

Establishment of the Federal Court
Report No. 68

SUBJECT: **Establishment of the Federal Court**

Secretary Law, Justice and Human Rights, Islamabad *vide* his letter No. 1(46)/2004-D&L dated the 14th January 2005, made a reference to the Chief Justice of Pakistan forwarding therewith a Bill, namely, the Federal Court Bill 2004, seeking comments and suggestions thereon. The Chief Justice of Pakistan convened a meeting of the Law and Justice Commission of Pakistan on 12-2-2005 to consider the following proposed Bill regarding establishment of the Federal Court to adjudicate commercial and financial matters.

A

BILL

to establish a Federal Court to provide expeditious and speedy justice

WHEREAS in fulfillment of constitutional obligations as provided in Articles 3 and 37 read with Article 175 of the Constitution, it is expedient to provide for a forum for expeditious and speedy justice;

WHEREAS commercial and financial matters including appeals and references require special expertise for their expeditious disposal;

WHEREAS it is expedient to provide a forum to try such cases and hear appeals and references;

WHEREAS the establishment of the proposed Court would facilitate investment in the country and provide speedy justice;

AND WHEREAS it is in the public interest to establish such Court for the aforesaid and the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title, extent and commencement.**—(1) This Act may be called the Federal Court Act, 2004.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, determine.

2. **Definition.**—In this Act, unless the context otherwise requires,—

(a) “Chief Judge” means the Chief Judge of the Court;

(b) “Constitution” means the Constitution of the Islamic Republic of Pakistan;

- (c) “Court” means the Federal Court constituted under section 3;
- (d) “Judge” means the Judge of the Court and includes Chief Judge;
- (e) “President” means the President of the Islamic Republic of Pakistan; and
- (f) “Schedule” means Schedule to this Act.

3. **Establishment of Federal Court.**—(1) As soon as may be possible, after the commencement of this Act, the Federal Government shall establish a Court to be called the Federal Court.

(2) The principal seat of the Court shall be at Islamabad and the Federal Government may establish benches at such other places including the provincial headquarters as it may deem fit.

4. **Composition of Court.**—The Court shall consist of a Chief Judge and so many other Judges as may be determined by the President.

5. **Appointment of Chief Judge and other Judges.**—(1) The Chief Judge and other Judges shall be appointed by the President after inviting a panel from the Chief Justice of Pakistan and professional bodies including public organization as the Federal Government may deem fit.

(2) The Chief Judge and any other Judge shall be a person,—

- (a) who is eligible to be a Judge of the High Court; or
- (b) serving in a public organization in BPS 21 or above or equivalent and has suitable professional qualification and experience in commercial, economic or financial matters for a period of not less than fifteen years; or
- (c) who is a retired Judge of a High Court or the Supreme Court or a retired Member or Judge of a Tribunal or a Court established under a federal law and has the experience in commercial, economic or financial matters.

(3) The President may, in his discretion, appoint any Judge as an ad hoc Judge for a period of one year.

6. **Oath of Office.**—Before entering upon office, the Chief Judge shall make before the President of Pakistan, and the other Judges shall make before the Chief Judge, oath in the form specified in Schedule- I.

7. **Retiring age.**—A Judge shall hold office until he attains the age of sixty-eight years, unless he sooner resigns or is removed from the office in accordance with the provisions of section 18.

8. **Acting Chief Judge.**— At any time when office of Chief Judge is vacant or he is absent or unable to perform the functions of his office the President may appoint an Acting Chief Judge from amongst the Judges.

9. **Original jurisdiction of the Court.**— The Court shall have exclusive original Jurisdiction under the laws specified in Schedule II in the manner provided in such laws.

10. **Appellate jurisdiction.**—(1) The Court shall have exclusive jurisdiction to hear and determine appeals and references from Judgments or orders passed by any court or tribunal constituted under the laws specified in Schedule III.

(2) An appeal shall lie to a Bench of two or more Judges of the Court from a decree passed or final order made by a Single Judge of the Court in the exercise of its original jurisdiction.

11. **Appeal.**— Except where an appeal has been provided under the laws specified in Schedule II or Schedule III, an appeal to the Supreme Court from a judgment, decree or order of the Court shall lie if the Supreme Court grants leave to appeal.

12. **Execution.**—The Court shall have the power to execute its orders as provided in the law under which a judgment, decree or order was passed and where no such procedure has been provided under such law the Code of Civil Procedure, 1908 (Act V of 1908) shall mutatis mutandis apply.

13. **Federal and Provincial Agencies to act in aid of Court.**— All the Federal and Provincial Agencies shall act in aid of the Court.

14. **Decision of Court binding on courts and tribunals.**—Subject to Article 189 of the Constitution, any decision of the Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law be binding on courts and tribunals the orders and decisions whereof are appeal-able, or reference against which lie, to the Court.

15. **Remuneration etc., of Judges.**—The salary, privileges and other perquisites of Chief Judge and other judges shall be as are admissible from time to time to the Chief Justice and Judges of the High Court, respectively.

16. **Contempt of Court.**—The Court shall have the power to punish for its contempt under the law of contempt for the time being in force.

17. **Divisions and Benches of the Court.**—(1) There shall be constituted as many Divisions of the Court as may be determined by the Chief Judge.

(2) There shall be one or more Benches including appellate Bench or Benches consisting of one or more Judges as may be constituted by the Chief Judge for the purposes of this Act.

(3) The Court shall decide a case, appeal or a reference within a period of ninety days.

18. Resignation and removal of Judges.—(1) A Judge may resign his office by writing under this hand addressed to the President.

(2) A Judge may be removed from office by the President on the ground of misconduct or of being incapable of properly performing the duties of his office by reason of physical or mental incapacity:

Provided that a Judge shall not be removed from his office except in the manner as provided under Article 209 of the Constitution.

(3) A Judge removed from office on the ground of misconduct shall not be eligible to hold any office of profit in the service of Pakistan or for election as a member of Parliament or a Provincial Assembly or any local body.

19. Power of Court to make rules.—The Court may make rules to regulates its practice and procedure.

(2) In particular, the rules may provide—

(a) for case management, and

(b) for resolution of disputes by alternative dispute resolution methods such as conciliation and mediation.

20. Power of the Federal Government to make rules.—Subject to this Act and except as provided in section 19, the Federal Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

21. Transfer of cases.—(1) All matters under the laws specified in Schedule II pending in any High Court shall stand transferred to the Court as and from the date as may be notified by the Federal Government and the Court may proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to re-hear any witness who has recorded his evidence and may act on the evidence already recorded.

(2) All appeals and references under the laws specified in Schedule III pending before any High Court shall stand transferred to the Court for adjudication as and from the date as may be notified by the Federal Government.

22. Bar of jurisdiction.— No court other than a Court established under section 3 shall have or exercise jurisdiction with respect to any matter to which the jurisdiction of a Court extends under this Act.

23. **Amendment of laws.**—The laws specified in Schedule IV are amended to the extend specified therein.

24. **Amendment of Schedules.**—The Federal Government may, by notification in the official Gazette, amend a Schedule so as to add any entry thereto or modify or omit any entry therein.

25. **Immunity.**—No suit, prosecution or other legal proceeding shall lie against the Judge, or any person performing functions in connection with this Act for anything which is in good faith done or intended to be done under this Act.

26. **Supreme Court to superintend the Court.**—The Supreme Court shall supervise and control the Federal Court.

27. **Annual Report.**—The Court shall publish annual reports in respect of its performance for the information of general public.

28. **Service of process.**—(1) For the purposes of this Act, a written process or communication from the Court shall be deemed to have been duly served upon a respondent or any other person by, inter alia, any one or more of the following methods, namely:—

- (i) by service by any process-server of the Court or any other person authorized by the Court in this behalf.
- (ii) by publishing the process or document through any newspaper having wide circulation; and
- (iii) by any other device including telegram, urgent mail service, phonogram, registered post, acknowledgement due, fax message or e-mail.

(2) In case of denial of service, the burden of proof shall be upon the respondent.

SCHEDULE I

OATH OF THE CHIEF JUSTICE OR JUDGE OF THE FEDERAL COURT

(See section 6)

(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 Judge (or a Judge) of the Federal Court, I will discharge my duties, and perform my functions, honestly, to the best of my ability, and faithfully, in accordance with law:

That I will abide by the code of conduct issued by the President:

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

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

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

SCHEDULE II

ORIGINAL JURISDICTION OF FEDERAL COURT

(See section 9)

1. The Chartered Accountant Ordinance, 1961 (X of 1961)
2. The Companies Ordinance, 1984 (XLVII of 1984)
3. The Insurance Ordinance, 2000 (XXXIX of 2000)
4. The Privatization Commission Ordinance, 2000 (LII of 2000)
5. The Non-performing Assets and Rehabilitation of Industrial Undertakings Legal proceedings Ordinance, 2000 (LVIII of 2000).
6. The Patents Ordinance, 2000 (LXI of 2000)
7. The Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001)

SCHEDULE III

LIST OF LAWS UNDER WHICH APPEALS AND REFERENCES SHALL LIE TO THE FEDERAL COURT

(See section 10)

1. The Works of Defense Act, 1903 (VII of 1903).
2. The Charitable and Religious Trusts Act, 1920 (XIV of 1920)
3. The Cantonments (House Accommodation) Act, 1923 (VI of 1923)
4. The foreign exchange Regulation Act, 1947 (VII of 1947)
5. The Imports and Exports (Control) Act, 1950 (XXXIX of 1950)
6. The House Building Finance Corporation Act, 1952 (XVIII of 1952)
7. The Chartered Accountants Ordinance, 1961 (X of 1961)
8. The Copy Rights Ordinance, 1962 (XXXIV of 1962)
9. The Customs Act, 1969 (IV of 1969)
10. The Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970)
11. The Drugs Act, 1976 (XXXI of 1976)
12. The Emigration Ordinance, 1979 (XVIII of 1979)
13. The Modraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980)
14. The Companies Ordinance, 1984 (XLVII of 1984)
15. The Sales Tax Act, 1990
16. The Islamabad Consumers Protection Act, 1995 (III of 1995)
17. The Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996)
18. The Pakistan Environmental Protection Act, 1997 (XXXIV of 1997)
19. The Insurance Ordinance, 2000 (XXXIX of 2000)
20. The Registered Designs Ordinance, 2000 (XLV of 2000)
21. The Registered Layout-Designs of Integrated Circuits Ordinance, 2000 (XLIX of 2000)
22. The Privatization Commission Ordinance, 2000 (LII of 2000)
23. The Non-performing Assets and Rehabilitation of Industrial Undertakings (Legal Proceedings) Ordinance, 2000 (LVIII of 2000)
24. The Patents Ordinance, 2000 (LXI of 2000)
25. The Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001)
26. The Income Tax Ordinance, 2001 (XLIX of 2001)
27. The Oil and Gas Regulatory Authority Ordinance, 2002 (XVII of 2002)
28. The Electronic Transitions Ordinance, 2002 (LI of 2002)

29. The Industrial Relations Ordinance, 2002 (XCI of 2002)

SCHEDULE IV
LAWS TO BE AMENDED
(See section 23)

1. **Amendment of Act VII of 1903.**— In the Works of Defence Act, 1903 (VII of 1903), in section 43, for the words “High Court” the words “Federal Court” shall be substituted.
2. **Amendment of Act XIV of 1920.**—In the Charitable and Religious Trusts Act, 1920 (XIV of 1920),—
 - (a) in section 2, for the words and brackets “[Provincial Government] and includes High Court in the exercise of its ordinary original civil jurisdiction” the words “Federal Court” shall be substituted; and
 - (b) in section 12, for the words “High Court” the words “Federal Court” shall be substituted.
3. **Amendment of Act VI of 1923.**—In the Cantonments (House Accommodation) Act, 1923 (VI of 1923), in section 29,—
 - (a) in marginal note for the words “High Court” the words “Federal Court” shall be substituted; and
 - (b) in sub-section (1), for the words “High Court” the words “Federal Court” shall be substituted.
4. **Amendment of Act VII of 1947.**—In the Foreign Exchange Regulation Act, 1947 (VII of 1947), in section 23A in sub-section (6), for the words “High Court” the words “Federal Court” shall be substituted.

5. **Amendment of Act XXXIX of 1950.**—In the Imports and Exports (Control) Act, 1950 (XXXIX of 1950), in section 5A, in sub-section (8), for the words “High Court” the words “Federal Court” shall be substituted.

6. **Amendment of Act XVIII of 1952.**—In the House Building Finance Corporation Act, 1952 (XVIII of 1952), in section 30,—

- (a) in sub-section (8), for the words “High Court” occurring twice, the words “Federal Court” shall be substituted;
- (b) in sub-section (10), for the words “High Court” occurring twice, the words “Federal Court” shall be substituted; and
- (c) in sub-section (10), in the Explanation, for the words “High Court” the words “Federal Court” shall be substituted.

7. **Amendment of Ordinance X of 1961.**—In the Chartered Accountants Ordinance, 1961 (X of 1961),—

- (a) in section 20D,—
 - (i) in sub-section (1), in proviso, for the words “High Court” the words “Federal Court” shall be substituted; and
 - (ii) in sub-section (2) for the words “High Court” the words “Federal Court” shall be substituted;
- (b) in section 20F, in marginal note and in section 20F, for the words “High Court” the words “Federal Court” shall be substituted;
- (c) in section 20K,—
 - (i) in sub-section (1) for the words “High Court” the words “Federal Court” shall be substituted; and
 - (ii) in sub-section (2), and in clause (c) of sub-section (2), for the words “High Court” the words “Federal Court” shall be substituted; and
- (d) in Schedule II,—
 - (i) in Part 1, in the heading, for the words “High Court” the words “Federal Court” shall be substituted; and
 - (ii) in Part II, in the heading, for the words “High Court” the words “Federal Court” shall be substituted.

8. **Amendment of Ordinance XXXIV of 1962.**—In the Copy Rights Ordinance, 1962 (XXXIV of 1962),—

- (a) in section 77, in sub-section (1), for the words “High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally words for gain” the words “Federal Court” shall be substituted; and
- (b) in section 79, for the words “High Court”, occurring twice, the words “Federal Court” shall be substituted.

9. **Amendment of Act IV of 1969.**— In the Customs Act, 1969 (IV of 1969),—

- (a) in section 196, in marginal note and in sub-sections (1), (4), (5), (7) and (8) for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted; and
- (b) in section 196-J, clause (b) shall be omitted.

10. **Amendment of Ordinance V of 1970.**—In the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970), in section 20, in marginal note and in section 20 for the words “High Court” the words “Federal Commercial Court” shall be substituted.

11. **Amendment of Act XXXI 1976.**—In the Drugs Act, 1976 (XXXI of 1976) in section 31, in sub-section (7), for the words “High Court” the words “Federal Court” shall be substituted.

12. **Amendment of Ordinance XVIII of 1979.**—In the Emigration Ordinance, 1979 (XVIII of 1979), in section 24 A,—

- (a) in sub-section (1), for the words “High Court” the words “Federal Court” shall be substituted; and
- (b) in sub-section (2), in clause (b), for the words “High Court” the words “Federal Court” shall be substituted.

13. **Amendment of Ordinance XXXI of 1980.**—In the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980), in section 30,—

- (a) in sub-section (1), for the words “High Court” the words “Federal Court” shall be substituted; and
- (b) in sub-section (2), the words “shall be heard by a Bench of two Judges and” shall be omitted.

14. **Amendment of Ordinance XLVII of 1984.**—In the Companies Ordinance, 1984 (XLVII of 1984),—

- (a) in section 2, in clause (26), in sub-clause (a), for the words “High Court”, occurring twice, the words “Federal Court” shall be substituted;
- (b) in section 7, for the words “High Court”, wherever occurring, the words “benches of Federal Court” shall be substituted;
- (c) for section 8, the following shall be substituted, namely:—

“The Chief Judge, may constitute one or more company benches to exercise the jurisdiction vested in the Federal Court under section 7”;
- (d) in section 143, in clause (a), for the words and comma “if the registered office is situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court” the words and comma “in a place where English or Urdu language is not commonly used,” shall be substituted;
- (e) in section 152, in sub-section (4),—
 - (i) in clause (a), the words and comma “subordinate to a High Court,” shall be omitted and for the words “High Court”, occurring for the second time, the words “Federal Court” shall be substituted; and
 - (ii) in clause (b), for the words “High Court” the words “Federal Court” shall be substituted;
- (f) in section 282 M, in sub-section (2), for the words “High Court” the words “Federal Court” shall be substituted;
- (g) for section 307, the following shall be substituted, namely:—

“Where the Federal Court makes an order for winding up a company under this Ordinance, it may, if it thinks fit, direct all subsequent proceedings to be had in a civil court empowered by the Federal Government under sub-section (1) of section 7 and thereupon, for the purposes of the winding up of the company, such civil court shall be deemed to be the Court within the meaning of the Ordinance and shall have all the powers and jurisdiction of the Court thereunder.”;
- (h) in section 308, for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted;
- (i) in section 391, in sub-section (3), in clause (a) for the words and comma “a High Court, to such High Court” the words “Federal Court, to such Federal Court” shall be substituted;

- (j) in section 438, in sub-section (1),—
 - (i) for the words “High Court”, occurring twice, the words “Federal Court” shall be substituted; and
 - (ii) for the words “a High Court and in the Courts subordinate thereto” the words “the Federal Court and in the civil courts” shall be substituted;
- (k) in section 481, for the words “a High Court” the words “Federal Court” shall be substituted; and
- (l) in section 485,—
 - (i) in sub-section (1), for the words and comma “High Court within whose jurisdiction the order, directive or judgment is passed” the words “Federal Court” shall be substituted; and
 - (ii) in sub-section (2), for the words “High Court” the words “Federal Court” shall be substituted.

15. **Amendment of the Sales Tax Act, 1990.**—In the Sales Tax Act, 1990, in section 47, in the marginal note and in sub-section (1), (4), (5) (6), (6A) and (7), for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted.

16. **Amendment of Act III of 1995.**—In the Islamabad Consumers Protection Act, 1995 (III of 1995), in section 10, for the words, commas and figure “High Court and the provisions of the Code of Criminal Procedure, 1898 in respect of appeals to the High Court shall, *mutatis mutandis*, apply” the words “Federal Court” shall be substituted.

17. **Amendment of Act XVII of 1996.**—In the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996), in section 7, in sub-section (1), for the words “High Court”, occurring twice, the words “Federal Court” shall be substituted.

18. **Amendment of Act XXIV of 1997.**—In the Pakistan Environmental Protection Act, 1997 (XXXIV of 1997),—

- (a) in section 20, in sub-section (2), for the words “Justice of the High Court” the words “Judge of the Federal Court” shall be substituted;
- (b) in section 23, in sub-section (1), for the words “High Court” the words “Federal Court” shall be substituted; and
- (c) In section 24, in sub-section (1), for the words “High Court” the words “Federal Court” shall be substituted.

19. **Amendment of Ordinance XXXIX of 2000.**—In the Insurance Ordinance, 2000 (XXXIX of 2000),—

- (a) in section 2, in clause (xvi), the words and semi colon “and includes a High Court in exercise of its ordinary civil jurisdiction; and” shall be omitted;
- (b) in section 124,—
 - (i) in sub-section (2) for the word “High Court” the words “Federal Court” shall be substituted; and
 - (ii) sub-section (3) shall be omitted; and
- (c) in section 160, in sub-section (14), for the words “High Court exercising territorial jurisdiction over it” the words “Federal Court” shall be substituted.

20. Amendment of Ordinance XLV of 2000.—In the Registered Designs Ordinance, 2000 (XLV of 2000),—

- (a) in section (5), in sub-section (6), for the words “High Court” the words “Federal Court” shall be substituted;
- (b) in section 10,—
 - (i) in sub-section (1) for the words “High Court” the words “Federal Court” shall be substituted; and
 - (ii) in sub-section (2), for the words “High Court”, occurring thrice, the words “Federal Court” shall be substituted;
- (c) in section 16, in sub-section (1), (2), (3), and (4), for the words “High Court” the words “Federal Court” shall be substituted;
- (d) in section 21, in sub-section (2) and in proviso to sub-section (2) for the words “High Court”, the words “Federal Court” shall be substituted; and
- (e) in section 24, in sub-section (2), for the words “High Court” the words “Federal Court” shall be substituted.

21. Amendment of Ordinance XLIX of 2000.—In the Registered Layout-Designs of Integrated Circuits Ordinance, 2000 (XLIX of 2000), in section 19, in sub-section (1), (2) and (3), for the words “High Court” shall be substituted.

22. Amendment of Ordinance LII of 2000.—In the Privatization Commission Ordinance, 2000 (LII of 2000)-

- (a) in section 28, in marginal note and in section 28, for the words “High Court” the words “Federal Court” shall be substituted;

- (b) in section 29,—
 - (i) in marginal note for the words “High Court”, the words “Federal Court” shall be substituted;
 - (ii) in sub-section (1) and in proviso to clause (a) of sub-section (1), for the words “High Court” the words “Federal Court” shall be substituted; and
 - (iii) in sub-section (2), for the words “High Court” the words “Federal Court” shall be substituted;
- (c) in section 30, in marginal note and in section 30, for the words “High Court” the words “Federal Court” shall be substituted;
- (d) in section 32, in sub-section (1) and (6), for the words “High Court” the words “Federal Court” shall be substituted; and
- (e) in section 33,—
 - (i) in sub-section (1) for the words “High Court”, occurring twice the words “Federal Court” shall be substituted; and
 - (ii) in sub-sections (2) and (3), for the words “High Court” the words “Federal Court” shall be substituted.

23. Amendment of Ordinance LVIII of 2000.—In the Non-performing Assets and Rehabilitation of Industrial Undertakings (Legal Proceedings) Ordinance, 2000 (LVIII of 2000),—

- (a) in section 4, in sub-section (2),—
 - (i) the words, commas, figures and brackets “the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997), the Companies Ordinance, 1984 (XLVII of 1984),” shall be omitted; and
 - (ii) “Explanation” shall be omitted;
- (b) in section 6, after sub-section (6), the following new sub-section shall be added, namely:—
 - “(7) The provisions of sub-sections (5) and (6) shall mutatis mutandis apply to the Federal Court Act, 2005 (of 2005)”;

- (c) in section (8),
 - (i) in sub-section (2), the words, commas, figures and brackets “the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997), the Companies Ordinance, 1984 (XLVII of 1984), or” shall be omitted;
 - (ii) in sub-section (3), the words, brackets, commas and figures “the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997), or any other” shall be omitted; and
 - (iii) in sub-section (4), the words, commas, figures and brackets “the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (XV of 1997) or the Companies Ordinance, 1984 (XLVII of 1984) or” shall be omitted;
- (d) in section 9, in sub-section (1),—
 - (i) the words, commas, brackets and figures “the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 and the Companies Ordinance, 1984,” shall be omitted, and
 - (ii) the words, figures and comas “section 305 of the Companies Ordinance, 1984 for winding up,” shall be omitted; and
- (f) in section 11,—
 - (i) in sub-section (1), the words, figure and comma “and in respect of the new cases instituted hereunder under the Companies Ordinance 1984,” shall be omitted;
 - (ii) in sub-section (3), the words, commas and figure, “including the Companies Ordinance, 1984” shall be omitted; and
 - (iii) after sub-section (3), the following new sub-section shall be added, namely:—

“(4) The provisions of section 11 shall mutatis mutandis apply to the Federal Court Act, 2005 (of 2005)

24. Amendment of Ordinance LXI of 2000.—In the Patents Ordinance, 2000 (LXI of 2000),—

- (a) in section 19, in sub-sections (1) and (2), for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted;

- (b) in section 33, in clause (b), for the words “High Court” the words “Federal Court” shall be substituted;
- (c) in section 43, in sub-sections (1) and (2), for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted;
- (d) in section 44, in sub-sections (2), for the words “High Court” the words “Federal Court” shall be substituted;
- (e) in section 46, in marginal note and in sub-sections (1) and (2), for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted;
- (f) in section 56, in marginal note and in sub-sections (1), (2), (3), and (4), for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted;
- (g) in section 58, in sub-section (12), for the words “High Court” the words “Federal Court” shall be substituted;
- (h) in section 60, in sub-section (1), in proviso, for the words “High Court” the words “Federal Court” shall be substituted;
- (i) in section 69, in sub-sections (3) and (4), for the words “High Court” the words “Federal Court” shall be substituted;
- (j) in section 70, in sub-sections (1) and (2) and in proviso to sub-section (2), for the words “High Court” wherever occurring, the words “Federal Court” shall be substituted;
- (k) in section 98, in marginal note and in sub-section (1), for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted ;
and
- (l) in section 104, in marginal note and in section 104, for the words “High Court”, occurring twice, the words “Federal Court” shall be substituted.

25. Amendment of Ordinance XLVI of 2001.—In the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001),—

- (a) in section 2, in clause (b), in sub-clause (ii), for the words “High Court” the words “Federal Court” shall be substituted;
- (b) in section 11, in sub-section (2), in the second proviso, for the words “High Court” the words “Federal Court” shall be substituted;

- (c) in section 15, in sub-section (12), for the words “High Court” the words “Federal Court” shall be substituted;
- (d) in section 19, in sub-section (1), in the proviso, for the words “High Court” the words “Federal Court” shall be substituted; and
- (e) in section 22, in sub-section (1), (3) and (4), for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted.

26. **Amendment of Ordinance XLIX of 2001.**—In the Income Tax Ordinance, 2001 (XLIX of 2001), in section 133,—

- (a) in marginal note and sub-sections (1), (3), (4), (6), (7), (9), (10), (11), (12), (13) and (14), for the words “High Court”, wherever occurring, the words “Federal Court” shall be substituted; and
- (b) in section 134, in sub-sections (1), (2), (3) and (4), for the words “High Court” the words “Federal Court” shall be substituted;

27. **Amendment of Ordinance XVII of 2002.**—In the Oil and Gas Regulatory Authority Ordinance, 2002 (XVII of 2002), in section 12,—

- (a) in sub-sections (2), (3) and (4) for the words “High Court” the words “Federal Court” shall be substituted;
- (b) in sub-section (5) for the words “High Court” occurring twice, the words “Federal Court” shall be substituted; and
- (c) in sub-section (5), the words and comma “within six months from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded” shall be omitted.

28. **Amendment of Ordinance LI of 2002.**—In the Electronic Transactions Ordinance, 2002 (LI of 2002), in section 2, in sub-section (1), in clause (e), in sub-clause (iv), after the words “Supreme Court”, occurring twice, the comma and the words “Federal Court” shall be inserted.

29. **Amendment of Ordinance XCI of 2002.**—In the Industrial Relations Ordinance, 2002 (XCI of 2002),—

- (a) in section 13, in clause (a), for the words “High Court” the words “Federal Court” shall be substituted;
- (b) in section 37, in sub-section (2), for the words “High Court” the words “Federal Court” shall be substituted;

- (c) in section 40, in sub-section (1), in clause (b), for the words “High Court” the words “Federal Court” shall be substituted;
- (d) in section 46, in sub-section (6), for the words “High Court” the words “Federal Court” shall be substituted;
- (e) in section 47, in sub-section (3), for the words “High Court” the words “Federal Court” shall be substituted;
- (f) in section 48, in sub-section (6), for the words “High Court” the words “Federal Court” shall be substituted;
- (g) in section 59, in sub-section (1), for the words “High Court” the words “Federal Court” shall be substituted;
- (h) in section 60, in sub-sections (3), (4) and (5), for the words “High Court” the words “Federal Court” shall be substituted;
- (i) in section 61, in sub-section (1) and (2), for the words “High Court” the words “Federal Court” shall be substituted;
- (j) in section 62, in sub-section (1) and (2), for the words “High Court” the words “Federal Court” shall be substituted;
- (k) in section 75, for the words “High Court” the words “Federal Court” shall be substituted;

STATEMENT OF OBJECTS AND REASONS

There are various Federal Statutes under which either the High Court has original Jurisdiction or the appeals and reference lie to it. A large number of such cases, appeals and references require expeditious disposal. It is, therefore, expedient to establish a forum to hear such cases, appeals and references to reduce the pendency and to provide quick relief and speedy justice. The Federal Court would not only facilitate the expeditious disposal of commercial and financial matter, it would also satisfy concerns of WTO and facilitate local and foreign investments in the country by providing speedy and expeditious forum with exclusive jurisdiction.

2. The Bill is designed to achieve the aforesaid objects.

MINISTER-IN-CHARGE

Commission’s deliberations

The Federal Court Bill, 2005 was considered by the Law and Justice Commission of Pakistan in its meeting held on 12-2-2005. The Chairman appreciated the realization by

the Federal Government of its obligations under Articles 3 and 37 read with Article 175 of the Constitution and its concern and anxiety to provide expeditious and speedy justice in commercial and financial matters. He remarked:

- This meeting has been convened to consider an important reference, received from the Federal Government i.e. the draft Federal Court Bill 2005. The draft Bill will affect the judicial system of the country and the litigant public in a significant way. The justice system is under severe criticism on account of inordinate delays and backlogs. The people are voicing the grievance that they are not getting justice. Justice being administered is so much delayed that the very purpose of the litigation is frustrated. There are many factors responsible for this delay – the lawyers and maybe some shortcomings in the system, but the responsibility on judges is greater than others because they are answerable to none else other than their own conscience. So, we are supposed to adopt methods to see that justice is done at proper time so that the parties, who come to the court for resolution of their disputes, should get justice within a reasonable time. It is no justice if a matter, which ought to be decided in a couple of months, is decided in years, or a matter, which ought to be decided in a year or so, is decided in decades;
- Major item for today's discussion is establishment of Federal Court. The purpose of establishing this court is stated to be that the litigation has increased, the cases are not being decided within proper time and the balloon of backlog is swelling. It is feared that if at this stage, steps are not taken to control the litigation, a time is bound to come when the litigant public will lose complete confidence in the present system and they may adopt other methods for getting justice. It is not proper for a civilized society that the people lose confidence in an established judicial system, which is working satisfactorily in other countries in similar circumstances;
- Whenever a new law is enacted, jurisdiction is conferred on the High Courts. One of the major functions of the High Courts is to supervise and control the lower courts, which are the backbone of the system and also deal with their own heavy backlogs. The entire system is over burdened. There is a dire need to increase the number of judges in the High Courts as well as the lower courts with requisite staff and infrastructure;
- Articles 175, 202 and 203 of the Constitution provide a framework how the judicial system in this country is to work. Article 175 says that every Province shall have a High Court and other courts established under law. The phrase 'other courts' is relatable to Article 203, which speaks about subordinate courts. Besides the courts referred to in Articles 175, 202 and 203, the Constitution also recognizes courts/tribunals under Articles 212 and 225, i.e. the Service Tribunals and the Election Tribunals). The establishment of Federal Court is to be examined on the touchstone of two judgments of the Supreme Court delivered in the cases of Mehram Ali and Sh. Liaquat Hussain;

- Appointment of Judges of Federal Court is to be made by the President by inviting panels from the Chief Justice of Pakistan and other professional bodies including public organizations. Retired Judges of the Supreme Court/High Courts and persons serving in public organizations in BPS-21 or above having suitable professional qualifications and experience are also eligible to be appointed as judges of the Federal Court. So, there is a clear departure from the well established procedure prescribed for the superior judiciary;
- Officers of B-21 or above have been made eligible for appointment. The qualifications, professional caliber and experience of a public servant notwithstanding, judicial process necessarily requires proper acumen in and knowledge of law and procedure, which is crucial for dispensation of justice in accordance with law. Legal profession is not that simple or easy. It takes lawyers decades to become eligible for appointment as judges of High Court. A person who has never dealt with legal matters, such as pleadings, evidence, civil and criminal procedures and so many other laws, can hardly be equipped with the knowledge and experience required for judgeship, howsoever qualified and expert he may be as a civil servant;
- Federal Court is to be supervised by the Supreme Court. It is not subordinate to the High Court. The High Court will have no jurisdiction over the matters enumerated in Schedule II (original jurisdiction) and Schedule III (appellate jurisdiction). After enactment of the bill, cases under those laws will stand transferred from High Courts to the Federal Court;
- The status of the Federal Court would be on a higher footing than the High Court, inasmuch as High Court Judges retire at the age of 62 while the judges of Federal Court will retire at 68, even beyond the age of retirement of Supreme Court Judges;
- It ousts the jurisdiction of the Supreme Court, inasmuch as petition for leave to appeal is provided only in those matters where there is no appeal under the proposed law. Thus, the decision of the Federal Court will be final in all respects;
- Article 199 of the Constitution has not been amended nor proposed to be amended. If Article 199 remains on the statute book, High Court certainly will have jurisdiction if any matter is brought before it within the scope of Article 199 despite ouster clause contained in the bill. The object will be frustrated. Subordinate legislation cannot override the supreme law;

- It opens the door for the provinces to create separate courts in respect of various laws;
- The lawyers have expressed reservations over the proposed bill and have termed the Federal Court parallel to the High Court;
- If the Federal Government wants to establish this Court, it may do so, but it must be subordinate to the High Court. The appellate forum should be the High Court. Appeal to the Supreme Court would mean that there would be thousands of appeals every year. Resultantly, the Supreme Court would be busy in deciding these matters instead of dealing with the constitutional matters, which is its primary function and responsibility. The Supreme Court is already facing great trouble after insertion of section 2A in the Service Tribunals Act. Result is that 40 % of Supreme Court's pendency comprises service matters involving promotions, demotions, seniority disputes, transfers, etc. There is a need to provide appellate forum in service matters. The issue has already been discussed with the concerned quarters;
- System of justice will definitely improve if the government takes steps in the light of various reports of the Law Commission prepared in the past and sent to the government from time to time. Short cuts provide no real solutions.

The Chairman concluded that in his view, rather than creating another hierarchy of courts, whose legal or constitutional foundations are in doubt, it will be better if remedy is found in the existing structure: perhaps by strengthening the High Courts and creating separate Benches or Divisions within each High Court, as is practiced in the U.K., for expeditious resolution of financial and commercial matters.

The Chairman thereafter invited the views of other members.

The Attorney General stated that commendable aspect of the bill is that the Law Ministry has placed it before the Commission and it is even soliciting opinion of the lawyers and the public at large on it. Thus, process of discussion, deliberation and sharing of views before a law is made, has been initiated. This is a first draft, which seeks consensus. The constitutionality of this law in its present form is highly suspect. The judgments cited by the Chairman are directly in the way of this particular law. Both cases were presided by a large number of Judges of the Supreme Court.

Besides, from the point of view of training, experience and education, although a lawyer can be appointed directly to the Supreme Court, but for the last 57 years, no lawyer has been appointed as such. High Courts are recruiting grounds for the Supreme Court. That is why High Court Judges, serving or retired, are brought to the Supreme Court. This law is not a short time measure. In 15 years all or most of the Judges now serving in the superior judiciary will stand retired. What training, experience or knowledge the Judges of the High Court will bring to the Supreme Court, if they have not dealt with those cases in High Court. This court creates a service disconnection between the High Court and the

Supreme Court. We will have suddenly Judges in the Supreme Court who would have never dealt with commercial and financial cases in the High Court.

The idea was not to emasculate the High Courts, but to expedite process of justice. Article 199 of the Constitution cannot be amended insofar as it compromises the independence of the judiciary. This law cannot take away the constitutional jurisdiction of the High Court. If it does not fit in the scheme of the Constitution, we, as members of the Law & Justice Commission, must find the solution to make the justice system more efficient and relevant to the present-day realities. On the other hand, the objects of this law cannot be achieved by placing this court under the High Court.

The Chief Justice, High Court of Sindh entirely agreed with the observations of the Chairman. He stated that this court will create chaos in the country and the litigants and lawyers both will suffer. The object of speedy disposal cannot be achieved by establishing this court. There will be 28 courts in the country. In Sindh alone, presently there are 11 banking courts, 8 courts under the Industrial Relations Ordinance and 7 other judges dealing with matters covered by this law. How can just 28 courts in the country cope up with the situation? Enormous expenditure will be incurred. If more judges are appointed in the High Courts and the subordinate courts, the objects of this law can easily be achieved. A Division in High Court can be created, which will exclusively deal with commercial and financial cases.

The Chief Justice, High Court of Balochistan fully supported and endorsed the views of the Chairman. He said that the object of law can be achieved by increasing strength of High Courts. Exclusive Benches can be constituted to deal with specific categories of cases.

The Chief Justice, Federal Shariat Court observed that the matter basically relates to the High Courts. The bill should be referred back to the Law Ministry to suitably amend it. It should be made workable.

The Chief Justice, Peshawar High Court entirely agreed with the observations made by the Chairman. He stated that the preamble to the bill provides speedy justice, which can be achieved within the present structure. The Supreme Court laid down that interim order staying recovery passed by the High Court under Article 199 would lapse after six months and directed the High Courts to constitute special benches for dealing with fiscal matters. Accordingly, such benches were constituted in the Peshawar High Court and the number of such cases was fairly reduced. He opined that instead of establishing a Federal Court, which will entail huge expenditure, the number of judges in the High Courts be increased. This will be more efficient and economical remedy, be concluded.

The Chairperson, National Commission on Status of Women also supported the views of the Chairman and stated that the draft bill curtails the jurisdiction of High Courts hence it is better to address the issue in the context of existing judicial structure.

The Chairman then invited Law Secretary to make his comments, who stated that as part of the judiciary, he could not disagree with what has been remarked by the Chairman and shared by other members of the Commission. The view of the government is that as a matter of fact, on account of stay system, common man is not getting justice. Cases are not being decided in time, justice delayed is justice denied. If a *lis* takes 10 years, it is no justice at all. Then, there is pressure from the international organizations and business communities, both within the country and abroad, who demand speedy decisions of cases. Perhaps, results cannot be achieved within the present set up.

The view taken here that in the light of Mehram Ali and Sh. Liaquat Hussain's cases, the Federal Court be subordinate to the High Court may not be favoured by the government. This bill has not been introduced in the Assembly, but it has only been floated for seeking public opinion. We must gear up the judicial process. There is a general perception that the judiciary is not delivering goods. Cases on the commercial side are pending in the High Courts since long and are adjourned time and again. 37% of appeals in the High Courts arise out of commercial or financial disputes, which is a verifiable position. Article 175 is not restrictive but wide enough to accommodate other courts. He appreciated the concerns of the Commission and added that he would place its views/comments before the government for reconsideration.

Mr. Justice Abdul Shakoor Piracha, Judge, Lahore High Court, Rawalpindi Bench represented the Chief Justice, Lahore High Court, who could not attend the meeting as he could not travel to Islamabad on account of bad weather in the morning. He stated that he agreed with the views expressed in the meeting. No doubt, pendency of cases is a perennial problem, but the solution lies in increasing strength of judges and in establishing exclusive benches in the High Courts.

The Secretary, LJCP stated that he too had concerns as to the validity of the draft bill as well as its utility and beneficence, in the presence of a functional judicial system already in existence. He added that these aspects have been adequately discussed and he fully agrees with the consensus, arrived at in the Commission.

The Law & Justice Commission unanimously recommended that instead of establishing Federal Court, which concept is not free from legal/constitutional complications, an effort be made to find a remedy within the existing system, such as by—

- Immediately filling in the vacancies in the High Courts;
- Increasing the number of judges in the High Courts; and
- Creating Divisions in the High Courts for various categories of cases, including the commercial and financial cases.