

¹[CHAPTER 3A. – FEDERAL SHARIAT COURT

Provisions of Chapter to override other provisions of Constitution

203A. The provisions of this Chapter shall have effect notwithstanding anything contained in the Constitution.

Definitions

203B. In this Chapter, unless there is anything repugnant in the subject or context,—

- ²[(a) "Chief Justice" means Chief Justice of the Court;]
- (b) "Court" means the Federal Shariat Court constituted in pursuance of Article 203C ;
- ³[(bb) "Judge" means Judge of the Court;]
- (c) "law " includes any custom or usage having the force of law but does not include the Constitution, Muslim personal law, any law relating to the procedure of any court or tribunal or, until the expiration of ⁴[ten] years from the commencement of this Chapter, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure ; and

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¹ Subs. by the Constitution (Amdt) Order, 1980 (P.O. No. 1 of 1980). Art. 3, for the "existing Chapter 3A" (w.e.f. 26th May, 1980).
² Subs. by the Constitution (Second Amdt.) Order, 1982 (P. O. No. 5 of 1982), Art. 2. for ~~paragraph (a)~~".
³ Ins. *ibid.*,
⁴ Subs. by P.O. No. 14 of 1985, Art. 2 and Sch., which was previously amended by various enactments for ~~five~~".
⁵ Paragraph (d) omitted by P. O. No. 5 of 1982, Art. 2.

The Federal Shariat Court

203C. (1) There shall be constituted for the purposes of this Chapter a Court to be called the Federal Shariat Court.

¹[(2) The Court shall consist of not more than eight Muslim ²[Judges], including the ³[Chief Justice], to be appointed by the President ⁴[in accordance with Article 175A].

⁵[(3) The Chief Justice shall be a person who is, or has been, or is qualified to be, a Judge of the Supreme Court or who is or has been a permanent Judge of a High Court.

(3A) Of the Judges, not more than four shall be persons each one of whom is, or has been, or is qualified to be, a Judge of a High Court and not more than three shall be Ulema ⁶[having at least fifteen years experience in Islamic law, research or instruction.]

(4) The ⁷[Chief Justice] and a ⁸[Judge] shall hold office for a period not exceeding three years, but may be appointed for such further term or terms as the President may determine:

Provided that a Judge of a High Court shall not be appointed to be a ⁸[Judge] ⁹* * * except with his consent and ¹⁰[, except where the Judge is himself the Chief Justice,] after consultation by the President with the Chief Justice of the High Court.

¹¹[(4A) The ⁷[Chief Justice], if he is not a Judge of the Supreme Court, and a ⁸[Judge] who is not a Judge of a High Court, may, by writing under his hand addressed to the President, resign his office.]

¹²[(4B) The Chief Justice and a Judge shall not be removed from office except in the like manner and on the like grounds as a Judge of the Supreme Court.]

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¹ Subs. by the Constitution (Second Amdt.) Order, 1981 (P. O. No. 7 of 1981), Art. 2, for "clause (2)".
² Subs. by P. O. No. 5 of 1982, Art. 3, for "members".
³ Subs. *ibid.*, for "Chairman".
⁴ Ins. by the Constitution (Eighteenth Amdt.) Act, 2010 (10 of 2010), s. 74.
⁵ Subs. by the Constitution (Third Amdt.) Order 1985 (P. O. No. 24 of 1985), Art. 4, for "clause(3)".
⁶ Subs. by the Constitution (Eighteenth Amdt.) Act, 2010 (10 of 2010), s. 74, for certain words.
⁷ Subs. by the Constitution (Second Amdt.) Order, 1982 (P. O. No. 5 of 1982), Art. 3, for "Chairman".
⁸ Subs. *ibid.*, for "members".
⁹ Certain words omitted by Act No. 10 of 2010, s. 74.
¹⁰ Subs. by the Constitution (Third Amdt.) Order 1985 (P. O. No. 24 of 1985), Art. 4, for "one year".
¹¹ Ins. by the Constitution (Second Amdt.) Order, 1980 (P. O. No. 4 of 1980), Art. 2.
¹² Subs. by Act No. 10 of 2010, s. 74, for clause (4B) for which was previously ins. by P. O. No. 14 of 1985, Art. 2 and Sch.
¹³ Clauses (4C) and (5) omitted *ibid.*

(6) The principal seat of the Court shall be at Islamabad, but the Court may from time to time sit in such other places in Pakistan as the ¹[Chief Justice] may, with the approval of the President, appoint.

(7) Before entering upon office, the ¹[Chief Justice] and a ²[Judge] shall make before the President or a person nominated by him oath in the form set out in the Third Schedule.

(8) At any time when the ¹[Chief Justice] or a ²[Judge] is absent or is unable to perform the functions of his office, the President shall appoint another person qualified for the purpose to act as ¹[Chief Justice] or, as the case may be, ²[Judge].

³[(9) A Chief Justice who is not a Judge of the Supreme Court shall be entitled to the same remuneration, allowances and privileges as are admissible to a Judge of the Supreme Court and a Judge who is not a Judge of a High Court shall be entitled to the same remuneration, allowances and privileges as are admissible to a Judge of a High Court:

Provided that where a Judge is already drawing a pension for any other post in the service of Pakistan, the amount of such pension shall be deducted from the pension admissible under this clause.]

203CC. *[Penal of Ulema and Ulema members.] Omitted by the Constitution (Second Amdt.) Order, 1981 (P.O. No. 7 of 1981), Art. 3, which was previously ins. by P.O. No. 5 of 1981, Art. 2.*

Powers, jurisdiction and functions of the Court

203D. (1) The Court may, ⁴[either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, 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 the Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.

⁵[(1A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a

¹ Subs. by the Constitution (Second Amdt.) Order, 1982 (P. O. No. 5 of 1982), Art. 3, for "Chairman".

² Subs. *ibid.*, for "members".

³ Subs. by the Constitution (Eighteenth Amdt.) Act, 2010 (10 of 2010), s. 74, and shall be deemed always to have been so, subs. with affect from the 21st day of August 2002 for "clause (9)".

⁴ Ins. by the Constitution (Second Amdt.) Order, 1982 (5 of 1982), Art. 4.

⁵ Ins. by the Constitution (Amdt.) Order, 1984 (P. O. No. 1 of 1984), Art. 2.

matter in the Federal Legislative List ¹* * * or to the Provincial Government in the case of a law with respect to a matter not enumerated ²[in the Federal Legislative List], a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.]

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision :—

- (a) the reasons for its holding that opinion; and
- (b) the extent to which such law or provision is so repugnant;

and specify the day on which the decision shall take effect ³[:]

⁴[Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.]

(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam,—

- (a) the President in the case of a law with respect to a matter in the Federal Legislative List ⁵* * * or the Governor in the case of a law with respect to a matter not enumerated in ⁶[said List] shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and
- (b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.

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¹ The words ~~or the Concurrent Legislative List~~” omitted by the Constitution (Eighteenth Amdt.) Act, 2010 (10 of 2010), s. 75.
² Subs. *ibid.*, for the words ~~in the either of those lists~~”.
³ Subs. and shall be deemed always to have been so subs. by the Constitution (Amdt.) order, 1984 (P.O. No. 1 of 1984), Art. 2, for the full stop.
⁴ Proviso added and shall be deemed always to have been so added *ibid.*
⁵ The words ~~or the Concurrent Legislative List~~” stand omitted as consequence of the (Eighteenth Amdt.) Act, 2010 (10 of 2010), see section 2.
⁶ Subs. *ibid.*, for ~~Either of those Lists~~”.
⁷ Clause (4) omitted by the Constitution (Second Amdt.) Order, 1980 (P. O. No. 4 of 1980), Art. 3.

Revisional and other jurisdiction of the Court

¹[**203DD.** (1) The Court may call for and examine the record of any case decided by any criminal court under any law relating to the enforcement of *Hudood* for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by, and as to the regularity of any proceedings of, such court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) In any case the record of which has been called for by the Court, the Court may pass such order as it may deem fit and may enhance the sentence:

Provided that nothing in this Article shall be deemed to authorise the Court to convert a finding of acquittal into one of conviction and no order under this Article shall be made to the prejudice of the accused unless he has had an opportunity of being heard in his own defence.

(3) The Court shall have such other jurisdiction as may be conferred on it by or under any law.]

Powers and procedure of the Court

203E. (1) For the purposes of the performance of its functions, the Court shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits ; and
- (d) issuing commissions for the examination of witnesses or documents.

(2) The Court shall have power to conduct its proceedings and regulate its procedure in all respects as it deems fit.

¹ Subs. by the Constitution (Second Amdt.) Order, 1982 (P. O. No. 5 of 1982), Art. 5, for "Article 203DD", which was previously ins. by P. O. No. 4 of 1980, Art. 3.

(3) The Court shall have the power of a High Court to punish its own contempt.

(4) A party to any proceedings before the Court under clause (1) of Article 203D may be represented by a legal practitioner who is a Muslim and has been enrolled as an advocate of a High Court for a period of not less than five years or as an advocate of the Supreme Court or by a jurisconsult selected by the party from out of a panel of jurisconsults maintained by the Court for the purpose.

(5) For being eligible to have his name borne on the panel of jurisconsults referred to in clause (4), a person shall be an *aalim* who, in the opinion of the Court, is well-versed in Shariat.

(6) A legal practitioner or jurisconsult representing a party before the Court shall not plead for the party but shall state, expound and interpret the Injunctions of Islam relevant to the proceedings so far as may be known to him and submit to the Court a written statement of his interpretation of such Injunctions of Islam.

(7) The Court may invite any person in Pakistan or abroad whom the Court considers to be well-versed in Islamic law to appear before it and render such assistance as may be required of him.

(8) No court fee shall be payable in respect of any petition or application made to the Court under ¹[Article 203D.]

²[(9) The Court shall have power to review any decision given or order made by it.]

Appeal to Supreme Court

203F. (1) Any party to any proceedings before the Court under Article 203D aggrieved by the final decision of the Court in such proceedings may, within sixty days of such decision, prefer an appeal to the Supreme Court [:]³

⁴[Provided that an appeal on behalf of the Federation or of a Province may be preferred within six months of such decision.]

(2) The provisions of clauses (2) and (3) of Article 203D and clauses (4) to (8) of Article 203E shall apply to and in relation to the

¹ Subs. by the Constitution (Second Amdt.) Order, 1980 (P. O. No. 4 of 1980), Art. 5, for "this Article".

² New clause (9) added by the Constitution (Amdt.) Order, 1981 (P. O. No. 5 of 1981), Art. 3.

³ Subs. by the Constitution (Third Amdt.) Order, 1983 (P. O. No. 9 of 1983), Art. 2, for the full-stop.

⁴ Proviso added *ibid*.

Supreme Court as if reference in those provisions to Court were a reference to the Supreme Court.

¹[(2A) An appeal shall lie to the Supreme Court from any judgment, final order or sentence of the Federal Shariat Court—

- (a) if the Federal Shariat Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or imprisonment for life or imprisonment for a term exceeding fourteen years ; or, on revision, has enhanced a sentence as aforesaid; or
- (b) if the Federal Shariat Court has imposed any punishment on any person for contempt of the Court.

(2B) An appeal to the Supreme Court from a judgment, decision, order or sentence of the Federal Shariat Court in a case to which the preceding clauses do not apply shall lie only if the Supreme Court grants leave to appeal.]

²[(3) For the purpose of the exercise of the jurisdiction conferred by this Article, there shall be constituted in the Supreme Court a Bench to be called the Shariat Appellate Bench and consisting of—

- (a) three Muslim Judges of the Supreme Court; and
- (b) not more than two *Ulema* to be appointed by the President to attend sittings of the Bench as *ad hoc* members thereof from amongst the Judges of the Federal Shariat Court or from out of a panel of *Ulema* to be drawn up by the President in consultation with the Chief Justice.

(4) A person appointed under paragraph (b) of clause (3) shall hold office for such period as the President may determine.

(5) Reference in clauses (1) and (2) to "Supreme Court" shall be construed as a reference to the Shariat Appellate Bench.

(6) While attending sittings of the Shariat Appellate Bench, a person appointed under paragraph (b) of clause (3) shall have the same power and jurisdiction, and be entitled to the same privileges, as a Judge of the Supreme Court and be paid such allowances as the President may determine.]

¹ New "clauses (2A) and (2B)" ins. by the Constitution (Second Amdt.) Order, 1982 (P. O. No. 5 of 1982), Art. 6.

² Subs. by the Constitution (Third Amdt.) Order, 1982 (P. O. No. 12 of 1982), Art. 2, for "clause (3)".

Bar of jurisdiction

203G. Save as provided in Article 203F, no court or tribunal, including the Supreme Court and a High Court, shall entertain any proceedings or exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Court.

Decision of Court binding on High Court and courts subordinate to it

¹[**203GG.** Subject to Articles 203D and 203F, any decision of the Court in the exercise of its jurisdiction under this Chapter shall be binding on a High Court and on all courts subordinate to a High Court.]

Pending proceedings to continue, etc.

203H. (1) Subject to clause (2) nothing in this Chapter shall be deemed to require any proceedings pending in any court or tribunal immediately before the commencement of this Chapter or initiated after such commencement, to be adjourned or stayed by reason only of a petition having been made to the Court for a decision as to whether or not a law or provision of law relevant to the decision of the point in issue in such proceedings is repugnant to the Injunctions of Islam; and all such proceedings shall continue, and the point in issue therein shall be decided, in accordance with the law for the time being in force.

(2) All proceedings under clause (1) of Article 203B of the Constitution that may be pending before any High Court immediately before the commencement of this Chapter shall stand transferred to the Court and shall be dealt with by the Court from the stage from which they are so transferred.

(3) Neither the Court nor the Supreme Court shall in the exercise of its jurisdiction under this Chapter have power to grant an injunction or make any interim order in relation to any proceedings pending in any other court or tribunal.

203I. *[Administrative arrangements, etc.,] Omitted by the Constitution (Second Amdt.) Order, 1982, (P.O. No. 5 of 1982), Art. 8.*

Power to make rules

203J. (1) The Court may, by notification in the official Gazette, make rules for carrying out the purposes of this Chapter.

¹ New Article 203GG ins. by the Constitution (Second Amdt.) Order, 1982 (P. O. No. 5 of 1982), Art. 7.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may make provision in respect of all or any of the following matters, namely :—

- (a) the scale of payment of honoraria to be made to jurisconsults, experts and witnesses summoned by the Court to defray the expenses, if any, incurred by them in attending for the purposes of the proceedings before the Court; *¹
- (b) the form of oath to be made by a Jurisconsult, expert or witness appearing before the Court ²[;]
- ³[(c) the powers and functions of the Court being exercised or performed by Benches consisting of one or more members constituted by the Chairman ;
- (d) the decision of the Court being expressed in terms of the opinion of the majority of its members or, as the case may be, of the members constituting a Bench ; and
- (e) the decision of cases in which the members constituting a Bench are equally divided in their opinion.]

(3) Until rules are made under clause (1), the Shariat Benches of Superior Courts Rules, 1979, shall, with the necessary modifications and so far as they are not inconsistent with the provisions of this Chapter, continue in force.]

¹ The word "and" omitted by the Constitution (Second Amdt.) Order, 1980 (P. O. No. 4 of 1980), Art. 6.

² Subs. *ibid.*, for the full-stop.

³ Paragraphs (c), (d) and (e) added *ibid.*