



PREMIER LAW JOURNAL

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PREMIER LAW JOURNAL

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Dr. Muhammad Amin
The Editor

**RIGHTS OF CHILDREN OF UNMARRIED
COUPLES IN ENGLISH AND ISLAMIC LAW; AN
INCUMBENT NEED FOR LEGISLATION**

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ABSTRACT

The United Nations Convention on the rights of child and the European convention on human rights have made sure the principle that no country should discriminate against the children on the ground of parent's status. In UK in initial phrases at the common law the child only legitimated if the parents were married as it was based on the Christianity but later on, in the twentieth century a legal development has been made to common law by allowing children of unmarried couples as legitimates if their parents get married at the time of their birth. However, Islamic law doesn't recognize such marriage. In secrets and in private capacity if someone get married after making out of marriages relations, Islamic law doesn't intervene with this situation unless it unfolds. The matter unfolds means it goes to the court and follow the evidential procedures. Islamic law doesn't suspect any child as illegitimate and doesn't support and indulge in DNA testing for proving legitimacy of the child unless someone claims succession and inheritance in property and some other denies his succession by saying that he is not a legitimate child of his father. However, Islamic law maintains minimum standards for making legitimacy of the child and remains in support to restore the honor and prestige of the children and persons by not declaring them as illegitimate. However, Islamic law recognizes all the rights of children of unmarried couples if the situation arises.

Keywords: Islamic Law, Common Law, Legitimate, Illegitimate, Children.

INTRODUCTION

All human beings tie with tribes, families and nations. Men found family and can be alive within social boundaries of a family. Marriage is a way to establish a family system. All blood relations emanates from a marriage. Marriage establishes relation between a man and woman as a husband and wife. Husband and wife then can have issues as a result of this marriage and these issues become brothers and sisters in themselves and daughters and sons to their parents. These sons and daughters then get married and for their children, they become uncles and aunts on part of their parents. Out of marriage no blood relation and family system can be established, therefore, the importance of marriage is too much high in human life. Although the west is sex free zone, but the UK has passed the family act 1989 and family reform act 1976 which define the legitimate and illegitimate child. The actual problem in our society is the matter of the honor which is of different nature and concept in the west and east. In the east, if the girl becomes pregnant out of marriage relation she feels shame and thinks herself a sinful person, so that she tries to abort the pregnancy, If she remains unable to do so she throws the baby anywhere to conceal her sin, if the baby fortunately remains alive, the NGOS uplift such babies and undertake their care on their own responsibility. The *Edhi* Foundation works for handling this situation in such a way that it installed cradles in different places in Karachi where the unmarried lady leave the illegitimate child.

The NGOs in Pakistan are taking care of children having no paternity in their *Dar-ul-Amman*. However, the welfare of these children is being performed very well but their legal issues are still unsolved and their civil rights are unprotected.

It is making sure the principle in the United Nations Convention on the rights of child¹ and the European convention on human rights² not to discriminate against the children on the ground of parent's

¹The anti-discrimination principle in Art. 2. Art. 18 requires States' Parties to use their best efforts to ensure the recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.

² Art. 14. In *marckx v. Belgium* (1979) 2 E.H.R.R. 330 and *Inze v. Austria* (1987) 10 E.H.R.R. the European Court of Human Rights held that discrimination against illegitimate children in relation to inheritance rights breached their Art. 14. But the inheritance of a little is not protected: *Re Moynihán* [2000] 1 F.L.R. 113 HL and *X. v. U.K.* (1978) 2 E.H.R.R. 63.

status while the matter is different in society laws. (English and Islamic law)

UK LAWS ON CHILDREN OF UNMARRIED COUPLES

At common law children were only “legitimate:” if the parents were married when they were born or conceived.³ A child born to unmarried parents was a *filius nullius or filius populi*; no legal relationship was recognized with the mother or father nor with any other “relatives”. Hence the child had no legal right to succeed to their property, nor to receive maintenance⁴ and other benefits deriving from the status of parent and child. However, in the twentieth century two separate developments have been made to relax the stiffness of the common law. First, the definition of “illegitimate” was narrowed and allowed to include the children whose parents married after their birth to be legitimated.⁵ And also recognized as legitimate some children born of void marriages.⁶ secondly, rights accorded to children born within marriage were extended to all children. For example, the Fatal Accidents legislation⁷ virtually eliminated the distinction for the purpose of “dependency” claims brought under it, and the law of inheritance was changed to enable a child born outside marriage to claim under a will,⁸ the father’s intestacy⁹ and to seek family provision¹⁰

³ Blackstone, Commentaries, p; 454. A child born after the husband’s death or divorce was also legitimate: Knowles v. Knowles [1962] p; 161.

⁴ Note, however, according to R.H. Helmholz, “Support orders, Church Court and the rule of Filius Nullius. A reassessment of the common Law” (1977) 63, Rev. 431 the church courts gave a right of support.

⁵The Legitimacy Act 1926 allowed legitimation if the father was domiciled in England at the date of the marriage and neither party was married to anyone else at the date of child’s birth. The Legitimacy Act 1959 allowed a child born of an adulterous relationship to be legitimated. The Children Act 1975, Sched. 1 made changes to the status conferred by legitimation. These provisions were consolidated in the Legitimacy Act 1976, sec.8 which provides that a legitimated person should have all the same rights as a legitimate one but it did not affect titles, nor dispositions made before January 1, 1976.

⁶ The Legitimacy Act 1959, consolidated in the Legitimacy Act 1976, sec.1 treated such children as legitimated provided the father was domiciled in England at the time of birth and at least one parent believed at the time of marriage was valid.

⁷ See Fatal Accident Act 1976, (as substituted by Administration of Justice Act 1982) sec.1 (5) (b).

⁸ Family Law Reform Act 1969, sec.16.

This process has been made in the Family Law Reform Act 1987, which ended the distinction between children based on their parent's marriage. As to be noted down here;

“ references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time,”¹¹

This rule is applied to some existing statutes.¹² but where the rule did not apply, it began to necessary to determine the child was or is legitimate; and the provisions of the Legitimacy Act 1976 applied¹³ Thus all children's inheritance rights¹⁴ and rights of support are now the same, but where the parents are not married the child does not automatically¹⁵ have a father with legally recognized rights, nor qualify for British citizenship where only the father is British.

However, the government rejected this apparently because there were no adequate legal procedures for determining paternity.¹⁶ The Law Commission says that proof of parentage was not a problem and suggested that British or overseas birth certificates or declarations could be used.¹⁷ The advent of DNA testing, which is

⁹ Family Law Reform Act 1969, sec.14: (the Legitimacy Act 1926 allowed succession under the mother's intestacy).

¹⁰Family Law Reform Act 1969, sec. 18; Inheritance (Provision for the Family and Dependants) Act 1975, ss. 1 , 25(1)

¹¹ Sec.1 (3) defines a person “whose father and mother were married to each other at the time of his birth” to include all legitimate, legitimated and adopted children. See also, D. pearl, “Recent changes in the law relating to children of unmarried parents” (1989) 1 J.C.L. 126 and N. Lowe, “The family Law Reform Act 1987-Useful reform but an unhappy compromise” [1988] Denning L.J. 77.

¹² Family Law Reform Act 1987, sec.2.

¹³ Sec.1 (3) the definition of children treated as legitimate is amended by Family Law Reform Act 1987, sec.28; see below.

¹⁴ Family Law Reform Act 1987, ss.18-20; but inheritance of titles of honour and succession to the throne are generally not affected.

¹⁵ Financial support for all children is now provided under the Children Act 1989, Sched.1.

¹⁶ Law Com. 118, para. 11.8. It was not appropriate to devise such procedures just for citizenship claims.

¹⁷ *Ibid.* para. 11.21.

capable of proving a child's parentage¹⁸ and is used for this in immigration disputes,¹⁹ removes objections based on problems of proof but there have been no further developments in relation to citizenship. The British Nationality Act 1981 abolished the so-called *ius soli*, the rule by which everyone born in the United Kingdom automatically acquired British citizenship. Entitlement to citizenship depends on the citizenship and marital relationship of the child's parents.²⁰ Children whose parents are not married are at a disadvantage in two main factual circumstances. A child born in this country to a British father and a foreign mother will not be entitled to British citizenship if the parents are not married.²¹ Similarly, a child born abroad to a father who is a British citizen, otherwise than by descent and a mother who is either foreign or a British citizen by descent only, will not be entitled.²² In each circumstance the child would have been entitled if the parents had been married²³ However, a child born in the United Kingdom who spends the first 10 years of life here will be entitled to registration as a British citizen provided that he or she has not been absent for more than 90 days each year during this time.²⁴ It is thus extremely difficult for a child born overseas, whose parents were not married, to enter this country to live with one parent while the other is alive and capable of looking after the child elsewhere.²⁵ States have a wide margin of appreciation; the

¹⁸ D. Webb, "The use of blood grouping and D.N.A fingerprinting tests in Immigration proceedings" [1986] *Immig. & Nat. I. & P.* 53; R. White and J. Greenwood "D.N.A. fingerprinting and the law" (1988) 51 *M.L.R.* 145.

¹⁹ See Hansard, H.C., Vol. 154, col. 464 written answers, June 14, 1989.

²⁰ British Nationality Act 1981, sec.1. For further explanation, see Law Com. No. 118, paras 11.3 et seq; I. Macdonald, *Immigration Law and Practice* (5th ed., 2001).

²¹ The Immigration and Nationality Directorate's policy is to register the child as a British citizen where there are no doubts about paternity, no reasonable objections from the parents or those with parental responsibility and no good character objections: Macdonald, *op. cit.*, para.2.37.

²² British Nationality Act 1981, ss.1 (1), 2(1), 50(90) (b).

²³ This is contrary to the non-discrimination principle in the U.N. Convention on the Rights of the Child, Art. 2, but the U.K. Government made a reservation relating to nationality and immigration see; 2nd Report to the U.N. committee on the Rights of the Child by the U.K. (1999), para.7.31.

²⁴ British Nationality Act 1981, sec.1(4); Macdonald (2001), para.2.43.

²⁵ *Ibid.* para. 297 (e), (f). The parent must have had "sole responsibility for the child's upbringing" and "there are serious and compelling family or other

legitimate aims of immigration policy were weighed against rights to family life,²⁶ and the interest of the child are not paramount.²⁷ In this area of law children's rights depend on their parent's rights and status are not moderated by considerations for their welfare.²⁸

ISLAMIC LAWS ON RIGHTS OF CHILDREN OF UNMARRIED COUPLES

In Islamic law every male and female is responsible for his\her sperm. No one can throw his\her sperm at his\her own choice as it is not merely a sperm, it is an entity attached with rights. A sperm is being perished in mother womb is unlawful to be aborted unless it causes any harm to the mother. Out of marriages relations are strictly banned with severe punishments just to save the family system. The societies in which out of marriage relations are established, the family system of the society is collapsed. However, before proceeding to the study of Islamic law on rights of children of unmarried couples, Islamic teachings should be seen in moral perspective. Islam tries to solve the issues first of all morally. As in the case of illegitimate child, Islam makes bound the society to close eyes on such issues and not bring them in public. Unless such issues remain to be secret not come to public, these issues remain in between ALLAH and Person. May ALLAH forgive him; it totally depends upon the will of ALLAH and the *touba* of the sinful person.²⁹ As we see this moral aspect in the *hadith* of *Ghamidiya* women who became pregnant due to *zina* and came to prophet ﷺ for confession and applying *hadd*(punishment of *zina*) but the prophet ﷺ sent her back and refused to hear what she wants to say and asked her go back. The prophet means, she

considerations which make exclusion the child undesirable and suitable arrangements have been made for the child's care."

²⁶ R. on app. Mahmood v. secretary of State for the Home Department [2001] 1 F.L.R. 757, CA; R. v. Secretary of State for the Home Department, ex p. Iiskoc[2001] 1 F.L.R. 930 CA.

²⁷ R. v. Secretary of State for Home Department, ex p. Gangadeen[1998] 1 F.L.R.762 at 775 per Hirst L.J.

²⁸ See: "The status of immigration children in the UK and conflicts between immigration law and procedure and the welfare of the child" in society for advance legal studies, Family law Working Group, Report on the cross border movement of children (1999), p; 19.

²⁹ Moududi, Abul-Al-Aala, Sayed. *Tafheem-ul-Quran*(Al-Noor) Tarjman-UI-Quran, Lahore1991 Vol;3, p;320-326

does not to discuss the matter with anyone and let the matter be remained between *ALLAH* and herself. While setting moral standards, Islamic law tries even not come a doubt of illegitimacy in someone's mind. A man came to the prophet ﷺ and said, O *ALLAH*'s Apostle!, A black child has been born for me. The prophet ﷺ asked him, have you got camels? The man said, yes. The prophet ﷺ asked him, what color are they? The man replied, Red. The prophet ﷺ said, is there a grey one among them? The man replied, yes. The prophet ﷺ said, whence comes that? He said, May be it is because of heredity. The prophet ﷺ said, may be your latest son has this color because of heredity.³⁰

Islamic law while maintaining highly moral standards does not indulge in proving the legitimacy or illegitimacy of a child by conducting the test of DNA. Islamic law maintains status quo as on whom bad child born, he belongs to him; he would be father of that child. Islamic law supports the conducting of DNA test only if the situation comes that some child demands some property in succession, and other heirs denies his succession, they said that he is not a son of their father, then the court orders the conducting of the DNA to prove the heredity.

Alongside, a moral perspective, Islamic law maintains minimum criteria of assessing legitimacy of the child as the Quran says "the period of pregnancy and feeding the child is 30 months"³¹ and at another place the Quran fixes the period of feeding the child as 24 months "the mothers should feed their child two years as a whole"³² it means that if 24 months of feeding the child reduces from 30 months, the six months remains for the period of pregnancy. The Quran maintains six months minimum period for assessing a child as legitimate. If a child born after six months from the marriage, he would be considered as legitimate in the eyes of Quran. There is another criterion of assessing the legitimacy of the child in Islamic law as settled down by the prophet ﷺ in the *hadith* narrated by the *Ayesha*. The essence of this principle lying under it is that rather looking into assessing legitimacy or illegitimacy of the child, base the matter apparently

³⁰ Bukhari, Muhammad-bin-Ismail, Abu-Abdullah, *Sahih Al Bukhari*, Dar-UI-Salam, Lahore Vol; 4 p; 870

³¹ Al-Ahqaf 46:15.

³² Al-Baqrah 2:233

and decide the matter according to what happened on the screen and not peep down into the secrets of the people. The wording of the prophet ﷺ is “The child belong to the person on whom bed he is born” basically this is a verdict of the prophet ﷺ given in the case of *Saad-bin-Abi-Waqas*. This case detailed in the *hadith* as that *Utba-bin-Abi-Waqas*(Non-Muslim) brother of *Saad-bin-Abi-Waqas*(Muslim) made a *wasiya* to his brother *Saad* at the eve of his death that the son of *Zamaa* (from the womb of his she- slave) is from my sperm so that you keep him after my death under his guardianship, *Saad-bin-Abi-Waqas* adopted under his guardianship the son of *Zamaa* as his nephew but another son of *Zamaa*(*Abd-bin-Zamaa*) came to the prophet ﷺ and said that, the child (claimed by *Saad* as his nephew) from the womb of she-slave of my father *Zamaa*. Therefore, he is in relation my brother. I request oh prophet ﷺ, handover to me this boy as my brother. *Saad-bin-Abi-Waqas* told the prophet ﷺ that he is son of my brother *Utba-bin-Abi-Waqas* as according to the *wasiya* he made. The prophet ﷺ decided the case not in favor of *Saad-bin-Abi-Waqas* but decided it in favor of *Abd-bin-Zamaa* and said that the child is brother of the son of *Zamaa*(*Abd-bin-Zamaa*) as he is born on the bed of *Zamaa*.³³

Now, we quote here the *hadith* of *Ghamidiya* which entails certain rights of children of unmarried couples.

فَجَاءَتِ الزَّعَامِ دِييَا رِفْعُوَالْتَاهَ ، اِدِّي قَدُ زَنَيْتُ فَطَهَّرْنِي وَاِنَّهُ رَدَّهَا ،
 فَلَمَّا كَانَ الْيَقْدُو قَسَالُوْنَ لِلَّهِ ، لِمَ تَرُدُّنِي لِعَدِّكَ اَنْ تَرُدُّنِي كَمَا رَدَدْتِ
 مَا عَزَا فَوَاللَّهِ اِنِّي لِحَلْمِي ، لِقَالِ فَبَاذْ هَبِي حَتَّى تَلِدِي ، فَلَمَّا وَاَدَّتْ اَتْتَهُ
 بِالصَّبِيِّ فِي خِرْقَةٍ ، قَالَتْهُنَا قَدْ وَاَدَّتْهُ ، اَقْلَهْبِي فَاَرْضِعِيهِ حَتَّى
 تَفْطِمِيهِ ، فَلَمَّا فَطَمْتَهُ اَتْتَهُ بِالصَّبِيِّ فِي يَدِهِ كِسْرَةَ خُبْزٍ فَقَالَتْ هَذَا يَا نَبِي
 فَطَمْتَهُ وَقَلْبُكَ كَلِّ بِالطَّعَامِ ، فَوَدَّعَ الصَّبِيَّ اِلَى رَجُلٍ مِنَ الْمُسْلِمِينَ ، ثُمَّ اَمَرَ
 بِهَا فَحُفِرَ لَهَا اِلَى صَدْرِهَا وَاَمَرَ النَّاسَ ، فَرَجَمُوهَا،³⁴

“A woman from tribe of *Ghamidiya*, came to the prophet ﷺ and told that she has committed the offense of *zina* so that purify her with implementation of *hadd-e-zina*. The prophet ﷺ ordered her to

³³ Bukhari, Muhammad-bin-Ismael, Abu-Abdullah, *Sahih Al Bukhari* The Book of sales, Dar-UI-Salam, Lahore Vol; 2 p; 472

³⁴ Al-Qushairy, Abu-al-Hussain, -Muslim-bin-Al-Hajaj, *Sahih Al Muslim* The Book of Hudood, Dar-UI-Qudas Lahore 2011, Vol; 3 p;336.

go back and don't discuss the matter. But she very next day came again and said to the prophet ﷺ not to send me back as you ﷺ sent back *Maaiz*. I swear by God, that I became pregnant because of *zina*. Then the prophet ﷺ said her now go back and come again when you deliver the child. The time come when she delivered the child and took the child along with her to the prophet ﷺ. The prophet ﷺ told her go back and feed the child till his feeding completed. She came again to the prophet ﷺ when the feeding of the child completed and child started the eating of meals and a piece of bread was in the hand of child while he was eating it. The prophet ﷺ hand over the child to a person of Muslim society for the upbringing of the child and ordered the companion to apply the *hadd* of *zina* over the women.”

The rights of children of unmarried couples deduced from this *hadith* include right of fetus, right to life, right to feeding, right to guardianship, right to welfare, right to honor.

Right of fetus

As the Prophet ﷺ sent back the *Ghamidiya* woman pregnant lady because of *zina* and told her to come back when she delivers the child. It means that the prophet ﷺ protects the right of fetus.

Right to life

When the *Ghamidiya* women delivered the illegitimate child, she came to the prophet ﷺ and the prophet ﷺ sent her back till she completes the feeding of the child.... It means that the prophet ﷺ recognized the right to life for illegitimate child.

Right to feeding and nursing

The prophet ﷺ ordered the *Ghamidiya* woman to feed the illegitimate child; it means that the illegitimate child has right to feeding with his mother.

Right to guardianship

When the illegitimate child completed the feeding and nursing from his mother *Ghamidiya*. The prophet ﷺ handed over the illegitimate child to a person from Muslim society who took care of this child; it means that the prophet ﷺ made that person as a guardian of illegitimate child.

Right to welfare

As the prophet ﷺ gave child of *Ghamidiya* to a person from Muslim society as he agreed that he would do all the best for welfare of the child.

Right to honor

The society of the *Madina* at the time of the prophet ﷺ said nothing bad about this illegitimate child and his mother *Ghamidiya*. *Khalid-bin-Walid* said something bad about this woman but the prophet ﷺ got angry with him and said to *Khalid* “don’t remarks bad about this woman she repented to *ALLAH* on her sin, *ALLAH* forgive him if her repent is distributed upon all the sinful persons of *Madina*, all would be forgiven.”

SIMILARITIES AND DIFFRENCES

The British Nationality Act 1981 abolished the so-called *ius soli*, the rule by which everyone born in the United Kingdom automatically acquired British citizenship. Entitlement to citizenship depends on the citizenship and marital relationship of the child’s parents.³⁵ But in Pakistan how would the matter of citizenship for the child having no paternity be solved? How his fatherhood would be registered in NADRA? In Islamic law he can never attribute to someone as his father as Quran says; “no child can be given a name of particular father who is not his actual father” How a prestige or honor of the illegitimate child can be restored in society? An opinion may come out here as to just restore the honor or prestige of the child in the society, so that the people should not call such child as a *harami* and the Quranic spirit laying in calling children to their actual father, doesn’t have any violating affect. This situation may be solved if a child may be registered with NADRA with any general fatherhood, supposed as names of Abdullah, Ahmad, Muhammad, Adam. These names are not of some particular persons, on whom names the children can have rights which can have from actual father.

As it has been mentioned above, the strict rule of common law “A child legitimates only if the parents were married when he was born or conceived” in the twentieth century, this rule to some extent was relaxed by allowing children to be legitimated if their unmarried parents get married immediately after their birth. Basically the poor law began the intervention between birth

³⁵ British Nationality Act 1981, sec.1. For further explanation, see Law Com. No. 118, paras 11.3 etseq; I. Macdonald, *Immigration Law and Practice* (5th ed., 2001).

outside marriage and criminality as to just avoid a charge on the community by the illegitimate child. The Stephen M. Cretney writes in this regard “this legal intervention was originally primarily concerned to protect against the financial consequences of children becoming a charge on a community; and thus the poor law began the formal association between birth outside marriage and criminality, relics of which lingered on for many years”.³⁶ Islamic law doesn’t match with this rule as it doesn’t recognize such marriages. In our society, a practice in secret happening if a girl becomes pregnant because of having out of marriage relations, the family members try to get the couple married so that the honor or prestige of the family to be protected. This matter in secret and in private capacity can be handled so but publically a legislation to be made in this regard can’t be done as if it is done so then it falls within the parameters of transforming the *Haram* into *halal* in Islamic *shariah*. In UK the Fatal Accidents legislation³⁷ virtually eliminated the distinction for the purpose of “dependency” claims brought under it, and the law of inheritance was changed to enable a child born outside marriage to claim under a will,³⁸ the father’s intestacy³⁹ and to seek family provision.⁴⁰ In Islamic law a will (*wasiya*) can be made by anyone to an illegitimate child as it is ruled in Islamic law that *wasiya* can’t be made in favor of a relative who has not share in inheritance.

³⁶ Cretney S.M., Judith M.Masson, *Principles of Family Law*, Thomson Sweet& Maxwell, London 2002 Ed; 7 Sec; 17-019 p; 517

³⁷ See Fatal Accident Act 1976, (as substituted by Administration of Justice Act 1982) sec.1 (5) (b).

³⁸ Family Law Reform Act 1969, sec.16.

³⁹ Family Law Reform Act 1969, sec.14: (the Legitimacy Act 1926 allowed succession under the mother’s intestacy).

⁴⁰ Family Law Reform Act 1969, sec. 18; Inheritance (Provision for the Family and Dependents) Act 1975, ss. 1, 25(1).

CONCLUSION

This article concludes the matter that no child can be discriminated on the bases of parent's status. All are human beings weather they are legitimate or illegitimate. They are all equal before law. This distinction in humanity has not been made in the life of the prophet صلى الله عليه وسلم. The woman of *Ghamidiya* who has been pregnant because of out of marriages relations, the prophet صلى الله عليه وسلم gave her all respect and provided all the rights for her illegitimate child. The prophet صلى الله عليه وسلم got angry with the *Khalid-Bin-Walid* who gave bad remarks about this woman. Islamic law sets minimum standards for legitimacy of the child and not supports the DNA testing for declaring the legitimacy or illegitimacy of a child.

Islamic law sets highly moral standards and orders the people to close their eyes on such issues and let them in secret and not tries to bring it to the public. But if the matter comes to the public then it leaves no stone unturned unless it implements its principles.

The United Nations Convention on the rights of child and the European convention on human rights have made sure the principle that no country should discriminate against the children on the ground of parent's status. In UK in initial phrases at the common law the child only legitimated if the parents were married as it was based on the Christianity but later on, in the twentieth century a legal development has been made to common law by allowing children of unmarried couples as legitimates if their parents get married at the time of their birth. However, Islamic law doesn't recognize such marriage. In secrets and in private capacity if someone get married after making out of marriages relations, Islamic law doesn't intervene with this situation unless it comes to its folds. It means that the matter approaches to the courts and evidential procedures. Islamic law doesn't suspect any child as illegimates and doesn't support and indulge in DNA testing for proving legitimacy of the child unless someone claims property in succession and inheritance and some other denies his succession by saying that he is not a legitimate child of his father. However, Islamic law maintains minimum standards for making legitimacy of the child and remains in support to restore the honor and prestige of the children and persons by not declaring them as illegitimate. However, Islamic law recognizes all the rights of unmarried couples if the situation comes.

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**FREEDOM OF SPEECH AND RESPECT FOR
RELIGIOUS BELIEFS: MINIMUM CRITERIA
FROM A LEGAL PERSPECTIVE**

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ABSTRACT

This Article deals with an important legal right i.e. freedom of speech, the nature and extent of this right vis-a-vis freedom of religion. Another aspect which has been covered is to know whether there is a right not to be insulted in religious beliefs or not. The legal restrictions acknowledged and imposed by the legal framework of Pakistan, USA and view point of European Court of Human Rights have been discussed. Whether freedom of speech is an absolute right or a right subject to different restrictions imposed by different legal jurisdiction is another dimension which has been discussed. In the end in the interest of world peace what ought to be done and how the Legal Frameworks of the states should be designed about the freedom of speech and freedom of religion.

Keywords: Freedom of Speech, Freedom of Religion, Legal Framework, USA, European Court of Human rights.

INTRODUCTION

The importance of freedom of speech and freedom of religion has become the focus of the jurists all over the world for the last two decades. Publication of Danish cartoons has provided fuel to the fire. Now, it is everywhere discussed what ought to be the nature and scope of freedom of speech and freedom of religion and whether freedom of speech should be an absolute right as it is perceived by US Supreme Court and by some of the Western countries or there should be some restrictions on the freedom of speech as these have been imposed by the various States including Pakistan subject to their peculiar religious, political and social circumstances.

The main purpose of this article is to know whether there should be some restriction on freedom of speech or it should be an absolute right. Whether there is a right on the part of a person not to be insulted in his religious beliefs and feelings. What is the best situation in the interest of preservation and protection of world peace and harmony?

VARIOUS RESTRICTIONS RECOGNIZED BY THE EUROPEAN COURTS OF HUMAN RIGHTS AND SUPREME COURT OF UNITED STATES OF AMERICA

The European Court of Human Rights has decided various cases on freedom of speech that offended the religious beliefs and sensitiveness of various people. In a famous case of *Otto-Preminger-Institute versus Austria*,⁴¹ the court confirmed the order of forfeiture of the film by the Australian government prior to screening of Werner Schroeder's film *Das Liebeskonzil* (1981). God, Christ and Virgin Mary were shown in an unfavorable light in that film.⁴² The film was based on the Play of Oskar Panizza who was charged with blasphemy and sentenced to jail for one year.

Another famous case which was decided by the European Court of human rights was about *Otto-Preminger-Institute*. In 1985, a small private cinema Association in Innsbruck

⁴¹ Eur. Ct. H. R., *Otto-Preminger-Institute v. Austria*, 20 September 1994.

⁴² According to the description of the Austrian courts, the film presented God as a "senile, impotent idiot", Christ as a "cretin" and Mary ("slutty Mary") as "a wanton lady".

announced a series of six showings. Upon payment of a fee the cinema which was known for its progressive thought was preparing to show a series of 6 showings. The lawyer of the Australian Government after this announcement filed an application for the seizure of the film under section 188 of the Australian Penal Code, the manager of the cinema was charged and punished for despairing religious doctrines.

In 1993, the case reached the European Court of human rights. It was held by the court that it is the responsibility of the state to ensure freedom of religion of all the citizens and extreme ways of denying or opposing religious beliefs like provocative portrayals of objects of religious veneration may stop to enjoy freedom of religion.⁴³ Furthermore, the court declared that freedom of speech was not an absolute right, but a right subject to various duties and responsibilities, which include an obligation not to use expressions which are offensive to others and amounts to infringement of religious rights of other people.⁴⁴

The court declared the purpose of protecting the religious beliefs of people from offensive speech is not only a legal one for limiting speech under Article 10 of European Convention on Human Rights, but it is also part of religious freedom under Article 9, Para 1 of European Convention on Human Rights. The court declared that the government of Australia was in a better place to decide whether it was offensive to the religious feelings of Roman Catholic or not.

In *Wingrove vs United Kingdom*, the decision of the British Board of Film Classification (BBFC) not to allow a certificate for the short film 'Visions of Ecstasy (1989)' was challenged on the ground of violation of freedom of expression. The court acknowledged the English law of blasphemy which was a legal basis to stop the film from being made public. Again, the respondent state was declared to be in a better place to decide what amounts of an offensive religion conviction.

The supreme court of the USA has founded a different jurisprudence on the topic of freedom of speech and freedom

⁴³ Otto-Preminger-Institut, Para. 47, Similar reasoning figures in the Court's earlier judgement in Eur. Ct. H. R., *Kokkinakis v. Greece*, 25 May 1993, para. 48.

⁴⁴ *Ibid.* para. 49.

of religion. The apex Court has given more importance to freedom of speech and it has preferred it to freedom of religion. The apex Court of USA has rejected content-based restrictions and it has declared balancing as detrimental to free speech.⁴⁵ Freedom of speech can only be restricted in the existence of very specific government interests.

In contrast to the US court the European court has suggested whether the limitation of the right is proportionate to the legitimate being pursued.⁴⁶ The European Court grants a margin to the respondent state when there is no single agreed upon opinion among the states. The European Court has given a concept of balancing conception of rights. It means each and every state of the world can decide some restrictions to the freedom of speech in each state subject to the peculiar circumstances of each state.

FREEDOM OF SPEECH AND LEGAL FRAMEWORK OF PAKISTAN

Freedom of speech has been provided under Article 19 of the Constitution of Islamic Republic of Pakistan, 1973. Like USA and European Court of Human Rights, the freedom of speech in the constitution of Pakistan is not absolute but subject to few limitations which includes glory of Islam, integrity, security and defense of Pakistan, friendly relations with other states public order decency or morality in relation to the contempt of court or commission of officer or incitement to an offence⁴⁷.

From the above said Article 19 of the Constitution of Islamic Republic of Pakistan 1973, it is very much clear that there is a comprehensive list of checks and balances subject to which this freedom of speech can be exercised in Pakistan.

⁴⁵ R. Post, "Religion and Freedom of Speech: Portraits of Muhammad," *Constellations* 14(1) (2007), 72–90.

⁴⁶ On the relationship between the test of proportionality and that of strict scrutiny see R. Fallon "Strict Judicial Scrutiny," *UCLA Law Review* 54 (2007), 1267.

⁴⁷ Constitution of Islamic Republic of Pakistan, 1973, Article 19, Ed. 5th, Mansoor Law Book House, 2020.

ANALYSIS OF THE RIGHT OF FREEDOM OF SPEECH UNDER VARIOUS JURISDICTIONS

From the above said discussion it is very much clear that each and every jurisdiction has recognized some restriction or restrictions subject to which freedom of speech can be exercised but in no jurisdiction the freedom of speech is an absolute right.

The restrictions imposed by each jurisdiction vary from state to state depending upon the religious social and political values and preferences of each state.

In the USA, religion is a private matter, so, there is no restriction to offend or insult the religious feelings and beliefs of others in USA. The apex Court of USA has declared that the government of USA can restrict freedom of speech if it is against government interest in USA and what is liked by the General Motors is liked by USA. From the above said discussion it is clear that wealth is the highest value in USA which is to be preferred to other values.

The European Court of Human Rights has put a restriction on this right (freedom of speech) if the respondent State decides it to be against the public interest of the community. From the decisions of the European Court of Human Rights about the freedom of speech it can be concluded that it does not recognize an absolute right of speech but it has left it to the states to impose restrictions on this right keeping in view the peculiar circumstances.

Islamic States including Pakistan have a different value system. In Islamic states religion is not a private matter. Religion is the highest priority over all other values. The Constitution of Pakistan is a good example of it.

Difference between Pakistan and western countries is that the western countries have imposed some restrictions on freedom of speech by keeping in view the law and other, or economic or political interests of only their own States but Article 19 of the Constitution of Pakistan has acknowledged friendly relations with foreign States along with glory of Islam and integrity of Pakistan as restrictions on freedom of speech.

Law has territorial jurisdiction and the physical power of the State can only be used by the State within the territorial

jurisdiction of the State only. So, there is one theory that a country being sovereign may allow absolute freedom of speech even if insults the religious feelings and beliefs of others. The recent trend of cartoons (of Prophet Muhammad (PBUH)) in many Western countries which insulted the religious feelings of the Muslims across the world through media is an example of it. Media projected it as a freedom of speech and resultantly restless riots, protests and violence were caused in all the Islamic countries. This bitter experience has proved that unbridled and absolute right of freedom of speech anywhere in the world of modern media can be threat to peace everywhere in the world, so, in order to put the evil in the bud, Article 19 of the Constitution has been designed to put a limit on freedom of speech so that friendly relations with the outside world are not affected.

According to Ronald Dworkin, in a genuinely free society the world of ideas and values belong to no one and to everyone.⁴⁸ From the above-mentioned statement of Ronald Dworkin, it is very much clear that freedom of speech should be controlled in such a manner that in the exercise of this right (freedom of speech) the religious feelings are not hurt. Nobody can claim that it is part of his or her religion to hurt the religious beliefs and feelings of any other religion or sect. In order to bring interfaith harmony, each State should place some restrictions on freedom of speech which can prove helpful to bring peace not only within that State but among all States of the world. So, it is need of the hour to exercise this freedom of speech and expression subject to some reasonable restrictions and in a responsible manner.

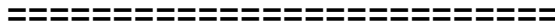
⁴⁸ R. Dworkin, *Is Democracy Possible Here? Principals for a New Political Debate* (Princeton University Press, 2006), p; 89.

CONCLUSION

From the above discussion and arguments, it can be concluded that there is no absolute right of freedom of speech. Various States have placed various restrictions on freedom of speech keeping in view the value (priorities) of that State. But today when the world has become a global village it is need of the hour and duty of each State to control the right of freedom of speech in such a way that positive debate and dialogue may be encouraged on the one hand and nobody would be able to injure and insult the religious beliefs and feelings of any other religion on the other hand under the cover of freedom of speech.

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**UNDERSTANDING IEE/EIA WITH RELEVANT
LAWS & REGULATIONS. WHICH DOCUMENTS
CAN BE USED TO RELEVANT AUTHORITIES
REGARDING IEE/EIA REQUIREMENTS FOR
TOWN PLANNING AND THE PROCEDURE OF
ACQUIRING NOC**

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ABSTRACT

For sustainability of a development project it is imperative that it should be economically viable, socially acceptable and environmentally sound. Therefore, Government of Pakistan (GOP) and the funding agencies like The World Bank has made it obligatory to submit the IEE/EIA report to competent authority for approval prior to implementation. Government of Pakistan and Provincial Governments in Pakistan made many acts to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution and promotion of the prevention and control of pollution and promotion of sustainable development.

Keywords : Environmental Law, IEE , EIA , Government, Protection, Agency, Act, Projects.

INTRODUCTION

Environmental law looks at all the factors that pertain to an economy and its production and industry to assess its impact on the environment and to propose regulations that will reduce environmental harm. It is mostly considered with regulations and treaty agreements between countries, corporations, and public interest initiatives that promote the conservation of natural resources and enhance energy efficiency.

Environmental law is necessary to combat issues related to the environment and conservation of natural resources. For instance – environmental laws pertain to issues like global warming, climate change, greenhouse gas emissions, acid rain, hunting of endangered species, deforestation, depletion of natural resources, and pollution of water, air and soil.

IMPORTANCE OF ENVIRONMENTAL LAW

The environment is important for human existence. To protect the environment, it is important to have some legislation in place. The environmental laws provide a guideline so that we can take care of the environment in an effective manner. We have different legal organizations and charitable institutions that take care of the environment and implement the rules.

WHAT ARE IEE AND EIA?

The IEE is an initial environmental examination, and it is a preliminary small study to see if a project harms the environment while the EIA is a full assessment of the effects of the project on the environment.

RELEVANT LAWS RELATING TO EIA AND IEE

1. Pakistan environmental protection agency (review of IEE and EIA) regulations, 2000
2. The Pakistan environmental protection act 1997 (XXXIV of 1997)

PROJECTS REQUIRING AN EIA

A proponent of a project falling in any category listed in Schedule II shall file an EIA with the Federal Agency and the provisions of section 12 shall apply to such project.

- a) **Pakistan environmental protection agency (review of IEE and EIA) regulations, 2000**

“EIA” means an environmental impact assessment as defined in section 2(xi);⁴⁹

b) Pakistan Environmental Protection Act (PEPA), 1997

(xi) “environmental impact assessment” means an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed;

PROJECTS REQUIRING AN IEE

A proponent of a project falling in any category listed in Schedule I shall file an IEE with the Federal Agency and the provisions of section 12 shall apply to such project.

a) Pakistan environmental protection agency (review of IEE and EIA) regulations, 2000

“IEE” means an initial environmental examination as defined in section 2(xxiv);

b) Pakistan Environmental Protection Act (PEPA), 1997

(xxiv) “initial environmental examination” means a preliminary environmental review of the reasonably foreseeable qualitative and quantitative impacts on the environment of a proposed project to determine whether it is likely to cause an adverse environmental effect for requiring preparation of an environmental impact assessment;⁵⁰

- **Documents used to explain to the relevant authorities regarding IEE/EIA requirements**
- **Filing of IEE and EIA**
- **Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000**

(1) Ten paper copies and two electronic copies of an IEE or EIA shall be filed with the Federal Agency.

(2) Every IEE and EIA shall be accompanied by –

(a) An application, in the form prescribed in Schedule IV; and

⁴⁹Pakistan environmental protection agency (review of IEE and EIA) regulations, 2000.

⁵⁰Pakistan Environmental Protection Act (PEPA), 1997

(b) Copy of receipt showing payment of the Review Fee.

Others documents

- i. Description of property
- ii. Description of potentially affected environment
- iii. Practical alternative as appropriate
- iv. Mitigation of adverse environmental impact
- v. Indication of uncertainties
- vi. Indication of jurisdictional affects and alternatives
- vii. A brief non-technical summary

PROCEDURE FOR ACQUIRING NOC

The Punjab Environmental Protection (Delegation of Powers for Environmental Approvals) Rules 2017

Section 3: Application for environmental approval

A proponent may submit the environmental assessment for a project, mentioned in schedule-I to the notified officer of the district along with the receipt of payment of the prescribed fee.

Powers of the agency to grant environmental approvals

According to section 12 agency may grant approval after recording reasons and after affording an opportunity of hearing to the proponent

- a) Impose conditions in addition to the conditions of approvals
- b) Annul the approval granted under the rules

The agency may monitor the projects approved by it.

The secretary and the agency may from time to time call for and inspect the record pertaining to the grant of approvals.⁵¹

TOWN PLANNING AND ITS IMPORTANCE

a) Meaning of town planning

Urban Planning, also known as Town Planning, City Planning or Regional Planning, is the art of giving shape, design, and structure to cities and towns. It involves various processes like arrangement and designing of buildings, transport systems, public spaces, determining land use as well as good amenities. Importance of urban planning is understood when we talk about the various challenges faced by cities. Planners can answer and address some of the most challenging issues. Taking care of

⁵¹ The Punjab Environmental Protection (Delegation of Powers for Environmental Approvals) Rules 2017.

demand of people, need of physical spaces and infrastructure in a sustainable manner. The quality of our built environment directly impacts the well-being of people in a community

b) Importance of town planning

Town planning is importance for:

- 1) Defective road system resulting in the formation of narrow streets and lanes;
- 2) Development of slums and squatter settlements;
- 3) Haphazard location of industries;
- 4) Heavy traffic congestion during the working hours of the day;
- 5) Inadequate open spaces for parks and playgrounds resulting in unhealthy living conditions;
- 6) Lack of essential amenities like electricity, water supply and drainage;
- 7) Noisy atmosphere disturbing the peace of city dwellers;
- 8) Uncontrolled development of the town;
- 9) Unhealthy living conditions; etc

ZONING

The local governments in developed countries designated permitted uses of land based on mapped zones. The mapped zones help in separating one set of land uses from another. This device of land use planning is called zoning. Zoning is one of the principles of town planning.

WHY ZONING IS NECESSARY FOR IMPROVEMENT OF TOWN PLANNING ON THE BASIS OF ENVIRONMENTAL ISSUES?

1. The purpose of zoning is to allow local and national authorities to regulate and control land and property markets to ensure complementary uses.
2. Zoning can also provide the opportunity to stimulate or slow down development in specific areas
3. Zoning is used to specify the use of land and is called functional zoning.
4. It is also used to regulate the height of the buildings and density (ground coverage specifications).
5. Deliver savings on land, infrastructure and energy.

6. Reduce the economic costs associated with time spent travelling.
7. Help concentrate knowledge and innovative activity in the core of the city.
8. Promote social connectedness and vitality.
9. Help encourage greater physical activity, with consequent health benefits.

THE PURPOSE OF A ZONING LAWS FOR ENVIRONMENTAL ISSUES

- i. A zoning law is a rule that defines how property in specific geographic zones can be used.
- ii. Zoning laws detail whether specific geographic zones are acceptable for residential or commercial purposes.
- iii. Zoning laws may also regulate lot size, placement, density, and the height of structures

CITIES AND TOWNS ARE DIVIDED INTO DIFFERENT ZONES SUCH AS:

- a) Residential zone (housing)
- b) Commercial zone (retail/wholesale shops/malls – anything related to commerce)
- c) Industrial zone (Industries/factories)
- d) Recreational zone (Parks/Playgrounds/spaces for recreational activities)
- e) Mixed use zone (Commercial + Residential)
- f) All of the above mentioned zones cater to their specify type of usage.

CONCLUSION

It is clearly mentioned in the Section 12 (1) of PEPA, 1997 Amended in 2012 that, there shall no proponent of a project shall commence construction or operation unless he has filed with the EPA an IEE, where the project is likely to cause an adverse IEE, where the project is likely to cause an adverse environmental effect, an EIA, and has obtained approval in respect thereof. Initial Environmental Eamination is an preliminary environment review of the reasonably foreseeable qualitative and quantitative impacts on the environment of a proposed project to determine whether it is likely to cause an adverse environmental effect for requiring preparation of an environmental impact assessment. Environmental Impact Assessment is an environment study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigation and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and forming of recommendations and such other components as may be prescribed.

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**VIOLENCE ON WOMEN, GIRLS AND
TRANSGENDER PEOPLE; REMEDIAL JUSTICE
IN PAKISTAN**

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ABSTRACT

Islamic Republic of Pakistan is male dominated country and ranks as the sixth most dangerous country in the world for women, girls and transgender with cases of sexual crimes and domestic violence recording a rapid rise. Activists blame society's patriarchal attitudes for the problem. Women police stations and other facilities are set up in the big cities of Pakistan, while the majority of the violence cases take place in villages. In rural areas, feudal landlords call the shots; the administration and police are subservient to these feudal chieftains who view women as commodities. So how can justice be delivered in such cases? The patriarchal attitudes prevalent in Pakistani society are responsible for the problem. No government has ever tried to put an end to this mindset. Nearly half of the women experience violence across their lifespan in the all five provinces of Pakistan and its federal Capital at an alarming rate. Despite knowing the prevalence, there has been meager progress in developing strategies to combat violence at individual, family, or community level. Federal and Provincial Governments are trying to amend existing laws to reduce violence against women, girls and transgender people.

Keywords: Pakistan, Women, Girls, Transgender, United Nations, Human Rights, Police.

VIOLENCE AGAINST WOMEN AND GIRLS IN PAKISTAN

Violence against women and girls, particularly intimate partner abuse and sexual abuse, is a major public health problem and a violation of women's human rights in Pakistan. Violence and abuses against women in Pakistan is part of an issue that faces the entire region (Sub-Continent) the country is situated in⁵². In the 2019 Women, Peace and Security Index, Pakistan ranked 164 out of 167 countries and this was worst and alarming situation. Around 12.2 million girls, compared with 10.6 million boys, remain out of school in Pakistan. According to this Index Pakistan's achievement of 20 per cent representation for women in parliament had a better indicator than India on bias towards sons Indicator⁵³. In 2017 there were an estimated 746 honor crimes, 24 stove burnings, and 18 cases of settlement marriages. An Alternative Dispute Resolution (ADR) system in 2017 has been hailed as a success in Khyber Pakhtunkhwa. In 2019, the Ombudsman for Sindh province informed the Supreme Court of Pakistan that out of 350 cases, action was taken in just eight cases. The largest province, Punjab, has received 116 complaints since the establishment of the office in 2013, resulted in 42 convictions, 15 acquittals, 27 withdrawals, and 24 still ongoing cases. It also reviewed 13 appeals⁵⁴. Four decisions were set aside, five decisions upheld, two cases were declared time barred, while two remain ongoing. Women in Pakistan mainly encounter violence and abuses by being forced into marriage, through workplace sexual harassment, domestic violence and by honor killings. A survey carried out by the Thomson Reuters Foundation ranked Pakistan as the sixth most dangerous country in the world for women and girls in 2018. In Pakistan, domestic violence and abuses are considered a private matter, as it occurs in the family. Spousal abuse is rarely considered a crime socially unless it takes an extreme form of murder or attempted murder. Various forms of domestic violence include physical, mental and emotional abuse. According to an

⁵² See for instance, the report of World Health Organisation 2019, "Violence against women".

⁵³ See for instance, the report of United Nations Women 2020, "The Women, Peace, and Security Index: A Global Index of Women's Wellbeing".

⁵⁴ Cheema, Ahmed Raza; Iqbal, Mazhar. "Determinants of Girl's School Enrollment in Pakistan" Ed. 2017. P; 141.

estimate in 1969, approximately 80 to 90% of Pakistani women who were interviewed were subjected to domestic abuses and violence. Almost one in three married Pakistani women report facing physical violence from their husbands. Only 22% of women are formally reported to participate in the Pakistani workforce. Intimate partner violence is expensive, in terms of medical cost, and missed days of work. In the late 1970s and 1980's, Pakistan witnessed a regression of women's rights and laws were amended to reflect this discrimination. However, in the last 10–15 years, there has been some success in passing policies and laws to prevent practices such as early age marriages, honor killings, sexual harassment, domestic violence and abuses and rape. Many of these laws have been introduced by women parliamentarians in Pakistan⁵⁵. In a survey, 35% of women admitted in the hospitals reported being beaten by their husbands. At least two women were burned every day in domestic violence incidents. In 1998, 282 burn cases of women were reported in only one province. Out of the reported cases, 65% died of their injuries. According to Dr. Rukhsana Iftikhar and Dr. Maqbool Ahmad Awan in the *Journal of Political Studies*, "Pakistan is an agrarian state where the concept of personal ownership is very much common", with the two writing "Women are also considered personal properties in Pakistan". The two state that such violence persists due to the cultural norms within the country. Pakistani women are expected to maintain modesty while men are expected to project masculinity to keep honor among their families⁵⁶. Poverty is one of the important causes for violence and abuses in Pakistan. In Pakistan, every third woman is illiterate and hence unaware about her rights. Increased level of education can create awareness and help them to speak up for their rights and bring change in their status. Some ancient traditions and customs which are still followed. This includes exchange marriages, marriage with Quran, Karo Kari, Honor killing, Dowry, etc⁵⁷.

⁵⁵ See for instance, "Addressing violence against women in Pakistan: time to act now". blogs.worldbank.org. Dated: 12-06-2020. (Last visit; Date and Time 18-02-2021 / 01:40 pm)

⁵⁶ Jafri, Amir H. *Honor killing: dilemma, ritual, understanding*. Oxford University Press, Karachi. Ed. 2008.

⁵⁷ Foerstel, Karen. *Issues in Race, Ethnicity, Gender, and Class: Selections*. Sage Publications. Ed. 2008. P; 337.

In a 2008 survey of Human Rights Commission of Pakistan, 70% of women respondents reported that they experienced domestic abuse and violence. According to a 2009 Human Rights Watch report, 70-90% of Pakistani women suffered with some kind of domestic abuse and violence. About 5,000 women are killed annually from domestic abuses and violence in Pakistan, with thousands of other women maimed or disabled. Law enforcement agencies and Police do not view domestic violence and abuse as a crime and usually refuse to register any cases brought to them. In the 2012-2013 Pakistan Demographic and Health Survey, 3,867 married or previously married women were questioned of the respondents, 47% of these women believed that physical violence was just if a wife had argued with her husband. The survey found that such beliefs on domestic violence were often passed down to future generations of children. Marital rape is also a common form of spousal abuse and it is considered to be a crime under Pakistani laws. Historically, honor killings have occurred in Pakistan for thousands of years and authorities in the country, legally obligated to treat such incidents as a crime of homicide, often ignore such killings. As of 2019, thousands of honor killings occurred annually in Pakistan. In Pakistan, women often refrain from reporting their experiences with rape. According to a study carried out by Human Rights Watch there is a rape once every two hours and a gang rape every hour⁵⁸. According to women's Studies professor Shahla Haeri stated that rape in Pakistan is "often institutionalized and has the tacit and at times the explicit approval of the state". According to senior lawyer and social rights activist Asma Jahangir (Late), who was a co-founder of the women's rights group Women's Action Forum, up to seventy-two percent of women in custody in Pakistan are physically or sexually abused⁵⁹. In Pakistan, Police have very negative role in protecting the women and girls rights. Most of the accused persons in the violence cases are released by the Police on political pressure by the abusers. If some accused presented to the court, he got bail on insufficient evidences collected by the Police authorities.

⁵⁸ Foerstel, Karen. *Issues in Race, Ethnicity, Gender, and Class: Selections*. Sage Publications. Ed. 2008. P; 339.

⁵⁹ See for instance, Reuters. "Lahore gets first women-only auto-rickshaw to beat 'male pests'". The Dawn newspaper. www.dawn.com.pk. Dated: 10-04-2015. (Last visit; Date and Time 18-02-2021 / 02:33 pm)

DOMESTIC VOILENCE AGAINST WOMEN AND GIRLS IN PAKISTAN

Domestic violence against women and girls is highly prevalent in Pakistan. This paper proposes the strategies based on literature review, for the prevention and control of domestic violence. The reported causes for domestic violence against women include women's low educational levels, low empowerment, and least opportunities to indulge in political activities; wrong interpretations of religious, traditional and cultural norms in the society; poverty; dowry system; women's suppressed autonomy and males' addiction to alcohol. Through this article, we have attempted to highlight the need to recognize the domestic violence against women as an important issue and to enhance educational and health facilities for the prevention and control of violence with combined awareness programs including nongovernmental organizations (NGOs) through stake holders. Furthermore, comprehensive laws need to be developed and enforcement against dowry and alcohol abuse is required in low income countries like Pakistan⁶⁰. In Pakistan, women always fear paybacks, have concerns about the future of their children, and even more they have lack of any other moral support like friends. In case a woman wants to approach any social support, she has to face rejection and non supportive response from her own community and parents. Women who reside in rural or tribal areas are subjected to higher murder rates⁶¹. Furthermore, in Pakistan majority of women consider the behaviors and actions of men in societies as inherited normal actions which really make them more vulnerable to any type of abuse in their home. Other prominent points for domestic violence in the Pakistani culture are societal pressures, imbalance of power between men and women which keeps women as followers of those rules and regulations of society and defiance to follow those rules leads to penalties like acid throwing, honor killings etc⁶².

⁶⁰ Fee E, Brown TM, Lazarus J, and Theremin P. Domestic Violence-Medieval and Modern. Ed. 2002. P; 92.

⁶¹ *Ibid*.

⁶² Stephenson R, and Hennink M. Barriers to Family Planning Services amongst the Urban Poor in Pakistan. Ed. 2004.

FACTORS OF DOMESTIC VIOLENCE AGAINST WOMEN AND GIRLS IN PAKISTAN

1. DOMESTIC VOILENCE BECAUSE OF ALCOHOLIC ADDICTIONS OF INTIMATE PARTNERS

Pakistan is an Islamic country, a vast majority of men are addicted to alcohol or other substance abuse and addicted intimate partners are mostly seen as perpetrators for domestic violence against women and girls. Alcohol utilization is another triggering factor for the violence, as it inhibits judgmental capabilities, decreases the abilities to understand social norms and roles. Excessive alcohol and other drugs' consumption have also been noted as a factor in provoking aggressive and violent male behavior towards women and girls. Even when the wife points out the hazards of alcohol to her partner, it often results in violence. The main implication made by males justifying their violent behavior towards their women is that the religion gives them such a liberty, which is a totally falsified belief as quoted by Quran. In fact, their behavior regardless of which gender they belong to is unjustified in terms of true Islamic teachings. Again apart from the fact that alcohol is prohibited in Islam because of the untoward effects that it causes, it has been found as an abuse, especially against women in their home⁶³.

2. DOMESTIC VIOLENCE BECAUSE OF LOW LEVEL OF EDUCATION

In Pakistan, due to lack of education and less awareness, the basic right of autonomy of women is being suppressed not only by their partners but also by the society. Many studies have been conducted on social status of women in Pakistan, which shows that there are limited opportunities in educational fields as well as employment and the traditional norms have restricted their mobility and basic right of autonomy of women in Pakistan. It is documented in the constitution of Pakistan that, "All human beings are born free and equal in dignity and rights. All citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex alone; Steps shall be taken to

⁶³ Garcia-Moreno C, Heise L, Jansen H, Ellsberg M, Watts C. Violence against women. Ed. 2005. P; 310.

ensure full participation of women in all spheres of national life". Articles 1, 2, 7, 16, 21(2), 25(2) and Articles 25, 27, 35, 37.21 Due to inadequate administrative measurements, majority of women are not allowed to get educated, have other outdoor activities or work for any volunteer welfare organization. That adds to one of the factors for domestic violence, as women are not only unaware of their basic rights and roles as defined by the constitution of Pakistan but, they have also limited access even to report any type of abuse against themselves. Based on the raised concerns by Nongovernmental organizations about female education, Government of Pakistan has established some schools and other learning centers for women within the community but, due to social restrictions women are not able to utilize these amenities like health, education⁶⁴ or any other recreational activities⁶⁵. The reported literacy rate of Pakistan in 1997-98 was estimated at 40 % in which 51% is for males and 28 % for females; 60% in urban areas and 30 % in rural areas. Women with a good education are more likely than uneducated women to be exposed to mass media, to have broader social and cultural networks, and to have equal as well as more communicative relationships with their husbands. Over all education enables women to be confident in reporting, struggling for their rights and be aware of their surroundings⁶⁵

3. POOR HEALTH OF WOMEN AND GIRLS BECAUSE OF DOMESTIC VIOLENCE

In Pakistan, violence experience might cause serious health conditions such as injuries, fractures, wounds, skeletal deformations, gastro-intestinal problems, abdominal injuries, vaginal lacerations, forced abortions and chronic pain syndromes, sleeping disorders, sexual dysfunction, genital infections, HIV-infection, post traumatic stress disorders (PTSD), generalized anxiety disorders and serious depressive conditions and also suicidal thoughts.

⁶⁴ See for instance, the charter of United Nations on Rights of women.

⁶⁵ Mahmood, Naushin. "Education Development in Pakistan: Trends, Issues, and Policy Concerns". Ed. 1999.

4. DOMESTIC VIOLENCE BECAUSE OF OTHER FACTORS

There are many common precipitating factors which are responsible for domestic violence in Pakistan. Some example are: domestic violence against women due to daily conflicts, family related problems, disagreements between women and men on any decision, choice preferences, conflicts of the two genders, etc. All of those factors are quite broadly discussed in majority of studies as they are globally applicable to any social make up. In Pakistan, there are some distinguished factors which make women prone to domestic violence like women's low educational levels, least participations in political activities due to low empowerment, existing misconception about Islamic thoughts and traditional norms, misuse of women in the name of honor justifying honor killing, low socioeconomic levels and poverty, existence of unjust traditional dowry system in the society, the common beliefs in the inherent superiority of males ignoring the women's autonomy, and even the alcoholic addiction of men which is not even allowed in Islam and strictly prohibited⁶⁶.

5. DOMESTIC VIOLENCE BECAUSE OF DOWRY

Dowry is an amount of cash or in the form of other materials like jewelry, household items, car, plot, house, agriculture land and equipments etc, made to the groom's family to marry away a daughter and it takes different forms in different cultures throughout the world including Pakistan. Additionally, the size and amounts of the dowry is found the most common reason for disputes, with the groom's family demanding more than the bride's family can offer, resulting in persecution of brides which leads to all types of domestic violence. The dowry related issues irking domestic violence against women is not only present in rural and tribal areas of Pakistan but, also in many urban families of cities like Karachi, Lahore, Islamabad, Peshawar, Quetta, Gilgit etc. In Pakistan majority of Dowry practices are against Quran and Sunnah.

⁶⁶ Shaikh, MA. Domestic violence against women-perspective from Pakistan. Ed. 2000.

6. DOMESTIC VIOLENCE BECAUSE OF LOW EMPOWERMENT OPPORTUNITIES

In Pakistan, low empowerment of women and girls reduced autonomy is a contributing factor for domestic violence in Pakistan and studies show that lower socioeconomic status, females' low education levels and lack of opportunities are core factors for low empowerment. Due to low rate of education, women in Pakistan are not considered to be competent enough to participate in decision making thus, decisions are taken by the male members in the woman's life about issues even pertaining to her own life such as, about females work, marriages, major purchases, number of children, and even the decisions regarding female's education. In Pakistan, the number of women in decision making posts is thus; lower than in any other country in the subcontinent. Even if a woman wants to seek any medical help in order to avoid pregnancy due to her illness, the decision is only taken by men and if she insists she is subjected to physical abuse. Additionally, men also display and abuse the high rank and power given to them by society as a head of the family. Going through the studies of different cultures in Pakistan, women are not considered for equal opportunities in making any decision not even at the time of their marriages or any other decision related to them⁶⁷.

7. DOMESTIC VIOLENCE BECAUSE OF POVERTY

In Pakistan, researchers have found that poverty is a contributing factor for domestic violence against women and girls particularly, where men are primary bread earners. As it is expected from men to be more economically productive and they have to give economic support to their homes, in case of failure to accomplish that goals they get frustrated and as a result women have to face the abuse. Several studies have shown that demographic factors such as age, number of living male children, and extended family residence are associated with risk of domestic violence because the larger family leads to more expectations from men. Conflicts occur if house hold expenses, children education, other expenses are not being paid by the partners. This also results in domestic violence against women and girls⁶⁸.

⁶⁷ Rao, V. Wife-beating in rural South India (Sub-Continent): a qualitative and econometric analysis. Ed. 1997. P; 44.

⁶⁸ See for instance, Journal of Pakistan Medical Association. Ed. 2007.

8. DOMESTIC VIOLENCE BECAUSE OF LEAST OPPORTUNITIES FOR WOMEN AND GIRLS TO PARTICIPATE IN POLITICAL ACTIVITIES

Pakistan is a male dominant society; men carry out any type of violence against women as a means of suppressing them and giving women lower ranks in society. Due to their low empowerment status in the society, they have a lack of control over possessions or they have no participation in group based savings and credit programs which is another factor associated with domestic violence. At times social support from organizations are present in some social systems but due to activity limitations of women, outside movements and contacts with others leads them to be more in isolation in their societies. Though due to government efforts, women got opportunities to participate in local body elections. In the past years however, due to some religious groups' announcements, tribal and Jirga's' (group of leaders) decisions, they were not allowed to be a part of local government. This was a golden opportunity for women to take part in policy and reform making and to raise the issue of domestic violence not only at local level but also globally. In Khyber Pakhtunkhwa, Province of Pakistan, Jirga's at various union councils had declared earlier that women would not be allowed to cast a single vote. No official action was however taken to ensure women would be able to exercise their right to vote. Even though 22% of seats in the lower house of parliament and 18% of seats in the upper house are held by women, this number is not sufficient for them to make any reforms or have some support by amending any part of the constitution⁶⁹.

HUMAN RIGHTS WATCH REPORT, 2019

In Islamic Republic of Pakistan, violence against women and girls including rape, honor killings, acid attacks, domestic violence, forced marriages and prohibition to work or receive medical treatment from hospitals, remains a serious problem. Pakistani activists estimate that there are about 1,000 "*honor killings*" every year. This is the worst situation of women and girls rights all over the country. In June, 2018 the murder of 19 year old girl Mehwish

⁶⁹ Watts, Charlotte; Zimmerman, Cathy Zimmerman. Violence against women: global scope and magnitude. Ed. 2002.

Arshad in Faisalabad district, Punjab, for refusing a marriage proposal gained national attention. According to media reports, at least 66 women were murdered in Faisalabad district, Punjab in the first six months of 2018, the majority in the name of “*honor killings*.”⁷⁰ Women from religious minority communities remain particularly vulnerable to abuse. A report by the Movement for Solidarity and Peace in Pakistan found that more than 1,000 girls belonging to Christian and Hindu communities are forced to marry Muslim men every year. The government has done little to stop such forced marriages⁷¹. Early marriage remains a serious problem, with 21 percent of girls in Pakistan marrying before the age of 18, and 3 percent marrying before age 15. Over 5 million primary school age children in Pakistan are out of school, most of them girls. Human Rights Watch research found girls miss school for reasons including, lack of schools, costs associated with studying, child marriage, harmful child labor, and gender discrimination. On January, 2018 the rape and murder of 7 year old, little child Zainab Ansari in Kasur, Punjab, led to nationwide outrage and prompted the government to promise action. On 12th June, 2018, the Supreme Court of Pakistan upheld the convictions of Imran Ali for the rape and murder of Zainab Ansari and at least eight other girls. Imran Ali was executed on 17th October, 2018. On 8th August, 2018, the body of a 5 year old girl, little child who was raped and murdered was found in Mardan district, Khyber-Pakhtunkhwa. The rape of a 6 year old, little child in Sukkur district, Sindh, was confirmed by a medical report on 10th August, 2018.⁷²

According to the organization Sahil, an average of 11 cases of child sexual abuse is reported daily across Pakistan. Zainab Ansari was among the dozen children to be murdered in Kasur district, Punjab in 2018. In 2015, police identified a gang of child sex abusers in the same district (Kasur district, Punjab). According to the Human Rights Watch, 479 attacks against transgender women were reported in Khyber Pakhtunkhwa Province of Pakistan in 2018. At least four transgender women were killed there in 2018, and at least 57 have been killed there since 2015. On 4th May 2018, the fatal shooting of Muni, a transgender woman in Mansehra

⁷⁰ See for instance, the report of Human Rights Watch 2019, P; 1.

⁷¹ See for instance, the report of the Movement for Solidarity and Peace in Pakistan 2018, P; 3.

⁷² See for Instance, the report of Universal Periodic Review, 2017.

district, Khyber Pakhtunkhwa province, attracted national attention. In March, 2018, the United Nations Human Rights Council (HRC) adopted the outcome of Pakistan's third Universal Periodic Review (UPR), which was conducted in November 2017. The Pakistani government rejected a large number of key recommendations that states made to it during the UPR. Since Pakistan was elected to the Human Rights Council in 2017, it has generally failed to take a strong stance on serious human rights situations. However, in September 2017, it led Organization for Islamic Cooperation member states at the council in expressing concerns about the ethnic cleansing campaign against the Rohingya by the Myanmar military.⁷³

VIOLENCE AGAINST TRANSGENDER PEOPLE IN PAKISTAN

In Islamic Republic of Pakistan, the total population of transgender people in 1998 census was 10,418. In 2015, Federal Minister for Health Mrs. Saira Afzal Tarrar indicated that the number of transgender people in the country is nearly 150,000. Violence on Transgender in Pakistan refers to the abuses and incidents which takes place in the country against transgender people. Transgender rights are legally protected by the law of Pakistan which prohibits discrimination and violence against transsexual people in the country. In Pakistan, 68 transgender people have been killed since 2015, and 1,500 were sexually assaulted in multiple incidents. In 2018, transgender people reportedly experienced 479 violence incidents in Khyber Pakhtunkhwa. In September 2020, a prominent transgender activist Gul Panra, was shot six times. Nayyab Ali was allegedly sexually assaulted and attacked by acid claimed for bring a transgender. In 2019, Amnesty International published a report indicated Shama, a transgender journalist, was raped by nine men in one of Pakistan's cities, Peshawar district, Khyber Pakhtunkhwa⁷⁴⁷⁵. The Transgender Protection Act is not the first

⁷³ *Ibid.*

⁷⁴ See for instance, the report of The News newspaper. "Transgender woman Gul Panra shot dead, friend wounded in Peshawar". www.thenews.com.pk. Dated: 09-09-2020. (Last visit; Date and Time 19-02-2021 / 10:30 am)

⁷⁵ See for instance, the report of Amnesty International, "With Transgender Rights, Pakistan has an Opportunity to be a Path breaker". www.amnesty.org. Dated: 22-01-2019.

time we have seen government provisions to protect the rights of Trans people, as the Supreme Court of Pakistan declared that Trans peoples were equal to normal Pakistani citizens in 2010. This declaration of equality should have entitled Trans peoples to equal job opportunities, education, and exempted them from discrimination. However, none of these things actually happened since the declaration, as in the last census roughly 40% of transgendered peoples reported being illiterate and the largest sources of income for Trans peoples in Pakistan are dancing and sex work⁷⁶. Due to the lack of penal nature for the Transgender Protection Act, it appears as though it will serve the same function that the aforementioned Supreme Court of Pakistan declaration did, and only offer Trans people formal equality and not substantive equality. The only penalty mentioned throughout the entire law is against gurus who incentivize their chena's to beg. The lack of penalties gives the law no teeth, and there is no genuine incentive for the citizens to follow the law, and no infrastructure or concrete punishments in place to enforce it. This is present especially on the topic of education, as the law states that if a transgender person meets the admission requirements for a school then their gender cannot be a deciding factor on their admittance to that school. This addresses the actual admittance processes that correlate with getting into a school, the law does not address the social stigmas and customs that make it extremely difficult for a transgender person to meet these acceptance goals in the first place. The law also does not address many pressing issues to the transgender community which include hate crimes against transgender peoples, and proper health care for transgender peoples.⁷⁷

SARO IMRAN, A TRANSGENDER ACTIVIST

According to the Saro Imran, a transgender activist running a community based organization (CBOs) in Pakistan. Pakistan is a signatory to several international human rights conventions that are of relevance to transgender people and other marginalized

⁷⁶ Hali, Shafei. Mapping Transgender Rights and Policy Evolution in Pakistan. Ed. 2018.

⁷⁷ Islam, Semra. "The Transgender Community and the Right to Equality in Pakistan: Review of the Transgender Persons Act 2018". LUMS Law Journal. Dated: 03-09-2020.

minorities, which the country has systematically failed to protect. The exception is the Transgender Protection Act of 2018, which we already have in place. As a consequence of this limited protection, transgender people and other marginalized minorities suffer discrimination and violence in many spheres of their lives. In Early of October, 2018, a transgender person was killed and another was injured from gunshots fired by unidentified men in the Khyber Pakhtunkhwa (KPK) Province of Pakistan. Both victims were rushed to the hospital, where doctors pronounced one victim dead. The other victim is undergoing treatment. According to the Police, First Information Report (FIR), a group of transgender people had gone to perform at a wedding function and were preparing to leave when unknown people opened fire on them. In October, 2018, a transgender person was gunned down by his younger brother from Swabi district, Khyber Pakhtunkhwa. The person had gone to Rawalpindi and Islamabad to participate in several dance parties. His family was opposed to his dance performance, and his brother had warned him of 'dire consequences'. Human rights violations and discrimination on the basis of gender identity are still prevalent and mount a big challenge for Pakistan. The transgender community and other marginalized minorities face stigma, discrimination and violence much more than non-marginalized groups. Transgender people and transgender women in particular, face harassment, mistreatment and exclusion from society, from the public health care system, education system, employment and other institutions of government. They face different forms of abuse, ranging from exclusion from society to brutal murder. They are subjected to trafficking, extortion and forced prostitution. After the Transgender Protection Act of 2018, things have slowly started to change. However, for the proper inclusion of transgender people in society and the acknowledgment of their basic human rights, the government will have to take a number of measures to address the gravity of the situation. In Pakistan, transgender people and other marginalized minorities are ostracized by society and sometimes disowned by their families. Transgender women, in particular, live in groups for protection and survival. Due to widespread stigma and discrimination, many transgender women engage in sex work in extremely unsafe environments and circumstances. Their clients or sex partners feel that the sexual abuse of a transgender woman is

permissible. Therefore, when they solicit their services, they invite friends over and gang rapes them. These abuses cause severe emotional distress and mental agony for many transgender women. To cope with these realities, many survivors start indulging in drugs and alcohol or resort to self-harm. Also, transgender individuals are often responsible for financially supporting their biological families, families who tend to resort to abuse, violence and torture to maintain their control over them⁷⁸. Forced marriage and physical and emotional torture are common forms of abuse against them, recorded in studies done by various organizations and NGOs. The worst thing is, if police arrest perpetrators of violence, the biological family tends to forgive them in return for money. The only support for transgender people in Pakistan is provided by their peers. In the absence of medical care that is sensitive to their needs, relief usually comes from community members looking after them using traditional methods and wisdom. Community based organizations (CBOs) all over Pakistan have arranged a protest against the murders and violence faced by transgender people. We demand justice for victims and survivors and security for the transgender community from the Government of Pakistan. We call for the development of provincial policies and legislation to criminalize offenses such as sexual violence and murder of transgender people⁷⁹. Pakistan has progressive laws that protect transgender rights. Historical references to the gender diverse community go back thousands of years in South Asia, and Pakistan is one of only 12 countries in the world that recognizes transgender identity on national ID cards. But the community, known as the ``*Khawaja Sira*`, was criminalized by the British Raj under the Criminal Tribes Act of 1871, and transgender people in Pakistan still suffer from the attitudes it embedded⁸⁰.

MEASURES TO PREVENT VIOLENCE AGAINST WOMEN, GIRLS AND TRANSGENDER PEOPLE

Federal and Provincial Governments in Pakistan should take steps for public health interventions for violence can be given through three traditionally characterized levels of prevention. Primary prevention in which certain steps are taken to prevent violence

⁷⁸ See for Instance, Civicus, Blogs, Saro Imran, Dated: 7-10-2020.

⁷⁹ See for Instance, Zwi, The world report on violence and health, 2020.

⁸⁰ *Ibid.*

before it occurs. This may include awareness programs for women, girls, transgender people and other people to prevent violence. Secondary prevention which is focused more on instantaneous response to violence, which also includes care before accessing to hospitals and emergency room care depending on the type of violence. Nurses particularly can play the best role in the initial assessment, and providing psychological support to patients to prevent them from psychiatric disorders such as depression and anxiety. The third type is Tertiary prevention which is focused on long-term care of the victims, such as rehabilitation and reintegration, and measures to decrease the chances of reoccurrence of any type of further abuse on women, girls and transgender people. Over all, there are three types of preventive measures related to help victims in their serious situation when they are subjected to any type of violence. Furthermore, there must be made reforms in the Police and Prosecution departments in the Pakistan. There should be enough educational programs in all societies and cultures, for women, men and transgender people at the same levels. There should be enough opportunities of employments and participation in political parties along with security and safety for women, girls and transgender people and the seat allocation for recruitments of three genders should be considered on equality grounds. More funds should be allocated to women, girls, and transgender people`s development in the all over the country.

CONCLUSION

The responsibility to bring about a substantial change in behavior and attitudes must begin with engaging men in all the interventions that aim to reduce violence. So, without community stakeholder's involvement and participation violence could never be reduced on women, girls and transgender people. Keeping the existing socio-cultural dynamics in mind, the need of time is to design and implement innovative interventions that are culturally and contextually appropriate and can be expanded across the country. To the best of our knowledge, the nationwide implementation and internalization of the innovative strategies and policies has not yet been explored in Pakistan from the perspective of community stakeholders and to develop the recommendations at national level specifically for identifying strategies to discourage these perceived norms that different NGOs has point out. In order to prevent women from domestic violence and provide them medical as well as judicial and legal support, new plans and interventional maps should be made in the societies in collaboration with health team members, religious and societal leaders, NGOs, police department, Law enforcement agencies and people from other similar groups. This strategy implementation should be enforced strictly.

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**PROTECTION OF POLITICAL AND
CONSTITUTIONAL RIGHTS OF PEOPLE
OF GILGIT BALTISTAN; IN THE LIGHT OF
GILGIT BALTISTAN EMPOWERMENT
AND SELF-GOVERNANCE ORDER,
2009/2018**

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ABSTRACT

The Gilgit Baltistan has been formerly known as the Federally Administered Northern Areas (FANA), is strategically located between China, India and Pakistan. The area is home to a number of endangered wild animals and plants species, and internationally known for its mountain peaks, famous glaciers and high altitude lakes. The world's second highest mountain peak K-2 is also located in this region. For over 60 years, the people of Gilgit Baltistan (Northern Areas) had been living in a constitutional vacuum, directly administered by the Federal Government of Pakistan from Islamabad without granting legal and constitutional rights to the local population. This curious position arises from the unresolved dispute between Pakistan and India over the former princely state of Jammu and Kashmir of which the Gilgit Baltistan (Northern Areas of Pakistan) has been annexed with the disputed territory since the days of British Empire. Islamic Republic of Pakistan's Constitutions of 1947 (Interim Constitution), 1956, 1962, 1972 (Interim Constitution) and 1973 do not recognize Gilgit Baltistan (Northern Areas) as territorial part of the country, however, democratic governments and military regimes had been introducing various administrative and governance reforms to strengthen direct rule of Islamabad over the Gilgit Baltistan.

Keywords: Northern Areas, Gilgit Baltistan, Pakistan, Federal Government, Frontier Crimes Regulations.

INTRODUCTION

The Gilgit Baltistan has been ruled by cosmetic Ordinances introduced time to time without any constitutional or legal cover. After independence in August 1947, the Frontier Crimes Regulations (FCR) was enforced in this area. Under this colonial law a civil servant, called Political Agent, exercised all judicial and administrative powers. Initially the Political Agent in Gilgit was placed under the Political Resident of the Khyber Pakhtunkhwa, (formerly NWFP), in an attempt to extend administrative control and later controlled directly from Islamabad. Other key administrative measures undertaken are, establishment of the Ministry of Kashmir Affairs and Northern Areas (KANA) in 1950, appointment of a joint secretary of the Ministry of KANA as Resident with administrative and judicial powers in 1952, organizing elections of 16 members of Northern Areas Advisory Council in 1970, package of administrative and judicial reforms in 1974, declaration of the area as Martial Law Zone-E by Chief Marshall Law Administrator General Muhammad Zia-ul-Haq and granting representation in the non-elected Majlis-e-Shura, appointment of a representative from the area as Advisor to Minister for KANA in 1985, followed by appointment of an advisor to the Prime Minister in 1988, Legal Framework Order (LFO) or Reforms Package of 1994, delegation of legislative powers in 1999, establishment of Northern Areas Court of Appeal in 2005, and Northern Areas Governance order in 2007⁸¹. The Government of Gilgit Baltistan (Northern Areas) is the government of the autonomous territory of GilgitBaltistan, Pakistan (Northern Areas of Pakistan). Its powers and structure are set out in the 2009 Gilgit Baltistan (Northern Areas) Empowerment and Self Governance Order, in which 10 districts come under its authority and jurisdiction. The government includes the cabinet, selected from members the Gilgit Baltistan Assembly, and the non-political civil staff within each department. The Gilgit Baltistan is governed by a unicameral legislature with the head of government known as the Chief Minister. The Chief Minister, invariably the leader of a political party represented in the Assembly, selects members of the Cabinet. The Chief Minister and Cabinet are thus responsible the functioning of government and are entitled to remain in office so

⁸¹ Dani, Hasan, Ahmad. History of Northern Areas of Pakistan. Ed. 1989.

long as it maintains the confidence of the elected Assembly. The head of the province of Gilgit Baltistan is known as the Governor, as in other four provinces of Pakistan head of Province is Governor, who is appointed by President and Prime Minister of Islamic Republic of Pakistan. The term Government of Gilgit Baltistan is often used in official documents. The seat of government is in Gilgit, thus serving as the capital of the territory of the province⁸². In 1970, the Gilgit Agency, and the Baltistan district of erstwhile Ladakh wazarat, and the hill states of Hunza and Nagar were combined together to form the Northern Areas. The territory was renamed as Gilgit Baltistan in 2007 and given self government status in 2009. Before that people of Gilgit Baltistan have no political rights⁸³.

HISTORY OF GILGIT BALTISTAN

Before Gilgit Baltistan (Northern Areas of Pakistan) independence on 1st November, 1947, Gilgit Baltistan was part of the State of Jammu and Kashmir, one of the largest princely states of India. This state was created in 1846 after the signing of a treaty between the British and Gulab Singh of the Dogra dynasty. The princely state of Jammu and Kashmir had four units: the province of Jammu, the province of Kashmir, the district of Gilgit and the district of Ladakh. Present day Baltistan was subjugated and annexed by Gulab Singh's Dogra army earlier, in 1840, before the Treaty of Amritsar. In the new administrative set-up, Baltistan was made part of district Ladakh as Skardu tehsil. Realising the geostrategic importance of this region, and fearing a possible Russian invasion from Central Asia, the British directly intervened and created the 'Gilgit Agency' in order to bring the area under their control. This marked the beginning of a dual British-Dogra control in Gilgit. Civil administration remained with Dogra rulers, while military and security matters were placed directly under the control of the British Indian Government⁸⁴. After Independence of India and Pakistan, India and Maharaja want control of this region.

⁸² See for instance, website of Government of Gilgit and Baltistan, History.

⁸³ Balouch, Khan, Sikander. In the Wonderland of Asia, Gilgit & Baltistan. Ed. 2004. P; 10.

⁸⁴ See for instance, Published in Dawn, Gilgit Baltistan Independence Day. Dated: 01-11-2020. www.dawncom.pk. (Last visit; Date and Time 21-02-2021 / 10:30 am)

GILGIT BALTISTAN EMPOWERMENT AND SELF GOVERNANCE ORDER, 2009

Gilgit Baltistan (Northern Areas) administratively controlled by Pakistan since Independence by the Karachi agreement. This agreement was between Government of Pakistan and Government of Azad State of Jammu and Kashmir. Gilgit Baltistan (Northern Areas) has not yet been formally integrated into the Islamic Republic of Pakistan federation state and does not participate in constitutional political affairs and have no participation in the Pakistani Parliament or Executive⁸⁵. On 29th August, 2009, the Gilgit Baltistan (Northern Areas) Empowerment and Self-Governance Order 2009 was passed by the Government of Pakistan and later signed by the President of Islamic Republic of Pakistan Asif Ali Zardari. The order granted self rule to the people of Gilgit Baltistan (Northern Areas), by creating, among other things, an elected Gilgit Baltistan Legislative Assembly and a Gilgit Baltistan Council. Gilgit Baltistan thus gained de facto province like status without constitutionally becoming part of Pakistan. Gilgit Baltistan become fifth province of Islamic Republic of Pakistan. Name of Northern Areas of Pakistan changed to Gilgit Baltistan⁸⁶. The government of Gilgit Baltistan consists of democratically elected body with the Governor of Gilgit Baltistan as the provincial constitutional head. The Chief Minister of Gilgit Baltistan is elected by the Provincial Assembly of the Gilgit Baltistan to serve as the head of the provincial government in Gilgit-Baltistan and its cabinet. The Gilgit Baltistan Legislative Assembly is a 33 seats unicameral legislative body. It has 24 directly elected members, 6 reserved seats are for women and 3 seats are reserved for technocrats⁸⁷. In light of a verdict by Supreme Court of Pakistan in the case filed by Wahab Al Kahiri, Justice Shehbaz Khan and others through Al-Jehad Trust Versus Federation of Pakistan, as per orders of Supreme Court of Pakistan, Government of Pakistan established Northern Areas Court of

⁸⁵ See for instance, Gilgit Baltistan Empowerment and Self-Governance Order 2009, Ministry of Kashmir and Gilgit Baltistan Affairs. Dated: 09-09-2009.

⁸⁶ See for instance, "President Asif Ali Zardari Signed Gilgit Baltistan Governance order". The Nation newspaper. www.nationnews.com.pk. Dated: 13-09-2009. (Last visit; Date and Time 21-02-2021 / 11:00 am)

⁸⁷ Ali, Nousheen. *Delusional States: Feeling Rule and Development in Pakistan's Northern Frontier*. Ed. 2019. P; 35.

Appeals at Gilgit vide Gazette of Pakistan, on 8th November, 1999 with Appellate Jurisdiction, The Court started function on 27th September, 2005, when the Chairman and members were appointed. on 15th December, 2007 by virtue of amendments in the Northern Areas Governance order 1994, the nomenclature of the Court was re-designated as Northern Areas Supreme Appellate Court and its jurisdiction was also enlarged by conferring Original and Appellate jurisdiction, It was also given the Status equal to the Supreme Court of Azad State of Jammu and Kashmir. On 9th September, 2009, the Supreme Appellate Court was conferred the similar jurisdiction equal to the Supreme Court of Pakistan by promulgating Gilgit Baltistan (Empowerment and Self Governance Order) 2009. The Supreme Appellate Court is consisting of a Chief Judge and two other Judges. The Permanent Seat of the Court is at Gilgit, but the Court also sits from time to time at Skardu Branch Registry⁸⁸. Gilgit Baltistan Chief Court is the court of appeal and is equivalent to other provincial high courts in the other four provinces of Pakistan, according to Gilgit Baltistan Empowerment and Self Governance Order 2009⁸⁹. The Gilgit Baltistan Empowerment and Self Governance Order ,2009 is a turning point in the administrative history of the Gilgit Baltistan. Anchored in article 258 of the Constitution of Islamic Republic of Pakistan, the Order, though short of providing constitutional status to Gilgit Baltistan, has given the region identity by renaming it as Gilgit-Baltistan and introducing an improved setup of legislative system i.e. Legislative Assembly and Gilgit Baltistan Council. Now the region has its own Governor, Chief Minister and legislative Assembly⁹⁰. Under Gilgit Baltistan Empowerment and Self Governance Order 2009, elections for the Legislative Assembly were held on 14th November, 2009. Pakistan Peoples Party emerged as the majority party by winning 14 seats out of the total 33 and formed a coalition government. Jamiat Ulema-e-Islam (F) secured four seats, Pakistan Muslim League (Q) 3, Muttahida Quami Movement one seat, Pakistan Muslim League (N) two, and two independent seats in the Legislative Assembly.

⁸⁸ See for instance, Order of Chief Court, Gilgit Baltistan, 2018.

⁸⁹ *Ibid.*

⁹⁰ See also, Gilgit Baltistan Empowerment and Self-Governance Order 2009, Ministry of Kashmir and Gilgit Baltistan Affairs. Dated: 09-09-2009.

PEOPLE OF GILGIT BALTISTAN WANTS TO BECOME A PART OF PAKISTAN POLITICALLY AND CONSTITUTIONALLY

What makes Gilgit Baltistan's conundrum intricate is that, despite 73 years of independence, it is still unable to achieve what it strove for. Every year, people of Gilgit Baltistan celebrate their independence with great zeal. However, the struggle to integrate the region in the Pakistan and its constitution still continues. Various Governments in Pakistan have tried in the past to regulate the issues of Gilgit Baltistan through reforms and executive orders. Recently, the region has come under the spotlight again when the Federal Government of Islamic Republic of Pakistan announced plans to give Gilgit Baltistan constitutionally provincial status. It seemed Gilgit Baltistan was finally on the path of integration with Pakistan. However, the important question remains whether the Government of Pakistan can take this bold step and, instead of another executive order, bring Gilgit Baltistan into the ambit of Pakistan's constitution. Due to this linkage, the region still has the status of a disputed territory. Subsequently, the region is in constitutional limbo and denied representation in the national legislature of Pakistan. Successive governments have tried to regulate the problems and solve the puzzle through different measures; however, the anomaly still exists. The question of Gilgit Baltistan's integration into Pakistan is complicated as Pakistan and India both maintain Gilgit Baltistan is part of Kashmir. When India raised the case of Kashmir before the United Nations, India's claim on Kashmir was denied and the whole state of Kashmir including Gilgit Baltistan became a disputed territory. The issue was supposed to be resolved through a plebiscite with certain preconditions⁹¹. Gilgit Baltistan's scholars and political analysts take a contrary position. As per historical accounts, Kashmir's Dogras captured Baltistan through military aggression; there was no legal or constitutional rationale for their rule. The people never accepted their rule, either. Hence, the occupation of the region through military invasion cannot justify associating the region with Princely State of Jammu and Kashmir⁹². Qasim Naseem, a senior

⁹¹See for instance, Published in Dawn, Gilgit Baltistan Independence Day. Dated: 01-11-2020. www.dawncom.pk. (Last visit; Date and Time 21-02-2021 / 11:30 am)

⁹² *Ibid.*

journalist and writer from Gilgit Baltistan, argues that, if the justification behind declaring Gilgit Baltistan a part of Kashmir is accepted, Pakistan and India could also be declared a constitutional part of Great Britain. Jammu and Kashmir itself was, at one time, ruled by Sultan Saeed Khan Kashgiri and came under control of the Afghans for a long period. However, Jammu and Kashmir neither became part of Kashgar nor of Afghanistan. Naseem further contends that we do not accept Indian Occupied Kashmir as a part of India, despite it being under Indian administration since 1948⁹³.

GILGIT BALTISTAN ORDER, 2018

On 24th May, 2018 the long wait for full citizenship of Pakistan for the residents of Gilgit Baltistan finally ended after the local government formally promulgated the Gilgit Baltistan Order 2018. The piece of legislation, which received Presidential assent on 1st June 2018, replaces the Gilgit Baltistan Self Governance Order 2009. While spelling out the provisions of the Order, the then Prime Minister of Pakistan, Shahid Khaqan Abbasi, said the law would make Gilgit Baltistan government more powerful than other provincial governments and would grant similar basic rights to the Gilgit Baltistan residents without any discrimination. A brief analysis of the Gilgit Baltistan Order 2018 suggests that it devolves most administrative and financial powers to the area and guarantees its residents all constitutional protections, including access to regular courts. Under the new order, all powers exercised by the Gilgit Baltistan council, including passing legislation regarding mineral, hydropower and tourism sectors, have been shifted to the Gilgit Baltistan Assembly⁹⁴. While Addressing the joint session of the Gilgit Baltistan Legislative Assembly and Gilgit Baltistan Council, the Prime Minister of Pakistan, Mr. Shahid Khaqan Abbasi said under the Order, all powers would rest with the Gilgit Baltistan Assembly and there would be no discrimination between the fundamental rights, enjoyed by the residents of other provinces and those of the Gilgit Baltistan. He further said that under the new order, all the subjects, which had been devolved to provinces under the 18th Constitutional

⁹³ Hussain, Altaf. *The Gilgit Baltistan Reforms*. Ed. 2009.

⁹⁴ See for instance, Nagri, J. New law promises more political, judicial powers to GilgitBaltistan. Article in Dawn, 2018.

Amendment in the 1973 Constitution of Islamic Republic of Pakistan, would also stand devolved to Gilgit Baltistan. The Gilgit Baltistan Council would only deal with the federal subject, having just an advisory role, not executive or overriding one⁹⁵. The positive points of new order are that it has repealed Gilgit Baltistan Self Governance Order 2009 and annulled powerful Gilgit Baltistan Council and powers shifted to Gilgit Baltistan Legislative Assembly. Apparently, there is no role of Federal Ministry of Kashmir and Gilgit Baltistan Affairs as it is Gilgit Baltistan Assembly that is endowed with powers of legislation. Chief Court will consist of 7 Judges and will be renamed as High Court of Gilgit Baltistan. Judges' appointments will be made at local level. There will be Gilgit Baltistan provincial service commission and a provincial Auditor General⁹⁶. Till their appointments, the jurisdiction of Federal Public Service Commission (FPSC) and Auditor General of Pakistan (AGP) have been extended to the province of Gilgit Baltistan. Similarly, the jurisdiction of the Council of Islamic Ideology (CII) has also been extended to the province. Gilgit-Baltistan is being given the status of non-voting membership in all constitutional bodies like National Finance Commission (NFC), Economic Coordination Committee (ECC), Council of Common Interests (CII) and Indus River System Authority (IRSA) although, this is not part of the order. There would be no discrimination between the fundamental rights being enjoyed by residents of the province of Gilgit Baltistan and those living in other four provinces of the Islamic Republic of Pakistan. Judges of the High Court and Governor of Gilgit Baltistan would be appointed from amongst the local people, and the locals will be allotted a quota in the civil service of Pakistan and Gilgit Baltistan⁹⁷. One of the strongest selling points of the order is the dismantling of all federal taxes and bringing Gilgit Baltistan on a par with the country's other four provinces, a much desired objective in itself – under Schedule IV of the Constitution of Islamic Republic of Pakistan, 1973. Gilgit Baltistan Assembly will also have same powers as those enjoyed by the other four provincial assemblies of the country (Punjab, Sindh, Khyber

⁹⁵ See for instance, Daily Times. "Supreme Court of Pakistan Restores Gilgit-Baltistan Order 2018". Dated: 09-08-2018.

⁹⁶ *Ibid.*

⁹⁷ See for instance, Pamir Times. Government of Gilgit Baltistan Order 2018.

Pakhtunkhwa, and Balouchistan).⁹⁸ The Order has started a new debate in the area, terming it the Prime Minister-centric. The Prime Minister will have the final authority on legislation and policies of the Gilgit Baltistan Government. Prime Minister of Islamic Republic of Pakistan will levy taxes and no decree or order can be issued against him. Prime Minister enjoys sweeping powers in Gilgit Baltistan but he cannot enjoy the same in other four provinces of Islamic Republic of Pakistan. Moreover, no one can challenge or question the validity of this Order. As per the Gilgit Baltistan Order 2018, the rules set therein are applicable within the province of Gilgit Baltistan where Governor, as representative of the Federal Government will supervise affairs of the Government. However, even in the affairs of provincial government of Gilgit Baltistan, Prime Minister will have the final authority of any legislation and administrative decision. Both Governor and Chief Minister of Gilgit Baltistan will be subservient to the Prime Minister of Islamic Republic of Pakistan. Article 41 of the Gilgit Baltistan Order 2018 says that “the Executive Authority of the Provincial Government shall extend to the matters with respect to which the assembly has the power to make laws, provided that in any matter with respect to which both Prime Minister and the assembly have the power to make laws, the executive authority of the government shall be subject to and limited by the executive authority expressly conferred and this order by law made and by the Prime Minister”⁹⁹. According to Article 60 (4) of the Gilgit Baltistan Order 2018 “any law which the Prime Minister is competent to enact then the law made by the Prime Minister, whether passed before or after the act of the assembly shall prevail and the act of the assembly shall to the extent of the repugnancy, be void”. The Prime Minister has the power to levy taxes in the area, according to Article 65. According to Article 61, the executive authority of the Government shall be so exercised as to secure compliance with the laws made by the Prime Minister which apply thereon. (2) It shall be the duty of the Prime Minister to protect Gilgit Baltistan against internal disturbances and to ensure that the Government is carried on in accordance with the

⁹⁸ See for instance, Pamir Times. Government of Gilgit Baltistan Order 2018.

⁹⁹ Ali, Nousheen. *Delusional States: Feeling Rule and Development in Pakistan's Northern Frontier*. Ed. 2019. P; 39.

provisions of the Gilgit Baltistan Order 2018. Article 62 says, “The executive authority, of the Government, shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Prime Minister, and the executive authority of the Prime Minister shall extend to the giving of such directions to the Government as may appear to the Prime Minister to be necessary for that purpose. The executive authority of the Prime Minister shall also extend to the giving of directions to the Government as to the construction and maintenance of means of communication declared in the direction to be of national or strategic importance. The executive authority of the Prime Minister shall also extend to the giving of directions to the Government as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquility or economic life of Gilgit Baltistan or any part thereof.”¹⁰⁰ Besides, Article 105 of the Gilgit Baltistan Order, 2018 also gives immense power to Prime Minister of Islamic Republic of Pakistan in even financial affairs of the Gilgit Baltistan provincial government. The Article reads: “If the Prime Minister is satisfied that a situation has arisen whereby the economic life, financial stability or credit of Gilgit Baltistan, or any part thereof, is threatened, he may, after consultation with the Governor of the province of the Gilgit Baltistan, by proclamation make a declaration to that effect, and while such a proclamation is in force, the executive authority of the Government shall extend to the giving of directions to observe such principles of financial propriety as may be specified in the directions, and to the giving of such other directions as the Prime Minister may deem necessary in the interest of the economic life, financial stability or credit of Gilgit Baltistan or any part thereof. While a proclamation issued under this section is in force, the President may issue directions for the reduction of the salaries and allowances of all or any class of persons serving in connection with the affairs of the Government.”¹⁰¹ Another important article is related to imposition of taxes in the province of Gilgit Baltistan, as the same has been rejected by the residents until the region is mainstreamed through constitutional amendments and given equal rights. Under Articles 65, 60 (2) and (a) and the Third Schedule,

¹⁰⁰ See for instance, the Gilgit Baltistan order, 2018, p; 61.

¹⁰¹ See also, the Gilgit Baltistan order, 2018, p; 61.

Prime Minister has the authority to levy all taxes in the region. The surprising portion of the order is related to the judiciary in Gilgit Baltistan where now all exclusive power of appointment in the judiciary is solely vested in Prime Minister. Interestingly, as per Article 77 (2), the direction, order or decree issued by Gilgit Baltistan Supreme Appellate Court and Chief Court of Gilgit Baltistan will not be enforceable in the rest of the country. Meaning thereby, no direction, order or decree can be issued against Prime Minister of Islamic Republic of Pakistan¹⁰². Another important legislation through is the order to override other laws. Article 117 says: “The provision of the Gilgit Baltistan Order, 2018 shall have effect, notwithstanding anything contained in the provisions of any law for the time being in force except that in case of conflict between the laws of Pakistan and the laws framed under this Order, the laws of Pakistan shall prevail. No Court, including the Gilgit Baltistan Supreme Appellate Court and the Gilgit Baltistan High Court, shall call into question or permit to be called into question, the validity of this Order.” As per Article 120, the Gilgit Baltistan Empowerment and Self-Governance Order, 2009, hereinafter in this section referred to as “the Repealed Order” together with the Orders amending it, is hereby repealed. As the Gilgit Baltistan Council will also cease to exist after the issuance of the new order, section (3) of the Article 120 says that “the six elected members of the erstwhile Gilgit Baltistan Council shall become the Advisors to the Chief Minister for the remaining part of the tenure of the incumbent Assembly.”¹⁰³This clause was made for the adjustment of elected members of Gilgit Baltistan Council. These six members will have to assist the Chief Minister of Gilgit Baltistan as advisors till the next election of the province of Gilgit Baltistan. This was a good move to accommodate elected members of the council.

GILGIT BALTISTAN ORDER, 2018 CHALLENGED IN THE APPELLATE COURT OF GILGIT BALTISTAN

One of the members of the Gilgit Baltistan Legislative Assembly, who simultaneously held the council membership, filed a petition in the Supreme Appellate Court of Gilgit Baltistan citing that he

¹⁰² See for instance, Nagri, J. New law promises more political, judicial powers to GilgitBaltistan. Article in Dawn, 2018.

¹⁰³ *Ibid.*

“took the oath under Article 33 of the Gilgit Baltistan Empowerment and Self Governance Order, 2009 and was entitled to hold the office till 2020.” According to the petitioner, “the new order should not be introduced till their tenure was completed”.¹⁰⁴ As a result, a stay order had been issued by the Appellate Court of Gilgit Baltistan against the abolition of the council on 24th April, 2018 last year. Later in July, 2018, the Appellate Court of Gilgit Baltistan also suspended the new order stating that “despite stay order of the court, Gilgit Baltistan Order, 2018 was introduced, which was violation of law.”¹⁰⁵

FEDERAL GOVERNMENT OF PAKISTAN CHALLENGED THE VEDICT OF APPELLATE COURT OF GILGIT BALTISTAN IN THE SUPREME COURT OF PAKISTAN

The Federal Government of Pakistan moved to the Supreme Court of Pakistan against the Appellate Court of Gilgit Baltistan verdict, and restored the order in August, 2018. Ironically, the Supreme Court of Pakistan Chief Justice Mian Saqib Nisar “remarked the order has been restored as people of Gilgit Baltistan should have the same rights as those in other parts of the country do”.¹⁰⁶ Meanwhile, the Supreme Court of Pakistan examined the matter on a fast track basis. In December, 2018 it formed a committee headed by the Attorney General of Pakistan “to prepare a final draft of planned reforms for Gilgit Baltistan”. Supreme Court of Pakistan stated that the people of Gilgit Baltistan could be granted rights on par with Pakistani citizens but on the other hand, the Gilgit Baltistan administration is kept under tight grip of Islamabad¹⁰⁷. Furthermore, Dr Abbas (Nationalist leader) highlighted that even the judges of Gilgit Baltistan apex court were drawn from among the retired judges in Pakistan on a contractual basis. He considered taking the case to the United Nations or International Court of Justice, citing that Gilgit Baltistan was part of an international ‘dispute’. This move by Dr Abbas a nationalist

¹⁰⁴ See for instance, Nagri, Jamil. "Appellate Court Suspends Gilgit Baltistan Order 2018".

¹⁰⁵ *Ibid.*

¹⁰⁶ See for instance, Supreme Court of Pakistan’s verdict, Gilgit Baltistan Isn't the Part Of Pakistan. Dr. Abbas Petition 2019.

¹⁰⁷ See for instance, Supreme Court of Pakistan’s Judgement, Gilgit Baltistan Order 2018, Restoration, ruling, p; 19.

leader was not appreciated by the people of Gilgit Baltistan. People of Gilgit Baltistan said that we are not part of Kashmir dispute and we want to become Constitutional Province of Islamic Republic of Pakistan.

SUGGESTIONS FOR GILGIT BALTISTAN

A noted jurist, Justice (Retired) Muzaffar Ali, suggests the following steps to cope with the emerging situation:

- The law division Islamabad should frame reforms for Gilgit Baltistan in the shape of a bill as per spirit of the judgment, entrusting all the legislative as well as the administrative powers to the elected representatives of the people of Gilgit Baltistan and present the same reforms before the parliament to pass the bill.
- Since, the Supreme Court has declared the people of Gilgit Baltistan the citizens of Pakistan and it has been observed that the administrative authorities have clearly extended some chapters of the Constitution without any power by the Constitution, to Gilgit Baltistan. For instance:
 - Under Article 31 of the Gilgit Baltistan Order 2018, Chapter 2 of Part-II of the Constitution of Pakistan has been extended to Gilgit Baltistan;
 - The jurisdiction of the Council of Islamic Ideology constituted under the Constitution has been extended to Gilgit Baltistan under Article 67 of the Constitution of Pakistan.
 - The jurisdiction of the Federal Public Service Commission established under Article 242 of the constitution has also been extended to Gilgit Baltistan under Article 95(2);
 - The jurisdiction of Auditor General of Pakistan also has been extended to Gilgit Baltistan.¹⁰⁸

Then, after all above, what issue prevents the federation of Pakistan to extend the jurisdiction of Supreme Court of Pakistan to the Gilgit Baltistan. Therefore, it is suggested that despite, introducing a Supreme Appellate Court as apex court but impliedly subservient to the Prime Minister, the jurisdiction of Supreme Court of Pakistan be extended to the Gilgit Baltistan.

¹⁰⁸ See for instance, Read the Government of Gilgit Baltistan Order 2018, Suggestions.

That, in the introductory chapter of the Order, under Article 2(b), all the citizens under the Pakistan's Citizenship Act, 1951 (II of 1951) have been declared citizens of Gilgit Baltistan too and in the first schedule pertaining to the oath of the office of the Governor Gilgit Baltistan, Chief Minister Gilgit Baltistan, ministers of Gilgit Baltistan and Speaker and Deputy Speaker of the Gilgit Baltistan Assembly have been bound to take oath to discharge their duties and perform functions, faithfully in accordance with the Constitution of the Islamic Republic of Pakistan 1973, then, what hurdle remains to declare the Gilgit Baltistan a province under the Constitution? Therefore, it is suggested that the Gilgit Baltistan be declared the constitutionally fifth province of Islamic Republic of Pakistan¹⁰⁹.

¹⁰⁹ See for instance, Daily Times. "Supreme Court of Pakistan Restores Gilgit-Baltistan Order 2018". Dated: 09-08-2018.

CONCLUSION

The Gilgit Baltistan Order 2018 was meant to be a step forward from the one passed during the Pakistan People's Party government in 2009. Under that ordinance, the process of Self and Empowerment – a cornerstone of republican values enshrined for the rest of Pakistan in the country's constitution, had been started with the formation of a legislative assembly to be elected by the Gilgit Baltistan people on the principle of adult franchise. The Self and Empowerment Order 2009 severely restricted the Gilgit Baltistan Legislative Assembly's autonomy since all its affairs were to remain under the scrutiny of a 17 member Gilgit Baltistan Council to be headed by the Prime Minister of Islamic Republic of Pakistan. Meaning that real power over all legislative affairs lied with the Prime Minister of Pakistan and his Federal Government.

Against this backdrop, the Gilgit Baltistan Order, 2018 is hardly a step forward. In fact, it makes matters worse by assigning an advisory role to the Council. Meaning that the latter's power of scrutiny gets transferred to the Prime Minister sitting in Islamabad. With 62 legislative subjects under the exclusive domain of the leading Minister, the Gilgit Baltistan Legislative Assembly is unlikely to have any empowering role in the provincial government, once the 2018 order gets enforced. There are similar concerns over the lack of judicial authority vested in the Gilgit Baltistan Courts whose jurisdiction remains limited to the province only. Such a judicial authority will not be able to check any violations of the fundamental rights of the Gilgit Baltistan people. Therefore, Part II of the order, on fundamental rights and principles of policy, remains without the necessary legislative and judicial force needed to enforce them.

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**EMERGENCY OF 3rd NOVEMBER, 2007; ITS
EFFECTS ON CONSTITUTIONAL AND
POLITICAL FLOW IN PAKISTAN**

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ABSTRACT

Eight years after then Chairman Joint Chiefs of Staff Committee of Pakistani Armed Forces and suspended Chief of Army Staff General Syed Pervez Musharaf seized power on 12th October, 1999 and declared himself the country's Chief Executive (Prime Minister), a new crisis erupted in 2007 when he imposed Emergency in the country once more. On 3rd November, 2007, Military Dictator General Syed Pervez Musharaf, President of Pakistan and Chief of Army Staff of Pakistan, issued a Proclamation of Emergency, which held the Constitution in "abeyance". The Proclamation of Emergency was rescinded on 15th December, 2007. These actions were validated by the Supreme Court of Pakistan consisting of those judges who took oath under the Judges (Oath of Office in emergency) Order, 2007. In a brief but dark period that followed, the Constitution of 1973 remained suspended from 3rd November, 2007 to 15th December, 2007 and several Judges of the Supreme Court of Pakistan, Federal Shariah Court of Pakistan and High Courts of All four provinces of Pakistan, including the Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, were detained. In the proclamation order for the emergency, 2007, General Syed Pervez Musharaf, who had become a self-appointed President in June 2001, cited members of the superior judiciary "working at cross purposes with the executive and legislature in the fight against terrorism and extremism" as grounds for calling an emergency.

Keywords: Pakistan, Emergency, Military Dictator, General Syed Pervez Musharaf, Supreme Court of Pakistan, Judges.

INTRODUCTION

Leading up to the 2007 Presidential Elections, the Election Commission of Pakistan, approved General Syed Pervez Musharaf as a candidate for re-election. One of his opponents, retired Supreme Court Justice Wajihuddin Ahmed, challenged the ruling in the Supreme Court. The dispute was primarily regarding whether a member of the military was constitutionally permitted to run for the office of the president, as Musharaf held both titles of President and Chief of Army Staff. Responding to the challenge, on 28th September, 2007, Supreme Court of Pakistan cleared the way for President Pervez Musharaf to seek another five-year term when it threw out a major legal challenge to his re-election plans. But barred the Election Commission of Pakistan from officially declaring a winner until it made its final decision. On 6th October, 2007, presidential elections were held with Musharaf winning 98% votes in the Senate, National Assembly and the all four provincial assemblies of Pakistan¹¹⁰. While the Supreme Court of Pakistan was hearing the case of General Musharaf's eligibility as a candidate, it announced that it would likely need to delay the hearing until 12th November, 2007 due to a personal engagement of one of the honorable members of the bench. On 2nd November, 2007, the court reversed its decision to break, stating that it would now reconvene the following Monday on 5th November, 2007, to attempt to resolve the political situation quickly. This reversal was in part due to criticism that the Court's continuing delay was adding to Pakistan's general instability¹¹¹. A state of emergency was declared by President of Pakistan and Chief of Army Staff General Syed Pervez Musharaf on 3rd November, 2007 and lasted until 15th December, 2007, during which the 1973 Constitution of Islamic Republic of Pakistan was suspended. When the state of emergency was declared, General Musharaf controversially held both positions of President and Chief of Army Staff. He later resigned as army chief 25 days into the emergency on 28th November, 2007. Chief Justice of Pakistan Iftikhar Muhammad Chaudhry reacted promptly to the emergency declaration,

¹¹⁰ Gall, Carlotta. "Boycotts and Legal Fight Cloud Victory for Musharaf". The New York Times. Dated: 06-10-2007.

¹¹¹ See for instance, "Musharraf court ruling 'delayed'". BBC News. www.bbc.com.uk. Dated: 1-11-2007. (Last visit; Date and Time 11-01-2021 / 11:30 am)

convening a seven-member bench which issued an interim order against this action. He also directed the Armed Forces of Pakistan not to obey any illegal orders by General Pervez Musharraf. Subsequently, the 111th Brigade of 10th Corp of the Pakistan Army entered the Supreme Court of Pakistan Building and removed the Chief Justice of Pakistan Iftikhar Muhammad Chaudhry and several other judges from the Supreme Court and arrested all of them¹¹².

STATE OF EMERGENCY

Before the Supreme court of Pakistan could reach a decision, General Pervez Musharraf, acting as President of Islamic Republic of Pakistan and Chief of the Army Staff, declared a state of emergency as per Article 232 of the constitution, on the evening of 3rd November 2007, and issued a Provisional Constitutional Order which replaced the country's constitution. The Constitution of Pakistan, Article 232, allows the President of Pakistan to declare a State of Emergency when he is satisfied a situation exists that warrants its imposition. In the case that a President of Pakistan declares a State of Emergency, the National Assembly has to approve it within 30 days. The state-run Pakistan Television Corporation issued a brief announcement saying that, "The Chief of the Army Staff (General Pervez Musharraf) has proclaimed state of emergency and issued a provisional constitutional order," at 6:10 pm local time without giving any details. Under the order, the Constitution was suspended, the federal and provincial cabinets were also suspended, all executive powers of Prime Minister and Chief Ministers was transferred to General Pervez Musharraf and the justices were ordered to take an oath to abide by it. Those who failed to do so would be dismissed¹¹³. In the emergency it was clearly mentioned that no court can hear against the emergency order also no court or authority can suspend this emergency order gave by President and Chief of Army Staff of Pakistan General Pervez Musharraf.

¹¹² See for instance, "Martial law declared in Pakistan". CNN News. Dated: 4-11-2007. (Last visit; Date and Time 11-01-2021 / 12:30 pm)

¹¹³ See for instance, "Text of 'Proclamation of emergency'" of Nov 3rd, 2007.

PROCLAMATION OF STATE OF EMERGENCY

Proclamation of State of Emergency declared by the President of Islamic Republic of Pakistan and Chief of the Army Staff of Pakistan General Syed Pervez Musharaf.

WHEREAS there is visible ascendancy in the activities of extremists and incidents of terrorist attacks, including suicide bombings, IED explosions, rocket firing and bomb explosions and the banding together of some militant groups have taken such activities to an unprecedented level of violent intensity posing a grave threat to the life and property of the citizens of Pakistan;

WHEREAS there has also been a spate of attacks on state infrastructure and on law-enforcement agencies;

WHEREAS some members of the judiciary are working at cross purposes with the executive and legislature in the fight against terrorism and extremism, thereby weakening the government and the nation's resolve and diluting the efficacy of its actions to control this menace;

WHEREAS there has been increasing interference by some members of the judiciary in government policy, adversely affecting economic growth, in particular;

WHEREAS constant interference in executive functions, including but not limited to the control of terrorist activity, economic policy, price controls, downsizing of corporations and urban planning, has weakened the writ of the government; the police force has been completely demoralized and is fast losing its efficacy to fight terrorism and intelligence agencies have been thwarted in their activities and prevented from pursuing terrorists;

WHEREAS some hard-core militants, extremists, terrorists and suicide bombers, who were arrested and being investigated, were ordered to be released. The persons so released have subsequently been involved in heinous terrorist activities, resulting in loss of human life and property. Militants across the country have, thus, been encouraged while law-enforcement agencies subdued;

WHEREAS some judges by overstepping the limits of judicial authority have taken over the executive and legislative functions;¹¹⁴

¹¹⁴ See also, "Text of 'Proclamation of emergency'" of Nov 3rd, 2007.

WHEREAS the government is committed to the independence of the judiciary and the rule of law and holds the superior judiciary in high esteem, it is nonetheless of paramount importance that the honorable judges confine the scope of their activity to the judicial function and not assume charge of administration;

WHEREAS an important constitutional institution, the Supreme Judicial Council, has been made entirely irrelevant and non-est by a recent order and judges have, thus, made themselves immune from inquiry into their conduct and put themselves beyond accountability;

WHEREAS the humiliating treatment meted to government officials by some members of the judiciary on a routine basis during court proceedings has demoralized the civil bureaucracy and senior government functionaries, to avoid being harassed, prefer inaction;

WHEREAS the law and order situation in the country as well as the economy have been adversely affected and trichotomy of powers eroded;

WHEREAS a situation has thus arisen where the government of the country cannot be carried on in accordance with the Constitution and as the Constitution provides no solution for this situation, there is no way out except through emergent and extraordinary measures;

1- AND WHEREAS the situation has been reviewed in meetings with the Prime Minister, Governors of all four provinces, and with Chairman of Joint Chiefs of Staff Committee, Chiefs of the Armed Forces, Vice-Chief of Army Staff and Corps Commanders of the Pakistan Army; **NOW, THEREFORE**, in pursuance of the deliberations and decisions of the said meetings, I, General Pervez Musharraf, Chief of the Army Staff, proclaim Emergency throughout Pakistan.

2- AND WHEREAS I, President of Islamic Republic of Pakistan and Chief of Army Staff of Pakistan General Syed Pervez Musharraf hereby, order and proclaim that the Constitution of the Islamic Republic of Pakistan shall remain in abeyance.

This Proclamation shall come into force at once¹¹⁵.

PROVVISIONAL CONSTITUTIONAL ORDER, 2007

Provisional Constitutional Order, 2007 (PCO) promulgated by the President of Islamic Republic of Pakistan and Chief of the Army Staff of Pakistan General Syed Pervez Musharaf.

1- In pursuance of the Proclamation of the 3rd day of November, 2007, and in exercise of all powers enabling him in that behalf, the Chief of Army Staff of Pakistan, under the Proclamation of Emergency of the 3rd day of November, 2007, is pleased to make and promulgate the following Order:¹¹⁶

(1) This Order may be called the Provisional Constitution Order No 1 of 2007.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2- (1) Notwithstanding the abeyance of the provisions of the Constitution of the Islamic Republic of Pakistan, hereinafter referred to as the Constitution, Pakistan shall, subject to this Order and any other Order made by the President, be governed, as nearly as may be, in accordance with the Constitution.

Provided that the President may, from time to time, by Order amend the Constitution, as is deemed expedient:

Provided farther that the Fundamental Rights, under Articles 9, 10, 15,16,17,19 and 25, shall remain suspended.

(2) Notwithstanding anything contained in the Proclamation of the 3rd day of November, 2007, or this Order or any other law for the time being in force, all provisions of the Constitution of the Islamic Republic of Pakistan embodying Islamic injunctions including Articles 2, 2A, 31, 203A, 227 to 231 and 260 (3) (a) and (b) shall continue to be in force.

(3) Subject to clause (1) above and the Oath of Office (Judges) Order, 2007, all courts in existence immediately before the commencement of this Order shall continue to function and to exercise their respective powers and jurisdiction:

¹¹⁵ See for instance, "Text Provisional Constitutional Order, 2007". Dated: Nov 4th, 2007.

¹¹⁶ *Ibid.*

Provided that the Supreme Court or a High Court and any other court shall not have the power to make any order against the President or the Prime Minister or any person exercising powers or jurisdiction under their authority.

(4) All persons who immediately before the commencement of this Order were in office as judges of the Supreme Court, the Federal Shariah Court or a High Court, shall be governed by and be subject to the Oath of Office (Judges) Order, 2007, and such further Orders as the President may pass.

(5) Subject to clause (1) above, the Majlis-i-Shoora (Parliament) and the Provincial Assemblies shall continue to function.

(6) All persons who, immediately before the commencement of this Order, were holding any service, post or office in connection with the affairs of the federation or of a province, including an All Pakistan Service, service in the armed forces and any other service declared to be a service of Pakistan by or under Act of Majlis-i-Shoora (Parliament) or of a Provincial Assembly, or Chief Election Commissioner or Auditor General, shall continue in the said service on the same terms and conditions and shall enjoy the same privileges, if any, unless these are changed under Orders of the President.

3- (1) No court, including the Supreme Court, the Federal Shariat Court, and the High Courts, and any tribunal or other authority, shall call or permit to be called in question this Order, the Proclamation of Emergency of the 3rd day of November, 2007, the Oath of Office (Judges) Order, 2007, or any Order made in pursuance thereof.

(2) No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the President or the Prime Minister or any authority designated by the President.¹¹⁷

4- (1) Notwithstanding the abeyance of the provisions of the Constitution, but subject to the Orders of the President, all laws other than the Constitution, all ordinances, orders, rules, bye-laws, regulations, notifications and other legal instruments in force in any part of Pakistan, whether made by the President or the

¹¹⁷ See also, "Text Provisional Constitutional Order, 2007". Dated: Nov 4th, 2007.

governor of a province, shall continue in force until altered, or repealed by the President or any authority designated by him.

5- (1) any ordinance promulgated by the President or by the governor of a province shall not be subject to any limitations as to duration prescribed in the Constitution.

(2) The provisions of clause (1) shall also apply to an ordinance issued by the President or by a governor which was in force immediately before the commencement of the Proclamation of Emergency of the 3rd day of November, 2007¹¹⁸.

PCO JUDGES OF THE SUPREME COURT OF PAKISTAN VALIDATES PRESIDENTIAL ELECTIONS, 3rd NOVEMBER, 2007 EMERGENCY AND PROVINSIAL CONSTITUTIONAL ORDER (PCO)

On 24th November 2007, a seven panel larger bench of the Supreme Court, headed by Chief Justice Abdul Hameed Dogar, directed the chief election commissioner and the government to declare Pervez Musharaf President for a second term by 1st December, and said that President Musharaf shall relinquish the office of the chief of army staff (COAS) before taking oath as civilian president. The Supreme Court also validated the imposition of emergency and the promulgation of the Provisional Constitution Order issued by the Chief of the Army Staff. The larger bench held that President General Musharaf was qualified to contest the presidential election and did not suffer any disqualification under the constitution and the law. The court also vacated the interim stay of the 6th October, 2007 presidential election results that had kept the Election Commission from announcing them until now. The bench was headed by (PCO) Chief Justice Abdul Hameed Dogar. The other members were Justice Aijaz-ul-Hassan, Justice Muhammad Qaim Jan Khan, Justice Muhammad Musa K Laghari, Justice Chaudhry Aijaz Yusuf, Justice Muhammad Akhtar Shabbir, and Justice Zia Pervez¹¹⁹. Later, on 15th February 2008, the Supreme Court delivered a detailed judgment to validate the Proclamation of Emergency on 3rd November 2007, the Provisional Constitution

¹¹⁸ *Ibid.*

¹¹⁹ See for instance, "Pakistan Supreme Court validates emergency rule, PCO of 2007"

Order No 1 of 2007 and the Oath of Office (Judges) Order, 2007. This Full Court judgment was written by (PCO) Chief Justice Abdul Hameed Dogar. Other (PCO) Judges of the Full Court were Justice Aijaz-ul-Hassan, Justice Mohammad Qaim Jan Khan, Justice Mohammad Musa K. Laghari, Justice Chaudhry Aijaz Yusuf, Justice Muhammad Akhtar Shabbir and Justice Zia Pervez. The Supreme Court wrote, "In the recent past the whole of Pakistan was afflicted with extremism, terrorism and suicide attacks using bombs, hand grenades, missiles, mines, including similar attacks on the armed forces and law enforcing agencies, which reached climax on 18th of October 2007 when in a similar attack on a public rally, at least 150 people were killed and more than 500 seriously injured. The situation which led to the issuance of Proclamation of Emergency of the 3rd day of November 2007 as well as the other two Orders, referred to above, was similar to the situation which prevailed in the country on the 5th of July 1977 and the 12th of October 1999 warranting the extra-constitutional steps, which had been validated by the Supreme Court of Pakistan in Begum Nusrat Bhutto V. Chief of the Army Staff (PLD 1977 SC 657) and Syed Zafar Ali Shah V. Pervez Musharraf, Chief Executive of Pakistan (PLD 2000 SC 869) in the interest of the State and for the welfare of the people, and Doctrine of State of Necessity as also the fact that the Constitution was not abrogated, but merely held in abeyance" It further wrote, "The learned Chief Justices and Judges of the superior courts, (Supreme Court of Pakistan, Federal Shariah Court and the High Court's), who have not been given, and who have not made, oath under the Oath of Office (Judges) Order, 2007 have ceased to hold their respective offices on the 3rd of November 2007. Their cases cannot be reopened being hit by the doctrine of past and closed transaction"¹²⁰ On 20th November, 2007 it was reported in the Daily Jang that a newly appointed Supreme Court had dismissed five writs challenging Musharraf's confirmation as president and was waiting to adjudicate the sixth. Another from the Pakistan Peoples Party was withdrawn as the originators do not recognise the new

¹²⁰ See for instance, "Pakistan Supreme Court validates emergency rule, PCO of 2007"

court. The Court has threatened to revoke the licence of any lawyer not recognizing its authority¹²¹.

PCO OATH AND IMPACT ON HIGHER JUDICIARY

The judges of Supreme Court, Federal Shariah Court and all four High Courts of Pakistan were asked to take an oath on the PCO issued by Chief of Army Staff General Syed Pervez Musharaf. Some of the judges opted to take the oath on the PCO immediately, while some took it over a period of time and some remained steadfast in refusing to take the oath on the PCO¹²².

Immediately after the emergency, out of 18 Supreme Court justices, only five judges took the oath on the PCO. Initially in Islamabad, Abdul Hameed Dogar who was inducted as the new Chief Justice, Muhammad Nawaz Abbasi, Justice Khokhar and M. Javed Buttar took the oath under the PCO¹²³. Later in the evening, in Karachi Syed Saeed Ashhad also took the oath on the PCO on 3rd November, 2007¹²⁴. From the remaining judges, Justice Javed Iqbal, Justice Falak Sher, Justice Sardar Muhammad Raza Khan, Justice Mian Shakir Ullah Jan, Justice Tassaduq Hussain Jillani, Justice Nasir ul Mulk, Justice Chaudhry Ejaz Ahmed, Justice Raja Fayyaz, Justice Syed Jamshed Ali and Justice Ghulam Rabbani declined invitation to take oath of supreme court took oath on PCO. The Chief Justice Iftikhar Muhammad Chaudhry, Justice Rana Bhagwandas and Justice Khalil-ur-Rehman Ramday also did not take oath on PCO nor were they offered to¹²⁵.

On 3rd December, 2007, President General (R) Syed Pervez Musharaf issued a notification of removal of three justices of the Supreme Court without any retirement privileges. They were Chief Justice Iftikhar Muhammad Chaudhry, Justice Rana Bhagwandas and Justice Khalil-ur-Rehman Ramday.

¹²¹ Kalhan, Anil. "Constitution and 'Extra constitution': Emergency Powers in Postcolonial Pakistan and India". *Emergency Powers in Asia*. Ed. 2010.

¹²² Kalhan, Anil. "Constitution and 'Extra constitution': Emergency Powers in Postcolonial Pakistan and India". *Emergency Powers in Asia*. Ed. 2010. P; 56.

¹²³ See for instance, "Majority of judges refuse to take oath under new PCO in Pakistan". *Daily News*. Dated: 03-11-2007. (Last visit; Date and Time 11-01-2021 / 02:35 pm)

¹²⁴ See for instance, Associated Press of Pakistan press release, Islamabad. Dated: 03-11-2007.

¹²⁵ Kalhan, Anil. "Constitution and 'Extra constitution': Emergency Powers in Postcolonial Pakistan and India". *Emergency Powers in Asia*. Ed. 2010.

On 3rd December, 2007, President General (R) Syed Pervez Musharraf issued another notification that in pursuance to Article 3 of the Oath of Office (Judges) Order, 2007 (Order No. 1 of 2007), 24 judges of the High Courts of Sindh, Punjab and NWFP had ceased to hold office, with effect from 3 November 2007, the day emergency was proclaimed in the country.

According to the notification twelve justices of Sindh High Court were notified to cease to hold office. They were Justice Rahmat Hussain Jafferri, Justice Khilji Arif Hussain, Justice Aamir Hani Muslim, Justice Gulzar Ahmed, Justice Maqbool Baqar, Justice Muhammad Athar Saeed, Justice Faisal Arab, Justice Sajjad Ali Shah, Justice Zafar Ahmed Khan Sherwani, Justice Salman Ansari, Justice Abdul Rashid Kalwar and Justice Arshad Siraj.

According to the notification ten justices of Lahore High Court were notified to cease to hold office. They were Justice Khawja Muhammad Sharif, Justice Mian Saqib Nisar, Justice Asif Saeed Khan Khosa, Justice Muhammad Tahir Ali, Justice Ijaz Ahmad Chaudhry, Justice M. A. Shahid Siddiqui, Justice Muhammad Jehangir Arshad, Justice Sheikh Azmat Saeed, Justice Umar Atta Bandial and Justice Iqbal Hameed-ur-Rehman.

According to the notification two justices of Peshawar High Court were notified to cease to hold office. They were Justice Ijaz Afzal Khan and Justice Dost Muhammad Khan.

All justices of the High Court of Baluchistan took the oath on the PCO¹²⁶.

PCO, an illegal order issued by General Syed Pervez Musharraf required judges to retake an oath of allegiance to Musharraf. Many refused to do so, including 15 Supreme Court judges and a large number of judges of the High Courts.

BANNED ON PRINT AND ELECTRONIC MEDIA

With the imposition of emergency a media blackout followed. All private channels go off air, and only the state-controlled *PTV* releases the proclamation of emergency order which speaks of the "visible ascendancy in the activities of extremists" as the reason for imposing the emergency. National channels like *ARY NEWS*, *GEO NEWS*, *AAJ NEWS*, *WAQT NEWS*, *EXPRESS NEWS*, *SAMAA*

¹²⁶ See for instance, "24 judges of high courts 'cease to hold office'". DAWN News. www.dawnnews.com.pk. Dated: 05-12-2007. (Last visit; Date and Time 14-01-2021 / 02:00 pm)

NEWS and other channels were also blocked. General Syed Pervez Musharraf maintained that these channels were creating discord, misrepresenting facts, were not responsible, and were contributing to the instability of the nation. The Government also cracked down on international channels like *BBC and CNN*. *ARY* reported that authorities in Dubai had asked the network's administration to close down its operations. The network said no reason had been given for the move¹²⁷. The government expelled three journalists from the British news paper *The Daily Telegraph* after calling General Musharraf "our son of a bitch". This is an allusion to Franklin D. Roosevelt's defense of Nicaragua's heavy-handed but U.S.-backed dictator, Anastasia Somoza Garcia. However this is still viewed as an extremely severe insult in Pakistan¹²⁸.

STATE OF EMERGENCY AND ECONOMY

The Pakistani stock market was the first to react, with the Karachi Stock Exchange (KSE) falling by more than 4.6% on the first day of the emergency. Investors in the United Kingdom pulled back \$26.27 million while investors in the United States withdrew \$51.93 million. It is estimated that more than \$235 million in total were withdrawn from the KSE during the emergency. The Dutch government froze development aid to Pakistan in response to the imposition of emergency rule. Deputy Minister for Development Bert Koenders decided to suspend the remainder of the €15 million (US\$22 million) that had yet to be paid in 2007¹²⁹.

GENERAL (R) SYED PERVEZ MUSHARAF AS CIVILIAN PRESIDENT AND HIS RESIGNATION

- On 28th November, 2007: General Syed Pervez Musharraf retired as Chief of Army Staff of Pakistan, handing over the command of Pakistan Army to General Ashfaq Pervez Kayani.

¹²⁷ See the order of Pemra, November, 2007" All News channels of Geo, ARY, Dawn, Waqt goes shut down". Dated: 17-12-2007.

¹²⁸ See the orders of Interior and Information Ministries, "UK reporters ordered out of Pakistan". *The Irish Times*. Dated: 10-11-2007. (Last visit; Date and Time 14-01-2021 / 04:35 pm)

¹²⁹ See for instance, *Daily Times Report*. Another outflow of \$89 million in a day. Dated: 15-11-07. (Last visit; Date and Time 14-01-2021 / 06:00 pm)

- On 29th November, 2007: General (R) Syed Pervez Musharaf took oath as a civilian President of Islamic Republic of Pakistan.
- On 15th December, 2007: President General (R) Syed Pervez Musharaf lifts the emergency, revokes the Provisional Constitutional Order, 2007 (PCO) and revives a Constitution of Islamic Republic of Pakistan, 1973 amended through Presidential Ordinance seeking to validate actions taken during the 42-day-long emergency period. Same day President Musharaf asked Chief justices and judges of the Supreme Court (SC), High Courts and Federal Shariah Court to take a fresh oath.
- On 7th June, 2008: Musharraf categorically declares that he has no plan to resign or go into exile. He will complete his five year Presidential term.
- On 18th August, 2008: After a nine years of brutal rule on the country, President General (R) Syed Pervez Musharaf resigns from the office of the President, averting the possibility of impeachment by the Parliament.
- On 31st July, 2009: The Supreme Court of Pakistan gave its historic verdict. Supreme Court rules that Musharaf's decision to impose an emergency on November 3, 2007, as well as his PCO were illegal and unconstitutional. The court gives him seven days to respond.
- On 6th August, 2009: General ® Syed Pervez Musharaf refuses to answer the charges against him and leaves Pakistan for the United Kingdom on self made exile¹³⁰.

HIGH TREASON CASE OF ARTICLE 6 OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 ON GENERAL (R) SYED PERVEZ MUSHARAF

The Federation of Islamic Republic of Pakistan v. General (R) Syed Pervez Musharaf, informally known as the Musharaf high treason case, was a court case in which former Pakistani President and Military Dictator General Pervez Musharraf was tried for high treason stemming from his actions on 3rd November, 2007 in

¹³⁰ See for instance, "Supreme Court strikes down 3rd November, 2007 emergency". Dawn newspaper. www.dawnnews.com.pk. Dated: 01-08-2009. (Last visit; Date and Time 14-01-2021 / 09:50 pm)

which he suspended Pakistan's 1973 constitution and arrest majority of the Judges of Supreme Court, Federal Shariah Court and all four High Courts of Pakistan¹³¹. On 31st July, 2009, a 14-judge bench of the Supreme Court of Pakistan declared General (R) Syed Pervez Musharraf's action of declaring emergency in November 2007, as illegal and unconstitutional in the PCO Judges case's verdict¹³². On 5th April, 2013, the Supreme Court of Pakistan accepted a petition filed against General Musharraf that accused him of committing treason under Article 6 of the Constitution of 1973. A three-member bench headed by Chief Justice Iftikhar Mohammad Chaudhry was constituted to begin hearing the case from 8th April, 2013¹³³. However, on 7th April 2013, the Chief Justice of Pakistan Iftikhar Muhammad Chaudhry rescued himself from the bench hearing the petition. On 8th April 2013, a two-member bench led by Justice Jawad S. Khawaja summoned Musharraf and ordered that his name be put on the Exit Control List (ECL). On 24th June 2013, in the National Assembly of Pakistan, the-then Prime Minister Mian Muhammad Nawaz Sharif said that his government intends to file a written request before the Supreme Court to put Musharraf on trial for treason under Article 6 of the Constitution. On 18th November 2013, the Supreme Court accepted the Sharif government's request to set up a Special Court to try Musharraf under Section 2 of the High Treason (Punishment) Act 1973 of the constitution¹³⁴. On 19th November 2013, Prime Minister of Islamic Republic of Pakistan Mian Muhammad Nawaz Sharif approved the names of Sindh High Court Justice Faisal Arab, Balouchistan High Court Justice Tahira Safdar and Lahore High Court Justice Muhammad Yawar Ali for the Special Court set up under Section 4 of the Criminal Law Amendment (Special Courts) Act 1976. On 12th December 2013, the Mian Nawaz Sharif government submitted an 11-page complaint carrying five charges

¹³¹ Jaffrelot, Christophe. *The Pakistan Paradox: Instability and Resilience*. Oxford University Press. Ed. 2015. P; 354.

¹³² *Ibid.*

¹³³ See for instance "Supreme Court to hear treason case against Musharraf". Dawn newspaper. www.dawnnews.com.pk. Dated: 05-04-2013. (Last visit; Date and Time 14-01-2021 / 09:55 pm)

¹³⁴ See for instance, Cabinet Agenda, "Former dictator General Musharraf to be tried for treason under article 6: PM Mian Nawaz Sharif". Dawn newspaper. www.dawnnews.com.pk. Dated: 24-6-2013. (Last visit; Date and Time 14-01-2021 / 10:30 pm)

of high treason against General Musharaf for his trial in the Special Court. On 13th December 2013, the Special Court convened its first meeting at Federal Shariah Court and summoned Musharraf to appear before it on 24th December 2013. Case proceeding was very slow and Musharaf with influence took dates again and again. Sometimes he appeared in the court but majority times he did not appear in the Special Court. On 18th March 2016, Musharraf left the country for Dubai, United Arab Emirates. On 11th May 2016, the Special Court declared General Musharaf an absconder in the treason case for his failure to appear before the court even after multiple summonses¹³⁵. On 17th December 2019, a Special Court, composed of Chief Justice of the Peshawar High Court (PHC) Waqar Ahmed Seth, Nazar Akbar of the Sindh High Court (SHC), and Shahid Karim of the Lahore High Court (LHC), found General (R) Syed Pervez Musharaf guilty of high treason and sentenced him to death¹³⁶. On 13th January 2020, the Lahore High Court annulled the death sentence and said that this case is of further inquiry¹³⁷.

¹³⁵ See for instance, Judgment of Special Court, "Special court declares General Musharaf absconder in treason case". Dawn newspaper. www.dawnnews.com.pk. Dated: 11-06- 2016. (Last visit; Date and Time 14-01-2021 / 10:50 pm)

¹³⁶ See for instance, Asad, Malik. "Army dismayed as Musharraf gets death for high treason". DAWN news. www.dawnnews.com.pk. Dated: 18-12-2019.

¹³⁷ See for instance, the Lahore High Court Judgment, Lahore High Court annuls Musharaf death sentence.

CONCLUSION

In Pakistan democratic culture was spoiled by Military bureaucracy, Civil bureaucracy, Judiciary, Governor General/President immediately after the death of Quaid-e-Azam Muhammad Ali Jinnah. Due to again and again intervention of above institutions, Pakistan splits into two States; Pakistan and Bangladesh. In Pakistan Military took over the control of country four times and last Military dictator was General Syed Pervez Musharaf. General Pervez Musharaf overthrew elected government of Mian Muhammad Nawaz Shareef on 12th October, 1999. General Musharaf was in power almost nine years in which he controlled country according to his own will. General Musharaf attacked on Judiciary on 3rd November, 2007 and suspended the Constitution of Islamic Republic of Pakistan, 1973. This was again Marshall Law in Pakistan but that time people, lawyers, journalists, political parties, civil society, students; teachers came on the roads and protested against Military Dictator General Musharaf. Due to massive resistance by democratic players General Musharaf took over Marshall Law and forced to resign from the Presidency in 2008. After that trial start against Musharaf in 2009 and 2013. Musharaf flew away from the country on the medical grounds. In 2019 Special Court gave its verdict against Musharaf but this decision was suspended by the Lahore High Court. Now people of Pakistan wants some kind of strong legislation from the Parliament to prevent further interventions of Military, Judiciary, Civil bureaucracy and President. Without legislation democratic culture will not fully develop in Pakistan and its institutions.

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