

# **Judicial System of Pakistan**

# Elements of State

## **Legislature:**

The function of the Legislature or Parliament is to make new laws. These laws are made by the representatives of the general public for the whole of the country. It is not necessary that some dispute should already be there.

## **Executive:**

The function of the executive is to implement the laws.

## **Judiciary:**

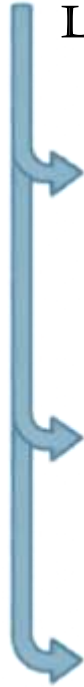
The function of the judiciary is to interpret the laws. Further, it also makes laws in the forms of pronouncements given in decisions arising out of disputes between parties.



# CONSTITUTION



## LEGISLATIVE



PARLIAMENT



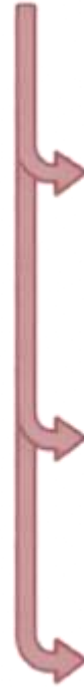
SENATE



NATIONAL ASSEMBLY



## EXECUTIVE



PRIME MINISTER



PRESIDENT



FEDERAL CABINET



## JUDICIAL



SUPREME COURT



HIGH COURTS

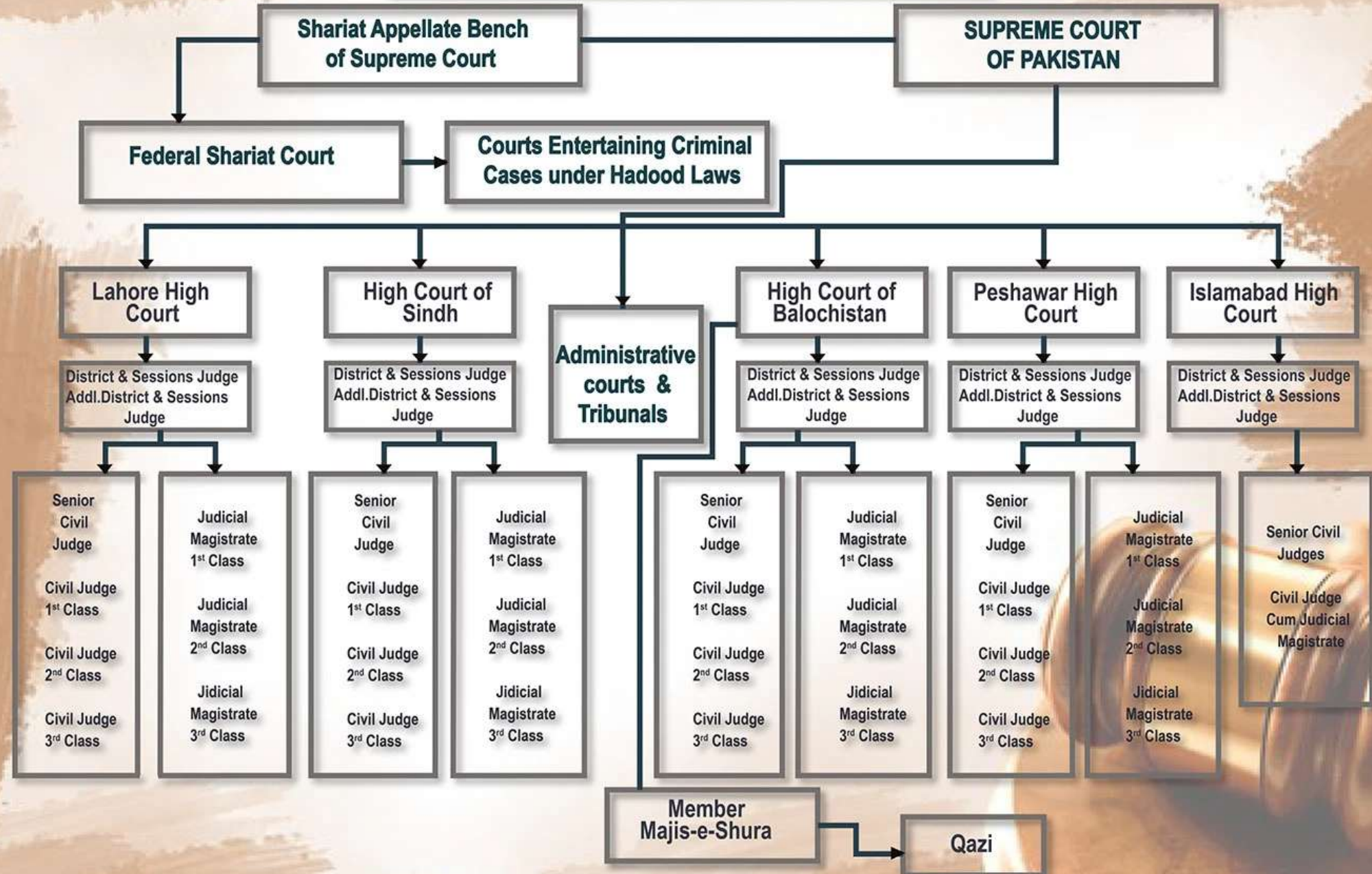


DISTRICT COURTS

# History

- Pakistan's judicial system stems directly from the system that was used in British India as on independence in 1947, and 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 with due adaptations and modifications, where necessary, to suit the requirements of the new Republic.

# Organogram Of Courts



# Supreme Court of Pakistan

- Supreme Court is the apex court in Pakistan's court system and is the final arbiter of all legal and constitutional matters. The permanent seat of the Supreme Court is in Islamabad, while it has Branch Registries in all four provincial capitals i.e. Lahore, Karachi, Peshawar and Quetta.
- Neither the Supreme Court nor a High Court may exercise jurisdiction in relation to Tribal Areas, except otherwise provided for.
- Azad Jammu and Kashmir and Gilgit-Baltistan have separate court systems.

# Supreme Court of Pakistan

- The Supreme Court (Urdu: **عدالت عظمیٰ**), established in 1956, is the apex court in Pakistan's judicial hierarchy, the final arbiter of legal and constitutional disputes.
- The Supreme Court is made up of 17 permanent judges and has a permanent seat in Islamabad. Cases are also heard in its Branch Registries in the provincial capitals of Lahore, Peshawar, Quetta and Karachi.
- It has a number of de jure powers which are outlined in the Constitution, including appellate and constitutional jurisdiction, and suo moto power to try Human Rights matters.

# Supreme Court of Pakistan

- Through several periods of military rule and constitutional suspensions, the court has also established itself as a de facto check on military power.
- The Supreme Court Judges are supervised by the Supreme Judicial Council, which may hear complaints brought against any of them.
- People of Pakistan are feeling un-pleased due to lengthy procedures and processes involved in getting justice from courts.



# Federal Shariat Court of Pakistan

- The Federal Shariat Court of Pakistan was established by presidential order in 1980 with the intent to scrutinize all laws in the country that are against Islamic values.
- This court has a remit to examine any law that may be repugnant to the “injunctions of Islam, as laid down in the Holy Quran and the Sunnah.”
- If a law is found to be ‘repugnant’, the Court is to provide notice to the level of government concerned specifying the reasons for its decision. The court also has jurisdiction to examine any decisions of any criminal court relating to the application of Islamic (hudud) penalties.
- The Supreme Court also has a Shariat Appellate Bench empowered to review the decisions of the Federal Shariat Court.

# Federal Shariat Court of Pakistan

- The Federal Shariat Court of Pakistan consists of 8 muslim judges including the Chief Justice.
- These Judges are appointed by the President of Pakistan, after decision is made by the Judicial Committee consisting the Chief Justice of Pakistan (Federal Shariat Court) and the Chief Justice of Pakistan.
- They choose 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.

# Federal Shariat Court of Pakistan

- Of the 8 judges, 3 are required to be Islamic Scholars/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.
- 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. 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.

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# Federal Shariat Court of Pakistan

- 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.
- See also part vii chapter 3A, constitution of Islamic republic of Pakistan 1973. (Article 203A)

# High Courts of Pakistan

1. Lahore High Court - for the province of Punjab
  2. Sindh High Court - for the province of Sindh
  3. Peshawar High Court - for the province of Khyber Pakhtunkhwa
  4. Balochistan High Court - for the province of Balochistan
  5. Islamabad High Court - for the federal capital city of Islamabad
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- The High Court is an appellate court for all civil and criminal matters in the respective province.

# High Court – Jurisdiction

The High Courts are the appellate courts for all civil and criminal cases in each respective province. The High Courts' general authority is laid out in the Constitution of Pakistan, 1973, Article 199, which reads: "199. Jurisdiction of High Court:

1. Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-
  - a. on the application of any aggrieved party, make an order-
    - i. directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

# High Court – Jurisdiction

- ii. declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or
- b. on the application of any person, make an order-
  - i. directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or



# High Court – Jurisdiction

- ii. requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or
- c. on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part 11.

# High Court – Jurisdiction

2. Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged.
3. An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.

# High Court – Jurisdiction

4. Where-the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorised by him in that behalf has had an opportunity of being heard and the Court, for reasons to be recorded in writing, is satisfied that the interim order-
  - a. an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), and
  - b. the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest [181] [or State property] or of impeding the assessment or collection of public revenues,
    - i. would not have such effect as aforesaid; or
    - ii. would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction

# Civil Justice System and Civil Courts

The procedure of civil justice system in Pakistan is governed and regulated by the Code of Civil Procedure 1908. This law is enforced through the civil courts. Civil courts in Pakistan are established by the respective province under different laws titled the Civil Courts Ordinance 1962, which recognizes the following main classes of civil courts:

1. The court of District Judge
2. The court of Additional District Judge
3. The court of Civil Judge (Class I, II & III)

# Civil Justice System and Civil Courts

- All civil courts in Pakistan are subordinate to the High Court and subject to the general superintendence and control of the High Court, the District Judge has control over all civil courts within the local limits of his jurisdiction. The High Court is not a civil court.
- District Judges are appointed by the Provincial Government in consultation with the High Court. There is a District Judge for each district in the province. The court of the District Judge is the highest court of original civil jurisdiction in the district.
- Additional District Judges are appointed by the Provincial Government and they perform such functions of the District Judge as the District Judge may assign.

# Civil Justice System and Civil Courts

- The power to appoint Civil Judges, to fix the number of Civil Judges and to make rules prescribing qualifications for recruitment of persons as Civil Judges vests in the Provincial Government. However, the power to post a Civil Judge to district, the power to determine the local limits of the jurisdiction of the Civil Judge and the general power to fix the pecuniary limits of the jurisdiction of the Civil Judge vest in the relevant High Court. The High Courts have, for the purpose of determining the pecuniary limits of the jurisdiction to be exercised by Civil Judges, placed the Civil Judges in three distinct classes i.e. Civil Judge 1st Class, Civil Judge 2nd Class, and Civil Judge 3rd Class.

# Criminal Justice System and Criminal Courts

- The police and the criminal courts are the most visible features of criminal justice system in Pakistan. While the police investigates offences and sends the offenders to stand trials before the courts, the courts' function is to try the offences, get at the truth of the crime and in case of proof of crime to punish the offender in accordance with law.
- The criminal procedure system in Pakistan is laid down in the Code of Criminal Procedure 1898, whereas the substantive law about definition of a crime and its punishment is found in the Pakistan Penal Code 1860. The Pakistan Penal Code contains the law which determines whether an act or omission is a crime, and the Code of Criminal Procedure is about the procedure by which the criminal law is enforced.

# Criminal Justice System and Criminal Courts

- The law of evidence is the part of the law of the procedure with the help of which criminal offences are proved. However, there are other special laws as well which lay down different procedural and substantive criminal laws in Pakistan.
- The main criminal courts in Pakistan are as follows:
  1. The court of Session Judge
  2. The court of Additional Session Judge
  3. The court of Judicial Magistrate ( Class I, II & III)



# Criminal Justice System and Criminal Courts

- High Courts are constitutional courts established by the Constitution of Pakistan, however they also exercise powers as criminal courts.
- A court of session is established by the relevant Provincial Government for every geographical division. A court of session consists of a Sessions Judge and Additional Sessions Judge.
- Magistrates are of three different categories i.e. Magistrate of the 1st Class, Magistrate of the 2nd Class, and Magistrate of the 3rd Class. All magistrates are subordinate to the Sessions Judge of their respective division.

# Special Courts

There are also many special tribunals, courts and boards in Pakistan which are created through different laws for specific areas of laws. Examples include the following:

- Family Courts
- Juvenile Courts
- Anti-Narcotics Courts
- Banking Courts
- Income Tax Tribunals
- Consumer Courts
- Services Tribunals
- Anti Corruption Courts
- Anti Terrorism Courts
- Board of Revenues
- Labor Relations Courts

**Thank You**