

Multi-level Governance in Pakistan:

Module VIII

Pillars of State

- Federal Govt. consists of the following branches
 - **Executive**
 - **Legislative**
 - **Judiciary**

Legislature

- Legislative Branch comprises of elected (**directly or indirectly**) elected representatives
- President is the head of the state
- Parliament includes (Majlis-e-shoora) Art. 50
- National Assembly (Lower House) Art. 51
- Senate (Upper House) Art. 59
- The President

Legislature (National Assembly)

Province / Area	General Seats	Women Seats	Non-Muslim	Total Seats
Balochistan	16	4		20
Khyber Pakhtunkhwa	45	10		55
Punjab	141	32		173
Sindh	61	14		75
Federal Capital	3	-		3
			10	10
Total	266	60	10	336

Legislature (Senate)

Provinces / Territories	General	Technocrats / Ulema	Women	Non-Muslims	Total
Sindh	14	4	4	1	23
Punjab	14	4	4	1	23
Balochistan	14	4	4	1	23
Khyber Pakhtunkhwa	14	4	4	1	23
Federal Capital	2	1	1	-	4
TOTAL	58	17	17	4	96

Function of National Assembly

- The [National Assembly](#), Pakistan's sovereign legislative body, makes laws for the federation under powers spelled out in the [Federal Legislative List given in the Constitution](#)
- Through debates, adjournment motions, question hour, and Standing Committees, the National Assembly keeps a check on the Govt.
- It ensures that the Govt. functions within the parameters set out in the Constitution and does not violate the people's fundamental rights
- The Parliament scrutinizes public spending and exercises control of expenditure incurred by the Govt. through the work of relevant Standing Committees. The **Public Accounts Committee** has a special role to review the [report of the Auditor General](#)

Function of Senate

- The main purpose for the creation of the Senate of Pakistan was to give **equal representation** to all the **federating units** since the membership of the National Assembly was based on the population of each province.
- Equal provincial membership in the Senate, thus, balances the provincial inequality in the National Assembly and dispels doubts and apprehension, if any, regarding deprivation and exploitation.
- The role of the Senate is to promote **national cohesion** and harmony and to alleviate fears of the smaller provinces regarding domination by any one province because of its majority, in the National Assembly.
- The Senate, is a body which represents the provinces/territories of the country and promotes a feeling of **equality, peace and harmony**, which is so essential for the growth and prosperity of a nation. Thus, the Senate in Pakistan, over the years, has emerged as an **essential organ and a stabilizing factor** of the federation.

Provincial Assemblies

	General Seats	Women	Non-Muslims	Total
Balochistan	51	11	3	65
Khyber Pakhtunkhwa	99	22	3	124
Punjab	297	66	8	371
Sindh	130	29	9	168

Provincial Assemblies

- **Powers and Limitations**
- The Provincial Assembly is empowered to make laws for the Province with respect to criminal law, criminal procedure, evidence and any matter not enumerated in the Federal Legislative List. It cannot, however, make any law –
 - which is repugnant to the injunctions of Islam as laid down in the Holy Quran and the Sunnah; or
 - which is repugnant to any provision of the Constitution;
 - which is inconsistent with a federal law; or
 - which violates or contravenes any of the fundamental rights; or
 - which is not in consonance with the [Principles of Policy](#).

Judiciary

- [Judiciary](#) (Art. 175) refers to the system of law courts that administer justice and constitute the judicial branch of Govt.
- The Purpose of legal system is to provide a system for interpreting and enforcing the law
- The Purpose of a legal system is also to provide a systematic, orderly, and predictable mechanism for resolving disagreements

Function of Judicial System

- Judiciary performs following functions
 - Adjudication (Arbitration, negotiation)
 - Legislation
 - Execution
 - Interpretation

Function of Judicial System

- Adjudication
 - This is core of any legal system, in its judicial function, a legal system adjudicates disputes, issuing a decision as to how the disagreement should be settled
- Legislative Function
 - The purpose of legislative function is to determine the rules that will govern process of adjudication
 - It tells how the adjudication would be done

Function of Judicial System

- **Execution Function**

- It gives the legal system its teeth, providing incentives for peaceful behavior; both domestic law enforcement and national defense under the executive function
- It operates at two levels, first, disputing parties submit to adjudication, second, the involved parties actually comply with settlement eventually reached through judicial process
- In its executive function the legal system may rely on
 - coercive force
 - Voluntary social sanctions
 - Or combination of two

- **Interpretation of Constitution**

- Legislature is responsible for legislation, however, interpretation of legislation is done by the supreme court or the constitutional courts (**Constitutional Benches – 26th Amendment – 21 Oct. 2024**) Art. 184

Constitutional Court / Benches

- A **Constitutional Court** is a specialized court that primarily deals with constitutional law and issues related to the interpretation, application, and enforcement of a country's constitution.
- Its main purpose is to ensure that the laws, policies, and actions of the government comply with the constitution, which is the supreme legal framework of a country.
- Constitutional courts may function as independent judicial bodies or as part of a broader judicial system, depending on the structure of a country's legal framework.
- They play a vital role in maintaining the balance of power among the branches of government and protecting fundamental rights and freedoms.

Key Functions of a Constitutional Court

- Judicial Review
- Protection of Fundamental Rights
- Interpretation of the Constitution
- Resolution of Constitutional Disputes
- Oversight of Elections
- Review of international treaties

Characteristics of Constitutional Courts

- Exclusive Jurisdiction
 - Constitutional courts generally handle only cases related to constitutional matters, unlike general courts that deal with a broader range of legal issues.
- Autonomy
 - They operate independently of the executive and legislative branches to ensure impartiality and uphold the rule of law.
- Binding Decisions
 - The rulings of constitutional courts are binding and carry significant authority, often shaping the country's legal and political landscape
- Advisory Role
 - In some jurisdictions, constitutional courts provide advisory opinions to the government or parliament on constitutional matters.

Advantages of Constitutional Court

- **Upholds Rule of Law:**

Ensures that all government actions and laws conform to constitutional principles.

- **Protects Rights and Liberties:**

Safeguards fundamental rights against encroachment by the state or other entities.

- **Ensures Checks and Balances:**

Resolves conflicts between branches of government, maintaining a balance of power.

- **Stability in Legal Framework:**

Provides clear and consistent interpretations of the constitution, reducing legal ambiguities.

Challenges and Criticisms

- **Judicial Activism:**
 - Constitutional courts may be accused of overstepping their boundaries by making politically charged decision
- **Delays:**
 - The judicial process can be time-consuming, delaying the implementation of policies or laws.
- **Potential for Politicization:**
 - In some cases, the appointment of judges to constitutional courts may be influenced by political considerations, raising concerns about impartiality.
- **Complexity:**
 - The interpretation of constitutional law can be highly complex, leading to contentious decisions and debate

Pakistan's Judicial System

- The Govt. of India Act 1935 was retained as a provisional Constitution of Pakistan at the time of independence in 1947
- As consequence, the legal and judicial system of the British period continued with due adaptation and modification, to suit the requirements of the new Republic
- Pakistan is an Islamic Republic, Islam is the state religion, and Constitution requires that laws be consistent with Islam

Supreme Court of Pakistan

- The Supreme Court was created under the Constitution of 1956
- It succeeded the Federal Court, set up in 1948, which was successor to the Federal Court of India, established in 1937
- The Supreme Court of Pakistan is the highest appellate court of the country and court of last resort. It is the final arbiter of the law and the Constitution
- Its orders/decisions are binding on all other courts in the country.
- All executive and judicial authorities are bound to act in aid of the Supreme Court
- The Constitution provides for the independence of judiciary and its separation from the executive.
- The Constitution assigns the Supreme Court a unique responsibility of maintaining harmony and balance between the three pillars of the State, namely, the Legislature, the Executive and the Judiciary
- As a guardian of the Constitution, the Court is required to preserve, protect and defend this basic document.

Supreme Court of Pakistan

- The Supreme Court exercises original, appellate and review jurisdiction
- It possesses exclusive original jurisdiction for the settlement of intergovernmental disputes between Federal and Provincial Government(s) or Provincial Governments
- The Supreme Court can also exercise **original jurisdiction**, with respect to the enforcement of fundamental rights, if the case involves an issue of public importance
- The Court also exercises **advisory jurisdiction**, where the President may obtain its opinion on a question of law
- Under its **appellate jurisdiction**, the Court entertains appeals against orders and decisions of High Courts and other special courts/tribunals.

Federal Shariat Court

- The Federal Shariat Court was established by the President's Order No.1 of 1980 as incorporated in the Constitution of Pakistan, 1973- Art. 203
- Article 227 makes it incumbent that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet (Peace Be Upon Him)
- Article 203 , which pertains to the functions and organization of Federal Shariat Court, empowers the court and entrusts the court with the responsibility to examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet (Peace Be Upon Him)
- Its jurisdiction includes law, any custom or usage having the force of law

Federal Shariat Court

- The Court consists of 8 Muslim Judges including Chief Justice
- Of the 8 judges, 3 are required to be Ulema who are well versed in Islamic Law
- The judges hold office for a period of 3 years and the President may further extend such period
- The procedure of the appointment of judges is similar to that of judges of Supreme Court and High Court

High Courts

- There is a High Court in each province as well as federal capital. Each High Court consists of a Chief Justice and other Judges
 - Lahore High Court 60 Judges
 - Sindh High Court 27 Judges
 - Peshawar High Court 17 Judges
 - Baluchistan High Court 8 Judges
 - Islamabad High Court 5 Judges

High Courts

- High Court exercises original jurisdiction in the enforcement of Fundamental Rights and appellate jurisdiction in judgments / order of the subordinate courts in civil and criminal matters
 - Appellate jurisdiction is the power of a higher court to review and change the decisions of a lower court. A court with appellate jurisdiction is called an appellate court and also court of appeal
- A High Court has, under the Constitution, original jurisdiction to make as order;
 - Directing a person within the territorial jurisdiction of the Court to refrain from doing anything he is not permitted by law or to do anything he is required by law
 - Declaring that any act done by a person with out lawful authority is of no legal effect ; or
 - Matter related to enforcement of any of the [Fundamental Rights](#) conferred by Chapter 1. However, persons of the armed forces would be exempted

District & Sessions Courts

- District Courts exist in every district of each province, and have **Civil and Criminal Jurisdiction**
- In each District Headquarters, there are numerous Additional District & Session Judges who usually preside the courts. District & Sessions Judge has executive and judicial power all over the district under his jurisdiction
- The Sessions court is also a trial court for heinous offences such as Murder, Rape, **Haraba offences** (armed robbery where specific amount of gold and cash is involved), and is also appellate court for summary conviction offences and
- Session Courts deals with **criminal cases**, whereas, **district courts** deal with civil cases

Special Tribunals

- Banking Courts
- Customs Courts
- Drug Courts
- Anti Corruption Courts
- Anti Terrorism Courts
- Family Courts
- Juvenile Courts
- Labour Courts
- Labour Appellate Tribunal
- Environmental Courts
- Control of Narcotic Substances (Special Courts)
- Consumer Courts

History & Evolution of LGs

- **Pre-Independence Era:** The concept of local governance dates back to the British colonial era with the introduction of municipal boards and councils
- **1959-Post-Independence Period:** Ayub Khan introduced the "Basic Democracies System", establishing local councils.
- **1979 LG Ordinance** -Zia-ul-Haq implemented a new local government framework, emphasizing district and municipal councils.
- **2001 LG Ordinance** -Pervez Musharraf introduced a devolution plan under the Local Government Ordinance (LGO), creating three tiers of local government. - Dist. Council, Tehsil Council & Union Council

Local Government System In Pakistan

- New local government system introduced in 2001
 - Agenda:
 - Rebuilding national confidence and morale
 - Decentralization of administrative and financial authority to local governments
 - Devolution of power was based on three basic principles
 - People-Centered Development,
 - Rights and Responsibility-Based, and
 - Service Oriented Government
 - Three levels of local government:
 - District (zila),
 - Tehsil (taluka)/town, and
 - Union
- (Taluka: a subdivision of a district; a group of several villages organized for revenue purposes)

Local Government System In Pakistan

- The local government system in Pakistan plays a vital role in **governance, administration, and service delivery** at the **grassroots level**
- It operates under the framework of the **Constitution of Pakistan**, which empowers provinces to legislate and implement local governance systems.

Local Government System In Pakistan

- **Legal Framework**
- **Constitutional Basis:** Article 140-A (1) of the Constitution mandates provinces to establish local governments and devolve political, administrative, and financial responsibilities to them.
- **Legislation:** Each province has its own Local Government Act:
 - **Punjab Local Government Act (2019)**
 - **Sindh Local Government Act (2013)**
 - **Khyber Pakhtunkhwa Local Government Act (2019)**
 - **Balochistan Local Government Act (2010)**
 - **Islamabad Capital Territory Local Government Act (2015)**

Local Government System In Pakistan

Structure of Local Governments

Local government systems in Pakistan typically have three tiers, although the structure may vary slightly between provinces:

1. District Government (Upper Tier)

- Headed by the **District Chairman or Mayor**.
- Responsible for district-level planning and service delivery in areas like education, health, and infrastructure.

2. Tehsil/Taluka Government (Middle Tier)

- Headed by the **Tehsil Chairman or Taluka Chairman**.
- Focuses on municipal services, including water supply, sanitation, and waste management within tehsils or towns.

3. Union Council Government (Lower Tier)

- Smallest administrative unit, headed by the **Chairman of the Union Council**.
- Deals with community-level needs like primary healthcare, small-scale development projects, and dispute resolution.

Local Government System In Pakistan

Functions and Responsibilities

Local governments are responsible for:

- **Service Delivery:**
 - Managing water, sanitation, waste disposal, roads, and public spaces.
- **Development Planning:**
 - Implementing development projects at the district, tehsil, or union level.
- **Revenue Generation:**
 - Collecting local taxes, fees, and fines.
- **Public Welfare:**
 - Administering social programs, health services, and education initiatives.
- **Law and Order:**
 - Supporting local police and maintaining peace.

Local Government System In Pakistan

Challenges of the Local Government System

- **Lack of Consistency:** Frequent changes in the local governance structure and interruptions in holding elections
- **Limited Financial Autonomy:** Dependence on provincial and federal governments for funds
- **Political Interference:** Dominance of provincial authorities often undermines local government independence
- **Capacity Issues:** Limited resources and expertise for efficient service delivery.

Reasons for Failure of Local Govt.

1. Political parties don't believe in decentralization / local democracies
2. Military rulers used local Govt. to counter the main stream political parties
3. Over centralized Govt. structure and mindset
4. Economic constrains & lack of infrastructure
5. Bureaucratic hurdles
6. Development funds to MNAs/MPAs and senators undermine the role of LG
7. Lack of continuity of political processes

Thank You