

PRESIDENT
Islamic Republic of Pakistan

Subject: ASSENT TO THE SUPREME COURT (PRACTICE AND PROCEDURE) BILL, 2023

6. On an in-depth consideration of the Supreme Court (Practice and Procedure) Bill, 2023, “*to provide for the practice and procedure of the Supreme Court of Pakistan*”, the following aspects require due consideration:-

- i. Article 191 of the Constitution empowered the Supreme Court ‘*to make rules regulating the practice and procedure of the Court*’. Under such enabling provisions of the Constitution, the Supreme Court Rules 1980 have been made and in force duly validated and adopted by the Constitution itself. These time-tested Rules are being followed ever since the year 1980 – any tinkering with the same may tantamount to interference with the internal working of the Court, its autonomy and independence.
- ii. Our Constitution is founded on the concept of trichotomy of power – three pillars of the State whose domain of power, authority and functions are defined and delineated by the Constitution itself. The Parliament has also been given the power under Article 67 that states “*subject to the Constitution, a House may make rules for regulating its procedure and the conduct of its business.....*”. Article 191 states that “*subject to the Constitution and law, the Supreme Court may make rules*

regulating the practice and procedure of the Court”. Articles 67 & 191 are akin to each other and recognize the autonomy and independence of each other respectively – barring interference of one into the other’s domain.

- iii. Supreme Court of Pakistan is an independent institution as visualized by the founding fathers that in the State of Pakistan ‘*independence of judiciary shall be fully secured*’. With such an objective in view, Article 191 was incorporated and the Supreme Court was kept out of the law-making authority of the Parliament.
- iv. The competence of the Parliament to make laws stems from the Constitution itself. Article 70 relates to ‘introduction and passing of Bills’ with respect to any matter in the Federal Legislative List – enumerated in the Fourth Schedule of the Constitution. Followed and further affirmed are the provisions of Article 142(a) that Parliament can make laws ‘*with respect to any matter in the Federal Legislative List*’. Entry 55 of Part I of Fourth Schedule while empowering the Parliament to make laws in respect of ‘*jurisdiction and powers of all courts except the Supreme Court*’ especially excluded the Supreme Court. Thus the Bill *prima-facie* travels beyond the competence of the Parliament and can be assailed as a colourable legislation.
- v. The Constitution confers the Supreme Court with Appellate Jurisdiction (Articles 185 – 212), Advisory (Article 186), Review

(Article 186) and Original Jurisdiction (Article 184). Article 184(3), the focus of the Bill relates to original jurisdiction of the Court – providing for the mode and manner for invoking it and providing Appeal. The idea may be laudable but can such a purpose be achieved without amending the provisions of relevant Articles of the Constitution – established law is that the provisions of the Constitution cannot be amended by an ordinary law as the Constitution is a higher law – father of laws – a Constitution is not an ordinary law, but rather an embodiment of fundamental principles, higher law, and law above other laws.

7. In order to meet the scrutiny about its validity (if assailed in the Court of law), I have thought it fit and proper as per the provisions of Article 75 of the Constitution to return the Bill with the request for reconsideration.

(DR. ARIF ALVI)
PRESIDENT

THE PRIME MINISTER

PS(Public)'s U.O.No. 5(70)/Senate/D(E)/2023, dated: 08-04-2023