

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY,HCJ
MR. JUSTICE JAVED IQBAL
MR. JUSTICE MIAN SHAKIRULLAH JAN
MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE RAJA FAYYAZ AHMED
MR. JUSTICE MUHAMMAD SAIR ALI
MR. JUSTICE MAHMOOD AKHTAR SHAHID SIDDIQUI
MR. JUSTICE JAWWAD S. KHAWAJA
MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE KHILJI ARIF HUSSAIN
MR. JUSTICE RAHMAT HUSSAIN JAFFERI
MR. JUSTICE TARIQ PARVEZ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE ASIF SAEED KHAN KHOSA
MR. JUSTICE GHULAM RABBANI
MR. JUSTICE KHALIL-UR-REHMAN RAMDAY

CONSTITUTION PETITIONS NOS. 11-15, 18-22, 24, 31, 35, 36, 37 & 39-44/2010.

CM APPEAL NO. 91/2010, HRC Nos.20492-P &22753-K/10

and

Civil Petition. No. 1901/2010

(On appeal from the order of PHC, Peshawar
dt: 16.6.10 passed in W.P. No. 1581/10)

Nadeem Ahmed Advocate (In Const. P. 11/2010)	....	PETITIONER
Distt. Bar Association, Rawalpindi (In Const. P. 12/2010)	....	PETITIONER
Watan Party through its Chairman (In Const. P. 13/2010)	....	PETITIONER
Supreme Court Bar Association (In Const. P. 14/2010)	....	PETITIONER
Muhammad Ijazul Haq (In Const. P. 15/2010)	....	PETITIONER

Lahore High Court Bar Association (In Const. P. 18/2010)	....	PETITIONER
Lahore High Court Rawalpindi Bench Bar Association (In Const. P. 19/2010)	....	PETITIONER
Pakistan Lawyers Forum (In Const. P. 20/2010)	....	PETITIONER
Sardar Khan Niazi (In Const. P. 21/2010)	....	PETITIONER
Shahid Orakzai (In Const. P. 22/2010)	....	PETITIONER
M. Kowkab Iqbal (In Const. P. 24/2010)	....	PETITIONER
Al-Jehad Trust (In Const. P. 31/2010)	....	PETITIONER
District Bar Association Sangarh (In Const. P. 35/2010)	....	PETITIONER
District Bar Association Gujrat (In Const. P. 36/2010)	....	PETITIONER
District Bar Association Sialkot (In Const. P. 37/2010)	....	PETITIONER
Arshad Mahmood Bago etc. (In Const. P. 39/2010)	....	PETITIONER
Dr. Abdul Hafeez Pirzada (In Const. P. 40/2010)	....	PETITIONER
Dr. Muhammad Aslam Khaki (In Const. P. 41/2010)	....	PETITIONER
Shamshad Ahmed Mangat (In Const. P. 42/2010)	....	PETITIONER
Julious Salik (In Const. P. 43/2010)	....	PETITIONER
Concerned Citizens of Pakistan etc. (In Const. P. 44/2010)	....	PETITIONER
Application by Lawyers of Hazara Division.... (In HRC No. 20492-P/10)		APPLICANT
Application by Baba Sardar Haider Zaman.... (In HRC No. 22753-K/10)	....	APPLICANT

Shahid Orakzai PETITIONER
(In C.P. 1901/10)

Watan Party through its Chairman APPELLANT
(In CM Appeal No. 91/2010
in Const. P. NIL/2010)

VERSUS

Federation of Pakistan and others RESPONDENTS

For the petitioner:
(Const. P. 11/2010)

Mr. Muhammad Akram Sheikh, Sr. ASC,

Mr. M.A. Zaidi, AOR

Assisted by

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Barrister Natalia Kamal, Adv.

Barrister Sajeel Shehryar, Adv.

Barrister Ahmed Kamran, Adv.

M. Ishaque Shah, Adv

Hafiz Muhammad Naeem, Adv

Ms. Sameen Khan, Adv

For the petitioner:
(Const. P. 12/2010)

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Mr. Mudassar Ikram Ch., Adv.

Mr. Shoaib Shahid, Adv.

For the petitioner:
(Const. P. 13/2010 &
CM Appeal No. 91/2010)

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For the petitioner:
(Const. P. 14, 18, 35 & 36,
37 & 39/2010)

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Mr. Rashid A. Rizvi, Sr. ASC

Mr. Ahmed Awais, ASC

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Assisted by

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For the petitioner:
(Const. P. 15/2010)

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For the petitioner:
(Const. P. 19/2010)

Syed Zulfiqar Abbas Naqvi, ASC

Mr. Arshad Ali Chaudhry, AOR

Petitioner:
(Const. P. 20/2010)

Mr. A.K. Dogar, Sr. ASC.

Petitioner:
(Const. P. 21/2010) Sardar Khan Niazi, In Person

Petitioner:
(Const. P. 22/2010 &
C.P. 1901/10) Mr. Shahid Orakzai, In Person

Petitioner:
(Const. P. 24/2010) Mr. M. Kowkab Iqbal, ASC, In Person

Petitioner:
(Const. P. 31/2010) Mr. Habib-ul-Wahab-ul-Khairi, ASC,
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For the petitioner:
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Petitioner:
(Const. P. 41/2010) Dr. Muhammad Aslam Khaki, ASC,
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For the petitioner:
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(Const. P. 43/2010) Mr. Zulfiqar Ahmed Bhutta, ASC
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For the petitioner:
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For the Applicant:
(HRC. 20492-P/10) Nemo

For the Applicant:
(HRC. 22753-K/10) Nemo

On Court notice: Moulvi Anwarul Haq
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Mr. Mahmood Raza, Addl. A.G. Balochistan

Khawaja Haris Ahmed, A.G. Punjab
Ch. Khadim Hussain Qaiser, Addl.
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Mr. Asadullah Khan Chamkani, A.G. KPK
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For the Federation:

(Const. P. 11,14 & 40/10)

Mr. Wasim Sajjad, Sr. ASC

Mr. Mehmood A. Sheikh, AOR

Assisted by

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(Const. P. 12/2010):

Sardar Muhammad Ghazi, ASC

Mr. Mehmood A. Sheikh, AOR

(Const. P. 13,19, 35/10 &
C.M.Appeal No. 91/10):

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(Const. P. 15/2010):
(For Federation)

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(Const. P.18,21,22,37,39
& 42/2010):

Mr. K.K.Agha, Adl. AGP

Mr. Mehmood A. Sheikh, AOR

(Const. P. 24 & 41 /2010):

Ch. Nasrullah Warraich, ASC

Mr. Mehmood A. Sheikh, AOR

(Const. P. 31/2010):

Mr. Salahuddin Gandapur, ASC

Mr. Mehmood A. Sheikh, AOR

(Const. P. 35/2010):

Mr. Iftikhar-ul-Haq Khan, ASC

Mr. Mehmood A. Sheikh, AOR

(Const. P. 36/2010):

Mr. Mushtaq Masood, ASC

Mr. Naeem Masood, ASC

Mr. Mehmood A. Sheikh, AOR

(Const. P. 39/2010):

Mr. Iftikhar Ahmed Mian, ASC

Mr. Mehmood A. Sheikh, AOR

(Const. P. 43/2010):

Mr. Khurshid Ahmed Sodi, ASC

Mr. Mehmood A. Sheikh, AOR

(For the Govt. of KPK: (Const. P.13,15,20 & 24/2010)	Syed Iftikhar Hussain Gillani, Sr. ASC Mr. Shaukat Hussain, AOR (Absent)
For the Govt. of Punjab: (Const. P. 14,18,35,36 & 37/2010)	Mr. Shahid Hamid, ASC Mr. Abid Aziz Sheikh, ASC <i>Assisted by</i> Mr. Shujaat Ali Khan, Asst. A.G. Punjab Mr. Tahir Mahmood Khokhar, Adv. Ms. Aysha Hamid, Adv.
For the Applicant (in CMA No.1599/10)	Sahibzada Ahmed Raza Khan Qasuri, Sr.ASC, In Person
For the Applicant (in CMA Nos. 1859 & 1959/10)	Mr. Salman Akram Raja, ASC <i>Assisted by</i> Syed Shahab Qutub, Adv. Mr. Waqas Mir, Adv. Ms. Aneesa Agha, Adv. Mr. Wasif Majeed, Adv. Ms. Sahar Bandial, Adv. Mian Bilal Ahmed, Adv. Malik Ghulam Sabir, Adv.
For the Applicant (in CMA No. 2681/10)	Dr. Syed A. S. Pirzada, In person
Dates of hearing:	24-31/5, 1-3, 7-10/6, 5-8, 12-15, 19- 22, 26-29/7, 2-5, 9-12, 16-19 & 23- 25,30,31/8, & 1-2,6-7,27-30/9, 2010.

ORDER

Through these petitions, various petitioners have called in question the provisions of Articles 1, 17, 17(4), 27, 38, 45, 46, 48, 51, 58(2)(b), 62, 63, 63A, 91, 106, 148, 175, 177, 193, 203C, 209, 219, 226, 245, 260 and 267A and insertion of Article 175A brought about through 18th Amendment in the Constitution.

2. It has been argued that the amendments made are violative of the salient features of the Constitution which according to them, are as under:

- (i) Parliamentary form of government;
- (ii) Democracy blended with Islam;
- (iii) Provision of fundamental rights;

- (iv) Independence of Judiciary; and
- (v) Federalism.

3. Petitioners mostly have challenged the vires of Article 175A of the Constitution, a reference to which would be in order:-

“175A. Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court.—(1) *There shall be a Judicial Commission of Pakistan, hereinafter in this Article referred to as the Commission, for appointment of Judges of the Supreme Court, High Courts and the Federal Shariat Court, as hereinafter provided.*

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

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|-------|---|-----------------|
| (i) | <i>Chief Justice of Pakistan;</i> | <i>Chairman</i> |
| (ii) | <i>two most senior Judges of the Supreme Court;</i> | <i>Member</i> |
| (iii) | <i>a former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the two member Judges, for a term of two years;</i> | <i>Member</i> |
| (iv) | <i>Federal Minister for Law and Justice;</i> | <i>Member</i> |
| (v) | <i>Attorney-General for Pakistan; and</i> | <i>Member</i> |
| (vi) | <i>a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two years.</i> | <i>Member</i> |

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

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

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

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|-------|--|---------------|
| (i) | <i>Chief Justice of the High Court to which the appointment is being made;</i> | <i>Member</i> |
| (ii) | <i>the most senior Judge of that High Court;</i> | <i>Member</i> |
| (iii) | <i>Provincial Minister for Law; and</i> | <i>Member</i> |

- (iv) a senior advocate to be nominated by the Provincial Bar Council for a term of two years: Member

Provided that for appointment of the Chief Justice of a High Court, the most senior Judge of the Court shall be substituted by a former Chief Justice or former Judge of that Court, to be nominated by the Chief Justice of Pakistan in consultation with the two member Judges of the Commission mentioned in clause(2):

Provided further that if for any reason the Chief Justice of High Court is not available, he shall also be substituted in the manner as provided in the foregoing proviso.

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

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

Provided that for initial appointment of the Judges of the Islamabad High Court, the Chief Justices of the four Provincial High Courts shall also be members of the Commission.

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

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

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

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

(9) *The Parliamentary Committee, hereinafter in this Article referred to as the Committee, shall consist of the following eight members, namely:-*

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

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

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

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

Provided that the Committee may not confirm the nomination by three-fourth majority of its total membership within the said period, in which case the Commission shall send another nomination.

(13) *The Committee shall forward the name of the nominee confirmed by it or deemed to have been confirmed to the President for appointment.*

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

(15) *The Committee may make rules for regulating its procedure.”*

4. It has been argued that this provision is violative of one of the salient features of the Constitution i.e. independence of judiciary; that the judicial independence has nexus with the appointment process; that it is unworkable and impracticable inasmuch as the nominations made by the Judicial Commission are subject to scrutiny by the Parliamentary Committee which is empowered to confirm and forward the nominations of the Commission to the President for appointment under clauses (12) and (13) of Article 175A; that the Parliamentary Committee has been given veto powers and even a unanimous recommendation made by the Judicial Commission can be vetoed by six out of eight members selected from the Parliament; that the insertion of this new Article is a product of *mala fides* and that the process of appointment of Judges will have an adverse effect on judicial independence as it is likely not only to make the appointment process political but would even otherwise affect its structural insularity which is an essential element of judicial independence. It was argued that this Court has power of judicial review of constitutional amendments, if the basic structure/features or the core values have been tinkered with.

5. While praying for striking down the provisions under challenge, the concept of basic structure was pressed into service and it was maintained that the principle of substantive limits on the power to amend the Constitution has become a part of constitutional law in several liberal democracies. Reference was made to the judgments rendered by the Supreme Courts of India and Bangladesh where the amendments were struck down on the touchstone of basic structure. It was submitted that the basic structure of the Constitution of Pakistan was even acknowledged by this Court in Mahmood Khan Achakzai v. Federation of Pakistan (PLD 1997 SC 426) and Syed Zafar Ali Shah v. General Pervez Musharraf, Chief Executive of Pakistan (PLD 2000 SC 869) and even in Wukala Mahaz Barai Thafaz Dastoor v. Federation of Pakistan (PLD 1998 SC 1263) but the Court did not deem it proper to make it a touchstone to strike down a constitutional provision. These judgments, it was further argued, needed re-visiting.

6. Learned Attorney General for Pakistan, Maulvi Anwar-ul-Haq, learned Additional Attorney General, Mr. K. K. Agha and the learned counsel appearing for the Federation Mr. Wasim Sajjad, ASC defended the impugned provisions by submitting that the concept of basic structure as a touchstone to strike down a constitutional provision is alien to our jurisprudence and this Court may not like to review its own judgments as no good grounds have been canvassed so far, to warrant re-visiting. Learned counsel appearing for the Province of Punjab Mr. Shahid Hamid, ASC defended the impugned amendment. He, however, in all fairness, admitted that the enforcement of Article 175A may raise certain issues and it would be in fitness of things if the matter is referred to the Parliament for re-consideration in terms of Article 267A of the Constitution.

7. We have considered the submissions made and have held extensive deliberations qua all the Articles under challenge. The Court at this stage would

not like to express its opinion on the merits of the issues raised and arguments addressed and would rather, in the first instance, defer to the parliamentary opinion qua Article 175A on reconsideration by it in terms of this order. We would thereafter decide all these petitions adverting to all the issues raised therein.

8. The Court is conscious that it is a creation of the Constitution which envisages, *inter alia*, a structure of governance based on trichotomy of powers in terms of which the functions of each organ have been constitutionally delineated keeping in view the seminal concept of separation of powers. The political sovereign i.e. the people, being trustees of a “sacred” trust in the distribution of powers under the Constitution, did not make Judges supreme arbiters on issues purely political. But they wanted the Judges to do “right to all manner of people according to law, without fear or favour, affection or ill-will” (Oath under the Constitution). While examining the vires of Article 175A of the Constitution and its judicial enforcement, we are mindful of the mandate of the oath of office, its constraints and the fundamental principles which underpin judicial independence in the constitutional scheme envisaged by the founding fathers. Judicial independence is one of the core values of our Constitution because it is inextricably linked with the enforcement of fundamental rights [Article 184 (3) and Article 199 of the Constitution] and the rule of law. According an exalted position to this value, the Constitution in its very Preamble laid down that, “*the independence of the judiciary shall be fully secured*”. The judiciary has not been made part of the Executive or the Legislature (Article 7), its separation from the executive was made a constitutional command [Article 175(3)] and right to “fair trial” is acknowledged as one of the fundamental rights (Article 10A). To further buttress this objective, the process of appointment of judges (Article 177) and their removal (Article 209) was kept insulated from legislature and the opinions of the Chief Justice of Pakistan and Chief Justices of High Courts were given

weight which now stand judicially defined by this Court in Al-Jehad Trust case (PLD 1996 SC 324). Judiciaries in all democratic setups are vulnerable to the power of legislatures to create, alter or impair judicial structures including the mode of appointing, removing and remunerating the Judges. In our country, like in some others as well, this power is tampered with constitutional guarantees that restrict legislative control over the judiciary. The Parliament was conscious of this scheme, because other than inserting Article 175A, it did not amend any other provision on which is built the edifice of judicial independence or the provisions relating to the functions of judiciary. Only the appointment process has been changed and the avowed objective seems to be to strike a balance between judicial independence and democratic accountability/parliamentary oversight.

9. It was maintained by the learned counsel appearing for the Federation that the Parliament was motivated by higher considerations of liberal democracy, the rule of law and the independence of judiciary in passing the Eighteenth Amendment. Notwithstanding these noble objectives, serious apprehensions have been expressed that this provision may compromise judicial independence which require serious consideration. Following aspects of Article 175A, according to the petitioners, are likely to disturb the overall constitutional scheme qua judicial independence and the balance sought to be achieved through it, may be tilted in one way. Because:

- (i) The Chief Justice of Pakistan is *pater familias* i.e. the head of judiciary. His opinion under the unamended provision was held by this Court [in Al-Jehad Trust case (PLD 1996 SC 324)] to have primacy in the consultative process initiated by the President for appointment of Judges. But under the newly inserted provision, the consultative process has been done away with and the Chief Justice has just one vote in the Judicial Commission whose recommendations can be rejected by the Parliamentary Committee.
- (ii) The Law Minister and Attorney General who represent the Executive have been made members of the Judicial Commission with weightage equal to judicial members.

- (iii) In the Parliamentary Committee in the name of parliamentary oversight, the Committee has been given the power to reject the recommendations of the Judicial Commission which would be tantamount to granting veto powers to it.
- (iv) Four out of eight members of the Parliamentary Committee, though members of the Parliament are nominees of the Chief Executive i.e. the Prime Minister. The inclusion of the executive members in the afore-referred bodies has not only minimized the role of the judiciary in the appointment process but is likely to politicize the entire exercise and thereby impinge on the constitutional guarantees provided to ensure its insularity and to restrict the legislative and executive control over it.
- (v) The issues of elevation of a Chief Justice of a High Court or Judge of the said Court to the Supreme Court, if brought before the Parliamentary Committee and discussed is likely to be violative of Article 68 of the Constitution, which stipulates that:

“No discussion shall take place in [Majlis-e-Shoora (Parliament)] with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.”

- (vi) There is a serious omission in clauses (9) & (10) of Article 175A as in the event of dissolution of the National Assembly, the composition of the Parliamentary Committee would be incomplete and there is no provision in *pari materia* to the third proviso to clause (2B) of Article 213 of the Constitution which stipulates that,

“When the National Assembly is dissolved and a vacancy occurs in the office of the Chief Election Commissioner, the Parliamentary Committee shall comprise the members from the Senate only and the foregoing provisions of this clause shall, mutatis mutandis, apply.”

10. Most of the petitioners who had challenged Article 175A of the Constitution raised serious issues regarding the composition of the Judicial Commission and Parliamentary Committee and veto power given to the latter. It was contended that there was a well known practice, when the unamended provision was in vogue that Chief Justice would consult most senior Judges of the Supreme Court before finalizing the recommendations. Instead of bringing any drastic change, the said practice should have been formalized. It was, therefore, suggested during arguments that to ensure that the appointment process is in consonance with the concept of independence of judiciary,

separation of powers and to make it workable, Article 175A may be amended in following terms:-

- (i) That instead of two most senior Judges of the Supreme Court being part of the Judicial Commission, the number should be increased to four most senior Judges.
- (ii) That when a recommendation has been made by the Judicial Commission for the appointment of a candidate as a Judge, and such recommendation is not agreed/agreeable by the Committee of the Parliamentarians as per the majority of 3/4th, the Committee shall give very sound reasons and shall refer the matter back to the Judicial Commission for reconsideration. The Judicial Commission upon considering the reasons if again reiterates the recommendation, it shall be final and the President shall make the appointment accordingly.
- (iii) That the proceedings of the Parliamentary Committee shall be held in camera but a detailed record of its proceedings and deliberations shall be maintained.

11. Mian Raza Rabbani, Advisor to the Prime Minister (Chairman of the Special Committee of the Parliament for Constitutional Reforms) while speaking on the floor of the National Assembly reiterated the resolve not to alter the core values of the Constitution when he said:

“Madam Speaker! Before I go into the details of this Article, let me once again reiterate that one of the essential purposes rather two or three of the essential purposes which made up the basis for these constitutional reforms was to ensure that the fundamental principles of the Constitution are not altered.”

12. He was conscious of the apprehensions which some may have about the provision when at a subsequent occasion he stated that under the new

system (Article 175A), a name for appointment as a Judge shall originate from the Chief Justice of Pakistan. Even learned Attorney General for Pakistan in his written submission affirmed this and stated, "*the names of the recommendees will be initiated in the Judicial Commission by the Hon'ble Chief Justice of Pakistan in consultation with the other members/Hon'ble Judges of the Commission*" and that "*in case of rejection of nomination by the Parliamentary Committee, the said Committee shall have to state reasons which shall be justiciable.*" But such fair concessions, it was argued, were not enough to fully allay the reservations expressed regarding this provision.

13. In view of the arguments addressed by the learned counsel, the criticism made with regard to the effect of Article 175A on the independence of judiciary and the observations made in paragraphs-8, 9 & 10 as also deferring to the parliamentary mandate, we would like to refer to the Parliament for re-consideration, the issue of appointment process of Judges to the superior courts introduced by Article 175A of the Constitution, *inter alia*, in the light of the concerns/reservations expressed and observations/suggestions made hereinabove. Making reference to the Parliament for reconsideration is in accord with the law and practice of this Court as held in Hakim Khan v. Government of Pakistan (PLD 1992 SC 595 at 621).

14. This is for the first time ever in our national, judicial and constitutional history that such a serious challenge has been thrown by a cross section of society including some premier Bar Associations of the country to a legislation which was no ordinary piece of legislation but was a constitutional amendment. By making this unanimous reference to the Parliament for re-consideration, we did not consider the sovereignty of the Parliament and judicial independence as competing values. Both the institutions are vital and indispensable for all of us and they do not vie but rather complement each other so that the people could live in peace and prosper in a society which is just and

wherein the rule of law reigns supreme. We can also not lose sight of the fact that we, as a nation, are passing through testing times facing multidimensional challenges which could be best addressed only through measures and methods where societal and collective considerations are the moving and driving force. We had two options; either to decide all these petitions forthwith or to solicit, in the first instance, the collective wisdom of the chosen representatives of the people by referring the matter for reconsideration. In adopting the latter course, we are persuaded primarily by the fact that institutions may have different roles to play, but they have common goals to pursue in accord with their constitutional mandate.

15. Notwithstanding the pendency of these petitions, the constitutional provisions under challenge have come into effect. Prior to the Eighteenth Amendment, several appointments of Additional Judges have been made in various High Courts and the issue of fresh appointments is likely to come up in near future. In these circumstances and till such time these petitions are decided, Article 175A has to be given judicial enforcement by way of a construction which is in consonance with the other constitutional provisions underpinning judicial independence. While doing so we take note of the fair stand taken by Mian Raza Rabbani, Chairman of the Special Committee of the Parliament for Constitutional Reforms and the Attorney General for Pakistan to which reference has been made in Para-12 above and hold that Article 175A shall be given effect to in the manner as under:-

- (i) In all cases of an anticipated or actual vacancy a meeting of the Judicial Commission shall be convened by the Chief Justice of Pakistan in his capacity as its Chairman and the names of candidates for appointment to the Supreme Court shall be initiated by him, of the Federal Shariat Court by the Chief Justice of the said Court and of the High Courts by the respective Chief Justices.

- (ii) The Chief Justice of Pakistan as head of the Judicial Commission shall regulate its meetings and affairs as he may deem proper.
- (iii) The proceedings of the Parliamentary Committee shall be held *in camera* but a detailed record of its proceedings and deliberations shall be maintained. The Parliamentary Committee shall send its approval of recommendations of the Judicial Commission to the Prime Minister for onward transmission to the President for necessary orders. If the Parliamentary Committee disagrees or rejects any recommendations of Judicial Commission, it shall give specific reasons and the Prime Minister shall send copy of the said opinion of the Committee to the Chief Justice of Pakistan and the same shall be justiciable by the Supreme Court.

16. All cases of fresh appointments of Judges of the Supreme Court, of the Federal Shariat Court, of the High Courts and of Additional Judges of the latter Courts shall be processed forthwith under Article 175A.

17. To enable the Parliament to proceed and re-examine the matter in terms of the observations made above, these petitions are adjourned to a date in the last week of January, 2011.

18. The Registrar of this Court shall send a copy of this order to the Chairman Senate, the Speaker of the National Assembly, Mian Raza Rabbani, Advisor to the Prime Minister/Chairman of the Special Committee of the Parliament for Constitutional Reforms and to the Secretary Law & Justice, Human Rights Division of Pakistan.

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.

JAVED IQBAL, J.

MIAN SHAKIRULLAH JAN, J.

TASSADUQ HUSSAIN JILLANI, J.

NASIR-UL-MULK, J.

RAJA FAYYAZ AHMED, J.

MUHAMMAD SAIR ALI, J.

MAHMOOD AKHTAR SHAHID SIDDIQUI, J.

JAWWAD S. KHAWAJA, J.

ANWAR ZAHEER JAMALI, J.

KHILJI ARIF HUSSAIN, J.

RAHMAT HUSSAIN JAFFERI, J.

TARIQ PARVEZ, J.

MIAN SAQIB NISAR, J.

ASIF SAEED KHAN KHOSA, J.

GHULAM RABBANI, J.

KHALIL-UR-REHMAN RAMDAY, J.

Announced in Open Court on
the of October, 2010.

CHIEF JUSTICE

ISLAMABAD
Khurram Anees P.S./*

APPROVED FOR REPORTING