

## **INTRODUCTION TO PAKISTANI LEGAL SYSTEM**

On independence of Pakistan, 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 did any break result in the continued operation of the legal system which was prevalent in the sub-continent under the British rule. 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 (*By the High Court (Bengal) Order 1947*). Similarly, a new Federal Court for Pakistan was also established (*By the Federal Court of Pakistan Order 1948*). 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 (*Section 223-A*). 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 up-gradation 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 (*Article 203-C*) 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 (*Article 203-D*). In terms of (*Article 175*) of the Constitution of Islamic Republic of Pakistan, as amended (*By the Constitution (Eighteenth Amendment) Act, 2010*), the Islamabad High Court for Islamabad Capital Territory has been established at Islamabad which will start functioning from the 13<sup>th</sup> December, 2010.

### **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” (*Preamble and Article 2A*). It entrusts the superior courts with an obligation to “preserve, protect and defend” the Constitution (*Articles 178 & 194 read with 3<sup>rd</sup> Schedule*). The qualifications of Judges, their mode of appointment, (*Articles 177 & 193*) service conditions, salary, pension (*Article 205 read with 5<sup>th</sup> Schedule*) 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 (*Articles 81 & 21*), 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 (*Article 209*). 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 (PLD 1994 SC 105)*. 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 *Government of Sind v Sharaf Faridi (PLD 1994 SC 105 at page 115)*.

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 23<sup>rd</sup> of March 1994 as the last date for carrying out this measure. In its order dated 24<sup>th</sup> January 1996 on the review petition, the Supreme Court extended the said date to 23<sup>rd</sup> 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 (PLD 1996 SC 324)* and *Asad Ali v Federation (PLD 1998 SC 33)* 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 (*Articles 184, 185 & 186*). It is the Court of ultimate appeal and therefore final arbiter of law and the Constitution. Its decisions are binding on all other courts (*Article 189*). The Court consists of a Chief Justice and other judges (*Article 176*), 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 (*Article 177*). The standing practice until recently was 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 was 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.

A new mechanism for appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court, has been prescribed under recently added (*Article 175A*), *Constitution Eighteenth Amendment Act, 2010*. Now a Judicial Commission of Pakistan, for appointment of Judges consisting of Chief Justice of Pakistan as its Chairman and, two most senior Judges of the Supreme Court, a former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the two member Judges, for a term of two years, Federal Minister for Law and Justice, Attorney-General for Pakistan, a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two year, as its members. However the President shall appoint the most senior Judge of the Supreme Court as the Chief Justice of Pakistan. For appointment of Judges of a High Court, the Commission shall also include, Chief Justice of the High Court to which the appointment is being made, the most senior Judge of that High Court, Provincial Minister for Law, a senior advocate to be nominated by the Provincial Bar Council for a term of two years as its members. Provided that for appointment of the Chief Justice of a High Court, the most senior Judge of the Court shall be substituted by a former Chief Justice or former Judge of that Court, to be nominated by the Chief Justice of Pakistan in consultation with the two member Judges of the Commission mentioned in clause. Provided further that if

for any reason the Chief Justice of High Court is not available; he shall also be substituted in the manner as provided in the foregoing proviso. For appointment of Judges of the Islamabad High Court, the Commission shall also include Chief Justice of the Islamabad High Court, most senior Judge of that High Court, Provided that for initial appointment of the Judges of the Islamabad High Court, the Chief Justices of the four Provincial High Courts shall also be members of the Commission. Provided further that in case of appointment of Chief Justice of Islamabad High Court, the same procedure as is applicable for appointment of Chief Justice of any of High Court shall, mutatis mutandis, apply. For appointment of Judges of the Federal Shariat Court, the Commission shall also include the Chief Justice of the Federal Shariat Court and the most senior Judge of that Court as its members Provided that for appointment of Chief Justice of any of High Court shall, mutatis mutandis, apply. The Commission by majority of its total membership shall nominate to the Parliamentary Committee one person, for each vacancy of a Judge in the Supreme Court, a High Court or the Federal Shariat Court, as the case may be. The Parliamentary Committee consisting of eight members, namely (i) four members from the Senate; and (ii) four members from the National Assembly. Out of the eight members of the Committee, four shall be from the Treasury Benches, two from each House and four from the Opposition Benches, two from each House. The nomination of members from the Treasury Benches shall be made by the Leader of the House and from the Opposition Benches by the Leader of the Opposition. Secretary, Senate shall act as the Secretary of the Committee. The Committee on receipt of a nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed. Provided that the Committee may not confirm the nomination by three-fourth majority of its total membership within the said period, in which case the Commission shall send another nomination. The Committee shall forward the name of the nominee confirmed by it or deemed to have been confirmed to the President for appointment.

The Court exercises original jurisdiction in inter-governmental disputes (*Article 184(1)*), 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 (*Article 184 (3)*). The Court has appellate jurisdiction in civil and criminal matters (*Article 185*). Furthermore, the Court has advisory jurisdiction in giving opinion to the Government on a question of law (*Article 186*).

The Court appoints its own staff and determines their terms and conditions of service (*Article 208*). 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 (*Article 191*). 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)*).

## (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 was 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 (*Article 193*). 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 (*Article 193*). The previous practice for the appointment of Judges of High Courts was 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 selected Judges from the said list. The recommendation of the Chief Justice of Pakistan and Chief Justice of the High Court was binding on the President, except for sound reasons to the contrary has been changed by adding *Article 175A*. 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. The Court supervises and controls all the courts subordinate to it (*Article 203*). It appoints its own staff (*Article 208*) and frames rules of procedure for itself as well as courts subordinate to it (*Article 202*).

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 (*Article 200*). 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 (*Article 203-C (5)*). Ever since 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 pressurizing the judges so as to obtain from them favourable opinions/judgments or punish them for their upright behavior. The Supreme Court in the case of *Al-Jehad Trust v Federation* (PLD 1996 SC 324 at page 324) 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. 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 (*Article 203-C*).

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 (*Article 203-D*). 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 (*Article 203-F*). 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 (*Article 203-D*). The decisions of the Court are binding on the High Courts as well as subordinate judiciary (*Article 203-G*). The Court appoints its own staff (*Article 208*) and frames its own rules of procedure (*Article 203-J*).

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 (*By the Constitution (Amendment) Order 1980*) and subsequently protected under the controversial 8<sup>th</sup> Amendment (*Constitution (Amendment)*), 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 criticized 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 exercises 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 (*Item 14 of the Federal Legislative Act, Part I in the 4<sup>th</sup> Schedule*). 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 complaints/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 (Article 175). They are supervised and controlled by the respective High Court (Article 203). The administration of justice, however, is a provincial subject and thus the subordinate courts are organized 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 NWFP and Balochistan, recruitment is made through a competitive examination consisting of a written test and viva voce. In Punjab and 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.

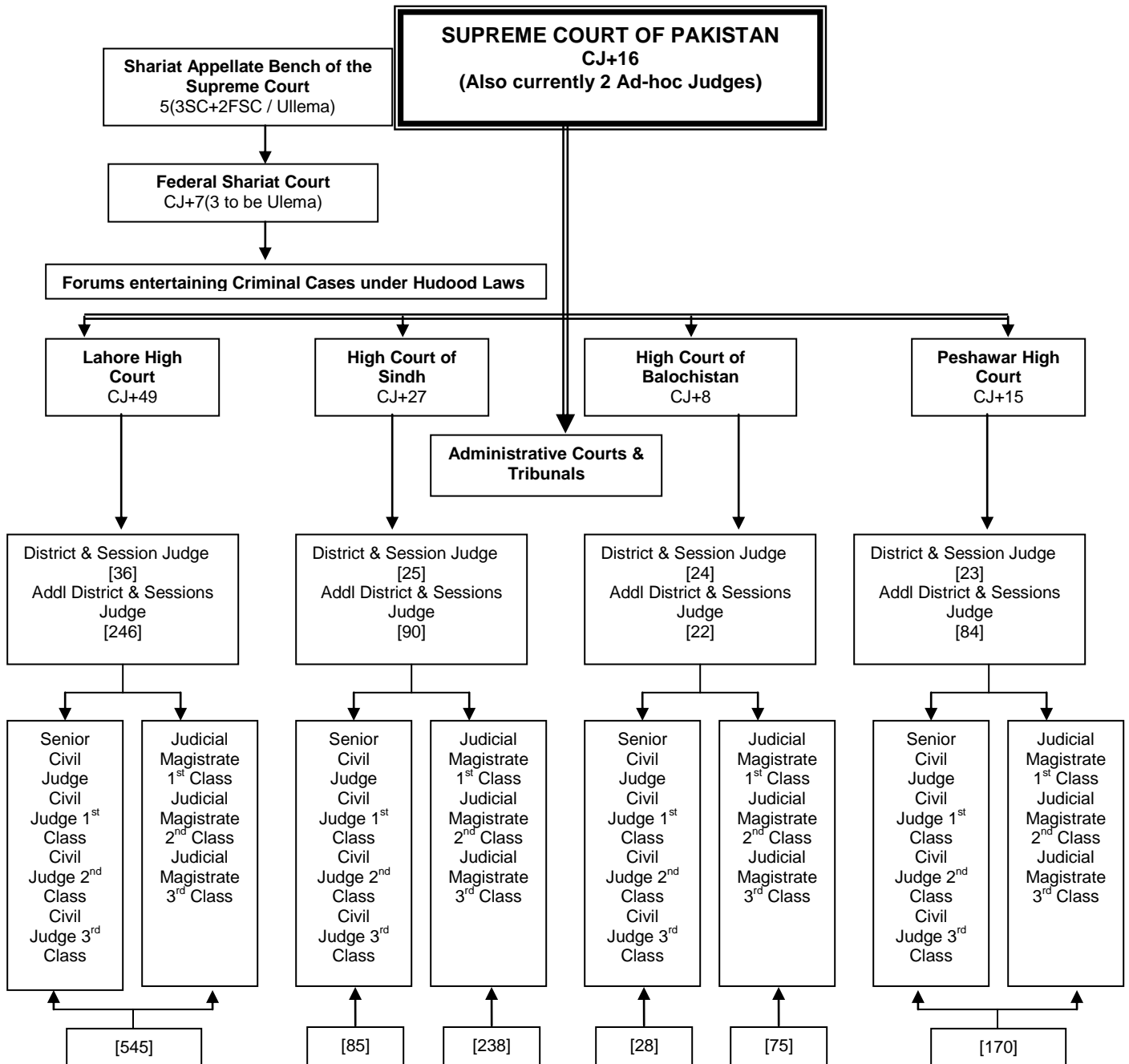
After appointment, the civil judges are usually attached for a few weeks to the Court of Senior Civil Judge/District & Sessions Judge to get practical training. They also receive specialised training at the Federal Judicial Academy and in the respective provincial academies. Such training is comprised 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.

## 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.

### 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.96 &100 of CPC;
6. To decide reference under S.113 of CPC;
7. Power of review under S.114 of CPC;
8. Power of revision under S.115 of CPC;

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9. Appeals under S.410 of Cr.P.C;
10. Appeals against acquittal under S.417 of Cr.P.C;
11. Appeals against judgment/decreed/order of tribunals under special laws;
12. To issue directions of the nature of *habeas corpus* under S.491 of Cr.P.C;
13. Banking & Company Judge Jurisdiction
14. 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}.

### **District & Sessions Judge/Additional District & Sessions Judge**

1. Appeal against judgment/decreed 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. As Justice of Peace issue directions under S.22 A & 22 B of Cr.P.C.
10. Decides pre-arrest bail applications under S 498 of the Cr. PC.  
(In Karachi District, the original jurisdiction of District Judge is limited to Rupees 3 million)

### **Civil Judge 1<sup>ST</sup> 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. In certain jurisdictions also designated as Guardian Judge;
5. At Karachi, pecuniary jurisdiction limited to rupees 3 million (Karachi Courts Order 1956); and

6. In certain jurisdictions designated as Magistrate empowered under S.30 of Cr.P.C.

### **Civil Judge 2<sup>ND</sup> Class**

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

### **Civil Judge 3<sup>rd</sup> Class**

To try civil suit up to the value of two lakh rupees.

## **THE PROCEDURE OF THE CIVIL COURTS**

- Suit (statement of claim) by the plaintiff
- Based on all documents relevant to the case, (copies or original) documents are either attached with the suit or relied upon along with Fard Pata (address of the plaintiff(s), Fard-e-Dastawaizat (list of documents), Fard-e-Inhesar (list of reliance), list of legal heirs of the plaintiff (s), Fard Talbana (court fee for issuance of summons/notices to the defendants), notices and summons and Wakalat Nama (Power of Attorney). Along with lifa-e-Dastawaizat is filed before the Senior Civil Judge who allocates these suits to different Civil Judges according to their jurisdiction and work load.
- Summons are issued which are brought to the defendant(s) by the Piadas (Notice servers).
- The Written Statement on behalf of the defendant(s) based on all relevant documents to the case together with all the civil forms mentioned above is filed.
- Issues are framed.
- List of witnesses is filed.
- Evidence is recorded first by the plaintiff, then by the defendant(s) and finally evidence in rebuttal by the plaintiff. Witnesses can be summoned by intervention of the court, a special commission for local examination and investigation might be set up. Expert witnesses can also be summoned for seeking their expert opinion.
- Arguments by the Lawyers.
- Decision (Judgment & Decree) by the Court.
- Execution of the Judgment.

## **THE PROCEDURE OF THE CRIMINAL COURTS**

- Occurrence of an event (fighting, murder, theft, adultery etc.)
- Investigation
- F.I.R. (First Information Report), Physical Remand (upto 14-days), Judicial Remand.
- Medical Forensic Report, Map of the location, Statements of the witnesses, Objects recovered like weapons, stained clothes, Chemical reports, Report on the body and the judicial remand documents and material helpful for the trial and investigation, Challan (Report of the Police investigations) is processed by the prosecution section working under the police, Prosecution branch helps in the legal investigation of the case.
- Inquiry
- It is the pre-trial proceeding conducted by the Magistrate to determine if, how and where the case to be tried.
- Sessions procedure.
- Warrant procedure (serious offences)
- Summons procedure (punishment upto six months)
- Trial
- Acquisition being put, the accused questioned and the defence evidence, if any, recorded.  
(Under the warrant procedure, first there is preliminary inquiry to determine whether the facts would justify the framing of a charge. Whether the accused pleads guilty or not? If he pleads not guilty, the trial proceeds Right to record any of the prosecution witnesses before the charge for further examination. On conclusion of the prosecution evidence, the statement of the accused is taken and then the defence evidence is recorded).