

# Supreme Judicial Council: Functions, Prospects, and Challenges

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## ABSTRACT

The accountability of officials including judges is of prime importance. Therefore, every constitution provides a constitutional body responsible for hearing references against judges of the superior judiciary. Why Supreme Judicial Council is needed, what are its functions, and what are the challenges it has been facing in its proceedings? are the main questions to be answered in this study. Supreme Judicial Council is a constitutional body to hear references and can remove the judges of the superior judiciary on the grounds, if the judge concerned is unable to perform his duties, violate the code of conduct, or is guilty of misconduct. The Council may start proceedings against a judge either by its own initiative or by reference forwarded by the President of Pakistan. It examines the charges and submits its finding and recommendations to the President of Pakistan. Since its creation, it has initiated references against many judges but there are only a few cases where it has removed a judge because it is composed of the judges of the same superior judiciary. The feeling of fellowship influences the decisions of the Council. How functionality can be improved? To improve the functionality of the Supreme Judicial Council, a strict mechanism of check and balance by the executive and legislature over the council is needed. By strengthening the rule of law, open trial, and elimination of fellowship feelings can also improve its function and role and can overcome the challenges.

**Keywords:** Pakistan, Constitution, Supreme Judicial Council, Supreme Court, Judge.

## Introduction

Article 209 of the 1973 Constitution of Pakistan provides for the "Supreme Judicial Council" (SJC)? (Anwar, 2016). The Council shall consist of five members: the Chief Justice of Pakistan, two senior-most Judges of the Supreme Court, and the two senior-most Chief Justices of High Courts (Anwar, 2018). Its Headquarters is in Islamabad, but it may hold its investigation or meeting at any other place in Pakistan, wherever the chairman of the council may consider suitable. There is also a permanent secretariat of the council. The SJC may appoint other staff and officers if considers necessary. It has also a secretary who keeps the record and proceedings of the SJC. Clause (3) of article 209 of the 1973 Constitution of Pakistan further states that if the SJC is inquiring against a judge who is its member, or any of its members unable to perform or absent from his duty because of sickness or any other reason, then if the judge concerned is the member of Supreme Court, another judge of Supreme Court next in seniority will

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act as the member of the SJC. Likewise, if the member concerned is the Chief Justice of High Court, then another Chief Justice of High Court next in seniority among the remaining Chief Justices of High Courts will be the member of the SJC (*The News*, 2014, August 20).

It is a constitutional institution whose main function is to hear cases against the in-service judges of the Supreme Court of Pakistan and provincial High Courts. The Code of conduct for Judges of the higher judiciary framed by the SJC are, a Judge should be honest, God-fearing, law-abiding, abstemious, truthful, wise, vigilant, and blameless. All these codes of conduct are checked by the SJC. It is necessary for smooth provision of justice that a judge should be strong, polite, devoted to his words, preserve calmness, punctilious, cautious to safeguard the dignity of the court, mindful of the courtesies, and should be impartial. Moreover, it is also included in the code of conduct that a judge must not enter in or continue any business with any party to a case before him. Likewise, a judge should also refuse the hearing of a case in which he/she has a link or any other type of affiliation with a party of the case or its lawyer (Code of Conduct for Judges).

## **Research Methodology**

The qualitative technique of research has been used, based on critical discourse analysis in this article. CDA is a multi-disciplinary approach helping the explanation of complex connections between writing, conversation, societal view, power, and people (Wodak and Meyer, 2001). This method was developed for the first time in the 1990s to investigate and analyze the different issues related to social sciences (Amoussou and Allagbe, 2018).

The descriptive method of social sciences is also utilized to answer the proposed questions of this study. This technique tries to answer the how, where, what and when types of questions. This approach in the research of social sciences concentrates on doing detailed observations, thorough documentation, and analysis of the research question. These stages are essentially based on scientific procedures which are replicable and precise. Thus, research conducted through this technique is more trustworthy as compared to conducted on any informal observational technique.

In the analysis and discussion of various aspects attached to accountability and removal of judges, the role of the Supreme Judicial Council and concluding the entire study, an analytical method has been used. For conducting this research study facts and figures and other related data are gathered from secondary sources.

## **Functions of SJC**

The SJC is the constitutional body in Pakistan empowered to remove the judges of provincial High Courts and Supreme Court of Pakistan on different charges. For the matter, an inquiring against a judge the SJC has the same power as Pakistan's Supreme Court. It can also issue orders and commands to secure the presence of any individual or the production or finding of any required document, and such orders have equal value as of the Supreme Court orders. The Council on evidence from any source or the President of Pakistan is of the view that the judge of the High Court or Supreme Court of Pakistan is unable to perform its duties and responsibilities because of physical or mental incapability or is guilty of misconduct, the President of Pakistan directs the SJC to conduct an inquiry of the matter concerned. The SJC on its own choice can also start an investigation against any judge.

According to the procedure made by the honourable Supreme Court in 2005, any member of civil society may also bring the information about the misconduct or incompetence of a judge in the notice of the secretary of SJC or any of its member. In such a case the person providing the said information will properly expose himself. Such allegation may be supported by evidence authentic and sound in the view of the Council to begin an inquiry against the judge (*The News*, 2014, August 20). If the information or evidence concerning the inquiry against a judge is received by any member of the SJC, he will present it to the chairman of the SJC, who will further refer it to a member of SJC to examine it and express his opinion whether is it sufficient or not? If the SJC is satisfied that the material is enough for an inquiry,

then an inquiry against the judge is conducted by the SJC. If the member to whom the chairman had referred the information for opinion, makes an opinion that the information or material is not sufficient to begin an inquiry, then he informs the SJC accordingly. If the member concerned comes to the assumption that the material provided is incorrect, then he informs the SJC accordingly and proceeds legal action against the individual who had provided the information and material and the Council may instruct the Secretary to pursue the course of action against the offender (The SJC Procedure of Inquiry, 2005).

For initiation of an inquiry against any judge, the Attorney General of Pakistan and in case of his unavailability a senior counsel of the Supreme Court, guided by him, shall make a reference. The Chairman of the SJC may call a meeting of the Council and the information and materials in respect of the conduct of a Judge are placed before the member for inspection. When the SJC agrees to proceed against a judge, then a show-cause notice is issued to the judge concerned along with supporting materials calling upon him/her to respond within fourteen days. After receiving a reply from the Judge, the Council will proceed further. If the Council considers it necessary to hear the concerned Judge before the formation of an opinion, then it calls upon the Judge to present before the Council. The SJC may also summon any expert, if necessary, in order to reach the facts of the reference. In case of inquiry against the incompetence of a Judge may issue a directive for medical examination by foreign or local medical experts (The SJC Procedure of Inquiry, 2005). In case if there is a difference of opinion among SJC members while concluding the matter, the judgment of the majority shall prevail (Article 209). The proceedings of SJC are held in-camera. Only the decision of the proceedings is allowed to make public. The Secretary is the guardian of the proceedings and record of the Council.

### **Report to the President of Pakistan**

When SJC decides that the concerned Judge is unable to perform his duty properly or guilty of misconduct, it expresses its view, and the Chairman of the Council recommends to the President of Pakistan as a Report of the SJC under Article 209(6) of the Constitution that the judge must be removed and the President of Pakistan removes the Judge (Article 209). A Judge of the High Court or Supreme Court cannot be removed without following this procedure.

### **Prospects**

Accountability is most important for public trust in any department. It is of prime importance to ensure the aims and objectives of the department concerned. To guarantee the accountability of the superior judiciary the 1973 Constitution of Pakistan created the Supreme Judicial Council. This is the only constitutional body working for the accountability of the judges of the Supreme Court and High Courts. History shows that those countries smoothly develop which have guaranteed rule of law, independence and autonomy of judiciary (Rehman, Khan and Ashfaq, 2017). Given the troubled history of the superior judiciary with the repeated interference in judicial independence by military and political elites, such a system of self-accountability is good to protect its independence (Siddiqi, 2016). It is a good way to exclude the inefficient and incapable judges from holding office.

There is no consensus among the experts of this field about the best way to stop the misuse of disciplinary actions against the judges of the higher judiciary, but this measure of self-accountability protects judges of the superior judiciary in Pakistan from the pressure of executive and legislature. Judges have the right to a fair and transparent hearing before a decision-making body. This body is free and independent, particularly from the control of the executive (Fombad, 2001). The disciplinary actions against them must be fair and transparent and should provide them an opportunity to clarify their position and defend themselves.

### **Challenges**

The SJC is the only constitutional forum that has the authority to remove judges of the superior judiciary on different charges, but it has rarely taken such extreme action. Since its creation, it has removed only a few judges. In Pakistan, the self-accountability of the judiciary is considered by some analysts as a

challenge in the way of impartial accountability of judges. It is a mechanism of inner accountability; no other outside body is involved in its decision-making like executive or legislature while in most of the countries of the world legislatures have the authority to remove the judges of the superior judiciary. Though due to the interference of political and military elites in judicial independence such a mechanism of self-accountability is good to shield its autonomy, but it is good only in theory while seems failed in practice. It is the system of self-accountability not external accountability as the judges of the Supreme Court and High Courts are removed by the SJC which is comprised of some particular judges of the same courts. Therefore, it is not as active as required for ensuring accountability. In the removal of judges, no role has been given to other organs of the state. Unlike Pakistan, the US and many other countries have an efficient and effective separation of powers both in letter and spirit, whereby judges to the superior judiciary are appointed by the president (Executive) with the approval of the legislature, while removed by the legislature. A strict mechanism of check and balance is needed over the judiciary.

Another challenge is that this council is not conducting its proceeding on-camera. There is not much detailed public information of the cases filed against judges since its creation and the results of those cases (Siddiqi, 2016).

As per the method determined by the Supreme Court of Pakistan in 2005, any citizen may bring information about corruption, inefficiency, and incapability of a judge to the notice of the SJC, but the issue is that if the allegation is not proved then the person who brings the information into the notice of the council will face dire consequences. Due to this fear people mostly do not bring such complaints.

### **Cases filed in the Supreme Judicial Council**

Since the beginning, many cases were filed against the Supreme Court and High Courts judges in the SJC. Some judges were removed, some resigned while some won their cases and get cleared.

The most popular case was of the Iftikhar Chaudhry in 2007 during the Musharif regime. In March 2007, Iftikhar Chaudhry the then Chief Justice of Pakistan was charged with “misconduct” and “misuse of authority” by the then President of Pakistan Musharraf a reference was sent for inquiry to the SJC. He had appeared before the SJC and faced the charges. It was a very important case and the whole nation was following the proceeding. This case also gave birth to the popular Lawyer movement and independence of the Judiciary in Pakistan. He was restored after hearing and decided the case by SJC. It was the fifth case in the judicial history of Pakistan against a judge. Before him the first-ever case was filed against Justice Hassan Ali Agha in 1951, the second was filed against Justice Akhlaque Husain, the third was against Justice Shaukat Ali, the fourth was the case filed against Justice Safdar Ali Shah (Shah, 2019).

Another case based on corruption charges was filed against the Justice Mazhar Iqbal Sidhu of Lahore High Court. He was charged with corruption. He also resigned on February 28, 2017, two days ago from the date he was listed to appear before the SJC.

Another case against a judge filed in the Supreme Judicial Council was against Justice Shaukat Aziz Siddiqui. He was removed on 11<sup>th</sup> October 2018 based on the recommendation of the Council after notification of the Law and Justice Ministry in this regard. He was charged guilty of misconduct. Therefore, the President of Pakistan removed him from office on the recommendation of SJC. After, 1970, it was the first time that Supreme Judicial Council proposed the removal of a judge of a high court. Most of the judges chosen to tender their resignations to avoid investigation against them in the Supreme Judicial Council. Justice Shaukat Aziz Siddiqui decided to face the allegations of misconduct against him (Malik, October 2018).

Another case filed in Supreme Judicial Council was against Justice Farrukh Irfan Khan who was a Judge of Lahore High Court in 2019. After appearing his name in the Panama Papers which showed his offshore companies. A case was filed against him, but he resigned instead of facing the charges in the Supreme Judicial Council (Shah, 2019). He was charged with two offshore companies in the British Virgin Islands

(Cheema, 2017). After appearing his name in Panama Papers the SJC had summoned him to record his sources of income, but he decided to resign.

Another very recent case was of Justice Qazi Faez Isa. Under the reference of the President of Pakistan accusing him of concealing his properties in the United Kingdom, allegedly held in the name of his wife and children, investigated by the Supreme Judicial Council in 2020 (Khan, 2020). After investigation, the council decided the case in his favour.

### **Some Important Procedure of Removal of Judges in Other Countries**

In different countries different procedures are mentioned in their constitutions. In the United States of America, the judges of the Supreme Court can be removed by the senate on different charges (Prakash and Smith, 2006). The US Constitution mentioned only this method of the removal of judges. The charges are first submitted to the chief judge, then investigated by the committees of judges and then congress can remove the judge through the method of an impeachment (US Institute of Peace, 2009). Likewise, the judges of the Supreme Court of the United Kingdom can be removed from office by the petition of the parliament to the Queen. Both the houses of the parliament have the power of such a petition (Judges and Parliament). In France, the charges on a judge initially are referred to the Chief Justice. The ministry of justice investigates the charges and finally a judicial council removes the concerned judge (US Institute of Peace, 2009).

### **Conclusion**

Judges are also subject to the law. Therefore, there must be a constitutional body to examine the accountability, inefficiency, and incapability of the judges of the superior judiciary. In this respect, the competent authority is Supreme Judicial Council, but it is not playing an effective role in this regard, mainly due to its procedure and lack of external control. It is a very important constitutional body that plays a good role in the accountability of in-service judges, only needs some reforms to strengthen its role. To strengthen its role, it is necessary that the proceeding of the council should be on-camera, executive and legislature control over judiciary should be ensured and proceeding of corruption should be investigated by NAB, if necessary to reach the facts. Over Supreme Judicial Council the Control of executive and legislature is also necessary because in the present system it is a self-accountability of Judges. For the member of the Supreme Judicial Council sometimes it became difficult to take action against fellow judges.

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