



**Lahore University of Management Sciences**

**POL 41X – Constitutional Development in Pakistan**  
**Fall 2010-11**

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**Eligibility: For Juniors & Seniors ONLY**

**Course Description:**

Constitutional history of Pakistan is dotted with various strong and weak points. It has all the major features of constitutional systems of the established democracies as inherited from British India. However, constitutional breakdowns, tensions between civil and military wings of the State, coups d' etats, tug of war between judiciary and executive, and uncertainty about the role of Islam in the state have adversely affected the process of Constitutional development in Pakistan. This course seeks to expose the students to constitutional debates and the general framework of the constitutional thought and practice in the country.

**Course objectives:**

- 1) To cultivate the understanding of the legal and constitutional edifice of the state and develop a profile of various challenges faced by it;
- 2) To develop appreciation of the complex process of interaction between the letter and spirit of the Constitution on the one hand and political practice on the other;
- 3) To deal with contentious issues which continue to come up every now and then, relating to provincial autonomy, federalism, Islamization, minorities and local bodies, among others.

**Grading:**

Attendance	15%
Quiz	20%
Midterm examination	25%

Final examination 40%

### **Session - 1: Introduction**

### **Session - 2: Emergence of a Constitutional State**

- G. W. Choudhury, *Constitutional Development in Pakistan*, 1995, Chapter 3, 'Some Aspects of the Interim Constitution', 29-43

### **Session - 3: Constitution and Politics**

- Hamza Alavi, 'Constitutional Changes and the Dynamics of Political Development in Pakistan', Seminar Paper, Institute of Commonwealth Studies, University of London, *Collection of Seminar Papers on Constitutional Changes in the Commonwealth Countries*, 1973, 65-79
- L. Michael Hager, 'The Great Experiment - Law and Development in Pakistan', in Wolfgang Peter Zingel and Stephanie Zingel Ave Lallemand, *Pakistan in the 80s: Law & Constitution*, 1985, 209-230

### **Session - 4: Constitutionalism: An Overview**

- Syed Jaffar Ahmed, 'Overview of the Constitution of Pakistan', in *Pakistan Institute of Legislative Development and Transparency (PILDAT)*, Briefing Paper no. 17, Publication no. 2-003, August 2004, 9-19
- Shahid Hamid, 'Constitutional Change and Continuity', Memeographed paper, n.d, 1-15

### **Session - 5: Principles of Policy**

- Mian Abdul Ghaffar, *The Constitution of the Islamic Republic Pakistan 1973*, 1999, Chapter 2, 'Principles of Policy', 280-304

### **Session - 6: Federalism**

- Katherine Adeney, *Federalism and Ethnic Conflict Regulation in India and Pakistan*, 2007, Chapter 7, 'Ferderal (In)Stability in Pakistan', 137-162
- Syed Jaffar Ahmed, *Federalism in Pakistan - A Constitutional Study*, 1990, Chapter 3, 'Division of Powers', 69-110

### **Session - 7: Constitutional Dyarchy**

- Mohammad Waseem, 'Constitutionalism in Pakistan: The Changing Patterns of Dyarchy', *Diogenes*, Vol. 53, No. 4, December 2006, 102-115
- Charles H. Kennedy, 'Presidential-Prime Ministerial Relations: The Role of the Superior Courts', in Charles H. Kennedy & Rasul Bakhsh Rais eds, *Pakistan 1995*, 1995, 17-30

### **Session - 8: Form of Government**

- Hamid Khan, *Constitutional and Political History of Pakistan*, 2001, 'Debate Over Form of Government', 859-866

### **Session - 9: Parliamentarism in Pakistan**

- Justice ® Fazal Karim, *Judicial Review of Public Actions*, Chapter 4, 'Independence of Legislature', 2006, 180-190
- PILDAT, *Performance of the 13th National Assembly of Pakistan: First Parliamentary March 17, 2008 - March 16 2009*, Lahore, 2004, 1-19

### **Session - 10: Islam and Constitution Making - I**

- L. Binder, *Religion and Politics in Pakistan*, Chapter 10, 'The Objectives Resolution', 1961, 142-154
  - Fazlur Rahman, 'Islam in Pakistan', *Journal of South Asian and Middle Eastern Studies*, Vol. 8, No. 4, Summer 1985

### **Session - 11: Islam and Constitution Making - II**

- Jeffrey A. Redding, 'Constitutionalizing Islam: Theory and Pakistan', *Virginia Journal of International Law*, Vol. 44, 2004, 760-827
- Rubya Mehdi, *The Islamization of the Law in Pakistan*, 1994, Chapter 2, 'Islamic Provisions in the Constitutions of Pakistan', 71-108

### **Session - 12: Islamization of Laws**

- Martin Lau, *The Role of Islam in the Legal System of Pakistan*, 2006, Chapter 2, 'The Assertion of Islamic Law', 31-45

### **Session - 13: Repugnancy to Islam**

- Charles Kennedy, *Islamization of Laws and Economy*, 1996, Chapter 4,

'Repugnancy to Islam - Who Decides?', 83-108

- Martin Lau, *The role of Islam in the Legal system of Pakistan*, 2006, Chapter 10, 'The Effect of Repugnance', 189-197

#### **Session - 14: Judiciary and The State**

- Paula R. Newberg, *Judging the State*, 1995, Chapter 8, 233-250
- Hamid Khan, 'Military and Judiciary in Pakistan October 1999 Onwards', *Journal of South Asian and Middle Eastern Studies*, Vol. 26, No. 4, Summer 2003, 37-49

#### **Session - 15: Mid-Term Examination**

#### **Session - 16: Independence of Judiciary**

- Nasim Hasan Shah, 'Judiciary in Pakistan: A Quest for independence', in Craig Baxter and Charles Kennedy eds, *Pakistan 1997*, Westview press, Boulder 1998, 61-78
- Hamid Khan, *Constitutional and Political History of Pakistan, 2001*, Chapter 36, 'Role of the Judiciary: Independent or Docile?', 869-876

#### **Session - 17: Black Coats, White Robes**

- Shoaib A. Ghias, 'Miscarriage of Chief Justice-Lawyers, Media, and the Struggle for Judicial Independence in Pakistan', *Law and Social Inquiry*, 35: 4, forthcoming 2010, 1-53

#### **Session - 18: Minorities**

- Tayyab Mahmud, 'Protecting Religious Minorities: The Courts Abdication', in Charles H. Kennedy & Rasul Baksh Rais, *Pakistan 1995*, 1995, 83-102
- M. A. Mannan ed, *Chief Justice Dr. Nasim Hasan Shah: Judgments on the Constitution, Rule of law, and Martial Law in Pakistan*, Chapter 35, 'Rights of Minorities be Upheld', 1993, 378-389

#### **Session - 19: Election System**

- Mohammad Waseem, 'Electoral Reform: The Political Context', in Mohammad Waseem ed., *Electoral Reform in Pakistan*, 2002, 5-26
- Salim Qazi, 'How Independent is Election Commission of Pakistan?' *Pakistan Institute of Legislative Development and Transparency (PILDAT)*, Citizens' Group

on Electoral Process, February 2008, 7-16

### **Session - 20: Emergency**

- Anil Kalhan, 'Constitution and "Extraconstitution": Emergency Powers in Postcolonial Pakistan and India', in Victor V. Ramraj & Arun K. Thiruvengadam, *Emergency Powers in Asia: Exploring the Limits of Legality*, 2010, 1-31

### **Session - 21: Provincial Autonomy**

- Mohammad Waseem, 'Pakistan Revolution and the Ethnonationalist Movements', in Kaniz F. Yusuf, Saleem Akhtar, Razi Wasti eds, *Pakistan Resolution Revised*, 1990, 514-530
- Hamid Khan, *Constitutional and Political History of Pakistan*, 2001, Chapter 36, 'Issue of Provincial Autonomy', 884-889

### **Session - 22: Constitutional Amendments**

- Ministry of Information and Broadcasting, 'Amendments' & 'Proposed Amendments', 2006, 1-51, (A Study of 17 Amendments)
  - 18th Constitutional Amendment, 2010

### **Session - 23: Judicial Review**

- Justice ® Fazal Karim, *Judicial Review of Public Actions*, 2006, 4-16

### **Session - 24: Local Bodies**

- George M. Platt, 'Basic Democracies: The Experiment in Local Government', in S.H. Hashmi ed, *The Governing Process in Pakistan 1958-69*, 1987, 215-271
- Charles H. Kennedy, 'Analysis of Pakistan's Devolution Plan', Paper developed for the Department of International Department (DFID), September 2001, 1-11

### **Session - 25: Military Vs Constitutionalism**

- Nasim Hasan Shah, 'Proclamation of Martial Law 5 July 1977: Validity of', Chapter 8, M A Mannan ed., *Chief Justice Dr. Nasim Hasan Shah Judgments on the Constitution, Rule of law, and Martial Law in Pakistan*, 1993, 64-85

### **Session - 26: Jurisprudence of Dissolution of Assemblies**

- Osama Siddique, 'The Jurisprudence of Dissolutions: Presidential Power to Dissolve Assemblies Under The Pakistani Constitution and Its Discontents' *Arizona Journal of International And Comparative Law*, 2006, Vol. 23, no. 3, 1-99

**Session - 27: Constitutional Legitimacy**

- Leslie Wolf Phillips, *Constitutional Legitimacy: A Study of the Doctrine of Necessity*, Third World Foundation Monograph 6, 1980, 3-39

**Session - 28: Recapitulation of major themes**