

PAKISTAN AFFAIRS

NOTES ON:

- I. CONSTITUTIONAL, LEGAL AND POLITICAL MATTERS**
- II. RECENT CONSTITUTIONAL AND POLITICAL DEBATES**

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STATE:

State is an organized polity with flowing components

- i. Territory
- ii. Population
- iii. Government
- iv. Sovereignty (An unconditional authority of a state to govern itself)

CONSTITUTION: SOCIAL CONTRACT/SUPREME LAW

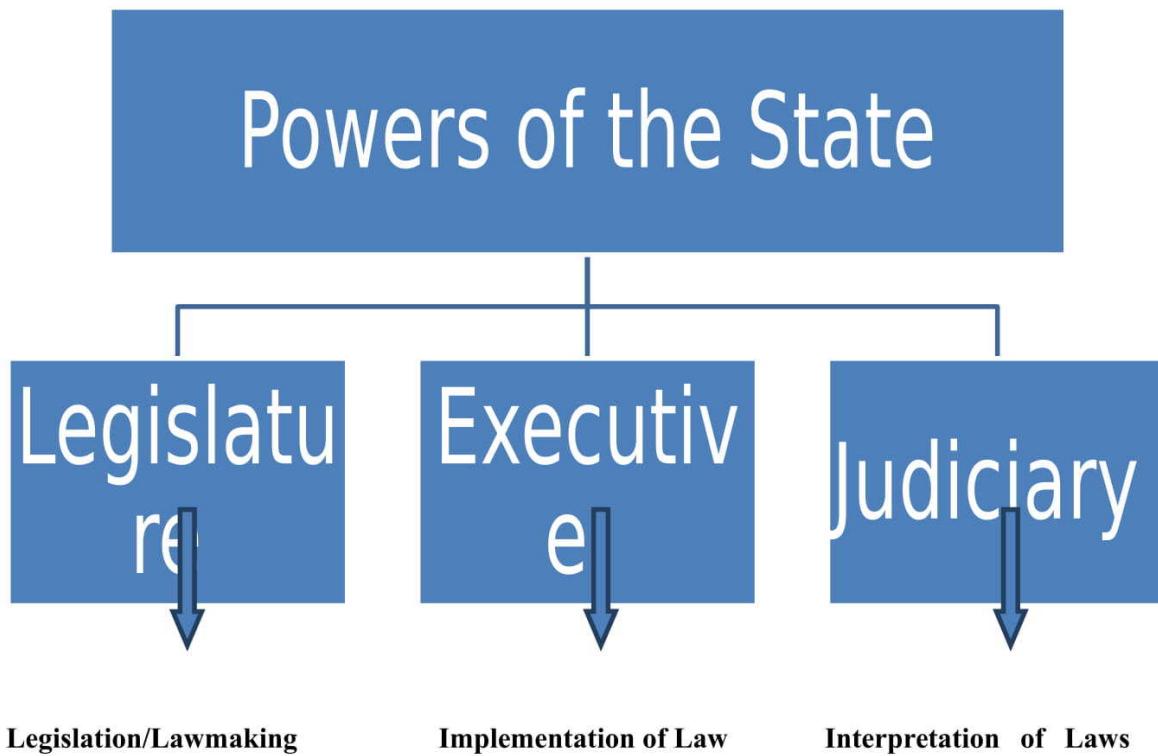
Constitution is a fundamental body of laws which defines the structure and organization of a state.

Types of Constitutional Models vis a vis distribution of powers between Center and Administrative Units: i. Federal ii. Unitary

| Federal Model | Unitary Model |
|---|---|
| Definition: Powers are distributed among “Center” and “administrative Units” which generally operates independent of each other. | Definition: Powers of state are vested in the Center which can, though, be delegated to the administrative Units in the manner devised by the center. |
| Example: Pakistan, India, US, Canada, Australia etc. | Example: France, UK, China, Greece, Iran, Bangladesh |
| Merits <ul style="list-style-type: none"> i. Suitable to the countries with diversified demographics (different sub national identities on cultural, ethnic or linguistic basis) ii. Administrative convenience iii. Decentralization of power iv. Less Burden upon Central Government v. Sense of empowerment among sub national groups. vi. Policy making in response to local needs | Merits <ul style="list-style-type: none"> i. Suitable to the countries with undiversified demographics such as Bangladesh ii. Relatively inexpensive (there are lesser tiers of governmental bodies). iii. No overlapping and duplication of laws and institutions. iv. Prevention of disputes amongst center and units over distribution of powers v. Uniformity of Legislation vi. Strong Center |



POWER DISTRIBUTION AMONGST THE ORGANS OF STATE UNDER THE PRINCIPLE OF TRICHOTOMY OF POWER.



LEGISLATURE OF PAKISTAN

Legislative organ comprises of Parliament (Majlis e Shoora) and Provincial Assemblies.

Parliament (Majlis e Shoora) is Bi-Cameral i.e comprises of two houses and President(Article 50). The upper House is called Senate while Lower House National Assembly.

National Assembly: The Lower House

National Assembly of Pakistan currently comprises of 342 members (**to be reduced to 336 from the next term**). Seats are distributed on the basis of Population. Of total 342, 262 are directly elected on the basis of election conducted under the system of First Past the Post. 60 Seats are reserved for women while 10 seats are reserved for non-Muslims. Election to the reserved seats

is conducted through the system of Proportionate representation. The term of National Assembly is Five Years.

Senate: The Upper House

Senate has 104 seats in total (to be reduced to 96) from the next term. All the federating units have equal representation in the Senate (23 seats for each of the provinces). Four seats are meant for the Federal capital.

The term of the Senate is 6 years while half of the members retire after every three years. Election to the senate is held under “Single Transferable Vote” Model. Senate is a continuous institution for it is never dissolved.

Powers of Senate and National Assembly:

Both of the houses have been conferred upon equal legislative powers , barring the following two provisions..

- I. However Power to elect and remove the Prime Minister /Leader of the House rests only National Assembly
- II. Money Bill is not voted upon in the Senate, though tabled for debate. The power to pass Money Bill is exclusive prerogative of National Assembly.

JUDICIARY

Judiciary in Pakistan can be divided in two tiers

- I. SUPERIOR/CONSTITUTIONAL COURTS**
 - i. Supreme Court of Pakistan
 - ii. High Courts for each of the provinces and Federal Capital(5 in total)
 - iii. Federal Shariat Court

- II. SUBORDINATE COURTS**
 - i. District Courts
 - ii. Special Courts

EXECUTIVE BRANCH

- i. Executive Authority of federation rests with the Prime Minister and Federal Cabinet.
- ii. Executive Authority of a province rests with the Chief Minister and Provincial Cabinet.

FUNCTIONS OF THE THREE ORGANS OF THE STATE

| Functions of Judiciary | Functions of Executive | Functions of Legislature |
|---|--|---|
| <p>i. Interpretation of Law</p> <p>ii. Accountability</p> <p>iii. Protection of fundamental rights</p> <p>iv. Guardian of the Constitution</p> <p>v. Arbitration</p> <p>vi. Dispensation of Justice</p> <p>vii. Advisory Function</p> <p>viii. Enforcement of Law</p> <p>ix. Lawmaking</p> <p>x. Administrative functions</p> <p>xi. Judicial Review of Administrative functions</p> <p>xii. Judicial review of Legislative Functions</p> | <p>i. Implementation of Law</p> <p>ii. Defense of the Country</p> <p>iii. Internal Security</p> <p>iv. Law and Order</p> <p>v. Protection of Life and Property</p> <p>vi. Accountability</p> <p>vii. Infrastructure</p> <p>viii. Policy Formulation and</p> <p>ix. Implementation Subordinate Legislation</p> <p>x. Public Service Delivery(Education, Health, Sanitation)</p> <p>xi. Regulatory Function</p> <p>xii. Foreign Relations</p> <p>xiii.</p> | <p>1. Legislation</p> <p>2. Representation</p> <p>3. Formation of the Government</p> <p>4. Accountability of the Government</p> <p>5. Removal of Government(Vote of No Confidence)</p> <p>6. Judicial Appointments</p> <p>7. ECP Appointment</p> <p>8. Protection of the Constitution</p> <p>9. Protection of Human Rights</p> <p>10. Ratification of International treaties (Bill not passed)</p> <p>11. Approval of Expenditures</p> <p>12. Levy of Taxes</p> <p>13. Financial Accountability</p> |

18TH AMENDMENT TO THE CONSTITUTION OF PAKISTAN

Overview and Background:

The Constitution of Pakistan, promulgated on 14th August 1973, originally provided for a parliamentary democratic system where executive powers were vested in the Prime Minister, though, subject to the oversight of the parliament. The office of President was symbolic in nature in line with the norms and spirit of parliamentary Democracy. However the constitution was held in abeyance by Zia Ul Haq on 5th July 1977, even less than four years after its promulgation.

General Zia ul Haq , had to restore the democracy in 1985 in response to the domestic and internatinal pressure. However he confirmed his 5 years term of President through a referendum held on 19th December 1984. He introduced 8th amendment to the constitution whereby all Numerous powers were transferred to the President hereby transforming the constitution in to a semi-presidential one where President had upper hand to the extent that he could sent the elected government packing by dissolving National Assemblies under the infamous Article 58(2)(b). Four elected assemblies were dissolved subsequently by the president by invoking Article 58(2)(b).

The 8th amendment was , however, undone and Constitution was restored to its original spirit through 13th amendment in 1997. However the constitution faced second assault by General Pervaiz Musharaf on 12th October 1999 by being held in abeyance. However General had to restore the democracy and following the suit of his predecessor Military Ruler, Zia ul haq, the General Musharraf secured a 5year Presidential term through a referendum held 30th April 2002 and subsequently introduced 17th amendment which was almost similar in impact as to that of 8th amendment. (Semi Presidential system with power of the President to dissolve assemblies restored though subject to confirmation of Supreme Court).

Against this backdrop, the Government of Pakistan People's Party sworn in 2008 had vowed to restore the constitution in its original parliamentary spirit with wide ranging reforms on multiple counts. The 18th amendment, accorded Presidential

Assent on 19th April 2010 following a wider political consensus, was meant to archive the aforesaid goal.

18TH AMENDMENT TO THE CONSTITUTION OF PAKISTAN

Objectives of 18the Amendment

- i. Restoration of Constitution in its Original Parliamentary Spirit
- ii. Promotion of Democratic Values
- iii. End of Individual Discretions
- iv. Institutionalization of Constitutional Appointments
- v. Promotion of Transparency across the Government Apparatus
- vi. Enhancement of Provincial Autonomy
- vii. Promotion of Good Governance
- viii. Strengthening the Legislature
- ix. Increasing the Role of Opposition
- x. Empowerment of the Citizenry through additional fundamental rights

| Provision Introduced Through 18th Amendment | Relevant Article of the Constitution |
|---|---|
| Change of Name of NWFP to KPK (Correction in Spellings of Sindh and Baluchistan) | 1 |
| Suspension, Subversion or holding in abeyance of the Constitution criminalized as an Act of High Treason. | 6 |
| Right of Fair Trail made “Fundamental Right” | 10-A |
| Right to Information made “Fundamental Right” | 19-A |
| Right of Free Education to the Children of 5 to 16 years of age made “Fundamental Right” | 25-A |
| Discretionary Powers of President to Dissolve Assemblies withdrawn | 58 |

| | |
|---|-------|
| <i>(Likewise discretionary powers of Governors to Dissolve Provincial Assemblies also withdrawn under Article 112)</i> | |
| Limit on strength of Federal Cabinet to 11% of the total strength of Majlis e Shora (Number of Ministers Cannot exceed 49 i.e 11% of 446). <i>(For Provinces the limit is 11% or fifteen whichever is higher Under Article 130)</i> | 92 |
| Local Government Made Mandatory | 140-A |
| Concurrent List Abolished | 142 |
| CCI Reconstituted | 153 |
| Establishment of Islamabad High Court | 175 |
| Institutionalization of Appointment of Judges of Superior Courts (through Judicial Commission of Pakistan and Parliamentary Committee) | 175-A |
| Institutionalization of Appointment of Election Commission of Pakistan (By 12 members Parliamentary Committee) | 213 |
| Institutionalization of Appointment of Care Taker Government | 224 |
| Powers of President as to appointment of "Services Chiefs"/"Chief of Joint Staff Committee" transferred to Prime Minister | 243 |

Changes in Implementation of 18th Amendment

- i. Reservations of certain quarters as to Over-Empowerment of Provinces.
- ii. Center-Provinces disputes on Distribution of Powers (Labour Laws, Accountability and HEC etc.)
- iii. Overlapping of Jurisdiction with regard to certain subjects.
- iv. Low Fiscal Space left with the Center
- v. IMF Condition to reduce Share of Provinces under NFC
- vi. Political Uncertainty
- vii. Centralized Civil Service
- viii. Capacity of the Provinces to take over the devolved subjects
- ix. Reluctance of Provinces to Devolve Powers to the Local Government as envisaged under 18th Amendment (140-A).
- x. CCI not exercising its role as envisioned in the Constitution (153)

How to Overcome the Challenges

- i. Resolution of Disputes through Political Negotiations
- ii. Good Governance
- iii. Capacity Building of the Provincial Apparatus
- iv. Tax Reforms
- v. Decentralization of Civil Service
- vi. CCI to play its constitutional role effectively
- vii. Strengthening of Democratic Values

ISLAMIC PROVISIONS ON THE CONSTITUTION OF PAKISTAN

| Provision | Article | Whether Provided in Constitution of 1956 | Whether Provided in Constitution of 1962 |
|---|--------------------------------|---|---|
| Objective Resolution in the Preamble of the Constitution | Preamble | Yes | Yes |
| Name of the state being “Islamic Republic of Pakistan”. | 1 | Yes | Yes(added through First Amendment) |
| Islam as a State Religion | 2 | No | No |
| Objective Resolution made substantive part of the Constitution ¹ | 2A(8 th Amendment) | No | No |
| Islamic Way of Life | 31 | Yes | Yes |
| Elimination of Riba as early as possible | 38 | Yes | Yes |
| Friendly Relations with | 40 | Yes | Yes |

¹ Inserted through 8th Amendment in 1985

| | | | |
|---|---|---|--|
| Muslim World | | | |
| President to be Muslim | 41 | Yes | Yes |
| Prime Minister to be Muslim | 91 | No | No |
| Federal Shariat Court ² | 175-A(8 th Amendment) | No | No |
| No Law to be made in violation of Islamic Injunctions and existing Laws to be brought in conformity with the Sharia | 227 | Yes | Yes |
| Council of Islamic Ideology | 228 | Yes (in the name of Islamic Commission) | Yes(in the name of Islamic Advisory Council) |

NFC AWARD

OVERVIEW AND BACK GROUND

Under federal scheme of things in Pakistan, a major share of taxes/revenues is collected by the federation/center (about 93%) and subsequently a share thereof, called federal divisible pool, is distributed amongst the federating units(provinces) while the rest is retained by the center to meet its own expenses. Following taxes constitutes the federal divisible pool.

- i. Income Tax
- ii. Corporate Tax
- iii. Sales Tax on Goods
- iv. Wealth Tax
- v. Export Duty on Cotton
- vi. Federal Excise Duty(Other than Gas)

² Inserted through 8th Amendment in 1985

The authority to determine the share distribution is vested in National Finance Commission(NFC) , a body comprising of Federal and Provincial Finance Ministers and such other members as may be appointed by the President following consultation with Provincial Governors.

History of Resources Distribution in the Subcontinent:

Pre-independence Period:

The Government of India Act 1935 provided for a “Federal System” in the subcontinent. Under section 138 of the Act , the taxes on Income were to be collected by the Federation and distributed amongst the provinces. The distribution arrangement were arrived through **Niemeyer Award** of 1937 wherein 50 percent of the Income tax was to be retained by the federation whereas rest of the 50% was to be distributed amongst the provinces.

Post-Independence Period

i. Raisman Award

Niemeyer Award remained in vogue following independence of Pakistan till April 1 1952. A Civil servant named Jeremy Raisman was assigned the task as to revisiting of the earlier Award immediately after independence. He presented a formula in December 1947 which was put in to effect on April 1952, called Raisaman Award whereby in addition to Income tax, sales tax was also placed under the federation of which 50% share was earmarked for provinces.

ii. Awards under One Unit

All provinces of west Pakistan were merged under One Unit in 1954. Two awards were announced under One unit scheme in 1961 and 1964 respectively. The share of Esat Pakistan remained at 54 % in both of the awards.

NFC UNDER 1973 CONSTITUTION

As narrated in the preceding paras , NFC was constituted under Article 160 of the Constitution with the provision that the meeting will be held after an interval not exceeding five years. However this requirement has not been met for want of consensus amongst the federation

and provinces. The detail of awards following promulgation of 1973 before 7th NFC Award is given below.

The State of Pakistan's Economy

Table SS2.1: Resource Distribution under Various NFC Awards*

| | | Federation: provinces distribution | Distribution within provinces | | | |
|-----------------|--------|------------------------------------|-------------------------------|---------------|-------|-------------|
| No | Year | | Punjab | Sindh | NWFP | Baluchistan |
| 1 st | 1974 | 20:80 | 60.25 | 22.5 | 13.39 | 3.86 |
| 2 nd | 1979 | 20:80 | 57.97 | 23.34 | 13.39 | 5.30 |
| 3 rd | 1985 | | | Interim award | | |
| 4 th | 1990 | 20:80 | 57.87 | 23.29 | 13.54 | 5.30 |
| 5 th | 1996 | 62.5:37.5 | 57.88 | 23.38 | 13.54 | 5.30 |
| 6 th | 2000 | | | Interim award | | |
| | 2006** | 55:45 | 57.36 | 23.71 | 13.82 | 5.11 |

Source :State Bank of Pakistan³

Population remained the Sole Criterion for distribution of resources amongst federating units in all the Six Awards.

The 7th NFC Award

The 7th NFC award was signed on 30th December 2009 at Gawadar. It was a great leap forward in that , unlike the previous awards based solely on the population, the 7th NFC has introduced three new factors thereby making the distribution of resources amongst provinces based upon the following four components with the percentage weightage given against the each.

| | |
|---------------------|--------|
| Population: | 82% |
| Revenue Generation: | 5% |
| Poverty: | 10.3 % |

3 <http://www.sbp.org.pk/reports/quarterly/fy10/first/specialsection2.pdf>

| | |
|-----------------------------|------|
| Inverse Population density: | 2.7% |
|-----------------------------|------|

Inter-Provincial Share under the New Formula

Table SS2.2: Revenue Sharing Formula for 7th NFC (2009)
percent

| Indicators | Weight | Share of provinces in terms of indicators | | | |
|--|--------------|---|--------------|--------------|-------------|
| | | Punjab | Sindh | NWFP | Baluchistan |
| Population share (SBP estimates) * | 82.0 | 57.36 | 23.71 | 13.82 | 5.11 |
| Poverty/backwardness ** | 10.3 | 23.16 | 23.41 | 27.82 | 25.61 |
| Revenue generation/collection ** | 5.0 | 44.0 | 50.0 | 5.0 | 1.0 |
| Inverse population density (SBP estimates) * | 2.7 | 4.34 | 7.21 | 6.54 | 81.92 |
| Total share | 100.0 | 51.74 | 24.55 | 14.62 | 9.09 |

Source: State Bank of Pakistan⁴

The share of Federal Divisible Pool under 7th NFC has been fixed at 57.5% which cannot be decreased owing to the constitutional provision contained in Article 160(3A) of the Constitution of Pakistan.

Other Key Features of 7th NFC:

- i. Federal Government collection charges reduced from 5% to 1%.
- ii. KPK Govt was given additional one percent for fight against terrorism
- iii. A minimum amount of Rs 83 Billion Guaranteed for Balochistan , which in case of shortfall was to be met by the Federal government.
- iv. GST on services transferred to provinces (18th amendment)
- v. Payment of arrears of Gas Development Surcharge to Baluchistan
- vi. Payment of Hydel Profits to KPK

MERITS AND DEMERITS OF 7TH NFC

Merits

1. Outcome of Political Consensus

⁴ <http://www.sbp.org.pk/reports/quarterly/fy10/first/specialsection2.pdf>

2. Redress of Grievances of smaller Provinces
3. Broad based (Four instead one factor)
4. Envisages greater fiscal decentralization
5. Greater Provincial Autonomy on financial count
6. Compatible with 18th Amendment whereby provinces have been devolved a number of subjects.
7. Greater space with the provinces to spend on socio development

Demerits

1. Reduced fiscal space with the federation.
2. No incentive for provinces to increase their own tax collection
3. Population still remains a major criterion (82%)
4. No linkage with provincial efforts for tax collection

LOCAL GOVERNMENT

DEFINITION:

The United Nations Office of Public Administration defines Local Government as under:

“A political subdivision of a nation or (in a federal system) state, which is constituted by law and has substantial control of local affairs, including the powers to impose taxes or to exact Labour for prescribed purposes. The governing body of such an entity is elected or otherwise locally selected”

A sub national tier of Government

A sub national tier of government elected by the populace of a specific locality which is invested with certain powers of governance over that locality is called Local Government.

IMPORTANCE AND BENEFITS OF LOCAL GOVERNMENT

Administrative Benefits

- i. An established model of Governance
- ii. Decentralization/Devolution of Powers
- iii. Ease of Access to the Citizenry
- iv. Local Responsiveness
- v. Redress of Public Grievances at Local Level
- vi. Effective Public Service Delivery
- vii. Benefit of local acquaintance
- viii. Local Accountability
- ix. Public Trust

Political Benefits

- i. Political Participation at Gross Root Level
- ii. Political Awareness
- iii. Political Training of Future Leaders
- iv. Promotion of Political Culture and Values
- v. Sense of empowerment amongst the masses

HISTORY OF LOCAL GOVERNMENTS IN PAKISTAN

BACKGROUND

At the time of independence, Government of India Act 1935 was adopted as interim constitution of the Pakistan. The Schedule 7 of the Act ibid placed Local Government under the jurisdiction of Provincial Governments .However, for as many as twelve years no legislation was made for establishment of Local Government Institution. It was the Military Government of General Ayub Khan who made first ever Law for establishment of Local Governments in 1959 called Basic Democracies Order 1959.

Till 2013 , Two Local Governments models /laws were introduced by Military Regimes of Zia Ul Haq and General Musharraf in 1979 and 2001 respectively. No political government ever made legislation over Local Government Laws before 2013.

Though there remained a provision as to establishment of Local Governments by the respective Provincial Governments in all Constitutions of Pakistan, it was the 18th Amendment which first made it constitutionally incumbent upon the Provinces to establish Local Governments under Article 140-A which provided that:

“140-ALocal Governments:

Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.”

Following 18th amendment, which made the local government a constitutional requirement, the Supreme Court of Pakistan taken upon itself to make the Provinces establish Local Government Institution following which local bodies were established across Pakistan.

The details and comparison of all the Local Government Models is given hereunder.

LOCAL GOVERNMENT SYSTEMS IN PAKISTAN

AYUB KHAN BASIC DEMOCRACIES (1959-70)

- Introduced vide Basic Democracies Order 1959 on October 27th 1959
- There were four tiers of the local government: Union Council, Tehsil Council, District Council and Divisional Council
 - **Union Council:** was divided into 10-15 wards each representing 1000-1500 voters. The members elected from the respective wards subsequently elected a chairman and vice chairman from amongst them. All the members therefore were elected ones at this tier. The council were entrusted to provide basic municipal Services. They could levy some taxes with prior approval of Commissioner. **But their importance increased manifold when UCs were made “Electoral College of President”.**
 - **Tehsil Council:** No Direct election
 - Members consisted of officially nominated and chairmen of UCs with equal representation
 - Responsibility : Basic Municipal Services
 - **District Council:**
 - No Direct elections
 - Deputy commissioner was chairman whereas Vice chairman and rest of the members were nominated by him
 - Responsibility : Basic Municipal Services
 - **Divisional Council:**
 - No Direct elections
 - Commissioner was ex officio chairman while all DCs of the district in the jurisdiction of division were members.
 - Rest of the members were nominated by Commissioner

- **Analysis:**
- The system was devised to meet political needs of ayub khan
- Powers /authority predominantly rested with the Administration/Bureaucracy/DC
- The 80000(40000 from each of the provinces) BD members were electoral college of the president and therefore they voted ayub khan into power as President of Pakistan.
- There were no reserved seats.

ZIA UL HAQ: LGO 1979

The system consisted of following tiers.

- 1- Union Council for rural areas
- 2- Town Committees for urban areas
- 3- Zil/District Council(for rural areas)
- 4- Municipal Committees and Municipal Corporation(For Lahore and Karachi)

SALIENT FEATURES:

Members of all the tiers were elected directly through adult franchise (Age 21 years)

The members of respective tiers elected their chairmen/VCs

Seats were reserved for non-Muslims.

Rural Urban Divide

Function: Basic municipal service

Arbitration under Muslim family ordinance

Could levy certain taxes

No administrative powers

PLGO 2001 DURING MUSHARAF

- 1- Revolutionized the concept of Local government.

- 2- Introduced the concept " district Government " where district administration and local government was placed under the control of elected Nazim.
- 3- Most of the provincial departments such as education, health, community development, agriculture were devolved at district level.
- 4- Abolished "Magistracy"
- 5- Tiers of the Local Government
 - Union Council
 - Tehsil/Town Council
 - District/City District Council
- 6- All the members were elected directly
- 7- Multi-ward system.
- 8- All members of UC were electoral college of Tehsil and District Nazim/Naib Nazim.
- 9- Union Nazim and naib Nazim were ex-officio members of District and Tehsil Council respectively.
- 10- Fair deal of financial independence and powers to levy taxes.

PLGO 2013

- 1- Replica of LGO 1979
- 2- Tiers
 - Union Council for rural areas
 - Municipal Committee/Municipal Corporation and Lahore Metropolitan Corporation for urban areas
 - Zila Council(for rural areas)
- 3- Direct election of UC General seats and indirect election against reserved seats
- 4- Functions: provisions of local municipal services

- 5- Powers to levy taxes
- 6- No Administrative authority: District administration is independent of Local Government.
- 7- District Education and Health Authority
- 8- Rural Urban Devide.

COMPARATIVE ANALYSIS OF LOCAL GOVERNMENT SYSTEM

| | Basic Democracies 1959 | LGO 1979 | PLGA 2001 | PLGA2013 |
|--|--|-------------|-----------|-------------|
| Mode of Election(Electio n or selection) | Direct Election of UC Members/Selection in higher tiers | Election | Election | Election |
| Electoral College | Yes(President of Pakistan) | No | No | No |
| Relation with | Controlled by DCs | Independent | District | Independent |

| District Administration | | | Administration under elected Nazim | |
|-------------------------------|---------------------|---------------------|------------------------------------|---------------------|
| Rural-Urban Divide | No | Yes | No | Yes |
| Financial autonomy | Partial | Fair | Complete | Fair |
| Uniformity across the country | Yes | Yes | Yes | No |
| Voter Age | 21 | 21 | 18 | 18 |
| Ward System | One ward/one member | One ward/one member | Multi ward System | One Ward/One member |

COMPARATIVE ANALYSIS OF CURRENT SYSTEMS

| | Punjab | Sindh | KPK | Baluchistan | Cantonment | Federal Capital |
|---------------------------------|---------------------------------|-----------|-------------------------------|-------------|-----------------------|--|
| Similarity with earlier systems | LGO 1979 | LGO 1979 | LGO 2001 | LGO 1979 | First experience | LGO1979 |
| Governing Law | PLGA2013 | SLGA 2013 | KPK Local Government Act 2013 | BLGA 2013 | Cantonment Act 1924 | Islamabad Capital Territory Local Government Act |
| Tiers | • Union Council for rural areas | Same | Same as provided under | | Members of Cantonment | 1. Union Council 2. Metropool |

| | | | | | | |
|---|--|-------------|------------------------|-------------|-------------------------|-------------------|
| | <ul style="list-style-type: none"> • Municipal Committee/Municipal Corporation and Lahore Metropolitan Corporation for urban areas • Zila Council(for rural areas) | | PLGO 2001 | | ent Board | iton corporatio n |
| Authorities | District Education and Health Authority | No | No | No | No | No |
| Relationship with District Administration | Independent | Independent | Local Govt under Nazim | Independent | Under Station Commander | Independent |

JUDICIAL ACTIVISM

DEFINITION:

Black Law Dictionary

“A philosophy of law-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions is called Judicial Activism”.

The term can also be defined as:

The judiciary is said to be exercising judicial activism when it encroaches upon the domain of Legislature or Executive.

OR

When judges let their personal inclinations prevail over legalities, they are said to be exercising Judicial Activism.

HISTORY OF JUDICIAL ACTIVISM

Though the term judicial activism was coined by Arthur M. Schlesinger Jr in an Article titled – “*The Supreme Court: 1947*”- in year 1947 , the judiciary was said to have been assuming a proactive role long before. The first such case where US Supreme Court declared that it was invested with the powers to strike down the Laws and a statute (Power of Judicial Review, was that of Marbury Vs Madison (1803). The power of Judicial Review, known to be an aspect of Judicial Activism was subsequently used not only by Supreme Court of USA but by the judges across many common law countries.

6 DIMENSIONS OF JUDICIAL ACTIVISM BY BRADELY CANON

- I. Majoritarianism (judgments influenced by populist sentiments)
- II. Interpretive stability(When judges don't observe consistency in their own decisions)
- III. Interpretive fidelity(When judges don't consider the principles laid down in Judicial Precedents)
- IV. Specificity of policy(When judiciary assume the rule of policy maker on a subject not in its domain)
- V. Availability of an alternate policymaker (when judiciary strikes down a policy made by executive/legislature and impose its own policy).
- VI. Substance/democratic process(When judiciary –when invested with the powers to decide a case either way- decides a case in a manner not warranted by the democratic norms)

Powers of Supreme Court Under The Constitution Of Pakistan

- Powers to issue direction for enforcement of fundamental rights under Article 184(3)
- All executive and judicial authorities are required to render assistance to the Supreme Court (Article 190)
- Power to punish any person for contempt of Court(204)

DIMENSIONS OF JUDICIAL ACTIVISM WITNESSED IN PAKISTAN

- i. Judicial Decisions allegedly violative of set principles
- ii. Exercise of *Suo Moto* (184(3))

- iii. Judicial Outreach
- iv. Judicial Review of Legislation
- v. Judicial Directions on Executive Appointments
- vi. Policy making
- vii. Use of Executive Authority (Visits and Inspections)

MERITS/BENEFITS OF JUDICIAL ACTIVISM

- i. Enhanced Accountability
- ii. Redress of Public Grievances
- iii. Public Service Delivery
- iv. Improvement in Governance
- v. Enforcement of Laws
- vi. Protection of Fundamental Rights
- vii. Check on Excesses of Executives
- viii. Adherence to Rule of Law

DEMERITS

- i. Violation of Trichotomy of Power enshrined in the Constitution
- ii. Power Imbalance
- iii. Allegation of Judicialization of Politics
- iv. Allegation of Politicization of Judiciary
- v. Detraction from its original function i.e Administration and Dispensation of Justice
- vi. Allegation of Partisan Role
- vii. Rendering the Judiciary Controversial
- viii. Hindrance in execution of Public Policy

IMPORTANT CASES IN THE HISTORY OF PAKISTAN

1- MOLVI TAMEEZ UD DIN CASE(PLD 1955FC 240)

(Muhammad Munir, C. J., A. S. M. Akram, A. R. Cornelius, Muhammad Sharif and S. A. Rahman, JJ)

SHORT DETAILS OF CASE: The then Federal Court of Pakistan (Now Supreme Court) legalized the decision of Governor General Malik Glulam Muhammad vis a vis dissolution of First Constituent Assembly by invoking the Doctrine of Necessity: Justice A. R. Cornelius however dissented with the decision

2- DOSSO CASE PLD 1958 SC 533

(Muhammad Munir, C. J., M. Shahabuddin, A. R. Cornelius and Amiruddin Ahmad, JJ)

Imposition of martial law on 07th October 1958 was validated under doctrine of necessity and Hens Kelsons theory.

3- ASMA JILLANI CASE: PLD 1972 SC 139

(Hamoodur Rahman, C. J., Muhammad Yaqub Ali, Sajjad Ahmad, Waheeduddin Ahmad and Salahuddin Ahmed, JJ)

Imposition of martial Law by Yahah Khan and resultant detention of Ghulam Jillani was declared unlawful and ultra vires(After resignation of Yayaha Khan)

4. NUSRAT BHUTTO CASE. PLD 1970 SC 657

Imposition of Martial Law by Zia Ul Haq was validated under Doctrine of Necessity and hens keelson theory

5. ZULFQAR ALI BHUTTO CASE PLD 1979 SC 53

Appeal against death sentence awarded by Lahore High Court was dismissed by 4 judges(all from Punjab) while three judges (Dorrab Patel Balochistan, Muhammad Safdar Shah from NWFP and Muhammad Haleem from Sindh) dissented with the decision.

6. ZAFFAR ALI SHAH CASE PLD 2000 SC 689:

(Irshad Hasan Khan, C J., Muhammad Bashir Jehangiri, Sh. Ijaz Nisar, Abdur Rehman Khan, Sh.Riaz Ahmed, Ch. Muhammad Arif, Munir A. Sheikh, Rashid Aziz Khan, Nazim Hussain Siddiqui, Iftikhar Muhammad Chaudhary, Qazi Muhammad Farooq and Rana Bhagwan Das, JJ)

Supreme Court validated the military takeover by Pervaiz Musharf by resorting to Doctrine of Necessity and Hens Kelson theory.