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**THE CONSTITUTION (FIFTH AMENDMENT) ACT, 1976**  
**ACT NO. LXII OF 1976**

*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 may be called the Constitution(Fifth Amendment) Act, 1976.

(2) It shall come into force at once except section 8 and section 13 which come into force on the first day of December, 1976.

**2. Amendment of Article 101 of the Constitution.**-In the Constitution of Islamic Republic of Pakistan. hereinafter referred to as the Constitution in Article 101, in clause (2) for the full stop at the end a colon shall be substituted hereafter the following proviso and new clause shall be added, namely:-

"Provided that, after the holding of the first general election to the National Assembly, a person shall not be appointed to be the Governor of the Province of which he is a permanent resident.

(2A) Nothing contained n the proviso to clause (2) shall apply during the period that an Order under paragraph (c) of clause (2) of Article 232 or a Proclamation under Article 234 is in force."

**3. Amendment of Article 160 of the Constitution.**-In the Constitution in Article 160, in clause (3), for paragraph (ii) the following shall be substituted namely:-

"(ii) taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed;"

**4. Amendment of Article 175 of the Constitution.**-In the Constitution in Article 175, in clause (3), for the word "three" the shall be substituted.

**5. Amendment of Article 179 of the Constitution.**- In the Constitution Article 179 shall be re-numbered as clause (1) of that Article and after clause (1) re-numbered as a aforesaid, the following new clauses shall be added, namely:-

"(2) The Chief Justice of the Supreme Court, whether appointed before or after the commencement of the Constitution (Fifth Amendment) Act, 1976, shall unless he sooner attains the age of sixty-five years, hold office for a term of five 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-five years; or
- (b) to assume the office of the most senior of the other Judges of the Supreme Court and to continue to receive the same salary which he was receiving while holding the office of Chief Justice.

(3) When a Judge assumes the office of the most senior of the other Judges of the Supreme Court under clause (2), the Judge who was until then the most senior of the other judges shall rank next after him in order of seniority.

(4) 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.

5. The provision of clauses (2), (3) and (4) shall have effect notwithstanding anything contained in Article 275."

**6. Amendment of Article 180 of the Constitution.-** In the Constitution, in Article 180 for the word "the most senior of the other Judges of the Supreme Court" the words "one of the Judges of the Supreme Court who have not previously held the office of Chief Justice of Pakistan otherwise than under than Article" shall be substituted.

**7. Amendment of Article 187 of the Constitution.-** In the Constitution, in Article 187, in clause (1) for the word "The" the words, brackets, figures and comma "Subject to clause (2) of Article 175, the" shall be substituted.

**8. Amendment of Article 192 of the Constitution.-** In the Constitution, in Article 192, for clauses (2), (3) and (4) the following shall be substituted namely:-

- "(2) The Sind and Baluchistan High Court shall cease to function as a common High Court for the Provinces of Baluchistan and Sind.
- (3) The President shall, by Order, establish a High Court for each of the Provinces of Baluchistan and Sind and may make such provision in the Order for the principal seats of the two High Courts, transfer of the Judges of the common High Court, transfer of cases pending in the common High Courts and generally, for matters consequential or the two High Courts and, generally, for matters consequential or ancillary to the common High Court ceasing to function and the establishment of the two High Courts as he may deem fit."

**9. Amendment of Article 195 of the Constitution.**- In the Constitution Article 195 shall be re-numbered as clause (1) of that Article and , after clause (1) re-numbered as aforesaid, the following new clauses shall be added namely:-

"(2) The Chief Justice of a High Court, whether appointed before or after the commencement of the Constitution (Fifth Amendment) Act, 1976, shall, unless he sooner attains the age of sixty two years, hold office for a term of four 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 two years; or
- (b) to assume the office of the most senior of the other Judges of the High Court and to continue to receive the same salary which he was receiving while holding the office of Chief Justice.

(3) when a Judge assumes the office of the most senior of the other Judges of a High Court under clause (2), the Judge who was until then the most senior of the other Judges shall rank next after him in order of seniority.

(4) 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.

(5) The provisions of clauses (2), (3) and (4) shall have effect notwithstanding anything contained in Article 275."

**10. Amendment of Article 196 of the Constitution.**- In the Constitution, in Article 196, for the words "the most senior of the other judges of the High Court" the words "one of the Judges of the High Court who have not previously held the office of Chief Justice of the High Court otherwise than under this Article" shall be substituted.

**11. Amendment of Article 199 of the Constitution.**-In the Constitution, in Article 199, for clause (3A) the following shall be substituted, namely:-

"(3A) A High Court shall not make under this Article-

- (a) an order prohibiting the making, or suspending the operation, of an order for the detention of any person under any law providing for preventive detention;
- (b) an order for the release on bail of any person detained under any law providing for preventive detention;
- (c) an order for the release on bail, or an order suspending the operation of an order for the custody, of any person against whom a report or complaint has been made before any court or tribunal, or against whom a case has been

registered at police station, in respect of an offence, or who has been convicted by any court or tribunal;

- (d) an order prohibiting the registration of a case at a police station, or the making of a report or complaint before any court tribunal, in respect of an offence; or
- (e) any other interim order in respect of any person referred to any of the preceding paragraphs.

(3B) Every such order as is referred to in clause (3A) made at any time after the commencement of the Constitution (Fourth Amendment Act, 1975, shall cease to have effect and all applications for making of any such order that may be pending before any High Court shall abate.

(3C) The provisions of clauses (3A) and (3B) shall also apply to the disposal of an application in a petition for leave to appeal, or in appeal, from an order such as is referred to in the said clause that may be pending before the Supreme Court immediately before the commencement of the Constitution (Fifth Amendment) Act, 1976

**12. Amendment of Article 200 of the Constitution.**- In the Constitution in Article 200, in clause (1) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

"Provided that such consent, or consultation with the Chief Justice the High Courts, shall not be necessary if such transfer is for a period not exceeding one year at a time.

Explanation,-In this Article, "Judge" does not include a Chief Justice.

**13. Amendment of Article 204 of the Constitution.**-In the Constitution Article 204, for clauses (2) and (3) the following shall be substituted, namely:-

"(2) A Court shall have the power to punish a person for contempt court in accordance with law."

**14. Amendment of Article 206 of the Constitution.**-In the Constitution Article 206 shall be re-numbered as clause (1) of that Article and, after (1) re-numbered as aforesaid, the following new clause shall be added namely:-

"(2) A Judge of a High Court who does not accept appointment as Judge of the Supreme Court shall be deemed to have retired from his office and, on such retirement, shall be entitled to receive a pension calculated on the basis of the length of his service as Judge and total service, if any, in the service of Pakistan."

**15. Amendment of Article 212 of the Constitution.**- In the Constitution, Article 212, in clause (2), after the word "Tribunal" occurring for the third time, the commas and words "other than an

appeal pending before the Supreme Court," shall be inserted and shall be deemed always to have been so inserted.

**16. Amendment of Article 260 of the Constitution.-** In the Constitution Article 260, in the definition of "service of Pakistan" after the word and comma "Attorney-General", the word and comma "Advocate-General," shall be inserted.

**17 Amendment of Article 280 of the Constitution.-**In the Constitution of Article 280, after the word "made" at the end, the words and figure" and be called in question in any court on the ground of inconsistency with the rights conferred by Chapter I of Part II" shall be added and shall be aimed always to have been so added.

**18. Amendment of the First Schedule to the Constitution.-**In the Constitution, in the First Schedule in Part I,-

- (a) under the sub-heading II REGULATIONS' after entry 6, the following new entry shall be added, namely:-
  - 7. The Settlement of Disputes of Immovable Property (Chitral) (Amendment) Regulation, 1976 (XII of 1976).
- (b) under the sub-heading 'III FEDERAL ACTS' after entry 2, the following new entries shall be added, namely:-
  - 3. The Flour Milling Control and Development Act, 1976 (LVII of 1976).
  - 4. The Rice Milling Control and Development Act, 1976 (LVII of 1976)
  - 5. The Cotton Ginning Control and Development Act, 1976 (LVII of 1976).
- (c) after the sub-heading 'PROVINCIAL ACTS' and the entries relating thereto, the following new sub-heading and entry shall be added, namely:-

## **VI. PROVINCIAL ORDINANCE**

*'The Land Reforms (Pat Feedet Canal) (Amendment) Ordinance, 1976.'*

**19. Amendment of the Fourth Schedule to the Constitution.-**In the Constitution, in the Fourth Schedule,-

- (a) in the Federal Legislative List,-
  - (i) in Part I, for entry 49 the following shall be substituted, namely:-

"49. Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed."; and
  - (ii) in Part II, in entry 3, for the words "West Pakistan Water and Power Development Authority and the West Pakistan Industrial Development Corporation" the words "Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation." shall be substituted; and

(b) in the Concurrent Legislative List, for entry 41 the following shall be substituted, namely:-

"41. Production, censorship and exhibition of cinematograph films."