

For the information of all the learned members of legal fraternity:

We have received the Government's proposed bill for new judicial reforms, on 18-04-2006 by the Federal Secretary Law, Human Rights and Justice, for considering establishment of the High Courts into divisions in bid to restructure the judiciary, and the same is being launched on the website of Punjab Bar Council (www.pbbarcouncil.com) for receiving your learned opinion and esteemed suggestions on the same.

Kindly send your proposals before or on the 31st of May 2006.

Waiting for your response.

Thanks.

From

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Punjab Bar Council

A

Bill

to make provisions for the practice and procedure of the High Courts

Whereas it is necessary and expedient to make provisions regulating the practice and procedure of the High Courts, and the administration of justice therein and for matters incidental and ancillary thereto;

It is hereby enacted as follows:

1. **Short title extent and commencement** (1) This Act may be called the High Courts (Practice and Procedure) Act, 2006.

(2) it extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions:** - In this Act, unless there is anything repugnant in the subject or context.

(a) "Divisions" mean the Divisions constituted under section 3;

(b) "Puisne Judge" refers to any Judge of the High Courts other than the Chief Justice;

(c) "Rules or rules of court" means rules made under section 21;

(d) "Schedule" means the schedule to this Act; and

(e) "Senior Judge" means the most senior Judge of a High Court presiding over a Division.

3. **Divisions of High Court:-** (1) There shall be the following divisions of each High Court, namely:-
- (a) Civil Division, consisting of the senior Judge of the Division who shall be president thereof, and such other puisne Judge as are for the time being attached thereto;
 - (b) Commercial Division, consisting of the senior Judge of the Division who shall be president thereof, and such other puisne Judges as are for the time being attached thereto;
 - (c) Criminal Division, consisting of the senior Judge of the Division, who shall be president thereof, and such other puisne Judges as are for the time being attached thereto;
- (2) The puisne judges of the High Court shall be attached to the various Divisions by order of the Chief Justice, and the Judges so attached to a Division shall be the Judges of that Division whether sitting at the principal seat of the High Court or at the seat of a Bench thereof.
- (3) The puisne Judges so attached to Division shall rank among themselves, according to the priority of the dates on which they respectively became judge of the High Court, and the most senior of them shall be the senior judge of the Division.
- (4) The senior judge of a Division, with his consent, and any other judge of a division, with his consent and with the concurrence of the senior Judge of the Division, may be transferred from one Division unother by the direction of the Chief Justice.

- (5) Any Judge attached to any Division may act as an additional judge of any other Division at the request of the Chief Justice made with the concurrence of the senior Judge of each of those Divisions.
- (6) Without prejudice to the provisions of this Act relating to the Court of business in the High Court al jurisdiction vested in the High Court shall belong to all the Division alike.

4. Power to increase or reduce Division and transfer of courts.

- (1) The President may from time to time, on recommendation of the Chief Justice, by order, direct any increase or reduction in the number of the Divisions of the High Courts.
- (2) An order under this section may include such incidental, supplementary or consequential provision as appear to the President necessary.

5. Commercial jurisdiction of High Court: - (1) The jurisdiction of the commercial Division shall be as follows, that is to say:-

- (a) any jurisdiction to hear and determine a commercial action.
- (b) any jurisdiction exercisable by the admiralty Court; and
- (c) such other jurisdiction of commercial nature as may be vested in the High Court by any statutory provision or as may be directed by rules of court to be exercised by the Commercial Division.

(3) For the purposes of this act, a “commercial action” means any action, arising out of the transaction of trade and commerce, and includes any action, relating to-

- (a) Foreign investment;
- (b) negotiable instrument;
- (c) export or import of goods
- (d) carriage of goods by land, sea, air or pipeline;
- (e) exploitation of oil and gas reserves or other natural resources;
- (f) insurance and re-insurance
- (g) banking and financial services, including bank guarantees;
- (h) the operation of markets and exchanges;
- (i) business agency;
- (j) arbitration; and
- (k) companies.

6. **Admiralty Court and its Jurisdiction.-** (1) There shall be, in each High Court, as part of the Commercial Division, an Admiralty Court.

(2) The Judges of the Admiralty Court shall be such of the puisne Judges of the High Court as the Chief Justice with the concurrence of the senior Judge of the Commercial division, may, from time to time nominate to be Judges of the Admiralty Court respectively.

(4) The jurisdiction of the Admiralty Court shall be as follows, that is to say,

- (a) jurisdiction to hear and determine any of the questions and claims mentioned in the Admiralty Jurisdiction of the High Courts Ordinance, 1980 (XLII of 1980); and

(b) such other admiralty jurisdiction as may be vested in the High Court by any other statutory provision or as may be directed by the rules of court to be exercised by the Admiralty Court.

7. **Alternative dispute resolution.-** (1) The Judges of the Commercial Division shall, without involving themselves in any alternative dispute resolution process, encourage the parties and invite them, in appropriate cases, to consider, as a possible additional means of resolving their case or certain issues in the case, the use of alternative dispute resolution methods, such as arbitration, mediation and conciliation.

(2) If the parties agree to have their case or any issue so resolved, the agreement shall be, reduced to writing and the case or the particular issue, as the case may be shall be determined accordingly.

8. **Hearing of commercial action.-** (1) A commercial action shall be brought to a hearing and its hearing shall be concluded as early as may be practicable, but not later than the period, if any, prescribed in the enactment concerned.

(2) The hearing of a commercial action shall be continued from day today until its completion, unless for reasons to be recorded the court finds the adjournment beyond the following day to be necessary.

9. **Exercise of jurisdiction of High Court.-** (1) Any jurisdiction of the High Court shall be exercised by a single Judge of that court except in so far as it is-

(a) by or by virtue of this Act or any other statutory provision or by rules of court required to be exercised by a division court; or

(b) by rules of court made exercisable by registrar or any other officer of the High Court.

(2) Where in the course of hearing of any cause or matter, a Bench consider that the cause or matter is of such difficulty or public importance that it should be considered by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a larger Bench in concurrence with the senior Judge of the Division concerned.

(3) The Chief Justice may delegate the power to constitute Benches to the respective senior Judge of the Divisions, but where there is no such delegation, he may constitute Benches with the concurrence of the senior Judge of the Division concerned.

Provided that the concurrence of the senior Judge shall not apply where the Chief Justice himself is the president of the Division concerned.

10. Distribution of business among Division.- (1) Subject to any provision made by or under this Act, and in particular to any rules of court made in pursuance of subsection (2) and any order under subsection (3), business in the High Court of any description mentioned in the Schedule to this Act, as for the time being in force, shall be distributed among the Division in accordance with that Schedule.

(2) Rules of court may provide for the distribution of business in the High Court among the Divisions; but any rules made in pursuance of this subsection shall have effect subject to any orders for the time being in force under sub-section (3).

(3) Subject to the provisions of subsection (5), the Chief Justice may by Order_

- (a) direct that any business in the High Court which is not for the time being assigned by or under this Act to any Division be assigned to such Division as may be specified in the Order;
- (b) if at any time it appears to him necessary to do so with a view to the more convenient administration of justice, direct that any business for the time being assigned by or under this Act to any Division be assigned to such other Division as may be specified in the Order; and
- (c) amend the Schedule so far as may be necessary in consequence of provision made by Order under clause (a) or clause (b).

(4) The powers conferred by sub-section (2) and sub-section (3) include power to assign business of any description two or more Divisions concurrently.

(5) No Order under clause (b) of sub-section (3) relating to any business shall be made without the concurrence of the senior Judge of-

- (a) the Division or each of the Divisions to which the business is for the time being assigned;
- (b) the Division or each of the Divisions to which the business is to be assigned by the Order.

(6) Without prejudice to subsections (1) to (5), rules of court may provide for the distribution of the business (other than business to be heard by a divisional court) in any Division of the High Court among the Judges of that Division.

11. Interlocutory or other proceedings.- Where a cause or matter is commenced in the High Court, all subsequent interlocutory or other steps or

proceedings in the High Court in that cause or matter shall be taken in the Division to which the cause or matter is for time being allocated.

12. Power of transfer.- (1) Any case, cause or matter may at any time and at any stage thereof, either with or without application from any of the parties, but after hearing the parties, be transferred by such authority and in such manner as rules of court may direct, from one Division or Judge of the High Court to another Division or Judge thereof, or from a puisne Judge or Judges to another puisne Judge or Judges thereof.

(2) The transfer of a cause or matter under subsection (1) to a different Division or Judge of the High Court shall not affect the validity of any steps or proceedings taken or order made in that cause or matter before the transfer.

13. Divisional courts of High Court.- (1) Divisional courts may be held for the transaction of any business in the High Court which is, by or by virtue of rules of court or any other statutory provision, required to be heard by a divisional court.

(2) Any number of divisional courts may sit at the same time.

(3) A divisional court shall be constituted of not less than two Judges.

(4) Every Judge of the High Court shall be qualified to sit in any divisional court.

(5) The Judge who is, according to the priority of the date on which he became Judge, the senior of the Judges constituting a divisional court shall be the president of the court.

14. Proceedings in court and in chambers.- Business in the High Court shall be heard and disposed of in court except in so far as it may, under this or any other Act, under rules of court or in accordance with the practice of the court, be dealt with in chambers.

15. Exercise of High Court jurisdiction otherwise than by Judges.- (1)

Provision may be rules of court as to the cases in which jurisdiction of the High Court may be exercised by the registrar or other officers of the High Court.

(2) Without prejudice to the generality of subsection (1), rules of court may in particular-

(a) authorise the whole of any cause or matter, or any question or issue therein, to be heard before any such person as is mentioned in that subsection; or

(b) authorise question arising in any cause or matter to be referred to any such person for inquiry and report;

but rules of court shall not authorise the exercise of power of attachment and committal by any such person.

(3) The decision of any such person as is mentioned in subsection (1) may be called in question in such manner as may be prescribed by rules of court.

16. Vacations and sitting during vacation.- (1) Rules of court shall make provision for regulating the vacations to be observed by the High Court and in the offices of that Court.

(2) Rules of court-

(a) may provide for securing such sittings of a Division of the High Court during vacations as the senior Judge of that Division may with the concurrence of the Chief Justice determine;

(b) Without prejudice to clause (a), shall provide for the transaction during vacation by Judges of the High Court of

all such business in the High Court as may require to be immediately or promptly transacted; and

- (c) Shall provide for securing sittings of the Criminal Division during vacations, if necessary.

17. Written brief, and time-limit for hearing arguments.- (1) A party shall file a written brief succinctly stating the facts of the case, formulating the points of fact and law requiring determination, adducing reasons briefly supporting its case and containing such other information as rules of court may prescribe.

- (2) In every case or a case or matter therein, there shall be fixed by the Judge or Judges hearing the case, or a cause or matter therein, preferably in consultation with the parties' counsel, the time that each party shall have for oral arguments.

- (3) For the purposes of sub-section (2), the High Court may make use of such electronic or other devices as may be necessary.

18. Inspection Wing.- (1) To enable the High Court to effectively supervise and control courts subordinate to them, there shall be, as part of each High Court, an Inspection Wing, consisting of an Inspection Judge at its head and two or more District and Sessions Judges, as members and such other officers as rules of court may provide.

(2) The Inspection Judge shall be a retired Judge of High Court, to be appointed by the President, in consultation with the Chief Justice of the High Court. The remuneration and other terms and conditions of the Inspection Judge shall be as determined by the President.

(3) The primary function of the Inspection Wing will be to assist the High Court in the performance of its duty under Article 203 of the Constitution, to

supervise and control all courts subordinate to it, with a view to providing fulfillment of the State's responsibility under article 37 (d) of the Constitution to ensure inexpensive and expeditious justice and to that end, to, among others,

- (a) keep an up to date record of information relating to the pendency of cases on each court in all the districts of the province, particularly of old cases, and to recommend for the posting of Judges and Judicial Magistrates proportionately with the number of pending cases;
- (b) suggest measures for the disposal of cases, old cases in particular, expeditiously and inexpensively;
- (c) see whether the courts, especially in session case, adhere to the rule of day to day hearing and if not why;
- (d) receive complaints other than anonymous complaints relating to administration of justice in the subordinate courts and to ensure prompt action for their redress;
- (e) ensure that instructions contained in rules of court on the inspection of subordinate courts are strictly complied with;
- (f) provide guidance to judges of subordinate courts with a view to improving judicial administration and case management;
- (g) report on the state of court houses, that is to say,
 - (i) whether it is in good repair and properly maintained and provides adequate accommodation;
 - (ii) whether each court house has a well equipped library and the library is in good order and up-to-date;
 - (iii) whether adequate funds are available for the upkeep and maintenance of court houses, and for the efficient administration of justice;

- (h) Arrange surprise visits, where necessary, for the purpose of prompt attention to complaints other than anonymous complaints from the litigant public.

19. Functions of Inspection Wing as regards High Court offices.- The Inspection Wing may, by rules of court, be entrusted also with the function of dealing with complaints relating to the offices of the High Court.

20. Information to the complainant.- After a complaint has been duly dealt with and disposed of, the complainant shall be informed in writing of the result.

21. Rules of Court.- (1) A High Court may make rules of court for the purposes of this Act and for the purpose of giving effect to the provisions of this Act.

(2) Any existing rule of court, in so far as it is not inconsistent with the provisions of this Act or any rule made under this section, shall continue in force until it is replaced by a rule made under this section.

(3) No rule which may involve an increase of expenditure out of public funds may be made under this Act except with the concurrence of the Federal Government, or as the case may be, of the Provincial Government.

22. Rule Committee.- (1) The power to make rules of court under section 20 shall be exercisable by a Rule Committee consisting of –

- (a) the Chief Justice of the High Court;
- (b) the senior Judges of the Divisions of the High Court;

- (c) one Judge each from each of the Division of the High Court, to be appointed by the Chief Justice but where a Judge belongs to a Division other than his own Division, with the concurrence of the senior Judge of that Division;
- (d) the Advocate-General of the Province;
- (e) three advocates of the High Court, one to be nominated by the Pakistan Bar Council and the other two to be nominated by the Provincial Bar Council.

(2) The advocates nominated to be members of the Rule Committee shall hold office for three years, but any such a advocate may resign by writing addressed to the Chief Justice before the expiry of that period.

(4) The Chief Justice shall preside at the meeting of the Rule Committee; the quorum for a meeting shall be seven including the Chief Justice and all decisions of the Rule Committee shall be taken by majority of the members present and voting

Schedule

District of Business in High Court

Civil Division

- I. To the Civil Division are assigned all causes and matters, original as well as appellate and revisional, of civil nature.

Commercial Division

- II. To the Commercial Division are assigned all causes and matters mentioned in section 5

Criminal Division

- III. To the Criminal Division are assigned all causes and matters, original as well as appellate and revisional, of criminal nature.