



**RESEARCH PAPER**

**Establishment, Powers and Functions of Supreme Court of Pakistan**

**<sup>1</sup> Dr. Abida Hassan\* <sup>2</sup>Dr. Muhammad Mumtaz Ali Khan and <sup>3</sup>Imran Alam**

1. Assistant Professor, Dr. Iqbal School of Law, Government College University, Lahore , Punjab, Pakistan
2. Director (Research & Development), Punjab Higher Education Commission Lahore, Punjab, Pakistan
3. Assistant Professor, Punjab University Law College, Lahore, Punjab, Pakistan

**\*Corresponding Author** [dr.abidahassan@gcu.edu.pk](mailto:dr.abidahassan@gcu.edu.pk)

**ABSTRACT**

The important function that Pakistan's Supreme Court plays in the nation's legal and judicial system has been examined in this research. It explores the background of the Supreme Court's founding and outlines the roles and authority that are incorporated in the Constitution. The Court's jurisdiction over matters of public concern, its ability to interpret and uphold the law, and its relevance in protecting constitutional rights are all covered in this article. This article has also focus on significant cases and important rulings that have influenced Pakistan's legal system. The main purpose of this article was to give an overview of the Supreme Court's development and its function in upholding justice and the rule of law in Pakistan.

**Keywords:** Constitution, Establishment, Jurisdiction, Supreme Court

**Introduction**

The Pakistani Supreme Court is the nation's highest court of appeals and the last resort when seeking justice outside of the country. Regarding legal and constitutional issues, it is the supreme authority. Other courts around the nation are impacted by its rulings and decrees. It is anticipated that all judicial and administrative authorities will work in tandem with the Supreme Court. The constitution provides a detailed description of the Supreme Court's creation, authority, and duties. The criteria and process for appointing judges, the retirement age, the reasons and mode of termination, and the terms of service for judges are all closely related. This Court will be composed of a Chief Justice as Chief Justice of Pakistan and other Judges as may be nominated by Act of the Parliament (Art.175).

The Pakistan Supreme Court's founding dates are rooted in the early years of the country's independence in 1947. The Federal Court of India was first passed down to Pakistan and was renamed the Federal Court of Pakistan. Subsequently, the Supreme Court of Pakistan was founded under the 1956 Constitution. Established as the Federal Court in 1948, this judicial body's constitutional restructure and remaking was reviewed by the articles of 1956; it has maintained its jurisdiction and name by the successive legal instruments since convention of 1973. After the constitution was ratified in 1973 and other legal developments, the Supreme Court, which was founded in 1956, has continued to operate under the same name and authority. This Court selects its own staff and defines their conditions and terms of service (Hamid Khan).

The Supreme Court has the authority to conduct investigations, appeals, and original jurisdiction. It has the original authority to make decisions on interstate disputes involving the federal, state, or local governments. The Supreme Court has the authority to make final rulings. When a matter is of public concern, the Supreme Court may also exercise original jurisdiction over the award of basic rights. The Supreme Court also possesses the caveat emptor power, which allows the President to request the court's judgement on a legal issue.

The Supreme Court hears appeals from orders and rulings of the High Courts and other subordinate courts due to its appellate jurisdiction.

### **Review of Literature**

Article 175 of the Constitution of Pakistan provides that there shall be a Supreme Court of Pakistan which can exercise its powers as per the Constitutions grants; it is also clearly mentioned in the said article that the judiciary will work independently in Pakistan and there will be no influence of executive on judiciary which was positive sign to ensure the justice and free and fair trial for the parties.

The judiciary's independence from the executive branch and autonomy are guaranteed by the constitution. The Supreme Court has an exceptional constitutional obligation to uphold the unity and coordination among the three branches of government: the legislature, the executive branch, and the judiciary. The Supreme Court has an obligation to uphold, defend, and conserve the Constitution in its capacity as its custodian (PLD 1999 SC 504).

Independence of Judiciary is in fact the guarantee of protection to human rights as every person has the right to enjoy full protection of rights which is possible through independent, free and fair judicial system (UDHR, 1948).

It is also a fact that the judiciary can only work with the support of executive and legislature; it has a deep relationship with both but this deep relationship is limited and restricted to the relationship is to the extent that legislature frames the laws and judiciary interprets those laws while executive executes the laws as per orders of the courts (PLD 1997 SC 32, 69).

There are so many precedents where it is clear that Supreme Court is not a federal court but it is an apex court and a court for whole of Pakistan (PLD 2001 SC 607) and (PLJ 2001 SC 817), so it is the ultimate custodian of lives and property of people of Pakistan (1992 SCMR 2320).

As per article 176 of the Constitution of Pakistan, Supreme court consists of one Chief Justice of Pakistan and some other judges as per the Act of the Parliament and determined by the President of Pakistan. The president is the authority to appoint all judges of Supreme Court including Chief Justice of Pakistan as per article 175-A of the Constitution of Pakistan.

Article 177 of the Constitution of Pakistan 1973, states that a person who is or has been a judge of High Court or has an experience of practice in High Court for 15 years, is eligible to be appointed as judge of supreme Court.

According to the above said requisites of the articles of Constitution of Pakistan, 1973, it is also necessary that the person must be a citizen of Pakistan, he must have served as an advocate of High Court or have served in a judicial capacity for the required number of years, he must be under the legally specified age limit with good character, integrity and a clean record holder. Laws and legal expertise may stipulate additional criteria, which may change over the time.

### **Material and Methods**

The research is based on mix methodology i.e., qualitative and prescriptive following by recommendations and conclusion. The population of research is case laws, books and articles.

## Jurisdiction of Supreme Court of Pakistan

The Supreme Court of Pakistan under original jurisdiction, entertains the cases related to the violation of fundamental rights of people so as a consequence there is a lot of cases pending. According to the data present, on 31<sup>st</sup> December 2013, almost 20,480 cases were pending in the Supreme Court.

**Table 1**  
**Jurisdiction of Supreme Court of Pakistan**

Original jurisdiction	Appellate jurisdiction	Advisory jurisdiction
Arise in case of violation of fundamental rights.	Against the judgements of lower courts, appeals come to S.C.	President can seek advice or opinion of supreme Court.
Article 184(3)	Article 185	Article 186
Aggrieved person can approach for remedy/ Suo Moto by S.C	Appeals against judgments of High Courts, tribunals	Opinion/Advise to president, it is not binding.

### Original Jurisdiction of Supreme Court:

Under article 184(1) of the Constitution of Pakistan, 1973, the Supreme Court has the authority and can exercise its power through judicial review to examine the administrative action taken or any decision passed by the administrative authority and the government activities to make sure they follow the law and in case any dispute arises between the governments, Supreme Court can make declaratory judgments under article 184(2) of the Constitution of Pakistan.

Under article 184(3) of the Constitution of Pakistan, the Supreme Court has jurisdiction to provide protection to the fundamental rights of the citizens of Pakistan. Supreme Court can serve as defender of human rights as well as fundamental rights of people in a true sense.

The case of Mukhtaran Bibi, a survivor of a gang rape in 2002, drew widespread attention, and the Supreme Court took suo-motu notice of the case, resulting in convictions for the accused.

In Mr Justice Iftikhar Muhammad Chaudhary and Others vs The President of Pakistan through the secretary and others, it was held that under article 184 of the Constitution of Pakistan, The supreme Court has been granted the original jurisdiction and exclusive jurisdiction to settle the disputes and controversies if any raised between the federation and provincial government or between provinces (PLD 2010 SC 61).

Yousuf Raza Gilani, the Prime Minister, was convicted in 2012 of contempt of court for his refusal to write a letter to Swiss authorities requesting the reopening of corruption investigations involving the former President Asif Ali Zardari. The Prime Minister was disqualified from holding public office after the Supreme Court ruled that he was in contempt for disobeying its orders. This case showed the Supreme Court's strength and authority in upholding its rulings and had important political and legal ramifications for Pakistan.

A complaint was made against Justice Qazi Faiz Essa, a member of the Supreme Court of Pakistan, on the grounds that he failed to disclose foreign properties in his wealth statement. The case brought up significant issues regarding the independence of the judiciary and the function of the Pakistani Judicial Commission, which is in charge of selecting, transferring, and dismissing judges in that country.

When the case reached the Supreme Court, it brought up concerns over how judges are handled in similar situations. In June, 2020, the Supreme Court finally rendered a comprehensive ruling, maintaining the judiciary's independence and nullifying the appeal. A notable instance of a case involving judicial appointments that made it all the way to the Supreme Court and had a big impact on Pakistan's legal system and judicial independence ideals is the case of Justice Faiz Essa.

### **Appellate and Advisory Jurisdiction**

Supreme Court of Pakistan has also appellate jurisdiction to entertain and determine the cases under article 185 of the Constitution of Pakistan which are decided by the High Court, some appeals can be filed as a right and some are filed with leave to appeal. In 2017, the Supreme Court held an inquiry into the Panama Papers leaks, and thereafter leading to the disqualification of the then-Prime Minister, Nawaz Sharif, on charges of corruption.

Under article 186 of the Constitution of Pakistan, whenever the president of Pakistan requires or desires to obtain the opinion of Supreme Court on any legal matter or on question of law, which is important with reference to public importance, the president may refer the matter to the Supreme Court of Pakistan to consider and give its opinion. The Supreme Court shall consider and give its opinion to the president on the question so referred to it, but the opinion of Supreme Court is not binding.

### **Power to Transfer the Cases**

After the presidential order and amendment in the Constitution of Pakistan and under article 186-A of the Constitution of Pakistan, the supreme Court of Pakistan has been conferred powers to transfer the cases, appeals, or other proceedings from one High Court to another High Court to expedite the justice and to meet the ends of justice and ensure rule of law (PLD 1987 Lah 331). This power can be exercised only if the parties due to coercive tactics, the parties can not freely contest and pursue their case freely and they make an application to the Supreme Court for transfer of their case (2009 PSC-SC Pak, 4).

### **Execution of order of Supreme Court**

When the Supreme Court of Pakistan pass an order, it is the duty of the concerned province to execute the order or judgment of the Supreme Court as it has been passed by the High Court of that Province and this power has been given to Supreme Court Under article 187 of the Constitution of Pakistan.

### **Challenges to Supreme Court of Pakistan**

From studying the articles related to Supreme Court, its powers and functions, it has been observed that Supreme Court, like many other institutions, must deal with a backlog of cases, uphold the rule of law, and preserve its independence in a complicated political climate, among other issues. As the highest court of the nation in the country, the Supreme Court of Pakistan, all high courts, must contend with a number of difficulties. Among the principal difficulties such as Judicial Independence which is very important for rule of law and to ensure justice in the society, because the court is bound and it is the basic responsibility of the court to render impartial and equitable decisions, protecting and maintaining the judiciary's independence from political influence is a never-ending task. Second challenge from these difficulties is that like many other courts, Supreme Court of Pakistan frequently has a backlog of cases, which can impede justice and put a burden on judicial resources. Third one is the public perception and it is essential to preserve the public's faith in the judiciary, and it is a constant struggle to allay worries about the openness, responsibility, and equity of the court's rulings. Fourthly, the Supreme Court has to be very cautious to settle down the prominent or politically touchy issues can exert

pressure on the court because rulings in these cases may have a big impact on the stability and governance of the nation and also to maintain the rule of law and making sure that judicial rulings carried out are constant challenges, particularly when working with influential people or organisations. Fifthly, the Supreme Court has to manage the financial matters within limited sources because it does not have enough money or manpower, which could hinder its effectiveness and capacity to handle every case quickly.

## **Conclusion**

The Supreme Court of Pakistan is a crucial part of the nation's legal and constitutional systems. It is in charge of maintaining the integrity of the legal system, defending fundamental rights, and making sure the legal system runs smoothly. It is a key component of Pakistan's legal system and government because of its role in interpreting the constitution and settling legal issues. As the highest court in the nation, the Pakistani Supreme Court is essential to maintaining the rule of law and defending the constitution. It is essential for interpreting the constitution, settling legal issues, and guaranteeing the citizens' right to justice. The rulings of the Court have a significant impact on the legal system and government of the country. Its significance in the Pakistani legal and political scene cannot be emphasised, despite differing viewpoints on its performance. The Supreme Court of Pakistan (SC) is the highest court in Pakistan's judicial hierarchy and the last arbiter of constitutional and legal problems. Islamabad serves as the Supreme Court's permanent home. Cases are heard at several of its Branch Registries as well. The Constitution lists a number of the court's de jure authority. The court has also established itself as a de facto check on military power via multiple periods of military rule and constitutional suspensions. It has original jurisdiction over a limited number of cases and appellate jurisdiction over all federal courts, including district courts, special courts, and provincial high courts. The President appoints senior justices to the Supreme Court after conferring with the Prime Minister, and the court is headed by a chief justice. Upon appointment, justices are expected to serve out their terms and retire, unless the Supreme Judicial Council removes them in response to a presidential referral about judge misconduct.

The Supreme Court must assume its responsibilities going beyond the limits of the legislative or executive arms of the government. The judiciary can end up making political and policy decisions which results in judicial activism. The legal system of Pakistan is frequently chastised for its protracted and sluggish court proceedings which needs attention to be struck down by taking steps and through reforms in legal system of Pakistan. It can take years or even decades to conclude a case, which can cause injustice and frustration. The court should not come under fire of critics and must give such decisions which show that the justice should not only be done but seem to be done and no favours may be expected by political parties while ignoring others otherwise this act may create doubt in the minds of the people on the impartiality of the court. In order to improve the public confidence in the court, it should be more transparent in its decision-making and procedures should be explained in very well.

## **Recommendations**

Like any other legal body, the Supreme Court of Pakistan has been criticised over the years but that is not the solution to criticize any institution, the only solution is to make reforms in the system and give full independence for decision making without the involvement of any political or other influence which can built up the moral of the institution. Therefore, Supreme Court being highest and August Court of the country is responsible to establish the organizational structure, necessary to ensure the administration of justice in the society. It is also the responsibility of the Supreme Court to employ not only the worthy judges but also of high moral having strong will and decision making powers; the Supreme Court must draft the judiciary bills which are suitable and appropriate for an Islamic state like Pakistan. To keep abreast of legal developments and

their skills, it is imperative that judges and other legal professionals must be provided opportunities to obtain ongoing education and training to improve their skills and level of understanding to apply a rational approach for deciding the cases as quickly as it can do. Last but not the least, it is very important to increase the budget of the Supreme Court as well as benches of Supreme Court, so that the burden of thousands cases can be reduced and justice be provided to people as soon as possible.

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