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EDITORIAL NOTE

Premier Law Journal (PLJ) is a research Journal published by Premier Research Center, Premier Law College Gujranwala in English Language. This is a 1st volume, issue 4, which is going to be published in December, 2021. It is a quarterly Journal dedicated to provide original research articles in Legal Studies as well as analysis and commentary on issues related to Legal & Social Issues. This Journal brings together many of today's distinguished scholars and thinkers, practicing lawyers, teachers and students making their research available on Current Issues need to be legislated in Pakistan.

It is an interdisciplinary Journal of peer-reviewed research and informed opinion on various intellectual and academic issues in areas of Legal & Social Studies. Its readership includes Legal practitioners, policy makers, Judges, Teachers and Students of Law. The articles published in this Research Journal undergo initial editorial scrutiny, double blind peer-review by at least two experts of the field, and further editorial review.

Saleem Shaheen's article is a review of the ICT Rights of Persons with Disability Act, 2020.This Act passed by the National Assembly for the ICT Capital territory. The ICT Rights of Persons with Disability Act, 2020 tried to improve the rights of persons with disabilities but unfortunately, this legislation was very hastily made and didn't reach at the stage where the rights of persons with disabilities come into complete conformity with the Islamic injunctions, Provisions of the Constitution of Islamic Republic of Pakistan, 1973 and the UNO Convention on the Rights of Persons with Disabilities. This Act seems to be a policy rather than an enactment. It needs to revise and make it bring in line with UNO Convention on Rights of Persons with Disabilities.

Identification parade is a practical procedure to find out the real offender with the help of witnesses. In Pakistan, this procedure is used in criminal cases where eyewitness recognizes the culprit in Presence of magistrate. Rao Zohaib's article is an analysis, how much identification parade procedure and technique is fair and effective for the administration of justice in Pakistan.

The usage of the term ‘Friend of Court’ or more precisely Amicus Curiae have been a common practice in Pakistan’s legal system. Although there is no crystal-clear stance of Amicus Curiae in the legal system of Pakistan, Abdullah Khan in his article actually assesses shadow of volubility from the articles 59 to 64 of Qanoon-e-Shahadat order 1984 as the opinion of third person in the decisions of the respected courts.

In criminal cases, hearsay evidence is most commonly used when a witness testifies about facts he has no personal knowledge about. The facts were communicated to him by someone not in Court or when a witness' written statement is presented to the Court because the witness cannot attend Court to give oral evidence. Hafiz Ijaz assesses the general rule of hearsay evidence, recognizing hearsay evidence, its evidentiary value and statutory exceptions to the hearsay rule.

Promissory estoppel is an equivalent concept that applies to the regulation of a contract, which applies when one party to the agreement promises to the other, Rana Bilal in his article provides an outline of the improvement of this principle in three common law nations, i.e., England, Australia and Malaysia to determine how the threats to the traditional limitations of this ideology seem to have an effect on its parameters.

In Pakistan military dictators took over the control of country four times and every time they validated their rule by superior courts of Pakistan. Superior courts validated Marshall Law`s on the famous maxim of doctrine of necessity. Muhammad Amin and Zeeshan abu-bakar has nicely explained in their article how this doctrine is an enemy of Constitution and democratic values.

Dr. Muhammad Amin
The Editor

THE ICT RIGHTS OF PERSONS WITH DISABILITY ACT, 2020: A LEGISLATIVE REVIEW

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ABSTRACT

This Article assess and reviews the ICT Rights of Persons with Disability Act, 2020.This Act passed by the National Assembly for the ICT Capital territory. Previously, there was an ordinance promulgated by Gen. Zia-Ul-Haqq in 1981 titled as "Disabled Persons (Employment and Rehabilitation) Ordinance, 1981". This Ordinance obtained its legal effectivity and applicability to the whole of Pakistan through the 8th Amendment in 1985. Actually ICT Rights of Persons with Disability Bill, 2020 was put in the National Assembly as a result of protesting voice of persons with disabilities who were on the roads for certain years. Disabled Persons (Employment and rehabilitation) Ordinance, 1981 was insufficient to cater for needs of persons with disabilities. It was a dire need in the country to improve this ordinance through making a legislation on the subject. The ICT Rights of Persons with Disability Act, 2020 tried to do this job but unfortunately, this legislation was very hastily made and didn't reach at the stage where the rights of persons with disabilities come into complete conformity with the Islamic injunctions, Provisions of the Constitution of Islamic Republic of Pakistan, 1973 and the UNO Convention on the Rights of Persons with Disabilities. This Act seems to be a policy rather than an enactment. It needs to revise and make it bring in line with UNO Convention on Rights of Persons with Disabilities.

Keywords: Disability, Constitution, Convention, Ordinance, Rights, Legislation

INTRODUCTION

The women have rights as they are half of population of the world. Since the very beginning of human history, the women have been oppressed in every society. The children have rights as they are a generation of future. The Capital invested on children can never be gone waste as a capital of today invested on them will come with a double capital tomorrow. Women and children all are very beneficial to the society and its development. That's why their rights are necessary to be protected but the rights of persons with disabilities, why are necessary? While they are not beneficial to the society on part of their disability. Even they are not beneficial for their families. Unfortunately they are burden on their families. They also can't perform any material service for their family and country. Secondly, it is against justice to get a certain percentage of income of certain class of people in the term of taxes and spend it on other class of people. What we may answer this question in a logical way? In answer to all these questions, we may say that the society the more upholds moral goals and values, it goes more grow. The society as a whole bears burdens, hurdles and restrictions, it creates in itself an ability and power to develop. The person who have a limitation in his body, he can serve the family and country in a better way if he has been rehabilitated. As it is a common practice, the people don't throw the electronics items if they are defective or they become out of order and remained un-useable for them. They get these items repaired and make them re-useable. Likewise, the human's with disabilities are rehabilitated and tried to remove any physical and mental defect in them through rehabilitation process and are made useable for the society. You can chose a difference in both persons, one is a worst criminal person in a society and other is a blind or a physically disabled but is a very pious man, who is better, first person or second one?

All persons have sufficiency and insufficiency naturally. ALLAH Almighty created all persons with different abilities. The one has an ability, the other has not that ability. This sufficiency and insufficiency of men doesn't mean a disability and nor it makes someone superior and someone inferior. It also doesn't have a barrier in delivering rights and duties but it emphases to perform the duty. The thing which makes a person disabled, that is giving a person a sense of disability socially. If the rights and duties are to be

performed because of insufficiency and sufficiency. The society will not have an element of disability socially.

The Disability is a means of creating a positive motion in a society. When non-disabled persons who are idle and lazy in a society see the persons with disabilities to work hard, they get an inner power to work and grow. The society which makes the persons with disabilities useful citizens, actually, it makes itself useful. It is almost seen a common phenomenon in people that a person has a disability in his body, he can do have an alternative ability in his body. The society can benefit from his alternative ability.[1]

Having an introductory words, we come to our core topic "ICT Rights of Persons with Disability Act, 2020; A legislative review". As the ICT Rights of Persons with Disability Act, 2020 in its preamble ensures the rights of persons with disabilities to bring in line with the Islamic injunctions, provisions of the constitution of the Islamic Republic of Pakistan and the UNO Convention on the rights of persons with disabilities.[2]Therefore, it is necessary to review and analyze this act in the light of these three angles. This act is also viewed technically to see what Legal drawbacks it has and also to see does it have conformity with Islamic Injunctions, Constitution, 73 and UNO Convention on disability rights. It is a factual fact that unless we don't have a brief overview of disability legislations made in the near past in the world, we can't analyze and review the legislation we made in our country in 2020. Therefore, before we go to procced on our core issue. We come to take a brief overview of disability legislations in the UK, USA and Pakistan.

A BRIEF OVERVIEW OF DISABILITY LEGISLATIONS IN THE UK, USA AND PAKISTAN

In the 19th and 20th century, the legislations for persons with disabilities were made in the UK. For example, Mental Deficiency Act, 1913 passed to set out arrangements for dealing with those considered to be 'mentally defective': 'idiots', 'imbeciles', 'feeble-minded persons' and 'moral imbeciles' (defined in section 1). It is principally concerned with the provision of appropriate

[1] See the introductory pages of the book written by the author titled as "Disability Rights; Problems and Solutions" Ed. 1st, Maktbah-Al-Qalam, (2009), p; 27-31

[2] See for instance, the preamble of the Bill "ICT Rights of Persons with Disabilities" passed by the National Assembly of Pakistan in 2020.

accommodation for them. The role of local education authorities is referred to in sections 2, 30 and 31. They are required to ascertain and certify the children aged 7 to 16 in their areas who are 'defective' and would 'not benefit from instruction in special schools or classes' (section 31).[3]

The Poor Law Amendment Act, 1834 was not directly related to persons with disabilities but its effect extended to them. As it was an 'Outdoor relief' (assistance provided outside of a workhouse) that was withdrawn unless a person was unable to work due to old age or 'infirmity'. Those who were 'able-bodied' but unemployed could not draw state support unless they entered a workhouse, where they earned their keep. Workhouses also housed the sick, 'mentally ill', unmarried mothers, the elderly and 'the infirm'. The government's intention was to make the experience of being in a workhouse worse than the experiences of the poorest laborers outside of the workhouse. This policy was to become known as the principle of 'less eligibility'. The Poor Law Commission was replaced by the Poor Law Board in 1847, with the intention of improving accountability to Parliament. Workhouses and Boards of Guardians were abolished in 1930 by the Local Government Act 1929, and their powers and responsibilities were passed to local and national government bodies.[4]

In the mid of 20th century, the England passed the Disabled Persons Employment Act, 1944. In the 1975, the British Government improved the social environment in their country and

[3] Mental Deficiency Act, 1913 comprises 28 chapters, actually this act made to further and better provision for the care of feeble-minded and other mentally defective persons and to amend the Lunacy Acts. [15th August 1913.] Currently, this act is the part of Crown copyright material that is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.

[4] The Royal Commission into the Operation of Poor Laws, chaired by the Bishop of London, launched an investigation into the administration of the Poor Laws in 1832. The commission reported back in March 1834, concluding that poverty was being perpetuated by the provision of Poor Law relief. This conclusion led the commission to recommend that all able-bodied people and their families should stop receiving relief. The recommendations of the commission formed the basis of the Poor Law Amendment Act 1834, dubbed the 'new Poor Law', which overhauled the system of providing support to the poor in August 1834. The Act grouped local parishes into Poor Law unions, under 600 locally elected Boards of Guardians. Each of those boards had its own workhouse

enhanced the Mobility Allowance. The British Government took a further step to improve the Disabled Persons Employment Act, 1994. However, in the 1995, the British Government replaced this Act with Disability Discrimination Act, 1995. In the 1995, the British Government also celebrated an anniversary of Disabled Persons Employment Act, 1944. The British Government eliminated the element of discrimination against Persons with disabilities in the society through Disability Discrimination Act, 1995.

In 2010, the UK Government passed the equality Act. In the equality Act 2010, a person is defined as having a disability if he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his ability to carry out normal and day-to-day activities.[5] The Act states that a person discriminate against a disabled person if he treats that person unfavorably because of something arising in consequence of his disability, and he cannot show that the treatment is a proportionate means of achieving a legitimate aim.[6]

Section 20 of the Act makes provisions regarding the requirement to make reasonable adjustments for disabled people in relation to public services and functions;

> The duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. The first requirement covers changing the way things are done (such as changing a practice), the second covers making changes to the built environment (such as providing access to a building), and the third covers providing auxiliary aids and services (providing special computer software which are a different nature of services).[7]

USA has evolved the last century for disability rights. However, in the very beginning the campaigning of disability rights started from the ideology that disability

[5] See Section 6. UK Equality Act 2010.
[6] *Ibid*, Section 15.
[7] Explanatory Notes to the Equality Act 2010, P: 25.

equates to weakness.[8] At this stage, the disability was a personal issue and political regime didn't support the individual with disabilities.[9] In 1960s the civil rights movements started and disability advocates joint this movement. These movements gave the individuals with disabilities to fight for their rights.[10] As a result of disability movements, the Americans with Disability Act was passed in 1990.[11] Meanwhile, on a global scale, the United Nations has established the convention on rights of persons with disability.

In Pakistan, first time in legislative history in 1981, the president of Islamic Republic of Pakistan promulgated an ordinance about employment and Rehabilitation of Persons with Disabilities named as Disabled Persons (Employment and Rehabilitation) Ordinance, 1981. As an Ordinance it has its effectivity for six months but the 8th amendment in the Constitution, 1973 made the status of this ordinance as a permanent legislation? This Ordinance comprises three pages including a preamble and 22 sections as a whole. After 1981, in Pakistan there has not been any legislation on the subject and have not improved and updated this ordinance. This ordinance had many drawbacks and shortcomings in the Disability Rights perspective. As a part of this Ordinance and in continuance of disability legislation in Pakistan the Government of Pakistan has passed the bill of Rights of persons with disability in 2020. The drawbacks and shortcomings in previous legislations should have to be removed through the new legislation but unfortunately the previous legislation has not to be improved through the ICT Act. The Rights of Persons with Disability Act, 2020 seems to be just a formality and dust thrown in the eyes of persons

[8] Fleischer & Zames, Doris & Frieda (2001). The Disability Rights Movement: From Charity to Confrontation. Temple University Press.p:9

[9] *Ibid*

[10] See a report on "A brief history of the disability rights movement and disability discrimination" prepared by Disability Rights Centre Staff, 2004-2010. Bancroft Library, University of California, Berkley. P: 1-28

[11] Befort & Donesky, Stephen & Tracey (2000). "Reassignment under the American Disability Act: Reasonable Accommodation, Affirmative Action, or Both?" University of Minnesota Law School. P:1-10

with disabilities. As this Act has been abruptly come into force as the result of protest of persons with disabilities. Now we review this legislation parallel with the ordinance, 1981.

THE DISABILITY DEFINED IN THE ACT

ICT Rights of Persons with Disability Act, 2020 defines disability as;

> “"disability" means a long term physical or mental condition that limits a person's movements, senses or activities and shall include physical, mental, intellectual and developmental disorders or sensory impairments which in interaction with participate fully and effectively in day to day performance and interaction with others on an equal basis”[12]

This definition is not a full-fledged definition expressing the disability as a whole. What does mean by “a long term” in this definition? For how long if disability lasts it would be considered as a disability. For how many months or how many years, the term “long term” includes. This definition doesn’t explains “the adverse substantial effect of disability”. If the word “substantial” is not used in the definition than the very least disability can fall into the definition of disability.

THE RIGHT OF POLITICAL PARTICIPATION

ICT Rights of Persons with Disability Act, 2020 prescribes the Right of Political Participation of persons with disabilities as;

> “Persons with disabilities shall have full right to participate in the political activity in the country including exercising right of vote and right to be elected to an elected body”.[13]

Although, this section gives persons with disabilities right to exercise the vote and right to be elected to an elected body but this

[12]See Section 2 for definition clause “disability” ICT Rights of Persons with Disability Act, 2020.
[13] See Section 16. ICT Rights of Persons with Disability Act, 2020.

section ignores a basic political perspective. As it is a common perception that parliament of a country has a representation of people from different areas and different classes of people. The minorities have their specified seats in parliament to represent themselves. The women have also a reserved quota of seats in the Parliament. The people from tribal areas have also their specified seats in the Parliament. Why this particular political presentation of people from different areas and classes? The one class of people from a specified area of a country doesn't understand the problems and issues of other area and class of people. It is just as a patient who knows the intensity of his disease. The non-patient doesn't know what pain and disease is? The minorities know their problems and issues. The women asquint with their problems. The people of tribal areas know their conditions and problems. Likewise, the persons with disabilities know their problems and issues. Therefore, it is necessary to reserve seats for them in the parliament as they have been given a quota in the employment. We have also an example of political participation from the Islamic history. The Prophetﷺ appointed Abdullah-ibn-Umme-Maktum (a blind companion of the Prophetﷺ) a Governor of Madinah in his absence when heﷺ traveled to Makkah for performing Ummrah in 6th hijri. Abdullah-ibn-Umme-Maktum also performed the function of Imam in Madinah Mosque in the absence of the Prophetﷺ.[14]

THE RIGHT OF EMPLOYMENT

Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 Section 10/1 says about the right of employment as detailed in the quota system:

> "Not less than one percent of the total number of persons employed by an establishment at any time shall be disabled persons"[15]

ICT Rights of Persons with Disability Act 2020, Section 24 says about the right of employment as detailed in the quota system:

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[14]Mubarak Puri, Safi-ur-Al Rahman, *Alraheeq-ul-Maktum*. Maktbah Al-Salfiyah, Lahore, Ed 1995. P;459

[15]See Section 10, sub section 1, Disabled Persons (Employment and Rehabilitation) Ordinance, 1981.

> "Not less than one percent of the total number of persons employed by an establishment at any time shall be persons whose names have been registered with the Council or its designated office of the area in which such establishment is located and against whose names in the register maintained under section 23 an-endorsement exists to the effect that they are fit to work"[16]

In both legislation the previous and new one, we see the percentage of employment of persons with disabilities remained same (one percent). While a period of forty years (1981-2020) exists in both legislations. Has the number of persons with disabilities not increased in the population of country in forty years? Does this one percent quota proportionate to the estimate of ten percent of the number of whole population of a country as entailed by WHO?

ICT Rights of persons with Disability Act, 2020, section 10/3 says:

> "The government shall reserve an employment quota as prescribed by the Federal Government to be periodically reviewed, at various levels for persons with disabilities in government departments, institutions, entities and corporate entities owned and managed by the government and the concerned department shall implement the allocated quota."[17]

This section seems apparently that the quota percentage would be reviewed periodically but the question is here that why didn't upraise the one percent quota according to the population of persons with disabilities. The more better way was firstly to upraise the one percent quota according to the number of persons with disabilities of the whole population of the country so that the gap between 1981 to 2020 in respect of the number of persons with disabilities to be filled in and then secondly, the section 10/3 of ICT Rights of Persons with Disabilities to be inserted.

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[16] See Section 24, ICT Rights of Persons with Disability Act, 2020.
[17] See Section10, sub section 3, ICT Rights of Persons with Disability Act, 2020.

Another loophole and technical fault of this legislation is to be seen in section 25

> "Establishment to pay to the Fund.- An establishment which does not employ a person with disability as required by section 24 shall pay into the Fund each month total sum of money it would have paid as salary or wages to a disabled person had he been employed".[18]

This loophole and technical fault was existed in Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, Section 11

> "An establishment which does not employ a disabled person as required by section 10 shall pay into the Funds each month the sum of money it would have paid as salary or wages to a disabled person had he been employed".[19]

We see in both sections in both legislations that if any establishment does not want to employ a person with disability, shall pay into the fund each month the sum of money it would have paid as salary or wages to a disabled person had he been employed. The previous and new legislation made the right of employment of a person with disability as a discretion of the head of the institution. He may or may not employ a person with disability. Both legislation put the right of employment of the person with disability totally at the disposal and discretion of the head of the institution. Both sections 25 and 11 of the new and old legislation respectively make the right of employment non-obligatory and create a question of choice in the hand of the head of the institution. If he doesn't like to employ a person with disability or he doesn't have a person of his own choice, he will deposit the wages of vacancy into the fund and left the vacancy vacant. He doesn't feel any burden of this situation as he is not paying into fund from his own pocket.

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[18]*Ibid* at Section 25, sub section 1.

[19]See Section 11, sub section 1, Disabled Persons (Employment and Rehabilitation) Ordinance, 1981.

In fact, the loophole in both sections is a great barrier in the way of exercising the right of employment for persons with disabilities. The dangerous element of both these sections is that the right of employment of a person with disability may be gone on the prejudice of the head of the institution as the question of choice rises here.

BOARD OF ASSESSMENT AND DISABILITY CERTIFICATE

Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, Section 12/2 is about issuance of disability certificate.

> "The Provincial Council shall, if it thinks necessary, cause each disabled person registered under sub-section(1) to be assessed as to the nature of his functional disability and also as to his aptitude and the nature of work he is fit to do by a medical officer authorized by it in his behalf or by such assessing board consisting of not less than one medical officer as it may appoint, and the medical officer or, as the case may be, the assessing board shall submit its report to the Provincial Council in such form as may be prescribed by the [20][Government]."[21]

Medical Officer is a member of assessing board. He is off course, a medical specialist but he doesn't have any skilled knowledge in disability studies. Therefore, it is not possible for a person to give an opinion on any specialized issue unless he has got a knowledge of that specialized area through a specialized degree. There has not been setup any criteria in this section to assess the disability. Sometimes, the person has a very low nature of disability which doesn't affect his day to day performance, gets a disability certificate.

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[20]Substituted by the Disabled Persons (Employment and Rehabilitation) (Amendment) Act 2012 (XIII of 2012), for the words "Provincial Government".

[21]See Section 12/2, Disabled Persons (Employment and Rehabilitation) Ordinance, 1981,

NATIONAL COUNCIL FOR THE RIGHTS OF PERSONS WITH DISABILITIES

ICT Rights of Persons with Disability Act, 2020, Section 21/1 strengths and reconstitute the National Council for the Rehabilitation of disabled persons and make this council stand reconstituted as the council of rights of persons with disabilities. This council consists of sixteen persons including Chairperson and Vice Chairperson with fourteen members. Three of them are persons with disability. The following is the structure of the National Council for the Rights of Persons with Disabilities;

> "A Minister -in-Charge; Chairperson, Vice Chairperson Secretary of the Division allocated with business of this Act; two members from the Senate, one each from government and the opposition; Members; Two members from the National Assembly one each from government and the opposition one representative from Ministry of Information, Broadcasting, National History and Literary Heritage not below the rank of Joint Secretary one representative from Ministry of Finance, Revenue and Economic Affairs not below the rank of Joint Secretary, one representative from the Division allocated with business of education not blow the level of Joint Secretary, one representative from the Division allocated with the business of poverty alleviation and social safety not below the rank of Joint Secretary, an officer not below the rank of a Joint Secretary of the Division to which business of this Act stands allocated, chairman, Capital Development Authority (CDA), chief Executive or Head of National Institute of Rehabilitation Medicine (NIRM). Three persons with disability.[22]

The Chairperson, Vice Chairperson and members of the council belong to different departments of the state. The function of the council is to manage and supervise the administration of rights of persons with disabilities. They also representatives of persons with

[22] See Section 21, ICT Rights of Persons with Disability Act, 2020.

disabilities. Chairperson and Vice Chairperson and other members belonging to different departments of the state, have already a huge burden on their heads to manage and administer their own departments. How can it be possible for them to bear a burden of another department (the rights of persons with disabilities)? In this way, can they do justice with their jobs? Off course, if they don't express the feeling of extra burden over their job verbally but they have ill feeling about this extra burden in their heart. Secondly it is also injustice with them to take the services for which they are not payed. Thirdly, this council comprises only three members with disability. This thing force us to think keeping in view the proverb "that a person who have a pain in his body, he knows what a pain is"? The persons who haven't any disability, how can they know what disability is? Therefore, the section 21 has a technical drawback and fault to make the council comprises proximately 90% representation of non-disability element in the council.

ICT RIGHTS OF PERSONS WITH DISABILITY ACT, 2020 SEEM TO BE A POLICY RATHER THAN AN ACT

ICT Rights of Persons with Disability Act, 2020 seem to be a policy rather than an Act. This act where it entails the services or rights in its sections, it uses the terms "Shell Ensure, Shell take measures, Shell take necessary steps, Shell establish, May set up" These terms are often used in a policy rather than in an Act. Secondly, there is no any time framework or time limits for Provision of services to persons with disabilities. As we note in section 7;

> "The government as well as the private sector shall take necessary measures towards allowing ease of access to the persons with disabilities to public buildings, hospitals, recreational facilities, public transport, streets and roads for which the old buildings and vehicles shall be appropriately modified and new buildings and vehicles shall be built conforming to appropriate standards in conformity with guidelines developed by the Council:

> Provided that the government shall ensure accessible washrooms, toilets and bathrooms with all the facilities and necessary accessories".[23]

The section 7 has six total number of sub-section. All these sub-sections entails the right of ease of access and mobility but there has not been entailed any time framework or time limit for provision of these services. What will make bound the services providers in public and private sectors to provide these services up till this time (month/year). Section 7 has an ambiguity in this Act.

REDESIGNING THE DISCRIMINATION CLAUSES IN THE CONSTITUTION OF 1973 IN ORDER TO BRING THE DISABILITY RIGHTS IN LINE WITH THE PROVISIONS OF THE CONSTITUTION OF 1973

As it is claimed in the preamble of ICT Rights of Persons with Disability Act, 2020 that all issues related to disability should come in line with the Provisions of the constitution of the Islamic Republic of Pakistan. In order to obtain this objective, it is a dire need to redesign the discrimination clauses in the constitution of 1973. Clauses 25 is about equality of citizen. Its sub clause says about discrimination.

> "(1) all citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children".[24]

The Clause 26 sub clause 1 says about discrimination in respect of race, religion, caste, sex, residence or place of birth.

> "In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination

[23] See Section 7, ICT Rights of Persons with Disability Act, 2020.
[24]See Article 25, sub clause, 2. The Constitution of Islamic Republic of Pakistan, 1973

> against any citizen on the ground only of race, religion, caste, sex, residence or place of birth".[25]

The Clause 27 sub clause 1 says about discrimination in respect of services and employment.

> "No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:"[26]

The above mentioned clauses of the constitution of Islamic Republic of Pakistan says about non-discrimination against any person on the basis of race, religion, caste, sex, residence or place of birth. There is no mention of discrimination on the basis of disability in these clauses. It is therefore, necessary to redesign the discrimination clauses in the constitution of 1973 by inserting the word "disability" in order to bring the disability rights in Pakistan in line with the provisions of the constitution.

[25] *Ibid* Article 26, sub clause, 1
[26] *Ibid* Article 27, sub clause, 1

CONCLUSION

As there have been a protest of persons with disabilities in the country for the last certain years. The federal government has very hastily enacted the bill of ICT Rights of Persons with Disability Act, 2020 as the result of that protest. Actually, this act is a dust thrown in the eyes of the persons with disabilities or just it is a “dalasa” consolation to the persons with disabilities. We may say that this enactment is a “tikki Taaffe” given to the persons with disabilities and they have been happy with this “tikki Taaffe”. There is a dire need to remove technical drawbacks and short comings in this Act and revise this enactment.

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FAIRNESS AND EFFECTIVENESS OF IDENTIFICATION PARADE IN MANAGEMENT OF JUSTICE SYSTEM IN PAKISTAN

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ABSTRACT

Identification parade is a practical procedure to find out the real offender with the help of witnesses. In Pakistan, this procedure is used in criminal cases where eyewitness recognize the culprit in presence of magistrate. But through this article, we are going to analyze, how much this procedure and technique is fair and effective for the administration of justice in Pakistan. To provide justice and equality among the nation, it is important to follow the proper law and order in every aspect of management. This article explores fairness and effectiveness of identification parade in Pakistan. Eyewitness is highly important and vital as far as the criminal cases are concerned, so to know the credibility of eyewitness, it is essential. Therefore, this article focuses objectively, whether it is present or not in the technique of identification parade, and on the other hand, it also addresses the value of this procedure in Pakistan. Moreover, it also explores that how this procedure is faulty and becomes horrendous for the innocent. To analyze this paper, we will follow the qualitative method and different cases laws are used to support our idea.

Keywords: Identification, Effectiveness, Fairness, Qualitative, Objectivity.

INTRODUCTION

Identification parade has its own history, it was started in England in the 18th century in the England. This method has considered useful for better identification in the criminal law. This method is conducted with rules and regulations, in this regard, a person is present amongst the other suspects who are very similar to them and witnesses are there to recognize them. On the other side, it is considered two side checks, one is for suspect, and secondly, it shows the credibility of witness. This method is most commonly used in all over the world[27].

It is principle about the identification parade that it should be conducted with proper rules and regulation, if it is not conducted with proper rules and regulation, it would be worthless. For the fair identification, it should be according to the set pattern of given direction. In the whole world, it is conducted with full prudence.

Justice and fair trial is right of every individual, so far as the justice and fair trial is concern this issue is highly debated in the modern world as well. In the primitive time period, there were no proper rules and regulations where the people were living in horrendous environment, where rights were only for the upper class, on the other side, lower class lived their lives without rights, and their duty is to obey only the aristocratic class. After the renaissance, the period of evolution started and in 18 century the people were well aware of their rights and duties, it was the age of questioning where people question about their existence. Most of movements were started for the development of humanism, and supremacy of law and rights.

Identification parade is a matter of identifying any suspects. It is general rule that suspects are not a criminal till it is not proved that it is real criminal or the person who has committed the act of crime. So, identification parade provides assistance to recognize the real culprits, but in this process, there are many grounds on which this practice creates massive ambiguity and becomes a hurdle in the management of justice. In the subcontinent, overall system of justice is very slow and issue of fairness is there. Justice system in subcontinent is horrendous and people are facing serious issues regarding it.

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[27]JW Shepherd, HD Ellis & GM Davies. (1982) London Identification Evidence: A Psychological Evaluation at page 22.

Different cases are pending for long time, there are many flaws in this matter where Pakistan and India both suffer since their independence. According to "rule of index Pakistan judicial system in on 130 out 139," In this matter justice management system is massive slow and there are different issues in which political, economic, corruption and different other crises are involved[28].

In Pakistan, the overall condition of justice system is slow and horrendous because of many issues of which corruption, bribes, recommendations and money grabbing spirit are on the top which lead it towards horrendous and pathetic for the poor people. On the other hand, now in the modern-day scenario people are aware of their rights and duties but still in the remote area people become victim of tyranny by many ways such like political influence and illegal techniques.

Identification parade technique is commonly used in Pakistan, it is part of examination and investigation. So far as the law is concern, it is also not a regular rule of law, there is no set pattern present in any book. It is considered as a rule of prudence. But "section 22 QSO and Section 9 in evidence act" deals with it, on the other hand, Supreme Court has now decided some parameters for this method to use it fairly. Because in many cases witness fall prey of police's malafide intension, it is massive important in the criminal cases and it is witness's job to make it possible to identify the right person. In this regard, most of the time wrongly identification has been done, as a result innocent and poor was behind the bars.

So, we can say that parade provides chance to witnesses to recognize the right criminal who are collaborator and involved in the demeanor of offence, the main things are core important in this regards that recognized those one who have not identified earlier or previously as being engaged in the offence. This also deals with the facts that are stated to be appropriate bout occasion, name, individual and place.

Statement of the Problem

Pakistan is among the developing county, where crime ratio has increased in last two years due many problems, and on the other hand crime has an issue for the world, on the whole. Pakistan is present among those countries in which the procedure of

[28] https://worldjusticeproject.org/rule-of-law-index/country/2021/Iran%2C%20Islamic%20Rep./

identification is followed for getting proper result for the administration of justice. In this regard, most of people have been sent to judicial lockup for the procedure of identification parade. But some of them are guilty and some of them are innocent, as they are just victim unfairness during the practice of this procedure. It is also possible that the person who is eye witness is biased and unreliable Eye witness testimony that aims to identify the person seen at the relevant moment has a significant probability of being unreliable. The study is keen to perform an investigation into the effectiveness of identification parades, in relation to the problem due to flawed eye witness evidence of identity. This piece of writing is keen to perform the examination of identification parade regarding how much fairness and effectiveness is present in Pakistan for this technique, because in this regards many people become victim of tyranny and poor identification system due to not following of proper rules and regulation according to the given direction of our honorable Supreme Court.

Research question:

- Whether the identification parade method is effective and fair or not with respect to the administration of justice in Pakistan?
- What are remedies which Pakistani law provides to an accused, who has become a victim of unfairness, convicted due to tyranny of faulty identification parade/ or follow wrong technique or procedure?

Objective of research:

The objective of this study is to explore the method of identification parade in Pakistan. On the other hand, the main objective of this research work is to explore how much effective and fair this method is in our country, also it addresses remedies for those who become the victim of this method.

Significance of Research

This research explores the different problems related to Identification parade. The main importance of this study is to show issues which arises on the basis of faulty identification parade and also the danger faced by the people who are trapped on the name of identification parade. In Pakistan, this procedure is used on daily basis for the identification of person, who is demanded in any case. So, in this regard, it also looks into issues that are just because of tyranny, false recognition of any person and their consequences.

Research Methodology

This research is about the identification parade and it has followed the qualitative method. In this research work, the data is collected with the help of ethnographic technique, observations, different articles related to Identification parade, and different case laws related to it. So, in this regard, I will follow the discussion method to analyze this piece of research work because it fulfills the requirement of our research.

Literature Review

This book covers all aspects of identification parade in this book authors have enlisted all the issues and importance of this test, also they describe that how much this technique is valid. On the other hand, he explores that in identification parade must be conducted in front of any valid authority, "judge or any higher authority". If any witness identifies any accused as a main criminal so it is duty of judge or duty officer to write down those points on the basis of the identify the suspect. So, it will helpful to avoid any inconvenience or false identification[29].

In this research work he explores the importance of identification parade that in the criminal cases it provides way to find out the real culprit because it is helpful in those cases where culprit is hidden. In his paper he shows its importance and explores that it is legal system in six different big European countries. On the other hand, he said that it is not only a matter of identification but it also deals with the matter of memory because sharp memory required recognizes the main culprit[30].

In "The identification parade: organization and preparatory aspects of investigation." Author is explaining the nature of identification parade that why it is necessary and its role in the criminal case, also it addressed those precautions are very important to conduct this research work, because if it is conducted with proper precautions, it will lean towards faulty result. In this regard, this investigation is totally distinctive, because it is carried out only single time, otherwise it loses its evidentiary value.

In another source, namely "Distinguishing accurate from inaccurate eyewitness identifications with an optional deadline procedure"

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[29]Penrod Steven. D. *Mistaken Identification. Cambridge* (England: 1995), 56

[30]Wójcikiewicz, Józef. "On the Benefits to Polish Law of a Comparative Analysis of Identification Parades". (West: October), pg123-34. https://doi.org/10.12775/CLR.2013.007

author provide practical experiment of identification parade. In this regard, he conducted two different experiment to show the both result accurate and in accurate. He explores that with proper, careful and force method this method is useful, but if biasness is present and people know already about the accused, then this would be useless method because it will not provide a positive result[31].

In a study carried out in England, "Identification on the street: a field comparison of police street identification and video line ups in English" Author shows through this research that identification parade is also conducted through videos and other method. In this regard through video identification, 84% accused were arrested but he also explores, through video identification the accuracy is more than the traditional identification parade. In this procedure, the police mixed different videos and asked the people to identify who are real culprits[32].

In "Test Identification Parade as a Tools to Better Criminal Justice Administrator" author examines the value of witness that identification parade does not show the culprit but it also explores the credibility of witnesses, because it is also important that witness must be genuine. Through this test credibility of witnesses must be measured in proper way, if they fail to recognize the true person that means that they are not genuine one[33].

In another book published under the title, "Identification Evidence - A Psychological Evaluation" author discusses about the identification widely. This book focuses on the psychological perspective of the person, who is there for identification of the accused. In this book, he also discusses about the faulty identification because most of the time, witness' are artificial, i.e.,

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[31]Brewer, N., Weber, N., Clark, A., & Wells, G. L. "Distinguishing accurate from inaccurate eyewitness identifications with an optional deadline procedure. Psychology, Crime & Law," (Australia: 2008), p: 397–414. https://doi.org/10.1080/10683160701770229

[32]Davis, Josh & Valentine, Tim &Memon, Amina& Roberts, "Identification on the street: A field comparison of police street identifications and video line-ups in England". (England:2015), p: 21

[33]Sonthalia, Shubham, "Test Identification Parade as a Tools to Better Criminal Justice Administrator" (India: 2021), pg22. https://ssrn.com/abstract=3861072 or http://dx.doi.org/10.2139/ssrn.3861072

they were made after the incident. So, this book covers vast aspects of identification parade[34].

The article, "Identification parade: An empirical survey of legal recommendations and police practice in South Africa" by author highlights, important points regarding the identification parade. He explores that this technique is followed in many countries all over the world, but still there is fear of faulty identification and in this way an innocent may be trapped because of many mistakes done by the authorities who conduct this practice, in this regard, he suggests that jury should take this thing very serious and it should be conducted with proper method and in careful manner[35].

Another book, "Criminalistics. Pretoria" highlights the whole system of identification parade, where he wrote down about aspect of identification parade. In his country South Africa, this technique is used to identify the accused, he describes that in every case police used this method. Through this book, he explores that in every incident identification parade is not necessary. This test must be conduct in specific scenario where criminals are unknown and witness can be able to identify after they see them[36].

As per "THE POLICE RULES, 1934," police order (26.32), the whole road map of identification parade is described. In the whole subcontinent, this rule is properly followed by the courts to carry out this technique. In this regard, the whole road map is described, it is mentioned here, that it should be done with proper measures and under the supervision of magistrate or higher authorities. It is also mentioned that police and witnesses should not interacted with each other during this whole procedure, because if the witness already knew about the identification of criminal, this test would no value[37].

In case law "walayat vs state" the High Court has provided clear direction regarding the identification parade, because before that in this case, police was involved with the culprits and no proper evidence was there for their conviction. In this regard, The High Court has given the clear direction regarding the Identification test

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[34]John W. Shepherd, Hadyn D. Ellis, Graham M. Davies *"Identification Evidence: A Psychological Evaluation" (winter: 1983),* pp. 591-595.

[35]Annegret Rust "Identification Parades: An Empirical Survey of Legal Recommendations and Police Practice in South Africa" (Africa :1998)

[36]T J Van Heerden "Criminalistics" Pretoria, (University of South Africa: 1982).

[37]RULES AND ORDERS OF THE LAHORE HIGH COURT, LAHORE VOLUME II

is concern and provide full mechanism to conduct this test with full precautionary measures[38].

In case law "Muhammad Yaqoob and another Vs the State," Justice Khalil Ur Rehman Ramday states that identification parade is an important test, because in this practice both credibility is going to be test, but unfortunately in Pakistan, mostly tests are just formality. Witnesses already know about the criminal or police are involved in it, because they already show their faces. In this way, innocent or original criminal both are affected. So, in this case law Justice Khalil-Ur-Rehman Ramday provided a guide line for police that it is moral duty of duty officer that he must adopt precautions after arresting the accused if they show the faces of accused then this test is worth less[39].

Article, "IDENTIFICATION PARADES: FAIR OR UNFAIR?" explores the judgment of South African High Court "THE STATE And ZWELETHU HAROLD JOSEPH MTHETHWA". This research work is about the direction of identification parade, the judge provides proper road map to the officials who conduct the identification test, on the other hand, he also stressed on the police officials that it's their duty to make sure about all the precautions for this test, if they failed to control it, then innocent will be trapped by this tyranny and original criminals will be free[40].

"A QUAGMIRE OF IDENTITY" asserts that identification parade is just a corroborative test to identify the accused. In this research work, author explores pros and cons of identification parade. In subcontinent, the investigation process is massively slow, as well as, it is full of doubt. The most important point of this piece of research is that without any competent authority, this test should be carried out. And if the doubt is present or ambiguity is there for faulty identification, then the competent authorities should go ahead for more investigation to avoid any false decision. Author also clarified, this test has worth when it is conducted by proper rules and regulations otherwise its result will be highly depending upon biasness[41].

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[38]*Walayat vs state (2008)* PLD 2008 LAHORE 470

[39]*Muhammad Yaqoob and another Vs the State (*1989) 1989 PCrLJ 2227

[40]Joubertscholtz, IDENTIFICATION PARADES: FAIR OR UNFAIR (2019), S v Mthetwa 1972 (3) 766 (A)

[41]Dr. Aditi Malhotra "A QUAGMIRE OF IDENTITY" (India:2016)

In this work the writer stressed on delaying of identification process that this tactic provides witnesses to know already about the person's identity that is behind the bar. In this way, the whole process of identification becomes formality and, in many times, innocent becomes the victims of this. In this whole delay in conducting identification leads this process towards negative result. Because delaying is the main tactic in which witnesses tried to know about the accused, in this way many times the innocent would be trapped under the tyranny of culprits with the help of police[42].

This research highlights the very much important point that it is an act of caution, and this test must depend upon the corroboration without it, it must be considered as worthless. In this whole research, he stressed upon two important points; first, that this test is not for identification only, as it also provides you the validity of the witness, and second, if it is conducted with full cautions result will be very much positive and if it is done with the intention of formality or biasness then it leads towards faulty decisions. Identification is matter of prudence; its shows dual effects, first, it explores the identity of the accused, and secondly, it also helps to check the credibility and memory of the present witness[43].

Fairness in identification is a massive issue, in his dissertation "Colin Getty" examined the whole procedure of this test, and in this regard, he explored that fairness in identification is most important but it is difficult, because mostly witnesses already have information about the accused with many reasons which are due to carelessness of the police officials. In this regard, he explored that similar dummies, and same face groups are not enough for fairness. On the other side, facial similarities will be useful technique for better result in identification parade only when officials will be careful from their end[44].

Another research done in Malaysia, points out that there are different types of identification method, but so far as the matter of

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[42]Amina Memon et al, Delay and Age Effects on Identification Accuracy and Confidence: An Investigation Using a Video Identification Parade (2012) p: 26

[43]Ratanlal & Dhirlaj (2007) India. The law of evidence 2nd Edition Wadhwa& company publishers Nagpur.at p: 21

[44]Tredoux, Colin Getty. *"Evaluating the fairness of identification parades with measures of facial similarity."* Thesis. University of Cape Town, Faculty of Humanities, Department of Psychology, 1996.
http://hdl.handle.net/11427/21840

criminal identification is concerned on the basis of witnesses, there are many techniques to identify the original criminal. According to this piece of work, identification parade is method which is mostly used in all over the world to identify the culprit, and in the Malaysia this method is developing day by day but there are some issues in this regard, as in many cases, their result is not up to the mark, just because of police officials. According to the investigation report of different trials it is noticed that ambiguity arises due law of training of the police officials[45].

This research work totally neglected that identification parade technique. In this research work, he wrote down about issues present in the technique of identification. He tried to prove that without corroboration or without proper justification, we cannot rely upon this process because many loopholes are there in this process of identification. In this piece of research work, he stated that we are living in modern era and now we have other methods to detect the culprit. In this regards, he tried to prove that this technique is old and in this technique many of results are on the basis of biasness[46].

Was another study conducted in New Zealand relates to the different methods of identification introduced in this regard. The author said that this method of lineup is not secured, many times witnesses are already aware of the person who is under the custody of police for identification, this research stressed on the mechanism of this whole procedure. He also said that is procedure is good, if it is done with full care under the supervision of authority, on the other side for reforms he has given the mechanism of reform of this method, author stated that head authority is responsible for fair identification[47].

In another piece of work in India, writer is in favor of this method. The author has supportive arguments for this test, but he has drawn some dimensions to conduct the identification parade. He stated that it must be conducted when magistrate allow them to conduct it. Extra judicial identification parade must be penalized and judicial

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[45]Rajamanickam, Ramalingam. (2018). Identification Parade: Current Position and Issues in Malaysia. 893-902. 10.15405/epsbs.2018.07.02.94.

[46]Meintjes van der Walt L (2016) " Judicial Understanding of the Reliability of Eyewitness Evidence: A Tale of Two Cases" PER / PELJ 2016(19) - DOI http://dx.doi.org/10.17159/1727- 3781/2016/v19i0a11601247

[47]Tinsley, Yvette --- "Identification Procedures and Options for Reform" [2000] VUWLawRw 11; (2000) 31 Victoria University of Wellington Law Review 117

authorities must take actions against them who conduct it to provide any favor. This method is not used against any innocent one, if it is used it should be declared as tyranny against the innocent people and it is totally unjustifiable and injustice[48].

ANALYSIS

Pakistan is an under developing country, it has faced many problems since its independence. So far as the judicial system of Pakistan is concerned, it still follows the primitive laws. Judiciary and all other machinery work under the set pattern of the said constitution of 1973 of Pakistan. This is a time period of postmodern era; our law system still relies upon primitive values of law. For the better result, we have to change with the time period. In this regard, many changes have been done in previous couple of years but still there are huge number of issues present.

Management of justice system is a big challenge with these all issues. This is great matter of concern that we face on daily basis according to the constitution of Pakistan. Justice should be providing on the door at an individual. But the condition is pathetic and poor. The justice system is vital for every nation. If there no justice then the society and nation is not more than barbarian. For betterment and development of any nation, justice system must be strong and quick. But in Pakistan the system is slow and many ambiguities are present which demands proper development and change according to the demands of modern time period.

Identification Parade in Pakistan and fairness

This method is very commonly used at local level to identify the witness in our country. This method is generally used in the criminal matters to make sure about the real culprits. On daily basis, our local police arrest many accused for the sake of this test. On the other hand, to arrest for identification is fair but if there is any mala fide intention, then it is totally injustice with every individual.

Commonly in Pakistan in remote area people are not aware of their rights and duties properly and also do not have proper access to modern devices, in this context police and other authority arrest the suspect in the name of identification parade and most of the time put them into the judicial lockup or illegal custody for no reason,

[48]Anand, Ravi, Proof of the Identification Parade (April 2, 2009). Available at SSRN: https://ssrn.com/abstract=1372353 or http://dx.doi.org/10.2139/ssrn.1372353

Identification parade is matter of caution, in which authority check the reality and credibility of the witnesses but in Pakistan this techniques is massive faulty on many reasons, in this most common is illegal intension where innocent are trapped by the police, they put accused in jail for identification reason but with mala fide intension on the part of police, they delay this test, which is totally illegal , according to case law, if it is delay in identification parade it is totally illegal and worthless as a matter of evidence[49].

Most of time, identification parade is held in police station in the presence of police officials, but this is not rule to conduct extra judicial identification parade it is clear instruction of the supreme court that it must be done under the supervision of judicial magistrate it is common practice in Pakistan that it report must be rely upon the extra judicial test of identification but it is clearly illegal because commonly in this way many of important precautions were neglected if it conducted in police supervision, it should be conducted in police station but not in the supervision of those official those who arrest them[50].

In Pakistan, this technique is used on daily basis but many ambiguities are present just because of not following the proper instruction. Moreover, in past some years people suffer a lot from this because many of them trapped, in many cases picture and identity are already revealed to the witnesses by police or by any other person who is involved in arresting the accused on this regard accused was identified by the witnesses. So, on this account if police arrested and disclose identity to the witnesses it is totally injustice by this act many of young guys spent illegal detention. On this Sindh high court give proper judgment to arrest any person on this ground of identification parade and reveal its identity is massive horrendous crime it should be retaliate and safe the people[51].

Illegal detention is a major cause; identification parade is an excuse to detain an individual. In many times people are held at unknown places and when family member report for their misplacement, it is noticed that they are present in a lockup or somewhere else in legal detention. When officials question about their arrest they answer, this person is accused and it is suspect in xyz case. It is just because

[49]Abdullah Shah vs state NLR 1999 Cr. 217
Manzoor vs state PLJ 1995 FSC 68
[50]M. Hayat vs state2021SCMR 92
[51]Muhammad Yaqoob and another Vs the State1989 PCrLJ 2227

of that there is no proper check and balance properly and also people are not aware of their legal rights.
At local level time and again judiciary provide guide line to conduct this method properly, in this way, every kind of guideline has been provided to the police officials but still the despicable type of investigation is there. These kinds of problems lead towards the injustice and unfairness in the value of identification parade in society.

ROLE OF MAGISTRATE AND RULE OF PRUDENCE IN IDENTIFICATION PARADE

This procedure is highly worked on the mechanism of caution and care in these regards authorities must put their eyes on it, if the magistrate is not present or this test is held without any sufficient authority so it is considered as worthless. The condition of this parade is depending upon care, and prudence. In the recent case law, it is clearly defined that magistrate will command all the procedure and it is his duty to check everything properly.
No other witness is allowed who has already an idea about suspect or know his identity, even the police officials who arrested the suspect cannot be able to participate in this procedure and are not allowed to meet the witnesses and the suspects. These all things came under the shadow of caution and it is very important to conduct this test in positive manner and duty of magistrate to look after all the scenario[52].

INFRINGED RIGHTS OF SUSPECT AND IDENTIFICATION PARADE IN PAKISTAN

Pakistan's population is on the 5th rank in all over the world, in this regard, the problems are increasing. Day by day human rights infringement has become common in the country. Moreover, corruption is also present, though authorities, organization, government and judicial machinery are trying a lot to overcome these all issues but poverty and other problems are in massive numbers which infringes human rights in our country. In every case, it is the constitutional right that suspect can get legal assistances from his lawyer, and he has constitutional right of fair assessment or

[52]M Imran vs state 2021 YLR 95

trial. But now a days, it seems impossible for poor and illiterate person. This is reason behind the tyranny of police work who arrest the suspect and detain them illegally for no reason.

"In Karachi, the Rao Anwar cases the biggest example of tyranny who arrested the suspects and put them in illegal custody". It is proved in the early investigation against him that many of innocent people became the victim of his tyranny in Pakistan. He arrested many of young guys, put them in jail and declared them militants and traitors, in this context, he committed false identification and killed many of them in extra judicial encounters in Pakistan[53].

In all the discussion, this technique is effective only, if it followed all the directions of the authorities. This is fair enough with all the suspects that they must be judged on the merit and this true formula must be applied during the trial of identification parade. In the rest of the world, now there are many other techniques to identify the suspects, moreover they used this technique as matter of prudence only, not for as a statute of law.

As far as effectiveness and fairness is concerned, witnesses must be judged by the honorable magistrates and judges, because in their proper presence, this procedure has worth and corroboration is necessary in this. This is age of modern technology and development, it is duty of authorities' and police officials that they use proper techniques to deal with all the ambiguities in a right manner to avoid injustice. Moreover, whoever is involved in any illegal act to trapped innocent people must be treated strictly according to law and order.

REMEDIES

"Pakistan follow the constitution of 1973, where proper road map has been provided. In the light of constitution 1973, article 9 and 10 provide proper safeguard to the citizen of Pakistan". Liberty is core right of every individual, whereby if any person is suspected in any case, he or she has a right of fair trial. There are many remedies in this regard to make sure justice prevails in Pakistan.

On the account of identification parade, now in modern age we have to take it as matter of caution and do it with full care. This is not a

[53]Mehr Ahmad (2018) the Slain 'Militant' Was a Model, and a Karachi Police Commander Is Out

single person's duty to follow the road map. In this regard, justice Khalil-Ur-Rehman-Ramaday provided full guideline to make this procedure valid and applicable for the justice system, before that many of cases were reported which are full of biasness and extremely influenced by the feudalistic culture.

On the other hand, government should take action against the culprits who play with the life of innocent people. The power distribution is also a massive problem, some of the officials used their power in illegal activities; they used government machinery for their own money grabbing spirit. This results in horrendous form of tyranny which would increase if government does not take action against it. To avoid these kinds of problems, and trial must be fair and effective in which innocent will be set free on merit and culprit must be behind the bars.

The most important thing is we are living in a period of post modernism, where development and other most modern equipment's are present. And our investigation teams should be aware about all these techniques. So development must be there and most accurate and best will be depending upon it. In Pakistan the investigation method is adopted from primitive time period and still there is no proper change according to the modern requirement of time. There is a need of some special training centers, where these teams should be trained and modern gadgets and other devices should be given to them for better and accurate results.

CONCLUSION

In the light of above all mentioned discussion, hence it is proved that there still are many problems and issues present in management of justice system in Pakistan. Identification parade is method to test the witness' credibility as well as to identify the unknown suspects. On the other, it is proved that in this method there are many issues and hurdles to conduct this method fairly. This method should only be used as principle of prudence, not as a matter of proper law, because many time through this technique people are trapped in the hands of corrupt officials which lead towards the illegal detention and illegal custody.

Identification parade's effective value is carried out only when there is fair trial, proper method and caution should be adopted and all measure should be taken to complete this process but in Pakistan this process is used to trap different people on the account of different issues, many of officials are involved in it because they already disclosed their identities to witness on this account government should take serious steps against it and it must be under strict care and the people who are responsible to tamper and disclosed the identity must be retaliate by serious penalties.

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THE ROLE AND IMPORTANCE OF AMICUS CURIAE IN THE ADMINISTRATION OF JUSTICE IN PAKISTAN

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ABSTRACT

The usage of the term 'Friend of Court' or more precisely Amicus Curiae have been a common practice in Pakistan's legal system. Although there is no crystal-clear stance of Amicus Curiae in the legal system of Pakistan, but it takes its shadow of volubility from the articles 59 to 64 which states the opinion of third person as given in the Qanoon e Shahadat Order 1984. The term Amicus Curiae is quoted many a times in the decisions of the respected courts. Also, the judges of the Supreme Court of Pakistan have considered Amicus Curiae in their judgements. This article aims to determine, paramount, understand, and examine the legal position of Amicus Curiae under the Qanoon-e- Shahadat Order. Amicus Curiae can be quoted as evidence under the Qanoon-e-Shahadat Order, however, it does not have its binding force under the Criminal Procedure Code. Therefore, the courts are free to consider the opinion submitted by the Amicus Curiae.

Keywords: Amicus Curiae, Qanoon-e-Shahadat Order, Criminal Procedure Code

INTRODUCTION

In the legal system, 'proving of a fact', constitutes the most important phase of the proceeding, and also in the criminal law proceedings, its importance cannot be ignored. Conviction and acquittal of a person at any cost can't be done in arbitrarily or ambiguous manner. For this sole purpose the presence of a clear and probative evidence is very important and necessary as it has the direct effect on the decision of the court. The proving of a fact or law in a case is very important to determine the legal or persuasive truth in the proceeding as the determination of the absolute conclusion, truth is very difficult to obtain. In the Qanoon e Shahadat Order, there are several kinds of the evidences such as 1) the evidence given by the witness, 2) the evidence given by the expert, 3) the evidence given in a form of document, 4) the evidence given through the circumstantial corner and 5) the evidence given by the accused person[54]. Amicus Curiae by the meaning of words means, 'Friend of the court', the term includes an individual or group of individual or a legal person who is not directly involved in a case but their opinion under the provisions of Qanoon-e-Shahadat can directly or indirectly can affect the remarks of a judge thus can result in effecting the decision of the court. It has been observed from past years that the use of amicus curiae has been increased in the local courts of Pakistan. However national and international jurists still have a debate on the origin of the said term. Some legal jurists and researchers have a theory of the origin of Amicus Curiae that it takes its origin from the Roman era of emperors, however some think that it can be traced back to the time of Holy Prophet (P.B.U.H).[55] In Pakistan, the position of Amicus Curiae remained uncertain for a specific period of time, but with the passage of time and by the help of the amendments in the law, the worth of amicus curiae in helping in the decision of the courts has been increased. However, there still exists the uncertainty in the guidelines, methods and proper consideration in form of money or other for amicus curiae.

The Amicus Curiae can give the statements in the documented form in front of the respected court of law, however, it can also be

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[54] Phipson Evidence,14th Edition, Para 2-06; Taylor SS- 3-21

[55] Mazhar Hayat. Islamic Law and jurisdiction a case study. PLD Publishers,2014.674

recorded in oral manner in front of the respected court. In 2014, the respected Supreme Court of Pakistan declared that the expert opinion can be regarded as the evidence by amicus curiae and the rule admitting and governing it maybe founded in the prestigious doctrine, which is doctrine of necessity, as in general practice the court may seek help from the said doctrine. In other countries like United States, the mental health legal organization can submit written form of affidavits as evidence and also amicus curiae to guide respected courts about a situation or about the mental health of a person which will affect the judgement of the court. Many other examples of the use of Amicus Curiae have been seen in Pakistan, as in the case of Mr. Ali vs the State, it was stated that the convict was suffering from the mental disease namely schizophrenia, and the court called the amicus curiae from the Psychiatrist Association Pakistan, who presented his report regarding the mental health of Ali, in which it was concluded that since schizophrenia is not a permanent mental disorder, that's why the murder committed by Mr. Ali was in his complete consciousness and that he will be convicted as a murderer.[56] In addition to that the use of amicus curiae was also used in Pakistan more rapidly to ensure that no discrimination is present and that the judgements of the cases are transparent without any type of partisanship with respect to the race, religion, color of a person. The legal position of Amicus Curiae in Pakistan is still not clear as there exist no specific guidelines relating to the appearance of amicus curiae in the court and how much experience he needs to prove a fact and that what will be paid to him on his appearance, however the amendments in QSO have made the relevancy of the evidence and its stance clearer[57]. However, in the proceedings of the criminal law, the stance of amicus curiae needs more clarity in Pakistan so that there shall exist no kind of ambiguity. The Supreme Court of Pakistan in in 'Safia Bano v. Home Department, Government of Punjab', considered the utmost value of the stance and provided that the opinion given by an expert in the context of

[56] Mst. Safia Bano Versus Home Department Govt. of Punjab through its Secretary and others, Civil Review Petition No. 420 of 2016 in Civil Petition No. 2990 of 2016 (To review the judgment dated 27.09.2016 passed by this Court in C.P. No. 2990 of 2016)

[57] Report by UN Commissioner for refugees Submission of amicus curiae in Pakistan,14 December 2018, Publisher: UNHCR

the case and having the required experience which seems professional can be regarded as the court. There is need for the clarification in the position of Amicus Curiae in Pakistan. The author's background of study states that after the conversion of the law of the evidence into the Qanoon-e-Shahadat and after the amendments of the articles. The opinion given by the third who does not have any interest in the proceedings in front of the court but his opinion can affect, directly, the proceeding of the court, was made relevant. This made the legal stance of the amicus curiae clearer in the legal system of the Pakistan. However, the requirement of the rules related to the experience of a person in the relevant field, his qualification to give a certain opinion were not made clear and also how much he is needed to be paid and who should pay him was not made clearer by the law. However, the respected Supreme Court made several decisions in this regard, but there exists contradiction with respect to different situations in different cases. There is a need for the legislation in this regard by which the proceedings involving amicus curiae can legally regulated.

RESEARCH METHODOLOGY

This normative research article relating to legal field uses the legal standards, principles, morals and norms from various informative sources which include laws, rules, principal bodies, case laws, precedents, doctrine for the application of Amicus Curiae, opinion by third person in the legal system of Pakistan.

RESEARCH OBJECTIVE

This research aims to clarify the status of the Amicus Curiae in the legal system of Pakistan and to make grounds for the legislation in this regard. There are some grey areas and loopholes in the position of amicus curiae in the law of Pakistan regarding its manner, qualification and salary, however, the QSO have stated and clarified the relevancy of the statement given by amicus curiae in the legal proceedings.

RESEARCH QUESTIONS

1. Whether Amicus Curiae can be considered as the documentary evidence according to the Qanoon e Shahadat Order?
2. What is the legal stance of Amicus Curiae in the legal system of Pakistan under the Qanoon-e-Shahadat Order?

REVIEW OF LITERATURE

The researcher reviewed a lot of articles, case laws and books to explore the legal position of the amicus curiae in the legal system of Pakistan under the Qanoon-e-Shahadat Order,1984.The articles suggested that there exists the relevancy of the opinion given by the third person in the criminal proceedings under the criminal procedure code 1898, however there exists a loophole in the guidelines relating to the proper guidelines and experience of the expert and amicus curiae whose opinion shall effect the legal proceedings of the court. For this purpose, the researcher explored the available material to minutely observe the position of amicus curiae in the legal system. The researcher reviewed the research for its weightage, of the present material and for the future researchers.
M. Mahmood, in his book 'The Qanoon-e-Shahadat Order,1984, an exhausted commentary', stated that the importance of Amicus Curiae in the field of law cannot be ignored and he emphasized on the relevancy of the opinion given by the 'Friend of the court', however there still exists ambiguity regarding the guidelines for the appearance of amicus curiae in the research.[58]
M. Monir, in his book 'Law of Evidence', scrutinizes the importance of the opinion given by the third person i.e., he states that the amicus curiae have always been a strong part of the legal system. However, he did not clarify the stance of amicus curiae under the Islamic legal system and did not address its importance in cultural relativism. [59]
The researchers S Krislov - Yale LJ,' the amicus curiae brief: From friendship to advocacy', stated that the amicus curiae in the present world 'Corpus Juris Secundum'. He emphasized about the social economic matters which would arise if the said term is ignored and how the ignorance of the said term can have a drastic effect on the decision of the trial courts however the mode of the requisition of the opinion given by the said article is not clear[60].
The international researchers, H Woolaver, S Williams, in their research article, 'The role of the Amicus curiae before International Criminal Tribunals', emphasized about the role of amicus curiae at international level and talked about the importance of expert's

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[58] Mahmood, Muhammad. The Qanoon-e-Shahadat Order,1984, an exhausted commentary'Lahore,2010
[59] M. Monir' Law of Evidence'
[60] S Krislov - Yale LJ,' The amicus curiae brief: From friendship to advocacy'. Oxford university press, 2012.

opinion in universalism and in the international court of justice, however they did not emphasize about the role in Islamic domestic courts.

The jurist A. Dolidze, in his article, 'Bridging Comparative and International Law: Amicus Curiae Participation as a Vertical Legal Transplant' discussed about the importance of the amicus curiae in the international courts and international laws. They emphasized on the implementation of the international experts through ratification in the domestic courts however they failed to discuss about the guidelines for the incorporation of such laws.

The researcher Kamlesh Pednekar, in his article,' Kul Bhushan Jadhav case: The facts and secrets', discussed about the case where the supreme court of Pakistan called for three amicus curiae in the case and he discussed about the pros of calling about the third person opinion however he failed to discuss about the consideration or the proper salary of the amicus curiae.[61]

The researcher Natacha Wexech Risers, 'National Law Profile: Islamic Republic of Pakistan', scrutinizes constitutional standards of Pakistan that what are the rights of a third person who does not have any interest in the legal proceedings but can have the effect of his opinion directly on the decision of the court. [62]The article has highlighted the grey areas of the laws regarding amicus curiae but have not mentioned any cure to turn these grey areas. The article was focused on precising the role of the expert in the legal proceeding.

The researchers Kristy A Martire; Gary Edmond, in the article 'Rethinking expert opinion evidence', emphasizes on the scientific nature of the expert opinion in the field of evidence law. They have clarified that no person is qualified enough to give his opinion in every field of proceedings and like this in the courts proceedings the court needs an expert to clarify any situation regarding the fact on which the court is struck[63].But they have missed to clarify the qualification and experience of such expert.

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[61] Kamlesh Pednekar, in his article,' Kul Bhushan Jadhav case: The facts and secrets'. JMCL26(2015):56

[62] Natacha Wexech Risers, 'National Law Profile: Islamic Republic of Pakistan'. Sweet and Maxwell press (1999):183

[63] Kristy A Martire; Gary Edmond, in the article 'Rethinking expert opinion evidence', International journal of business and social science 3, no.6.2012.

In Book 'Expert evidence in criminal proceedings in England and Wales', the authors have discussed about the importance of the expert opinion and more precisely amicus curiae in the legal proceedings of the court[64]. The authors have discussed about the concept that the amicus curiae should belong to the legal field and that there should be a salary for him but they have not discussed about the manner and guidelines for the amicus curiae to be called by in a court of justice.

In this fragment, researcher scrutinizes some of the writings that deal with the current research work. EJ Imwinkelried states in his article, 'A comparatives critique of the interface between hearsay and expert opinion in American evidence law', the researcher talked about the standards for the amicus curiae in the court of justice and the procedure to call amicus curiae in the civil cases but did not discuss about the role in criminal cases[65].

In the book, 'Phipson Evidence,14th Edition', the writer discussed about the cases in which there is no need to appoint the amicus curiae as such the cases related to the interpretation of the substantive law and how to mark a benchmark for such appointments but he did not discuss about the guidelines related to the appointment of amicus curiae.[66]

D Walton in his research article, 'Visualization tools, argumentation schemes and expert opinion evidence in law.' discussed about the appointment of an expert in the cases relating to science and technology, however he failed to discuss to discuss about the legal standing of such person who will be appointed by the court[67].

Researcher Carlson, in his research synopsis, 'Admissible Evidence under the Expert Opinion', states Expert opinion and evidence by amicus curiae becomes only admissible evidence after the cross examination is done in the court and where amicus curiae are presented as witness however, he failed to discuss about if the amicus curiae give false evidence.

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[64] Expert evidence in criminal proceedings in England and Wales'. Brownsword. Hird & Howells (eds), Ashgate, Dartmouth (2017):292

[65] EJ Imwinkelried, 'A comparativist critique of the interface between hearsay and expert opinion in American evidence law'. JMCL35(2017):39

[66] ibid

[67] 'Visualization tools, argumentation schemes and expert opinion evidence in law."Elaw journal. Mirdoch university electronic journal of law7, no.3(2018):1-14

The researcher PR Rice in his article, 'Inadmissible Evidence as a Basis for Expert Opinion Testimony: A Response to Professor Carlson' states that the court when is struck on the point should take the evidence by amicus curiae however the appointment of the amicus curiae should not hurt or infringe the hearsay rule however he did not wholesomely discuss the relation between rule and amicus curiae.

The jurist HA Hammelmann, in his article ' Expert evidence and Amicus Curiae a case study', reveals that the evidence provided by the amicus curiae in the court should be gone through a transparent and legal passage to avoid the time wastage of the court and that the evidence should be authentic.

The researchers Schauer, BA Spellman in their research work, 'Is expert evidence, amicus curiae really different 'argued that the judges are always taking their role of gatekeeper in the legal system and they are having at most powers in the legal field. This could result in the abuse of powers which could have drastic effects on the whole legal system working domestically or internationally[68]. They argued that no human being is perfect and it is unable for a being to acquire the at most knowledge about everything. There exists a need for the expertise which would guide a court of justice regarding the issue if the judge needs help. Thus, the importance of amicus curiae cannot be ignored in the legal system and there should exist proper standards for guidance. But they did not discuss about the grey areas and loopholes which can take place in the case if the false evidence is provided in the court.

The researcher SC Mohan - Sing. J. in his research-based article and research,' The amicus curiae: friends no more', suggest that the term used from the ancient time both in common law and civil law system should have a proper legal standing in the legal system to avoid its abuses in the proceeding, however, he did not discuss about the proper legal framework for amicus curiae[69].

AO Larsen - Va. L. in his research article,' The trouble with amicus facts', gave stress to the concept of bringing expertise to the court as most of the decisions given made by the respected Supreme Courts are generalized and how important the amicus curiae's importance

[68] BA Spellman in their research work, 'Is expert evidence, amicus curiae really different, JMCL,26(1999):71

[69] SC Mohan - Sing. J. (ed)

in the court can be appeared, however, he did not discuss about the material evidence given by the amicus curiae is admissible and what should be its legal framework[70].

The researchers S Williams, E Palmer in their research-based book, 'Civil society and amicus curiae interventions in the International Criminal Court' discussed that with the establishment of international criminal court the states have to adopt the Rome statute and that since some states are legally backward, they need amicus curiae in this field to avoid any type of ambiguity, however, he did not discuss the legal framework of such persons in the domestic legal systems[71].

The researcher RA Schuller, in the book, 'Expert evidence, Amicus Curiae and hearsay', discussed about the formal perspective of the amicus curiae in the court in the determination of the guilty or acquittal[72] shall belong to the negative theory of law ,however, he did not discuss about the admissibility of the material evidence provided by the amicus curiae

In the case of Supreme Court of India, 'Anokhilal v. State of Madhya Pradesh, 2019 SCC On Line SC 1637, decided 18.12.2019'the learned court decided that in all of the cases, if there is a possibility of life imprisonment or even in the case of death sentence, the person who is appointed as the amicus curiae shall be a person who has minimum 10 years legal practice and shall be appointed by the senior court for the specific period of time[73].

ANALYSIS AND RESULT

Role of Amicus Curiae as the documentary evidence under the Qanoon-e-Shahadat Order

The concept of the term amicus curiae is not new, instead it can be traced back to the ancient roman times when the tribunals called for the help by the third person opinion. In Pakistan the term amicus curiae hold a legal standing under the law of evidence of Pakistan. In Pakistan, the Supreme Court of Pakistan have many a times practiced the usage of amicus curiae. Like in Kul Bhushan Jadhav

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[70] AO Larsen - Va. L. 'The trouble with amicus facts'. 2015.Hague.78

[71] S Williams, E Palmer in their research-based book, 'Civil society and amicus curiae interventions in the International Criminal Court'. ICJ printing press.679.

[72] RA Schuller, in the book, 'Expert evidence, Amicus Curiae and hearsay'

[73] Anokhilal v. State of Madhya Pradesh, 2019 SCC on-line SC 1637, decided 18.12.2019'thelearned

case the court appointed three amicus curiae who were the senior advocates to seek into the matter to review the death penalty and to avoid the violation of the Vienna convention. As a dualist state, Pakistan has taken a great shadow from the United Kingdom. Countries like England, United States and Canada and many other countries pay special importance to amicus curiae. But in absence of the clear guidelines regarding amicus curiae in the legal system of Pakistan, the courts are very minutely seeking and observing the procedure to call amicus curiae in the courts[74]. However, with the passage of time, as there exists, several precedents regarding the status of amicus curiae, so due to which trough the public prosecutor amicus curiae can give its opinion in front of the respected courts. However, with the development in the legal field, the amicus curiae can directly give the application to the Supreme Court regarding the opinion and guidance. There are two modes in which amicus curiae can provide evidence in the court; orally or in written form.

When the opinion or evidence is provided in the oral form by amicus curiae, then it shall be cross-examined to check the transparency. And if the opinion is given in the written form or in the form of a document, it shall be provided through pledoi, which can make further problem. The problem is the absence of rules under the Qanoon-e-Shahadat order which can be used to regulate and enforce the document written by the amicus curiae. In the case of Supreme Court, 'Dr. Amjad H. Bokhari vs. Federation of Pakistan, (Constitutional Petition 45/2003), Amicus Curiae by Dr. Parvez Hassan' the judges recommended the acceptance of the written document provided by the amicus curiae and that they in the further case rejected the written documents and declared it irrelevant. The researchers argued that the court must admit the evidence provided by the amicus curiae admissible under the Qanoon-e-Shahadat order but the courts argued that the admittance of the document provided by the amicus curiae shall be solely based on the provision under the criminal procedure law and the QSO and that it shall not infringe any type of provision of the said acts[75]. In the legal proceeding the evidence plays a very important part for the process of providing justice and for the prevarications of peace and security. As under the

[74] Anokhilal v. State of Madhya Pradesh, 2019 SCC on-line SC 1637, decided 18.12.2019'thelearned

[75] ibid

provisions of the Qanoon-e-Shahadat Order, the validity of the document provided by the amicus curiae should be transparent and should be concerned with the provisions in the case of criminal law. Some of the documents which can be presented in front of the court can be the documents from the office of the public official which is maintained and preserved by the public prosecutor in his official capacity. The other type of the document can be circumstantial document, which include the information regarding an event or happening of an event. Other type of the document can be regarded as the document as provided by the expert in regard to the opinion with respect to the case. However, other document can be regarded as the document which include the contents which are relevant to another document but its relevancy can affect the judgement of the court. In any case where the document provided by the amicus curiae is to be considered in the court should include the transparency in it.

Legal Standing of Amicus Curiae under the Qanoon-e-Shahadat

The judges in the general court seek negative law theory to collect the information regarding the guilt of committing a criminal act or not. In this regard, the judges need to collect the transparent evidence which is not tempered and to find the transparency of the evidence, they can need an expert to clarify the stance of the evidence if any type of ambiguity arises. However, the judge needs two types of a valid evidences to given the decision in this regard[76].Under the provisions of the Qanoon e Shahadat Order, documented evidence is of most high probative force and its transparency is of most importance. As far as the evidence given by the amicus curiae is concerned, it is also of most importance till it is linked with the case.[77] The learned courts have now, with the amendments and advancement in law, suggested that the amicus curiae should be considered as a part of court and should be paid a specific amount regarding the case and the salary of amicus curiae

[76] Civil Review Petition No. 420 of 2016 in Civil Petition No. 2990 of 2016 (To review the judgment dated 27.09.2016 passed by this Court in C.P. No. 2990 of 2016)

[77]HIGH COURT OF SINDH, BENCH AT SUKKUR Constitutional Petitions No. D – 2149 and 4729 of 2015, and 172, 935, 1110, 1111,1112,1113,1114, 1115, 1116, 1117, 1118, 1119, 1122 and 1123 of 2018

could be varied from case to case.[78] Since after the evolution of Law of Evidence into the Qanoon-e-Shahadat Order after Islamification of the said law, many jurists believe that the concept of amicus curiae can be traced back to the time of Holy Prophet (P.B.U.H).[79] Speaking on the theoretical grounds the evidence and opinion provided by the amicus curiae shall be considered by the court if the evidence is linked to the principal evidence and facts of the case. On the formal grounds the admissibility of the documentary evidence is under the law admissible, if it is made with respect to the written formalities stipulated in the statutory laws. So, the documentary evidence as provided by the amicus curiae, if the document has a connection with other evidence including the testimony of the witness, the opinion given by the expert and the statements recorded in the court as given by the defendant.

Materially speaking not all the documents provided in the court have binding force and its legal position is rather still variable in the court. In simple words, it means, in the case of the latter, the judges of the respected court of justice have freedom to assess the probative value and the evidential value of the testimony whether written, oral or in documentary form given by the Amicus Curiae in the Court.

[78]IN THE SUPREME COURT OF PAKISTAN (APPELLATE JURISDICTION) CIVIL APPEAL NO. 508 OF 2020 (On appeal against the judgment dated 25.08.2018 passed by the High Court of Balochistan, Quetta, in C.P. No. 136/2014)

[79] Leila Azzam, The life of HOLY PROPHET

CONCLUSION

From the above-mentioned research and discussion, the authors conclude that the binding force of the documents provided by the Amicus Curiae remain unclear. And as a result, it is not a piece of cake to consider and explicitly address the legal position of the amicus curiae in the legal system of Pakistan. And whether considered as the witness testimony provided by the witness or expert testimony or as a documentary or circumstantial evidence, the status of amicus curiae remains uncertain. However, the authors have an opinion that after the abovementioned discussion, there are two types of point of view regarding the status of amicus curiae, namely formal and materialistic point of view.

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THE LAW RELATING TO HERESAY EVIDENCE: AN ANLYTICAL STUDY

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ABSTRACT
In criminal cases, hearsay evidence is most commonly used when a witness testifies about facts he has no personal knowledge about. The facts were communicated to him by someone not in Court or when a witness' written statement is presented to the Court because the witness cannot attend Court to give oral evidence. The general rule of hearsay evidence, recognizing her say evidence, its evidentiary value and statutory exceptions to the hearsay rule are all covered in this assignment.

INTRODUCTION
In order to establish a fact in a criminal prosecution, it is usually essential for a witness who has experienced the event first-hand, to testify. A witness should generally give evidence orally, speaking from their memories. This ensures that witnesses offer 'first-hand' testimony regarding events they have personally experienced, rather than facts they have been informed about by others who are not present in Court to testify under oath. It implies that a witness whose testimony is being challenged by the other side can be cross-examined, and the Court can judge their credibility.[80].
Black's Law Dictionary states: "Hearsay is a term applied to that species of testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others.[81]."
Therefore, Hearsay is a statement that is any representation of fact or opinion made by a person by any means to persuade another person to believe or act based on the truth of the topic. It can be in a sketch, a photo-fit, or another pictorial representation. It can be expressed through gestures and/or behavior. However, Article 71 of the Constitution establishes the general rule of natural justice that hearsay evidence is not admissible.[82]. The act of reciting anything heard from another person without having actual knowledge of the fact is known as Hearsay. "Whatever person is heard to say, or whatever a person proclaims on information furnished by someone

[80] Peters, John Durham. "Witnessing." In *Media witnessing*, pp. 23-48. Palgrave Macmillan, London, 2009.
[81] Reeves, T. Z. (2016). Preparing an evidence-Based.
[82] Davies, Thomas Y. "Not the Framers' Design: How the Framing-Era Ban against Hearsay Evidence Refutes the Crawford-Davis Testimonial Formulation of the Scope of the Original Confrontation Clause." *JL & Poly* 15 (2007): 349.

else. The hearsay evidence was eliminated by Article 71 of the QSO, which declared it to be an invalid piece of evidence. However, there are several exceptions to this rule. The article emphasizes the importance of presenting the best possible evidence to the Court; derivative or second-hand proofs are not admissible as evidence.

SOME EXAMPLES OF HEARSAY EVIDENCE:

1. With his knife, a stabbed B. C was present at the time and witnessed the incident. C told D about the incident, even though D was not present at the time of the murder. Hearsay evidence refers to D's deposition[83].
2. A, a four-year-old child, was raped. She was not sent to the hospital for a medical evaluation. A was not examined because she was unable to depose. Her mother's and relatives' testimony about the child's treatment and behavior becomes hearsay evidence.
3. A, a son of X, was adopted by Y shortly after his birth in a giving and taking ceremony. M and N were both presents. M and N's testimony is oral and direct, as they witnessed the adoption ceremony. If A deposes that he was adopted shortly after his birth at an adoption ceremony, his deposition becomes hearsay evidence because he was unable to comprehend the incident at his birth[84].
4. The testimony of those witnesses who arrived on the scene of the incident after the incident and were told by other people who observed the incident first-hand are hearsay evidence[85].
5. Based on B's testimony, a doctor issues a medical certificate to B stating that B is suffering from a specific ailment and requires bed rest. A medical certificate like this is considered hearsay evidence.
6. All rumors are based on Hearsay.

EVIDENTIARY VALUE OF HEARSAY:

"Hearsay evidence is no evidence" because all spoken evidence must be direct.

"No one principle can be designated as having worked to exclude hearsay from any ascertainable data," Phipson says. The hearsay

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[83] Dripps, Donald A. "Controlling the Damage Done by Crawford v. Washington: Three Constructive Proposals." *Ohio St. J. Crim. L.* 7 (2009): 521.
[84] Bryan, Betsy Morrell. *The reign of Thutmose IV*. Baltimore: Johns Hopkins University Press, 1991.
[85] Paterson, Helen M., Richard I. Kemp, and Jodie R. Ng. "Combating Co-witness contamination: Attempting to decrease the negative effects of discussion on eyewitness memory." *Applied Cognitive Psychology* 25, no. 1 (2011): 43-52.

testimony is thrown out because it is "somewhat untrustworthy for judicial purposes on account of:
I. The original declarant's irresponsibility, as his statements were not made under oath or subjected to cross-examination.
II. The depreciation of truth in the repetition process.
III. The possibilities for fraud that its admission would create; to which are occasionally added;
IV. The proclivity of such evidence to prolong legal proceedings.
V. To encourage weaker proofs in place of weirder proofs.
The absence of an oath and of cross-examination, on the other hand, appears to be the only fundamental objections, with the witness's production acting primarily as a way of securing cross-examination and secondarily as a means of assessing demeanor. Indeed, in many circumstances, the latter benefit is surrendered without resulting in evidence rejection.[86]."
There are more flaws in hearsay evidence in addition to these flaws: "The significantly increased expense and vexation that the adverse party must incur in order to rebut explain it, the vast consumption of public time thus occasioned, the multiplication of the collateral issue for decision by the jury, and the danger of losing sight of the main question and of the justice of the case, if this sort of proof were admitted are considerations of too grave a character to be overlooked by the Court or the legislature, determining the question of changing this rule. Due to its infirmity compared to its source, derivative or second-hand evidence, also known as hearsay evidence, is disallowed.[87].

EXCEPTIONS TO THE HEARSAY RULE:
The rule of Hearsay states that statements, whether oral or written, made by those who are not called as witnesses are not admissible in Court, with a few exceptions. The following are the exceptions to the hearsay rule, which states that hearsay evidence is not evidenced at all[88].

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[86] Christianson, Jennifer. "The Future Implications of Lilly v. Virginia." *U. Miami L. Rev.* 55 (2000): 891.
[87] Leipold, Andrew D. "The problem of the innocent, acquitted defendant." *Nw. UL Rev.* 94 (1999): 1297.
[88] Zenebe, Gashaw Sisay. "Admissibility of hearsay evidence in criminal trials: an appraisal of the Ethiopian legal framework." *Haramaya Law Review* 5, no. 1 (2016): 115-143.

1. **RES GESTAE:**

Under section 6 of the Evidence Act 1872, statements made by people who are not being examined can be proved by other people who appear as witnesses, and they count as "original" evidence, as opposed to "hearsay" or "derivative" evidence, if they are part of the transaction in question[89].

2. **ADMISSIONS AND CONFESSIONS:**

An extrajudicial admission or confession is admissible as evidence if it is sought to be proven by a witness to whom the admission or confession is made. (Evidence Act 1872) Secs. 17-31.

3. **STATEMENTS BY PERSONS WHO CAN NOT BE CALLED AS WITNESSES:**

Statements of relevant facts, written or oral, made by a person who is dead or cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be obtained without an amount of delay or expense that appears to the Court unreasonable in the circumstances of the case, are themselves relevant. (Evidence Act of 1872) Sec. 32

4. **EVIDENCE GIVEN IN FORMER PROCEEDINGS:**

Evidence given by a witness in a previous judicial proceeding or before any person authorized by law to take it is relevant to prove the truth of facts stated by the witness in any subsequent judicial proceeding or at a later stage of the same judicial proceeding unless the witness is dead or otherwise incapacitated. There is an exception to the rule of Hearsay in this case (Article. 33 of Evidence Act 1872)[90].

5. Entries in books of account, including those kept on computers, are relevant. (Article 34 of the Evidence Act of 1872)

6. Whether an entry in a public record or an electronic record created in the course of duty is relevant. (Article 35 of the Evidence Act of 1872)

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[89]Leib, Ethan J. "Are the Federal Rules of Evidence Unconstitutional?" *American University Law Review* 71 (2021).

[90] Rivas, Brennan Gardner. *The Deadly Weapon Laws of Texas: Regulating Guns, Knives, and Knuckles in the Lone Star State, 1836-1930*. Texas Christian University, 2019.

7. Expert opinions are number seven. (Evidence Act 1872) Sections 45 and 46
8. Your thoughts on handwriting. (Article 47 of the Evidence Act of 1872)
9. When it comes to digital signatures, give your opinion. (Evidence Act of 1872) Sec. 47-A
10. Opinion on whether or not a right or tradition exists. (Article 48 of the Evidence Act of 1872)
11. Opinions on usages, tenets, and so forth. (Article 49 of the Evidence Act of 1872)
12. Your thoughts about the partnership. (Article 50 of the Evidence Act of 1872)
13. Statements included in Acts and Notifications, as well as government maps, charts, and plans (Article. 34-39 of Evidence Act 1872)[91]

WHEN IS HEARSAY EVIDENCE ADMISSIBLE UNDER THE QANUN-E-SHAHADAT ORDER OF 1984?

Article 71 of the QSO 1984 states that oral evidence must be direct and that, hearsay evidence is not admissible. The provisions of articles 46 and 64, on the other hand, are exceptions to the general rule.

Statement of significant facts, written or oral, made by the person
1. who is dead,
2. who cannot be identified,
3. who has grown incapable of providing evidence, according to article 46[92].

Whose attendance cannot be obtained without a significant delay or expense that appears to the Court to be unreasonable in the circumstances of the case, are themselves relevant facts in certain circumstances.

The opinion indicated by conduct as to the existence of such relationship, of any person who, as a member of the family or otherwise, has particular means of knowledge, is a relevant fact when the Court has to make an opinion as to the relationship of one person to another, according to article 64. The person making the

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[91] Talbert, Richard JA. "Mapping the classical world: major atlases and map series 1872-1990." *Journal of Roman Archaeology* 5 (1992): 5-38.
[92] Mughal, Justice R. Dr, and Munir Ahmad. "Mode of Taking and Recording Evidence in Inquiries and Trials: Ch. XXV [Ss. 353 to 365] CrPC." *XXV [Ss. 353 to 365] CrPC (October 14, 2012)* (2012).

statement must have exceptional knowledge of the relationship to which it refers, and it must have been made ante litem mortem, that is, before the occurrence of the dispute[93].
"The opinion represented by action as to the existence of the particular relationship and not only a statement as to that relationship," according to article 64 of the QSO 1984. [1990 MLD 355]

IS HEARSAY ADMISSIBLE IN THE COURT?
Hearsay evidence is not admissible. If a witness gives evidence in the shape of a statement made by someone else, that is said Hearsay and prima facie inadmissible. Article 70 and 71 of QSO provide the general rule of admissibility of hearsay evidence. Oral evidence is defined under Article 3 of QSO to mean "statement which court permits to be made by witnesses."[94]

WHEN HEARSAY ADMISSIBLE (CASE LAWS).
Hearsay evidence, according to Article 71 of the Qanoon-e-Shahadat (Act or Ordinance) of 1984, oral evidence must be direct, and hearsay evidence is not accepted. The provisions of Articles 46 and 64, on the other hand, are exceptions to the general rule. According to Article 46, a statement of significant facts made by a person who is dead, cannot be found or has grown incapable of giving testimony, or whose attendance cannot be obtained without an amount of delay or expenditure that, in the circumstances of the case, would be unreasonable. Under certain circumstances, facts that appear to the Court to be irrational are themselves relevant.[95]. When the Court is asked to develop an opinion about a relationship, it must do so under Article 64. The important fact is any individual who, as a member of the family or otherwise, has unique information and expresses his or her view about the existence of such a relationship by their actions. The person making the statement must have special knowledge of the relationship to which it refers, and it must have been made ante litem motam, that is, before the occurrence of the

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[93] Herek, Gregory M. "Confronting sexual stigma and prejudice: Theory and practice." *Journal of social issues* 63, no. 4 (2007): 905.
[94] Abbasi, Hafsa, Summayah Rafique, and Syed Naeem Badshah. "Critical Analysis of Pakistani law of Electronic Evidence from the Perspective of Sharīʿah and English Law-Recommendations for Pakistan." *Tahdhib-al-Afkar* (2021): 33-50.
[95] *ibid.*

dispute. "The opinion represented by conduct as to the existence of the particular relationship and not only a statement as to that relationship," according to Article 64 of the Evidence Act. A comment made to a witness by someone who is not called a witness may or may not be considered Hearsay. When the purpose of the evidence is to establish the statement's truth, it is hearsay and inadmissible. It is not hearsay and is admissible when the purpose of the evidence is to prove the tact with which the statement was made rather than the statement's veracity. The fact that the remark was made, regardless of its validity, is frequently crucial in determining the mental state and subsequent behavior of the witness or another person whose presence the statement was made. [PLD PC 100 (p. 106)]. Evidence of repute, even if it is Hearsay, is admissible where the legislature's sole purpose is to offer a preventive measure. [6 Bom LR 34] [6 Bom LR 34] [6 Bom LR 34]. Certain conversations, despite being Hearsay, have been deemed admissible in cross-examination, since they pertain to the witness' credibility. [16 C 210] [16 C 210] [16 C 210] [The Supreme Court's minority opinion is that hearsay evidence does not become admissible simply because it is presented in response to a cross-examination inquiry. [PLD 1979 S. C. 53 (p. 451)] [PLD 1979 S. C. 53 (p. 451)] [PLD 1979 S. C] Hearing the cries of two other prosecution witnesses that the accused had slain the children awoke the witness. What he heard is admissible in his testimony. [Cr.L.J. 627, 630] 1988. Where the arraignment witness has testified that he had gotten data from the indicated individual that blamed was the administrator for the truck engaged with wrongdoing, if the witness has not been inspected as an observer, the proof of indictment witness is unacceptable[96] [AIR 1983 S.C. 906]. Without a doubt, the proclamation of the spouse regarding everything her better half said to her would be only prattle and would not be allowable in the proof as an assertion of the spouse. However, where the proof of the spouse shows that she, when all is said and done, was uprooted with the party also concerned, it was indeed to underscore the disappointment of her family and its head that the spouse's name was gotten, the party concerned cannot get any benefit from the technical issue with the gathering of the spouse's assertion as being second-hand. [AIR 1964

[96] Allen, Ronald J., and Brian Leiter. "N Naturalized epistemology and the law of evidence." *Va. L. Rev.* 87 (2001): 1491.

S C 72] section, the evidence of a witness who says that he had been told “so and so” by B would be admissible in evidence in proof of the fact that the said statement had been made to him by B. However, the same would be inadmissible in proof of the contents of the said statement unless B himself appears as a witness and affirms the truth of what he had told him. Has not been examined as a witness the evidence of prosecution witness is inadmissible. [1983 S. C. 906]. It is true that the statement of the wife as to what her husband told her would be merely Hearsay and would not be admissible in evidence as a statement of the husband, but where the evidence of the wife shows that she was displaced with the party concerned[97].

WHEN HEARSAY IS NOT ADMISSIBLE (CASE LAWS).

The notion of hearsay evidence exclusion is more than a technical regulation coined by Qanoon-e-Shahadat; it is a natural justice principle that must be followed even by non-judicial authorities. The principle of hearsay evidence rejection is based on its relative unreliability for judicial purposes. The reasons for this are that the original declarant of the statements offered in a second-hand manner is not put on the stand and is not subject to cross-examination, and the accused against whom such evidence is offered loses his opportunity to examine the means of knowledge of the original maker of the statement. The admissibility of hearsay evidence would open up opportunities for fraud. When the prosecution uses the statement of a prosecution witness who was examined earlier to another prosecution witness who was interrogated later without the earlier P. W. being asked about it in his examination, the earlier prosecution witness must be allowed to explain himself. The earlier prosecution witness's statement is inadmissible in evidence without such an opportunity. [S.C. 738, AIR 1956]. It is not admissible for a witness to make a statement to another individual.

[AlR 1934 Sind 100] [AlR 1934 Sind 100] [AlR 1934 Sind 100] When a kid is not interrogated as a witness, evidence of remarks made by the youngster to other persons, or behavior that amounts to a statement, is hearsay evidence and is not admissible in criminal prosecution. [AlR 1942 Cal. 214] [AlR 1942 Cal. 214] [AlR 1942 Cal]. The earlier remarks of the witness concerning the accused were deemed to be secondary evidence of a hearsay character that

[97] Shiner, Larry. "Larry Shiner Oral History." *UIS Alumni SAGE Society Oral History Project* (2009).

did not corroborate primary evidence and hence could not support conviction where the eyewitness did not identify the accused during the trial. (Rang. Two hundred ninety-five in AIR 1928). When an identification witness is called to Court and declares that he cannot identify anyone, the earlier statement given during the identification procedure in the jail is not acceptable. [AIR 1921][98]

CONCLUSION

On the one hand, the effect of the general rule of hearsay evidence is to prevent certain oral and written statements of persons other than the witness who is giving evidence from being related to the Court as evidence of the truth of what was asserted in the statement, even if no better evidence of the facts stated is to be obtained. While on contrary, the prohibition on hearsay evidence stems from a centuries-old legal recognition that hearsay evidence has two severe risks. The first is that hearsay evidence may be untrustworthy. Any statement repeated more than once carries the risk of inaccuracy or distortion, which grows in proportion to the number of repetitions and the statement's complexity. The second is that effective cross-examination of a witness testifying about a hearsay remark is nearly impossible because the witness did not observe the events in question. Neither disadvantage, however, is theoretically fatal to hearsay evidence's acceptance. The judges may have decided that Hearsay should be allowed and that the focus of the investigation should be on the factual question of the weight to be given to it, which will undoubtedly vary significantly from case to case. As far as the development of these exceptions is concerned, the judges realized the need for some exceptions to the hearsay rule as soon as it was established, and they began to construct them. Where necessary witnesses were deceased, acts were hopelessly vague without some contemporaneous explanation by those who conducted them. The only family history record was local repute; the evidence had the merit of being available, even if it was far from adequate. In certain circumstances, such as family history and boundary statements and reputations, it appears that the necessity was directly tied to the current prominence of those areas of litigation. There were few indicators that such instances were trustworthy. Even terrible evidence is preferable to no evidence at

[98] Chafee Jr, Zechariah. *Free speech in the United States*. Harvard University Press, 2013.

all, and it satisfied the then-current notion of best evidence, even if it did not satisfy a modern theory of reliability. Some, but not all, of the standard law exclusions were founded on long-term reliability ideas. There was a widespread judicial belief that public records were fundamentally more reliable than other papers, that res gestae utterances were spontaneous, and that a declarant's motives were trustworthy at the point of death. However, there was no systematic attempt to create categories of exceptions and no overarching theory of what makes some hearsay evidence acceptable. As the rule of evidence in general, the hearsay exceptions emerged gradually and as piecemeal remedies to specific difficulties that the courts faced from time to time.

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XXV [Ss. 353 to 365] CrPC." *XXV [Ss. 353 to 365] CrPC (October 14, 2012)* (2012).

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The threats to the limitations outlining the present parameters of promissory estoppel: a comparative study

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ABSTRACT

Promissory estoppel is an equivalent concept that applies to the regulation of a contract, which applies when one party to the agreement promises to the other, phrase or deed, which he will not work out his proper underneath the agreement. This principle was first proposed to save you from any incident of inequality or injustice because of the promiser's backtracking on his promise, which, to start with, triggered the promise to be to his detriment. Was the motive traditionally, there were five boundaries to this idea, derived from the High Treasures and Hughes cases. That promise only serves as a protect and no longer as a sword; That there need to be a relationship to the present settlement; That have to be a clear and unambiguous step; That there must be evidence of unfavorable dependence on representation; And that there could be only a transient suspension of contractual duties and rights. Nevertheless, this theory is evolving, which later starts off evolved to have an effect on its parameters. This article provides an outline of the improvement of this principle in three common law nations, i.e., England, Australia and Malaysia to determine how the threats to the traditional limitations of this ideology seem to have an effect on its parameters.

Keywords: Limitations, Promissory Estoppel, Contract

INTRODUCTION

Promised pardon is an equivalent principle that aims to prevent any incident of inequality or injustice due to the manner of the promiser's reneging on his promise, in order to start with cause the promiser to lose. Had to face It was at first designed to prevent a person from changing their preceding representation, especially if every other man or woman, counting on that illustration, modified their position. According to Martin (1986), estoppel is a rule of regulation, which prevents a person from denying the veracity of his announcement or denying the statistics against which he has been accused. There have to be a truth that the opposite man or woman, on whom this assertion has been made, has relied on and acted on it, or due to which his popularity has changed. Promissory estoppel, which falls into the class of estoppel in terms of illustration, applies while one birthday celebration to the settlement guarantees to the other, phrase or deed, that he or she has absolutely or partially enforced his or her right under the agreement. Will no longer. If the other birthday celebration has fulfilled this promise, then the individual making the promise might be certain by using it and could now not be allowed to sue the settlement, as a result. That means of the promissory estoppel, in addition to its origin, is foretold by means of Lord Cairns on page 498 of Hughes v. Metropolitan Railway Company (1877) 2 AC 439.[99]

"…It's the first principle upon which all courts of equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results – certain penalties or legal forfeiture afterwards by their consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced,or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealing which has thus taken place between the parties."[100]

In the existing case, a current promotional status quo has erupted wherein it has been decided that the commencement of negotiations

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[99]Furmston, Michael Philip, Geoffrey Chevalier Cheshire, and Cecil Herbert Stuart Fifoot. *Cheshire, Fifoot and Furmston's law of contract*. Oxford university press, 2012.

[100] Binti Abdullah, Nurhidayah. "An empirical analysis of the status of good faith in contractual performance: the Australian experience." (2015).

for the acquisition of the premises below dialogue is tantamount to a brand-new promise. In October 1874, the owner gave the tenant six months' word to restore the residence, failing which the hire might be revoked. In November, the landlord started out negotiating a return sale with the tenant, which become later terminated on December 31. Meanwhile, the tenant did nothing to repair the premises, and in October 1874, after six months of note carrier, the owner claimed to have forfeited the lease and evicted the tenant.[101] The House of Lords noticed that the start of negotiations become tantamount to a brand-new promise from the landlord that he would not implement the awareness as long as negotiations persisted. The tenant had indeed depended on this promise whilst he changed into silent, and consequently the six-month period for maintenance needed to run from December 31, 1874. Seizure In 1947, the landmark case inside the current Promotional Estoppel become sooner or later decided in Central London Property Trust Ltd. V. High Trees House Ltd. [1947] KB one hundred thirty, wherein the plaintiffs leased a block of apartments to defendants in September 1939 for £ 2,500 according to lease. - Annually in January 1940, the plaintiffs agreed in writing to lessen the lease to £ 1,250 as there have been many vacancies inside the flats because of the warfare. From 1940 to 1945, the defendants paid a discounted hire, and when the apartments had been absolutely re-occupied in 1945, the recipient of the plaintiff's corporation claimed full rent for both the past and the future. Denning J. (as he was on the time) dominated that the plaintiffs' written promise in January 1940 meant best a transient enjoy the battle. By the end of World War II, the promise had stopped working and, therefore, the plaintiffs have been entitled to complete rent. However, the court docket refused to supply the plaintiffs in advance declare for the length 1940-1945.[102]

The Parameters of Promissory Estoppel

Traditionally, as an equal concept, the scope of the promissory estoppel principle is very limited in meaning, which truly facilitates

[101] Bulan, Ramy. "The Detriment Element and The Reinterpretation of The Equitable Estoppel Doctrine in Malaysia." *JMCL* 26 (1999): 49.

[102] Cheong, May Fong. "Estoppel in Boustead's Case: A Move away from Reliance towards Unconscionability." *JMCL* 26 (1999): 71.

to stretch its parameters. There have been five barriers that would be drawn from the High Trees and Hughes case. They are: -[103]

(a) Promissory estoppel as a shield

The complete force of the equal maxim "allows only one plaintiff to apply it as a shield and now not as a sword" to reason motion against any other.

(b) Pre-existing contractual relationship

This predicament limits the software of this principle to subjects among the parties to the contract, because of this that the promise must be legally binding before an apology can be sought.

(c) Clear and unequivocal undertaking

The promise or representation need to be "accurate" and "unambiguous" even though this doesn't suggest that any such promise or illustration need to be made explicitly.

(d) Detrimental reliance on the representation

Proof of possible loss or prejudice, so as to be fulfilled if the promiser is permitted to go back to his unique promise, is important. This early system of the promotional estoppel has been a main topic of discussion within the evolution of faith. Reliance has been given many adjectives to describe its diverse classifications ranging from harmful to affordable, harmful, later and mere dependence, recognized by way of normal felony courts since the sixteenth century and survived the complete generation.[104]

(e) Temporary suspension of contractual obligations and rights

This idea does no longer paintings to absolutely do away with the actual rights of the events to the treaty. It simplest presents for the suspension of one of these proper, which may additionally later be restored after a particular event or time. This quandary of Estoppel's scope extends within the experience that the theory applies to representations of past and present events, except destiny activities (sensible promises).

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[103] Treitel, G. H. "The Law of Contract. London." *Sweet& Maxwell Press* (1999): 183.

[104] Talaat, Wan Izatul Asma Wan. "The Threats to The Limitations Outlining The Present Parameters of Promissory Estoppel: A Comparative Study." *International Journal of Business and Social Science* 3, no. 6 (2012).

The above limits assist to define its parameters without a doubt. Therefore, historically, the software of present-day promotional estoppel needs to be challenge to those barriers.

RESEARCH QUESTIONS

The attempts to depart from the traditional approach set by the Hughes and the High Trees cases have caused the parameters of promissory estoppel to be no longer an established and well-settled area leaving behind the following questions: -

1. Whether, in the interest of equity and justice, promissory estoppel can also be used independentlyby a plaintiff as a cause of action?
2. Whether promissory estoppel can be granted to a plaintiff who has no pre-existing contractualrelationship with the defendant?
3. Whether the proof of unconscionable conduct supersedes the proof for detriment suffered by the promise as a result of reliance made on the promisor's representation?
4. Whether promissory estoppel can permanently extinguish the promisor's contractual rights?

RESEARCH OBJECTIVES

This array of objective results in a first-rate query mark, which could be a primary trouble for the development of the treaty law that "[W] will, however, with the risks posed to the limits of those promotional estoppel theories. As I actually have visible, England, Australia and Malaysia, the parameters of this principle can be actually stated at gift?

REVIEW OF LITERATURE

Since this idea has evolved thru a number of degrees in treaty regulation beneath which its evolution did now not stop with the High Trace Case, the continuous evolution of the principle, mainly because the 1980s, has affected its parameters. Is seen this theory is being carried out extra flexibly than whilst it turned into first carried out. Now that the number one consciousness in pardoning (in alternate for unfavorable consider) is being shifted unconsciously, it seems that the courts within the three nations with commonplace law are greater organized to comply with the necessities of equity.

Evaluation of this improvement has revealed an essential and important problem concerning the extent of application of

promiscuous estoppel, with cases displaying those conventional strategies to the utility of the idea, which includes Hughes and High Trace. The case was stated. Has been compromised. Such departures by using the subsequent regular prison courts are in particular mentioned underneath: -

(a) England

The traditional need for a pre-present treaty courting turned into followed religiously through publish-English courts in 1968, till English courts in 1968 broke the deadlock inside the Fancy Goods case while identifying its impact. Had long past,

"…Although in Hughes and Metropolitan Railway Co., the Court of Appeal assumed a pre-existing contractual relationship between the parties, this [did] not seem to be essential provided that there (was) a pre-existing legal relationship which could give rise to liabilities and penalties."[105]

More important leave from the English courts can be seen below the 1/3 restriction, which calls for the presence of harmful dependence, where the present-day inclination is toward unconsciousness. One such example is Instance Societe Italo-Belge Pour le Commerce et I'Industries SA v Palm & Vegetable Oils (Malaysia) Sdn Bhd, (The Post Chaser) [1982] 1 All E.R. 19 is the case.

(b) Australia

Although Sutton (1989) believes that initially the popularity of the pardon become now not easy, it subsequently won prison repute with reputation via the whole Australian High Court in Legione v Hateley (1983) 152 CLR 406. From this point of view, the Australian courts will not look again in spotting this idea in Walton Store v. Mehr (1988) 164 CLR, the Australian High Court has made a tremendous breakthrough in this theory via ruling. That the promissory be aware by myself can be used as a motive for taking motion in opposition to the defendant. Absence of any contractual relationship. It is clear from the records that there has been no earlier agreement between the events and actually, no conciliatory relationship ever existed. The agreement by no means expired because the appellants did no longer follow the lease change. Nevertheless, throughout the negotiations, an apology become

[105] Talaat, Wan Izatul Asma Wan. "The Present Parameters of Promissory Estoppel and Its Changing Role in the English, Australian and Malaysian Contract Law." *JMCL* 35 (2008): 39.

granted on the idea of the appellant's representation that the store should be installation with the aid of mid-January 1984.[106]

Another instance of this type of departure from Australia may be visible inside the judgment of Dan J. K. The Commonwealth of Australia v. Verwin (1990) a hundred and seventy CLR 394, who opined that,

"…the fundamental purpose of all estoppel [is] to afford protection against detriment which would follow from a party's change of position if the assumption that led to it were deserted"[107]

Nevertheless, prior to this development, the introduction of Section 52 of the Australian the Trade Practices Act 1974 has already revolutionized the traditional parameters of promissory observe. The phase states, S. Fifty-two (1) - A enterprise, in trade or commerce, shall not interact in conduct which is deceptive or misleading or in all likelihood to mislead or mislead.

The phrase "enticing inside the Enlightenment" is described by the Trade Practices Act as "refusing to do or refuse to take any action, consisting of imparting or affecting a settlement or engagement".[108]

Five years earlier than the Walton Store case, the Australian High Court dominated in desire of Commercial Bank of Australia Limited v. Amadio (1983) 151 C.L.R. 447 had already determined that the loan on his belongings, secured via the defendants to assure the compensation of the business mortgage given to his son's organization, become set apart at the floor of indifference. The case changed into visible as a turning point in the recuperation of Australian regulation regarding irresponsible transactions (Harland, 1993), which turned into currently used as one of the preliminary compounds of promotional estoppel in exchange for dangerous dependence. Is being argued.

(c) Malaysia

The departure from the traditional method to the utility of the pardon, as seen in each Australia and England, also can be traced to

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[106] Harland, David. "Unconscionable and unfair contracts: an Australian perspective." *Brownsword, Hird & Howells (eds), Good Faith in Contract, Ashgate, Dartmouth* (1999): 262.

[107] Stone, Richard. *Principles of contract law*. Routledge, 1997.

[108] Harland, David. "Unconscionable and unfair contracts: an Australian perspective." *Brownsword, Hird & Howells (eds), Good Faith in Contract, Ashgate, Dartmouth* (1999): 262.

the efforts of the Malaysian courts to soften the bounds of the doctrine.

Malaysia's most prominent case on this regard is Boosted Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] three MLJ 331 where estoppel changed into regarded as a vast application principle used to are looking for justice. Samples of records need to be relied upon.

In this example, the appellant bought the products on credit score from Chemitrade Sdn Bhd (CSB), which entered right into a factoring settlement with the respondent. Under the settlement, the CSB was assigned to the respondent the debts owed with the aid of the appellant underneath which the attention of assignment was duly dispatched to the respondent. Pursuant to the factoring settlement, the CSB furnished the appellant with copies of receipts for every sale and transport of the products, which the respondent licensed that any within 14 days of receipt of the bill before it turned into dispatched. The objection become to be stated. To the appellant[109]

No grievance or challenge turned into made to the respondent's proper to such verification in the length specific by way of the appellant. The appellant truly made several payments to the respondent but later refused to pay on 20 invoices ("invoices") at the ground that the appellant's statement on buy orders ("declaration") did now not include whatever on the receipts. Was now not payable. That the stated quantity changed into to be set in opposition to the price of stock returned to CSB.

The respondent, while denying information of the announcement, argued that because the appellant did now not item to the accuracy of the attestation made on the receipts, he has the right to consider that the appellant has established it. In the first case, the trial chooses observed the defendant responsible. On appeal inside the Federal Court, the appellants raised 3 grounds namely: -

The respondent, as a venture, had no proper to unilaterally impose a limit of 14 days.

The factoring settlement become not a valid task; And the defendant's argument that the failure to protest the accuracy of the appellant's affirmation gave the defendant the right to count on the

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[109] Seah, Weeliem. "Unfulfilled promissory contractual terms and section 52 of the Australian Trade Practices Act." *eLaw Journal: Murdoch University Electronic Journal of Law* 7, no. 3 (2000): 1-14.

attractiveness of the appellant, which changed into now not asked by way of the defendant and therefore, the trial decide made a mistake in trusting him.

Defendant had also move-appealed towards the trial judge's refusal to go into judgment on two other objects claiming RM 95,000 / =. The Federal Court brushed off each the enchantment and the pass-enchantment on the following grounds:[110]

The respondent reasonably (and is entitled to) anticipate that the appellant agreed to the 14-day period due to the fact he now not only remained silent (without objecting to it) however in truth Some receipts have been paid.

Estoppel's theory is a versatile principle with the aid of which justice is achieved in line with instances. The reality that the estoppel can handiest be used as a defend and not as a sword does not restriction the idea to defendants. It was considered a theory of extensive application and various information had been used to gain justice. Estoppel can consequently be used to help the plaintiff in enforcing the reason of action through preventing the defendant from denying the lifestyles of any reality, so one can ruin the purpose of action.

As there was no proof of knowledge of the respondent's announcement, the respondent became entitled to assume that the receipts were proper for payment as the appellant had now not in any other case knowledgeable him. Thus, it's far unfair for the appellant to signify that, firstly, the defendant has to not pay camtrade on the invoices and, secondly, the defendant must chorus from claiming that not anything was due on the invoices.

It is of first-rate concern that Gopal Sri Ram JCA's description of the pardon as an open and flexible ideology with the aid of which justice is finished in step with the instances of the case.[111]

Misbahul (1999), comparing the position of promissory staples in England, Australia and Malaysia, thinks that the utility of this concept in England is more complicated due to the need for consideration. He believes that judges in England are extra involved

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[110] Cheong, May Fong. "Estoppel in Boustead's Case: A Move away from Reliance towards Unconscionability." *JMCL* 26 (1999): 71.

[111] Chiaw, Loo Choon, Gerard McCoy, Rupert Cross, John Bell, and George Engle. "Constructing Theoretical Andrew Frameworks Phang Boon Leong 211."

with the security and safety of business transactions than with properly religion and equity.

THE AFTERMATH

The traditional parameters of this theory were compromised via the dangers posed by way of everyday felony courts, as discussed above. This compromise and separation from the conventional parameters of the promotional estoppel is pondered in the following trend: -

(a) The Use of Promissory Estoppel as a Sword

According to Formston (1981), a plaintiff should additionally be able to depend upon this principle as long as there's an impartial purpose for motion. If, according to the information in Hughes' case, the landlord had taken ownership of the landlord, the tenants could be handled as a plaintiff with the rent as a reason for the movement and to disclaim the landlord a likely protection of Staples. Will paintings that he was. In confiscated right-of-way UK, English courts are slowly spotting using promissory estoppel as a sword, even though no longer as an impartial reason of action, but as an "assistant" to facilitate an existing motive. Is. Nevertheless, Australian courts had been braver in their tries to apply the promiscuous Estopel as a sword than their English opposite numbers. Starting with the case of Jackson v. Crosby (No. 2) (1979) 21 SASR 280, the Australian courts did now not shy away from seeking to make this idea to be had to the plaintiff as well. The take a look at also found out that Malaysian courts are nearly on par with its Australian counterparts while Sri Ram JCA declared in a boosted case that the principle is not limited to the defendant but "the plaintiff also can help."[112]

(b) The Negation of the Requirement for Pre-Existing Contractual Relationship

Despite the sturdy manifestation of limiting the application of promotional estoppel to pre-present contractual relations inside the UK, there is a truthful percentage of British judges who've the courage to take their application to the non-contracting birthday party provided there is good sized felony connection already. Be For

[112] Binti Abdullah, Nurhidayah. "An empirical analysis of the status of good faith in contractual performance: the Australian experience." (2015).

instance, in Fancy Goods Ltd. vs. Michael Jackson (Fancy Goods) Ltd., it was decided that the promotional staple could observe
"... Provided there is a pre-existing felony relationship, which offers rise to obligations and consequences." Can supply."
Similarly, to a massive extent, Australian courts have agreed to permit this precept to be applied to a non-contracting party, furnished there may be a pre-current felony courting among the events, which lets in the courtroom to Style is unacceptable. Its lifestyles. The Walton Stores case has truly set a precedent in Australia in which a non-contracting birthday celebration can searching for asylum beneath a pardon if the alternative birthday party fails to fulfill its duty. Plaintiffs declare was allowed, despite the fact that no settlement become simply reached. The apology changed into successful as long as the felony relationship existed. Brennan J.'s decision illustrates this point.
“An unconventional promise can simplest lead to a truthful termination if the promiser is persuaded to count on or expect that the promise is supposed to have an effect on their criminal dating and that Knows or intends that the Promiser will act or refuse to believe. On the Promise, and while the Promiser does or refuses to behave and the Promiser will act or fail When these factors are present, the honest estoppel nearly takes the shape of an agreement, due to the fact the movement or inactivity of the promiser seems to be thinking about the promise."[113]
In the Boosted case, Gopal Sri Ram JCA's declaration that this idea is applicable in both broad application and flexibility to prevent a plaintiff from claiming that there is no valid and binding settlement among him and his opponent. Which was later repeated in Taha Pooh Wah. The case is a sturdy indication that the Malaysian courts are equipped to increase the usage of the pardon for non-compliant events. It is thought that because the motive of the Malaysian courts is to decide the instances in which the theory applies, borrowing Sri Ram's phrases is to provide "necessary justice among the litigants". It can be that the Malaysian courts, in conjunction with their English and Australian counterparts, are greater brave in applying this

[113]Talaat, Wan Izatul Asma Wan. "The Present Parameters of Promissory Estoppel and Its Changing Role in the English, Australian and Malaysian Contract Law." *JMCL* 35 (2008): 39.

ideology to any kind of relationship, deviating from their traditional scope.

(c) The Dichotomy between Detrimental Reliance and Unconscionability

Harmful or damaging trust has usually been a central problem in promotional staples, where dependence-based totally hobby was already seen as an opportunity form of attention throughout the sixteenth and 17th centuries.

Promise Under the current idea of forgiveness, the promiser should have trusted and acted on (or stopped doing) the illustration of the promiser which precipitated him damage or inconvenience if later the promiser the source withdraws one of these promises.

This conventional want for a pardon has now been changed with the aid of a pressing need wherein the courtroom now not asks, was it dangerous or prejudice? “According to Matta (1999), the vital question now is, "Is it suitable for a promiser to break his promise?" Although a number of treaty theories have emerged over the past five centuries, the reality remains that questions of believe, goodwill and judgment of right and wrong have constantly been important. Goodwill or goodwill has constantly been an essential idea in agreement law, particularly now, when the critical question posed by means of legal professionals and legal experts at the time is "Is the behavior underneath discussion reasonable or in suitable faith?" With?" According to Carter (1994), the perspectives of the courts are transferring from traditional to trendy, wherein the courts have found out they want to put in force police negotiations and trade agreements in an extra advantageous way, particularly, true religion, equity and non-seriousness. Using In each England and Malaysia, among choosing between those extremes, the courts have discovered themselves in choose of a one-sided and mild ideology, deciding on to base their findings at the notions of justice, equity and equality. The observe additionally determined that no matter the preconceived notion that English courts have been fairly reluctant to move past the pervasive need for unfavorable dependence, the examiner found that the perception of "indifference" Are beginning to open. Studies in both Australia and Malaysia, except for a number of the judges' reservations, have additionally confirmed the perception that frivolity has been commonplace as a foundation for soliciting for an exceptionally amnesty.

In England, for instance, inside the case of The Post Chaser, the courtroom followed a similar approach wherein the relevant check is on the question of insensitivity. The perception of goodwill and honest dealing is a contemporary fashion in European treaty law. Irresponsible bargaining, misleading practices and unfair enrichment are a number of the elements that are being saved out of the existing contract law (Harrison, 1997). A comparable fashion may be discovered inside the case of Read v Sheehan [1982] 56 FLR 206 and Legion v Hateley [1983] fifty-seven ALJR 292 in Australia. In the case of Walton Stores, the following ratio of Brennan J can also be seen at this point.

The difference between a settlement and such equity - it relates to staples, can be implemented irrespective of whether the birthday celebration has the same opinion to it. Equity does now not need to be taken into consideration. The agreement relies upon on the phrases, and what is wanted to keep away from that is irrational. "

In the subsequent case of Verwayen, Deanne J. Truly states on web page 444:

"... The significant principle in the doctrine of avoidance of conduct is that the law will no longer allow one birthday party to deviate from the subject of the irrational - more precisely, subconscious - assumption that the other celebration has a few basis for. Relationship, conduct, action or omission for you to reason harm to the opposite party if the assumption isn't acted upon for the reason of litigation."[114]

In the Boosted case, the Malaysian federal courtroom explicitly rejected the want for damages, pronouncing the pardon was a bendy principle wherein justice become finished in line with instances. Gopal Sri Ram JCA justified that the maximum vital element in prosecuting this ideology is the attainment of self-justice. In case of inequality, if the promising character is permitted to withdraw his representation due to the fact the promising man or woman has changed his function relying on this representation, then the court have to permit the request of Staples. By uttering the following phrases, he completely removed the requirement of dangerous agree with.

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[114] Cheong, May Fong. "Estoppel in Boustead's Case: A Move away from Reliance towards Unconscionability." *JMCL* 26 (1999): 71.

"We use this possibility to declare that the dangerous detail isn't part of Estopol's principle. In different phrases, it isn't a vital component that calls for evidence earlier than making use of the concept. It just desires to be proven that during positive situations of a case, it would be unfair to permit a representative or instigator to insist on his strict prison rights.

The court's point in this trouble, even though obituary, is important for explaining the reliance at the more bendy idea of non-seriousness and the departure from the conventional way of promising pardon based on harm (Cheung, 1999).[115]

(d) Promissory Estoppel can now be Permanent and Extinctive

The doctrinal challenge, i.e., the temporary suspension of contractual responsibilities and rights, has also been affected, in which the promiscuous staple can now work completely to terminate the felony proper of the claimant below an agreement. Tritel (1999) sees the promissory word staple principle as carefully associated with the concepts of the overall regulation of waivers within the experience of tolerance. He also thinks that during many later instances, the two "exemptions" and the "promise of forgiveness" are considered to be pretty equal, and the 2 impressions are frequently used interchangeably. There is powerful proof that the concept recommends with the aid of (1999) has twin results, which may also depend upon the character of the illustration in the intervening time or the purpose of the consultant.

Studies in all 3 nations have shown conclusively that these commonplace law courts are extraordinarily greater open to treating the outcomes of the promise of amnesty, relying on the nature of the representation or reason at the time, in addition to the nature of the rights. Are also extinct. In most of the instances worried, the difficulty of the impact of this concept became no longer specially addressed, but court orders indicated that the courts had been now organized to simply accept the Primorye Estoppel as a non-existent and suspended concept. In England, Lord Dannings first won WJ Alan & Co Ltd vs. El Nasr Export & Import Co. [1972] three predicted in SCJ 328. 335 that

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[115] Cheong, May Fong. "Estoppel in Boustead's Case: A Move away from Reliance towards Unconscionability." *JMCL* 26 (1999): 71.

"But there are cases where no withdrawal is possible. It may be too late to withdraw; or it cannot be done without justice to the other party. In that event, he is bound by his waiver. He will not be allowed to revert to his strict legal rights."[116]

Australia's role on the difficulty is sort of clear, as inside the case of the Walton Store, Mason CJ and Wilson J explained that, similarly via Staples, was stopped (Sutton, 1989). This issue is mainly relevant to the query of the reception of promotional estoppel in Malaysia, despite the fact that there may be a clean felony provision in Section sixty-four of the Malaysian Contracts Act which specially provides exemptions. This, specifically, raises the query of whether the promotional estoppel is being well carried out through the Malaysian courts below which sections three and five of the Civil Law Act allow software simplest if our law allows. I do not have this sort of clause. Andrew Fang (1998) believes that section 64 of the Malaysian Contracts Act has abolished this principle within the case of the Penal Code, which guarantees the satisfaction of consideration via accepting partial repayments as the full pleasure of the original debt exceptions. Gives. Sinnadurai (1986) stocks the identical view that phase sixty-four is vast sufficient to cover all exceptions to the overall rule below English regulation.

RESEARCH METHODOLOGY

The reason of this examine is to make clear the location regarding the CISG, the ideas of UNIDROIT, and their dating to the doctrine of frustration / exemption / forcibly injured, and to provide a better understanding of the operating relationship between them. Is. Three major legal equipment of attention on this take a look at. This examine will use the techniques of comparative and crucial analysis of the laws, beliefs, concepts and jurisdictions which are the focus of this examine. The sample may even present a historic framework for numerous problems that have been evolved to test this research explicitly.

[116] Cheong, May Fong. "Estoppel in Boustead's Case: A Move away from Reliance towards Unconscionability." *JMCL* 26 (1999): 71.

CONCLUSION

Threats to the limits of promotional estoppel, as evidenced by using the continuous evolution of promotional estoppel, can lead to turmoil in agreement regulation and open the door to litigation. This concept of equality, which changed into at the start an exception to the concept of consensus and pride and is challenge to 5 limits, now appears as an open and infinite idea.

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MARTIAL LAW REGEIMES AND DEMOCRATIC VALUES IN PAKISTAN

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ABSTRACT
This article is about doctrine of necessity maxim used several times in Pakistan. First time this maxim was used in Pakistan by Justice Munir and its 5 member's bench of Federal Court of Pakistan in favor of Governor General Ghulam Muhammad and Federation of Pakistan. This was the bad precedent set by the most superior court in Pakistan. In Pakistan military dictators took over the control of country four times and every time they validated their rule by superior courts of Pakistan. Superior courts validated Marshall Law`s on the famous maxim of doctrine of necessity. In this maxim it is clearly mentioned that extra constitutional steps can be taken by any powerful authority in the state of emergency. Doctrine of necessity has been used in many developing and under developed countries. This maxim is an enemy of Constitution and democratic values. During the last few years, the governments of many emergent nations have been overthrown through violent revolutions, bloodless coups d'état, or other forms of upheaval. Many of these countries have been long unstable due to ethnic, religious, political, or economic differences. In countries with a strong commitment to constitutional government, a coup is particularly traumatic because acceptance of the revolutionary government effectively invalidates the constitution. A new regime cannot lawfully exist within a constitutional framework if it came to power in direct contravention of it. If the new government continues to function, it becomes the functional governing body of the country; the constitution continues to exist in name only. New un-elected government can run the county on basis of doctrine of necessity.
Keywords: Doctrine of Necessity, Pakistan, Military Dictators, Marshall Laws, Supreme Court

INTRODUCTION

State or civil necessity is a common law doctrine which provides a justification for otherwise illegal government conduct during a public emergency. Courts must severely circumscribe this common law defense because a loosely-imposed standard of necessity makes it possible to justify substantial violations of constitutional rights and alterations of the governmental structure. This doctrine is inappropriate to any judicial consideration of the legitimacy of a coup, revolution or other acute governmental upheaval. Necessity is a doctrine which bridges the sometimes considerable gap between what the law allows the government to do and the government's actual response to an emergency. It has no relevance where emergency state action is taken pursuant to specific statutory or constitutional authorization. Rather, it is only relevant where an injured party can show a prima facie that the government has violated the law.

The doctrine of necessity is a term used to describe the basis on which extra constitutional actions can be taken by administrative authority, which are designed to attain power on the pretext of stability, are found to be constitutional even if such an action would normally be deemed to be in contravention to established norms or conventions. It also includes the ability of a private person to violate a law without punishment where the violation of law was necessary to prevent even worse harm. The maxim on which the doctrine is based originated in the writings of the medieval jurist Henry de Bracton, and similar justifications for this kind of extra-legal action have been advanced by more recent legal authorities, including William Blackstone.

In modern times, the doctrine was first used in a controversial 1954 judgment in which Pakistani Chief Justice Muhammad Munir validated the extra-constitutional use of emergency powers by Governor General, Ghulam Mohammad. In his judgment, the Chief Justice cited Bracton's maxim, 'that which is otherwise not lawful is made lawful by necessity', thereby providing the label that would come to be attached to the judgment and the doctrine that it was establishing. [117]Federation of Pakistan and Governor General

[117] See for instance, "Governor General's Case, PLD 1955 Federal Court of Pakistan 477.

Ghulam Muhammad challenged the decision of Chief court of Sind in Federal Court of Pakistan.[118]

EXERCISING OF DOCTRINE OF NECESSITY, MARTIAL LAW REGIEMES AND DEMOCRATIC VALUES IN PAKISTAN

1. Moulvi tammez.u.din vs federation of pakistan and governor general

On 19th October, 1954 Governor General Ghulam Muhammad dismissed Constituent assembly of Pakistan and dismissed Prime Minister Khawaja Nazimuddin and its Cabinet which was publically elected. Moulvi Tameez.u.Din who was President of Constituent assembly challenged the decision of Governor General in Chief Court of Sind. Chief Court of Sind restore the assembly and Government and declared Governor General`s decision unlawful.[119] Chief Justice Muhammad Munir and 5 member's bench heard the case. And after hearing the case Federal Court declared Chief Court Sind order null and void and said that Governor General and Federation are sovereign bodies and they made their decision in emergency powers.[120] Justice Munir and its 4 member's bench gave their verdict on the state of doctrine of necessity.[121] While Justice Alvin Robert Cornelius disagreed with the judgment and written in his disagreeeed note that there is no importance of doctrine of necessity and constitution is most important and it cannot be violated. Justice Cornelius dissented on the necessity issue, asserting that the Governor-General's actions went too far beyond his authority under the existing constitutional framework.[122] Although the justice recognized that during an emergency state necessity may justify interference with the rights of citizens, he stated that it cannot justify "interference with constitutional instruments." Cornelius contended that the sources which the majority cited to uphold

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[118] See for instance, Judgment Order of the Chief Court of Sindh, PLD 1955 Sind 96. Dated: 9th February, 1955.

[119] Khan, Hamid. Constitutional and Political History of Pakistan. Oxford University Press, Karachi. Ed. 2005. P; 86.

[120] See for instance, Moulvi Tameez-u-Din Case; PLD 1955 FC 240. Dated: 24th October, 1954.

[121] http://www.pja.gov.pk/system/files/CONSTITUTIONAL_HISTORY.pdf

[122] Wolf-Phillips, Leslie. "Constitutional Legitimacy: A Study of the Doctrine of Necessity." Third World Quarterly, Vol. 1, No. 4 (October 1979) 98.

executive exercise of legislative powers were anachronisms which no longer should be accorded any precedential weight.[123]
The verdict dealt a blow to the notion of parliamentary supremacy in Pakistan. The irony was that Pakistan was an independent dominion created by the Indian Independence Act 1947. [124]The British parliament enjoyed parliamentary supremacy in its own realm. But the Federal Court's verdict stripped Pakistan's parliamentary supremacy, even though Pakistan itself was an independent realm of the British monarchy.[125] The verdict paved way for the future judiciary to support unconstitutional and undemocratic actions, such as military coups. The doctrine of necessity was applied by successive Pakistani and Bangladeshi courts to validate the actions of martial law authorities.[126] This doctrine of State of Necessity was a base for every Martial Law in Pakistan as well as in Bangladesh. This Doctrine of State of Necessity has very vast implications on third world countries. [127]And Military dictators of third world countries forced courts in their countries to validate unlawful government on the basis of doctrine of necessity.

1- DOSSO VS FEDERATION OF PAKISTAN

Dosso vs. Federation of Pakistan was the first constitutional case after the promulgation of Constitution of Pakistan of 1956 and an important case in Pakistan's political history. The case got prominence as it indirectly questioned the first martial law imposed by President Iskander Mirza in 1958.
Dosso was the tribal person from district Loralai in Baluchistan then under Provincially Administered Tribal Areas who committed a murder and got arrested by tribal authorities and handed over to Loya jirga which convicted him under Frontier Crimes Regulation (FCR). Relatives of Dosso challenged the decision in Lahore High Court the then west Pakistan High

[123] Newberg, R Paula. Judging the State: Courts and Constitutional Politics in Pakistan. Cambridge University Press. Ed. 1995. P; 35-41.
[124] See for instance, Chief Justice Muhammad Munir: his life, writings, and judgments. Research Society of Pakistan. Ed. 1973.
[125] Newberg, R Paula. Judging the State: Courts and Constitutional Politics in Pakistan. Cambridge University Press. Ed. 1995. P; 25-35.
[126] Omer, *Imtiaz.* Emergency powers and the courts in India and Pakistan. *Martinis Nijhoff Publishers. Ed. 2002. P; 55-60.*
[127] Munir, *Muhammad.* From Jinnah to Zia*. Vanguard Books*. Ed. 1980, 2018. P; 79.

Court which ruled in favor of Dosso. Federal Government went on to the Supreme Court of Pakistan which reversed the High Court's decision by referring to the Hans Kelsen theory of legal positivism famously the doctrine of necessity.[128]

``Dosso a resident of tribal district Loralai committed a murder and got arrested by the Levis Forces which handed him over to the tribal authorities where he was trialed by Loya Jirga. He was charged for murder under the section 11 of the FCR 1901 and was convicted for it by Loya Jirga. Dosso's relatives challenged the decision of Loya Jirga in Lahore High Court. The High Court considered the case according to the 1956 constitution of Pakistan and ruled in favour of Dosso. The High Court declared that FCR is against the constitution and Dosso is entitled to equality before law under article 5 & 7 of the constitution. Loya Jirga's decision was declared null and void. Federal Government of Pakistan filed an appeal in Supreme Court of Pakistan against the verdict of High Court``.

Relatives of Dosso filed a petition against his conviction by Loya Jirga in West Pakistan High Court that he is the citizen of Pakistan and being a citizen of Pakistan he must be tried according to the Pakistani laws, not the FCR. Articles 5 of the Constitution of Pakistan of 1956 states that all citizens are equal before law and under article 7 enjoy equal protection of the constitution. Dosso's relatives also challenged the relevant provisions of FCR considering them against the article 5 and 7 of the constitution. West Pakistan High Court decided the case in favor of Dosso and declared that FCR is against the 1956 Constitution. The Constitution of Pakistan ensures the equality and protection of citizens and declared the proceedings of Loya Jirga as null and void.

The effect of West Pakistan High Court's decision was that after declaring Frontier Crimes Regulations against the constitution and proceedings of Loya Jirga as null and void, the cases which were decided since the promulgation of new constitution of 1956 were in question. It was said that if conviction of Loya Jirga in Dosso case is declared null and void then what about the previous convictions of Loya Jirga after promulgation of Constitution in 1956.

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[128] See for Instance, *Noorani, Ahmad. The News International.* "Embarrassing verdicts in Pakistan`s history". 19th December, 2019. (Last visit; Date and Time 08-04-2021 / 03:40 pm)

Federation of Pakistan challenged against the decision of West Pakistan High Court in the Supreme Court of Pakistan and Supreme Court set the hearing date for the case on 13 October 1958. On 7 October 1958, a harsh change came in the political history of Pakistan. President General Iskander Mirza imposed first martial law in the country and made Commander-in-Chief of Pakistan Armed Forces General Muhammad Ayub Khan as Chief Martial Law Administrator of a country. All of the government machinery; legislatures, central and provincial were dissolved.

After three days of martial law, an order named Laws (Continuance in Force) Order, 1958 was issued by Chief Marshal Law Administrator, Commander-in-Chief of Pakistan Armed Forces General Muhammad Ayub Khan. This order was a new legal order which replaced the old legal order that is The Constitution of Pakistan 1956. The legal order validated all the laws other than constitution of 1956 and restored the jurisdiction of all courts. Martial law impacted the case significantly and raised some technical points that if Supreme Court maintains the decision of West Pakistan High Court, it meant that constitution was still in force because the West Pakistan High Court decided the case under article 5 and 7 of the Constitution of Pakistan 1956. Also if the constitution was still in force then what will be the status of martial law regulations and Laws (Continuance in Force) Order 1958 as it also challenged the martial law administration. The Supreme Court of Pakistan after restoration decided the case against the decision of West Pakistan High Court with single member dissenting note by Justice Cornelius. Supreme Court bench headed by Justice Munir based its decision on Hans Kelson's General Theory of Law and State.

The judgment legitimized the martial law of 1958 as a bloodless coup and a kind of peaceful revolution which was not resisted or opposed by the public implied that public is satisfied with this change or revolution, so therefore this martial law is legit. According to the Supreme Court, Laws (Continuance in Force) Order 1958 is the new legal order instead of Constitution of Pakistan 1956 which got abrogated and the validity of a law is determined by this new legal order. Furthermore, it was held that the constitution is abrogated; therefore Frontier Crimes Regulations 1901 is in force according to the Laws (Continuance in Force) Order 1958 which validated the decision of Loya jirga. Dosso case has a far reaching

effect on the political history of Pakistan.[129] The recognition of martial law and with the reborn of Kelsen's theory which afterwards was applied in many other cases in Pakistan as well as in the outer world. Judgment of this case made Pakistan an uncivilized state in the eyes of the west. Furthermore doctrine of necessity was used second time in the political history of Pakistan. The Judgment given by Supreme Court of Pakistan in Dosso case greatly impacted the politics in Pakistan and opened the doors for the future martial laws in the country. Legitimization of martial law given power to Chief Marshall Law Administrator General Muhammad Ayub Khan who used it to rule the country for 11 years[130]. Democratic process in the country was destroyed which had recently been on the road after the promulgation of first constitution in 1956 and made the country to run on the track of dictatorship. Military was encouraged by it for future interventions which occurred three times afterwards. The decision also deprived country of its first constitution just after two years of its promulgation after the struggle of nine long years. Abrogation of the 1956 Constitution also disturbed the ties between East and West Pakistan which were recently settled by establishing parity between both wings and incorporating both Urdu and Bengali as national language. Legitimization of Marshall Law made Bengalis angry and they started their struggle for fundamental rights. The decision of the Supreme Court re-validated the British implied legacy of Frontier Crimes Regulation, which was known as the Black Law continued to be enforced in the tribal region till 2018. The decision of the Supreme Court of Pakistan was a serious blow to the independence of judiciary and judiciary was bound to render its service under new legal order. The decision also deprived the courts to hear appeals against the action of government. The judiciary once again bowed down in front of executive in this case and concept of separation of powers further diminished.

2- ASMA JILLANI VS FEDERATION OF PAKISTAN

There were two appeals, one filed by Miss Asma Jilani in the Lahore High Court for the release of her father Malik Ghulam Jilani, and by Mrs. Zarina Gohar in the Sindh High Court for the redemption of

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[129] See for Instance, *Qazi, Sabina.* "Necessity as the mother of laws". The Dawn newspaper. 19th December, 2019. www.dawn.com.pk (Last visit; Date and Time 08-04-2021 / 05:05 pm)

[130] Khan, Hamid. Constitutional and Political History of Pakistan. Ed. 2009.

her husband Althaf Gohar, under Article 98 of the Constitution of Pakistan 1962. The restraint of Malik Ghulam Jilani and Althaf Gohar had been made under the Martial Law Regulation No.78 of 1971. So the restraint of these persons was challenged in Lahore and Sindh High Court respectively. The High Court adopted that it had no jurisdiction because of the clause 2 of the Jurisdiction of Courts Order No.3 of 1969 banned the courts from questioning the validity of any act committed under the Martial Law Regulation No.78 of 1978. Asma Jilani petition to Supreme Court which held that this country was not a foreign country which had been affected by any army with General Agha Mohammad Yahiya khan as its Head, nor was it an foreign territory which had been occupied by the said Army. Martial Law could not have founded in the situation. Pakistan had its own legal doctrine-The Qur'an, and the Objectives analysis. Therefore Martial law was never above to the Constitution. After listening arguments Supreme Court gave its observation that acts done by Military dictator were unlawful but they took support of Kelson`s theory of Doctrine of necessity and said that Chief Marshall Law Administrator and President of Pakistan General Agha Muhammad Yahiya Khan as head of Federation, Government and Armed Forces can promulgate Marshall Law and have power to suspend or amend constitution or any law in the country.[131] Unfortunately when Judgment of Supreme Court of Pakistan released General Agha Muhammad Yahiya Khan was not in power and Zulfiqar Ali Bhutto was in Power and he was President of Pakistan, Head of Government and civilian Chief Marshall Law Administrator. Supreme Court further held that neither Yahya khan was neither a victor not a Pakistan was an occupied territory and thus declared him a 'usurper' and all his actions were also declared illegal. Asma Jilani's case paved the way for the restoration of democracy in the country. Due to the Judicial pronouncement in the case of Asma Jilani, Zulfiqar Ali Bhutto was compelled to remove the Martial law and restore the democracy in the country.

3- BEGUM NUSRAT BHUTTO VS CHIEF OF ARMY STAFF OF PAKISTAN

The promulgation of martial law was shocking for whole of Pakistan as well as rest of the world. Pakistan People’s Party who was

[131] See for instance, Ali Shah, Syed Akhtar. "Tailor made laws". The Express Tribune. 19th December, 2019.

democratic elected government of that time has been over thrown by that time Chief of Army Staff General Muhammad Zia-ul-Haq. Pakistan People's Party decided to challenge it in court. Pakistan People's Party know that the seat of Chief Justice of Pakistan`s would now be occupied by a Chief of Army Staff General Muhammad Zia-ul-Haq friendly judge Justice Anwar-ul-Haq. Justice Anwar-ul-Haq was replaced as Chief Justice of Pakistan by Chief Justice Yakoob Ali Khan on Sept 20, 1977. The same day as Nusrat Bhutto made a petition in the Supreme Court of Pakistan to challenge dictatorship was filed. The constitutional petition was filed by Begum Bhutto under Article 184 (3) against the Chief Martial Law Administrator and Chief of Army Staff of Pakistan General Muhammad Zia-ul-Haq, challenging the validity of the Chief of Army Staff to promulgate martial law, as well as the detention of Former Pakistani President and democratically elected that time Prime Minister Zulfiqar Ali Bhutto and 10 other Pakistan People's Party leaders who were arrested on Sept 17, 1977 under Martial Law Regulation No 12. The application was admitted for hearing. A nine member bench was constituted to hear the constitutional petition; the judges included Chief Justice Anwar-ul-Haq, Justice Waheedudin Ahmad, Justice Mohammad Afzal Cheema, Justice Mohammad Akram, Justice Dorab Patel, Justice Qaisar Khan, Justice Mohammad Haleem, Justice G. Safdar Shah and Justice Nasim Hassan Shah. In her petition, Begum Nusrat Bhutto took the plea that the Chief of Army Staff of Pakistan General Muhammad Zia-ul-Haq had no right to overthrow the elected government and that all his actions were illegal. The petitioner contended that the Chief of Army Staff had no legal authority under the 1973 Constitution to impose martial law in the country or to promulgate the Laws (Continuance in Force) Order, 1977. This intervention, Begum Bhutto argued, amounted to an act of treason as stipulated by Article 6 of the 1973 Constitution. As a consequence, the proclamations of martial law on July 5, 1977, and the laws promulgated, were all without lawful authority. Since the martial law government had no authority, the petition said, the detention of Zulfiqar Ali Bhutto and 10 other Pakistan People's Party leaders was also illegal. The Federation was represented by A.K. Brohi, who based his arguments over the post March election scenario. He claimed that as a result of Zulfiqar Ali Bhutto's massive rigging, his government had lost whatever constitutional

validity it earlier had. The ensuing widespread disturbances amounted to a repudiation of Zulfiqar Ali Bhutto's authority to rule and the specter of civil war was averted only thanks to the timely action by the Chief of Army Staff General Muhammad Zia-ul-Haq on July 5, 1977. Senior lawyer Sharif-ud-Din Pirzada said that General Zia's action on that day was not a coup, but was valid based on the old Roman doctrine of state necessity, as the only proper means of ousting a usurper who had illegally assumed power as a result of massive rigging.[132]

After hearing both sides, the court delivered its verdict on Nov 10, 1977, referring to the doctrine of necessity, the court dismissed the petition, saying it was not maintainable. [133]The Supreme Court of Pakistan said that the legal consequences of an abrupt political change, by imposition of martial law, have to be judged not by application of an abstract theory of law in vacuum but by consideration of the total milieu preceding the change.[134] The court held that the "objective" political situation prevails at the time, its historical imperatives, compulsions, motivations of persons bringing the change and the extent of preservation of suppression of old legal order all needed to be considered. In paragraph IX of the verdict, the court said that the true position emerging out of the facts of the case and the law applicable there to is that the 1973 Constitution still remains the supreme law of the land, subject to the condition that certain parts thereof have been held in abeyance on account of State machinery.[135] The mere fact that the judges of the superior courts have taken a new oath after the proclamation of martial law does not in any manner derogate from the position as the courts had been originally established under the 1973 Constitution and have continued in their functions in spite of the proclamation of

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[132] See for instance, The Dawn newspaper. "Necessity as the mother of laws". www.dawn.com.pk. 19th December, 2019. (Last visit; Date and Time 08-04-2021 / 07:45 pm)

[133]See for instance, Constitutional History of Pakistan. www.pja.gov.pk. (Last visit; Date and Time 09-04-2021 / 11:50 pm)

[134] Newberg, R Paula. Judging the State: Courts and Constitutional Politics in Pakistan. Cambridge University Press. Ed. 1995. P; 165.

[135] Wolf-Phillips, Leslie. "Constitutional Legitimacy: A Study of the Doctrine of Necessity". Ed. 1979.Vol. 1, P; 98

martial law. [136]The Chief Marshal Law Administrator General Muhammad Zia-ul-Haq assuming power by means of an extra-constitutional step was held to be a matter of state necessity and was deemed as being a step taken for the welfare of the people. [137]He was now entitled to perform all acts and promulgate all legislative measures. The verdict recalled events that took place during and after the March 7, 1977 polls, and the allegations of rigging.[138] The verdict added that given the broken state of law and order, and the shattered economy, the Chief Marshal Law Administrator took over administration for a short time to arrange for fresh elections within the shortest possible time.[139] The new arrangements dictated by consideration of state necessity and welfare of the people of Pakistan and restoration of democratic institutions in Pakistan, and were therefore justified on the basis of doctrine of necessity. [140]

4- ZAFAR ALI SHAH VS CHAIRMAN JOINT CHIEFS OF STAFF COMMITTEE GENERAL PERVEZ MUSHARAF

On 12th of October, 1999 Chairman Joint Chiefs of Staff Committee General Pervez Musharaf with other Army Corp Commanders overthrew the elected government of Prime Minister Mian Muhammad Nawaz Shareef and detained Mian Muhammad Nawaz Shareef with other party members in various jails of a country. [141]Zafar Ali Shah a senior lawyer and a senior member of Pakistan Muslim League files a constitutional petition in the Supreme Court of Pakistan against the Coup of Pervez Musharaf with his Army fellows. [142]The Supreme Court of Pakistan led by Chief Justice

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[136] See for Instance, *Qazi, Sabina.* "Necessity as the mother of laws". The Dawn newspaper. 19th December, 2019. www.dawn.com.pk (Last visit; Date and Time 11-04-2021 / 12:05 pm)

[137] Omer, *Imtiaz.* Emergency powers and the courts in India and Pakistan. *Martinis Nijhoff Publishers. Ed. 2002. P; 55.*

[138] Munir, *Muhammad.* From Jinnah to Zia. *Vanguard Books*. Ed. 1980, 2018. P; 82.

[139] See for instance, The Encyclopedia Britannica "Mohammad Zia-ul-Haq President of Pakistan". (Last visit; Date and Time 12-04-2021 / 12: 35 pm)

[218] Christina. Waiting *for Allah: Pakistan's Struggle for Democracy. Penguin Books, London. Ed. 1992. P; 74-76.*

[141] Baxter, Craig. Pakistan on the Brink: Politics, Economics, and Society. Lexington Books, Oxford. Ed. 2003. P; 56-59.

[142] See for instance, The Newspaper of BBC "How the 1999 Pakistan coup unfolded". Dated; Oct. 13th 1999. News.bbc.com.uk (Last visit; Date and Time 12-04-2021 / 12:45 pm)

Arshad Hasan Khan and also including later Chief Justice Iftikhar Muhammad Chaudhry not only "rejected" the petition but also empowered the fourth dictator of Pakistan General Pervez Musharaf to himself amend the constitution, a relief which was not even sought. [143]This black judgment pushed Pakistan into a blind alley. The backbone of country's economy was broken and incompetent dictators and his associates played havoc with country's energy and all other sectors. [144]Pakistan became one of the leading countries worst hit by terrorism. No plans were made to meet electricity shortage and future gas requirements. The Supreme Court of Pakistan validated the martial law in a view of "doctrine of necessity" but provided its legality only limited to three years; But Musharaf remained in the power for almost 9 years with brutal decisions made by him.[145] Pakistan suffered a lot because of every dictator and especially of General Pervez Musharaf. His decisions there are totally kayos in the country. [146]It was held by the Supreme Court that on 12th of October 1999 a situation arose for which the Constitution provided no solution and intervention by the Armed Forces through an extra-Constitutional measure became inevitable and the said act was validated on the basis of the doctrine of state necessity. It was further held that the 1973 Constitution would remain supreme law of the land subject to the condition that certain parts thereof would be held in abeyance on account of state of Doctrine of Necessity. [147]

Supreme Court of Pakistan given their judgment against Zafar Ali Shah and once again took shoulder of Doctrine of necessity. Because of this General Pervez Musharaf became President through a referendum held in April 2002, not an election where there would be other candidates. At the general elections held in October 2002,

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[143] Hirschl, Ran. Constitutional Theocracy. Harvard University Press. Ed. 2010. P; 15-25.

[144] Jan, Abid Ullah. "The Height of Collective Helplessness". The Musharaf Factor: Leading Pakistan to Inevitable Demise. Trade Paperback Books. Ed. 2005. P; 21-41.

[145] Aziz, Mazhar. "The politics of military coup d'état theoretical implications". Military Control in Pakistan: The Parallel State. Rutledge, London. Ed. 2008. P; 79-96.

[146] Shah, Aqil. "From Zia to Musharaf". The Army and Democracy. Harvard University Press, Stanford. Ed. 2014. P; 381.

[147] Aziz, Sartaj. Between Dreams and Realities: Some Milestones in Pakistan's History. Oxford University Press, Karachi. Ed. 2009. P; 408.

the Muttahida Majlis-e-Amal (MMA), an alliance of religious parties and the pro-Musharaf Pakistan Muslim League (Q) won comfortably. In 2003, the Seventeenth Amendment to the Constitution validated the various acts done by Musharaf, including the revival of the President's power to dissolve Parliament. The President to Hold another Office Act, 2004 (PHAA) permitted Musharaf to be both President and Chief of Army Staff.

PAKISTAN LAWYERS FORUM VS FEDERATION OF PAKISTAN

Pakistan Lawyers Forum challenged both the Seventeenth Amendment and the PHAA in the Supreme Court of Pakistan. The petitioners relied on Zafar Ali Shah's case where the Court had held that the Constitution had certain 'salient features'. The Supreme Court validated both the Seventeenth Amendment and the PHAA. Having referred to the mandate that Musharaf received at the referendum, the Court stated that it was no longer correct to think of the Constitution of Pakistan as providing for a purely parliamentary system according to the Westminster model. 'Instead, what can be seen is that over time, Pakistan has evolved its own political system so as to suit the political conditions found here. No objection can now be taken to the said system on the bass that it provides for a balance of powers (as opposed to concentrating all powers in the hands of the Prime Minster). As such, the vehement protects of the petitioners that the impugned provisions have destroyed the basic structure of the Constitution appear to be considerably overwrought and no weight can be placed on those arguments.' The Court observed that even though there were certain salient features of the Constitution, it has been the consistent position of the court ever since it first enunciated the point in Zia's case (PLD 1973 SC 49) that the debate with respect to the substantive vires of an amendment to the Constitution is a political question to be determined by the appropriate political forum and not by the judiciary[148]. The position adopted by the Indian Supreme Court in Kesvavananda Bharati case (AIR 1973 SC 1461) is not necessarily a doctrine which can be applied un thinking to Pakistan. Pakistan has its own unique political history and its own unique judicial history. There is a significant

[148] Aziz, Sartaj. Between Dreams and Realities: Some Milestones in Pakistan's History. Oxford University Press, Karachi. Ed. 2009. P; 408.

difference between taking the position that Parliament may not amend salient features of the Constitution and between the positions that if Parliament does amend these salient features, it will then be the duty of the superior judiciary to strike down such amendments. Clearly, the Court was now extending the doctrine of state necessity. The basic features doctrine enunciated in Zafar Ali Shah's case that stood in its way was not followed. 'In legitimizing the power of the military and executive over the Parliament, this case further strengthened the popular perception of the subservience of the Supreme Court to the military regime.' Pakistan being a jurisdiction with post-enactment judicial review, it is difficult to see how the power of review would not extend to the review, in the absence of a specific constitutional provision to that effect. This was all done because of doctrine of necessity which was firstly given in 1955 by that time Supreme Court. Every Marshall Law Administrator pressurized the Superior Courts to legitimate their illegal government on the basis of Doctrine of Necessity.

LAST MARTIAL LAW REGIEME AND ITS EFFECTS ON DEMOCRATIC VALUES IN PAKISTAN

On 09 March 2007, President and Chief of Army Staff General Pervez Musharaf suspended the Chief Justice of Pakistan, Justice Iftikhar Mohammad Chaudhry, and giving rise to lawyers' protests all over the country. On 20 July 2007, a 13member Bench of the Supreme Court of Pakistan unanimously reinstated the Chief Justice. On 03 November 2007, President and Chief of Army Staff General Pervez Musharaf declared a state of emergency and again suspended the Constitution and Parliament. Supreme Court judges were locked up. A Provisional Constitutional Order was issued prescribing a special oath for judges of the Superior Courts as a requirement for continuing to hold office. 13 out of the 18 judges of the Supreme Court and 61 out of 93 Judges of the various High Courts did not take the oath. General Pervez Musharaf thought that he will suspend Chief Justice of Pakistan and validate his actions by Supreme Court of Pakistan on the grounds of Doctrine of Necessity but that time Judiciary was not in position to accommodate General Pervez Musharaf.[149]

[149] Aziz, Sartaj. Between Dreams and Realities: Some Milestones in Pakistan's History. Oxford University Press, Karachi. Ed. 2009. P; 408.

After the general elections in February 2008 in which General Pervez Musharaf supported Pakistan Muslim League (Q) was badly defeated, the Constitution was restored and an elected Government revived. General Pervez Musharaf resigned in August 2008. In September 2008, several of the deposed Judges rejoined the Court, and finally, on 16 March 2009, Justice Chaudhry was re-instated as Chief Justice.[150]

Prime Minister of Pakistan Syed Yusuf Raza Gillani case was on 19th June, 2012, the Supreme Court of Pakistan refused to resurrect 'the malignant doctrine of necessity which has already been buried, because of the valiant struggle of the people of Pakistan.'[151]

When General (R) Pervez Musharaf was tried for high treason; he issue of the legality of his actions came up before the Special High Court which refused to invoke the doctrine of necessity to validate his actions. Referring to former Chief Justice of Pakistan Justice Muhammad Munir original invocation of the doctrine, the Special High Court stated: 'Had the honorable Superior Judiciary, at that time, not invoked the Doctrine of Necessity, and had proceeded against usurpers, abrogaters, subvertors, the Nation would not have seen this day at least, where an officer in uniform repeats this offence'.[152]

Addressing a judge's conference on 02 February 2019, the then Chief Justice of Pakistan, Mian Saqib Nisar said that the infamous doctrine of necessity that had given the judicial nod to successive martial laws in the country now lay buried. He furthermore added that this harmful doctrine will not use ever in the Pakistan. [153]Pakistan bearded a lot of loss due to this doctrine. Because of this doctrine Pakistan splits into two countries Pakistan and Bangladesh.

On 22 April, 1960, speaking to the Lahore High Court Bar Association on his retirement, Former Chief Justice of Pakistan Muhammad Munir referred to the controversial cases he dealt with and stated that holding against the Governor General would have entailed enforceability issues and caused bloodshed. 'The mental

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[150] Aziz, Sartaj. Between Dreams and Realities: Some Milestones in Pakistan's History. Oxford University Press, Karachi. Ed. 2009. P; 409, 410.

[151] *Ibid*.

[152] See for instance, The Jang newspaper, 5th February, 2019. www.jang.com.pk (Last visit; Date and Time 12-04-2021 / 12:50 pm)

[153] See for instance, The Dawn newspaper, 4th February, 2019. www.dawn.com.pk. (Last visit; Date and Time 12-04-2021 / 12:555 pm)

anguish caused to the judges by these cases is beyond description and I repeat that no judiciary anywhere in the world had to pass through what may be described as a judicial torture', he added. In 1962, Munir accepted a Cabinet position in Ayub Khan's regime under a Constitution which did not have fundamental rights. In his book 'From Jinnah to Zia' published in 1979, Justice (R) Muhammad Munir does not utter a word about his infamous judgments or about the doctrine, probably out of remorse.[154]
He warned against the dangers of the doctrine's application in constitutional law. 'Doctrinally, courts should be reluctant to permit deviations from constitutional norms. Approval must be reluctant because courts, in reviewing a state necessity claim, must consider the legitimacy of readjusting fundamental political, social, and legal values. This consideration must be made in cases where the challenged state action affects individual rights as well as in cases involving changes in the governmental structure.'[155]

[154] Aziz, Mazhar. "The politics of military coup d'état theoretical implications". Military Control in Pakistan: The Parallel State. Rutledge, London. Ed. 2008. P; 133, 189.
[155] See for instance, The Jang newspaper, 5th February, 2019. www.jang.com.pk (Last visit; Date and Time 12-04-2021 / 01:33 pm)

CONCLUSION

The use of the necessity doctrine to legitimize a coup d'état or other revolutionary alteration of the government is inappropriate. This application of the doctrine is incorrect for two reasons. First, the assumption that the court will be able to influence the regime by using the doctrine in this manner is not realistic. Second, the court's action validates the new regime and gives it the appearance of legitimacy. The Supreme Court OF Pakistan did not act in the national interest in its use of the necessity doctrine in the Bhutto case. The court upheld, as constitutional, actions by the regime which undermined the raison d'être of the Pakistani Constitution. The court's action legitimized the removal of a popularly elected government and the disenfranchisement of the population. While the court might have been removed after such a ruling, Zia would have had to assuage a country committed to democratic rule without the assistance of the court. Without the court and constitution behind him, Zia may have been compelled to make concessions to bolster his then fledgling regime. Instead, the regime became entrenched to the point where the judicial system is now firmly under Zia's control. This all done because of Supreme Court`s verdict which gave on the Kelson`s theory of doctrine of Necessity.

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