure for appointment of High Court Judges.- (1) There shall be a Commission for the appointment of Chief Justice of a High Court and other Judges of a High Court which shall consist of the following members, namely:-

(a) Chief Justice of Pakistan who shall be Chairman of the Commission;

(b) Chief Justice of the High Court” failing which the senior most Judge of the respective High Court;

(c) Federal Minister for Law and Justice; and

(d) Provincial Law Minister of the respective Province.

Explanation:- For the purpose of this clause, the inter se seniority of a Judge of the respective High Court shall be determined with reference to his date of appointment as Judge.

(2) In case of appointment of Chief Justice of a High Court Federal Minister for Law and Justice shall be the Chairman of the Commission.

(3) The Commission shall forward a panel of two names for each vacancy of a Judge to the Chief Minister, who shall forward one name to Joint Parliamentary Committee for confirmation through a transparent process.

(4) The Joint Parliamentary Committee referred to in clause (3) shall consist of three members from the treasury benches and three from Opposition in the Provincial Assembly to be nominated by the Leader of the House and the Leader of the Opposition, respectively.”

49. Amendment of Article 194 of the Constitution.- In the Constitution, in Article 194, for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that in case of Chief Justice of the Islamabad High Court, the oath shall be made before the President or a person nominated by him.”

50. Substitution of 195 of the Constitution.- In the Constitution, for Article 195, the following shall be substituted, namely:-

“195. Retiring age.- (1) Subject to clause (2), a Judge of a High 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) The Chief Justice of a High Court whether appointed before or after the commencement of the Constitution (Eighteenth Amendment) Act, 2008 shall unless he sooner attains the age of sixty-five years, hold office for a term of ...years and shall have option either-

(b) to retire from his office and receive the pension to which he would have been entitled if he had retired from office on attaining the age of sixty-five years; or

(c) to assume the office of the Judge of the High Court and to continue to receive the same salary which he was receiving while holding the office of Chief Justice.

(3) A person who has once held office as Chief Justice of a High Court, otherwise than under Article 196, shall not again be appointed to be the Chief Justice of that High Court.”

51. Amendment of Article 196 of the Constitution.- In the Constitution, in Article 196, for the word “one” the words “the most senior” shall be substituted and the commas and words “,or may request one of the Judges of the Supreme Court,” shall be omitted.’

52. Amendment of Article 197 of the Constitution.- In the Constitution, in Article 197, in paragraph (c), the word and commas “as the President may determine, being a period not exceeding such period, if any, as may be prescribed by law” the words “not exceeding one year” shall be substituted.

53. Amendment of Article 198 of the Constitution.- In the Constitution, in Article 198, after clause (1), the following new clause shall be inserted, namely:-

(a) “(1 A) The High Court for Islamabad Capital Territory shall have its principal seat at Islamabad.

(b) in clause (3), for the words “at Suklur” the words and comma “each at Sukkur, Hyderabad and Larkana” shall be substituted.

(c) in clause (4), the word “in consultation with” shall be omitted.”

54. Amendment of Article 203B of the Constitution.- In the Constitution, in Article 203B, in paragraph (c), for the words and comma “or, until the expiration of ten years from the commencement of this Chapter” the word “and” shall be substituted.

55. Amendment of Article 207 of the Constitution.- In the Constitution, in Article 207, for clause (2), the following shall be substituted, namely:-

“(2) A person who has held office as Judge of the Supreme Court or of a High Court shall not hold any office of profit in the service of Pakistan, before expiration of two years after he has ceased to hold that office.”.

56. Amendment of Article 208 of the Constitution.- In the Constitution in Article 208, for the full stop, at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that in case of the High Court for Islamabad Capital Territory the rules may be made with the approval of the President.

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

“209 Judicial Commission of Pakistan.-(1) There shall be a Judicial Commission of Pakistan, in this Chapter referred to as the Commission.

(2) The Commission shall consist of the following members, namely:-

(i) Non-politicized retired Chief Justice of Pakistan who shall be the Chairman of the Commission;

(ii) Non-politicized two retired Judges of Supreme Court; and

(iii) Non-politicized retired Judge of each High Court.

(3) The members of the Commission shall be appointed by the President on terms and conditions to be determined by the Federal Government.

(4) If at any time the Commission is inquiring into the capacity or conduct of a Judge and a member of the Commission is absent or is unable to act due to illness or any other cause then another non-politicized retired Judge of the Supreme Court or, as the case may be, of High Court shall be appointed as a member of the Commission in his place.

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

Provided that in the event of the votes being “equally divided the Chairman shall have a casting vote.

(6) On information received from any source, the President or the Chairman and two other members who are retired Judges of the Supreme Court if so recommend or on the requisition of not less than one-fourth of the total membership of the Commission, the Chairman of the Commission shall within thirty days place the information or requisition before the Commission and

the Commission shall enquire into and finalize the enquiry within ninety days as to whether Judge of the Supreme Court or High Court-

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

(b) has been guilty of misconduct.

Explanation.- Where information is against the Chief Justice of Pakistan, the recommendation, if any, shall be made by two members who are retired Judges of the Supreme Court.

(7) After finalizing the enquiry, the Commission shall send its report to the President and if the Commission is of the opinion that the Judge has become incapable of performing the duties of his office or has been guilty of misconduct, the President shall forthwith remove the Judge from the office.

(8) If at any time the Commission is enquiring into the capacity of or conduct of the Chief Justice of Pakistan or a Chief Justice of High Court or a Judge of the Supreme Court or of a High Court, the President shall by order in writing require such Chief Justice or a Judge to proceed on leave from such date and for such period as may be specified in the order.

(9) The Commission shall have the power to regulate its own procedure and have powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), including the power of-

(a) enforcing the attendance of any person and examination of him on oath;

(b) compelling the production of documents; and

(c) issuing Commission for the examination of witnesses and documents.

(10) The Chairman of the Commission shall summon the meetings of the Commission.

(11) A meeting may also be requisitioned by not less than one-fourth of the total members of the Commission.

(12) The quorum for the meetings of the Commission shall not be less than five members of the Commission.

(13) No proceedings of the Commission or any report submitted by it shall be void because of any vacancy or vacancies in the membership of the Commission.

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

(15) The Commission shall make Code of Conduct to be observed by the Judges of the Supreme Court and the High Courts.

(16) If the Commission after inquiry is of the opinion that the information given by the informant is false, the Commission may after affording opportunity of hearing to such person punish him upto one year or fine or with both and such punishment shall be executed as if awarded by a Court.

Explanation:- In this Article and Article 209A, the expression "Judge" includes the Chief Justice of Pakistan or Chief Justice of High Court.

58. Insertion of new Article in the Constitution.- In the Constitution, after Article 209, the following new Article shall be inserted, name1y:-

"209A. Appeal against the decision under Article 209.- A Judge or an informer aggrieved by a decision under Article 209 may file appeal against such decision within thirty days to the Supreme Court which shall be heard by a Bench of not less than nine Judges and the Supreme Court shall decide the appeal within thirty days."

59. Amendment of Article 213 of the Constitution.- In the Constitution, in Article 213,- (i) for clause (1), for the following shall be substituted, namely:-

"(1) There shall be Chief Election Commissioner (in this Part referred to as the Commissioner), who shall be appointed by the President in the following manner, namely:-

(a) The Prime Minister in consultation with the Leader of the Opposition in the National Assembly shall forward two names to Joint Parliamentary Committee for confirmation of anyone name;

(b) The Joint Parliamentary Committee shall comprise of three members from the treasury benches and two from Opposition in the National Assembly to be nominated by the Leader of the House and the Leader of the Opposition, respectively and one member from the Senate to be nominated by the Leader of the Opposition;

(c) In case there is no consensus between the Prime Minister and a Leader of the Opposition, each shall forward separate list of the requisite persons mentioned above to the Joint Parliamentary Committee for consideration which may confirm any one name."; (ii) in clause (3), for the word "law" the words "by Act of Parliament" shall be substituted.

60. Amendment of Article 215 of the Constitution.- In the Constitution, in Article 215, in clause (1), in the proviso, for the words "National Assembly" the words "Parliament in joint sitting" shall be substituted

61. Amendment of Article 218 of the Constitution.- In the Constitution, in Article 218, in clause (2), for paragraph (b), the following shall be substituted, name1y:-

"(b) Five members, each of whom is or has been a Judge of a High Court of respective Province and Islamabad Capital Territory appointed by the President in the manner provided in clause (1) of Article 213."

62. Amendment of Article 219 of the Constitution.- In the Constitution in Article 219 and in the marginal note for the word "Commissioner" the word "Commission" shall be substituted.

63. Amendment of Article 221 of the Constitution.- In the Constitution in Article 221, for the word "Commissioner" occurring for the first and second time the words "Election Commission" shall be substituted and the words "Commissioner or an" shall be omitted.

64. Amendment of Article 224 of the Constitution.- In the Constitution, in Article 224,- (i) in clause (1), in the proviso,-

(a) for the word "his discretion" the words "consultation with the Chairman Senate and the Speaker of the National Assembly" shall be substituted;

(b) for the words "his discretion" the, words "consultation with Speaker of the Provincial Assembly" shall be substituted;

(c) before the word "Care-taker" the word "neutral" shall be inserted;

and "(ii) in clause (7), after the words "Prime Minister" the words "and Federal Ministers" shall be inserted and after the words "Chief Minister" the words "and Provincial Ministers" shall be inserted.

65. Amendment of Article 243 of the Constitution.- In the Constitution, in Article 243,- (i) in clause (3), the commas and words "in consultation with the Prime Minister," shall be omitted; and (ii) after clause

(3) amended as aforesaid, -the following new clause shall be added, namely:-

"(4) For the purposes of paragraphs (b), (c) and (d) of clause (3), the sitting Chief will give panel of three names in order of priority to the President who will choose one of them for appointment."

66. Insertion of new Article in the Constitution.- In the Constitution, after Article 243, the following new Article shall be inserted, namely"-

"243A. Declaration of war.- Notwithstanding anything contained in the Constitution or any other law for the time being in force, no person or authority shall declare war or use Armed Forces against any foreign Government or country without prior approval of the Prime Minister or the Cabinet."

67. Amendment of Article 247 of the Constitution.- In the Constitution, in Article 247,- (i) clauses (3) and (4) shall be omitted; (ii) in clause (5), for the word "President" the words "Federal Government" shall be substituted; and (iii) in clause (6), for the word "President" occurring thrice, the words "Federal Government" shall be substituted.

68. Amendment of Article 255 of the Constitution.- In the Constitution, in Article 255, after clause (3), the following new clause shall be added, namely:-

"(4) A Judge of the Supreme Court, a High Court or the Federal Shariat Court who makes oath other than that prescribed in the Third Schedule, shall cease to be a Judge of the Supreme Court or a High Court, or the Federal Shariat Court, as the case may be.

Explanation:- For the purposes of this clause the expression "Judge" includes the Chief Justice of Supreme Court, Chief Justice of a High Court and the Chief Justice of Federal Shariat Court."

69. Amendment of Article 260 of the Constitution.- In the Constitution in Article 260, in clause (1), after the expression "clause" the expression "consultation" and the entries relating thereto shall be omitted.

70. Amendment of Article 267 of the Constitution.- In the Constitution in Article 267, in clause (1),- (i) the words "before the commencing day or" shall be omitted and for the words "commencing day" the words, brackets, comma and figure "commencement of the Constitution (Eighteenth Amendment) Act, 2008_ shall be substituted; and (ii) for the word "Constitution" occurring twice, the words, brackets, comma and figure "Constitution (Eighteenth Amendment) Act, 2008_ shall be substituted.

71. Amendment of Article 268 of the Constitution.- In the Constitution, in Article 268, clause (2) shall be omitted.

72. Amendment of Article 270A of the Constitution.- In the Constitution, in Article 270A,- (i) in clause (1), the commas, words and figures " , under which in consequence of the result of the referendum held on the nineteenth day of December, 1984, General Muhammad Zia-u1-Haq became the President of Pakistan on the day of first meeting of Majlis-e-Shoora (Parliament)" in joint sitting for the term specified in clause (7) of Article 41_ shall be omitted; and (ii) clause (6) shall be omitted.

73. Insertion of new Article 270AAA in the Constitution.- In the Constitution, after Article 270AA the following new Article shall be inserted, namely:-

"270AAA. Validation of Ordinances etc.- (1) The Islamabad High Court (Establishment) Order, 2007 (P.O. No.7 of 2007) and the Ordinances, except those specified in the Sixth Schedule, made between the 12th day of July, 2007 and the 15th day of December, 2007 (both, days inclusive) and actions taken there under shall be deemed to have been validly made and taken by the competent authority notwithstanding the expiry of period of four months specified in Article 89 and notwithstanding anything contained in the Constitution shall not be called in question in any court or forum on any ground whatsoever.

(2) The Islamabad High Court (Establishment) Order, 2007 P.O. No.7 of 2007) and the Ordinances, except those specified in the "Sixth Schedule, in force between the 12th day of July, 2007 and the 15th day of December, 2007 (both days inclusive) shall continue in force until altered, repealed or amended by the appropriate legislature.

74. Insertion of new Article 270BB in the Constitution.- In the Constitution, after Article 270B, the following new Article shall be inserted, namely:-

"270BB. General Elections 2008 to be deemed to be held under the Constitution.- Notwithstanding anything contained in the Constitution or any other law for the time being in force, the General Elections 2008 held on the 18th day of February, 2008, to the National Assembly and the Provincial

Assemblies shall be deemed to have been held under the Constitution and shall have effect accordingly and shall not be called in question in any court or forum including the Supreme Court on any ground whatsoever.”.

75. Insertion of new Article in the Constitution.- In the Constitution after Article 270C, the following new Article shall be inserted, namely:-

“270CC. Restoration of Superior Court Judges.- Notwithstanding anything contained any provision of the Constitution, the Oath of Office (Judges) Order, 2007, the High Court Judges (Pensionary Benefits) Order, 2007 (P.O.No. 8 of 2007), the Supreme Court Judges (Pensionary Benefits) Order, 2007 (P.O.No. 9 of 2007) and any other law for the time being in force or judgment of any Court including a High Court and the Supreme Court, the Judges of Supreme Court and High Courts including the Chief Justice of Supreme Court and Chief Justices of High Courts who had ceased to continue to hold office in pursuance of the Oath of Office (Judges) Order, 2007, dated the 3rd day of November, 2007, shall stand reinstated/restored to the position and seniority they were holding on the 2nd day of November, 2007.

Provided that a Judge shall not stand reinstated/restored who has already retired on attaining the age of superannuation or a Judge who has joined Federal or Provincial Government service- or a post under any authority, corporation, body or organization established by or under a federal law, provincial law or which is owned or controlled by the Federal Government or a Provincial Government or in which the Federal Government or a Provincial Government has a controlling share or interest, provided that such Judge shall be entitled to pensionary benefits in accordance with law.

76. Amendment of Third Schedule of the Constitution.- In the Constitution, in the Third Schedule, in the Form of oath prescribed for Members of the Armed Forces, after the word “uphold” the words “and shall not abrogate, subvert, suspend or hold in abeyance or attempt or conspire to abrogate, subvert, suspend or hold in abeyance” shall be inserted.

77. Amendment of the Fourth Schedule to the Constitution.- In the Constitution, in the Fourth Schedule, in the Concurrent List entries 6,11,19,21,23,25,33,37,41 and 43A shall be omitted.

78. Substitution of Sixth Schedule of the Constitution.- In the Constitution, for the Sixth Schedule, the following shall be substituted, namely:-

“SIXTH SCHEDULE

[See Article 270AAA]

1. The National Commission for Human Development (Amendment) Ordinance, 2007 (XXXVII of 2007).
2. The Police Order (Amendment) Ordinance, 2007 (XLI of 2007).
3. The Press, Newspapers, News Agencies and Books Registration (amendment) Ordinance, 2007

(LXIY of2007).

4. The Pakistan Electronic Media Regularity Authority (Third Amendment) Ordinance, 2007 (LXV of2007).

5. The Pakistan Army (Amendment) Ordinance,'2007 (LXVI of2007).

6. The Legal Practitioners and Bar Councils (Amendment) Ordinance, 2007 (LXIX of2007).”.

79. Omission of Seventh Schedule of the Constitution.- In the Constitution, the Seventh Schedule shall be omitted.

80. General amendment of the Constitution.- In the Constitution, for the words and brackets “Majlis-e-Shoora (Parliament)”, wherever occurring, the word “Parliament” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Through extra-constitutional deviation, the Constitution of the Islamic Republic of Pakistan had undergone substantial changes, adversely affecting parliamentary system envisaged by it. Substantial amendments have been made to restore its parliamentary character and also ensure independence of the judiciary.

2. The Bill seeks to achieve the aforesaid objects.

(FAROOQ H. NAIK)

Minister for Law, Justice, Parliamentary Affairs

and Human Rights

Minister-In-Charge

RESOLUTION

“WHEREAS the Pakistan Bar Council has always strived for rule of law and independence of judiciary;

AND WHEREAS this Council is of the considered view that the judiciary of 2nd November, 2008 could be restored through an executive order.

Now, therefore, the Executive Committee of the Pakistan Bar Council has examined in detail the proposed Constitution (18th Amendment) Act, prepared by the Ministry of Law & Justice and unanimously resolved as follows:

That the 18th Amendment in the Constitution, 1973 is being proposed to delay the restoration of those Judges who have declined to take oath on Provisional Constitution Order therefore, these amendments have been devised to maintain the status quo and black deeds of General Pervez Musharraf undertaken during the period of emergency. At the same the proposed amendments relating to the judiciary in the Constitutional Package violate the doctrine of “independence of judiciary”, therefore, it is not permissible for the parliament to amend the Constitution to such extent.

The substitution of Article 6 has been proposed to protect the Judges who have taken oath on Provisional Constitutional Order and to convey an impression to the general public that no punishment is provided in the present Article of the Constitution particularly for those judges, parliamentarians and other persons for committing the offences of High Treason. The terms “aiding” and “abetting” used in the present Article is sufficient to bring within its frame work all those judges, parliamentarians, officials who have aided and abetted with Gen. Pervaiz Musharraf on 3rd November, 2007 and thereafter.

It is shocking to note that the authority for appointments of Attorney-General and Advocate-General of the provinces have been conferred on the Federal Government and Provincial Governments respectively and the discretion of the President and Governors to appoint these Law

Officers have been withdrawn thus making these offices a case of political appointments. Thus, there appears no urgent need to amend Article 100 and 140 of the Constitution.

The Executive Committee of the Pakistan Bar Council strongly condemns the proposed amendments in Article 177 and introduction of Article 177-A, which violates the basic concept of the independence of judiciary. The well settled principles of appointment and promotion of the Superior Court Judges established by the Supreme Court of Pakistan from time to time through several cases particularly in the case of Al-Jihad (famously known as Judges case) and Malik Asad Ali have been violated by proposing "Commission" which will be headed by the Chief Justice of Pakistan and comprising of all Chief Justices of provinces who will decide their own cases of promotion to the Supreme Court. It is consistent view of the Pakistan Bar Council that all appointments to the Superior Courts should be made through National Judicial Commission wherein Bar representation has also been suggested. The idea of Federal Law Minister leading the Commission for the appoint of Chief Justice of Pakistan is violative of the principle of 'separation of powers'. It is consistent view of the lawyers that the senior most judge of the Supreme Court should be appointed the Chief Justice of Pakistan.

It is the matter of record that the entire legal community had strongly opposed enhancement of retiring age of the Supreme Court and High Court Judges made through the Legal Frame Work Order, 2002 and it was due to their struggle that the same was withdrawn vide 17th Amendment. Now, once again amendments have been proposed to enhance the retiring age of the Judges, which amounts to awarding bonus to the P.C.O. Judges, therefore this proposal is not acceptable to the Pakistan Bar Council.

The introduction of Article 193-A is again violative of the concept of independence of judiciary. The appointment of High Court Judges have been "politicized by inclusion of the Federal and Provincial Law Minsiters in the Commission. Strangely, the said Commission will be headed by the Federal Law Minister for the purpose of appointing the Chief Justice of a Province. The formation of a Joint Parliamentary Committee and involvement of Chief Minister with the authority of sole discretion supports the view of this Council that now the process of elevation of the High Courts would become purely political. The idea of Federal Law Minister leading the Commission for

appointment of Provincial Chief Justice is violative of the principle of separation of powers. It is consistent view of the lawyers that the senior most judge of a High Court should be appointed as Chief Justice of the High Court.

The Executive Committee of the Pakistan Bar Council strongly condemns the substitution of Article 209 by proposal of a Judicial Commission, which will comprise of “non-politicized” retired judges. Strangely, this term has not been defined in the so-called proposed 18th Amendment. The proposal that President would be authorized to sent any Judge of Chief Justice on “forced leave” for indefinite period amounts to making judiciary subservient to the Executive. The proposed Article 209 in 18th Amendment is capable of being misused as a weapon of exploitation against those judges who are independent and do not succumb to government pressure. Nearly all the provisions of the Constitution relating to the Judiciary have been defaced and mutilated in order to serve the purpose of Ruling Junta.

It is very painful to note that the suo-moto jurisdiction of Supreme Court is being curtailed by amending Article 184 of the Constitution, which is calculated attempt to take away and curtail the powers of the apex Court. It is matter of record that most historical judgements of the Supreme Court were delivered in exercise of jurisdiction under Article

184(3). On several occasions, Shaheed Benazir Bhutto had also invoked the said provision of the Constitution. Thus, this Bar Council rejects all such proposals in the 18th Amendment, which relates to the Judiciary as the same being malafide attempt on the part of present regime.

Proposal for insertion of new Article 270CC would tantamount to an admission on the part of the Federal Law Minister that all unconstitutional acts of Gen. Pervaiz Musharraf undertaken during 3rd November to 15th December, 2007 were legal and constitutional. It amounts to legitimizing the unconstitutional removal of Chief Justice of Pakistan and other Judges of the Supreme Court. It is consistent view of entire legal community as well as of the Pakistan Bar Council that all those judges who stood retired as a result of Provisional Constitution Order could be restored simply by an executive order. Hence, introduction of Article 270 CC is mischievous, unjustified and malafide. All the coalition partners of the present Government had strongly

condemned imposition of emergency, suspension of constitution and removal of Judges on 3rd November, 2007 despite that Article 270 CC has been proposed by the Ministry of Law & Justice of the present regime.

Therefore, the Executive Committee of the Pakistan Bar Council is of the considered view that the proposed 18th Amendment relating to the judiciary is an attempt to curtail independence of judiciary. Even the parliament would not be legally competent to legislate to such extent. We are of the considered view that the restoration of judiciary of 2 November, 2007 should be done in accordance with the Murree Declaration of 9 March, 2008 i.e. Resolution of the National Assembly followed by an executive order. The restoration of judges should have no connection with the amendment of the Constitution. However, the Constitution should be amended in accordance with the consistent stand of the lawyers for the last more than eight years that the Constitution should be restored to the position of 12 October, 1999.

We call upon all the members of the National Assembly and the Senate in general and particularly the partners of the coalition Government to reject all those proposals of the Constitutional Package relating to the judiciary. We also request all the members of the civil society including labours, students, peasants, teachers, medical practitioners, business community and all other political parties to unite themselves in order to resist all such attempts through which independence of judiciary is likely to be curtailed”.