

LEGAL SYSTEM

Organs / Pillars of State:

- 1) **Legislature:** The law making body of the country. It can make the law for an entire country. Law making is the exclusive domain of legislature. Its the supreme law making authority. Its not responsible for enforcing law.
- 2) **Executive:** Its the body responsible, for enforcing the law made by the legislature. It also do day by day management making decision. Its the body responsible for conducting all the affairs in the country. For e.g. we want to trade with India or not.
- 3) **Judiciary:** Its function is to administrate justice according to the law made by legislature. It can only provide justice at to the extent of law created by legislature and it cannot go beyond that extent, so in this way our courts of law and not courts of justice.

Second function of judiciary is to make interpretation of law made by the legislature. Judiciary regularly applies the law that is why they can easily interpret the law.

- **Lacuna:** When something is missing or there is no clear-cut meaning in law. Judiciary also interprets the law made by the legislature and its the second function of the judiciary. (sometimes 4th pillar in journalism).

Constitution: The supreme fundamental and basic law of the land. All new laws shall be made in the light of constitution. Constitution contains basic principles.

- 1) It plays a role of torch-bearer. No law in the country can be made which is repugnant (clash) with the constitution.
 - If judiciary make the law contrary to the constitution, a common citizen can file a case and make this law null and void or supreme court itself can take notice named **Suo Moto Notice** (that is on its own initiative).
 - Boundary of legislature is constitution. It cannot by-pass constitution.
 - There is check and balance for both legislature and judiciary.
- 2) Constitution is a document which regulates and governs the working relationship of the various organs of a state.
 - We have number of rights and obligations. Similarly state has number of rights and obligations. (State should work for its people, take care of their rights, then its become its right that its citizen obey its law).

3) Constitution is a document which regulates and governs the rights and obligation of the citizen towards the state and vice versa.

Legislature:

Parliament: Parliament is the legislature in Pakistan. It is an elected body having three components.

National Assembly (Lower House) + Senate (Upper House) + Head of State (President)

Lower House (National Assembly)	Upper House (Senate)
<u>Representation</u> of different provinces on the basis of population.	<u>Equal representation</u> in the upper house.
<u>Mode of Election:</u> Direct i.e. people (masses) elects his own representative.	<u>Mode of Election:</u> Indirect i.e. elective of provincial assembly will elect member for upper house.
<u>Permanent Body:</u> Its not permanent, no restriction for old members.	Senate never dissolves, after every 2 years, by computers balloting, 1/3 rd retired.
<u>Tenure of Membership:</u> 5 years	6 years
<u>Prime Minister:</u> Yes	No
<u>Monetary Bills:</u> Yes	No

- When President is not there in a country, Chairman of Senate act as President and if he is not present as well then speaker acts as President.
- In senate there is equal representations of provinces.
- In Senate provincial assemblies case votes but in national Assembly there are masses who cast votes and there is a direct election.
- National Assembly is dissolved after every 5 years, but senate is a permanent body (not dissolved), but in senate after every 2 years there is balloting by which there is retirement gives to the members.
- In case, if there is a member whose name has not come in the ballot for 3 periods (6 years) then he is given retirement automatically.
- Monetary Bill is like budget.

Civil Law	Criminal Law
<u>Definition (Inter-se) (Among themselves):</u> The law which regulates and governs the relationship of the member of society inter-se is called civil law.	<u>Definition (An act forbidden by law – PPC):</u> The law which is concerned with the relationship of the individuals of the society and the state is called criminal law.
<u>Notice / Legal Action:</u> In case of Infringement of civil right, it is only the injured person who can take legal action against the defaulting person.	<u>Notice / Legal Action:</u> In case of commission of crimes. Such notice is taken by the state.
<u>Parties / litigants:</u> Plaintiff (Claimant),	<u>Parties / Litigants:</u> Prosecution (Public

Defendant	Prosecutor) - Accused. (An accused shall be presumed innocent party until proven guilty).
A Civil Law is proved on the balance of probability.	Prosecution must prove a criminal case beyond reasonable doubt.
<u>Punishment:</u> There is no punishment.	<u>Punishment:</u> There is punishment (Punishment is death sentence).
<u>Remedies:</u> The sources by which the rights are enforced on the violation of rights may be prevented are called remedies. (Damages means monetary compensation, Injunction or Stayorder).	<u>Remedies:</u> There are no remedies, punishment awarded: <ul style="list-style-type: none"> • Death sentence • Imprisonment • Fine If guilt is established against the accused, 2 imprisonment: <ul style="list-style-type: none"> • Simple Imprisonment • Rigorous Imprisonment
<u>Admission:</u> Admission is made in civil case when somebody accepting a crime. (Every confession is an admission but every admission is not a confession).	Confession is made in criminal law.
In civil law, no question of why is asked.	In Criminal law, the question of why is asked.
A civil dispute may be refer to arbitration instead of court of law.	Criminal case must always be decided by the court of law.
<u>Limitation Act:</u> There is a limited time period to file a case. In case of civil law limitation act is there.	There is no limitation act.

- Admission is made in a civil case and it means accepting guilty.
- Plaintiff is the person who claims about other person and defendant is the one against whom the case is filed.
- Civil disputes are settled and it is arbitration, because there are few courts of it. Criminal Case may be settled by other or third party.
- The relief or compensation determines that it is a criminal or civil case.

Indian Parliament:

Lok Sabha + Rajia Sabha + Rashtar Pati (President)
(Lower House) (Upper House)

UK Parliament:

The House of Commons + The House of Lords + Crown (either king or queen)
(Lower House) (Upper House)

US Parliament (Not known as parliament):

House of Representatives + Senate

Head of State: He is a man without powers. He is bound to sign the law passed by legislature, he is figure-act. He has ceremonial powers.

Head of Government: He is a man of show, he works. He is sometime a Prime Minister, President or Chancellor. There is a body under him called Cabinet.

Attorney General: He is a first law officer of a country. He is practicing lawyer nominated by Prime Minister. He can conduct private cases, along with cases filed by the Government. He is the only person who can attend the proceedings of National Assembly or of Senate or of both, although he is unelected member. He will tell about the progress of cases. He is assisted by Deputy Attorney General and Assistant Attorney Generals.

Advocate General: He is a first law officer of the province. He deals with cases of provinces elected by Chief Minister (CM). He can attend provincial assembly proceedings assisted by Deputy Advocate General and Assistant Advocate General.

Legislature and Executive come after election while Judiciary Judge comes after executive.

Judge of Supreme Court: is a life member of a Supreme court.

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Judgement:

* The judge has delivered some particular judgements.

Ratio decidendi: It means the reason or ground of a judicial decision. It is the ratio decidendi of a case which makes the decision a precedent for the future.

Obiter Dicta: Obiter dicta are the personal comments given by the judge. These comments are judicial or legal comments. They are sometimes warning for society or can be a philosophy of a law, it does not execute.

Jurisdiction of Supreme Court:

1) **Original Jurisdiction:** It can be categorized in two ways:

* **Public Interest Litigation:** It cannot be the court of first instance. There are some matters with which the interest of masses are attached is called public interest litigation can be

directly taken to the supreme court. Only in this situation supreme court can be a court of first instance.

* A provincial Government can file a case in supreme court against another government. Its judgement will execute in some different way which is defined in the constitution.

- 2) **Appellate jurisdiction:** Appellate jurisdiction is the highest court of appeal.
- 3) **Supervisory Jurisdiction:** Supreme Court is the Apex court of Pakistan. In UK House of Lords is the Apex court. All courts are sub-ordinate of Supreme Court. Hence to monitor them is the jobs of supreme court.
- 4) **Advisory Jurisdiction:** Legal advice can be taken from supreme court for some matters. However the Government is not bound to follow this advice.

The Doctrine of Binding Precedent:

- * Precedent means previous judgement
- * by standard is the one who observes
- * all the fact of these cases are same but the decisions are different
- * If there is no consistency in the judgement then people will not come to judiciary. There will be anarchy in the society.

Today's judge is bound to apply previous judgement but there are some requirements for it:

Requirements:

- 1) Facts of both the cases must be same.
- 2) The preceding court must be the court either of a superior status or in some cases of equal status.
- 3) The statute on the basis of which the preceding judgement was delivered must neither have been amended nor repelled.
- 4) Ration Decidendi of the preceding judgement has to be applied.
- 5) The preceding court must not have ignored any fundamental principle of the court such as privity of contract.