

Appointment and Removal of Judges of the Constitutional Courts

Article 175-A of the Constitution of Islamic Republic of Pakistan 1973, Regarding Appointment of Judges of the Constitutional Courts

The Parliament passed the 18th Constitution (18th Amendment) Act 2010, which was aimed, inter alia, at strengthening parliamentary system and improving central-province The Judicial System of Pakistan relations. The Parliament in its wisdom also prescribed new fora and procedure for the appointment of judges. Cases of appointment in superior courts (i.e. Supreme Court, Federal Shariat Court, High Courts) are processed through two forums: one, Judicial Commission, headed by the Chief Justice of Pakistan and comprising senior judges of Supreme Court, Chief Justices and senior judges of High Courts as well as Attorney General for Pakistan, Federal and Provincial Law Ministers, representatives of the Federal and Provincial Bar Councils, etc. The Judicial Commission nominates names for each vacancy. Such nomination is forwarded to the Parliamentary Committee for confirmation. The Committee comprises eight members, four from National Assembly and four from Senate. The names confirmed are forwarded to the President, through the Prime Minister for appointment. This amendment was challenged before the Supreme Court and examined by a 17-member bench, which decided unanimously to send a reference to the Parliament with certain recommendations to improve the process and procedure of appointment of judges. The Parliament graciously considered the reference and approved many a recommendations through the adoption of Constitution (19th Amendment) Act, 2010. In the light of 18th and 19th amendments, judges of Supreme are appointed through the Judicial Commission which consists of Chief Justice of Pakistan as Chairman, four senior most judges of the Supreme Court, one former Chief Justice or judge of the Supreme Court, nominated by the Chairman in consultation with the four member judges for a period of two years, the Attorney General for Pakistan, the Federal Law Minister and a senior advocate, Supreme Court, nominated by the Pakistan Bar Council. Once the Judicial Commission approves a new name for appointment as the judge of the Supreme Court, it goes to an eight member Parliamentary Committee that has equal representation of the government and the opposition as well as of two houses i.e. National Assembly and Senate. This committee has two weeks to consider the nomination. If approved, the name is forwarded to the President through the Prime Minister, for appointment. The Parliamentary Committee, for reasons to be recorded, may not confirm the recommendation by three-fourth majority, in which instance, the decision is forwarded to the 13 The Judicial System of Pakistan Commission through the Prime Minister and the Commission sends another nomination. Notwithstanding the procedure provided in Article 175-A, the President has to appoint the most senior judge of the Supreme Court as the Chief Justice of Pakistan. For appointment of Chief Justices and judges of Federal Shariat Court, the Chief Justice and most senior judge of the said court

are added to the composition of the Judicial Commission, provided that for appointment of the Chief Justice, the most senior judge is excluded from such composition. Similarly, for appointment of Chief Justices and judges of High Courts, the Chief Justice and senior most judge of the respective High Court, provincial minister for law and an advocate of High Court (15 years standing), as nominee of the provincial bar council, are added to the composition of the Judicial Commission. However, for appointment of Chief Justice, the senior most judge is excluded from such composition. Just like appointments in the Supreme Court, the Chief Justices and judges of the Federal Shariat Court and High Courts are appointed by the President through their nomination by the Judicial Commission and confirmation by the Parliamentary Committee.

JUDICIAL COMMISSION

A. For the purpose of Judge Supreme Court of Pakistan

1. Chief Justice of Pakistan as Chairperson
2. Three senior most judges of the Supreme Court
3. One former Chief Justice or a retired judge of the Supreme Court appointed in consultation with the four member judges for a period of two years.
4. Attorney General
5. Federal Law Minister
6. An Advocate having not less than fifteen years standing to be nominated by the Pakistan Bar Council for the period of two years

(Notwithstanding the procedure provided in Article 175-A, the President has to appoint the most senior judge of the Supreme Court as the Chief Justice of Pakistan)

B. For the purpose of Judge High Court of Pakistan

1. Chief Justice of Pakistan as Chairperson
2. Three senior most judges of the Supreme Court
3. One former Chief Justice or a retired judge of the Supreme Court appointed in consultation with the four member judges for a period of two years.
4. Attorney General
5. Federal Law Minister
6. An Advocate having not less than fifteen years standing to be nominated by the Pakistan Bar Council for the period of two years
7. Chief Justice of the High Court to which appointment is being made
8. Most senior Judge of that High Court
9. Provincial Minister for Law

10. An Advocate having not less than fifteen years standing to be nominated by the respective Bar Council for the period of two years.

(For appointment of Chief Justice, the requirement of “most senior judge of the High Court to which appointment is being made “ is excluded)

C. For the purpose of Judge High Court of Pakistan

1. Chief Justice of Pakistan as Chairperson
2. Three senior most judges of the Supreme Court
3. One former Chief Justice or a retired judge of the Supreme Court appointed in consultation with the four member judges for a period of two years.
4. Attorney General
5. Federal Law Minister
6. An Advocate having not less than fifteen years standing to be nominated by the Pakistan Bar Council for the period of two years
7. Chief Justice of the Federal Shariat Court to which appointment is being made,

(For appointment of Chief Justice, the requirement of “most senior judge” of the Federal Shariat Court is excluded)

PARLIAMENTARY COMMITTEE

Once the Judicial Commission approves a new name for appointment as the judge of the Supreme Court, High Court or Federal Shariat Court it goes to an eight member Parliamentary Committee that has equal representation of the government and the opposition as well as of two houses i.e. National Assembly and Senate. This committee has two weeks to review the recommendation after which, if the recommendation is approved, it goes to the Prime Minister who forwards the same to the President for appointment.

The Parliamentary Committee, for reasons to be recorded, may not confirm the recommendation by three-fourth majority, in which instance the decision is forwarded to the Commission through the Prime Minister and the Commission then sends another nomination.

ARTICLE- 209, SUPREME JUDICIAL COUNCIL

(1) There shall be a Supreme Judicial Council of Pakistan, in this Chapter referred to as the Council.

(2) The Council shall consist of,

- (a) the Chief Justice of Pakistan;
- (b) the two next most senior Judges of the Supreme Court; and
- (c) the two most senior Chief Justices of High Courts.

Explanation:- For the purpose of this clause, the inter se seniority of the Chief Justices of the High Courts shall be determined with reference to their dates of appointment as Chief Justice [231] [otherwise than as acting Chief Justice], and in case the dates of such appointment are the same, with reference to their dates of appointment as Judges of any of the High Courts.

(3) If at any time the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or any other cause, then

- (a) if such member is a Judge of the Supreme Court, the Judge of the Supreme Court who is next in seniority below the Judges referred to in paragraph (b) of clause (2), and
- (b) if such member is the Chief Justice of a High Court; the Chief Justice of another High Court who is next in seniority amongst the Chief Justices of the remaining High Courts, shall act as a member of the Council in his place.

(4) If, upon any matter inquired into by the Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail, and the report of the Council to the President shall be expressed in terms of the view of the majority.

(5) If, on information [231A] [from any source, the Council or] the President is of the opinion that a Judge of the Supreme Court or of a High Court,

- (a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or
- (b) may have been guilty of misconduct, the President shall direct the Council to [231B] [or the Council may, on its own motion,] inquire into the matter.

(6) If, after inquiring into the matter, the Council reports to the President that it is of the opinion,

- (a) that the Judge is incapable of performing the duties of his office or has been

guilty of misconduct, and

(b) that he should be removed from office, the President may remove the Judge from office.

(7) A Judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article.

(8) The Council shall issue a code of conduct to be observed by Judges of the Supreme Court and of the High Courts.

209. Supreme Judicial Council. (1) There shall be a Supreme Judicial Council of Pakistan, in this Chapter referred to as the Council.

(2) The Council shall consist of,

(a) the Chief Justice of Pakistan;

(b) the two next most senior Judges of the Supreme Court; and

(c) the two most senior Chief Justices of High Courts.

Explanation:- For the purpose of this clause, the inter se seniority of the Chief Justices of the High Courts shall be determined with reference to their dates of appointment as Chief Justice otherwise than as acting Chief Justice, and in case the dates of such appointment are the same, with reference to their dates of appointment as Judges of any of the High Courts.

(3) If at any time the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or any other cause, then

(a) if such member is a Judge of the Supreme Court, the Judge of the Supreme Court who is next in seniority below the Judges referred to in paragraph (b) of clause (2), and

(b) if such member is the Chief Justice of a High Court; the Chief Justice of another High Court who is next in seniority amongst the Chief Justices of the remaining High Courts, shall act as a member of the Council in his place.

(4) If, upon any matter inquired into by the Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail, and the report of the Council to the President shall be expressed in terms of the view of the majority.

¹³⁹(5) If, on information from any source, the Council or the President is of the opinion that a Judge of the Supreme Court or of a High

Court-

(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or

(b) may have been guilty of misconduct, the President shall direct the Council to, or the Council may, on its own motion, inquire into the matter.]

(6) If, after inquiring into the matter, the Council reports to the President that it is of the opinion-

(a) that the Judge is incapable of performing the duties of his office or has been guilty of misconduct, and

(b) that he should be removed from office, the President may remove the Judge from office.

(7) A Judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article.

(8) The Council shall issue a code of conduct to be observed by Judges of the Supreme Court and of the High Courts.

210. Power of Council to enforce attendance of persons, etc. (1) For the purpose of inquiring into any matter, the Council shall have the same power as the Supreme Court has to issue directions or orders for securing the attendance of any person or the discovery or production of any document; and any such direction or order shall be enforceable as if it had been issued by the Supreme Court.