

Comparative law



**ASSIGN
BUSTER**

Question 1: Selected Jurisdiction-Pakistan Introduction: The common law forms a major part of the legal system of many countries, especially those which had been British territories or colonies. It is notable for its inclusion of extensive non-statutory law, reflecting a consensus of centuries of judgments by working jurists. [1] The legal system of Pakistan is based on English common law and Islamic law. The former is more influential in commercial law while the latter is more influential in personal status (and, more recently, criminal and tax law to some extent).

There is a fine distinction between Civil Law and Common Law; however the same are used interchangeably in Pakistan and most countries of the World. Pakistan was a colony of the British Empire pre partition therefore, Common law systems were inherited by Pakistan which places greater weight on court decisions, as opposed to civil law where judicial precedent is given less weight (which means that a judge deciding a given case has more freedom to interpret the text of a statute independently, and less predictably), and scholarly literature is given more.

Pakistan law system has adversarial court procedure and follows other common law practices such as judicial precedent and the concept of stare decisis. Differences Pakistan differs from the classic common law in many ways. Firstly both the criminal and civil laws are almost completely codified, a legacy from the days of the British Raj, when English laws were extended to India by ways of statute. Jury trials have been phased out in Pakistan since independence, because of judicial and public dissatisfaction with their operation; one Pakistani judge called jury trials as " amateur justice".

In constitutional law matters Pakistani jurisprudence has been greatly influenced by the United States legal system, Pakistan has adopted a US-style Federal Structure. Islamic law and traditional Jirga-based law has also influenced the country's judicial development. Pakistan's legal system stems directly from the system that was used in British India. The Supreme Court has original, appellate, and advisory jurisdictions. The president of Pakistan appoints the justices.

Each province has a high court, the judges of which are also named by the president. Below the high courts are district and session courts, and below these are subordinate courts and village courts on the civil side and magistrates on the criminal side. There are no jury trials in Pakistan. [2] The British tradition of an independent judiciary has been undermined in Pakistan by developments over the last 50 years. In May 1991, for example, the National Assembly adopted legislation which incorporated the Islamic legal code, the Sharia into Pakistan's legal system.

Courts in Pakistan are also subject to pressure from the executive branch, in part because of presidential power over transfer and tenure of high court justices and lower court judges. Judges in the special courts are retired jurists hired on renewable contracts so that their decisions may be influenced by a desire for contract renewal. Nonetheless, the provincial high courts and the Supreme Court have exercised some degree of independence in handing down a number of cases against the government.

In 1996 the Supreme Court issued orders curtailing the powers of the executive to appoint and transfer high courts' judges. [2] Court System: The

judiciary is composed of three levels of federal courts, three divisions of lower courts, and a Supreme Judicial Council. There are district courts in every district of each province, having both civil and criminal jurisdiction though they deal mainly with civil matters. The Supreme Court is the apex Court of the land, exercising original, appellate and advisory jurisdiction. 3]The High Court of each province has jurisdiction over civil and criminal appeals from lower courts within the provinces. The Supreme Court sits in Islamabad and has exclusive jurisdiction over disputes between or among federal and provincial governments, and appellate jurisdiction over High Court decisions. There is also a Federal Shariat Court established by Presidential Order on 26th May 1980. [4] The Law of Contract in Pakistan Contract Act 1872 is the main source of law regulating contracts in Pakistani law, as subsequently amended.

It determines the circumstances in which promise made by the parties to a contract shall be legally binding on them The general law of contract in Pakistan is contained in the Contract Act 1872. English decision's (where relevant) are also cited in the courts. The Act defines " contract" as an agreement enforceable by law. The essentials of a (valid) contract are: (a) Intention to create a contract; (b) Offer and acceptance; (c) Consideration; (d) Capacity to enter into a contract; (e) Free consent of the parties; (f) Lawful object of the agreement;

Writing is not essential for the validity of a contract, except where a specific statutory provision requires writing. An arbitration clause must be in writing.

[5] Regionalization: 1) The Islamization Process in Pakistan General Mohainmad Zia-ul-laq, leader of Pakistan (1977-1988) has based his

<https://assignbuster.com/comparative-law/>

government on what he has called the Nizam-i-Mustafa ("The Order of the Prophet"). Zia's government has gradually reorganized many secular institutions to bring them into conformity with his advisors' view of Islamic ideology. 11] The Islamization program includes the teaching of Islamiyat (the history and cultural traditions of Islam) in all schools and colleges, the initiation of a system to collect zakat and ushr (contributions to the poor enjoined by the Qur'an), and effort to revise the entire legal system, including the Constitution, to conform with the shar'iah (Islamic law). [6] 2) Hudood Ordinance: On February 10, 1979 President Zia ul Haq promulgated four ordinances, collectively referred to as the "Hudood Ordinances", which were crafted to make significant changes in the Pakistan's criminal law system. 16] The intent of the ordinances, as stated by Gen Zia was to bring Pakistan's legal system closer to the precepts of Islam. Accordingly revisions were made in criminal statutes bearing on sex related crimes (zina) and theft. [15] The Islamization process under General Zia created a parallel court structure with limited jurisdiction for cases under the Hudood Ordinances (serious crimes regulated by Islamic law) being given to the newly formed Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court (the 'Shariat Courts'). 7][8][9] Islamization of laws in Pakistan has been primarily a judge-led process, which was initiated to enhance the power of the judiciary and to expand the scope of constitutionally guaranteed fundamental rights. It will be argued that the role of judges in the Islamization of the legal system has been largely obscured by the more visible manifestations of Islamization, namely the promulgation of the infamous Hudood Ordinances' and other isolated pieces of Islamic legislation, such as, for instance, the Enforcement of Shari'ah Act 1991. 14] 3) Impact of

<https://assignbuster.com/comparative-law/>

Islamization on Criminal and Civil Laws of Pakistan As a result of General Zia-ul-Haq's Islamization process the laws of the country were changed to reflect conservative interpretations of Islam. During this time the Hudood Ordinances along with the Blasphemy Law was passed. In 1991 the Federal Shariat Court in a judgment required the Government to adopt a process for phasing out Riba (Interest) from the economy.

While this legal process continues, to date there is no practical policy of the Government to implement this ruling. [10] 4) Blasphemy Laws The Pakistan Penal Code (PPC) and the Criminal Procedure Code were amended, through ordinances in 1980, 1982 and 1986 to declare anything implying disrespect to Muhammad, Ahle Bait (family of the prophet), Sahaba (companions of the prophet) and Sha'ar-i-Islam (Islamic symbols), a cognizable offence. [12] Blasphemy is dealt with under Section 295 of the Pakistan Penal Code.

The original law, based on the British Indian Law's Indian Penal Code of 1860 and amended by the insertion of Section 295-A in 1927, simply stated that defiling any place of worship or deliberately insulting the religious beliefs of any group was to be punished with up to two years' imprisonment. [13] 5) Qisas and Diyat Ordinance In 1990 the Shariah law of retaliation by causing similar hurt (Qisas) and compensation (diyat) for murder and intentional bodily harm had been introduced by means of a presidential order.

Christians were alarmed by the implication that following the pattern of the Shariah they would be considered worth to be only half of the diyat of Muslims. The Ordinance was not considered by parliament and therefore lapsed after four months. In April 1977 an amended version was passed by

Parliament, which had no discriminatory references to women or non-Muslims. [12] Diaspora in Pakistan: Chinese diaspora The Chinese people in Pakistan are a significant ethnic group in Pakistan.

There were estimated to be 10, 000 Chinese people living and working in Pakistan . During the 1940s many Chinese Muslims fled unrest in China and settled in Karachi. However the Chinese community there is primarily of non-Muslim origins; their ancestors were Buddhists, but subsequent generations follow other religions or none at all. About 30% are estimated to have converted to Islam. Despite the emigration of members of older communities, the Chinese population in Pakistan has been bolstered by new expatriate residents.

However, the growth in their population was somewhat interrupted by the September 11, 2001 attacks; fearful that war could break out in Pakistan, most Chinese residents sent their wives and children back home. As of 2007, there were roughly 3, 500 Chinese engineers temporarily residing in Pakistan for work on various state-run projects in various locations, especially in the construction of the Gwadar Port. Their total number might have been as high as 5, 000. About 1, 200 were estimated to reside in Islamabad.

Between 2008 and 2009, the number of Chinese working in Pakistan grew sharply, to an estimated 10, 000, even as expatriate workers of other nationalities left the country. [15] Afghan Diaspora Afghans in Pakistan are refugees who fled Afghanistan during the 1980s Soviet war in their homeland into Pakistan. [17] As of March 2009, some 1. 7 million registered Afghan nationals were reported to be still living in Pakistan. They are allowed to

work and attend schools in the country until the end of 2012. 16] The population of Afghans in Pakistan consists of refugees who first arrived during the 1980s Soviet war in Afghanistan. As a result of political unrest, communist takeover, mass arrests and executions, and other human rights violations, as well as the civil war, around 3 million Afghans began migrating to Pakistan and Iran for safety. The migration began after December 1979 when the former Soviet Union invaded Afghanistan with over 100, 000 troops and continued throughout the 1980s.

From 2005 to late 2006, the Government of Pakistan began and completed a registration process of all Afghans living in their country. The total numbers of registered Afghans were reported at 2. 15 million in February 2007. [18] According to Pakistan's Ministry of States and Frontier Region, more than 1. 7 million registered Afghan refugees will remain in the country until December 2012[19] though around 300, 000 Afghan refugees will return to Afghanistan in 2010 and 2011. UNHCR estimates show that around 1. million refugees will remain in the country in December 2011. [20] TYPE OF POPULATION| TOTAL IN PAKISTAN WHOM ASSISTED BY UNHCR - JANUARY 2010| TOTAL IN PAKISTAN WHOM ASSISTED BY UNHCR - DECEMBER 2010 - JANUARY 2011| TOTAL IN PAKISTAN WHOM ASSISTED BY UNHCR - DECEMBER 2011| || || Refugees| 749, 180| 700, 720| 652, 240| || || People in refugee-like situations| 972, 200| 870, 800| 769, 300| || || Asylum-seekers| 2, 930| 2, 930| 2, 930| || || Total| 1, 724, 310| 1, 574, 450| 1, 424, 470[20]| Table 1: "2010 UNHCR country operations profile - Pakistan"