Introduction of Legal Systems

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Part – I

WORLD LEGAL SYSTEM

Q. **DEFINE THE TERM LEGAL SYSTEM AND DISCUSS THE SOURCES OF LEGAL SYSTEM.(A2018)**

(OR)

WHAT DO YOU UNDERSTAND BY THE TERM LEGAL SYSTEM AND ENUMERATE THE VARIOUS FORMS OF WORLD LEGAL SYSTEM. (S2018)

(OR)

DISCUSS LAW AS AN INSTRUMENT OF PURPOSIVE SOCIAL CHANGE; WHILE EXPLAINING THE SOURCES OF A LEGAL SYSTEM? (S2019)

Ans:

LEGAL SYSTEM

We can define legal system in a single line as :

"A legal system is a procedure or process for interpreting and enforcing the law."

A legal system can be defined as the principles or procedures for the classification of laws, matters or procedure relating to them. It can also be defined as a body of rules including the principles, rules or doctrines اصول associated with them that have the force of law in a given society.

Definitions of Legal System

Austin and Bentham

Sum total of laws.

HLA Hart

Union of primary and secondary rules.

Dias

Ideas which guides legal development and administration.

Kelson

A legal system is the hierarchy of the norms. It revolves around basic norms.

Joseph Raz

Legal system is system of minimum efficacy افادیت, bindings, continuity, membership, genetic وراثی and operative norms اصول and norms to control behaviours.

Upendra Baxi

Legal system refers to:

- Firstly, legal system can be conceived متصور merely محض as an agreement of legal norms;
- Secondly, system of social behaviour and rules of structure
- Thirdly, legal system may be equated متوازی with social control system

The Essence of The Legal System in the Society

Man is a social being. He is part and parcel of society which has its own structure and organisation. Society is primarily based on order which order is achieved and maintained through social rules. Man's behaviour is closely controlled, either directly or indirectly through moral standards, religious doctrines, social edicts and customs as well as legal rules. In today's complex society, legal rules are especially significant and it is difficult to find any area of society which is completely free from legal control. There is therefore undeniable and manifest relationship between law and society and the individual members of society.

THE MAJOR LEGAL SYSTEMS OF THE WORLD AND SOURCES

Most nations today follow one of two major legal traditions:

1) **Common Law System**
2) **Civil Law System**

The common law tradition emerged ابھرا in England during the middle Ages and was applied within British colonies across continents. The civil law tradition developed in continental Europe at the same time and was applied in the colonies of European imperial شاہی powers such as Spain and Portugal. Civil law was also adopted in the nineteenth and twentieth centuries by countries formerly possessing distinctive مخصوص legal traditions, such as Russia and Japan, which sought to reform their legal systems in order to gain economic and political power comparable مقابل to that of Western European nation-states.

1) Common Law System

Common law traces its roots to the medieval قرون وسطی idea that the law as handed down from the king's courts represented the common custom of the people. It evolved ارتقا chiefly from three English Crown courts (common law courts) of the twelfth and thirteenth centuries:

- The Exchequer
- The King's Bench
- The Common Pleas

Early common-law procedure was governed by a complex system of pleading , under which only the offenses specified in authorized writs could be litigated مقدمہ. Complainants شکایت کنندگان were required to satisfy all the pacifications of a writ before they were allowed access to a common-law court. This system was replaced in England in mid-1800s. The court of equity, which were instituted to provide relief to litigants in cases where common-law relief was unavailable, later merged with common-law courts to constitute the English legal system. This merging of jurisdiction over most legal disputes into several courts was the framework for the modern Anglo-American judicial system.

Under a common-law system, disputes are settled through an adversarial مخالف exchange of arguments and evidence. Both parties present their cases before a neutral fact finder, either a judge or a jury. The judge or jury evaluates the evidence, applies the appropriate law to the facts, and renders a judgment in favour of one of the parties. Following the decision, either party may appeal the decision to a higher court. Appellate courts in a common-law system may review only findings of law, not determinations of fact.

Thus, common law systems place great weight on court decisions, which are considered 'law' with the same force of law as statutes. Common law courts have had the authority to make law where no legislative statute exists, and statutes mean what courts interpret them to mean.

2) Civil Law Systems

Also referred to as *the Roman-Germanic Law* or *Continental European System*, this is a legal system inspired متاثر by Roman and Germanic law and whose the primary feature is that laws are written into a collection, codified, and not (as in common law) interpreted by judges. The principle of civil law is to provide all citizens with an accessible رسائی and written collection of the laws which apply to them and which judges must follow. It is the most widespread system of law in the world, in force in various forms in about 150 countries. Conceptually تصوراتی طور پر, it is the group of legal ideas and systems ultimately derived اخذ شدہ from the Code of Justinian (Byzantine emperor who held the eastern frontier of his empire against the Persians), but heavily overlaid by Germanic, feudal جاگیردارانہ, and local practices, as well as doctrinal strains تنا such as natural law, codification, and legislative positivism.

Materially مادی طور پر, civil law proceeds from abstractions تجرید and formulated general principles and distinguishes ممتاز functional rules from procedural rules. It holds legislation as the primary source of law, and the court system is usually interrogational, unbound by precedent, and composed مشتمل of specially trained judicial officers with a limited authority to interpret law. Juries separate from the judges are not used, although in some cases, volunteer رضاکار lay بچھانا judges participate along with legally trained career judges.

OTHER FORMS OF WORLD LEGAL SYSTEM

Socialist Legal Systems

Socialist system mostly denotes a general type of legal system used in the communist and former communist states. It is based on the civil law system, with major modifications and additions from Marxist-Leninist ideology. There is controversy تنازعہ as to whether socialist law ever constituted a separate legal system or not, but prior to the end of the Cold War, socialist law ranked among the major legal systems of the world by virtue of the predominant غالب ideology in the communist states. Socialist law is similar to the civil law system but with some modifications.

Religious Legal Systems

Religious law refers to the notion خیال of a religious system or document being used as a legal source. The main kinds of religious law are ***Sharia*** in Islam, ***Halakha*** in Judaism یہودیت, and ***canon law*** in some Christian groups. The methodologies طریقہ کار used in religious laws greatly vary. The use of Jewish Halakha for public law, for example, has a static and permanent quality, precludingپیشگی amendment through legislative acts of government or development through judicial precedent مثال. On the other hand, it may be observed that Christian canon law is more similar to civil law in its use of civil codes. Islamic Sharia law (and Fiqh jurisprudence) is usually based on legal precedent and reasoning استدلال by analogy (Qiyas), and is thus considered similar to common law. During The Islamic Golden Age, classical Islamic law may have had an influence اثر on the development of common law and several civil law institutions. Islamic legal system is the most protected divine law, because, the majority of the rulings of Sharia law are based on the Qur'an and Sunnah, while a small fraction of its rulings are based on the Ulema (jurists) who used the methods of Ijma (consensus اتفاق رائے), Qiyas (analogical deduction), Ijtihad (research) and Urf (common practice) to derive Fatwa (legal opinions).

Plural جمع Systems

Legal pluralism is the existence of multiple legal systems within one geographic area. Plural legal systems are particularly prevalent مروجہ in former colonies, where the law of a former colonial authority may exist alongside more traditional legal systems. When these systems developed, the idea was that certain issues (e.g., criminal sanctionsپابندیاں) would be covered by colonial law, while other issues (e.g., family and marriage) would be covered by traditional law. Over time, these distinctions امتیازات tended to break down and individuals would choose to bring their legal claims under the system that they thought would offer them the best advantage. Legal pluralism also occurs when different laws govern different groups within a

country. For example, in India, Kenya and Tanzania, there are special Islamic courts that address concerns in Muslim communities by following Islamic law principles. Secular courts deal with the issues of other communities.

Hybrid Systems

Hybrid systems arise اٹھنا where there is a mixture of notions تصورات form different legal systems coexisting متوازی with each other at the same time. The most prominent example of a hybrid legal system is the Indian legal system. India follows a mixture of civil, common law and customary or religious law. Separate personal law codes apply to Muslims, Christians, and Hindus. Decisions by the Supreme Court of India and High Courts are binding باندھنا on the lower courts. Further, most of the laws are statutory قانونی and it also has a constitution which signifies ظاہر کرتا ہے the civil nature of law in India. Hybrid legal systems are also found in South Africa and Greece where the systems are based on a mixture of Civil law and common law. US law may also be viewed as hybrid legal systems to the extent حد تک that there is a mixture of civil law, common and religious laws in the system.

Q. WHAT DO YOU UNDERSTAND BY THE TERM "COMMON LAW" AND ELABORATE THE SIMILARITIES AND DISSIMILARITIES BETWEEN COMMON LAW LEGAL SYSTEM AND CIVIL LAW LEGAL SYSTEM. (A2018) (S2018)

(OR)

WHAT IS DIFFERENCE BETWEEN THE COMMON LAW SYSTEM AND THE CIVIL LAW LEGAL SYSTEM.

Ans.

The difference between civil law and common law lies not just in the mere fact of codification , but in the methodological طریقہ کار approach to codes and statutes. In civil law countries, legislation قانون is seen as the primary source of law. By default, courts thus base their judgments on the provisions of codes and statutes. On the other hand in the common law system, cases are the primary source of law, while statutes are only seen as incursions دراندازی into the common law and thus interpreted تشریح narrowly. Common law and civil law systems may be distinguished in light of some key features.

The areas of distinction are described below:

1) Common law systems trace their history to England, while civil law systems trace their history to Roman law and the Napoleonic Code.
2) Regarding continuity of the legal system, whereas common law is evolutionary, civil law systems are revolutionary. Civil laws are altered immediately the legislature enacts قانون سازی a law whereas common law courts will continue to apply precedents making the changes slow and progressive.
3) The major sources of law in the common law system are customs and practice while in civil law legislative statutes stand as the primary source of law.
4) With regard to precedents, there is a very strong reliance انحصار to them in the common law system. This is not the case with civil law system which does not rely on previous decisions, but rather on codes.
5) The systems may also be distinguished on the basis of judicial role in law-making. Whereas in common law it is active and creative, in the civil law system the judiciary only plays a passive and technical role.
6) The role of legal scholarship in the common law system is usually secondary and peripheral ملحقہ, while in a civil law system the use of legal scholarship is extensive وسیع and influential.
7) Judicial review of statutes and of executive actions is largely incorporated in common

law system which is not the case in the civil law world.

8) At common law, the major decision-making stage is the trial stage, while at civil law, the critical stage in the process is at the investigation and examination period.

9) The trial format in common law is judgmental and confrontationalمتصادم, while in civil law, it is inquisitorial and collaborative.

10) The use of argument and debate during trial, extensive and fundamental in common law systems. In civil law, the arguments are quite modest and restricted.
11) The style of legal reasoning in common law is inductive while in civil law, it is usually deductive کٹوتی.
12) Trial emphasis تاکید in common law is usually on procedural correctness, whereas the civil law system normally emphasises on factual certainty.
13) Evidentiary ظاہری rules in common law is formal and restrictive. The exclusionary خارجی rule is usually employed in common law. In civil law, usually all relevant evidence considered.
14) With respect to the role of lawyers during trial, it is primary in common law system, while in civil law system the lawyers only play a secondary role.
15) The common law lawyer's function is to debate and oppose while in civil law, the lawyer's function is to advise and inform.
16) The judge's role during trial is that of a referee/umpire in common law while in civil law, he/she is a director/examiner.
17) The common law judges are usually political appointees from practicing lawyers and other judicial ranks. Their status is of political VIPs. In civil law, judges are appointed by merit advancement from judicial specialists. Their status is of mid-level civil servants.
18) Some common law jurisdiction allow citizen's participation in trial by employing juries (grand & petit). In civil law, decisions are usually by members of judicial panels.
19) While appeals in common law normally focus on procedural propriety, in civil law, appeals focus both on procedural and substantive propriety.
20) The structure of the common law courts is usually unified while civil law systems have diffused court structures (with multiple specialized courts)

Q. Discuss the characteristics of Common Law. (S2018)

Ans:

CHARACTERISTICS OF COMMON LAW

The unique feature of common law is that it represents the law of the courts as expressed in judicial decisions. Judges decide cases found in precedents provided by past decisions. Originally, supremacy of the law meant that not even the king was above the law, So main characteristics of common law are given below:

1. Rule of Law:

Rule of law is essence of common law legal system , it mean every one in equal before the law and at the same time every one should have access to the justice system and no one is above the law. Rule of law is the main feature of common law.

2. The right of silence and Presumption of innocence:

According to common law system , an accused person has the right to be presumed innocent until proven guilty through strong evidence. Innocence is presumed خیال at common law, the burden of proof is on the defendant in certain offences as enacted نافذ by statutes.

3. Already Understood of Statutes:

In common law a few common things are understood and assumed:

- A man cannot be convicted twice for the same offence.
- The accused must be given the benefit of a reasonable doubt.
- A man can only be punished after conviction.
- Ignorance of the law is not an excuse.
- The accused is entitled to make a full answer in defence of a charge.
- In some cases compulsion and insanity is defence.

4. Judicial Independence :

In common law judicial immunity is designed to safeguard judicial independence on the assumption that judges are appointed from among honest, fair, and impartial members of the society.

5. Jury System:

At common law, the power of jurors to decide on findings of fact is so great that jurors can circumvent the function of the trial judge on points of law. Juries are comprised پر مشتمل only of laypersons عام آدمی never judges. In the U.S., juries are employed in both civil and criminal cases. Their function is to weigh evidence presented to them, and to find the facts and apply the law.

6. Protection of Legal Rights:

Common law also provide protection to all legal rights of an individual. Every member of society has freedom of speech, freedom of association of assembly, freedom of join trade unions etc. If someone is deprived محروم from basic rights then he may approach the justice system.

7. Judicial Decision:

In common law, Precedence or judicial decisions are main source for justice. There is no bounding بند of enacted laws for judges. Judges have liberty to decide cases according to evidence and circumstances حالات to keep the peace and justice in the society in the light of past judicial decisions. The previous decisions of the highest court in the jurisdiction are binding on all the subordinate courts. However, different conditions soon make most decisions inapplicable ناقابل except as a basis for analogy تشبیہ, and a court must therefore often look to the judicial experience. This provides a more flexible to system.

Q. ENUMERATE THE CHARACTERISTICS OF CIVIL LAW TRADITIONS. (A2018)

(OR)

DISCUSS CIVIL LAW TRADITION; DISCUSS THE ORIGIN AND HISTORICAL ASPECT OF CIVIL LAW TRADITIONS. (S2018)

Ans:

THE CIVIL LAW TRADITION

The Civil Law Tradition Parliamentary legislation is the principal source of law in civil law countries. This legislation includes codes, separate statutes and ancillary معاون legislation (e.g., Police Implementing Regulations that provide more details on the provisions of the Police Act). Within civil law countries, there is a hierarchy درجہ بندی of laws. At the top of the hierarchy is the Constitution, followed by codes and other legislation, then executive decrees, then regulations, followed by local ordinances. Custom, as a rare source of law sits at the bottom of the pyramid and would rarely شاذ و نادر be relied upon in court.

History of Civil Law Traditions:

The civil law tradition is the oldest and most widely distributed legal system, dating back to 450 B.C in its origins. Even though it is the older of the two systems, the civil law took exponentially تیزی سے longer to develop than the common law, the genesis ابتدا of which was rapid in comparison. Four hundred and fifty B.C. is designated as the beginning of the development of the civil law because this is the year of the Twelve Tablets, the first written law and rudimentary ابتدائی system of dispute resolution in Ancient Rome. The next significant period in the development of the civil law comes in the 6th century A.D., when the Emperor Justinian of Constantinople قسطنطنیہ commissioned the Corpus Juris Civile to be written, which would codify the Roman law on family, inheritanceوراثت, property, and contracts, among other areas of law. After the fall of the Roman Empire, codified Roman law was no longer in use. However, during the Enlightenment روشن خیالی Period in Europe (11th- 15th Centuries) after the so-called "Dark Ages," the Corpus Juris Civile was rediscovered. During this time the first modern European university was founded in Bologna, Italy. Students came to study the civil law from all over Europe and brought this influence back to their own countries.

The civil law tradition spread well beyond Europe. As European countries colonized countries in South America, Africa, the Middle East and Asia, they brought their legal systems with them.

Characteristics of The Civil Law Tradition

We can understand the characteristics of the civil law traditions under the following headings:

1) Source of Law
2) Court System
3) Justice Actors
4) The Criminal Process
5) Legal Education and Training

1) Source of Law

Many civil law proponents حامی believe that a code can address all circumstances that might need legal regulation, without the need for judicial interpretation تشریح and without the need for judges to refer to case law. Each code in a civil law country will likely have a set of commentaries تفاسیر that gives expression اظہار to the doctrine.

2) Court System

Civil law countries make a theoretical and practical distinction تفریق between public law and private law, that does not hold the same importance in common law countries. It is most evident ظاہر when looking at the court structure in countries following the civil law tradition. The courts have divided according to public law cases and private law cases. Courts in civil law countries are more specialized than in the common law. There are multiple sets of courts and each has its own jurisdiction, hierarchy, judiciary and procedure. For example, in addition to ordinary courts that deal with private law matters, there may be Labour Courts, Social Security Courts, Commercial Courts, Administrative Courts and Agriculture Courts addressing public law cases.

Decisions of the ordinary courts can be appealed to Appellate Courts. At the head of the ordinary courts. Public law matters, namely, administrative law and constitutional law have their own separate jurisdictions. Traditionally, in the civil law tradition, there was no supreme administrative court that would decide upon administrative and constitutional law.

3) Justice Actors

In civil law tradition, following are the justice actors to provide justice to the society.

- **Investigating Judge**

  An investigating judge is a member of the judiciary. This judicial officer was first seen in the French Napoleonic Criminal Procedure Code of 1808. Instead of adjudicating cases, like a common law judge would, the investigating judge is responsible for leading the criminal investigation which includes interviewing the accused, the victim, and witnesses; and preparing the case file.

- **Sitting Judge**

In addition to investigating judges, there are also sitting judges who hear the case in court. The sitting judge may sit alone for minor cases but, for more serious cases, will sit in a panel of judges (normally, three judges).

- **Police/Judicial Police**

In many civil law countries, and particularly for more serious cases, there are specially designated "judicial police" who are tasked with assisting the investigating judge and prosecutor in the criminal investigation. In certain exigent circumstances, the judicial police may have powers to search premises, collect preliminary evidence, and arrest suspects.

- **Prosecutor**

In many countries, the prosecutor is part of the judiciary. This is evidenced by the fact that the prosecutor will walk out with the judges at the beginning of the court session and will sit close to the judges rather than in the same position as the defence counsel. Prosecutors may also wear many hats representing the state, society, and/or the victim.

- **Lawyer**

In the common law system a lawyer is a custodian, an arbitrator, a trustee or more. For example, he or she may negotiate and draft contractual agreements; act as an agent for his or her client; and receive fund on behalf of the client. In addition, he or she may assist clients in planning business and property affairs.

- **Defence Counsel**

A lawyer may act as a defence counsel, sometimes called "avocat de la defense." In the common law tradition, defence counsel must represent their clients.

- **Jury and Lay Judges**

As in the common law, the role of the jury is to determine the guilt or innocence of the accused based on the facts presented. Juries are more typical in common law countries, but jury trials now exist in many civil law countries, like France and Belgium etc.

- **The Victim**

In the civil law tradition, the victim has a much more central and powerful role than in the common law. The victim has several rights during the criminal process and, in some civil law countries, also has the right to bring a "private prosecution."

- **Notary**

A notary serves three functions in the civil law tradition.

  - Drafts legal instruments
  - Authenticates instruments
  - Acts like a kind of public record office

- **The Academic**

They can greatly influence a criminal trial in two ways. First, doctrine developed by academics will be used by the court in determining the law around a certain issue. Second, in some instances, judges will seek input from academics on a particular case.

4) The Criminal Process

In common law system criminal process can be understand through following points:

- **Investigation**

Once a crime has been discovered or reported, the police (or judicial police where they have jurisdiction) begin an investigation. The investigating judge, upon receiving the request to conduct a judicial investigation from the prosecutor, will begin to gather evidence.

- **Indictment فردجرم**

The judge will close the investigation and refer the case to the sitting judge. Where there is a prosecutor only, an indictment will need to be drafted and a court will determine if there is enough evidence to proceed to trial.

- **Trial**

The prosecutor will present the case at trial. In court, the judge is the central figure, acting as an investigator to find the facts and the truth. Neither the prosecutor nor the defence counsel takes centre-stage in the trial, as one would see in a common law trial.

- **Verdict فیصلے and Sentencing سزاسنانا**

Once the trial is over, the judge (or the jury) releases the verdict, at which point the accused person will either be released or convicted.

- **Appeal**

The convicted person can appeal to the higher courts, on one of three bases:

a) an error in law
b) an error in fact
c) the penalty imposed

5) Legal Education and Training

The education of law students in the civil law tradition is through an undergraduate university degree. The primary reference materials for civil law student are codes and the commentaries to these codes. Case law does not play a major role in legal education. After students complete their undergraduate education, they then make a choice as to what legal profession to pursue. Very early on, graduates must chose whether to become a government lawyer, public prosecutor, advocate, notary, judge or scholar. Lawyers do not often change careers. If a law graduate wants to become a judge, he or she must attend a special training school for judges, pass exams and be appointed (often by a judicial council).

Q. DISCUSS THE SOURCES OF CIVIL LAW LEGAL SYSTEM. (S2018)

Ans:

CIVIL LAW LEGAL SYSTEM

The civil law is one of the large legal systems in the world. It is widespread in Europe, Central and South America, and many parts of Asia and Africa. Compared with other legal systems, it has peculiarities خصوصیات in its history, structure, application, and development. Civil law is a legal system inspired by Roman Law. The primary feature of Roman Law is that laws are written into a collection and codified.

Sources Of Civil Law Legal System:

Fallowing are the main sources of civil law legal system.

1. Enacted Law
2. Customs
3. General Principles
4. International Treaties

1. Enacted Law:

The main source of civil law legal system is the enacted (statutory) law. Statutory laws are written laws that have been approved by a legislature (either a state or federal legislature). It predominates غالب in civil law systems. All judges observe the statutory laws of the land and decide cases in the light of such enacted laws. So enacted law is the main source of common law legal system.

2. Customes:

Custom is also a source of law, but tends جاتا to be less important in practice because it is often difficult to prove its pervasive وسیع observance منانا in society. Customs are non written rules, developed and observed over years and now part of social and economic thinking.

3. General Principles:

In civil law legal system judges consider 'general principles of the law' as guidelines in the interpretation تشریح of statutory norms both for the purpose of defining their interrelation باہمی تعلق

and for the purpose of their application. The civilian judge is not so restricted but derives اخذ کرنا the interpretation considered to be appropriate مناسب from the structure of the legal system ہے and the general principles of law that pervade it.

For example: if a plaintiff seeks damages for breach of contract, preliminary analysis must determine فیصلہ کرنا whether the contract was validly concluded. Provisions dealing with invalidity and avoidance پرہیز of contracts usually are found in the general part of a civil code. Such a general part may be followed by particular parts dealing with individual fields of law, such as torts, contracts, property, or the law of succession سلسلہ.

4. International Treaties

International treaties and conventions also are sources of law in civil law countries. Most civil law countries are "monist" meaning that when the country ratifies توثیق a treaty, it automatically becomes part of domestic law. This means that a judge can automatically apply it and a party in court can rely on international law in proceedings.

Q. DISCUSS THE PRIMARY AND SECONDARY SOURCES OF ISLAMIC LEGAL SYSTEM? (A2018) (A2019)

(OR)

DISCUSS QURAN AS A GRUND NORM IN ISLAMIC LEGAL SYSTEM? EXPLAIN STATUS OF SUNNAH WITH RESPECT OF QURAN? (S2019)

(OR)

DISCUSS QURAN AS PRIMARY SOURCE OF ISLAMIC LEGAL SYSTEM. (A2020)

(OR)

WRITE NOTE : IJMA AS SOURCE OF ISLAMIC LEGAL SYSTEM. (A2020)

(OR)

QURAN AND SUNNAH AS SOURCE OF LEGAL SYSTEM. (S2018)

Ans:

ISLAMIC LEGAL SYSTEM

The process of globalization is the establishment of legal system of all countries. The legal system of countries in the world is generally grouped into 5 (five) systems.

1) **The Civil Law system** (European continent)
2) **The Common Law system** (UK, US & Common Wealth Countries)
3) **Customary Law system** (African, Chinese)
4) **The Muslim Law system (Shariah)** (Muslim countries)
5) **Mixed system** (Indonesia, India)

About Fourteen centuries ago Islam was a spiritual, social, and legal revolutionانقلاب. Its potential for effecting progress remains unchanged. Islam at the height of its civilization, between the seventh and eleventh centuries, was neither repressive دبنگ nor regressive. It was a progressive, humanisticانسان پرست, and legalistic قانون پرست force for reform and justice. Islamic law grew along with the expanding توسیع Muslim Empire. The Umayyad اموی dynasty سلطنت caliphs, who took control of the empire in 661, extended توسیع Islam into India, Northwest Africa, and Spain. The Umayyads appointed Islamic judges, to decide cases involving Muslims.

What is sharia?

Sharia means *"The Correct Path"* in Arabic. In Islam, it refers to the divine guidance that Muslims follow to live moral lives and grow close to God. Sharia is derived from two main sources:

- The Quran (which is considered the direct word of God)
- The Hadith(The sayings and practices attributed to the Prophet Mohammed ﷺ)

The Prophet Mohammed is considered the most pious of all believers, and his actions became a model for all Muslims. The process of interpreting sharia, known as fiqh (School of Thought), Each school is named after the scholar who founded it.

- **The Hanafi**
- **The Hanbali**
- **The Maliki**
- **The Shafiʿi**

SOURCES OF ISLAMIC LAW

Sources of Muslim law is classify into two categories that is primary sources and secondary sources.

A) Primary Sources

Primary sources are those on which Muslim law relied on. These sources are the foundation of Muslim law. Primary sources of Muslim law are:

1) **Al-Qur'an**
2) **Sunnah**
3) **Hadith (Hadees)**
4) **Ijma**
5) **Qiyas**

B) Secondary Sources

These sources are not basic sources of Muslim law but the supplementary sources of Muslim law. The secondary sources of Muslim law are:

1) **Urf or Custom**
2) **Judicial decision**
3) **Legislation**
4) **Equity, Justice, & Good conscience**

PRIMARY SOURCES OF ISLAMIC LAW

1. AL-QUR'AN

The Holy Quran is the first and most important source of Islamic law. The word Qur'an literally means *"The Reading"* or *"The Recitation",* and refers to the divinely revealed scripture کلام given to Prophet Muhammad ﷺ. Since Prophet Muhammad ﷺis considered the last prophet of God, the Qur'an is considered the ultimate آخری revelation from God to humanity. The Qur'an is the book revealed the messenger of Allah, Muhammad (ﷺ) as written in the Mashaf and transmitted to us from him through authentic continuous narration (tawatur) without doubt. Other jurist defines that The Qur'an is the words of Allah (Exalted) that were revealed to the Prophet (ﷺ) in Arabic through the Angel Jibril. As a complete code of life in terms of its stated morality and laws, The Holy Quran guides humans in spiritual روحانی and worldly matters, as well as individual and collective aspects of life. The holy Quran, the last book of Allah Almighty which He revealed on Prophet Muhammad (ﷺ), is the foundation of religion and the fountainhead of Islamic law. This is a complete book and a code for man's guidance. It is addressed to the whole humanity without the discriminationامتیاز of race, colour, religion or time. It is the first source of Islamic law and, without any doubt, is the recipe ہدایت for success in this world and the hereafter. We can say in other words that, Muslims believe that the Quran is the direct word of Allah , as revealed by Muhammad (ﷺ). All sources of Islamic law must be in necessary agreement with the Quran. The Quran was written and preserved during the life of Muhammad (ﷺ), and was compiled later. As the Qur'an was revealed over a period of about twenty three years in relation to particular events and it is explained in the holy Qur'an as follows. More than 200 verses of the Holy Quran make up the body of Islamic law that governs legal relations. It is notable here that all the rules in these 200 verses leave their mark in the five basic principles that lay the very foundation of the Islamic legal system. The brief break of these verses is as follows:

- 70 verses on family and Inheritance law
- 70 verses on obligations and contracts
- 30 verses on criminal law
- 20 verses on procedure
- 10 verses on other matters

2. Sunnah

The Sunnah is the next important source, the Sunnah or path or way of Prophet Muhammad (ﷺ). The Sunnah consists of the sayings, deeds and words of Prophet Muhammad (ﷺ) which are not revelations of the Quran. In order to understand the teachings of Quran, the understanding of Sunnah is compulsory. It is the traditions or known practices of the Prophet

Muhammad, accepting words, deeds, silent assertions about him and statements and activities, many of which have been recorded in versions of Hadith literature.

3. HADITH (HADEES)

Literally meaning of Hadith "talk" or "discourse", in Islam refers to what Muslims believe to be a record of the words, actions, and the silent approval of the Islamic prophet Muhammad ﷺ. Hadith have been called "the backbone" of Islamic civilization, and within that religion the authority of hadith as a source for religious law and moral guidance ranks second only to that of the Quran (which Muslims hold to be the word of God revealed to his messenger Muhammad ﷺ). Scriptural authority for hadith comes from the Quran which enjoins Muslims to follow Muhammad ﷺ and obey his judgments . While the number of verses pertaining متعلق to law in the Quran is relatively few, hadith give direction on everything from details of religious obligations (such as Ghusl or Wudu, for salat(Namaz) prayer). Thus the "great bulk" of the rules of Sharia (Islamic law) are derived from hadith, with than the Quran. Hadith or traditions consists of following types:

- Hadith-ul-quali (word spoken)
- Hadith-ul-faili (conduct)
- Hadith-ul-tahriri (silence)

Difference between Sunna and Hadith

The terms “Sunna” and “Ḥadīth” are often used interchangeably. This use is inaccurate. As explained, “Sunna” denotes what the Prophet ﷺ said, did, approved, and disapproved of, explicitly واضح or implicitly مضمر. “Ḥadīth,” on the other hand, refers to the reports of such narrations. Sunnah is an action that was performed by our beloved prophet Muhammad ﷺ , and hadith is the where sunnah is written for us to read, Prophet Muhammad ﷺ life is perfect example for us we all must follow his teachings, his way of livings thats sunnah.

4. IJMA (CONSENSUS اتفاق رائے OF OPENION)

Ijma is a term used for an opinion or order of Islam where all good and respected scholars of Islam are unanimous اتفاق کلی in their rule. For example, scholars believe that there are five obligatory prayers (Namaz), or that adan should be offered before the namaz, or that the funeral prayer should be recited over the deceased مردہ believer, or drinking is prohibited in Islam, etc.

There are three kinds of Ijma:

- **Ijma of Companions**: The concurrent بیک وقت opinion of the companions of Prophet ﷺ was considered most authoritative and could not be overruled or modified.

- **Ijma of the Jurists**: This was the unanimous decision of the jurists (other than companion).
- **Ijma of the people or masses**: It is the opinion of the majority of the Muslims which was accepted as law. But this kind of Ijma has little value.

IJTEHAAD

The literal meaning of ijtihad is derived from the root word jihad or effort, to find in the solution the guidance of the Quran and Sunnah. Ijtihad is the process where scholars of Islam try to find a solution to an issue on which the Quran and Sunnah are silent. For example there is an issue of modern times: is it legal to shut down the life-support system of a person declared brain-dead? Because this is a new development of modern technology, the Quran and Sunnah are clearly silent on this issue. Thus respected scholars of Islam should do ijtehad and draw out a ruling whether under the guidance of the Quran and Sunnah, any such thing is acceptable in Islam.

5. QIYAS

"Qiyaas is a term used when determining تعین the root-cause of the process to do Ijtehaad. Qiyaas is a process whereby a clear ruling of the permissibility or impermissibility of an act or thing is applied to an issue closest related to it. For example, Allah and His Messenger (ﷺ) have declared khamr (wine, alcohol, etc.) haraam. Now if someone were to ask for a ruling on the usage of marijuana چرس, the scholars of Islam would do Qiyaas and determine the root cause of the haraam of khamr is its intoxication نشہ; thus all things that intoxicate would be considered haraam. Because the usage of marijuana intoxicates, it too would be considered haraam.

SECONDARY SOURCES OF ISLAMIC LAW

1. Urf or Custom

Before the emergence of Islam in Arabia , customs were the basis of entire social life, religion, morality اخلاقیات, trade and commerce. Custom has not been recognized as a source of law in a Muslim law. However, it cannot be denied that custom has always been given a place under Muslim law, if it is in conformity with Muslim law. For example, The Prophet Mohammad ﷺ never repeal منسوخی the whole of the pre-Islamic customary law of Arabia.

2. Judicial Decision

These includes the decisions of the supreme court & high court of a Muslim countries, Judges explain what law is. These decisions are regarded as precedents for future cases.

3. Legislation

In different countries , Muslims are also governed by the various legislation passed either by the parliament or by state legislature. The following are the examples of legislation in India.

- The usurious loans act, 1918
- Religious toleration act
- Freedom of religion act, 1850
- The mussalman wakf validating act, 1930
- The shariat act, 1937
- Dissolution of Muslim marriage act, 1939

4. Justice, equity and good conscience

The doctrine of equity, justice & good conscience is regarded as one of the source of Muslim law. Abu Hanifa, the founder of hanafi sect of Sunni, expounded بیان the principle that rule of law based on analogy could be set aside at the option of the judge on a liberal construction or juristic preference to meet the requirements of a particular case. These principles of Muslim law are known as ***Istihsan*** or juristic equity. Istihsan literally means approbation and may be translated as liberal construction or juristic preference.

Q. DISCUSS IN DETAIL THE VARIOUS THEORIES OF PUNISHMENT IN ISLAMIC LEGAL SYSTEM? (A2020)

Ans:

THEORIES OF PUNISHMENT

Punishment is defined as the act of punishing or the process of being punished. Theories of punishment can be divided into two general philosophies:

- The Utilitarian Theory
- The Retributive Theory

The utilitarian theory of punishment aims at punishing offenders to discourage or deter روکنا future wrongdoing. The purpose of punishment is to act as an example to the rest of society and put others on notice that criminal behaviour will not be tolerated برداشت, and will be punished. The retributive theory on the other hand seeks to punish offenders because they deserve to be punished.

Punishments under Islamic Law

As with all penal systems, the Islamic law system prescribes punishments when someone is found guilty of a wrongdoing. The philosophy of punishments in Islam indicates that Islam provides punishment only as a last resort and the purpose behind it is reform brought about through a blending of human values and justice tempered with mercy. Some of the features of punishment are as follows :-

- Punishments are meant to be a last resort;
- Punishments are made to be examples to the public;
- Punishment are to reform an offender;
- Punishments are a form of retribution سزا for the victim.

The Types of Punishment

There are four categories of punishment that criminals may be subjected to, namely;

- **Hadd** (literally meaning boundaries)
- **Qisas** (retributionسزا)
- **Diyat** (blood money)
- **Ta'zir** (chastisement عذاب)

THEORIES OF PUNISHMENT IN ISLAMIC LEGAL SYSTEM

1. Preventive

The theory of Prevention, in reality cannot be considered as a separate theory, because it uses all the different approaches like deterrence روک تھام and retribution جزا to 'prevent' the commission of crime.

2. Reformative

A society under the Islamic rule is itself a 'Reformative Society' in a sense that it brings 'reforms' in every walk of the human life. It tries to prevent the crime beforehand, but even then if there is some mischief of minor nature, the person is tried to be reformed through various مختلف programmes.

Prisons

Unlike the western system that has two separate concepts, of 'prison' and 'rehabilitation centre', the Islamic system offers just one, and that is 'rehabilitation centre'. According to the teachings of Islam, there is no concept of modern day 'prisons' where crimes exist. Prisoners face cruel behaviour both from the prison authorities and other prisoners, where 'fight matches' take place, where drugs are available, and every other crime exists.

According to the Islamic system, the 'rehabilitation بحالی centres' are the 'prisons'. Offenders are kept in these centres to make them realise the gravity of their wrongdoing, and feel the shame of their offence, and to reform them, and not to evolve تیار them into big criminals. During the lifetime of Prophet Muhammad ﷺ the prisoners were kept in the Masjid (Mosque) the holy place of Muslims.

3. Restitutionary بحالی / Restorative / Substitutary

According to the west, this system considers apologizing معافی مانگنا, returning stolen money, or community service, as a form of punishment. But according to Shari'ah, these are not forms of punishment. Shari`ah, as opposed مخالف to western mind set, that takes any one of the theories of punishment to be the sole justification of the punishment; embraces all the theories in one way or the other. The philosophy of punishment in Shari`ah is Retributive, Deterrent روک تھام, and Rehabilitative.

Q. WHAT IS MEANT BY "NATURAL JUSTICE" AND DISCUSS THE SCOPE OF PRINCIPLES OF NATURAL JUSTICE SYSTEM IN WORLD LEGAL SYSTEM. (A2018) (S2018)

(OR)

EXPLAIN HOW PRINCIPLES OF NATURAL JUSTICE OCCUPY A UNIQUE PLACE IN EVERY LEGAL SYSTEM? DISCUSS THE PRINCIPLE AGAINST BIAS IN DETAIL. (S2019)

(OR)

DISCUSS HOW OPULENT ENFORCEMENT OF PRINCIPLES OF NATURAL JUSTICE ENSURES THE TRUE IMPLEMENTATION OF ADMINISTRATION OF JUSTICE? (A2019)

(OR)

EXPLAIN THE PHRASES "AUDI ALTERM PARTEM" AND "NEMO IN PROPRIA CAUSA JUDEX, EASE DEBET". (A2018)

(OR)

EXPLAIN THE SCOPE OF PRINCIPLES OF NATURAL JUSTICE WITH SPECIAL REFERENCE TO PRINCIPLES OF "AUDI ALTERAM PARTEM" AND PRINCIPLE AGAINST "BIAS". (A2020)

Ans.

NATURAL JUSTICE

Principle of Natural Justice is derived from the word '***Jus Natural'*** of the Roman law and it is closely related to Common law and moral principles but is not codified. It is a law of nature which is not derived from any statute or constitution. Natural Justice means the right to a fair hearing free of bias; individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the matter, a fair opportunity to answer it, and the opportunity to present their own case.

Natural justice simply means to make a sensible and reasonable decision making procedure on a particular issue. Sometimes, it doesn't matter what is the reasonable decision but in the end, what matters is the procedure and who all are engaged in taking the reasonable decision. It is not restricted within the concept of 'fairness' it has different colours and shades which vary from the context.

Rules of Natural Justice

Basically, natural justice consists of 3 rules.

1. The first one is "***Hearing Rule***" which states that the person or party who is affected by the decision made by the panel of expert members should be given a fair opportunity to express his point of view to defend himself.

2. Secondly, "***Bias Rule***" generally expresses that panel of expert should be biased free while taking the decision. The decision should be given in a free and fair manner which can fulfil the rule of natural justice.

3. And thirdly, "***Reasoned Decision***" which states that order, decision or judgement of the court given by the Presiding authorities with a valid and reasonable ground.

Origin

The principle of natural justice is a very old concept and it originated at an early age. The people of Greek and roman were also familiar with this concept. According to the Bible, in the case of Eve and Adam, when they ate the fruit of knowledge, they were forbidden by the GOD. Before giving the sentence, eve was given a fair chance to defend himself and the same process was followed in the case of Adam too. Later on, the concept of natural justice was accepted by the English jurist.

"Natural justice is a sense of what is wrong and what is right."

Purpose of The Natural Justice

- To provide equal opportunity of being heard.
- Concept of Fairness.
- To fulfil the gaps and loopholes of the law.
- To protect the Fundamental Rights.
- Basic features of the Constitution.

THE PRINCIPLES OF NATURAL JUSTICE:

The principles of natural justice comprise of the following two rules:

1. The rule against bias (***nemo iudex in causa sua*** – no one should be a judge in his own cause);
2. The right to a fair hearing (***audi alteram partem*** – hear the other side).

1. The Rule Against Bias (*nemo iudex in causa sua)*

No one should be a judge in his own case because it leads to rule of biases. Bias means an act which leads to unfair activity whether in a conscious or unconscious stage in relation to the party or a particular case. Therefore, the necessity of this rule is to make the judge impartial and given judgement on the basis of evidence recorded as per the case.

Type of Bias

- Personal Bias.
- Pecuniary Bias.
- Subject matter Bias.
- Departmental Bias.
- Policy notion Bias.
- Bias on the account of obstinacy.

- **Personal Bias.**

  Personal bias arises from a relation between the party and deciding authority. Which lead the deciding authority in a doubtful situation to make an unfair activity and give judgement in favour of his person.

- **Pecuniary Bias.**

  If any of the judicial body has any kind of financial benefit, how so ever small it may be will lead to administrative authority to biases.

- **Subject matter Bias.**

  When directly or indirectly the deciding authority is involved in the subject matter of a particular case.

- **Departmental Bias.**

  The problem or issue of departmental bias is very common in every administrative process and it is not checked effectively and on every small interval period it will lead to negative concept of fairness will get vanished in the proceeding.

- **Policy notion Bias.**

  Issues arising out of preconceived policy notion is a very dedicated issue. The audience sitting over there does not expect judges to sit with a blank sheet of paper and give a fair trial and decision over the matter.

- **Bias on the account of obstinacy**.

  Supreme court has discovered new criteria of biases through the unreasonable condition. This new category emerged from a case where a judge of Calcutta High Court upheld his own judgement in appeal. A direct violation of the rules of bias is done because no judge can sit in appeal against in his own case.

2. The Right To A Fair Hearing (*audi alteram partem)*

It simply includes 3 Latin word which basically means that no person can be condemned or punished by the court without having a fair opportunity of being heard.

In many jurisdictions, a bulk of cases are left undecided without giving a fair opportunity of being heard. The literal meaning of this rule is that both parties should be given a fair chance to present themselves with their relevant points and a fair trial should be conducted. This is an important rule of natural justice and its pure form is not to penalize anyone without any valid and reasonable ground. Prior notice should be given to a person so he can prepare to know what all charges are framed against him. It is also known as a rule of fair hearing. The components of fair hearing are not fixed or rigid in nature. It varies from case to case and authority to authority.

Components

- **Issuance of notice:** Valid and proper notice should be given to the required parties of the matter to further proceed with the procedure of fair trial method.
- **Right to present the case and evidence**: After receiving the notice he must be given a reasonable time period to prepare and present his case in a real and effective manner.
- **Right to Cross Examination**: Right of fair hearing includes the right to cross-examination the statement made by the parties. If tribunals denied the right to cross-examination then it will violate the principles of natural justice.
- **Right of Legal representative**: In the process of enquiry, every party has the right to have a legal representative. Each party will be presented by the legally trained person and no one can deny.
- **Reasoned Decision:** Basically, it has 3 grounds on which it relies:-

a) The aggrieved party has the chance to demonstrate before the appellate and revisional court that what was the reason which makes the authority to reject it.
b) It is a satisfactory part of the party against whom the decision is made.
c) The responsibility to record reasons works as obstacles against arbitrary action by the judicial power vested in the executive authority.

Exceptions

- During the Emergency period
- Public interest
- Express statutory provision
- Nature of the case is not of a serious kind
- If it doesn't affect the status of the individual

Conclusion:

To conclude the discussion with the famous saying of the U.S Lawyer ***L. Spooner*** that natural justice is the only standard through which any dispute among individuals can be adjudicated rightfully; it is such a principle that everyone demand its protection for himself/herself irrespective of their wish whether to accord it to other individuals or not; it has universal application irrespective of place, nation and time.

Q. DISCUSS HISTORICAL DEVELOPMENT OF "ROMAN LEGAL SYSTEM' AND ITS INFLUENCE ON THE WORLD LEGAL SYSTEM. (A2018) (S2018)(A2019) (A2020)

(OR)

HIGHLIGHT THE BASIC FEATURES OF ROMAN LAW LEGAL SYSTEM. (S2019)

(OR)

DISCUSS THE FUNDAMENTAL FEATURES OF LAW OF "TWELVE TABLES" IN ROMAN LEGAL SYSTEM. (A2018) (S2018) (A2019) (S2019) (A2020)

(OR)

CONCEPT OF CRIME AND PUNISHMENT IN ROMAN LEGAL SYSTEM. (A2019)

Ans:

ROMAN LAW LEGAL SYSTEM

Long before the Roman Republic was established in 509 BC, the early Romans lived by laws developed through centuries of custom. This customary law (***ius***, in Latin) was handed down through generations and was considered by the Romans to be an inherited موروثی aspect of their society as it had evolved ارتقا from its earliest days.

Roman laws covered all facets of daily life. They were concerned with crime and punishment, land and property ownership, commerce, the maritime and agricultural industries, citizenship, sexuality and prostitution, slaveryغلامی , politics, liability and damage to property, and preservation of the peace. Roman Law was established through a variety of means, for example, via statutesقانون , magisterial decisions, emperor's edicts, senatorial decrees, assembly votes, plebiscites and the deliberations غوروخوض of expert legal counsel and so became multi-faceted and flexible enough to deal with the changing circumstances of the Roman world, from republican to imperial شاہی politics, local to national trade, and state to inter-state politics.

Features of Roman Law System

1. The Romans had three branches of government including:
    - The legislative assemblies (branch of the people)
    - The senate (branch of the nobles and patricians)
    - The consuls (executive branch).

2. Roman women had limited rights as citizens. They could not vote or hold public office, but they could own property and businesses.

3. In 212 AD, the Roman Emperor *Caracalla* declared that all freedmen in the Roman Empire were full Roman citizens.

4. Emperor *Justinian-I* had the laws of Rome written down and organized. These laws became known as the ***Justinian Code*** and were used throughout the empire.

SOURCES OF ROMAN LAW

Roman law was cumulative مجموعی in nature, i.e. a new law could be added to the legal corpus or supersede a previous law. Statutes (leges), plebiscitesرائے شماری, senatorial decrees (decreta), decided cases (res iudicatae), custom, edicts نباتات (senatusconsulta) from the Emperor, magistrates or other higher officials such as praetors and aediles could all be sources of Roman law.

Following were the main sources of Roman Law

1. The Twelve Tables

During a period of social unrest, when some Romans felt that legal decisions were being arbitrarily من مانی decided, a push was made to write down the law in order to better anticipate how decisions would be made. Thus a committee of ten men called the ***decemvirs*** was established in 451 BC to write down the law for the first time. The work they produced in 449 BC, the ***Twelve Tables***, documented the centuries-old customary laws and became the foundation of Roman law as we know it. The Twelve Tables touched on many areas of law, not only the civil law that applied directly to citizens, but also areas such as public law and religious law, which applied to larger social constructs and institutions.

These Twelve Tables was not quite a law code in the modern sense but a list of important legal rules. The rules were extraordinarily laconic ناگہان and now a days are hard to understand.

Since the Twelve Tables do not survive, our knowledge of them is extremely fragmentary, and the order in which provisions appeared in them is mostly not known. The provisions which are known indicate that matters of family law, property and succession were prominent, as is perhaps to be expected at this period, but they also attest great concern with setting out the rules for legal process.

2. ius

Apart from the Twelve Tables, the early law of Rome consisted in customary or common law, which had not been created by enactment but was simply recognized as being the law. Some of this, of course, was what was ultimately embodied in the Twelve Tables. This old, unwritten, undeclared law was known as ***ius***.

3. Statutes

Statutes قوانین were passed by the popular assemblies voting on proposals put before them by magistrates. Ancient authors liked to complain about the volume of legislation . But so far as the private law was concerned, very little was made by statute (***lex***). There are notable exceptions, such as the statute on damage to property, the ***lex Aquilia*** of about 286 BC, and the ***lex Falcidia*** of 40 BC, which placed restrictions on legacies. But they are exceptions to a clear rule. Statutes tended to be drafted in a very narrow and literal manner. Presumably this reflected extremely rigid canons of construction. An egregious سخت example is provided by the ***lex Rubria*** dating from the 40 BC.

4. Praetor and Edict (General Orders)

The formal source of most of Roman private law was the edict of the urban praetor, an office created in 367 BC which in the hierarchy درجہ بندی ranked second only to the consuls. The praetor was the magistrate charged with the administration of justice. At the beginning of his year of office each praetor would publish in the forum his edict, which set out the legal remedies he would grant, together with the formulae for those remedies. A person who wished to raise اٹھانا legal proceedings would come before the praetor and request a particular formula from the edict. Equally, if he had a case which was not covered by an existing remedy in the edict, he might try to persuade مائل کرنا the praetor to add a new remedy to the edict. In both the drafting of the initial edict and in its supplementation by new remedies the praetor, who would only rarely have knowledge about the law, would be assisted by the advice of legal experts, jurists.

5. Jurists

There grew up a professional class of lawyers. These 'jurists' were originally priests, but in the course of the third century they came to profess a secular jurisprudence. Their role in the Roman legal system was very important, neither the magistrates responsible for granting legal remedies nor the judges who decided cases were lawyers; all looked to the jurists for legal advice. Although the jurists did not in the modern sense practise law, this contact with practice shaped their distinctly واضح طور پر pragmatic عملی approach to it. But in debate and in their writing, they also developed a sophisticated analytical jurisprudence; and particularly during the 'classical' period of Roman law from the late republic until the early third century they produced a substantial legal literature. Typical of their works were large-scale commentaries on civil law and the remedies contained in the magistrate's edict, and books of collected legal opinions. While some of their works played their part in argument of interest only to the jurists themselves, others were suited to, and written to satisfy, the diverse demands of practice or even teaching.

6. Emperor

The general term for law made by the emperor is 'constitution' (constitutio). This took many forms: if the ruling was made in court, it was known as a decree (decretum). Some emperors,

such as *Claudius* and *Septimius Severus* were apparently fond of hearing court cases themselves. Here is one of *Paul's collection* of *decreta* pronounced تلفظ by *Severus*, which also gives a sense of the legal debate that might surround the emperor's decision. Emperors might also issue general orders, known as edicts (*edicta*). Or they might reply to official inquiry by letter (epistula); or to inquiries made by private petitions, by writing the answer at the bottom of the petition: hence the name 'subscription' given to these replies. Justinian's Code contains constitutions of all these sorts.

To what extent did Roman Law influence the English legal system?

England did not adopt Roman Law as the other countries in Europe had. In England, ancient قدیم Roman texts were never considered as rules having the force of law. Nonetheless, Roman Law was taught at the Universities of Oxford and Cambridge, just as it was taught at Bologna. Scholars, who had studied Roman Law on the Continent (the so-called Civilians), did have considerable influence on the development of certain areas of law. Some substantive rules, and more importantly concepts and ways of reasoning, developed by continental legal scientists, based on the Roman legal tradition, influenced the English legal system.

What does the term, Classical Roman Law, mean?

The Romans were the first people to make law into a science. During the first two centuries of the Common Era, Roman legal science was the most fertile. This age is called the classical period of Roman Law, because the law during this time period, as it was taught and practised, best exemplified the classic characteristics of the Roman legal tradition.

Q. **THE IMPACT OF GLOBALIZATION ON THE WORLD LEGAL SYSTEM. (A2018) (S2019) (A2020)**

(OR)

ENUMERATE THE EFFECTS OF GLOBALIZATION ON CONTEMPORARY LEGAL SYSTEMS OF THE WORLD? (A2019)

(OR)

WRITE NOTE ON GLOBALIZATION VIS-À-VIS WORLD LEGAL SYSTEM. (A2018) (S2018)

Ans:

GLOBALIZATION

Globalization is the word used to describe the growing interdependence of the world's economies, cultures, and populations, brought about by cross-border trade in goods and services, technology, and flows of investment, people, and information. Countries have built economic partnerships to facilitate these movements over many centuries. But the term gained popularity after the Cold War in the early 1990s, as these cooperative arrangements shaped modern everyday life.

A Simple Globalization Definition

"Globalization means the speedup of movements and exchanges (of human beings, goods, and services, capital, technologies or cultural practices) all over the planet. One of the effects of globalization is that it promotes and increases interactions between different regions and populations around the globe."

History of Globalization

Although many people consider globalization a twentieth century phenomenon, the process has been happening for millennia ہزارسالہ. Examples include the following:

- **The Roman Empire**. Going back to 600 B.C., the Roman Empire spread its economic and governing systems through significant portions of the ancient world for centuries.
- **Silk Road Trade**. These trade routes, which date from 130 B.C. to 1453 A.D., represented another wave of globalization. They brought merchants, goods and travellers from China through Central Asia and the Middle East to Europe.
- **Pre-World War I**. European countries made significant investments overseas in the decades before World War I. The period from 1870 to 1914 is called the golden age of globalization.
- **Post-World War II**. The United States led the effort to create a global economic system with a set of broadly accepted international rules. Multinational institutions were established such as the United Nations (UN), International Monetary Fund, World

Bank and World Trade Organization to promote international cooperation and free trade.

Types of Globalization:

There are three types of globalization.

Economic Globalization

Here, the focus is on the integration of international financial markets and the coordination of financial exchange. Free trade agreements, such the North American Free Trade Agreement and the Trans-Pacific Partnership are examples of economic globalization. Multinational corporations, which operate in two or more countries, play a large role in economic globalization.

Political Globalization

This type covers the national policies that bring countries together politically, economically and culturally. Organizations such as NATO and the UN are part of the political globalization effort.

Cultural Globalization

This aspect of globalization focuses in a large part on the technological and societal factors that are causing cultures to converge. These include increased ease of communication, the pervasiveness of social media and access to faster and better transportation.

Effects / Impact of Globalization on World Legal System

Globalization has affected justice delivery mechanisms of nations around the world. It touches and spreads the legal developments and debates which are going on in one part of the world to another part of the world. The best example of this is the development of laws and concepts relating to Human Rights, Competition law, Intellectual Property Rights, Cyber laws, Media laws etc. in recent times. Globalization has affected the way these laws have taken shape in different countries around the world. The provisions of the laws enacted in one country have a bearing on provisions enacted in another country. This is because of the simple fact that Globalization has linked the economies of nations which otherwise have no territorial or geographical connection. The effects of globalization can be felt locally and globally, touching the lives of individuals as well as the broader society in the following ways:

1. **Individuals:**

Here, a variety of international influences affect ordinary people. Globalization affects their access to goods, the prices they pay and their ability to travel to or even move to other countries.

2. **Communities:**

This level encompasses the impact of globalization on local or regional organizations, businesses, economies and state legal systems. It affects who lives in communities, where they work, who they work for, their ability to move out of their community and into one in another country, among other things. Globalization also changes the way local cultures develop within communities.

3. Institutions:

Multinational corporations, national governments and other organizations such as colleges, universities and all institutions of a legal system are all affected by their country's approach to and acceptance of globalization. Globalization affects the ability of companies to grow and expand, a university's ability to diversify and grow its student body and a government's ability to pursue specific economic policies.

4. Global Human Rights:

The development of the laws relating to Human Rights around the world can provide a great insight into how globalization has impacted the way justice is administered as Human Rights laws kept on developing around the world with the increase in Globalization and nations nowadays are very concerned about human rights violations. There have been various conventions and conferences globally to curb روکنے Human Rights violations and to improve the condition of human life and dignity around the world.

Benefits of Globalization

Globalization enables countries to access less expensive natural resources and lower cost labour. As a result, they can produce lower cost goods that can be sold globally. Proponents حامی of globalization argue that it improves the state of the world in many ways, such as the following:

- **Solves Economic Problems.**

Globalization moves jobs and capital to places that need these resources. It gives rich countries access to lower cost resources and labour and poorer countries access to jobs and the investment funds they need for development.

- **Promotes Free Trade**

Globalization puts pressure on nations to reduce tariffs, subsidies and other barriers to free trade. This consequently promotes economic growth, creates jobs, makes companies more competitive and lowers prices for consumers.

- **Spurs Economic Development**

Theoretically, globalization gives poorer countries access to foreign capital and technology they would not otherwise have. Foreign investment can result in an improved standard of living for the citizens of those nations.

- **Encourages Positive Trends in Human Rights and The Environment**

Advocates of globalization point to improved attention to human rights on a global scale and a shared understanding of the impact of people and production on the environment.

- **Promotes Shared Cultural Understanding**

Advocates view the increased ability to travel and experience new cultures as a positive part of globalization that can contribute to international cooperation and peace.

Conclusions

As a conclusion, the legal transplant represents a phenomenon in a continuous development that may lead to the globalization of law by extension to any legal norm that may be useful for a given global topic. At the same time the globalization of law and justice opens a new horizon for the sovereign states called to evaluate the value and place in grouping nations in terms of influence and independence. The efficiency, efficacy and validity of law and the application thereof in a reasonable and convincing manner are the principles that come before independence and dignity of any national law.

Q. DISCUSS THE LANDSCAPE AND BUILDING BLOCKS OF GLOBAL LEGAL SYSTEMS. (A2018) (S2018)

(OR)

DISCUSS THE LANDSCAPE AND BUILDING BLOCKS OF GLOBAL LEGAL SYSTEM? DISCUSS THE DOCTRINE OF RULE OF LAW IN ESTABLISHING SUPREMACY OF LAW. (A2019)

(OR)

WRITE NOTE ON RULE OF LAW (S2019)

Ans:

THE LANDSCAPE AND BUILDING BLOCKS OF GLOBAL LEGAL SYSTEMS

What is Rule of Law:

Rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly spread, equally enforced and independently adjudicated فیصلہ شدہ, and which are consistent with international human rights norms and standards.

The doctrine of Rule of law has elements:

1. **Supremacy of law**
2. **Equality before the law**
3. **The predominance of a legal spirit**

A country that follows to the rule of law ensures that :

- All persons and organizations including the government are subject to and accountable to the law.
- The law is clear, known, and enforced.
- The Court system is independent and resolves disputes in a fair and public manner.
- All persons are presumed innocent until proven otherwise by a Court.
- No person shall be arbitrarily من مانی arrested, imprisoned, or deprived محروم of their property.
- Punishment must be determined by a Court and be proportionate متناسب to the offence.

Separation of Powers

Separation of powers is a doctrine of constitutional law under which the three branches of government

- Executive
- Legislative
- Judicial

are kept separate. This is also known as the system of checks and balances, because each branch is given certain powers so as to check and balance the other branches. Each branch has separate powers, and generally each branch is not allowed to exercise the powers of the other branches. The Legislative Branch exercises congressional power, the Executive Branch exercises executive power, and the Judicial Branch exercises judicial review.

Executive:

The executive is the branch of government exercising authority in and holding responsibility for the governance of a state. The executive executes and enforces law. In political systems based on the principle of separation of powers, authority is distributed among several branches (executive, legislative, judicial) an attempt to prevent the concentration حراسق of power in the hands of a single group of people. In such a system, the executive does not pass laws (the role of the legislature) or interpret them (the role of the judiciary). Instead, the executive enforces the law as written by the legislature and interpreted by the judiciary. The executive can be the source of certain types of law, such as a decree or executive order. Executive bureaucracies are commonly the source of regulations.

Judicial Review:

Judicial review is the power of the courts to declare that acts of the other branches of government are unconstitutional, and thus unenforceable. For example if Congress were to pass a law banning newspapers from printing information about certain political matters, courts would have the authority to rule that this law violates the First Amendment, and is therefore unconstitutional. State courts also have the power to strike down their own state's laws based on the state or federal constitutions.

Human Rights:

Human rights are rights we have simply because we exist as human beings. They are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status. They range from the most fundamental "the right to life" to those that make life worth living, such as the rights to food, education, work, health, and liberty. The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, was the first legal document to set out the fundamental human rights to be universally protected. The UDHR, which turned 70 in 2018, continues to be the foundation of all international human rights law. Its 30 articles provide the principles and building blocks of current and future human rights conventions, treaties and other legal instruments. The UDHR, together with the 2 covenants , the

International Covenant for Civil and Political Rights, and the International Covenant for Economic, Social and Cultural Rights - make up the International Bill of Rights.

Global World Legal System:

Globalization has affected justice delivery mechanisms of nations around the world. It touches and spreads the legal developments and debates which are going on in one part of the world to another part of the world. The best example of this is the development of laws and concepts relating to Human Rights, Competition law, Intellectual Property Rights, Cyber laws, Media laws etc. Research demonstrates that globalization is variably contested in several domains of research on law:

(a) the construction and regulation of global markets,

(b) crimes against humanity and genocide,

(c) the diffusion of political liberalism and constitutionalism, and

(d) the institutionalization of women's rights

Q. ENUMERATE THE SALIENT FEATURES OF CHARTER OF MAGNA CARTA. (A2018) (S2018)

Ans:

MAGNA CARTA

The Magna Carta or "Great Charter," is seen as one of the most influential legal documents in British history. Magna Carta has been taken as foundational to the rule of law. The Magna Carta, also know as Magna Carta Libertatum (the Great Charter of Freedoms), was so called because the original version was drafted in Latin. It was introduced by some of the most notable barons نواب of the thirteenth century in an act of rebellion بغاوت against their king, King John I (24 December 1199 – 19 October 1216).

Indeed Lord Denning (1899 -1999) a distinguished British judge and second only to the Lord Chief Justice as Master of the Rolls, called the document

"The greatest constitutional document of all time, the foundation of the freedom of the individual against the arbitrary authority of the despot".

The Magna Carta, was possibly the most significant early influence on the extensive وسیع historical process that led to the rule of constitutional law today in the English-speaking world. In 1215, after King John of England violated a number of ancient قدیم laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, which enumerates شمارندہ what later came to be thought of as human rights. Among them was the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit وارث property and to be protected from excessive taxes. It established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery رشوت and official misconduct.

Features of Magna Carta

The Magna Carta has the following features:

1. Originally Magna Carta (Great Charter) was known as the Charter of Liberties. It became Magna Carta when a smaller Charter of the Forest was issued in 1217.

2. Magna Carta was originally in Latin. It was not issued in English until over 300 years later.

3. In 1215, it had been translated into French, which was the world language of the ruling classes.

4. In modern English translation, it has 4,922 words. The United Nations Universal Declaration of Human Rights has only 1,833.

5. In its original version, Magna Carta lasted only three months before King John violated its terms.

6. In 1225, a new version was issued by Henry III which became the definitive version.

7. The original Magna Carta was written on parchment made from dried sheepskin.

8. Three of Magna Carta's original clauses are still part of British law.

9. King John's Great Charter has 63 clauses but no definite article. it's simply referred to as Magna Carta, without "the."

10. This document guarantees Barons their ancient rights:

- No new taxes unless a common counsel agrees
- All free men have the right to justice and a fair trial with a jury
- The Monarch doesn't have absolute power. The Law is above all men and applies to everyone equally
- All free citizens can own and inherit property
- Widows who own property don't have to remarry

11. The idea that a government can only govern so long as it has the agreement and support of the people. All people and institutions are subject to and accountable to laws, the justice system should treat everyone fairly and equally.

Q. WRITE NOTE ON HYBRID LEGAL SYSTEM.

(A2018) (S2018) (A2019)

HYBRID LEGAL SYSTEM

Countries may have mixed legal systems that draw on common law and/or civil law traditions, mixed with customary or religious laws. For example, Islamic law operates alongside civil or common law in some countries. India has a common law system combined with separate personal law codes that apply to Muslims, Christians, and Hindus. Pakistan's legal system combines common law and Islamic law. Nepal's legal system combines Hindu legal concepts and common law. The Philippines has a mixed legal system of civil, common, Islamic and customary law. Sri Lanka's legal system combines civil law, common law and customary law. Most Pacific island countries recognize customary law as well as common law. In some African countries, customary law still has great influence, and local values play a role in informal justice systems and accountability.

Q. WRITE NOTE ON CODE OF HAMMURABI (A2018)

CODE OF HAMMURABI

The Code of Hammurabi was one of the earliest and most complete written legal codes and was proclaimed by the Babylonian king Hammurabi, who reigned راج from 1792 to 1750 B.C. Hammurabi expanded the city-state of Babylon along the Euphrates فرات River to unite all of southern Mesopotamia. The Hammurabi code of laws, a collection of 282 rules, established standards for commercial interactions and set fines and punishments to meet the requirements of justice. Hammurabi's Code was carved onto a massive, finger-shaped black stone stele (pillar) that was looted لوٹا گیا by invaders حملہ آور and finally rediscovered in 1901. The black stone stele containing the Code of Hammurabi was carved from a single, four-ton slab of diorite(type of stone), a durable but incredibly difficult stone for carving نقاشی.

The Code of Hammurabi includes many harsh punishments e.g;

"An eye for an eye, and a tooth for a tooth."

Sometimes demanding the removal of the guilty party's tongue, hands, breasts, eye or ear. But the code is also one of the earliest examples of an accused person being considered innocent until proven guilty. The 282 edicts (laws) are all written in it , in form of if-then. For example, if a man steals an ox, then he must pay back 30 times its value. The edicts range from family law to professional contracts and administrative law. A doctor's fee for curing علاج a severe wound would be 10 silver shekels (currency name) for a gentleman, five shekels for a freedman and two shekels for a slave. Penalties for malpractice followed the same scheme: a doctor who killed a rich patient would have his hands cut off, while only financial compensation was required if the victim was a slave.

Q. CLASSIFICATION OF COURTS IN COMMON LAW. (A2019)

CLASSIFICATION OF COURTS IN COMMON LAW

Common law isn't a set of formal statutes. Instead, it's based on court-established legal precedents. Verdicts فیصلے by public juries and judicial authorities are institutionalized and serve as a foundation for any relevant future instances. It's also referred to as case law, as it's the law created by judges for decisions on individual cases or disputes. There are many different types of courts in common law and many ways to classify and describe them. We can classify common law courts into following types:

- The County Court
- The Family Court
- The Magistrates Court
- The Crown Court
- The High Court
- The Court of Appeal
- The Supreme Court

The County Court

The county court deals with civil cases and these are handled by a judge or district judge. County courts usually deal with claims that involve:

- Landlord and tenant disputes
- Consumer disputes
- Personal injury claims
- Discrimination cases
- Debt problems (payments)
- Employment issues

The Family Court

The Family Court and Family Division deal with all kinds of legal disputes to do with children and the breakdown of relationships.

The Magistrates Court

Magistrates courts are the criminal court where all criminal proceedings start. These are most famous courts which deal with the following types of offences.

- Driving offences
- Assault and battery
- Robbery
- Theft

The Crown Court

Although all cases start in the Magistrates Court, more serious offences are often automatically moved up straight away to Crown Court, these include:

- Armed Robber
- Manslaughter
- Sexual Offences
- Murder

The High Court

The High Court deals and hears with sensitive cases and cases that have been sent for appeal, they can deal with both criminal and civil cases. This court has the power to review the actions of individuals or organisations and deem whether they have acted legally and justly.

The Court of Appeal

Similarly to the High Court, the Court of Appeal deals with all criminal and civil cases that have been appealed in the common law legal syste. Sometimes the Court of Appeal will deal with appeals from tribunals such as the Employment Appeal Tribunal etc.

The Supreme Court

The Supreme Court deals with the most serious and sensitive offences. This court will also deal with appeals that have gone through the High Court and the Court of Appeal, but the most important cases they deal with are those in the public eye and are of general public importance.

Q. WRITE NOTE ON WHAT ARE SOURCES OF COMMON LAW. (A2020)

Ans:

SOURCES OF COMMON LAW

Common law is a body of unwritten laws based on legal precedents established by the courts. Common law influences the decision-making process in unusual cases where the outcome cannot be determined based on existing statutes or written rules of law. The U.S. common-law system evolved from a British tradition that spread to North America during the 17th- and 18th-century colonial period. Common law is also practiced in Australia, Canada, Hong Kong, India, New Zealand, and the United Kingdom.

Sources of Common Law :

1. Primary Sources

- Court Decisions ("Common Law" And "Equity Law")
- Legislation

2. Secondary Sources

- Custom
- Legal Writing (Doctrine)
- Court Decisions

Common law is basically a "case law". a 'judge made law' Main source is court decisions.

In all countries there is distinction between "superior courts" and "all other courts". All other courts are called "lower courts" or "inferior courts" . Superior courts contribute the development of common law and equity. superior courts create legal rules.

In Common law, rules set by court decisions must be followed by other courts. Normally common law system is a judge-made system and judges have a basic obligation to respect the "judicial precedent" example-instances. They should respect the previous court decisions and this is called "***The Rule Of Precedent***".

Q. WRITE NOT ON BILL OF RIGHTS (S2019)

BILL OF RIGHTS

Bill of Rights, in the United States, the first 10 amendments to the U.S. Constitution, which were adopted as a single unit on December 15, 1791, and which constitute a collection of mutually reinforcing guarantees of individual rights and of limitations on federal and state governments. The Bill of Rights derives from the Magna Carta (1215), the English Bill of Rights (1689), the colonial struggle against king and Parliament, and a gradually broadening concept of equality among the American people. Virginia's 1776 Declaration of Rights, drafted chiefly by George Mason, was a notable forerunner. Besides being sayings of government, the guarantees in the Bill of Rights have binding legal force. The bill of rights remains an active force in contemporary American life as a major element of constitutional law. Following 10 amendments are made which are known as bill of rights.

Amendment	Rights and Protections
First	• Freedom of speech • Freedom of the press • Freedom of religion • Freedom of assembly • Right to petition the government
Second	• Right to bear arms
Third	• Protection against housing soldiers in civilian homes
Fourth	• Protection against unreasonable search and seizure • Protection against the issuing of warrants without probable cause
Fifth	• Protection against ▫ trial without indictment ▫ double jeopardy ▫ self-incrimination ▫ property seizure
Sixth	• Right to a speedy trial • Right to be informed of charges • Right to be confronted by witnesses • Right to call witnesses • Right to a legal counsel
Seventh	• Right to trial by jury
Eighth	• Protection against ▫ excessive bail ▫ excessive fines ▫ cruel and unusual punishment
Ninth	• Rights granted in the Constitution shall not infringe on other rights.
Tenth	• Powers not granted to the Federal Government in the Constitution belong to the states or the people.

Q. WRITE A NOTE ON CUSTOMARY LAWS IN CONTEMPORARY LEGAL SYSTEMS. (S2019)

CUSTOMARY LAWS IN CONTEMPORARY LEGAL SYSTEMS

The contemporary معاصر national legal systems are generally based on one of four basic systems;

- Civil law
- Common law
- Statutory law
- Religious law or combinations of these.

However, the legal system of each country is shaped by its unique history and so incorporates individual variationsتغیرات . A purely common law system is created by the judiciary, as the law comes from case law, rather than statute. Thus a common law system has a strong focus on judicial precedent.

Customary Law

First, the idea of "customary law" that is under consideration concerns the laws, practices and customs of indigenous سرخ peoples and local communities. It is not, for instance, the same idea as "customary law" in the international context. "Customary international law" has a more precise and technical meaning in the realm دائرے of rules governing relations between distinct States, referring to those aspects of international law that are based on custom or practice between States.

Example Of Customary Law

The customary law of the Quechua (South American people of Peru) peoples of the Andean region provides one example of a customary law system. Key principles of Quechua law include the following:

• **Reciprocityتعامل :** encompassesمحیط the principle of equity, and provides the basis for negotiation and exchange between humans, and with the Pachamama (Mother Earth);

• **Dualityدوہرپن:** indicates that everything has an opposite which complements it; behaviour cannot be individualistic, for example, in the union between man and woman; and that other systems or paradigms can be accepted;

• **Equilibriumتوازن:** refers to balance and harmony, in both nature and society – e.g. respect for the 'Pachamama' and mountain gods; resolving conflicts to restore social harmony; and complementarities (e.g. between ecological niches). Equilibrium needs to be observed in applying customary laws, all of which are essentially derived from this principle.

PLACES WHERE CUSTOMARY LAW IS RECOGNISED

In particular customary law is often recognised in the following situations:

- Through the courts:
- Judicial responses and discretion;
- Sentencing discretions;
- Criminal law in the assigning of criminal responsibility;
- Compensable injury;
- Traditional marriage; and
- Interrogation rules through trial.
- Through legislation:
- Grant of land rights and native title;
- Protection of sites and sacred sites;
- Hunting and fishing rights;
- Aboriginal traditional marriages;
- Aboriginal child care practices;
- Traditional distribution on death; and
- Aboriginal courts.

PART-II

LEGAL SYSTEM OF PAKISTAN

Q. DISCUSS HISTORICAL DEVELOPMENT OF LEGAL SYSTEM OF PAKISTAN AND ITS PRESENT DAY FORM. (A2018) (A2019)

Ans

HISTORICAL DEVELOPMENT OF LEGAL SYSTEM OF PAKISTAN

Introduction

Pakistan, officially the Islamic Republic of Pakistan, is a country in South Asia. It is the world's fifth-most populous country, with a population of almost 227 million, and has the world's second-largest Muslim population. Pakistan is the 33rd-largest country by area, 307,374 sq mi (796,096 sq km).

Legal System of Pakistan

The legal system is derived from English common law and is based on the much-amended 1973 constitution and Islamic law (sharia). The Supreme Court, provincial high courts, and other courts have jurisdiction over criminal and civil issues. The president appoints the Supreme Court's chief justice and formally approves other Supreme Court justices as well as provincial high court judges on the advice of the chief justice. The Supreme Court has original, appellate, and advisory jurisdiction, and high courts have original and appellate jurisdiction. The Federal Shariat Court determines whether laws are consistent with Islamic injunctions. Special courts and tribunals hear particular types of cases, such as drugs, commerce, and terrorism.

Pakistan's Rule of Law development has suffered from decades of military rule with only short lived and intermittent وقفے وقفے سے experience with democratic governance. Since much of the law derives from the British colonial system, it is seen by many as missing legitimacy. There is also tension between the inherited common law system and the Islamic law based on the Quran, especially in outlying provinces and regions. Questions about legitimacy are compounded by the low level of efficiency, the prevalence of delays, the inferior quality of legal training, corruption, and the perception that the court system is a tool for the delay of justice, manipulated by rich and/or powerful interests in the society.

Historical Development Of Legal System Of Pakistan

By the end of World War II, the British imperial government granted independence to its Indian colony and for that matter the British Parliament enacted the Indian Independence Act, 1947. Under the Act, the British Crown relinquished چھوڑ دیا its sovereign powers over India and transferred those powers to the newly established dominions of India and Pakistan on 14 August 1947. The constitution of British India, was amended to bring it in consonance تصرف with the aims and objectives of independence as laid down in the 1947 Act.

First Constitution 1956

After independence, it took three Governor Generals, four Prime Ministers, two constituent assemblies (1947-1954 & 1955-1956), and nine years of protracted constitution making process to produce the first constitution of Pakistan in 1956. *Choudhary Muhammad Ali* was the Prime Minister at that time. The draft of this Constitution was introduced in the Assembly on 9th January 1956 and was passed by the Assembly on 29th February 1956. The assent was given on it by the Governor General on 2nd March 1956. It was rejected on the final day of its adoption (29 February 1956) by all Hindu minority parties and the largest Muslim political party (the Awami League) from East Pakistan , which was the largest province. Due to lack of consensus اتفاق رائے among ethnonational نسلی groups, the 1956 constitution failed to arrest the political instability that engulfed گھیرا ہوا the entire country following its promulgation, ultimately leading to its abrogation and imposition of the first martial law in the country on 7 October 1958.

Second Constitution 1962

The military dictator General Ayub Khan, who had taken over the reins لگام of power, enacted the 1962 constitution to the country through an executive order. It was introduced by President Ayub on 1 March 1962 and finally came into effect on 8 June 1962. The Constitution contained 250 articles divided into twelve parts and three schedules. The 1962 Constitution like the previous constitution provided for unicameral یک ایوانی legislature called National Assembly. Its total strength was 156 (later 218 and then 313, who were elected by the electoral college of Basic Democrats. Besides, certain seats were also reserved for women. Its term was 5 years, which was fixed. The Constitution of 1962 introduced a Federal State with Presidential form of government, with National Assembly at the centre and the Provincial Assemblies in the Provinces. The Legislatures, both at centre and in provinces were unicameral. Its features were:

- Under the constitution of 1962 federal system was adopted.
- The 1962 constitution was written in nature and character. It consisted of 250 Articles and 3 Schedules.
- The 1962 constitution was written in nature and character. It consisted of 250 Articles and 3 Schedules.
- All the executive authority was vested in the President who was unanimously responsible for the business of the central government.
- indirect method of election for President and for the legislative assemblies was adopted.
- Judges of the superior courts were appointed by the President.
- Each province had a provincial assembly, which was organized on the lines of National Assembly.

Third Constitution 1973

The third constitution of Pakistan was drafted by the government of *Zulfiqar Ali Bhutto*, with additional assistance from the country's opposition parties, it was approved by the Parliament

on 10 April and ratified توثیق شدہ on 14 August 1973. The Constitution is intended to guide Pakistan's law, its political culture, and system.

This Constitution consists of 280 articles divided into 7 the following Parts:

I. **Introductory**
II. **Fundamental Rights and Principles of Policy**
III. **The Federation of Pakistan**
IV. **Provinces**
V. **Relations Between Federation and Provinces**
VI. **Finance, Property, Contracts and Suits**
VII. **The Judicature**

Main Features of 1973 Constitution:

1) The President is the head of state, represents the unity of the republic and is elected by a simple majority of an electoral college consisting of members of the two houses of federal legislature and of the four provincial legislatures.
2) The Prime Minister is elected by members of the lower house of the federal legislature after every general election, and other cabinet ministers are appointed by the President according to the advice of the Prime Ministers.
3) The executive authority of the federal government is exercised in the name of the President by the Prime Minister.
4) The federal bicameral legislature, consists of the President, the lower house (National Assembly) and upper house (Senate).
5) The 1973 constitution provides for a hierarchy of the judicial branch with the Supreme Court of Pakistan on top and five High Courts subordinate to it, and then lower courts.
6) The 1973 constitution guarantees freedom of speech, press, and religion as well as the right to bail, counsel, habeas corpus, representation, appeal, and numerous other protections.

This constitution was twice suspended by military coups of General Zia-ul-Haq (1977-1985) and General Musharraf (1999-2002), and at the time of its 'restoration', both in 1985 and 2002, the military regimes amended it in ways that fundamentally changed its Islamic and federal character. One such amendment on both occasion was the grant of power to the president to dissolve the lower house of the federal legislature. With this power in the hands of presidents , which office was usurped غصب by both dictators at the time of restoring the constitution. The ensuing آنے والا parliaments on both occasions were forced to give constitutional cover via the 8th and 17th Amendments to the acts of suspensions of the constitution, and all other acts of the military dictators during the period between the suspension and restoration of the constitution.

Federal Shariat Court:

The process of Islamization that has taken place in Pakistan, especially in the Zia years, raised considerable concern about criminal law. In February 1979, President Zia promulgated a new legal code for Pakistan based on Islamic law and established the ***Federal Shariat Court*** to hear appeals arising from the new code. The Federal Shariat Court also has extensive other powers. It lies within the discretion اختیار of the court of first instance to decide whether to try a case under civil or sharia law. If the latter, then the appeals process goes to the Federal Shariat Court, rather than to the high courts. Sharia law was not intended to replace the criminal code but to bring specific parts of it into accordance with the Quran and the sharia. Its most notable provisions are contained in the hudood ordinances promulgated in 1979.

Nizam-e-Adl:

The 2009 Nizam-e-Adl bill was tabled in the Parliament and all the major political parties, except Muttahida Qaumi Movement (MQM), voted for the bill and it became a law in no time. On 13 April 2009, President Asif Ali Zardari, the 11th president of Pakistan, signed Nizam-e-Adl Regulation 2009. Prime Minister Yousuf Raza Gilani said that by supporting the implementation of the agreement signed by the provincial government, the National Assembly was respecting the mandate, desire and the will of the Provincial Government.

General elections were held in Pakistan on Wednesday, 25 July 2018 to elect the members of National Assembly and the four provincial assemblies. In the National Assembly elections, the Pakistan Tehreek-e-Insaf (PTI) received the most votes and won the most seats. Imran Ahmed Khan Niazi a Pakistani politician and former cricketer who become the 22nd prime minister of Pakistan.

Q. CRITICALLY EXAMINE THE SALIENT FEATURES OF PAKISTAN LEGAL SYSTEM. (S2019)

(OR)

DISCUSS THE DEVELOPMENT OF CONSTITUTION AND LAW IN SUB-CONTINENT AND ELABORATE THE SALIENT FEATURES OF LEGAL SYSTEM OF PAKISTAN WITH REFERENCE OF ISLAMIC CHARACTER. (S2018)

Ans:

PAKISTAN LEGAL SYSTEM

The 1973 Constitution of Pakistan was prepared by the first elected NA through a 25 members committee under the leadership of Abdul Hafiz Pirzada of all parliamentary parties. The constitution was approved by the Assembly on 10th April 1973 and assented to by the President on 12thApril 1973. It was enforced on 14thAugust 1973. This constitution was the first one, which enjoyed greater popularity. It enjoyed and still enjoys a great respect and is acknowledged as the best constitution ever produced in Pakistan. Here we will discuss the salient features of Pakistan Legal System and also examine them critically.

A Written and Lengthy Document

Pakistan 3rd constitution of 1973 is is one of the lengthiest constitutions of the world, consisting of a Preamble and 280 Articles, classified into 12 Chapters and 6 Schedules. Most of the principles of the constitutional laws have been specified in the constitution to avoid all possible ambiguities. Hence it is comprehensive and comparatively more detailed than the previous ones but still there are large no of issues where this constitution is silent.

Islamic Ideology

The 1973 Constitution of Pakistanis strictly based on Islamic ideology. Article-1 of the constitution declares Pakistan to be an Islamic polity. The Muslims were advices to implement the teachings of Quran and Sunnah in the daily life. Islam shall be the state religion. Besides, the Council of Islamic Ideology it has been made obligatory for the President and Prime Minister to be Muslim, But on the other way practically we are far away from Islamic ideology and still no government could implement laws in the country.

Federal System

According to Article-I of the constitution, Pakistan shall be federal republic to be known as Islamic Republic or Pakistan. There are two legislative lists the Federal List and the Concurrent List. The central government has exclusive right to legislate on all matters enumerated in the Federal List. As far as the Concurrent List is concerned, both the central and the provincial

governments can make laws on their subjects, however, in case of conflict the central law will prevail while the other will stand invalid. The residuary powers are vested in the provincial governments. Although the provincial autonomy has been ensured but the supremacy of the federal government has been recognized in various legislative, administrative and fiscal matters. Due to multiparty system in Pakistan, different provinces are governed by different political parties and they often have conflict with central government. Then many projects and matters remain unsolved or delayed.

Parliamentary Form

The 1973 constitution establishes a parliamentary form of government. The Prime Minister and the cabinet ministers belong to Parliament and are responsible to it for their conduct and policies. They remain in office so long as they enjoy the confidence of the majority members. The President is the head of State and the Prime Minister is the head of Government. The President has to act on the advice of Prime Minister. There is no check and balance on the qualification of parliament members, so members are elected from few families. Land lords inherit parliament seats and after father his son get same place. So majority of unqualified and inexperienced persons are in parliament for legislation.

Fundamental Rights

The constitution of 1973 incorporates شامل کرتا ہے all the fundamental rights that were ensured in other legal systems of the world. Neither the Parliament nor the provincial assemblies are authorized to enact laws repugnant to these rights otherwise the courts will declared such laws to be unconstitutional. Some of these rights include freedom of movement, freedom of assembly, association, profession, speech and freedom of religion, right to property, equality before law etc. On the other hand it is difficult for the poor person to get his basic rights in current Pakistan Legal System due to corruption. Budget assigned by the government for the welfare of poor people, for their education , health and other issues could not reach to them due to corruption. There is no check and balance for consumption of such budget.

Independence of Judiciary in 1973 Constitution

Under the Constitution of 1973 proper safeguards have been provided to ensure independence of judiciary. Judges of the superior courts once appointed can only be removed on the basis of inquiry report submitted by Supreme Judicial Council. Thus they enjoy full security of office. They receive huge salaries along with many other allowances. There is single judicial hierarchy with Supreme Court at the top and the High Court next in order. Practically, on the other hand Pakistan's judiciary is influenced by the government and other stakeholders. The lower judiciary is influenced by the executive branch and seen as lacking competence and fairness. It currently faces a significant backlog of unresolved cases. Pakistan's judicial system operates independently but the reality is different as the politicians and corruption has significant influence over the judicial branch.

Directive Principles of State Policy

Directive Principles of State Policy lay down the basic objectives and future plan of action of the political system. All the government agencies take guidance from these principles. However, their realization depends upon the availability of resources, commitment of the decision makers and the contemporary environment. Hence their violation is not an offence or illegal action. Most of the Islamic provisions of the constitution are part of the directive principles of the state policy especially those dealing with the enforcement of socio-economic justice

Rule of Law

All citizens arc ensured equal protection of law. It is explicitly laid down in the constitution that the executive has no power to deprive a citizen of his life, liberty, property and equality etc. nor can a person be stopped from doing certain things which one is entitled to do under law. If we observe keenly the current legal system of Pakistan then we will realize that there is different law for poor and rich person. It is very difficult for a poor person to get justice due to less education of law and influence of corruption.

Position of the President

The President is the chief executive head of the state. He is assisted by the Prime Minister and his cabinet ministers for running the governmental machinery smoothly. He represents the unity of the republic. All the executive authority is vested in him. He appoints all the top-ranking military and civil officials of the state. All the bills passed by Parliament must be assented to by him. He can summon and prorogue either house of the Parliament. It is the most important seat for Pakistan but last few decades we are watching that corrupt politicians are using this position for their own benefits and misusing it.

A Rigid Constitution

The 1973 constitution of Pakistan is a rigid constitution but it is not so rigid like that of US Constitution. Article-239 provides a very rigid procedure of amending the constitution. A bill to amend the constitution must be passed by both the houses of Parliament separately by 2/3rd majority vote. After that the bill is to be submitted to the President for his assent. If the President signs the bill, the constitution will be amended accordingly. As corrupt Politicians make a lot of amendments during last 30 years for prolong their government and personal benefits.

So, we can say legal system using in Pakistan is best legal system as compare to other countries but our corrupt politicians pollute the very department by corruption and bad governance during last few decades and there is no proper accountability for these corrupt insects and black sheep. Officials of accountability like NAB are also involved in corruption because politicians appoint persons who are apple of their eyes at key posts.

Q. EXPLAIN THE ROLE OF DOCTRINE OF JUDICIAL REVIEW IN PROTECTING AND ENFORCING FUNDAMENTAL RIGHTS IN PAKISTAN LEGAL SYSTEM? (S2019)

(OR)

DISCUSS THE DOCTRINE OF JUDICIAL REVIEW AS PERMANENT FEATURE OF PAKISTAN LEGAL SYSTEM? (A2019)

(OR)

WRITE NOTE ON JUDICIAL REVIEW. (S2018)

Ans:

DOCTRINE OF JUDICIAL REVIEW

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. Legal System of Pakistan presents two types of judicial review, which are valid as well as constitutional according to the prescribed statutes enforced in Pakistan. All courts which are established in Pakistan have general power to review its orders, judgment and decree.

- First kind of review can be called as review of judicial actions. The power of the judiciary to control administrative actions derive their force from the law and the Constitution.
- Second kind of review can be called as review of administrative and legislative actions.

SCOPE

The scope of judicial review depends upon whether a given function is administrative or judicial in nature. The administrative finding of facts is not generally reviewed unless it goes to the very jurisdiction or the findings are manifestly wrong in which case they are likely to be characterized as flawed in point of law.

Source of Judicial Review in Pakistan

The Constitution of Pakistan has been modelled partly on the American Constitution and partly on the British Constitution. Our Constitution prescribes a limited government. The principle of judicial review was first added to the Constitution in 1962. Article 199 of our present Constitution is the successor to Article 98 of the 1962 Constitution. It was introduced without any material change to the substance or language of the original provision. In terms of its extent and limits, Article 199, though comparable with the British writ jurisdiction, is significantly different. Nonetheless, the judgments of English courts regarding the extent and limits of writ jurisdictions can and do help Pakistani courts in the interpretation of Article 199.

THE JURISDICTIONAL PRINCIPLES /DOCTRINE OF ULTRA VIRES

ULTRA VIRES

Ultra vires is a Latin phrase meaning literally "beyond the powers". If an act requires legal authority and it is done with such authority, it is characterized in law as intra vires (literally "within the powers"; Acts that are intra vires may equivalently be termed "valid" and those that are ultra vires "invalid". Doctrine of ultra vires is in fact is a scale for the measurement of delegated legislation, its validity and the proper observance of procedure created by the said legislation. The doctrine is of two kinds:

SUBSTANTIVE ULTRA VIRES: The situation where the executive authorities enact laws or rules, for which they are not authorized by the parliament.

PROCEDURAL ULTRA VIRES: When the authorities fail to follow the procedural requirement prescribed by the statutes.

PRINCIPLES OF JUDICIAL REVIEW IN PAKISTAN

Jurisdiction principles enable the reviewing courts to control the exercise of power by the administrative authorities. Principles applied in Pakistan examined below:

- **REASONABLENESS:** The doctrine of reasonableness has been adopted in the rule that powers, particularly discretionary ones, have to be exercised "judiciously and not arbitrary or capriciously".
- **IMPROPER MOTIVES/ MALAFIDE:** A malafide order means that which is passed not for the purpose contemplated غوروفکر by the enactment granting the power to pass the order, but for some other collateral or ulterior motive.
- **IRRELEVANT CONSIDERATIONS:** It is an established principle that in exercising discretion, the authorities must have regard to all relevant considerations and disregard all irrelevant considerations.
- **ACTING UNDER DICTATION:** Discretionary powers must be exercised only by the persons authorized by the statute.
- **ABDICATION OF AUTHORITY:** Persons invested with discretion must exercise it properly and are not allowed to 'surrender their power' to any other authority.
- **SUBJECTIVE DISCRETION**: Exercise of subjective discretion by authority allowed under an enactment has been brought under judicial review. Expressions such as "shall make such orders as it may think fit" do not allow to make a fanciful خیالی or arbitrary order unrelated to the case before it.

MODES OF JUDICIAL REVIEW

Following are the modes of judicial review of administrative action

1. Public Law Review
2. Private Law Review

1. PUBLIC LAW REVIEW

An important aspect of Public Law review is not only enforcement of private right but to keep the administrative and quasi-administrative machinery within proper control. Following are the different kinds of writs which can be issued on certain grounds by Supreme Court and High Court.

- **HABEAS CORPUS**
- **MANDAMUS**
- **PROHIBITION**
- **CERTIORARI**
- **QUO WARRANTO1**

HABEAS CORPUS directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner.

MANDAMUS to do anything he is required by law.

PROHIBITION functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do.

CERTIORARI functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect.

QUO WARRANTO requiring a person within the territorial jurisdiction of the Court holding hold a public office to show under what authority of law he claims to hold that office.

2. PRIVATE LAW REVIEW

Private law review refers to the ordinary courts of the land, exercised in accordance with the ordinary law to control administrative authorities and their actions.

MODES OF PRIVATE LAW REVIEW

Private Law review can be exercised through following modes:

- **INJUNCTIONS**
- **DECLARATORY ACTIONS**
- **SUIT FOR DAMAGES**

INJUNCTIONS Injunction is a judicial process by which one who has invaded حملہ آور or is threatening to invade the rights, legal or equitable مُنصِفانہ of another, is restrained from continuing or commencing such wrongful act.

DECLARATORY ACTIONS A declaratory اعلانیہ action signifies a judicial remedy, which conclusively determines the rights of the parties. Any person entitled to legal character may institute a suit against any person denying such character, and the court may in its discretion make there a declaration that he is so entitled.

SUITS FOR DAMAGES An action for damages used to lie against the local authorities or public corporations. A corporation which has the same liability as any individual has, in all civil matters, can be liable for the acts of his servant acting within the scope of his employment.

LIMITS OF JUDICIAL REVIEW

- No interference will be made by any court where the action of administrative authority is within jurisdiction.
- The superior court cannot review where the possible interpretation has been made by lower court or tribunals.
- The court does not interfere with an administrative body's determination of facts except when its conclusion is not supported by any evidence at all.
- Sufficiency of evidence cannot be reviewed.

THE ROLE OF COURTS IN PROTECTION OF FUNDAMENTAL RIGHTS

The role of courts in protection of fundamental rights is essential . Rule of law in a society can only be ensured if the rights of the people are protected in a fair and transparent manner. Thus, the modern democratic states have empowered their higher courts with the power of ***Judicial Review*** of executive actions. Pakistan inherited this power from the English prerogative استحقاق writs and subsequently incorporated شامل the power of *judicial review* in its Constitution and the courts in Pakistan are actively exercising their powers of judicial review of executive actions. The courts in Pakistan declared that the government in Pakistan is not identical to that of England and thus brought all the executive actions, without out leaving any no go area, under the scrutiny جانچ of the courts. However, there is a restriction on this power that it can be availed only in case when there is no other effective remedy available under the prevailing مروجہ laws. The high courts have successfully used this power to provide relief to the public against the executive.

CONCLUSION

The exercise of governmental power by administrative authorities is a sacred مقدس trust and they are required to act within their limits and they are subject to judicial control in case of

arbitrary من مانی exercise of their powers. This judicial review may be in the form of constitutional review i.e. , invoking the jurisdiction of High Court or non- constitutional review i.e. , invoking the jurisdiction of civil courts and no statute can curtail سلب the judicial review of superior court.

Q. WHAT IS MEANT BY PREROGATIVE WRITS? EXPLAIN THE JURISDICTION GIVEN UNDER ARTICLE 199 AND 184(3) OF THE CONSTITUTION OF PAKISTAN 1973. (A2020)

Ans

What is a Writ:

A writ is an official written directive ہدایت issued by an organisation with administrative or judicial jurisdiction; in modern sense, this organisation is known as a court. There are many types of writs exist including prerogative writs, summons and warrants but there are many others. The writ, in common phrasing is ***an order issued by a court in the name of an authority requiring the performance of a specific act.***

Origin of Writs:

The system of writs derives its origin from Common Law, but since 1938, in England the word "writ" has been replaced by "order" and the same precedent has been followed in the Constitution of 1973. The effect of omission of the traditional names of the writs has been calculated to give to the court a wider scope to issue a particular direction, because the court would not be bound in the issuance of such direction to restrict itself to the rigid rules applicable to prerogative writs.

PREROGATIVE WRITS

A prerogative استحقاق writ is a historic term for a writ (official order) that directs the behaviour of another arm of government, such as an agency, official, or other court. It was originally available only to the Crown under English law, and reflected the discretionary صوابدیدی prerogative and extraordinary power of the monarch بادشاہ.

The "prerogative" writs or writs based on privileges are a subclass of the group of writs, those that are to be heard before regular cases on a court's docket (tag/label) except other such writs.

Types of Prerogative Writs

The most common types of prerogative writs are:

- **MANDAMUS**

  Mandamus is a judicial remedy which is in the form of an order from a superior court to any subordinate court, organisational or public authority to do or refrain from doing some specific act.

- **CERTIORARI**

  Certiorari is a writ intending for seeking judicial review, currently means an order by a superior court directing a lower court, tribunal, or public authority to submit the record in a certain case for review.

- **HABEAS CORPUS**

  Habeas corpus is a legal action through which a prisoner can be released from an unlawful custody.

- **PROCEDENDO**

  A writ of ***procedendo*** is a remedy where there is a delay in rendering a judgment that amount to a abandonment or denial of justice. It is an order of a higher court to lower court, directing that court to extract a delayed judgment.

- **PROHIBIT**

  The Court may issue a writ of prohibition to prohibit the authority from acting in excess of its jurisdiction. This writ is normally issued by a superior court to the lower court asking it not to proceed with a case which does not fall under its jurisdiction.

- **QUO WARRANTO**

  The writ of ***quo warranto*** is issued against a person who claims or usurps غصب a public office. Through this process, the court inquires 'by what authority' the person supports his or her claim.

JURISDICTION GIVEN UNDER ARTICLE 199 AND 184(3) OF THE CONSTITUTION OF PAKISTAN 1973

Article 184(3) of the Constitution of Pakistan 1973 provides the concept of protection of Fundamental Rights through the use of Article 199 of the Constitution. Hence, the Supreme Court of Pakistan can pre-empt (prevent) the jurisdiction of High Courts under Art.199 whenever "a question of public importance with reference to the enforcement of any of the Fundamental Rights is involved. The power of Art.184(3) is "original jurisdiction" of the Supreme Court to enforce fundamental rights. It is the combined effect of the provisions of Art.184(3) and Art.199 that help us to understand as to what might be the human rights to be enforced. "Human Rights" is a general term while the term "Fundamental Rights" is specific one and is used in the Constitution as a practical term defining and limiting the exact meanings of various rights provided to all those who are citizens of Pakistan. However, certain Fundamental Rights are provided to everyone who is within the territorial jurisdiction of Pakistan, whether citizen or not, at any given time period.

Q. DISCUSS THE POWERS, ELECTION PROCEDURE OF THE PRESIDENT OF PAKISTAN ENUNCIATED IN CONSTITUTION OF PAKISTAN 1973. (A2020)

(OR)

WRITE NOTE ON THE CONSTITUTIONAL ROLE OF PRESIDENT. (S2018)

(OR)

WRITE NOTE ON THE ELECTION AND REMOVAL OF PRESIDENT OF PAKISTAN. (A2018)

Ans.

THE PRESIDENT OF PAKISTAN

The President is the constitutional head of the state. The office of president represents the unity of federation and conducts its functions with utmost impartiality and neutrality. President is elected for five years, by both houses of parliament and of the four Provincial Assemblies, the president is entitled to the highest respect and esteem by all the functionaries of the state. The president resides in presidency named "***Aiwan-e-Sadar***" in Federal Capital Islamabad. In his absence, the Chairman Senate takes over as the Acting President until the President resumes office, or the election of the next President is held.

POWERS/DUTIES OF PRESIDENT OF PAKISTAN

The President of Pakistan holds following powers:

Powers Regarding Military

- **Appointment**

  On the advice of Prime Minister, President appoints Chairman Joint Chiefs of Staff committee, Chief of Army Staff, Chief of Naval Staff and Chief of Air Staff. Even President of Pakistan determines their allowances and salaries.

- **War and Peace Settlement**

  President possesses power to declare war and make peace settlement. However, such power can only be used after making consultation with Prime Minister.

- **Sending Pakistan Army to other states and UN**

  President has power to send Pakistan army for help to other states and United Nations organization.

Judicial Powers

President of Pakistan possesses following judicial powers:

- Appointment of Chief Justice of Pakistan.
- Appointment of Chief Justices of High Courts and Judges of Supreme Court and High Court.
- Appointment of acting Chief Justice of Pakistan and chief Justice of High Courts.
- Appointment of acting and ad hoc judges of Supreme Court.
- Appointment of additional judges of High Courts.

In the past, after three successful military coups in the South Asian country, Pakistan has experienced a kind of political conflict between its President and Prime Minister. However, some of recent constitution amendments have made Prime Minister more powerful than President. These amendments have aimed to finish political conflict between these two constitutional heads.

Legislative Powers After 18th Amendment

After 18th Amendment in the Constitution of Pakistan, President possesses following legislative powers:

- It is widely believed that after 18th amendment, the Constitution does not empower the President to dissolve the National Assembly but the fact is that head of the state still has the right. However, President can only dissolve the National Assembly if so advised by the Prime Minister; and the National Assembly.

Powers Regarding Elections:

The President of Pakistan also have following powers and duties:

- As head of the state, President conducts and oversees the general elections when the national assembly stands dissolved after completing its five-year term.

- At the outset of new Parliamentary year, President summons and addresses the joint session where he reminds the lawmakers of the state's founding principles.

Administrative Powers:

- President has the right to promulgate any ordinance or an amended bill. If president reject the bill, it comes back to the Parliament and then needs 2/3 majority to be passed again. If the bill gets 2/3 majority then the President is bound to sign that bill and if the bill fails to get 2/3 majority, the life of that bill gets over.

- President is also the Chancellor of all federal universities in the country.
- It is the President who appoints Auditor General, Attorney General, Governors, members of National Finance Commission, members and chairman of Council of Islamic Ideology, Council of Common Interest, and National Economic Council.
- President of Pakistan has power to appoint ambassadors in foreign states and representative in United Nations Organization, and to settle foreign affairs.
- President also holds the power to grant pardon, or reduce the sentence of a convicted prisoner.

How Can President Of Pakistan Be Removed?

Under the following ground or conditions the president may be removed from his office.

- ❖ Physical incapacity
- ❖ Mental incapacity
- ❖ Guilty of violation of the constitution
- ❖ On account of gross misconduct

PROCEDURE FOR PRESIDENTIAL ELECTIONS

According to the Constitution of Pakistan, the indirect election to the office of the President is held no earlier than 60 days and no later than 30 days before the expiration of the term of the incumbent موجودہ President. In case a vacancy occurs for any reason, the presidential election shall be held within 30 days . If the presidential election cannot be held because the National Assembly has been dissolved, it will be held within 30 days of the general election to the National Assembly. Presidential election is conducted through secret ballot.

Qualifications For President

The Constitution provides that a candidate for election to the office of the President should be:

- A Muslim
- Not less than 45 years of age
- Qualified to be elected as a member of National Assembly.

It is the responsibility of the ECP to hold and conduct elections for the office of the President. The Chief Election Commissioner serves as the Returning Officer for such an election. Similarly, the ECP appoints Presiding Officers to preside over the meeting of the members of Parliament and at the meetings of the members of the provincial assemblies.

Submission of Nomination Papers

The Chief Election Commissioner fixes by public notification the time and place for submission of nomination papers, holding a scrutiny, making withdrawals, if any, and holding

the poll, if necessary. Any member of Parliament or of a provincial assembly may nominate a person qualified for the post by delivering to the Presiding Officer a nomination paper, signed by them self as proposer and by another member of Parliament or, as the case may be, Assembly as seconder, together with a statement signed by the person nominated that he consents to the nomination. After scrutiny, the Chief Election Commissioner announces, by public notification, the names of the persons validly nominated to be hereinafter called the candidate(s).

Electoral College

In Pakistan, according to Article 41 of the Constitution of Pakistan, the President's electoral college consists of members of both Houses (Senate and National Assembly) and members of the provincial assemblies. The respective Presiding Officers conduct the poll at the meetings of Parliament and of each provincial assembly. The poll is held by secret ballot containing the names of all the candidates in alphabetical order. Member persons vote by placing a mark against the name of the person for whom they wish to vote.

nnouncement of Results

After the poll, the Chief Election Commissioner determines the result of the election in the following manner:

(a) The number of votes cast in Parliament in favour of each candidate are counted;

(b) The number of votes cast in a provincial assembly in favour of each candidate are multiplied by the total number of seats in the provincial assembly for the time being having the smallest number of seats and divided by the total number of seats in the provincial assembly in which the votes have been cast. The vote is counted using the following formula:

$$\frac{\textit{No of votes obtained by candidate in PA} \times \textit{the lowest No in PAs (65 being lowest)}}{\textit{Total members of relevant provincial assembly}}$$

In this formula, each province has an equal proportion of vote in the President's electoral college.

It means that

- each member of the Punjab Assembly has 65/371 = 0.175 votes,
- each member of the Sindh Assembly has 65/168 = 0.387 votes,
- each member of the KP Assembly has 65/124 = 0.524 votes and
- each member of the Balochistan Assembly has 65/65 = 1 vote.

(c) The number of votes calculated in the manner referred to in clause (b) shall be added to the number of votes counted under clause (a). The candidate who has obtained the largest number of votes compiled in the manner specified above is declared by the Chief Election Commissioner to be elected.

Q. WHAT DO YOU UNDERSTAND BY THE TERM "MODERN LEGAL SYSTEM" AND ELABORATE THE PRE REQUISITES OF MODERN LEGAL SYSTEM. (A2018)

(OR)

WRITE NOTE ON MODERN LEGAL SYSTEM (S2018)

Ans:

MODERN LEGAL SYSTEM

A legal system is a procedure or process for interpreting and enforcing the law.

There are hundreds of legal systems in the world. At the global level, international law is of great importance, whether created by the practice of sovereign states or by agreement among them in the form of treaties and other accords. Some transnational entities such as the European Union have created their own legal structures. At the national level there are over 180 sovereign states in the United Nations Organization. Many of these are federal, and their constituent parts may have their own additional laws.

There are four main legal systems in the modern world:

- **Common Law**
- **Civil Law**
- **Religious Law**
- **Customary Law/Monarchy**

As the world becomes more interdependent, a fifth category of legal systems has developed ***The Hybrid Legal System***, which is a legal system that is a combination of two or more legal systems.

Common Law Legal Systems

The legal system in the United States comes from the English common law tradition and the US Constitution. English common law is a system that gives written judicial decisions the force of law. As a result, the US legal system recognizes an appellate court's ability to interpret and apply the law to future litigants through precedent. Precedent is a judicial opinion that is considered legal authority for future cases involving the same or similar questions of law. The benefit of this system is consistency and resolution of disputes without requiring the parties to take legal matters to court.

- Written judicial decisions of appellate courts are binding legal authority on lower courts when interpreting and applying the same or similar questions of law
- The legal system is adversarial
- The outcome of a case is often decided by a jury of the parties' peers

Civil Law Legal Systems

Civil law systems were developed in Europe and are based on Roman and Napoleonic law. Civil law systems are also called code systems because all the legal rules are in one or more comprehensive legislative enactments. During Napoleon's reign, a comprehensive book of laws "***A Code***" was developed for all of France. The code covered criminal law and procedure, non-criminal law and procedure, and commercial law. The code is used to resolve only cases brought to the courts, which are usually decided by judges without a jury.

- All legal rules are in comprehensive legislative enactments often called Codes
- Written judicial decisions of appellate courts are not binding legal authority
- The legal system is investigative

Religious Law Systems

Religious law systems arise from the sacred texts of religious traditions and usually apply to all aspects of life, including social and business relations. In religious legal systems, a religious document is used as a primary legal source. All major world religions Judaism, Christianity, Islam, Buddhism and Hinduism have a religious legal system. The Islamic legal system (Sharia) with Islamic jurisprudence (Fiqh) is the most widely used religious legal system in the world. Most nations that have religious legal systems use them to supplement their secular national system. Only Saudi Arabia (Islamic) and the Vatican (Christian) are pure theocracies that have only a religious legal system in their nations.

- Religious documents are used as legal sources
- All major world religions have a religious legal system
- Most nations that have religious legal systems use them to supplement a secular national system

Customary Law Systems

Customary legal systems are becoming increasingly less common. A customary system is used by a monarchy and grants specific legal powers to the kings, queens, sultans or tribal leaders as heads of state. A challenge of a customary system is that the ruler is seen to be "above the law" because the laws do not apply equally to the ruler and subjects. There are only a handful of monarchies remaining in the world, and most of them have evolved into hybrid legal systems or have adopted a different type of legal system.

- Legal system used by a monarchy or tribe
- Grants specific legal powers to kings, queens, sultans or tribal leaders as heads of state
- Monarchs and leaders often seen to be "above the law"

Hybrid Law Systems

Hybrid legal systems are a combination of two or more legal systems within a nation. India is a classic example of a nation with a hybrid legal system. As a former British colony, India has a common law legal system, which recognizes the power of the Supreme Court and High Courts to make binding judicial decisions as a form of precedent. However, most of its laws are integrated codes found in a Napoleonic code system. In addition, India has separate personal codes that apply to Muslims, Christians, and Hindus. As a result, India has a hybrid system made up of common law, civil law and religious law systems.

Q. DISCUSS THE COMPOSITION AND JURISDICTIONS OF THE SUPREME COURT OF PAKISTAN. (A2020)

(OR)

DISCUSS THE ORGANIZATIONAL STRUCTURE AND JURISDICTION OF COURTS IN PAKISTAN. (S2018)

(OR)

WRITE NOTE ON COURTS SYSTEM OF PAKISTAN. (A2018) (S2019)

(OR)

WRITE NOTE ON ORIGINAL JURISDICTION OF SUPREME COURT OF PAKISTAN. (A2019)

Ans:

JUDICIAL SYSTEM OF PAKISTN

The roots of the current judicial system of Pakistan stretch back to the medieval period and even before. The judicial system that we practice today has evolved over a long period of time, spanning پھیلا ہوا roughly over a whole millennium. The system has passed through several epochs دور, covering the Hindu era, Muslim period including the Mughal Empire, British colonial period and post independence chapter. The judicial system generally maintained a steady growth and gradual بتدریج advance towards merging and improvement, without indeed, having to undergo any major disruption خلل or breakdown.

Types of courts in Pakistan | Courts Structure

There are two types of Courts in Pakistan

1. The Superior (Or Higher) Courts
2. Subordinate (Or Lower) Courts

Types of courts in Pakistan are discussed briefly.

1. SUPERIOR COURTS

Supreme Court of Pakistan

In 1956 supreme courts were established. It is the highest type of court in Pakistan. Supreme court consist of a Chief justice and sixteen other judges. Supreme court permanent seats are in Islamabad and other branches of the supreme court are in Lahore, Karachi, Peshawar, Quetta.

The Chief justice of Pakistan has the power of the ***suo moto*** to try the human rights matter. Supreme Judicial Council supervised Supreme court Judges.

Federal Shariat Court

Federal Shariat Court was established in 1980 to view all Laws of Pakistan to confirm that any Law of Pakistan can not be against the Quran and Sunnah. If any Law is found against the Quran and Sunnah then the government specifies the reason for its decision. The decision of the courts is binding on higher courts. The Federal Shariat court in Pakistan consists of eight Muslim judges appointed by the president of Pakistan. These judges' services are for three years as their extensions are given by the president of Pakistan.

High Courts of Pakistan

There are five high courts in Pakistan as one for the capital of Islamabad in Pakistan and four other provinces for Courts in Pakistan. All the high courts have their other high court benches in the province. A high court is the principal court of the province and the largest court of the Province.

- Lahore High Court, Lahore, Punjab
- Sindh High Court, Karachi, Sindh
- KPK High Court, Peshawar, kPK
- Balochistan High Court, Quetta, Balochistan
- Islamabad High Court, Islamabad, ICT

2. SUBORDINATE COURTS OF PAKISTAN

Family Courts

Family Courts are specially for family matters. The Family courts Resolve the issues of the families such as adoption, taking of the children into care and residence of children and child protection etc. such types of cases are handled by the family courts.

District Courts

Every province has a district court and has the criminal and civil jurisdiction governed by CPC 1908 and CRPC for criminal cases. District and secession Judges is the Administrative Head of the district judiciary. The province high courts' decisions are applicable and binding on the province Lower courts.

Civil Judge Cum Judicial Magistrates Courts

Civil Magistrate courts are present in every city. Judicial magistrates can award all punishment except capital punishment under section 30 Code of Criminal Procedure.

Special Tribunals Court in Pakistan

- Foreign Exchange Appellate Board
- Consumer Courts
- Intellectual Property Tribunal
- Control of narcotic substance (Special Court)
- Boars of Revenue
- Special Magistrate Courts
- Environment Courts
- Labour Appellate Tribunal
- Labour Courts
- Anti-Terrorism Courts
- Anti-Corruption Courts
- Income tax Tribunals
- Provincial service Tribunals (one for a Province)
- Federal service Tribunals
- Drugs Courts
- Criminal Courts
- Custom Courts
- Banking Courts

Juvenile Court

Juvenile نوعمر justice system act 2018 was passed by the parliament. this law is applicable to all Pakistan. Provincial Government is authorized to establish one or more juvenile for local areas in the chief Justice high court consultation.

JURISDICTION OF COURTS IN PAKISTAN

SUPREME COURT OF PAKISTAN

CONSTITUTION OF SUPREME COURT. ARTICLE 176.

The Supreme Court shall consist of a Chief Justice to be known as the Chief Justice of Pakistan and so many other Judges as may be determined by Act of Majlis-e-Shoora (Parliament) or, until so determined, as may be fixed by the President.

JURISDICTION OF THE SUPREME COURT.

A) ORIGINAL JURISDICTION. ARTICLE 184

(1) The Supreme Court shall, to the exclusion of every other court, have original jurisdiction in any dispute between any two or more Governments. Explanation. In this clause, "Governments" means the Federal Government and the Provincial Governments.

(2) In the exercise of the jurisdiction conferred on it by clause (1), the Supreme Court shall pronounce declaratory judgments only.

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.

B) APPELLATE JURISDICTION. ARTICLE 185.

(1) Subject to this Article, the Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences.

(2) An appeal shall lie to the Supreme Court from any judgment, decree, final order or sentence

(a) if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to transportation for life or imprisonment for life; or, on revision, has enhanced a sentence to a sentence as aforesaid; or

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him as aforesaid; or

(c) if the High Court has imposed any punishment on any person for contempt of the High Court; or

(d) if the amount or value of the subject matter of the dispute in the court of first instance was, and also in dispute in appeal is, not less than fifty thousand rupees or such other sum as may be specified in that behalf by Act of Majlis-e-Shoora (Parliament) and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or

(e) if the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or

(f) if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution.

(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court in a case to which clause (2) does not apply shall lie only if the Supreme Court grants leave to appeal.

C) ADVISORY JURISDICTION.

ARTICLE 186.

(1) If, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration.

(2) The Supreme Court shall consider a question so referred and report its opinion on the question to the President. iv.

D) POWER OF SUPREME COURT TO TRANSFER CASES.

ARTICLE 186-A. The Supreme Court may, if it considers it expedient to do so in the interest of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

E) ISSUE AND EXECUTION OF PROCESSES OF SUPREME COURT.

ARTICLE 187.

(1) Subject to clause(2) of Article 175, the Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province.

(3) If a question arises as to which High Court shall give effect to a direction, order or decree of the Supreme Court, the decision of the Supreme Court on the question shall be final.

F) REVIEW OF JUDGMENTS OR ORDERS BY THE SUPREME COURT.

ARTICLE 188. The Supreme Court shall have power, subject to the provisions of any Act of Majlis-e-Shoora (Parliament) and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it.

G) DECISIONS OF SUPREME COURT BINDING ON OTHER COURTS.

ARTICLE 189. Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan.

JURISDICTION OF COURTS IN PAKISTAN.

Federal Shariat Court

- Art 203-D To determine whether a provision of law is repugnant to the Injunctions of Islam
- Art 203 DD Revision jurisdiction in cases under Hudood laws
- Art 203 E Review of its judgment/order
- Art 203 E Punishment for contempt; and 5 Entertains appeals from judgment/order of criminal courts trying Hudood cases.

High Court

- Art 199(1) Issues 5 writs, namely, mandamus, prohibition, certiorari, habeas corpus and quo warranto;
- Art 199(2) Enforcement of Fundamental Rights; 3 Art 203 Supervision/control of Subordinate Courts;
- Art 204 Punishment for contempt;
- Appeal under S.100 of CPC
- Review under S.114 of CPC
- Revision under S.115 of CPC
- Appeals under S. 410 of CrPC
- Appeals against acquittal under S. 417 of CrPC
- Appeals against judgment/decree/order of tribunals under special laws
- Issues directions of the nature of habeas corpus under S. 491 of CrPC
- Intra-court appeal at Lahore High Court, High Court of Sindh and Islamabad High Court.
- The Karachi Bench of High Court of Sindh has original jurisdiction in civil cases of the value of rupees fifteen million and above. The Islamabad High Court has original jurisdiction in civil cases of the value of rupees on hundred million and above.

SUBORDINATE COURTS

District & Sessions Judge/Additional District & Session Judge

- Appeal against judgment/decree of a Civil Judge under S. 96 of CPC as well as other laws specifically provided in the respective enactments eg rent law and family law, etc.
- Appeal against order under S.104 of CPC;
- Revision under S.115 of CPC
- Original jurisdiction in suits upon bills of exchange, Hundies or promissory notes under Order XXXVII of CPC
- Murder trial under S. 265 A of the CrPC and all other trials involving death penalty under the Anti-terrorism Act, Control of Narcotic Substances Act, etc.
- Criminal trial under Hudood laws
- Appeals under S. 423 of CrPC

- Revision under S. 435 of CrPC
- Issues directions of the nature of habeas corpus under S. 491 of CrPC as well as Justice of Peace under S.22-A & B of Cr.PC
- Decides pre-arrest bail applications under S. 498 of Cr. PC. (The original jurisdiction of District Judge is limited to rupees fifteen million and in Islamabad Capital Territory rupees one hundred million)

Civil Judge 1st Class

- Tries all civil suits, there is no pecuniary limit on its jurisdiction;
- In certain jurisdictions, also designated as Rent Controller;
- In certain jurisdictions, also designated as Judge, Family Court and Guardian Judge;
- At Karachi, pecuniary jurisdiction limited to rupees fifteen million (Karachi Courts Order 1956); at Islamabad limited to rupees one hundred million;
- In certain jurisdictions designated as Magistrate empowered under S. 30 of CrPC.

Civil Judge 2nd Class

- Tries civil suit up to the value of rupees five hundred thousand in Punjab, rupees fifty thousand in Khyber Pakhtunkhwa and rupees fifteen thousand in Balochistan.
- In certain jurisdictions, designated as Rent Controller/Judge, Family Court and Guardian Judge.

Civil Judge 3rd Class

Tries civil suit up to the value of rupees one hundred thousand in Punjab.

Magistrate 1st Class

Tries offences punishable upto 3 years imprisonment and fine upto rupees fifty thousand.

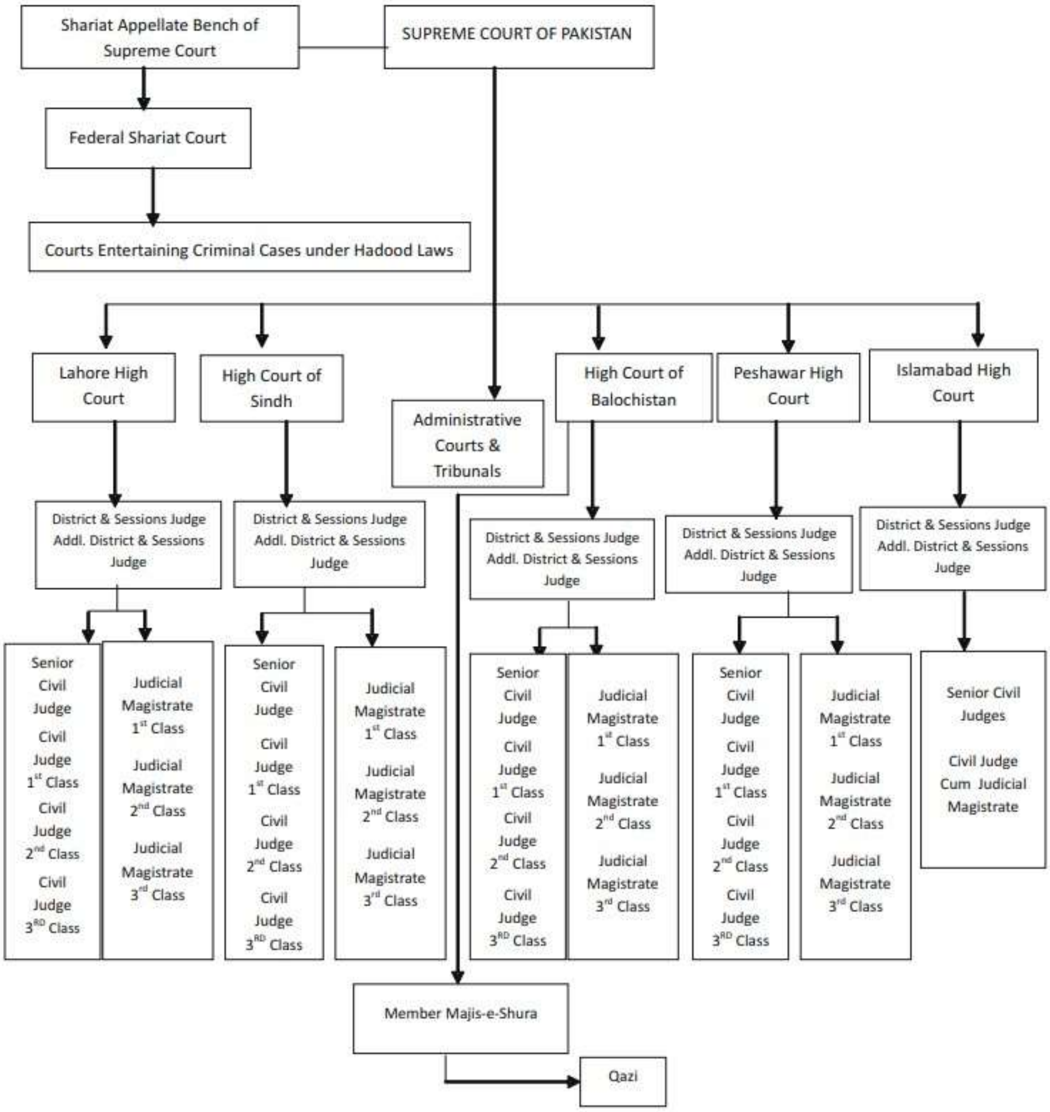
Magistrate 2nd Class

Tries offences punishable upto 1 year imprisonment and fine upto rupees fine thousand.

Magistrate 3rd Class

Tries offences punishable up to 1 month imprisonment and fine upto rupees one thousand

Classification of Courts in Pakistan



Q. DISCUSS SCOPE AND NATURE OF ALTERNATIVE DISPUTE RESOLUTION (ADRS) AND FACTORS FAVOURING ADAPTATION OF ADRS TECHNIQUES AND PROCESSES IN PAKISTAN'S LEGAL SYSTEM. (A2018)

(OR)

ALTERNATIVE DISPUTE RESOLUTION (ADRS) IN EXPEDITIOUS AND IN EXPENSIVE METHOD TO RESOLVE CIVIL AND COMMERCIAL DISPUTES IN PAKISTAN. DISCUSS THE SCOPE AND REASONS FOR ACCEPTABILITY OF THIS METHOD AND HIGHLIGHT THE ROLE OF COURTS IN PAKISTAN IN THE PROMOTION OF ADRS. (S2018) (A2019) (S2019)

(OR)

EXPLAIN THE FACTORS WHICH FAVOUR THE ADOPTION OF ADR PROCESSES AND DISCUSS THE ROLE OF COURTS IN PAKISTAN IN PROMOTING ADR AS EFFECTIVE INSTRUMENT TO RESOLVE DISPUTES? (A2020)

(OR)

ROLE OF COURTS IN PROMOTION OF ADRS IN PAKISTAN. (A2018)

Ans:

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative dispute resolution (ADR) refers to a range of dispute settlement methods which help the parties in the dispute to come to a settlement without going to court, or without litigating on the said matter. These methods usually involve a third party, who helps them in settling the disputes. In many cases, ADR methods are used alongside the litigation process as well through court authorisation.

Definition of ADR:

Alternate Dispute Resolution (ADR) means a process in which parties resort to a method of resolving the dispute other than by adjudication by Courts and includes arbitration, mediation, conciliation, neutral evaluation and dispute resolution Through ***Panchayat****;*

Types of Alternative Dispute Resolution (ADRs)

Arbitration is the only formal ADR process to be commonly used in Pakistan. Recently, laws have been introduced across Pakistan to encourage other alternate methods of dispute resolution. There are various ADR methods, but they differ from country to country. Most common ADRs are described below:

- **Arbitration**
- **Mediation**
- **Conciliation**
- **Negotiation**
- **Panchayat**

Arbitration

The arbitration process is informal and this process allows the dispute to be resolved amicably خوش اسلوبی and efficiently as it takes less time and involves lesser costs for the parties. Therefore, parties frequently choose to arbitrate when disputes arise, especially in the business world. Big corporations would rather settle disputes quickly, rather than fighting long cases in the courts. Before the arbitration process begins, an arbitration agreement is required to be formed. This agreement lays down the terms and conditions on which the arbitration process is carried out. Arbitral decisions are final and binding on the parties, who have limited scope of objecting to the decisions. Non binding arbitrations also exist wherein the party can request a trial if it is not satisfied with the arbitrator's decision.

Ad Hoc Arbitration

Under ad hoc arbitration , the parties involved in the dispute determine the conduct of the arbitration proceedings themselves, without going to an arbitral institution.

Institutional Arbitration

In this kind of arbitration, the parties decide in the agreement itself, that an arbitration institution will administer the arbitration.

Mediation

In mediation, a third neutral party aims to assist two or more disputants in reaching a settlement. This third party is referred to as the mediator. One of the characteristics of this type of dispute resolution is that the mediator is not allowed to give an outcome of the dispute. The solution is given mutually, and the agreements are generally non binding. Parties are in significant control of the mediation process and it is strictly confidential. The parties can even go for litigation if they are not satisfied with the mediation process. It must be observed that the main aim of the mediation process is to build relationships, and not to make a decision. It is more of an amicable resolution of differences with potential form future business between the parties.

Conciliation

In conciliation, the third party, who is called the conciliator, talks to the parties involved separately so that the parties can arrive at a mutually acceptable solution through facilitating talks between the parties.

Difference between Mediation and Conciliation

In mediation, the mediator plays a more active role in the process by proposing compromise solutions after hearing all parties while in the case of conciliation, the conciliator has to bring the parties into such a state of mind as to facilitate the parties to come to an acceptable compromise.

Negotiation

Negotiation is also a form of dispute resolution, but there is no third party to adjudicate the matter, therefore the parties work together to find a mutually acceptable solution or a compromise. The parties may choose to be represented by their attorneys during their negotiations. There are no set rules for conducting a negotiation.

Essentials of Negotiation-

- ✓ It is a process of communication which helps to resolve conflicts.
- ✓ It can be entered into voluntarily and its outcome is non-binding.
- ✓ The parties are benefitted here as they have control over the outcome and procedure and the process is carried out keeping their interests in mind.

Panchayat

This concept mainly focused on reducing the burden of pending cases on the Courts and has incorporated the concept keeping in mind various factors like social justice. This technique is normally used in rural areas of Pakistan, where parties sit and resolve their disputes under the supervision of selected arbitrators.

Benefits of ADR Process

- It is less expensive.
- It is less time consuming.
- It is free from the technicalities that are present in the court system.
- The parties are free to differ in their opinion and can discuss their opinions with each other, without any fear of disclosure of this fact before the courts.
- There is no feeling of enmity دشمنی between the parties as there is no winning and losing side. They also get their grievances شکایات redressed and their relationship remains as it was before, therefore, they can conduct future business deals with each other.
- ADR is more suitable for multi party disputes, as all the parties can put forward their opinions at the same place and in one go, rather than going to court again and again. Also, it provides for a wider perspective of the dispute.
- The parties often have the choice of the ADR method to be used. They sometimes also have the choice to select the individuals or bodies who will settle the dispute.
- The process is also very flexible, according to what suits the parties.
- The parties also have the option of being confidential. The ADR system also enables the parties to put focus on practical solutions.

- A wider range of issues are considered and shared future interests of the parties are protected.
- ADR system also allows for risk management.

FACTORS FAVOURING ADAPTATION OF ADRS TECHNIQUES AND PROCESSES IN PAKISTAN'S LEGAL SYSTEM

Although no explicit mention of ADR can be viewed in the Constitution of Pakistan, there is a reference to commercial and financial activities which may lead implicitly to a view that Pakistan practices certain methods of ADR. A quick review of the Constitution reveals that Articles 153-154 deal with the Council of Common Interest, Article 156 deals with the National Economic Council, Article 160 deals with the National Finance Commission, and Article 184 of the Constitution gives rise to the original jurisdiction to the Supreme Court of Pakistan in "any dispute between two or more Governments."

Serious efforts are being made to adopt ADRs in Pakistan , details are given below:

Punjab:

Punjab has enacted the Punjab Alternate Dispute Resolution Act, 2019 and the Lahore High Court has made certain amendments to the First Schedule of the CPC as applicable in Punjab. Under the Act the Courts are required to refer to ADR the disputes listed in Schedule 1 of the Act where as the Court have been empowered to refer to ADR disputes listed in Schedule 2. It is note that the Act contemplates a resumption in litigation in the event ADR fails. Pursuant to the changes in the CPC, courts hearing civil suits are required to refer the dispute for mediation except where the court is satisfied that the case involves an intricate question of law or fact or that there is no possibility of successful mediation. When referring a case for mediation, the court may specify the material issues for determination through mediation. When a case is so referred, its proceedings in court are stayed for a period not exceeding 30 days and the parties are directed to the Mediation Centre established by the Lahore High Court.

Islamabad:

The Alternate Dispute Resolution Act, 2017 has been enacted for Islamabad along with changes in the CPC as applicable in Islamabad. under this Act where the court is satisfied that a scheduled dispute can be resolved by ADR and that it does not involve an intricate question of law, the court may refer the dispute to ADR. It is noted that in this case the court requires the consent of the parties to refer the matter to ADR.

Khyber Pakhtunkhwa:

Khyber Pakhtunkhwa has enacted the Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020. Such Act applies in the same manner as the Alternate Dispute Resolution Act, 2017 discussed above.

Balochistan:

Balochistan is yet to introduce any legislation empowering courts to refer matters to ADR.

It is note that this legislative reform is very recent and it remains to be seen whether it will be implemented in practice.

Domestic Laws of ADR in Pakistan

- As regards the ADR in Pakistan, some of the relevant laws are as follows:
- Arbitration Act, 1940
- Conciliation Courts Ordinance, 1961
- Muslim Family Laws Ordinance, 1961
- Family Courts Act, 1964
- Section 89-A of the Civil Procedure Code, 1908 read with Order X Rule 1-A;
- The Small Claims and Minor Offences Courts Ordinance, 2002
- Punjab Local Government Act, 2012
- Khyber Pakhtunkhwa Local Government Act, 2012.

THE ROLE OF COURTS IN PAKISTAN IN PROMOTING ADR

Speedy Justice:

With the object of reducing delays that commonly afflicted various stages of civil proceedings, the Code of Civil Procedure 1908 was amended in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory during 2020. The most far-reaching and elaborate amendments have been made in Punjab. The efficacy of these measures will depend on the extent to which they are enforced by judges. Meaningful change will only come about if the culture of leniency نرمی towards requests for adjournment is addressed by judges with adverse directions, including cost orders.

Model Courts:

In 2019, the Supreme Court introduced the initiative of establishing model courts in every district of Pakistan for expeditious disposal of cases. The model courts conduct criminal and civil trials daily, use technology and do not accept routine requests for adjournment.

Commercial Courts:

During 2020, with the aim of improving the ease of doing business, and in particular enforcement of contracts, the Lahore High Court established commercial courts in five districts of Punjab: Rawalpindi, Faisalabad, Lahore, Multan and Gujranwala. The object of such courts is to decide commercial disputes within one year and there are plans to establish such courts in other districts in Punjab.

Video Link Facility :

The Supreme Court in 2019 established video link facilities to connect its branch registries in provincial capitals with the principal seat in Islamabad. In late 2020, during the covid-19 pandemic, as a one-off measure, the Supreme Court conducted a hearing entirely remotely, with senior counsel attending a hearing from home using video links. There are plans to implement e-court systems across the board in the Supreme Court, enabling counsel to attend hearings from their homes and offices.

E-Courts:

During the first wave of the pandemic, most courts in Pakistan suspended regular work and heard only urgent cases. The Islamabad High Court instituted an e-court procedure whereby counsel can apply to attend hearings at the High Court or its subordinate district courts on Skype. Certain benches of the Lahore High Court have allowed counsel to attend hearings remotely and there are plans to immediately expand this facility to all benches of the High Court. Other High Courts are yet to establish such facilities for themselves or their subordinate courts.

Conclusion:

Along with ADR, arbitration has a bright future in Pakistan. With strong arbitration instruments in Pakistan, foreign and domestic investments in the country can increase as investors are discouraged by lengthy and costly litigation processes. The judiciary can play an important role in practically executing the arbitration process and in encouraging the litigants to adopt the process of arbitration in a speedy and cost-effective manner. The legal profession has to accept business and market needs, equip themselves with the knowledge and skills of mediation, and develop professional capacity in the field of ADR as this is a major requirement for modern day clients. The National Judicial Conferences are giving an important place to ADR mechanism to discuss its benefits, problems, and future development including its recommendations. The Constitution of the Islamic Republic of Pakistan under Article 37 is mandated to ensure ***inexpensive and expeditious justice***. The use of ADR is defiantly one of the best possible options to resolve disputes expeditiously and restore the confidence of the people in the judicial system.

Q. DISCUSS LAW MAKING PROCESS IN PAKISTAN. (A2018) (S2018) (A2019)

(OR)

EXPLAIN THE AMENDING PROCEDURE OF CONSTITUTION OF PAKISTAN . (S2019)

Ans:

LAW MAKING PROCESS IN PAKISTAN

The constitution of Islamic republic of Pakistan provides legislative procedure in part III chapter 2. The parliament has three functions such as to make laws, to grant finance to the Govt, and to administer the policies of the ministries. The important function of the parliament is to make laws for the state. It is only legislative body. Through an amendment in 1985 the legislative procedure has been made easy.

Parliament of Pakistan

Article 50 of the Constitution provides that the Parliament of Pakistan shall consist of:

1. **President**
2. **The National Assembly**
3. **The Senate.**

The National Assembly has an edge over the Senate by legislating exclusively on money matters. With exception to money Bills, however, both the Houses work together to carryout the basic work of the Parliament, i.e. law making.

Definition of Bill

Before starting legislation procedure we should understand about the term "Bill".

A bill is proposal for new law and it does not become law until it is passed by the legislature or approved by the executive.

Kinds of Bill

Following are kinds of bill.

1. Public Bill

Public bill is such bill which relates to the interest of people.

2. Private Bill

Private bill is such bill which relates to the interests of private individuals

3. Money Bill

Money bill is such bill which relates to the finance matters of the state.

LAW MAKING PROCEDURE

Summary:

A bill must go through the following steps (in both Houses) to become law:

First Reading: Bill arrives.

Second Reading: Main debate on purpose and key areas of the bill.

Committee Stage: Detailed line by line scrutiny of the text with amendments (proposed changes). Votes may take place to decide whether to make the changes.

Report Stage: Further examination of the text. More amendments are debated and further votes take place to decide whether to make the changes.

Third Reading: After clause by clause consideration of the Bill, the member-in-charge of the Bill can move a motion that the Bill (or the Bill, as amended, as the case may be) be passed. At this stage, the debate is confined to arguments either in support or for rejection of the Bill without referring to the details thereof.

Presidential Assent: When both Houses agree the final content, a bill is assented by the Parliament and becomes a law or '*Act of Parliament'*

Legislation Process:

We can understand the law making procedure in following four steps:

1) The Bill relating to the Federal Legislative List can be originated in either House. If the House passed the Bill through majority vote, it shall be transmitted to the other House. If the other House passes it without amendment, it shall be presented to the President for assent.
2) If the Bill, transmitted to the other House, is not passed within **ninety days** or rejected, it shall be considered in a joint sitting to be summoned by the President on the request of the House in which the Bill was originated. If the Bill is passed in the joint sitting, with or without amendments, by the votes of majority of the members of the two Houses, it shall be presented to the President for assent.
3) If the Bill is presented to the President for assent, he shall assent to the Bill in not later than **ten days**. If it is not a Money Bill, the President may return the Bill to the Majlis-e-Shoora with a message requesting that the Bill be reconsidered and that an amendment specified in the message be considered. The Majlis-e-Shoora shall reconsider the Bill in a joint sitting. If the Bill is passed again, with or without amendment, by vote of the majority of the members present and voting, it shall be presented to the President and the President shall give his assent within **ten days**; failing which such assent shall be deemed to have been given.
4) Under the Constitution, the Parliament may also legislate for two or more Provinces by consent and request made by those Provinces. If the Federal Government proclaims

State of Emergency in any province, the power to legislate about that province is vested in the Parliament. But the Bills passed by the Parliament during the State of Emergency, shall cease to be in force after the expiration of six months from the date Emergency is lifted.

DIFFERENCE OF MONEY AND NON-MONEY BILLS

Legislative Procedure In Non-Money Bill

A. Preface of Bill
Bill is introduced in any house. If bill is introduced by gov't minister is called Govt. bill if presented by private member it is called private bill.

B. First Reading
In the first reading the causes of presentation are explained by the member who introduces the bill.

C. Reference To Committee
Bill is examined in detail in committee stage. The committee hears the evidence of expert and any objection of the person who is interested in such bill

D. Second Reading
Bill is discussed clause by clause and amendments are made during the second reading.

E. Third Reading
After second reading third time it is read and it is sent to other house. The same stages are also followed in the other house.

F. President's Assent To Bill
If the bill is passed in the joint sitting, with or without amendment by the majority of votes of the total membership of the house. It shall be presented to the president for assent.

Legislative Procedure In Money Bill

In according with the article 73 of the constitution of Islamic republic of Pakistan a money bill shall be originated in the National Assembly and after it is passed by the National Assembly without being transmitted to the senate, be presented to the president who will assent to the bill with in thirty day, otherwise the bill shall be deemed to have been assented to and it shall become law.

a) Features of Money Bill

A bill or amendment shall be supposed to be a money bill. If it shall contain provisions dealing with all or any the following matters.

(a) The imposition, abolition نسخ, reduction, alteration of any tax.

(b) The borrowing of money or a giving of any guarantee, by the federal Govt.

(c) The custody of the federal consolidate fund, or the issues of moneys from the fund.

(d) The imposition of charge upon the federal consolidated fund,

(e) The receipt of money on account of the public accounts of the federation the custody of issue of such money.

(f) The audit of the accounts of the federal Govt or a provincial govt.

(g) Any matter incidental to any of the matters specified above.

b) Dispute regarding determination of Money Bill

If any question arises whether a bill is a money bill or not, the decision of the speaker of the National Assembly shall be final.

Discussion In Senate

Now by the amendment in the constitution (Legal Frame Work order 2002) a money bill can be discussed in the senate. Following are the differences between money and non-money bills.

1. As to nature

Money bill relates to finance matters. Ordinary bill relates to the interest of private or public persons.

2. As to Origin

Money bill can be originated only in National Assembly. Ordinary bill can be originated in either house.

3. As to transmission

Money bill is not transferred to other house. Ordinary bill is transferred or transmitted to other house when passed by one house.

PROCEDURE OF AMENDMENT IN CONSTITUTION

In order to any amendment in the constitution, we have to consider following steps.

- Constitutional Amendment Bill can originate in either House.
- Each House has to pass the Bill with two thirds majority of the total membership of that House.

- If 2nd House passes the Bill with amendments it is referred back to the House in which it originated and if that House agrees to those amendments with two thirds majority it is sent to the President for assent. If the 2nd House does not agree to the Bill or the amendments the matter ends there and then.
- Constitutional amendment Bill which seeks altering the limits of a Province shall also be passed by the Provincial Assembly of that Province by the votes of not less than two thirds of its total membership.

Q. WHAT IS DIFFERENCE BETWEEN PARLIAMENTARY AND PRESIDENTIAL SYSTEMS. (S2019)

Ans:

What is Government…?

A government is the organization, machinery, or agency, through which a political unit exercises its authority, controls and administers public policy, and directs and controls the actions of its members or subjects. The government makes laws, regulate economies, conduct relations with other countries, provide infrastructure and services, and maintain an army and a police force amongst others on behalf of the people of the country.

Democracy is any system of government in which the people have the rule. Every country in the world has its own constitution, according to which policies are framed, government bodies and institutions function and decisions are made. In finer terms, it is the constitution, that covers all the aspects of the political system adopted by the country. There are two forms of government, Parliamentary and Presidential.

DIFFERENCE BETWEEN PARLIAMENTARY AND PRESIDENTIAL SYSTEMS

PRESIDENTIAL SYSTEM OF GOVERNMENT

In a presidential system, the head of the government leads an executive, that is distinct الگ from the legislature. Here, the head of the government and the head of the state are one and the same. Also, a key feature is that the executive is not responsible to the legislature.

Features of the Presidential System

1. The executive (President) can veto acts by the legislature.
2. The President has a fixed tenure and cannot be removed by a vote of no-confidence in the legislature.
3. Generally, the President has the power to pardon معافی or commute judicial sentences awarded to criminals.
4. The President is elected directly by the people or by an electoral college.

Merits of Presidential System

The advantages of the presidential system are given below:

- **Separation of Powers:** Efficiency of administration is greatly enhanced بہتر since the three arms of the government are independent of each other.

- **Expert Government**: Since the executive need not be legislators, the President can choose experts in various fields to head relevant departments or ministries. This will make sure that people who are capable and knowledgeable form part of the government.
- **Stability:** This type of government is stable. Since the term of the president is fixed and not subject to majority support in the legislative, he need not worry about losing the government. There is no danger of a sudden fall of the government. There is no political pressure on the president to make decisions.
- **Less Influence Of The Party System**: Political parties do not attempt to dislodge the government since the tenure is fixed.

Demerits of Presidential System

The disadvantages of the presidential system are given below:

- **Less Responsible Executive**: Since the legislature has no hold over the executive and the president, the head of the government can turn authoritarian.
- **Deadlocks Between Executive And Legislature**: Since there is a more strict separation of powers here, there can be frequent tussles between both arms of the government, especially if the legislature is not dominated غالب by the president's political party. This can lead to an erosion کٹاؤ in efficiency because of wastage of time.
- **Rigid Government**: Presidential systems are often accused of being rigid. It lacks flexibility.
- **Spoils System**: The system gives the president sweeping powers of patronage سرپرستی. Here, he can choose executives as per his will. This gives rise to the spoils system where people close to the president (relatives, business associates, etc.) get roles in the government.

PARLIAMENTARY SYSTEM OF GOVERNMENT

Pakistan chose a parliamentary form of government primarily because the constitution-makers were greatly influenced by the system in England. There are more parliamentary forms of government in the world than there are presidencies. In this system, the parliament is generally supreme and the executive is responsible to the legislature. It is also known as the Cabinet form of government, and also 'Responsible Government'.

Features of the parliamentary system

1. **Close Relationship Between The Legislature And The Executive:** Here, the Prime Minister along with the Council of Ministers form the executive and the Parliament is the legislature. The PM and the ministers are elected from the members of parliament, implying that the executive emerges ابھرتا ہے out of the legislature.
2. **Executive Responsible To The Legislature**: The executive is responsible to the legislature. There is a collective responsibility, that is, each minister's responsibility is the responsibility of the whole Council.

3. **Dual Executive**: There are two executives – the real executive and the titular executive. The nominal executive is the head of state (president or monarch) while the real executive is the Prime Minister, who is the head of government.
4. **Secrecy Of Procedure**: A prerequisite of this form of government is that cabinet proceedings are secret and not meant to be divulged to the public.
5. **Leadership Of The Prime Minister**: The leader of this form of government is the Prime Minister. Generally, the leader of the party that wins a majority in the lower house is appointed as the PM.
6. **Bicameral Legislature**: Most parliamentary democracies follow bicameral legislature.
7. **No Fixed Tenure**: The term of the government depends on its majority support in the lower house. If the government does not win a vote of no confidence, the council of ministers has to resign. Elections will be held and a new government is formed.

Although Pakistan follows this system chiefly influenced by the British model, there are a few differences between the Pakistan and British systems. They are:

- In Pakistan, the PM can be from National Assembly and in Britain, the PM will always be from the lower house, the House of Commons.
- In Britain, the speaker once appointed, formally resigns from his/her political party. In Pakistan, the speaker continues to be a member of his/her party though he/she is expected to be impartial in the proceedings.
- The concept of a shadow cabinet is absent in Pakistan. In Britain, the opposition forms a shadow cabinet that scrutinises چھان بین the actions and policies of the government. It also offers alternative programmes.

Merits of Parliamentary System

The advantages of the parliamentary system are as follows:

- **Better Coordination Between The Executive And The Legislature:** Since the executive is a part of the legislature, and generally the majority of the legislature support the government, it is easier to pass laws and implement them.
- **Prevents Authoritarianism** مطلق العنانیت: Since the executive is responsible to the legislature, and can vote it out in a motion of no confidence, there is no authoritarianism. Also, unlike the presidential system, power is not concentrated in one hand.
- **Responsible Government**: The members of the legislature can ask questions and discuss matters of public interest and put pressure on the government. The parliament can check the activities of the executive.
- **Representing Diverse Groups**: In this system, the parliament offers representation to diverse groups of the country. This is especially important for a country like Pakistan.
- **Flexibility:** There is flexibility in the system as the PM can be changed easily if needed. During the Second World War, the British PM Neville Chamberlain was replaced by Winston Churchill. This is unlike the presidential system where he/she can be replaced only after the entire term or in case of impeachment/incapacity.

Demerits of Parliamentary System

The disadvantages of the parliamentary system are as follows:

- **No Separation Of Powers**: Since there is no genuine separation of powers, the legislature cannot always hold the executive responsible. This is especially true if the government has a good majority in the house. Also, because of anti-defection مخالف تبدیلی rules, legislators cannot exercise their free will and vote as per their understanding and opinions. They have to follow the party whip.
- **Unqualified Legislators**: The system creates legislators whose intention is to enter the executive only. They are largely unqualified to legislate.
- **Instability:** Since the governments sustain only as long as they can prove a majority in the house, there is instability if there is no single-largest party after the elections. Coalition governments are generally quite unstable and short-lived. Because of this, the executive has to focus on how to stay in power rather than worry about the state of affairs/welfare of the people.
- **Ministers:** The executive should belong to the ruling party. This rules out the hiring of industry experts for the job.
- **Failure to take a Prompt Decision**: Since there is no fixed tenure enjoyed by the Council of Ministers, it often hesitates from taking bold and long-term policy decisions.
- **Party Politics**: Party politics is more evident in the parliamentary system where partisan interests drive politicians more than national interests.
- **Control By The Bureaucracy**: Civil servants exercise a lot of power. They advise the ministers on various matters and are also not responsible to the legislature.
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Comparison of Parliamentary and Presidential Systems

Areas	Parliamentary	Presidential
Executive	Dual	Single
Accountability	Executive accountable to legislature	Executive not accountable to legislature
Ministers	Only from among MNAs	People outside the legislature can be appointed
Dissolution of Assembly	PM can dissolve before the expiry of the term	President can not dissolve Assembly
Tenure	Not Fixed	Fixed

Q. HADD VS TAZIR PUNISHMENTS IN PAKISTAN LEGAL SYSTEM. (A2019)

Ans:

HADD VS TAZIR PUNISHMENTS

In Islamic law there are two kinds of punishments are given by Islamic law which is

1) **Hadd**
2) **Tazir**

Types of Punishment

Types of punishments are divided into two types

1. Hadd

Literal meaning : Word hadd means ***limit***

Definition of Hadd:

Legally Hadd means those punishments whose limit has been defined in the Holy Quran and Hadith.

Hadd refers to punishment for offenses as mentioned in Holy Quran and judge can't change them. In Islamic Law ,aim or objective of such kind of punishments is to reformation of criminal and disgracing them

Hadd Crimes And Punishments

No judge can change or reduce the punishment for these serious crimes because these have been set by ALLAH in Quran. The Hadd crimes are:

1. Murder Punishment

- Death by retaliation(Jawabi Karwaee) (by victim's family)
- Compensation (Payment or property)
- Pardon by victims family

2. Apostasy ارتداد (Inkaar) from Islam Punishment

- Death by Beheading (Sar Kalam Krna)
- Imprisonment until repentance توبہ (Toba,Mufi)

3. Robbery Punishment

- Death by beheading (Sar Qalam Krna)

- Cutting off hands or foot
- Imprisonment

4. Theft Punishment

- Cutting of right hand from joint of wrist if theft is committed first time
- As for the thief, male or female, cut off the hands of both from the joint of wrist

5. Adultery Punishment

- Stoning to death for those who are married
- 100 lashes کوڑے for those who are un-married or bachelors

6. Defamation Punishment

- 80 lashes are defined under Hadd for defamation

7. Alcohol Drinking Punishment

- 80 lashes are defined under Hadd for Alchohold Drinking

8. Rebellion Punishment

- Death if Captured by the forces
- Tazir Punishment if surrendered or arrested himself

2. Tazir

Literal meaning: Literally means disgracing the criminal for his shameful act

Definition of Tazir: Legally Tazir means those Punishments "where Judge is authorized to fix the nature of punishment which may be fine, death, imprisonment, compensation etc against violation of individual rights.

Tazir Crimes And Punishments

Judge can fix a punishment on his own discretion against violation of rights of individuals

- Tazir crimes are less serious than the hadd crimes found in the Quran. Tazir punishments vary according to circumstances. Change time to time and place to place. Objective of such punishment is to prevent the society from offender from future. Judges are not bound to make decision on behalf or Precedent ,or later case etc Some of most common punishments are comes under Tazir crimes:

1. Counselling (Sulaah)
2. Fines
3. Death Penalty
4. Imprisonment

5. Seizure of property
6. Confinement (nazarbandi) in the home
7. Lashes

DIFFERENCE BETWEEN HADD VS TAZIR

Being Muslims, it is obligatory واجب for us to accept wholeheartedly all the tenets of Islam. Hadd crimes are crimes against ALLAH's Law. Tazir crimes are crimes against society. Islam has defined two kinds of punishment namely Hadd ,Tazir,. Punishments for Hadood are integral part of Islam which can't be reduced by Judge. In Tazir crimes, judges are authorized to fix the nature of punishment on their own discretion اختیار . Following are the some point of distinction between hadd and tazir

OBJECT	HADD	TAZIR
As to Object	The object is hadd is prevention of a crime by following the principles laid down in the Quran and limits prescribed by ALLAH	The object of Tazir is reformation and correction of the offender
Procedure	The procedure of trial in Hadd is complicated	The procedure of trial in Tazir is Simple, according to some jurists, Judge can judgment on basis of his own knowledge
As to Right	Violation of rights of ALLAH gives raise to Hadood Punishments	Violation of rights of Individual gives raise to Tazir Punishments
Change of Sentence	The penalty of Hadd can't be commuted	The penalty of Tazir can be commuted
Pardon of Sentence	Pardon can't be granted in Hadood cases	Pardon may be granted in Tazir cases
Operation of Mistake	Doubt or mistake can affect the penalty of Hadood cases	Doubt or mistake can't effect the penalty of Tazir cases
. Rule of testimony	The evidence of women is not acceptable in Hadood Cases	The evidence of women is acceptable in Tazir cases, but the nisab of one man and two women will have to keep in view
Standard of evidence	In hadood ,the standard of evidence is so high as to number, qualification and	In Tazir,Standard of evidence is not so high

	conditions of witness because any doubt can prevent the implementation of hadd punishment	
Mention of Offences	Some jurists listed following hadd offences. 1. Murder 2. Apostasy from Islam 3. Robbery 4. Theft 5. Adultery 6. Defamation 7. Rebellion 8. Alcohol drinking	Tazir offences has not been mentioned because they are innumerable (Angint)
Discretion	In Hadood crimes ,judge can't exercise his discretion(Raye/Sawabaydeed)	In Tazir crimes, Judge can exercise his discretion
Replacement	Hadd punishment can be dealt with under Tazir	In Tazir the punishment of Hadood can't be enforced

Q. WRITE NOTE ON ARTICLE 4 OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN. (A2019)

ARTICLE 4 OF CONSTITUTION OF PAKISTAN

Article 4 of The Constitution of The Islamic Republic of Pakistan stats that:

Right of individuals to be dealt with in accordance with law, etc.

Article 4.

According to Article 4 of constitution of Pakistan, Every citizen of Pakistan has the following rights and no one can deprive them from these rights except when court of law decide. These rights are:

- Right of Safety of Life and body.
- Right of Liberty or Movement.
- Right of Reputation.
- Right of Property.
- No body force to do any thing which law not required.

Details of Article 4 are described below:

(1) To enjoy the protection of law and to be treated in accordance with law is the absolute right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular

(a) no action detrimental نقصان دہ to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

It means every citizen of Pakistan has right of safety of life,

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not required him to do.

Q. WRITE NOTE ON ARTICLE 2A OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN (S2019)

Ans:

ARTICLE 2A OF CONSTITUTION OF PAKISTAN

Article 2A of the Constitution of Pakistan states,

"The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly."

The "Objectives Resolution" was presented to the Constituent Assembly by Liaquat Ali Khan in 1949. The aspect of every Pakistani Constitution would furthermore be enunciated upon the pattern of this Objectives Resolution. The principles indicate that the Constituent Assembly shall represent the will of the Pakistani people and shall produce the Constitution accordingly.

A controversial متنازع principle within the resolution states that "democracy, freedom, equality, tolerance and social justice are to be established through the articles of Islam". Our Constitution declares the sovereignty of God as a figure above all political, philosophical and judicial aspects of the system in Pakistan; this is a quality distinct from Western constitutions. The Resolution's main objective states that the Pakistani Constitution was not to be modeled after any European statue or constitution. Instead it would be based on Islamic democracy and ideology. In fact "Bismillah" and the opening sentence of ***"sovereignty belongs to Almighty Allah"***, have been incorporated شامل in every subsequent Pakistani constitution.

Since the addition of 2A, the Constitution has been criticized by leaders and judges and a worldwide cry for its amendment and revision has existed. Justice Munir, the former Chief Justice of Pakistan talks about Article 2A in the following words:

"It has been freely admitted that the Resolution, though grandiloquent in words, phrases and clauses is nothing but a hoax دھوکہ"

Justice Munir emphasized that the Resolution ordered a precedent of actions and principles that the Pakistani government could never embody and it rather distributed the government onto a path that it should never have ventured into in the first place.

Maulana Maududi (the founder of Jaamat-e-Islami), was a fan of the Resolution but admonished نصیحت its results stating that: "it was a rain, which was neither preceded by a

gathering of clouds nor was it followed by vegetation". Maulana Maududi's point needed to be understood and comprehended within the Constituent Assembly. His point was not that the Resolution was not profound in its own right, it was in fact its establishment and maintenance that was unworkable in the sphere of turmoil اضطراب and corruption found in the Pakistani political system.