

# GENERAL PROVISIONS RELATING TO THE JUDICATURE

<sup>1</sup>[204. *Contempt of Court.* (1) In this Article, "Court" means the Supreme Court or a High Court.

(2) A Court shall have power to punish any person who—

- (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;
- (b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Court; or
- (d) does any other thing which, by law, constitutes contempt of the Court.

(3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court.]

## SYNOPSIS

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<sup>1</sup> Subs. by P.O. 14 of 1985 w.e.f. 2 March 1985. The text of the Explanation omitted runs as under:  
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24. Contempt of Court Act, 1976.
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1. **Contempt of Court.** According to Lord Hardwick contempt is of three kinds:-

- (1) Scandalizing the Court itself;
- (2) Abusing parties who are concerned in causes in presence of the Court.
- (3) Prejudicing the public against persons before the cause is heard.

The law of contempt has two purposes namely:

- (i) The necessity of maintaining faith of the people in the dignity and uprightness of the Courts, and
- (ii) To protect the presiding officers from intimidation so that justice could be administered without any fear and doubt.

Contempt of Court proceedings are *sui generis* in nature partaking some of the elements of both civil and criminal proceedings but really constituting neither, there is no fixed formula for contempt proceedings and that technical accuracies are not required, nor the contempt proceedings are bound by the provisions of the Code of Criminal procedure or by the technicalities or ordinary criminal proceedings but, nevertheless being Courts of justice, judges normally follow the fundamental rules for the ascertainment of the truth by giving the fullest opportunity to the person accused of defending himself and of putting forward his case with as much, if not more fairness than it is required in ordinary trial before a Court of justice. [PLD 1959 Dacca 252 DB] To malign Judges, to impute dishonesty and to utter allegation of their being faithless, and law breakers by counsel, were the words of gravest contempt. [PLD 2009 S.C. 284]

To speak generally, contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation. Publishing, improper attacks on Judges of superior Courts and their juries, reflecting on their action in the administration of justice, attempting to intimidate or improperly to influence Judges, or speaking contemptuous words to or of Judges of inferior Courts when in the actual execution of their duty amounts to Contempt of Court.

If the abuse of the witnesses who appear in a Court of law is to be regarded as contempt of Court on the ground that it would intimidate other witnesses and thus impede the course of justice, it must be held that the intimidation of a lawyer, who is representing one of the parties is also contempt of Court as it would seriously interfere with the administration of justice.

Counsel may legitimately submit before an appellate Court that the order of a subordinate Court is wrong, foolish or even perverse. The atmosphere and the circumstances in which such submission are made are completely different from the scene created in a Court of law by Magistrate a by getting up from his chair and by hurling insulting epithets at the Counsel who had dared to obtain an injunction. In these circumstances, the remark that "this is a foolish order passed by a foolish Sub-Judge and secured by a foolish lawyer" certainly amounts to contempt of the Court which had passed the order. [PLD 1949 Lah. 392]

In the face of plain words of Article 123 of the late Constitution, of Pakistan (1962) and Article 204 of the present Constitution, which contains, no qualification as to the capacity in which the Courts acts, the argument based upon a division between the administrative functions of the High Court and its judicial functions seems to lose all its force. There is no question now, in view of the definition given to this particular class or contempt by the Constitution itself, that provided the reference is to the Court or to a Judge of the Court, that is to say, lowering it in general esteem or attracting to the Court or any Judge, feeling of hatred, ridicule or contempt, the contempt is established. [PLD 1965 S.C. 28]

There is no reasons to put any limitation on para (2) (b) or Article 204 confining it the judicial functions of the High Court. There is also no reason to put any limitation on the administrative functions of the High Court so as to limit it to what is prescribed by rule or law. Article 204 should be read without any preconceived notion. [PLD 1964 Lah. 661] Jurisdiction of High Court cannot be exercised for setting private scores. [PLD 2004 Kar. 60]

Although proceedings in chambers are not invested with the full formality of those that take place in Court, yet the circumstances in which, and the attitude with which, an interruption is made even in chamber proceedings are factors which may deprive the interruption of all innocence in the light of the contempt of the Court's authority and dignity. [PLD 1966 S.C. 94]

Speeches of the members of the National Assembly enjoy qualified privilege subject to Constitution and are amenable to contempt of Court proceedings under Article 204. [PLD 1988 Kar. 309]

Article 204 of the Constitution provides that the courts which include the Supreme Court and the High Courts shall have the power to punish any person who commits any of the acts specified in sub-clauses (a), (b), (c) and (d). Subsection (b) empowers the Court to punish a person who scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt. [PLD 1998 S.C. 823] Contempt proceedings were to be filed against a person by name who had allegedly violated the order of the Court so that he could be convicted if found guilty. Contempt application could not be filed against designations, therefore, the same was dismissed in circumstances. [PLD 2004 Kar. 728] Non compliance with direction of Court was contempt of Court. [2004 PLC (C.S.) 622] Injuries on the person of son of the petitioner having not been denied, local police first of all should proceed in the mater under S. 154, Cr.P.C. and thereafter, if information provided by the petitioner/complainant was found false, case should have been cancelled and proceedings against complainant, should have been initiated in accordance with law as directed by High Court in its order passed in earlier Constitutional petition. Proceedings under Contempt of Court Act, 1976 could be initiated in case of non-compliance of the order of the High Court. [2004 P.Cr.L.J. 391] Contempt proceeding can neither be initiated at the desire or whim of a litigating party nor for any consideration that did not weigh with the Judge. Court had to be satisfied as to whether the act of respondents would come within the mischief of the law of contempt or otherwise amounting to interference with administration of justice. Contempt in its

legal connotation signified disrespect to that which is entitled to a high legal regard. Very purpose of initiating contempt proceedings is the vindication of dignity and honour of the Court or that of the justice administration. [2007 MLD 248]

Attributing improper and dishonest motive to Chief Justice and the two Judges in initiating inquiry against the accused under the disciplinary rules could definitely lower the confidence of public in the credibility of the judicial system which the said Judges were to administer. [2001 SCMR 519] Contempt application moved against all the respondents without specifying their names, assigning them, their respective role and particularizing the material allegations of disobedience, violations of any Court order and nature of contempt allegedly committed by them. Such contempt application held not maintainable. [2008 YLR 1996]

Mere non compliance of an order in the absence of contumacy would not amount to contempt of Court. A distinction has to be made between a case of contempt of Court based on defiance or violation of judicial order in the nature of temporary injunction by a party whereby such party was restrained from acting in a particular manner but in spite of service of notice or having come to know of the passing of such order, acts in a manner to alter the position to his advantage so as to frustrate the temporary injunction and an act of mere non submission of a report called for by the Court by an Officer of the Court. In the former case the Court would take strict view and mere act of defiance of the judicial order would be itself justify raising of presumption that the doer of the act was guilty of contempt of Court unless he proves otherwise whereas in the latter case, it has to be determined on application of judicial mind as to whether the accused deliberately did not submit the report on account of having personal interest in any of the parties to cause damage to other party in the case in which the report was called or had any personal interest which, if proved or established, would make the act of non-submission of the report *mala fide*. [PLD 2002 S.C. 1033] Assuming that a case for initiating contempt proceedings is made out against the petitioners, even then in view of the settled law that a matter of contempt is between the Court and the alleged contemnor, it is upto the Court either to take any appropriate action against the alleged contemnors or drop the matter. [2009 SCMR 477] Although the exercise of the power conferred on a court by Art.204 (3) of the Constitution might be regulated by law and subject to law by rules made by the court, but it did not mean that a statute could control or curtail the power conferred on the superior courts under the said Article nor in the absence of a statute on the subject, the said Article would be inoperative. [PLD 2012 S.C. 923]

**1.1 Disobedience of the order of Court.** Contempt alleged against said persons was primarily consequent to issuance of the three instruments viz. Proclamation of Emergency; Provisional Constitution Order, 2007 and Oath of Office (Judges) Order, 2007 and thereby launching an assault on the independence of the Judiciary. Prima facie, these instruments were issued prior to the passing of the order of the seven-member bench of the Supreme Court dated 3-11-2007 and not in disobedience of the same. Case for contempt of Court of said persons materially different from the charge to be faced by the applicants which had arisen on account of their disobedience of the order passed by the seven-Member Bench of Supreme Court on 3-11-2007. Proceedings therefore, against the said persons may proceed independently and on their own facts, and it was not necessary to link or club the proceedings against the applicants with those which may be taken against the said persons. [PLD 2011 S.C. 195] Disobedience of restraint order passed by seven Members Bench of the Supreme Court dated 3-11-2007 by members of the Superior Judiciary by taking oath

under Provisional Constitution Order, 2007 and Oath of Office (Judges) Order, 2007. Judges, whether they were in Supreme court or in the High Court, who violated the order passed by seven-Member Bench of Supreme Court dated 3-11-2007 had all rendered themselves liable for consequences under the Constitution for their disobedience of said order. Article 204 of the Constitution dealt with the cases where a person had violated an order passed by Supreme Court, therefore, notices under Article 204 of the Constitution read with relevant provisions of contempt of Court laws were issued to all those Judges who were appointed between 3-11-2007 and 15-12-2007 and made oath in violation of the said Supreme court Judgment dated 3-11-2007. [PLD 2011 S.C. 680] Law does not prohibit proceedings under S. 204 of the Constitution against the respondent even though they might be Judges of the Supreme Court and the High Courts; they were not immune from proceedings under S. 204 of the Constitution and the Contempt of Court Ordinance, 2003 for committing contempt of the Supreme Court. Propriety thus required that proceedings should be taken against the respondents and they with the exception of two, be put to trial in accordance with the law. Supreme Court, having noted the submissions made on behalf of said two respondents and contents of their replies, found that even though said two respondents took oath under the Provisional Constitution Order, 2007 on 14-12-2007 or at any later point in time, they did not violate the letter of the order dated 3-11-2007 even though they might have violated its spirit. Conduct of said two respondents in taking oath under Provisional Constitution Order, 2007 and purporting to act as Judges subsequent thereto, was deprecated in terms of S. 18(2) of the Contempt of Court Ordinance, 2003. Said two respondents, in circumstances, shall not be charged to face trial under Contempt of Court Order, 2003. [PLD 2011 S.C. 197] Contempt proceedings are drawn when there is a violation of the court order, or the authority of the court is undermined or ridiculed. [2012 SCMR 773]

Supreme Court in the, case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265), had issued directions to the Government to write letter to the authorities in Switzerland to seek revival of requests for mutual legal assistance and secure the status of civil party and the claims lodged to the allegedly laundered money lying in foreign countries including Switzerland. Former Prime Minister (predecessor of the present incumbent Prime Minister), was convicted and sentenced for contempt of the Supreme Court for non-implementation of said directions of the Supreme Court by him resultantly, he lost his membership of the National Assembly and consequently the office of the Prime Minister. All the said directions issued by the Supreme Court applied with equal force to the present incumbent Prime Minister. Supreme Court observed that newly elected Prime Minister had assumed the charge of his office and that he will implement the directions of the Court. Attorney General was directed to obtain instructions from the Prime Minister and inform the court of his (present incumbent Prime Minister's) response. Attorney General submitted that the matter was taken up in a Cabinet meeting which had desired that the Ministry of Law should furnish its views as regards the matter of implementation of the said directions of the Supreme Court, and as and when the Ministry of Law rendered its opinion in the matter, the Cabinet would then take decision in accordance with the provisions of the Constitution. Supreme Court observed that the response of the present Prime Minister was difficult to appreciate or accept since predecessor of the present incumbent Prime Minister was directed to implement the relevant directions of the Supreme Court

**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 Court shall be determined with reference to their dates of appointment as Chief Justice <sup>6</sup>[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.

<sup>7</sup>[(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,-

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<sup>6</sup> Inst. by Constitution (First Amdt.) 1974 w.e.f. 4 May 1974.

<sup>7</sup> Subs. by Constitution (Eighteenth Amendment) Act, X of 2010.

- (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.

### SYNOPSIS

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| <ol style="list-style-type: none"> <li>1. Scope.</li> <li>2. One of the nine Judges incapable of performing his judicial functions.</li> <li>3. Enquiry by the Supreme Judicial Council.</li> <li>4. Accountability of a Judge.</li> <li>5. Removal of Judge of Supreme Court.</li> <li>6. Reference to the Supreme Judicial Council.</li> <li>7. Judges (Compulsory Leave) Order, 1970.</li> </ol> | <ol style="list-style-type: none"> <li>8. Reference dated 9-3-2007 made by the President on advice of Prime Minister against Chief Justice of Pakistan.</li> <li>9. Misconduct.</li> <li>10. Reference made under Article 209 is not immune from judicial review.</li> <li>11. Function and scope of the jurisdiction of Supreme Judicial Council.</li> </ol> |
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1. **Scope.** The Article 209 has been examined by the Supreme Court of Pakistan in the case *Asad Ali vs. Federation of Pakistan*. [PLD 1998 S.C. 161] Holding that the recommendation of the Chief Justices of the High Court concerned and that of Chief Justice of Pakistan in respect of fitness of otherwise of a person to be appointed/confirmed as a Judge of High Court would not fall within the scope of Article 209 of the Constitution. [PLD 2000 S.C. 179]

2. **One of the nine Judges incapable of performing his judicial functions.** Due to an act of God his Lordship becoming incapable of performing his judicial functions, for the time being and in the foreseeable future, Adjournment for any length of time would be highly undesirable; and might even necessitate a re-hearing of the whole case so as to refresh our mind on questions of law and fact, which have been so painstakingly argued by both sides before us. We are absolutely clear in our mind that this Court cannot afford to undertake such an exercise. [PLD 1979 S.C. 38 (p. 43)]

3. **Enquiry by the Supreme Judicial Council.** The enquiry by the Supreme Judicial Council against the judge of a superior Court under this Article is limited to two points, namely:-

- i) The incapacity of the Judge to perform the duties of his office properly arising from any physical or mental incapacity and
- ii) Misconduct of the Judge concerned.

The finding of the Supreme Judicial Council in such an enquiry are recommendatory in nature and the action, if any, is to be taken by the President on the advice of the Prime Minister or the Cabinet. It is, therefore, quite clear that besides the fact that the Supreme Judicial Council itself cannot grant any relief to a person aggrieved by the illegal and unconstitutional appointment of a Judge of the superior Court, the invalidity and unconstitutionality of the appointment of a Judge of a superior Court are outside the purview of the enquiry under Article 209 of the Constitution, because such an appointment has no nexus either with the mental or physical incapacity of the Judge to perform properly, the duties of his office or with the misconduct of the Judge concerned. [PLD 2000 S.C. 179]

**4. Accountability of a Judge.** Judges of superior Courts are subject to accountability, only in accordance with the methodology laid down in Article 209 of the Constitution of Pakistan. [PLD 2000 S.C. 869] Government shall accelerate the process of accountability in a coherent and transparent manner justly, fairly, equitably and in accordance with law. [2000 SCMR 1137] Contention that a Judge once appointed in the High Court could not be removed, except in accordance with provision of Article 209 of the Constitution, repelled. [PLD 2000 S.C. 179] Cases of former Chief Justice and Judges of Supreme Court who had not taken or given oath could not be opened being hit by the doctrine of past and closed transaction. [PLD 2000 S.C. 869]

**5. Removal of Judge of Supreme Court.** Judges of Supreme Courts cannot be removed from their offices except in accordance with the provision of Article 209 of the Constitution but since they are not immune from accountability therefore, if situation arises and the President of Pakistan also considered necessary the proceedings can be initiated against a Judge with respect to his conduct in terms of Article 209 of the Constitution. Principles stated ..... [PLD 2008 S.C. 522] The exercise envisaged by Article 209 is bi-foral *i.e.*, certain things happening at the President's end and other things taking place before the S.J.C. And if the framers of the Constitution had understood English language as the said learned ASC for the Federation is canvassing *i.e.*, proceedings before the Council meaning "everything from the start to the end", then the founding fathers would not have wasted words to mention also the report of the Council to the President and the removal of Judge by him, in the said Article 211. Every student of law is expected to know the principle which is too well established by now that no redundancy or surplusage could ever be attributed to a draftsman much less to the one drafting the Constitution. It may be clarified that the report of the Council to the President should not be confused as a matter happening before the said Council as the report required to be sent to the President was not something taking place before the S.J.C. but only a result of whatever had transpired or had taken place before it. It may be added that if the intention of the Constitution was to grant immunity to all the acts and proceedings "from the start to the end", then there was nothing stopping the Constitution-makers from saying in Article 211 simply that no proceedings under Article 209 would be called in question in any Court, which was not done and what had instead been done was grant of protection to some only of the proceedings envisaged by the said Article 209.



**6. Reference to the Supreme Judicial Council.** Direction cannot be issued to the Supreme Judicial Council to initiate proceedings of judicial misconduct against any Judge of Supreme Court at the instance of lawyer or a citizen. Supreme Court as also a High Court is prohibited to take upon themselves the exercise to record even tentative finding that a particular Judge has committed misconduct warranting filing of a Reference against him under Article 209 of the Constitution. On the same analogy no direction can be issued to the Supreme Judicial Council to stay its hands off the reference filed against the Chief Justice what to speak of quashing the reference altogether. [PLD 2008 S.C. 178 per Mr. Justice Abdul Hameed Dogar C.J.]

**7. Judges (Compulsory Leave) Order, 1970.** Judges (Compulsory Leave) Order, 1970 was unanimously declared as *ultra vires* of the Constitution and consequently the order of the President dated 15-3-2007 directing that Chief Justice of Pakistan shall be on leave was also unanimously declared to have been passed without lawful authority. Such invalidity, however, shall not affect the ordinary working of the Supreme Court or its discharging of any other Constitutional order/or legal obligations by the Acting Chief Justices of Pakistan during the period in question. President declaration by the Supreme Court was so made by applying the de facto doctrine. Order of the President dated 9-3-2007 and order of the Supreme Judicial Council of the same date restraining the Chief Justice of Pakistan from acting as a Judge of the Supreme Court and/or the Chief Justice of Pakistan were also unanimously set aside as being illegal. However, since according to minority view on the question of validity of the direction (the Reference), in question, the said Reference had been competently filed by the

President, therefore, the Supreme Court could pass a restraining order under Article 184(3) read with Article 187 of the Constitution. Matter of accountability of the Chief Justice of Pakistan and issue that Chief Justice was not accountable, having not been raised before the Supreme Court, same did not require any adjudication. *Held*, Chief Justice of Pakistan (petitioner) shall be deemed to be holding the said office and shall always be deemed to have been so holding the same. [PLD 2007 S.C. 578]

**8. Reference dated 9-3-2007 made by the President on advice of Prime Minister against Chief Justice of Pakistan.** The Reference dated 9-3-2007 made by the President on advice of Prime Minister against Chief Justice of Pakistan was thoroughly examined by the Full Bench of the Supreme Court in its original jurisdiction. By the majority view, the petition made by the Chief Justice challenging the reference was allowed as result thereof the reference in question was declared liable to be set aside, by virtue of a short order. [PLJ 2007 S.C. 814] Judges (Compulsory Leave) Order, 1970 was unanimously declared as *ultra vires* of the Constitution and consequently the order of the President dated 15-3-2007 directing that Chief Justice of Pakistan shall be on leave was also unanimously declare to have been passed without lawful authority. [PLD 2007 S.C. 578]

**9. Misconduct.** Assumption of power by authority not mentioned in the Constitution would be unconstitutional, illegal and void *ab initio* and not liable to be recognized by any Court, including the Supreme Court. Henceforth, a Judge playing any role in future in the recognition of such assumption of power would be guilty of misconduct within the ambit of Article 209 of the Constitution. [PLD 2009 S.C. 879]

**10 Reference made under Article 209 is not immune from judicial review.** In the normal circumstances a reference under Article 209 of the Constitution against a Judge of Superior Court may not be subject to the judicial scrutiny, by any Court including the Supreme Court due to bar contained in Article 211 of the Constitution but if the Reference under Article 209 of the Constitution is made by the President for the motive and purpose beyond the spirit of Article 209 and it is not in good faith, the same may not have the immunity from judicial review of Superior Courts and the Supreme Court may on the ground of *mala fide* examine the question relating to the validity of reference in its original jurisdiction under Article 184(3) of the Constitution. The exercise in question prescribed by Article 209 of the Constitution consist of eight stages or steps starting with the receipt of the relevant information by the President and ending, either with the dropping of the proceedings against the concerned Judge, or his removal by the President, as the case may be.

Out of the eight steps in the exercise in question, what is sought to be protected are the following three matters only, namely:-

- i) Proceedings before the Council;
- ii) Report of the Supreme Judicial Council to the President, as a result of the said proceeding; and finally;
- iii) The removal of the concerned Judge. Meaning thereby that the Constitution makes no attempt at all to keep the remaining matters out of the purview of the Courts of law, namely:-
  - a) Receipt of information by the President, from any source, about the mental or physical disability of a Judge or about his being guilty of misconduct;
  - b) Collection of material in support of the said information;

- c) Formation of opinion by the President about such a disability or misconduct of a Judge; and the consequent;
- d) Direction (generally called a Reference) by the President to the Council to inquire into the matter. [PLD 2010 S.C. 61]

**11. Function and scope of the jurisdiction of Supreme Judicial Council.** The Supreme Judicial Council is an exclusive body constituted under Article 209 of the Constitution, which consists of the Chief Justice of Pakistan, two next most senior Judges of the Supreme Court and two most senior Chief Justices of High Courts. The Supreme Judicial Council if at any time is enquiring into capacity or conduct of a Judge who is member of the Council or a member of Council is unable to act due to any reason, in case such member is a Judge of the Supreme Court, the next Judge in seniority, and if he is a Chief Justice of the High Court, the Chief Justice of another High Court next in seniority, shall act as a member of the Council in his place. Article 260 of the Constitution provides that "the Chief Justice in relation to the Supreme Court or a High Court includes the Judge for the time being acting as chief Justice of the Court and the Judge includes Chief Justice of the Court." In the light of sub-Article (3) of Article 209 read with Article 260 of the Constitution the debate with reference to sub-Article (2) of the Article 209 that in the absence of Chief Justice of Pakistan, the constitution and composition of Supreme Judicial Council may not be proper is of no significance.

Sub-Article (5) of Article 209 provides that the President on an information received from Council or any other source, if is of the view that Judge of the Supreme Court or a High Court is incapable of properly discharging function of his office by reason of physical or mental incapability or is guilty of misconduct, shall direct Council to inquire into the matter and Supreme Judicial Council in consequence to the inquiry conducted in the matter, if submits report to the President with the opinion that Judge is unable of performing duties of his office or has been guilty of misconduct and he may be removed from his office, the President may remove the Judge from office. It is thus mandatory for the President that on receipt of information of the nature mentioned above against a Judge of the Superior Court, to issue direction to Supreme Judicial Council for holding an inquiry into the matter and if the Supreme Judicial Council forms opinion as stated in clauses (a) and (b) of sub-Article (6) of Article 209 of the Constitution, the President may in his discretion remove the Judge. The expression "shall" used in sub-Article (5) places duty on the President may or may not remove the Judge. The Code of Conduct issued by the Supreme Judicial Council is to be observed by the Judges of superior Courts and under sub-Article (7) of the Article 209 of the Constitution provides protection of tenor to the Judges of superior Courts as no Judge can be removed from his office except in the manner provided in Article 209.

The plain reading of Article 209 of the Constitution would show that it is complete code by itself providing the manner in which a Judge can be removed from his office on the ground of misconduct or if he is incapable of performing his duties due to mental or physical incapacity.