

LEGISLATIVE PROCESS IN PAKISTAN



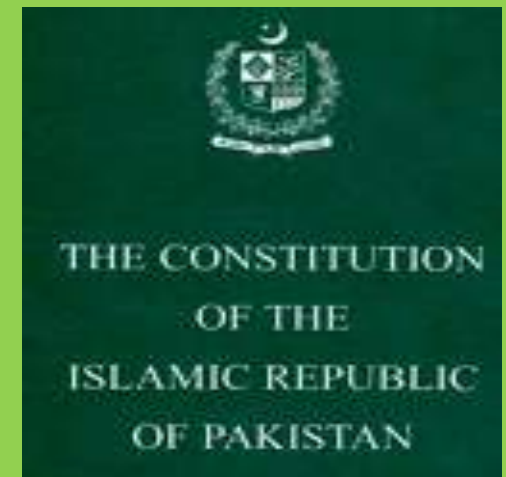
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Constitution of Islamic Republic of Pakistan 1973.

THE CONSTITUTION OF PAKISTAN 1973

- **Pakistan got independence from British Empire under the leadership of Barrister Muhammad Ali Jinnah (1947)**
- **Constitutional Name of State - “The Islamic Republic of Pakistan”**
- **Preamble and Objective Resolution Promises that:**
 - ✓ **The State shall exercise its powers and authority through the chosen representatives of the people**
 - ✓ **The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed**



STRUCTURE/ COMPOSITION OF LEGISLATURE IN PAKISTAN

Vide Article 50 Parliament is Composed of:-

President

Senate- *Upper House*

National Assembly- *Lower House*



KINDS OF LEGISLATION

There are Two Kinds of Legislation

- **Government or Official Bills**

- **Private Member's Bill**



LEGISLATURE AND LEGISLATIVE POWERS

- **Legislative Powers are Divided Between Federation and Provincial Assemblies**
- **Federal Legislative Powers enumerated in Fourth Schedule of Constitution**
- **Residuary Powers Lies with Provincial Legislature**
- **Federal and Provincial Legislatures Supreme in their Respective Fields**

PARLIAMENT AT WORK

- **Introduction of Bill**
- **Reference to the concerned Standing Committee**
- **Consideration in the Standing Committee**
- **Report of the Standing Committee before House**
- **Consideration of the bill (First Reading)**
- **Clause by clause Consideration (Second Reading)**
- **Passing of Bill (Third Reading)**
- **Transmission of Bill to Other House**
- **Same Process shall be followed in the Other House**
- **If Passed, Bill shall be sent for Presidential Assent**

Law Making Body – The Legislature/Parliament

- **According to the Constitution of Pakistan, it is the duty of the Legislature to make and/or amend the laws. Both the houses are equally equipped with the authority to do so, with the lower house having a slight edge over the upper house on financial matters.**

- **The money bills can only be initiated in the National Assembly and this is the sole prerogative of the lower house which the Senate does not enjoy. Nevertheless, all other matters excepting the money bills can be initiated in any house as enumerated in the Federal Legislative List. The money bills can only be initiated in the National Assembly and this is the sole prerogative of the lower house which the Senate does not enjoy. Nevertheless, all other matters excepting the money bills can be initiated in any house as enumerated in the Federal Legislative List.**

- **In case one house passes a bill with the majority votes, such bill shall be passed onto the other house. If such other house passes that bill without making any changes with majority, then it shall be sent to the Presidential assent. However, in case the other house does not pass the bill within the prescribed period of ninety days or it simply rejects that bill, then a joint sitting shall be summoned by the President on request of the house who initiated that bill. In the joint sitting, if both the houses pass that bill through majority votes with little or no changes, then it transmitted to the President for final approval. it shall be presented to the President for assent.**

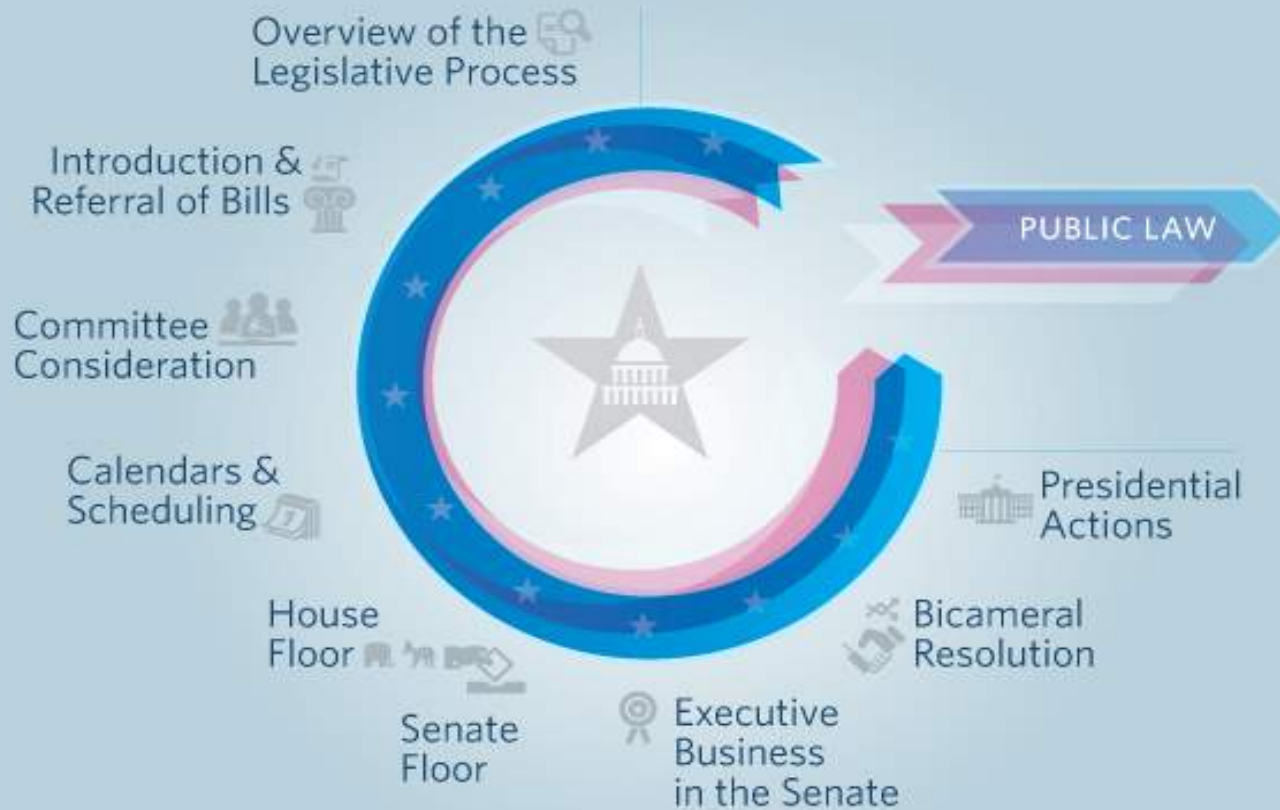
- **When the bill is sent to the President, then he is obliged by the Constitution to return his assent within the prescribed time of ten days, failing which the assent shall be deemed to be given. In case of a money bill, the President has the power to send the bill back to the National Assembly asking for reconsideration or making amendments as specified in his message to the National Assembly. In such instance, the National Assembly is then bound to reconsider the bill but in joint sitting with the Senate. If the joint sitting passes that bill either with or without the suggested amendment through a majority vote of the members present and voting, then such bill shall be sent to the Presidential approval which shall be given no later than ten days. Otherwise, the bill is considered approved.**

Moreover, the Legislature of Pakistan enjoys special power under the Constitution with regard to provincial legislation and state of emergency. According to the current Constitution, the federal legislature has the power to make laws on behalf of one or more provincial legislatures, provided they give their consent thereof. The Federal Legislature bears the authority to legislate for such provinces even in instances of state of emergency declared by the Federal Government. However, once the state of emergency is lifted by the Federal Government, all the laws or bills passed by Federal Legislature shall have no validity after six months of the lifting of state of emergency. Nevertheless, this shall have no effect on the laws or bills already passed, i.e. with no retrospective action.

AMENDMENT PROCEDURE

- **The present Constitution cannot be altered entirely like the previous constitutions. However, there can be made certain constitutional amendments that bring the laws into conformity with the changing needs of the time and cases in hand. These amendments can only be introduced into the Constitution by the legislature. The Constitution requires that a two-thirds majority in both the houses of the legislature shall vote for such an amendment to take effect. Additionally, if some amendments in the Constitution relate to the federal nature, in such cases the said amendments must be approved and ratified by the majority of the provincial legislatures.**

★ LEGISLATIVE PROCESS ★



Since 2015, the Constitution has been amended bringing in effect total twenty-one (21) Amendments. Of all these amendments, the Eighth amendment in 1985 and the Seventh amendment in 2004 bear immense significance in that they brought changes in the form of government of the country, that is to say, from a Federal Parliamentary System to yet a Federal but Semi-Presidential System. However, these amendments got reversed in 2010 when another amendment was made - the Eighteenth Amendment. This amendment put a curb on the expanding presidential powers and changed the existing system back to the parliamentary form of government. It also declared any changes being made to the Constitution to subvert, suspend and/or abrogate it would amount to an act of high treason.

Role of the Executive and Judicial Branches in Monitoring the Quality of Legislation passed by the Parliament

– Executive branch

- The executive branch is composed of the President, Prime Minister and his Cabinet. As aforementioned, the President of Pakistan is the Head of the State. He is elected by an electoral college which is comprise of members from both the houses of the federal and provincial legislatures. The term of the Presidential is five-year for one term, which may be extended to five more years in case he gets re-elected the second time. He can however be removed either by a self-resignation or impeachment by the Parliament through a two-thirds vote. The President has powers to grant pardons to the prisoners and appoint ministers on the advice of the Prime Minister, the provincial governors, and the chiefs of the armed forces. However, his role in keeping a check over the Legislative bills or laws is that he bears the power to veto them in case he thinks such laws or bills are inappropriate or endanger state dignity or security, save where there is an existence of a majority vote in both houses of the Parliament. He may also suspend certain individual rights like fundamental rights enshrined in the Articles 8-28 of the Constitution, in cases of emergency. The President used to enjoy another much more strong power, that is of dissolving the National Assembly in 1985, but this power was removed by a 2010 amendment (18th Amendment) along with the ability to appoint military chiefs, in order to loosen the tight grip of the executive over the essential functioning of the Legislature.

As the President is the Head of the State, the Prime Minister is the Head of Government in Pakistan who is appointed by the President, himself, from the lower house of the Parliament. The Prime Minister in turn shares the power to appoint Cabinet members with the consent of the President. The Cabinet acts as an advisory body for the Prime Minister. As the Head of Government, it is the primary duty of the Prime Minister to oversee the execution of the laws by the legislature and ensure smooth functioning of the government. For that purpose, he has at his disposal an Executive Cabinet which is empowered to enforce such laws through the framework of executive off-shoots at all levels.

Moreover, as the Constitution establishes a federal system of government, it also established four provincial governments with considerable autonomy. Each of the provinces has a governor, a council of ministers appointed by the governor, and a provincial assembly. The assemblies are elected by a direct vote, with reserved seats for minorities. The main aim of these provincial governments is similar to that of the federal government, that is to keep in check the enforcement and execution of the laws passed by the legislature and keep the provinces in line with the Constitutional principles.

Judicial branch

- As the Executive branch oversees enforcement of the enacted legislation, the Judicial branch is authorized to monitor the both the enacted legislation and its execution. In Pakistan, the judicial system follows a constitutional hierarchical framework comprising of two categorizes of courts: superior judiciary; and subordinate judiciary. It is the superior judiciary that is comprised of the higher courts in the country including the Supreme Court, Federal Shariat Court and High Courts of all provinces. Amongst them, the Supreme Court is regarded as the apex court that has the final and binding authority in relation to both the original and appellate jurisdiction in cases of all kinds, be they civil, criminal, or constitutional. It is also provided with the power of judicial review which shall be binding on all courts in the country. Moreover, the Supreme Court is also vested with the authority to advise the parliament in the making and enacting of laws. The Federal Shariat Court as explicit in by its name is a Federal Islamic court established mainly to check if the laws in the country are in conformity with the injunctions of Islam or not. As Pakistan is an Islamic Republic, the role of Federal Shariat Court is to prevent any deviations of the state laws with the Islamic principles. In case, such derogations are found existent, the Court directs the President or the provincial Governor to deal with the issue by attempting to make it in line with the Islamic directives.

- **This court also exercises appellate jurisdiction on decisions of lower courts in criminal cases involving theft, intoxication, or intercourse. Every province (4) of Pakistan has a High Court along with the Islamabad High Court, amounting to five High Courts in total. The role of the High Court is similar to the Supreme Court in the sense that it is the highest judicial body in a province. According to the Constitution of Pakistan, it is the prime duty of the superior judiciary to preserve and protect the Constitution and other state laws. As Pakistan follows common law system, the decisions passed by the judiciary in instances where both the Constitution and Parliament provide no clear guidelines are held as precedents which form part of the law in future cases. This is how the gaps in the laws are abridged and the quality of legislation maintained through judicial branch.**
- **On the other hand, the subordinate judiciary is comprised of the lower judiciary courts: civil courts, criminal courts and various specialized courts including the banking courts, insurance, customs and excise courts, anti-corruption courts, consumer protection courts, and anti-terrorism courts etc. The purpose of the subordinate judiciary is to provide redress to the claimants in instances of grievances. It ensures that the laws enacted by the legislature are implemented in their true letter and spirit by the executive branch. If not, the courts are authorized to order the execution of non-executed laws through executionary decrees. In this way, the aims and objectives of the laws passed by the legislation are upheld and guarded.**

Judicial Laws as an example to test Quality Legislation

- In Pakistan, the laws of the judicial branch are provided under both constitutional as well as ordinary/parliamentary laws. Under the ordinary laws, the judges are vested with legal immunity against their judicial action, that is they cannot be questioned for their judicial decisions during their tenure as a judge. Whereas under the constitutional law, the judges especially of Superior judiciary are provided safeguards with regard to their *services and privileges*. Some of the laws that throw light on the immunities and privileges of the judicial branch as prescribed under the various Statutes and constitutional provisions can be illustrated in the following discussion. The legal immunity of the judges, as aforementioned, is stressed under the *Judicial Officers Protection Act (1850)*. Under this Statute, it is stated that a judge, magistrate or any other person who is acting judicially is excused from the liability of being sued in any court of law for any order or act done by him while dispensing his judicial duty, notwithstanding such order or act is within or outside his/her jurisdiction. In another Act - the *Pakistan Penal Code (PPC) 1860*, it is stated that if a judge commits an act that amounts to an offense while discharging his obligations judicially would not be considered as an offense provided he did so in good faith presuming such act was allowed and vested in him by law. Yet another Act, the *Civil Procedure Code (CPC)* provides safeguards to the judges or any other judicial officer from being arrested while going or returning from his/her court. Moreover, the Constitution also provides certain other privileges to the judges of Superior judiciary. For instance, their entire Section 77, Pakistan Penal Code(PPC) 1860.

- **Yet another Act, the *Civil Procedure Code (CPC)* provides safeguards to the judges or any other judicial officer from being arrested while going or returning from his/her court. Moreover, the Constitution also provides certain other privileges to the judges of Superior judiciary. For instance, their entire period of service is protected from arbitrary removal by the executive branch, that is to say, the judges of Supreme court or High courts cannot be removed from their service unless provided under the Article 209(7) of the Constitution. Additionally, the superior judiciary is vested with the power to punish any person found guilty of contempt of court, as provided under the *Contempt of Court Act (1976)* and the *Constitution*. The term contempt of court means an offense of showing disrespect to the court and its officers by way of disobedient behavior towards the court's decision or dignity. Any person found guilty of such contempt is liable for a punishment of simple imprisonment (extendable up to six months) or with fine, or both. In case such person submits an unconditional apology, it is up to the court to either to discharge or relieve his sentence if it thinks appropriate or bona-fide.**
- **Section 135 (1), Civil Procedure Code (CPC) 1908.**
- **Article 204 of the Constitution of Pakistan, 1973.**
- **The Contempt of Court Act 1976. & Section 4 of the Pakistan Penal Code (PPC) 1860.**

- The Al-Jehad Trust case provides an emphatic example into the laws regulating judicial appointments and their implementation, in order to reflect the quality of judicial legislation and independence. *Under Article 184 (3)* of the Pakistan's Constitution, independence of judiciary is regarded as matter of public interest. Therefore, the petition in this case arose the jurisdiction of the Supreme Court, where a bench comprising of five judges declared that in case any appointment of a judge of superior court made by the President without consulting any of the consultees (usually the Chief Justice of Pakistan and other Chief justices of the Higher Courts) as provided under the Articles 177 and 193 of the Constitution shall be held null and void. The President is bound under the said Articles to hold negotiation and consultation with the consultees before any confirmation of a judge of superior court, in order to ensure the judicial independence. Through this case, it can be witnessed that the laws made by the legislature are upheld in their letter and spirit by the judiciary to keep the elements of quality legislation upfront and ensure the smooth working of law in the country to ensure justice.
- Al-Jehad Trust v. Federation of Pakistan, (PLD 1996 Sc 324).

ROLE OF MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS IN LEGISLATION

- **Drafting of Bill in Legal Language**
- **Provide Consultancy regarding competence of Parliament to make a law on the proposed legislation**
- **Fulfilling other Legal requirements**
- **Presenting Bill in the House**

MAJOR CHALLENGES/ PROBLEMS

- **Coalition Government takes longer time required to develop consensus**
- **Frequent military interruptions/suspension of the Constitution**
- **Lack of grooming of Parliamentarians/Capacity issues**
- **Role of Free Media – New Experience/ulterior motives**
- **Legislation - Power politics and party affiliation**

CONCLUDING REMARKS

- The Constitution is supreme law in Pakistan
- Parliament is supreme law making authority
- Pakistan is new democracy and institutions are nascent
- Firm-belief of all stakeholders in supremacy of the law/strengthening of democracy in Pakistan

CHAPTER # 02: LAW AND LEGISLATION

LEGISLATIVE PROCEDURE IN PAKISTAN

- Legislation is the fundamental responsibility of the Majlis-e-Shoora (Parliament), composed of two Houses (National Assembly and Senate) and President.
- Legislation may be initiated by introduction of a Bill in either House of the Parliament, except a Financial Bill which can only be introduced in National Assembly.
- A **Bill** is a legislative statement, which becomes an Act of Parliament if passed by the two Houses and is duly assented by the President.

Types of Bills:

- There are following types of Bills namely:
 1. Government or Official Bills: Introduced by a minister and passed by simple

majority.

2. Private Member's Bills: Introduced by any member of the Parliament and passed by simple majority.
3. Constitution Amendment Bill: A Bill intending amendment in Constitution and is required to be passed by two-third majority by both Houses
4. Financial Bill: It is a specie of Government Bills. It deals with matters of revenue and expenditure. It can only be introduced in National Assembly and if passed then is to be sent to Senate within seven days. Moreover, it is the prerogative of the National Assembly to pass it with or without incorporating the recommendations of the Senate.

Legislative Procedure: From a Bill to an Act

Step 1: Introducing a Bill

- Three copies of a Bill, in complete form, must be handed over to the secretary of the

- Three copies of a Bill, in complete form, must be handed over to the secretary of the House with a ten days written notice for moving it to the House

Step 2: Order of the Day

- Government Bill may be moved on any day of Motion except on the day specified for Private Members' Bills

- Private Member's Bill shall be set down on the orders of the day specified for Private Members Bills
- The copies of the Bill shall be circulated to all the members of the House.

Step 3: Bills Repugnant to Islam

- If a Bill seems to be repugnant to Islam, it shall be referred to the Council of Islamic Ideology for advice.

Step 4: First Reading – Discussion on Principles of the Bill

- In the first reading only the headings or main principles of the Bill shall be discussed.

Step 5: Motion of Consideration by Member in Charge

- The Member In-Charge of the Bill may present a Motion for Consideration.

Step 6: Reference to Committee

- The Bill (except the Money Bill) is then to be referred to the concerned Standing or Select Committee of the House for recommendations.

Step 7: Committee's Recommendations

- The committee may recommend either to take the Bill for consideration as a whole with some amendments or may instruct for making some particular or additional provisions to it.

Step 8: 2nd Reading – Amendments

- In the Second Reading the whole Bill, clause by clause, goes through the second reading
- The speaker shall decide as to any proposed amendment if fulfilling the conditions of admissibility.

Step 9: 3rd Reading – Debate

- In this stage the Members of the House argues in support or to reject the Bill.
- Any amendment at this stage shall only be verbal.

Step 10: Vote

- After debate the speaker puts the motion for the decision of the House.

Step 9: 3rd Reading – Debate

- In this stage the Members of the House argues in support or to reject the Bill.
- Any amendment at this stage shall only be verbal.

Step 10: Vote

- After debate the speaker puts the motion for the decision of the House.

Step 11: Transmission of the Bill to the other House

- Once a Bill (other than Money Bill) has been passed by the House in which it was introduced then it shall be transmitted to the other House.
- In other House a similar process may be adopted to pass the Bill.
- However if any Bill (Other than Money Bill) is passed but with recommendations, it shall be sent back to the House from where it was originated.
- This Bill with recommendations from the other House shall once again go through the same procedure as if it was introduced for the first time.
- However, if the other House rejects the Bill, then it shall be discussed in the Joint Sitting of both the Houses.

Step 12: Presentation before the President for Assent

- When a Bill has been passed by both the Houses, it then shall be presented before President for his assent.

The president shall within a period of ten days, may either give his consent to the Bill (in which case it shall become Act of Parliament) or return the Bill to the House from where it originated, with some amendments and recommendations.

- In case of a return Bill, once again the whole procedure discussed above shall be repeated.
- Both the Houses may either incorporate the changes proposed by the President or pass the Bill without incorporation of the said changes.
- After re passing the Bill from both Houses it shall again be presented before the President for his assent.
- This time the President is bound to give his assent to the Bill within ten days. However, if President fails to give his assent so, on the expiry of the tenth day, the Bill shall

automatically become an Act of Parliament.

Step 12: Publication in Official Gazette:

- After becoming an Act of Parliament, it is to be notified by publishing in the Official Gazette for general information.



QUERIES?

Thank You!

