

Judicial System of Pakistan

By

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I am going to introduce the judicial system in Pakistan and its origin. I would also make humble venture to dispel the incorrect perception entertained by certain about Islam and its practices. I would also narrate some historical events which created great hurdles in the flourishing of democracy in Pakistan.

Rationale behind creation of Pakistan was that Muslims should be able to live their lives according to their religion. The country was created with the partition of India in the year 1947 by the British through Indian Independence Act, 1947. At its creation for the time being it was governed by the Government of India Act 1935. However, the principles laid down by the Quranic injunctions revealed fourteenth centuries earlier regarding administration of justice, good governance through democratic means and establishment of social justice with full emphasis on independence of judiciary were incorporated in the Objective Resolution adopted by the Constituent Assembly of Pakistan on the 12th March 1949. The main feature of this Resolution was to make the country, a democracy, based upon Islamic Social justice in every sphere of life. The first constitution of Pakistan by the Constituent Assembly was framed in the year 1956 and in the preamble the objective Resolution which could be termed as a grund norm of the constitution of Pakistan was incorporated, featuring federalism, parliamentary form of government, independence of judiciary and social welfare state.

In the preamble of every constitution it is mentioned that sovereignty over the entire universe belongs to Allah (God) Almighty and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust. So the chosen representatives according to the constitution are trustee and they are to perform their functions accordingly.

The objective Resolution which was passed in the year 1949 became part of the substantive constitution by incorporating Article 2A in the year 1985. .

However, unfortunately a military dictator did not allow the constitution of 1956 to function and abrogated the same in the year 1958 at its very infancy and derailed the democratic system. Another constitution was framed in the year 1962 which too was abrogated in the similar manner by another dictator in the year 1969. Where after, the elections were held and a democratic government came into being in the year 1971. This government promulgated the constitution in the year 1973 fully based upon the democratic system as well as other clauses mentioned in earlier Constitutions. A chapter of Fundamental

Rights was also incorporated. However, this constitution too was not allowed smooth functioning and an another dictator abrogated it in the year 1977 and remained in power for more than a decade. Thereafter elections were held in the year 1988 and the country was again put up on the rail of democracy. Our provisions of Fundamental Rights given in Constitution are second to none in the world. Some of the Articles pertaining to Fundamental & Human Rights are shown on the slides.

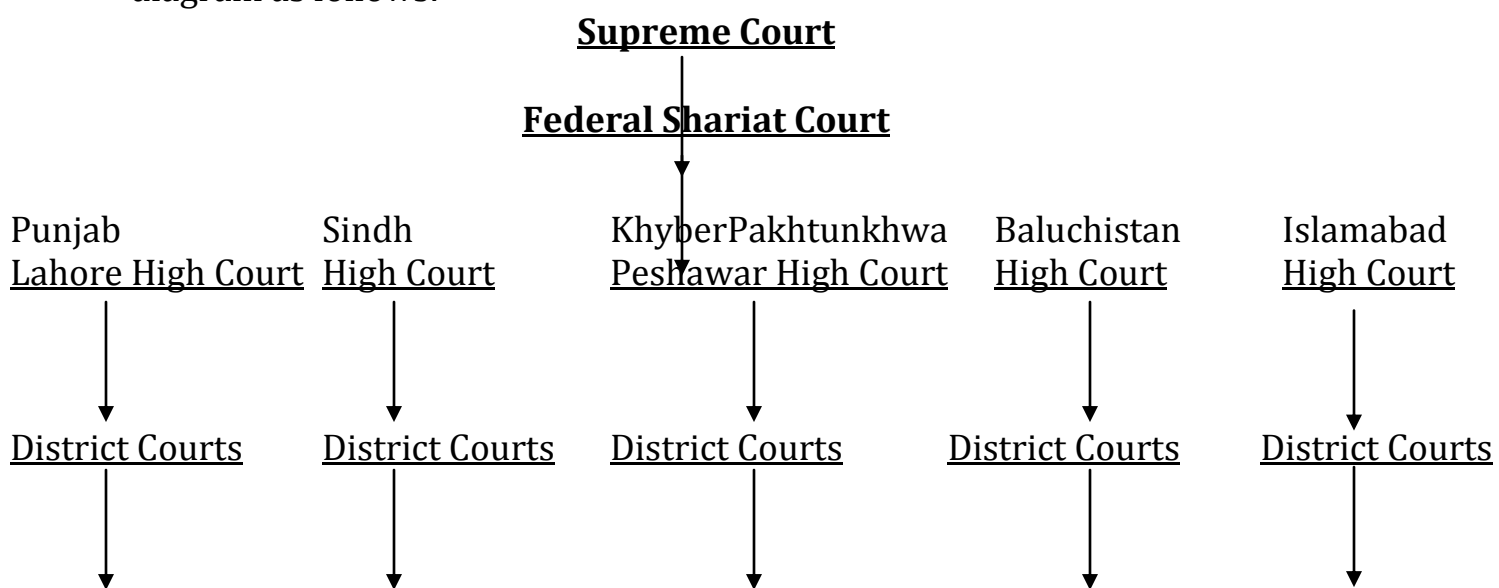
Presently the Judicial system of the country according to this Constitution is being regulated under Article 175 which provides for the establishment of a Supreme Court and High Courts in each of the four provinces, i.e. Punjab, Sindh, Balochistan and Khyber Pakhtunkhwa. Recently through an amendment, a High Court for Islamabad capital territory has also been established. This Article also provides for the establishment of other courts through law and accordingly Civil Courts and Criminal Courts stood established respectively under Civil Courts Ordinance 1962 and Code of Criminal Procedure 1898. Article 227 of the constitution has also established Federal Shariat Court, the jurisdiction of which is in the following terms.

“All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions”.

In short the Judicial System of Pakistan broadly may be divided into three classes, i.e. tricotomy of Judicial System.

- (a) Superior judiciary comprising of Supreme Court, Federal Shariat Court and High Courts.
- (b) District judiciary comprising of Civil and Criminal Courts created by acts working under the supervision and control of the respective High Courts under Article 203 of the Constitution.
- (c) The Administrative Courts, Tribunal and Special Courts created under different laws.

The hierarchy of the courts as stated above is illustrated by means of a diagram as follows:-



Civil , Criminal, Administrative, Tribunal, Income Tax, Banking and Many other Courts created through special laws.	Civil, Criminal, Administrative, Tribunal, Income Tax, Banking and Many other Courts created through special Laws.	Civil, Criminal, Administrative, Tribunal, Income Tax, Banking and Many other Courts created through. special laws.	Civil, Criminal, Administrative, Tribunal, Income Tax, Banking and Many other Courts created through special laws.	Civil, Criminal, Administrative, Tribunal, Income Tax, Banking and Many other Courts created through special laws.
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The induction of Superior Courts Judges earlier was made for the High Courts on the recommendations of respective Chief Justices after the approval of the Provincial Governor / Chief Minister and where after the matter was to be sent to the Chief Justice of Pakistan and accordingly final approval was to be made by the President through Federal Ministry of Law.

However, now the procedure has been completely changed through 18th amendment in the Constitution of Pakistan. By adding Article 175A which provides for a Judicial Commission comprising the followings:-

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| 1 | Chief Justice of Pakistan | Chairman |
| 2 | Four Senior Most Judges of the Supreme Court | Member |
| 3 | A former Chief Justice or a former Judge of Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan in consultation with the four member judges, for a period of 2 years. | Member |
| 4 | Federal Minister for Law and Justice as well as Attorney General for Pakistan and a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council would also be nominated for 2 years. | Member |

Thereafter the matter would be sent to the Parliamentary Committee consisting of eight members, four from Senate of Pakistan and four from the National Assembly of Pakistan and out of these four members shall be from the Treasury Benches and four would be nominated from the Leader of Opposition. The Committee would have fourteen days to dilate after the approval by the Judicial Commission, failing which the nomination would be deemed to have been confirmed by the majority. However, by $\frac{3}{4}$ majority, the Parliamentary Committee for the reasons to be recorded may not confirm the nomination submitted by the Judicial Commission. Finally the President would approve the appointment through the Ministry of Law.

The power and jurisdiction of judicial review has been incorporated for Supreme Court and High Courts respectively under Articles 184 (3) and 199 of the Constitution. This judicial review jurisdiction of the Supreme Court is of much wider import as compared to the jurisdiction of the High Courts in this respect. The former has got jurisdiction to take cognizance wherever the **Fundamental Rights** are violated and the

matter is of public importance. While for the exercise of jurisdiction of judicial review by the High Courts, it can only be exercised if certain conditions are satisfied.

Unfortunately, hardly a period of one decade was given for the development of democratic system when the 4th dictator stepped in and abrogated the constitution in year 1999 and derailed the entire democratic system. He even went to the extent of completely exterminating / annihilating the entire superior judiciary and made an abortive attempt terminating the services of more than a hundred judges of superior courts. However, he did not succeed in his nefarious design. The entire lawyers community and civil society of Pakistan fully supported and encouraged by the electronic and print media started a Movement for the restoration of judiciary. This Movement continued unabated nearly for two years which efforts were appreciated all the world over and even American Legal Bar did not lag behind in this respect. Ultimately the judiciary was Restored on 16th March, 2009.

Now after this restoration of independent judiciary, the people of Pakistan are looking towards it for the redressal of all their grievances and in return the judiciary is playing an active part to make Pakistan an Islamic socialist welfare state wherein everybody should enjoy the protection of law and shall be treated in accordance with the law which is an inalienable right of every citizen wherever he may be and every other person for the time being within Pakistan as mandated by Article 4 of the constitution of Pakistan.

I feel it imperative to mention here that this principal of judicial review was not incorporated in the American constitution which was framed in the year 1789 consequent to the Declaration of Independence by the delegates of thirteen states who revolted against the British rule and its Hegemony declaring that “all men are created equal by their Creator”, as such British Government has no right to subjugate over the Americans. The Herculean Task undertaken by the Chief Justice John Marshal in a case of “Marbury Vs Madison” held that the Supreme Court has got the power to declare any law ultra vires if it is in conflict with the constitution of America. Before that the judiciary was the weakest of the three departments of state governance. Alexander Hamilton has stated about the then judicial setup in the following words “*judiciary has no influence over sword or the purse and look at the aid of executive arms even for the efficacy of its judgment*”.

This landmark judgment “Marbury Vs Madison” transformed the weakest into the most powerful. This judgment was criticized by no less than a person, the President of America, Thomas Jefferson who stated that unelected life tenure would thus become a **DESPOTIC BRANCH**. Similarly the judicial review power of the Supreme Court was also not appreciated by the President Roosevelt who after his landslide victory in 1936 proposed a law providing that when any judge of the Supreme Court of U.S.A reached at the age of 70 and did not resign or retire, the president could with the Senate confirmation appoint another

additional judge, as he was of the view that the court had been assuming the power to pass on the Wisdom of the acts of Congress. According to him it was necessary to take action to save the American Constitution. However, the Senate judicial committee did not approve this bill.

Similarly, this power of judicial review was not much appreciated by the executives in Pakistan in the year 1997 as well as during this period, as most of the orders passed by the Supreme Court are not implemented in letter and spirit by the executive.

Now coming to Pakistan, after the restoration of judiciary, the Chief Justice of Pakistan in collaboration with other judges and all the stakeholders has formulated the National Judicial Policy through which serious attempts are being made by the courts of Pakistan to clear the back log of the cases and to dispose off the new cases at the earliest possible time. In this regard the Judicial Academies in all the four Provinces as well as Federal Judicial Academy at Islamabad are playing their dominant role in training all the stakeholders who are in one way or the other having any nexus with the administration of justice, impressing upon their minds the methods laid down in the National Judicial Policy for the early dispensation of justice. I am also heading the province of Punjab Judicial Academy after my retirement from the Supreme Court of Pakistan, where efforts are being made to inculcate in the minds of all the trainees the hopes entertained by the general people of Pakistan for the redressal of their grievances shall be materialized at an early stage from them. I am hopeful having trust in God that in this way the high expectations of the general public from the judiciary would be met and better results would follow.

As I stated, in the beginning that I would venture to dispel incorrect perception kept by certain people about Islam. The Muslim day starts with Assalam-o-Alaikum greetings meaning thereby "Peace Be Upon You". Islam gives great importance to peace and administration of justice in a fair manner. To administer justice is considered to be a Divine attribute and is regarded as a religious duty of everyone as an act of piety.

I would be referring certain verses of the Holy Quran wherein the principles of administration of justice have been mandated. It is ordained therein that one should **Stand out firmly for the teachings of God, as witnesses to fair dealing, and let not the hatred of others to you make you diverge from state course and depart from justice. Be just in your dealings which is next to piety. Whenever you judge Between man and man, judge them with justice.**

It is further ordained that you should **Stand firmly for justice, as a witnesses to Allah, even though it be against yourself, or your parents, or your kin, be he rich or poor.**

There are many more other verses regarding the dispensation of justice wherein it is ordained that the balance of justice must be kept in equilibrium. The principle of ADR (Alternate Dispute Resolution) which

is becoming popular these days in the corridor of courts has also been mentioned in the following terms:-

“And if two parties or groups among the believers fall to fighting, then make peace between them both. But if one of them outrages against the other, then fight against the one that outrages till it complies with the Command of Allah. Then if it complies, then make reconciliation between them justly, and be equitable. Verily! Allah loves those who are the equitable”.

It is also to be brought to the notice of illuminated gathering that the Islam detests the killing of human being. It is stated in Quran that **“Killing of one man amounts to killing of whole mankind and if anyone save a life it would be as if he has saved the life of all mankind”.**

I must say over here that two American Judges, Mr. Larry Boyle of IDAHO and Ms. Helen Ginger Berrign of LOUISIANA both Federal Judges of USA, visited the Punjab Judicial Academy and I presented them these verses, which they highly appreciated as it was certainly a good news to them that Islam has even ordained to give evidence against oneself. However, I must admit over here that all these good teachings of Islam are not fully practiced in letter and spirit by the Muslims. I must also point out here that a very senior religious leader in Pakistan at Lahore before a gathering of more than three million Muslims have stated time and again that the spirit of teaching of Islam could be seen in practice in Western World.

The Holy Quran is a perpetual source of guidance for the humanity laying down the principles to lead life aptly from the very conception of human being till end. It has brought a most dynamic revolution extending beyond time and space with its multifaceted manifestations touching all the aspect of life. As already stated the concept of justice in Islam is that the right be given to whom the same is due and maintain the balance of equilibrium. I myself cannot claim myself as a Muslim and my faith would not be perfect according to the Holy Quran till I accept and believe in Jesus Christ as a messenger of God and his book and deeds. God has created the human being as the noblest among all His creature. In this regard, Article 14 of the constitution of Pakistan states that dignity of man and subject to law, the privacy of home shall be inviolable.

The Muslims are also mandated to give full regard and respect towards the faith of other people. Here I would like to quote one instance wherein the Caliph Hazrat Umar (R.A) declined to pray in a Church of Scpulcher though He was asked to do the same by the Arch Bishop of Jerusalem for the reason that later on the Muslims may turn it into a mosque.

Article 20 of the constitution of Pakistan provides full liberty to every citizen having right to profess, practice and propagate his own religion.

Further every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious Institutions. Islam also propagates democratic system of governance through elections. I may mention here that the four Caliphs of Islam were chosen by the people and none of them was appointed king nor anyone tried to establish his dynasty by appointing his successor.

Prophet Muhammad (PBUH) throughout His life lead His life strictly according to the teachings of Islam as mandated in the Holy Quran. Here I would be referring to His last sermon at the congregation of Hajj where He preached equality and pronounced that no person has got preference over the other, whether he is from East or West black or white and everybody should be treated even handedly with fairness and justice. He also stated that one should adopt the same which he prefers for self.

Mr. Michael H. Hart published a book in the year 1989 titled **“THE 100 - A RANKING OF THE MOST INFLUENTIAL PERSONS IN HISTORY”** whose copyright has been kept by “Hart Publishing Company Inc, New York”. This book has been reprinted more than ten times. In this book he has placed Hazrat Muhammad (PBUH) at top of 100 persons in the face of terrible criticism which he aptly refuted.

He signed a covenant when a delegation from St Catherine’s Monastery who visited him seeking his protection. (The monastery, located at the foot of Mount Sinai, is the world’s oldest, and a treasure house of rare manuscripts, icons and Christian history.)

The covenant’s words are as follows:

“This is a message from Muhammad ibne Abdullah, as a covenant to those who adopt Christianity, near and far, we are with them.

“Verily I, the servants, the helpers, and my followers defend them, because Christians are my citizens; and by Allah! I hold out against anything that displeases them.

“No compulsion is to be on them ... Neither are their judges to be removed from their jobs nor their monks from their monasteries.

“No one is to destroy a house of their religion, to damage it, or to carry anything from it to Muslims’ houses.

“Should anyone take any of these [belongings], he would spoil God’s covenant and disobey His Prophet. Verily, they are my allies and have my secure charter....

“No one is to force them to travel or to oblige them to fight. Muslims are to fight for them.

“If a female Christian is married to a Muslim, it is not to take place without her approval. She is not to be prevented from visiting her church to pray.

“Their churches are to be respected. They are neither to be prevented from repairing them nor [barred] the sacredness of their covenants. “No one of the nation is to disobey the covenant till the Last Day (of Judgment),”

It is important to remember that this covenant was made binding on all the Muslims for all times, past, present and future, till the Day of Judgment. Unfortunately, this covenant is being violated by certain persons which cannot be appreciated on any score by a practicing Muslim.