

Judiciary of pakistan

[Law](#), [Court](#)



Justice n. Fairness, moral rightness, and a scheme or system of law in which every person receives his/her/its due from the system, including all rights, both natural and legal. One problem is that attorneys, judges, and legislatures often get caught up more in procedure than in achieving justice for all

Judiciary: The branch of government that is endowed with the authority to interpret and apply the law, adjudicates legal disputes, and otherwise administers justice. Every society in human history has confronted the question of how to resolve disputes

Definition of Court: Court n. any official tribunal (court) presided over by a judge or judges in which legal issues and claims are heard and determined. Judicial courts are created by the government through the enactment of statutes or by constitutional provisions for the purpose of enforcing the law for the public good. They are impartial forums for the resolution of controversies between parties who seek redress from a violation of a legal right. In a broader sense, the term may also refer to a legislative assembly; a deliberative body. The public has a right to attend judicial proceedings. This right ensures that the proceedings will be conducted in a fair and unbiased manner. Most courts have a multilevel structure. A few states have a two-tiered system, but the federal government and most states use a three-tiered model. All litigants have an opportunity to argue cases before a trial-level court, and subsequently to pursue the matter further through two levels of appeals courts.

Purpose of Judicial System: The purpose of the legal system is to provide a system for interpreting and enforcing the laws. The purpose of the legal is to provide a systematic, orderly, and predictable mechanism for resolving disagreements.

Functions of Judicial System In order to do its job, any such system must

perform three closely connected, but nevertheless distinct, functions: -

Adjudication(Arbitration, negotiation), - Legislation - Execution. Judicial

Function The judicial function is the core of any legal system. In its judicial

function, a legal system adjudicates disputes, issuing a decision as to how

the disagreement should be settled. Legislative Function The purpose of the

legislative function is to determine the rules that will govern the process of

adjudication. Legislation tells judicial function how to adjudicate. Executive

Function Finally, the purpose of the executive function is to ensure, that the

disputing parties submit to adjudication in the first place, and they actually

comply with the settlement eventually reached through the judicial process.

In its executive function the legal system may rely on coercive force,

voluntary social sanctions, or some combination of the two. The executive

function gives a legal system its " teeth," providing incentives for peaceful

behavior; both domestic law enforcement and national defense fall under the

executive function. HISTORICAL RETROSPECT: The roots of the current

judicial system of Pakistan stretch back to the medieval period and even

before. The judicial system that we practice 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.

Judicial Structure of Pakistan Pakistan's judicial system stems directly from the system that was used in British India as on independence in 1947, 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.

Pakistan is an Islamic republic. Islam is the state religion, and the Constitution requires that laws be consistent with Islam. 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. There is a Supreme Court in Pakistan and a High Court in each province, and other courts exercising civil and criminal jurisdiction. The Supreme Court and High Courts have been established under the Constitution and other Courts have been established by or under the Acts of Parliament or Acts of Provincial Assemblies. The Constitution also provides for the office of Ombudsman.

Judiciary Supreme Court ORGANISATION AND STRENGTH OF JUDICIAL HIERARCHY: (1) Supreme Court The Supreme Court is at the apex of the judicial systems of Pakistan. The Supreme Court of Pakistan consists of Chief Justice and not more than 16 other Judges appointed by the President. A person with 5 years experience as a Judge of High Court or 15 years experience as an advocate of High Court is eligible to be appointed as a Judge of the Supreme Court. The President of Pakistan appoints Judges to the Supreme Court from amongst the persons recommended by the Chief Justice of Pakistan on the basis of their knowledge and expertise in the different fields of law. The recommendation of Chief Justice is binding on the President and is entitled to be accepted except for reasons to be recorded by President, which are justifiable. As per practice, usually the most Senior Judge of the Supreme Court is appointed as the Chief Justice. A Judge holds office until attaining the age of 65 years, unless he resigns earlier or is removed from office, in accordance with the Constitution. No Judge may be removed from office except on the grounds specified by the Constitution, namely, physical or mental incapacity, or misconduct, to be determined by the Supreme Judicial Council. The Supreme Court exercises: - Original Jurisdiction - Appellate Jurisdiction and - Advisory Jurisdiction ORIGINAL JURISDICTION: Exercises: It possesses exclusive original jurisdiction for settlement of intergovernmental (federal/provincial) disputes. Under this jurisdiction, the Court pronounces declaratory judgments. The Supreme Court can also exercise original jurisdiction, with respect to the enforcement of fundamental rights, if the case involves a question of public importance. Jurisdiction: The Supreme Court, if it considers that a question of public

importance, with reference to the enforcement of any of the Fundamental Rights ensured by the Constitution of Pakistan is involved, it has the power to make any appropriate order for the enforcement of fundamental rights.

APPELLATE JURISDICTION: Exercises: Under its appellate jurisdiction, the Court entertains appeals against orders and decisions of High Courts and other special tribunals and courts. Under the Constitution, the Court is invested with authority to make its rules of practice and procedure. Under the rules, the Chief Justice, as the head of the institution, nominates Judges for hearing of cases and exercising other administrative powers and functions.

Jurisdiction: The Supreme Court has jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences passed by a High Court, the Federal Shariat Court and the Services Appellate Tribunals. An appeal to the Supreme Court can be made as a matter of right for certain cases while for the rest the Court hears an appeal with its prior permission.

ADVISORY JURISDICTION: Exercises: In exercise of its advisory jurisdiction, the Court furnishes its opinion on a question of law of public importance referred to it by the President for consideration.

Advisory Jurisdiction: It, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration. The Supreme Court considers the question so referred and reports its opinion on the question to the President.

SEAT OF THE SUPREME COURT(SC): The permanent seat of the Supreme Court is at Islamabad, but it also runs circuits at Lahore, Karachi, Peshawar and Quetta.

Transfer of Cases: The Supreme Court may, if it considers expedient to do so

in the interest of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court. General: The practice and procedure of the Court is regulated by the rules made by the Court. All executive and judicial authorities throughout Pakistan are required to act in aid of the Supreme Court. Any decision of the Supreme Court to the extent it decides a question of law or is based upon or enunciates a principle of law is binding on all courts in Pakistan. The Supreme Court has the power to review any judgments pronounced by it or any order made by it. (2) High Courts: There is a High Court in each of the four provinces. The Islamabad Capital Territory falls within the jurisdiction of the Lahore High Court of the Punjab. A High Court consists of a Chief Justice and so many other Judges as may be determined by law or as may be fixed by the President. Appointment of High court Judges: A Judge of the High Court is appointed by the President after consultation with the Chief Justice of Pakistan, the Governor of the Province and the Chief Justice of the High Court in which appointment is to be made. NO person is appointed as a Judge of the High Court unless he is a citizen of Pakistan having forty years of age and has been an advocate of the High Court or has held a judicial office for ten years and has for a k/period of not less than three years, served as or exercised the functions of a District Judge in Pakistan. A Judge of a High Court holds office until he attains the age of sixty-two years, unless he sooner resigns or is removed from office in accordance with the Constitution. SEAT OF THE HIGH COURT(HC): The principal seat of the Lahore High Court is at Lahore and it has three Benches at Bahawalpur, Multan and Rawalpindi. The principal seat of the High Court of Sindh is at Karachi with a Bench at Hyderabad and Sukkur. The principal

set of Peshawar High Court is at Peshawar and it has two Benches at Abbott bad and Dera Ismail Khan. The principal seat of High Court of Baluchistan is at Quetta with a Bench at Sibi. Each High Court may have more Benches at other places as the Governor on the advice of the Cabinet and in consultation with the Chief Justice of the High Court may determine.

Jurisdiction (3) Federal Shariat Court The Federal Shariat Court of Pakistan consists of 8 Muslim judges including the Chief Justice. These Judges are appointed by the President of Pakistan choosing from amongst the serving or retired judges of the Supreme Court or a High Court or from amongst persons possessing the qualifications of judges of a High Court. Justice Agha Rafiq A. Khan is the Chief Justice of FSC. 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, which may eventually be extended by the President.

Exercises of Federal Shariat: 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.

Jurisdiction: The FSC, on its own motion or through petition by a citizen or a government (federal or provincial), has the power to examine and determine as to whether or not a certain provision of law is repugnant to the injunctions of Islam. Appeal against its decisions lie to the Shariat Appellate Bench of the Supreme Court, consisting of 3 Muslim judges of the Supreme Court and 2 Ulema, appointed by the President. The court also exercises revisional jurisdiction over the criminal courts, deciding Hudood Cases. The decisions of the court are binding on the High Courts as well as subordinate judiciary. The court appoints its own staff and frames its own rules of procedure. Subject of

Criticism: 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 and subsequently protected under the controversial 8th 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 and also operates as a check on the sovereignty of Parliament. 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. That is to say, it is not immune to pressures and influences from the Executive. In the past, this court was used as a refuge 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 tend to restrict the rights of women, are severely criticized and deplored. In brief there is a need for a serious discussion on the status, utility and functions of this Court. (4) Subordinate Judiciary: The subordinate judiciary may be broadly divided into two classes; 1. Civil courts, established under the West Pakistan Civil Court Ordinance 1962 2. Criminal courts, created under the Criminal Procedure Code 1898 In addition, there also exists, Other Courts and tribunals of civil and criminal nature, created under special laws and enactments. A judicial tribunal established to administer justice. An entity, in the government, to which the administration of justice is delegated.

JURISDICTION: 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: a) COURT OF DISTRICT JUDGE FOR CIVIL CASES: Courts of General Jurisdiction: In every district of a Province, there is a Court of District Judge which is the principal court of original jurisdiction in civil matters. Besides the Court of District Judge, there are courts of Civil Judges. Exercises: Civil Judges function under the superintendence and control of District Judge and all matters of civil nature originate in the courts of Judges. The District Judge may, however, withdraw any case from any Civil Judge and try it himself. Appeal against Judgment of Civil Court: Appeals against the judgments and decrees passed by the Civil Judges in cases where the value of the suit does not exceed the specified amount lie to the District Judge. b) COURT OF SESSION JUDGE AND MAGISTRATES FOR CRIMINAL CASES: Court of Criminal Jurisdiction: In every district, there is a Court of Sessions Judge and Courts of Magistrates. The Court of a Sessions Judge is competent to pass any sentence authorized by law. Exercises: Criminal cases punishable with death and cases arising out of the enforcement of laws relating to Hudood are tried by Sessions Judges. Offences not punishable with death are tried by Magistrates. Among the Magistrates there are Magistrates of 1st Class, 11th Class and 111th Class. Appeal against Judgment of Criminal Court: An appeal against the sentence passed by a Sessions Judge lies to the High Court and against the sentence passed by a Magistrate to the Sessions Judge if the term of sentence is up to four years, otherwise to the High Court. (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 administration control over them appoints such officers. Law prescribes their powers and functions. (iii) Special Courts: To deal with specific types of cases Special Courts and Tribunals are constituted. 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. These are; - Special Courts for Trial of Offences in Banks; - Special Courts for Recovery of Bank Loans; - Special courts under the Customs Act, - Special Traffic Courts; - Courts of Special Judges Anti- Corruption; - Commercial Courts; - Drug Courts; Labour Courts; - Insurance Appellate Tribunal; - Income Tax Appellate Tribunal and - Services Tribunals - Anti Narcotics Courts - Anti terrorist Courts - Consumer Courts - drug courts Appeal against Special Court: Appeals from the Special Courts lie to the High Courts, except in case of Labour Courts and Special Traffic Courts, which have separate forums of appeal. Appeal against Tribunal Court: The Tribunals lie to the Supreme Court of Pakistan. Speedy and Inexpensive Justice Steps have been taken to overcome the problems of inordinate delays in dispensing justice and enormous cost involved in litigation- a legacy of the past. The number of High court Judges, Additional Sessions Judges, Civil Judges and Magistrates has been increased. The Code of Criminal Procedure, 1898, has been amended to grant automatic

concession of release on bail to the under-trial prisoners, if the continuous period of their detention exceeds one year in case of offences not punishable with death and two years in case of offences punishable with death. It also made incumbent on the criminal courts to take into consideration the period of detention spent by the accused as an under-trial prisoner while awarding sentence. No fee is payable in criminal cases and for filing any petition before the Federal Shariat Court. Court fee in civil cases up to the value of Rs. 25, 000 has been abolished. iv) Juvenile Court: Section 4 of the JJSO authorizes the Provincial Government to establish one or more juvenile courts for any local area within its jurisdiction, in consultation with the Chief Justice of the high court. Ten years have passed, and not a single such court has been established; and instead the High Courts have been conferring status of the juvenile courts on the existing courts. The High Courts cannot be doing this on their own, and must be instructed by the provincial governments to do so. In this era of independent judiciary, the High Courts should stand up against the governments on this issue and refuse to confer powers on the already over-burdened courts and instead should insist upon establishing exclusive juvenile courts. v) WAFaqI MOHTASIB (OMBUDSMAN): The Concept Mohtasib (Ombudsman) is an ancient Islamic concept and many Islamic States had established the office of Mohtasib to ensure that no wrong or injustice was done to the citizens. The Prophet of Islam (peace be upon him) introduced the system of `Hisab' or accountability. He as well as his companions presented their public and private life and conduct for accountability. Thus a great institution emerged and spread across the globe. In the 18th century when King Charles XII of Sweden was in exile in

Turkey, it was there that he observed the working and efficacy of this institution in the Ottoman Caliphate. On regaining his throne, the King established a similar institution in Sweden. Later, in 1809 King Gustav set up this institution under its Swedish name i. e. Ombudsman. Gradually, other developed western countries also adopted this institution. Establishment in Pakistan: In Pakistan, the establishment of the institution of Ombudsman was advocated on several occasions. It was Article 276 of the Interim constitution of 1972, which provided for the appointment of a Federal Ombudsman as well as Provincial Ombudsmen for the first time. Subsequently, the Constitution of 1973 included the Federal Ombudsman at item 13 of the Federal Legislative List in the Fourth Schedule. The Institution of Ombudsman was, however, actually brought into being through the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983. Tenure The Wafaqi Mohtasib, who is appointed by the President of Pakistan, holds office for a period of four years. He is not eligible for any extension of tenure, or for re-appointment under any circumstances. He is assured of security of tenure and cannot be removed from office except on ground of misconduct or of physical or mental incapacity. Even these facts, at his request, can be determined by the Supreme Judicial Council. Further, his office is non-partisan and non-political. Jurisdiction: The chief purpose of the Wafaqi Mohtasib is to diagnose, investigate, redress and rectify any injustice done to a person through maladministration on the part of a Federal Agency or a Federal Government official. The primary objective of the office is to institutionalize a system for enforcing administrative accountability. The term " maladministration" has been defined in the law governing the office of

Mohtasib, to cover a very wide spectrum, encompassing every conceivable form of administrative practice. It includes a decision, process, recommendation, an act of omission or commission, which: (A) Is contrary to law, rules or regulations or is a departure from established practice or procedure; (B) is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory or is based on irrelevant grounds: or (c) involves the exercise of powers, or the failure, or refusal to do so, for corrupt or improper motives. It also includes neglect, inattention, delay, incompetence, inefficiency, ineptitude in the administration, or in the discharge of duties and responsibilities. The term " Agency" has been defined as a Ministry, Division, Department, commission, or Office of the Federal Government, or a statutory corporation, or any other institution established or controlled by the Federal Government. Not included in this term is the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court.

Currently, the number of Agencies falling within the Ombudsman's functional ambit is 300. The Mohtasib jurisdiction is excluded from matters the Defence of Pakistan or with the laws governing the Army, Navy and Air Force, or are concerned with the personal grievance or service matters of a public servant or functionary. Anonymous or pseudonymous complaints also cannot be entertained by him under the law. Powers - If the Mohtasib finds an element of maladministration in a matter, he can, after investigating the matter, ask the Agency concerned to consider the matter further, to modify or cancel its decision, to take disciplinary action against any public servant, to dispose of the cases within a specified time, or to improve the working of the Agency, or to take any other specified steps. Failure on the part of an Agency to

comply with the Ombudsman's recommendation is treated as "Defiance of Recommendations" which may lead to reference of the matter to the President of Pakistan, who, in his discretion may direct the Agency to implement the recommendations. The Mohtasib is empowered to award compensation to an aggrieved person for any loss or damage suffered by that person on account of maladministration. But if the complaint is found to be false, or frivolous, he can also award compensation to the Agency or the functionary against whom the complaint was made. The Mohtasib has the same powers as a civil court under the Civil Procedure Code for summoning and enforcing the attendance of any person, compelling production of documents and receiving evidence on affidavits. He has also powers identical to that of the Supreme Court of Pakistan to punish any person for contempt. The most significant feature of the Ombudsman's powers is that where the superior courts cannot take notice of orders of administrators which are in conformity with the law and rules-whosoever oppressive or unjust or arbitrary they may otherwise be-the Ombudsman can go into their equity aspect without any inhibition and recommend their withdrawal or modification if he so finds. Similarly, where the law or rules empower an authority to exercise his discretion in deciding matter, no court can question that discretion except the Ombudsman who, if he is satisfied that the discretion has not been exercised judiciously, may upset the decision or have it amended in the manner he sees fit. This gives him extensive leverage to do well and to undo injustice and arbitrariness arising out of orders lawfully made. Performance Since the inception of this office on 8th August, 1983 up to 31st December, 1993 the number of complaints dealt

with were 4, 01, 897. Out of these 66 per cent were the matters relating to Federal Agencies and remaining 34 per cent were the provincial matters and they were not in purview of the Ombudsman. From the complaints against Federal Agencies 50 per cent were admitted for thorough investigation and remaining were not entertained due to the reason that either they were subjudice/service matters/premature or no maladministration was found apparently. During this period 1, 19, 684 complaints were thoroughly investigated and 71 per cent were found to be genuine. During the year 1993, the highest number of complaints, i. e. 20, 934 out of 44, 578 complaints, after scrutiny, were admitted for investigation and 79 per cent of them were disposed off resulting in relief to the aggrieved. In view of the fact that a very high percentage of complaints is lodged with the Wafaqi Mohtasib which are within the purview of the provincial agencies, there is an urgent need for establishing the office of Provincial Mohtasib in all the provinces without any further delay. The Provincial Government of Sindh and the Government of Azad Jammu and Kashmir have already established the institution of Mohtasib within their jurisdiction. Achievements Apart from the pains taken to investigate and redress complaints, the Ombudsman's Secretariat makes it a appoint to acknowledge each and every complaint, and to inform those members of the public whose complaints cannot be legally entertained. In any case, each and every complaint has to be read and examined from all points of view even if it has to be rejected at the very outset for any of the prescribed reasons. Only the Mohtasib can dismiss or reject a complaint, even in liming, and only he can pass the final orders on it after investigation. Justice An important aspect of the Office of Mohtasib, in

addition to dealing with individual complaints, is to initiate studies and research regarding maladministration in Agencies having extensive dealing with the public, so that systems and procedures can be improved for the benefit of the people dealing with these Agencies. So far, seven in-depth studies have been conducted in Departments/Corporations of vital concern to the general public, while in numerous cases procedures and processes have been got simplified to obviate complaints from the public. Since its establishment, the most significant impact of this institution is that it has revived the concept of administrative accountability in Pakistan, which is both an Islamic tenet and a democratic obligation. The public servant has become more cautious while exercising his powers. He knows that there is an authority who can question him about his acts of omission and commission, while the citizen has the assurance that if an agency or an officer continues to be obdurate and inaccessible, he can go to the Mohtasib with his problem and get relief. The Mohtasib's institution has emerged as a poor man's court and an effective check on the excesses of the bureaucracy. It has made the bureaucracy responsive to popular aspirations, thereby helping to bridge the yawning gap which had earlier characterized the relationship between the administrator and the citizen. As a democratic instrument of Federal Government, it has helped improve administrative processes and procedures in line with modern day's requirements, which have gone a long way in reducing red-tapism and misuse of discretionary powers by the bureaucracy. The all out support extended to the institution by the press and the general public and the decision in principle to extend the scope of accountability at the provincial level, testifies the success story

of the institution and the increasing confidence reposed in it. Organization 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. [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 there under. 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 specialized 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.

PROCEDURE OR COURT PROCEEDING: When attending a criminal or civil trial, Court usually starts early in the morning (at 08: 00), with the hearing of pre-arrest bail applications, followed by post-arrest bail applications and civil appeals from the orders of the Judicial Magistrates' Courts and civil Judges.

Decisions are usually announced later in the day, once the Judge has had time to peruse the case files after the hearings. The rest of the day is allocated for the recording of the Evidence in session's cases such as in offences murder, rape and robbery etc. Cases are usually allotted by administrative orders of District and Sessions Judges. The Court of the

District & Sessions Judge usually hears administrative applications against lower courts orders. The Participants involved in Court Proceeding: a. Judge: acts as a legal referee to ensure that proper trial procedure is followed and issues rulings on points of law. In a bench trial, the judge gives the verdict in place of a jury. b. Jury: present if demanded in a civil case and present in a criminal case unless waived by the defendant. Once a juror appears for jury duty, the juror is assigned a panel number. Panels are divided randomly into groups of 6 or 18. The juror then takes part in an orientation program explaining the trial process which includes watching an orientation videotape. When a trial is ready to begin, the judge sends the deputy sheriff to the jury room to request potential jurors. The judge generally requests a group of 6, 12, 18 or 36 jurors. Jurors, chosen by panel number, are sent to the courtroom to be questioned by the judge and the attorneys to determine the juror's ability to keep an open mind and be fair. Eventually a jury panel of 12 is selected. In some instances, two alternate jurors are also chosen. They are present throughout the trial but do not deliberate unless taking the place of an absent jury member. Any jurors not selected to sit on the courtroom panel return to the jury room and may be sent to a new courtroom to be questioned for another trial. The Circuit Court operates on a one day or one trial system. This means that if a juror is not selected to serve on a jury by the end of the day, the juror is not required to return the next day. Jury service is considered fulfilled and the juror will not be called for at least another year. However, jurors chosen to sit on a panel in a particular courtroom for a particular trial are required to serve for the duration of that trial. While the trial judge determines the evidence and

instructs the jury as to the law, the jurors are responsible for deciding the facts, following the law and rendering a final decision. c. Plaintiff: in a civil case, the person who files the complaint. d. Prosecutor: in a criminal case, the Pakistani State's Attorney's Office acts as the legal representative of the people of the State of Illinois in prosecuting the accused defendant. Certain cases may be prosecuted by municipal prosecutors. e. Defendant: person against whom a civil or criminal complaint is filed. f. Witness: gives testimony during the trial relating to the case. g. Court Reporter: records every word spoken during the trial on a stenograph machine or a recording device. h. Deputy Sheriff: keeps order in the court, guards defendants in criminal cases and maintains custody of the jury. i. Clerk: swears in witnesses and maintains court orders and exhibits in a trial. Trial

Proceedings: Most trials have five stages: Stage 1: Jury Selection: The judge and attorneys question the jurors sent to the courtroom until a panel of twelve is agreed upon by all sides. The questioning is designed to excuse jurors who might have difficulty in rendering a fair and impartial verdict in that particular case. Stage 2: Opening Statements: These are brief statements made by the attorneys to the jury in which the attorneys outline the facts as they see them and what they hope to prove. The attorneys are not considered witnesses and their statements are not evidence. The plaintiff's attorney in a civil case or the prosecutor in a criminal case gives the first statement and the defense attorney follows. Stage 3: Presentation of Evidence: Witnesses for the plaintiff in a civil case or for the prosecution in a criminal case testify first, witnesses for the defense testify next and any rebuttal witnesses testify last. Each witness is sworn to tell the truth. The

attorney who calls the witness asks questions in direct examination. The attorney for the opposing side then questions the witness in cross-examination. The purpose of this questioning is to elicit evidence. Exhibits and physical objects such as photographs and x-rays are also presented at this time as evidence. Stage 4: Closing Arguments: This is the final opportunity for the attorneys to address the jury. The plaintiff's attorney in a civil case or the prosecutor in a criminal case proceeds first. The attorney analyzes the evidence and attempts to convince the jury to decide in favor of his or her side of the case. The defense attorney follows with his or her argument, attempting to do the same. Finally, the plaintiff's attorney or prosecutor has the opportunity to present a rebuttal to the defense attorney's argument. Stage 5: Jury Deliberations: The judge instructs the jury on the law they must apply in the particular case. Jurors then retire from the courtroom to deliberate in secret. When the jurors reach a verdict, the jury foreman who is elected by fellow jurors informs the deputy sheriff that a decision has been reached. The jury returns to the courtroom and the verdict is read aloud to the parties. A) JIRGA: A jirga (occasionally jirgah) (Pashto: $\text{Ø}\text{Ø}\text{±}\text{Ú}\text{«}\text{Ú}\text{‡}$) is a tribal assembly of elders which takes decisions by consensus, particularly among the Pashtun but also in other ethnic groups near them; they are most common in Afghanistan and among the Pashtun in Pakistan near its border with Afghanistan and are even held by Pashtuns in Kashmir valley, India. Functioning The community council meaning is often found in circumstances involving a dispute between two individuals; a jirga may be part of the dispute resolution mechanism in such cases. The disputants would usually begin by finding a mediator, choosing someone of

stature such as a senior religious leader, a local notable, or one of the mediation specialists (known as khans or maliks). The mediator hears from the two sides, and then forms a jirga of community elders, taking care to include supporters of both sides. The jirga then considers the case, and after discussing the matter comes to a decision about how to handle the matter, which the mediator then announces. The jirga's conclusion in the matter has to be accepted. The jirga was also used as a court in cases of criminal conduct, but this usage is being replaced by formal courts in some settled areas of Pakistan and Afghanistan, elsewhere it is still used as courts in tribal regions. The jirga holds the prestige of a court in the tribal areas of Pakistan. Although a Political Agent, appointed by the national government, maintains law and order through Frontier Crimes Regulation (FCR), the actual power lies in the jirga. The political agent maintains law and order in his tribal region with the help of jirgas. The jirga can award capital punishment, stoning to death in case of adultery, or expulsion from the community. The Sindh High Court imposed a ban on the holding of jirgas in April 2004 because of the sometimes inhumane sentences awarded to people, especially the women. But the ban has been blatantly ignored and nothing has been done about it so far. In the recent military operation against al Qaeda and Taliban in Pakistan's restive southern tribal agencies bordering Afghanistan, jirgas played a key role of moderator between the government and the militants.

A FEW MAJOR CASES: RECENT CASES: SC breather for Gilani as contempt hearing Appearing before the Supreme Court, Pakistan's embattled Prime Minister Yousaf Raza Gilani on Thursday said he has complete respect for judiciary and cannot think of committing any contempt

but stood his ground that his government could not reopen graft cases against President Asif Ali Zardari as he enjoyed complete immunity. Presenting himself before a seven-judge bench headed by Justice Nasir-ul-Mulk in compliance of its directive after being slapped with a contempt notice, Gilani appeared to have earned a breather when the apex court adjourned the hearing till February one and exempted him from personal appearance on future dates. Among those who came to the court were Foreign Minister Hina Rabbani Khar, Interior Minister Malik, Asfandiyar Wali Khan of the Awami National Party, Chaudhry Shujaat Hussain of the PML-Q and Punjab Governor Latif Khosa. Gilani was on Monday issued a contempt of court notice for failing to act on the apex court's order to reopen graft cases against Zardari. This is the third occasion that a Pakistani premier has been issued a contempt notice by the apex court. The other premiers who faced similar action by the court were Zulfikar Ali Bhutto and Nawaz Sharif.

ISLAMABAD: A brother of a widow of Osama bin Laden filed in the Islamabad High Court on Tuesday a petition challenging the registration of a criminal case against his sister and children of the slain Al Qaeda chief. Naming the state, Inter-Services Intelligence (ISI) and interior and defence secretaries as respondents, Zakarya Ahmed Abdulfattah, younger brother of Amal Abdulfattah, also expressed reservations over the trial of his sister by Civil Judge Shahrukh Arjumand. The IHC office raised some minor objections about maintainability of the petition, but fixed it for hearing on Wednesday by Chief Justice Iqbal Hameedur Rehman. Filed by Mohammad Aamir Khalil, the counsel for Mr Abdulfattah, the petition said the authorities could not register a criminal case against Ms Amal and her five minor children - Safiah,

Asia, Ibraheem, Zainab and Hussain – because they were living in Pakistan like millions of Afghans who had migrated to the country during the Afghan war. Mr Abdalfattah challenged the registration of a criminal case under sections 13 and 14 of the Foreign Act and sections 212 and 419 of Pakistan Penal Code (PPC). He said sections 13 and 14 of the Foreign Act could not apply to his sister and her children because the matter of a foreign national entering and living in Pakistan related to political and foreign affairs. Hussain Haqqani rejects Ijaz's evidences in written reply Former Ambassador to Pakistan in United States, Hussain Haqqani on Wednesday submitted his written reply to the Supreme Court commission in the memo scandal case. In his statement, filed by his associate counsel Sajid Tanoli, the former ambassador denied most of the allegations leveled against him by central character of the scandal, Mansoor Ijaz — a Pakistani-American businessman. Haqqani refused to accept the evidences presented before the investigation body by Mansoor Ijaz. However, in the rejoinder, Haqqani confessed to having meeting with Ijaz and a telephonic conversation in November 2011. SC adjourns Babar Awan contempt court case till April 2 Supreme Court Tuesday adjourned the contempt proceedings against Pakistan People's Party (PPP) leader Babar Awan on his request till April 2. The apex court was all set to frame contempt charge against former Federal Law Minister; but, he informed the court his counsel Ali Zafar is leaving for India and is currently in Lahore for making arrangements for the visit. He asked the court to indict him on contempt charge in presence of his counsel. ' I do not demur at the indictment, if it is made today; however, I want it to be in the presence of my lawyer,' he requested the court. Granting his plea, the court

adjourned the further proceedings till April 2. SC orders Pakistan Railways to curb corruption ISLAMABAD: While hearing a suo motu case regarding irregularities and non-payment of salaries to Pakistan Railways (PR) workers, the Supreme Court (SC) on Monday ordered the PR authorities to curb corruption in the department. A three-member bench led by Chief Justice of Pakistan (CJP) Iftikhar Muhammad Chaudhry heard the case. PR Chairman Arif Azeem, counsel for PR Rai Nawaz Kharal, Attorney General Maulvi Anwarul Haq, the National Accountability Bureau (NAB) additional prosecutor general and former Railways Board secretary Shafiqullah appeared before the court. At the beginning of the hearing, the NAB official told the bench that in compliance with the apex court orders corruption cases in Railways were referred to NAB, adding that investigation was carried out in cases including sale of scrap and purchase of 69 locomotives. OLDER CASES: Asma Jilani vs Government of Punjab In the famous case of Asma Jilani, a detailed history of the Martial law in the British days has been mentioned and its comparison has been made with the past days. FACTS: The two appeals , one filed by Miss Asma Jilani in the Punjab High Court for the release of her father Malik Ghulam Jilani , and by Mrs Zarina Gohar in the Sindh High Court for the release of her husband Althaf Gohar, under Article 98 of the Constitution of Pakistan 1962. The detention of Malik Ghulam Jilani and Althaf Gohar had been made under the Martial Law Regulation No. 78 of 1971. So the detention of these persons were challenged in Lahore and Karachi High Court respectively. The High Court held that it had no jurisdiction because clause 2 of the Jurisdiction of Courts(Removal of Doubts) Order No. 3 of 1969 barred the courts from questioning the validity of any

act done under the Martial Law Regulation No. 78 of 1978. Asma Jilani appealed to Supreme Court which held that this country was not a foreign country which had been invaded by any army with General Agha Mohammad Yahya Khan as its Head, nor was it an alien territory which had been occupied by the said Army. Martial Law could not have arisen in the circumstances. Pakistan had its own legal doctrine-The Qur'an, and the Objectives Resolution. Therefore Martial law was never superior to the Constitution. Supreme Court further held that Yahya Khan was neither a victor nor Pakistan was an occupied territory and thus declared him a "Usurper". All his actions were also declared illegal. When Asma Jilani's judgment was released, Yahya Khan was not in power, but now it was Bhutto's Martial Law and Bhutto was the chief Martial law Administrator and the president. Asma Jilani's case paved the way for the restoration of democracy. This case was followed by the interim Constitution of 1972 and then by the permanent constitution of 1973. Due to the judicial pronouncement in the case of Asma Jilani, Bhutto was compelled to remove the Martial law. Begum Nusrat Bhutto v. Chief of the Army Staff On November 10, 1977 the Supreme Court unanimously validated the imposition of martial law, under the doctrine of necessity. The law of necessity recognized and upheld by Pakistan's highest judicial body has proved an honorable protection for military adventure in civil government. Haji Saifullah vs Federation of Pakistan In Federation of Pakistan v Saifullah Khan case, the Supreme Court, held that the dismissal of Mohammad Khan Junejo's government by General Zia in May 1988 was unconstitutional but it refused to restore the National Assembly. Ahmed Tariq Rahim v. Federation

of Pakistan On 6 August 1990, President Ghulam Ishaq Khan, under Article 58(2)(b) of the constitution, had dissolved the National Assembly and the government of Benazir Bhutto. The said dissolution order was challenged. The Supreme Court, by majority, upheld the dissolution of the National Assembly. Merham Ali vs Federation of Pakistan During Nawaz Sharif's government, the Supreme Court declared unconstitutional several anti-terrorist laws, including the 1997 Anti-Terrorism Act (which established Anti-Terrorism Courts) subsequently amended in October 1998 (Merham Ali vs Federation of Pakistan) [1]; and the 1998 Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance, declared "unconstitutional, without legal authority, and with no legal effect" on 22 February 1999 (Liaquat Hussain versus Federation of Pakistan) Declaring Provisional Constitutional Order (2007) Illegal On 3 November 2007, Chief of the Army Staff declared emergency in Pakistan.[2] The emergency suspended the constitution. A seven panel bench issued a unanimous two-page order declaring the action illegal.[3] The bench consisted of: â Chief Justice Iftikhar Mohammad Chaudhry â Justice Rana Bhagwandas â Justice Javed Iqbal â Justice Mian Shakirullah Jan â Justice Nasirul Mulk â Justice Raja Fayyaz â Justice Ghulam Rabbani Upholding Provisional Constitutional Order (2007) On 24 November 2007, a seven panel bench of newly constituted supreme court, after imposition of PCO, validated the imposition of emergency and the promulgation of the Provisional Constitution Order issued by the Chief of the Army Staff.[4] The bench consisted of: â Chief Justice Abdul Hameed Dogar â Justice Ejazul Hassan â Justice Muhammad Qaim Jan Khan â Justice Muhammad Moosa K Laghari â Justice Chaudhry Ejaz Yousaf â

Justice Muhammad Akhtar Shabbir â– Justice Zia Pervez 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/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. 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/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. 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 1 ST 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 2 ND 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 3 RD CLASS: to try civil suit

up to the value of twenty thousand rupees. MAGISTRATE 1 ST CLASS: to try offences punishable up to 3 years imprisonment and fifty thousand rupees fine. MAGISTRATE 2 ND CLASS: to try offences punishable up to 1 year and five thousand rupees fine. MAGISTRATE 3 RD CLASS; to try offences punishable up to 1 month and one thousand rupees fine. <http://legal-dictionary.thefreedictionary.com/court> <http://www.cookcountycourt.org/about/trial.html>