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## LEGAL SYSTEM OF PAKISTAN

- **Introduction**

Pakistan emerged as an independent State on 14 August 1947. Pakistan is divided into four provinces, namely, North West Frontier Province (NWFP), Punjab, Sindh and Balochistan. The tribal belt adjoining NWFP is managed by the Federal Government and is named FATA i.e., Federally Administered Tribal Areas. Azad Kashmir and Northern Areas have their own respective political and administrative machinery, yet certain of their subjects are taken care of by the Federal Government through the Ministry of Kashmir Affairs and Northern Areas. Islamabad is the federal capital. Over 97 per cent of the country's population is Muslim.

- **Constitutional Status of Islamic Law**

Article 1 of the 1973 Constitution declares that Pakistan's official name shall be the Islamic Republic of Pakistan, and Article 2 declares Islam the state religion. The Objectives Resolution of the preamble of the Constitution was made a part of its substantive provisions by the insertion of Article 2A in 1985, thereby requiring all laws to be brought into consonance with the Quran and Sunnah. Chapter 3A establishes the Federal Shariat Court. Part IX of the Constitution is entitled "Islamic Provisions" and provides for the eventual Islamization of all existing laws, reaffirming that no laws repugnant to the injunctions of Islam are to be enacted.

- **Government**

*Federal Parliamentary System:* The Constitution of the Islamic Republic of Pakistan provides for a Federal Parliamentary System of government, with the President as the Head of State and the popularly elected Prime Minister as Head of government. The Federal Legislature is a bicameral *Majlis-e-Shoora* (Parliament), composed of the National Assembly and the Senate.

- **Provinces:**

Pakistan is divided into four provinces. These are, Balochistan, the North-West Frontier Province (NWFP), Punjab, and Sindh. Governors are appointed by the President to head each Province. Each Province has a directly elected Provincial Assembly headed by a Chief Minister. The Provincial Governments may legislate in certain areas for example health, education, agriculture, municipal planning and roads.

- **National Assembly:**

Members of the National Assembly are elected by universal adult suffrage (over eighteen years of age in Pakistan). Seats are allocated to each of the four Provinces, the Federally Administered Tribal Areas, and Islamabad Capital Territory on the basis of population. National Assembly members serve for the parliamentary term, which is five years, unless they die or resign sooner, or unless the National Assembly is dissolved. Although the vast majority of the members are Muslim, about 5 percent of the seats are reserved for minorities, including Christians, Hindus, and Sikhs. Elections for minority seats are held on the basis of separate electorates at the same time as the polls for Muslim seats during the general elections.

- **Senate:**

The Senate is a permanent legislative body with equal representation from each of the four Provinces, elected by the members of their respective Provincial Assemblies. There are representatives from the Federally Administered Tribal Areas and from Islamabad

Capital Territory. The Chairman of the Senate, under the Constitution, is next in line to act as President should the office become vacant and until such time as a new President can be formally elected.

- **Prime Minister and Cabinet:**

The majority of members in the National Assembly nominate a member as Prime Minister from amongst themselves. That individual is then appointed as Prime Minister by the President from among the members of the National Assembly. The Prime Minister is assisted by the Federal Cabinet, a council of ministers whose members are appointed by the President on the advice of the Prime Minister.

- **President of Pakistan:**

The President of Pakistan is Pakistan's Head of State. It is the majority party in the National Assembly which usually is instrumental in nominating and electing a person as the President. At various times in history, changes in the Constitution of Pakistan have altered the powers and privileges associated with the office of the President. At present, Pakistan has a semi-presidential system of government. (The semi-presidential system is a system of government that features both a prime minister and a president who are active participants in the day to day functioning of government.)

- **Process of Law Making**

The Constitution sets out the procedure to be followed for promulgating a statute. Broadly, this requires a Bill to be passed by both Houses of Parliament – the National Assembly and the Senate. Upon a Bill's passage through both Houses, it is presented to the President of Pakistan for assent and becomes an Act of Parliament upon receiving such assent. In the absence of the National Assembly, statutes are promulgated by the President pursuant to Article 89(1) of the Constitution. Under this Article, the President may, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance. Such Ordinances have the same force and effect as an Act of Parliament. A similar power is bestowed upon Provincial Governors by Article 128(1) of the Constitution in respect of matters falling within provincial legislative authority.

- **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.

- **Legislative Drafting:**

Drafting of Ordinances and Bills is a major function and responsibility of the Law and Justice Division which is looked after by the Drafting Wing.

- **Litigation:**

The other major function and responsibility of the Division is to look after the litigation on behalf of the Government of Pakistan.

- **Administration of the Federal Courts/ Tribunals:**

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 for which purpose there is a committee comprising the Attorney General, Law and Justice Minister and the Law and Justice Secretary.

- **Judicial Academy:**

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 have been 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**
- **Structure:**

The Supreme Court is at the apex of the judicial systems of Pakistan. It consists of a Chief Justice known as Chief Justice of Pakistan and such number of other judges as may be determined by the Act 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.

- **Jurisdiction:**

The Supreme Court has original, appellate and advisory jurisdiction.

- **Original 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 or a provincial government or between any two or more provincial governments. The Supreme Court, if it considers that a question of public importance, with reference to the enforcement of any of the Fundamental Rights ensured by the Constitution of Pakistan is involved, it has the power to make any appropriate order for the enforcement of fundamental rights.

- **Appellate Jurisdiction:**
- 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 hears an appeal with its prior permission.
- **Advisory Jurisdiction:**

It, 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 on the question to the President.

- **Seat of the Supreme Court:**

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

- **High Courts of Pakistan**

There is a High Court in each of the four provinces of Pakistan. The Islamabad Capital Territory falls within the jurisdiction of the Lahore High Court of the Punjab. 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.

- **Jurisdiction:**

A High Court has original and appellate jurisdiction.

- **Original Jurisdiction:**

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

- directing a person within the territorial jurisdiction of the Court to refrain from doing anything he is not permitted by law or to do anything he is required by law;
- declaring that any act done by a person without lawful authority is of no legal effect;
- directing that a person in custody be brought before it, so that the court may satisfy itself that he is not being held unlawfully;
- giving such directions to any person or authority, for the enforcement of any of the fundamental rights conferred by the Constitution. Besides the original jurisdiction conferred by the Constitution, a High Court has original jurisdiction in many other matters conferred by or under various laws.
- Appellate Jurisdiction: A High Court has extensive appellate jurisdiction against the judgments, decisions, decrees and sentences passed by the civil and criminal courts.
- General: A High Court has the power to make rules regulating its practice and procedure and of courts subordinate to it. 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**

Federal Shariat Court comprises eight Muslim Judges including the Chief Justice to be appointed by the President. Of the Judges, four are the persons qualified to be the Judges of the High Courts, while three are Ulema (scholars well-versed in Islamic Law).

- **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 District Judge and all matters of civil nature originate in the courts of Judges. The District Judge may, however, withdraw

any case from any Civil Judge and try it himself. Appeals against the judgments and decrees passed by the Civil Judges in cases where the value of the suit does not exceed the specified amount lie to the District Judge.

- **Criminal Courts**

In every district, there is a Court of Sessions Judge and Courts of Magistrates. Criminal cases punishable with 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 authorised by law. Offences not punishable with 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 lies to the High Court and against the sentence passed by a Magistrate to the Sessions Judge if the term of sentence is up to four years, otherwise to the High Court.

- **Legal Research**

The Federal Laws of Pakistan are published by the Government in a document called the *Gazette of Pakistan*. The well known law reporters, like the *Pakistan Legal Decisions* (PLD) and the *Pakistan Law Journal* (PLJ), also contain the statutes in their statutes sections. The major compilation for statutes, however, is the Pakistan Code. The current code is spread over twenty-one (21) volumes dating from the year 1836 C.E. Volume twenty-one, the last published volume, contains the laws made up to the year 1988. Code volumes for the years after 1988 are yet to be published and made available. The Ministry of Justice, Law and Parliamentary affairs does publish individual Acts when these are updated in the light of amendments, but this is done through the *Official Gazette*. This means that the published Code may not contain the updated law, and for the updated version one has to wait for the new edition of the Code. The latest versions of the laws are available from the government documents (*Official Gazette*) outlets and bookstores. The Acts sold by the bookstores are usually, but not always, the exact copies of the laws published officially. Thus, in many cases, the Acts available from the market do not contain the official notes added by the Ministry.