

The 17th Amendment to the Constitution brought a significant change in Article 209 of the Constitution. Prior to the Amendment, the Council could process only such matters as were referred to it by the President. Under the amended Article 209, the Council, besides a reference from the President, may, also on its own account, inquire into the conduct or capacity of a Judge of a Superior Court in Pakistan. To bring the forum more effective a Committee was constituted by the Chief Justice of Pakistan to prepare draft rules/procedures for initiating action and conducting investigation/inquire. The Committee prepared a draft of the Supreme Judicial Council Procedure of Enquiry 2005, which was approved by the Council. It was duly notified and gazetted. Thus, the Council has become fully functional and is entertaining complaints as per the prescribed procedure. The Gazette of Pakistan containing the Procedure of Enquiry reads as follows: -

THE GAZETTE OF PAKISTAN
Extraordinary, Karachi, November 29, 2005
PART III
SUPREME COURT OF PAKISTAN (SUPREME JUDICIAL COUNCIL)

NOTIFICATION

No.P.Reg.113/2005-SJC:- (SUPREME JUDICIAL COUNCIL PROCEDURE OF ENQUIRY 2005) Pursuant to the decision taken by the Supreme Judicial Council, in its Meeting on 24th September 2005, the Supreme Judicial Council is pleased to lay down the following procedure for effective performance of functions vested in it under Article 209 of the Constitution of Islamic Republic of Pakistan.

1. Title and application:

- (1) The procedure of enquiry shall be called "The Supreme Judicial Council Procedure of Enquiry 2005".
- (2) It shall only apply to the Supreme Judicial Council and its proceedings.

2. Scope:

The Procedure shall provide for effective implementation of Article 209 of the Constitution and regulate all inquiries required to be undertaken and all other matters which need to be addressed there under.

3. Definitions:

In the present Procedure, unless the context provides otherwise, the following expressions used in the Procedure will have the meanings as assigned to them hereunder;

- (a) "Any matter", includes all matters and facts associated with the enquiry that the Council may carry out.
- (b) "Any other source", includes all sources through which information is received in respect of the conduct of a Judge.
- (c) "Code of conduct", means the code of conduct issued by the Supreme Judicial Council in terms of Article 209(8) of the Constitution of Islamic Republic of Pakistan.
- (d) "Chairman", means and includes the Chief Justice of Pakistan.
- (e) "Incapacity", will include all forms of physical or mental incapacity howsoever described or narrated, which render the Judge incapable of performing the duties of his office.
- (f) "Conduct", will include series of facts associated with the matter being inquired into by the Council, including the facts which are attributed to the person of the Judge.
- (g) "Guilty", will include arriving at an opinion by the Council that a Judge has been guilty of misconduct.
- (h) "Opinion", will include arriving at a conclusion by the Council, that misconduct has or has not taken place.
- (i) "Information", includes any material, facts, documentation, photographs, video or audio tapes, affidavits, letters or any other reasonable evidence that has come to the knowledge of any Member of the Council or the Council itself sufficient to initiate an enquiry.
- (j) "Enquiry", means the consideration of any matter, in relation to conduct of a Judge, by the Council, or any Member of the Council.
- (k) "Member", means Member of the Supreme Judicial Council.
- (l) "Misconduct", includes,
 - (i) conduct unbecoming of a Judge,
 - (ii) is in disregard of the Code of Conduct issued under Article 209(8) of the Constitution of Islamic Republic of Pakistan,
 - (iii) is found to be inefficient or has ceased to be efficient.

- (m) "Report of the Council", includes the findings of the enquiry proceedings carried out by the Council including recommendations for the President of Pakistan for removal of the Judge or otherwise.
- (n) "Secretary", means the Registrar, Supreme Court or any person appointed by the Council.
- (o) "Supreme Judicial Council", means the Supreme Judicial Council as constituted by Article 209 of the Constitution of Islamic Republic of Pakistan.

4. The Headquarters of the Council shall be at Islamabad, but the Council may hold its meeting or enquiry into reference or a complaint at any other place in Pakistan, as the Chairman may deem convenient.

5. Receiving of Information:--

- (1) Any member of public may bring to the notice of the Council or any of its Members or the Secretary, information alleging incapacity or misconduct of a Judge.
- (2) The allegation may be supported by material which is sufficient in the opinion of the Council to commence enquiry.
- (3) The person providing the said information shall identify himself properly.
- (4) The information may be received through any mode by the Council or any Member of the Council, without being restricted to any of the following sources such as;
 - (a) Print or electronic media;
 - (b) Written Complaint.
- (5) Information received under sub-para (4) shall be entered in the Register maintained by the Secretary.

6. Cognizance by the Council:--

Without prejudice to the general requirement of receiving information in the manner provided for above, nothing in this Procedure shall be read to curtail or limit the jurisdiction of the Council to initiate an enquiry against a Judge.

7. Procedure for scrutinizing information:--

- (1) Once any information in respect of enquiry into the conduct of a Judge is received by any Member or the Council, it shall be presented to the Chairman of the Council, who; shall
 - (a) refer the same to any Member of the Council to look into the said information; and to express his opinion in relation to sufficiency or otherwise of the information.
 - (b) if the Council is satisfied that the information prima facie discloses sufficient material for an enquiry, it shall proceed to consider the same.
- (2) The Member, to whom the Chairman has referred the information, will examine the same and ascertain if the information so received discloses specific particulars of misconduct, and provides factual details necessary to form prima facie opinion in respect of the guilt of the Judge.
- (3) If the Member forms an opinion that the information does reveal sufficient material to commence enquiry, he shall inform the Council accordingly and the information shall be placed before the Council.
- (4) If the Member comes to a conclusion that the information is false, frivolous, concocted or untrue, he shall inform the Council accordingly and may recommend action against the person who initiated the information.

8. Enquiry by the Council:--

- (1) The Chairman may, call the meeting of the Council, for discussion and enquiry into the information received.
- (2) The information in respect of the conduct of a Judge shall be placed before the Council for examination.
- (3) If the Council is of the view that before forming an opinion, it should also hear the Judge under enquiry, it shall require the said Judge to present himself before the Council. The Council shall provide him the information and material received against him.
- (4) If the Council is of the opinion that it requires more material or seeks additional information before it can form any opinion, it shall direct accordingly.
- (5) The Council may, if necessary, secure the attendance of the person who has provided the information, for enquiry into any aspect of the information provided.
- (6) The Council may summon any expert, where the enquiry is in respect of the incapacity of a Judge and may order any medical investigation by local or foreign expert.

(7) Without prejudice to the foregoing, the Council shall have inherent powers to adopt any procedure specific to the enquiry which is considered by the Council to be just and proper in the circumstances.

9.

(1) If the Council decides to proceed against a Judge, a show cause notice shall be issued to him along with supporting material calling upon him to explain his conduct within 14 days.

(2) On receipt of reply from the Judge, Council shall convene its meeting to proceed further with the matter.

10.

(1) The Attorney-General for Pakistan and in his absence a senior counsel of the Supreme Court, instructed by him, shall conduct a reference.

(2) The Council may require the Attorney-General for Pakistan or any other counsel to appear and assist the Council in relation to smooth and efficient conduct of its proceedings.

11. Procedure of Council:--

(1) In the event of a difference of opinion amongst the members of the Council regarding, further enquiry, granting right of hearing to the Judge concerned, securing attendance of the person providing information and related matters, opinion of the majority shall prevail.

(2) In the event of a difference of opinion amongst the members of the Council whether the Judge concerned is guilty of misconduct, opinion of the majority shall prevail.

12. Report to the President of Pakistan:--

If the Council in its meeting, on conclusion of the proceedings forms an opinion, that the Judge concerned has been guilty of misconduct or incapacitated in the performance of his duties properly, it shall express its views accordingly and the same shall be communicated by the Chairman to the President as a Report of the Council for action under Article 209(6) of the Constitution of Islamic Republic of Pakistan.

13. Proceedings of the Council not to be reported:--

(1) Proceedings of the Council shall be conducted in camera and shall not be open to public.

(2) Only the findings of the proceedings shall be allowed to be reported.

(3) Proceedings of the meetings of the Council or any other steps that Council may take shall not be reported, unless directed otherwise.

14. Punishment for frivolous information:--

(1) Whenever the Council finds that the information or evidence provided to it was false in material particulars or with the sole intention to malign a Judge, or scandalizing the Court or to undermine it in any form whatsoever, it may direct action against all those who are found to have provided the said information, or evidence as the case may be.

(2) For this purpose, the Council may direct the Secretary of the Council to pursue the course of action against the offender.

15. Council Secretariat:--

(1) The Council shall have a permanent secretariat and in order to carry out the affairs and functions, the Council may appoint such officials and staff as deemed fit and proper.

(2) The Council shall have a perpetual seal which shall be retained in the custody of the Secretary.

(3) The Secretary of the Council shall be the custodian of the record and proceedings of the Council.

16. Powers to issue directions:--

The Council shall have the power to issue any directive, pass any order and prescribe the procedure for achieving the objects of the Council.

17. This procedure shall, mutatis mutandis, apply to proceedings against other office holders, who can be removed from office in the manner prescribed by Article 209 of the Constitution.

By order of HCJ/Chairman,

Sd/-
(Dr. Faqir Hussain)
Secretary