

[Supreme Court Of Pakistan]

Judges: Mr. Justice Muhammad Ali Mazhar



RELATIONSHIP BETWEEN PRESIDENTIAL POWER OF TRANSFER UNDER ARTICLE 200 AND APPOINTMENTS UNDER ARTICLE 175A.

Constitution Petition No. 22 of 2025, Constitution Petition No. 20 of 2025, Constitution Petition No. 25 of 2025, Constitution Petition No. 26 of 2025, Constitution Petition No. 27 of 2025, Constitution Petition No. 28 of 2025,

Constitution Petition No. 30 of 2025

decided on 19th June, 2025.

(a) Constitution of Pakistan, 1973---S.Art. 200, S.Art. 175A---Relationship between presidential power of transfer under Article 200 and appointments under Article 175A.---

The President's power to transfer a High Court Judge under Article 200 is a standalone constitutional provision and does not amount to a fresh appointment under Article 175A, so JCP involvement is not required for such transfers.

Article 200 and Article 175A of the Constitution operate independently concerning transfers and appointments, respectively; transfer cannot be equated with appointment.

Hamza Rasheed Khan vs. Election Appellate Tribunal, Lahore and others PLD 2024 Supreme Court 1028 ref.; Reference No. 1 of 2020 (Senate Elections Secrecy of Ballot) PLD 2021 Supreme Court 825 ref.; Lahore Development Authority vs. Ms. Imrana Tiwana 2015 SCMR 1739 ref.; District Bar Association, Rawalpindi vs. Federation of Pakistan PLD 2015 Supreme

Court 401 ref.; Regarding pensionary benefits of the Judges of superior courts PLD 2013 Supreme Court 829 ref.; Qazi Hussain Ahmad, Ameer Jamaat-e-Islami Pakistan vs. General Pervez Musharraf PLD 2002 Supreme Court 853 ref.; Abdul Razzaq Khokhar vs. Province of Punjab 1990 SCMR 183 ref.; Hafiz Abdul Waheed vs. Mrs. Asma Jehangir PLD 2004 Supreme Court 219 ref.; Johnson vs. Moreton (1978) 3 All ER 37 ref.; Stock vs. Frank Jones (Tipton) Ltd. (1978) 1 All ER 948 ref.; Commissioner of Income Tax vs. Hindustan Bulk Carriers (2003) 3 SCC 57 ref.; Jagdis Singh vs. Lt. Governor, Delhi & Ors AIR 1997 SC 2239 ref.; S. Nagraj (Dead) by LRs & Ors Vs B. R. Vasudeva Murthy & Ors. (2010) 3 SCC 353 ref.; SBEC Sugar Ltd & Anr. Vs Union of India & Ors. (2011) 4 SCC 668 ref.; State of Rajasthan v. Gopi Kishan Sen AIR 1992 SC 1754 ref.; East India hotels ltd. Vs. Union of India AIR 2001 SC 231 ref.; P.S Sattappan vs. Andhra bank ltd. 2004 11 SCC 672 ref.; Sarabjit Rick Singh vs. Union of India 2008(2) SCC 417 ref.; Bhatia International vs. Bulk Trading S.A. (2002) 4 SCC 105 ref.; Hunter v. Southam Inc [1984] 2 SCR 145 ref.

Mr. Muneer A. Malik, Senior ASC, Mr. Salahuddin Ahmed, ASC, Syed Rifaqat Hussain Shah, AOR, Ms. Zainab Janjua, Advocate, Ms. Faaiza Qazi, Advocate, Mr. Idrees Ashraf Malik, ASC, Raja Muqsit Nawaz Khan, ASC, Mr. Hamid Khan, Senior ASC, Mr. Waqar Rana, ASC, Mr. Ajmal Ghaffar Toor, ASC, Mr. Faisal Siddiqi, ASC, Mr. Riasat Ali Azad, ASC, Mr. Anis Muhammad Shahzad, AOR, Mr. M. Ammar Rafique, Advocate, Sikandar Naeem Qazi, Advocate for Appellant.

Mr. Mansoor Usman Awan, AGP, Ch. Aamir Rehman, Addl. AGP, Raja Shafqat Mehmood Abbasi, DAG, Mr. Muhammad Amir Malik, AOR, Mr. Hasan Mehmood, Legislative Advisor, M/O Law, Ms. Mariyam Ali Abbasi, Advocate, Mr. Saad Javed Satti, Advocate, Mr. Muhammad Amjad Pervaiz, AG, Mr. Waseem Mumtaz Malik, Addl. AG, Rao Muhammad Aurangzeb, Asstt. AG, Mr. Muhammad Adil Chattha, Sr.Consultant, Mr. Suresh Kumar, Addl. AG, Mr. Sibtain Mehmood, Addl. AG, Barrister Zeeshan Adhi, Addl. AG, Mr. Shah Faisal Ilyas, Addl. AG, Mr. Muhammad Ayaz Swati, Addl. AG, Mr. Tahir Iqbal Khattak, Addl. AG, Mr. Ayyaz Shaukat, AG, Dr. Mirza Muhammad Usman, AOR, Mr. M. Shahid Latif Khan, Dy. Registrar, Mr. Wajid Ali Khan, Director (Regulations), Mr. Sohail Muhammad Laghari, Registrar, Mr. M. Asif Iqbal, Dy. Registrar for Respondent.

(b) Constitution of Pakistan, 1973---S.Art. 200---Requirements of consent and consultation for transferring judges under Article 200.---

All constitutional conditions for consent and consultation were fulfilled: the three judges consented and the Chief Justices concerned were properly consulted.

Transfer of a High Court Judge requires the judge's consent and meaningful consultation with the Chief Justices concerned, ensuring the check on executive power.

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 rel.

Union of India v. Sankal Chand Himatlal Sheth & Anr. AIR 1977 SC 2328 ref.; S.P. Gupta v. Union of India (First Judges Case) AIR 1982 SC 149 ref.; Supreme Court Advocates on Record Association v. Union of India (Second Judges Case) AIR 1994 SC 268 ref.; In Re: Presidential Reference (Third Judges Case) AIR 1999 SC 1 ref.; Supreme Court Advocate-on-Record Association And Other v. Union of India (Fourth Judges Case) [2016] 5 SCC 1 ref.

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(c) Islamabad High Court Act, 2010---S.S. 3---Interpretation of Section 3 of the Islamabad High Court Act, 2010 in context of transfers.---

Section 3 regulates composition and is not a bar to transfer under Article 200; there is no constraint preventing transferee judges from joining the IHC.

Statutory provisions dealing with court composition cannot override constitutional transfer powers; ordinary law cannot curtail constitutional authority.

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(d) Constitution of Pakistan, 1973---S.Art. 200---Public interest and independence of judiciary in transfers under Article 200.---

No violation of public interest or judicial independence occurred: the procedure assured judicial control over transfers, and the requisite safeguards were observed.

Where consultation and consent processes are followed, the transfer does not compromise judicial independence; public interest is determined institutionally by consultees.

Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324 rel.

English Biscuits Manufacturers (Pvt.) Ltd. v. Monopoly Control Authority 2005 CLD 264 ref.; Abu Dhabi Medical Devices Co. L.L.C. v. Federation of Pakistan 2010 CLC 1253 ref.; Dossani Travels (Pvt.) Ltd v. Travels Shop (Pvt.) Ltd. PLD 2014 SC 1 ref.; Premier Battery Industries Ltd. v. Karachi Water & Sewerage Board 2018 SCMR 365 ref.; Malik Muhammad Bashir Lakhesar v. Government of Punjab 2019 PLC (C.S.) 266 ref.; Ashfaq Ahmad Kharal and 21 others v. Province of Punjab PLD 2024 Lahore 129 ref.; Janata Dal v. H.S. Chowdhary and others AIR 1993 SC 892 ref.

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(e) Constitution of Pakistan, 1973---S.Art. 200, S.Art. 193, S.Art. 194; High Court Judges (Leave, Pension and Privileges) Order, 1997---S.Art. 25---Seniority and terms of transfer for High Court judges under Article 200.---

There is no unified seniority list for High Court judges; seniority should be specified in the transfer notification. The matter is remanded to the President to determine seniority and nature (permanent or temporary) of transfer.

Seniority and permanence/temporariness of a transfer under Article 200 must be expressly stipulated; a transferee judge's status continues from original appointment without requiring a fresh oath.

Muhammad Aslam Awan v. Federation of Pakistan 2014 SCMR 1289 rel.
Malik Asad Ali v. Federation of Pakistan PLD 1998 SC 33 ref.; Muhammad Anwer Khan's Case PLD 1998 SC 33 ref.; Mustafa Impex, Karachi vs. Government of Pakistan PLD 2016 SC 808 ref.

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(f)

The allegations concerning the letter are sub judice and cannot be decided in these proceedings; compliance with Article 200's procedures is dispositive.

Allegations of executive interference, when under separate adjudication, do not affect the legality of transfers decided through proper constitutional process.

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By majority of 3 to 2, all the Constitution Petitions are disposed of in terms of the short order dated 19.06.2025: the President's transfer of judges to Islamabad High Court under Article 200 is upheld as constitutional, but seniority and nature of transfer are remanded to the President for determination; minority holds petitions allowed and impugned notification set aside.

**IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)**

Constitutional Bench

****Present ****

Justice Muhammad Ali Mazhar

Justice Naeem Akhter Afghan

Justice Shahid Bilal Hassan
Justice Salahuddin Panhwar

Justice Shakeel Ahmad

Constitution Petitions No. 22, 20, 25 to 28 & 30 of 2025 (Constitutional Petitions U/A 184(3) of the Constitution for declaring Notification No. F.10 (2)/2024-A.II dated 1st February 2025 regarding Transfer of Judges to Islamabad High Court as Illegal and Unconstitutional)

AND

**C.M.A.2136/2025 IN C.P.22/2025 and
C.M.A.2137/2025 IN C.P.20/2025 and**

C.M.A.2138/2025 IN C.P.26/2025 and

**C.M.A.2139/2025 IN C.P.27/2025 and
C.M.A.2047/2025 IN C.P.28/2025**

(Stay applications)

Justice Mohsin Akhtar Kayani, & others Raja Muqsit Nawaz Khan

Imran Khan Niazi

Lahore High Court Bar Association, Lahore Lahore Bar Association Lahore and another Karachi Bar Association, Karachi

Riasat Ali Azad and others

Versus

The President of Pakistan, Pak Secretariat, Islamabad and others

Federation of Pakistan through, Secretary Ministry of Law, Justice & Parliamentary Affairs, Islamabad and others
(In CP 22/25) (In CP 20/25) (In CP 25/25) (In CP 26/25) (In CP 27/25) (In CP 28/25) (In CP 30/25)

.....Petitioners

(In CPs 22, 26 to 28 & 30/25)

(In CPs 20 & 25/25)

...Respondents

For the Petitioners: Mr. Muneer A. Malik, Senior ASC Mr. Salahuddin Ahmed, ASC

Syed Rifaqat Hussain Shah, AOR

(In CP 22/25) assisted by Ms. Zainab Janjua & Ms. Faaiza Qazi, Advocates.

Mr. Idrees Ashraf Malik, ASC
Const.Ps.No.22, 20, 25-28 & 30/2025 -2-

Raja Muqsit Nawaz Khan, ASC

(in CPs 20 & 25/25)

Mr. Hamid Khan, Senior ASC

Mr. Waqar Rana, ASC
Mr. Ajmal Ghaffar Toor, ASC

(in CPs 26 & 27/25)

Mr. Faisal Siddiqi, ASC

Mr. Riasat Ali Azad, ASC
Mr. Anis Muhammad Shahzad, AOR

Assisted by Mr. M. Ammar Rafique &

Sikandar
Naeem Qazi, Advocate (in CPs 28 &

For the Respondents:

For the Federation

President of Pakistan, Registrar SCP &

Secretary JCP

For Province of Punjab:

For Province of Sindh:

For Province of KPK:

For Province of

Balochistan:

For ICT:

For the Registrar LHC: For the Registrar PHC:

Mr. Mansoor Usman Awan, AGP Ch. Aamir Rehman, Addl. AGP Raja Shafqat Mehmood Abbasi, DAG

Mr. Muhammad Amir Malik, AOR Assisted by: Mr. Hasan Mehmood, Legislative Advisor, M/O Law, Ms. Mariyam Ali Abbasi & Mr. Saad Javed Satti, Advocates

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Mr. Sibtain Mehmood, Addl. AG & Barrister Zeeshan Adhi, Addl. AG Mr. Shah Faisal Ilyas, Addl. AG

Mr. Shah Faisal Ilyas, Addl. AG

Mr. Muhammad Ayaz Swati, Addl. AG Mr. Tahir Iqbal Khattak, Addl. AG

Mr. Ayyaz Shaukat, AG

Dr. Mirza Muhammad Usman, AOR Mr. M. Shahid Latif Khan, Dy. Registrar

Mr. Wajid Ali Khan, Director
(Regulations)

(via video link from Peshawar
Const.Ps.No.22, 20, 25-28 & 30/2025 -3-

For the Registrar SHC:

For the Registrar IHC:

For the Transferee Judges:
Mr. Sohail Muhammad Laghari, Registrar

(via video link from Karachi) Mr. M. Asif Iqbal, Dy. Registrar

Nemo

Dates of Hearing: 14th, 17th, 22nd, 29th, 30th April; 07th, 08th, 14th, 15th, 19th, 20th, 21st, 23rd,

26th, 27th, 29th May and 16th June to
19th June, 2025.

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Muhammad Ali Mazhar-J

I. Preamble

The bone of contention in the aforesaid Constitution Petitions, filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”), is the Notification No.F.10 (2)/2024-A.II, dated 01.02.2025 issued by the President of Pakistan (“**President**”) in exercise of powers conferred under Article 200 of the Constitution for the transfer of certain Judges to the Islamabad High Court (“**IHC**”). All the petitioners, in one voice, seek a declaration that the said notification is unconstitutional. Since Constitution Petition No.22 of 2025 has been filed by five sitting learned Judges of the Islamabad High Court *in personam*, assailing, *inter alia*, the upsetting of their seniority reckoned before the transfer, their petition is treated as the leading petition, and the rest proceed conjointly.

II. Background and Key Facts

2. On 1st February 2025, the Law Ministry issued the impugned notification transferring three serving Judges from provincial High Courts to the IHC. The

transferee Judges are Mr. Justice Sardar Muhammad Sarfraz Dogar of the Lahore High Court (“LHC”), Mr. Justice Khadim Hussain Soomro of the Sindh High Court (“SHC”), and Mr. Justice Muhammad Asif of the Balochistan High Court (“BHC”). These transfers filled existing vacancies in the IHC without exceeding its sanctioned strength (one Chief Justice and twelve other Judges as prescribed by the Islamabad High Court Act, 2010). As a result of the notification, Justice Dogar joined the IHC and as its Senior Puisne Judge. The five learned IHC Judges (petitioners in Const.P.22/2025) challenged the transfers as an encroachment on their seniority and on the internal autonomy of the IHC. Several Bar Associations, including the Lahore High Court Bar Association (Const.P.26/2025), Lahore Bar Association (Const.P.27/2025), Karachi Bar Association (Const.P.28/2025) as well as individual lawyers and litigants such as Raja Muqsit Nawaz Khan, Advocate Const.Ps.No.22, 20, 25-28 & 30/2025 -5-

(Const.P.20/2025) and Mr. Imran Khan Niazi, (Const.P.25/2025) joined the fray, echoing concerns about the constitutionality of the transfers.

III. Counsel for Petitioners: Arguments and Submissions

Mr. Muneer A. Malik, Senior ASC

(for Petitioners in Const.P.22/2025)

3. Learned counsel Mr. Muneer A. Malik (assisted by Barrister Salahuddin Ahmed, ASC) appeared for the five petitioner Judges of the IHC. At the outset, he stressed that this case is unprecedented: “*there is no precedent in the past for a permanent transfer of a Judge from one High Court to another*”, making it a first-of-its-kind matter requiring careful constitutional scrutiny. He submitted that Article 200 of the Constitution, if properly construed, allows only temporary transfers of High Court Judges, which is essentially a short-term deputation, and does not envisage permanently relocating a Judge in a manner that effectively vacates his original seat. A “permanent” transfer would encroach upon Article 175A, which establishes the Judicial Commission of Pakistan (“JCP”) for appointments to superior courts. In his submission, transferring a Judge to fill a vacant judgeship in another High Court bypasses the JCP’s constitutional mandate for making a *fresh appointment* to that vacancy, thereby rendering Article 175A ineffective if such transfers are permitted without the JCP’s involvement.

3/1. He further submitted that historically Article 200 had been used sparingly and only for short tenures, precisely to avoid undermining the appointments process and the stability of tenure. There exists no precedent for a permanent transfer of a judge from one High Court to another in Pakistan’s judicial history. It was further averred that if Article 200 is assumed to permit such transfers, the

manner in which it was invoked here violated the requirement of effective or meaningful consultation with the relevant judicial authorities. He emphasized that under Article 200, consultation with the Chief Justice of Pakistan (“CJP”) and the Chief Justices of both the

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transferring and recipient High Courts is mandatory. This consultation, as per longstanding jurisprudence, must be real, substantial and meaningful, and not a mere formality. Learned counsel pointed out that the concept of consultation in judge

related matters has been elaborated in the Judges’ Case precedents (Al-Jehad Trust Vs. Federation of Pakistan ([PLD 1996 SC 324](#)) and the President’s Reference No.2 of 1996 reported as ([PLD 1997 SC 84](#))) whereby it was held that the consultees’

opinion should be given due weight and be ordinarily accorded primacy absent strong reasons.

3/2. Mr. Malik further argued that in the present case, the consultation process was tainted since critical information was withheld or misrepresented to those being consulted. He further argued that by administrative arrangement, Justice Dogar, a transferee from LHC who was a junior there, was placed at the top of the IHC seniority list as Senior Puisne Judge, superseding IHC’s existing judges in seniority. The learned counsel also referred to the case of Muhammad Aslam Awan v. Federation of Pakistan, ([2014 SCMR 1289](#)) in which it was held that if two officials are appointed on the same date, the older in age ranks senior. It was further contended by the learned counsel that the transferee judges should have taken a fresh oath and upon joining their seniority, they should have been reckoned at the bottom from the date they take oath. Reinforcing the principle of independence, he argued that the manner and timing of these transfers gave rise to a reasonable perception that they were not done for *bona fide* institutional needs but possibly to influence the composition and leadership of the IHC, especially in light of certain events. In this context, he alluded to a letter dated 25th March 2024, authored by a group of IHC Judges (including some petitioners) complaining of interference by the executive and the establishment in the judicial matters.

3/3. It was further averred that the transfer is not only against the public interest but it also undermines the independence of the judiciary, violating due process, and denying equal protection to the affected Judges. He also cited the case of

case (**PLD 1989 SC 404** and **PLD 1994 SC 105**) wherein the superior courts recognized that executive actions impacting the judiciary must be assessed in light of the constitutional mandate to secure an independent judiciary that is free from extraneous pressure or retribution.

Mr. Idrees Ashraf, ASC

(for Petitioners in Const.P.20 & 25 of 2025)

4. The learned counsel while adopting Mr. Malik's arguments added that any exercise of the President's power under Article 200 must be anchored in demonstrable public interest and necessity, for instance, to meet an urgent need or extraordinary circumstance in the transferee High Court and not for extraneous or whimsical reasons.

4/1. He further contended that the President failed to identify any legitimate public interest rationale for suddenly transferring three judges to the IHC. There was no crisis or functional breakdown in the IHC warranting emergency measures; rather, the transfers were effected in undue haste. It was further avowed

that the notification was silent on critical parameters of the transfer, notably its duration and terms. According to him, Article 200 permits transfers on temporary basis. Hence, the transferred Judges should be treated as freshly appointed and should not leapfrog existing judges.

4/2. The learned counsel further argued that the petitioner (Mr. Imran Khan Niazi) is a frequent litigant in the IHC and is concerned that altering the IHC's composition through executive fiat could affect pending cases. Counsel suggested that the transfers had the appearance of court-packing or tailoring the bench, which erodes public confidence in the judiciary's impartiality.

Mr. Hamid Khan, Sr. ASC

(for Petitioners in Const.P.26 & 27 of 2025)

5. The learned Sr. Advocate Mr. Hamid Khan represented two Bar Associations (Lahore High Court Bar and Lahore Bar

Association) who challenged the Judges' transfer on behalf of the legal fraternity. He forcefully advanced the theme that the independence of the judiciary is a foundational principle recognized in numerous Supreme Court pronouncements. He began by drawing the following comparison: though the Constitution of India allows the transfer of High Court judges without their consent, in Pakistan, a Judge's consent is a constitutional requirement for the transfer.

5/1. He further argued that the presence of the consent clause in Article 200 is not a technicality but a key buffer against executive overreach; no Judge can be uprooted from a High Court against his will. In the case at hand, he acknowledged, the transferred Judges did ostensibly give consent. However, the conditions

surrounding that consent warranted scrutiny whether the Judges were pressured or misled? It was further contended that the transfer was made with unusual haste and opaqueness. The proposal moved swiftly through the corridors of power with minimal disclosure, fueling suspicions of a predetermined agenda. He alleged that the real motive was to elevate Justice Dogar to take charge of the IHC, whereas the transfer of two other Judges alongside was merely symbolic to give an appearance of even-handedness. In fact, counsel contended, the entire exercise was a misuse of Article 200 that aimed to install a favored individual as IHC Chief Justice. On the consultation aspect, he reinforced that meaningful consultation with all stakeholders, the CJP and the concerned Chief Justices, was indispensable. He argued that the transfer decision lacked the requisite consensus-oriented consultation mandated by law. He further argued that the Chief Justices of the SHC and BHC, from whose courts judges were taken, were ostensibly consulted but their views were not made public or perhaps not accorded due weight.

5/2. To fortify his stance, Mr. Hamid Khan referred to Al-Jehad Trust case (1996) and argued that the independence of judiciary is part of the basic constitutional framework and parachuting a junior judge into a new jurisdiction to make him de facto senior

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is equally offensive to the seniority convention upheld in *Malik Asad Ali v. Fed. of Pakistan (1998)* and *Muhammad Anwer Khan's Case (PLD 1998 SC 33)*. Additionally, the learned counsel highlighted Rule 15-A of the Rules of Business, 1973, which delineates the procedure for submission of cases to the Prime Minister and President. He contended that matters of judges' appointments and transfers fall under the special category requiring prior approval of the Prime

Minister and careful processing in the Cabinet. According to the learned counsel, the matter of transfer should have been approved by the Federal Cabinet.

Mr. Faisal Siddiqi, ASC

(for Petitioners in Const.P.28 & 30 of 2025)

6. The learned counsel focused on the perspective of the Bar and litigant public. He stressed that public confidence in the judiciary is paramount and it hinges on the perception that judges are appointed and assigned to courts based on merit and transparent criteria, not due to executive favoritism or machinations behind closed doors. From the standpoint of the Bar, the February 2025 transfers appeared to be a *fait accompli* that sprung without prior consultation even with the concerned Bar Associations or the Judiciary itself. Mr. Siddiqi argued that Article 200 must be read subject to the Constitution's fundamental guarantees and the overall appointment scheme.

6/1. He echoed that Section 3 of the Islamabad High Court Act, 2010, requiring IHC judges to be appointed from among all provinces and territories, presupposes the normal appointment process. He contended that if one were to interpret Section 3 in context, it envisions a diverse composition of the IHC bench to reflect the federation, which can be achieved by the JCP when making new appointments. He also referred to Justice Fazal Karim's treatise on Judicial Review and passages from Corpus Juris Secundum and Halsbury's Laws for emphasizing that constitutional provisions should be read so as to give each

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force and effect, rather than allowing one to nullify the other. If two provisions seem to cover related subject matter (Article 175A on appointments and Article 200 on transfers), the Court should strive for an interpretation that avoids conflict and redundancy. Article 200 should not be misused to do what Article 175A demands and conversely, the existence of Article 175A does not impliedly repeal Article 200, as each has a distinct sphere. The correct view, in his submission, is to preserve Article 200 as a "standalone" power but circumscribe its use to genuine transfer scenarios, not de facto appointments.

6/2. Regarding consultation, the learned counsel argued that the consultation under Article 200 must be conscientious, open minded and informed. He further argued that consultation is not a mere procedural checklist but a substantive requirement that tempers the President's power with judicial input. He also referred to the High Court Judges (Leave, Pension and Privileges) Order, 1997 (President's Order No.3 of 1997) which in fact anticipates the scenario of transfers by providing in Article 25 for a "transfer allowance" and related privileges for a

Judge who is transferred which according to the learned counsel indicates that while transfers are contemplated, they are considered significant events with logistical and financial implications for the Judge. This further underlined that such decisions should not be sprung upon a Judge without due deliberation and planning.

****IV. Arguments of Respondents ****

Attorney-General (AGP)

7. The learned Attorney-General (“AGP”) Mr. Mansoor Usman Awan argued that the President’s power under Article 200 is an integral part of the Constitution’s design, co-existing with Article 175A, and was in fact left untouched by the post-2010 amendments. He submitted that Articles 200 and 175A operate in distinct domains, the former dealing with transfers of serving Judges between High Courts, and the latter dealing with appointments as Judges of the superior courts. He drew a clear

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distinction in the constitutional text and argued that Article 200 uses the term “transfer” and explicitly requires the Judge’s consent and consultation with judicial authorities, whereas Article 175A uses “appointment” and establishes a multi-step selection process through the JCP. The presence of both provisions side by side in the Constitution evidences the framers’ intent that both mechanisms remain available for different situations, without one overriding the other.

7/1. It was further contended that a transferred Judge does not take a fresh oath but takes oath of office at the time of his original appointment as a High Court Judge. Therefore, treating the transfer as synonymous with a new appointment would render Article 200 redundant. According to AGP, at the time of transfers, the Islamabad High Court was functioning with a significantly reduced bench and faced a growing docket. Instead of waiting for the lengthy process of fresh appointments via the JCP, which involves inviting nominations, scrutiny, committee approval, etc., often taking many months, the Executive, in consultation with the CJP, opted for the expeditious route of transfer to immediately bolster the IHC.

7/2. He maintained that it was a bona fide decision in the public interest, aimed at ensuring that justice in the Islamabad Capital Territory would not suffer for want of sufficient Judges. The choice of one Judge each from three different High Courts (Punjab, Sindh, Balochistan) also ensured a mix of backgrounds and satisfied, in substance, the diversity principle of Section 3 of the IHC Act, 2010. The AGP underscored that the transfer from one High Court to another can only

be made within the sanctioned strength of the transferee court, and here the IHC's sanctioned strength of 12 judges was not exceeded. Addressing the consultation, the learned AGP submitted that the constitutional requirements were fully met in this case. Each of the three Judges gave their written consent to being transferred, as evidenced by their letters on record. There is no allegation that any Judge's consent was coerced. Rather, the President, through the Ministry of Law and Justice, consulted all the relevant

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constitutional consultees. Article 200's consultation mechanism, in fact, shields judicial independence by ensuring that no transfer can happen if the judiciary dissents.

7/3. On the issue of public interest and motive, the learned AGP categorically denied any malice or punitive intent behind the transfers. He further averred that no *mala fide* can be inferred against high constitutional functionaries. The petitioners' allegations of malice were not supported by concrete evidence; no official document or admission indicates any motive other than filling vacancies at IHC. Coming to the question of seniority, the AGP argued that the seniority of transferee judges shall be reckoned from the date of their appointment. He also referred to the principle laid down in the case of Muhammad Aslam Awan's case ([2014 SCMR 1289](#)) and [PLD 2019 SC 509](#) regarding reckoning of seniority from oath date would likely apply, subject to any specific rules that may be framed.

Advocate General, Punjab

8. Mr. Muhammad Amjad Pervaiz, learned Advocate General, Punjab, while adopting the arguments of learned Attorney General, added that the transfer is not a new notion under the provisions of Constitution. He further argued that no prejudice is caused to judicial independence. Rather, the mechanism of consent and consultation in Article 200 itself guards against executive overreach. It was further averred that the instant matter is a case of first impression as to the import and scope of Article 200. It was further averred that since there is no case law available on the issue in question, hence, a need has arisen to trace the legislative history and previous practice in Pakistan dealing with this issue of seniority in situations other than Article 200 in case of transfer of Judge from one High Court to another. He concluded that a Judge of a High Court retains his seniority and takes it along with him to any High Court or forum he goes. This has been consistent practice since 1955 and thus the same has assumed the character of Constitutional Convention.

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V. Points for determination

9. Upon appraisal of the pleadings, the voluminous record, and the rival submissions, the pivotal points for determination by this Court are framed as follows:

1. Scope and Validity of Article 200 Transfers vis à-vis Article 175A of the Constitution:

Whether the President's power to transfer a Judge of a High Court to another High Court under Article 200 of the Constitution remains a standalone and independent power for transfer of High Court judges after the 18th Amendment (which introduced Article 175A for judicial appointments), and to what extent Article 175A limits, implicates or overlaps with the exercise of Article 200. In essence, can a transfer under Article 200 be carried out without recourse to the JCP mechanism, and does such a transfer amount to or require a "fresh appointment" within the meaning of Article 175A?

2. Constitutional Requirements of Consent & Consultation:

Whether in the impugned notification the mandatory pre-conditions of Article 200 have been satisfied in letter and spirit. Subsidiary questions include what constitutes "meaningful consultation" in this context, and whether any deficiency in consultation or consent would vitiate the transfer?

3. Scope & Interpretation of Section 3 of the Islamabad High Court Act, 2010:

Whether the transfer of Judges from provincial High Courts to the IHC violates Section 3 of the Islamabad High Court Act 2010. Does this statutory provision forbid the induction of judges by transfer as opposed to fresh appointment?

4. Public Interest & Judicial Independence Considerations:

Whether the impugned transfers, in their purpose or effect, contravened the public interest and independence of the judiciary?

5. Seniority and Terms of Transfer:

What is the proper legal regime for determining the seniority of High Court Judges and tenure of transfer/nature under Article 200? Should the transferee Judges

rank as per their original appointment dates, or by their transfer date and

whether their transfers requires fresh oath?

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6. Letter of Six Judges

Effect of letter of six judges communicated to the former Chief Justice of Pakistan complaining the interference and pressure by the executive and agencies in the judicial functions.

****VI. Point-to-point Discussion, Analysis and Decision ****

1. Scope and Validity of Article 200 Transfers

vis-à-vis Article 175A of the Constitution:

10. Since the predominant question is revolving around the interpretation and niceties of Article 200 of the Constitution, therefore, it would be expedient for the ease of reference to reproduce it as under:-

“200. (1) The President may transfer a Judge of a High Court from one High Court to another High Court, but no Judge shall be so transferred except with his consent and after consultation by the President with the Chief Justice of Pakistan and the Chief Justices of both High Courts.

Explanation— In this Article, "Judge" does not include a Chief Justice but includes a Judge for the time being acting as Chief Justice of a High Court other than a Judge of the Supreme Court acting as such in pursuance of a request made under paragraph (b) of Article 196.

(2) Where a Judge is so transferred or is appointed to an office other than that of Judge at a place other than the principal seat of the High Court, he shall, during the period for which he serves as a Judge of the High Court to which he is transferred, or holds such other office, be entitled to such allowances and privileges, in addition to his salary, as the President may, by Order, determine.

(3) If at any time it is necessary for any reason to increase temporarily the number of Judges of a High Court, the Chief Justice of that Court may require a Judge of any other High Court to attend sittings of the former High Court for such period as may be necessary and, while so attending the sittings of the High Court, the Judge shall have the same power and jurisdiction as a Judge of that High Court:

Provided that a Judge shall not be so required except with his consent and the approval of the President and after consultation with the Chief Justice of Pakistan and the Chief Justice of the High Court of which he is a Judge.

Explanation: In this Article, "High Court" includes a Bench of a High Court".
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10/1. It is clearly articulated under Article 200 of the Constitution that the powers of the President for the transfer of a Judge of the High Court from one High Court to another High Court is an independent Article in its application but with some safety measure and safeguards and these powers are not dependent upon any other Article of the Constitution. However, the punch line or litmus test is that before exercising such powers of transfer of judges, the President has to seek out the consent of the judge intended to be transferred from one High Court to another. The most important is the second limb, that is,

the consultation process by the President with the Chief Justice of Pakistan and the Chief Justices of both High Courts. It is further provided in sub-article (2) that where a Judge is so transferred or is appointed to an office other than that of Judge at a place other than the principal seat of the High Court, he shall, during the period for which he serves as a Judge of the High Court to which he is transferred, or holds such other office, be entitled to such allowances and privileges, in addition to his salary, as the President may, by Order, determine. In case of exigency, sub-article (3) also allows to increase temporarily the number of Judges of a High Court, whereby the Chief Justice of that Court may require a Judge of any other High Court to attend sittings of the former High Court for such period as may be necessary which can be done with the consent of such judge and the approval of the President after consultation with the Chief Justice of Pakistan and the Chief Justice of the High Court of which he is a Judge.

10/2. Whereas Article 175A of the Constitution is germane to the appointment of Judges to the Supreme Court, High Courts, and the Federal Shariat Court by the JCP, at first sight, both are two distinct and separate provisions dealing with two widely divergent situations without overlapping or overriding each other. The transfer of a judge by the President of Pakistan by means of Article 200 of the Constitution (permanently or temporarily) cannot be deduced as a fresh appointment expressly or tacitly.

What's more, the powers of transfer bestowed to the President by
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the framers of the Constitution cannot be obliterated or disregarded on the ground as to why the vacant posts were not filled up by JCP through fresh appointments rather than transfer. If it is reckoned or envisaged that all posts should be filled by the JCP alone through fresh appointments and not through transfer by the President, then such interpretation will not only contradict the discernible purpose and objective of the framers of the Constitution but will also invalidate the bedrock

and substance of Article 200 of the Constitution which is unequivocally an independent right and power not interconnected or interrelated with the life-force of Article 175A of the Constitution. Rather, it is a standalone provision specifically dealing with the exigencies of the transfer of judges of a High Court (permanently or temporarily) which cannot be reckoned a fresh appointment which is the sense of duty JCP inherently and unreservedly in terms of Article 175A of the Constitution and has nothing to do with the transfer of High Court Judges from one High Court to another. Furthermore, we have no hesitation in our mind to fervently hold that the transfer of a judge from one High Court cannot be deemed to be a fresh appointment to the office but the status of a transferee judge remains the same as appointed primarily under Article 193 of the Constitution and mere change of venue does not alter his original engagement but a reallocation of an existing resource.

10/3. The golden rule of statutory interpretation provides that the words used should be interpreted harmoniously and congenially in line with the intention of the legislature and all the provisions should be read in unison, for the reason that the foremost stratagem of this doctrine is to preserve the effect of the statute within the precincts of law and within the dominion of Constitution, provided that the statute is mute and/or inarticulate and is capable of more than one interpretation. While interpreting the Constitution, it is to be read as a whole without obliterating or annihilating the other provisions to ensure the rule of harmony. To understand its primordial and elemental commandments, and the language used in various Articles, it is

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necessary to consider the historical background and the textual and structural substratum for its literal interpretation with liberal enforcement. It is a well settled exposition of law that a written constitution is, in essence, a form of statute which needs to be interpreted liberally and read holistically as an organic document which contemplates the trichotomy of powers between the three organs of the State, namely, the Legislature, the Executive, and the Judiciary. The doctrine of pith and substance places considerable emphasis on figuring out the distinct attributes of constitutional provisions, and the doctrine of purposive interpretation lays down a duty upon the Courts to interpret the statute or the Constitution keeping in mind the purposefulness for which the provision in question was

legislated while adopting a result-oriented approach, rather than construing it in a restrictive or stringent sense. According to Salmond on Jurisprudence (12th ed.) by P. J. Fitzgerald, M.A., at page 132, interpretation or construction is the process by which the courts seek to ascertain the meaning or intention of the legislature through the medium of the authoritative forms in which it is expressed. The concept of purposive interpretation places an obligation upon the Courts to interpret the statute or the Constitution keeping in mind the purposefulness for which the provision in question was legislated with a dynamic and result oriented approach rather than construing it in a restrictive or stringent sense and should be vetted under the doctrine of harmonious interpretation which is akin to the notion of an extensive approach within the basic structure and constitutional scheme. It is well settled principle that redundancy cannot be attributed to any provision of the Constitution rather in case of any conflict in two provisions, the rule of harmonious interpretation is to be followed.

10/4. The fundamental principles guide the superior courts in construing the constitutional provisions to maximize their intended effect and ensure the enduring dispensation of constitutional justice. The Doctrine of Harmonious Construction stands as a cardinal principle, enjoying pervasive application
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across the diverse landscape of constitutional jurisprudence. The Oxford English Dictionary defines a constitution as "a body of fundamental principles or established precedents according to which a state or organization is governed".
The Collins Dictionary

says a constitution consists of "the fundamental principles on which a state is governed, especially when considered as embodying the rights of subjects". Constitutional interpretation entails evaluating the text, structure, history, and underlying principles of a constitution to determine its interpretation and scope, and to drive the formation of legal doctrine and precedents. The general rules of interpretation of the Constitution are: the words must be given full effect if they are clear and unambiguous; the Constitution must be read in its entirety; harmonic construction principles should be used; the Constitution must be interpreted liberally; the court must determine the intent of the constitution by looking beyond its literal words; when interpreting, it's acceptable to use both internal and external help and all other laws are subordinate to the Constitution whereas the guiding principles and modes of interpretation to approach and decipher literal interpretation of constitutional text (Textualism); emphasis on purpose and spirit of the Constitution (Purposivism); some constitutional principles are inviolable (Basic Structure) and avoiding conflict among different constitutional provisions (Harmonious Construction).

10/5. Professor Richard H. Fallon has, in his celebrated work "A Constructivist Coherence Theory of Constitutional Interpretation", 100 HARV. L. REV. 1189, 1189-90 (1987), identified five different strands of interpretative considerations: Arguments from the plain, necessary, or meaning of the constitutional text; arguments about the intent of the framers; arguments of constitutional theory that reason from the hypothesized purposes that best explain either particular constitutional provisions or the constitutional text as a whole; arguments based on judicial precedent; and value arguments that assert claims about justice and social policy. In the case of *Hunter v. Southam Inc*: [1984] 2 SCR 145, the Supreme

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Court of Canada, expounded the principle pertaining to constitutional interpretation as under:-

"The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or a Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind. Professor Paul Freund expressed this idea aptly when he admonished the American courts 'not to read the provisions of the Constitution like a last will and testament lest it become one'.

10/6. Seemingly the errand of elucidating and rationalizing a Constitution is stringently distinct from that of interpreting a statute, for a statute defines present rights and obligations and is easily enacted and as easily repealed and where two provisions in legislation are in such disagreement with each other that both of them cannot stand together, it is possible that they should be so read that effect can be given to both because it will not be a viable option to embrace a construction that renders both of them ineffective and useless. A Constitution is drafted with an eye to the future and its function is to provide a continuing framework for the legitimate exercise of governmental power and each provision of it has to be given meaningful and dynamic and vigorous interpretation rather than making it antediluvian or superfluous.

10/7. The Doctrine of Harmonious Construction is based on a cardinal principle in law that every statute has been formulated with a specific purpose and intention

and thereby should be read as a whole and essence is to give effect to both the provisions. To avoid conflict, the adopted “interpretation of the statute” should be consistent with all its provisions. For the ease of reference some local and foreign judicial precedents on doctrine of harmonious construction are as under:-

1. Hamza Rasheed Khan versus Election Appellate Tribunal, Lahore and others ([PLD 2024 Supreme Court 1028](#)) (Overruling of Sami Ullah Baloch case [PLD 2018 SC 405](#)): The judgment emphasizes the principle of harmonious [Const.Ps.No.22, 20, 25-28 & 30/2025 -20-](#)

interpretation of constitutional provisions, stating that the Constitution should be read as an organic whole and its provisions, especially those closely related to each other, are to be harmoniously reconciled instead of making out inconsistencies between them---One constitutional provision cannot, unless expressly so provided, override the other nor can one be so construed as to destroy the other but rather both are to be construed harmoniously, each sustaining the other.

2. Reference No. 1 of 2020, (secrecy of ballot in Senate elections in Pakistan ([PLD 2021 Supreme Court 825](#)). The Court emphasized that the Constitution is an organic whole and no provision should be interpreted in isolation. The meaning must be gathered from the Constitution as an integrated whole.

3. Lahore Development Authority versus Ms. Imrana Tiwana and others ([2015 SCMR 1739](#)). One constitutional provision cannot, unless it is so specifically provided, override another and must be harmoniously construed together, as repeatedly held by this Court: Ref: Hakim Khan v. Government of Pakistan ([PLD 1992 SC 595](#)); Kaneez Fatima v. Wali Muhammad ([PLD 1993 SC 901](#)); Zaheeruddin v. The State ([1993 SCMR 1718](#)); Al

Jehad Trust v. Federation of Pakistan ([PLD 1996 SC 324](#)); Pakistan Lawyers Forum v. Federation of Pakistan ([PLD 2005 SC 719](#)); Raja Muhammad Afzal v. Government of Pakistan ([PLD 1998 SC 92](#)) and Wukala Mahaz Barai Tahafaz Dastoor v. Federation of Pakistan ([PLD 1998 SC 1263](#)).

4. District Bar Association, Rawalpindi versus Federation of Pakistan ([PLD 2015 Supreme Court 401](#)). The Constitution contains a scheme reflecting its Salient Features which define the Constitution. Such Salient Features are obvious and self

evident upon a harmonious and holistic interpretation of the Constitution. In an effort to discover such Salient Features material outside the Constitution cannot

be safely relied upon.

5. Case regarding pensionary benefits of the Judges of superior courts from the date of their respective retirements, irrespective of their length of service as such judges ([PLD 2013 Supreme Court 829](#)). The entire Constitution has to be read as an integrated whole. No particular provision should be so construed as to destroying the other, but each sustaining the other provision. This is the rule of harmony, rule of completeness and exhaustiveness.

6. Qazi Hussain Ahmad, Ameer Jamaat-e-Islami Pakistan and others versus General Pervez Musharraf, Chief Executive and others (

[PLD 2002 Supreme Court 853](#)). The Court observed that the principles for interpreting Constitutional documents as laid down by this Court are that all provisions should be read together and harmonious constructions should be placed on such provisions so that no provision is rendered nugatory.

7. Abdul Razzaq Khokhar versus Province of Punjab and others ([1990 SCMR 183](#)). This Court, in this judgment, emphasized the principle of harmonious interpretation for incorporated laws. This means that when one law incorporates another, they should be read together to give consistent meaning to all relevant provisions.

8. Hafiz Abdul Waheed versus Mrs. Asma Jehangir and another (

[PLD 2004 Supreme Court 219](#)). The Court held that it is well-settled that the Court will lean in favour of harmonious interpretation of the statutes/various provisions and would certainly avoid an interpretation which has the potential of Const.Ps.No.22, 20, 25-28 & 30/2025 -21-

conflicting judgments or pitching one Constitutional Court against another.

9. Johnson vs. Moreton [(1978) 3 All. ER 37] & Stock vs. Frank Jones (Tipton) Ltd. [(1978) 1 All. ER 948]. In selecting out of different interpretations the Court will adopt that which is just reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice.

10. Commissioner of Income Tax Vs Hindustan Bulk Carriers**, (2003) 3 SCC 57, P. 74].** The Court laid down following principles of rule of harmonious construction: the Courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them. ["Commissioner of Income Tax Vs Hindustan Bulk Carriers", (2003) 3 SCC 57, P. 74]. AIR (2003) SC 3942; the provision of one section cannot be used to

defeat the provision contained in another unless the Court, despite all its effort, is unable to find a way to reconcile their differences; when it is impossible to completely reconcile the differences in contradictory provisions, the Courts must interpret them in such a way so that effect is given to both the provisions as much as possible. *Sultana Begum Vs Premchand Jain*--AIR 1997 SC 1006, Pages 1009, 1010]; Courts must also keep in mind that interpretation that reduces one provision to a useless number or dead is not harmonious construction and to harmonize is not to destroy any statutory provision or to render it fruitless.

11. *Jagdish Singh Vs Lt. Governor, Delhi & Ors (AIR 1997 SC 2239)*. Where there is a conflict between two provisions, their harmony should be tried to establish between them. It requires: read the complete Statute or Rules as a whole; read the complete statute or rules as a whole, and any Rule should not be construed to make the other Rule ineffective. It is a cardinal principle of construction of a Statute or the Statutory Rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a Harmonious Construction should be given, Further a Statute or a Rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the Rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One Rule cannot be used to defeat another Rule in the same Rules unless it is impossible to effect harmonization between them.

12. *S. Nagraj (Dead) by LRs & Ors Vs B. R. Vasudeva Murthy & Ors. ((2010) 3 SCC 353)*. The Statutes opposing provisions but with same subject matter have to be read together.

13. *SBEC Sugar Ltd & Anr. Vs Union of India & Ors., ((2011) 4 SCC 668)*. The cardinal principle of construction is that the provisions of the notification have to be harmoniously construed as to prevent any conflict with the provisions of the Statute.

14. *State of Rajasthan v. Gopi Kishan Sen (AIR 1992 SC 1754)*. The Court emphasized the principle of harmonious construction to uphold and give effect to all provisions without rendering any of them powerless. The Court invoked the maxim

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‘generalibus specialia derogant,’ where a special provision prevails over a general one on the same subject.

15. East India hotels ltd. Vs. Union of India (**AIR 2001 SC 231**). An Act is to be read as a whole, the different provisions have to be harmonized and the effect to be given to all of them.

16. P.S Sattappan vs. Andhra bank ltd. (**2004 11 SCC 672**). One cannot interpret a section in a manner which would lead to a conflict between two sub sections of the same sections.

17. Sarabjit Rick Singh vs. Union of India (**2008(2) SCC 417**). The court observed that a construction giving effect to all provisions of the statute should be adopted.

18. Bhatia International vs. Bulk Trading S.A. (**(2002) 4 SCC 105**). The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the Court has to choose that interpretation which represents the true intention of the legislature.... Notwithstanding the conventional principle that the duty of judges is to expound and not to legislate.

10/8. Moreover, the learned counsel for the petitioners emphatically argued that sub-article (1) of Article 200 should be read in conjunction with sub-article (2) and if both are read together, it accentuates that the transfer can be made only for limited period for the reason that the language of sub-article (2) explicates that “where a Judge is so transferred or is appointed to an office other than that of Judge at a place other than the principal seat of the High Court, he shall, during the period for which he serves as a Judge of the High Court to which he is transferred, or holds such other office, be entitled to such allowances and privileges, in addition to his salary, as the President may, by Order, determine”. In tandem, the learned counsel argued that both provisions require harmonious construction.

10/9. The expression “conjunction” is enunciated as under:-

1. Oxford Dictionary: the expression “conjunction” is defined as “together”.

2. Merriam-Webster defines the word conjunction as “ in combination with together with”.

3. Collins Dictionary defines it as “If one thing is done or used in conjunction with another, the two things are done or used together”.

10/10. To all intents and purposes, the phrase “conjunction” doesn't necessarily imply that there's a conflict. It simply means that the provisions are related and their collective meaning is what matters. Summarily, read in conjunction with each other means do not interpret one provision in isolation without considering the implications and context provided by the others; recognize that the meaning, scope, or application of one provision might be clarified, qualified, or even limited by another and the full and accurate meaning emerges only when all referenced parts are considered as a whole.

10/11. To keep with the letter of law, neither the aforesaid constitutional provisions can be given restrictive meaning nor it can be presumed that this provision can be applied only for time constraint transfer or for transfer for a specific period and not permanent, merely for the reason that under sub-article (2) it is provided that during the period for which a Judge of the High Court is transferred, he will be entitled to such allowances and privileges, in addition to his salary, as the President may by Order determine. The effect of payment of allowances and privileges, in addition to the salary is confined in the exigency of temporary transfer for specific period and not for the permanent transfer. The analogy drawn by the learned counsel for the petitioners is structured on the erstwhile provisions integrated under Article 200 where the transfers could be made for one year or two years without the consent of a judge intended or likely to be transferred but quite the reverse, the present configuration and constituents of Article 200, explains in simple terms that no deadline or closing date/period is provided for the transfer of judge from one High Court to another which connotes that in the present structure of Article 200 of the Constitution, the transfer can be effected both temporarily and permanently but the Notification of transfer issued by the President should specify the nature of transfer fair and square without leaving this important aspect in limbo which has its own repercussions and ramifications such as, if the transfer is on permanent basis then obviously, the seat of said transferred judge in his original place

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of appointment (High Court) will be vacant and opened for appointment of a new judge in his place within the prescribed strength of judges by JCP.

10/12. Even a glimpse of Article 25 of the High Court Judges (Leave, Pension and Privileges) Order, 1997, accentuates that it is almost analogous and interconnected with Sub-article (2) of Article 200 of the Constitution. In point of fact, it evokes a scenario under the caption “Transfer Allowance” whereby, if a Judge of a High Court is transferred from one High Court to another or from the principal seat of a High Court to a Bench of that Court, or is appointed to an office other than that of Judge at a place other than the principal seat of the High Court, he shall, during the period for which he serves as a Judge of the High Court, or at

the Bench, to which he is transferred, or holds such other office, be entitled, in addition to his salary, to a monthly allowance of ten thousand rupees. [emphasis supplied]. What it shows in the eyes of law is that the monthly allowance is payable only during the period for which a person serves as a Judge of the High Court or at the Bench to which he is transferred and yet again we observe that this condition applies only in temporary transfer and not in the event of permanent transfer. As a matter of course, the primary aim of the Courts is to get the bottom of the objectives of the Constitutional provision and then proceed with an interpretation that lends support thereto. The rule of purposive interpretation of statutes was originated in the 16th Century by means of decision in the Heydon's Case ((1584) 76 ER 637) which laid down the keystone of the purposive rule of interpretation, that is, if the literal interpretation of any provision of law is not acceptable or leads to absurdity, then such provision may be interpreted in line with the object and purpose which the legislature had in mind while enacting the law. According to *Maxwell on the Interpretation of Statutes* (12th ed.), at page 228, where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice,

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which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. Where the main object and intention of a statute is clear, it must not be reduced to a nullity.

10/13. It was further argued that the transfer summary should have been approved by the Federal Cabinet before sending it by the Prime Minister to the President in view of the dictum laid down by this Court in the case of *Mustafa Impex, Karachi versus The Government of Pakistan* ([PLD 2016 SC 808](#)). This argument also does not hold water. If the plain language of Article 48 of the Constitution is vetted, it is clearly conversed that in the exercise of functions, the President shall act on and in accordance with the advice of the Cabinet or the Prime Minister. The summary moved by the Prime Minister neither transgresses the command of Article 48 of the Constitution nor it offended the dictates laid down in the case of "Mustafa Impex". It is also somewhat reminiscent to call attention to Rule 15-A of the Rules of Business 1973, Cabinet Secretariat (Cabinet Division) Islamabad, wherein it is provided that in terms of any provision of the Constitution or under any other statutory provision any function is to be performed or any orders have to be issued by the President or his specific approval is required, the Division concerned shall incorporate a paragraph to this effect in the summary entitled as "Summary for the Prime Minister". The Prime Minister shall render his advice and submit the case to the President. After the President has seen and approved the case, it shall be returned to the Prime Minister. The cases to which this rule applies are enumerated in Schedule V-B (List of Cases

Requiring Orders of the President on the Advice of the Prime Minister). In Schedule V-B, item at Serial No.32 under the nomenclature of "Law and Justice Division" is germane to the High Court, its number of Judges, appointment of Chief Justices, Acting Chief Justices and other Judges and their transfers, removal, allowances and privileges with reference to Constitutional provisions such as Article 192 (1), 193 (1), 196, 197, 200 and 209 (6).

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10/14. A phrase "Constitutional lens" is now commonly being used which in literal sense denotes the interpretation and decision of cases within the framework of a constitution. By means of this lens, the Courts while exploring every avenue may scrutinize and survey the laws and policies vis-à-vis the provisions of the constitution to reach a conclusion whether it scaffolds the fundamental laws and tenets or not. Great philosopher Plato said "no law or ordinance is mightier than understanding." According to John Marshall, the constitution is either a superior paramount law unchangeable by ordinary means, or it is on a level with ordinary legislative acts alterable when the legislature shall please to alter it. It is emphatically the province and duty of the judicial department to say what the law is. This is the very essence of judicial duty. While Justice Neil Gorsuch, (Supreme Court of USA), said "ours is the job of interpreting the Constitution. And that document isn't some inkblot on which litigants may project their hopes and dreams". Some Latin Legal maxims are also applied as guiding light which paves a way to elect fundamental legal principles for judges and lawyers in interpreting the laws and raison d'être of legal provisions and rules in order to make sure consistency and equanimity in the Courts decisions. For example: "**A verbis legis non recedendum est**" translates to "from the words of the law, there must be no departure." In fact, this legal maxim underlines the interpretation of law on its literal wording and meaning of legal text. While the maxim "**verba cum effectu accipienda sunt**" explicates that "words are to be understood so as to give them effect" or words are to be construed as to their effect". The "**ratio legis est anima legis, et mutata legis ratione, mutatur ex lex**", (the reason for a law is the soul of the law, and if the reason for a law has changed, the law is changed). Whereas the maxim, "**cessante ratione legis, cessat ipsa lex**" denotes "when the reason for the law ceases, the law itself ceases." Another maxim "**ut res magis valet quam pereat**" enunciates that "the thing may have effect rather than be destroyed" or it is better for a thing to have effect than to be made void". Meaning thereby that while interpreting the laws, the validity of legal provision

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should be guarded rather than rendering it totally ineffective or invalid. The next dominant maxim is "**aequitas nunquam contravenit leges**" which means "equity never contradicts the law." Indeed this maxim provides a proactive guiding force that equity can complement where the strict application of law might be unjust. In essence, doctrine of equity can operate as a corrective measure within the leaps of

law but not as a device or tool to nullify the express provision of law. Last but not least, the phrase "**iudicis est ius dicere, non dare**" is equally of great magnitude which focuses on the role and sense of duty of judges. It deciphers that "it is for the judge to declare the law, not to give it." This draws a dynamic distinction between the legislative function of making laws and the judicial function of interpreting and applying them in its veritable intellect.

10/15. According to Warren E. Burger, former Chief Justice of the United States, "the Judges rule on the basis of law, not public opinion". Judicial populism triggers when judicial branches are much more influenced by the people and render the decisions according to the will of people which is not precisely the role of judiciary. The role of a constitutional judge is different from that of a King, who is free to exert power and pass orders of his choice over his subjects. Vesting of judicial power does not mean to exercise as per will of the judge but effect is ought to have given the will of the law and Constitution. Under the guise or semblance of populist approach, the judges cannot indulge in electing and opting public opinion and emotions for overshadowing or eroding established constitutional and legal provisions. At this juncture, I am also fortified by the judgment authored by Justice Mansoor Ali Shah in the case of Mian Irfan Bashir Vs. Deputy Commissioner (D.C.), Lahore ([PLD 2021 Supreme Court 571](#)), wherein the learned author of the judgment quoted Chief Justice John Marshall, who stated that judicial power is never exercised for the purpose of giving effect to the will of the judge, but always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law. Additionally, his lordship referenced an excerpt from the

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chapter "The Rehnquist Court and "Conservative Judicial Activism" in the book "*That Eminent Tribunal: Judicial Supremacy and the Constitution*" authored by Christopher Wolfe (American Political Scientist), and held as under:

"5. It is one thing for a judge to progressively interpret the law because of human rights considerations about which he has substantial information. It is quite another to change or ignore the law for economic or social or political reasons based on polycentric considerations beyond the judge's expertise. According to Chief Justice John Marshall, judicial power is never exercised for the purpose of giving effect to the will of the judge; but always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law. When courts exercise power outside the Constitution and the law and encroach upon the domain of the Legislature or the Executive, the courts commit judicial overreach.

6. Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. This is totally

uncharacteristic of the role of the judiciary envisaged under the Constitution and is most undesirable in a constitutional democracy. Judicial overreach is transgressive as it transforms the judicial role of adjudication and interpretation of law into that of judicial legislation or judicial policy making, thus encroaching upon the other branches of the Government and disregarding the fine line of separation of powers, upon which is pillared the very construct of constitutional democracy. Such judicial leap in the dark is also known as "judicial adventurism" or "judicial imperialism." A judge is to remain within the confines of the dispute brought before him and decide the matter by remaining within the confines of the law and the Constitution. The role of a constitutional judge is different from that of a King, who is free to exert power and pass orders of his choice over his subjects. Having taken an oath to preserve, protect and defend the Constitution, a constitutional judge cannot be forgetful of the fact that he himself, is first and foremost subject to the Constitution and the law. When judges uncontrollably tread the path of judicial overreach, they lower the public image of the judiciary and weaken the public trust reposed in the judicial institution. In doing so they violate their oath and turn a blind eye to their constitutional role. Constitutional democracy leans heavily on the rule of law, supremacy of the Constitution, independence of the judiciary and separation of powers. Judges by passing orders, which are not anchored in law and do not draw their legitimacy from the Constitution, unnerve the other branches of the Government and shake the very foundations of our democracy." **[Emphasis Applied]**

10/16. In our considered view, there is no incongruity or repugnancy in the midst of Article 175A and Article 200 of the Constitution. Contrarily, both according to chapter and verse have different standing for dealing different situations and physical characteristics of judicial manpower management. A holistic reading of the Constitution reveals multiple avenues through which the composition of a High Court may change: (i)

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by a new appointment under Article 175A; (ii) by elevation of one of its judges to the Supreme Court (thus creating a vacancy); (iii) by retirement or resignation or removal of a judge (again creating vacancy); and (iv) by permanent transfer of a judge from or to that High Court under Article 200 (filling a vacancy in one High Court while simultaneously creating a vacancy in another). The Secretary JCP (Respondent No.2) also filed the reply/concise statement vide CMA.2229/2025 in Const.P.22/2025 in which it is clearly submitted that the mandate of JCP under Article 175A of the Constitution is a constitutional body which is primarily tasked to the appointment of Judges to the Supreme Court of Pakistan, High Courts and Federal Shariat Court and has nothing to do with the transfers made in exercise of powers under Article 200 of the Constitution. Had the framers of Constitution intended to subsume the transfer of judges from one High Court to other entirely under the JCP regime or deliberation, they would either have repealed Article 200

in the 18th Amendment or included language in Article 175A to govern transfers also but substratum of Article 200 still remains unchanged which demonstrates the intention of framers of Constitution manifestly that neither they aspired to vest in such powers to JCP, nor they amended or diluted the exactitudes of Article 200 of the Constitution. A transfer by the President under Article 200 cannot be questioned on the ground that the vacancy should have been filled by the JCP through a fresh appointment. To hold otherwise would not only contradict the manifest intention of the Constitution's framers but effectively read Article 200 out of the book. In view of the above, we answer the first point by affirming that Article 200 is a valid, self-contained constitutional mechanism for transferring High Court Judges, (permanently or temporarily) and its invocation in the present case does not violate or subvert Article 175A by any means. The two provisions neither overlap nor override each other, nor is there any disharmony or dissonance amongst them which need to be reconciled or resolved.

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2. Constitutional Requirements of Consent and Consultation:

11. The forthright rendition of Article 200 conveys that it is consciously and purposefully barricaded with conditions to ensure that the power of transfer of High Court Judge should not be misused by the executive to the detriment of judicial independence, therefore, a "four tier formula" is encapsulated i.e. (i) the consent of the Judge concerned; (ii) consultation with the Chief Justice of Pakistan; (iii) consultation with the Chief Justice of the High Court from which the Judge is to be transferred; and (iv) consultation with the Chief Justice of the High Court to which the Judge is to be transferred. The requirement that no Judge shall be transferred without his consent is an emphatic recognition of a judge's personal and professional stakes in his posting. It acknowledges that transferring a Judge is not a trivial matter; it uproots him from familiar surroundings, possibly compels relocation of family, changes his pool of cases and lawyers, and might affect his chances for future elevation. Thus, the Constitution grants him first choice or first right of refusal. If he refuses, the matter ends forthwith at the very initial stage. There was no complaint that judges were transferred without their consent or volition. The next tier of protection is the consultation with the Chief Justice of Pakistan who according to the record in principle, agreed to the proposal of transferring three Judges to IHC. In fact, the initiative was discussed between the Law Ministry and the CJP, and the consent of Judges was procured subsequently. The CJP's consent is the linchpin, being paterfamilias of the judicial family. Regarding the Chief Justice of the donor High Courts (LHC, SHC, BHC), the record indicates they were informed and their views sought. None of them raised any objection, evidently, no qualms or reservations were voiced during consultation process.

11/1. No doubt the consultation should be effective, meaningful, purposive, and consensus oriented (Ref: Al-Jehad Trust v. Federation of Pakistan ([PLD 1996 SC 324](#))). It refers to the process whereby people exchange views and information. It is not just a one-way process, but a process of sharing knowledge and opinions. The

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expression “consultation” is defined in the different lexicons as under:-

1. Black's Law Dictionary, 'consultation' is the act of asking the advice or opinion of someone (such as a lawyer).

2. Collins Dictionary. A consultation is a meeting which is held to discuss something. Consultation is discussion about something.

www.collinsdictionary.com/dictionary/english/consultation

3. Oxford Learners Dictionaries. The Consultation is the act of discussing something with somebody or with a group of people before making a decision about it.

<https://www.oxfordlearnersdictionaries.com/definition/english/consultation>

4. Stroud's Judicial Dictionary, Volume 1, Fourth Edition, for the definition of the word "consultation: New Towns Act 1946, (C.68), SA(l). Consultation means that, on the one side, the Minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender advice" Per Bucknill L.J. in Rollo v. Minister of Town and Country Planning (1948) 1 All E.R. 13. 13, C.A.; see also Fletcher v. Minister of Town and Country Planning (1947) 2 All E.R. 946. (2) "Consultation so far as practicable ... with the ... parochial church councils" (Pastoral Reorganization Measure 1949 (No.3), S.3(l) means that a full and sufficient opportunity for the members of the council to ask questions and to submit their opinions in any reasonable way should be given (re: Union of Benefices of Whippingham and East Cowes, St. James (1954) A.C. 245. Ref: **Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi v. Federation of Pakistan and others** ([PLD 1996 Supreme Court 324](#))

11/2. According to the learned counsel for the petitioners, the process of consultation was sham and completed with due haste. It was further articulated that the material facts were concealed and suppressed during the consultation process. When the aforesaid bunch of Constitution Petitions were filed and fixed in Court, we on the very first date i.e. 14.4.2025, issued notices to all the respondents including the Attorney General and Advocate General of all Provinces

and Islamabad Capital Territory under Order 27A CP.C. In response, the Registrar Supreme Court of Pakistan, Registrar Lahore High Court, Sindh High Court, Balochistan High Court and Islamabad High Court have filed their reply through concise statements, which are reproduced as under:-

****i) Registrar Supreme Court (Respondent No.04) ****

CMA.2228 of 2025 in Const.P.No.22 of 2025

“It is respectfully submitted as follows:-

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1. It is submitted that under Article 200(1) of the Constitution of the Islamic Republic of ("Constitution"), the President may transfer a Judge of a High Court to another High Court with his consent and after consultation by the President with the Chief Justice of Pakistan and the Chief Justices of both High Courts.
2. In furtherance to the above and keeping in view the mechanism laid out in Article 200(1), consultation/concurrence of the Hon'ble Chief justice of Pakistan was sought by the Ministry of Law and Justice vide letter dated 01-02-2025. The said consultation/concurrence was duly provided/conveyed by the Hon'ble Chief Justice of Pakistan on 01-02-2025.
3. In view of the foregoing it is respectfully noted that the concise statement may be taken on record.

Registrar

Drawn & Settled by

Muhammad Salim Khan,

Registrar Supreme Court of Pakistan Islamabad”

ii) Registrar Lahore High Court (Respondent No.06) CMA.No.2238 of 2025 in Const.P.No.22 of 2025

“Respectfully Sheweth.

That the Hon'ble Supreme Court of Pakistan (Constitutional Bench) vide order dated 17.04.2025 passed in above said petition has been pleased to direct the answering respondent to file concise statement. The relevant portion of the order of the Hon'ble Bench is reproduced below:-

"3. The notices issued to the learned Advocate General of the Province and Islamabad Capital Territory have been served, and except the Advocate General Sindh, all learned Advocate Generals/Additional Advocate Generals are present. Since the Registrars of High Courts have also been impleaded in this petition, therefore, all learned Advocate Generals are directed to consult with the Registrar of their concerned High Court and file their concise statements before the next date of hearing along with the seniority list maintained by the Hon'ble Judges in their respective High Courts.

2. That Hon'ble Mr. Justice Bardar Muhammad Sarfraz Dogar s/o Sardar Nazar Hussain Dogar was a practicing lawyer at Multan when on the recommendations of the then Hon'ble Chief Justice of the Lahore High Court Lahore was appointed as additional Judge of the Lahore High Court, Lahore vide Notification No.F.5(1)/2015-/A.II. dated 05.06.2015 issued by the Ministry of Law Justice and Human Rights Division, Govt. of Pakistan, Islamabad (Annex-A).

3. In pursuance of the above said Notification Hon'ble Mr. Justice Sardar Muhammad Sarfraz Dogar took oath of the office of additional Judge of the Lahore High Court Lahore on 08.06.2015 (Annex-B) and assumed charge accordingly on the same day, charge assumption report in attached as Annex-C.

4. That vide Notification No.F.5(1)/2015-/A.II. dated 09.05.2016 issued by the Ministry of Law & Justice, Govt. of Pakistan, the President of Islamic Republic of Pakistan was pleased to extend the tenure of office of Hon'ble Mr. Justice Sardar Muhammad Sarfraz Dogar, amongst others as additional Judges of Lahore High Court Lahore for a period of one year w.e.f. the date their present term of office expires, while exercising powers under Article 197 of the Constitution of Islamic Republic of Pakistan (Annex-D).

5. That vide Notification No.F.5(1)/2015-/A.II. dated 26.05.2017 issued by the Ministry of Law & Justice, Govt. of Pakistan, the President of Islamic Republic of Pakistan while exercising
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powers under Article 193 of the Constitution of Islamic Republic of Pakistan was pleased to appoint Hon'ble Mr. Justice Sardar Muhammad Sarfraz Dogar along with five other additional Judges of the Lahore High Court Lahore to be the Judges of the said Court w.e.f. the date they make oath of their office (Annex

E).

6. That in compliance with the aforesaid Notification Hon'ble Mr. Justice Sardar Muhammad Sarfraz Dogar took oath of the office of Judge of Lahore High Court Lahore on 27.05.2017 (Annex-F) and assumed charge accordingly on 27.05.2017 (Annex-G).

7. That on 29.01.2025 Hon'ble Mr. Justice Sardar Muhammad Sarfraz Dogar has given his consent sought by His excellency the President of Pakistan for his transfer from the Lahore High Court Lahore to the Islamabad High Court Islamabad and after having the consent of the said Hon'ble Judge, His excellency the President of Pakistan also consulted with the Hon'ble Chief Justice of Lahore High Court Lahore, in response to which the Hon'ble Chief Justice accorded concurrence on 31.01.2025.

8. That vide Notification No.F.10(2)/2024-A.II dated 01.02.2025 issued by Ministry of Law & Justice, Govt. of Pakistan, His excellency the President of Pakistan while exercising powers conferred under clause (1) of article 200 of the Constitution of the Islamic Republic of Pakistan was pleased to transfer Hon'ble Mr. Justice Sardar Muhammad Sarfraz Dogar along with two other Hon'ble Judges namely Hon'ble Mr. Justice Khadim Hussain Soomro, Judge High Court of Sindh and Hon'ble Mr. Justice Muhammad Asif, Judge High Court of Baluchistan to Islamabad High Court (Annex-1).

9. That Hon'ble Mr. Justice Sardar Muhammad Sarfraz Dogar was at Sr.No.15 of the seniority list of the Hon'ble Judges of Lahore High Court Lahore at the time of transfer from Lahore High Court Lahore to Islamabad High Court, Islamabad (Annex

1), whereas, the present seniority list of the Hon'ble Judges of Lahore High Court Lahore is attached at Annex-J for facility of the reference.

10. That pursuant to the Notification dated 01.02.2025 issued by Ministry of Law & Justice, Govt. of Pakistan Hon'ble Mr. Justice Sardar Muhammad Sarfraz Dogar relinquished the charge of the office of Judge, Lahore High Court Lahore (Annex K), on 01.02.2025

(Amjad Iqbal Ranjha)
Registrar
Lahore High Court"

iii) Registrar Sindh High Court (Respondent No.07.) CMA.No.2911 of 2025 in
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“It is respectfully submitted that so far memos of above constitution petitions have not been received. However, the last order dated, 17- 04-2025 passed in the above numbered constitution petitions, required filing of concise statement before the next date of hearing along with seniority list maintained by the Honourable Judges in the respective High Courts.

2. It is respectfully submitted that letter bearing F. No. 10(2)/2024- A.II, dated: 31-01-2025 was addressed to this office by Mr. Raja Naeem Akbar, Secretary, Ministry of Law & Justice, Government of Pakistan on the subject for transfer of Mr. Justice Khadim Hussain Soomro, Judge, High Court of Sindh from High Court of Sindh to Islamabad High Court pursuant to Article 200 of the Constitution of Pakistan (Copy along with its relevant annexures is enclosed as Annex-A). The said letter was then placed before the then Honourable Chief Justice and thereafter the reply thereto with concurrence pursuant to Article 200 of the Constitution coupled with the consent conveyed by Honourable Judge was sent through letter No. Const.Ps.No.22, 20, 25-28 & 30/2025 -34-

RHC/PA/JCP-8/2025, dated: 31-01-2025 (Copy of letter is enclosed as Annex-B)

3. It is further respectfully submitted that thereafter Notification No. F.10(2)/2024-A.II, dated: 01-02-2025 was issued by Secretary, Ministry of Law and Justice, Government of Pakistan and charge assumption report of Honourable Mr. Justice Khadim Hussain Soomro as Judge, Islamabad High Court was furnished to this Court by Additional Registrar (Estb.) Islamabad High Court through letter dated: 03-02-2025 (Copy of Notification dated: 01-02-2025 and letter dated: 03-02-2025 are enclosed as Annex-C and D respectively.)

4. It is further respectfully submitted that the present Seniority List maintained in this Court is enclosed as Annex-E.

Submitted for kind perusal and further orders.

Suhail Muhammad Laghari
Registrar, High Court of Sindh”

iv) Registrar Islamabad High Court (Respondent No.05) C.M.A.No.2256 in Const. P.No.22 of 2025

"Respectfully Submitted:

01. That the above titled petition is pending adjudication before the Honorable Constitutional Bench wherein the Registrar, Islamabad High Court, Islamabad, is arrayed as one of the Respondents.

02. That wide order dated 17.04.2005, the learned Advocate Generals have been directed to file concise statements. The operative part of the order of Constitution Bench of Supreme Court is reproduced below:

"3. Since the Registrars of the High Courts have also been impleaded in this petition, therefore, all learned Advocate General are directed to consult with the Registrar of their concerned High Courts and file their concise statements before the next date of hearing along with the seniority list maintained by the Honourable Judges in their respective High Courts."

03. That the titled petition seeks to challenge transfer of judges to the Islamabad High Court vide notification dated 01.02.2025, issued by the Ministry of Law & Islamabad High Court dated 03.02.2025 (Annex-Page 4); the notification of appointment of the Hon'ble Acting Chief Justice of the Islamabad High Court dated 12.02.2005 (Annex

Page 5); and the decision on the representation of the Hon'ble Judges by the then Chief Justice of the Islamabad High Court, dated 08.02.2025 (Annex-Page 61 Justice (Annex-Page 3); the seniority list of the Hon'ble Judges as issued by

04. That the summary was initiated by the Ministry of Law & Justice the Prime Minister, whereupon the Prime Minister sent the same to the President of the Islamic Republic of Pakistan for transfer of High Court judges to the Islamabad High Court.

05. That the President of the Islamic Republic of Pakistan approved the summary of the Prime Minister for transfer of High Court judges to the Islamabad High Court after meaningful consultation with the Hon'ble Chief Justices of the respective High Courts and the Chief Justice of Pakistan and thereafter the Ministry of Law and Justice issued notification of the transferee judges dated 01.02.2025 accordingly.

06. That the transfer of judges has been made after fulfilling all constitutional requirements. The process of transfer was initiated, processed and then finalized

in accordance with Article 200 of the Constitution of the Islamic Republic of Pakistan, 1973.

07. That the Hon'ble Acting Chief Justice of the Islamabad High Court, Mr. Justice Muhammad Sarfraz Dogar, had already been administered oath as Additional Judge and as Judge of Hon'ble High
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Court. On his transfer to the Islamabad High Court, on the basis of rule laid down for seniority of High Court's Judges by the Hon'ble Supreme Court of Pakistan, the seniority of Hon'ble Mr. Justice Muhammad Sarfraz Dogar was fixed as Senior Puisne Judge of the Islamabad High Court vide order dated 03-02-2025.

08. That Senior Puisne Judges are ordinarily appointed as Acting Chief Justices of respective High Courts, and that on the basis of the same principle and judicial convention, Hon'ble Mr. Justice Muhammad Sarfraz Dogar was appointed as Acting Chief Justice of the Islamabad High Court.

09. That the then Hon'ble Chief Justice of Islamabad High Court had reconstituted the Administration Committee of High Court as per High Court Rules & Orders, applicable at the relevant time, vide Notification dated 03.02.2025.

10. This concise statement is submitted for kind consideration of Hon'ble Constitutional Bench of the Supreme Court of Pakistan in compliance of order dated 17.04.2025.

Muhammad Yar Walana
Registrar, Islamabad High Court"

v) Registrar High Court of Balochistan, Quetta (Respondent No.08) CMA.2255 of 2025 in Const.P.No.22 of 2025

“Humbly sheweth:

Consequent upon having authorization from the President of the Islamic Republic of Pakistan to initiate transfer process, as envisaged in Article 200 of the Constitution of Islamic Republic of Pakistan, the Ministry of Law and Justice, Government of Pakistan, addressed a letter dated 31 January, 2025, and on having consent from Justice Muhammad Asif, Judge, High Court of Balochistan, Quetta, for his transfer to Islamabad High Court, within the meaning of Clause (1) of ibid Article, by means of another letter of even date requested for placing the matter before the Hon'ble Chief Justice of this Court for

consultation/concurrence. The Hon'ble Chief Justice at the relevant time was out of country, however, his honour was contacted on Mobile, who in view of the consent given by the Hon'ble Judge concurred for the subject transfer and directed for placing the matter before the Hon'ble Acting Chief Justice of this Court and his honour in view of the consent given by the Hon'ble Judge, gave concurrence for the subject transfer. As a result, the Ministry of Law and Justice, Government of Pakistan, issued Notification dated 1st February, 2025, transferring Justice Muhammad Asif, Judge of this Court to Islamabad, High Court. Copy of letter dated 31.01.2925, consent of Hon'ble Judge, another letter of Ministry of law of even date, Note Portion containing approval of the Hon'ble Acting Chief Justice, letter of this Court dated 31.01.2025 and Notification dated 01.02.2025, are annexed herewith as Annexure-R-8/1 to R-8/6.

Concise statement as per direction of the Hon'ble Court is submitted for kind consideration and orders as deemed appropriate in the interest of justice.

Registrar
High Court of Balochistan, Quetta”

11/3. Last but not least, the letter dated 1st February 2025, (Reg. No.F-I/2025, communicated by the Registrar, Supreme Court of Pakistan to Secretary, Ministry of Law & Justice, Government of Pakistan, Islamabad conveying the consent/concurrence of the Honourable Chief Justice of Pakistan is quite significant, which is reproduced as under:-

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Concurring note of Honourable Chief Justice Pakistan

“The proposed transfer of the 03 Honourable Judges from the High Courts of different federating units to Islamabad High Court completely syncs with the spirit of federalism as enshrined in the Constitution of Islamic Republic of Pakistan. It is also in conformity with Section 3 of the Islamabad High Court Act, 2010. The thoughtful consideration behind the proposal illustrates resolve in providing an equitable share to linguistic diversity of our country and fair chance of representation to all the federating units in the High Court of the common capital of the Federation i.e., Islamabad High Court”

11/4. Compliant with the exactitudes and assiduousness of the consultation process provided under Article 200 of the Constitution, all the concerned collegium members were consulted who were none other than the three Chief Justices of the High Courts and the Chief Justice of Pakistan, who was in a leading or the dominant position as paterfamilias. In his own wisdom, not only did he find the proposal completely in sync with the spirit of federalism, but also in

conformity with Section 3 of the Islamabad High Court Act, 2010. According to him, the thoughtful consideration behind the proposal illustrated resolve in providing an equitable share to linguistic diversity of our country and fair chance of representation to all the federating units in the High Court of the common capital of the Federation. What's more, all other Chief Justices of the High Courts were a part of the consultation process after due consideration and deliberation conceded the transfer. Though the petitioners are raising eyebrows against the consultation process and attributing malice in fact and malice in law, nothing was objected by any of the consultees involved in the process who had actually every right to object if found some wrongfulness or impropriety in the process. Had any of them any reservation in the consultation process including the alleged hazard or jeopardizing the public interest, independence of judiciary and or any complaint or express doubts vis-à-vis the alleged concealment or suppression of material facts in the transfer proposal, they could have undoubtedly raised the objections at the very initial stage and could not become privy to the transfer proposal or even if

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something was suppressed in the proposal floated to them, they could have raised objections afterwards in their replies filed by the concerned Registrars to bring it in the knowledge of this Court. But in all replies, they all open-heartedly reinforced the transfers without any remonstration and their concurrence cannot reckon as a snap decision. We are sure that under the doctrine of indoor management, the ripostes could not be filed by the Registrars in this Court without the administrative approval and vetting of their concerned Chief Justices.

11/5. If we look into Article 222 of the Constitution of India, it also empowers the President to transfer a judge from one High Court to another after consulting the Chief Justice of India but the consent of the judge being transferred is not a requirement for either initial or subsequent transfers while in our Article 200, a foolproof and watertight procedure is provided to be complied with before issuing transfer notification by the President. The question of transfer of High Court Judges was for the first time raised in the case of **Union of India v. Sankal Chand Himatlal Sheth & Anr. (1978 (1) SCR 423 = AIR 1977 SC 2328)**, where the petitioner was a judge of Gujarat High Court who was transferred to the Andhra Pradesh High Court. He challenged the transfer's validity and argued that it was unconstitutional because it was done without his consent, violated an earlier assurance by the Law Minister, was not in the public interest, and resulted from ineffective consultation with the Chief Justice of India. The Supreme Court held that the consent of the judge being transferred is not a prerequisite under Article 222(1) of the Constitution; the Court emphasized that Article 222 (1) imposes a mandatory obligation on the President to consult with the Chief Justice of India before transferring a judge; the Court acknowledged the importance of preserving judicial independence but concluded that the power to transfer judges, when

exercised in the public interest, does not necessarily undermine it and it was further clarified that transfer of High Court judges should be made with effective consultation with the Chief Justice of India. In the First Judges Case S.P.Gupta v. Const.Ps.No.22, 20, 25-28 & 30/2025 -38-

Union of India (**AIR 1982 SC 149**), it was held that that the executive could refuse the Chief Justice of India's recommendation for cogent reasons. In the Second Judges Case, Supreme Court Advocates on Record Association v. Union of India (**AIR 1994 SC 268**), a Collegium system was introduced by interpreting "consultation" as "concurrence," meaning the Chief Justice of India's opinion must reflect institutional consensus formed in consultation with the two senior-most Supreme Court judges. Whereas in the Third Judges Case, In Re: Presidential Reference (**AIR 1999 SC 1**), the Collegium was expanded to a five-member body, comprising the Chief Justice of India and the four senior-most judges of the Supreme Court. While in the Fourth Judges Case, Supreme Court Advocate-on-Record Association And Other v. Union of India (**[2016] 5 SCC 1**), the Supreme Court of India struck down the National Judicial Appointments Commission (NJAC) Act, 2014, thereby upholding the Collegium system to safeguard judicial independence. In the case of Supreme Court Advocates-On-Record Association case (supra), the Court while deciding the case also referred to the observation of Justice Chandrachud rendered in the case of Union of India v. Sankalchand Himatlal Sheth, that the transfers might be necessary to address a "factious local atmosphere" in a High Court or to remove a judge from a situation of favoritism. The Court also referred to the speech of Dr. Ambedkar who cited strengthening a High Court with "better talents" from elsewhere and appointing a Chief Justice uninfluenced by local politics. Moreover, potential reasons for transfer may in the public interest which include addressing unsuitable working conditions, resolving irreconcilable differences between a judge and their colleagues, and preventing the exploitation of a judge's close relationships for improper gain.

11/6. The bottom line in our thoughtful consideration is that the prerequisites and due diligence phases encapsulated under Article 200 were duly complied with in letter and spirit. Yet again, the power of transfer by the President is not unregulated or unbridled but structured on a four-tier formula. Hence, for all Const.Ps.No.22, 20, 25-28 & 30/2025 -39-

intents and purposes, it is resonated without any possibility of doubt, that in the inbuilt procedure and mechanism, the right of rejection or primacy/dominance is within the strict sphere and realm of judiciary and not within the domain or province of executives. Therefore, it does not in any case compromise the independence of the judiciary where the option to accept or reject the transfer's proposal is vociferously within the hands of the judiciary without any compromise,

which neither disparage the independence of judiciary nor put it at peril insofar as the decision making authority or consent remains within the control of judiciary.

****3. Scope & Interpretation of Section 3 of the ****

Islamabad High Court Act, 2010:

12. Pursuant to Article 175 of the Constitution, the Islamabad High Court was established in the Capital Territory vide Law, Justice and Parliamentary Affairs Division's Notification No. F.9 (I)/2008-A.II, dated 22.4.2010. The learned counsel for the petitioners argued that the transfer of judges in Islamabad High Court also contravenes Section 3 of IHC Act, 2010, which is reproduced as under:-

“3. Islamabad High Court. (1) The Islamabad High

Court shall consist of a Chief Justice and twelve

other Judges to be appointed from the provinces
and other territories of Pakistan, in accordance

with the Constitution.

(2) The Islamabad High court shall start

functioning from the appointed date.

(3) The principal seat of Islamabad High Court

shall be at Islamabad”.

12/1. The petitioners leaned on the phrase “to be appointed from the provinces and other territories” as the sticking point and argued that the life and soul of this provision emphasizes the mode of induction into IHC by appointment through JCP rather than the transfer of judges from other High Courts. We find this argument to be based on a misreading of Section 3 of IHC Act, 2010 and an improper attempt without any rhyme or reason to give a subordinate legislation primacy over the

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Constitution. In all conscience, if we look into the pith and substance, Section 3 is an ordinary law provision and by no means deemed to be so sacrosanct or sacred with the ability or proficiency to override or curtail express constitutional powers

of the President conferred under Article 200 of the Constitution. Even, an astute reading of Section 3 ricochets that it essentially fixes the composition of the IHC (1 Chief Justice + 12 Judges)

and indicates that these Judges are to hail from various federating units consistent with the federal character of the Court. It does not candidly set down the method of appointment except “in accordance with the Constitution”. We are sanguine that Section 3 is germane to the appointment but it does not expressly or impliedly debar or restrict that a judge can only join the Islamabad High Court through a fresh appointment for all time to come and not by way of a transfer. To get hold of such interpretation amounts the overriding Article 200 of the Constitution. If primacy is accorded to Section 3 of the IHC Act, 2010, it would be constitutional non sequitur. We therefore conclude that Section 3 of the IHC Act, 2010 proffers no bar to the impugned transfers. The transfers were made in accordance with the Constitution and there was no violation of the provincial representation principle. Section 3 of IHC Act, 2010 cannot be read to attribute redundancy or severance to Article 200’s operation or to rein in the provisions of Constitution and its supremacy. Consequently, we hold that the transfers to IHC are neither unconstitutional nor illegal on the anvil of Section 3 of the IHC Act, 2010.

4. Public Interest & Judicial Independence Considerations:

12/2. The petitioners also anchored much of their challenge to the ways and means of the transfer of judges on the principle of judicial independence which in substance undermined the internal seniority of a High Court. We do not aspire to hold that Article 200 of the Constitution is meant to utilize for compromising or devastating the independence of the judiciary. How can this provision be construed against the independence of judiciary when foolproof built in checks and balances are

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provided before triggering the transfer of judges? The transfers were made after due compliance of requisite formalities and every stakeholder was taken on board and final and central approval to transfers was accorded by the judiciary and not the executive. In such a scenario, there is no earthly reason to hold that the independence of judiciary as an institution is violated when the judiciary essentially made the choice about its own personnel

and without the requirement of CJP’s approval and judge’s consent, neither was it possible nor imaginable.

12/3. The learned counsel for the petitioners very forcefully argued that the transfer of judges can only be made in the public interest and according to them, the present transfer of judges is based on malice in facts and malice in law both as well as against the independence of judiciary. In the case of Al-Jehad Trust v. Federation of Pakistan ([PLD 1996 SC 324](#)), while interpreting the constitutional provisions governing the appointment of judges to the superior judiciary, this Court acknowledged that under the Constitution a High Court Judge could be transferred to another High Court by the President. However, it read into Article 200 an important limitation: a transfer can only be made in the public interest, not as a punitive measure or for political ends. It was further held that that a non-consensual transfer (especially coupled with forced retirement on refusal) militates against the concept of the independence of Judiciary and effectively amounts to a circumvention of the removal process under Article 209. The introduction of provisions in the Constitution for transfer of a High Court Judge to another High Court without his consent and also appointment of a High Court Judge to the Federal Shariat Court without his consent, at the peril of his being [deemed retired] in case of refusal, or the provision relating to the nomination of a High Court Judge to any of its Benches are amendments/additions which militate against the concept of the independence/separation of Judiciary as envisaged by the Constitution. Even in the Presidential Reference No. 2 of 1996 ([PLD 1997 SC 84](#)), this Court while recapping and

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ensuring the spirit of the Al-Jehad judgment, maintained and even strengthened that primacy in appointments remains with the judiciary's recommendation while the formal appointment remains an executive act.

12/4. In the Black's Law Dictionary (Sixth Edition), 'public interest' means "something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government....". Whereas in Black's Law Dictionary (Eight Edition), "public interest" means "the general welfare of public that warrants recognition and protection or something in which the public as a whole has a stake, especially "an interest that justified governmental regulation". In fact, the term ****public interest" refers to the welfare or well-being of the general public. In administrative law, the term "public interest" refers to the collective well-being, security, and proper functioning of society and the state, as weighed against individual or private interests. It is a guiding principle used by government authorities to justify actions and decisions, such as transfers, suspensions, regulations, or restrictions, that may affect individuals but are claimed to benefit the broader public. It carries legitimacy and

justifies coercion and it has done so ever since “salus populi suprema lex esto” (the welfare of the people is the supreme law, enunciates the idea of law). The concept of public interest has been defined very aptly in the following cases:

1. English Biscuits Manufacturers (Pvt.) Ltd. v. Monopoly Control Authority and another ([2005 CLD 264](#)). The phrase (public interest) has been explained by the superior Courts in the manner that something in which public at large had some interest or by which their rights or liabilities were affected, but would not mean interest of a particular person.
2. Abu Dhabi Medical Devices Co. L.L.C. v. Federation of Pakistan through the Ministry of Health and another" ([2010 CLC 1253](#)). Public Interest is very wide expression and embraces public security, public order and public morality. Expression Public Interest in common parlance means an act beneficial to general public and action taken in public interest necessarily
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means an action taken for public purpose. It further leads general social welfare or regard for social good and predicating interest of the general public in matters where regard was social good is of the first moment. The dispute involved in the present case is directly related to the larger public interest and such type of matter should be decided expeditiously.

3. Dossani Travels (Pvt.) Ltd. v. Travels Shop (Pvt.) Ltd. ([PLD 2014 SC 1](#)). It is settled proposition that the competent authority i.e. the Federal Government is in a better position to settle their requirements to engage the services of a civil servant, whose services are required to it or otherwise in the public interest, this executive discretion could not be interfered with.
4. Premium Battery Industries Limited v. Karachi Water Sewerage Board ([2018 SCMR 365](#)). Constitutional jurisdiction of the superior Courts was required to be exercised carefully, cautiously and with circumspection to safeguard and promote public interest and not to entertain and promote speculative, hypothetical or malicious attack that blocked or suspended the performance/executive functions by the Government**.**

5. Malik Muhammad Bashir Lakhesar, Assistant Advocate General Punjab vs. Government of Punjab ([2019 PLC \(C.S.\) 266](#)). The pleasure doctrine was not based on any special prerogative of the Government but was based on public policy and was in public interest / good. The basis of pleasure doctrine was that public was vitally interested in efficiency and integrity of civil services, therefore, public policy required public interest and public could demand that a civil servant, who is

inefficient, dishonest or corrupt and had become a security risk should not continue in service.

6. Ashfaq Ahmad Kharal and 21 others v. Province of Punjab through Secretary, Law and Parliamentary Affairs and others ([PLD 2024 Lahore 129](#)). Although, the expression "public interest" has not been defined in any law, however, this expression is to be understood and interpreted in the light of entire scheme, purpose and object of the enactment in which it is employed..... it can be deduced that expression "public interest" is not capable of precise definition and has no strict meaning but it takes colour from the statute in which it occurs.

7. Janata Dal v. H.S. Chowdhary and others ([AIR 1993 SC 892](#)). In *Shrouds Judicial Dictionary*, Vol. 4 (IV Edition), 'public interest' is defined as a matter of public or general interest "does not mean that which is interesting as gratifying curiosity or a love of information or amusement' but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected." (**per Cambell C.J., R. v. Bedfordshire 24 L.J.Q.B. 84**).

12/5. Albeit, the forthright reading of Article 200 of the Constitution makes explicit that the "public interest" is not condition precedent or a hard and fast rule according to the language couched in the said provision for the transfer but in our view, the pros and cons of this onerous task is left to be decided by the consultees as sole arbiters in terms of Article 200 of the Constitution. Had they any demur in their fine sense of judgment

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that the proposal of transfer is against the public interest or politically motivated/*mala fide*, they would have withheld their consent during consultation process. But here, unanimous concurrence of the Chief Justice of Pakistan and other Chief Justices of High Courts candidly conveyed the institutional endorsement and they do not find it offensive or against the public interest. On the contrary all the transfers were virtually consensual and no transferee judge approached this Court to challenge that his transfer was made without his consent or under duress/coercion or as a punitive measure and for political ends or against the public interest. The concurring note of the Honourable Chief Justice of Pakistan unequivocally demonstrates that he applauded the transfer. The phrase public interest to a certain degree denote the state of affairs in which public at large had some interest or where their rights or liabilities are jeopardized but it does not mean to espouse or harbor personal rights or personal interests under the garb of public interest. Although the expression "public interest" has not been defined in any law, however, this expression is to be understood and interpreted in the light of entire scheme, purpose and object of the enactment. Nothing is articulated as to why and how the transfers of judges have affected the

public interest despite express provision in the Constitution; whether due to the transfer, the Islamabad High Court's working has come to a dead halt, or stalemate and whether the transferee judges are not performing their duties according to the roster or the Court is not regularly functioning. Just for the reason of affecting seniority of few existing judges by one transferee judge, the transfers cannot be declared against public interest. The best interest of public at large is always with the expeditious disposal of their cases and not in forum shopping. It is a matter of record that initially, the Islamabad High Court Bar Association ("IHCBA") had also filed Constitution Petition No.23/2025 which was fixed with the bunch of aforesaid petitions but vide CMA No.2168/2025, the IHCBA withdrew their Petition on 17.04.2025 which unequivocally deduces that the parent bar association accepted

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the transfer of judges and did not find it against the public interest or independence of judiciary.

5. Seniority and Terms of Transfer:

13. We now take on the question of inter se seniority between the transferee Judges and the pre-existing Judges of the IHC. In fact, the bone of contention was predominantly related to Mr. Justice Sardar Muhammad Sarfraz Dogar, whereas the other two judges namely Mr. Justice Khadim Hussain Soomro and Mr. Justice Muhammad Asif are already at the bottom of the seniority list according to their date of appointment, which does not raise any cause of concern for the existing judges. The petitioners in C.P.NO. 22 of 2025 (Five Judges Petition) articulated in paragraph 70, page 27 of the Paper Book, that the transfers, envisioned to be a temporary nature and would not disturb the seniority at a relevant High Court and such transfers judges would be akin to a deputationist who retains the seniority in their High Courts. While the same petitioners at page 28 of the paper book added a paragraph XI under the heading "*Transfers in Pakistan are a usual occurrence for Civil Servants because of the unified Federal Service but even there a transferee is a deputationist who does not affect the Seniority of anyone else*". We do not acquiesce or subscribe to the arguments that the High Court judges transfer under Article 200 is akin or amounts to deputation. We also disagree that the transfer can only be made for temporary period and when the judges will be reverted back, their seniority will be maintained in the High Court in which scenario essentially depends upon the terms and conditions mentioned in the notification of transfer. If the transfer is made on permanent basis, then of course there shall be no room to join or revert back to the same High Court by the transferee judge and his seat will be vacant in the parent High Court for appointment of a new judge in his place by JCP. Furthermore, the example of civil servants transfer is not complementary or well-matched in the present set of

services and cadre. The civil servants have their own statutory rules for determination of seniority and their transfer does not mean deputation in all circumstances but depend on the nature of transfer. Under Section 8 of the Civil Servants Act, 1973, it is provided that for proper administration of a service, cadre or post, the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be and the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre whether serving in the same department or office or not, as may be prescribed. Rule 4 of the Civil Servants (Seniority) Rules, 1993, brings to light that seniority in a service, cadre or post to which a civil servant is appointed by transfer shall take effect from the date of regular appointment to the service, cadre or post. Yet again, in our view, it depends on the nature of appointment by transfer in a service, cadre or post which has no direct or indirect nexus to the transfer of judges made pursuant to a constitutional provision.

13/1. Our constitution is silent on the seniority of judges and there is no combined/unified seniority list or “All-Pakistan cadre” for the High Court judges. When a judge moves from one list to another, the question arises how to fix his seniority. In absence of a predetermined rule, one approach may be to treat him as a new entrant, which would make him junior-most as of his joining date irrespective of his original date of appointment. Another approach is to consider his original date of appointment for fixing his seniority in the High court where he is transferred. While in India, the inter se seniority amongst Judges in their High Court is determined according to the combined seniority on all India basis with the principle of continuity in judicial service, as the judge’s previous tenure is treated as continuous when they are transferred to another High court and the length of service, eligibility for pension, entitlements and other service

related benefits remains uninterrupted and incessant. He is
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considered to be in continuous judicial service, even though he moves from one High Court to another.

13/2. According to the scheme of Constitution, if a Judge is transferred to another High Court it cannot be treated a fresh appointment once again as a Judge of a High Court or even as a Judge of the High Court to which he is transferred. The learned counsel vigorously opposed the whole action of transfer being illegal and

unconstitutional but as a fall back, they argued that fresh oath was not taken by the transferee judges and made an alternate prayer that the transferee judges cannot be considered judges of the IHC until they take oath as justices of the IHC pursuant to Article 194 read together with Third Schedule of the Constitution. The bedrock of this argument was that had they taken fresh oath, they would be considered juniors to the existing strength of judges and their seniority would be reckoned at the bottom of seniority list. The appointment of a Judge of a High Court is governed under Article 193, whereby the Chief Justice and each of other Judges of a High Court is appointed by the President in accordance with Article 175A and under Article 194, before entering upon office, the Chief Justice of a High Court shall make before the Governor, and any other Judge of the Court shall make before the Chief Justice, oath in the form set out in the Third Schedule, provided that the Chief Justice of the Islamabad High Court shall make oath before the President and other Judges of that Court shall make oath before the Chief Justice of the Islamabad High Court. If a person becomes a judge of High Court, he continues to occupy the office till the age of superannuation unless he resigns earlier or removed from office.

So for all practical purposes, if a judge is transferred to another High Court, he does not enter upon a new office. On one hand the learned counsel for the petitioners vigorously argued that transfer of judge can be made temporarily but at one fell swoop, he emphasized that the judge has to take fresh oath and after ending the designated period, he will be reverted to his parent High Court. This argument by the looks of it is mutually destructive. The intention of framers of Constitution does not

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depict that a transferee judge has to take fresh oath on each and every transfer. Even in the instance of temporary transfer, if a judge is called upon to take fresh oath on her reversion in the parent High Court, then the question arises what would be the consideration of fixing his original seniority after taking fresh oath which amounts to supersession of his earlier oath in the same High Court and will he become junior most?

13/3. In the case of *Muhammad Aslam Awan, Advocate v. Federation of Pakistan (2014 SCMR 1289)*, this Court held that inter se seniority of Judges of a High Court shall be reckoned from the order and date of their appointment as Additional Judges of that Court. Inter se seniority of Additional Judges of a High Court appointed vide the same order and date shall be reckoned from their seniority in age. If appointment of two or more (district judiciary) service candidates was simultaneously made with that of candidates from the Bar, the service Judges shall retain their existing seniority in the department regardless of their age, though age would be the determining factor in respect of their seniority vis-à-vis the candidates from the Bar. Such mode and principle of determining

inter se seniority of Judges of the High Court had been consistent in all the four Provinces, barring one-time deviation when the Administration Committee of Sindh High Court followed a different course; that such mode was normative because it was more in accord with equity and constitutional intent reflected in various provisions of the Constitution, thus it had assumed the character of a constitutional convention.

13/4. Since we noted that in the notification of transfer issued by the President in exercise of powers conferred under Article 200, it was not demonstrable whether the transfer is temporary or permanent which was also directly linked up the fixation of seniority. Therefore, sanguine to the situation that in normal circumstances, the decision on the disputes relating to the inter se seniority is within the dominion of the Chief Justice of that High Court at the administrative side. Right now, the issue of seniority was not cropped up between the existing strength of

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judges of IHC but the dispute was related to the seniority of transferee judges. Though the learned Attorney General argued that the transfer seems to be permanent but in our view, whether the transfer is permanent or temporary, this should be specifically mentioned in the notification of transfer. It is also a ground reality that there is no All Pakistan Cadre/unified or combined seniority list of High Court judges for determining their seniority at the time of transfer, hence, in the fitness of things, by means of our short order, we partially remanded the matter to the President of Pakistan, without upsetting the Notification of transfer, to determine the seniority in accordance with Article 200 of the Constitution, including the question whether the transfer is on a permanent or temporary basis.

VII. Letter of Six Judges

14. More or less in all Constitution Petitions, one common ground has been raised that the transfer of judges appears to be based on malice in fact and malice in law. The five learned judges in their Const.P.No.22 of 2025, in paragraph 114 (page-42 of paper book) also alleged that they sent a letter dated 25.3.2024 (Six judges letter) and disclosed certain instances where the executive's functionaries had attempted to meddle in the judiciary's functions and Supreme Court has initiated proceeding by means of *Suo Motu* Case No. 1 of 2024. Whereas the petitioners in the Constitution Petition No. 26 & 27 of 2025 in a common ground "M" (at page 45 and 48 of paper books respectively), alleged that all the impugned actions appear to be *mala fide* in fact and *mala fide* in law, the letter of six judges complaining about the interference of the Executive and its intelligence agencies with the working of the judges of IHC appears to be cause of their victimization at the hands of the President and the Prime Minister, who acted on the dictates of

the Establishment which is bent upon depriving judiciary of its independence through highly controversial 26th Constitutional Amendment. It was further alleged that “the Chief Justice concerned appears to have been rendered pliable to act on wishes of the Establishment”. The Five learned judges (petitioners in Const.Ps.No.22, 20, 25-28 & 30/2025 -50-

Constitution Petition No.22 of 2025) during course of proceedings also filed their joint statement by dint of C.M.A. No. 2953 of 2025 in which it was inter alia stated that “*we neither seek self aggrandizement nor any personal benefit from the outcome of these proceedings. In filing this petition, we have been impelled by a sense of duty to uphold the Constitution and the oaths we have sworn. And we have done so in full view of the Code of Conduct requiring judges not to indulge in avoidable litigation and public controversy. The actions impugned in this petition would not have been intolerable had they merely affected our seniority amongst our peers. They are abhorrent as they constitute commandeering of Islamabad High Court and demolition of its independence and sanctity before our eyes*”

14/1. In the Constitution Petition No. 25/2025, filed by Mr. Imran Ahmed Khan Niazi, Founder Chairman of Pakistan Tehreek-i-Insaf, it has been alleged in paragraph (3) of the petition that the High Court judges, especially Islamabad High Court, had written a few letters to the then Chief Justice of Pakistan detailing the amount of illegal external pressures being faced by the said judges but no judicial action was taken. While in paragraph (4) of the Petition, without mentioning any particular case or cases, it was alleged the said Judges of the High Court are also being punished because they decided the false cases on merits registered and filed against the petitioner, (Mr. Imran Ahmed Khan Niazi) without 'fear or favour'.

14/2. In order to examine and verify the allegations raised in the letter dated 25.3.2024 by the six learned judges of IHC (Justice Mohsin Akhtar Kayani, Justice Tariq Mehmood Jahangiri, Justice Babar Sattar, Justice Sardar Ejaz Ishaq Khan, Justice Arbab Muhammad Tahir and Justice Saman Rafat Imtiaz), initially an inquiry commission was constituted with the approval of Federal Cabinet and the former Chief Justice of Pakistan, Mr. Tassaduq Hussain Jillani who was requested to head the one

man inquiry commission but he recused. Thereafter, this Court initiated proceedings in *Suo Motu Case No. 1 of 2024*. The larger
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bench was constituted comprising Justice Qazi Faez Isa, CJP, (as he then was), Justice Syed Mansoor Ali Shah, Justice Jamal Khan Mandokhail, Justice Athar Minallah, Justice Musarrat Hilali and Justice Naeem Akhtar Afghan. The aforesaid bench heard the case on 03.04.2024, 30.04.2024 and 07.05.2024 but the matter

is still pending without any final outcome or end result which should have been decided much earlier.

14/3. The petitioners blame that the transfer of outside judges have been made in the IHC vide Notification dated 01.02.2025 to victimize the six judges due to writing a letter by them on 25.3.2024 (almost before eleven months of transfer notification). In the practical and methodical legal acuteness, malice in law does not deduce an act done with an inappropriate or reprehensible motive but it implies a wrongful act done intentionally without cause or excuse. It insinuates a wrongful

aspiration and objective, presumed in the case of an unlawful act, rather than a bad motive or feeling of ill-will. In the legal terminology, malice in law is interconnected to the actions that are intrinsically illegal, heedless of the actual intent of the

committer. No doubt, the alleged reasons of transfer is the letter of six judges but it is a ground reality that the proceedings on account of aforesaid letter is pending adjudication, though in our view the said case should have been fixed and decided one way or the other but unfortunately, it was never fixed after 07.05.2024 and is still pending.

14/4. The fragment of arguments relating to the letter which is sub judice in some other proceedings cannot be taken and decided in the present proceedings. Any remark, comment or observation made in the present proceedings regarding the pending *Suo Motu* Case No. 1 of 2024, may seriously prejudice the outcome of sub judice matter in which various serious issues have been raised and require independent application of mind and decision without mixing it with other case or cases. Moreover, various Constitution Petitions challenging the 26th

Constitutional Amendment are also pending in this Court. Therefore, no observations can be made to said pending
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proceedings as well in the present proceedings. It was further alleged that the Chief Justice concerned appears to have been rendered pliable to act on the wishes of the Establishment. In the present proceedings we have to figure out and decide whether the inbuilt mechanism provided under Article 200 of the Constitution has been fulfilled or not? Seemingly, entire procedure has been followed in letter and spirit and consent was accorded with proper application of mind which is manifestly reflecting from the concurrence accorded by the consultees that was further reinforced and fortified through the replies filed by Registrars of the High Court and Supreme Court of Pakistan. As a Constitutional

Bench of this Court, by all means, we want to stick to our domain and decide the legal implications and compliances rather than delving into the allegations leveled against the consultees, which is otherwise uncalled for and unwarranted, therefore, we cannot pass any declaration to the effect whether the Chief Justice concerned were pliable on wishes of the Establishment or not?. Such allegations can be leveled easily against each and every transfer if made under Article 200 because the procedure and consultees will always remain the same i.e. the Chief Justice of Pakistan and the Chief Justices of both High Courts unless Article 200 of the Constitution is amended or substituted.

14/5. By majority of 3 to 2, comprising Justice Muhammad Ali Mazhar, Justice Shahid Bilal Hassan, and Justice Salahuddin Panhwar, the aforesaid Constitution Petitions were disposed of along with a Civil Misc. Applications, vide short order dated 19th

June, 2025 in the following terms:

“1. The powers of the President of Pakistan under Sub article (1) of Article 200 of the Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”) for the transfer of a Judge of the High Court from one High Court to another High Court and the provisions contained under Article 175A of the Constitution for appointment of Judges to the Supreme Court, High Courts, and the Federal Shariat Court by the Judicial Commission of Pakistan (“**JCP**”) are two distinct provisions dealing with different situations and niceties. Neither do they overlap nor override each other. The transfer of a judge by the President of Pakistan by Const.Ps.No.22, 20, 25-28 & 30/2025 -53-

means of Article 200 of the Constitution (permanently or temporarily) cannot be construed as a fresh appointment. Furthermore, the powers of transfer conferred to the President by none other than the framers of the Constitution cannot be questioned on the anvil or ground that if the posts were vacant in the Islamabad High Court, then why they were not filled up by JCP through fresh appointments. One more important facet that cannot be lost sight of is that the transfer from one High Court to another High Court can only be made within the sanctioned strength, which can only be regarded as a mere transfer and does not amount to raising the sanctioned strength of a particular High Court.

2. In all fairness, if it is presumed that all posts should be filled by the JCP alone through fresh appointments, then such interpretation or state of mind, in our view, would not only go against the manifest intention of the framers of the Constitution but will also amount to negating or making redundant the substratum and existence of Article 200 of the Constitution; which Article is absolutely not dependent, concomitant, or at the mercy of Article 175A of the

Constitution, but is an independent and standalone provision dealing with the transfer of judges of a High Court (permanently or temporarily) and not the appointment of judges, which assignment has been incontrovertibly conferred to the JCP autonomously in terms of Article 175A of the Constitution.

3. As far as Section 3 of the Islamabad High Court Act, 2010, is concerned, it only divulges that the Islamabad High Court shall consist of a Chief Justice and twelve other judges to be appointed from the provinces and other territories of Pakistan in accordance with the Constitution. In our considered view, this provision is only germane to the appointment of judges and does not, in any way, mean that a judge can only join the Islamabad High Court through a fresh appointment and not by way of a transfer or, in other words, that Article 200 does not apply to the Islamabad High Court, which interpretation would be against the exactitudes of the Constitution. Neither can Section 3 of the aforesaid Act supersede/override a constitutional mandate, nor can it control, nullify, or rescind the powers of transfer that are vested in the President of Pakistan under Article 200 of the Constitution.

4. Nevertheless, the exercise of the powers of transfer by the President of Pakistan under Article 200 of the Constitution is not unregulated or unfettered. It is structured on a four tier formula which expounds that no judge shall be transferred except with his consent and after consultation by the President with the Chief Justice of Pakistan and the Chief Justices of both High Courts. What does this mean? If at the very initial stage, a judge intended to be transferred from one High Court to another High Court refuses the offer/proposal, then obviously the matter ends forthwith. Even in the

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case of consent, the transfer shall be subject to consultation with two Chief Justices of the High Courts and the Chief Justice of Pakistan, as the paterfamilias of judiciary, who may, during the consultation process, pragmatically ruminante the pros and cons germane to the transfer proposal, including the aspect of public interest, if any. Hence, for all intents and purposes, it is reverberated beyond any shadow of doubt that before exercising the power of transfer, certain inbuilt procedures and mechanisms have to be followed in letter and spirit and the decision, or the right of refusal or primacy, is within the sphere and realm of judiciary and not within the domain of executives. Therefore, it does not in any case compromise the independence of the judiciary for the discernable reason that the decision to accept or reject is exclusively within the hands of the judiciary.

5. Thus, for all intents and purposes, the transfer of judges by the President of Pakistan, by means of the impugned Notification No. F.10 (2)/2024-A.II, dated 1st

February 2025 (“Notification”) is within the framework of the Constitution and cannot be declared *ultra vires*.

6. We are sanguine that in normal circumstances, the decision on *inter se seniority* disputes or disagreements amongst the judges of a High Court are within the domain of the Chief Justice of that High Court, at the administrative side, but here the matter relates to the transfer of judges from other High Courts to the Islamabad High Court. Thus, the seniority issue is not exactly *inter se seniority* within the existing strength of judges of one and the same High Court, prior to bringing forth the transfer of three judges under Article 200 of the Constitution, but is somewhat cropped up between the transferee judges and the judges that already existed prior to the transfer. At this juncture, it is also pertinent to mention that there is no All Pakistan Cadre/unified or combined seniority list of High Court judges for determining their seniority at the time of transfer. Therefore, in our view, the terms and conditions of transfer (permanently or temporary) including seniority should have been taken up and mentioned by the President of Pakistan at the time of issuing the Notification of transfer in terms of Article 200 of the Constitution.

7. As a result of the above discussion, we partially remand the matter to the President of Pakistan, without upsetting the Notification of transfer, to determine the seniority after examining/vetting the service record of the transferee judges as soon as possible, including the question of whether the transfer is on a permanent or temporary basis.

8. Till such time that the seniority and nature of transfer (permanent or temporary) of the transferee judges is determined by the President of Pakistan by means of notification/order, Mr. Justice Sardar Muhammad Sarfraz Dogar, already holding the office of

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Acting Chief Justice of the Islamabad High Court, will continue to perform as the Acting Chief Justice of the Islamabad High Court”.

Above are the reasons assigned to the majority judgment in support of short order.

Judge

I concur subject to
the reasons recorded
separately (Salahuddin
Panhwar-J)

Judge Judge

Islamabad

18.09.2025

Khalid

Approved for reporting.

****ORDER OF THE COURT SIGNED & ANNOUNCED ****

BY THE CONSTITUTION BENCH ON 19.6.2025

By majority of 3 to 2 (comprising Justice Muhammad Ali Mazhar, Justice Shahid Bilal Hassan, and Justice Salahuddin Panhwar), all the Constitution Petitions are disposed of along with Misc. Applications in terms of the Short Order dated 19.06.2025. Whereas, Justice Naeem Akhter Afghan and Justice Shakeel Ahmad, *vide* their own short order dated 19.06.2025 allowed the Constitution Petitions and set aside the impugned Notification No.F.10(2)/2024-A.II, dated 01.02 2025.