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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 7, which is going to be published in Sep, 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.

Ayesha pointed out well the reasons for instability of local system of District Governments in Pakistan. She presents in her article an analysis of the history, evolution and values of local district administration in Pakistan, how the periods of military rule deprived the local district administration of its democratic spirit and became a major obstacle in the Political development of Pakistan.

Tamoor's article presents briefly the expanding trend of Insider trade in enterprises in the Pakistan along with the world. He points out what does Pakistan face legal and illegal issues of this type of trade and what is impact of insider trading on the economy.

Azhar Siddique's article briefly explains how and to what extent the health sector has been affected in Pakistan because of plastic pollution. This article also presents an overview of governing laws and policies and their practicability regarding control of plastic pollution and mitigation of its hazardous effects.

Ali Haider and Dr. Shahid Rizwan's article presents well conceptual frame work to examine Presumptions in Qanoon-e-Shahadat Order, 1984. Both writers have tried earnestly put an analytical view on the definitions, categories, purposes, and structures of presumptions in common law before using this information as a conceptions in conducting doctrinal analysis of the presumptions in the evidence. It is envisaged that the current study may aid in Pakistan's proper comprehension and implementation of presumptions in the legal system.

The utmost requirement for the fair trial and to have the ends of justice on the part of court of law is to put its efforts in the form of Questions from the witness to find out the truth of case. Maraj Alam and Dr.Mirza Shahid Rizwan Baig's article is an excellent study in presenting the mode of leading question which possibly confer correct answer to the person putting before such type of questions and expected or wish to get a desirable answer from witness in order to reach at the ambit of truth.

Dr. Muhammad Amin The Editor

LOCAL GOVERNMENTS: A STUDY OF HIJACKING THE EVOLUTION OF DEMOCRACY IN PAKISTAN

Ayesha*

Abstract: In the political history of Pakistan, the local system of district governments could not be stabilized. The main reason is the interference of the military regime in the democratic system. In Pakistan's 75 years of political history, every time the Vehicle oaf democracy has de-tracked from the political system. Some military governments have derailed this Political train. General Ayub Khan introduced his own designed district government system for local governments in the sixties. The clear purpose of which was to strengthen the military government. Similarly, General Pervez Musharraf introduced Turkish local district system of government "Nazimit" in Pakistan in the first decade of this century. The purpose of local system of government introduced by Gen. Musharraf was also to strengthen the military government at the local level. The local district government system devised by the military regimes was not meant to achieve democratic values. That's why the Pakistan was always deprived of local district order government with democratic values. This article presents an analysis of the history, evolution and values of local district administration in Pakistan, how the periods of military rule deprived the local district administration of its democratic spirit and became a major obstacle in the Political development of Pakistan.

Keywords: Local Government, Evolution, Democracy, Military Regime, Pakistan

I. INTRODUCTION

This is an attempt to address the gap existed in the democratic system in comparison with the totalitarian regimes which hijacked the evolution of democracy in Pakistan. The importance of Local Government system can only be viewed in the pure and simple form of democracy where the institutions are free to perform their duties. The rule of one corrupts the system of any country and this has been the real dilemma of Pakistan; the system of popular government has always been undermined to derail the democracy and replace with the unjust seizure of power by means of force.

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Moreover, there is a continuous struggle of Pakistan political parties and the will of its people not to forgo the essence to democracy. They, political parties and the masses, accepted the significance and the necessity of democracy for the survival in this world. Democracy on the other hand is not only a political system but it's a way to live a life, it's a message to all the other democratic countries that we also respect the opinion and the will of our people. Democratic government is a government by the people and for the people but at the same time, if we compare the rule of authoritarian government, the will and the wish of people weren't considered an important pillar of the government. There should be a comparison between these two forms of government with the special reference to the Local Government system along with its evolution.

Consequently, the Pakistan on democratic line; its struggle, defeat and success will be appeared before all of us. The importance of democracy will be highlighted along with the historical basis of democratic struggle against the authoritarian regimes which abrogated the ongoing democratic process in the country by declaring martial law. This abrogation of popular political system is an indirect humiliation of the people of Pakistan as their mandate and their voice didn't matter for the dictators who came into power in the iron clads of saviors but in actuality, they damaged the entire outlook of Pakistan and also dented the process of pure democracy. Those forces which strengthened the democratic values will be discussed here along with the importance of local government system in the pure and simple form of democracy.

It is also necessary to know the comparison of dictatorial and democratic regimes of Pakistan. Its emphasis on the effectiveness of Local Government system in both forms of government respectively. The sustainability, the growth and the problems faced under the afro-mentioned two forms of government.

With regard to this study, it is also necessary to know importance of Local government system in a pure democratic environment because it's the only way for the democratic government to serve the people and include them in the decision-making process which will ultimately affect them. In the end I will make conclusions and some

¹ Shirah, R. (2015). Electoral Authoritarianism and Political Unrest. *International Political Science Review*. Epub ahead of print.

² Svolik, M. (2009.) Power Sharing and Leadership Dynamics in Authoritarian Regimes. *The American Journal of Political Science* 53: 477–494.

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recommendations for the betterment of the people through the Local Government system as the main objective of this research is to highlight the importance of Local Government system in a democratic form of government if that government want to enhance the living standards of its population.

II. HISTORICAL BACKGROUND

Pakistan was created with the values of Islam and also to practice Islam in a separate homeland, where everyone will have the freedom to practice their religion. The United Kingdom colonized the Indian sub-continent and ruled it for almost two hundred years but in the end, by the three broad secular forces, public opinion of the international community, Indian political awareness and the natural evolution of imperialism itself had played an important role in giving independence to the Indian people. Pakistan independence in August 1947 and defended its sovereignty in the world. In this course, Pakistan had faced multifaceted problems including the political and democratic crisis. In "Pakistan a hard country" Lievan argued that its people are very resilient, and they can endure hardships because it's the culture and the social forces which made this country a hard country. Historically, Pakistani society had faced many undeniable catastrophes but somehow managed to survive. The focus of this thesis will be on the democratic journey of Pakistan that how the democratization on the society made possible. The main problem which Pakistan had faced right after its inception was the problem of management. There were many dire problems waiting to be solved but on the other hand, the hands of the administrators of Pakistan were tied because of issues like economic and defense. 3 The real contest has been started for Pakistan right after the partition but the resilient nature of its people and its non-daunting society made through the darkest nights in the history of Pakistan. Here, the darkest history has been referred to the era when all the democratic forces were forcefully curtailed with the heavy hammering of authoritarian government in the name of the widest national interest but, curtailing the evolution of democratic process always undermined the steady growth of Pakistan; in the home and also in the eyes of international community.

³ Acemoglu, D., Robinson, J. A. (2005). *Economic origins of dictatorship and democracy*. Cambridge University press.

The bleak history of dictatorship starts from the assassination of Liagat Ali Khan, 4 the first prime minister of Pakistan. The reins of Pakistan held by the military dictator and implemented martial law for the first time.⁵ It was the time when the military elites thought that they and only they can save the country from demise, so in for the first time, in the wider scope of national interest they took over the political office and started an authoritarian regime while dismissing and abolishing all political parties of Pakistan. In 1960, the huge general Ayub Khan had become the president of Pakistan, not by election nor attaining any mandate but seizing the power.⁶ His tool to clear his name in the eyes of the world he introduced the system of "Basic Democracy" which didn't serve his purpose. With the passage of time, the mounting tensions with India had reached to its culmination point resulting a war of 1965. The outcomes of the way with idea were deadly to him as his failure to win made him the bearer of nepotism and corruption. These allegations undermined his position and it was unable for him to occupy his office any longer. Due to the 1965 war and its outcomes, the popularity of Gen. Ayub Khan hit the lowest ebb and in 1969 he was left with no other option but to resign. He left the office but the dictatorship yet had plans to stay and enjoy the force of evil power over the country.

After the resignation of Field Marshal Ayub Khan, another military general was in line to taste the fruits of political power in Pakistan. The power was taken over by general Yahya Khan and he remained in the office and ruled the people of Pakistan for their betterment and also for the national interest. His main agenda and ultimate objective were to hold general elections and for once again make the newly independent country a democratic outlook. He was successful in holding the national election in December 1970. The disintegration of Pakistan and the Mukti Bani was the direct result of military intervention in the socio-political theatre of Pakistan.⁸

⁴ Rizvi, H. A. (2003). *Military, State and Society in Pakistan*. Lahore: Sang-e-Meel Publications.

⁵ Ibid

⁶ Ibid

⁷ Gauhar, A. (1996). Ayub Khan: Pakistan's First Military Ruler. Lahore: Sange-Meel.

⁸ Rizvi, S. A (1976). Changing Patterns of Local Government in Pakistan. Karachi: Pakistan Historical Society.

The national interests were guarded and persuade by the military resulted in the events of civil war of 1971 which had become the main reason of independence of Bangladesh. This thesis will draw an indicating line where the evolution of democratic system has been sabotaged by the overwhelming interference of Pakistan army in the matters of the state.

Furthermore, the instigation of Local Government system from "Basic Democracy" to the "Musharraf's Devolution Plan" every dictator in its authoritarian regime had tried to show the ultimate concern for the well-being and uncompromised growth of democracy while putting all the energies of the state to strengthen it on the basic or grass root level, whatever the scene was, it can be said that every time a dictator came, sang this old mantra on his newly composed tunes and all the people and masses of Pakistan listened it and from every dictator, the buoyant society of Pakistan⁹ categorized it, hoped for the best to come from every authoritarian regime. The reason was that, the society of Pakistan and the people of Pakistan survived during the dark rule of Zia-ul-Haq who declared Martial law and arrested the popular democratic Zulfigar Ali Bhutto who became the Prime Minister of Pakistan under a new constitution of 1973. 10 General Zia-ul-Haq arrested him and hanged him after a controversial trail.

General Zia-ul-Haq had become a sole master of the state, assumed presidency and abolished and banned all the political parties. He gave a new look to Pakistan. He wanted to be a popular leader, so he tried to seek help from the religion, knowing that religion was the weak point for the people of Pakistan as they got united in their freedom struggle backed by the religious and nationalist forces behind them. He initiated the program of Islamization and took through Pakistan in to a darkest pit from where, the hard country is still trying to survive. He promised to hold elections in ninety days but he used the power until his last breath. Finally he died in a plane crash and now started another struggle to restore and revive the dying soul of democracy in Pakistan. It was important to educate people of Pakistan about democratic values and the importance of

⁹Lieven, A. (2012). *Pakistan: A hard country*. Public Affairs.

¹⁰ Mueller, D. C. (1996). Constitutional democracy. Oxford University Press, USA.

its prevailing forces but in order to do that the democracy must prevail.

For the love of democracy, another election held in November 1988 and a coalition government of Pakistan People's Party came into power with Mohajir Qoumi Movement (MQM) but due to some ideological differences and issues of self-interests, 11 MQM left the coalition and Ghulam Ishaq Khan dissolved the assembly because of increasing corruption and unpopularity of the PPP's Government. 12 A care taker government came into existence, a valid and vivid positive step towards strengthening the basis of democracy but the state of Pakistan was yet to witness dictatorial regimes to come.

III. PAKISTAN ON DEMOCRATIC LINES; ITS STRUGGLE, DEFEAT AND SUCCESS

Local government system is a grass root system of government in which the democracies utilize for the benefit of the people and also for the betterment of the people. Good governance is also the main contour of this system of government as the basic agenda of this plan was to create stronger communities in Pakistan by maximizing the basic integration among the different communities with the state machinery and the government. Local government system was an ideal system to bridge an increasing gap between the government and the people of the different communities, who thought that they were being ignored and marginalized by the power elite of Pakistan. Generally speaking, induction of local government system in the strata of Pakistan was considered another step towards the establishment of fair and pure basis of democracy, this was yet another affective step towards the system of growth and development of the democracy in Pakistan. 13 This was considered an affective step towards the reinforcement of democracy in the history of a country where the conditions remained hostile for this very concept of ruling individuals. The local government system was divided into three main categories which operate under their own domains as follows: local level, state level and federal level

¹¹Jones, P. E. (2003). *The Pakistan people's party: Rise to power*. Oxford University Press, USA

¹² Ibid

¹³ Applied Economic Research Centre (AERC) (1990). *Local Government Administration in Pakistan*. Karachi: unpublished manuscript.

These sub-units allow the elected officials to mitigate the issues on public levels by some authorities given by the government so that they may be able to solve the problem of that area on their own and also with the local resources. In this wake, local level is the first level, or one can say that this level is a touchable level for the local people. The success of government is significantly dependent on this local level; local level is an essence of the local government system as it gives an opportunity to the people of disintegrated unites of centers to act freely for the betterment of the people as democracies ought to act under this umbrella of good governance.¹⁴

Furthermore, local government system directly addresses the plight and sufferings of poor people, which didn't have any direct access to the main stream power and the local administrative body. In this way local body or the local government system is significant to the local poor people because they have a direct contact with the people they elect as their representatives instead of waiting for their turn outside the offices of higher governmental officials. In other words, it is far more easy and convenient for the people to talk to their elected representative about their problems, rather than to a government appointee whose transfer likely to be held anytime as per the governmental policies. But on the other hand, the local elected person is attached to the people from which he got the votes and from which he or she is drawing power. This system gives an opportunity to the poor people, the minorities and the women to contribute in the development and betterment of their lives.

However, People of Pakistan, from its inception, constantly striving for the better standards of life and also from its inception fighting against the menace of poverty and trying to elevate their depressed circumstances. This system provides a direct line of communication as this system offers a chance to affect the decision-making process of a government which gives a meaning and meaning to their voice. Local government means the building blocks of local communities by with communities represent themselves in the annals of direct policy making streams, this system is also providing them, 'the local communities' a chance of better life style by which they will be able to discuss the matters with the government on the basis of their

¹⁴ Arif, S., Cartier, W., Golda, A., & Nayyar-Stone, R. (2010). The local government system in Pakistan: Citizens perceptions and preferences. *The Urban Institute IDG Working Paper: Washington, DC*.

benefits. By the help of or by the creation of local government system, institutions get stronger which give arise a system of strengthen governance for the local communities residing in their constituency. This effectiveness solves their problems on the local level because of their easy excess to their local institutions. Therefore, institutions play very important role in the lives of human beings in this modern age of democracy; without effective and able institutions, the lines become blur between the totalitarianism and democracy. That is the reason, institutions in any country are the important contour of local government. These institutions are called the 'sub-groups' because they operate on public level and show the local public a way towards their better future and also, on the other hand, supplement the original and pure concept of democracy as democracy is nothing but the government of the people, by the people and for the people. This is the real sense which inspired the western political thought and they implemented this idea to the practice and they succeeded in providing better lives to their people. They are now successful because they thought of their people and they strengthened their governments and made such governmental policies which strengthened their people, by considering their lives more important than the mere politics and policies to acquire power. Everyone cannot be taken to the fountain for power but the water of the fountain of power can be taken from its source to everyone. This is the main and original essence of local government system, of course in general.¹⁵ This system has become so viable because of the three levels of government:

- Local level
- State level
- Federal level

These levels of government enable this system to deliver the fruits and benefits of democracy to the community under discussion. The motive is to solve their problems and to give the populace maximum relief and these two objectives can be achieved by these three levels of government.

In addition to that, local government is the first level to address the question of public good and better life style while providing them with the basic necessities of life to the poor populace of the

¹⁵ Svolik, M. (2009.) Power Sharing and Leadership Dynamics in Authoritarian Regimes. *The American Journal of Political Science* 53: 477–494.

community. This system, not only address to the poor people but it also brings the good governance for the marginalized portion of the community, minorities, poor women and the children of the poor families by including them to the real process of decision making. Local government system is a systematic way to solve the poverty problem in the longer run as it operate on the individual level. The local level is directly related to the lives of the poor people as it has been mentioned earlier that by this process, an individual can have access to the higher level of elected officials through their own elected representatives and encourage the government to address their plight and devise some policies to lessen their sufferings. Furthermore, the local level is the most important and the most crucial level for the success and effectiveness of the system of local government. In other words, the local level is the driving force behind the local government and this driving force serve as its backbone. Without the local level, the system of local government will not be able to stand on its own. This level provides this entire system a structural foundation to stand upon and also it gives a fair and vivid chance to the local elected representative a chance to bridge a gap between the local area and the capital. In any law and order situation, the local people can be interacted through a political and social forum by their local elected representative. The local representatives who are elected by the people of that community, are considered the voice and will of the entire community and at the same time, these elected representatives are the part of the government which in a broader perspective, allows them to become a better administrator. The aim and objective of the elected representative is to deliver the basic opportunities and to increase his ability in the eyes of his higher ups, in this way he or she adjust their course which benefits the both, the local communities and the government in power; as the elected representative is drawing his or her powers from the main governing body from the capitol. In this regard, through local bodies, government can promote peace and tolerance among the different communities in the hour of need. Similarly, the antagonism among the communities the feeling of distrust, and insecurity of lives and property can be settled with the help this system of local government in general and on local level in particular.

On a state level, local government system also plays a vital role as it plays its significant role on local level. This level is also known as 17

the provincial level as it tends to work on provincial level. This is the second tier of local government system directly connected with the federal level and also connected directly with the local level. This level plays central role in the local government system of Pakistan though provinces are independent in their policies and governance by 18th amendment in the constitution, ¹⁶ but they at the same time considered a bridge between local level and the federal level of local government system. The flow-chart representation of three tiers of local government in Pakistan are given as follows:

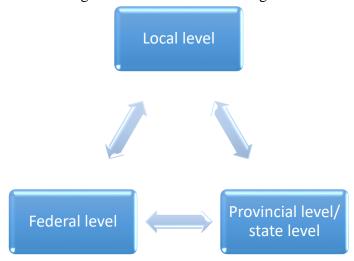


Table 1: Three tiers of Local Government in Pakistan

This flow-chart representation of local government in Pakistan is manifestation of a cycle which enact with the different local bodies and institutions to communicate with the provincial/ state level and then the provincial/ state level by its own institutions and bodies communicates with the federal level. By this way the problem in question or a situation of crisis at local level can be taken to the federal level through the provincial/ state level.

This is the simplest and easiest explanation of the systematic processing of local government system in Pakistan. The only core objective on this system is to create maximum opportunities for the people of the local communities and promote the voice and cause of poor people with a higher objective to eradicate poverty from

¹⁶ Mueller, D. C. (1996). *Constitutional democracy*. Oxford University Press, USA.

Pakistan and make Pakistan a welfare state like Scandinavian countries.

IV. HISTORICAL BASIS OF LOCAL GOVERNMENT SYSTEM IN PAKISTAN

This was a dream of every dictator who ruled Pakistan, to give it a system for the betterment of local communities. The irony lies in the details of this shallow effort to win the minds and hearts of people by inducting and introducing a local government system by the hand of a dictator who wanted this system to work for the benefit of the people of Pakistan in particular and in general, his motive was to give Pakistan an attire of democratic country where democracy is working from its grass root level to the higher ups. This was the general's wish and that wish was to be fulfilled by the people who were working in his administration. He also initiated a campaign of enlighten moderation to tailor the look of Pakistani society a moderate one, in the eyes of his fellow countrymen, women and his western counterparts who were keenly observing the moves of Pakistan. Local government system, in other words, for Pervez Musharraf had become a necessity, if not a choice as the western or allied powers despised any authoritarian government or regime.¹⁷ Musharraf's local government system was implemented on August 14, 2001, as he claimed this prize to his countrymen and women. He was very eager to promote this concept of advanced cum borrowed local government and his hope was high in the success of this system. General wanted this system to work, this system worked or at least it seemed that its working, but the reality remained silent on the side lines of Pakistan's poverty stricken society. The condition of a common citizen of Pakistan didn't changed by the change of the system that remain as poor and depleted as age old history of Pakistan. That was a dream, dream of Musharraf who came into power de-fecto, a frustrated desire to do well for the betterment of this country as it witnessed and survived many authoritarian regimes and yet it was another, with the new dreams to give people a hope for the better future days. 18 That local government system was a guilty strife to transfer power from representatives to the masses of

¹⁷ Boix, C & Svolik, Milan. (2013). The Foundations of Limited Authoritarian Government: Institutions and power-sharing in dictatorships. *The Journal of Politics* 75: 300–316.

¹⁸ Ibid

Pakistan. General's dream and desire to reinforce the common citizen of Pakistan and empower them by giving them the control of direct power in their hands. He had become a self-acclaimed people's benefactor and he staged the feelings of love and care for the poor of Pakistan. He wanted to win the hearts of people, not without votes or winning a mandate but capturing power by the power vested in him. In order to do that he copied a system of local government from Turkey and implemented that plan for the betterment of the society and for the betterment of the people.¹⁹

The local government system of 2001 had three broad spectrums, the essence of this system. These three categories were objectified to solve the people's problems on grass root level; level at their door steps or village level at least. The second important objective of 2001 LG system was to include the common masses into the decision-making process and the third important objective was to provide people with speedy justice system. The afro-mentioned objectives remained mere objectives on papers or rhetoric in the slogans in favor of democracy because the LG system implemented in a hasty manner, without studying the needs and the requirement of Pakistani society. As mentioned earlier, the induction of local Government system was a mirror image of Turkish local government system, which suited the requirements of Turks but Pakistan wasn't Turkey nor its society was comprised of Turkish people; the outfit wasn't fit for all as it desired to be and that was the reason that it lacked many insights important for the betterment of the people of Pakistan.

The desire was noble, the effort attempted was in good faith as the LG system's vision was to make the government accountable to the people of Pakistan. Here, in this manner the weakness of this system lied. The system wanted another system to be accountable to the people; the corruption played an important role because this plan didn't change the people specially the ruling class of the country. In order to give power to the common people, this system empowered the power elites of Pakistan and by this system they had become the sole people's representatives in the country. The menace of corruption wasn't addressed not curtailed but swiped under the carpet for time being. Furthermore, the community building and

¹⁹ Bowman, A. O. M., & Kearney, R. C. (2015). *State and local government*. Nelson Education.

vigorous growth of awareness in the citizens was expected from the Local Government system of 2001. It was also expected from the program of local bodies to work along with the people and remove or converge the divide between rural and urban areas. ²⁰ It was huge and tedious task in front of the bearers of the local government system as the system lacked capacity building campaigns for rural and urban people who weren't familiar with this change in the system but again this was the system for the local people and local people were expected to learn this system by their own, they were expected to adjust themselves with the change of the system, that wasn't the responsibility of the authoritarian government to educate masses first and also develop a viable system of them. ²¹ This change of new system was a lap dog of Pakistan military as its idea came directly from the chief of army staff who wanted to see basic democracy flourished under his authoritarian regime; dictatorial government seeking to lay durable foundations of democracy in Pakistan. At that time, in 2001 that progress in the field of democracy was considered an exercise to instigate the awareness on democracy in the minds of the masses of Pakistan. It was a timid effort from the incumbent government to support the claim that the people of Pakistan are ready of this change in the governmental structure of Pakistan which was struggling hard for the survival of democracy, which was fighting day and night for the life of democratic struggle in Pakistan which was of course for the betterment of the good people of Pakistan.

V. FACTORS AFFECTING THE ROLE OF GRASS ROOT LEVEL DEMOCRACY

As mentioned in previous flag that the local government system of 2001 was a need-based program, not to confuse with the popular need but a need of dictator and this system was implemented without any proper research on Pakistan's social need and societal structure. Challenges and problems were to be expected but the major problem which came in front was the inter-play of local bodies' elections. There arose problems in within the process of elections and these

²⁰²⁰ Fung, A. (2004). *Empowered Participation: Reinventing Urban Democracy*. Princeton, NJ: Princeton University Press.

²¹ Bukhari, A.S. (1985). *Rural development strategy in Pakistan past, present and future*, Peshawar Journal of Rural Development and Administration 17(1). P.45.

problems were to be solved if the incumbent government wanted to implement the local government system in Pakistan.

Historically, the structure of Pakistan's political system comprises of two-tier system. These tiers were divided into provincial and federal government. This had become the limitation for the government. Devolution of power in the Musharraf's regime tried to strengthen the local people of Pakistan by making the Local Government system effective and to be work with. Musharraf's government dissected their own formatted Local Government system into various levels and different stages. The first and the foremost flaw in the effective working of Musharraf's Local Bodies was in the first phase of any democratic structure; the election. In the election phase, ²² the legitimacy of its candidature and the process on with the elections were being conducted were considered flawed because the system was changed not the participants nor the culture of the villages of Pakistan were altered.

Another challenge which Local Government system of 2001 had faced was related to the illiteracy of the people of Pakistan. The new system was very much different from the old system which prevailed since the partition of united India. General Musharraf not only chanced the entire structure of Local Government but, he along with the pattern, changed the entire nomenclature of the Local Government system which seemed almost impossible to understand in the initial stage of its launch by the common and local people of Pakistan. This issue made the Local Government System of 2001 a difficult one for the common people. The class to be benefitted were unable to grasp the true nature of the system, though National Reconstruction Bureau, before the launch of this Local Bodies system, had conducted many surveys and also launched many awareness campaigns but in the end or after its launch, they all un insufficient because the efforts of National Reconstruction Bureau remained unsuccessful. The department has failed to educate the common masses of the Pakistan about the meaning and the working patterns of the new tailor made Local Government System by a dictator.

²² Abbasi, M. Z., & Mussarrat, R. (2015). Devolution of Powers to Local Governments in Pakistan during Musharraf Regime. *Pakistan Journal of Social Sciences (PJSS)*, *35*(2).

Thirdly, the bureaucratic model and the existing bureaucrats wanted this system to be reverted. They wanted this system to be failed because the authority and the influence of the district government were undermined. The Zila Nazim has become the high official in the district instead of Deputy Commissioner. This change made the bureaucracy resentful sand for this they wanted to reclaim their lost position in the eyes of the government and also in the eyes of the common public on any given district. Their resentment and their love-loss between the tailors and the designers of this system encouraged them to act non-cooperatively in their public dealings. The local administration was supposed to be the blood of this new system of government, but the administration, by their own hands, dried this blood to jam this machinery from running. The main objective of this local government system was to provide local masses with speedy justice and the system has failed due to the lack of interest and lack of will of local administration to make this system a success.

The main challenge which Local Government system or the famous devolution plan face was in the form of legal frame work of its structure. The devolution plan was the outcome of a hasty endeavor to win the minds and the hearts of the common people by establishing a fact of deliverance of the reforms²³. The makers of this system failed to address many legal formalities as whether the high or top offices were elected directly or indirectly. They failed to give any system regarding to the legality of the task. This made this system vulnerable to many dangers. Also, there were many loopholes in the matter of allocation of funding and its legal dimensions. The hierarchy was also another matter which has needed a proper legal touch. In short, the legal side of the Local Government System was prone to many questions and this also has become a challenge itself for the devolution plan which so gladly given by the general Musharraf on 14th of August 2001 as a gift to the local masses of Pakistan.

²³ Cheema, A., & Mohmand, S. K. (2003). Local government reforms in Pakistan: legitimizing centralization or a driver for pro-poor change. *Pakistan drivers of pro-poor change*.

VI. LAW AND ORDER SITUATION DURING THE ELECTIONS OF LOCAL GOVERNMENT SYSTEM OF 2001

It has been considered a common practice and proud deed to mend or break the laws and use violence to intimidate the voters in the election culture of Pakistan. The members or the campaigners of any political party use different methods to win the seat and for this they were all willing to go to any limits. This is the election in Pakistan. The election of Local Government of 2001 was also not different from any other election which has taken place from its inception. Although the military backed the local bodies election in Musharraf's regime but the political or the democratic counterparts also had their influence in their concerning constituency and also on their constituents because it was important for the political parties to win this election because when General Pervez Musharraf toppled Nawaz Sharif and declared Martial Law, he banned on the working of all the political parties of Pakistan but, in 2010 he announced the local government elections²⁴, it had become the dream of every political party to have a share in the dictator's power and that made this local government election very important. To win the election means to win the power and it has become an important issue for the leaders of the political party to contest this election. They started to use their power and influence to change the opinion of the people to win the elections and started to use the unfair means for this purpose. The presence of military was the only barrier in changing the face of elections into total cheat but the military, to some extent, tried to stop the unfair means but it wasn't possible for anyone to curb the entire chain of the cheating to gain the power in the government. Local government election happened, and people came into the power, but they didn't do anything for the betterment of the people because, first they wanted to enjoy the fruits of power and wanted to make sure the return of every penny which they had utilized in the election campaign. This practice took the local government to another level which will be discussed below.

²⁴ Abbasi, M. Z., & Mussarrat, R. (2015). Devolution of Powers to Local Governments in Pakistan during Musharraf Regime. *Pakistan Journal of Social Sciences (PJSS)*, 35(2).

VII. PATTERNS OF CORRUPTION IN THE NEWLY ELECTED LOCAL GOVERNMENT

As the power was distributed to the elected representatives of local government, they started to find the weakness in the system and they started to exploit those weaknesses for the basis of their corruption. They were tasting the share of power which comes not from the people but directly from the dictator, for whom the will and wish of the people hadn't mattered at all as he came into the power by force and he knew he wasn't answerable to the people nor he was going to ask for the votes in the next general elections. The local bodies elected representatives knew this fact and they also knew that they are working under the shadow of a dictator and also in the dictatorial form of government which is trying to justify its deeds and steps as democratic. This was the impact of the leadership as the representatives knew that in this system the common masses were not going to ask any questions because they knew its Martial Law and in Martial Law no civil rights were observed as the masses or the people of Pakistan had witnessed in the bled and the darkest phase of General Zia-ul- Haq in the entire bleeding history of Pakistan. People were scared but the representations elected those scared people were open to scheme every corrupt move while remaining in the matrix of the Local government system. Of course, the corruption came into the way of progress of democracy and the democratic form of government but that was the process, a daily deal after the election of Local Government 2010. The local bodies under the rule of dictators cannot and will not attain true and original soul of democracy or the democratic process because of the overall impact on the psychology of people as well as a particular mind set of the leaders under authoritarian regime²⁵. So the people of Pakistan must stand for their rights and oppose every effort to subdue their civil and political rights from any military dictator in the future which is yet to come if not for the love of this country then at least for the sake our future generations because sincerely the Pakistan nor the people of Pakistan can afford or tolerate another dictator like Zia-ul Haq because he took this country into the dark ages and we all are paying the price of his doing in the form of our lives and the lives of our children. The menace of terrorism was his

²⁵ Shirah, R. (2015). Electoral Authoritarianism and Political Unrest. *International Political Science Review*. Epub ahead of print.

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doing, he sowed the seeds of hatred and intolerance and we harvested the crop of thrones by sacrificing the innocent lives of Pakistani people. Let's just hope that the reign like his may not come in the life of Pakistan.

VIII. LOCAL GOVERNMENT SYSTEM: A TUG OF WAR AMONG THE POLITICAL PARTIES OF PAKISTAN

The success and the failure of local government system in Pakistan depend upon the working of the local bodies and the political parties which are into the power. Every political party assumed that its local government system will prevail as initiated by the dictatorial regimes in Pakistan. Starting from Ayub Khan, he gave the BD system which was abolished and represented by the local government system of Zia as he thought that his system will be the best system in Pakistan. And will be able to address the issue of poverty and the problems of Pakistani people but also failed to accomplish the assumed goal from the tailored local government system. The drawbacks and the weakness from the BD system were rectified by the Zia's administration to make and evolve a better system from its predecessor but not succeeded. ²⁶ The administration which came after the Zia dictatorial regime was democratic in nature and wanted to made the local government system their own success story and shared the responsibility of its failure on the policies of dictatorial regimes who had introduced a flawed system and the democratic government effortlessly rectified only for the betterment of the people of Pakistan.

After Zia regime, the incumbent government tried to ignore the local government as the government want to cut the baggage and want to survive the term which seemed difficult due to the crumbling of the political situation in the country. It has been understood and believed by the political elites that the failure of the local government in Pakistan was due to the military dictatorships and also due to the ruling government as the local government wasn't their priority and the ruling government didn't want to share the hard-acquired power. This has become a tug of war among the political parties of Pakistan and it has become a practice of blame game. Every government which came into power laid the burden of the failure of the local government on the shoulders of its

²⁶Ziring, L. (1988). Public Policy Dilemmas and Pakistan's Nationality Problem: The Legacy of Zia ul-Haq. *Asian Survey*, 28(8), 795-812.

predecessors and promised to fulfil the requirements the local government as promising the timely elections without any political influence upon them but again, they failed to fulfil this promise same as their predecessors and the struggle of the local government system goes on and on in an infinite circle of lies and broken promises as Democracy at Grass Root level couldn't be achieved yet.

IX. A CLASH OF INTEREST BETWEEN LOCAL GOVERNMENT MODEL AND THE BUREAUCRATIC MODEL

The rift started when the decentralization of power started the division of power between the local government elected personals and the officers of bureaucratic model who were the previous holders of the powers on the district level. The division of power, in local government plan, allowed the representatives to get hold of the powers from the previously called Deputy Commissioner and the Superintendent Police.²⁷ Musharraf changed the name of these administrative bodies and these administrative persons and made them subordinate under the office of District *Nazim*. The elected representatives were in the pursuit of chances like that, they started to rule ruthlessly but the bureaucracy didn't remain silent, they started to draw different administrative hurdles for the elected representatives which ultimately weakened the system of local government. This rift ultimately started to run in the annals of the policies of Pakistan. The both models worked in a harmonious way only for keeping the appearances but in actuality, they were in a constant struggle to win the ultimate power from the government. Local government representatives knew that they had these five years because they were unaware from the policies of the new government, so they suppressed the bureaucratic model as much as they could. On the other hand, the administrative lobby knew that the local government would always be on the slippery grounds and they made every effort to make the system of local government failure and filled with mistakes and loopholes. There happened to a rift between the (DMG, PSP) and the local government system and of course, after Musharraf regime, the

²⁷ Burki, S. J., Perry, G., Dillinger, W., Griffin, C., Gutman, J., Rojas, F., & Winkler, D. (1999). *Beyond the center: Decentralizing the state*. The World Bank.

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devolution plan was abolished by the Nawaz Sharif in a revenge against Pervez Musharraf. He didn't think for once about the betterment of the people of Pakistan. The democratic government of Pakistan Muslim League destroyed every structure of devolution plan because it was given by Musharraf which had become an arch enemy of Mian Muhammad Nawaz Sharif.

In short, the damage was done only to the local and common citizens of Pakistan as only the system of local government had suffered in every regime which wasn't its creator because everyone thought that he/she and their administration has the ultimate knowledge about the society of Pakistan and also about the people of Pakistan. Consequently, and surprisingly, the local government system, a bench mark of true democracy, flourished and served the people of Pakistan in dictatorial regimes. The democratic system hunted and damaged the smooth working of local government system. Surprisingly, this is true and only happened in the democracy of Pakistan.

X. COMPARISON BETWEEN LOCAL GOVERNMENT SYSTEMS IN DEMOCRACY VS. DICTATORSHIP: CASE STUDY OF PAKISTAN

Defining Democracy

Lincoln was considered the father of democracy, he coined the term in which he tried to express his dire feelings about the democratic concept and wished for a real and authentic system for the people of this entire world.²⁸ Rule of the people is the second name of democracy in which people are ruled by the power of the people to elect their own leadership to sort out their issues and problems and run the confined territory called state. The system vitalizes the people to speak about their wish and will, and have the right to ask questions from their elected leaders as the leaders are liable to the general population, which has the power to elect another leader from the government (BBC, 2011). The form of government in which masses are involved and groups called political parties expresses their manifesto to attract people of any country, in other words it's a kind of race in which every political party run to win the race with unique agenda and point of view and by the end of the election the political party wins who has more votes than its rival political party.

²⁸Lincoln, A. (2009). *The gettysburg address*. Penguin UK.

The opposite of democratic form of government in which there are bans and punishments if anyone criticize the type of government. That type of government is called the authoritarian government and this is the opposite of the democratic system, but this practice is not acceptable in democracy (BBC, 2011). Another important factor to note is that, in the more liberal form or the more democratic form of government, there are no censorship in the annals of films and media but at the same time, in the dictatorial form of government, a huge burden of bans and heavy censorship becomes the practice of the daily life, no director nor any author can write his or her mind in dictatorship.

Along with this, the myth is to find an ideal democracy because there isn't one. The trick lies in forming an illusion of democracy in the minds of the general masses of any country with a tint of some truth in it to justify and blow some logic into this form of government, but this form of government is far better than the authoritarian form of the government.

Defining Dictatorship

As to understand the concept of darkness, one may give the example of light and explain that the absence of light is the darkness, same is the case with the simpleton definition of dictatorship to develop a basic understanding about this concept, is the absence of democratic system is the presence of dictatorship or the dictatorial form of government (BBC, 2011). The commonality of attributes in dictators of the world are same as they were all, from historical perspective, demagogies and wanted to control the mob by presenting themselves as the true and just saviors of the nations. These attributes made them the most dangerous and authoritarian in their personality and also inform the people who they are ruling.

Again, historically speaking, the dictatorial regimes have the worst control over the masses on the incumbent countries as the violence and the threat of violence are the only option and only way to take control of the civil liberties of any country.²⁹

As it has been proven that absolute power corrupts absolutely. This axiom is purely for dictatorial regimes as the entire country under dictatorship suffers from the miseries of the one man's will and wish. The state has nothing to say in the matters of the government

²⁹ Acemoglu, D., & Robinson, J. A. (2005). *Economic origins of dictatorship and democracy*. Cambridge University Press.

and the overall picture of the state will become the picture of repression.

The state machinery has become involved in making the dictator of any country happy and for this, the machinery of the state starts to ignore the constitution and the laws. Laws of a country by which the normality of any state has been connected with the state department. The army and the police become the hand tool kit for the dictators and they by the help of this force initiate the polity of violence and repression in any country.³⁰

Brief History of Dictatorship in Pakistan

Pakistan is still suffering from the shadows of past dictatorial regimes as those shadows are haunting Pakistan. The external world is now gaining the process of trusting the political scenarios of Pakistan as there were three successful ousters of democratic governments in the country. They crippled the state of affairs in Pakistan but the people and the political parties of Pakistan never lost hope. They remained connected to the struggle of democracy and now Pakistan is on the track to become a pure democratic state. General Ayub was the first who started the practice of this kind of power and he ruled the country by force against the will of people. He was the first military dictator who became the field marshal to add in the miseries of Pakistani people. His reign had started from 1958 and he resigned in 1962.³¹ The second martial law remained for almost two years that was imposed by General Yahiya Khan. The third phase of dictatorial regime initiated and that delivered Pakistan in to the hands of a worst man named General Zia-ul Hag. He destroyed the country and made the outlook of a fundamentalist. The fourth man who assumed the power by force was another general named, Pervez Musharraf. He toppled the democratic government of Nawaz Sharif and became the head of the state by its power.

Interestingly, if the desire to see the development of local government, it thrived under the dictatorial form of government in Pakistan.

³⁰ Baehr, W. P., & Richter, M. (2004). *Dictatorship in history and theory: Bonapartism, Caesarism, and totalitarianism*. German Historical Institute and Cambridge University Press.

³¹ Ahmed, V. and Amjad, R. (1984). *The Management of Pakistan's Economy*, 1947-82. Karachi: Oxford University Press.

Understanding the Local Government System

Local government stands for the form of government with the direct representation of the people, elected from their local community of any consistency. This form of government is an important and integral part of democracy.³² This system is considered the backbone of the democratic form of government because it is the only system which works for the direct betterment of the people and this is the reason, this system has been consider the base of any democratic government in any country

The local government in other words, a form of the government in which direct system of election has been presented because of its nature to deal the direct administration of people which work for their betterments. This system of direct representation has become the voice of people in the corridors of the parliament.³³ The structure of local government is different from the structure of private organizations which has the only capability to maximize their profit on the behest of local population, but this is entirely different from this concept, it maximizes the interest of the general public in the country.

Another definition of local government is "the significant part of the governance of any state that deals with the problems or issues of the local population that resides in a certain territory or geographical location".³⁴

Local government presents the direct link to the people of any country as it has the direct representation which is pure in its making and simple in its structure. This is the most unique feature of the local government system.³⁵

Robson (1937: 574) defines local government as,

"Local government is involved in the conception of a territorial, non-sovereign community possessing the legal right and the necessary organization to regulate its own affairs. This, in turn, presupposes the existence of a local authority with power to act

³² Ndreu, A. (2016). Local governance units as a public manager in Albania. *Mediterranean Journal of Social Sciences*, 7(3 S1), 465.

 $^{^{33}}$ Lockard, D. (1969). The politics of state and local government. Macmillan.

³⁴ Stones P. (1968). *Local government for students*. Macdonald and Evans, 3rd edition.

³⁵ Ndreu, A. (2016). Local governance units as a public manager in Albania. *Mediterranean Journal of Social Sciences*, 7(3 S1), 465.

independent of external control as well as the participation of the local community in the administration of its own affairs ..."

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Gomme (1987: 1-2)³⁶ has defined local government in the following manner:

"Local government is that part of the whole government of a nation or state which is administered by authorities subordinate to the state authority, but elected independently of control by the state authority, by qualified persons resident, or having property in certain localities, which localities have been formed by communities having common interests and common history..."

The division of responsibilities is another striking and unique feature of the local government system. The share in the power structure, the say of the people in the main stream governmental issues, has connected this system to the central government which is also called the provincial government. The definitions of the local government system vary according to the typologies but the main concept behind every definition is same, which is the basic form of democracy and for the betterment of the people.

The benefit and the role of local government in any state is to administer an enormous territory of any state which has become impossible task for the central and the federal government. This has also become another reason why local government is important in any country. This increases its importance to the higher limits of the utility and made this necessity of any state if that state wants to run its affairs smoothly.

By local self-government is meant that system of local authorities which has developed contemporarily in many modern states. The characteristics of the local government system include:

- a) a territory and population;
- b) an institutional structure for legislative, executive or administrative purposes;
- c) a separate legal identity;
- d) a range of power and functions authorized by delegation from the appropriate central or intermediate legislature;

³⁶Gomme, G.L., (1987). *Lectures on the principles of the local government*. Delivered at London school of Economics, Lent term 1987, Westminister, whithall garden. PP 1-2.

e) Within the sphere of such delegation, autonomy (which also includes fiscal autonomy).³⁷

Decentralization: An approach to Local Government

Decentralization is the soul of the local government system in Pakistan because without decentralization of power structure and decentralization of responsibilities there would be no local government system in the country that is the reason, this is an important factor in the wake of local government system in a state.³⁸ The difference among diverse forms of decentralization is as under:

- a) It's in the opposite to the world consolidation of power and the central form of the government.
- b) The transfer of power and the responsibility is another form of this decentralization as it summarizes the importance of the delivery of the power and the shift of the power from the higher hands to the lower ones.
- c) Yet another important faction of decentralization is the safe and successful transfer of power from first tier which is federation to the last and third tier of the government which is the local government tier.
- d) The system of rendering services to a company for the sake of wages comes under the similar system to the local government but again in this system the profit maximization is not the goal as in the system of any firm and any autonomous body.³⁹

Significance of Local Government in Democracy

It fulfils the demands of basic democracy by inviting the local representations into the channels of power which has become important to the real and basic soul of western concept of democracy. Without this concept the logic to govern people by the will of people become shallow and the democracy wouldn't be able to address the issue of common people. The state is the entity to deal with the issues on higher level, the voice of common people has this

³⁷ Mawood, P. N., (1983). *Local Government in the Third World Countries*. Wiley and Sons, New York.

³⁸ Rondinelli et al (1981). *Government decentralization in comparative perspective*, International Review of Administrative Sciences, Vol. 47, No. 2, PP. 133-145.

³⁹ Ibid

by the system of local government, to send it their issues to the ears of people in power.⁴⁰

The distinction in the power structure of a state made democracy workable instead of dictatorial form of government. Concentration of powers made the system chock and the evil side of the power become prominent. This is why the role of local government in the system of ruling has significance.

Merging of three tiers in a western democratic model can be taken as an instance to explain the significant of democracy in work and this significant alignment made this form of government more practical for the betterment of the people, which is the basic and rightful cause of the local government system.⁴¹ Secondly, its counterpart, the dictators and the dictatorship only focus on the concentration of power not on the concentration on the betterment of the people.

Furthermore, the local government system provides a considerable support in the promotion of democratic culture in the country. In the modern form of democracy, the democratic rules of people cannot be governed without the help of the people entirely and as wholesome effect because in this age of technology and modern education, the basic knowledge of the rights and the duties make the citizens to ask questions to their representatives. Strong local government system provides strength to the effective system of democracy.

a) Local Government and Democracy

The availability of the local government system in the country exemplify the importance and the will of its nation that they had accepted the western form of the government. For better working, the local government system has its three tiers which work from the executive to the local voter who had elected the representative of local government.

The afro mentioned concept of three tiers means the participation of every single member of any commune in the process of election and expressing their will to elect the leader of their own choice. The

⁴⁰ Wraith, R., (1972). *Local Administration in West Africa*. George & Unwin, London. PP

⁴¹ Whalen, H. (1960). Democracy and Local Government. *Canadian Public Administration*, *3*(1), 1-13.

democracy and the local government system go hand in hand for the betterment of the public. 42

b) Promotion of Social equity through Local government
Democracy can also be perceived as a social phenomenon because
in this system an entire share of society works for their own
betterment. The creation of a democratic government is a step
towards the betterment because in the popular elected government
it has been assumed that it's the responsibility of the elected
government to provide the basic necessities and the good standard
of life to its people. This concept of involvement of all social
factors in the electoral process confirms the acknowledgment that
the democratic form of government wouldn't ignore the basic needs
of the people in the society. The social phenomena of the democracy
can be proved by its conduct with all the classes of minorities,
transgender and all walks of life. It has become the responsibility of
a democratic government to look after every citizen under its
command because its power is coming directly from the people.

XI. CHALLENGES FACED BY THE LOCAL GOVERNMENT SYSTEM IN PAKISTAN AND SOME RECOMMENDATIONS TO MAKE DEMOCRACY STRONGER

The process of electing the representatives of the devolution of power plan was developed under the authority of Election Commission of Pakistan. ⁴⁴ The ECP was the monitoring body which has completed the local body's elections and after the elections, the power was handed over to the newly elected representatives of the Local Government system of 2001 of Pakistan. The responsibility of newly elected local government was to look after the political issues which were hampering the benefits to the local masses of Pakistan. The election of new representatives had avidly raised its voice to fulfil the agenda and the manifesto behind the philosophy

⁴² Gildenhuys, H., Fox, W., & Wissink, H. (1991). *Public macro-organization*. Juta & Co.

⁴³ Cloete, J. J. N. (1993). *Democracy: Prospects for South Africa*. JL van Schaik

⁴⁴ International Crisis Group. (2004). Devolution in Pakistan: Reform or Regression? *ICG Asia Report No.* 77. Islamabad/Brussels: International Crisis Group.

of the devolution plan. 45 Another task which the newly elected local government was supposed to do was to solve the administrative issues which the common public faced on the daily basis. This was one of the important characteristics of local government which Gen. Pervaiz Musharraf had introduced in 2001. The new local government was to address the issues of common people by addressing them directly on popular front. The office of Zila Nazim was considered to be the direct link between the local populace and the governmental district administration. The soul of this devolution plan was to curtail the powers of Deputy Commissioner and to make his/her office under any competent political scrutiny. By this system, at least theoretically speaking, gave the direct access to the office of deputy commissioner and this was considered a success of this local government system which gave a direct access to the higher office on a district level. Since Zila Nazim was competent popular political authority which mandate was likely to question the deputy commissioner's working in the field of public service and deputy commissioner was answerable to the authority of Zila Nazim. This is the way how Musharraf imagined his tailored system of local government.

Thirdly, another important factor which wanted Musharraf's regime to see was the financial responsibility of the public institutions. The local bodies will be accountable directly to the public; an essence of grass root level of democracy. According to Musharraf administration, it is the responsibility of any elected government to remain transparent and transparency can only be acquired by the involvement of the people. It was the foremost desire of Musharraf's administration to evolve a transparent form of local government system in Pakistan for the people of Pakistan.

Devolution of power in the Musharraf's regime tried to strengthen the local people of Pakistan by making the Local Government system effective and to be work with. Musharraf's government dissected their own formatted Local Government system into various levels and different stages. The first and the foremost flaw in the effective working of Musharraf's Local Bodies, like other newly democratic states face, was the election. In the election phase,

⁴⁵ Hasanain, Z. (2008). Devolution, Accountability and Service Delivery: Some insights from Pakistan. *Policy Research Working Paper* 4610, Washington, DC: World Bank.

the legitimacy of its candidature and the process on which the elections were being conducted were considered flawed because the system was changed not the participants nor the culture of the villages of Pakistan were altered.

Another challenge which Local Government system of 2001 had faced was related to the illiteracy of the people of Pakistan. The new system was very much different from the old system which prevailed since the partition of united India. General Musharraf not only chanced the entire structure of Local Government but he along with the pattern, changed the entire nomenclature of the Local Government system which seemed almost impossible to understand in the initial stage of its launch by the common and local people of Pakistan. This issue made the Local Government System of 2001 a difficult one for the common people. The class to be benefitted were unable to grasp the true nature of the system though National Reconstruction Bureau, before the launch of this Local Bodies system, had conducted many surveys and also launched many awareness campaigns but in the end or after its launch, they all seemed insufficient because the efforts of National Reconstruction Bureau remained unsuccessful. The department has failed to educate the common masses of Pakistan about the meaning and the working patterns of the new tailor of Local Government System by a dictator. Thirdly, the bureaucratic model and the existing bureaucrats wanted this system to be reverted. They wanted this system to be failed because the authority and the influence of the district government were undermined. The Zila Nazim has become the high official in the district instead of Deputy Commissioner. This change made the bureaucracy resentful sand for this they wanted to reclaim their lost position in the eyes of the government and also in the eyes of the common public on any given district. Their resentment and their love-loss between the tailors and the designers of this system encouraged them to act non-cooperatively in their public dealings. The local administration was supposed to be the blood of this new system of government, but the administration, by their own hands, dried this blood to jam this machinery from running. The main objective of this local government system was to provide local masses with speedy justice and the system failed due to lack of interest and lack of will of local administration to make this system a success.

The main challenge which Local Government system or the famous devolution plan face was in the form of legal frame work of its structure. The devolution plan was the outcome of a hasty endeavor to win the minds and the hearts of the common people by establishing a fact of deliverance of the reforms. The makers of this system failed to address many legal formalities as whether the high or top offices were elected directly or indirectly. They failed to give any system regarding to the legality of the task. It made this system vulnerable to many dangers. Also, there were many loopholes in the matter of allocation of funding and its legal dimensions. The hierarchy was also another matter which needed a proper legal touch. In short the legal side of the Local Government System was to be addressed in details, codifying every statutes and every by- law of the constitution related to this local government system.

To make this system fool proof, the General and its administration gave the local government constitutional cover by the article 140A. This article of constitution of Pakistan protect the rights of the local government to prevail on the provincial level, without any alien influence. This has become the strength of the devolution plan of Pervez Musharraf. The amendments like 140A allowed a streamlined system on local government because it was the requirement of evolution of democracy⁴⁷, it was expected from the local government system to strengthen the democracy in Pakistan while educating the common masses about the importance and the advantages of democratic system. Furthermore, the 18th amendment in the constitution of Pakistan in 2010 made the environment for the local bodies more favorable as according to 18th amendment, provinces work in an independent capacity without any influence or the involvement of federal government.⁴⁸ This amendment went hand in hand with the local government system as in the local body system, the working and the decision making body were independent. The important feature of this amendment was the allocation of funds, according to the amendment, provinces are

⁴⁶ Cheema, A., & Mohmand, S. K. (2003). Local government reforms in Pakistan: legitimizing centralization or a driver for pro-poor change. *Pakistan drivers of pro-poor change*.

Khan, A. Q. (2017). Local Government and Judiciary in Pakistan after 2010.
 Aslam, G. (2010). *Dictatorship as a Bargaining Process: The Case of Pakistan*. George Mason University.

responsible in their own sole capacity in the means of their budget. The main feature of the 18th amendment is to empower provinces. In the wake of 18th amendment, the local government system was considered to be thrive because by this system, provinces would be in a better condition because of their autonomy in the matters of decision making, administrative manner and also in the matters of funds and budget allocation.⁴⁹

In addition to that, Musharraf's devolution plan comprised of three tiers as described in previous chapter which was advantageous in its own nature but the vital challenge which this structure faced was the allocation of responsibilities and the assigning of the authority among these three tiers of the Local Government system of 2010.

XII. PRINCIPLE OF DECENTRALIZATION

In a theoretical as well as in a practical manner, an effective local government system governs the public in a successful way⁵⁰ by remaining the structure of three tiers. This is done by the principle of subsidiary by which a real and functional local system will run in the country. This has become a challenge for the Musharraf's devolution plan because the collaboration between the tiers regarding the administrative as well as the financial powers remained on the side-lines of the policy of this system. The real nature of decentralization was the distribution of equal power to each tier in any three-tiered systems. In this local government system, the division of power became a bone of contention.⁵¹ The division of power was ought to be in a spiral way, running from top to the bottom or vice-versa but the devolution plan failed to follow this spiral structure of power flow in the system. This challenge and drawback made this system dysfunctional and gradually it crumbled and proved short lived remedy to address the issues and problems of poor and common folks of this country. The failure or the reason of its dysfunctional was a struggle between the tiers to accumulate more power. The evil lied in the details of financial power and the corruption in the system. The elected representatives were in pursuit of power but from power, they wanted to withhold the maximum

⁴⁹ Khan, A. Q. (2017). Local Government and Judiciary in Pakistan after 2010.

⁵⁰ Dollery, B., & Robotti, L. (Eds.). (2008). *The theory and practice of local government reform.* Edward Elgar Publishing.

⁵¹ Aslam, G., & Yilmaz, S. (2011). Impact of decentralization reforms in Pakistan on service delivery—An empirical study. *Public Administration and Development*, *31*(3), 159-171.

funds allocated to any district. This autonomy of the provinces led to the autonomy on lower level, on a district level. Nazims and Naib-*Nazim* were the representatives of the people but here the corruption came the deal of the day. This struck local government system in the heart and minimize its efficiency. The autonomy which were given to the provinces with the 18th amendment allowed the local bodies to generate their own revenue and spend it on the expenditures of the local councils. The local government system made it possible to govern the public service sector. The vitality of the local government system was to deliver the programs of public uplift. The local government was considered responsible for the delivery of services to the general population, but it had also become a huge challenge for the local government system because the government couldn't deliver what was promised by the authors of the local government system. The main hurdle of not delivering to the people of Pakistan was the missing linkages in the system. If a local body failed to provide anything then it went into the purview of provincial government and after the failure by the provincial government, the issue had become the task of federal government to address which eventually made the local government system as same as the previous local government systems in Pakistan.

General Pervez Musharraf desired to make this system more transparent and able in order to run a country. For its success, the General had introduced a concept of enlightened moderation. This very concept was to strengthen the government outlook in general and to give a local government a lift in particular. The aim of enlightened moderation was to develop tolerance in the society of Pakistan and give a new moderate look in the eyes of the entire world. This moderate image can only be achieved if the whole society put its effort in the system and without the local bodies, involvement of general masses into the system was an impossible task. The both concepts reinforced and supplemented each other in the reign of General Musharraf, they enlightened moderation and the devolution plan ran smoothly without any bumps and ridges. Yet, both systems weren't self-sustaining, they both collapsed after the dictatorial regime was over and Asif Ali Zardari became the President of Pakistan.

a) Higher tiers and the Local Government

The form of government which prevailed in Pakistan is known as the Parliamentary form of Government. In this government, a

bicameral system runs the machinery and the business of the government. It is important for the government to establish a balance between these two houses; a balance between an upper hose and the lower house. Similarly, it was important for the local government, to maintain the balance and create communicating interaction with the higher tiers for working in a conducive environment. It was required for the system of devolution of power to got itself imbedded with the representation of the country's political parties as those political parties jointly create a political environment from which political representation emerges. Same was the case with the devolution plan, the majority of elected representatives came from the existing political parties so it had become the necessity for the newly emerged local government system to get itself streamlined with the existing order of the system. It had become important for the local government to work alongside with the two higher tiers.

Along with the streamlined working of local bodies, it has become another challenge for the local Government to how to manage and include the other political parties into the policy structure of this new local government system. It had become a dire question for the makers of devolution plan whether to include the existing political parties or to include the new and emerging political parties of Pakistan. Of course this question needed to be addressed because it was the political parties which have the ability and capability to organize the political representation in the country. The challenge which emerged in a shape of political representation on local level which, 'this new Local Government system of 2010'52 allowed the local political parties to select their own representatives which will become the executive of the local government after elections. On the other hand, this system had allowed local and national political parties, after contesting the local government elections, determine who will become the mayor or the Zila Nazim. The 18th amendment feed the provinces to act in an independent way but in the long run,⁵³ this freedom and autonomy came as challenge for the devolution plan which Musharraf had introduced. There are a number of political parties in Pakistan working on local level as well as on the

⁵² Abbasi, M. Z., & Mussarrat, R. (2015). Devolution of Powers to Local Governments in Pakistan during Musharraf Regime. *Pakistan Journal of Social Sciences (PJSS)*, *35*(2).

⁵³ Ibid

national level. This was the main reason which completed the situation for the Election Commission of Pakistan to conduct a smooth and transparent election in Pakistan.⁵⁴

b) Institutions: Building Blocks of Local Government Systems

No one can deny the importance of local government institutions because without those institutions, betterment of the people wasn't possible without the institutions introduced in the devolution plan; the Musharraf administration tried to upgrade the existing structure of local bodies by invigorating some new departments and institutions into the system. The come common and affective example of inclusion in the local government system was the *Tehsil* Municipal Authority commonly known as TMA. The Tehsil-Nazim was given the power to chair this department and allocate and release funds in order to upgrade/ maintain the infrastructure on tehsil level.⁵⁵ The inclusion of TMA was a successful step which actually favored the local people, which worked under the purview of both Tehsil-Nazim and the Assistant Commissioner of a subdivision. The main or the central command runs through the secretary of any department, for instance, secretary of finance and addressed to the District *Nazim* for compliance and form the office of District *Nazim* the main orders or the main authority passed to the office of Deputy commissioner then to the office of Assistant Commissioner and Tehsil Nazim to the Union Council Nazim commonly known as UC *Nazim*, ⁵⁶ and from this office a common man had a n access to the higher level of secretary of finance for the reversal of any issue or for the sake of any urban or rural developmental program. This is the main concept of devolution of power and the main essence of grass root level of democracy which the General Perviz Musharraf wanted to create permanently, but the political and conditions of Pakistan and the politics of revenge shattered the good of this devolution of power plan.⁵⁷

Below is the organogram of local government system which was implemented in 2010 till the PMNL came into power. According to

⁵⁴ Abbasi, M. Z., & Mussarrat, R. (2015). Devolution of Powers to Local Governments in Pakistan during Musharraf Regime. *Pakistan Journal of Social Sciences (PJSS)*, *35*(2).

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

this plan there were two factions of same system,⁵⁸ the first faction emerged from the popular elected bodies which came between the office of Chief Minister/ Secretary local government and the district administration body; the bureaucratic structure.

The office district *Nazim* were placed between the bureaucratic structure and the local public of Pakistan. Before this system there were no political democratic body to represent the interests of common people of Pakistan. In this plan of devolution of power, the government wanted to introduce such a system by which the commune of rural and the urban people could be obliged and in its own sense, the devolution plan, due to its invigorating institutions, was a best of in its own kind. Nevertheless, it had its own disadvantages as well. The first and foremost disadvantage or challenge for the common people was the change of the names of the government offices. It was impossible for the lay men to develop a correlation between the working/duties/responsibilities and the names of the officials which were given new names in Musharraf's devolution plan but wasn't the only challenge, the demerit of this system was the appointment District Nazim in an upper rank of Deputy Commissioner whose name was changed to District Coordination officer. In majority of cases, the bureaucrats came after the contesting the exam of CSS. Only some numbered successful people can qualify to District Management Group but this system made them work under an elected person without any considerable education but only having a mandate, this made this system a challenge for its own self. There was no parameter for the qualification of District Nazims, they only needed mandate for rule over a well-educated, well trained and well-disciplined government officers. The devolution plan collapsed under its own burden and couldn't addressed its challenges.

⁵⁸ Khan, A. Q. (2017). Local Government and Judiciary in Pakistan after 2010. *Pakistan Perspectives*, 22(1), 27-41.

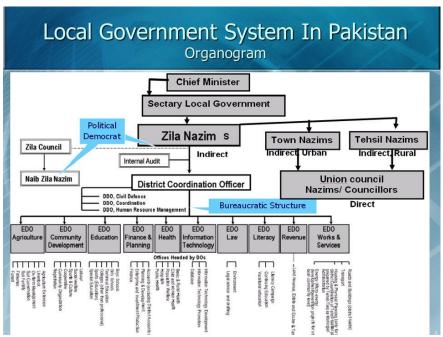


Figure 1: Local government system in Pakistan

Above is the explanation of institutions and organizations which made the devolution of power plan practical, at least for those who wanted to see it working for the period of their own time. Though the local government system didn't sustain but along with its disadvantages, the system was a workable system if time a chance was given.

Recommendations Regarding Local Government System in Pakistan

a) Elections: Vital Part of Democratic System

There are no two opinions in this fact that democracy is the only viable and practical form of government which cannot be replaced by any other system of government. Similarly, it is also important to ensure the Local Government system to prevail in Pakistan if Pakistan wishes for the triumph of democracy. Secondly, transparency in the process of election is also very important in the creation of better democratic system. It is also recommended that if Pakistan wants to strengthen the rule of democracy then it is important that it hold the free and fair local government election. This would be the only way for the accomplishment of speedy justice along with the betterment of citizens of Pakistan at grass root

level. It is also recommended that provinces shouldn't compromise of the autonomy and the system of local government because power should be given into the hands of masses who elect their representatives. The cycle of democracy cannot be complete without the presence of local government in Pakistan.

b) Equal Distribution of Power among Three Tiers of Government

For the better and lucid working of local government system, it is important not to ignore the third tier of the government which General Perviz Musharraf has introduced in his devolution plan. This plan was not the only local government plan which was introduced in Pakistan, struggles were made to fulfill the promise of good governance but the local people remained deprived from the fruits of the local government system not because of the flaws in the system but also the unwillingness to distribute power from the already existing two tiers to the third tier which was the tier of local bodies and the local institutions.⁵⁹ It recommended that the distribution of power should be allocated equally to the three tiers of the government. It has also been recommended from the conclusions of the above discussion, that the third tier ought not to be ignored by the other two tiers of the government. Equal flow of power from top to the bottom, from the office of the Chief Minister to the office of Union Council is necessary if needed the system of local government to work efficiently in Pakistan and strengthen the roots of democracy in the country.

c) Local Government's Constitutional Cover

The constitution of Pakistan is nor the flexible constitution like Britain nor its customary in its nature. It had been drafted and redrafted many times to rectify the mistakes and loopholes in it by the passage of time. Many weaknesses and the disadvantages were removed, and new legislation was done to make constitution more accurate and to work with. The process of amendments and rectification of constitution has been started from the 1973. Since the constitution of 1973 were presented, it has been expected that the new constitution will fulfill the requirements of the country, but that constitution was not yet just finalized. As time proceeded, different amendments were introduced and the amendment which

⁵⁹ Ismail, Z. H., & Rizvi, S. (2010). Some issues of governance in Pakistan. *Retrieved on May*, *17*.

protected the local government system was added as 18th amendment. It is recommended that the more legislation should be done to give the local government cover and protection from the powers which want to dismiss the prevailing local government system in Pakistan. On the other hand, it is also recommended that by the help of constitution, the incumbent government must hold the Local Government elections on the time given by the Election Commission of Pakistan.

d) Political Culture of Pakistan and Local Government System

Since the independence of Pakistan, the preconceived notions in the minds of its leadership proved that they despised the system of sharing of power with another tier. This has become an issue since the people of Pakistan got their independence because the power was snatched and they were being ruled by the Britain as the united India was the colony of Great Britain. There is a complex in the minds of the leaders of Pakistan that if they share their power with anyone other than their own kith and kin when they acquire the power through general election. This inability in the minds and in the psychology of Pakistani leadership made the sharing of power with the local representatives very much difficult. In this wake it is recommended that the leadership must change the patterns of their thinking and try to evolve from the past and take a positive step of sharing towards the future for the betterment of the people. It has now become the necessity for the democratic government to change this attitude of paranoia and develop an environment of trust and sharing to stop the failures of the local government system in Pakistan.

e) Limitations of Local Government in Pakistan

Without local government system in Pakistan, there wouldn't be any flow of power from the higher ups to the lower and grass root level. The here wouldn't be any justification of limiting the power of local government in the democratic regimes in Pakistan. The provincial governments after getting into the power, stop or to slow the process of local government because of the involvement of monetary issues and the issues of authority to control over the constituencies from where the elected provincial leader got their support and votes. They, in the sense of insecurity, try to sabotage the free and fair local body elections. This is the reason that the local government in Pakistan have the limited power and is not free in the conduct of

matters like revenue generation, budget allocation and the delivering the required and promised services to the people at grass root level. It is recommended that, the provincial government should not influence the working of the local government in Pakistan, rather make them truly independent and autonomous in its working and in its function, not theoretically but practically as well.

f) Mechanism to Uplift the Underdeveloped Areas of the Country

In Pakistan, there is no single functional system to address the evil of poverty. With the passage of each day, the poverty index is increasing. There are no concreate plans by any government to address this uncontrolled issue in Pakistan. Government came, make different promises and gone without delivering anything to the people of Pakistan. First of all, government should develop a concreate mechanism to give financial aid to the underdeveloped areas of the country as there is a mechanism had adopted by the federal government. 60 The Islamabad or the federation allocate the funds to the provinces on the basis of poverty and also on the basis of unemployment and underdevelopment of any area. The provincial government should also acquire these kinds of mechanism to address the issue of rural poverty and urban unemployment. By allocation of the funds where the funds are desperately will also address the issue of street crimes and the rate of crimes can also be controlled. A crime happened because of the evil of poverty, if the provincial government will follow a mechanism or a proper method of allocation of funds to the muchdeprived area on the basis of poverty and deprivation, the crime rate and the betterment of the people can be attained. It is recommended that provincial government must devise a method by with the government ensure availability of funds to the disposal of local government.

g) Revenue Generation, a Question Mark for Local Government

Though, theoretically speaking, the local body government has its own sources of revenue generation. The system of local government has been developed yet to attain its own funding. The expenditure always increases from the allocated budget or the budget discussed

⁶⁰ Wright, J. (2009). How foreign aid can foster democratization in authoritarian regimes. *American journal of political science*, 53(3), 552-571.

in the meetings at the Zila Councils because the rural as well as the urban areas of Pakistan are still in their developing stage and at the same time, the local government has no proper source of income. That is why many projects failed to exist or die at the table of Union council Nazims. Therefore, it is recommended that government should make self-sustaining programs by which local government will have an independent source of funds but not barring the support from the provincial government itself. The process of selfsufficiency of local government has not yet reached to a level where the general of funds will be available to them as a ready reference, whenever they are required for the development, they become available to a competent authority. Another recommendation which is related to the funds and the fiscal issue of local government system is that the funds should be directly sent to the MPAs and from them to the District Nazims for their better usage and also the sake to transparency.⁶¹

h) Capacity Building Programs

Education is the backbone of any society and it is as important as society itself. One cannot deny the importance of education because educated society can adopt new and innovative ideas for their betterment and also for their uplift and without awareness and without education its most likely reject any new and innovative idea. For the success of the local government system, it is recommended that government must launch awareness campaigns about the benefits of the local government. It is highly recommended that government should research the society and develop a capacity to which people will accept the new system of local government. The unawareness about this new system which Musharraf has introduced in Pakistan during his time in power, failed because people were unable to grasp the important of the system. The people of Pakistan wasn't ready to accept the democracy at their door step level, it wasn't their fault but it was the fault of those wo were ruling them. They just introduced the system and had expected that it will run on its own, they didn't make the grounds first. The Musharraf government tried but that try through the National Reconstruction Bureau wasn't enough because the required time wasn't given to the

⁶¹ Cheema, A., & Ali, U. (2005). How Rule-Based is Punjab's Intergovernmental Fiscal Transfer System ', Lahore University of Management Sciences. *Social Enterprise Development Centre Working Paper*.

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society. It is recommended that, for the success and affective working of local government in Pakistan, government should launch intensive awareness campaigns beforehand if any government wants to make the local government system a success and also the government wants to see the democracy prevail. It is important for the government to launch full-fledged capacity building campaigns for the citizens of Pakistan who are unaware from the advantages and benefits of democracy at grass root level.

i) Duties and Responsibilities must be Improved

Sporadic work cannot take any organization, institution or system to the point of success as the lack of central command on assigning the responsibilities and the duties. Same is the case with the local government system. The officials are overdoing their duties and confused about their responsibilities. It is highly recommended that government should demarcate the responsibilities and the duties of the officials of the local government of Pakistan. The provincial government should make a policy which the local bodies execute as federal government's policies are executed by the provincial government. By doing this the work can be centralized in a decentralized form of government, it will increase its efficiency in the form of betterment of the people which is the aim of the local government.

j) Democracy: the ultimate goal

It is recommended for the government to make democracy their ultimate goal by strengthening the local government system in Pakistan. Local government system is the building block of democratic system which will suit the socio-economic culture of Pakistan as socio-economic integrity can only thrive in a democratic culture. One cannot think of having a peaceful, undisturbed socio-economic culture without having the democratic form of government. So, the government should take all necessary steps to ensure the empowerment of local government system to establish firm basis of democracy in Pakistan which no dictator can topple. In addition to this, a new concept of public management has been introduced in the local government system of Pakistan. It concerned with the ideas to maximize the growth and capacity in the field of public sector. Decentralization, according to this new concept of

⁶² Zaidi, S. A. (Ed.). (2003). *Continuity and change: socio-political and institutional dynamics in Pakistan*. City Press.

public management can increases the yield of the work done for the betterment of the people, the services, by this new approach can also be upgraded to the level of citizen's satisfaction. Not because of the result of any good will from the governmental side but mainly due to the program's criteria check the progress on citizen's end. The concept of public management has increasing the importance of the need of local government system in the county. In Pakistan, it is very important to strengthen the program like this,, which on the one hand can maximize the yield of the public satisfaction and on the other hand gives the governors of the government to realize that they don't acquire the absolute and ultimate over the population of nay country, especially the country like Pakistan, which is still struggling form the menace of poverty and basic necessities of the life. The program like public management can lead the country on the road of progress and ultimate self-actualization by which Pakistani people and the government can focus their energies to the work of development and progress as in the countries which have achieved the status of developed countries the maximum index of human development.

Furthermore, by relating to the concept of change in the human lives and its surroundings lead us to the concept of social change, this is yet another concept by which one can see and measure the growth index in any society. Yet Pakistan is lacking in this field as well because of the society is still attached to its roots and the people are afraid to let go the ways of life which were led by their forefathers, the social change is in proximity to the change in overall. The system which runs the country has its roots attached to the roots in the history and this restraint the people to accept the new ways of life and accept the social change, but at the same time, it is almost impossible to stop the wheel of social change. One way or the other social change will hit the society of Pakistan, the process is in its way due to the awareness and the media and also due to education, people are learning to live not only to exist under a totalitarian rule of anyone. The Local Government system is the pure and simple manifestation of this process of the social change in a successful way and presents a parameter by which any observer weighs the need and the importance of the local government in any society with the growing influence of social change. Social change in the American society led them to break down the system of rule of one, from the time of their forefathers like Washington DC and Benjamin Franklin, the American has devised a constitution which has ensured the rule of people not the rule of one military or political elite. The American, fore fathers of the concept of democracy, has introduced the idea of self and local government because this was, at that time, and even today is the best political system to rule a country because the nation-state is for the people and they have the right to rule their own mother land.

Thus, given by the Britishers, modified and tested, practiced and prevailed by Americans, local government system in democracy justified its role in the progress and the betterment of the people in contract with its arch rival system of dictatorship as it threatens, not only the freedom and safety of an individual but, at the same time, puts the safety and security of entire world in danger. This can be justified and analyzed by the two great wars fought by the world. Those wars, indeed, were a struggle, a conflict between democracy and dictatorship and ay the end of the day the democracy survived and strengthened which ultimately blocked the way of the third world war to happen, or at least for now.

Along with this, the concept of democracy and in it the Local Government system, an intelligent government which enables its citizens to operate and work in a way which establish the basis of another, upcoming government to supplement the local system with their policies. The polices should be of two folds, one should address the needs of people, the general public of any country in general and the needs of the people of Pakistan in particular and the second fold should address the ways to strengthen the existing Local Government as an institution, not under the shadow of any other institution or any individual, the system of Local Government should work independently and for this a responsive leadership and educated community is required but unfortunately, Pakistan also lacks in these afro mentioned qualities which is why the pure and un biased system of local government system is ceased to exist. The need should be address by the intelligentsia and the also the universities and the education sectors must play their rule in educating the populace to reach out to the authorities which were elected by them for the remedies of their problems and for the betterment of their future.

What is evil is the absence of good. This oft quoted axiom reflects the presence of bad Local Government system in Pakistan. The basic logic behind this is the village system and no central judicial and ruling system in Pakistan. The village elders are difficult to challenge and also it is almost impossible to challenge their decision. The Local Government system has also been hijacked by those political village elites, in almost every election from Ayub khan's BD system to General Pervaiz Musharraf's local body system, the village elders contested on the seat and captures the power over the naïve and nomad villagers, to rule them and also to rule their lives. This system prevails in Pakistan because no reforms has been introduced in this filed. Truth be told, this is the very structure on which the building of Pakistan's politics stands, and this very building is cemented by the wealth and the money of these village elders. The chance of social change diminishes in the atmosphere like this where there is the presence of local government but without any effective role of people of the vicinity.

In the system of decentralization, it is evident from the culture of *Panchaiet* in Pakistan's villages, no doubt, the system of Local Government has not thrived. The village elected elders know that there would no check and balances upon them once elected to the seat. This mind set hinders the evolution of an independent LG system also stupor the process of social change. The system of LG in Pakistan goes unchecked by the authorities because of the there is an attempt to elect from the people, but this chance was highly sabotage by the presence of elitism in the village structure, mainly due to the economic reasons. A lay man or a common villager has its own daily survival battles to fight, he or she just don't seem interested in contesting the election and route their meagre funds to a lesser chance of winning against the village elite who has the power to buy and sell the votes and also has ample money to spend on its election campaign.

Moreover, the financial side of LG in Pakistan is also in a fragile state because of the issue of funds and budget allocated to the development of the constituency. The center, apparently, in the case of Sind province, remained reluctant and always lay blame on the federal government of depriving Sind from the developmental funds but on the other hand, the federal government, claims that Sind has been included and a considerable amount of one to two billion has been allocated for the Sind rural development. This is yet another paradox to solve the mystery of funds for the development and strengthening the LG system in Pakistan. Apparently, this is the classic case of corruption of the system and this is another reason

which is declining the devolution plan into the depths of redundancy and being obsolete in general sense.

Another drawback which has minimized the impact and working of LG system in Pakistan over the years was the lack of interest of the national leaders in the essence and the utility of LG system because they, the leaders of various political parties, thinks that their personality and the impact of their party is enough to rule the county and almost every consistency. The idea of sharing power was not acceptable for the leaders of Pakistan, simply because they only believe in themselves; another attribute to be addressed if want to eliminate the dictatorial regimes inside the psychology of leader of Pakistan.

The main argument under this heading is vast concept of social change because, the local government cannot operate with the apparatus so redundant that no member of society accepts its vitality. The question of social change is so important because it is directly related to the vitality of the working and operation of LG system in Pakistan and in the society of Pakistan which comprises of its population. This the why social change is so important a concept related to the LG system in Pakistan. It directly addresses the issues of education, politics, historical back ground of the country, its religion, customs, norms, demography and morality. With all these concepts of greater importance one cannot deny their direct relation to the system of Local Government because all these factors combine shape the holistic characteristics and the features of the government in general and Local Government in particular.

The social change has various interlocutors which varies with the needs of society over a period. The first and fore more important interlocutor is the structure on which the basis of society exists; the structure of its values, its norms and the traditions associated with it. In this case of Pakistan, the very social structure is its *Baradari* system and this system has its roots deep into the process of electing a government. Same is the case with the electing the body of Local Government because of this social structure of the society. It is difficult to say when and how this social structure will undergo through a change. Since the devolution plan, no serious efforts are done to support and collaborate with the process of social change which General Pervaiz Musharraf has initiated with a name of enlightened moderation. The Pakistani society is moving with extremely slow speed to embrace change which directly slows down

the speed of transparency and efficiency of Local Government in Pakistan. This very structure of Pakistani society renders it to drag itself to the social conflict with the emergence of new social process as a natural outcome of an inevitable process of social change. Yet another attribute related to the afro mentioned point is the social conflict generated by the inclusion of the ideas of conflict leads to the disintegration of society into different groups, adhering to their respective ideas and philosophies and with a passage of time and also with a experiences many a members were forced to join or to accept the dominating ideas or prevailing ideas in the society which by the time again, become the social structure of any society. For this very sake, in some countries, a covert program of social engineering to rearrange and modify the existing philosophies of social structure. The program of social engineering runs through the education and the mind making media campaigns to achieve the desired objects from the population of a society. This process is a slow one but by the change of a generation, it produces a result and change the desired variables in the society which the people in power want to replace with the ideas of their own likings. This is yet another reason why LG system is important and always in the best interest on the people because it may provide a cover against the tests and experiments like this. A strengthened democracy breeds a powerful and fool proof system of Local Government which enables the citizens of the country to raise their voices in favor of their rights and put limit to the authority of the government over the lives of its population.

Development is another mile stone of the Local Government system, scholars and the sociologists believes that by the development in any society, an observer can see the shift in the social structure; from the previous phase of local government and its measures taken to towards development of the society to the current phase of the policies and the measures of development, the different between these two phases mark the amount of change in the structure of a society. This is a variable by which one can quantify the significance of the social change from point A to point B and draw a conclusion in favor of or against the prevalence of Local Government in a society. Since the Musharraf's time, no visible measures have been taken in the development of Pakistani society. The Local Government system has become just a stone with a name on it without any true and productive working for the betterment of the

society. Generally, from point A to point B, in the case of Pakistani society, these is near to nothing happened in the field of development of Local Government.

While on the other hand, the society of Pakistan has been booming in the wake of social reforms, with the help of education, excessive and unbridled on air time of news sensationalism and the addiction of refreshing the social media pages. These mentioned reforms go beyond in the negative corner of a social set up, but reforms it is and it is in the field of social science to accept whatever comes with the time to see the difference in the previous scenarios and the prevailing scenarios

Similarly, this is the case with the change in the structure of government when it comes to the system of LG system because, with the passage of every day, with the tint of awareness and presence of social media with the availability of smart phones with camera built in it, makes the federal government aware along with the awareness of the common populace of Pakistan. The social reform cycle is in its prime due to the afro mentioned factors and also due to these factors, the elected leaders of Local Government, remained under a constant system of check and balance. This is an effective way to strengthen the LG system in Pakistan because the country is in the phase of transition, from a primitive society to a modern one and due to this transition, the concept of feudalism also transits to the concept of good governance without no chains attached to the system of baradari and elitism on village level. Nevertheless, this is not in its full form and shape, it will take time to be groomed in its maturity and till then Pakistan has to face the challenges to the democracy and its evolved culture of home-grown democratic society. Of course, the roots lie in the western concept of democracy but the people of Pakistan, because of their culture, methods to perform daily businesses, customs, religion and economic structure, has made this concept of western democracy to work for them and also for their benefits in a way of eastern way of democracy. This is the reason it took so many years for Pakistan's government and its people to cope with the deteriorating and failing system of governance in the wake of a successful democratic system.

The study of society in which this change has been undergoing has its own ways to measure it or look into the process of change in the society. As stated earlier, it is important to measure the change in

the society if to strengthen the Local Government system in any society. The case with the society of Pakistan hasn't been changed from the time of its inception till the date when the last tenure of Martial Law has been imposed and overthrew the elected government of Nawaz Sharif by General Pervaiz Musharraf. That military coup was also comes in the domain of social change because, it enabled Pakistan to see the importance of democracy in the developing country like Pakistan. Many anthropologists, sociologists, economists and political scientists graded every coup a step towards the more strengthen pattern of democracy in Pakistan. And this social change from the beginning has brought Pakistan to the doors of development in every field of life and for this very reason, Pakistan never missed a chance to make democracy selfsustaining and a well-established institution of Pakistan. The history of general elections after the last military coup of Musharraf made it clear that there is no room for military to take over the public office. This has been considered a mile stone in the democratic history of Pakistan. The society of Pakistan comprised with the people having a positive curve or bend towards the capitalism and a capitalistic form of economics. The middle class in Pakistan comprises a huge portion of population in Pakistan and due to the capitalistic oriented middle class, democratic system has been evolving as their interests and economic gains can only be maximized in the prevailing and strengthening system of democracy rather than any other systems like dictatorial, totalitarianism or even socialism. It is another important factor in the history of democracy of Pakistan that the presence of capitalistic oriented middle class, having interests vested in the democratic form of government, helps to sustain the government and provide an assistance to the democracy to prevail in the Pakistan. The shift from rural areas of Pakistan to the urban areas in a process of urbanization, making the survival of democracy easier because of the business patterns and the form of economics. The process of urbanization is another step towards the industrial development and the industrial development bore the fruits of growth and awareness in the society as it is evident from the western societies. The transit point or the reference point in the development and the growth of society vis-à-vis democracy was the industrial revolution. In a way industrialization of the western societies took them to the path of growth and on the way of democratic form of government. The society of Pakistan has also

been shifting from the rural back ground to the urbanization in search of wages and also in search of new industries as the needs and the demands of living are increasing which the Agri based society was not able to meet. With the development of rural shift from village-based society of Pakistan, the importance of education has become an important contour in the domain of Local Government system and its progress in Pakistan. As it has been observed that under the rule of Musharraf, the education clause has come in the lime light for the qualification of District Nazims. It was a progressive step to introduce an educated cadre in the grass root level of government. The goal of this introduction of education of minimum graduate level, was to ensure a better and effective rule of law and the availability of good governance in the society of Pakistan. This initiative of introducing education in the Local Government made new places for the young leadership among the elites who contest election for the acquisition of public office. Also, this clause of graduation pass candidature has compelled many seasoned politicians to vacant their place and allowed the people to see new faces for the first time in the rural set up of local elections. This system of education-based leadership in Pakistan's Local Government system also brought some weaknesses in the system of general elections of Pakistan in as it unveiled the educational capacity of the leaders of Pakistan because many of the renounced leaders appeared to be under graduate and couldn't fulfil the basic requirements of contesting elections, especially in the general election of 2002 as that was the time when this graduation based candidature became a basic requirement for contesting elections. In general elections, this process has served as a strainer for the youth to come and join the race for the leadership of Pakistan. The huge names, the seasoned politicians at last compelled to make a way for the new leadership to come to the surface but also this came with a draw back as this also brought those who were already associated with the previous leader ship in some way or another. Either the new leadership was bought and sponsored by the old one or the new graduated leadership was already kith and kin of the old leaders of Pakistan. This system, in way, wasn't as successful as it was anticipated due to the reasons described above.

CONCLUSION

Consequently, the political culture of Pakistan is complex in nature and the linkages between the different forms of governments including the Local Government system worked under strains of governmental red tapes and corruptions but still it never ceased to be evolved from an under developed system to fully evolved democracy in the country. For the coherence among the other forms of government, it is important for the LG system in Pakistan to work in the matrix where there are minimum red tape and corruption less system on which the machinery of government runs. Moral and honest society leads to the pure and practical form of democracy and in this form, Local Government thieves and the good of people will prevail which is the essence of the Local Government system in Pakistan. In a comparative study with other countries and their local government system, that framework of working and administrative structure cannot be mirrored because of the physical realities of Pakistan and its people with their basic needs and also with their social problems like poverty, food insecurity, standards of living, slums, transport, communications labor force and environmental insecurity. With these problems and challenges, it is almost impossible to mimic the entire local government system as General Pervaiz Musharraf tried to copy the entire structural frame work of Turkish Local Government system but that exact system didn't work because of the very conditions of Pakistan as elaborated earlier. Keeping this point in mind, it is safe to say that Pakistan need its own Local Government system championed by the factors related to the conditions and the physical features of Pakistan and that type of system can be obtained with the passage of time, in an evolutionary process rather than adopting from another country's model and try to implement it on the revolutionary basis. This way of comparison of Pakistan with other countries and their Local Government system wouldn't work, rather it will work when its people will be ready to accept it and embrace it. The government of Pakistan should take some necessary steps to empower the Local Government system in Pakistan. It is the need of an hour that an awareness campaign regarding to the benefits and importance of LG system would be launched to tell the people of Pakistan that this system without corruption and nepotism is for their own good. Secondly, the leadership should act in a sincere way to establish the basis of true Pakistan's oriented LG system which will work in accordance to the

needs Pakistani people. Thirdly, it is important that government should take steps necessary to curb the menace of corruption because it leads to every crime committed against the progress and development of a country. Pakistan being a developing country, and with the economy always on the verge of collapse, is not in the position to sustain the shocks of corruption and nepotism. Fourthly, its time for the rural populace of Pakistan to see and safe guard their own interest by stressing the importance an effective and honest leadership to maximize the development of the rural side of the country. Fifth, the people of Pakistan and its government should take steps to empower the overall concept of democracy in the country and decentralization of power or the Local Government system is the first and most important step towards the strengthened the democratic culture of Pakistan.

INSIDER TRADING: A LEGAL ANALYSIS

Tamoor Mughal*

Abstract: In the last ten years, the trend of insider trade in enterprises has been increased significantly in the world. Corporate directors, employees and managers etc. are doing insider trading in their companies. On one hand, they are receiving wages for their work from these institutions and on the other hand, they are also running a business within the institution. What is the legal status of insider trading of such employees? Is insider trading legal or illegal? What are the effects of such insider business on the country's economy? This article presents an analysis of the impact of insider trading on the economy.

Keywords: Insider Trading, Effects, Employees, Economy

I. INTRODUCTION

"Insider trading is a term that most investors have heard and usually associate with illegal conduct. But the term actually includes both legal and illegal conduct. The legal version is when corporate insider's officers, directors, and employees buy and sell stock in their own companies. When corporate insiders trade in their own securities, they must report their trades to the SEC."63

"Illegal insider trading refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, nonpublic information about the security. Insider trading violations may also include 'tipping' such information, securities trading by the person 'tipped' and securities trading by those who misappropriate such information." "Insider trading is the trading of a corporation's stock or other securities (e.g. bonds or stock options) by individuals with potential access to non-public information about the company. In most countries, trading by corporate insiders such as officers, key employees, directors, and large shareholders may be legal, if this trading is done in a way that does not take advantage of non-public

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 ⁶³ Utpal Bhattacharya "The World Price of Insider Trading". Journal of Finance,
 Vol: LVII, Issue No. 1, Feb 2002.
 ⁶⁴ ibid

information. However, the term is frequently used to refer to a practice in which an insider or a related party trades based on material non-public information obtained during the performance of the insider's duties at the corporation, or otherwise in breach of a fiduciary or other relationship of trust and confidence or where the non-public information was misappropriated from the company."65 "In the United States, Canada, Australia and Germany, for mandatory reporting purposes, corporate insiders are defined as a company's officers, directors and any beneficial owners of more than 10% of a class of the company's equity securities. Trades made by these types of insiders in the company's own stock, based on material non-public information, are considered fraudulent since the insiders are violating the fiduciary duty that they owe to the shareholders. The corporate insider, simply by accepting employment, has undertaken a legal obligation to the shareholders to put the shareholders' interests before their own, in matters related to the corporation. When the insider buys or sells based upon company owned information, he is violating his obligation to the shareholders."66

"For example, illegal insider trading would occur if the chief executive officer of Company A learned (prior to a public announcement) that Company A will be taken over and then bought shares in Company A while knowing that the share price would likely rise." 67

"In the United States and many other jurisdictions, however, "insiders" are not just limited to corporate officials and major shareholders where illegal insider trading is concerned but can include any individual who trades shares based on material non-public information in violation of some duty of trust. This duty may be imputed; for example, in many jurisdictions, in cases of where a corporate insider "tips" a friend about non-public information likely to have an effect on the company's share price, the duty the corporate insider owes the company is now imputed to the friend and the

⁶⁵ Larry Harris, Trading & Exchanges, Oxford Press, 2003. Ch: 29

 ⁶⁶ Shell G. Richard. "When is it Legal to trade on Insider Information". MIT Sloan Management Review. Vol: 43, Issue No. 1 (fall) P: 89-90
 ⁶⁷ Ihid

friend violates a duty to the company if the corporate insider trades on the basis of this information."⁶⁸

II. LIABILITY FOR INSIDER TRADING AND MARKET EFFICIENCY

"Liability for inside trading violations cannot be avoided by passing on the information in an "I scratch your back; you scratch mine" or quid pro quo arrangement as long as the person receiving the information knew or should have known that the information was material non-public information. When allegations of a potential inside deal occur, all parties that may have been involved are at risk of being found guilty.

For example, if Company A's CEO did not trade on the undisclosed takeover news, but instead passed the information on to his brother-in-law who traded on it, illegal insider trading would still have occurred (albeit by proxy by passing it on to a "non-insider" so Company A's CEO wouldn't get his hands dirty)."69

"Abuse of information typically involves a breach of confidence or plagiarism, or extending the confidence of information beyond those authorized. In the financial world, Insider trading can also be considered a misuse of internal information that gives an unfair advantage in investment." "Ultimately, insider trading is an inefficient way of achieving market efficiency, because insiders earn all their profits on the lag between when they start selling and when the market figures out what's going on. This gives them every reason to hoard information, with the result" "that stock prices are out of whack for longer than they otherwise would have been. Markets thrive on transparency, but insider trading thrives on opacity." "

"Insider trading affects stock market prices through what is known as 'derivatively informed trading.' First, those individuals possessing material nonpublic information begin trading. Their trading has only a small effect on price. Some uninformed traders become aware of

⁶⁸ Shell G. Richard. "When is it Legal to trade on Insider Information". MIT Sloan Management Review. Vol: 43, Issue No. 1 (fall) P: 89-90

⁶⁹ Ibid

⁷⁰ Brooks, John. "A reasonable amount of time". The New Yorker. P: 160-188

⁷² Kristoffel Grechenig, The Marginal Incentive of Insider Trading: An Economic Reinterpretation of the Case Law. University of Memphis Law Review, 2006. Vol. 37, p. 75-148

the insider trading through leakage or tipping of information or through observation of insider trades. Other traders gain insight by following the price fluctuations of the securities. Finally, the market reacts to the insiders' trades and gradually moves toward the correct price. But while derivatively informed trading can affect price, it functions slowly and sporadically. Given the inefficiency of derivatively informed trading, the market efficiency justification for insider trading loses much of its force."⁷³

"Insider trading undermines stock price accuracy because it discourages arbitrage [The simultaneous purchase and sale of an asset in order to profit from a difference in the price.] Traders by increasing the risk of expropriation [The taking over of private property by the government.] and/or by stifling competition in the market for information, and/or it increases insiders' incentives to manipulate information disclosure."

III. INSIDER TRADING—THREATS AND AS A SIN OR CRIME

"By and large the idea that there is no direct harm from the practice [of insider trading] has held up very well, especially the point that no real damage is caused to an investor who engages anonymously on an exchange in a trade with an insider on the other side of the transaction.

Furthermore, there is considerable evidence that the harm to market makers exists more in the theoretical world of finance literature than it does in the actual play of the market. Though the argument is theoretically feasible, it seems to be practically irrelevant in the real world."⁷⁵

"Attacking insider trading has a singular advantage for regulators and journalists alike: short of swiping money from the cash register, it is the simplest financial crime to understand. The frauds perpetrated at Enron or, a generation earlier, the Equity Funding Corporation" defy any simple explanation. "Insider trading – making money by trading on confidential information – is an easy

⁷³ Kristoffel Grechenig, The Marginal Incentive of Insider Trading: An Economic Reinterpretation of the Case Law. University of Memphis Law Review, 2006. Vol. 37, p. 75-148

⁷⁴ http://insidertrading.procon.org/viewanswers.asp?questionID=001055

Macey, Jonathan. "Getting the word out about fraud: a theoretical analysis of whistleblowing and Insider Trading:. Michigan Law Review, 2007. P: 1899-1940 folial

sin to attack. Yet the awkward truth about the practice is that it's far from clear that it should be illegal." In securities markets trading on an informational advantage may be a sin, Winans says, but it really isn't a crime. Indeed, everyone who trades stock does so because she believes she knows something others don't — something that causes the stock she's trading to be undervalued (if she's purchasing) or overvalued (if she's selling). Moreover, the only way the SEC can police unfair trading on the basis of an informational advantage is to prosecute selectively, "much as a patrolman tickets only the red sports car when everyone on the road is speeding." That sort of selective prosecution is troubling, Winans maintains, for "stopping the sports car slows traffic only for a mile or two" and "gives the false impression that the policeman is on the beat, making the financial markets safe for the rest of us." "

"Winans thus concludes that the SEC ought to stop fighting sin — i.e., trading on an informational advantage — and redirect its efforts to combating crime — i.e., insider trading that involves the theft of non-public information." ("The solution is sinfully simple. Throw out the current insider trading laws and bus the Securities and Exchange Commission's lawyers over to the Justice Department, where they can concentrate on the real crime: stealing.")

IV. HARMFUL EFFECTS OF INSIDER TRADING

"Almost all of the brokers said that insider trading is harmful and the most commonly expressed view was that the harm was done to the market. Some said that small shareholders suffered. Some of those who expressed contrary views said that there were no losers because there were willing sellers. Amongst those who agreed that there was harm to the market there were various qualifications of that view. According to one broker, "in its rawest form insider trading dislocates the market. It upsets overseas investors". Similarly, a Sydney broker asserted that "sophisticated insider trading done on a big scale erodes market confidence. Australia's image was damaged by insider trading in the mining boom. "Innocent" insider trading has negligible effect". A more specific statement was that "the harm is to confidence in the marketplace. It

 $^{^{77}}$ Macey, Jonathan. "Getting the word out about fraud: a theoretical analysis of whistleblowing and Insider Trading: Michigan Law Review, 2007. P: 1899-1940

⁷⁸ http://www.truthonthemarket.com/category/corporate-law/

⁷⁹ Ibid

is necessary to protect smaller people-insider trading hurts small people". A similar opinion was that "it is a form of stealing. It damages the system, especially small people. The entrepreneurs steal from the weak"."80

"A more general explanation was that "the vast majority of shareholders suffer. They miss out on value; they should be able to share profits". A somewhat different assessment of the damage was that quote; there is more money lost by people acting on what they think is inside information than by those who sold".'81

"Some brokers were more specific about where the harm is felt. A Melbourne broker said "smaller shareholders are disadvantaged. The institutions are not. They are in a privileged position, in a favored position and are getting all the information that is around-but are not necessarily insider trading"."

"Those who felt that no harm was caused by insider trading offered several views. One was that "there is a willing seller who would have sold anyway. It is caveat emptor in the marketplace". Another was that it is "a swings and roundabouts situation. There is some damage in blatant cases such as in pre-takeovers". One of the very senior brokers described insider trading as "a victimless crime. In the equities market you cannot totally protect everybody. It has an unfortunate effect on the market"."83

"Most of the financial advisers felt that insider trading is harmful and for the most part they identified the victim as the market. In more specific terms they said that investor confidence is eroded; the raising of capital is made more difficult; the efficiency of the market is destroyed; the perception of unfairness leads to disinvestment and that the international reputation of the Australian market suffers. One view was that the market does not suffer from insider trading because it is always in need of information. Other victims of insider trading were identified as the "Mums and Dads" investors, small traders, and those who do not have the information and trade in that state of ignorance. The fund manager who thought differently said that "there is not really any harm. Although the game is not played

⁸⁰ Ziobrowski, Alan J. Cheng, Ping; Boyd, James W; (2004) "Abnormal Returns from the Common Stock Investments of the U.S. Senate". Journal of Financial and Quantitative Analysis, No. 39 (4) p:661

⁸¹ Ibid

⁸² Ibid

⁸³ Ibid

with fair rules I believe that people buy and sell shares at prices they find attractive". 84

The stock exchange officials believed that there was some harm associated with insider trading. They said that the market suffers, the seller is the victim and mathematically, persons who conduct transactions without being properly informed are banned. The one dissenting view was that there is no harm, "particularly in Australia as the market is so thin. The seller is not forced to sell. He sells at a price he thinks is fair". 85

"In the market observer group the view was that insider trading is harmful and the words "unfair", "wrong", and "defrauds" were used in describing its effect. The views as to the victim of the harm fell into the two usual categories - the market, and those who were on the other side of the transaction. An answer that perhaps summed up the views of the group was that "it distorts the market; it is unfair to small shareholders; it creates an unfair advantage and it destroys the level playing field".'86

"The concept of a group of uninformed shareholders being taken advantage of was summarized as "people on the outer ring of the market are disadvantaged". A more robust view was that "the real harm is that the game is not straight. We need an informed, honest market" but less concerned with the effect on investors was the observer who said that "in some situations insider trading could undo a deal"."

Most lawyers agreed that there was harm caused by insider trading but they also said that it was a question of perspective. As one Sydney lawyer put it, "it all depends upon where you stand. I've never been interested in little old ladies and orphans. There must however be a minimum level of regulation. It seems wrong when you hear of cases of insider trading. The law has a role to inhibit it but not to stop insider trading entirely". In a similar vein, a

⁸⁴ Ziobrowski, Alan J. Cheng, Ping; Boyd, James W; (2004) "Abnormal Returns from the Common Stock Investments of the U.S. Senate". Journal of Financial and Quantitative Analysis, No. 39 (4) p:661

⁸⁵ Hauck, P., Europe's commitment to countering insider dealing and market manipulation on the basis of Art. 83 para. 2

⁸⁶ Fabri, David (2005). "How the new prevention of Financial Market abuse Act may affect the Media". Times of Malta, https://www.timesofmalta.com Last Visit : 13/12/2022 Time: 2:53 PM

⁸⁷ M. Duffy. Insider trading: Addressing the continue problems of Proof (2009). Australian Journal of Corporate Law 23 (2) p: 149

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Melbourne lawyer observed that "the degree of harm depends upon the circumstances of a particular stock. Insider trading can both advantage and disadvantage an individual". The most common view was that insider trading was harmful because of its unfairness to the person who does not have the inside information.

"A strong view was taken by a Melbourne practitioner, who said that "insider trading distorts securities markets. Insider trading is a fraud. People should be fully informed or have the capacity to be so if they seek advice". A Sydney lawyer expressed the view that "no economic loss is caused by insider trading, but insider trading is a question of fairness". Lawyer interviewees sometimes also held more complex or ambiguous views. The strongest critic of the view that insider trading causes harm emphatically answered that "insider trading is not the major evil it is made out to be". He acknowledged however that "a problem arises from an insider's ability to get out before the market knows what the real problems are. But most big investors and individuals don't invest in anything but blue chip companies and the latter do not insider trade as insider trading is too risky". The predominant view of the lawyers was that insider trading was undesirable on the ground of fairness."88

Amongst the regulators, the issue of perceived unfairness was common. Frequent references were made to the level playing field. One regulator observed that 11 an uninformed market is not a fair market, as it may not represent the true value of the securities. The end detriment is to the general public who are indirectly affected through their commitments to superannuation funds and the like" It was also said that "if a market is seen as being 'unfair' then both the confidence of the players and the credibility of the Australian market are harmed". The regulators commonly observed that the company itself was harmed by insider trading, because it became difficult for the company to raise capital. One regulator said that "the company is harmed by the misuse of information which belongs to it. In some large corporations or groups this is not so simple because managers expect to benefit from insider trading as a spin-off from the company's deals".

"The regulators were in no doubt that insider trading was harmful for a range of reasons, but again ranked fairness as the main reason

⁸⁸ Pulliam, Susan and Micheal Rothfeld. "Motive for Stock Leak Can be Respect, Love". The Wall Street Journal. Issue No. 14 March 2011.

for the perceived harm caused by insider trading. Former NCSC Chairman, Henry Bosch, argued before the Griffiths Committee, that damage to shareholders is not the most important damage which arises from insider trading activity. He began by putting insider trading in the context of other corporate law offences when he said: I would like to argue that insider trading is not the malefaction that does the most harm. I believe, and the Commission believes, that misleading accounts, secret deals, the reversible put and call options that have recently become quite popular, the misuse of controlling shareholders' positions, market manipulation and warehousing, all cause more damage to shareholders, and more identifiable damage, than insider trading."

"Insider trading typically refers to either trading on insider information or the buying and selling of shares by company insiders -- top management, key employees and investors -- who are privy to confidential information and have sizable stakes in the company." Despite the negative connotation, not all insider trading is illegal." Insider trading is illegal.

i. Insider Information

Trading on insider information is illegal because it puts other investors who are not yet aware of a certain development at a disadvantage. A company is required to disclose material information that can impact the stock price to all investors at once; it cannot favor one group over another. It is unfair when somebody benefits from information that causes others losses or deprives them of reasonable profits. In addition to negative financial ramifications for investors, trading on insider information undermines public trust in the company linked to it.⁹²

ii. Trading on Insider Information

Not all trading on insider information is done by insiders. An insider can leak the information to an institution or a group of investors who will act on it ahead of other investors and share the benefits with or return the favor to the source later. An outsider who comes into possession of insider information and acts on it may be found guilty of illegal insider trading.

⁸⁹ Pulliam, Susan and Micheal Rothfeld. "Motive for Stock Leak Can be Respect, Love". The Wall Street Journal, Issue No. 14 March 2011.

⁹⁰ Stephen M. Bainbridge. Securities Law: Insider Trading (1999)

⁹¹ Ibid

⁹² Ibid

iii. Insider Selling

Insiders must report their stock sales to the Securities and Exchange Commission. Most insider sales are legal: many insiders have a substantial amount of their assets tied up in company stock and may want to sell to take profits or to diversify their holdings. It's excessive insider selling that concerns investors. "Insiders know their companies better than anybody else so if they are selling aggressively, it suggests trouble. Massive insider selling may depress the stock price and encourage other investors to sell" Things look even worse when insiders publicly praise the virtues of their company while privately selling the stock.

"Insider trading is the trading of a public company's stock or other securities (such as bonds or stock options) by individuals with access to non-public information about the company. In various countries, trading based on insider information is illegal." This is due to unfairness, as one investor with some inside information could potentially make far larger profits, or at least, make profits that a typical investor would not make. The authors of one study claim that illegal insider trading raises the cost of capital for securities issuers, thus decreasing overall economic growth. However, some economists have argued that insider trading should be allowed and could, in fact, benefit markets."

⁹³ http://designer-aus-berlin.de/k/Anybody-else-so

⁹⁴ Submitted to Victoria University on 2014-11-25

 ⁹⁵ Review of Financial Studies; 2009, Vol. 22 Issue 5, p. 1845-1887
 96 Ibid

CONCLUSION

As the discussion above we saw "Insider trading is the trading of a corporation's stock or other securities (e.g. bonds or stock options) by individuals with potential access to non-public information about the company. In most countries, trading by corporate insiders such as officers, key employees, directors, and large shareholders may be legal, if this trading is done in a way that does not take advantage of non-public information." However, "the term is frequently used to refer to a practice in which an insider or a related party trades based on material non-public information obtained during the performance of the insider's duties at the corporation, or otherwise in breach of a fiduciary or other relationship of trust and confidence or where the non-public information was misappropriated from the company."98 Trading on insider information is illegal because it puts other investors who are not yet aware of a certain development at a disadvantage. A company is required to disclose material information that can impact the stock price to all investors at once; it cannot favor one group over another. It is unfair when somebody benefits from information that causes others losses or deprives them of reasonable profits. In addition to negative financial ramifications for investors, trading on insider information undermines public trust in the company linked to it.⁹⁹

"Ultimately, insider trading is an inefficient way of achieving market efficiency, because insiders earn all their profits on the lag between when they start selling and when the market figures out what's going on. This gives them every reason to hoard information, with the result that stock prices are out of whack for longer than they otherwise would have been. Markets thrive on transparency, but insider trading thrives on opacity." ¹⁰⁰

⁹⁷ Pulliam, Susan and Micheal Rothfeld. "Motive for Stock Leak Can be Respect, Love". The Wall Street Journal, Issue No. 14 March 2011.

⁹⁸ Klein, Willian A. Stephen M. (2018). Business Associations: Cases and Materials on Agency, Partnership and Corporation. University Casebook Series. Ed: 10th Foundation Press.

⁹⁹ McCool, Grant; Basil Katz (2012) "Rajat Gupta guilty of Insider Trading". Reuters 2012

¹⁰⁰ Ibid

PLASTIC POLLUTION: A LEGAL CHALLENGE FOR PAKISTAN

Azhar Siddique*

Abstract: As the plastic industry has been expanded in Pakistan for last two decades and environmental pollution has also been increased due to the use of plastic goods there. Similarly, the health sector has also been affected. It was necessary to make or improve the legal requirements to control health and environmental pollution with the expansion of the plastics industry. This article is actually an overview of governing laws and policies and their practicability regarding control of plastic pollution and mitigation of its hazardous effects. It has been seen in this article to what extent has Pakistan legislated to control plastic pollution in the light of international environmental laws? This article also gives a brief understanding of plastic pollution by encompassing its causes, effects and way forward for controlling plastic pollution.

Keywords: Plastic, Pollution, Environmental Laws, Pakistan

I. INTRODUCTION

Pakistan is one of the developing countries. Which are facing the most severe environmental threats. In Pakistan, the plastic industry has gained a lot of expansion due to the fact that plastic consumables are very cheap. Along with this expansion, plastic pollution has also increased. Plastic pollution is a major factor for environmental pollution in Pakistan. Bernard Marcus showed concern about pollution as: "I am concerned about the air we breathe and the water we drink. If overfishing continues, if pollution continues, many of these species will disappear off the face of the earth." ¹⁰¹ polyethylene Propane (PEP): polyethylene terephthalate(PET) are the ingredients of the plastic utilities. Which naturally contains an hazards element to the human and animal health. United Nations has started Biodegradable material program for environmental protection. The United Nations Convention on the Law of the Sea

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¹⁰¹Conserve energy future "Causes, Effects and Incredible Solutions to Plastic Pollution You'll Wish You'd Known", Accessed on 13 November, 2022. https://www.conserve-energy-future.com/causes-effects-solutions-of-plastic-pollution.php

(UNCLOS) defines an Exclusive Economic Zone (EEZ) as generally extending 200 nautical miles from shore, within which the coastal state has the right to explore and exploit, and the responsibility to conserve and manage, both living and non-living resources. Some proposals would calibrate certain disciplines depending on whether the subsidized fishing activity takes place within or beyond a member's EEZ. ¹⁰² Along with this international environmental protection development. Pakistan has taken certain legal steps towards this cause. However, in the Pakistan like other developing Asian countries the main reason of plastic pollution is absence of effective trash disposal mechanism contrary to developed nations where reason is not trash disposal but low rates of recycling. ¹⁰³

II. REASONS OF PLASTIC WASTE

For knowing or ascertaining reasons for plastic waste, it is necessary to know, how plastic pollution has been defined? It also help us to bringing plastic pollution fit into realms of definition for rightly legal solution. According to Britannica, plastic pollution can be defined as: "Accumulation in the environment of synthetic plastic products to the point that they create problems for wildlife and their habitats as well as for human populations." ¹⁰⁴ In the light of the said definition, the following reasons of plastic waste are enumerated as follows:

- 1. Plastic is inexpensive, easily accessible, with multifold consumption from straw to big water cans and furniture.
- 2. Population explosion resulting in urbanization and in creating great demand of economical material i.e. plastic. The world's population is growing and so is urbanization.
- 3. Mishandled disposable of plastic as it is of no worth to be saved.
- 4. Long shelf life of approximately 400 years of plastic. The US EPA (Environmental Protection Agency in the United States), is of

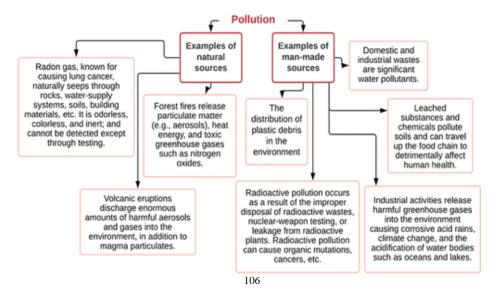
¹⁰² Exclusive Economic Zone, "WTO glossary", accessed on 13 November, 2022. https://www.wto.org/english/thewto e/glossary e/exclusive economic zone ee z e.htm

 $^{^{103}}$ Laura Parker, "The world's plastic pollution crisis explained" National Geographic accessed on November 13, 2022.

https://www.nationalgeographic.com/environment/article/plastic-pollution
104 "Plastic Pollution Definition, Sources, Effects, Solutions, & Facts" Britannica, accessed on November 13, 2022. https://www.britannica.com/science/plastic-pollution

view that approximately every single particle of plastic ever prepared and disposed to landfill or discarded in the environment still survives. 105

III. SOURCES OF PLASTIC POLLUTION



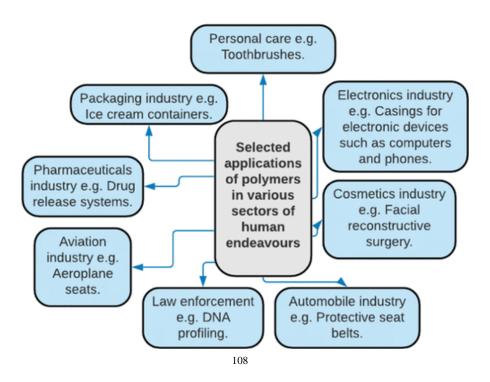
It can be said that almost everything around has some role in plastic pollution. Few examples are Food Wrappers & Containers, Singleuse Plastics, Fishing Nets, Bottle & Container Caps, Plastic Bags, Straws and Stirrers, Beverage Bottles etc. Even agricultural industry, tourism industry, construction sector contributes to plastic pollution. Even natural disasters, such as floods, should also be taken into account as sources of plastic pollution. ¹⁰⁷

¹⁰⁵ "Plastic waste – everything you need to know," Westminster, accessed on 13 November, 2022. https://cleanstreets.westminster.gov.uk/plastic-waste-complete-guide

¹⁰⁶ Austin Ofondu, Chinomso Iroegbu, Suprakas Sinha Ray, Vuyelwa Mbarane, Joao Carlos Bordado, and José Paulo Sardinha, *Plastic Pollution: A Perspective on Matters Arising: Challenges and Opportunities. ACS omega* 6, no. 30 (2021): 19344. Accessed on November 13, 2022.

https://pubs.acs.org/doi/pdf/10.1021/acsomega.1c02760.

Patil Amruta, "Sources of Plastic Pollution - Environment Notes," Prepp, September 19, 2022. Accessed on November 13, 2022. https://prepp.in/news/e-492-sources-of-plastic-pollution-environment-notes.



The main problem of plastic is that large polymers of PEP material are difficult to disintegrate. Thus it can be said that plastic pollution comes from improper disposal. ¹⁰⁹

IV. EFFECTS OF PLASTIC POLLUTION

Plastic pollution affects every living and non-living sphere of the earth. It imperils plants and livestock, affects marine life. Animals can be poisoned by plastic pollution, which creates a negative impact on human food supplies. In net shell contamination caused by plastic pollution damages human health, Chemical contamination, also known as nutrient pollution, is hazardous to one's health, upsets the food chain, causes natural calamities, disturb bio diversity and much more. ¹¹⁰

¹⁰⁸ Ofondu,Iroegbu, Sinha Ray,Mbarane,Bordado, and Sardinha," Plastic Pollution: A Perspective on Matters Arising: Challenges and Opportunities".(2021), 19346.

¹⁰⁹ *Ibid* 3

¹¹⁰ "Plastic Pollution," vedbatu, accessed on November 13, 2022. https://www.vedantu.com/chemistry/plastic-pollution.

V. PAKISTAN PERSPECTIVE ROLE OF LEGISLATURE AND GOVERNMENTAL POLICIES;

1. The Punjab Environmental Protection Act 1997 is "an Act to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development."

According to section 4(1) (c) envisages that the council is responsible for approving the Punjab Environmental Quality Standards. Sec 14 provides prohibition on hazardous substance and section 16 gives environmental protection order whereas section 17 provides penalties for the violators. Section 20 has provided environmental tribunals with specific jurisdiction. Section 31 along with schedule is reproduced for ready reference.

- "[31. Power to make rules.— The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act including rules for implementing the provisions of the international environmental agreements, specified in the Schedule to this Act.
 - 2. Punjab Prohibition on Manufacture, Sale, Use and Import of Polythene Bags (Black or any other Polythene Bag below fifteen-micron thickness) Ordinance, 2002 (IX of 2002) has been enacted

"to prohibit manufacture, sale, use and import of black polythene bags or any other polythene bag below fifteen micron thickness in the Province of Punjab.]"

Section 3 of Act ibid provides

"No person shall manufacture, sell, use, or import black polythene bags or any polythene bag below fifteen-micron thickness or offer any kind of eatable and non-eatable goods in black polythene bag below fifteen-micron thickness."

Whereas section 4 provides for penalty for violating section 3.

3. The KPK Environmental Protection Act,2014 aims "to provide for the protection, conservation, rehabilitation and improvement of the environment, for the prevention and control of pollution, and promotion of sustainable development in the Province of the Khyber Pakhtunkhwa."

Whereas following amendment regarding plastic pollution has been made in the ibid act

- "2. Amendment of section 2 of the Khyber Pakhtunkhwa Act No. XXXVIII of 2014. ---In the Khyber Pakhtunkhwa Environmental Protection Act, 2014 (Khyber Pakhtunkhwa Act No. X XXVIII of 2014), hereinafter referred to as the said Act, in section 2,-
- (a) after clause (fl, the following new clause shall be inserted, namely:(f-i) "banned plastic products" mean the plastic products, which are specified and banned under sub-section (1) of section 7B of this Act;"
- (b) after clause (1), the following new clause shall be inserted, namely:(l-i) "Department" means the Forestry, Environment and Wildlife Department of Government;" and
- (c) after clause (oo), the following new clause shall be inserted, namely: "(oo-i) "plastic" means polymer of polyethylene, polypropylene, polystyrene, polyethylene terephthalate; ".111
 - 4. National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rule, 2001 rules require industries self-reporting, by compliance of environmental monitoring reports to the Pakistan Environmental Protection Agency. Rule 3 is reproduced as under
 - 3. Responsibility for reporting. All industrial units shall be responsible for correct and timely submission of Environmental Monitoring Reports to the Federal Agency.

Whereas rule 9 Environmental Monitoring Report contemplates that there must be an Environmental Monitoring Report comprising of a liquid Effluents Monitoring Report, a Gaseous Emissions Monitoring Report and a Cover sheet which shall be in the form as set out in Forms A, B and C, respectfully, of Schedule VI. 112

Monitoring%20and%20Reporting%20by%20Industries)%20Rules%202001.pdf

¹¹¹ Khyber Pakhtunkhwa Environmental Protection (Amendment) Act, 2022, https://www.pakp.gov.pk/wp-content/uploads/Agenda-Item-9-and-10-The-Khyber-Pakhtunkhwa-Environmental-Protection-Amendment-Bill-2022.-Bill-No.-213.pdf

¹¹² Ministry of Climate Change, National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rule, 2001. https://mocc.gov.pk/SiteImage/Misc/files/National%20Environmental%20Quality%20Standards%20(Self-

- 5. The Policy on Controlling Smog 2017 is policy made by Punjab environmental protection for mitigation measures in extreme weather conditions of dense smog caused by various sources of pollution.¹¹³
- 6. The National Climate Change Policy (NCCP), a milestone in the Climate Change response in Pakistan, approved in 2012. The Policy systematically addresses all impending challenges of Climate Change adaptation and mitigation. It ensure to provide a fundamental and resilient; framework for ensuing Climate Change Action Plans, Programs and Projects. 114

VI. BILLS IN SENATE OF PAKISTAN

In past few years many legislators being aware of the hazardous effects of plastic pollution tried to legislate on the issue. Following are few examples of the bills by Senators in this regard:

- The Graduation Legacy and Environment Protection Bill, 2022 presented by Senator Seemi Ezdi is to introduce the Bill to provide for tree-planting as a mandatory requisite for Secondary School Certificate, Higher Secondary School Certificate and Graduation. ¹¹⁵
- Pakistan Environmental Protection (Amendment) Act 2020 by Senator Faisal Javaid with the intent to stop littering that includes dropping of plastic wastes. The bill defines littering as:

"(xxiv a) Littering: Littering is depositing, dropping, placing or throwing litter, any article or thing including wrappers, plastic bottles, the discarded ends of cigarettes, cigars and like products, and discarded chewing-gum and the discarded remains of other products designed for chewing in any public

¹¹³ Government of The Punjab, Environment Protection Department, Policy On Controlling Smog 2017, 21st October 2017.

https://epd.punjab.gov.pk/system/files/Policy%20on%20Controlling%20Smog%20%28Final%29_0.pdf

¹¹⁴ Government of Pakistan, Ministry of Climate Change, National Climate Change Policy, October 2021,

https://mocc.gov.pk/SiteImage/Policy/NCCP%20Report.pdf

https://senate.gov.pk/uploads/documents/1665922573 549.pdf

place including public transport except in a dustbin provided for the deposit of rubbish." ¹¹⁶

The penal provision was also provided for litterer to ensure implementation of law.

3. Cutting of Trees Prohibition Amendment Act 2022 By Senator Palwasha Khan encompassing that no Banyan tree will be cut down is in pipe line

VII. WAY FORWARD

Control on plastic pollution can be achieved by collective working at individual, social and governmental level. Few viable solutions are enumerated as follows:

- 1. Individual shall emphasize on using reusable bags rather than plastic bags.
- 2. One can replace reusable bottles and get rid of plastic water bottles made from (PET), which takes over 400 years to decompose naturally.
- 3. Select items that can be recycled. Check everything before you put it in the trash, as more and more items are able to be recycled these days.
- 4. A lot of difference can be made by making green choices at home, and moving away from the throwaway culture. Choose products with less plastic packaging.
- 5. Boycott cosmetics and personal hygiene products having microbeads, the little dots toothpaste, and facial scrubs, are actually a type of micro plastic.
- 6. Business personnel shall be educated socially to switch to excellent low-cost replacements, such as bamboo utensils in place of plastic ones.
- 7. Legislatures should get involved in making legislation and devising ways of enforcing it.¹¹⁷

¹¹⁷ *Ibid* 1

¹¹⁶ Senate of Pakistan. Report of the Senate Standing Committee on Climate Change, July 2022.

https://senate.gov.pk/uploads/documents/1598435477 179.pdf

CONCLUSION

Unfettered plastic waste is actually an intimidation to environment and atmospheric surroundings creating tremendous risk to civic life that clamors the deep attention of governmental policies and legislature's enactments on this global menace, the treaties have been signed and a number of statutes in Pakistan consolidated consequently. However still a great deal of policies on a serious note have to be happened with assurance of implementation in letter and spirit in order to subdue this menace for the prevalence of the peace, prosperity and pleasure.

Meanings, Categories, Functions and Structure of Presumptions: a critical analysis of Presumptions in Qanoon e Shahadat Order

Ali Haider*

Dr. Mirza Shahid Rizwan Baig**

Abstract: The goal of the current study was to investigate the definitions, categories, purposes, and structures of presumptions in common law before using this information as a conceptual framework to examine presumptions in Qanoon e Shahadat (hereinafter QSO). After conducting a doctrinal analysis, the current study discovered that presumption in common law is seen as a legal principle that permits courts to reach particular decisions based on a set of established facts. The structure of presumptions in the common law evidence process has also been studied using a variety of categories, methods, and techniques. Similar to this, the study discovered four key roles of presumptions, four distinct techniques to Analyze the structure of presumptions in QSO, and five categories of presumptions. It is envisaged that the current study may aid in Pakistan's proper comprehension and implementation of presumptions in the legal system.

Key Words: Presumptions, Qanoon-e-Shahadat Order, Analysis

I. INTRODUCTION

One of the key duties that courts are expected to perform is the resolution of the conflicts before them. By establishing the facts in the cases, the courts carry out their duty. The courts can derive conclusions regarding the facts at issue thanks to these established facts. Also, the law of evidence study looks at how disputed facts are established in legal proceedings because facts are typically established through the use of evidence. The law of evidence discusses a number of different methods, and presumption is one of them. In common law countries, the term "presumption" refers to a conclusion that, up until the contrary is established, may or may not be inferred from a specific collection of facts. When there is minimal knowledge about particular facts or when judgements must be taken in the face of uncertainty, it is regarded as the second-best way of

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proving facts. 118 (Hohmann, 1999, p.1).

Moreover, the term "presumption" refers to circumstances in which formal proof of certain facts is not necessary. It is a creation of judges that has been crystallized in the rule of law. 119 Presumptions are also considered by some researchers to be a component of substantive law. 120 Presumptions serve three key purposes in legal proceedings: first, they cut down on the amount of proof that isn't necessary; second, they make it simpler to prove certain facts that would otherwise be difficult to establish; and third, they exempt or redistribute the burden of proof.

Despite the crucial roles that presumptions play in the proof process, many scholars believe that the word "presumption" in common law is vague because it has been used by the legal community in a variety of contexts and for a wide range of objectives. Additionally, judges, attorneys, and legislators refer to it by various names; sometimes it is considered a rule of substantive law, others accommodate it in procedural law, others believe that it is a component of pleadings, while others think that it is a statement of natural probability. According to Allen (2014)¹²², the debate over the definition of presumption is pointless because it is the result of academic confusion. ¹²³

Presumption, he continued, can refer to a variety of evidentiary choices, and he urged the researcher to look into the issues raised by their use. 124 It is crucial to note that the presumption topic only pertains to factual concerns, not legal ones.

Due to its significance and inherent ambiguity, presumption has been the subject of debate in a large amount of literature. Its meaning, types, purposes, and structure are all ambiguous. These presumption dimensions have been explored by various analysts, but the literature reveals disagreements between the researchers. The QSO contains numerous clauses that address presumptions. When courts must or may make presumptions is covered by Article

¹¹⁸ Petroski, 2008, p.388

¹¹⁹ McCormick, 1927, p. 309

¹²⁰ Fanner, 1919, p. 388

¹²¹ Gama, 2016, p. 8

¹²² Allen, R. J. (2006). Evidence: Text, Problems, and Cases, 852, trans.

¹²³ Ibid. p: 14

¹²⁴ Allen 1980, p:845, quoted in R. Gama 2016

2 Subsections 7, 8, and 9. The types of papers and presumptions that the courts may or must draw are listed from article 90 to article 101. Regarding the definition, structure, kinds, and roles in the proof process, OSO is silent. Additionally, there is a dearth of study on the meaning, categories, and uses of presumption in QSO. The current research seeks to close this gap while taking all of this into consideration. The current study's research questions are as follows: How is presumption described in the literature? What varieties are there? What different roles does it play? What constitutes an assumption in a QSO, specifically, and in general? To answer the research questions listed above, the authors of the current study used a doctrinal approach. The current study will provide clarification on categories, purposes, definition, and organization presumptions as they are used in QSO. This explanation will make it easier to employ presumptions correctly in Pakistan's proofprocess.

In addition to the introduction, the current research is divided into three main sections. The definition, types, purposes, and structure of presumption in common law nations are covered in the second part. The third part examines how presumption can be defined in terms of QSO and how different presumptions can be grouped according to their types, purposes, and structures. The conclusions of the current research are discussed in the final section.

I. MEANINGS, STRUCTURE, CATEGORIES, AND FUNCTIONS OF PRESUMPTIONS

By creating a conceptual framework to examine how presumptions operate in QSO, the Pakistani law of evidence, and this section aims to respond to the first three research questions of the current study. The main goal of this section is to gain a deeper grasp of presumptions, their nature, types, and functioning in common law nations, particularly in the United States of America and the United Kingdom. There are four subsections within this part. Presumptions are defined in the first part, their structure is covered in the second, categories are covered in the third, and their roles in common law are examined in the final section.

II. WHAT IS PRESUMPTION?

This section is dedicated to defining presumptions in law. To do this, the authoritative literature from the fields of law, artificial intelligence, and law is consulted and studied. To start, it must be

acknowledged that the extensive literature on presumptions in common law nations does not contain a generally acknowledged definition. It may be because this word has been mired in misunderstandings and controversies, making it the most ambiguous term in the law of evidence. The following paragraph, however, discusses a few definitions of presumptions in order to further the concept.

A legal inference or assumption regarding the presence of a fact based on other known or proven facts regarding the existence of another fact or combination of facts is described as a presumption in Black's Law Dictionary. "Presumption is a rule of law that requires courts and judges to draw a particular conclusion from a specific fact or a specific piece of evidence, unless and until the truth of such inference is proven," wrote Stephen (1876)¹²⁷. In his response to Stephen's definition, Thayer (1898)¹²⁸ suggested making a distinction between the presumption and allowed inferences rules. He noted that a rule of presumption not only indicates that such and such is a legal and usable inference from other facts, but it also adds that this significance shall always be ascribed to them in the absence of additional facts, the speaker said. 129

Similar to Wigmore (1940)¹³⁰, presumption is a legal principle that is set by judges and gives an evidentiary fact a particular procedural impact. Presumptions, he continued, alter the weight of proof that parties must meet. ¹³¹ Kaiser (1955) defined presumptions as a legal principle that necessitates coming to certain conclusions when certain facts are established and undisputed. ¹³² Waltz (1986)¹³³ shared the belief that presumptions are those inferences about the presence or absence of any fact that are made after some fundamental facts are established. According to Phipson (1987),

¹²⁵ He, 2018, p:170

¹²⁶ McCormick, 2013, p. 342

¹²⁷ McCormick, 2013, p: 4

¹²⁸ Thayer, J.B. (1898). *A preliminary treatise on evidence at the common law*. London: Sweet & Maxwell.

¹²⁹ Ibid, p:317

¹³⁰ Wigmore, J.H. 1940. A treatise on the Anglo-American system of evidence, 3rd ed. Boston: Little Brown & Co

¹³¹ Wigmore, 1940, p.2491

¹³² Ibid p: 261

¹³³ Waltz, J. (1983). Criminal Evidence, 2nd ed, 275. Chicago: Nelson-Hall Press.

presumption refers to the practice of holding onto a conclusion up until evidence of the opposite is presented. He continued by saying that such inferences could be reached both when certain preliminaries facts are proven and when preliminaries are not established.¹³⁴

Presumption is defined similarly by Smith (1995).¹³⁵ He views presumptions as legal principles that permit courts to make certain deductions when certain facts are established. According to Strong (1992), presumption is a prescribed process where certain facts are thought to require uniform treatment with regard to their impact as proof of other facts.¹³⁶ Presumptions are a collection of guidelines that govern the inferential process of proof, according to Allen (2006). These guidelines are predetermined, clear, and they establish legal ties between established facts and some other facts that are presumed to be established.

Presumptions, he continued, show an inferential relationship between proven and presumed truth. Presumptions have been defined by a number of academics from the fields of artificial intelligence, law, and argumentation theory, as well as by legal scholars. According to Macagno & Walton (2012), the presumption is a tool that shifts the weight of proof back and forth between the parties. Similar to this, Prakken & Sartor (2006)¹³⁸ believe that presumptions are non-monotonic logic's default principles. It is significant to note that the word "presumption" has not been defined in the QSO; however, presumptions are covered in article 2 subarticles 7, 8, and 9. These articles merely outline the conditions under which courts may, will, and must make inferences.

The scope and nature of the thirteen definitions of presumption listed in the previous sentence differ. The following similarities between these meanings may be noted, though. First and foremost, presumptions are legal rules; second, these rules of law occasionally require or occasionally give the courts the discretion to draw particular inferences in particular circumstances; third, the

¹³⁴ Waltz, J. (1983). Criminal Evidence, 2nd ed, 275. Chicago: Nelson-Hall Press, p. 223

¹³⁵ Smith, J. C. (1995). Criminal evidence. Sweet & Maxwell.

¹³⁶ Strong, 1992, p: 449

¹³⁷ Ibid, p: 272

¹³⁸ Prakken, H., & Sartor, G. (2006). Presumptions and burdens of proof.

¹³⁹ Ibid. p: 9

inferences will be drawn when basic facts have been proven with evidence; fourth, these inferences can be rebutted except in a very few cases; and finally, presumptions is a method to adjust the burden of proof. In order to continue the debate, the presumption may be defined as a legal principle that requires courts to derive particular conclusions from specific proved facts, which may occasionally be refuted and occasionally.

III. STRUCTURE OF PRESUMPTIONS

This section looks at the literature on the structure of presumptions after examining the different definitions of presumptions in common law nations. Numerous researchers and analysts have suggested a variety of methods to analyse the structure of presumptions. These ideas can be divided into the four groups below.

The probability between presumption raising facts, also known as basic facts, and presumed facts can be used to analyse the structure of presumption. The term "basic facts" refers to those facts that must exist before certain other facts can be presumed, while the term "presumed facts" refers to those facts that are assumed to exist once the main facts have been established. According to Hohmann, Hohmann, the structure of presumption usually resembles that of an argument from probability. According to him, the drawing of a presumption will be justified if there is a high probability between the presumption raising facts and the assumed facts.

Generally speaking, presumptions have empirical support, he continued, but judicial presumptions can be either empirical or non-empirical. This argument makes the case that one can legitimately assume a fact in law based on another fact if there is empirical or no empirical probability to support the assumption. Second, according to a number of researchers, the structure of presumption can be examined using the premise-conclusion test and by considering whether the presumed truth can be refuted. For instance, Walton (2014) contends that legal presumptions are rebuttable, meaning that conclusions reached may be retracted if new information emerges that indicates the validity of those conclusions. 142

Thirdly, some researchers have suggested considering presumption as an inference and examining its characteristic patterns in order to

¹⁴⁰ Hellman, 1944, p. 22

¹⁴¹ Ibid, 1999, p: 3

¹⁴² Ibid, p: 92

examine the structure of presumption. Presumptions, according to Ullman-Margalit (1983), ¹⁴³ are inferences that consist of three elements: presumption raising facts, presumption formula, and assumed facts. ¹⁴⁴ According to her, the conclusion is a statement that is assumed to be true based on (1) and (2), the presumption raising facts are those facts that provide grounds to presume certain facts (these are known as basic facts in legal terminology), and the presumption rule is a defeasible rule that allows the transit from the presumed fact to the conclusion. ¹⁴⁵ Fourth, numerous analysts have examined the structure of assumption by examining the connection between fundamental.

For instance, Podleny (2019) claimed that the antecedent and the consequent make up the building block of an assumption. The consequent is a statement of assumed facts that are drawn when the conditions outlined in the antecedent occur. The antecedent specifies the conditions for drawing presumptions. The circumstances stated in the antecedent must also be proven with evidence and in accordance with the necessary legal standard of proof. ¹⁴⁶

To analyse the structure of presumptions, QSO provides some guidelines in article 2 sub-articles 7, 8, and 9. For instance, article 3(7) states that a court may either seek proof of the fact or may consider the fact proven until it is refuted when it is permitted to presume a fact in accordance with this order. Additionally, sub-article 8 states that whenever a fact is required to be presumed by this order, the court shall take that fact as proved unless and until it is refuted. In a similar vein, Article 9 states that the court shall take the other fact as proved upon proof of the first fact when the order (QSO) declares one fact to be conclusive proof of another.

IV. CATEGORIES OF PRESUMPTIONS

The different categories of presumptions that can be found in the literature are described in this section. It is significant to note that various researchers have employed various terminologies for

¹⁴³ Ullman-Margalit, E. (1983). On presumption. *The Journal of Philosophy*, 80(3), 143-163

¹⁴⁴ Ibid, p: 147-149

¹⁴⁵ Ibid, p. 147-149

¹⁴⁶ Ullman-Margalit, E. (1983). On presumption. *The Journal of Philosophy*, 80(3), 143-163, p: 127

categorizing presumptions, and the following six classes have been determined based on the fundamental principle of such classification.

The opposing presumptions are the first in this list. Presumptions that contradict one another are those that could be true for both sides. Furthermore, the presumptions in such presumptions are in conflict with one another. The main fact in such hypotheses has no probability value. The courts have a variety of choices for how to handle these presumptions. The judges may select one presumption by favouring it over another or they may erroneously believe that competing presumptions have been debunked. Some researchers have found that judges chose the latter alternative in such circumstances. However, American Federal Rules of Evidence stipulate that in these circumstances, judges will opt for the stricter presumption.

In the second category of presumptions, known as conclusive presumptions, the courts must infer certain conclusions that cannot be refuted by the introduction of new proof. According to some researchers, the statutory definitions of offences are actually conclusive presumptions. ¹⁵⁰ It is crucial to note that some researchers do not consider these legal principles as presumptions. ¹⁵¹

The third type of presumption is the presumption of fact, which refers to inferring the presence or absence of a fact based on another fact that has been proven without using a legal standard. According to some researchers, such presumptions enable for the use of common sense reasoning to draw conclusions, and they are not laws. Although the court has the discretion to draw such a presumption or reject it even when the main facts have been established, it is up to the court to do so. 154

It is crucial to emphasise that this is a contentious presumption group in the literature. According to some experts, the courts should

¹⁴⁷ Geraldson, 1941, p: 130

¹⁴⁸ F. Roberts, 1959, p. 479-480

¹⁴⁹ Gausewitz, 1955, p. 398

¹⁵⁰ Plaxton, 2010, p. 145

¹⁵¹ Edward C, 1965, p. 325

¹⁵² Greenleaf, 1866, p. 48

¹⁵³ Kaiser, 1955, p. 254; Thayer, 1898, p. 539-550

¹⁵⁴ Wodage, 2014, p. 263

stop using presumptions of fact because they are invalid. For instance, Wigmore (1940) noted that there are no presumptions of truth and that all presumptions are those of law. The assumption of law, also known as the mandatory presumption, belongs to the fourth category of presumptions. These presumptions mandate that the judges infer a specific conclusion from a specific fact. These presumptions are artificial constructs of law that may or may not follow a specific legal rule or be rational. ¹⁵⁵

In most cases, presumptions of law are established in consideration of public policy, for convenience, to prevent a predicament, or to compel a litigant with easy access to more information (Morgan, 1933). While bearing in mind the distinction between fundamental fact and presumed fact, scholars usually distinguish presumptions of law from presumptions of fact. Kaiser (1955), for instance, notes that the presumptions of law are established legal principles that call for deducing a particular legal conclusion from a particular fact. On the other hand, presumptions of fact are logical arguments derived from the particular case's conditions that rely on their own inherent strength rather than any specific legal principle. 156

Similar to this, some analysts contend that while presumptions of truth are based on any type of probability or experience, presumptions of law are based on legal doctrine or the rule of law. For instance, Greenleaf (1866) noted that although both the presumption of law and the presumption of fact are based on the same probability, they vary in that the former is based on the law's rules or policies, while the latter is based on experience. ¹⁵⁷ It is significant to note that a logical link between the main facts and the presumed facts is necessary for the presumption of law to be justified. ¹⁵⁸

V. FUNCTIONS OF PRESUMPTIONS

This segment deliberates on the various capabilities which presumptions discharge in the technique of proof. Various researchers have mentioned numerous features of presumptions which may be accommodated in four subject matters: capabilities

¹⁵⁵ Kaiser, 1955, p: 253

¹⁵⁶ Kaiser, 1955, p. 254

¹⁵⁷ Greenleaf, 1866, p. 49

¹⁵⁸ Morgan, 1943, 1324, see also, Comment, 1966, The Constitutionality of Statutory Criminal Presumptions

related to proof, burden of evidence, connections between facts and resolving a impasse.

As some distance because the features of presumptions concerning evidence is concerned, presumptions may discharge capabilities. Firstly, presumptions come into play to tackle the issues of insufficient proof. Macagno, & Walton (2012) argue that when there is proof approximately a particular truth but this evidence is inadequate because of its failure to satisfy the desired general of evidence, presumptions offer an additional premise which comes over the insufficiency. Secondly, presumptions are used to deal with scenario when there may be no proof about a specific fact. It is essential to highlight that presumption is considered as a device in good judgment, philosophy and argumentation concept to fill positive gaps in know-how (Simons, Mandy, 2013).

The same is the case in judicial trials wherein presumptions permit presuming the existence of specific reality about which there is no evidence. Similarly, insofar as the presumptions within the context of burden of proof are worried, it is believed that presumptions allocate and regulate the load of persuasion and production of evidence. Laughlin (1953) continues that drawing presumptions supportive of 1 birthday celebration mean that the load of persuasion is shifted on different celebration. Likewise, presumptions alter the moving of the burden of persuasion. By pointing out that the presumption of legitimacy establishes that a child born for the duration of the validity of the marriage is the kid of the husband, R. Gama (2016) demonstrated this argument.

This presumption makes the father who contests the paternity of a toddler born or conceived all through marriage liable for persuading the court of his innocence. On the identical line of inquiry, presumptions additionally decide the weight of manufacturing of evidence in judicial trials. McCormick (2013) illustrated it with an example. He made observe of the truth that a letter that has been nicely addressed, stamped, and mailed is thought to had been duly introduced to the addressee unless the birthday party towards whom the presumptions function introduces evidence displaying the letter

¹⁵⁹ Morgan, 1943, 1324, see also, Comment, 1966, The Constitutionality of Statutory Criminal Presumptions, p. 277-278

¹⁶⁰ Podleśny, 2019, p. 127, see also, Monir, 2017, p. 13

¹⁶¹ Ibid, p. 199

¹⁶² Ibid, p: 10

became no longer obtained.¹⁶³ This shows that how presumptions shift the load of evidence and this moving hinge on the probability of the linking among primary facts and presumed information.¹⁶⁴ Thirdly, presumptions are used to make clear the hyperlink between records; the number one information and the presumed facts. When the fundamental information are proved according to required fashionable of legal evidence, the existence of presumed statistics is deemed to be true by an regular procedure of reasoning and presumptions makes clean the connection between them.¹⁶⁵ In addition, presumptions authorize courts to deduce that presumed records exist if life of primary records has been proved. The court docket will deal with presumed information as genuine till opponent birthday party produces proof to prove the non-existence of presumed information (Morgan's analysis).

Finally, presumptions are used to cast off a deadlock. Allen (1980) mentioned that presumption on this experience is just a rule of selections based on justice and policy. He illustrated this with the aid of bringing up an example of survivorship. He explained that once there may be a question of survivorship of someone and there's no evidence approximately existence of that person, presumption resolves this issue by way of permitting courts to anticipate life or dying of that person specially occasions. ¹⁶⁶

Structural Analysis of Presumptions in Qanoon e Shahadat

This section aims to examine the presumptions in QSO after creating a conceptual framework in the previous section. It is crucial to emphasize that the fourth research question of the current study will be addressed in this part. There are seven subsections in this part that cover different facets of QSO presumption.

Types of Structure of Presumptions

From structural factor of view, there are four styles of presumptions in Qanoon e Shahdat namely presumptions having fundamental truth-presumed truth structure, presumptions having operative component-simple fact presumed reality shape, presumptions having basic reality-presumed reality-restrictions structure and presumptions having no basic reality-no presumed reality-just guide

¹⁶³ Podleśny, 2019, see also, Monir, 2017, p. 343

¹⁶⁴ Best et al., 1875, p. 571

¹⁶⁵ Gama, 2016, p. 10

¹⁶⁶ Ibid, p. 850

strains shape. These 4 types of shape of presumptions are mentioned within the following lines.

The commonplace shape of presumptions found in QSO is "primary fact-presumed truth" structure. This shape makes it important that the primary statistics should be proved in courts before requiring them to expect the lifestyles of presumed fact. The working mechanism of such presumptions is quite simple; the basic facts have to be installed first after which the courts will draw precise inferences provided within the identical article. For instance, article 92 affords that every report purporting to be a report directed via law to be kept by using any individual and to be kept in a specific form and if it's far shown that it has been stored in the identical manners, the court docket will presume that the file is true.

In this text, primary facts include, report, prison requirement to preserve it in a selected form, and its keeping within the given form are the number one information. Similarly, the realization that it's far actual is a presumed fact. The 2d type of shape of presumptions in QSO is "operative part-simple reality-presumed reality" shape. This kind of shape is observed inside the presumptions underneath the weight of proof. Such presumptions have three step running mechanism; the primary element affords the state of affairs when such presumptions can or can be drawn, the second one part provides primary facts and the 1/3 element gives the particular inferences that can or may be drawn.

For instance, Article 126 of the QSO states that the burden of demonstrating that a person is not the owner of something of which he is proved to be in ownership falls on the individual that makes the affirmation that he isn't the owner. In this text, "when the query is whether someone is proprietor of something" is operative element which affords that below what circumstances the presumption may be drawn. Similarly, the words "of which he is shown to be in ownership" is the element which affords the fundamental reality and the phrases "the load of proving that he isn't the owner on that individual who affirms that he isn't always the owner" is the presumed fact.

Likewise, the 0.33 type of shape of presumption is "basic factpresumed truth-confined inferences" structure. The operating mechanism of such presumption is likewise primarily based on 3 steps; first the primary statistics must be shown, secondly, sure inferences are to be drawn and thirdly positive inferences are forbidden to be drawn from the basic facts. For example, in keeping with article 98 of QSO, the court may additionally count on that a message despatched from a telegraph office to the individual to whom it's miles meant equates with a message brought for transmission at the workplace from which it changed into despatched. However, the court docket shall not presume something regarding the identification of the person who introduced the message for transmission.

In this text, messages sent from a telegraphic office to a particular person are the number one data. Similarly, the conclusion that message added from telegraphic office corresponds with the messages acquired is the presumed truth and the phrases "however the court shall not make any presumption as to the character via whom such message was added" is the prohibition on court now not to draw this inference. The fourth sort of structure of presumptions in QSO is "no fundamental truth-no presumed fact-simply pointers" shape. The operating mechanism of this sort of presumption is quite simple; such presumption does now not provide any fundamental reality, presumed reality or restrained inferences instead it simply offer pointers to attract inferences from diverse facts. Article 129 of the OSO, as an instance, states that the court docket may presume the lifestyles of any reality that it believes is in all likelihood to have took place, contemplating the standard collection of natural occasions, human behavior, and public and personal commercial enterprise, with regards to the information of the specific case. This article only gives guidelines to make inferences as opposed to imparting any primary facts or presumed fact.

Categories of Presumptions

The gift observe identifies five exclusive categories of presumptions in QSO which include presumption of fact, presumption of law, combined presumption, rebuttable presumption, ir-rebuttable presumptions and conclusive presumptions. It is pertinent to highlight that the diverse studied referred to in 2d section makes use of one of a kind criterion to distinguish presumption of law from presumption of fact. According to these research, the criterion to distinguish presumption of regulation and truth involves the utility of logical or felony guidelines. However, the criterion of presumption of law and truth is distinct and quite easy in QSO.

In QSO, presumptions of records are denominated by using the phrases "may presume" (article 2 (7). There are six articles in QSO

which bestow discretion upon judges to attract or not to draw specific inferences from proved number one statistics. For example, Article ninety seven states that the Court might also count on that any e-book it consults for information on subjects of public or preferred hobby and any published map or chart, the statements of which might be relevant statistics and which can be produced for its inspection, have been created and published via the character, and at the time and location, through whom or at which it purports to had been created or published. On the equal line of inquiry, presumption of regulation, in QSO, are those presumptions which QSO requires the judges to draw (article 2 (eight)).

The legal provisions containing presumptions of law use the word "court shall presume". There are seven presumptions in QSO which require the judges to draw unique conclusion when number one information are mounted. For instance, Article ninety two specifies that if a record is kept basically in prison shape and is constructed from proper custody, the Court will conclude that it's far a actual report. The third category of presumptions in QSO is rebuttable and irrebutable presumptions. It is crucial to point out that both types are dealt with as presumption of regulation under QSO. However, there's essential distinction among these presumptions. In case of rebuttable presumption, the opponent party can adduce the proof but in case of ir-rebutable presumption the right to adduce evidence to dispel the realization is not allowed. In these articles, the words conclusive evidence has been used. According to Article 128 for example, a infant born all through the continuation of a valid marriage shall represent conclusive evidence of legitimacy.

This article does no longer permit adducing proof to disclaim this truth. On the opposite hand, rest of the prison presumption is rebuttable (article 2(eight). Similarly, the fourth category of presumptions in QSO is conclusive proof. There are conclusive presumptions contained in article fifty five and 128 of QSO. Conclusive presumptions have a unique effect that these presumptions do not permit to rebut the inference as discussed inside the above paragraph. Likewise, the fifth category of presumptions in QSO is mixed presumptions. Mixed presumptions are the ones presumptions which can be each presumption of regulation and fact. There is most effective one instance of combined presumption and that is determined in article 98. In this article states that the preliminary presumption is presumption of truth because the words

"courts might also presume" had been used; whereas the limit to attract targeted inference is presumption of law due to the fact the phrases "courts shall now not presume" have been used.

Subject Matter of Presumptions

After thorough exam of all of the provisions of QSO, the existing study has recognized fifteen concern matters approximately which courts may additionally or shall draw presumptions. These subject matters include national or foreign laws, country wide or overseas judicial decisions, judicial report, certified copies, reference books, telegraphic messages, documents, strength of lawyer, certificate, expectancy of a person's existence, dating between precise people, possession of assets, top faith in transactions among precise human beings, legitimacy of toddler, and herbal course of enterprise of the whole lot. The first theme or issue be counted of presumption is the legal guidelines of Pakistan and overseas United States.

For example, Article ninety four states that the court shall infer the authenticity of any record containing laws of Pakistan or any other foreign U. S. That is posted with the consent of that country. Similarly, the second difficulty matter of presumption is the judicial decisions of Pakistani and overseas courts. For instance, under article fifty five, the courts ought to draw a presumption regarding the precise juridical selections of specific Pakistani courts. Similarly, article 94 deals with the presumptions approximately foreign courts. Likewise, the 1/3 concern matter of presumptions is licensed copies. There are diverse articles in QSO which either authorizes or required courts to draw presumptions regarding certified copies and those licensed copies relate to vintage files (article 101), about any Pakistani report (article ninety), judicial report of overseas courts (article ninety six), reference e book for Pakistani courts (ninety seven), telegraphic messages (ninety eight), files which aren't produced (ninety nine), thirty years vintage files (one hundred), strength of attorneys (ninety five) and certificate (ninety). Similarly, the courts are certain to draw presumptions about a man's life (123,124), dating between unique humans (125), ownership of belongings in a man's ownership (126), appropriate faith in transaction among specific human beings (127), legitimacy of a baby (128), and about any two data which might be related with each other on herbal chance (129).

Nature of Presumed Facts

Similarly, a more in-depth examination of various provisions of QSO managing presumptions famous that there are twenty distinct difficulty topics of the presumed facts. The analysis indicates that the topics of the presumed facts are genuineness of documents or licensed copies (ninety one, ninety two, 94, ninety six), due execution of files (95, 99), due authentication of files (95), authenticity of files (96), authorship of books, date, time and place of booklet (ninety seven), transmission of telegraphic message (ninety eight), due attestation, signature and stamping (ninety nine), legit individual of attesting officer (90), and reality of occasions in which a selected report was prepared (91). In addition, the exam suggests that the problem depend of presumed facts includes compliance with the given criminal technique (ninety one), and accuracy of certain files (ninety three). Similarly, the courts might also or can presume the continuity of guy's life (123), his dying (124), continuation of dating among unique men and women (one hundred twenty five), ownership of property (126), absence of good religion in transactions among specific humans (127), legitimacy of a baby (129) and conferring or eliminating criminal individual under unique jurisdiction (55).

Explicitly and Implicitly Presumed Fact

The structural exam of all of the provisions dealing with presumptions in QSO also indicates that a few provisions expressly offers the presumed reality and a few provisions do now not offer the records which the courts may or have to presumed. In case of later provisions, one has to pick out the presumed reality hidden inside the provisions. For instance, article ninety specifies that the court shall expect the authenticity of these files which can be noted within the same article. In this article, the character of presumed reality is expressly supplied in the article. However, in step with Article 126, the individual that asserts that someone is not the proprietor of some thing over which they may be verified to be in ownership is needed to offer evidence to guide their declare. The presumption that the court will make isn't always said in this newsletter; as a substitute, it is implied that the court will assume that the man or woman is the property's owner.

Logic-Legal Rule behind Presumptions

Similarly, the structural evaluation of the presumptions in QSO shows that each one the presumptions, besides one, contain the software of a selected felony rule to draw presumptions. The best exception to this precept is article 129 which requires the judges to apply their personal revel in and probability to draw presumption and this liberty isn't given in other provisions of QSO dealing with presumptions.

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Functions of Presumptions

The evaluation of various articles of QSO suggests that presumptions discharge four features in the procedure of proof and these are mentioned within the lines beneath.

Firstly, presumptions are useful in organising matters that are almost not possible to show in courts due to elapse of considerable time or some other cause acceding to the specified trendy. When considerable time has been elapsed and it's miles important to establish positive records came about at some stage in that time, the courts are in a tough function as their ordinary proof is tough to accumulate. The presumptions come into motion in such situations and bring the courts out of this extraordinary situation. An illustration of this function is article one hundred. The article states that the courtroom may additionally presume attestation, executions, signature and handwriting in such files as real, genuine and duly execution. Monir factors out that it's miles hard and occasionally not possible to prove the handwriting, execution, attestation or signature in antique documents after the elapse of a few years and this article brings the courts out of this case. ¹⁶⁷

Similarly, sometimes a few records like mental state of mind are hard to prove and presumptions assist the courts in such conditions. For example, Article 122 specifies that the onus of proof is with the celebration who has special expertise of the fact being in dispute. Secondly, presumptions discharge the characteristic of maintaining intact the popularity quo. For example, article 126 states that once the courtroom has to remedy the query that whether any man or woman is the owner of a particular assets or no longer, the court will count on that someone is the owner in whose ownership the property became at the time when the matter become brought earlier than the court. Thirdly, the evaluation of QSO suggests that the presumptions

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¹⁶⁷ Gama, 2016, p. 335

are used in QSO to shift the burden of evidence within the method of evidence. For instance, Article 127 stipulates that after a party to a transaction questions the other's true religion while one of became in a role of active self-assurance towards other. The birthday party who is in an lively function of confidence has the obligation of demonstrating the coolest religion of the transaction. The presumption in this text shifts the weight of proof on the birthday party who changed into in a position of active confidence. Lastly, a few presumptions in QSO paintings to offer finality to positive topics and these presumptions in QSO are called conclusive proof. For instance, when the courts draw the presumption of legitimacy underneath article 128, the opponent party will now not allowed adducing any proof to rebut this presumption. So, this presumption offers finality to the legitimacy of child.

CONCLUSION

The above dialogue leads to the following six conclusions concerning presumptions in not unusual regulation nations. Firstly, presumption in commonplace regulation countries is a rule of regulation which authorizes courts to draw certain inference when a few specific information were installed. Secondly, now and again courts are required and sometimes courts have the discretion to draw or no longer to attract such inferences. Thirdly, the celebration in opposition to whom presumptions have been drawn normally has the right to adduce proof to rebut the impact of presumptions. Fourthly, the presumptions in not unusual law nations are categorized into presumption of regulation and truth, rebuttable and irrebutable presumptions, conclusive and conflicting presumptions. Fifthly, presumptions shift and allocate burden of production of proof, and burden of persuasion. Similarly, presumption brings out the courtroom out of hard situation like when there may be no or insufficient proof or whilst positive statistics are hard to prove. Sixthly, there are 4 techniques to examine the shape of presumptions in statutes. On the same line of inquiry, the following principal conclusions can be drawn concerning presumptions in QSO. Firstly, QSO acknowledges 5 classes of presumption namely presumption of reality, presumption of law, conclusive presumptions, rebuttable and irrebutable presumptions. Secondly, presumptions in QSO discharge 4 functions particularly, allocation of burden of proof and persuasion, decision of deadlock and evidence of such records which can be not possible to set up. Thirdly, the shape of presumptions in QSO can be analyzed through 4 methods namely by using searching into fundamental reality-presumed truth, element-simple fact-presumed fact, basic realitypresumed fact restrictions clause and no fundamental fact-no presumed reality-simply pointers.

THE CONCEPT AND ADMISSIBILITY OF LEADING QUESTION IN THE ADMINISTRATION OF JUSTICE IN PAKISTAN

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Abstract: Pakistan being a common law depending on parties to the case to extract evidence which is the utmost requirement for the fair and to meet the end of justice from the court of law for that purpose parties put their efforts in the form of Questions from the witness to find out the truth of case, one of the mode is leading question which conferring the answer to the person putting before such type of questions and expected or wish to get a desirable answer from witness in order to reach at the ambit of truth, leading questions are also called binding, hinting, suggestive and pointing questions which required answer in No or Yes without going in length to answer. Leading questions usually puts by the cross-examiner under Article 138 of QSO to safe time of court and brings him to materials points as soon as possible, in a leading questions witness are struck to play both side of the pitch. Leading and pointing questions are not allowed in examining-in-chief because witnesses have to answer according to his own sense of mind what he want to tell and what he actually saw or heard or conceived by any other sense of organ court want to hear from his mouth itself without any kinds of filtering it by the counsel. The questions that put in cross-examination by the adverse party to witness are often difficult and confusing to answer in the point of time they Questions might include negatives, double negatives, leading questions, closed questions with complicated syntax and vocabulary.

Key Words: Admissibility, Leading Question, Administration of Justice, Pakistan

I. INTRODUCTION

In an adversarial legal system there is no value of witness evidence unless he may go through different stages of examination (cross-examination, direct-examination and redirect-examination)

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cross-examination is always conduct by the adverse party and examination in chief and re-examination is done by the calling party under Article 132 of QSO 1984. In cross-examination the witnesses always have to confront such a complex and confusing types of questions of cross-examiners among them leading questions are one of them. Leading questions are also called close-ended questions that ask the witness to pick out from the set of pre- noticed and predefine response are inherently leading, it restrict the witness to play in one direction in the form of 'NO' or 'YES' without explaining the answer in length.

"Leading question," as defined by Article under Article 136 of QSO 1984, is one that leads the witness to the response that is expected and wishes from him. Furthermore, it is not leading if it only raises a subject without providing an answer or a particular part.

Unless the court forbids the question or orders the witness not to respond a party may ask a witness a leading-question pointing during cross-examination and in direct examination, If the court is determined that the facts would be better ascertained if leading questions were not used, the question must be disallowed or the witness must be told not to answer it. 168

In court, witnesses virtually always support the party who brought them, and this emotion compels them to withhold some information and mislead others that they believe may be harmful to the side they are testifying for. When we combine the partisanship of the witness with the lawyer leading the examination, it is simple to produce evidence that deviates very widely from the exact truth. This partisanship in the witness box is most fatal to fair evidence. Overzealous practitioners frequently accomplish this by asking leading questions or combining two basic questions into one, tricking the witness into answering "yes" to both of them, and therefore producing an altogether false result. ¹⁶⁹

The court of evidence gives permission to put leading and suggestive questions to a calling Party from hostile witness identified as adverse party by the court and may use leading-questions because the witness are unfavourable to the calling party. The court would not extend that permission to other parties in whose

¹⁶⁸ EVIDENCE ACT 1995 - SECT 42

¹⁶⁹ The art of Cross-Examination by Francis well man of the new york Bar

favour witness (to whom the witness is not hostile and identical to that party) diverted his state of mind completely.

A leading question is one that gives the witness a hint about the response which the examining party wants to hear. The general view is that that the leading question's has suggestive abilities and undesirable for witness, but the same tradition allows exceptions for witnesses who are hostile, uncooperative, or biased, witnesses who have communication issues, witnesses who are children, witnesses whose memories have been exhausted, and witnesses whose testimony is unchallenged in the earliest stages.¹⁷⁰

II. DETERMINATION OF LEADING QUESTIONS

There is no set standard for determining whether a question is improper based solely on its form, the Court must consider beyond the form both the question's substance and effect of inquiry. Leading is not an absolute concept, but rather a relative one. There is no such thing as leading in the reality because the same type of question that depending on the specifics of the situation, might be the most egregious form of leading might be the most appropriate method of interrogation in another.

Furthermore, the court of evidence judges have a lot of latitude in deciding what constitutes a leading question in his court of law, and the higher court judges are always reluctant to set aside a decision on the grounds that improper leading and hinting questions were permitted during taking evidence in subordinate court by way of direct-examination.¹⁷¹

It is a general assumption that a good lawyer is not the one who asks many questions from the man who is standing in the witness box, but the good lawyers are those who knew which question is to be asked and which are not need to put. Just because of that sometime the question left the adverse effect on the party who put such types of questions so a vigilant always care before putting any leading questions

III. PURPOSE OF ASKING LEADING QUESTIONS

The rationale behind to ask leading questions to Take back the witness towards the proceeding and as soon as possible to the bulk of material point upon which he is to speak, counsels may persuade

¹⁷⁰ Evidence sections 774–778 in Wigmore Ed: 3. 1940

¹⁷¹ United States v Ranney 719 F.2d 1183, 1190 (1st Cir. 1983)

him on that line length and may lead him the recognized facts of the case which have been already established. Presumption would be that evidence has been accepted by the opponent against whom it was given; now it's his turn to question to disprove such presumptions. The concept of the basic importance for putting such type of suggestive and leading-question is to lead him to a disputed point to save the time and to avoid him to repeat what has been already accepted by him or to skip it over the undisputed facts.

Court has a duty of continuous monitoring as a referee between the parties and decide the admissibility and non-admissibility and in order overcome the following.

- 1) To put the Queries and presentation of evidence effective and essential for determining and to find out the truth.
- 2) In order to avoid needless time consumption of court of law.
- 3) To provide Protection to witnesses from intimidation or excessive stress and confusion, the court would supervise over exercise of reasonable control over the manner in which witnesses are questioned and the order in which evidence is presented.¹⁷⁴

Leading questions are permitted during cross-examination from the dissenting witness because the goal of the cross-examination is to shift the witness's already stated facts during his direct-examination, and to test the correctness and credibility, and in general the worth and role of the evidence proceeding further. Sometimes, it becomes necessary for a party to use leading questions to get facts in assist of his case, even though the facts so Obtained may be completely unconnected with the facts testified before court¹⁷⁵

IV. WHY LEADING QUESTIONS NOT PERMISSIBLE IN EXAMINATION-IN-CHIEF

Ordinary the rules prohibit use of leading questions in Examination-in-chief and Re-examination because witness is regarded as biased towards the party questioning him and could therefore be prompted. If Leading questions are allowed it would empower a party to construct their Concocted and false story and develop it in court using their own words and the testimony of their

^{172 2009} YLR 289

¹⁷³ [ILR (1977) Bom. 1505]

¹⁷⁴ Haw. rev. stat. § 626-1, Rule 611 (2010).

¹⁷⁵ Lalta Prasad v. Inspector General of Police, 1954 A 438.

witnesses. It would generally make it more difficult to tell a narrative is concocted and made up. If a witness is given the freedom to tell his story in his own words, he is sure to leave some gaps in the account of it would be easy for Cross examiner to reach at the real story of the case otherwise not possible if the witness is dictated in examination in chief

The state Prosecutor cannot put leading questions on the material Part of evidence from his Witness and Witness must be allowed to account to what he himself had seen and perceived by his senses. ¹⁷⁶Leading suggestive pointing and hinting questions cannot be asked in direct-examination because of the following main reasons Reason: I) Witness always potentially biased in favour of the calling party and shows hostility against the opponent party.

Reason: ii) Asking leading questions may only bring out only the evidence which is favourable to the calling party in that situation asked leading questions is synonymous to extract only so much knowledge and information of the witness which would favouring to his side only or even put false gloss upon the whole?¹⁷⁷

Reason iii) witness may not express his full meaning and knowledge in their own state of mind

The ordinary rule that leading questions must not on material points be ask by a party to his own witness because he often anxious to assist the party from whose side he is representing as a witness so this rule is to protect against the bias in favour of the side to which his Evidence is paramount, where no such bias is apprehended rule lose must of it utility. ¹⁷⁸

V. EXCEPTION TO LEADING QUESTIONS IN DIRECT-EXAMINATION AND REDIRECT-EXAMINATION

Generally Leading questions are prohibited during the direct or redirect examination (examination by the calling party) of witness Leading questions should only be used if they are required to develop the witness' statement during direct examination and in the following instances as well:

(1) When the court declare the witness hostile on the application of the calling party when witness not willing to speak truth or

¹⁷⁶ AIR 1993 S.C. 1892

¹⁷⁷ Best, 12" Edn., S 641, p: 561

¹⁷⁸ AIR 1931 Cal 401

associated with an opposing party under Article 150 Qanun-e-shahadat Order 1984

- 2) When the calling witness gives evidence in order to surprise or deceive the examiner.
- 3) When it is important to develop a witness testimony before the court
- 4) When it is required to establish the undisputed and preliminary matters of suit¹⁷⁹

In certain conditions under article 137 of QSO leading questions may not if prohibited by the opposite party but if court allows while using discretionary power than the calling parties can ask in direct examination and redirect examination which are as follows Introductory matter

A witness may be asked about introductory matters which preliminary to the main issue of controversy between the parties and the rule of close-ended questions relax in direct and redirect examination which doesn't affect any party right e.g. witness name, parentage, residence and age etc.

Undisputed matters

The rule of leading questions also relax in undisputed Matters which are not in the point of dispute like the relation between the parties, date of institution of suit, disputed property, reason of dispute, these types of questions doesn't injured the right of any side, instead it safe the time of court and parties as well and to put the witnesses before the disputed facts as soon as possible.

Matters sufficiently proved

Counsel may guide the witness to that length and may recapitulate the admitted facts of the case that have already been established in order to resume the proceedings and move the witness as quickly as possible on to the important matters on which he is to testify before the court.

Witness to contradict former witnesses

If witnesses summoned to contravene another over language used by the previous, the first witness will be questioned about whether

¹⁷⁹ Connecticut. Superior Court. 1999. *Connecticut Code of Evidence*. Leading Ouestions

the language in question was actually used rather than just what was said, as this would prevent a contradiction from being established ¹⁸⁰ The leading remark, however, is inappropriate in cases where the conversion is not only demonstrated for the sake of contradiction. ¹⁸¹

When a witness is asked to rebut another regarding the wording of a lost diary, letter but is unable to recall every line of it off-hand, the specific section may be given to him, at least after his natural memory has been exhausted

Opportunity to explain the contradiction must be given to the witness before branding him as a prejudice when confronting him 182

To refreshing memory of witness

According to article 155 of QSO 1984 witness may refresh his memory. The witness's memory may be helped by a question that suggests the answer if he is unable to recall the desired point without any outside assistance, i.e., if he understands the topic but is unable to recall what he knows. As a result, it was permissible to offer names of firm members when a witness said he couldn't remember them adequately to recall them on his own but thought he may recognise them if it was helped by his councel.it is usually happens in case of investigating officer and medical expert in criminal cases like medico legal report it is difficult for a Dr to remember all the report because they face many case in daily base or sometime the assistant or junior of that Dr have to confront the court due to unavailability of the Doctor who actually prepared the medical legal report or officers other than investigating officer so it is difficult for them to remember all the reports well conversant mode so they need some suggestive answers to recollect his memory.

When the nature of the case prevents the witness from focusing on the subject of issue without a specific description of that subject, such as when he is summoned to rebut other witness regarding the contents and subject of a lost dairy and is unable to recall every detail off-hand, the specific lines may be referred to him at least after

¹⁸⁰ Edmonds v. Walter, 3 Stark 7; Courteen v. Touse, 10 RR 627

¹⁸¹ Hallet v. Cousens, 2 M&R 238

¹⁸² Sec 145, E.A. (DB) PLD 1964 Pesh. 194

his unassisted recollection has been depleted so that he may recall his memory regarding the said subject. ¹⁸³

When the witness declare hostile

The court may, under Article 150 of QSO has a discretionary power to allow the calling party to ask from that witness any question that might be asked of him during cross-examination by the opposing party, and since a party is permitted to put leading questions to their own witness As it put during cross-examination and same rules will be followed. Leading questions are permitted to be asked from witness who, by his act of conduct in the witness cell, obviously shown to be biased in favour of the opponent party than the calling party may ask for court to declare a hostile witness so that the party may impeached the credit of a witness by putting a leading questions. A party cannot demand as a right to treated the witness as hostile it's up to the court so as to entitle the party calling him to put leading questions to him 184

The evidence of a hostile witness cannot be wholly disregarded; it must be taken into account just as the testimony of other witness to the case, but with due care because of the simple facts that he had used in different tone of voice. Which voice he tells the truth in will be determined by the Court. In these situations, the evidence must be examined for consistency with the other evidence as well as for independent source confirmation. ¹⁸⁵ It is never acceptable to label a witness as hostile and permit his cross-examination simply because his answers are in stark contrast to the testimony of other witnesses. Yet, the court has complete authority to permit a witness's cross-examination so that they may put leading questions. ¹⁸⁶

The judge has the exclusive power to determine whether a witness is hostile based on his demeanour or the manner in which he provides his testimony. The appellate court is not authorised to examine the judge's determination. If a Judge allows a leading question, pleader should insist on having question and order disallowing it recorded 187

¹⁸³ Courteen v. Touse, (1807) 10 RR 627; Taylor, § 1405

¹⁸⁴ OSO article 150 and 151

¹⁸⁵ PLD 1962 Lahr. 1053, PLD 1959 Dac 613 Ref.

¹⁸⁶ 154, E.A. 1984 SCMR 560 Muhammad Boota

¹⁸⁷ [AIR 1918 Low Bur 22] (AIR 1916 Cal 188)

Where the leading questions make evident that the fact that the favouring counsel led calling witnesses to what he calculated that they should say about the main part of the prosecution case so that it will go against the accused, that would be not permitted and unfair with the accused and offends his right to fair trial enshrined under It is not a curable irregularity, ¹⁸⁸

The last Para of 611(c) evidence rules, doesn't allow the use of pointing questions from the party to whom the witness is favouring and friendly. But sometime the court uses its discretion to permit close-ended questions in a certain type of case. E.g. pointing and suggesting questions, may be fitting and reasonable when the evidence of a witness who was summoned and examined as a hostile witness by

One party considerable harms the interest of another party with whom the witness is neither friendly nor unfriendly with any side we may call him neutral witnesses who is not favouring one side in such types of certain cases leading-questions are reasonable for both parties¹⁸⁹

The evidence act 1995 also provide a ways for asking leading questions in the direct and redirect examinations which are as follows

- a. The testimony provided by the witness during the chief interrogation goes adverse to the party who produced the witness before court.
- b. If any witness interest overlaps to the interest cross-examiner.
- c. If a witness has a favourable attitude towards the party who leads the cross-examination either in general or with regard to a specific point.
- d. If a witness replies may be affected by their age or any physical, mental, or intellectual disabilities they may have. 190

Leading questions and children witness

Leading questions or close ended questions are that which suggests the answer itself in yes or no but in some situation it is unreasonable to disallowed the leading questions to the calling party when the

¹⁸⁸ [AIR 1993 SC 1892]

¹⁸⁹ Federal rule of evidence 611(c)

¹⁹⁰ Evidence act 1995 sec 42 sub-sec (a, b, c, d)

victim and witnesses are also child the rationale behind allowing leading questions is that the child are always in fear and in upset mood. Most of the countries who are following adversarial system allows the leading questions to calling party because of child witness in a very upset mood and was unaware that it was necessary to prove that the defendant had permeated her. When a witness is incapable of understanding, such as a child, or someone who may be illiterate, the rule against leading questions may occasionally be relaxed.

Allowing the state prosecution to use leading-questions during the direct-examination of a child witnesses or victim itself of sexual assault was not have misuse its power of discretion in this case because the victim was extremely hesitant to testify about her victimisation and the questioning had to be stopped several times so that she could assemble herself and be willing to discuss the events happening¹⁹¹

If the court decides that allowing leading and pointing questions at the court of evidence by the prosecution or defense from any victim or witness in a case whose age is below than 10 years age will advance the interests of justice, it may do so in any criminal case prosecution for a sexual offence or a bodily offence. In any criminal case involving the sexual exploitation of a kids under the age of 16, the claimed victim is a youngster who is under the age of 16 years, A leading question's scope and extent may be limited by the court at the request of either the state represent by prosecution or the defence or on the court's own initiative 192

The court of evidence has discretionary power to allow hintingquestions for young victim and witnesses or when the sensitivity nature of the subject matter forbids elaborate responses to general inquiries. The ruling did provide a caution that testimony obtained through the use of leading questions might not hold the same weight as voluntary evidence. The decision to allow leading-questions was up to the trial court and was not subject to reconsideration on a writ of certiorari by an higher forum. Moreover, that there was no error committed by the trial judge when he permitted the prosecution to put leading-questions on 13-years old victims and witness. ¹⁹³ The initial court of evidence did not misuse its discretionary power to

¹⁹¹ United States v. Tome, C.A.10 (New Mexico), 3 F.3d 342,

¹⁹² ALA. CODE § 15-25-1 (2010)

¹⁹³ Anderson v. State, 101. 202 (Fla. 1924),

allow the State to use leading-questions in its direct-examination of the victim, who was five at the time of the event happening and six at the time of the when commence proceeding. ¹⁹⁴In a criminal case, to permit the use of leading-questions; this is a wide discretion when the witnesses are minor ¹⁹⁵. the rule relax for the young ones who have suffered usually feel hesitation and doesn't know the importance of their speaking by his own mouth which is consider as best peace of evidence to reached at the culprits, by that reason court allows prosecution in criminal cases to put leading and hinting questions so that the child collect the memory and feel confident to tells what had happened with them or with his companion before the trail court of law.

Kinds of leading questions

There are following kinds of leading questions which are asking in court among them directive and non- directive leading questions are important one. A directive leading question is one that compels respondents to offer a particular response, typically in the yes. Directive leading questions are presented in an exceptionally aggressive manner, in contrast to other forms of leading questions. Non-directive statements are open-ended and do not require a "yes" or "no" response; instead, they ask the witness to defend a position, articulate their opinions, or make a decision. In cross-examination, they distinguish between direct and indirect leading questions. The lady who come to the the door and opened had hair covered, didn't she? This is an example of a directive-leading Question form, and 2nd "Does the woman who opened the door have hair covered?" is the example of non-directive leading form.

The legal system implicitly recognises that in unusual and challenging circumstances, witnesses can provide reliable testimony. But, a single word alteration in a proposition might have an impact on the way people react. Although the question's content is the same, asking, "Are you lying?" (Non-directive) may have a very different impact on a witness who is used to and apprehensive in a courtroom. As opposed to "You're lying, aren't you?" this is directive. ¹⁹⁶

¹⁹⁴ Weisenstein v. State (1985), 367 N.W.2d

¹⁹⁵ State v. Brown 285 N.W.2d 843 (1979);

¹⁹⁶ R v McDonnell (1919 Cr App R 322

Consider at just how distinct these questions are: A non-leading question is "Did anything happen?" A non-directive leading question is "Did he touch you?" A directive-leading question is "He didn't touch you, did he?" The latter is the most challenging and risky for witness statements' veracity.

Leading-Questions may not be asked in Cross-Examination in some exceptional cases

The rule that leading, hinting and pointing questions only conducted in Cross-Examination is not, at least in some other systems of jurisprudence, without its exceptions.

However there are two types of leading and suggestive questions which cannot be put at all from any side in either direct examination or redirect-examination and in Cross-examination as well.

Firstly, it is accepted principle by all means that leading-questions may in general be put in examination but this does not mean that the counsel of both side may go to the depth of putting the exact words into the mouth of such witness so that the same fact and words would echo back again. 197198

Secondly, a question which presumes fact and statement as proved but which had not been proved against witness yet. Or which considers or deemed that particular kind of statement and reply have been given, which infact have not been given by witness yet is not reasonable either in direct examination and redirect-examination or in cross-examination. ¹⁹⁹Or may not be assume that particular kind answers have been given which have no connection to the fact. ²⁰⁰

This is no reason to say that the party who calls the witness has taken an evil upon once own head, sometime a witness who make his mind to defraud with party or fixed already with any party might concealing his biasness in favour of any party, in order to compel or induce other party to summons him as witness or to show him as attesting-witness or any other person whom it was essential to call him to establish any part of fact in nutshell these two may be a

¹⁹⁷ R. v. Hardy, (1794) 24 St Tr 659 (755). Taylor was of the opinion that the true objection to such a course as to the value of answers so obtained in the case of a witness obviously too friendly to the cross-examiner's side. See Taylor, footnote (e) to § 1431, 913 of the 12th Edition.

¹⁹⁸ Malaysian evidence act sec 143,a

¹⁹⁹ Taylor, § 1431. See notes under the heading "Kinds of leading questions, questions assuming a controverted fact." 4. Wigmore, § 773, Taylor, § 1431. ²⁰⁰ Malaysian evidence act 1950

neutral witnesses for both parties, to allow a counsel to ask leading questions from such a witness to get the favourable reply suggested to him before through the medium of leading-questions would be sheer unjust and against the natural justice ²⁰¹

Where an opponent's witness shows by his conduct while answering the above mentioned two questions to be biased in favour the adverse party while cross-examination the danger of declaring hostile witness and leading-questions arises so such type biased questions may therefore, be forbidden to avoid consuming lengthy time of court without any fruitful output from such kinds of Questions.

Restrictions on the Right of Cross-Examination

As a general rule only the adverse counsel Have the Right to cross-examination under the Evidence Act. So, the defendant may only have to cross-examine and a Co-defendant right to Cross arises only where the interest and claims of Co-defendant is at conflict with the defendant claims. A defendant who does not have a conflict of interests with the plaintiff cannot question the plaintiff in a cross-examination. The only party who has the right to cross-examination is the opposing party. The law permitting the right of cross-examination to the extent of co-defendant's interest is permissible. Co-respondents may exercise their right to cross-examination if their interests are directly in conflict with one other. When the interests of Defendants No. 2 and 3 are somewhat related to those of Defendant No. 1, the court will allow them to cross-examine Defendant No. 1 and will then ask the Plaintiff to do the same.

²⁰¹ Taylor, § 1431. For further notes on this point. See notes to section 154.

²⁰² Sarkar at pp 3381-3382: (By P S Ranjan & Co. Advocates & Solicitors Malaysia)

CONCLUSION

Leading questions is a part of questions which are usually put in the order of examination by both sides with the circumstances of the case. The rationale to allow leading and pointing questions is to put to an adverse witness Or hostile witness is to test the accuracy and correctness of evidence and to check Reliability and general value of the evidence given and to analyse the facts already stated by the witness it is sometime becomes essential for a party to put That types of hinting questions in order to extract facts in support of his case, even though the facts obtained may be entirely unconnected with facts testified to in an examination-in-chief. It is upto to the Judge conducting the inquiry to disallow a particular question when that question is of mixed nature, irrelevant or confusing and Favouring one side.

But in general Rule restricting or allowing the petitioner or prosecution side to put any leading and suggestive question at all stands on a complete different Ground and cannot be justified, until and unless the circumstance allows and it is up to the court discretion like in case of hostile witness and in contradicting or refreshing the memory of the witness. Leading questions are always close-ended and hinting questions that ask the witness to choose from the set of pre- noticed and pre-define response. it restrict the witness to play in one direction in the form of 'NO' or 'YES' without explaining the answer in length. Leading, pointing, hinting and suggestive question are alternative of leading-questions and these are best mode to extract the truth from the adverse witness by opposite party or when any witness at a point of testimony change his mind in order to conceal the truth against the party who summoned him as a witness of their side in such a situation leading-Questions are used as a weapon to shake the credit of witness so that truth will come out in order to meet the end of justice