



**DADABHOY INSTITUTE
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 => LEGAL SYSTEMS OF PAKISTAN

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BATCH: 9

FACULTY: LAW.

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FINAL EXAMINATION.

QUESTION#3: -

Define Federal Shariat Court & Explain Composition of Federal Shariat Court?

=> FEDERAL SHARIYAT COURT: -

-Introduction: -

- The Court consists of 8 Muslim judges including the Chief Justice. Procedure for appointment of judges of Federal Shariat Court has been changed after 18th and 19th amendments as previously such judges were appointed by the President from amongst the serving or retired judges of the Supreme Court or a High Court or from amongst persons possessing the qualifications of a judge of the High Court. At present, the judges of Federal Shariat Court are also appointed through the Judicial Commission, which comprises the Chief Justice of Pakistan, as Chairman with four senior most Judges of the Supreme Court, one former Chief Justice or a retired judge of the Supreme Court, appointed by the Chairman, in consultation with the four member judges of the Supreme Court, Attorney General for Pakistan, the Federal Minister for Law and Justice, Chief Justice of Federal Shariat Court and most senior judge of the Federal Shariat Court, as members. For appointment of Chief Justice, however, the most senior judge of the Federal Shariat Court is excluded from the composition of the Commission. Once the Judicial Commission approves a new name for appointment as a judge of the Federal Shariat Court, it goes to an 8-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. 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 is required to send another nomination.

Of the 8 judges, 3 are required to be Ulema (Islamic scholars), who are well versed in Islamic law. The 48 judges hold office for a period of 3 years and the President may further extend such period.



-->Original Jurisdiction of

Federal Shariat Court: -

-The Court may examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (Peace be upon him). If the Court decided that any law or provision

of law is repugnant to the injunctions of Islam, it sets out to the extent to which such law or provision of law is so repugnant, and specifies the day on which the decision shall take effect. Where any law is held to be repugnant to injunctions of Islam, the President in the case of Federal Law or the Governor in the case of Provincial Law is required to take steps to amend the law so as to bring it in conformity, with the injections of Islam; and such law ceases to take effect from the specified day.

-->Appellate Jurisdiction: -

-The Court has exclusive jurisdiction to hear appeals from the decision of criminal courts under any law relating to enforcement of Hudood Law I.e., law pertaining to offences to intoxication, theft, Zina and Qazf. The principal seat of the Federal Shariyat Court is in Islamabad, but it runs circuits in Lahore, Karachi, Peshawar and Quetta.

Question#2: -

Define Supreme judicial Council Removal of judges?

=>SUPREME COUNCIL'S REMOVAL OF JUDGES: -

- Judges of the superior judiciary can only be removed from office under Article 209 of the constitution. Given recent events, it is important to understand how the process works and the nature of the proceedings before the Supreme Judicial Council.



=>The Process: -

- There are two relevant legal provisions. First, Article 209 itself. Second, the procedure laid down by the Supreme Judicial Council known as The Supreme Judicial Council Procedure of Enquiry 2005 (the 'SJC Procedure').

1. Article 209(5) of the constitution provides that if the council or the president are of the opinion, on information from any source, that a judge may have been guilty of misconduct, the president

shall direct the council to inquire into the matter or the council may, on its own motion, inquire into the matter.

2. Under the SJC Procedure, the chairman of the council (the CJP) shall refer any information/reference 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. Only if the council is satisfied that the information prima facie discloses sufficient material for an inquiry will it proceed to consider the same.

3. If so satisfied, the council undertakes an inquiry. The council may discharge the reference if having undertaken an inquiry in its judgment there is no case to answer. The council must form an opinion at the inquiry stage as to whether on the basis of material before it a show-cause notice should be issued to the judge. If a show-cause notice is issued, the judge will be required to explain his/her conduct within 14 days and thereafter the matter will be heard by the council.

4. There is nothing in the constitution or the SJC Procedure to indicate the circumstances in which a show-cause notice should be issued. Applying generally accepted principles of jurisprudence adopted by administrative tribunals, a show-cause notice should only be issued if the council is satisfied that absent an explanation there is clear material before it which could form the basis of a finding of misconduct. If such material exists, the judge is required to show cause as to why action should not be taken.

In a short explanation, the procedure contemplated is first, a **complaint** or **reference**. Second, an **evaluation** as to whether the same discloses sufficient material for an inquiry. Third, an **inquiry**.

Fourth, a **show-cause notice**. Finally, a **decision** on the **show-cause notice**. The matter may be dismissed at any stage if there is insufficient material in the opinion of the Council justifying further action. Following the inquiry, the council may be of the view that a show-cause notice is not justified and may conclude the matter.



Question#1: -

Define Supreme Court & Explain Appointment and Qualification of a Supreme Court judges?

=>SUPREME COURT: -

Define: -

-The Supreme Court is the apex court of the land, exercising original, appellate and advisory jurisdiction. It is the Court of the ultimate appeal and final arbiter of law and the Constitution. Its decisions are binding on all other courts. The Courts consists of a Chief Justice and

other judges, appointed by the President as per procedure laid down in the Constitution. An Act of Parliament has fixed the number of judges at 17 I.e., Chief Justice and 16 judges. There is also a provision of appointment of acting judges as well as ad hoc judges in the court. A person with 5 years' experience as a Judge of a High Court or 15 years standing as an advocate of a High Court, is eligible to be appointed as judge of the Supreme Court.

--->Appointment of Supreme Court Judges: -

-The Chief Justice of Pakistan and each of other judges of the Supreme Court shall be appointed by the President in accordance with Article 175A, inserted through 18th and 19th constitutional amendments. These Constitutional amendments have devised a new scheme for the appointment of the Judges of Supreme Court.

The Judicial Commission of Pakistan shall nominate a name for the appointment of the Judge of Supreme Court in majority after evaluating professional competency and antecedents. The recommendation of the Judicial Commission is sent to the Parliamentary Committee. The country after receipt of nomination from the Committee may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed. However, the country may not confirm the nomination for reasons to be recorded, by three-fourth majority within said period and forward it to the Commission through Prime Minister and in such case, the Commission shall send another nomination.

--->Qualification of Supreme Court Judges: -

-According to Article 177(2): A person shall not be appointed a Judge of the Supreme Court unless he is a citizen of Pakistan and-

(a) has for a period of, or for periods aggregating, not less than five years has been a judge of a High Court (including a High Court which existed in Pakistan at any time before the commencing day);

or

(b) has for a period of, or for periods aggregating not less than fifteen years has been an advocate of a High Court (including a High Court which existed in Pakistan at any time before the commencing day).



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