

The Judicial System of Pakistan

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The roots of the current judicial system of Pakistan stretch back to the medieval period and even before. The judicial system that we practise today has evolved over a long period of time, spanning roughly over a whole millennium. The system has passed through several epochs covering the Hindu era, Muslim period including the Mughal dynasty, British colonial period and post-independence period. Notwithstanding the successive changes i.e. one rule/dynasty substituted by the other, which naturally resulted in the socio-economic and political transformation of the Indian society, the judicial system generally maintained a steady growth and gradual advance towards consolidation and improvement/refinement, without indeed, having to undergo any major disruption or substantial change. All in all, the system experienced and passed through 3 distinct stages of historical development, namely, Hindu Kingdom, Muslim-rule and British colonial domination. The 4th and current era, commenced with the partition of India and the establishment of Pakistan as a sovereign and independent State. The system, thus, has evolved through a process of reform and development. This conclusion enjoys near unanimity among historians and commentators of Indian legal history. During this process of evolution and growth, the judicial system did receive influences and inspirations from foreign doctrines/notions and indigenous norms/practices, both in terms of organising courts' structure and hierarchy, and following procedures/practices in reaching decisions. Therefore, the present judicial system is not an entirely foreign transplant, as is commonly alleged, but has acquired an indigenous flavour and national colour. And whereas the system may not fully suit the genius of our people or meet the local conditions, its continued application and practice has made it intelligible to the common man. The very fact that the people are making resort to the courts for the

resolution of their conflicts/disputes indicates that the system enjoys a degree of legitimacy and acceptance.

Historical Retrospect

1- Hindu Period

The Hindu period roughly extends from 1500 BC until 1500 AD. Information on the judicial system during Hindu period has been somewhat sketchy, gathered mostly from scattered sources, such as ancient books like Dharamshastra, Smritis and Arthashastra, and commentaries of the same by historians and jurists. These sources construct a well-defined system of administration of justice during the Hindu period. The King was regarded as the fountain of justice who also discharged judicial functions. In this task, judges as well as his ministers and counsellors assisted him. He was the final judicial authority and court of ultimate appeal. At the Capital, besides the King's Court, the Court of Chief Justice existed. This Court, in hierarchy, was next to the King's Court and appeal against its decisions lay to the King's Court. The judges were appointed on the basis of their qualifications and scholarship but the choice was mostly restricted to upper caste i.e. Brahmins.

At the village level, tribunals dispensed justice, consisting of the assembly of the village, or the caste or the family.^[1] The village Headman acted as Judge/Magistrate for the community. Decisions by such tribunals were usually through conciliation. The decisions of village/town courts/tribunals were appealable in the higher courts and final appeal lay before the King's Court. Besides, judgment by the courts, the system of arbitration was also invoked.

As regards the procedure followed in the courts/tribunals, no formal rules existed, as the law applicable was not statutory but customary and moral. The determination of truth and punishment of the wrong-doer was regarded as a religious duty. Civil proceedings commenced with the filing of a claim which was replied to by the opposite party. Both parties were allowed to produce witnesses so as to prove their respective claims. On the conclusion of the trial, decision was pronounced which was duly enforced. It appears thus, that the system of administration of justice, as it operated in ancient India, was not

substantially different from what it is in the modern times. In a sense, the current system seems to be a continuation of the former practices and procedures.

2. Muslim Period

The Muslim period in the Indian Sub-Continent roughly begins in the 11th century A.D. This period may be divided into two parts i.e. the period of early Muslim rulers who ruled Delhi and some other parts of India and the Mughal period, which replaced such Muslim and other rulers in 1526 A.D. The Mughal dynasty lasted until the middle of 19th century.

During the period of Muslim rulers, the Islamic law generally held the ground and remained the law of the land in settling civil and criminal disputes. However, common customs and traditions were also invoked in settling secular matters. These rulers were not particularly keen on applying the Islamic law to each and every sphere of life, and let the indigenous customs and institutions continue side by side with Islamic law and institutions. During this period, different courts were established and functioned at the central, provincial, district and tehsil (Pargana) level. These courts had defined jurisdiction in civil, criminal and revenue matters and operated under the authority of the King. On the top of judicial hierarchy was the King's Court, presided over by the King himself, exercising original as well as appellate jurisdiction. The King was the head of judicial administration and he made all appointments to judicial posts. Persons of recognised scholarship, known competence and high integrity were appointed to such posts. The judges held office during the pleasure of the King.

The Mughals improved upon the previous experience and created an organised system of administration of justice all over the country. Courts were created at each and every unit of the administrative division. At the village level, the Hindu system of Panchayats (Council of Elders) was retained, which decided petty disputes of civil and criminal nature, using conciliation and mediation as means of settling disputes. At the town level, there existed courts, presided over by Qazi-e-Parganah. Similarly, at the district (Sarkar) and provincial (Subah) level, courts of Qazis were established. The highest court at the provincial level was that of Adalat Nazim-e-Subah. Similarly, for revenue cases, officers known as Amin were appointed at the town level. At the district level, revenue cases were dealt with by Amalguzar and at the provincial level by Diwan. The Supreme Revenue Court was called, the Imperial Diwan. Side by side, with civil and revenue

courts, criminal courts, presided over by Faujdar, Kotwal, Shiqdar and Subedar functioned.^[2] The highest court of the land was the Emperor's Court, exercising original and appellate jurisdiction.

Although these courts generally exercised exclusive jurisdiction in different categories of cases, however, sometimes their jurisdiction was inter-mixed, in as much as, officers dealing with criminal cases were also required to act as revenue courts. Furthermore, whereas territorially these courts formed a concentric organisation, their jurisdiction was not always exclusive on the basis of territorial limits. Thus, a plaintiff may choose to file his suit in a town or a district or a province. The pecuniary jurisdiction of the courts was also not defined; hence, a case of higher value may be filed in a court of small town. Similarly, appellate jurisdiction existed but was not well defined. Thus, a plaintiff or a complainant, not satisfied with a decision, may file a second suit/complaint in another court. Such later court would decide the matter afresh, without indeed taking into consideration the earlier finding of the court.

The emperor made the judicial appointments and persons of high scholarship and good reputation were appointed to the posts. Instructions were given to the judges to be neutral and impartial; and complaints against them were taken seriously. Corrupt officials were removed. Consequently, the scales of justice were very high.^[3]

The procedure followed in civil cases was not much different from the procedure, which is applicable today. On a suit being filed, the court summoned the opposite party to admit or deny the claim. Issues were framed in the presence of both the parties who were then required to produce evidence in support of their respective claims. Simple cases were decided, based on such evidence, however, in complicated cases, the judge may launch his own investigation into the matter.^[4] Maximum effort was made to find the truth. On the conclusion of the proceedings, judgment was pronounced and duly executed. Litigants were allowed to present their cases either personally or through agents. Such agents were not exactly lawyers (in the modern sense of the term) but were fully conversant with the judicial procedure. An officer of the court called Mufti, attached to the court, made the interpretation of law.^[5]

3- British Period

The East India Company was authorised by the Charter of 1623 to decide the cases of its English employees. The Company, therefore, established its own courts. The President and Council of the Company decided all cases of civil or criminal nature. The subsequent charters further expanded such powers. Thus the Charter of 1661 authorised the Governor and Council to decide not only the cases of the Company employees but also of persons residing in the settlement. In deciding such cases, the Governor and the Council applied the English laws. As the character of the Company changed from one of a trading concern into a territorial power, newer and additional courts were established for deciding cases and settling disputes of its employees and subjects. The administration of justice was initially confined to the presidency town of Bombay, Calcutta and Madras. In view of the huge distances between these towns and the peculiar conditions prevailing there, the administration of justice, which developed in these towns, was not uniform. There were established two sets of courts, one for the Presidency towns and the other the mufussil. The principal courts for the town were known as the Supreme Courts and Recorders Courts. These courts consisted of English judges and applied English laws. The English people, residing in such towns alone, were subject to their jurisdiction. The native inhabitants, who were mostly living in the mufussil, were governed under separate courts called Sadar Dewani Adalat and Sadar Nizamat Adalat, dealing with civil and criminal cases respectively. Such courts applied the local laws and regulations.

The Supreme Court of Calcutta was established under the Regulating Act 1773. The Court consisted of a Chief Justice and other Judges, exercising both civil and criminal jurisdiction. The Court could also issue certain prerogative writs. In 1798, Recorders Courts were established at Madras and Bombay with powers identical to the Supreme Court of Calcutta. Afterwards, the Recorders Court at Madras was substituted by the Supreme Court (under the Parliament Act 1800). A few years later, the Recorders Court at Bombay was also replaced by the Supreme Court (under the Parliament Act 1823). These new Courts had indeed the same composition, jurisdiction and powers as exercised by the Supreme Court of Calcutta.

The High Court Act 1861 abolished the Supreme Courts as well as the Sadar Adalats and in their place constituted the High Court of Judicature for each Presidency-town. This

Court consisted of a Chief Justice and such other number of Judges, not exceeding 15. The Act prescribed professional qualifications for such Judges together with the mode of their appointment. Thus, it was provided that 1/3rd of the Judges should be appointed from amongst the barristers with 5 years standing and 1/3rd from amongst the civil servants, having 3 years experience as a District Judge. The remaining 1/3rd seats were filled from amongst pleaders and members of subordinate judiciary, having 5 years experience. The Judges were appointed by the Crown and held office during his pleasure. The High Courts exercised original as well as appellate jurisdiction in civil and criminal matters and were also required to supervise the functioning of the subordinate courts in their respective domain. Besides the Presidency-towns, High Courts were also established in Allahabad in 1866, Patna in 1919, Lahore in 1919 and Rangoon in 1936. The Sind Chief Court was established under the Sind Courts Act 1926. Similarly, under the NWFP Courts Regulation 1931 and the British Baluchistan Courts Regulation 1939, the Court of Judicial Commissioner was created in each such area.

The Code of Civil Procedure 1908 created principal civil courts, namely, the Court of District Judge, the Court of Additional District Judge, the Court of Civil Judge and the Court of Munsif. Their territorial and pecuniary jurisdictions were also defined.

The Government of India Act 1935 retained the High Courts and also provided for the creation of a Federal Court.^[6] The Federal Court was established in 1937. Its Judges were appointed by the Crown and held office till completing the age of 65 years. The qualifications prescribed were, 5 years experience as a Judge of a High Court or 10 years experience as a barrister or 10 years experience as a pleader in a High Court. The Act further provided that the Judges of the Federal Court and High Courts should hold office during good health and behaviour, meaning they may not be removed except on the grounds of infirmity of mind or body or misbehaviour, only when on a reference made by the Crown, the Judicial Committee of Privy Council so recommends. The Federal Court exercised original, appellate and advisory jurisdiction.^[7]

Post-Independence Evolution:

On independence, the Government of India Act 1935 was retained as a provisional Constitution. As a consequence, the legal and judicial system of the British period

continued, of course, with due adaptations and modifications, where necessary, to suit the requirements of the new Republic. This way, neither any vacuum occurred nor any break resulted in the continued operation of the legal system. The judicial structure remained the same. The Lahore High Court continued to function and so did the Sindh Chief Court and the Courts of Judicial Commissioner in NWFP and Baluchistan. A new High Court was set up at Dacca.^[8] Similarly, a new Federal Court for Pakistan was also established.^[9] The powers, authority and jurisdiction of the Federal Court and High Courts, as prescribed in the Government of India Act 1935, remained intact. The Government of India Act 1935 was amended in 1954 with a view to empower the High Courts to issue the prerogative writs.^[10] The subsequent Constitutions i.e. 1956, 1962 and 1973 did not drastically alter the judicial structure or the powers and jurisdiction of the superior courts. The changes effected were, renaming the Federal Court as the Supreme Court by the 1956 Constitution and the upgradation of the Chief Court of NWFP and Judicial Commissioner Court of Baluchistan into full-fledged High Courts, by the 1973 Constitution. Later on, a new Court called, Federal Shariat Court was created in 1980^[11] with jurisdiction to determine, suo moto or on petition by a citizen or the Federal or a provincial Government, as to whether or not a certain provision of law is repugnant to the injunctions of Islam.^[12]

Superior Judiciary

The Constitution of Pakistan deals with the superior judiciary in a fairly comprehensive manner and contains elaborate provisions on the composition, jurisdiction, powers and functions of these courts. The Constitution provides for the “separation of judiciary from the executive” and the “independence of judiciary”.^[13] It entrusts the superior courts with an obligation to “preserve, protect and defend” the Constitution.^[14] The qualifications of Judges, their mode of appointment,^[15] service conditions, salary, pension,^[16] etc are also laid down in the Constitution. The remuneration of judges and other administrative expenditures of the Supreme Court and High Courts are charged on the Federal/Provincial Consolidated Fund,^[17] which means it may be discussed but cannot be voted upon in the legislature.

The Constitution also provides for the grounds as well as forum and procedure for the removal of judges of the superior courts.^[18] The Supreme Judicial Council, consisting of

the senior judges of the Supreme Court and High Courts, on its own or on a reference made by the President, may recommend the removal of a Judge on the ground of misconduct or physical or mental incapacity. Thus, the Constitution ensures the freedom, independence and impartiality of the superior judiciary.

The Supreme Court and High Courts have recently been given a degree of financial autonomy. This measure followed the Supreme Court ruling in the case of *Government of Sind v Sharaf Faridi*.^[19] The Court held that the independence of judiciary also means the elimination of financial control of the Executive over the judiciary, and therefore, the Chief Justice of the Supreme Court and High Courts should be authorised to make re-appropriation of funds within the budgetary allocation, without the approval of Finance Ministry. The Court went on to elaborate that the Chief Justices would thus be competent to re-appropriate amounts from one head to another and may also create or abolish posts and upgrade or downgrade the same.^[20]

This ruling came during the course of interpretation of Article 175(3) of the Constitution, which provides that “judiciary shall be separated progressively from the Executive within 14 years”. The Court held that as per such constitutional mandate, the functions of magistracy should be bifurcated and the judicial magistrates must be placed under the administrative control of the High Court. The Court fixed the 23rd of March 1994 as the last date for carrying out this measure. In its order dated 24th January 1996 on the review petition, the Supreme Court extended the said date to 23rd March 1996 and reiterated that separation must be effected by the due date and added that no request for further extension in time will be entertained. Consequently, through appropriate amendments in law, judicial magistrates were placed at the disposal of High Courts. Later, the Supreme Court in the cases of *Al-Jehad Trust v Federation*^[21] and *Asad Ali v Federation*^[22] further interpreted various provisions in the Constitution and clarified the procedure and qualifications for appointment to the Supreme Court and High Court and appointment of the Chief Justices of the said courts.

(1) Supreme Court

The Supreme Court is the apex Court of the land, exercising original, appellate and advisory jurisdiction.^[23] It is the Court of ultimate appeal and therefore final arbiter of law and the Constitution. Its decisions are binding on all other courts.^[24] The Court

consists of a Chief Justice and other judges,^[25] appointed by the President. An Act of Parliament has determined the number of judges. The number fixed at the moment is 17. Currently, the Court is working with full strength. Further, 2 Ad hoc Judges have also been appointed for one year. 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.^[26] The standing practice is that the Chief Justice recommends a list of names to the President and the President selects Judges from the said list. The recommendation of the Chief Justice is binding on the President, except for sound reasons to be recorded by the President. Similarly, the most senior judge is appointed as the Chief Justice, except for concrete and valid reasons to be recorded by the President.

The Court exercises original jurisdiction in inter-governmental disputes,^[27] be that dispute between the Federal Government and a provincial government or among provincial governments. The Court also exercises original jurisdiction (concurrently with High Courts) for the enforcement of fundamental rights, where a question of 'public importance' is involved.^[28] The Court has appellate jurisdiction in civil and criminal matters.^[29] Furthermore, the Court has advisory jurisdiction in giving opinion to the Government on a question of law.^[30]

The Court appoints its own staff and determines their terms and conditions of service.^[31] The Supreme Court (Appointment of Officers and Servants and Terms of Service) Rules 1982 prescribe the qualification for and mode of appointment and promotion of staff together with penalties and procedure for disciplinary proceedings against them. The Court may also frame its own rules of procedure.^[32] The Supreme Court Rules 1980 laid down detailed procedure for the filing of petitions and appeals and their processing through the Court.

As compared to the practice elsewhere in the world, particularly the United States and United Kingdom where fewer cases reach the apex Court, the Supreme Court of Pakistan deals with cases far beyond its capacity to deal with. Its jurisdiction, original as well as appellate, is fairly wide. Besides entertaining civil and criminal appeals from the High Courts, the Court also hears appeals from the judgments against the Federal Shariat Court, Service Tribunals and some special courts. The Court also entertains cases of

violation of Fundamental Rights under its original jurisdiction (Art 184(3)). Besides being deputed to act as special court/tribunal, the judges are also engaged as members of enquiry commissions. As a consequence, there is always some pending work to dispose of. On 1st February, 2007, a total of 10914 cases were pending in the Supreme Court. Approximately 13000 – 16000 cases (both petitions and appeals) are annually filed in the Court. Besides, around 30,000 applications/letters are annually received under Article 184(3) of the Constitution and processed by the Court. Obviously, the Court has a heavy workload. It raises the question as to whether the Court can devote adequate time and serious attention to important cases, involving the interpretation of law and the Constitution, ensure their timely disposal through sound reasoning and quality judgment, as is expected of an apex Court. There is a need, thus, to ponder whether or not the jurisdiction of the Court should be restricted to important and serious cases.

There is no system of adequate research assistance being made available to the Court so as to facilitate the judges in their research assignments concerning the clarification/elaboration of a legal provision or interpretation of the Constitution. Such a measure will undoubtedly help in improving the quality of judgment and facilitate in correct interpretation of law.

To facilitate the litigant public and ensure prompt disposal of cases, the Court, except in very important cases, generally operates through benches. Benches have been constituted, and are functional, almost round the year. Besides its Principal Seat at Islamabad, there are 4 Branch Registries, one at each provincial metropolis. Whereas the constitution of Benches and their operation in various cities, facilitates the public and ensures prompt disposal of cases, this system does affect the quality of judgments and deprives the Court of collective wisdom, so very vital for the apex Court, dealing with important issues and principles. There is, therefore, perhaps a need to re-examine the wisdom of bench system. This is however not possible with the present workload and rising trend of institution of cases, due to wider jurisdiction of the Court.

(2) High Courts

There is a High Court in each province. Each High Court consists of a Chief Justice and other puisne judges. The strength of Lahore high Court is fixed at 50, High Court of

Sindh at 28, Peshawar High Court at 16 and High Court of Baluchistan at 9. The Chief Justice is appointed by the President in consultation with the Chief Justice of Pakistan and other judges, in consultation with the Chief Justice of Pakistan, Governor of the Province and the Chief Justice of the concerned High Court.^[33] Qualifications mentioned for the post of a Judge are, 10 years experience as an advocate of a High Court or 10 years service as a civil servant including 3 years experience as a District Judge or 10 years experience in a judicial office.^[34] The standing practice for the appointment of Judges of High Courts is that initially the Chief Justice of the concerned High Court prepares a list of candidates which is submitted to the President through the Governor of the province and Chief Justice of Pakistan. The President finally selects Judges from the said list. The recommendation of the Chief Justice of Pakistan and Chief Justice of the High Court is binding on the President, except for sound reasons to the contrary. The most senior judge would have legitimate expectancy of being appointed as the Chief Justice except for concrete and valid reasons, to be recorded by the President.

The Court exercises original jurisdiction in the enforcement of Fundamental Rights and appellate jurisdiction in judgments/orders of the subordinate courts in civil and criminal matters. A large number of cases are pending in various High Courts. In the Lahore High Court, a total of 75,195 cases, in the High Court of Sindh, 27,291 cases, in Peshawar High Court, 13,610 cases and in the High Court of Balochistan, 2445 cases were pending on 1st January 2007.

The Court supervises and controls all the courts subordinate to it.^[35] It appoints its own staff^[36] and frames rules of procedure for itself as well as courts subordinate to it.^[37]

An extremely controversial provision in the Constitution has been the transfer of a judge from one High Court to another without his consent or after consultation with the Chief Justice of Pakistan or Chief Justices of the concerned High Courts.^[38] The original 1973 Constitution made such a transfer subject to such consent as well as consultation. A proviso added by the Constitution (Fifth Amendment) Act 1976 empowered the President to order such transfer for a period not exceeding one year, and the President Order No. 14 of 1985 extended such period from one to two years. Similarly, Article 203-C(4) of the Constitution, added by the Constitution (Amendment) Order 1980, also provides that a

judge of a High Court may be transferred to act, for up to two years, as a judge of the Federal Shariat Court, and in the event of refusal, shall be deemed to have retired from the service.^[39] Eversince such amendments, the transfer provisions had been the subject of intense criticism, and rightly so, as the provisions were seldom used in public interest. The provisions had often been misused or abused for pressurising the judges so as to obtain from them favourable opinions/judgments or punish them for their upright behaviour. The Supreme Court in the case of *Al-Jehad Trust v Federation*^[40] examined this provision in the light of other provisions pertaining to the independence of the judiciary and concluded that no judge may be transferred to the Federal Shariat Court, and further, that transfer to another High Court is permissible only in public interest.

(3) Federal Shariat Court

The Court consists of 8 Muslim Judges including the Chief Justice.^[41] Such Judges are 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. Of the 8 Judges, 3 are required to be Ulema who are well versed in Islamic law. The Judges hold office for a period of 3 years and the President may further extend such period.^[42]

The Court, on its own motion or through petition by a citizen or a government (Federal or provincial), may examine and determine as to whether or not a certain provision of law is repugnant to the Injunctions of Islam.^[43] Appeal against its decision lies to the Shariat Appellate Bench of the Supreme Court, consisting of 3 Muslim Judges of the Supreme Court and not more than 2 Ulema, appointed by the President.^[44] If a certain provision of law is declared to be repugnant to the Injunctions of Islam, the Government is required to take necessary steps to amend the law so as to bring it in conformity with the injunctions of Islam. The Court also exercises appellate revisional jurisdiction over the criminal courts, deciding Hudood cases.^[45] The decisions of the Court are binding on the High Courts as well as subordinate judiciary.^[46] The Court appoints its own staff^[47] and frames its own rules of procedure.^[48] On 1st January 2007, a total of 3316 cases (3016 appeals/revisions and 300 petitions) were pending before the Court.

Ever since its establishment in 1980, the Federal Shariat Court has been the subject of criticism and controversy in the society. Created as an Islamisation measure by the Military Regime ^[49] and subsequently protected under the controversial 8th Amendment, ^[50] its opponents question the very rationale and utility of this institution. It is stated that this Court merely duplicates the functions of the existing superior courts. The composition of the Court, particularly the mode of appointment of its judges and the insecurity of their tenure, is taken exception to, and it is alleged, that this Court does not fully meet the criterion prescribed for the independence of the judiciary, hence, is not immune to pressures and influences from the Executive. In the past, this Court was used as a dumping ground for the recalcitrant judges. And whereas some of its judgments, particularly the ones which relying on the Islamic concept of equity, justice and fair play, expanded and enlarged the scope and contents of individual's rights were commended, others that validated the controversial Hudood Laws, in particular, the sentence of Rajam (stoning to death) are severely criticised and deplored. With the adoption of Protection of Women (Criminal Laws Amendment) Act, 2006 the jurisdiction of the Court is considerably curtailed inasmuch as, appeals/applications for revision arising out of trial of offences taken out from the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 are no longer filed before the Court. They are filed before the High Court. In brief, there is a need for a serious discussion on the independence, utility and functions of this Court.

(4) Subordinate Judiciary

The subordinate judiciary may be broadly divided into two classes; one, civil courts, established under the West Pakistan Civil Court Ordinance 1962 and two, criminal courts, created under the Criminal Procedure Code 1898. In addition, there also exist other courts and tribunals of civil and criminal nature, created under special laws and enactments. Their jurisdiction, powers and functions are specified in the statutes creating them. The decisions and judgments of such special courts are assailable before the superior judiciary (High Court and/or Supreme Court) through revision or appeal. The civil courts may be classified as follows:

(i) Civil & Criminal Courts

The provincial governments appoint the civil and criminal judges and their terms and conditions are regulated under the provincial civil servants acts/rules. The High Court, however, exercises administrative control over such courts. The civil courts consist of District Judge, Additional District Judge and Civil Judge Class I, II & III. Similarly, the criminal courts comprise of Session Judge, Additional Session Judge and Judicial Magistrate Class I, II & III. Law fixes their pecuniary and territorial jurisdictions. Appeal against the decision of civil courts lies to the District Judge and to the High Court, if the value of the suit exceeds specified amount. Similarly, in keeping with the quantum of penalty, appeals against criminal courts lie to Session Judge or High Court.

(ii) Revenue Courts

Besides the civil courts, there exist revenue courts, operating under the West Pakistan Land Revenue Act 1967. The revenue courts may be classified as the Board of Revenue, the Commissioner, the Collector, the Assistant Collector of the First Grade and Second Grade. The provincial government that exercise administrative control over them appoints such officers. Law prescribes their powers and functions.

(iii) Special Courts

The Constitution authorises the federal legislature to establish administrative courts and tribunals for dealing with federal subjects. ^[51] Consequently, several special courts/tribunals have been created which operate under the administrative control of the Federal Government. Most of these courts function under the Ministry of Law & Justice, however, certain courts also operate under other ministries/departments. Such courts/tribunals include the Special Banking Court, Special Court Custom, Taxation and Anti-corruption, Income Tax (Appellate) Tribunal, Insurance Appellate Tribunal, etc etc. The judicial officers presiding over these courts are appointed on deputation from the provincial judicial cadre.

(iv) Service Tribunals

Under Article 212 of the Constitution, the Government is authorised to set up administrative courts and tribunals for exercising jurisdiction in matters, inter alia, relating to the terms and conditions of service of civil servants. Accordingly, service

tribunals, both at the centre and provincial level have been established and are functional. The members of these tribunals are appointed by the respective Government. Appeal against the decision of the Provincial Service Tribunal and the Federal Service Tribunals lies to the Supreme Court.

Procedure

The Code of Civil Procedure 1908 prescribes procedure for proceedings in civil cases. The Code is in two parts i.e. Sections, which contain the basic and fundamental principles and can be amended only by the legislature, and Schedules, which contain rules of procedure and can be amended by the High Court. The Code is indeed a consolidating statute, prescribing detailed procedure for instituting suit (meaning who may file a suit, how and where), pleadings (filing plaints/written statements, their form and particulars), proceedings, writing of judgment and execution of decrees, etc. The Code has been reviewed from time to time and its provisions amended to keep pace with time and changing condition of the society. Similarly, the Criminal Procedure Code 1898 as well as various other special statutes prescribe criminal procedure. The Qanun-e-Shahadat 1984 prescribes the competency of witnesses, the examination of witnesses, form of evidence and the procedure for presenting the same, etc. The procedure prescribed in the law applies to judicial proceedings and investigations by a court of law in civil or criminal cases.

Organisation of Subordinate Judiciary

The subordinate courts (civil and criminal) have been established and their jurisdiction defined by law.^[52] They are supervised and controlled by the respective High Court.^{i[53]} The administration of justice, however, is a provincial subject and thus the subordinate courts are organised and the terms and conditions of service of judicial officers determined under the provincial laws and rules. The issues of recruitment, promotions and other terms and conditions of service together with disciplinary proceedings, etc are dealt with under the provincial civil servants acts and the rules framed thereunder. Until recently, the appointing authority for judicial officers happened to be the provincial government but with the separation of the judiciary from the executive, such authority has been transferred to the High Court.

Initial recruitment as Civil Judge-cum-Judicial Magistrate is made through the Provincial Public Service Commission with the active involvement of the High Court. For the provinces of Punjab, NWFP and Balochistan, recruitment is made through a competitive examination consisting of a written test and viva voce. In Sindh, however, such recruitment is made by the High Court itself through a written test followed by viva voce and the names of selected candidates are recommended to the Provincial Government for appointment.

A Committee of the judges of the High Court, decides the issue of promotion of judges. For appointment as Additional District & Sessions Judge, quota is fixed for service personnel as well as induction from the Bar. Appointment as District & Sessions Judge is by promotion on the basis of seniority-cum-fitness from among the serving judicial officers.

After appointment, the civil judges are usually attached for a few weeks to the Court of Senior Civil Judge/District & Sessions Judge to get practical training. They also receive specialised training at the Federal Judicial Academy and in the respective provincial academies. Such training is comprised of education in various substantive laws, court management, case processing and judicial procedure, etc.

As mentioned earlier the High Courts exercise supervision and control over the functioning of the subordinate judiciary. Such supervision and control is both administrative as well as judicial. In the administrative sphere, disciplinary proceedings may be initiated against a judicial officer by the High Court. Judicial control is also exercised through revision and appeals being filed in the High Court against the orders/decisions of the subordinate courts. The High Court carries out its supervisory functions through inspections and calling of record from the courts. The Member Inspection Team (MIT) mostly deals with the issue; however, the Chief Justice of the High Court or any other judge deputed by the Chief Justice also carries out regular as well as surprise inspections. The Chief Justice is competent to initiate disciplinary action against a judge and take appropriate action in the matter.

Disciplinary proceedings against judicial officers are apparently initiated and action taken under the (provincial) Government Servants (Efficiency and Discipline) Rules. Such rules were primarily designed for the executive officers whose duties and functions are different from judicial officers. Consequently, in their application to judicial officers, the rules do contain certain gaps and anomalies. In particular, the rules are silent on how a judicial officer ought to conduct himself in and outside the court. There is, therefore, a need for preparing a separate code of conduct for the members of the subordinate judiciary, covering their private and public life and in particular, their conduct in the court so as to maintain propriety and decorum in the court and enhance public confidence in the administration of justice.

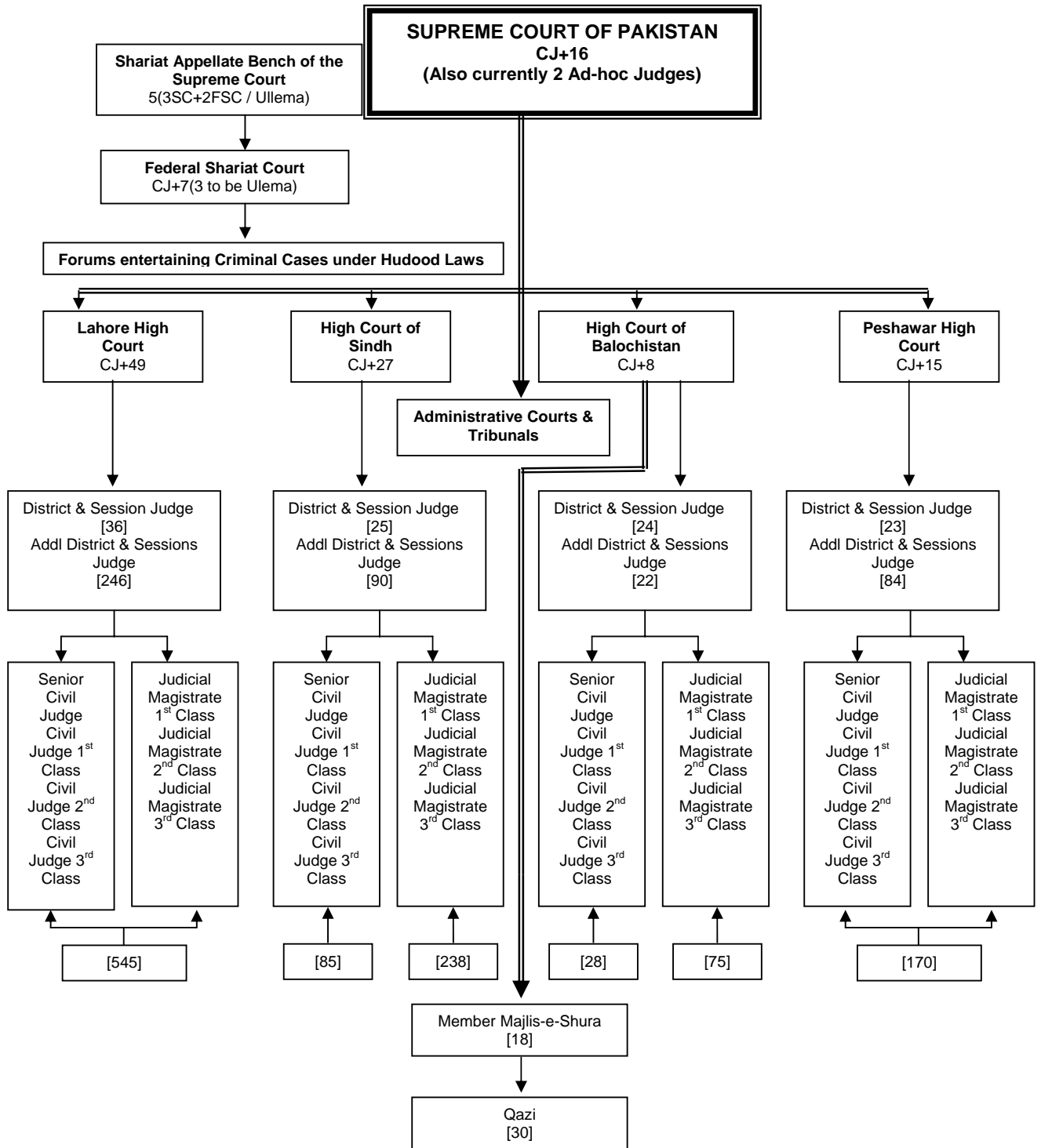
As regards the grievance of the judicial officers with regard to the terms and conditions of service, mechanism exists for resolving it. There exists a Provincial Judicial Service Tribunal for deciding appeals against the final orders of departmental authority. The judges of the respective High Court man such tribunals.

The subordinate judiciary in almost all the provinces operates under some constraints. There exists shortage of judicial officers, their supporting staff and equipment. The strength of subordinate judiciary has not kept pace with the rise in litigation due to which huge arrears of cases are piling up and there are enormous delays in deciding cases. As against the recommendations of several commissions and committees that the number of cases pending with a civil judge should not be more than 500 and the number of units pending with a District & Sessions Judge should not be more than 450 at a time, in actual practice the number of cases and units is far in excess of this prescribed limit.

There is a backlog of civil and criminal cases at the level of subordinate judiciary in all provinces. On 1st January 2007, in the Province of the Punjab, the number of cases pending was 110,546. In the Province of Sindh, the number of pending cases was 123,663, in NWFP, the figure was 37,000 whereas in Balochistan, it was 8377. The Province of Sindh perhaps presents the worst scenario, but the other provinces particularly Punjab and NWFP also have huge arrears.

This phenomenon is caused partly because of the inadequate budgetary allocation towards the judiciary. Unfortunately the administration of justice, so far has been regarded merely as a welfare service to the community rather than a social responsibility. As a result, the judiciary suffered due to under-staffing (both judicial and ministerial), lack of courtrooms, equipment, residential accommodation and library material, etc. Obviously these and other problems had to be addressed and resolved if the administration of justice is to improve and become efficient. Keeping in view the problems of dilapidated court buildings and shortage of staff, adversely affecting the functioning of courts, the Government of Pakistan launched the Access to Justice Programme. Under the Programme, funding is made available to judiciary and other institutions concerning the administration of justice, e.g. department of police, prosecution and investigation, etc. Accordingly, the strength of judges in subordinate courts is being increased and new court buildings constructed. Necessary equipment is also being provided. It has brought about an overall improvement in the functioning of judiciary. Needless to say, a sound and effective judicial system is a sine qua non for keeping peace in the society and maintaining growth and development.

ORGANISATION AND STRENGTH OF JUDICIAL HIERARCHY



Note:

1. In Punjab, 55 District & Sessions Judges, 34 Additional District & Sessions Judges and 23 Senior/Civil Judges and Judicial Magistrates are working on ex cadre posts.
2. In Sindh, 42 District & Sessions Judges, 9 Additional District & Sessions Judges and 8 Senior/Civil Judges and 11 Judicial Magistrates are working on ex cadre posts.
3. In Balochistan, 5 District & Sessions Judges, 4 Additional District & Sessions Judges, 7 Senior/Civil Judges and 5 Judicial Magistrates are working on ex cadre posts.
4. In NWFP, 31 District & Sessions Judges, 19 Additional District & Sessions Judges and 17 Senior/Civil Judges and Judicial Magistrates are working on ex cadre posts.

Court Jurisdiction

SUPREME COURT

1. 184(1) Original jurisdiction in inter-governmental disputes, issues declaratory judgments;
2. 184(3) Enforcement of Fundamental Rights involving an issue of public importance;
3. Art 185(2) Appeal from judgment/order of High Court in criminal cases, tried in original and/or appellate capacity and having imposed death penalty or life imprisonment;
4. Art 185(2) Appeal in civil cases when the value of claim exceeds fifty thousand rupees;
5. Art 185(2) Appeal when High Court certifies that the case involves interpretation of the Constitution;
6. Art 185(3) Appeal (subject to grant of leave) from High Court judgment/order;
7. Art 186 Advisory jurisdiction on any question of law involving public importance referred by the President;
8. Art 187 To issue directions/orders for doing complete justice in a pending case/matter;
9. Art 188 To review any of its own judgment/order;
10. Art 204 To punish for its contempt;
11. Art 212 Appeal from Administrative courts/tribunals; and
12. Art 203F Its Shariat Appellate Bench hears appeals from judgments/orders of Federal Shariat Court.

FEDERAL SHARIAT COURT

1. Art 203-D To determine whether a provision of law is repugnant to the Injunctions of Islam;
2. Art 203 DD Revisional Jurisdiction in cases under Hudood laws;
3. Art 203 E To review its judgment/order;
4. Art 203 E To punish for its contempt; and
5. Under Hudood laws, hears appeals from judgment/order of criminal courts.

HIGH COURT

1. Art 199(1) to issue 5 writs namely mandamus, prohibition, certiorari, habeas corpus, certiorari and quo warranto;
2. Art 199(2) Enforcement of Fundamental Rights;
3. Art 203: To supervise/control subordinate courts;
4. Art 204: To punish for its contempt;
5. To hear appeal under S.100 of CPC;
6. To decide reference under S.100 of CPC;
7. Power of review under S.114 of CPC;
8. Power of revision under S.115 of CPC;
9. Appeals under S.410 of Cr.P.C;
10. Appeals against acquittal under S.417 of CPC;
11. Appeals against judgment/decree/order of tribunals under special laws;
12. To issue directions of the nature of *habeas corpus* under S.491 of Cr.P.C;
13. Inter-Court appeal at Lahore High Court and High Court of Sindh, {High Court of Sindh has original jurisdiction in civil cases of the value of above 3 million}.

DISTT. & SESSIONS JUDGE/ADDL. DISTT. & SESSIONS JUDGE

1. Appeal against judgment/decree of a Civil Judge under S.96 of CPC;
2. Appeal against order under S.104 of CPC;
3. Power of revision under S.115 of CPC;
4. Original jurisdiction in suits upon bills of exchange, hundies or promissory notes under Order XXXVII of CPC;
5. Murder trial under S.265 A of the Cr.P.C;
6. Criminal trial under Hudood laws;
7. Appeals under S.423 of Cr.P.C;
8. Power of revision under S.435 of Cr.P.C;

9. To issue directions of the nature of *habeas corpus* under S.491 of Cr.P.C; and
10. Decides pre-arrest bail applications under S 498 of the Cr. PC.
(In Karachi District, the original jurisdiction of Distt Judge is limited to Rupees 3 million)

CIVIL JUDGE 1ST CLASS

1. To try all civil suits, there is no pecuniary limit on its jurisdiction;
2. In certain jurisdictions also designated as Rent Controller;
3. In certain jurisdictions also designated as Judge, Family Court;
4. At Karachi, pecuniary jurisdiction limited to rupees 3 million (Karachi Courts Order 1956); and
5. In certain jurisdictions designated as Magistrate empowered under S.30 of Cr.P.C.

CIVIL JUDGE 2ND CLASS

1. To try civil suit up to the value of fifty thousand rupees; and
2. In certain jurisdictions designated as Rent Controller/Judge, Family Court.

CIVIL JUDGE 3RD CLASS

To try civil suit up to the value of twenty thousand rupees.

MAGISTRATE 1ST CLASS

To try offences punishable up to 3 years imprisonment and fifty thousand rupees fine.

MAGISTRATE 2ND CLASS

To try offences punishable up to 1 year and five thousand rupees fine.

MAGISTRATE 3RD CLASS

To try offences punishable up to 1 month and one thousand rupees fine

Strength of Judges and Administrative Staff of Superior & Subordinate Judiciary

Judges	Supreme Court of Pakistan	Federal Shariat Court	Lahore High Court	High Court of Sindh	Peshawar High Court	Balochistan High Court
Chief Justice & Judges	19	08	50	28	16	08
Administrative Staff	567	216	1861	970	346	308
Pendency	10,914	3,316	75,195	27,291	13,610	2,445
Distt & Sessions Judges/ Addl Distt & Session Judge/ Senior Civil Judge/ Civil Judge	-	-	939	508	277	197
Administrative Staff	-	-	10330		3317	1450
Pendency	-	-	110,546	123,663	37,000	8,377

Strength of Members and Administrative Staff of Administrative Tribunals

	Federal Service Tribunal	Punjab Service Tribunal	Federal Ombudsman	Federal Tax Ombudsman
Members	11	05	07	01
Staff	126		593	145
Pendency	20453	1516	4885	357

Current Strength of Law Officers of the Federation and Provinces

Federation	Federal	Balochistan	NWFP	Punjab	Sindh	Total
Attorney General for Pakistan/ Advocate General	1	1	1	1	1	5
Deputy Attorney General/Additional Advocate General	10	2	5	12	8	37
Standing Counsel/ Assistant Advocate General	9	2	5	33	12	61
District Attorney	--	31	--	58	24	113
Deputy District Attorney	--	--	--	180	152	332
Assistant Deputy District Attorney	--	16	--	128	--	144
Public Prosecutor	--	--	31	--	31	62
Deputy Prosecutor	--	--	45	--	--	45
Assistant Public Prosecutor	BPS-16	--	42	--	--	42
	BPS-14	--	84	--	--	84
Government Pleaders	--	--	9	--	--	9
Assistant Government Pleaders	--	--	31	--	--	31
Totals	20	52	253	412	228	965

Advocates on the Roll of the Supreme Court

Senior Advocates	Advocates	Advocates-on –Record	Total
250	2,453	223	2,926

Advocates on the Rolls of the High Courts

Punjab	Sindh	NWFP	Balochistan
30,000	6,840	3,171	1,020

Advocates on the Rolls of the District Courts

Punjab	Sindh	NWFP	Balochistan
22,000	6,630	8,526	1,780

LIST OF LAW COLLEGES

S.No	Name of The University	No of affiliated Colleges
01	Peshawar University, Peshawar	17
02	Bahou-din Zakria University, Multan	14
03	Shah Latif University, Kharipur	05
04	Punjab University, Lahore	21
05	Sindh University, Jam Shoro	02
06	Islamia University, Bahawalpur	06
07	Gomal University, Dera Ismial Khan	03
08	Karachi University, Karachi	02
09	Balochistan University, Quetta	01
10	Federal University, Islamabad	02
11	International Islamic University, Islamabad	01
	Grand Total	74

References:

- [1] Law Commission of India's 14th Report, 1958, Vol 1, p 26
- [2] Dr. Nasim Hasan Shah, Constitution, Law and Pakistan Affairs, 1986, Wajidalis Limited, Gulberg, Lahore, p 99
- [3] B.R. Sharma, Judiciary on Trial, 1989, Deep & Deep Publications, Rajouri Garden, New Delhi, p 14
- [4] Report of the Law Reform Commission, 1967-70, p 60
- [5] Ibid
- [6] Section 200
- [7] Section 204, 205, 207, 213
- [8] By the High Court (Bengal) Order 1947
- [9] By the Federal Court of Pakistan Order 1948
- [10] Section 223-A
- [11] Article 203-C
- [12] Article 203-D
- [13] Preamble and Article 2A
- [14] Articles 178 & 194 read with 3rd Schedule
- [15] Articles 177 & 193
- [16] Article 205 read with 5th Schedule
- [17] Articles 81 & 21
- [18] Article 209
- [19] PLD 1994 SC 105
- [20] Ibid p115
- [21] PLD 1996 SC 324
- [22] PLD 1998 SC 33
- [23] Articles 184, 185 & 186
- [35] Article 203
- [36] Article 208
- [37] Article 202
- [38] Article 200
- [39] Article 203-C (5)
- [40] OP cit, p 324
- [41] Article 203-C
- [42] Ibid
- [43] Article 203-D

[24]	Article 189	[44]	Article 203-F
[25]	Article 176	[45]	Article 203-D
[26]	Article 177	[46]	Article 203-G
[27]	Article 184(1)	[47]	Article 208
[28]	Article 184 (3)	[48]	Article 203-J
[29]	Article 185	[49]	By the Constitution (Amendment) Order 1980
[30]	Article 186	[50]	Constitution (Amendment)
[31]	Article 208	[51]	Item 14 of the Federal Legislative Act, Part I in the 4 th Schedule
[32]	Article 191	[52]	Article 175
[33]	Article 193	[53]	Article 203
[34]	Ibid		