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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 2nd volume, issue 6, which is going to be published in June, 2022. 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.

Umar's article is an analytical study of the Punjab Infectious diseases (prevention and control) act 2020 in the light of Right of freedom of movement. The right of freedom of movement is the most important human right provided in national and international legal regime and is being curtailed by Punjab infectious diseases (prevention and control) act 2020. This article analyze nicely this curtailment by the said Act.

Hafiz Ijaz and Dr. Shahid's article is a brief account of social life of the people of the Pakistan under the Constitution of 1973. The current constitution of Pakistan was adopted in 1973. Despite the country's diverse ethnic, linguistic, and cultural groups, the constitution of Pakistan prescribes Islam the official religion. Initially, it appeared that the constitution would benefit the country as a whole, but the ruling class later made revisions that benefited them more than the people of Pakistan. This article nicely explains lacuna of social transitions under the Constitution of 1973

Iqra Ishfaq and Dr. Shahid's article is a good account of the jail Institution as recognized and enforced by Islam. As there is a

common misconception among the people that there are only two Islamic punishments, Hudood and Qisas. But this article removes this misconception and depicts other Taazir punishment just as imprisonment and jail punishment in Islamic Law.

Abdullah and Dr. Shahid's article puts the concept of contempt of court as a legal dilemma analyzing it in the light of legal system and Constitution system of Pakistan. This article briefly states the history and origin of the contempt of the court as a threats to ends of justice as well as it tries to determine the logical reasoning behind the term of contempt of court and explains why it has been incorporated in the Constitution of Pakistan. This article also maintains whether this term should be used in the future as the expression of freedom of speech.

Muhammad Farhan and Dr. Shahid's article is of too much importance in the current legal literature as this research paper has analyzed the scope of "right to life including right to death" in the modern world and from the perspective of Islam and in Pakistan. It has also discussed the countries on the world map in which right to die is given as a part of right to life which is a fundamental right. It has also contemplated the circumstances in which a person has the vested right to die like serious suffering and unbearable pain. It has underpinned the arguments which favor the use of euthanasia and assisted suicide. In addition to it, the opposing point of views are also there as it is not the mercy to kill and no one has the right to end his life because it is not recognized in any of the religion of the world.

Dr. Muhammad Amin
The Editor

The Punjab Infectious Diseases (prevention and control) Act 2020: an analytical study in perspective of Right of Freedom of Movement

Muhammad Umar Farooq Cheema*

Abstract: This research has been conducted on Right of freedom of movement which is one of the most important human right provided in national and international legal regime and is being curtailed by Punjab infectious Diseases (prevention and control) Act, 2020. Furthermore, it discusses to what extent restriction on freedom of movement in country violating the human rights conventions which Pakistan is party. Moreover Punjab infectious Diseases (prevention and control) ordinance 2020 has be discussed in detail and analyzed that to what extent restriction on freedom of movement in Punjab infectious Diseases (prevention and control) Act, 2020 are compatible with national law of Pakistan and international human rights law, also this research has discussed that what steps has been taken so far for the control and prevention of Covid-19 in the country for saving human lives.

Keywords: Infectious disease, Act 2020, Right Freedom, Movement

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INTRODUCTION

Freedom of movement refers to the right of people to circulate without restrictions across the surface of the world. This may concern either internal or international mobility. Article 13 of the Universal Declaration of Human Rights (UDHR) addresses both internal and international mobility and states that: (1) "Everyone has the right to freedom of movement and residence within the borders of each state" and (2) "Everyone has the right to leave any country, including his own, and to return to his country." There are states in which citizens are restricted from moving within their country. An example is China and its hukou system, which requires citizens to obtain a permit to live and work in a province other than their own, thereby exposing them to illegal status in their own country; about one hundred million migrants, especially from rural areas to cities,

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are concerned.[1] Internal mobility may also be difficult in the case of wars and conflicts, as illustrated by internally displaced people (IDPs) who are exposed to dangers and vulnerability following a move within their state. Refugees also embody a particular situation with respect to freedom of movement, as they enjoy the right to leave their country but are prohibited from returning to their country, or at least to do so in non-harmful conditions, in contradiction of the UDHR.[2] Internationally, crossing borders involves two different steps that are distinct in terms of their legal, political, and ethical implications: (1) leaving a country and (2) entering another country. Emigration has long been a sensitive issue for states, which have sometimes used it to get rid of undesirable citizens (the poor, criminal, or unemployed, for example), while also seeing it as a threat, both for the political stability of the nation and for its economic access to labor.

Yet, recent research into the legal regulation of movement reveals that it is as much a history of emigration restriction — curtailment of the rights of nationals to leave their own country — as it is one of migration controls by other countries.[3] The right to enter a country is only half the story; indeed, it does not even come into play if the antecedent right to leave one's country is not respected. The right to leave is recognized in a number of human rights instruments, most notably, the Universal Declaration of Human Rights ('UDHR') and the International Covenant on Civil and Political Rights ('ICCPR').[4]

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[1] Chan, K. W. & Buckingham, W. (2008) Is China abolishing the hukou system? The China Quarterly 195, 582–606.

[2] Dowty, A. (1987) Closed Borders. The Contemporary Assault on Freedom of Movement. New Haven: Yale University Press.

[3] See, eg, Sunil S Amrith, 'Tamil Diasporas across the Bay of Bengal' (2009) 114 American Historical Review 547 on 'diasporic histories' and 'circulation'; Sunil S Amrith, Migration and Diaspora in Modern Asia (Cambridge University Press, 2011). See also Adam M McKeown, Melancholy Order: Asian Migration and the Globalization of Borders (Columbia University Press, 2008); Nancy L Green and François Weil (eds), Citizenship and Those Who Leave: The Politics of Emigration and Expatriation (University of Illinois Press, 2007).

[4] Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 13(1) ('UDHR'); International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 12(1) ('ICCPR'). Although Robert Jennings and Arthur Watts maintain that emigration is 'in principle entirely a matter of internal legislation of the different States', later in the same paragraph they acknowledge that a right of emigration has been

However, it is an incomplete right, since it is not matched by a state duty of admission.[5] While modern international human rights treaties reflect the right to seek asylum and the principle of non-refoulement (non-return to persecution and other serious human rights violations), these are relatively limited incursions into states' otherwise unfettered sovereign power to determine who crosses their borders and may remain within them. How and why, then, were rights to free movement codified in modern human rights treaties and what, substantively, do they mean?

This article examines the philosophical underpinnings of the right to freedom of movement in modern international human rights law. For this reason, analysis of freedom of movement as an economic right falls outside the scope of the present article, which instead seeks to understand why the right to free movement came to be reflected in modern human rights law at all. What is striking is that

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recognized in a number of general international instruments: Robert Jennings and Arthur Watts (eds), Oppenheim's International Law (Longman, 9th ed, 1992) [381]. The first statement has been carried through from the very first edition of Oppenheim in 1905, although at that time 'in principle' read 'in fact': Lassa Oppenheim, International Law: A Treatise (Longmans, Green and Co, 1905) vol 1, 351 [296].

[5] See generally Jennings and Watts, above n 3, [381], and [400]. Although it is generally accepted that states are obliged to admit their own nationals, at least as a corollary of expulsion, it is complicated even to elucidate a universal rule on this. First, ICCPR art 12(4) indicates that the right to enter one's country cannot be 'arbitrarily' deprived, suggesting that there may be legitimate grounds for refusing entry to a national. Guy S Goodwin-Gill, International Law and the Movement of Persons between States (Clarendon Press, 1978) 20, notes that states 'quite frequently establish intermediate classes of "non-citizen nationals"', concluding that [w]hile international law is concerned with nationality for the purposes of diplomatic protection, and also in the matter of the reception of those expelled from the territory of other States, it leaves to States a much wider discretion in the regulation of the incidents of nationality, and in the creation of privileged classes, whether of aliens or citizens'. Goodwin-Gill further notes that any right of entry under UDHR art 13 can be traced to 'municipal law, as an incident of citizenship', 'treaties, which may create specific rights in favor of certain classes of aliens, including refugees and stateless persons', 'general international law, in so far as this affirms the duty of a State to receive back its nationals expelled from other States or, possibly, in so far as it recognizes the human rights aspect and the right of entry as belonging to the individual citizen': at 21. See also Van Duyn v Home Office (C-41/74) [1974] ECR 1337. See Richard Plender, International Migration Law (Martinus Nijhoff, 1988) 133 for a discussion of the particular quality of the obligation of states to admit nationals, which is beyond the scope of this article.

despite the longstanding ideal of free movement in Western political and philosophical thought, it has in practice always been subject to state restrictions. As international lawyer Paul Fauchille wrote in 1924, 'the liberty of the individual must be reconciled with a [state-based] system of regulation and emigration'.[6] The right to leave one's country has therefore 'never been considered an absolute right'.[7] It has always been subject to limitations of various sorts, including being denied to convicted criminals, some minors, those seeking to evade prosecution and those who are mentally incapacitated or have a dangerous disease. Although the particular restrictions imposed by states vary, 'the very breadth of actual practice is strong evidence against the emergence of a general principle of free movement'.[8]

The Right to Freedom of Movement

The right to freedom of movement appears in three manifestations in the UDHR and the ICCPR.[9] First, it encompasses the right to move freely within a country and to choose one's place of residence there.[10] Secondly, it includes the right to cross an international border, expressed as the right to leave any country, including one's own.[11] Thirdly, it extends to the right to return to one's country.[12]

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[6] Paul Fauchille, 'The Rights of Emigration and Immigration' (1924) 9 International Labor Review 317, 320.

[7] Guy S Goodwin-Gill, 'The Right to Leave, the Right to Return and the Question of the Right to Remain' in Vera Gowlland-Debbas (ed), The Problem of Refugees in the Light of Contemporary International Law Issues: Papers Presented at the Colloquium Organized by the Graduate Institute of International Studies in Collaboration with the Office of the United Nations High Commissioner for Refugees, Geneva, 26 and 27 May, 1994 (Martinus Nijhoff, 1995) 93, 96.

[8] *Ibid*.

[9] Unless I expressly refer to internal movement, I use the expressions 'right to free movement' and 'right to freedom of movement', as generic terms encompassing both internal and external movement. It has this broad sense in many of the writings under discussion.

[10] UDHR art 13(2); ICCPR art 12(2). See also McKeown, above n 2, 9, who suggests that the right of internal movement played an important role justifying white settler colonies' exclusionary migration policies in the 19th century, since 'free mobility in the interior of nations and equal access to law were [asserted as] features that distinguished the civilized states from barbaric and despotic ones'. Migrants who were 'ignorant of republican virtues' could be cast as a threat to the colonies' 'liberal institutions of self-rule'.

[11] UDHR art 13(2); ICCPR art 12(2).

[12] UDHR art 13(2); ICCPR art 12(4).

This is coupled with the right to seek and enjoy, in other countries, asylum from persecution.[13] The present article is primarily concerned with the second of these, although, in order to understand the philosophical underpinnings of free movement as a personal liberty (or, in contemporary discourse, a human right), it necessarily examines the first as well. Indeed, as will be shown, the regulation of international movement paralleled controls on internal movement and the development of the passport as a document for international travel was an extension of instruments that monitored movement within states. Part II traces the intellectual history of free movement as a philosophical, political and legal concept. While it attempts to do so chronologically, it also picks up on the theme of 'liberty' in classical, Enlightenment and liberal consciousness as a linking and consistent ideal, encapsulated in contemporary thought by the framework of human rights law.[14] However, just as there are numerous contemporary examples of state practice that curtail the right to free movement and the right to leave one's country, as expressed in various international and regional human rights instruments,[15] so a similar disconnect can be seen historically

[13] UDHR art 14(1). See also Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) ('Refugee Convention') art 33; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) ('CAT') art 3; ICCPR arts 6, 7. See generally Symposium, 'Asylum and the Universal Declaration of Human Rights' (2008) 27(3) Refugee Survey Quarterly on the right to seek asylum.

[14] In 1988, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities noted that '[f]reedom of movement is a constituent element of personal liberty … and it is a part of the right of "personal" self-determination': Sub-Commission on Prevention of Discrimination and Protection of Minorities, The Right of Everyone to Leave Any Country, Including His Own, and to Return to His Country, UN ESCOR, 40th sess, Agenda Item 15(e), UN Doc E/CN.4/SUB.2/1988/35 (20 June 1988).

[15] See, eg, UDHR art 13; ICCPR art 12; Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, 213 UNTS 222 (entered into force 3 September 1953), as amended by Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 13 May 2004, CETS No 194 (entered into force 1 June 2010) art 2 ('European Convention on Human Rights'); American Declaration of the Rights and Duties of Man, signed 2 May 1948, UN Doc E/CN.4/122, art 26; Convention Relating to the Status of Refugees, signed 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) art 26; International

between the theory of free movement, on the one hand, and its exercise in practice, on the other. Indeed, there are virtually no historical examples of unlimited freedom of movement across borders, even in the restricted context of the right to leave and return.[16] This remains true of state practice today, despite 'almost universal formal support for the principle of freedom of movement' in international law.[17]

The Right to leave one's Country in Modern International Law

In the modern period, some of the first to write about the right to free movement were lawyers setting out the principles of the 'law of nations' (international law). The writings of Spaniard, Francisco de Vitoria (1492–1546) and Dutchman, Hugo Grotius (1583–1645)[18] had enormous influence on the development of international law. To be properly understood, however, they must be read against the historical backdrop of imperial trade expansion, since many of the legal 'principles' they espoused helped to bolster the actions of their

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Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, signed 18 December 1990, 2220 UNTS 93 (entered into force 1 July 2003) art 39 ('Migrant Workers Convention'); African Charter on Human and Peoples' Rights, signed 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986) art 12; International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 5(d)(ii); Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, GA Res 40/144, UN GAOR, 3rd Comm, 40th sess, 116th plen mtg, Agenda Item 12, Supp No 3, UN Doc A/RES/40/144 (13 December 1985) annex, art 5; American Convention on Human Rights, signed 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978) art 22.

[16] See Hurst Hannum, The Right to Leave and Return in International Law and Practice (Martinus Nijhoff, 1987) 4: All commentators agree that some restrictions on such movement are legitimate if imposed for limited purposes in a fair and non-discriminatory manner, eg, on grounds of securing compliance [sic] with valid judicial or administrative decrees; preventing the spread of contagious diseases; ensuring fulfillment [sic] of certain contractual obligations; and, in time of war, regulating movements that may directly affect legitimate national security concerns.

[17] Goodwin-Gill, above n 10, 97.

[18] Grotius is known as the 'father of the law of nations': Oppenheim, above n 3, [43]: 'the book of Grotius obtained such a world-wide influence that he is correctly styled the "Father of the Law of Nations"'. See also Hamilton Vreeland, Hugo Grotius: The Father of the Modern Science of International Law (Oxford University Press, 1917).

respective states.[19] Grotius expressly acknowledged that his intention was 'to demonstrate briefly and clearly that the Dutch have the right to sail to the East Indies, as they are now doing, and to engage in trade with the people there';[20] de Vitoria's argument that '[i]t was permissible from the beginning of the world for anyone to set forth and travel wheresoever he would' justified the travel of Spaniards to the New World.[21] Their ideas were developed in the 18th century by scholars such as Vattel and Blackstone.

FREEDOM OF MOVEMENT IN INTERNATIONAL LEGAL REGIME

While the right to freedom of movement underpinned Enlightenment philosophy and some political theory, its footing in international law remained tenuous. In part, this is because the right to leave a country is not paralleled by a concomitant right to enter any country other than one's own. Thus, immigration remains within the sovereign domain of states, limited only by the principle of non-refoulement in refugee and human rights law, which prevents states from returning people to places where they would be at risk of persecution or other serious human rights violations,[22] or where there is no other state that will admit them, such as where a person is stateless. Whereas a right to free movement was not consistently included in the rights declarations proposed during WWII and the

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[19] Writing in 1924, international law scholar Paul Fauchille wrote: 'One of the rights of states is to carry on international trade, and such trade necessarily implies for the nationals of states the power to pass to and from the territories of other states': Fauchille, above n 9, 318. For an analysis of the liberal sensibility in international law from the late 19th century, see Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960 (Cambridge University Press, 2001). For a clear overview of 'migration in the law of nations'.

[20] Hugo Grotius, The Freedom of the Seas (Ralph van Deman Magoffin trans, Oxford University Press, 1916) 7 [trans of: Mare Liberum (first published 1609)].

[21] Francisco de Vitoria, On the Indians Lately Discovered (John Pawley Bate trans, Law book Exchange, 2000) sect III, 386 [trans of: De Indis Noviter Inventis (first published 1532)]; José D Inglés, Study of Discrimination in Respect of the Right of Everyone to Leave Any Country, Including His Own, and to Return to His Country (United Nations, 1967).

[22] See also Guy S Goodwin-Gill and Jane McAdam, The Refugee in International Law (Oxford University Press, 3rd ed, 2007) 285–354; Jane McAdam, Complementary Protection in International Refugee Law (Oxford University Press, 2007).

immediate post-war period,[23] by 1948, the notion of a right to leave and to return to one's country was expressed as a fundamental human right worthy of recognition in the world's first universal human rights instrument. Why was this? Jagerskiold suggests that it was necessary to include a right to free movement because without it a person may be unable to associate with his kith and kin, to obtain employment which is not available in his country, and to achieve a better standard of living. He may be prevented from studying or from marrying and raising a family. He may even be prosecuted in the country where he is forced to stay. Such a policy would evidently be contrary to the other principles embodied in the Declaration on Human Rights.[24]

While the drafting records on this provision (and its parallel in the ICCPR, which was initially drafted during the same period) are generally silent on the contextual background to the inclusion of the right, the Belgian delegate explained that it was 'of vital importance'[25] because 'the principles of freedom of movement and freedom of residence had to be stressed at that moment when the war and the resulting upheavals had demonstrated to what point that principle could be trodden underfoot'.[26] In his view, '[t]he ideal would be a return to the time when man could travel 'round the

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[23] See A W Brian Simpson, Human Rights and the End of Empire: Britain and the Genesis of the European Convention (Oxford University Press, 2001) 187, 191, 197–8, 213–19, who notes that: an official US Draft, the State Department's 1942 Declaration of Rights, did not include the right to freedom of movement; the US National Resources Planning Board's draft Bill of Rights (January 1943) included '[t]he right to come and go, to speak or be silent, free from the spying of secret political police' (art 6); an expert meeting organized by the World Citizens Association in April 1941 did not include the right to emigrate within its six basic rights (although this was mooted); the American Law Institute's February 1944 Statement of Essential Human Rights did not mention freedom of movement; and the charters of rights that emerged from occupied Europe made no mention of emigration.

[24] Jagerskiold, above n 63, 11. For similar arguments, see Sub-Commission on Prevention of Discrimination and Protection of Minorities, Working Paper on the Right to Freedom of Movement and Related Issues Prepared by Mr. Volodymyr Boutkevitch in Implementation of Decision 1996/109 of the Sub-Commission, UN ESCOR, 49th sess, Agenda Item 10, UN Doc E/CN.4/Sub.2/1997/22 (29 July 1997).

[25] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 322. See also the remarks of the representative of Chile, 314.

[26] *Ibid.*

world armed with nothing but a visiting card'.[27] The American Federation of Labor pointed out that 'the declaration had been inspired by Nazi persecutions',[28] and the Costa Rican delegate similarly invoked the Declaration as 'a weapon with which to oppose and combat' Nazi actions during the war that elevated the interests of the state above those of its people.[29] Interestingly, many of the drafters of the UDHR were themselves émigrés.[30] Freedom of movement was described by various delegations as 'a fundamental human right',[31] 'the sacred right of every human being … necessary to progress and to civilization',[32] and a principle 'recognized before national states had reached their present age of development'.[33] The Haitian delegate reminded the Drafting Committee that 'in 1789 the French Republic had not awaited the agreement of other countries to promulgate its great Declaration of the Rights of Man and of the Citizen, the principles of which echoed the aspirations of the people of that time'.[34] The UDHR's principles 'should not be political but educational, social and humane, and should remain faithful to the great Declaration of Human Rights of 1789'.[35] The USSR's view that 'every sovereign State should have the right to establish whatever rules it considered necessary to regulate movement on its territory and across its borders', based on 'the principle of national

[27] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 322. See also the remarks of the representative of Chile, 314.
[28] Drafting Committee, Commission on Human Rights, Summary Record of the Thirty-Sixth Meeting, UN ESCOR, 2nd sess, 36th mtg, UN Doc E/CN.4/AC.1/SR.36 (28 May 1948) 14.
[29] Ninetieth Meeting, 3rd Comm, 3rd sess, 90th mtg, UN Doc A/C.3/SR.90 (1 October 1948) 43.
[30] See Simpson, above n 127, 205–7.
[31] Commission on Human Rights, Summary Record of the Fifty-Fifth Meeting, UN ESCOR, 3rd sess, 55th mtg, UN Doc E/CN.4/SR.55 (15 June 1948) 6 (Indian delegate).
[32] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 316 (Chilean delegate).
[33] Ibid 318. Draft International Declaration of Human Rights: Report of the Third Committee, UN GAOR, 3rd Comm, 3rd sess, UN Doc A/777 (7 December 1948) (Haitian delegate).
[34] *Ibid.*
[35] *Ibid.*

sovereignty embodied in the United Nations Charter',[36] was resoundingly rejected by the majority of delegations on the ground that it nullified the right.[37]

The initial draft International Bill of Rights submitted by the Secretariat of the UN Commission on Human Rights included two provisions relating to freedom of movement.[38] Article 9 provided that 'subject to any general law adopted in the interest of national welfare or security, there shall be liberty of movement and free choice of residence within the borders of each State' and Article 10 stipulated that 'the right of emigration and expatriation shall not be denied'.[39] The first was therefore about internal movement in a country, while the second dealt with cross-border movement. A number of other draft texts were put to the Committee. Of these, the right to freedom of movement, including the right to leave one's

[36] Commission on Human Rights, Summary Record of the Fifty-Fifth Meeting, UN ESCOR, 3rd sess, 55th mtg, UN Doc E/CN.4/SR.55 (15 June 1948) 7. See also the supportive views of the Byelorussian Soviet Socialist Republic, 10.

[37] The proposal was rejected by 24 votes, with 13 abstentions and seven votes in favor: Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120. Article 27 of the Vienna Convention on the Law of Treaties, opened for signature on 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) subsequently codified the principle of international law that domestic law cannot be relied upon to justify non-performance of an international obligation. See especially Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 316–17 (Chilean delegate). This caused tension between Communist countries and others, who felt history was being used selectively. The Byelorussian Soviet Socialist Republic representative protested against the 'partiality displayed by the [US] Chairman in the conduct of the debates': at 324.

[38] Drafting Committee, Commission on Human Rights, Draft Outline of International Bill of Rights, UN ESCOR, UN Doc E/CN.4/AC.1/3 (4 June 1947). In addition, art 5 provided that '[e]veryone has the right to personal liberty', but this was connected to ideas elaborated in arts 6–8 relating to freedom from arbitrary deprivation of liberty, slavery, and the right to a fair trial in relation to detention. The United Kingdom delegate noted that the provisions on movement 'might be considered particular applications of the principle that the liberty of the individual shall be protected': Drafting Committee, Commission on Human Rights, Summary Record of the Eighth Meeting, 1st sess, 8th mtg, UN Doc E/CN.4/AC.1/SR.8 (20 June 1947). The 'international draft bill of rights' was comprised of three parts: a declaration, a convention and measures for implementation. Three Working Groups were established to oversee each aspect.

[39] Drafting Committee, Commission on Human Rights, Draft Outline of International Bill of Rights, UN ESCOR, UN Doc E/CN.4/AC.1/3 (4 June 1947).

country, was included as a freestanding right in two of them,[40] and as part of the 'right to personal liberty' in three.[41] By way of background, at the time of drafting, a version of the right to leave one's country was contained in at least nine national constitutions.[42] At least 14 contained a provision relating to freedom of movement internally or the right to choose one's abode, but did not contain

[40] Commission on Human Rights, American Declaration on the Rights and Duties of Man (Adopted by the Ninth Conference of American States), UN ESCOR, 3rd sess, UN Doc E/CN.4/122 (10 June 1948) art VIII: 'Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory and not to leave it except by his own will'; Drafting Committee, Commission on Human Rights, Text of Letter from Lord Dukeston the United Kingdom Representative on the Human Rights Commission, to the Secretary-General of the United Nations, UN ESCOR, UN Doc E/CN.4/AC.1/4 (5 June 1947) art 11: 'Every person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his own' (other obligations were stated to include such things as taxation or the maintenance of dependents); Commission on Human Rights, Proposal for a Declaration of Human Rights, Submitted by the Representative of the United States, UN ESCOR, UN Doc E/CN.4/36 (26 November 1947) art 4: 'There shall be liberty to move freely from place to place within the State, to emigrate, and to seek asylum from persecution'.

[41] Commission on Human Rights, Draft Declaration of the International Rights and Duties of Man Formulated by the Inter-American Juridical Committee, UN ESCOR, UN Doc E/CN.4/2 (8 January 1947) art II:Every person has the right to personal liberty. The right to personal liberty includes the right to freedom of movement from one part of the territory of the state to another, and the right to leave the state itself. It includes also freedom to establish a residence in any part of the territory, subject only to the restrictions that may be imposed by general laws looking to the public order and security of the state. Commission on Human Rights, Draft Charter of International Human Rights and Duties, UN ESCOR, 2nd sess, UN Doc E/CN.4/32 (12 November 1947) (proposed by the delegation of Ecuador) art I, §2: The right to personal liberty includes the right to freedom of movement from one part of the national territory to another, and the right to leave that territory upon presentation of a pass issued by the member states. It also includes freedom to reside in any part of the territory, subject only to the restrictions that may be imposed by general laws for the maintenance of public order and national security.

[42] Argentina, Bolivia, Costa Rica (provided 'he is free of all responsibility'), Cuba, El Salvador, Honduras, Mexico, Nicaragua, Turkey (unclear whether 'right to travel' relates to internal or international movement). See Drafting Committee, Commission on Human Rights, International Bill of Rights, UN ESCOR, 1st sess, UN Doc E/CN.4/AC.1/3/Add.1 (11 June 1947).

anything about travel abroad.[43] With the various proposals before it, the Drafting Committee requested that the French delegation redraft the text. It did so, and suggested that the three provisions be collapsed into a single article: Subject to any general law adopted in the interest of national welfare and security, there shall be liberty of movement and free choice of residence within the borders of each State; individuals may also freely emigrate or expatriate themselves.[44]

By the end of its first session in 1947, the Drafting Committee adopted the following draft text: There shall be liberty of movement and free choice of residence within the borders of each State. This freedom may be regulated by a general law adopted in the interest of national welfare and security. Individuals may freely emigrate or renounce their nationality.[45] This was put to the Sub-Commission on Prevention of Discrimination and Protection of Minorities for consideration. A key issue was whether the right to freedom of

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[43] Recognizing a right to internal movement only (or at least a prohibition on requiring people to reside in a certain place): Chile, China, Czechoslovakia, Dominican Republic ('freedom of transit'), Ecuador, Egypt, Ethiopia, Guatemala, Iran, Panama, Peru, Philippines, Poland, Syria. See Drafting Committee, Commission on Human Rights, International Bill of Rights, UN ESCOR, 1st sess, UN Doc E/CN.4/AC.1/3/Add.1 (11 June 1947). The absence of such a provision, however, does not mean the right does not exist: countries where the right is recognized as part of the common law, such as the UK and Australia, are a testament to that.

[44] Drafting Committee, Commission on Human Rights, International Bill of Rights: Revised Suggestions Submitted by the Representative of France for Articles of the International Declaration of Rights, UN ESCOR, 1st sess, UN Doc E/CN.4/AC.1/W.2/Rev.2 (20 June 1947) art 13. The US similarly suggested that a single provision entitled 'Liberty of movement within the borders of a State' would adequately encapsulate the idea: All persons shall equally enjoy the right to freedom of movement from one part of the territory of the state to another, and to free choice of residence in any part of the territory. Every person shall, subject to equitable immigration and deportation laws, be free to enter, travel through or over, and remain temporarily in the territory of another state, provided always that he observes local laws and police regulations. Drafting Committee, Commission on Human Rights, International Bill of Rights: United States Revised Suggestions for Redrafts of Certain Articles in the Draft Outline, UN ESCOR, 1st sess, UN Doc E/CN.4/AC.1/8/Rev.1 (19 June 1947); see also first US draft in Drafting Committee, Commission on Human Rights, International Bill of Rights, UN ESCOR, 1st sess, UN Doc E/CN.4/AC.1/3/Add.1 (11 June 1947) art 9.

[45] Drafting Committee, Commission on Human Rights, Report of the Drafting Committee to the Commission on Human Rights, UN ESCOR, 1st sess, UN Doc E/CN.4/21 (1 July 1947) annex 1 ('International Bill of Human Rights') art 13.

movement — both internally and internationally should be subject to an express limitation, or whether a general provision permitting restrictions in certain circumstances would suffice. The Belgian, Australian and Chinese delegates proposed that the provision open with the words: 'Subject to any general law not contrary to the principles of the United Nations Charter and adopted for specific and explicit reasons of security or in the general interest'.[46] The Sub-Commission was concerned about the way in which the exception for 'national welfare and security' might be interpreted, especially in light of Nazi persecution.[47] To address this, it was proposed that the following caveat be inserted: Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security and in the general interest there shall be liberty of movement and free choice of residence within the borders of each state. Individuals shall have the right to leave their own country and to change their nationality to that of any country willing to accept them.[48]

This was adopted by the Working Group on the UDHR, although some delegates were concerned that the UN reference appeared only to govern movement within a country.[49] It was endorsed by the Commission on Human Rights in December 1947, which replaced the last part of the second paragraph with 'to acquire the nationality of any country willing to grant it'.[50] In subsequent discussions, the Netherlands set out specific grounds on which the right to leave a country might be limited, such as 'outstanding obligations with

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[46] Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Report Submitted to the Commission on Human Rights, UN ESCOR, 1st sess, UN Doc E/CN.4/52 (24 November – 6 December 1947).

[47] Johannes Morsink, The Universal Declaration of Human Rights (University of Pennsylvania Press, 1999) 73, citing Sub-Commission on Prevention of Discrimination and the Protection of Minorities, UN Doc E/CN.4/Sub.2/SR.8, 19 (UK delegate).

[48] Cited in Sub-Commission on Prevention of Discrimination and Protection of Minorities, The Right of Everyone to Leave Any Country, Including His Own and to Return to His Country, UN Doc E/CN.4/SUB.2/1988/35, [38].

[49] See, eg, comments by the Government of Belgium in Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Report Submitted to the Commission on Human Rights, UN ESCOR, 1st sess, UN Doc E/CN.4/52 (24 November – 6 December 1947) 7.

[50] Cited in Sub-Commission on Prevention of Discrimination and Protection of Minorities, The Right of Everyone to Leave Any Country, Including His Own and to Return to His Country, UN Doc E/CN.4/SUB.2/1988/35, [39].

regard to national service, tax liabilities or voluntarily contracted obligations binding the individual to the Government'.[51] In addition, it queried whether, as a matter of 'urgent national necessity', a state should not be permitted to 'retain within the borders … persons exercising a special profession'.[52] This was reminiscent of old English laws which sought to restrict at various times the departure of people employed in particular professions.[53] However, a number of delegations cited the aspirational nature of the Declaration as a reason why restrictions on individual rights should be limited.[54] By contrast to the Covenant — 'a legally binding instrument that will have to be ratified or accepted in a formal way by the States'[55] — the Declaration was 'not intended to be a legislative document in

[51] Commission on Human Rights, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, UN ESCOR, 3rd sess, Agenda Item 5, UN Doc E/CN.4/82 (16 April 1948). The UK also listed these obligations in Commission on Human Rights, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, UN ESCOR, 3rd sess, Agenda Item 5, UN Doc E/CN.4/82/Add.4 (27 April 1948); see also New Zealand (national service or taxation) in Commission on Human Rights, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation: Communication Received from New Zealand, UN ESCOR, 3rd sess, Agenda Item 5, UN Doc E/CN.4/82/Add.12 (3 June 1948). France also suggested including cases where a person 'has been lawfully detained, or criminal proceedings are pending against him, or his departure must be prohibited in order to prevent the imminent commission of a crime or offence' in Commission on Human Rights, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation: Communication Received from the French Government, UN ESCOR, 3rd sess, Agenda Item 5, UN Doc E/CN.4/82/Add.8 (6 May 1948).

[52] Commission on Human Rights, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, UN ESCOR, 3rd sess, Agenda Item 5, UN Doc E/CN.4/82 (16 April 1948) 17.

[53] See Blackstone, above in 71 and accompanying text.

[54] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 318 (Haitian delegate), 323 (UK delegate).

[55] Commission on Human Rights, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, UN ESCOR, 3rd sess, UN Doc E/CN.4/82 (16 April 1948) 13 (The Netherlands government).

any sense'.[56] Thus, 'whereas the covenant was to take into account the practices and political considerations peculiar to each country, the declaration was a statement of universally applicable moral principles'.[57]

The Declaration was described as 'a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for and observance of human rights'.[58] Belgium described its 'main purpose' as being 'to make a public declaration of what the conscience of the world was thinking'.[59] By proclaiming 'solemn' principles, 'States would be morally obliged to subscribe to them and to amend their respective constitutional laws in accordance with them'.[60] The United Kingdom representative described the Declaration as expressing an ideal, which should not be constrained in any way.[61] The Australian delegate stated: 'Freedom of movement was unquestionably one of the fundamental rights of man, and it should form the subject of a statement of principle. To subject it to reservations would be to deprive the Declaration of all its force.'[62] The Indian delegate wanted to avoid any limitations because the article 'aimed at establishing the principle of freedom of movement, which like freedom of speech, freedom of meeting, etc., was a fundamental human right'.[63] Similarly, the Chilean representative stated that 'freedom of

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[56] Commission on Human Rights, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, UN ESCOR, 3rd sess, UN Doc E/CN.4/82 (16 April 1948) 7 (US government).

[57] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 317–18 (Haitian delegate).

[58] Commission on Human Rights, Comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation, UN ESCOR, 3rd sess, UN Doc E/CN.4/82 (16 April 1948) 7 (US government).

[59] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 322 (Belgian delegate).

[60] *Ibid* 317 (Chilean delegate).

[61] *Ibid* 323 (UK delegate).

[62] Drafting Committee, Commission on Human Rights, Summary Record of the Fifty-Fifth Meeting, UN ESCOR, 3rd sess, 55th mtg, UN Doc E/CN.4/SR.55 (15 June 1948) 11 (Indian delegate): the Australian representative 'fully concurred' with the remarks of Chile.

[63] *Ibid* 6 (Indian delegate).

movement was the sacred right of every human being',[64] and including limitations in the UDHR itself 'would imply the renunciation of the inherent rights of mankind. A document drawn up in that sense would be a declaration of the absolute rights of the state and not a declaration of human rights'.[65]

Eventually, at the suggestion of the UK and US, it was decided to remove all limitations in the text on the basis that the general limitation clause in art 29 would suffice.[66] The following text was referred to the Commission on Human Rights, having been agreed by 12 votes in favor, none against and four abstentions:[67]

1 Everyone is entitled to freedom of movement and residence within the borders of each State.

2 Everyone has the right to leave any country including his own.[68]

The only substantive change that was ultimately made to this definition in the final text of the UDHR was the inclusion at the end of para 2 of the words 'and to return to his country'.[69]

This was proposed by the Lebanese delegate, who noted that, while the 'ideal would be that any person should be able to enter any country he might choose', account needed to be taken of 'actual facts'.[70] It had earlier been observed that implementation of the right to emigrate would be difficult given that there was no corresponding

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[64] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 316 (Chilean delegate). He noted, however, that 'there was no question of free immigration but only of freedom of movement within a State'.

[65] *Ibid.*

[66] UDHR art 29. See, eg, discussions in Drafting Committee, Commission on Human Rights, Summary Record of the Fifty-Fifth Meeting, UN ESCOR, 3rd sess, 55th mtg, UN Doc E/CN.4/SR.55 (15 June 1948) (Indian delegate).

[67] Drafting Committee, Commission on Human Rights, Report of the Drafting Committee to the Commission on Human Rights, UN ESCOR, 2nd sess, Agenda Item 5, UN Doc E/CN.4/95 (21 May 1948) Annex A 7.

[68] The switch from emigration to a right to leave responded to a concern raised by the Lebanese delegate that 'emigration' did not necessarily cover 'mere travel', which ought to be included. See Drafting Committee, Commission on Human Rights, Summary Record of the Thirteenth Meeting, UN ESCOR, 1st sess, 13th mtg, UN Doc E/CN.4/AC.1/SR.13 (20 June 1947) 8–9. The Chilean delegate suggested that the words be changed to 'the right to leave the territory'; the UK delegate suggested that the words of the UK draft text be adopted: 'be free to leave any country including his own'.

[69] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 325. For consistency, [1] was altered to read 'Everyone has the right' rather than 'Everyone is entitled'.

[70] *Ibid* 316 (Lebanese delegate).

right to enter another country,[71] and measures restricting immigration 'were well known and generally accepted'.[72] As such, the minimum duty on states was to permit nationals to return to their country, which would strengthen the right to leave a country already contained in the text. This amendment was accepted without opposition. The new text, which ultimately became art 13 of the UDHR, was adopted with 37 votes in favor and three abstentions by the Third Committee of the General Assembly,[73] and by the General Assembly as a whole with 44 votes in favor, six against and two abstentions.[74] Subsequently, when the ICCPR was adopted in 1966, it contained a parallel provision: art 12. This provision limits freedom of movement within a country to those 'lawfully' present,[75] but the right to leave a country is proclaimed as universal.[76] The right is subject to restrictions similar to those included in the UDHR.[77] In contrast to the non-binding character of the UDHR, the ICCPR is a binding human rights treaty. The UN Human Rights Committee, which interprets the ICCPR, has stated that any restrictions on the right to leave must be necessary, reasonable and proportionate; provided by law; justified and shown to be reasonable

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[71] See Drafting Committee, Commission on Human Rights, Summary Record of the Fourth Meeting, UN ESCOR, 1st sess, 4th mtg, UN Doc E/CN.4/AC.1/SR.4 (13 June 1947) 4. See also the commentary in Commission on Human Rights, Report of the Working Group on the Declaration of Human Rights, UN ESCOR, 2nd sess, Agenda Item 5, UN Doc E/CN.4/57 (10 December 1947) 9: It was recognized that the right of emigration, affirmed above, would not be effective without facilities for immigration into and transit through other countries. The Working Group recommends that these corollaries be treated as a matter of international concern and that members of the United Nations co-operate in providing such facilities.

[72] Summary Record of the 120th Meeting, UN Doc A/C.3/SR.120, 319 (US delegate).

[73] Ibid 326. The USSR delegate subsequently stated that he had misinterpreted the nature of the vote, and would have voted against it: at 327.

[74] Draft International Declaration of Human Rights, UN GAOR, 3rd Comm, 3rd sess, UN Doc A/777 (7 December 1948). See also Report of the Third Session of the Commission on Human Rights, UN ESCOR, 3rd sess, 36th plen mtg, UN Doc E/800 (28 June 1948).

[75] ICCPR art 12(1).

[76] *Ibid* art 12(2).

[77] *Ibid* art 12(3): 'those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant'.

in each individual case; and consistent with other rights in the ICCPR.[78] States must ensure that restrictions do 'not impair the essence of the right'.[79] This is because freedom of movement is 'an indispensable condition for the free development of a person'.[80]

Article 13 and UDHR

In June 1946, the United Nations created the UN Commission on Human Rights (UNCHR)[81], chaired by Eleanor Roosevelt[82] (1884–1962), which would oversee human rights issues in member nations. Coupled with the 1948 Universal Declaration of Human Rights,[83] the commission would use the document as a guide for monitoring human rights abuses, reporting to the UN, and for facilitating greater expression of rights for all citizens of member nations. Articles 13, 14, and 15 of the Declaration of Human Rights specifically address internal and external migration and national identity. World War II displaced millions of people throughout Western Europe, Eastern Europe, Russia, Asia, and northern Africa. New borders were drawn and redrawn throughout the war and after; prisoners of war struggled to find their way home, while non-combatants found their villages destroyed, and needed shelter, communities, and jobs. The 1948 creation of the state of Israel led to mass migrations of Jewish people to the new state—and the displacement of Palestinians who had occupied that territory before Israel's borders were drawn. The UN's

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[78] See, eg, Human Rights Committee, General Comment No 27: Freedom of Movement (Article 12), UN GAOR, 67th sess, 1783rd mtg, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999) [2], [14], [15]. See also Human Rights Committee, Views: Communication No 492/1992, 51st sess, UN Doc CCPR/C/51/D/492/1992 (29 July 1994) ('Peltonen v Finland'); Human Rights Committee, Views: Communication No 456/1991, 51st sess, UN Doc CCPR/C/51/D/456/1991 (2 August 1994) ('Celepli v Sweden'), [9.2], [10]; Human Rights Committee, Views: Communication No 833/1998, 70th sess, UN Doc CCPR/C/70/D/833/1998 (30 October 2000) ('Salah Karker v France').

[79] Human Rights Committee, General Comment No 27: Freedom of Movement (Article 12), UN GAOR, 67th sess, 1783rd mtg, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999)

[80] *Ibid* [1].

[81] Eleanor Roosevelt, https://www.encyclopedia.com/people/history/us-history-biographies/eleanor-roosevelt, last accessed on 12.7.2021

[82] Universal Declaration of Human Rights,https://www.un.org/en/about-us/universal-declaration-of-human-rights, last accessed on 12.7.2021

[83] *Ibid*.

inclusion of Articles 13, 14, and 15[84] in the Declaration of Human Rights was an acknowledgement not only of the contemporaneous immigration and emigration issues in the late 1940s, but of future international migration issues.[85]

Amnesty International Guidance on Covid -19 Response

COVID-19 has highlighted our vulnerabilities as well as our inter-connectedness. It has brought to the fore pre-existing structural inequalities in our societies, which stem from the current economic, educational, social and labor order which continues to fuel and grow inequality. The pandemic has also highlighted the massive inequality between and within countries in their access to material and technical resources.[86] While COVID-19 response measures have been implemented across many countries – many of which would have seemed unthinkable beforehand, such as measures to address homelessness or vast levels of social security support - their impact will be very different depending on the ability of the country to invest sufficiently in their economy, and their social security and health systems.[87] Without urgent and targeted measures based on solidarity and international cooperation, there is a grave risk of mass unemployment, housing and health crises and even starvation in the countries with the fewest resources. Those from the most marginalized groups, especially people with multiple and intersecting identities, are likely to be most at risk of infection as well as adverse consequences of the responses to the pandemic. This is true in both wealthy and low-income countries, where those who are homeless, displaced, in prisons or immigration detention centers, living in inadequate housing or refugee camps, and working in overcrowded and unsanitary conditions are at higher risk of being infected in the first place. In many countries, these are mainly people from ethnic minorities or people suffering structural discrimination,

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[84] Universal Declaration of Human Rights, https://www.un.org/en/about-us/universal-declaration-of-human-rights, last accessed on 12.7.2021.

[85] United Nations. "Human Rights." ⟨http://www.un.org/rights/)

[86] COVID-19 RESPONSE MEASURES: RECOMMENDATIONS TO G20 FINANCE MINISTERS ON INVESTING IN PEOPLE FOR A JUST RECOVERY, file:///E:/DOWNLOADS/LLM%20Thesis%202021/Punjab%20Infectious%20Disesase%20Act%202020/ChapTer%202/IOR3026142020ENGLISH.PDF , last accessed on 23.5.2021

[87] *Ibid.*

including on the basis of work and descent.[88] The economic fallout from COVID-19 has been uneven and disproportionate, hitting workers in precarious employment hardest – especially in the informal sector and gig economy, including migrants, and those in supply chains in the Global South. There is a risk that countries will weakened labor standards in order to encourage investment and boost the economy.[89]

As in other crises, women and girls risk being particularly and disproportionately impacted. Similarly, LGBTI people, Indigenous peoples, those discriminated based on descent and work, refugee and migrant communities, and people with disabilities, among others, and women and girls within these groups, are among those often ignored and denied a voice in public policy-making responses to crises and are therefore further marginalized. Older people and those with disabilities, even when not directly affected by the virus, often find themselves more isolated, and public health measures introduced in the context of COVID-19 may make access for many of these groups to essential needs and services, such as housing, water and sanitation, even more difficult than before.[90]

The pandemic has laid bare that we are all only as safe as the most marginalized person amongst us. If we are to build resilience to future crises, we need to address existing inequalities – not just through crisis response but also long-term structural changes. Plans

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[88] Don Bambino Geno Tai, Aditya Shah, Chyke A Dubeni, Irene G Sia, and Mark L Wieland, The Disproportionate Impact of COVID-19 on Racial and Ethnic Minorities in the United States, June 2020, https://pubmed.ncbi.nlm.nih.gov/32562416/ and European Commission, OVERVIEW OF THE IMPACT OF CORONAVIRUS MEASURES ON THE MARGINALISED ROMA COMMUNITIES IN THE EU , 23 April 2020, https://ec.europa.eu/info/sites/info/files/overview_of_covid19_and_roma_-_impact_-_measures_-_priorities_for_funding_-_23_04_2 020.docx.pdf, last accessed on 23.5.2021

[89] Hindustan Times, Some states put freeze on labor laws to get business going, 9 May 2020, https://www.hindustantimes.com/india-news/some-states-freeze-labour-laws/story-6JMELEPdIugsHt8YjQT5vN.html , last accessed on 23.5.2021

[90] COVID-19 RESPONSE MEASURES: RECOMMENDATIONS TO G20 FINANCE MINISTERS ON INVESTING IN PEOPLE FOR A JUST RECOVERY, file:///E:/DOWNLOADS/LLM%20Thesis%202021/Punjab%20Infectious%20Disesase%20Act%202020/ChapTer%202/IOR3026142020ENGLISH.PDF, last accessed on 23.5.2021

to recover from this crisis cannot, once again, be based on austerity measures introduced without adequate safeguards and due regard for human rights. Temporary measures to support people in accessing their economic and social rights during the pandemic, such as emergency temporary housing for those who are homeless, evictions moratoria and targeted economic support should form the foundation of the recovery. Maintenance of equivalent levels of economic and social rights protections during the recovery phase will be vital. G20 countries must lead the way to a just and inclusive recovery that puts the wellbeing of people and the planet at the center.[91] This would not be a handbrake on progress and innovation, but rather will build economies that are resilient, protect human rights and respect environmental boundaries. Without these changes, it will be impossible to achieve the Sustainable Development Goals, which the G20 has committed to implementing. Accountability should also be a crucial part of recovery from the pandemic so that states can learn lessons to ensure that any failure to adequately uphold human rights in their responses is not repeated in any future waves of the covid-19 pandemic, or any other mass disease outbreaks. Comprehensive, effective and independent reviews into pandemic preparedness should be carried out with effective and accessible remedies for any human rights violations established to have taken place.[92]

Inter Parliamentary Union Report on Human Rights and Covid-19 Guidance: A Guidance Note for Parliaments

This note offers guidance on how parliaments can ensure that State interventions in the COVID-19 crisis are fully consonant with international human rights standards. It includes specific examples of action taken by parliaments across the globe to promote a human rights approach to national health responses. At the outbreak of an unprecedented crisis due to an external threat, the political establishment and population often present a united front on the national level. As a result, early on, the Government is given

[91] COVID-19 RESPONSE MEASURES: RECOMMENDATIONS TO G20 FINANCE MINISTERS ON INVESTING IN PEOPLE FOR A JUST RECOVERY, file:///E:/DOWNLOADS/LLM%20Thesis%202021/Punjab%20Infectious%20Disesase%20Act%202020/ChapTer%202/IOR3026142020ENGLISH.PDF, last accessed on 23.5.2021.

[92] *Ibid*

extensive leeway to take steps to respond to the crisis. In the wake of COVID-19[93], many countries have taken sweeping steps – even declared states of emergency – to slow down or stop its spread in a bid to protect the public health of their populations. Most of these steps have important consequences for the enjoyment of human rights.[94]

It is crucial that basic human rights standards and principles guide States' efforts in response to the health crisis and that parliaments exercise their legislative and oversight functions fully to see to it that States' actions are compatible with their human rights obligations. This applies to States' efforts to limit the enjoyment of certain human rights, to promote the implementation of other rights – in particular the right to health, and to offset the undesirable indirect effects of their crisis response on social and economic rights. Under international human rights law, the exercise of certain fundamental rights can never be curtailed, even during states of emergency.[95]

These "absolute" human rights include the prohibitions on torture, on slavery and on retroactive criminal laws. Most rights, however, are not absolute in character. States can limit the exercise of these rights for valid reasons as long as they respect a number of conditions. This includes the rights to freedom of expression, freedom of association, freedom of assembly and of movement, and the right to privacy. However, limitations to these rights are lawful only if certain conditions are met. One such requirement under international human rights law is that the restrictions pursue – what is called – a "legitimate aim", which includes the protection of public health, as is the case in the fight against COVID-19. Although restrictions to freedom of movement may be warranted to halt the spread of the virus, limitations to the right to freedom of expression may be very difficult to justify and may be considered unnecessary

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[93] Guidance on COVID-19 and human rights (2019, Office of the UN High Commissioner for Human Rights (OHCHR): https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx , last accessed on 23.5.2021

[94] *Ibid*.

[95] Handbook for parliamentarians on human rights (2016, IPU/OHCHR): https://www.ipu.org/resources/publications/handbooks/2016-10/human-rights , last accessed on 23.5.2021

or disproportionate.[96] Of course, any stigma, discrimination, racism and xenophobia against certain national and ethnic groups following the outbreak of the COVID-19 pandemic should be addressed and concerted efforts should be made at the international and national levels to counter false or misleading information that fuels fear and prejudice. At the same time, in the face of the current health crisis, respect for freedom of expression, including the right to freedom of information, is all the more crucial. It is therefore important that governments ensure that information reaches those affected by the virus and that people have the broadest possible access to internet. They should also do everything possible to enable medical professionals and relevant experts, including scientists, to speak freely and share accurate and vital information with each other and the public.[97]

The principles of "legality", "necessity", "proportionality" and "non-discrimination" also apply when States proclaim a state of emergency. In addition, given its far-reaching nature, States also need to comply with the following for states of emergency to be lawful:[98]

• The principle of proclamation, which refers to the need for the state of emergency to be announced publicly. Most legal systems provide for parliament to be actively involved either in the proclamation of a state of emergency or in its ratification once the executive has decreed it.

• The principle of communication, which refers to the obligation to duly inform the other States parties to the relevant United Nations human rights treaties, often the International Covenant on Civil and Political Rights, through their respective depositaries.

• The principle of temporality, which refers to the exceptional nature of the declaration of a state of emergency and its necessarily limited duration in time.

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[96] Handbook for parliamentarians on human rights (2016, IPU/OHCHR): https://www.ipu.org/resources/publications/handbooks/2016-10/human-rights , last accessed on 23.5.2021

[97] Handbook for parliamentarians on freedom of expression (2018, IPU): https://www.ipu.org/resources/publications/handbooks/2018-10/freedomexpression-parliaments-and-their-members-importance-and-scope-protection , last accessed on 23.5.2021

[98] *Ibid.*

• The principle of exceptional threat, which requires the crisis to present a real, current or at least imminent danger to the community.

The Un-Lawfulness of Travel Bans

As described in the previous section, both the IHR and the ICCPR recognize that in some situations it may be necessary to constrain the (international) freedom of movement of individuals to protect public health. The fact that the WHO never recommended (at least explicitly) the implementation of travel bans does not automatically render these measures illegal under the IHR – so long as the requirements of Article 43 are respected. When implementing additional health measures, states should bear in mind the important connections between the IHR and human rights, namely, the fact that such measures may result in the introduction of limitation to or of derogations from the human right to freedom of movement.[99]

References to human rights principles, including the 'protection of the human rights of persons and travelers', were incorporated in the text of the IHR for the first time in the 2005 revision.[100] The basic principles are stated as follows:[101]

1. The implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons.
2. The implementation of these Regulations shall be guided by the Charter of the United Nations and the Constitution of the World Health Organization.
3. The implementation of these Regulations shall be guided by the goal of their universal application for the protection of all people of the world from the international spread of disease.
4. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to legislate and to implement legislation in pursuance of their health policies. In doing so they should uphold the purpose of these Regulations.

The inclusion of these provisions made human rights rules and principles part and parcel of the accurate interpretation and

[99] Stellenbosch Consensus, note 158, at 46.
[100] IHR, note 3, foreword.
[101] Ibid, Article 3. Pursuant to Article 32 of the regulations, '[i]n implementing health measures under these Regulations, States Parties shall treat travelers with respect for their dignity, human rights and fundamental freedoms and minimize any discomfort or distress associated with such measures (…)'. See also Article 23 (health measures on arrival and departure).

implementation of the IHR.[102] The new references were seen as a welcome addition,[103] revealing WHO's willingness to exert its influence on matters of human rights[104] and its 'new normative discourse' on global health.[105] These provisions integrate human rights treaties into the construal and operation of the regulations, imposing on States the obligation to ensure that they comply with both legal frameworks. The same connection between human rights treaties and the IHR is made in the Siracusa Principles, which provide that when limiting certain rights on public health grounds, 'due regard shall be had to the international health regulations of the World Health Organization.'[106] As underlined by Negri,' such a reference to the IHR is particularly noteworthy because it stresses that in times of public health emergency national authorities have to comply with both the Regulations and human rights treaties, and that they are called to ensure consistency and coordination between the obligations stemming therefrom.'[107]

The connection between the IHR and human rights treaties also stems from Article 57(1) of the IHR, pursuant to which 'States Parties recognize that the IHR and other relevant international agreements should be interpreted so as to be compatible. The provisions of the IHR shall not affect the rights and obligations of any State Party deriving from other international agreements.'[108] This reinforces the central role of human rights law in guiding the interpretation of additional health measures under Article 43 of the IHR.[109] As recognized by the WHO, '[i]n emergency situations, the

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[102] David Fidler and Lawrence Gostin, The New International Health Regulations: An Historic Development for International Law and Public Health (2006) 34(1) JOURNAL OF LAW, MEDICINE AND ETHICS 85, at 87.

[103] Ibid; Michael Baker and David Fidler, Global Public Health Surveillance under the New International Health Regulations (2006) 12 EMERGING INFECTIOUS DISEASES 1058, at 1058.

[104] Lawrence Gostin, Meeting Basic Survival Needs of the World's Least Healthy People: Toward a Framework Convention on Global Health (2008) 96(2) GEORGETOWN LAW JOURNAL 331, at 378.

[105] David Fidler, Architecture Amidst Anarchy: Global Health's Quest for Governance (2007) 1(1) GLOBAL HEALTH 1, at 12.

[106] Siracusa Principles, note 157, para 26.

[107] Negri, note 107, at 289-290.

[108] IHR, note 3, Article 57(1).

[109] Stellenbosch Consensus, note 158, at 45-46. See also ibid, at 67: 'It is clear the IHR was conceived to be closely intertwined with international human rights law and international trade law. With respect to human rights law, Article 43

enjoyment of individual human rights and civil liberties may have to be limited in the public interest. However, efforts to protect individual rights should be part of any policy.'[110] Specifically discussing the different measures that may restrict the freedom of movement, the WHO stated: These measures can often play an important role in controlling infectious disease outbreaks, and in these circumstances, their use is justified by the ethical value of protecting community well-being. However, the effectiveness of these measures should not be assumed; in fact, under some epidemiological circumstances, they may contribute little or nothing to outbreak control efforts, and may even be counterproductive if they engender a backlash that leads to resistance to other control measures. Moreover, all such measures impose a significant burden on individuals and communities, including direct limitations of fundamental human rights, particularly the rights to freedom of movement and peaceful assembly.[111] The WHO acknowledges that human rights rules and principles 'provide the framework for evaluating the ethical acceptability of public health measures that limit individual freedom, just as human rights provide the foundation for other pandemic-related policies.[112] Measures that limit individual rights must be necessary, reasonable, proportional, equitable, non-discriminatory, and comply with national and international laws.[113] Thus, to conform to both the IHR and international human rights treaties, travel bans must cumulatively satisfy all of these (demanding) standards.

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sets limitations to additional health measures by deferring to the rights contained in the UDHR, ICCPR and other international and regional human rights treaties. This symbiosis suggests that in cases where an additional health measure may curtail the rights and freedoms of individuals, states should at minimum apply the principles of legitimacy, necessity and proportionality to guide them in understanding the limited circumstances under which they may legally deviate from their human rights obligations.' 195 WHO, 'Ethical Considerations in Developing a Public Health Response to Pandemic Influenza' 3 (2007) https://www.who.int/csr/resources/publications/WHO_CDS_EPR_GIP_2007_2c.pdf?crazycache=1 , last accessed on 23.5.2021

[110] WHO, 'Guidance for Managing Ethical Issues in Infectious Disease Outbreaks' 25 (2016), https://apps.who.int/iris/handle/10665/250580 , last accessed on 23.5.2021

[111] WHO, note 195, at 9.

[112] *Ibid*, at 3

[113] Human Rights Committee, General Comment No. 27: Article 12, note 132, para 11

Pakistan remains in dire need of such proposals and measures. Cases here are evidently rampant, with nearly 2,000 being reported in less than a month. The whole nation is facing the threat of this tragedy. Such a calamity is as new for us as it is for any other country, but this is truly the first epidemic Pakistan has experienced and we need to gear up to fight it. It is pertinent to note that unlike other developed countries, any measure must be made in line with our capabilities as a nation.[114]

So, what is Pakistan doing to combat this? On the 30th of March, the incumbent Prime Minister, Imran Khan, introduced a number of initiatives to be taken by the government. These include an Insaaf-relief program and a relief fund with an account drawn in the National Bank of Pakistan. The Prime Minister hinted that the funds would be beneficial for taxpayers as well – how it will be so is still unknown. Other measures include a voluntary force, namely the "Tiger Force", comprising committed workers and the youth tasked with spreading awareness. Many individuals have indeed started to sign up for the force already. It was further proposed that if a business or company did not lay off its workers and in turn facilitated them with sufficient wages; such companies would be awarded loans alongside perks by the State Bank of Pakistan. However, no law or rule has been promulgated for the implementation of any of the aforementioned initiatives. Legally speaking, Pakistan does not have comprehensive laws on epidemics, except for the Sindh Epidemic Diseases Act 2014 and the Epidemic Diseases Act 1958 which is an amended version of the 1897 Act.[115] Both statutes, however, are not very helpful as they are brief and do not accommodate our current situation.[116]

On the 27th of March, the Punjab Infectious Diseases (Prevention and Control) Ordinance 2020 was passed with an aim to "make provisions for prevention and control for infectious diseases in the Punjab and matters ancillary and connected thereto." Considering

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[114] Arwa Arshad, Panic, Pandemic and Punjab Infectious Diseases Ordinance 2020, https://courtingthelaw.com/2020/04/10/laws-judgments-2/panic-pandemic-and-punjab-infectious-diseases-ordinance-2020/ , last accessed on 23.5.2021

[115] *Ibid*

[116] *Ibid.*

the enormity of the issue and the doubling up of cases with every passing day, the Ordinance appears too general with regard to its provisions and fails to address numerous circumstances that should have been catered to.[117]

The Ordinance authorizes a Secretary (i.e. Secretary to the government, primary and secondary healthcare departments) and, in some cases, medical practitioners, to impose restrictions and duties regarding how to deal with infectious people, places, gatherings, etc. It gives procedural guidelines to the victims of the virus on how they are to be treated. Sections 17-20 of the Ordinance further categorize punishment according to the level of offence committed by an infected person. While it is commendable that Punjab has imposed these rules, they do not cover many circumstances not mentioned in the Ordinance.[118]

Most duties in the Ordinance have been addressed to "medical officers". Section 2, subsection (e) vaguely defines a "notified medical officer" as someone "notified for the purpose of the Ordinance by the Secretary". The Ordinance, however, lays down no criteria according to which such notification will be made, such as the amount of experience one must possess, any specific academic credentials or basic pay scale grade, etc. This gives arbitrary liberties to practically any medical practitioner to handle infected persons. Many patients can suffer because of this.[119]

Some of the duties that the aforementioned officer can exercise include the power to retain an infected person for an unspecified period of time if deemed necessary, or discontinue retention altogether (Section 10, subsections 3-6). This discretion can prove to be hazardous if a medical officer misjudges a case or fails to adequately examine it. It is, therefore, crucial to appoint a certain number of officers who actually qualify to carry out these duties. Moreover, it would be prudent to set a maximum limit for retention, e.g. in the case of Coronavirus, a fourteen-day period usually suffices for the incubation period. If a person tests positive, he or she may be retained for an additional thirty-day period, or till such time that the person recovers. Section 4, subsection (a) gives a Secretary (i.e. Secretary to the government, primary and secondary

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[117] https://courtingthelaw.com/2020/04/10/laws-judgments-2/panic-pandemic-and-punjab-infectious-diseases-ordinance-2020/ , last accessed on 23.5.2021

[118] *Ibid*

[119] *Ibid*, last accessed on 27.5.2021

healthcare departments), subject to the Chief Minister's approval, the power to direct all medical practitioners to treat cases of infection or contamination. As commendable as the task of risking life and saving victims may be, many may not be able to carry it out for some reason or the other. The direction is subject to confirmation, but is it definite? Do practitioners have the right to withdraw from their duty? Are there any circumstances which would allow one to withdraw? All of this has not been made clear and it is unlikely that the practitioners are being excused for not conforming to the Secretary's directives.[120]

The Ordinance also does not provide safety guidelines for medical practitioners working on the front-lines. There is no mention of the protection or precautions which must be afforded to such people. They are only required to carry out their duties. Shouldn't the government or Ministry of Health have any duties towards them as well? Compare this with the United Kingdom's comprehensive Corona Virus Act 2020 composed of 102 sections. It allows the relevant authority to "indemnify a person in respect of a qualifying liability (in tort) incurred by the person, or make arrangements for a person to be indemnified, in respect of a qualifying liability incurred by the person." The Ordinance not only neglects the protection of healthcare workers but also of infected persons. While there may be ample instructions on how patients are supposed to be retained if deemed necessary be a medical officer, the issue is that we still do not have enough quarantine centers. The Ordinance repeatedly makes mention of a "specified place" that they must be kept in, but there is no reference to how they are supposed to be kept or what resources they are supposed to be provided with. The welfare of infected persons who actually have to go through the process has become a moot point.[121]

According to the Ordinance, an infected person who escapes quarantine or does not comply with the given precautions may face imprisonment or be fined up to PKR 50,000. Such acts have been categorized as offences under Sections 17, 18, and 19. However, the Ordinance fails to recognize any mistreatment that may occur. It also does not take into account any judicial decree that may be

[120] https://courtingthelaw.com/2020/04/10/laws-judgments-2/panic-pandemic-and-punjab-infectious-diseases-ordinance-2020/ , last accessed on 28.5.2021

[121] *Ibid.*

awarded to persons treated unfairly. What remedies would an unjustly quarantined person have? The same question arises for medical practitioners. Do they have any judicial remedy as a result of inequity? The purpose of implementing the Ordinance is to crush the epidemic. However, failure to provide a yardstick may make its implementation more difficult or cause it to be applied wrongly or arbitrarily. In fact, the purpose of the Ordinance itself gets crushed if it does not attempt to address all those affected by the pandemic. There are further aspects of this epidemic which are repeatedly being ignored. What wage benefits, if any, is the working class getting during the lock-down? Are there any protective measures for those who have no source of income during this time? Is there any relief for those unable to pay rent? Many social workers and NGOs are working effortlessly to provide ration packages to the underprivileged but have any packages been distributed by the government itself?[122]

Another neglected area is the lack of mental health initiatives for patients as well as the general public. There are no provisions for differently-abled citizens and how their treatment may vary from other people infected by Coronavirus. Almost every individual seems to be surviving in a depressive state right now. Patients are seen as a threat and isolating them makes them even more disturbed. There is already a lack of mental health resources but it is high time that some facilities do get arranged at this time for the well-being of the society as a whole. Online sessions can be arranged by authorized practitioners, especially for the benefit of those infected and isolated. It must be kept in mind that the Ordinance is only for Punjab. No nationwide legislation has been enacted by the federal government which can provide uniform measures to help 'flatten the curve' with regard to the burden of the outbreak on healthcare resources. Our legislators must take into account the consequences that may flow if significant matters are left unaddressed.[123]

Human Rights Concerns

It is noted that PIDA is an emergency legislation, which like any other emergency laws is likely to give rise to doubts as to its implications in a post-emergency scenario. Jonathan observes that

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[122] https://courtingthelaw.com/2020/04/10/laws-judgments-2/panic-pandemic-and-punjab-infectious-diseases-ordinance-2020/ , last accessed on 28.5.2021

[123] *Ibid*

COVID-19 has led to imposition of strict measures by the governments which include restrictions on freedom of movement and doing business and even placing infected persons in isolation centers.[124] These concerns are not unfounded and ethical concerns have been raised by concerned quarters like the European Group on Ethics in Science and Technologies (EGE) which highlighted a 'significant danger of any emergency legislation' that is likely to establish a new 'normal' of shattered rights and liberties in a post-emergency world.[125] In view of the above concerns, it is observed that PIDA, an emergency legislation now made an act of Provincial Assembly, does not make any reference to the protection of human rights. However, it appears that in terms of restricting movement or retention of an infected person, while the Act seems to have reserved discretionary powers for the Provincial Government, its health representatives and those exercising executive authority under thereunder, it has also placed some limitations on the time of retention. For example, under Section 10(3) of the Act, a medical practitioner has authority to retain a potentially infected person for not more than 48hour period in the beginning. However, such limitation can be qualified and a person can be retained for a period beyond 48 hours if in the opinion of the concerned medical officer, such person is required to be retained. In such case, there is no limitation and the patient can be retained for an indefinite period of time subject to assessment of the medical officer.[126] The basis of

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[124] Jonathan Pugh, "The United Kingdom's Coronavirus Act, deprivations of liberty, and the right to liberty and security of the person", U.S. National Library of Medicine and National Institute of Health, retrieved from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7197562/ on April 25, 2021.

[125]The Nuffield Council on Bioethics, Guide to the Ethics of Surveillance and Quarantine for Novel Coronavirus, 2020. https://www.nuffieldbioethics.org/news/guide-to-the-ethics-ofsurveillance-and-quarantine-for-novel-coronavirus; UNESCO International Bioethics Committee and the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology, Statement on COVID-19: Ethical Considerations from a Global Perspective—UNESCO Digital Library. https://unesdoc.unesco.org/ark:/48223/pf0000373115 (accessed Apr. 17, 2021); European Group on Ethics in Science and Technologies, Statement on European Solidarity and the Protection of Fundamental Rights in the COVID-19 Pandemic, 2020. https://ec.europa.eu/info/publications/ege-statements.en last accessed on April 17, 2021.

[126]The Punjab Infectious Diseases (Prevention and Control) Ordinance, 2020. Section 10

authority to retain a person is premised on the assessment of medical officer. Such retention is primarily a restriction on right to freedom of movement under Article 15 of the Constitution of Pakistan which reads: "Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof."

In view of Article 15, the objective criterion of imposing a limitation on freedom of movement is 'reasonable restriction imposed by law in the public interest'. What may constitute 'reasonable restriction' has to be seen in view of the case law developed in Pakistan. The Lahore High Court held a reasonable restriction under the Constitution and the prohibitions under the law, has to be scrutinized. The Court provided an objective test for a restriction to be qualify as reasonable that it must be "substantive, real, proximate, tangible and immediate and not remote, conjectural or far-fetched."[127] Thus, it can be argued that a restriction imposed on a potentially infected person based on the opinion of a medical officer is reasonable, as only a qualified medical practitioner can assess the condition of an infected person, which is rightly considered by the drafters of the PIDA and further qualified by 'pre-conditions' in Section 15 of the Act recognizing the principle of proportionality, the interest of the infected person and public at large. However, it is also noted that in addition to the medical officers, the Secretary of the Provincial Government under Section 10(3)(b) of the PIDA with the approval the Chief Minister can order a retention beyond 48 hours in view of 'circumstances related to' infectious diseases. The does not explain what those circumstances could be, in addition to the risks assessed by a qualified medical officer? The Secretary to the Provincial Government is representative of the executive authority of the Government, and unless exercise of his authority in restricting a person is reasonably qualified, i.e. based on assessment of a medical officer, cannot be justified. In case of persons posing 'significant risk', a medical officer may place restrictions on such person for a maximum period of 14 days, which can be extended based on the assessment of the concerned medical officer. However, at the same the power to extend such period of time has been

[127] Leo Communications Private Limited. Vs. Pakistan (WP No. 2581/2017, (Lahore High Court).

reserved for the Secretary who can order extension of restrictions beyond 14 days with the approval of the Chief Minister under Section 12(3) (b) of the Act with ditto text found in Section 10(3) (b). These powers of extension of retention and restraint period reserved for the Provincial Government without objective qualifications does not inspire confidence of reasonability. Therefore, it is argued that such powers vested in the Secretary, that is executive authority of the Provincial Government, under Section 10(3)(b) and 12(3)(b) of the Act cannot be justified as 'reasonable' within the spirit of Article 15 of the Constitution.

Another important aspect missing from the text of PIDA is the issue of discrimination against the infected persons and publishing their identities and images. In Vietnam, the issue has been approached with more sensitivity as Article 9(5) of the Vietnamese Law provide that it is prohibited to: "Discriminate against and publishing negative images of and information on persons suffering from an infectious disease." (Clarification added)

Person infected with an infectious disease are already vulnerable to discrimination due to a medical condition which is not their choice. The trauma of suffering from a viral disease can be added by the trauma of being discriminated against by publishing of their images and reporting on them in the media. Though PIDA provides for confidentiality of the information concerning an infected person in Section 27, however, it is important the PIDA should have expressly provided against discriminatory treatment of people suffering from an infectious disease especially keeping in the view the media hype that is surrounding the present epidemic. The issue is so sensitive that New York based Covid-19 Working Group has issued specific guidelines on Media Communications so that the infected people are not discriminated by media and thus stigmatized.[128]

Concept of use of 'Reasonable Force' and Police Powers

In addition to the powers under Sections 10 and 12, the Act also provides for 'ancillary powers' for a medical officer or a police officer under its Section 16, which allows a police officer to use 'reasonable force'. The Act itself does not elaborate the concept of reasonability. In order to understand what should be reasonable, one

[128]Covid19 and Impact Communities: A Media Communications Guide, available at https://www.treatmentactiongroup.org/publication/covid-19-and-impacted-communities-a-media-communications-guide/ last accessed on April 29, 2021.

has to look into the case law developed by the superior courts in Pakistan. As per Supreme Court's observations in Maudoodi v. Government of Pakistan, 'the reasonableness of the mode of application of the restriction whether such mode be prescribed by the statute or not'.[129] Apparently in view of this precedent, the concept of reasonableness of use of force should have been provided within the Act. Not only the power to use reasonable force has been vested in the police officers but also power to apprehend an individual has also been ordained by the PIDA under Section 16(4). This combination of powers has been supplemented by more questionable power, vested in a police officer of Sub-Inspector level, to enter any premises while exercising his authority under the PIDA. Without providing for an objective criterion for exercise of police powers within the Act, it is argued that such powers are not unlikely to be misused. This issue, outside the statute, needs to be examined in view of the police attitude towards public and use of violence. There have been numerous incidents of police manhandling, beating and inhuman treatment of persons. For not wearing masks, people were tortured by police on public places. In the second largest city of Faisalabad in Punjab Province, police were reported using shock-wave gadgets, stun-guns, on adults and minors alike. The stun guns inflicted on the victims not wearing masks were reported to cause, for few seconds, loss of balance, muscle control, mental confusion and disorientation.[130] It is noted that this incident in Faisal Abad, reported in international media, took place after promulgation of PIDA coming into force as an Ordinance. The question of reasonability hanging between the concept of use of 'reasonable force' and the on-ground reality looms over the provisions of PIDA. In the provincial capital, Lahore, police were reported issuing fines for violation of SOPs, while the figures of

[129] PLD 1964 SC 673.

[130] The Gulf News, Police COVID-19: Police using shock device to punish violators of coronavirus preventive measures in Pakistan, accessed from https://gulfnews.com/world/asia/pakistan/covid-19-police-using -shockdevice-to-punish-violators-of-coronavirus-preventive-measures-inpakistan-1.71933319 on May 2, 2021.

fines for such violations were not yet approved by the relevant authority.[131]

Under Section 22 of PIDA, the Deputy Commissioner as administrative officer of the district is empowered to issue an order to his subordinates or police officers and for enforcement of such order, the Deputy Commissioner, his subordinates or police officers can:

(a) Enter any premises;
(b) Detain a person for up to 24 hours; and
(c) Use 'reasonable force' to ensure compliance.

It is noted that while the Act allows filing of a revision petition against an order, instruction or restriction imposed by a medical officer or a police officer may be filed against a board comprising of the concerned Commissioner and the medical officer notified by the Secretary of the Ministry of Health, Punjab. It appears that any grievance arising out of an ill imposed order or restriction has been kept out of the judicial purview under the PIDA by creating a forum within the executive and keeping out of the judicial purview. While this can be argued that the in an emergency situation like COVID-19, providing for the revision or appeal forum within the executive structure is more plausible approach as it might be time-effective since judicial recourse is more likely to take time. However, this argument is implausible for the reasons: first that it violates the principle of separation of executive and judicial authority; and second that summary procedures are available in action before normal court of law.

ANALYSING THE RESTRICTIONS ON FREEDOM OF MOVEMENT VIOLATING HUMAN RIGHTS CONVENTIONS

It should be noted, to begin with, that International Human Rights Law guarantees the right to the highest possible level of healthcare for everyone and, consequently, States are required to take the necessary administrative, legislative, or judicial measures to achieve that goal. Particularly, States must commit to be guarantors of Public Health and provide health care to all in the face of the characteristics of this pandemic (International Covenant on Economic, Social and

[131] The Express Tribune, Police jump the gun in fight against Covid-19, last retrieved on October 24, 2020 from https://tribune.com.pk/story/2236452/police-jump-gun-fight-covid-19.

Cultural Rights, 1966).[132] International Instruments of Human Rights also recognize that, in the context of serious threats to public health and public emergencies that place life at risk, restrictions on some rights may be justified only when they meet the following requirements: based on legal grounds, strictly necessary, based on scientific evidence, not arbitrary nor discriminatory, of limited duration, respectful of human dignity, subject to revision, and proportionate to achieve their objectives (Organization of American States, 2020).[133] The scale and severity of the Covid-19 pandemic clearly rises to the level of a public health threat that could justify restrictions on certain rights, such as those resulting from the imposition of quarantine or isolation that limit freedom of movement. At the same time, careful attention of the so called "hard core of human rights" is necessary to achieve coherence, transparency and respect for human dignity (Spanish Bioethics Committee, 2020[134]; Office of the United Nations High Commissioner for Human Rights, 2020).[135]

Both the American Convention on Human Rights in its Article 27, as well as the Covenant on Civil and Political Rights in its Article 4, authorize States to implement special measures of exception to satisfy some rights and in turn define those rights that cannot be revoked.

Article 4 of the International Covenant on Civil and Political Rights:

1. "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures

[132]International Covenant on Economic, Social and Cultural Rights *Article 12.* 1966. Available at: https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf[Ref list]

[133] Organization of American States Practical guide to inclusive and rights - Focused responses to COVID-19 in the Americas. Apr, 2020. Available at: http://www.oas.org/es/sadye/publicaciones/GUIASPA.pdf.

[134] Spanish Bioethics Committee. Report of the Spanish Bioethics Committee on the bioethical aspects of prioritizing health resources in the context of the coronavirus crisis. Madrid: Mar, 2020. Available at: http://assets.comitedebioetica.es/files/documentacion/Informe%20CBE-%20Priorizacion%20de%20recursos%20sanitarios-coronavirus%20CBE.pdf, last accessed on 23.5.2021 last accessed on 12.7.2021

[135] Office of the United Nations High Commissioner for Human Rights. Essential guidelines for incorporation the perspective of human rights in attention to the pandemic by COVID-19. Apr, 2020.

derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

Article 27 of the American Convention on Human Rights. Suspension of Guarantees:

1. "In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons

that gave rise to the suspension, and the date set for the termination of such suspension." The mechanism established in Article 27 of the Convention has been applied mainly in Latin American countries for the restoration of Democracy. However, an analogy can be made in the face of a pandemic to apply to the limitation of some rights. Contrary sensu and as the Inter-American Court has indicated, the rights that have not been enumerated in the above articles can be subject to a review in order to determine that there is no abuse of power for their limitation and that they are according to international standards.

The Inter-American Court of Human Rights[136], in its constant jurisprudence regarding the right to life, has indicated that: "One of the obligations that the State must inescapably assume in its position as guarantor, with the aim of protecting and guaranteeing the right to life, is to generate the minimum living conditions compatible with the dignity of the human person and not to produce conditions that hinder or prevent it. In this sense, the State has the duty to adopt positive, concrete measures aimed at satisfying the right to a decent life, especially when it comes to people in situations of vulnerability and risk, whose attention becomes a priority" (Inter-American Court of Human Rights, 2005).[137]

However, it is worth noting that the activation of the state of exception, as it is known, has rules, for example, that it must be for a limited time, justified, and it must be communicated to the General Secretariat of the Organization of States American for approval. The reason is that the limitation of rights is an extremely sensitive issue for the rights of individuals and democracy.

Furthermore, the General Comment No. 31 [80] of the Covenant on Civil and Political Rights of May 2004 provides that: "States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be

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[136] Inter-American Court of Human Rights Case of the Yakye Axa Indigenous Community v. Paraguay. Paragraph 162.2005. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec125ing.pdf. , last accessed on 23.5.2021

[137]American Association for the International Commission of Jurists Syracuse Principles - On the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1984. Available at: https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf .

permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right."

The 1984 Syracuse Principles* (American Association for the International Commission of Jurists, 1984)[138], and the General Comments of the United Nations Human Rights Committee on States of Emergency and Freedom of Movement, in particular General Comment No. 29** (Office of the United Nations High Commissioner for Human Rights, 2001)[139], also provide authoritative guidance for restrictions on human rights for reasons of public health or national emergency. In this sense, any measure taken to protect the population that limits people's rights and freedoms must be legal, necessary, and proportionate. Furthermore, states of emergency must be of limited duration and any reduction in rights must take into account the disproportionate impact on specific populations or vulnerable groups (Human Rights Watch, 2020).[140] In this regard, the Syracuse Principles specifically state that the restrictions should, at a minimum, be: Planned and carried out in accordance with the law Directed towards a legitimate objective of general interest Be strictly necessary in a democratic society to achieve the objective; the least intrusive and restrictive available to achieve the goal based on scientific evidence and neither arbitrary nor discriminatory in its application, and Of limited duration, respectful of human dignity and subject to review.

In this sense, International Human Rights Law, in particular the International Covenant on Civil and Political Rights, requires that restrictions on rights for reasons of public health or national emergency are legal, necessary, and proportionate. Restrictions such as mandatory quarantine or isolation of symptomatic persons must,

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[138] Office of the United Nations High Commissioner for Human Rights Comment No. 29. 2001. Available at: https://www.acnur.org/fileadmin/Documentos/BDL/2003/1997.pdf

[139] Human Rights Watch Human Rights Dimensions of COVID - 19 Response. Mar, 2020. Available at: https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response

[140] *Ibid*

at a minimum, be carried out in accordance with the law. They must be strictly necessary to achieve a legitimate objective, based on scientific evidence, proportionate to achieve that objective, neither arbitrary nor discriminatory in their application, of limited duration, respectful of human dignity and subject to revision. Furthermore, the International Health Regulations (IHR 2005)[141], which is the international legal instrument designed to support the protection of all States against the international spread of disease and currently legally binding on 194 States Parties worldwide, provides in Article 2: "Article 2 Purpose and scope. The purpose and scope of these Regulations are to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade."

Regarding the Principles guiding this norm, it is established that its application will fully respect dignity, human rights and fundamental freedoms of people.[142]

Covid-19 and Human Rights

The current COVID-19 pandemic has strained the global economy and limited some of most important human rights and fundamental freedoms in democratic societies. Health safety restrictions have had an impact on freedom of liberty and security for persons being quarantined as a result of contracting or being suspected of having contracted the virus. Limits on freedom of expression have been imposed in order, allegedly, to prevent information disorder. Assemblies and protests have been prohibited to prevent the spread of the virus. Equally, access to courts has been impeded or allowed only under special arrangements. One might argue that there have been violations of the right to life of individuals who have died because of the virus and of the lack of sufficient medical care, especially in detention or care institutions. The right to family life has been disrupted due to restrictions on movement of persons

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[141] Inter-American Court of Human Rights Case of the Yakye Axa Indigenous Community v. Paraguay. Paragraph 162.2005. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf

[142] Carlos Valerio, Human Rights and Covid-19 pandemic, JBRA Assist Reprod. 2020 Jul-Sep; 24(3): 379–381, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7365536/ , last accessed on 23.5.2021

across Europe. Furthermore, there have been instances of interference with the right to respect for private life by public authorities tracking infected persons. The emergency situation has caused an unprecedented chain of events affecting everyone and forcing States to take decisions restricting human rights within short time limits.[143]

The aim of this article is to examine the restrictions imposed by European States during the COVID-19 pandemic in the light of the European Convention of Human Rights and Fundamental Freedoms. I will present the development of the case-law of the European Court of Human Rights on public emergencies and on Article 15 of the Convention and how it is currently applied by the Court. At the same time, I will examine the current COVID-19 restrictions put in place by a number of States Parties to the Convention, providing critical analysis and concrete recommendations for the future.[144]

The Court examined cases relating to public emergencies either where a derogation of Art. 15 of the Convention applied or in the absence of such a derogation under the limitation clauses contained in some articles of the Convention, such as Arts. 8-11. in the absence of a limitation clause, the Court insisted on preserving some minimum requirements of a given right, for example under Arts. 5 and 6 of the Convention.[145] It should be noted that when a Convention right contains a limitation clause there will be no need for a State Party to derogate from them as wider limitations may be imposed in times of public emergency already under the text of those provisions.[146] States' derogations up to date have concerned primarily Art. 5 of the Convention.

The Convention allows State Parties to derogate from human rights and fundamental freedoms protected therein under strict conditions

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[143] Doswald-Beck, L.: Human rights in times of armed conflict and terrorism, Oxford University Press, Oxford p. 69 .

[144] Harris, D.J, O'Boyle, M., Bates, E.P., Buckley, C.M.: Law of the European Convention on Human Rights, Second Edition, Oxford University Press [5], p. 620-621.

[145] The text of the declarations is available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354

[146] Albanian Government declaration relating to the ECHR, 1 April 2020, available at: https://rm.coe.int/16809e0fe5

set out in Art. 15 of the Convention. The plain text of this provision contains the following five elements:

1) Timing: a derogation is possible only in time war or other public emergency threatening the life of the nation of a High Contracting Party;

2) Scope: to the extent strictly required by the exigencies of the situation;

3) Respect for other international law obligations: such measures must not be inconsistent with a State's other obligations under international law (Art. 15(1));

4) Non-derogable rights: certain human rights may not be derogated from (Art. 15(2)), namely the right to life under Art. 2 (except in respect of deaths resulting from lawful acts of war), the prohibition of torture, inhuman and degrading treatment and punishment under Art. 3, the prohibition of slavery and servitude under Art. 4(1) and the principle of nulla poena sine lege under Art. 7;

5) Obligation to inform: State Parties are required to keep the Council of Europe fully informed of the measures which they have taken and the reasons therefore, as well as when such measures have ceased to operate and the Convention provision are again fully executed (Art. 15(3)).

Between March and April 2020, ten States Parties to the Convention notified the Secretary General of the Council of Europe of a derogation specifically with respect to the COVID-19 pandemic: Latvia, Romania, Armenia, the Republic of Moldova, Estonia, Georgia, Albania, North Macedonia, Serbia and San Marino.[147] Albania,[148] Latvia[149] and North Macedonia[150] each exercised a derogation in respect of Arts. 8 and 11 of the Convention, Arts. 1 and 2 of Protocol No. 1 and Art. 2 of Protocol No. 4. Estonia exercised a derogation from Arts. 5, 6, 8 and 11 of the Convention,

[147] Latvian Government declaration relating to the ECHR, 16 March 2020, available at: https://rm.coe.int/16809ce9f2

[148] North Macedonian Government declaration relating to the ECHR, 2 April 2020, available at: https://rm.coe.int/16809e1288 .

[149] Estonian Government declaration relating to the ECHR, 20 March 2020, available at: https://rm.coe.int/16809cfa87

[150] Georgian Government declaration relating to the ECHR, 23 March 2020, available at: https://rm.coe.int/16809cff20

Arts. 1 and 2 of Protocol No. 1, and Art. 2 of Protocol No. 4.[151] Georgia derogated from Arts. 5, 8 and 11 of the Convention, Arts. 1 and 2 of Protocol No. 1, and Art. 2 of Protocol No. 4.[152] Moldova derogated, in particular, from Art. 11 of the Convention, Art. 2 of Protocol No.1 and Art. 2 of the Protocol No. 4.[153] Armenia appears to be limiting freedom of movement, the right to property, freedom of assembly and freedom of the press, whereby the media is obliged to report only official information.[154] Romania exercised a derogation in respect of, inter alia, freedom of movement, the right to private and family life, the right to education, freedom of assembly, and the right to property.[155] Additional measures were adopted to block "fake news" regarding the progress of COVID-19 in the mass media and online.[156] Some of the above-mentioned countries have already withdrawn their notifications of derogation, including Albania, Estonia, Latvia, North Macedonia, Moldova, Romania and San Marino. Other member States adopted COVID-19-related emergency legislation without making a derogation under Art. 15.

Different cases concerning human rights violations in times of the pandemic might arise in the future before the Court. It is especially worrisome that many countries have put in place limits on freedom of expression. The question arises of whether those restrictions were necessary in the situation at hand. How much scope will State Parties now have to limit human rights in the light of the health crisis? Is the emergency legislation that has been adopted in line with the Convention? Were individual measures that were adopted a proportionate response to the situation? I will try answering these questions by examining the case-law of the Court applicable in public emergencies with and without derogation under Art. 15 of the

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[151] Moldovan Government declaration relating to the ECHR, 20 March 2020, available at: https://rm.coe.int/16809cf9a2

[152] Armenian Government declaration relating to the ECHR, 20 March 2020, available at: https://rm.coe.int/16809cf885

[153] Romanian Government declaration relating to the ECHR, 18 March 2020, p. 4, available at: https://rm.coe.int/16809cee30

[154] *Ibid.* p. 16-17.

[155] Jovičić, Sanja. "COVID-19 restrictions on human rights in the light of the case-law of the European Court of Human Rights." In ERA Forum, vol. 21, no. 4, pp. 545-560. Springer Berlin Heidelberg, 2021. https://link.springer.com/article/10.1007/s12027-020-00630-w

[156] *Ibid.*

Convention. With regard to derogations, I will focus only on paragraph 1 of Art. 15.

Government's Initiatives to Tackle the Pandemic

The government of Pakistan has been lauded by international organizations including the WHO (and rightly so) for taking the necessary precautions and measures against the COVID-19 pandemic to guarantee not only the containment of disease spread but also to fulfill its responsibility as a state toward its people and their safety.[157]

Immediate Response to Contain Disease Spread

One of the first steps taken by the government was to develop functional emergency operations centers and to detect the route of disease spread in Pakistan. The origin of the virus was the first question; hence, detailed history-taking of patients was crucial not only in understanding the outbreak but also in determining the contacts of patients with other people in the community. This helped in cordoning off areas or home-bounding people who came in close contact with a patient with COVID-19. In addition to this, patients with a recent international travel history were monitored closely. This made sense because many cases and massive spread was reported in the countries neighboring Pakistan.

Containment Measures

Once primary and secondary contact-tracing was delineated, the foremost step taken by the government was to control the borders. This was a crucial decision, owing to the consideration of a large number of Pakistani students and pilgrims studying in and travelling from China, Iran, and Europe. The government gained the confidence of the affected individuals and their families. It was almost unfeasible to restrict such individuals outside the country because of the strong public response; nonetheless, it was necessary if the spread of the virus was to be controlled quickly. To tackle this problem, the government took the initiative of designating quarantine houses near borders and airports to isolate people entering Pakistan for a short period to make sure they were not infected before they moved out in the community.

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[157] Pakistan's Response to COVID-19: Overcoming National and International Hypes to Fight the Pandemic by Hashaam Akhtar https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8136406/, last accessed on 02.9.2021

Border Control

The WHO reported that the number of new cases increased by the minute, and disease spread was now not only limited to people who a recent travel history in the regions had highly affected by the pandemic. Disease spread within the community was alarming and called for drastic steps to be taken not only by local governments but also by countries and states at large. All necessary services and measures are still being used in maximum capacity till date to ensure the safety of people's lives in the country. Since all cases initially had a history of recent travel, it was speculated that transmissions were imported from outside of the country. Therefore, travel restrictions were imposed to limit the spread of virus from other countries to Pakistan.[158]

Quarantine Houses

After the borders were contained, it was important for the government to provide a solution to all individuals stuck at the borders to enter the country without imposing a threat to the rest of the community. It was crucial to quarantine the people at a specific location and either have them tested or wait for at least 2 weeks to ensure that they were not infected with SARS-CoV-2 before they travelled to their hometowns. People who did not show any symptoms after being quarantined for a certain duration could go to their cities and notify the authorities in case of any signs and symptoms after leaving the quarantine homes . The development of these shelters was an economically and strategically massive task for the government. More than 3000 pilgrims arrived from Iran in the first week of March 2020 alone and were housed at quarantine shelters in Taftan and Chaman.

Toward the end of March 2020, the government decided to relocate the pilgrims to their respective provinces where quarantine centers were set up. Most news outlets and social media users condemned this step taken by the government. Many problems were faced by the pilgrims and other people who were quarantined at these centers, including included small, cramped spaces for people to live in,

[158]Pakistan's Response to COVID-19: Overcoming National and International Hypes to Fight the Pandemic by Hashaam Akhtar https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8136406/, last accessed on 02.9.2021

unhygienic conditions, shortage of food, water, medication, and unavailability of physicians.[159]

Country-Wide Lockdown

Many other steps were taken by the government to tackle disease spread and to minimize the damage caused by the pandemic in Pakistan.

One of the first steps that the government of Pakistan took to limit the spread of the virus within the community was to impose well-planned lockdowns in all major cities. Lockdowns were imposed during different hours in different regions, and most of the public spaces were closed off except for grocery stores, pharmacies, and vegetable and fruit shops. All the eateries, parks, wedding halls, schools, and offices were closed until further notice by the federal government. This led to retaliation from the provincial governments and opposition as it posed a great economic threat to the country's daily-wage workers and to the low-income population; however, this was a necessary measure to curtail disease spread. Another step that the government took, and faced major opposition, was the closure of prayers at mosques, including Friday prayers.

Cordoning Off Areas

When reports of virus transmission started emerging, especially in the federal capital of Islamabad, the government took the initiative of sealing off areas that reported infections. According to a notification issued by the District Magistrate Islamabad, the city administration decided to cordon off areas to ensure public safety after the number of infections increased [30]. Samples were tested by the National Institute of Health, Islamabad, and analyzed by epidemiologists of the deputy commissioner of the COVID-19 Nerve Centre after which the notification was issued. This helped in not only curbing the spread of the infection but also in contact-tracing and further testing of the public.[160]

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[159] Pakistan's Response to COVID-19: Overcoming National and International Hypes to Fight the Pandemic by Hashaam Akhtar https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8136406/, last accessed on 02.9.2021

[160] *Ibid*

Testing and Contact Tracing

The country's testing capacity was limited during the early months of the pandemic, and while high-income countries were conducting large-scale randomized tests to estimate the actual number of confirmed cases, Pakistan was forced to carry out priority-based testing and rely on the enforcement of strict quarantine and isolation strategies to contain the pandemic. Contact-tracing, however, was an effective strategy that not only helped limit the spread of the virus but also helped predict its route through different regions of the country and across different age groups. Nevertheless, since large-scale testing was crucial to assess the severity of the pandemic, the testing capacity of laboratories and the availability of testing kits was gradually increased by the government, and in June 2020 up to 30,000 tests were conducted daily to ascertain the pace of spread and to formulate future strategies accordingly. Both these strategies provided valuable insights on the differences in the clinical manifestation of COVID-19 in people with different demographic and health backgrounds.[161]

Field Epidemiology Laboratory Training Program

The Training Programs in Epidemiology and Public Health Interventions Network is a network of 75 field epidemiology training programs, which operate in >100 countries including Pakistan. After the WHO declared COVID-19 a public health emergency of international concern, alumni from the Field Epidemiology Training Program implemented standard operating procedures (SOPs) for COVID-19 screening at international airports in Pakistan. They also designed and implemented a real-time data entry system to screen travelers from high-risk countries.[162]

Implementation of SOPs: Masks, Sanitization, and Social Distancing

SOPs were devised for the public and were meant to be strictly followed in public areas. These included guidelines on social distancing; that is, avoiding crowded areas, maintaining a physical distance of 3 feet, wearing masks, maintaining hand hygiene,

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[161] Pakistan's Response to COVID-19: Overcoming National and International Hypes to Fight the Pandemic by Hashaam Akhtar https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8136406/, last accessed on 02.9.2021

[162] *Ibid*

sanitizing frequently touched surfaces and areas, and following general hygiene rules such as avoiding touching the face, nose, or eyes, and coughing, or sneezing in the elbow or a paper napkin instead of the hands. The authorities started taking disciplinary action against those who violated the SOPs at public places in various parts of the country in accordance with the recommendations of the National Command and Control Centre of Pakistan. The focus of the National Command and Control Centre was on SOPs, compliance, strict administrative actions being implemented, and enforcement of various strands of the track, trace, and quarantine strategy.[163]

Initiation of Awareness Campaigns: Role of Community Health workers

Many campaigns were initiated by both local and federal governments in the interest of the general population to spread awareness about the risks, signs, and symptoms of COVID-19. Pakistan's extensive polio vaccination program, consisting of more than 265,000 community health workers and vaccinators, was mobilized with the help of the WHO. This not only helped provide infrastructure to track and trace cases early during the epidemic but also helped spread awareness in the remote, underdeveloped rural regions of Pakistan. Another vital step was taken to spread awareness to the masses, where text messages were sent by the government of Pakistan on all mobile networks. The daily reminders on following SOPs helped tackle those who did not take the necessary precautions and were unaware of the aforementioned information, and the imposition of fines and charges for noncompliance made risk and awareness campaigns a nationwide success.[164]

Recorded voice messages in various local languages including Urdu, Pashto, and Sindhi, which warned against the risks of COVID-19, its spread, and its complications, and general awareness regarding the SOPs to help control its spread, were used as caller

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[163] Pakistan's Response to COVID-19: Overcoming National and International Hypes to Fight the Pandemic by Hashaam Akhtar https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8136406/, last accessed on 02.9.2021

[164] *Ibid*

tunes before every phone call. The recorded messages were changed in accordance with the situation and ranged from guidelines on SOPs, warning noncompliers, and even congratulating efforts after successfully controlling disease spread during August 2020.[165]

Economic Measures

On the emergence of COVID-19 in Pakistan, the entire system faced various problems owing to the limitations of the health care system, poor infrastructure, uneven access to health care, resistance from various social, political, cultural, and religious groups, political instability, economic fragilities, and mistrust among the public. Data of a web-based survey conducted by the Small and Medium Enterprises Development Authority from April 3-14, 2020, among 920 businesses revealed insufficient revenue generation, losses, and difficulty in survival among businesses. Pakistan launched various schemes to tackle the economic crisis faced by many individuals during the pandemic. On May 2, 2020, Prime Minister Imran Khan launched a relief scheme for people who lost their jobs or whose source of income has been compromised owing to the lockdown. He launched a cash assistance program through the Ehsaas Cash Program to support unemployed individuals.

After lifting the lockdown in some sectors, the government allowed construction and daily-wage workers to resume working while dutifully following the SOPs and taking necessary precautions. This helped ease some of the economic burdens of the government, especially in providing rations and relief packages for the daily-wage workers. Furthermore, the government also requested people who had been diagnosed with mild or asymptomatic COVID-19 to quarantine at home as some of them did not required hospital care; this helped curb the patient influx in hospitals and at diagnostic centers, thus easing the burden on health workers and medical practitioners.[166]

Production of Ventilators

One of the largest concerns for the ministry of health and health departments in Pakistan and worldwide is coping with the

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[165] Pakistan's Response to COVID-19: Overcoming National and International Hypes to Fight the Pandemic by Hashaam Akhtar https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8136406/, last accessed on 02.9.2021

[166] *Ibid*

continuously increasing demand of ventilators as the virus spreads and the number of cases increases. The shortage of ventilators is a major issue faced by Pakistan, especially because all the major medical equipment are imported and not produced locally. To tackle this problem, the National Radio and Telecommunication Corporation produced its first ventilator locally within a few months of the onset of the pandemic. The National Radio and Telecommunications Corporation initially offered cost-free repairs for almost 109 ventilators throughout the country and later designed and produced its own ventilators. Initially, 8 ventilators were produced and handed over to the National Disaster Management Authority after which the prime minister formally inaugurated a facility for large-scale production of ventilators within Pakistan.

As a result of all the efforts made by the government of Pakistan, 6 months after reporting its first case, active cases in Pakistan are continuing to steadily decrease, with the number of deaths recorded in a day now often down to single-digit numbers. The country has had 312,263 confirmed cases of as on October 1, 2020, with 6479 COVID-19–related deaths, according to the official data. Save for single-day glitches, active cases have been progressively declining since peaking in June 2020, currently standing at 8903, their lowest level since late April 2020.

(Suo Moto Action Regarding Combating The Pandemic Of Corona Virus (Covid -19)

At the very outset, learned Attorney General for Pakistan has emphatically stated about the presence of Coronavirus (Covid-19) in Pakistan and has contended that this virus has spread in the Country, infecting considerable portion of its population, which is the matter of grave concern for the Government of Pakistan. He has further contended that worst is yet to come and the Government of Pakistan is expecting severe spike in spreading of this virus in the month of June, 2020. He has further contended that the resources available with the Government of Pakistan are not enough to meet the emerging scenario and there is every likelihood that the health sector will be overwhelmed. He has explained that Pakistan's economy was already facing challenges when the incumbent Government took charge of the Country, in that, not much money was available in the coffers and while the Government was making effort to recover from the economic crises, this Coronavirus (Covid-19) emerged and all resources of the Government meant for health

sector, were exhausted in dealing with this virus and even the resources, meant for other development activities, were also utilized to meet the challenges emerging from this virus. He has contended that Government has taken all necessary steps to secure the life of the people of Pakistan. He has, however, contended that the emerging challenges owing to Coronavirus (Covid-19) are real.[167]

We may caution the Government of Pakistan so also the Governments of all the four Provinces, ICT and G.B. that looking at the past history of Pakistan, where business activities of private entrepreneurs was interfered with by the Government, such entrepreneurs lost faith in the system and packed up and moved to some other destinations in the world, where they consider their investment to be more safe and profitable. If the businesses and industries remain closed for a long time, their revival becomes doubtful, more and more, and in case they are not revived, millions of workers will be on streets and the Government may be faced with a human disaster and calamity of such a magnitude that to overcome it, may become next to impossible.

Lastly, court given his remarks that we are not suggesting by any means that the governments should not attend to Coronavirus but we expect that the governments should not put all its resources for this one disease, nor the country should be made all together dysfunctional, because of this disease, for its consequences will be highly detrimental to the people of Pakistan, and the Federal Government and all Provincial Governments should address itself on this point.

[167] SMC-01/2020

CONCLUSION

Under international human rights law, governments have an obligation to protect the right to freedom of movement, including the right to seek, receive, and impart information of all kinds, regardless of frontiers. Permissible restrictions on freedom of movement for reasons of public health, noted above, may not put in jeopardy the right itself.

Governments are responsible for providing information necessary for the protection and promotion of rights, including the right to health. The Committee on Economic, Social and Cultural Rights regards as a "core obligation" providing "education and access to information concerning the main health problems in the community, including methods of preventing and controlling them." A rights-respecting response to COVID-19 needs to ensure that accurate and up-to-date information about the virus, access to services, service disruptions, and other aspects of the response to the outbreak is readily available and accessible to all. Governments should fully respect the rights to freedom of movement and access to information, and only restrict them as international standards permit. Governments should ensure that the information they provide to the public regarding COVID-19 is accurate, timely, and consistent with human rights principles. This is important for addressing false and misleading information. Freedom of movement under international human rights law protects, in principle, the right of everyone to leave any country, to enter their own country of nationality, and the right of everyone lawfully in a country to move freely in the whole territory of the country. Restrictions on these rights can only be imposed when lawful, for a legitimate purpose, and when the restrictions are proportionate, including in considering their impact. Travel bans and restrictions on freedom of movement may not be discriminatory nor have the effect of denying people the right to seek asylum or of violating the absolute ban on being returned to where they face persecution or torture. Governments have broad authority under international law to ban visitors and migrants from other countries. However, domestic and international travel bans historically have often had limited effectiveness in preventing transmission, and may in fact accelerate disease spread if people flee from quarantine zones prior to their imposition.

Social Transition of Pakistan under the Constitution of 1973

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Dr. Shahid Rizwan Baig**

Abstract: The Objectives Resolution was approved by the Pakistan Constituent Assembly in 1949 under the governance of Liaquat Ali Khan, the nation's 1st prime minister. The first Constitution was passed in 1956 and declared invalid in 1958. The second constitution of Pakistan was enacted in 1962 and revoked in 1969. The current constitution of Pakistan was adopted in 1973. Despite the country's diverse ethnic, linguistic, and cultural groups, the constitution of Pakistan prescribes Islam the official religion. Initially, it appeared that the constitution would benefit the country as a whole, but the ruling class later made revisions that benefited them more than the Pakistani people. The Pakistani people demand that the Constitution of 1973 should be revised in accordance with their desires and for their benefit and that any subsequent revisions that favor the ruling class be rescinded by the lawfully elected government. This is the research on the Constitution of Pakistan 1973, tries to achieve social justice by analyzing the social structure of the Constitution and proposing amendments. The design, method, and strategy of his qualitative study examine the Pakistani Constitution of 1973, its social system, and any obstacles to a more effective social legal system. This study would help serious political parties and competent politicians to comprehend the difficulties of raising Pakistanis under the current constitution and to propose amendments for a more socially transformed society. This study would examine the social system of Pakistan in light of the current Constitution. It also deems to examine Pakistan's social structure in light of the current Constitution, its negative implications, and the necessary adjustments for a socially reformed nation.

Key Words: Social Transitions, Pakistan, Constitution 1973

INTRODUCTION

The Islamic Republic of Pakistan declared independence from the British Indian Empire on August 14, 1947. Pakistan approved and utilized the Indian Act of 1935 as its first provisional constitution.

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After that in 1956, Pakistan was able to draft its first constitution, which went into effect on March 23, 1956, and was repealed by the country's first president, Major General Iskandar Mirza, on October 7, 1958. On October 27, 1958, General Ayyub Khan seized office as Pakistan's second president. In addition, he announced the approval of a new constitution in 1962, which stayed in effect until 1969, when General Yahya Khan became president. General Yahya Khan announced a state of emergency in Pakistan on November 23, 1971, which was the final step needed to combine East and West Pakistan. On December 16, 1971, East Pakistan formed Bangladesh as a result. It is vital to note that Yahya Khan's emergency proclamation in 1971 was recognized by the Pakistani Constitution of 1973, which is unequivocal evidence that the ruling elite of 1973 had a soft spot for Yahya Khan. Yahya Khan relinquished executive responsibility to Zulfiqar Ali Bhutto on December 20, 1971. On April 10 of that year, the National Assembly of Pakistan passed the new constitution, and on August 14 it was officially proclaimed. In order to profit themselves rather than the entire Pakistani population, the governing class has been amending the country's constitution.

On July 5, 1977, General Zia, proclaimed the 1973 Pakistani Constitution to be null and void. Later, he asserted that the Constitution was genuinely suspended. In 1985, when all of President Zia-ul-Haq's measures were approved by Parliament, the same process was repeated, and the ruling class further shaped the 1973 Pakistani Constitution in their favor. A period of time elapsed until a new military general grabbed control of the administrative branch on October 12, 1999, at which point the 1973 Constitution was once again abrogated. Later, the legislature ratified his actions from 1999 to 2003.

The three authenticated articles 270, 270A, and 270AA, which are present in the current Constitution of Pakistan from 1973, raise the question of whether it was drafted for the entire Pakistani populace or only for a select few members of the ruling class. The 18th amendment to the 1973 Pakistani Constitution was initiated by the Pakistan People's Party administration under the guidance of Asif Ali Zardari to make it easier for present politicians to seize power and make all decisions while negotiating with opposition parties.

This study provides a quick summary of the basic rights guaranteed by the Pakistani Constitution of 1973, but which are not really upheld by the nation's government. Although the Pakistani

Constitution of 1973 has Islamic requirements, they are ineffectual in developing an improved Islamic Welfare State. The present organizational construction of the Pakistani Federal Government and Provincial Administrations below, in the Pakistani Constitution of 1973, is followed by a review of the current organizational structure of the Pakistani Judiciary. The study will emphasize the policies that largely serve the interests of the ruling class, as well as the provisions of the Pakistani Constitution that are still in place but are not being applied to the benefit of the general population.

ISLAMIC PROVISIONS

On April 10, 1973, the National Assembly of Pakistan ratified the 1973 Constitution, and on August 14, 1973, it went into effect throughout Pakistan. Accepted by Pakistan's first Constituent Assembly on March 12, 1949, the Objectives Resolution was inserted into the preamble of Pakistan's 1973 Constitution. In the preamble of Pakistan's Constitution of 1973, it is stated that only Almighty Allah has sovereign authority over the entire universe and that the Pakistani people, via their elected representatives, may exercise this authority only within the limits he establishes. In addition, the preamble emphasizes that the ideals of democracy, freedom, equality, tolerance and public justice will be properly respected and that parity in social standing, equality of opportunity, and equality of faith are fundamental rights.

Minorities must be permitted to freely practice their faith and develop their culture, and Muslims must be allowed to live according to Islamic teachings. There must be adequate safeguards in place to protect the reasonable interests of Pakistan's minorities, marginalized, and disadvantaged groups, and each unit must be independent within definite bounds and restrictions while preserving their uprightness, independence, and autonomous rights over land, sea, and air[168].

In 1985, Article 2A was added to the Pakistani Constitution, making the Objectives Resolution an inherent part of the law. Islam is the official religion of Pakistan. In Pakistan, it is forbidden to pass laws that contravene the prohibitions of the Holy Quran and the Sunnah of the Prophet Muhammad[169]. Non-Muslims consist of Christians,

[168] (1949). The Objectives Resolution. Islamic Republic of Pakistan.

[169] Lau, M. (2003). "Article 2A, the Objectives Resolution and the Islamization of Pakistani Laws." SOAS University of London

Hindus, Sikhs, Buddhists, Parsis, Qadianis, Lahoris, Ahmadis, and Biharis, among others. A Muslim is one who has faiths in the unity of Almighty Allah and the prophet hood of Muhammad, the final prophet.

In Pakistan, there is an Islamic Ideology Council comprised of a Chairman chosen by the Pakistani President and eight to twenty more members chosen for three years based on their knowledge of Islamic law as well as Pakistan's politics, economy, legal system, and administrative difficulties. According to the precepts of Islam, the Islamic Ideology Council will respond to the President's suggestion within 15 days whenever the President or Governor requests its opinion on a piece of legislation passed by the National Assembly or a Provincial Assembly. President, Governors, and National and Provincial Assemblies must adhere to the Islamic Ideology Council's suggestions and orders while drafting Pakistani legislation consistent with Islamic principles. The President of Pakistan must accept any procedures adopted by the Islamic Ideology Council[170]. The Chairman of the Islamic Ideology Council is selected by the President of Pakistan based on politics, and associates are also selected on the basis of their political affiliations; thus, their choices are influenced by politics. The selection for the Islamic Ideology Council should have been grounded on the applicant's awareness of Islamic law and the present economic, political, legal, and administrative concerns confronting the State of Pakistan.

According to the Pakistani Constitution, the state of Pakistan shall ensure the abolition of all forms of exploitation and the gradual realization of the fundamental principles for each individual in line with his or her efforts and capabilities. Every Pakistani citizen is protected by the law and must be treated according to its stipulations; no one may be prohibited from behaving lawfully or pressured into doing something illegal. No one may be disadvantaged of their life, liberty, body, status, or possessions, except as permitted by commandment. Each Pakistani inhabitant is obligated to uphold the country's constitution and demonstrate national loyalty. Those who contravene the Pakistani Constitution

[170] Munir, M. and B. Ahmad (1996). Constitution of the Islamic Republic of Pakistan: Being a Commentary on
the Constitution of Pakistan, 1973, PLD Publishers.

of 1973 are guilty of high treason and incur the death penalty if the court finds them guilty.

FUNDAMENTAL RIGHTS

Protection of life and liberty, defense against unlawful detention, the right to a fair trial and due process, defense against forced labor and slavery, defense against retroactive punishment, defense against self-incrimination and jeopardy, defense against torture, freedom of movement, freedom of assembly, freedom of association, freedom of trade, business, and profession are some of the fundamental rights guaranteed by Pakistan's Constitution of 1973.4

Today, Pakistanis place a higher value on the lives of political leaders than professors or engineers, due to the fact that politicians have positions of authority whereas teachers do not. Although the Pakistani Constitution of 1973 guarantees the right to an education, the Pakistani government does not provide appropriate and high-quality educational opportunities for Pakistani children. Instead of working to improve the Government School System for all Pakistani students, politicians send their own children to expensive private schools or abroad to study. Instead of enrolling their own children in Government Schools, politicians should enroll their own children so that they appreciate the need of establishing an excellent educational system. Any measure that infringes basic rights will be deemed illegal by the Apex Court of Pakistan, and the aforementioned rights shall not be deferred under any circumstances unless expressly granted by the 1973 Constitution of Pakistan. However, the Constitution of Pakistan of 1973 contains provisions that provide the government of Pakistan the authority to temporarily suspend certain basic rights during times of national emergency.

The Federal and Provincial Governments of Pakistan are not bound by these principles, nor can a Pakistani court enforce them. These concepts are known as the rules of Policy, and the government must approve them throughout its term in accordance with the available resources. In Pakistan, fundamental rights can be imposed through the judicial system. These rules include the acceptance of the Islamic mode of life while obligating understanding of Islamic studies and the Holy Quran and strongly encouraging understanding of Arabic, promoting local bodies and institutions, discouraging provincial, racial, tribal, and sectarian prejudices, encouraging the involvement of women in all aspects of society, protecting the family, wedding, women, and children, promoting public justice,

and eradicating discrimination[171]. On August 14, 1973, the Pakistani Constitution went into effect, replacing all previous versions with its changes and presidential instructions. The Pakistani Constitution of 1973 granted the President of Pakistan the right to issue instructions for the constitution's proper execution[172]. In 2010, Parliament was granted the same ability to implement the 18th amendment to the 1973 Constitution.

THE CENTRAL GOVERNMENT

The head of state of Pakistan is the President. He must be a Muslim, 45 years or older, and serve a five-year term. He must take his oath in front of the Chief Justice of Pakistan, swear not to embrace any other positions of concern during his administration, and renounce his membership in the federal or regional assembly. He can leave by submitting his notification to the speaker of the National Assembly. He is authorized to commute, authorize, postpone, or reprieve any punishment.

According to the principles of Islamic law, no one may reduce the judge's punishment. During the Prophet Muhammad's lifetime, Makhzumia was given the order to have her hand removed, according to a well-known tradition. The Prophet Muhammad (PBUH) stated, "Do not break Al-Mighty Allah's prescribed rules; past realms were destined because when their rich people committed an offence, they would forgive them, while when their impoverished people committed an wrongdoing, they would convict and punish them. One of the Prophet Muhammad's (PBUH) companions came and requested for the punishment to be overturned. In fact, if Fatima (RZhand) steals, I will cut her off[173].

The Prime Minister is required to inform the President on all matters, and the President is liable to impeachment upon written notice by half of either house's members to the Parliament. The president must receive a copy of the resolution within three days, and a joint meeting must be summoned within seven to fourteen days. The president will be removed from office if a majority of the members vote against him on grounds of breaking the constitution,

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[171]Pakistan and S. Mahmood (1973). Constitution of the Islamic Republic of Pakistan, 1973, Legal Research Centre.

[172] Khosa, A. (1988). "The Constitution of Pakistan 1973." Lahore Kausar Brothers 175.

[173] Tradition 4304, Ismail, M. b. Sahi Bukhari.

gross misconduct or medical or mental sickness. The President of Pakistan must adhere to the recommendations of the Prime Minister and the Federal Cabinet. 2

Both the National Assembly and the Senate comprise the Pakistani parliament. The National Assembly has 342 members, 183 of which are from Punjab, 75 from Sindh, 43 from Khyber PAKHTUNKHWA, 17 from Baluchistan, 12 from FATA, 2 from Islamabad's capital area, and 10 reserved for minorities. Members of the National Assembly are elected for five-year terms. A participant must be a citizen, at least 18 years old, not have been found legally insane, and be on the authorized voter list. The Speaker and Deputy Speaker of the National Assembly are voted during the assembly's first sitting, and they can be detached from office if a resolution is approved by more than half of the members. The National Assembly of Pakistan may be called to order at any time by the President of Pakistan or by a simple majority of more than twenty-five per cent of its members. A minimum of three meetings must be held per calendar year, one of which must be held within 120 days, and a meeting will be adjourned if fewer than 25 per cent of the members are present. The President must address both the first joint session of Parliament following an election and the first meeting of every year. Prime Minister, Federal Ministers, Ministers of State, Advisors, and the Attorney General have the right to speak in Parliament, although they are not permitted to vote. On the suggestion of the Prime Minister, the President can disband the National Assembly. If a motion of no confidence is lodged in contradiction of the Pakistani prime minister and is finally upheld, and if no other voters are available, the President must dissolve the National Assembly.

The Senate, the higher chamber of the legislature, consists of 104 members, including 23 delegates from each province, eight from FATA, and four from Islamabad. The Senate will exist for 6 years, with partial of its participants retiring after three. The senators vote the chairman and vice chairman for a three-year tenure. Members of Parliament must be Pakistani citizens, 35 years old for the Senate and 25 years old for the National Assembly, on the elector list, of good ethical personality, have sufficient knowledge of Islam, not have committed major sins, be truthful and trustworthy and not working against Pakistan's ideology or integrity. Members of Parliament must not be insane, bankrupt, have dual citizenship, be

insolvent, hold any other paid positions with government or private organizations, be disqualified from serving in the Azad Kashmir Assembly, or have served more than two years in prison for an offence, unless five years have passed since the end of his or her sentence, or be mentally unstable.

In 2010, the Government of Pakistan People's Party, below the direction of Asif Ali Zardari, inserted this endowment into the law. Its objective is to allow persons convicted of crimes to once again sit in Pakistan's parliament. In 2010, for the benefit of the ruling elite, the 63A provision was also added. It provides that if a Participant of Parliament votes against the leader of his political party or connections another political party, his seat will be deliberated vacant and new elections will be called. It is also plainly clear that this was introduced to defend the interests of Pakistan's political leaders rather than the rights of the general population. If a Member of Parliament misses 40 consecutive days of parliamentary business, the member may submit a resignation letter to the speaker, and the member's seat will be ruled vacant.

PROVINCIAL GOVERNING BODIES

There are four provinces in Pakistan: Punjab, Sindh, Baluchistan, and Khyber Pakhtunkhwa. The Governor is in charge of the province, while the Chief Minister oversees the executive branch. After speaking with the Prime Minister, the President will appoint the governor of the province. He will be qualified to serve as a member of the National Assembly. He may submit his resignation to the President. The newly appointed Governor of a certain province will deliver the oath to the Chief Justice of that province's High Court. During his service as governor, he is prohibited from holding any other positions of interest. If neither the governor nor the speaker of the provincial legislature is available, the President will designate a person to serve as the governor of that province until the governor arrives to assume office. The Governor must make decisions based on the advice of the Chief Minister and the Cabinet of a province. If he dissolves a provincial assembly and calls for new provincial elections within 90 days, he must select a caretaker cabinet. The Punjab Provincial Assembly has 371 members, 168 in Sindh, 124 in Khyber Pakhtunkhwa, and 65 in Baluchistan. A resident of the province who is a Pakistani citizen, at least 18 years old, registered to vote, and of sound mind may participate in provincial assembly elections. A Provincial Assembly is elected for

a tenure of five years. During its first sitting following the general election, the Provincial Assembly will pick a Speaker and Deputy Speaker. The Governor has the right to adjourn a Provincial Assembly meeting in addition to convening it. He may also address the Provincial Assembly meeting.

The Provincial Advocate General is entitled to speak at Provincial Assembly meetings, but not to vote. On the suggestion of the Chief Minister, the Governor may temporarily dissolve the Provincial Assembly for 48 hours. If a vote of no confidence is passed against the Chief Minister and no one else has accepted the office of Chief Minister for that province, the Governor may also dissolve the Provincial Assembly. On the advice of the Provincial Government, the Provincial Assembly will decide the tasks and functions of the Provincial Institutions. The Governor's name must appear on all provincial executive documents. The Governor shall select an Advocate General who is eligible to serve as a judge on the High Court, help the Provincial Government with legal issues, and has the option to resign to the Governor. Each province shall establish Local Bodies Governments and transfer all political, administrative, and financial responsibility to Local Bodies Institutions. This is one of the Policy Principles covered in both Article 32 and Article 140A, which was added as part of the 18th Amendment in 2010. Provincial governments are reticent to delegate political, administrative, and financial authority and responsibility to local bodies' institutions.

JUDICIAL SYSTEM IN PAKISTAN

There is one Supreme Court, one High Court in each Province, and one High Court in the capital city of Pakistan. The President selects the Chief Justice of Pakistan's Supreme Court from among the highest-ranking judges.

The Supreme Court of Pakistan consists of the Chief Justice and a number of additional judges as defined by the Pakistani Constitution or the President. The judges of the Supreme Court of Pakistan must be Pakistani citizens with at least five years of experience as a High Court judge or fifteen years of experience as a High Court attorney. The President of Pakistan will give the oath of office to the Chief Justice, while the Chief Justice will administer the oath to the other Supreme Court judges. Supreme Court judges may retire at age 65. In the event that the Chief Justice is unavailable, the President shall select an acting Chief Justice from among the other Supreme Court judges. In the event that the acting Chief Justice is unavailable, the

President shall select any retired or active High Court judge to serve in the Chief Justice's place. In the absence of a quorum, the President may appoint an ad hoc judge to the Pakistani Supreme Court after conferring with the Pakistani Judicial Commission. If three years have not passed since the ad hoc judge's retirement from the Pakistani Superior Judiciary, he may be appointed.

The Supreme Court of Pakistan is in the city of Islamabad. The Supreme Court of Pakistan has the original authority to hear writ petitions about fundamental rights, settle disputes between the Center and a Province, and make a declaratory ruling about these things. Chief Justices and other judges chosen by the law or by the Pakistani President sit on Pakistan's High Courts. The High Court judge must be a Pakistani citizen who is at least 45 years old and has worked for at least ten years as a District Judge, a civil officer, a judge, or an advocate in the High Court. The oath will be given by the President of Pakistan to the Chief Justice of the High Court. The Chief Justice will then give the oath to the other justices. A High Court judge must be 62 years old to be able to step down. In the de jure Chief Justice's absence, the President will choose an acting Chief Justice from the Supreme Court or the High Court.

There is only one Federal Shariat Court in Pakistan, and it is based in Islamabad. It has eight justices, including a Chief Justice who must be qualified to be a Supreme Court or High Court judge. Three Islamic law experts with 15 years of experience should be able to serve as High Court judges. The positions last for three years and can be renewed by the President of Pakistan. The President will also give all Federal Shariat Court judges their oaths.

The Federal Shariat Court is not allowed to rule on Constitutional, Islamic Personal, Procedural, and Fiscal Laws for the next ten years. The Federal Shariat Court has the power to say that a law or rule goes against Islamic principles on its own, at the request of Pakistani citizens, or at the request of the federal or provincial government. A Muslim who wants to argue a case before the Federal Shariat Court must be an Islamic jurist, a Supreme Court or High Court lawyer, or both, and have at least five years of experience.

The President of Pakistan chose three judges from the Supreme Court and two Islamic jurists to be on the Shariat Appellate Bench. If a party feels hurt by a decision of the Federal Shariat Court, they have sixty days to appeal to the Shariat Appellate Bench and six months to appeal to the Federal or Provincial Governments. All

lower courts have to follow what the Federal Shariat Court and the Shariat Appellate Bench decide. 1 The Federal Shariat Court's decision should be put into effect right away, and the Shariat Appellate Bench should be given a certain amount of time to decide on the appeal.

KEY FEDERAL AUTHORITIES

The Prime Minister, the Chief Ministers of each Province, and three people from the Federal Government make up the Council of Common Interest. The council's annual report will be given to the government. The council is in charge of regulating, making rules, setting policies, and keeping an eye on and controlling some institutions. The council must be set up within 30 days of the Prime Minister taking the oath of office, and it must meet at least once every 90 days. The Federal and Provincial Governments can send questions about how water is used to the Council for a decision or to the President to have a commission set up.

The President of Pakistan set up the National Economic Council, which is made up of the Prime Minister and four other people he chose, as well as the Chief Ministers of each province and one member each. The National Economic Council is in charge of making plans for economic, social, and financial policy. It has to meet at least twice a year and give a report to Parliament every year. The federal government can build hydroelectric and thermal power plants in any province. The provincial government has the power to increase access to energy in the province, require that it be provided, put taxes on it, set up grid stations and power plants, and decide how much it will cost to get it to people. If the federal government and a province disagree about energy, the issue will be brought to the Council of Common Interest to be settled. The gas will first go to the people who live in the province where the gas was found. At the province's request, the federal government must install a transmitter and set fees for transmission and broadcasting. 2

The Federal Minister of Finance, the Provincial Ministers of Finance, and other officials chosen by the President from time to time make up the National Finance Commission. The National Finance Commission is in charge of dividing up tax money, sending money from the federal government to the provinces, using the federal and provincial governments' ability to borrow money, and taking care of other financial matters. The total for the Province should never go down and should always go up. The annual report

of the National Finance Commission will be given to the National and Provincial Assemblies. 1

Judges for the Supreme Court and High Court are chosen by a judicial commission. The Judicial Commission is in charge of choosing the judges for Pakistan's Supreme Court. It is made up of the Attorney General, the Federal Minister of Law and Justice, the four most senior Supreme Court Judges, the Chief Justice of the Supreme Court, a former judge of the Supreme Court who was appointed by the Chief Justice for two years, and the senior lawyer of the Supreme Court of Pakistan who was chosen by the Pakistan Bar Council. The senior Judge of the concerned High Court, the Law Minister, and the senior Advocate of the concerned High Court. They are chosen for two years by the concerned Bar Association. For the judges of the Federal Shariat Court, the following will be added: the senior Judge of the concerned High Court; if his selection is still pending, the previous retired Chief Justice or a senior Judge of the concerned High Court will take his place on the Commission; The Parliamentary Committee, which has eight members, four from the government and four from the opposition, will review the approved name and either approve it within 14 days or reject it by a 75% majority, in which case the Judicial Commission will have to find a new name. After the Committee approves the name, it will be sent to the Prime Minister and then the President for final approval. 2 The Supreme Judicial Council is made up of the Chief Justice of the Supreme Court, the two most senior Supreme Court justices, and the two most senior Chief Justices of the High Courts. If it turns out that a Supreme Court or High Court judge is physically or mentally sick or has done something wrong, the Judicial Council will look into it and, if necessary, ask the President to remove that judge from the bench. No one in Pakistan can question the investigations done by the Supreme Judicial Council. 3

In Pakistan, there is only one Election Commission. The President of Pakistan chooses Election Commissioners who are either retired Supreme Court or High Court judges or who are otherwise qualified to serve in these roles. The Prime Minister and the Leader of the Opposition will each put forward three candidates to the Parliamentary Committee, which has 12 members (six from each party) and is led by the Speaker. The Speaker will choose one of the candidates for Election Commissioner and send that person's name to the President for final approval. The Chief Justice of Pakistan will

give the Chief Election Commissioner of Pakistan an oath, and the Chief Election Commissioner will be in charge for three years. During his time as Chief Election Commissioner of Pakistan, he is not allowed to hold any jobs that could interfere with his duties. He is also not allowed to hold any jobs in the Pakistani government for two years after he steps down as Chief Election Commissioner of Pakistan. If the Chief Election Commissioner is not available, the Chief Justice of Pakistan can choose any other Supreme Court of Pakistan judge to do the Chief Election Commissioner's job. The person in charge of the Election Commission is called the Chief Election Commissioner. Four more people, one from each province and a High Court judge chosen by the President, make up the Election Commission. Pakistan's national, provincial, and senate elections are all run by the Election Commission of Pakistan. It is also in charge of setting up election tribunals, making electoral rolls, and often changing them. All of the administrative authorities in Pakistan would help the Election Commission of Pakistan do its job. The Commission will make rules about how the Pakistani Election Commission should hire people. It is legal for the Pakistani Parliament to make rules about seat allocation, voter lists, and elections, but it is not legal for the Pakistani Parliament to limit the power of the Pakistani Election Commission. A single person can't hold two seats in the same legislature at the same time, let alone two seats in both the National Assembly and a Provincial Assembly. The Election Commission of Pakistan will hold new general elections within 60 days of the parliament's term ending, or within 90 days if the parliament is dissolved. In fourteen days, the Election Commission of Pakistan will report the results of the election. If a seat in the National Assembly or Provincial Assembly becomes vacant within 60 days of the general election, it will be filled by election. If a seat in the Senate becomes vacant, it will be filled within 30 days. 1

The President of Pakistan picks the Chairman of the Pakistani Federal Public Service Commission based on what the Prime Minister says. At the provincial level, the Governors of Punjab, Sindh, Baluchistan, and Khyber Pakhtunkhwa choose the Chairman of the Public Service Commissions in their own provinces. The National Assembly of Pakistan and the Provincial Assemblies of Pakistan are in charge of making both federal and provincial laws for Pakistan. On the advice of the Prime Minister, the President

chooses the Chiefs of Army Staff, Naval Staff, and Air Force, as well as the Joint Chiefs of Staff Committee, and decides their pay and benefits. The President is in charge of all of the armed forces. The Pakistani Armed Forces fight any outside threats to Pakistan and help the civilian government of Pakistan.

CONCLUSION AND SUGGESTIONS

The National Assembly of Pakistan passed the Pakistani Constitution on April 10, 1973. It was made public on August 14, 1973. The Objectives Resolution, which was passed in 1949, was the first part of the Pakistani Constitution of 1973. Pakistan is made up of four provinces: Punjab, Sindh, Baluchistan, and Khyber Pakhtunkhwa. It also has the Federally Administered Tribal Area and the capital city of Islamabad. Islam is the country's official religion, and no law can be made that goes against what the Holy Quran and the Sunnah of the Prophet Muhammad say about Islam. The Pakistani Islamic Ideology Council makes suggestions about how the country's laws can be changed to be more in line with Islamic beliefs. The President is the leader of Pakistan. A person who is not a Muslim cannot be the president of Pakistan. The Senate is the upper house of Pakistan's two-house government, which was set up in 1973. The National Assembly is the lower house. To change the Pakistani Constitution from 1973, there must be a majority of 34 votes in Parliament. The Pakistani Constitution from 1973 has been changed twenty-one times so far. The National Assembly, which has 342 members, and the Senate, which has 104 members, work with the Pakistani President. The Pakistani federal government is made up of these three groups. Members of Pakistan's National Assembly choose the Prime Minister to be the head of the federal government's executive branch. The Governor and the Provincial Assembly are in charge of each province in Pakistan. In addition to the 371 members from Punjab, there are 168 members from Sindh, 124 members from Khyber Pakhtunkhwa, and 65 members from Baluchistan. In each province, the executive branch is run by the Chief Minister, who is chosen by the Provincial Assembly. Along with Lahore, Karachi, Quetta, and Peshawar, Islamabad is home to one Supreme Court and five High Courts. A Council of Common Interest also exists. The Judicial Commission of Pakistan chooses judges for the Supreme Court and High Courts

of Pakistan, while the Supreme Judicial Council looks into claims of wrongdoing against judges of the higher court.

Pakistan's Chairman and members of the Islamic Ideology Council are chosen based on their political affiliations, not on their skills in Islamic law, economics, politics, law, and administration. I would like to suggest that the Islamic Ideology Council of Pakistan be made an independent body, free from political influence, and that its members and chairman be chosen by a group of people from the judiciary, in consultation with all of Pakistan's most famous Islamic scholars, no matter what sect they belong to. Also, the council should have people on it who are experts in economics, politics, law, and management.

Pakistan's Constitution from 1973 says that everyone has the right to an education. However, Pakistan has three different ways of teaching: There are free religious schools that are only for learning about religion. The poor can't afford to go to a private school because it costs too much. The political and administrative system in Pakistan doesn't work well, and even though the Government School System is cheap, the teachers and facilities aren't very good. I want to push for a single educational system for all Pakistani children because it will give them a sense of equality, boost their self-esteem, make them smarter, and make them feel less like they're not good enough.

Article 45 of Pakistan's Constitution from 1973 says that the President can change, reprieve, relieve, allow, or put off any sentence. Since no law can be passed in Pakistan that goes against Islamic law, this part of the constitution needs to go. No one is exempt from the law, and only the heirs of people who have killed someone can get a second chance.

A person who has been convicted and sentenced to less than two years in prison, if more than two years have passed since the conviction; a person who has been convicted and sentenced to more than two years in prison, if more than five years have passed since the conviction; and a person who has been removed from the Pakistani military for misconduct, if more than three years have passed since the removal and more than five years have passed since the dismissal. Putting in this kind of language makes it clear that the goal is to let convicted criminals back into Pakistan's Parliament, where they will do more harm to the public. This part of the Pakistani Constitution, along with Article 63A, which says that a

member of parliament can't disagree with a decision made by the leader of his political party, should be taken out as soon as possible. Article 32 of Pakistan's Constitution from 1973 says that both the Federal and Provincial governments have to help local groups and institutions. Also, Article 140A of Pakistan's Constitution from 1973 says that each provincial government must set up local bodies' governments and give those institutions their political, administrative, and financial responsibilities. But this condition has never been met in real life. It is strongly suggested that the Provincial Governments fully uphold their responsibilities under the Pakistani Constitution of 1973 and give the necessary power to the institutions of local government that fall under the jurisdiction of the local bodies' governments.

Imprisonment and Jail Institution in the Eye of Islamic Law

Iqra Ishfaq*

Dr. Shahid Rizwan Baig**

Abstract: Institution of jail is recognized and enforced by Islam. There is a misconception among common the people that hudood and Qisas are the only two Islamic punishments, whereas Taa'zir is used where Islam is silent to ascribe punishment. Some people consider that it is enforced under English law. In fact, Taa'zir is also Islamic punishment. Proves of it can be traced from examples in history of Islam. Quran and Sunnah also support this point of view. Practice of companions of Prophet is also case in point. Imprisonment in jails is also punishment in Islam under Taa'zir. First, I would like to prove from Qur'an and Sunnah that Taazir's concept is available in Islam. Secondly, I would describe jurisprudence behind establishing jail institution. Then last but not the least I would suggest recommendations to mold Pakistan's jails (prisons) and reform them under the Islamic principles of Islam.
Key words: jail, Islamic law, imprisonment

INTRODUCTION

Islamic punishments are of three kinds, Hadd (fixed punishment), Qisas (retaliation) and Taa'zir (discretionary punishment). Taa'zir punishments are those punishments, quantum of which is not defined in Sharia'h but it is left upon judge (Qazi) to determine. Except Qisas (retaliation and blood money) and hadd (fixed punishment) all punishments come under Taa'zir, for example bribery, embezzlement, false evidence and homo sexuality etc.

In the light of Quran, DR Tahir-ul-Qadri has explained Taazir[174] in a comprehensive manner. He described ayah of surah Nisa from Qur'an:

وَٱلَّٰتِى تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَٱهْجُرُوهُنَّ فِى ٱلْمَضَاجِعِ وَٱضْرِبُوهُنَّ ۖ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا۟ عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ ٱللَّهَ كَانَ عَلِيًّا كَبِيرًا ٣٤

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[174] Islam mein Sazae Qaid aur Jail ka Tasawwur.inp

"Those (wives) from whom you fear disobedience and rebellion – first advise them; then if they persist, forsake them in bed; and (lastly), strike them. But if they obey seek no means against them. Indeed, Allah is ever exalted and grand" 4:34[175]

Here, three punishments i.e., advice, separation and striking are described as Taa'zir. This is one form of Taa'zir where punishment is described by Lord but quantum of punishment is left for the Judge to determine in accordance of the situation. Second form is where determination of punishment and its quantum is left upon Judge to determine.

وَٱلَّذَانِ يَأۡتِيَٰنِهَا مِنكُمۡ فَـَٔاذُوهُمَاۖ فَإِن تَابَا وَأَصۡلَحَا فَأَعۡرِضُواْ عَنۡهُمَآۗ إِنَّ ٱللَّهَ كَانَ تَوَّابٗا رَّحِيمًا ١٦

Those two of you who commit it, chastise both of them. However, if they repent and make amends, then, overlook them. Surely, Allah is Most-Relenting, Very-Merciful. 4:16 [176]— **Mufti Taqi Usmani**

Imam Tirmizi said that[177] **Ibn e Abbas** said that **Nabi (S.A.W)** said that **"**who do sexual intercourse with one who comes under his prohibited degree, kill him**".** As there is no punishment for Zina with Mahram (the one who comes under prohibited degree) so this killing was under Taa'zir.

There are numerous forms of Taa'zir provided by Qur'an and Sunnah, few of them are following:

1. Threat
2. Public disclosure
3. Boycott
4. Reprimand
5. Admonition
6. Fines and seizure of property
7. Imprisonment
8. Transportation (this also one form of imprisonment explains later)
9. Death penalty
10. Flogging

[175] Surah Nisa 4:34
[176] Surah Nisa 4:16
[177] Tirmizi, Imam Abu Esa Muhammad Bib Esa, Jamia Tirmizi Hadith 1462 Published Noor Muhammad Karkhana Kar.

In this article I am discussing imprisonment and jail institution so the main concern for me is to explain imprisonment and transportation.

Historical background of imprisonment and prisons (jails) in the prism of Qur'an:

In the historically, civilization of Egypt is considered oldest civilization. In this regard there is verses about imprisonment in the Surah Yousaf.

قَالَتْ مَا جَزَآءُ مَنْ أَرَادَ بِأَهْلِكَ سُوٓءًا إِلَّآ أَن يُسْجَنَ أَوْ عَذَابٌ أَلِيمٌ ٢٥[178]

She cried, "What is the penalty for someone who tried to violate your wife, except imprisonment or a painful punishment? 12:25. At another point wife of Aziz e Missr said**:**

فَٱسْتَعْصَمَ ۖ وَلَئِن لَّمْ يَفْعَلْ مَآ ءَامُرُهُۥ لَيُسْجَنَنَّ وَلَيَكُونًا مِّنَ ٱلصَّٰغِرِينَ ٣٢[179]

And if he does not do what I order him to, he will certainly be imprisoned and ˹fully˺ disgraced."

At that point Hazrat Yousaf prayed Lord Almighty:

رَبِّ ٱلسِّجْنُ أَحَبُّ إِلَىَّ مِمَّا يَدْعُونَنِىٓ إِلَيْهِ ۖ[180]

"My Lord! I would rather be in jail than do what they invite to me"

وَدَخَلَ مَعَهُ ٱلسِّجْنَ فَتَيَانِ ۖ[181]

"And two other servants went to jail with Joseph."

These verses are proof of this point that at that time not only punishment of imprisonment was enforced but also proved that institution of jail was also established.

يَٰصَٰحِبَىِ ٱلسِّجْنِ أَمَّآ أَحَدُكُمَا فَيَسْقِى رَبَّهُۥ خَمْرًا ۖ وَأَمَّا ٱلْءَاخَرُ فَيُصْلَبُ فَتَأْكُلُ ٱلطَّيْرُ مِن رَّأْسِهِۦ ۚ قُضِىَ ٱلْأَمْرُ ٱلَّذِى فِيهِ تَسْتَفْتِيَانِ ٤١

"O my fellow-prisoners! ˹The first˺ one of you will serve wine to his master, and the other will be crucified and the birds will eat from his head. The matter about which you inquired has been decided."[182]

وَقَالَ لِلَّذِى ظَنَّ أَنَّهُۥ نَاجٍ مِّنْهُمَا ٱذْكُرْنِى عِندَ رَبِّكَ فَأَنسَىٰهُ ٱلشَّيْطَٰنُ ذِكْرَ رَبِّهِۦ فَلَبِثَ فِى ٱلسِّجْنِ بِضْعَ سِنِينَ ٤٢

"Then he said to the one he knew would survive, "Mention me in the presence of your master.[1]" But Satan made him forget to mention Joseph to his master, so he remained in prison for several years."[183]

This verse that he remained imprisoned in jail for many years,

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[178] 12:25 Surah Yousaf

[179] 12:32 *Ibid*.

[180] 12:33 *Ibid*.

[181] 12:36

[182] 12:41 *Ibid*.

[183] 12:42 Surah Yousaf.

explains that he was not gone to jail. If this system was not recognized by Allah and Nabi (S.A.W) then they would have declared it "Mansookh"

Concept of imprisonment and jail In Islam, in the light of Qur'an, Sunnah and Islamic jurists' books

The particular terms used for imprisonment are Al Habas, Al *Sajjan, Naïf Fil Ard, Al Imsak, Al Ezal* and *Al Tagreeb*, these all terms have meaning of confinement, imprisonment, jail, prison and transportation

In the light of Qur'an

ٱلزَّانِيَةُ وَٱلزَّانِى فَٱجْلِدُواْ كُلَّ وَٰحِدٍ مِّنْهُمَا مِاْئَةَ جَلْدَةٍ ۖ وَلَا تَأْخُذْكُم بِهِمَا رَأْفَةٌ فِى دِينِ ٱللَّهِ إِن كُنتُمْ تُؤْمِنُونَ بِٱللَّهِ وَٱلْيَوْمِ ٱلْـَٔاخِرِ ۖ وَلْيَشْهَدْ عَذَابَهُمَا طَآئِفَةٌ مِّنَ ٱلْمُؤْمِنِين٢

As for female and male fornicators, give each of them one hundred lashes,[1] and do not let pity for them make you lenient in ˹enforcing˺ the law of Allah, if you ˹truly˺ believe in Allah and the Last Day. And let a number of believers witness their punishment[184].

Some mufassreen are of view that this verse revealed before enforcement of Hadd and if we take this opinion as it is then also this was about punishment of imprisonment in crime zina this not abolished the punishment of imprisonment as Taa'zir.

In the light of Hadith

Abdullah bin Salma narrates that once, a thief was carried to Hazrat Ali; he cut his hand; he again brought to him, he cut his foot when the third time he was brought, Hazrat Ali said, if I cut his second hand, how he will eat and wipe his head while ablution. Suppose I cut his other foot, how he will walk. Hazrat Ali flogged him and prisoned him for life.[185]

If we see the Practice of sahaba Hazrat Nafia heard from Abdullah bin Umar narrates that verily Hazrat Muhammad flogged criminals and deported, Hazrat Abu Bakar and Hazrat Umar did also followed the suit.[186]

In the view Islamic Jurists

"Somebody fraudulently married the daughter of someone to another person. imam Muhammad said I suggest life imprisonment

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[184] 24:2 Surah Noor

[185] Behaqi, Abu Bakr Ahmad bin Hussain bin Ali, Al Sunnan Al Kubra 8:275 Published Dar Ul Baz, Makkah Mukarrma, Saudi Arab 1413 Hijri

[186] Tirmizi, Al-Jamia-Al-Kabeer, Kitab Al-Huddood, Baab Maa Jaa Fi

for such type of person even he present that lady or die himself"[187] Hanafi and Shafi are of the view that if robbers do not commit robbery and not commit qatal then this is discretion of Qazi that he may execute him, cut his hand or foot or prisoned him. From their view we deduce concept of imprisonment in Islam.

Jurisprudence behind the concept of jail institution as reformative institution in Islam there is concept of retribution and reformation of the criminals as Hazrat Yousaf was preaching to his companions of jail.

Through enforcing imprisonment punishment of crime is being executed, as well as reformation of prisoners is purpose. For the purpose of reformation these steps can be taken:

A concise education system should be established to eradicate ignorance so that person come back in society should never repeat the same offence. Skills should be promoted so that after their release they could earn his bread honorably. If a person mends his ways, then he must get mitigation in his punishment period. Secondly, they must get proper health facilities and proper clothing should be provided to them. If any prison is suffering from mental health, then he should also provide psychological treatment. There must be proper department of psychologist to give treatment to criminals so that we could know the men's rea behind their criminal activities. They should be satisfied through spiritual training, system of prayer, fasting should be promoted. Love for humanity should also be promoted. Training of jail staff is very important as they behave with prisoners scornfully instead of reforming them. I interview two released criminals who were not reformed instead they were inclined towards crime because they were not reformed.

[187] Imam Taimia narrates in Fatwa Alamgiri translator Syed Ameer Ali published by Rehmania, Lah.

CONCLUSION

To conclude, I would like to say that jail institution and imprisonment as punishment is recognized by Islam. It is an institution which is retributory as well as reformative. I have given recommendation to reform the jails of Pakistan so that prisoners may be able to live their honorable life after releasing from jails. Criminals are mostly psychologically ill so there must be a department to deal with this matter so that reports could be prepared about their instinct behind crime so that while making policy these could be kept under consideration.

Contempt of Court: A legal dilemma. An analysis through the lens of Pakistan's legal system and constitution.

Muhammad Abdullah Bin Umer*
Dr. Shahid Rizwan Baig**

Abstract: The usage of the term "contempt in the face of the court" or "disrespect towards lord's decision", is now deemed as old fashioned because of the evolution in the term "freedom of speech", but the concept of contempt has still its utmost importance at all the legal places where the law and order have importance, in a context that the justice provided shall not be diminished and interfered. The term still has its importance, as it is a power given to the judges to maintain law and order and to maintain the respect of the court's decision. In Pakistan, under article 204 of the constitution of Islamic Republic of Pakistan 1973 the term contempt of court has been fully elaborated also through the powers conferred by the constitution, the contempt of court ordinances has been passed to maintain the supremacy of justice in the country. However, some jurists have the opinion that there is no base of the contempt of court in the light of Shariah law. This article tries to paramount and determine the logical reasoning behind the term of contempt of court and why it has been incorporated in the constitution of Pakistan and should this term be maintained in the future as the expression of freedom of speech has been evolving ever since and is being given great importance. Also, if the expression is a result of Anglo-American jurisprudence. The researcher more over tries to analyze the term contempt of court under the light of Quran and Sunnah and also to find out its effects on the conduct under the phrase of amicus curiae.
Keywords: Contempt of Court, Constitution of Pakistan 1973, Anglo-American Jurisprudence, Shariah Law, Freedom of speech, Amicus curiae.

INTRODUCTION

Pakistan being a client state has always been influenced by the forces and superpowers. In Pakistan, the dilemma of single law prevalence has always been a bone of contention for many jurists,

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since Pakistan takes it law's influence from the British law system it also includes that the law of the country should not be contradictory to the Injunctions of Islam. Moreover many Muslim jurists have an opinion that the Islamic law system does not have an importance of contempt of court in its legal system, while it is a term of absolute importance in common law system and also the civil law systems does not have a great importance in this regard as they think that freedom of expression, speech and opinion should be given a greater importance so that the individuals of the state can enjoy the basic rights and that it shall be helpful for strengthening the social contract placed between the sovereign and its people. While others argue that the term contempt of court has an utmost importance under Islamic law and history. If we see minutely the judicial framework as elaborated in the constitution of Pakistan 1973 by concentrating and analyzing we can conclude that it is influenced highly by the constitutionalism in the context of American legal and liberal jurisprudential framework[188]. The Anglo-American jurisprudence has played an important role in influencing many constitutions around the world as the written constitution was first given by the United States of America. Under the constitution of Pakistan, the jurists and the modern jurists have an opinion that the courts can be disrespected in two ways the first one can be considered as showing a harsh or impolite attitude against the court and other can be characterized by not obeying the court's judgement and order also to interfere in the court's proceedings. However, many legal research activists have an opinion that the expression under contempt of court can be vigorous as it gives most powers to the judicial house due to which the fundamental right i.e., right to a fair trial can be infringed. Many researchers have an opinion that the term 'contempt of court' is very vast and wide spread and that it can jeopardize and intervene with the phenomenon of administration of the justice[189]. Pakistan after being under the British rule as it was colonialized for a long time, so it has an influence of common law in its legal system however in the England the term supremacy of Parliament is used which drives that the parliament is the supreme body of a state and judiciary is working under the powers derived

[188] Mazhar Iqbal. Islamic Law and jurisdiction a case study of constitution. PLD Publishers, 2010.6.22

[189] Phipson on Evidence,14th Edition, para 12-26; Taylor SS- 3-21

from the lords and does not count for checking the validity of a constitution. However, in the American legal system the concept of judicial review of the legislation and the acts of the administration is of highest importance. In Pakistan, while minutely observing the judicial and legal system it can be concluded that the judiciary and parliament have both have not evolved to protect and prevail the socio-economic justice due to its client state nature and being continually influenced by the institutions with and outside the country. However the Dicey's concepts of 'doctrine of necessity' and the 'executive prerogative'[190] and other concept of 'rule by law' instead of the legal concept of 'rule of law' which were declared as the last resort for the administration of the justice in British and American legal system are being both ignored in the context of Pakistan due to the country's indigenous novelty, and when we see through the historical data available in this context we can see that the contempt can be traced backed in the ancient times and does have various types and forms variable to the civil and criminal school of thought, which may include:

1) Contempt prima facie or contempt made in the front or face of the respected court,
2) sub judice contempt or direct involvement in the decisions of courts[191]
3) defaming the decision or dismaying the court of the law or the respected judge in person.
4) victimizing the amicus curiae, or the witnesses or the others.
5) illegally publicizing the court's judicial and legal proceedings.
6) Causing hindrances in the way of judicial officer or judicial proceedings, restraining from the courts direction to act or to omit from an act.
7) in the type of civil contempt may include the direct disobedience towards the respected court of law or the payment or settlement order that a court issued.

However, it is an accepted phenomenon that the presence of men's rea is very important part of the contempt and also the actus Reus has its effect in this regard. Lord Hardwick while elaborating the

[190] Santoro, E. (2007). The Rule of Law and the "Liberties of the English": The Interpretation of Albert Venn Dicey. In *The Rule of Law History, Theory and Criticism* (pp. 153-199). Springer, Dordrecht.

[191] M. Hayat. Islamic Law and jurisdiction a case study. PLD Publishers,2014.674

term contempt of court, finalizes that the term has only three major kinds around which it operates; firstly, the term includes the scandalizing the honorable court itself, secondly, abusing and scandalizing the parties concerned and involved in causes in front of the respected court, and thirdly, manipulating and blackmailing the court or the parties involved, even before the case is been heard[192]. Under the Islamic school of thought, while looking through the prism of the Islamic injunction, the contempt of court has been granted to the shariah courts as well, and it can be traced backed to the ancient times of Islam, where the respect towards the decisions of the Qazi were given great importance, however, in the modern era the concept of contempt of court in the shariah courts is way more different than that in civil or criminal courts.

In Pakistan the term of the contempt of court needs to be amended in the positive way and there should be a more need of legislation in this regard. Since many jurists argue that the main purpose of the term contempt of court has two main motives behind first includes to maintain the respect, decorum and dignity of the court in front of the public at large and also to give people a feeling of uprightness when they look upon the court for the administration of the justice. And secondly, to protect the presiding body or justice house of the court so that the justice could be fully prevailed in the society without any fear and doubts. The nature of the said term is sui generis in nature which means that the term is of its own nature in the context, thus it does not have any fixed formula or criteria in the regard.[193] In Pakistan, under article 204 of the constitution the provisions related to contempt of court are available,[194] however, there also exists some proposed ordinances in this regard which were presented and some of them i.e. contempt of court act 2012 were declared prohibited and null and void by the Supreme Court of Pakistan. Since Pakistan is an Islamic state and it was colonized for a great part of the time and while evolving its legal system, it has been influenced greatly by the religion, ruler and superpower. In Pakistan the sanctity and respect towards the court has been an issue of confusion and there is a need to draw the legislations in this regard. However, the legislations should be made in accordance to

[192] Ahmed, N. (2000). Law of Contempt of Court. *JL & Soc'y*, *22*, 71.
[193] PLD 1959 Dacca 252, (DB)
[194] The Constitution of Islamic Republic of Pakistan 1973.

the injunctions of Quran and Sunnah. This article would urge and suggest that there is a need to find the constitutional base for the concept of contempt of court so that this issue could be resolved, once and for all.

Research Methodology

This normative and ontological research done in this article relating to legal field with special reference to Pakistan uses the legal norms, legal standards, legal and moral principles, and norms derived from various informative and didactic sources which include Islamic laws, international laws, domestic laws, rules and legislations, principle/administrative bodies, different case laws, leading cases, precedents, doctrine for the application of contempt of court, proceedings and provisions, in the legal system of Pakistan. The researcher also used the leading case laws of Pakistan to clarify the role of judicial system with respect to the usage of the contempt provisions.

Research Objective

In this research, the aim is to clarify and elucidate the status of the contempt of court in the legal system of Pakistan and to recommend the grounds for the legislation in this regard under the Islamic injunctions. There are some lacunas, grey areas and legal loopholes in the status of the elaborations and provisions regarding contempt of court in the law of Pakistan regarding its fixed criteria, manner, procedure, nature of cases in which it can be enforced and punishment of a person in this regard, however the constitution of the Pakistan has stated and clarified the stance of the superior courts in this regard.

Research Questions

- What is the legal stance of contempt of court in the context of Islamification of the legal system of Pakistan under the constitution of 1973 and how does it cope after being highly influenced by Anglo-American jurisprudence?
- What is the role of Amicus curiae in the context of contempt of court, in the legal system of Pakistan?

Review of Literature

The researcher reviewed a lot of books, legal articles and socio-economic articles, case laws and legal and other books to explore the legal position and acceptance of the term of Contempt of Court

in the legal system of Pakistan under the Constitution of Islamic Republic of Pakistan,1973 .The articles suggested that there exists the relevancy of the proceedings in the context of contempt of court to maintain the respect for the court's decision given in the context of criminal proceedings as well as the civil proceedings under the constitution of Pakistan 1973, however there exist some lacunas and loophole in the guidelines relating to the proper criteria and experience of the literal as well as logical interpretation in this context which shall effect the legal proceedings of the court in this context. For this purpose, the researcher explored the available legal and social material to minutely observe the legal stance of contempt in the legal system. The researcher reviewed the research for its own weightage consisting of the, present material, and for the future researchers.

M. Mahmood, in his book 'The Qanun-e-Shahadat Order, 1984, an exhausted commentary', explained the importance of contempt of court in the context of Amicus Curiae in the field of law which cannot be ignored at any cost and he emphasized that the relevancy of the opinion given by the 'Friend of the court' is very important, however there still exists ambiguity regarding the guidelines and extent to which the amicus curiae can be involved.[195]

M. Munir, in his book 'Law of Evidence', explains the importance of the opinion given by the third person in the context as such as he states that the amicus curiae have always been a strong part of the domestic legal system. However, he did not clear the stance of amicus curiae in the context of contempt proceedings under the Islamic legal system and did not address its importance in praetorianism and cultural relativism. [196]

The international journal-based researchers S Krislov - Yale LJ, in their research,' the amicus curiae brief: From friendship to advocacy', stated that the amicus curiae in the present world is helpful to maintain the respect of the court and is 'Corpus Juris Secundum'. They researched about the socio-economic and noematic matters which would arise if the advice by the expert in the context of contempt is ignored and how the ignorance of the said term can have horrendous and drastic effect on the decision of the

[195] Mahmood, Muhammad. The Qanun-e-Shahadat Order, 1984, an exhausted commentary' Lahore, 2010

[196] M. Monir' Law of Evidence'

trial courts at national and international level. However, the research has not been able to clarify, the mode of the requisition[197].

The global researchers, H Woolaver, S Williams, in their legal research article, 'The role of the Amicus curiae before International Criminal Tribunals', emphasized about the role of amicus curiae in the context of contempt of court at international criminal law level and they talked about the aftmost importance of experts opinion in universalism and culturalism in the international court of justice however they did not elaborated about the role in the above context under the Islamic and Shariah domestic courts.

The jurist I. Schneider, in his article, "Imprisonment in pre-classical and classical Islamic law. *Islamic Law and Society*", explains that the concept of contempt of court can be traced backed in the pre-modern Islamic times when the punishment for the disobedience of Qazi's decision in the case of hudood and tazir were resulted in the punishment.[198]However the researcher failed to coup the evolution in the modern times.

The researchers Kamal Halili, H., Venugopal, V., & Jasri, J. in their research paper, "Contempt of Court in the Syari'ah Courts". Elaborated that there exists strong Islamic base for the support of the term respect of the court is present in the Islamic history and that in the Islamic countries like Malaysia and Pakistan this term should be legally elaborated to enhance and protect the uprightness of the court of law[199].

The researcher Natacha Wexech Risers, 'National Law Profile: Islamic Republic of Pakistan', emphasizes the constitutional and legal standards in the law of Pakistan that what are the rights of a third person in the context of contempt of court and if a person who does not have any type of an interest in the legal proceedings in front of the court of law can participate in the proceedings if allowed by the court of justice in addition to that he/she can have a major effect of his opinion directly upon the courts proceedings. [200]. The

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[197] S Krislov - Yale LJ,' The amicus curiae brief: From friendship to advocacy'. Oxford University Press, 2012.

[198] Schneider, I. (1995). Imprisonment in pre-classical and classical Islamic law. *Islamic Law and Society*, *2*(2), 157-173.

[199] Kamal Halili, H., Venugopal, V., & Jasri, J. (2012). Contempt of Court in the Syari'ah Courts. *Pertanika Journal of Social Science and Humanities*, *20*, 23-33.

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

article was focused on précising the role of the expert or third person in the legal proceeding.

The researchers Jumani, A. "ENGLISH LAW OF CONTEMPT OF COURT AND LEADING CASES OF PAKISTAN A Study in the light of Constitution, 1973", scrutinizes that after the independence and partition in 1947, the Pakistani legal system adopted the contempt of court act of 1926 which was made under the English rule but after its incorporation in the constitution through the article 204 there existed several contempt of court ordinance which were a string of ordinances, concluded in the form of contempt of court act which was made null and void by the supreme court of Pakistan[201]. Thus, there is a need for further legislation in this regard.

In the Book, 'Law of contempt of court', the authors have discussed about the importance of the contempt of court phenomenon in maintaining the scarcity of the court of justice which would ultimately play an important role in the prevalence of the justice among the individuals falling within its jurisdiction.

In this fragment researcher quotes and observe some of the writings that deal with the current research work in this field. Hawkins, D, "Contempt of Court Maintenance Order", the researcher argues that in the present situation the court system needs the precautionary measures to maintain the respect of justice[202], the researcher argues that the contempt has same importance in the civil justice system and in criminal justice system further he argues that in the constitutional cases the involvement of contempt to maintain the decorum is of high importance.

In the book, "Contempt of Court: The Turn of the Century Lynching That Launched 100 Years of Federalism", the philosopher argues that the contempt is a scared term in the context of peace prevalence and that this term is not a wrong power given to the court but instead is a necessity to maintain law and order in the eye of law.[203]

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[201] Jumani, A. (2021). ENGLISH 2 LAW OF CONTEMPT OF COURT AND LEADING CASES OF PAKISTAN A Study in the light of Constitution, 1973. *Habibia Islamicus (The International Journal of Arabic and Islamic Research), 5*(4), 09-14.

[202] Hawkins, D. (2022). Contempt of Court Maintenance Order. *Wisconsin Law Journal*.

[203] Contempt of Court: The Turn of the Century Lynching That Launched 100 Years of Federalism Leroy Phillips

In the book, the writer discussed about the cases in which there is no need to scrutinize the issue of contempt 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 Islamic procedure for the exercise of the powers in this context.[204]

D Walton in his research article, 'Visualization tools, argumentation schemes and expert opinion evidence in conventional law.' discussed about the appointment of an expert in the cases where contempt was issued under the non-fulfilment of the task related to the science and technology[205]. However, the researcher was not able to clarify his stance in this regard.

Researcher Kaur, S, in article "Is contempt of court a hindrance to free speech?", argues that the contempt of court can be simply deemed as the hindrance and avoidance made by the legal system to avoid any kind of criticism on it. The writer argues that in this modern era the contempt is nothing but a mode to silent those intellectual minds who have an ability and courage to speak in front however there should be an alternate provided to maintain the respect of courts' decision

The researcher Mahipal, N. in the article "FREEDOM OF SPEECH AND EXPRESSION AS A FUNDAMENTAL RIGHT THE CONSTITUTIONAL VIEW.", argues that the freedom of speech under the Indian and Pakistani constitutional legal system has a biggest threat which is the term contempt of court which can have a drastic effect on the freedom of speech.[206] However the researchers have not elaborated alternative procedure.

The researchers Schauer, BA Spellman in their research work, 'Is expert evidence, amicus curiae really different 'argued that the judges in the court of justice are have always playing the role of gatekeeper and peace maintainer in the legal system and if they are having ultimate powers in the legal field, this could result in the abuse of powers which could have drastic and horrendous effects on

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[204] Contempt of Court: The Turn of the Century Lynching That Launched 100 Years of Federalism Leroy Phillips

[205] 'Visualization tools, argumentation schemes and expert opinion evidence in conventional law. "Elaw Journal. Mirdoch University Electronic Journal of Law 7, no.3 (2018): 1-14

[206] Mahipal, N. FREEDOM OF SPEECH AND EXPRESSION AS A FUNDAMENTAL RIGHT THE CONSTITUTIONAL VIEW.

the whole legal system at national or international level[207]. They also argued that no homo aspen is perfect and being a man, it is unable for a being to obtain the knowledge about anything or everything. There exists a need for the expertise and guide which would be guidance to a court of justice regarding the issue if the judge needs help. Thus, the importance of expert opinion in the context of contempt of court cannot be ignored in the legal system and there should exist proper procedural standards for guidance. But they did not discuss about the grey areas and lacunas which can take place in the case if the false evidence is provided in the court.

The researcher D'Aniello, C in the article, "The jury on trial: Guilty or not guilty? Investigating jury trial issues through a comparative approach. In *Challenges in Criminal Justice*", argues that the countries who have been influenced by the Anglo-American jurisprudential system have adopted the term of contempt however the correct message and the sequence of the procedure transferred from the influencer to the influence have not been correctly passed[208].

The researchers M. Mahmood, Jawad Pasha in their book, "The constitution of the Islamic republic of Pakistan, 1973, as amended by 2015 amendment act", while commenting on the article 204 of the constitution of Pakistan elaborated the due process laid down by the law in the context is still not enough in the context and there exists more legislation in this regard. And that the plea under this context can be bias, plea of justification and the plea od truth and that there exists a procedure of apology of the contemnor[209] and that it further needs legislation in this regard. Also, the process of the acceptance of the apology needs amendments in accordance to the injunctions of Quran and Sunnah.

AO Larsen - Va. L. in his research article,' The trouble with amicus facts', he 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 importance in

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

[208] d'Aniello, C. The jury on trial: Guilty or not guilty? Investigating jury trial issues through a comparative approach. In *Challenges in Criminal Justice*. Routledge.

[209] M. Mahmood, "The constitution of Islamic republic of Pakistan, amended ed of 2015 act"

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.

Under the book issued by PLD publisher it states that the Supreme court of Pakistan and the High courts while clarifying their stance on the contempt have shown that Contempt of Court proceeding are quasi-criminal, measure of proof of facts charged same as in criminal cases.[210]Proceedings of contempt of quasi-criminal nature, benefit of every doubt should go to the accused. Truth of assertion is no defense in a case of contempt of Court.[211] Person not party to original case proceedings cannot be held guilty in the context of contempt of Court. Contempt proceedings criminal in nature. All doubts to be excluded before the process recording conviction[212]. Judge of a superior Court is not answerable to contempt of Court allegations at any cause. While further elaborating Process for contempt cannot be issued by one Judge to another. Contempt proceedings cannot be taken up to satisfy their private grudge and opinions.

The researchers S Williams, E Palmer in their legal research based book, 'Civil society and amicus curiae interventions in the International Criminal Court' proposed and argued about that with the establishment of international criminal court and international criminal law the states have to adopt the Rome statute and there should be a need to add a binding nature to the courts and that since some states are legally backward they need amicus curiae in this field to avoid any type of ambiguity related to the procedure and that the concept of the contempt of court punishment should be involved and incorporated to avoid state to state aggression however he did not discussed the legal framework, grey areas and lacunas which would arise in future [213].

Research Gaps

The researcher while reviewing the related literature with respect to the research, reviewed and observed many articles and books and case law which did clarify the stance of the term contempt of court

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[210] PLD 1953 Pesh. 26 Fazil Elahi, PLD 1971 Lah. 278 Supra

[211] (FB) PLD 1973 Lah. 1 State v. Mujeeb-ur-Rehman Shami etc. Contra (SC) PLD 1977 SC 482 Yousaf Ali Khan. PLJ 1977 SC 449.

[212] (SC) 1977 SCMR 475 Qadiruddin etc. v. Ghulam Yaqub.

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

in the context of legal system of both common law counties and civil law countries. But the researcher has found that there exists a gap in the research in the area of research regarding the stance of Pakistan in the context of contempt of court. Pakistan been a client state has always influenced from the forces and institutions. There exists a gap which the researcher in this article tried to fill regarding the legal position of amicus curiae in the context of contempt of court maxim and that if the contextual term is Islamic then Pakistan being under the colonization and Anglo-American jurisprudence can at what level coup with it and what types of amendments and further legislations are needed in this regard of constitutionalism.

Analysis and Results

Pakistan derives most of its laws from the English law system as it has been colonized under the British Empire for the longest time. However, post-independence there was a greater challenge ahead which included the Islamification of the laws and legal system of Pakistan. Since American constitution was the first consolidated or written constitution in the world, the countries around the world which have written constitutions have been highly influenced by the American legal framework of the constitution. The laws in Pakistan accordingly are of hybrid nature which are derived from the English and American influence but cannot be against the injunctions of Islam. Pakistan being a client state has always struggled to clarify its stance at international platforms[214]. However, in Pakistan the basic aim and the constitutional approaches in the context under the contemporary jurisprudential paradigm of the Islamic republic of Pakistan is to establish the social- economical justice and security and protection of civil rights and liberties. In Pakistani, the legal and constitutional system under article 2A, 199,184(3), 187,190 and 204 are the articles formed by the influenced of the Anglo-American jurisprudential system Rousseau and Locke both believed that the society and its laws and rules are not evolved through progressive processes or by the continuation of the dynasties, instead it evolves, around the acceptance, through the individuals. Hart in 2005 argued that the community can co-exist and the notions of the community

[214] Pearl, D. (1985). Islamic family law and Anglo-American public policy. *Clev. St. L. Rev.*, *34*, 113.

can be variable[215]. In Pakistan, the context of contempt of court can be called influenced by Anglo American legal system but steps were taken for the Islamification of this term. The term contempt of court in Pakistan can also include and interference in the legal proceeding of the court and publications of such a material which may cause hindrance in the way of fair trial. The contempt of court act 2012 which was made null and void by the supreme court of Pakistan was ruled out due to its biased nature effected under article 248(1) of the constitution of Pakistan[216]. The judgement in this also stated that no such exemption shall be granted to any type of office bearer under article 248(1) and that punishment shall only be granted by the Supreme Court or high court to the contemnors and the ordinance of 2003 was also revived. If observing the Islamic injunctions, the word Islam is derived from a "Salama" which means submission and at most obedience thus the Islam means submission in front of Allah Almighty and obedience to Almighty's laws.[217]In Islamic system the morality and respect is given great importance in Al-Quran17:70 it is stated that

وَلَقَدْ كَرَّمْنَا بَنِىٓ ءَادَمَ وَحَمَلْنَـٰهُمْ فِى ٱلْبَرِّ وَٱلْبَحْرِ وَرَزَقْنَـٰهُم مِّنَ ٱلطَّيِّبَـٰتِ وَفَضَّلْنَـٰهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا

Translation: "And we bestowed dignity on the children of 'Adam and provided them with rides on the land and in the sea, and provided them with a variety of good things and made them much superior to many of those whom we have created"[218].

It is basic right of a citizen of an Islamic state to get easy and upright justice and the Islamic State is bound to set up speedy, fair and operative judicial and legal system. The above quoted verse and traditions reflect that the virtue of justice has been given great importance in Islam. Justice in Islam has been explained as placing things at their rightful place, settings and maintaining justice, peace and equality in matters of engagements, importance and giving rightful due. Also, it has been commanded by Shariah laws, as moral and supreme virtue. Islamic thought of justice diverges from an equilibrium-based concept of justice of west with no

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[215] Tariq, K. M. (2016). Impact of Anglo-American Jurisprudence on The Pakistan's Legal system. *Pakistan Journal of Islamic Research*, *17*(1).

[216] Constitution of the Islamic republic of Pakistan1973 amended, entry 55 4th schedule and article 248(1)

[217] M. Shafi, Mufti, Muarif-ul-Quran, Lahore, Maktaba Usmania, 1982, Vol 2.

[218] Al-Quran17:70

indistinguishable rights and duties. The Last Prophet Hazrat Muhammad (P.B.U.H) have always given great importance to the individual's respect and justice among the people, it is Prophetic mission and the holy Prophet (P.B.U.H) had said that:
"I have been commanded to judge justly between you"
While explaining the respect to the just decision Hazrat Imam Shamsuddin Sarkhasi, the prominent-researcher, writes that:
"A just decision is one of the highest duties after faith in Allah and the best form of worship."[219]
In the Islamic school of thought every person in the eye of law is equal and no one if he is a king, head or any VIP is not given any type of preference in front of law in this regard the Islamic studies scholar and jurist Amir the author of Al-Tazir fi Shariat-al-Islamiyah quotes that:
"In case of abusive language between the parties during the course of hearing, as a result of accusation and counter accusations before the judge, the Qazi can pass an order to the litigants to refrain from using abusive languages against each other and keep the dignity and decorum of the Court high. If they do not mend their attitude, the Qazi is empowered to punish them under Tazir. If Qazi forgives them, it is much better."[220]
There are many types of practices in the books of Fiqh written by great Fuqaha on the acceptability of bestowing punishment on disrespect or of the Court or a judge. Such punishments are found on Masliha (Public interest) because; the judiciary is a significant organ of the Islamic state delegated with the indulgence of justice flanked by the people. If the judges or the courts of law are chastened or ridiculed, then the sacrosanct job of maintaining justice, peace and equity which is basically entrusted to the messengers of Allah Almighty will be of no use. Sanctity and the respect of the justice of courts' judgement is significant and essential to a justice and peace system Asan (is in this respect) uncalled behavior of the petitioner parties may jeopardize the fair trial mode. It is comprehended in the context of contempt of court in Islamic legal system, where events from Islamic history, injunctions and traditions, verses of the holy Quran have been be dependent on in

[219] Sarkhasi, Al-Mabsoot, Book Adab-al-Qazi, Berūt Lebnon: Dar-ul-Marifah, 1989, Vol. 16, P.53
[220] Amir, Abdul Aziz, Al-Tazir fi Shariatil Islamiyah, Cairo: Khaleej al Arabi, 1988, Vol. 1, P. 137

order to reach a conclusion that courts' judgments must be given deference and nobody can avoid or is immune who ever regardless of his status from criminal proceedings if found guilty. This article also finds basis for an effective contempt of court legislative framework which could empower the judge of court to pact with all the matters pertaining to contemnors by having remedy to a rapid and speedy process of law. Thus, it determines that it is of much significance to establish the dignity of courts by upholding their image, uprightness and protecting them against unwarranted interference in the smoothing functioning of justice system.

Allamah Qurtubi, the renowned commentator of the Holy Quran while explaining:

"So, never by your Lord! Never shall they become believers, unless they make you the judge in the disputes that arise between them, and then find no discomfort in their hearts against what you have decided, and surrender to it in total submission."[221]

Thus, it is from the reference proved that the contempt term is relevant in the term of Islamic laws and that there is a need for further legislation in this regard. In Pakistan also the amicus curiae have utmost importance in the context of contempt of court cannot be ignored[222]. The respected judge can in the proceedings related to the above-mentioned context.[223] The court can rely upon the advice of amicus curiae if the court thinks fit that the expert can give better guidance in this regard where the stance revolves around in the context of the right to freedom of expression, speech and permissible limitations and boundaries based on the need to preserve the administration of justice and peace. The questions arising in front of the court of justice includes: "(a) The scope of press/media freedom in the context of the law of criminal contempt" "(b) The balance between the right of freedom of expression and preserving the integrity of the system of justice and upholding public confidence in judiciary"[224]. However, as noted from the above mentioned context that, criminal contempt penalties for this regard only includes appropriate measures only if there is a "substantial risk

[221] Al-Quran 4: 65

[222] 2022 SCMR 21 (Niamullah Khan vs Federation of Pakistan)

[223] 2022 PLC(CS)32 Islamabad

[224] IN THE ISLAMABAD HIGH COURT, ISLAMABAD Criminal Original No. 256/2019 In Re.: W.P. No. 3716/2019

of serious prejudice"[225] to the fairness of the legal proceedings and peace and "the threat to the right to a fair trial or the presumption of innocence outweighs the harm to freedom of expression."[226] However, in this regard, the contempt of the court can be regarded as the term which can be made which intended to insult the authority of the court or the persons presiding in this context. However, there is need to revisit the existing laws in this regard.

CONCLUSION

The matters and the references which have been herein discussed and elaborated, indicate that the legal treatment of the judicial contempt power has created a constitutional maze in Pakistan. Peculiar treatment of a frequently-implemented power has resulted in an exceptional body of law. The purpose of this article was merely to point out some of the constitutional ramifications and incongruities incident to the utilization of this infrequent and uncommon legal device. Answers or attitudes about particular and peculiar problems have been suggested or hinted at along the way. No far-reaching analysis was envisioned. Even, so, discerning consideration of the major constitutional problems and lacuna suggests that some new, modern, strong and deep-cutting changes, amendments should be made which would help to clarify the stance in the context, tendency of contempt of courts and their verdicts/ decisions in the Islamic republic of Pakistan like other Muslim developing countries like Malaysia is an issue which is required to be examined in the light of the Quran and Sunnah and that further legislations are need under the Islamic school of thought and that the amendments to the current Anglo-American and British influenced legal system running in the country should be made.

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225 Pakistan: Amicus Curiae Brief on Contempt of Court, CLD journal

226 *Ibid*

Does Right to Life Include Right to Death?

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Dr. Shahid Rizwan Baig**

Abstract: This research paper has analyzed the scope of "right to life including right to death" in the modern world and from the perspective of Islam and in Pakistan. It has discussed the countries on the world map in which right to die is given as a part of right to life which is a fundamental right. It has also contemplated the circumstances in which a person has the vested right to die like serious suffering and unbearable pain. It has underpinned the arguments which favor the use of euthanasia and assisted suicide. In addition to it, the opposing point of views are also there as it is not the mercy to kill and no one has the right to end his life because it is not recognized in any of the religion of the world. It has discussed the perspective of Islam as in Islam suicide is a sin and totally prohibited. It has further discussed the circumstances in which Islam allows the passive euthanasia (removal of life sustaining equipment). At the end, it has discussed section 325 of the Pakistan Penal code which criminalizes the attempt to commit suicide which is irrational. It concluded that section 325 should be repealed and attempters should be treated as patients not as offenders. It has also contemplated that the Pakistan has adopted the P.P.C 1860 from the British and the British parliament has repealed it as considering the suicide as a psychological and mental illness. At the end, it has recommended that the 325 should be amended and converted in to the reformatory clause in order to convert the suicide attempter into a civilized citizen of our country by the establishment of a rehabilitation center by the government.

Key Words: Right, life, death, euthanasia, assisted suicide, suicide, Islam, sin, attempt, decriminalize

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INTRODUCTION

In this modern era, many countries recognize the right to life as a fundamental right which also includes the right to die as a choice. Basically, this concept is based on the thinking approach of some

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people that an individual has a right to end his life or to be voluntary euthanasia. It is worthy to note that the countries which are regulating or providing this right to die is often to be understood that a person hold this right only in the condition of terminal illness, incurable pain. The proponents of this idea associate this right to die with the idea that a person's body and a person life is his own and he has the right to dispose of as he sees fit. In order to understand the concept of euthanasia, it is very compulsory to understand the concept of suicide and the different dimensions of the euthanasia. Under (Black's law) the term "euthanasia" defined as "the act of taking one own life is known as suicide." In view of Islam there is no existence of such right to die because the life of a person belongs to Allah Almighty and he only has the right to take it back even in the worst condition of disability or pain. That is why they attach the right to die as a suicide and a big sin. As it has been discussed above that there are few countries which are regulating the right to death. Basically, the term euthanasia means "easy death" which has been derived from the Greek. Euthanasia can be defined as "the act or practice of causing or hasting the death of a person who suffers from an incurable or terminal disease or condition especially a painful one." Euthanasia sometimes also termed as mercy killing. Euthanasia can be divided into many kinds but the major ones are active euthanasia and passive euthanasia. It is very compulsory to understand it because the passive euthanasia is allowed in Islam while the active Euthanasia is considered to be a sin. The term active euthanasia can be defined as "euthanasia which has been performed by a facilitator or doctor who provides the means of death and also carries out the final death causing act". In Islam, Passive euthanasia is not a sin and it can be defined as "it is allowing a terminally ill person to die by withdrawing life sustaining support such as removal of respirator or removal of feeding tube or committed through omitting to supply sustenance or treatment". The active euthanasia sometimes regard as the assisted suicide which means that "the act of providing a person with the medical means to commit suicide. In other words, when the doctor provides the means to death is known as physician assisted suicide."

The both terms assisted suicide and euthanasia are completely different from each other which are commonly misused to interpret it. The euthanasia as defined above is the mode of peaceful death to the patient suffering from a serious disease and it can only be

provided in the cases of incurable or terminal disease while on the other hand Assisted suicide is the intentional act by which provides the medical means to commit suicide. In other words, in assisted suicide an individual is allowed to die voluntarily by the use of medication which is in most countries of the world considered as the murder.

Research Questions

1- What is the slogan of right to life includes right to die, its contemporary aspects from modern world and from Islam?

2- What is the status of right to life includes right to die in Pakistan as an Islamic state in the world which criminalize the attempt to commit suicide under section 325 of the P.P.C. Is this provision of law need any amendment or not. If yes then why so?

Significance of Research

The right to life is a fundamental right, which is available in every country of the world to its citizen. There are a lot of other rights which are attached to the right to life. These even include the right to inhale fresh air and to drink the fresh water. Some of the countries are recognizing the right to life include right to die. In this paper, the basic focus will be on the right to life include right to die as a right. The arguments given by the advocates of right to die to support their idea and criticism on it will be considered to understand the phenomena. The teachings of Islam on the right to die will be covered under it. The scope of right to die in Pakistan and why Pakistan is treating suicide attempt as an offence and what is the negative effect of this on the mental ill person. It signifies the reasons for amendment in the P.P.C which should be converted into a reformatory clause.

Research Objective

The basic objective of this paper is to highlight the teaching of Islam as laid down in the Holy Quran and Sunnah regarding the right to die. Islam is a complete code of life and guides a person in the all aspects of life. Islam has its own opinion on the right to die. As a divine religion it taught us that man is the greatest creation of Allah almighty alone and his life belongs to Allah Almighty alone and He only knows that who and when will have to die and an individual has no right to decide it. The second basic objective is to analyze the section 325 of the Pakistan penal code 1860. As it is a precolonial law and out dated, the maker of it also repealed it while the country

of Pakistan still follows it. It is an admitted fact that being a Muslim country right to die is not recognized by it but the attempt to commit suicide is a psychological problem. The many countries had the laws regarding the attempting suicide but they repealed them in order to treat the attempter as a patient not as a criminal.

Literature Review

The thinking approach of different people varies from person to person as there is a variety of persons. There are people who support the euthanasia treatment and consider the right to die as a human right. They support their arguments that a man is autonomous and he has the right of individuality, compassion and mercy towards the patient. On the other side of the wall, there are the persons who are against the use of euthanasia treatment and do not consider the right to die as a human one. They argue that the life of man is Allah given and Allah only has the right to take it back and the mercy and so called compassion towards the patient on the name of euthanasia is false mercy.[227]

The teaching of holy Quran tries to prevent suicide in both direct and indirect way as it stated that "you should not kill yourself because Allah has been merciful to you".[228] Verse in the Holy Quran that only Allah has the control over the death states that "when their time comes they cannot delay it for a single hour nor they bring it forward by a single hour".[229] At another place "And no person can ever die except by Allah leave and at an appointed term".[230] Prophet (PBUH) said that "He who throws himself from a mountain and dies will stay in hellfire and be constantly thrown in it for eternity"[231]. The so called concept of autonomy and choice does not apply to finish life in Islam because of two reasons. Firstly, the life of a person does not belong to him; it is the sacred trust of Allah to a person. Secondly, to commit suicide may cause harm to the family and to the society.

Sheikh Al Yusuf Qaradawi who is the famous scholar of Egypt recently issued a fatwa in which he quotes that the euthanasia is equal to murder and it has no place in Islam. But in his fatwa he

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[227] Joseph Pakhu. Debate on euthanasia (pros and cons), 2015
[228] 4:29 Al Quran
[229] Holy Quran 16:61.
[230] AL-Quran 3:145
[231] Sahih Al-Bukhari, Hadith: 6982

allowed the passive euthanasia as allowing the withholding of treatment that is not effective and useless and patient cannot be recovered. In the light of fatwa by a Muslim Scholar we should exclude the case in which life support equipment's become useless and switched off from a patient who is at the last stage of blood cancer.[232]

The supporters of the right to die argue in support of euthanasia as the human beings are the autonomous one and is free so one may choose a peaceful death than he is bearing the indignity of a life which is no longer worth living in his opinion. Some people suffer from serious diseases and they consider better to be dead because they have very least interest in their lives. In this condition, a patient has the right to make a decision that whether he wants to live or die and the others should respect his decision.[233] The term autonomy of a human being is rooted in the right of self-determination. This argument was advocated in the UK and the United States during the period of nineteenth century. They admitted that life of an individual is sacred but it is only in the case when it provides happiness and joy to a human who possess it and it left on the choice of a person to decide about his future health and happiness. Furthermore an individual who is suffering from a fatal disease which may cause of painful death, than he should be allowed to choose a painless death if the person so desired.[234] They also support the physician assisted suicide as they argue that an individual has the right to control his own body and his life decisions. They believe that an individual should have the freedom to choose his own final exit. The prohibition of voluntary euthanasia is the disrespect of a person freedom who wishes physician help in their peaceful dying journey.[235] It can be justified as if a person is suffering from great pain and medication has become useless and is not effective to relieve patient from suffering. In this situation, patient has a right to make mature decision that he will not impose any burden on the others. Than he may request to the doctor to help him in his die moment? Because the death was the result of his desires so it is not

[232] Sheikh Al Yusuf Qaradawi. Euthanasia and Islam (2020)
[233] May, Catholic bioethics and the gift of human life, 265
[234] Ezekil J. Emanuel. "The History of euthanasia debates in the United States and Britain." November 15, 1994
[235] Manning, M.D., Euthanasia and physician assisted suicide, 26.

the injustice.[236] It can be argued that a man has not a freedom to kill himself. Only Allah alone has the power over life and death of every living being, and He may exercises his power according to his own will, to his wisdom and plan that who ought to die and who ought to live. It is injustice if legislator or a doctor decided that who may live or die.[237] It is an admitted fact that the autonomy of an individual is not absolute because of the factor that an individual has to respect the ethics. The autonomy given to a human being is very limited. It is the part of every divine religion that Allah is lord of life and the creatures and an individual is only the custodian. Another factor that can support the argument against the euthanasia that person autonomy is limited that a person is related to other human beings with the passion of love and care. Besides it, he is dependent on the Almighty Allah.

Supporters of the euthanasia tried to defend their stand by arguing that it is the right of a person to choose death. It is a very important question that whether a man has such right to choose death. In their eye, a man has a complete control over his life and even they consider a person as a martyr or a hero who surrenders his life to the voluntary death.[238] They claim that if there is no such hope of recovery of patient or zero possibility to serve then an individual should have the right to die. It is not for his benefit, but he is choosing the easement for the other. By exercising his right to die an individual does not want to become burden on the family and to the society. In this situation, a seriously ill person has the right to die and society should respect his decision and allow him the exercise of right to die as an act of compassion towards other human beings. They also claims that the prohibition on a patient right to death is somehow a denial of ones right to die. In order to cross the common phrase that human life belongs to Allah and it is the right reserved to Allah to take it back they argue that the medical field is the interference in the role of Allah.[239] In opposing to the right to die there is a movement right to life. Further "if a physician is on the duty by the state law to take the life of a patient and also to preserve him from death, this dichotomy creates a lot of vagueness into the

[236] May, Catholic bioethics and the gift of human life, 264
[237] John Paul 2, Evangelism vitae, (The Vatican City: March 25, 1995)
[238] Robin Gill, A textbook of Christian ethics, 2nd edition, 515.
[239] *Ibid*, 515,516.

relationship between a doctor and a patient. This concept destroys the role of physicians which they would have to play in the society". The promotor of euthanasia argues this is a treatment as an act of compassion. It is allowed on the request of the patient who wants to terminate their lives so their request should be honored as an act of kindness and beneficence of the patient.[240] They argue that medical technology of this era even cannot alleviate the physical pain of a patient suffering from severe pain. Moreover these sufferers are afraid from being indulged in life support machines that's why they prefer to approach death. In the view of supporters they are very compassionate toward these patients and support them in their right to make euthanasia in order to end their suffering. It is a decision often protected by the law.[241] The mercy killing is of the view that this mercy killing is "false mercy". They argue that "true compassion never include killing but compassion means the sharing of pain and it should not include the killing of a beloved one who is suffering from and we cannot bear him. It is pervasive if it done by the patient family because these family members are supposed to treat their ill member with love and patience. Euthanasia is not the mercy killing but it is the perversion of mercy killing.

The supporters of euthanasia upheld another argument to support it "dying with dignity'. For them "to have dignity" means to look at him with the proper respect, or with a high level of satisfaction. It is claimed by the advocates of euthanasia that no dignity is found if a person has no degree of satisfaction in looking at himself by the reason of his sickness. When an individual is not able to take care of himself and become dependent on the others due to sickness, this may cause to lose a person ability to depend on him.[242] The new innovations in the field of medical science cannot be neglected but these are not always humane. Furthermore some patients in their illness realize their own inner destruction and deterioration and consider them to be a burden on the others. In this worst condition of the suffering patient, it would not be a civilized act to revoke the ill person from the right to choose death.[243] To contrary, human dignity and concept of dying with dignity have another meaning and it cannot be interpreted as a person right of choosing death rather

[240] May, Catholic bioethics and the gift of human life, 265
[241] Manning, Euthanasia and physician assisted suicide, 40.
[242] Raphael Cohen-Almagor, "the right to die with dignity", (2008) P. 2-8
[243] Johnstone, Bioethics: A Nursing Perspective, 335.

than life. It means that all reasonable treatment should be provided and a hope to live.

Another argument given by the proponents of euthanasia is the providing of relief to the patient. They say that suffering and pain are unescapable and it is not a right thing to allow people to suffer from pain which is incurable. To see the patient in a painful condition may be horrible for the near relations and it would be a wrong practice not to use means like lethal drugs to stop suffering and pain.[244] That why a patient should be allowed to spare himself from unnecessary suffering and death is one of the best ways to relieve from suffering. On this ground euthanasia is ethical too. Moreover the refusal to choose spared from unbearable and incurable suffering cannot be perceived to be fair treatment. For its advocates, end the life which is intolerable is the best solution.[245] This thing can be easy understood by an illustration in which a lorry driver stuck in a blazing vehicle in an accident. A policeman reached there and tried to pull him out from burning vehicle but not succeeded. At the last moment of driver, he requested to the policeman to shoot him dead. Killing of driver is justified because it was only way to prevent such person from burning till death.[246] Opposing, suffering and pain is not a reason to favor euthanasia. To avoid suffering by unnatural means is always wrong. Suffering is the part of human life and it is total misperception that damages moral integrity when someone attempts to legalize it. Suffering is an inevitable experience which may be due to aging and also in case of death from which every person have to go through in his life.

It is believed that a person with total dependence on the family due to sickness has no such quality of life and considers him grave burden on them. So in the eye of modern sentiments, the life is only worthy when one is living a quality life but when a person life and living standers falls below a certain level it may become disposable. When a person loses the ability to enjoy his life and consider he being a burden to family may cause a wish to die.[247] The authority to say that an individual is not living a standard life because of very low quality of life, morally it's a wrong thing to judge the quality of

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[244] Johnstone, Bioethics: A Nursing Perspective, 334.

[245] *Ibid*, 335.

[246] Boer, Recurring Themes in the debate about euthanasia and assisted suicide, 536

[247] John Paul 2, Evangelism vitae, (The Vatican City: March 25, 1995) P.65

life because no one is good enough to judge. We should honored and respect those things which are considered to be holy by way of nature. In this way, life deserves respect even when the quality of life is low and it should not shorten because its sacredness always holds inviolability.

In most of the countries the practice of euthanasia and assisted suicide is illegal. However there are some countries in which the practice of both can be found.

In Australia the practice of euthanasia is not legal in the whole country but it has regulation in the Victoria. In November 29, 2017 Victoria legalize the practice of euthanasia. A law came into effect on June 19, 2019 to regulate it by which a terminally ill person is allowed to take a lethal drug by the help of doctor if such person is unable to do so themselves.[248]

In December 2020 the constitutional court of Austria held that the ban over the assisted suicide is violation of fundamental rights and order that ban to be lift that was punishable with up to five years imprisonment. In 2022 the Austria legalizes the physician assisted suicide. Under the Austrian law two medical doctors will review each case and after the wait for twelve weeks may make the decision unless the patient is in the terminal phase.[249]

In Belgium euthanasia is legal. Belgium passed an Act on euthanasia on 28 May 2002. By this legislation Belgium legalized the euthanasia and assisted suicide not only for adults but also for the minors suffering from serious illness that cannot be alleviated. Belgium was the second country in the world which legalized euthanasia after Netherland.[250]

In Canada, firstly in the Quebec part in 2014 passed a bill which legalized physician assisted suicide. The Supreme Court of Canada in 2015 remove the prohibition on the assisting suicide and order to pass a bill within the span of one year to legalize it in the parliament. And finally in the year of 2016 assisted suicide became legal in Canada. The eligibility for euthanasia is that "a person must attain the age of l8 years, must be permanent resident of Canada and must have irremediable medical condition."[251]

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[248] Adam Baidawi, "Australian state passes Assisted Dying Law', Nov. 29, 2017

[249] Ben McPartland, "Austria to make suicide legal from next year" Oct. 24, 2021

[250] Rachel Aviv, "the death treatment", June 22, 2015

[251] Florenec Kellner, "suicide," April. 24, 2015

In 1997, the constitutional court of Colombia ruled that a person may choose suicide and the person involve in the assistance to commit it should not be prosecuted and decriminalized the offence of assistance in the commission of suicide. Finally on 20th April 2015 euthanasia became legal in Columbia. [252]

Germany legalized the assisted suicide on 6th of November 2015 for sufferer but "commercial suicide" is still illegal in Germany. On Feb 2020 the High Court remove the ban on assisted suicide.[253]

Luxembourg is the 3rd country in the Europe which legalized the euthanasia and assisted suicide after Netherlands and Belgium. On Feb 19, 2008 parliament adopted a law to legalize it. Under this law doctors are under the special immunity from any criminal proceeding for performing euthanasia if patient requested for the procedure repeatedly. [254]

Netherland is the first country in the world which legalized the euthanasia in 2002. Euthanasia was not legal in Netherland till 1973. A case came to the court known as Postma case in which Dr. Postma give the lethal injunction to her mother who was terminally ill. The court convicted him for one week of suspension and one week probation. The actually punishment for the offence was 12 years imprisonment. On 1st April 2002 the "Termination of life on the request and Assisted suicide Act" was passed in the physician will be exempted from criminal liability. Even in Netherland, new born baby if they born with certain diseases which are incurable may be euthanized by the consent of parents. [255]

In New Zealand the act of "aiding and abetting the offence of suicide" was illegal under "New Zealand Crimes Act" which was punishable with the maximum sentence of three years. Many attempts were made in the different era to legalize the euthanasia by the parliament but not succeeded. In October 2020 nationwide vote in favor of physician assisted suicide was cast and now it is legal in New Zealand.[256]

The government of Spain requested to the health ministry to draft a bill in 2011 which was known as "death with dignity bill". But by

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[252] Katlyn Babyak, "Colombia opens its doors to euthanasia" July 7, 2015

[253] Christopher, "German court overturned ban on assisted suicide" Feb 26, 2020

[254] Tehran Time, "Luxembourg becomes third European country to legalize euthanasia" April, 4, 2009

[255] Brain Pollard, "Current euthanasia law in the Netherlands," 2003

[256] Isaac Davison, "euthanasia bill under party pressure" July 17, 2013

this law only passive euthanasia was legalized. Later on, in March 18, 2021 parliament of Spain legalize both. By this law euthanasia was allowed to adult of Spain suffering from illness.[257]
The use of euthanasia is not legal under section ll4 of the penal code of Switzerland in Switzerland. Assisted Suicide is allowed if the physician has good intention and such act is to be performed in the Dignities clinic. [258]

Research Methodology

This work will discursively analyze the arguments used in favor of right to die. It is very important to discuss because it gives a road map to understand the sanction behind their claim. By strong arguments it rebuts the all false so called claims in the favor of mercy killing. Furthermore, it will cover the perspective of Islam on the burning issue of right to die and when it can be allowed. At the end it will throw light on the Pakistan penal code 1860 which criminalize the attempt to commit suicide and give recommendation by argument to repeal or to convert it into a reformatory clause.

Suicide from the perspective of Islam

In the light of above stated arguments it can be analyzed that a man is autonomous but that autonomy is not recognized by any of the divine religion that allow a person to kill himself. By keeping in view the religion Allah has the power over death and life. The time of death of a person is to be determined by Allah not by the individual or by physician because the so called autonomy rewarded to a person is very limited. In Islam the profession of a physician is very sacred and he has the duty to protect the patient from physical ailments as well as fulfill the mental and spiritual needs of the patient. The protection of human being is entrusted to the doctor after the Allah Almighty. It is a belief that doctor always do best for his patient that why a myth create for doctor as “little Allah”. Advancement in the present era added new ideas like euthanasia and assisted suicide. The profession of doctor was bound to save the life of his patient but now it has been forced to deal with euthanasia on the name of mercy. This thing create a question in the minds of people that whether it is correct to take the life of person from enduring him from pain and suffering from the perspective of ethics,

[257] Gracial, “Spain: Bill on dignified Death”, Feb 2, 2011
[258] Christian Schwarzenegger, “criminal law and assisted suicide in Switzerland” Feb 3, 2005

morality and religion. The Muslim scholar came to the conclusion after much deliberation on this issue that under the teaching of Islam as directed by the Quran and Sunnah the euthanasia and assisted suicide is totally prohibited. The death of any living thing is pre-determined before the Allah and no one can delay it. A person has to be gone at his own determined time. The use of lethal drugs has no value in Islam because it is unnatural and no one knows that how much more a person alive. Despite of it, it is allowed to remove the medical equipment's from the patient who is at the last stage of life and no medication can save him. Sheikh Al Yusuf Qaradawi who is the famous scholar of Egypt recently issued a fatwa in which he quotes that the euthanasia is equal to murder and it has no place in Islam. But in his fatwa he allowed the passive euthanasia as the withholding of equipment's that is not effective and useless and patient cannot be recovered. In the light of fatwa by a Muslim Scholar we should exclude the case in which life support equipment's become useless and switched off from a patient who is at the last stage of blood cancer. The teaching of holy Quran tries to prevent suicide in both direct and indirect way as it stated that "you should not kill yourself because Allah has been merciful to you". Verse in the Holy Quran that only Allah has the control over the death states that "when their time comes they cannot delay it for a single hour nor they bring it forward by a single hour". At another place "And no person can ever die except by Allah leave and at an appointed term". The so called concept of autonomy and choice does not apply to finish life in Islam because of two reasons. Firstly, the life of a person does not belong to him; it is the sacred trust of Allah to a person. Secondly, to commit suicide may cause harm to the family and to the society.

Euthanasia arguments are false

The proponents of right to die believe that it is the choice of a person die and consider him to be a hero who accepts death to ease him and lessen the burden over the family and society. But in fact it is the manipulation because the principle responsibility of society is to protect life not to take life. Further it injects a sense of ambiguity between the sacred relationship of doctor and patient. Usually the advocates of right to die upheld this theory on the name of mercy. They interpret it as to kill a person in order to helplessly sick person as an act of love to relieve him from pain. It is false mercy to kill a person. The family has to share the pain not to kill him on the name

of compassion which is basically the perversion of mercy killing. Another thing upheld by the proponents of right to die is the dying with dignity, as they claim that a patient suffering from serious illness has no degree of satisfaction in looking at oneself by reason of sickness. Does it mean to kill him? No, all reasonable treatment should be provided to the patient to live him and gave him hope to live though he is going to be died. Another argument is the elimination of suffering but suffering or pain is not a reason to favor euthanasia. To avoid suffering by unnatural means is always wrong. Suffering is the part of human life and it is total misperception and damages our moral integrity when one attempts to legalize it by the killing the sufferer to end the suffering. Suffering is an inevitable experience which may be due to aging and death which most persons have to go through in life. A person has the right to die because he lost the quality of life and when a person falls below a certain level he may become disposable. But one has not the authority to say that an individual is not worth living because of low quality of life. Morally it is a wrong thing for a physician to judge the quality of life of patient because no one is good enough to judge. We should honored and respect things which are considered to be holy. In this way all living deserves respect even though the quality of life is low and one should not shorten that life because its sacredness holds inviolability.

Need of decriminalizing Section 325 of Pakistan Penal Code l860

Pakistan was the British colony before l947 but still relying on the British time codification. In such codification Pakistan still treats the mental illness as an offence. As if someone attempted to commit suicide is the accused of culpable offence. The Pakistan penal code l860 has not only condemned the suicide but also criminalize it under section 325 that whoever attempts to commit suicide shall be liable to punishment for one year. It is worthy to note that the attempt to commit suicide is basically a sickness not a wrongdoing. A person mental sickness may bring a thought in his mind to end all mental issues like tension, disappointment. He ought to be given proper treatment to resolve the problem not discipline. An individual who failed in the suicide attempt should be treated as the patient not as the guilty party.

Purpose of such decriminalization

The basic purpose for the decriminalization of attempt to commit suicide is to spread awareness in the society that suicide is mental illness not an offence. It is a fact that people who tend to end their own lives are sufferer of illness. It is not necessary to remain in the colonial era which is now out dated. It is not fair to criminalize a person who failed in his attempt to commit suicide. It means rebuffing him once more to make another attempt. State should consider the attempters as patients not as hoodlums under the penal code.

Treatment in lieu of punishment

In the eye of law and state suicide is an offence which has not been amended since independence. No doubt that section 325 of PPC has deep link with Islam as Islam prohibit the commission of suicide although there is no specific saying regarding the attempted suicide. Sharia law has not yet answered this question that whether attempt is punishable or not. No doubt that suicide is a sin and doer is the sinner. There is an objection which is often raised by the people that suicide is crime as it is prohibited in Islam but it can be easily countered that suicide is a sin and can be punished not the attempting. Prophet (PBUH) said that "He who throws himself from a mountain and dies will stay in hellfire and be constantly thrown in it for eternity". Admittedly this Hadith is telling about the punishment but it can be stipulated after death. Sharia does not specify any criminal punishment for suicide as it has specified for murder, sex, alcohol and robbery. So it is a sin not a crime.

People who attempted suicide need psychiatric cure not detention where he again encouraged for successful attempt of suicide. No prevention can hold a person back from his decision who wishes death and have lost interest in his life. Penalizing him does not fulfill the purpose. So Section 325 of the Pakistan Penal code should be repealed and it should be replaced by a reformatory clause.

RECOMENDATIONS

The following recommendations are to be noted down in this regard:

1- The parliament of Pakistan should repeal the section 325 of the P.P.C.

2- By decriminalizing the offence the attempting suicide, the parliament should introduce a new reformatory clause to treat the attempter as a patient not as a criminal.

3- In order to help the patient Pakistan should follow England as there Private NGOs are helping the miserable persons.

4- There is need to spread awareness to treat the attempter as a mental illness not as a criminal.

5- It should be treated not as an offence but as a sin which is answerable before Allah not to the people.

CONCLUSION

To conclude it can be said that the "right to life include right to die" is debatable. Many countries have legalized it in the shape of euthanasia and assisted suicide. This right is allowed to be exercised by the Canada, Australia, Austria, Belgium, Colombia, Germany, Netherland, New Zealand, Luxembourg, Spain and Switzerland. There are many arguments given in the favor and disfavor of the assisted dying and euthanasia and each school of thought has the grounds to support their arguments. For example a man is free to choose anything for him but at the same time he should care the near ones. No doubt that autonomy of a person favor the right to die but it is not absolute and responsibilities by the society should also be respected. Euthanasia is a mercy killing but at the same time it can never be a mercy to kill a human. In the light of all arguments it can be said that there are for and against arguments regarding euthanasia. The perspective of Islam is totally different as it is a great sin which is unforgivable near the Allah Almighty. Any type of mercy killing is not allowed in Islam. Although Islam allow the termination of medical parasitic from the patient when there is no chance that he will alive more. There can be many reasons for a person to commit suicide especially mental disorder which may lead a person toward such act which should not be penalized but tried to be rehabilitate. Section 325 of the PPC should be repealed and a mechanism should be introduced for the rehabilitation of the patient. The attempter of suicide should be treated as a patient not as a sinner.