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THE LEGAL SYSTEM OF PAKISTAN:

Law and order are essential components of any civilized society. A country cannot progress or function with the implementation of a proper judicial system. Country like Pakistan is deprived for such an effective and transparent judicial system that can punish the culprit irrespective of his power and authority and save the innocent. Unfortunately, legal system of Pakistan is highly biased and has many flaws that need to be corrected to restore the faith of common man.

THE LAW OF PAKISTAN

The Law of Pakistan is based on the legal system of the Islamic Republic of Pakistan. The origin of Pakistani law is based upon the legal system of old British India; incorporating the common law of England and Wales. Amendments in the legal system of Pakistan came during the reign of General Muhammad Zia-UI-Haq, when elements of Islamic Shariah law were incorporated into Pakistani law. This led to the institution of a Federal Shariah Court (FSC). In Federally Administered Tribal Areas (FATA), a system of law employing traditional practices is persistent at the local level. At this level, disputes are settled by a Jirga, a council of tribal elders. Ministry of Law and Justice is an advisory service organization providing services to all the offices of Federal and Provincial Governments on legal, judicial and constitutional matters.

THE JUDICIAL SYSTEM OF PAKISTAN

The Judiciary of Pakistan is a hierarchical system with two classes of courts: the superior judiciary and the subordinate judiciary. The superior judiciary is composed of the Supreme Court of Pakistan, the Federal Shariah Court and five High Courts, with the Supreme Court at the apex. There is a High Court for each of the four provinces as well as a High Court for the Islamabad Capital Territory. The Constitution of Pakistan delegates the superior judiciary with the obligation to preserve, protect and defend the constitution. However, neither High court nor Supreme Court can practice jurisdiction to tribal areas except of the special case. The disputed regions of Azad Kashmir and Gilgit-Baltistan have separate court systems.

ISLAM AND THE LEGAL SYSTEM

The legal system of Pakistan is based on English common law and Islamic law. Between 1947 and 1978, Islamic law was largely restricted to the sphere of personal status issues, such as marriage, inheritance and divorce. The Islamisation of the legal system began in earnest under General Zia ul Haq (1977-1988). Through a series of presidential decrees, Zia introduced far reaching changes in Pakistan's criminal justice system, regulated by the Pakistan Penal Code of 1860 and the Code of Criminal Procedure (1898). He also created a parallel court system, consisting of Shariat courts, and amended the country's anti-blasphemy laws. While most of the "Islamic" laws he instituted are still on the statute, and some were reinforced by conservative governments, Pakistan's parliament has recently introduced legal changes aimed at improving the status of women in the private and public spheres.

ADMINISTRATION OF LAW AND JUSTICE:

The Law and Justice Division is an advisory and consultative body to the Federal Government. There is a Law Department operating under the supervision and control of the Law and Justice Division in each province.

The Law and Justice Division is generally called upon, from time to time, to tender advice on various important and controversial constitutional and legal issues.

Drafting ordinances and bills is a major function and responsibility of the Law and Justice Division, which is looked after by the Drafting Wing. The other major function and responsibility of the Division is to be in charge of all litigation on behalf of the Government of Pakistan.

The Law and Justice Division is also involved in the appointment of Law Officers, including Attorney General, Deputy Attorney General and Standing Counsel. It also approves the appointment of legal advisers, with the assistance of a committee comprised of the Attorney General, the Law and Justice Minister and the Law and Justice Secretary.

The Federal Judicial Academy was set up by the Law and Justice Ministry in September, 1988 for the adequate training of Judges, Government law officers, police officers and doctors dealing with medical legal cases.

THE COURT SYSTEM:

There is a Supreme Court in Pakistan and a High Court in each province, and other courts exercising civil and criminal jurisdiction. The Supreme Court and High Courts were established under the Constitution, and other Courts have been established by or under the Acts of Parliament or Acts of Provincial Assemblies.

SUPREME COURT OF PAKISTAN:

The Supreme Court is the highest court in the judicial system of Pakistan. It consists of as the Chief Justice of Pakistan and such number of other judges as may be determined by Acts of Parliament. The Chief Justice of Pakistan is appointed by the President. Other Judges are also appointed by the President after consultation with the Chief Justice. The Supreme Court has original, appellate and advisory jurisdiction.

The Supreme Court, to the exclusion of every other Court in Pakistan, has the jurisdiction to pronounce declaratory judgments in any dispute between the Federal Government and a provincial government or between any two or more provincial governments. The Supreme Court also has the power to make any appropriate order necessary to ensure the protection and provision of fundamental rights.

The Supreme Court has jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences passed by a High Court, the Federal Shariat Court and the Services Appellate Tribunals. An appeal to the Supreme Court can be made as a matter of right for certain cases, while for the rest the Court must grant permission to hear an appeal.

If, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration. The Supreme Court considers the question so referred and reports its opinion to the President.

The permanent seat of the Supreme Court is at Islamabad, but it also runs circuits at Lahore, Karachi, Peshawar and Quetta.

The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

The practice and procedure of the Court is regulated by rules made by the Court. All executive and judicial authorities throughout Pakistan are required *to* act in aid of the Supreme Court. Any decision of the Supreme Court, to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding on all courts in Pakistan. The Supreme Court has the power to review any judgment pronounced by or any order made by the Court.

HIGH COURTS OF PAKISTAN:

There is a High Court in each of the four provinces of Pakistan. On December 14, 2007, a High Court for the Islamabad Capital Territory was established through an Executive Order made by the (now former) President Pervez Musharraf. A High Court consists of a Chief Justice and as many other Judges as may be determined by law or as may be fixed by the President. High Courts have both original and appellate jurisdiction.

A High Court has, under the Constitution, original jurisdiction to make an order:

- (i) Directing a person within the territorial jurisdiction of the Court to refrain from doing anything which he is not permitted to do by law, or to do anything which he is required to do by law;
- (ii) Declaring that any act done by a person without lawful authority is of no legal effect;
- (iii) Directing that a person in custody be brought before the Court, so that the Court may satisfy itself that he is not being held unlawfully;
- (iv) Giving such directions as are necessary to any person or authority for the enforcement of any of the fundamental rights conferred by the Constitution.
- (v) Besides the original jurisdiction conferred by the Constitution, a High Court has original jurisdiction in many other matters conferred by or under various laws.

High Courts have extensive appellate jurisdiction over the judgments, decisions, decrees and sentences passed by the civil and criminal courts.

High Courts also have the power to make rules regulating their, practice and procedure, as well as the practice and procedure of lower courts. Each High Court supervises and controls all courts subordinate to it and any decision of a High Court binds all courts subordinate to it.

SHARIAT COURT:

The Federal Shariat Court is comprised of eight Muslim Judges, including the Chief Justice, who is appointed by the President. Of the Judges, four are persons qualified to be Judges of the High Courts, while three are Ulema (scholars well-versed in Islamic Law). The Federal Shariat Court has original and appellate jurisdiction.

The Court may examine and decide questions regarding 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. If the Court decides that any law or provision of law is repugnant to the injunctions of Islam, it sets out 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 the injunctions of Islam, the President, in the case of Federal law, or the Governor, in the case of a Provincial law, is required to take steps to amend the law so as to bring it in conformity with the injunctions of Islam, and such law ceases to have effect from the specified date.

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. laws pertaining to offences of intoxication, theft, *Zina* (unlawful sexual intercourse), and *Qazf* (false imputation of *Zina*)

CIVIL COURTS :

In every district of a Province, there is a Court of District Judge, which is the principal court of original jurisdiction in civil matters.

Besides the Court of District Judge, there are courts of Civil Judges. Civil Judges function under the supervision and control of the District Judge, and all matters of civil nature originate *in* the courts of these Judges. The District Judge may, however, withdraw any case from any Civil Judge and try it himself if he sees fit. Appeals against the judgments and decrees passed by the Civil Judges, in cases where the value of the suit does not exceed some specified amount, are brought to the District Judge.

CRIMINAL COURTS :

In every district, there is a Court of Sessions Judge and Courts of Magistrates. Criminal cases punishable by death and cases arising out of the enforcement of laws relating to Hudood are tried by Sessions Judges. The Court of a Sessions Judge is competent to pass any sentence authorized by law. Offences not punishable by death are tried by Magistrates. Among the Magistrates there are Magistrates of 1st Class, 2nd Class and 3rd Class. An appeal against the sentence passed by a Sessions Judge goes to the High Court. An appeal against the sentence passed by a Magistrate goes to the Sessions Judge if the term of sentence is up to four years, and otherwise goes to the High Court.

SPECIAL COURTS AND TRIBUNALS :

Certain Special Courts and Tribunals have been created to deal with specific types of cases. These are: Special Courts for Trial of Offences in Banks, Special Courts for Recovery of Bank Loans, Special Courts under the Customs Act, Special Traffic Courts, Courts of Special Judges for Anti-Corruption, Commercial Courts, Drug Courts, Labor Courts, Insurance Appellate Tribunal, Income Tax Appellate Tribunal, Accountability Courts, Anti-Terrorism Courts and Services Tribunals. Appeals from the Special Courts go to the High Courts, except in case of Labor Courts and Special Traffic Courts, which have separate forums of appeal.

THE OMBUDSMAN (WAFIQI MOHTASIB):

The Concept Mohtasib (Ombudsman) is an ancient Islamic concept, and many Islamic States have established the office of Mohtasib to ensure that no wrong or injustice is done to the citizens. In the 18th century, when King Charles XI of Sweden was in exile in Turkey, he observed the working and efficacy of this institution in the Ottoman Caliphate. Upon regaining his throne, the King established a similar institution in Sweden. Gradually, other developed western countries also adopted this institution.

In Pakistan, at present, there are five Federal Ombudsmen, i.e., Wafaqi Mohtasib, Federal Tax Ombudsman, Federal Insurance Ombudsman, Federal Ombudsperson for Women and Banking Mohtasib.

WAFAQI MOHTASIB:

In Pakistan a beginning was made with the appointment of Wafaqi Mohtasib (Ombudsman). The primary objective of the Wafaqi Mohtasib was to diagnose, investigate, redress and rectify injustices faced by the public from Federal Government Departments. The measure of success achieved by the institution of Wafaqi Mohtasib led to the creation of Provincial Ombudsmen in the provinces of Sindh, Punjab, Baluchistan, Khyber Pakhtoonkhwa, Azad Jammu and Kashmir.

FEDERAL TAX OMBUDSMAN:

The growing nature of corporate sector grievances, largely relating to inequitable application of taxation laws, and the Government's desire to promote a just and equitable business environment in Pakistan, prompted the Government to establish an independent Federal Tax Ombudsman (FTO) during the year 2000.

The FTO has brought considerable relief to businesses during the last 11 years. Businessmen have now found a level of comfort, non-existent in the past, which allows them to confidently and fearlessly make investment decisions in the knowledge that an environment exists where they can expect equity, fair play and justice.

FEDERAL INSURANCE OMBUDSMAN:

In pursuance of the Insurance Ordinance 2000, the Office of Federal Insurance Ombudsman (FIO) was established on 2nd May, 2006. The institution is meant to provide analysis, investigation, redress and rectification of any injustice done to a person through maladministration by any of the insurer in the private sector. The key role of the FIO is to provide timely and cost free redressal of the public grievances against alleged

maladministration in an insurance company. The cases pertaining to life and general insurance business are looked after by FIO as per the requirements of the Insurance Ordinance 2000 and the Insurance Rules.

PROVINCIAL OMBUDSMAN (MOHTASIB) SINDH:

The establishment of the Mohtasib Sindh (Provincial Ombudsman Sindh) took place through the passage of Sindh Act No. 1 of 1992 (Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991). This law empowers Provincial Mohtasib (Ombudsman) Sindh to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration of an Agency of the Government of Sindh.

The Ombudsman Sindh is the first institute in the country to have a Children's Corriplaint Office (CCO) in the secretariat Provincial Ombudsman Sindh in collaboration with UNICEF, which specifically looks after the rights of the children and young people.

PROVINCIAL ORNBUDSMAN (MOHTASIB) PUNJAB:

The Institution of Ombudsman was established by virtue of The Punjab Office of the ombudsman Act, 1997, which provides for the appointment of the Provincial Ombudsman for protection of the rights of the people, ensuring adherence to the rule of law, diagnosing, redressing and rectifying

any injustice done to a person through maladministration and suppressing corrupt practices as enshrined in its preamble.

PROVINCIAL OMBUDSMAN (MOHTASIB) BALUCHISTAN:

The Ordinance for establishment of office of Ombudsman for province of Balochistan, 2001 provides a comprehensive procedure to discharge duty redressal of grievances of needy people and to control the state functionaries to implement the decisions against mal-administration.

PROVINCIAL OMBUDSMAN (MOHTASIB) KHYBER PAKHTUNKHWA:

The Provincial Ombudsman Khyber Pakhtunkhwa has been established under The Khyber Pakhtunkhwa Provincial Ombudsman ACT, 2010 for protection of the rights of the people, ensuring adherence to the rule of law, redressing and rectifying any injustice done to a person through maladministration, suppress corrupt practices and to ensure good governance.

AZAD JAMMU & KASHMIR MOHTASIB (OMBUDSMAN):

The Mohtasib (Ombudsman) Secretariat was established in 1991 through an ordinance. It is a quasi-judicial institution. Its mandate is to undo the injustice done through maladministration and to redress the grievance of an aggrieved person/ persons.

JIRGA:

Jirga, a Persian word, means a gathering or a consultation. Tribes had recourse to Jirga to solve their various problems, and hence jirga is now known as the tribal Justice system. What started as an informal, community based body that was meant to settle small claims, the 'jirga', or council of *tribal* elders, has in Pakistan been allowed to emerge as a powerful force protecting the interests of the powerful. A recent report by the Human Rights Commission of Pakistan (HRCP) on jirgas traces their history, citing several published sources according to which a British officer, Lt. Sandeman, introduced this system of resolving disputes among the Baloch tribes, although it already existed *in* the Peshawar area.

On April 24, 2004, the Sindh High Court imposed a ban on holding jirgas in the province, but government functionaries, ranging from chief ministers to union council nazims, continue to participate in these meetings, according to the list compiled from newspaper reports by the HRCP.