

CONSTITUTIONAL AND LEGAL SYSTEM

PAKISTAN NOTES

Legal system:

A legal system is a process OR procedure for inter-pretng and enforcing the law.

The legal system in Pakistan is derived from the English model through the Adoption of the laws and structure of British india ,itself a codified legal system based on **Nineteen century English law**. As a result, the legal system and much of the Substantive law of Pakistan will be Familiar to any Common law Lawyer.

Examples :

There are generally considered to be five legal system in the world today.

- **Civil law:** [Civil law system have their Origin in the Roman legal system e.gs France and Germaney.]
- **Common law:** [Common law is a body of Unwritten laws based on legal precedents established by the court e.gs. Dominica and Pakistan.]
- **Customary law.**
- **Religious law.**
- **Mixed legal system.**

Constitutional:

It is asset of basic principles and rules that define the rights of citizens ,the powers of different branches of government and their inter-relationship. In their light, business is run by the government .

Characteristics :

- The constitutional is of fundamental important to the country.
- Without a constitution , a country is like a jungle.
- Protects the rights of citizens.
- Its show about the independes of country.
- When a country comes into beings , it needs a constitution to run the country first
- The constitution guarantees the security the survival of the country
- Helps to manage the country and the government in a smooth manner.

Why delay is forming constitution ?

- Untimely death of Quaid-e-Azam.
- Immediate problems.
- Refuge ().
- Canal water dispute.
- Disagreement over parity of representation .
- Languages issues.

India Act-1935

1933- white paper
1935- parliament passed

1937- law implement

Background :

- Simon commission
- Nehru report
- Round table conference
- Forteen (14) points of Quaid -e-Azam

Characteristics 1935- Act :

- 1st April 1937.
- Forteen(14) parts , ten (10) schedules .
- Fedral system and executive .
- Territorial changes.
- sindh province.
- Burmaa separate.
- KPK province.
- Reserved subjects (Religion, defence , foreign).
- Transferred subjects (law and order, minorities rights).
- Province autonomy.
- Reaction (congress, Muslim league).

Four main demerits of Act- 1935

- 1- Preposterous Act.
- 2- No solution to Indian problems .
- 3- Faulty reservation and tutelage system.
- 4- Lack of the right of self – determination.

Constitutional- 1956

*The 1956, constitution provides for parliamentary form of government with all the executive power in the hand of prime minister *

OR

It consisted of 234 articles divided into thirteen parts and six schedules

Features of Constitution-1956

- Islamic republic :

Name Islamic republic of Pakistan, objective resolution include as preamble in constitution.

- Federal system:

Power divided among CENTRE and PROVINCES.

Federal type and comprised of only two provinces.

1- East Pakistan (bangladesh)

2- West Pakistan(Punjab , KPK, Sindh etc)

Three parts of lists...

i) the federal list ii) province list iii) con-current list

- Islamic law :

No law would be passed against the teachings of QURAN and SUNNAH.

- Languages :

Urdu and Bangalii were made national language .

- Fundamental rights :

Fundamental rights for all citizens of Pakistan.

- The prime minister :

Head of government.

Cabinet was answerable to assembly.

Be a Muslim.

Minimum age 25 years

More than 5 years duration but do not a fixed .

- President :

Head of state.

Be a Muslim.

He was authorized to appoint Governors.

The judge , supreme court, auditor general and
advocate general.

5 years duration fixed.

- Independent judiciary :

Supreme court, interpreted constitution and advised state.

- Flexible constitution :

Law is flexible .

Update , modify and can be insert any time.

- Written form :

Law is written form.

Written form means this is a permanent law.

Do not be any excuse about law .

- Parliamentary system of government :

President and governor would be constitution heads only,

Who would perform their duties with the advice of the

Cabinet and parliament.

Causes of the failure of constitution -1956

- i) Election procedure .
- ii) Adverse attitude of Sikandar Mirza .
- iii) Suharwardy's attitude .
- iv) Bureaucracy's behavior .
- v) Lack of leadership .
- vi) Deplorable role of political parties . (tag of war)
- vii) Deficiency of political training .

First Martial Law in Pakistan

First constitution of Pakistan was abrogated and first martial law was imposed on **07 OCTOBER , 1956**.

- Pakistan Martial law was declared in Pakistan on 7 October 1958, by President Iskander Mirza who then appointed General Muhammad Ayub Khan as the Chief Martial Law Administrator and Aziz Ahmad as Secretary General and Deputy Chief Martial Law Administrator.

- Causes :

The prelude to Ayub Khan's declaring martial law in Pakistan was fraught with political tension and sectarian politics in which the political establishment of the new country alienated its citizens through controversial governance and perceived political failings.

Who imposed the first martial law on October 7, 1958?

On October 7, President Iskander Mirza declared martial law in Pakistan. He abrogated the constitution of 1956, describing it as "unworkable" and full of "dangerous compromises." He dismissed the government of Sir Feroz Khan Noon, dissolved the National Assembly of Pakistan and the provincial legislatures.

What is the law order of 1958?

The Laws (Continuance in Force) Order, 1958, was issued by the General M. Ayub Khan on 10 October, and was supposed to take effect in retrospect from 7 October 1956. Its aim was to provide a legal framework in the absence of any other constitution in the country.

People also ask What happened in 1958 in Pakistan?

On 27th October 1958 General Muhammad Ayub Khan took-over as a second President of Pakistan. One of the first major steps taken by General Ayub Khan was the appointment of a Constitution Commission on 17th February 1960.

FOR MCQS;

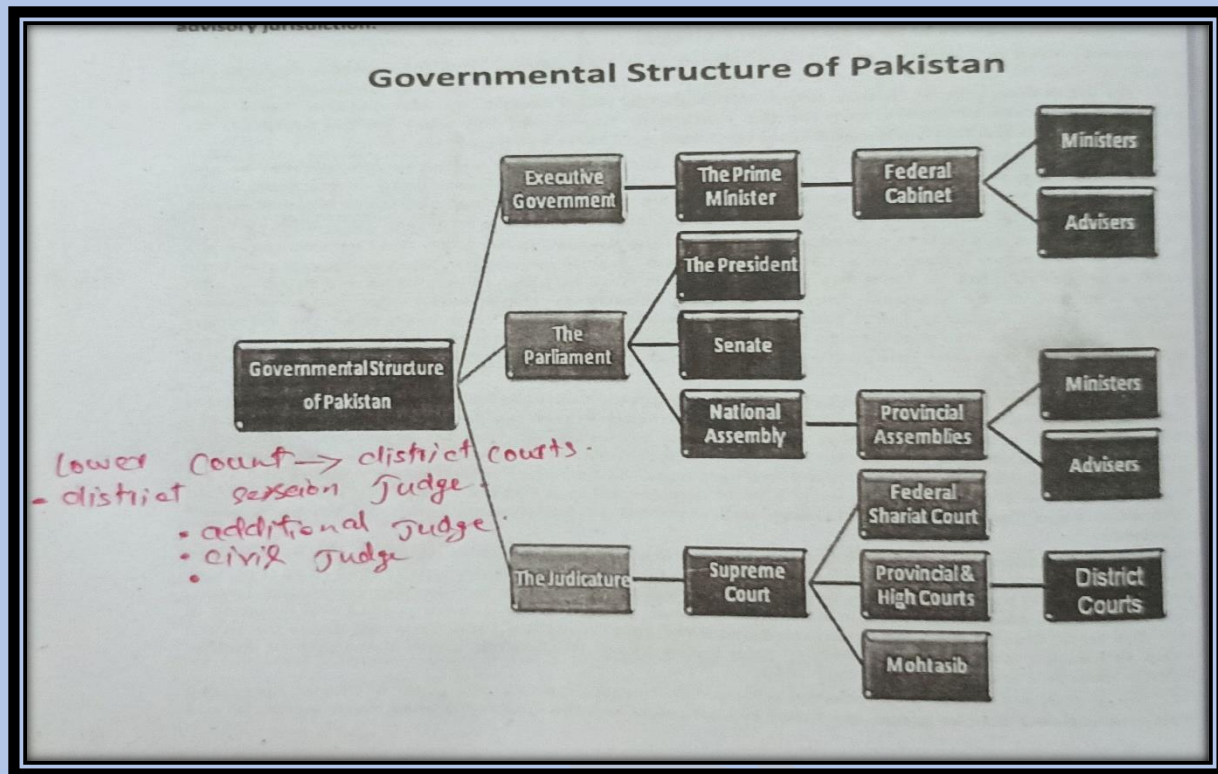
How many total martial law are there in Pakistan?

Since its creation in 1947, Pakistan has spent several decades under military rule (1958–1971, 1977–1988, 1999–2008).

PRINCIPAL ORGAN OF GOVERNMENT

There are three principal organ of government such as be likes

- 1. The parliament of Pakistan [introduction of Legislature and parliament.**
- 2. The Executive System of Pakistan.**
- 3. The judiciary [history and system of Pakistan].**



What is Parliament or Legislature ?

The term “legg” means LAW and “lature” place where laws are made another term , which is used as a synonym of legislature “parliament”.

OR

A parliament is a group of elected representatives with the power to make LAW.

Types of legislature / parliament ?

There are two main types of legislature / parliament.

- Bicameral
- Unicameral

Bicameral legislature ?

Bicameral means a legislature with two houses / chambers .A large number of modern legislature , particularly of big state , legislature with two houses (bi=two, cameral= houses).

Where the legislature is bicameral, “ the first house is usually called **LOWER House** , the second house is called the **Upper House** .

Unicameral Legislature ?

A legislature is unicameral if it consists of only One (Uni) chamber/ house is called unicameral legislature .

One house is usually representing the main territorial sub-division

Example of bicameral and unicameral legislature :

- Senate.
- House of representatives.
- House of commons.
- House of lords.
- Parliament.
- National assembly. [NA]
- General council.
- Chamber of deputies.
- Secretary of state.

Features of parliamentary system

- ❖ Close relationship between the legislature and executive:
- ❖ Executive responsible to the legislature:
- ❖ Dual executive :
- ❖ Secrecy of procedure:
- ❖ Leadership of the **Prime Minister** :
- ❖ Bicameral legislature :

- ❖ No fixed tenure :

Merits and demerits of parliamentary system :

Merits:

- ❖ Better coordination between the executive and the legislature:
- ❖ Prevents authoritarianism:
- ❖ Responsible government:
- ❖ Representating diverse group:
- ❖ Flexibility:

Demerits :

- ❖ No separation of power :
- ❖ Unqualified legislators :
- ❖ Instability :
- ❖ Ministers :
- ❖ Failure to take a prompt decision :
- ❖ party politics :
- ❖ Control by the Burescucracy :

Presidential system of Government :

In a presidential system , the head of the government leads an executive , that is distinct from the legislature. Here , the head of government and head of state are one and the same. Also a key features :

- The executive (president) can **Veto** acts by the legislature.
- The president has a fixed tenure and cannot be removed by a veto of no-confidence in the legislature .

- The president is elected directly by the people or an electoral college.

Core function of Legislature :

Legislature has four core function ;

- I. **Electoral representation.**
- II. **Law making.**
- III. **Authorization of the budget**
- IV. **Oversights** [oversights entails assessment, monitoring and rectification of implementation processes relating to laws and government politics] .

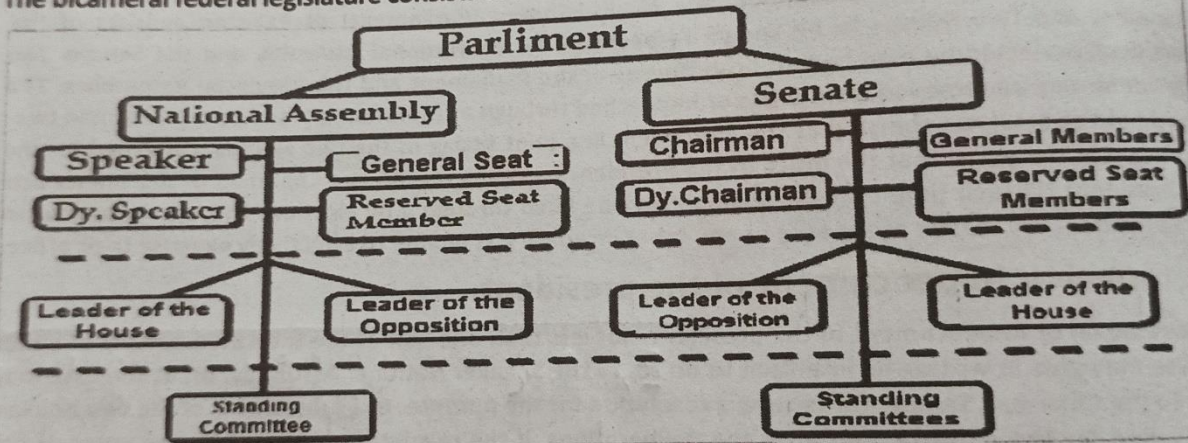
Main function of legislature:

- The first and foremost function of a legislature too legislature i.e. to make Law.
- Deliberatives function.
- Custodian of national finances.
- Control over the executive .
- Constituent function .
- Electoral function .
- Judicial function .
- Ventilation of Grievances.

Parliamentary House

2. Parliament House

The bicameral federal legislature consists of the following TWO houses. According to Article 50 of



The Pakistani parliament (Majlis_e_shura):

The Pakistani parliament (**Majlis_e_shura**) consists of two chambers in total :

1. President of Pakistan.
2. Parliament houses (two houses)
 - Upper house (Senate).
 - Lower house (National assembly).

The upper house (Senate) represents the provinces while the lower house (National assembly) is represents the people.

Senate election:

such manner as the President may, by order prescribe.

Sr. No	Provinces / Territories	General	Technocrats / Ulama	Women	Non-Muslims	Total
1.	Sindh	14	4	4	1	23
2.	Punjab	14	4	4	1	23
3.	Baluchistan	14	4	4	1	23
4.	Khyber Pakhtunkhwa	14	4	4	1	23
5.	Federal Capital	2	1	1	-	4
6.	FATA	8	-	-	-	8
	TOTAL	66	17	17	4	104

but current members is **100** .

National Assembly election:

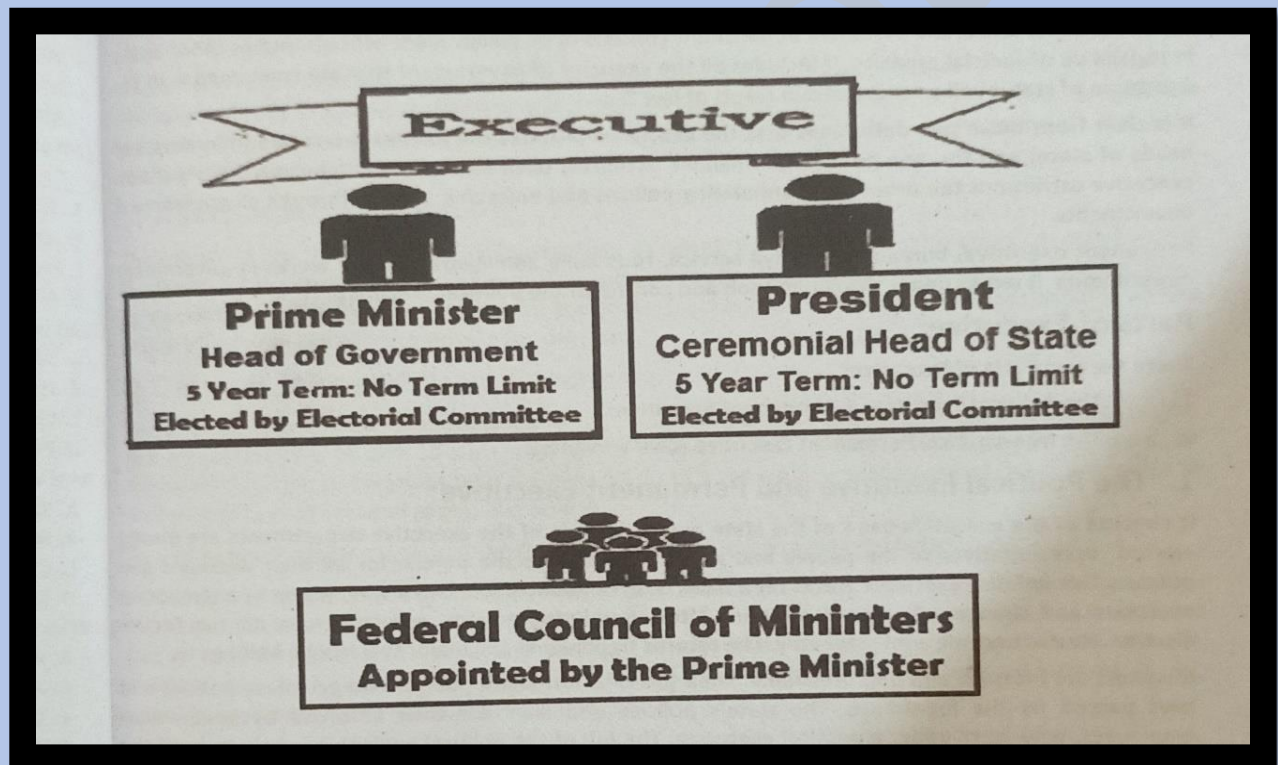
ADP-108. Constituents

General	141	61	51	16	3	272
Women	32	14	10	4	-	60
Non-Muslims	-	-	-	-	-	10
Total	173	75	61	20	3	342 ✓

THE EXECUTIVE OF PAKISTAN

The term “Executive” is used in both broad and narrow forms. It means all workers, political executive and permanent government employees who enforce laws and policies and run the states.

The second most powerful organ of government is the executive. It is the organ that enforces laws passed through legislature and government policies. In common parlance, people refer to the executive as the government. In modern times, the power and role of the executive has increased in every state.



Parts of executive :

There are two parts of executive :

- 1) The political executive and permanent executive .

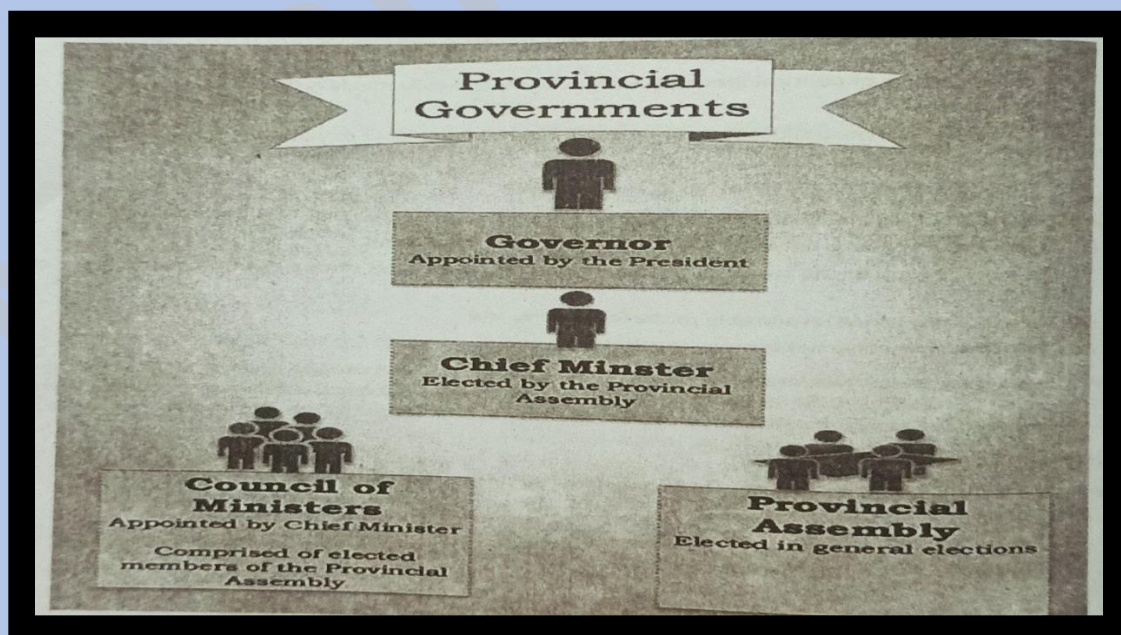
it consists of the executive head of the state and the head of the executive departments are mostly elected representatives of the people and accountable to the people for all their decision and policies.

2) The non-political permanent executive(Civil Servants).

These bureaucrats are from the lower to the highest. Their jobs is to carry out the day-to-day administration. These government employees are politically neutral and do not pledge allegiance to any political party.

Function of the Executive :

- Enforcement of law.
- Appointment-making function.
- Treaty-making function.
- Defence, war and peace.
- Foreign policy-making .
- Financial function.
- Some semi-judicial function.



Main role of executive in Pakistan:

- 1) Appointing federal judges (include members of supreme courts).
- 2) Acting as head of state.
- 3) Ambassadors , and cabinet officials.
- 4) Serving as commander in chief of the armed forces .

Types of executive in Pakistan:

Three types of executive in Pakistan:

1- Executive authorities:

- a) The president:
- b) The prime minister :
- c) The cabinet (a council of ministers) :
- d) The executive authority of a province : [CM & Governor]

2- Executive institution :

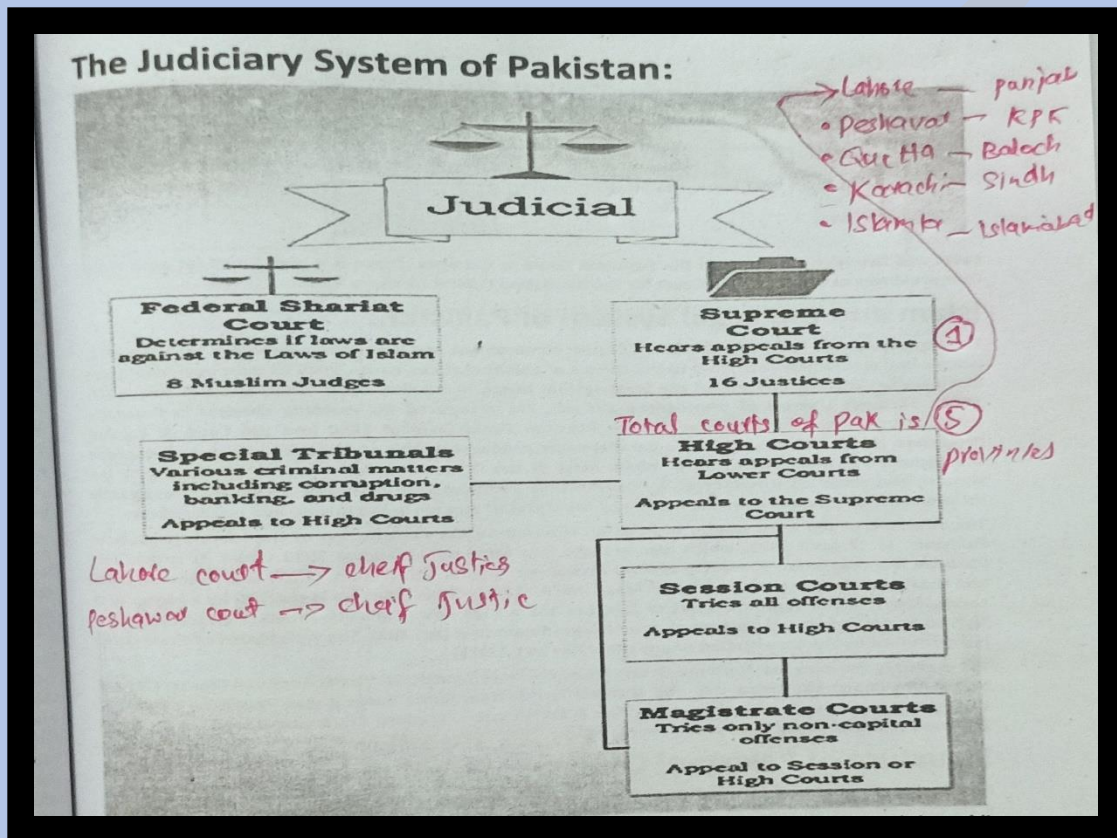
- a) The senate :
- b) The national assembly :
- c) The judiciary :
 - Supreme court .
 - Federal shariat court of Pakistan .
 - Provincial and high court .
 - Ombudsman / Mohtasib .
- d) Provinces assemblies :.
 - Provincial assembly of Punjab .
 - Provincial assembly of Sindh .
 - Provincial assembly of Gilgit- Baltistan.
 - Provincial assembly of Khyber pakhtunkhaw .
 - Provincial assembly of Balochistan .

3- Executive services :

- a) Federal government secretaries :
- b) Provincial government secretaries :
- c) Other provincial officers :

THE JUDICIARY OF PAKISTAN

There difference on opinions and suggestion among the people different societies and these difference become the cause of disspute and a thin dispute is called judiciary system.



Features of Pakistan judicial system :

- Organization of the judiciary .
- Independence of the judiciary .
- Separation of judiciary and administrations .
- Supremacy of the supreme courts .
- Civil and criminal courts .
- Establishment and jurisdiction of courts .

- Judiciary branches :
 - Superior judiciary:
 - Sub_ordinate judiciary:
 - Ombudsman institution:

Superior judiciary :

The following FOUR courts are considered in superior judiciary of Pakistan :

1. High judiciary council of Pakistan
2. Supreme courts of Pakistan
3. Federal Shariat courts of Pakistan
4. High courts

1_ Supreme courts of Pakistan :

It is the highest courts of Pakistan. It is both constitution and ordinary court of law. Its dissions are binding (cannot any change in law) for all others courts of Pakistan. Its makes seat is Islamabad.

- ❖ Supreme court contains nineteen[19] judges .
- ❖ Supreme court contain two[2] additional judges.
- ❖ Supreme court provide also two[2] ADhoc judges.

Power, composition, and responsibilities of the supreme court :

The part VII of the constitution 1973, range from articles 176_191, deals with the powers, composition, and responsibilities of the supreme court :

Articles 176_ Composition of the court:

- Constitution of Pakistan 1973 article 176_191 are related to supreme court of Pakistan.

Articles 177_ Appointment and qualification of the chief justice:

- He should be citizens of Pakistan .
- he should be reversed of judge in high court for period of five{5} years .
- He should be work as a lawyer in supreme court for period of fifteen {15} years.
-

Articles 178_ Oath of office :

- Chief of justice of Pakistan will take to Outh office before president of Pakistan and other judge of supreme court of Pakistan will take of office before chief justice of Pakistan .

Articles 179_ Retirement:

- The Retirement age of chief justice of Pakistan is sixty five {65} years .

Articles 180_ Acting chief justice, absence of the chief justice:

- chief justice of Pakistan under advice of president will take Outh of adhoc judge. They will leave some press an permanent staff.

Articles 181_ Acting judges , absence of other justice:

- In this clause , judge of high court includes a person who retired as a judge of a high court.

- An appointment under this article shall continue in force until it is revoked by the president .

Articles 182_ Adhoc appointment of justice :

- Appointment of adhoc judge with the approval of the president and with the consent of the chief justice of the high court ,required a judge of that court qualified for appointment as a judge of the supreme court .

Articles 183_ Location of court:

- Until provision is made for establishing the supreme court at Islamabad , the seat of the court shall be at such place as the president may appoint.

Articles 184_ Original Jurisdiction of supreme court :

- The original jurisdiction means that the supreme court can be approached with regard to such matters without contacting any other court of law.
- The supreme court has also original jurisdiction in the enforcement of fundamental rights .

Articles 185_ Jurisdiction to hear and determine appeals :

- The SC has appellate jurisdiction to hear and determines appeals from judgement , decree,order or sentences of a high court.

Articles 186_ if requested , advise the president on important matter of law :

- The supreme court may, if it considers such as a question and reports its opinion to the president who may or may not accept it .

Articles 186A_ Authority to transfer Venue :

- Supreme court of Pakistan has the power to proceed with a case or to transfer it to any courts.

Articles 187_ To issue direction :

- Supreme court of Pakistan has a power to issue the direction about the case which are proceedings or pending to solve them.

Articles 188_ Revision Power :

- Supreme court of Pakistan has completed any case it can be review itself and appeal of that person .

Articles 189_ Protection of fundamental rights :

- The supreme court protect the fundamental rights of the citizens.

Article 189A_ Interpretation of the constitution :

- The supreme court is empowered to interpret the constitution of **Islamic Republic of Pakistan**.

Article 189B_ Rule and regulations :

- The supreme court makes rules regulating for its practice and procedure .

Article 190_ Conclusion :

- To conclude, I can say that the supreme court is the highest court of Pakistan . It consists of chief justice and other judges who are appointed by the president of Pakistan .

HIGH COURTS

It is the highest courts of Provinces . It is both constitution and ordinary court of law. Its dissions are binding (cannot any change in law) for all others courts of Pakistan. Its makes seat is Islamabad.

Introduction :

According of the constitution of Pakistan 1973 a high court is the highest court in a province. Normally the jurisdiction of a high court is limited to its respective province. The jurisdiction of a high court may, by act of parliament , be extended to any area in Pakistan not forming part of a provinces.

Relevant provision:

- Article 192 to 203 of the constitution of Pakistan 1973.

Article 192_ Formation & Constitution of the high courts.

- A high court shall consists of a chief justice and so many other judges as maybe determined by law or, until so determined, as maybe fixed by the president.

Article 193_ Appointment of the high courts judges :

- The chief justice and each of other judges of a high court shall be appointed by the president in accordance with article 175A.

Qualification for judges :

- He must be a citizen of Pakistan.
- He must not be less than 40 years of age.
- He has been advocate of high court for at least 10 years.
- He has been in civil service for minimum ten years and during his service he has served as district judges for three years.
- He has held a judicial office in Pakistan for a period of not less than ten years.

Article 194_ Oath of Office :

- A **chief justice:** of high court takes his oath of office before the Governor other judge take their Oath before he chief justice of relevant high court .
- **Chief justice of Islamabad high court :** will take his Oath of office before the president of Pakistan .
- **Other judge:** take their Oath of office before chief of justice of Islamabad of high court .

Article 195_ Retiring Age :

- A judge of high court is retiring age is sixty-two [62] years.
- Unless he sooner resigns is removed from office in accordance with the constitution.

Article 196_ Acting Chief Justice :

- The office of chief justice of high court is vacant or the chief justice of a high court is absent or is unable to perform the function of his office due to any other cause the president shall

appoint [one of the judges of the high court , or maybe request one judges of the supreme court], to act as chief justice .

Article 197_ Additional Judge :

- The president may, in the manner provided in clause {1} of article 193, appoint a person qualified for appointment as a judge of the high court to be additional judge of the court for such period as the president maybe determine , being a period not exceeding such period , if any ,as maybe prescribed by Law.

Article 198_ Seat of the High Court :

- Each high court and judges and divisional courts there of shall sit at its principal seat and the seat of its branches and may hold, at any place with in its territorial jurisdiction, circuit courts consisting of the such of the judges as may be nominated by the chief justice .

Article 199_ Jurisdiction of high court :

- 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 | | shall not be abridges.

Article 200_ Transfer of high court judges :

- In this article “judges ” does not include a chief justice [but include a judge for the time being acting as chief justice of a high courts other judge of the supreme court acting as such in pursuance of a request made under of article 196]

Article 201_ Decision of high court binding on subordinate courts :

- Subject to article 189, any decision of a high court shall, to the extent that it decide a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it.

Article 202_ Rules of Procedure :

- Subject to the constitution and law, a high court may make rules regulating the practice and procedure of the court or of any court subordinate to it.

Article 203_ High court to superintend subordinate courts :

- Each high court shall supervise and control all courts subordinate to it.

Differences Between Civil and Criminal Cases

In the Quebec legal system, a person can be brought to court in a civil case or a criminal case. The differences between these two kinds of cases include the objectives, the deadlines for taking legal action and the level of evidence needed to convince the judge.

Civil Court

In these cases, a person or an organization asks a judge to settle a civil problem, such as

a problem concerning an inheritance,

a problem involving a contract, or

a family problem, such as divorce or custody of children.

A person can also ask a judge for compensation for damage suffered because of someone else's fault. This type of case is called a **“civil responsibility”** case.

Civil cases deal with a wide range of topics, and many different rules apply to them. The “Civil Cases” column in the table below provides information on “civil responsibility” cases only.

Criminal Court

The reason these cases come to court is always the same: a person is taken to court because she is accused of a crime. The judge, and sometimes a jury, must consider the evidence presented during a trial to decide whether the accused is guilty or innocent.

Most crimes and their punishments are described in the Criminal Code of Canada. Some crimes involve other people, including

assault,

murder,

sexual assault, and

identity theft.

Other crimes have to do with objects, such as drug possession and making fake money (counterfeit).

OR

What is the difference between Criminal Law and Civil Law?

Criminal Law

- Criminal law is all about the public misdeeds and breaches.
- According to criminal law only limited appeals can be done.
- In this law, fines are given to state.
- Unanimous jury conducts proceedings.
- According to this law, state takes the actions

Civil Law

- The laws about the crimes in which parties are involved in a crime privately are called Civil Law.
- In civil law, both parties have the right to conduct appeals.
- The compensations are given to individuals.
- Non-Unanimous jury conducts case Proceedings.
- An individual brings the actions in these cases.

District Court Judge	Sessions Court Judge
It is the highest civil court of a district.	It is the highest criminal court of a district.
It is presided over by the District Court Judge.	It is president over by the Sessions Court Judge.
These judges decide civil related cases such as divorce, will, land, property, money transactions, guardianship and arbitration.	These judges decide criminal related cases such as murders, theft, dacoity, pick-pocketing, etc.
These judges act as Deputy Commissioner and District Collector in their capacity - maintain law and order and supervise the collection of revenue and taxes in the district.	No administrative functions are performed by them.

Nasir Notes