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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 3rd volume, issue 10, which is going to be published in Jun, 2023. 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.

**Amna Imdad's** Article is a good brief of a case law analysis of the Federal Shariat Court's (FSC) less-favorite decisions. This paper seeks to clarify the role of the FSC in Pakistan's Islamization of law.

**Zummar Naveed** clarifies in her article very well the idea behind the struggle of Sub-continent Muslims, there was a motive to make an Islamic state. This research covered all these questions and also discussed the cases regarding the status of Ar.2A whether it was a Grundnorm or a simple document.

**Maraj Alam's** article puts briefly an action that impedes the administration of justice, diminishes the courts' authority and dignity, or otherwise disrespects and insults them is considered to be in contempt of court.

**Ali Haider's** Article presents in good detail of creation of digital media which has drawn a lot of attention from those wanting to strengthen democracy. This paper contributes to the current situation, particularly the safety of its citizens and attempts to analyze the contemporary nation of freedom of speech.

**Hafiza Madiha Shehzadi's** article presents an issue of provincial autonomy in Pakistan which has a murky past and a complex current. This article says that provincial sovereignty may be a helpful tool for developing democracy and development since it allows regions to tailor their policies to the needs of their own people.

**Farah Deeba** says that in a globalized world, international commercial arbitration (ICA) has gained significant importance due to the increasing integration of economies. Despite this, both countries have ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, necessitating reforms to enhance arbitration effectiveness.

**Farah Deeba and Waheed Ahmad Chughatta** explains briefly that The Right to Development (RTD) is pivotal in enhancing living standards and fostering prosperity globally. The UN Declaration on the Right to Development (UNDRTD) underscores that human beings are central to development, aiming for its benefits to reach every individual.

Dr. Muhammad Amin
Editor in Chief

# A CRITICAL ANALYSIS OF THE FEDERAL SHARIAT COURT'S ROLE IN SHAPING ISLAMIC LAWS IN PAKISTAN: LEADING CASE STUDIES

AMNA IMDAD JANJUA*
DR. SHAHID RIZWAN BAIG**

**ABSTRACT;** By providing a case law analysis of 8 of the Federal Shariat Court's (FSC) less-favorite decisions, this paper seeks to clarify the role of the FSC in Pakistan's Islamization of law. Islamization is the process of adopting new laws that are compliant with Islam, amending existing laws in Pakistan, and repealing any laws that are in contravention of Shariah and Islamic law. The Constitution provides specific clauses for the Islamization of Islam with relation to Article 227, which demands that laws in Pakistan be made and carried out in accordance with Islam. The purpose of the Federal Sharia Court (FSC) is to preserve and advance Pakistan's legal Islamization. But these phrases are not defined in the Constitution. The Federal Sharia Court was established under Chapter 3A, and it has the exclusive jurisdiction to declare any legislation unlawful if it contravenes Islamic principles. This article examines a number of the rulings rendered by the FSC and its Appellate Forum in accordance with Chapter 3A establishing the FSC to determine the scope of the aforementioned provisions. It is well knowledge that even if a law does not follow Islamic law, it is still valid as long as it cannot be demonstrated to be in conflict with Islamic law. Data will be acquired for this study's purposes using internet and library resources. This inquiry will use qualitative research approaches and be analytical and descriptive. Additionally, the process of implementing Chapter 3A's

Islamization of law for Pakistani institutions and the legislature would not be finished. Through a critical investigation of the Pakistani legal system in relation to financial transactions, secondary data will be analyzed. It currently allows for the continuation of laws that go against Islamic law.

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## INTRODUCTION;

The international Deen (religion) of Islam offers solutions to all questions about the past, present, and future.[1] Pakistan is one of the five countries that were established in the name of a religion. Islam had a major role in the formation of Pakistan. In order for Pakistanis to live their lives in line with Islam, it was established. When United India was still seen as a single country, the two-nation theory enabled Indian Muslims learn to see themselves as a single nation. Muslims in Pakistan have a unique identity due to the country's dual nationality. Following the establishment of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah emphasised the Islamic way of life in Pakistan in his inaugural address. Pakistan had several difficulties in its early years of history. One of Pakistan's main problems was its legislation. Pakistan didn't adopt its first constitution until 1956. Early Pakistani laws were mostly based on civil law rather than Islamic law. There was no method for overturning this law, despite the fact that it went against Islamic principles, the Quran, and the Sunnah.

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[1]Abdul-Matin, Ibrahim. *Green Deen: What Islam teaches about protecting the planet*. Berrett-Koehler Publishers, 2010.

The process of bringing laws into compliance with Islamic principles, taking steps to bring existing laws into compliance with Islam, and abolishing any laws that are entirely incompatible with Sharia, or Islamic law, is known as "Islamization," sometimes known as "sharerization."[2]

Pakistan made its first effort at islamization on October 12, 1949, when the Objective Resolution was enacted. However, the most recent modification to the legal structure of the nation was made in the 1970s by General Zia-ul-Haq, who was also Pakistan's President at the time and the administrator of martial rule. In 1979, a plan for islamization development was initiated. The Federal Citizenship Court was also founded as a result of this.

The Islamic Republic of Pakistan's 1973 Constitution places emphasis on the legalization of Islam. The constitution has particular Islamic provisions. The objective resolution envisions a society "in which Muslims will be able to organize their lives individually and collectively in accordance with the teachings and requirements of Islam as described in the Holy Qur'an and the Sunnah," as stated in Article 2A, which was later added to the Constitution.[3]

Article 227 of the Constitution states that legislation must be approved by the legislature and ratified if it directly complies with Islamic law. It reads as follows.

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[2]An-Na'im, Abdullahi Ahmed. "Human rights in the Muslim world: Socio-political conditions and scriptural imperatives-A preliminary inquiry." *Harv. Hum. Rts. J.* 3 (1990): 13.

[3]Iqbal, Mr Muhammad. "Islamizing the Constitution of Pakistan: The Role of Maulana Maudoodi." (2019): 61-64.

No legislation may be made that contradicts the Federal Shariah Court's rules, which have been mandated to be followed in order to execute Article 227 and the idea of Islamization of the law therein. The precepts of Islam—hereinafter referred to as the Precepts of Islam—as set out in the Holy Qur'an and the Sunnah must be integrated into all current legal systems.[4]

The first piece of this article serves as an introduction, the second section provides a general overview of the FSC's functions, and the third section contains the main topic of how the FSC decides. Eight lesser-known cases are explored. The latter sections conclude this investigation. [5]

## The Federal Shariat Court

As previously mentioned, General Zia-ul-Haq established the Federal Shariah Court (FSC) in 1980 as a result of a Presidential Directive. Chapter 3A of Part VII of the Constitution was included as part of the "Constitution (MDT) Order, 1980 (PO No. 1 of 1980)" and was given the name "Federal Shariat Court."Articles 203A through 203J make up Chapter 3A, which only addresses matters pertaining to FSC. FSC was founded largely with the intention of analysing and assessing if Pakistani law complies with Islamic law. [6]

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[4]Abiad, Nisrine. *Sharia, Muslim states and international human rights treaty obligations: A comparative study*. BIICL, 2008.
[5]Teubner, Rolf Alexander. "Strategic information systems planning: A case study from the financial services industry." *The Journal of Strategic Information Systems* 16, no. 1 (2007): 105-125.
[6]Yilmaz, Ihsan. "Pakistan federal shariat court's collective ijtihād on gender equality, women's rights and the right to family life." *Islam and Christian–Muslim Relations* 25, no. 2 (2014): 181-192.

Article 203C creates the Federal Shariat Court, a new constitutional court. It stipulates that the court will have eight judges. It is a requirement that all judges be Muslims. The criteria for selecting FSC judges and the merit requirements are also described in Article 203C. The appointment of judges must be governed by Article 175A, which regulates the appointment of judges to Pakistan's High Courts. The FSC has been given priority over the High Courts in cases involving sharia. All Pakistani High Courts and all courts below High Courts are required to abide with the FSC's decision in accordance with Article 203 GG. [7]

Regarding the FSC's characteristics, in addition to serving as a revisional court in instances with time limits, it is often a court with original jurisdiction under Article 227 of the Constitution.

Article 203D outlines the court's functions and gives it certain authority. It gives the court the authority to assess whether a legislation or law is in line with the Sunnah and Quranic prohibitions. It may operate independently or at a party's request. According to this article, the court must explain its reasoning and note the extent of the disobedience if it determines that the provision in issue is against Islamic edicts and declares as much. Will

The FSC is given the authority to evaluate "whether any law or provision of regulation is contrary to Islam or now not" in accordance with Article 203-B (c) Chapter 3-A, which deals with the functions and duties of

[7]Yilmaz, Ihsan. "Pakistan federal shariat court's collective ijtihād on gender equality, women's rights and the right to family life." *Islam and Christian–Muslim Relations* 25, no. 2 (2014): 181-192.

the FSC. If the court rules that any legislation or provision is contrary to the injunctions of Islam, Article 203D (three) compels the President and the Governor to take action to bring the laws into compliance with those injunctions.[8]

Role Of Federal Shariat Court In Islamisation

The FSC was created with the goal of implementing Article 227 of the Constitution. Article 227 mandates that legislation be drafted and altered to reflect Islamic principles[9], and the FSC is responsible for upholding this requirement. As the saying goes, "Judges speak through judgements," it is feasible to assess the FSC's performance by examining the rulings that it has reached after applying numerous laws and rules. The FSC reached a judgement based on Shariah.

In the paragraph above, an attempt has been made to investigate major instances of Pakistan's Islamization of law.

## The Land Reforms Act Case

The FSC ruled Hafiz Muhammad Amin v. Islamic Republic of Pakistan, also known as PLD 1981 FSC 23, on December 13th, 1980. This is where it should be noted that the Shariat Appellate Bench once again challenged the FSC's decision. One of the well-known cases involving land reforms from the Supreme Court

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[8]Rizvi, Aatir, Kashif Javed, H. Imran Ahmed Qureshi, and Muhammad Ramzan. "Legislative Role Of Sources Of Islamic Law In Modern Islamic State: A Pakistani Perspective." *Webology (ISSN: 1735-188X)* 19, no. 1 (2022).

[9]Rana, Afrasiab Ahmed, and Fiza Zulfiqar. "Role of Federal Shariat Court in Islamisation of Laws in Pakistan: A Case Law study of Leading Cases." *Available at SSRN 4491926* (2023).

(SAB) is Qizilbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore and others.[10]

The FSC adopted the position that Article 253 of the Constitution gives the Parliament the authority to create laws that specify the limits of a person's possession. Any law that permits individuals to own more than a set number of possessions is rendered invalid. The Constitution's dedication to eradicating societal ills like feudalism and promoting social fairness and economic prosperity is reflected in this section.

The FSC came to the conclusion that since it wouldn't be challenging the constitutional articles directly, it couldn't declare the land reform laws to be against Islamic injunctions. The majority ruling made clear the limits of the FSC's authority and emphasised that what cannot be done directly cannot be accomplished indirectly.

Aftab Hussain J also said that many students who attend various schools of thought defend the constitution. This is a strong indicator that the power used under Article 253 for jail property delimitation isn't necessarily against Islamic edicts. In addition, the Islamic Manifesto (Manishwar) of the All Pakistan Jamiat Ulama-e-Islam was mentioned. According to the manifesto, the government may also impose restrictions on property ownership in order to combat social ills, advance social justice, and protect peoples' financial well-being.[11]

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[10]Kennedy, Charles H. "ISLAMIZATION OF REAL ESTATE: PRE-EMPTION AND LAND REFORMS IN PAKISTAN, 1978—1992." *Journal of Islamic Studies* 4, no. 1 (1993): 71-83.

[11]Hussain, Mazher, Shahid Hassan Rizvi, Mian Saeed Ahmed, Aftab Hussain Gillani, Azra Nasreen Gilliani, and Almas Fatima. "Religio-Political Discourse and Jam'iyyat Ulema-i-Pakistan (JUP): A Careful Study of Different Narratives (1970-2003)." *Int'l J. Soc. Sci. Stud.* 4 (2016): 24.

The Latin proverb "leges posteriores priores contrarias abrogant" is said to apply in this situation if a disagreement can be settled between the two clauses. The cutting-edge legislation nullifies the earlier incompatible rule.

As previously mentioned, the Supreme Court of Pakistan's Shariat Appellate Bench (SAB) was challenged in this case since it had previously ruled in the Qizalbash case that no section of the Land Reforms Act was outside the FSC's authority. Do not possess anymore[12].

The FSC and the SAB have both deemed the same to be in conformity with Islamic tenets as far as the violation of the relevant requirements are concerned. Justice Naseem Hasan Shah of the Supreme Court made a statement.

"...keeping in mind that, on the merits of the case, the Federal Sharia Court's majority opinion that the challenged legal guidelines are not in conflict with Islamic principles is correct, I could disregard these appeals... "

The Hafiz Muhammad Amin case served as a benchmark for the Islamization of land reform laws. Although the FSC defended the legitimacy of the laws by refusing to touch such claims and confirming them under the protection of the Constitution, it became the first time that a case of this kind was contested in the SAB, and the reputation of the FSC was further defined. High Court.[13]

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[12]Nelson, Caleb. "Preemption." *Virginia Law Review* (2000): 225-305.
[13]Mohamed, Ibrahim. "Maldives commercial laws reform: Accommodating the tenets of Islam/Mohamed Ibrahim." PhD diss., University of Malaya, 2017.

## Appointment of Female Judges

Mr. Ansar Barni petitioned the FSC and filed Shariat Petition No. 4-K of 1982 in order to contest the appointment of female judges in the lower courts, particularly the Magistrates, principally on the basis of four points. Requested.

- Discharge of duties without proper Pardah;
- Neither the Holy Prophet (PBUH) not his companions had ever trusted the duty of Qaza to a female;
- The quantum of evidence and quantum of inheritance of a woman is half of a man thus judgment of a woman is also equal to half of a man; and
- A woman does not meet the qualification to be a Qazi in Muhammadan Jurisprudence.

The selection of the FSC was named "Ansar Birni v. Federation of Pakistan and others" and is noted as PLD 1983 FSC 73. The utility was often filed against the Federation of Pakistan. On August 10, 1982, a three-judge panel determined the case. Justice Zahoorul Haque, Chief Justice Aftab Hussain, and Justice Malik Ghulam Ali make up the FSC. The courtroom unanimously decided to dismiss the applications.[14]

The court found that there was no restriction on the nomination of a female chooser and cited the adage "everything is legal unless explicitly stated." When the petitioner claimed that there was no precedence from the time of the Prophet and his Companions, Mr. Sharifuddin Pirzada, Pakistan's then attorney general, relied on Syed

[14]Rana, Afrasiab Ahmed, and Fiza Zulfiqar. "Role of Federal Shariat Court in Islamisation of Laws in Pakistan: A Case Law study of Leading Cases." *Available at SSRN 4491926* (2023).

Sulaiman Nadvi's well-known work Sirat-e. He continued by stating that Surah Hujarat of the Holy Qur'an states, "Indeed, the most honourable among you in the eyes of Allah is he who is the most pious among you.

In addition to those, FSC examined the writings of eminent modern and ancient academics and evaluated their works to demonstrate that there isn't always a single instance in Islam that forbids the appointment of female judges, proving that there isn't always a single reason to exclude women from serving as judges. Is a component of the legal system like a judge. The court ruled the nomination of female judges in accordance with Islamic law after unanimously rejecting the appeal.[15]

## Islamisation of the Prison Rules

Social worker Dr. Aslam Khaki challenged the Jail Rules, 1978 before the FSC by filing Shariat Petitions No. 61-I of 1992, titled Dr. Muhammad Aslam Khaki v. State, which was designated PLD 2010 FSC 1. A total of four petitions were considered by a four-person FSC panel, which included Chief Justice Dr. Fida Muhammad Khan, Justice Salahuddin Mirza, Justice Muhammad Zafar Yasin, and Syed Afzal Haider.[16]

In this ruling, the Federal Supreme Court (FSC) had to determine whether or not certain elements and clauses of the Prisons Rules, 1978, Prisons Act, 1894,

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[15]Lu, Xing, and David A. Frank. "On the study of ancient Chinese rhetoric/bian." *Western Journal of Communication (includes Communication Reports)* 57, no. 4 (1993): 445-463.
[16]Aziz, Sadaf. *The Constitution of Pakistan: A Contextual Analysis*. Bloomsbury Publishing, 2018.

and Cr.P.C. 1898 were "opposite to the precepts of Islam" and the Pakistani Constitution. People who complained about the mistreatment of inmates based on their social status and the custody of females were the ones who submitted the petitions. Guards, as well as several injustices experienced throughout the criminal investigative procedure.[17][18]

The FSC uses a three-step reprehensibility test, which goes as follows: "Step 1: Determine if an expressed Islamic commandment covers an unchangeable legal requirement or whether the two are mutually incompatible.

Step 2 is to ascertain if the legislation that is being contested can be harmonized with Islamic law.

Step 3: Determine if it is possible to apply the regulation's contested provision without going against the "letter or spirit" of the Islamic edict.

Additionally, the FSC emphasizes that the statute cannot be explicitly repealed but instead refers to Article 203D (2) of the Constitution, which unquestionably contravenes Islamic law. Explains the goals and reach of the legislation regarding prisons. Very repulsive. A rule should be overturned if it really contravenes a clear Islamic law, according to the FSC. Because the FSC's jurisdiction depends on whether or not the applicable legislation "reviews" Islamic principles, the Court spent a significant amount of time defining the word

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[17]Alhammadi, Mohammed Shaker. "Ambiguities and Conflicts: Sharia and Modernity in the Criminal Law. A Study of the Federal Supreme Court Jurisprudence of the United Arab Emirates." PhD diss., 2009.
[18]Aziz, Sadaf. *The Constitution of Pakistan: A Contextual Analysis*. Bloomsbury Publishing, 2018.

"defamation" before conducting its jurisdictional examination. just what

The FSC looked up the term "innocence" in many English and Urdu dictionaries as well as legal cases from other countries before coming to a determination. The court ruled that the terms "Bada'at way: Paradox, Zayd, Adam Muqabat" are all Urdu phrases meaning "extremely ugly or offensive," according to the Law Dictionary English Urdu that is now provided utilising the National Language Authority of Pakistan.[19]

In this case, the FSC expanded the meaning of "rules of Islam" and "heresy" in order to enlarge the scope of its mission. By broadly interpreting the word, the court often grants jurisdiction over issues that fall within the purview of the High Court and invests itself with the authority to provide judicial judgements on the applicability of laws and their stipulations.

## The Martial Law orders and the Trust Case

Justice Afzal Haider, Shehzado Sheikh, and Chief Justice Agha Rafique Ahmed Khan presided over a three-judge FSC panel that rendered the decision in Shariat Petition No. 1/K of 2002, which was submitted on March 15, 2002 and for which martial rule orders had been issued. to challenged changed. The name was changed to People's Trust. The aforesaid Shariat petition was submitted by Ms. Benazir Bhutto in 2002, but it was dormant until it was finally completed in 2007. The petition was identified as PLD 2010 FSC 229 and was

[19]Matus, Kira JM, and Michael Veale. "Certification systems for machine learning: Lessons from sustainability." *Regulation & Governance* 16, no. 1 (2022): 177-196.

captioned "Benazir Bhutto and Others vs. Federation of Pakistan by Finance Secretary."
The petitioner said that the four martial law instructions concerning the People's Trust's alternative name and management violated Islamic edicts.
In his ruling, Syed Afzal Haider relied on verse 58 of Surah An-Nisa and came to the conclusion that it demands that;

- The property of the trust shall be reverted to the original owners;
- The affairs of the administration of the government and the affairs of the government shall be entrusted to those who are who capable of handling the authority;
- The authority shall be used fairly and justly; and
- Biasness shall not be part of the performance of the authority.

In addition to this passage, the FSC looked at other verses in the Holy Quran that deal with contracts, trusts, and property. In a similar vein, the FSC ruled that any character may be granted the right to appeal. The court based its decision on Surah An-Nisa verse 148 and other passages dealing with the same topic[20].

The court discussed the sanctity of contracts in Islam, rights of enchantment, the reputation and wisdom of Allah Ta'ala, the rule of law in Islam, the fundamentals of legal competence, Adam Haraj, Taysir Takfief, and other topics before getting into the reputation of unlawful orders.

The Zulfiqar Ali Bhutto Trust and People's Foundation Trust (Rename and Administration)

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[20]Raza, Rafi. *Zulfikar Ali Bhutto and Pakistan, 1967-1977*. New York: Oxford University Press, 1997.

(Amendment) Order as well as other non-disclosure orders, according to the court, violate Islamic edicts and the five holy Shariah. various issues, notably those covered by Articles 2A, 4, 23, and 25 of the Constitution;

- the trust's name was changed;
- the objectives of the trust were changed;
- the trustee was also changed and new administrative hierarchy was imposed;
- all the trustee effected by the impugned orders were women;
- The real rights of the trustee were high jacked without any legal authority and the Mutwalies were appointed on the wishes of a dictator.

Because of the flaws in these devices, the unlawful martial commands had no legal repercussions.[21]

The FSC was hesitant to include martial law orders in its rulings at first, but after some time passed, it found martial law to be unconstitutional. This was the first time the FSC had examined the criminal repute of martial law orders. Introduced state. orders that go against Islamic principles.

## Women Protection Act, 2006

A three-member bench, presided over by Chief Justice Agha Rafiq Ahmed Khan, heard three petitions challenging Sections 5, 6, and 7 of the Protection of Women Act of 2006 (Act, 2006) on December 22, 2020. The petitions were filed by Mian Abdul Razzaq Ameer,

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[21]Hussain, Zahoor, Dayal Das, Zulfiqar Ali Bhutto, Muhammad Hammad-u-Salam, Fauzia Talpur, and Glub Rai. "E-banking challenges in pakistan: an empirical study." *Journal of Computer and Communications* 5, no. 2 (2017): 1-6.

Muhammad Aslam Ghaman, and Abdul Latif Safi in Shariat Petition Nos. 1-I/2007, 2-I/2007, and 1/I 2010 respectively. This decision is titled "Mian Abdul Razak Ameer Vs. Federal Government" PLD 2011 FSC 1 and was written by Syed Afzal Haider. Verse forty-four to verse forty-seven of Surah Maida were used by the court to open the judgement. Following the opening arguments, the Court reached the following conclusions on eleven issues, numbered a to k, based on a consensus of the facts.

- The scope of term Hudood as used in article 203DD of the constitution;
- The scope and meaning of the judicial powers of the FSC as envisaged in the article 203DD of the constitution;
- The nullification of article 203DD at the hands of the act, 2006;
- The overriding effect section 11 and 26 of the Act, 2006 over the constitution and the Hudood Laws;
- The effect of the judgment or order of subordinate court on the FSC;
- The jurisdiction of FSC in relation to section 48 and 49 of the Control of Narcotics
- Substances Act, 1997;

the Hudud Ordinance of 1979, Sections 25 and 29 of the Act of 2006, and the Muslim Marriage Dissolution Act of 1939;

Act 2006 and Hudud 1979's descriptions of the legal status of crimes and punishments in Islam. the status of the authority granted to FSC by Articles 203D and 203DD;

Result; with the release of the court schedule.[22]

In response to these issues, the Court heard the circumstances and the jury consultant, and made the following rulings: The court considered eight verses from the Quran and six hadiths in answer to issues A to C and came to the conclusion that all of the movements fell inside the categories established by the Sunnah of the Prophet (peace and blessings of Allah be upon him) and the Holy Quran. Hudud. The courtroom further determined that the following 10 offences are covered by the aforementioned ambit:

- Zina;
- Lawatat;
- Qazf;
- Shurb;
- Sarqa;
- Haraba;
- Irdad
- Baghawat;
- Qisas; and Human Trafficking.

After determining that Section 11 of the 2006 Act was against Islamic law and the laws of drawback, the court invalidated it and restored the Limitation Ordinance. The court noted that when investigating the issue that any order issued by the Subordinate Court and the High Court in place of the Boundary Ordinance is subject to the FSC's authority. The court determined that the Act of 2006's Sections 11 and 28 violated Article 203DD of the Constitution, had a predominating effect on the statute of limitations, and were thus null and unconstitutional. The

[22]Hussain, Hamid. "Judicial Jitters in Pakistan–A Historical Overview." *Defence Journal* 22, no. 1 (2018): 69-87.

same ended up being true for Sections 48 and 49 of the CNSA.

The court ruled that Section 25 of the Act of 2006 violated Islamic principles, the Muslim Marriage Act, and the statute of limitations for the crime of blasphemy[23].

The lawsuit represents a significant milestone in the process of repealing dictatorial legislation. A number of clauses, namely Sections 5 through 8 and Section 28 of the 2006 Act, have been ruled unlawful and in violation of Islamic tenets.

[23]Saks, Michael J., and Robert F. Kidd. "Human information processing and adjudication: Trial by heuristics." *Law & Soc'y Rev.* 15 (1980): 123.

## House Rent Allowance of Husband and Wife

Prof. Kazim Hussain filed Shariah Petition No. Eight/I of 2004 to oppose a Ministry of Housing and Works office memorandum that said that if a husband and woman worked at the same station, only one of them might get an award. The House Rent Allowance Application was submitted as PLD 2013 FSC 18 and was made against the Government of Pakistan. The judgement was also given by Chief Justice Dr. Muhammad Fida Khan, who also presided over the bench. The two additional justices on the court have been Justice Rizwan Ali Dodani and Sheikh Ahmed Farooq.

Verse 32 of Surah An-Nisa, which reads, "Men are entitled to what they earn and women are entitled to what they earn," and no more than four additional passages were specifically trusted by the FSC. Men are entitled to it because they depend on it. They also have their own females and income. The court determined that workplace circulars or memoranda denying either spouse their legal entitlement to housing rent violate Islamic tenets, and ordered all governmental and autonomous agencies to issue such memos accordingly.[24]

## In Vitro Fertilization and Surrogacy

As his wife became unable to have a child, Dr. Farooq Siddiqui, a Pakistani-American, recruited Ms. Farzana Naheed to serve as a surrogate for him and his wife. After the surrogacy procedure, Fatima Siddiqui, a

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[24]Cheterian, Vicken. *Open Wounds: Armenians, Turks and a Century of Genocide*. Oxford University Press, USA, 2015.

woman, was born. It should be highlighted that Dr. Farooq and Ms. Farzana faked their marriage in order to avoid social tensions. Following that, Ms. Farzana refused to give Dr. and Mrs. Farooq her daughter. Farooq Siddiqui vs. Smt. Report of Farzana Naheed PLD 2017 FSC 78 is the name of the Shariat Petition No. 2/I of 2015 that was submitted by Dr. Farooq. The case was considered by a three-judge FSC panel. Chief Justice Riaz Ahmed took over as the bench's new leader. Dr. Fida Muhammad Khan and Zahoor Ahmed Shinwari were on the bench when Khan started performing it. Dr. Fida Muhammad Khan added his own words to the judgement after approving the one prepared by the Chief Justice.[25]

The court's primary inquiry focused on the prevalence of in vitro fertilisation and surrogacy in prisons. In addition to the attorneys for the parties, the court selected Dr. Aslam Khaki and Dr. Yusuf Farooqui as jury experts.

The following are the terminology used by the court to define surrogacy. "Surrogacy evolved into a method of assisted reproduction in which a woman might go through and give birth to a child for another partner. When sperm was obtained from a third character who, for that simple reason, employed surrogacy when a person was unable to father a kid. The issue of surrogacy emerged when a woman turned into hired for some financial or other reason to carry the child for a couple,

[25]Khan, Mohammad Shabbir. *Status of women in Islam*. APH Publishing, 1996.

even if it could not be argued that the child was no longer the father's.[26]

The verses 24 of Surah Al-Nisa, 5–7 of Surah Al-Mu'minun, and 223 of Surah Al-Baqarah were accepted by the court. These passages really signify that the child belongs to both the mother from whose womb it was born and the father from whose sperm it was born.

The court decided that the mother of a child born via in-vitro fertilisation (IVF) is the woman from whom the child is born, and that a child born through IVF belongs to the father from whom the sperm is born. The FSC ruled the procedure illegal and against Islamic law, and the court ruled that it was unnecessary to use the egg to establish the child's paternity. Both the unborn child and this Shariah-compliant system are legitimate[27].

According to the court, injecting sperm into a third person's womb in exchange for payment is against Islamic law.

## The Constitution (Amendment) Order, 1980

The Constitution (Amendment) Order, 1980 was used to establish the Federal Shariah Court (FSC), while President's Order (P.O.) No. 1 of 1980 was used to replace Chapter 3A of the Constitution. It is commonly accepted that an Act of Parliament, as specified in Article 238 of the Constitution, is the best way to alter the Constitution. Furthermore, in accordance with Article

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[26]Drabiak, Katherine, Carole Wegner, Valita Fredland, and Paul R. Helft. "Ethics, law, and commercial surrogacy: a call for uniformity." *Journal of Law, Medicine & Ethics* 35, no. 2 (2007): 300-309.
[27]Kamali, M. H. "MEGA LECTURE." (1991).

239, such an Act must be passed by a two-thirds majority in each House prior to the President's assent. But unlike the Laws (Continuing in Force) Order, 1977, the Constitution Amendment Order, 1980, was a Presidential Order issued pursuant to a Proclamation dated the Fifth Day of July, 1977. As a result, it cannot be referred to as an Act of Parliament and was not approved by a two-thirds vote in either House. Then, it is examined below in terms of how it would change the Constitution[28].[29]

## The Proclamation of Martial Law

On July 5, 1977, Chief of Army Staff General Muhammad Zia-ul-Haq issued a declaration of martial law for the whole of Pakistan and took over as the CMLA by upholding it. This declaration, among other things, put the charter on hold. The Laws (Continuity in Force) Order, 1977, which was also proclaimed on the same day by the CMLA, provided, among other things, that the state might be operated nearly in accordance with the Constitution's provisions. However, the Constitution was designed to challenge the Laws (Continuity in Force) Order of 1977, any future presidential orders, and any martial law laws or orders issued by the CMLA. The Rules (Continuity of Force) Order, 1977, and the declaration of martial law were maintained by the Supreme Court of Pakistan in Begum Nusrat Bhutto v.

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[28]Yilmaz, Ihsan. "Pakistan federal shariat court's collective ijtihād on gender equality, women's rights and the right to family life." *Islam and Christian–Muslim Relations* 25, no. 2 (2014): 181-192.

[29] Burki, Shahid Javed, Craig Baxter, and Robert La_Porte. Pakistan under the Military: Eleven Years of Zia ul-Haq. Boulder: Westview Press, 1991.

Chief of Army Staff and Federation of Pakistan on the fifth day of July 1977. Staff and the Pakistani Federation, 1977).

The State v. Dosso and any other, 1958), the Pakistani courts had previously permitted the CMLA to handle anything in the legislative and administrative arenas. It includes the authority to change the constitution, among other things. It was made clear that such powers may be used to issue presidential decrees, ordinances, and instructions for martial law, among other things.

After Mr. Chaudhry Fazal Elahi, the President of Pakistan, retired on September 16, 1978, the CMLA also took the position of President, enabling him to challenge not only the imposition of martial rule but also the President's directives. Chapter 3A was replaced as a result of the Constitution (Amendment) Order, 1980 because He exploited those powers and made several revisions to the Constitution expressly via different P.Os. However, the next section describes how this bankruptcy was originally included in the Constitution.[30]

## The Insertion of Chapter 3A

By way of P.O. No. 3 in 1979, Chapter 3A was officially added to the Constitution for the first time. Sharia Benches of the Supreme Court were established by another P.O. even before this Chapter was accessible. The Sharia Benches of Superior Courts Order, 1978, was the name given to this decree, which was set to take

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[30]Kayani, Justice MR. "3 Confining courts and constitutions (1958-1969)." *Judging the State: Courts and Constitutional Politics in Pakistan* 59 (2002): 69.

effect on the 12th day of Rabi al-Awwal 1399 Hijri. But with this P.O. Since it was abolished by P.O. No. 3 of 1979 only three days before it went into effect, it has never been used. After Chapter 3 in Part VII of the Constitution, Chapter 3A Sharia Benches of Supreme Courts was added by P.O. No. Three of 1979. The abrogated order was to be reinstated on the same day, or the 12th of Rabi'ul Awwal, 1399 Hijri, as this newly added bankruptcy. By means of Presidential Order No. 1 of 1980, this bankruptcy was replaced by a new bankruptcy, the Federal Shariat Court, roughly fifteen months later.[31]

## The Establishment of the Federal Shariat Court

The Constitution's Article 203C is located below the FSC. The application of Chapter 3A's requirements is cited as the cause of the FSC's status quo. Only Muslim judges may be nominated to the FSC, according to clause 2 of this bulletin. Eight judges overall, including the Chief Justice, are appointed under Article 175A of the Constitution, the same as judges of the Supreme Court and High Courts.[32]

The Chief Justice's credentials are comparable to those of a Supreme Court pick or an eternal High Court pick. Similar to this, four of the remaining seven judges are High Court selectors, but the last three judges, who are selected by students, have different credentials. Their qualifications are provided by clause 3A of the

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[31]Gardbaum, Stephen. "The new commonwealth model of constitutionalism." In *Bills of Rights*, pp. 101-154. Routledge, 2017.
[32]Khan, Shehreyar. "The Role of Qisas and Diyaat in Facilitating Honor Killings." *RSIL L. Rev.* (2018): 38.

Constitution of Pakistan (Eighteenth) (Amendment) Act, 2010, which stipulates that they must have at least fifteen years of experience in Islamic law, education, or practising. There are a total of 5 traditional judges judging 3 students. After the FSC decision in the Huzoor Baksh case (Huzoor Baksh v. State, 1981), there was a need for an alarm judge.[33]

## Original Jurisdiction of the FSC

A statute or a portion of a law that is in disagreement with Islamic principles as expressed in the Holy Quran and the Prophet's Sunnah must be declared invalid by the FSC, as per Article 203D. This is maybe the most important sentence in Chapter 3A. The FSC may use its authority in one of the following ways:

- On its motion
- On the petition of a citizen
- On the petition of the Federal Government
- On the petition of a Provincial Government

The Constitution (Second Amendment) Order, 1982 granted the FSC computerised authority to review the legislation and determine how it should be applied in 1982. When the law appears prima facie and the court exercises its authority on its own initiative or at the request of a citizen. If the legislation refers to a count at the federal legislative listing or if the case is in any other case as defendant, the court will be a part of the federal government to be thus conclusive. The federal government and the provincial government were not

[33]Yalof, David Alistair. *Pursuit of justices: Presidential politics and the selection of Supreme Court nominees*. University of Chicago Press, 2001.

previously required to participate as responses. The Constitution (Amendment) Order, 1984 introduced this clause.[34]

The power of the federal or provincial authorities to exercise the FSC's authority under this Article, however, is quite significant. To think about who may be included as a respondent in such actions.[35] Each level of government—federal or provincial—has its own legislative power. The constitution prohibits the government from passing any legislation that goes against Islamic principles. Additionally, in order to pass legislation that complies with Islamic tenets, the government may consult the Council of Islamic Ideology (CII). As the legislative authority, the government has the ability to repeal or change a law if it believes that it or any of its provisions violate Islamic tenets. This authority exists only within the government. Is. A more appropriate option to approaching the FSC if the government is unsure about whether or not a certain provision is objectionable or not is to get advice from the CII. This is why because while the CII's litigation are mostly autonomous, the legal system nonetheless has its stumbling blocks and technicalities.[36]

If the FSC ultimately determines that a rule is in conflict with Islamic tenets after considering the law and hearing the petitioner's and the concerned government's

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[34]Yalof, David Alistair. *Pursuit of justices: Presidential politics and the selection of Supreme Court nominees*. University of Chicago Press, 2001.
[35]Pakistan v. People (1986)
[36]Yilmaz, Ihsan. "Good governance in action: Pakistani Muslim law on human rights and gender-equality." *European Journal of Economic and Political Studies (EJEPS)* 4, no. 2 (2011).

and respondents' viewpoints, the FSC must take the following action:

- Give reasons of its opinion
- State the extent to which the law is so repugnant
- Mention the date on which the decision is to take effect

This last aspect is crucial because, until this decision is made, a legislation that has been deemed to be against Islamic edicts would continue to be in effect. Similar to Article 203H, when a law or portion of the law is contested on the grounds that it violates Islamic tenets, no action may be brought in a court under that legislation, and the rights and responsibilities of the parties shall be resolved in accordance with it. will be completed as a result. that rule. This is as a result of the qualification added to this clause by the Constitution (Amendment) Order, 1984. The proviso specifies that the decision will not become effective until the time limit for filing an appeal against the FSC's decision has passed. Filed SAB is required. The time frame is six months beginning on the date of the FSC's decision. Additionally, it adds that if an appeal is made, the decision will be delayed until the appeal's outcome. For a shining choice, the FSC case might be brought up. As a result, the wheel will start turning again at that point. A revision petition under Article 188 may still be submitted before to the SAB, even if the FSC's decision is supported by the SAB. It's fascinating to note that this has really occurred often despite not being the most successful theory. In this context, a few important cases

are examined following a brief assessment of the SAB, the appellate forum.[37]

## The Shariat Appellate Bench

SAB was already mentioned. It is specified in Article 203f(three), which outlines the process for appointing three Muslim Supreme Court judges and Ulama judges to an ad hoc bench inside the Supreme Court. It is notable that the Supreme Court has said in a number of judgements (Ms. Aziz Begum and Others v. Federation of Pakistan and Others, 1990) that any reference to the SAB is a reference to the Supreme Court itself.

The Ulema judges are chosen from either a panel of Ulemas chosen with the assistance of the President in collaboration with the Chief Justice, or from among numerous of the FSC justices. The question is, will the Chief Justice consult on appointing two FSC judges as ad hoc members of the SAB to represent a panel of students or both? It should be emphasised that the Chief Justice referenced in this section is not the Chief Justice of Pakistan but rather the Chief Justice of the FSC. The possibility that the Chief Justice of the FSC may be permanently appointed to the High Court is thrilling. A junior official is a representation for a senior job if the consultation is for the nomination of Ad Hoc SAB Participants. On the other hand, if the goal is to create a student panel, neither the President nor the Chief Justice are knowledgeable enough in Islamic law to do so. In this

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[37]Kennedy, Charles H. "Repugnancy to Islam–who decides? Islam and legal reform in Pakistan." *International & Comparative Law Quarterly* 41, no. 4 (1992): 769-787.

case, the Chairman of the CII serving as a marketing consultant would be a better option (Hafiz Abdul Waheed v. Mrs. Asma Jahangir and Others, 2004).[38]

## Literature Review (Analysis of Judgments)

A few of the significant decisions made by FSC and SAB are examined in the following lines as part of a literature review. The SAB's decision on pre-emption rules is the first of them. The well-known Riba selection and the Qizilbash waqf case might follow. Finally, the FSC's ruling in the Allah Rakha case is examined. The following list of important findings stems from the analysis of these instances.

Even yet, some FSC and SAB judges hold the view that the purview of Islamic edicts is restricted to the pure passages of the Holy Qur'an and the Prophet's (peace be upon him) Sunnah.[39]

It has been said that a statement that contradicts Islamic law is at odds with those laws. As a result, if any regulation or part of a regulation conflicts with or contradicts such instructions, the regulation is nevertheless considered to be valid due to the fact that it does not conflict with such orders.

When a law or one of its provisions is deemed to be against Islamic tenets, action is taken not just to eliminate the law's competitors but also to bring the

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[38]Khan, Feisal. "Islamic Banking by Judiciary: The 'Backdoor' for Islamism in Pakistan?." *South Asia: Journal of South Asian Studies* 31, no. 3 (2008): 535-555.

[39]Konjević, N., M. Ivković, and N. Sakan. "Hydrogen Balmer lines for low electron number density plasma diagnostics." *Spectrochimica Acta Part B: Atomic Spectroscopy* 76 (2012): 16-26.

legislation into compliance with Islamic tenets. The authority to review the SAB's ultimate judgement may be exercised under Article 188 of the Constitution.

### The Qazalbash Waqf Case

In the SAB, Qizilbash Waqf and others v. Chief Land Commissioner, Punjab, Lahore, and others held, among other things, that specific provisions of the Land Reforms Regulation, 1972, and the Land Reforms Act, 1977, are incompatible with Islamic precepts. (Qizilbash v. Waqf and others v. Chief Land Commissioner, Punjab, Lahore, and others, 1990. The SAB sent a questionnaire with 26 questions to several Islamic students and institutions in order to assess the legitimacy of such rules in light of Islamic law. Several academics and institutions responded to this questionnaire by including their assessments in the case paper. It's interesting to note that Muhammad Afzal Zalla J, the highest ranking member of the bench, took notice of those queries and the criticisms made of them when he handed in his verdict. The questions and answers to a few of them are provided here. This will make it easier to understand the scope of Islamic law.[40]

The questionnaire's fifth question asks if the Islamic State has the right to require its citizens to follow the law. If so, what are the challenges? This question's kind of right has been classified as belonging to the Nation of Islam. A restriction is prepared just to ensure that there is continued clean freedom for those who freely

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[40]Green, Nile. *Afghanistan's Islam: from Conversion to the Taliban*. University of California Press, 2016.

choose to take legal actions in order to get "welfare" after passing away. Similar to question number 9, it claims that a large number of Muslim jurists have permitted the Islamic state to forcibly seize people's possessions in times of need. The question investigates the limits of need. Similar to inquiry broad variety 11, question eleven inquires about the permissibility of hoarding goods, money, gold, and silver. The response falls within the category of yes.[41]

The bench member Muhammad Taqi Usmani J similarly created four problems or queries for himself. He argues that the answers to these queries and problems will determine the scenario at hand precisely. When considering the general welfare of its subjects, Question/Issue No. 3 asks whether it is acceptable for an Islamic state to impose upper bounds beyond which a citizen may not lawfully own property. They are led not only by the clear verses of the Holy Qur'an and the Prophet's (peace be upon him) Sunnah, but also by Islamic jurisprudence while responding to this question or difficulty. In addition to a variety of other jurisprudential viewpoints, he bases his judgement on the well-known Hanafi e-book "Rad al-Mukhtar."

## Allah Rakha Case

The Muslim Family Laws Ordinance, 1961 (MFLO), Sections 4 through 7, and other Shariah petitions were dismissed in this case by the Federal

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[41]Riquelme, Hernan E., Eman Mahdi Sayed Abbas, and Rosa E. Rios. "Intention to purchase fake products in an Islamic country." *Education, Business and Society: Contemporary Middle Eastern Issues* 5, no. 1 (2012): 6-22.

Supreme Court (FSC) as being against Islamic tenets.[42] However, in this essay, the aforementioned situation is examined most effectively in light of Section 5 of the MFLO. This clause often allows for the registration of weddings, and failure to comply with this clause is a crime punishable by a fine of up to 1000 rupees, a few months of simple jail, or a combination of the two.[43]

The petitioners' main justification is that, contrary to Islamic edicts, marriages do not need mandatory registration. Therefore, it is not possible to criminalise marriages that are not registered. Rather, it makes marriages more difficult to complete. As a result, this decision conflicts with Islamic law. The pertinent portion of the petitioners' argument reads as follows: "The petitioner contends that registration of a marriage under "Sharia" is not necessarily a requirement for marriage. Although marriage registration is required, it is acknowledged. Sometimes the penalty for not registering isn't decided in accordance with the Qur'an and Sunnah.
On the other hand, FSC disagreed with these claims. It was said that marriage registration is necessary for a number of legal reasons, including the legality of children, the cost of dowry, the inheritance of heirs, and many more. In such circumstances, the FSC no longer declared Section 5 of the MFLO unconstitutional. Instead, it became advised that the fine for disregarding this clause be raised. However, it was acknowledged and

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[42] Allah Rakha and others v. Federation of Pakistan and others, 2000
[43]Cheema, Shahbaz Ahmad. "Section 4 of Muslim Family Laws Ordinance 1961, Pakistan: An Exploration of Interpretive Tensions." *Pakistan: An Exploration of Interpretive Tensions (March 14, 2023)* (2023).

ruled that an unregistered marriage is equally legitimate as a registered marriage as a result.[44]

The FSC further implied that, in addition to the Holy Qur'an and the Prophet's (peace be upon him) Sunnah, the great Muslim jurists concur that consensus and qiyas (by means of inference) reasoning) are reliable sources of information. Islamic legal sources also noted that masha mursala (public interest), in accordance with Maliki jurists, and istihsan (preferring a weak presumption over a strong one due to more fitting purposes) are additional possible sources of law.[45]

Conclusion

Pakistan began to live according to the dictates of Islam. Since the establishment of Pakistan in 1947, all regions of the states have worked to impose Islamic law there. The first effort in this direction was the objective resolution of 1949.

The Islamization of laws has been aided through legislation. This is true, as seen by the creation of the Constitution and Article 227 itself, but the Zia period saw the greatest shift towards Islamization of the legal system. General Zia-ul-Haq issued a presidential directive to implement Article 227 of the Constitution, which led to the creation of the FSC.

It is obvious that the FSC plays a greater role than any other entity. The Hafiz Muhammad Amin case, discussed above, makes it clear that even though the SAB established the FSC's authority, the FSC fully

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[44]Cheema, Shahbaz Ahmad. "Federal Shariat Court as a Vehicle of Progressive Trends in Islamic Scholarship in Pakistan." *Al-Adwa January-June* (2013).
[45]Memon, Noor Ahmed. "Islamic banking: Present and future challenges." *IBT Journal of Business Studies (JBS)* 1, no. 1 (2007).

acknowledged the Islamic status of land reforms, and the equal converted into supported by the SAB.

Similar uncertainty existed over women's empowerment, leading to the assumption that the nomination of female judges was unlawful. However, the FSC addressed the issue and defended the appointment of female judges. Comparatively, the FSC determined that the Protection of Women Act of 2006's availability was against Islam and worked to harmonise the law with the religion. With the help of announcing the ministry's letter in regard to Islamic edicts, the House Rent Allowance for husband and wife was sustained. Choosing the proper definition of eunuch is also a fantastic effort by FSC to Islamize legal principles in Pakistan. In fact, classifying martial rule measures against the people as illegal and un-Islamic was Pakistan's penultimate attempt at islamizing the legal system.

The Federal Sharia Court of Pakistan is the greatest court in the world that is obligated to assess legislation on a legal basis and ensure that they adhere to Islamic principles, according to the debate above. It is impossible to ignore the role played by FSC in Pakistan's islamization of the legal system.

# AN ANALYSIS OF OBJECTIVE RESOLUTION IS THE GRUNDNORM OF CONSTITUTION OF PAKISTAN

ZUMMAR NAVEED**
DR. MIRZA SHAHID RIZWAN BAIG**

**Abstract**; Behind the struggle of Sub-continent Muslims, there was a motive to make an Islamic state. Muslims can easily be passed their life in the prescribed parameters of Islam. To achieve this purpose Liaqat Ali Khan proposed the Objective Resolution that was passed on 12 March. The key role behind the Objective resolution is to fulfill the obligations of Islam that were given by the Supreme Authority (Allah Almighty). After that Zia-ul-Haq added the preamble as an operational article of the constitution. With this addition, a lot of questions were raised on objective resolution i.e. what was the status of objective resolution? What was the implication of Ar.2A in our constitution? To cater to these questions a lot of cases were filed. And checked the status of Ar.2A. This research covered all these questions and also discussed the cases regarding the status of Ar.2A whether it was a Grundnorm or a simple document.
**Keywords: Grundnorm, objective resolution as a preamble, Ar.2A.**

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## INTRODUCTION:

Pakistan appeared as an Islamic state on the chart of the globe. Behind their independence, there would be a lot of suffering and hardships. When the British rulers

imposed their government in the sub-continent and the leaders of Muslim (Sir Syed Ahmed Khan, Allama Iqbal, Quaid-e-Azam, etc.) played their role and come to the stage and encouraged the Muslims to make a separate land in which they spent their lives according under Islamic provisions. Allama Iqbal first floated the notion of separate land in Allahabad address. And after that in 1940, Quaid-e-Azam proposed the idea of a "TWO NATION THEORY". And finally, on the 14th of August 1947, Pakistan got independence and breakdown the history. [46]

The major purpose of making a separate land is to order their lives according to the injunctions of Islam's Holy Quran and Sunnah. For the accomplishment of this purpose, law authorities started their struggle in the formation of a constitution and made the 1956 and 1962 constitutions but due to some insufficient provisions above mentioned constitutions did not stand. After that in 1970, the chosen representatives prepared a sketch for Pakistan Constitution. And in 1972, lawmakers institute a meeting in which they thoroughly discuss the major purpose of the Constitution. The charge of the constitution was first assigned to Mehmood Ali Kasuri but after that, it was transferred to Mr. Pirzada. Finally, the sketch was prepared by the Ministry of Law and represented before the Assemblies in 1973. There were a lot of suggestions proposed by opposition parties and another member of the assembly and suggestions were considered. The 1973 constitution was approved by a

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[46]Castells, Manuel. *The power of identity*. John Wiley & Sons, 2011.

majority of members and signed and enforced on the 14th of August, 1973.[47]

The basic structure of the Constitution is based on Islamic provisions. In rights of minorities, rights of women, rights of inheritance, rights of the judiciary, parliamentarians' rights were also discussed. Because these rights were infringed in the past by British rules and also by Hindus. To cater to this problem Liaqat Ali Khan proposed the Objective resolution in the first constituent assembly of Pakistan. It was proposed in 1949 on 7th March. The major elements of objective resolutions were-

- Sovereignty is ultimately in the hands of Allah.
- Allah Almighty deputed the powers to the people who perform their duties under the umbrella of Islam.
- Constitutional assembly makes a framework of the constitution.
- The elected persons shall perform their powers under the domain of Islam.
- The major rules and principles of equality, democracy, tolerance, freedom, and social justice must be protected under the injunctions of Islam.
- Muslims shall spend their lives under Islam and no one can infringe this right.
- The rights of minorities (Hindus, Sikhs, Christians, etc.) were also discussed in which they freely practice and profess their religion without any obstacle. And lawmakers shall institute specific provisions for their rights.
- The judiciary must be independent in its affairs.

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[47]Hayat 1, Muhammad Aslam. "Privacy and Islam: From the Quran to data protection in Pakistan." *Information & Communications Technology Law* 16, no. 2 (2007): 137-148.

- The state shall safeguard to ensure equality before the law and their fundamental rights must be protected like economic, social, and cultural life and also got freedom in belief, thought, religion, and make lawful association.
- Federal form of government shall be administered in the country and other subsidiary units got the status of province.
- The other rights like the right to land, rights on the sea, and right to air shall be prevented and guaranteed by the authority of the state.
- And lastly, international peace and security shall be protected in any circumstance[48].

After a long debate on the objective resolution, it was passed by the majority members of Muslims. But minorities (Hindus, Sikhs, etc.) opposed it because they consider that their rights were infringed after making the objective resolutions as a preamble of the constitution of Pakistan. But the leaders of Pakistan like Ishtiaq Hussain, Maulana Shabbir, and Liaqat Ali Khan cleared that the rights of minorities must be protected in the constitution so they can easily profess their religion, and places of worship cannot be destroyed by the Muslim majority. And finally, after clearing the points of minorities the resolution was passed in the 1st constitutional assembly on the 12th of March, 1949.[49]

<u>Research Questions:</u>

The research aims to answer-

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[48] All these things are mentioned in ANNEX OF constitution of Islamic Republic of Pakistan, 1973.

[49] Boussiakou, Iris. "Religious Freedom and Minority Rights in Greece: the case of the Muslim minority in western Thrace." (2008).

1. Is the Ar.2A of the Constitution of Pakistan the Grundnorm?
2. Is Objective Resolution superseded by the other provisions of Pakistan's Constitution?
3. What is the rank of Ar.2A in the Pakistan Constitution?

Research Methodology:

The present research was conducted to determine the legal status of objective resolution in our constitution and checked its interference. The work oBoussiakou, Iris. "Religious Freedom and Minority Rights in Greece: the case of the Muslim minority in western Thrace." (2008).f this research is qualitative. The research has been explored by reading different research articles, histories, and judgments on objective resolution and after taking a theoretical view this study becomes comprehensive and coherent in form. This study covers all the areas that were necessary for the observation and implication Of Ar.2A.[50]

Objective resolution as an operational article of the Constitution:

There was also a discussion on taking a preamble as an operational article of the constitution. During the framing of objective resolution as a preamble of the constitution
Some of them are in favor of this debate while others negate it. Then after a lot of discussions, the preamble was inserted in constitution provisions with the name of Ar.2A and taken as a "substantive part of the Constitution". The Ar.2A was included by "presidential order No.14 of 1985" dated March 2, 1985. The Ar.2A

[50]Tussman, Jospeh, and Jacobus TenBroek. "The equal protection of the laws." *Calif. L. Rev.* 37 (1949): 341.

provision was enumerated in Constitution by General Zia-ul Haq in presidential power. After the addition of Ar.2A a lot of questions were raised like what was the need of Ar.2A in the presence of the preamble? And what was the intent of Zia behind the promulgation of Ar.2A? All these questions create a panorama in the minds of legislative authorities. [51]

Firstly, after the enumeration of provisions, Ar.2A clears that the rights and duties mentioned in Quran and Sunnah create an obligation for everyone to oblige it. In this compliance of injunction of the Quran and Sunnah become the supreme law of the land and no one can derogate from it. And any law made against the injunction of Islam becomes null and void[52]. The next question arises how these rights were enforced? Or what was the authority behind the Constitution to enforce these rights or provisions? So, the enforcement of constitutional provisions must be in the hands of the court to ensure the full compliance of injunctions of the Quran and Sunnah. The judges are duty-bound to see the cases in the light of Islam. The exact wording of Ar.2A is-

"The principles and provisions set out in the objective resolution reproduced in the ANNEX are hereby made substantive part of the constitution and shall have effect accordingly"[53]

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[52] Under Ar.8(2) of constitution of Pakistan,1973, pg.5 on KLR publications.

[53] Pg.4 of KLR publication by M.A Zafar

**Historical development of Pakistan on Ar.2A:**

According to the provision of Ar.2A, the objective resolution was embodied as a substantive part of the constitution. In the history of Pakistan, Muslim leaders showed different views about the status of a preamble and Ar.2A. Like in the Hakim Khan case, the judge gave his view regarding the amendment situation on Ar.2A. In this judgment, it was not the intention of the legislators to make the objective resolution as an unamendable document[54]. Liaquat Ali Khan at the time of the proposal of Objective resolution prescribed the importance of the preamble"It is the main principle that is incorporated in the constitution which the whole system of Pakistan relied". On the other side, the great leader of Pakistan Abdur Rab Nishtar in his declamation said "By its very nature Objective resolution is not a constitution"[55]. Another Muslim leader Nazir Khan showed his view on the status of objective resolution that the "objective resolution present in the state of preamble but it's not whole a constitution although it was just based on the injunctions of Islam and Pakistan made on the agenda of a separate Islamic state"[56].

The law Minister Hafeez Pirzada also elaborate on the status of the preamble (objective resolution)-
"He cleared that it was not the aim of the legislator to make the objective resolution (preamble) as an operational article of the constitution. And also shed light

[54] PLD 1992 SC 595
[55] The constitution of Islamic Republic of pakistan,1973 by Abdul Basit, commentary, pg.76
[56] Nazir khan, in his speech the minister of the government presented the status of objective resolution.

on the point that many people consider the Grundnorm of the constitution or a basic structure of the constitution. He negated this point and said that where the constitutional provision is easily understandable and there was no doubt in it in this case the preamble cannot be taken as an interpretive force. And many of the judges like the Supreme Court and High Court prescribed the vision on the Grundnorm or basic structure of the Constitution. In which they cleared that the preamble cannot be taken as an unamenable (supra-constitutional) document. But where the ambiguity persists in the provision of the constitution then they can take help from the preamble and cannot go beyond from the major purpose of constitution that was based on Islam"[57].

Examination of Basic Structure theory in light of Pakistan Cases:

The word basic structure theory means every constitution has been based on the basic structure and neither can deviate from it nor it should be deleted from the constitution. This theory was the first time provided in Indian judgments. And later on, Malaysia, Bangladesh, and Pakistan also used this theory in constitutional cases. Because every independent and sovereign state's constitution has basic features and principles on which the whole system was based. Based on this theory, it was a supra-constitutional thing or unamendable and neither Parliament amended it nor the judiciary. The above

[57]Hafeez Pirzada, as a federal law minister, who presented the bill of the constitution before the parliament and

theory was also mentioned in the research project of German law professor, namedDietrich Conrad[58].

According to the above introduction of "BASIC STRUCTURE THEORY", the Indian Supreme Court supports the basic structure theory in his renowned judgment "Kesavananda Bharati case", which explained that our constitution is based on some basic rights that cannot be changed by the legislature (or by the Parliament). And in this scenario, if the legislature made any law that was inconsistent with those fundamental rights that were mentioned in Indian Constitution then the judiciary has the power to annul the provisions or amendments. Similarly, in another judgment of India which Supreme Court declared the constitutional 39th and 42nd amendments null and void on the base of the doctrine of "BASIC STRUCTURE THEORY"[59].

Now, moving towards the role of basic structure theory in Pakistan. It was linked with the basic feature of our constitution which is objective resolution through which our constitution is based. There were a lot of cases in Pakistan's history that explained the importance of theory in our constitutional amendments. In some cases, judges denied the basic structure theory and in some circumstance's theory supersede.

In Pakistan's history, the word Basic Structure Theory matter first time was raised in the "Asma Jilani case", in which the status of the preamble was determined by the Supreme Court. Chief Justice Hamood-ur-Rehman in his detailed judgment prescribed

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[58] Mentioned in detailed Supreme court judgment of Pakistan, presented by CJ Nasir-ul-Malik, Jawwad S. Khawaja and many others, based on 902 pages, on constitutional amendment's in Pakistan.

[59] Minerva mills vs. Union of India, and Nehru Gandhi vs. Raj Narain

that, Pakistan has its own basic norm or basic principle in the form of objective resolution but the apex court did not authorize the basic principle to annul any provision of the constitution. So, in this case, the supreme court of Pakistan negates the idea of the "Basic Structure Theory" given by the Indian Supreme Court. According to this judgment basic structure theory persist just for the sake of determination of basic features or principle of the Constitution[60].

Another important case was "Mahmood Khan Achakzai vs. the Federation ofPakistan". In this case, Sarmad Jalal Osmany Justice recognized the basic features of the constitution that are amalgamated with Islamic law including; a parliamentary form of Government, the judiciary must be independent in their work, and last one is Federal state. In this Judgment, Sarmad Jalal also refused the concept of "Basic Structure Theory". And clear that any article of the constitution cannot be null and void merely on the basis principle or basic norm of the constitution. In this case, claimants filed a case on behalf of basic structure theoryto annul the 21st amendment and also raised a point on the legislature to eradicate or to amend any provision[61]. But on the other side, the apex court has declined the ability of "objective resolution" to terminate or annul any provision although the meaning of the provision was clear and absolute.

Another case in history was the "Pakistan Lawyers Forum vs. Federation of Pakistan". In this case, SC also denied annulling any provision or article on the base of

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[60] PLD 1972 SC 139
[61] PLD 1997 SC 426

the basic principle of the Constitution but some perceive or acknowledged the concept of “Basic Structure Theory”[62]. The most important case of 1972, “Zia-ur-Rehman vs. State”. In this case, SC again denied that the preamble has the power to annul any article or segment of the Constitution. In this case, one point was raised that in 1972 the “Objective Resolution” was not included as an article of the constitution so how the preamble alone supersedes the other provisions or articles of the constitution[63].

According to the above discussion and take a purview of judgments some points are inferred that the preamble was just taken as a document, and on its judiciary cannot annul any article of the constitution. And the judges denied the Basic Structure Theory concept that was introduced by Indian Supreme Court. Although Objective Resolution is a basic structure of the Pakistan Constitution that was especially based on our Islamic provisions but on the other side if the other provisions are clear and there was no contradiction between Islam and the article then cannot be null and void by the preamble.

## Judicial Interpretation and Article. 2A:

In Pakistan’s history, some cases interpret the status of Ar. 2A. And also determined the inconsistent status of Ar.2A with other laws. Although judges have no authority to make the law, they make proper interpretation of the law whether it’s an Islamic provision or a local law. The detail of the cases was given below-

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[62] PLD 2005 SC 719

[63] PLD 1973 SC 49

The most important cases in history were "Kaneez Fatima vs Wali Mohammad"[64]. In this case,Wali (husband) has pronouncedthe dissolution of

Marriage or divorce from her wife (Kaneez). He just wants to get separation from her due to a lot of reasons. But under the "Muslim Family Law Ordinance" when the husband gives divorce to the wife then he his duty bound to send a notice to the "Union Council Chairman" and after that he also sent the copies of Talaq notice to the wife[65]. But Wali Mohammad divorced and didn't comply with this provision. There was also a provision under this Ordinance if any person doesn't fulfill the requirement of the above provision then he is "liable to punishment of imprisonment for a term of 1year or fine which may extend to 5 thousand rupees or both"[66]. Due to the non-compliance withthe provision his wife sued in court against her husband on the ground that the divorce has no effect and was not canceled. And she also demanded a maintenance allowance. But under Islamic law, the procedure was different, if a husband pronounced a Talaq once a time it becomes effective and cannot be revoked or canceled by any higher authority. This case showed a dispute between Islamic law (as per Article. 2A of the constitution) and local law (i.e. sec.7 of the Muslim. family law ordinance).

The next important case in history was "Asma Jilani vs. the Government of Punjab and others"[67]. This case was filed against the father (Ghulam Jilani) of Asma Jilani. During the martial law of Yahya Khan, the order

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[64] PLD 1993 SC 901

[65] Section. 7 (1) of MUSLIM FAMILY LAW ORDINANCE.

[66] Section. 7(2) of Muslim Family Law Ordinance,1961.

[67] PLD 1972 SC 139

has been passed to arrest Asma's father and Zarina Gohar's husband. The Supreme Court decided the case in favor of Asma's father and declared the detention was illegal. Chief Justice Hamood-ur-Rehman set down that Pakistan was run by Islamic Constitution and no one has the authority to abrogate the Islamic provisions. He also stated that Pakistan was not run by a dictator. It was just run by a democracy of people. And the order of a military person was not "supra-constitutional". So, in this case,the judge gave the" status of Grundnorm" to the objective resolution or Ar.2A.

Another case was "Hakim Khan vs. the Government of Pakistan"[68]. This case raised an issue on declared death sentences by military courts during martial regimes. But after that in 1988, Benazir Bhutto give guidance to the ex-president of Pakistan to commute all the death sentences that were awarded by the military. The constitution of Pakistan "shall grant powers to the President to commute, reprieve, or suspend any sentence granted or awarded by any court, by any higher authority, or by the tribunal"[69]. This type of provision also existed under "Pakistan Penal Code, 1860" in which the "President shall have authority to remit, pardon, or terminate the death sentence"[70]. So, the Hakim Khan upraise the issue on that point that it was against the injunction of Islam that was prescribed under Article. 2A or objective resolution of the constitution. Under Islam, the commutation of death sentence authority was in the

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[68] PLD 1992 SC 595

[69] Article. 45 OF THE Constitution of Islamic Republic of Pakistan,1973.

[70] Section.55-A of PPC, 1860 BY M.A. ZAFAR, Key law reports publication, pg. 19.

hands of Allah. And this created a contradiction between Ar.2A and Ar.45.

In this case, some questions were uplifted such as what was the status of Ar.2A? Is either Ar.2A supersede the other provisions of the Constitution? To determine what was the actual position of Ar.2A as a preamble and as an operational article of the constitution. So, the court ruled that we cannot be denied the status of objective resolution as an operational article of the constitution but it was unadmitted fact to annul any clear provision based on Ar.2A. And Supreme Court mentioned that it was not the authority of the judiciary to annul any provision like Ar.45 of the constitution. While authority lies only in the hands of the legislature to amend any provision of the constitution under Ar.239 of the constitution of Pakistan. From the above discussion of cases, it is inferred that some provisions of the constitution created contrast with Ar.2A and it cannot null and void any provision.

## CONCLUSION:

Pakistan being an Islamic State emerged on the page of the world. And got independence on the 14th of August,1947 from the sub-continent. At that time Pakistan has no particular constitution and acquired the "Government of India Act,1935" for the regulation of country affairs. And Pakistan mostly adopted the Acts of India and the British. And after that with the help of the legislative body Pakistan Government proposed the 1956 Constitution but due to some reasons, they made another Constitution in 1962 and finally after a lot of struggle they made a 1973 Constitution. In all of the Constitutions, parliamentarians are given the status of Objective resolution as a preamble. In which supreme

authority is given to Allah. And the authority was transferred to the elected persons. Some political leaders said that objective resolution was a Grundnorm but some of them said it was just a document when the issue has come in front of the court in the Asma Jilani case, SC did not deny the status of objective resolution but judges did not suggest that we can null and void any provision based on Ar.2A or objective Resolution. And the authority of the judiciary to just interpret the provisions of Pakistan in the right way and not to make the law. It was in the hand of the legislature to amend or alter any provision when it was inconsistent with Islam.

# CONTEMPT OF COURT

MARAJ ALAM**
DR. MIRZA SHAHID RIZWAN BAIG**

**Abstract;** Any action that impedes the administration of justice, diminishes the courts' authority and dignity, or otherwise disrespects and insults them is considered to be in contempt of court. Therefore, it is essential that courts have the authority to punish offenders of contempt of court. A nation where democracy is the rule requires an independent, open, and responsible judicial system as a sine-qua non. To uphold the rule of law and justice, judicial authority is carried out by the judiciary.In order to maintain public respect for and trust in the legal system, the law of contempt has been adopted. If this trust is damaged or destroyed, the common man's faith in the democratic system and the court is likely to decline, which, if unchecked, will undoubtedly be terrible for the society as a whole.

The goal of contempt of court is to penalize any behavior that undermines the authority and decorum of judicial tribunals. It is a question of the impartial administration of justice. There is substantial doubt that the common law principle of the supremacy and independence of the judiciary is where contempt law originated, despite the fact that it might be challenging to pinpoint its exact beginnings. The supporters of this law say that any administration system can be safely supported because of the judges' good faith.

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**INTRODUCTION;**

We have to first make the law respectable if we want people to obey the law."-Louis D. Brandeis[71]

The concept of contempt of court is used to represent violation of those courtroom standards established by law. Courtroom administration requires a smooth and uninterrupted courtroom management. Parties to a case and anyone else present in a courtroom are obligated to adhere to basic court demeanor standards. The phrase "contempt of court" is used to describe g0ing against the rules that the law has established for courtroom decorum. The act of opposing or defying the justice and honor of the court is known as contempt of court. When it comes to punishment, the contempt procedure must be just enough to take into account the fundamental principles of natural justice. If contempt is discovered, a minimum term would be imposed.

The definitions of "Civil Contempt," "Criminal Contempt," and "Judicial Contempt" are found in Sections 2(a), (b), and (c) of the Ordinance, however, The general rule that any higher court shall have the authority to punish a contempt committed in regard to it is stated and reaffirmed in Section 4 of the ordinance.

A fair and healthy comment on a decision regarding a matter of public concern in a case that has been definitively resolved and is no longer pending is not considered to be contempt of court, according to the exception provided by the ordinance.[72]It is neither a

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[71]Donaldson J, 'Respect for the Law' (1975) 4 Anglo-American Law Review 1.

[72]*CONTEMPT of COURT ORDINANCE*. 2003. Vol. sec 11.

precedent requirement nor a matter of vanity or reputation for the courts to require an unqualified apology in every instance. The apology may be accepted by the court, and the contemnor may be released from the contempt notice. Unconditional apologies do not, however, result in the suspension of the contempt case. Courts have the power to accept or reject an unconditional apology, and each case must be carefully evaluated. The sincerity of an apology cannot be called into question if the accused sincerely thinks he hasn't done anything wrong and offers a justification.[73]

It is a deliberate and unforgiveable act of disrespect for an advocate to write to the government in the capacity of the official receiver in order to influence the High Court with regard to his duties as the receiver in the manner proposed.[74]Despite the fact that the order may not have been served, mere awareness of its existence is sufficient for establishing contempt.

Civil contempt and criminal contempt are the two basic categories under which contempt can be classified. The former addresses intentional disregard for any type of court order or commitment. In general, the second type of contempt involves disregarding legal authorities, attempting to undermine the authority of the court, obstructing or attempting to hinder the administration of justice, or interfering with the conduct of a court procedure. A contempt action is necessary to uphold the dignity of the courts and to maintain confidence among the public in the system. Continuous attempts to intimidate the court, egregious violations of professional

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[73]*CONTEMPT of COURT Ordinance*. 2003. Vol. sec 5(2).

[74]Review of *S.A. Maquith (SC) PLD 1958 SC (Pak.) 425.* n.d.

standards, and unprofessional behavior can destroy the system of justice and democracy would fail in such circumstances. [75]

Any behavior that seeks to undermine or violate the rule of law, interfere with or harm parties, etc., is considered to be in contempt of court. Counsel may lawfully argue before an appellate court that a magistrate's decision is odd, stupid, or just plain incorrect. A statement like "This is a foolish order, passed by a foolish sub judge, and secured by a fool lawyer" clearly violates the court's rules of decorum, it would amount to contempt.[76] The constitutions of Pakistan provide the contempt powers under article 204 to punish the person who interfere or abuse, disobey, scandalizes or does anything which bring the judges and court in contempt in the administration of justice.

## KEY WORDS

contempt,demeanor, courtroom decorum, sine-qua non, administration, uninterrupted,sub judge, commitment, Unconditional apologies

### 1. Meaning of Contempt

According to the definition of contempt of court, "any act which likely to preclude a fair trial or to interfere with the exercise of judicial authority or in the implementation of a judicial decision."[77]

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[75]Review of *Review of the Contempt of Courts Act, 1971 (Limited to Section 2 of the Act),*. 2018. Law Commission of India.

[76]Review of *Muhammad Shafi v. Qadir Bakhsh.* n.d., PLD 1949 Lah. 392.

[77]Review of *the Nigerian Dictionary*. 1996. *Pt Ed. Kongo - Zaria Tamaza Publishing Co. Ltd* Nchi 5.1.

**According to Lord Denning MR.**

There is not one stream of justice, there are numerous streams thus whatever obstructs their courses or muddies the waters of any of those stream is penalized under the single cognomen' contempt of court", [78]
In Awobokun V. Adeyernl." the court stated that
"The act of interfering with or obstructing the due process of administration of justice in any way, whether via action or by passive behavior, is considered to be the essence of contempt"

The Penal Code, criminal codes and the constitution of Pakistan do not contain the express definition of the offence of contempt of court in their provisions."

The aforementioned definitions indicate that the purpose of the offence of contempt is to safeguard the administration of justice. Therefore, it is possible to be in contempt of court for any action or inaction that prejudiced or is likely to prejudice a fair trial. The behavior, activity, or inaction of the offender may be among the act usReus of the offence. According to Lord Denning, "Whatever interferes with or blurs the course of Justice" is contempt simply.

As stated, "Acts constituting contempt of court may include outrageous or disgraceful language or conduct, including statements made orally or in writing and published in a newspaper containing scurrilous

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[78]Denning, MR, Lord. 1980. Review of *the Due Process of Law. London Butterworth*, p.3.

personal accusations of the judge or statements about his conduct as a judge."

## 2. Purpose of contempt power to courts

The primary purpose of granting courts contempt authority is to preserve the majesty, honor, and public perception of the courts. It would seriously affect our nation's legal system if such assurance and faith were permitted to be disturbed. The law of contempt gives the courts the necessary tool to check unjustified assaults or attempts that have a tendency to jeopardize the rule of law.

The goal of contempt proceedings is to restore the honor and dignity of the court, and they are never meant to exact personal retribution. According to the court, it is not proper to take any more action against individuals other than issuing them a severe warning when they showed genuine remorse and contrition for publishing a completely false report about the honorable Chief Justice and tried their best to make amends by prominently publishing an elaborate apology. Notice discharge[79]

The Supreme Court has ruled in the past that the concept of justice is not an isolated virtue. Justice must be courageous, unrestricted, and open to public inspection in order to shine with its pure luster. Therefore, it cannot be considered contempt if someone questions the legal interpretation of a judgment, the severity of a penalty, etc. However, it would go beyond a person's rights if a judge's integrity was undercut by

[79]Review of *State v. Sultan J. Qureshi*. PLJ 1993 S.C. 793.

accusations of incompetence or dishonesty, arbitrary behavior, or a lack of independence.[80]

The issue of contempt basically exists between the Court and the contemnor. Even the Supreme Court would not get involved if the relevant Court decided not to move on. [81]

## 3. Jurisdiction & process for contempt of court in Pakistan

Every nation has created specific laws known as the Contempt of Courts statute in order to uphold such dignity and decorum. Generally speaking, when it comes to the application of contempt legislation, courts all over the world exhibit hesitation and judicial caution.one should exercise extreme care when acting in the capacity of a responsible citizen when speaking about courts, judges, or on any legal issues which is sub-judice before the court. The Islamic Republic of Pakistan's Constitution's Article 204, which unambiguously grants superior courts of Pakistan vast discretionary powers of contempt, is where the law of contempt of court in that country begins. Article in a newspaper detailing an ongoing legal situation about pending matter before the court is considered to be in contempt of court.[82]

According to Article 2o4, a superior court has the authority to punish anyone who abuses, impairs or interferes with the court's process in any way, disobeys a

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[80]Review of *Mohammed Yamin v. om Prakash Bansal,*. n.d., (1982, Cr. L.J. 322 (Raj.).

[81]Review of *West Pakistan WAPDA*. n.d., PLD 1979 SC 912.

[82]Review of *Manzoor Ahmad Malik v. Judges of Lahore High Court*. 1976. PLD SC 6o8.

court order, scandalizes the court, or otherwise does anything that tends to make the court or a judge of the court the target of hatred, ridicule, or contempt, or does anything else that tends to prejudge the outcome of a case that is currently before the court, or does anything else[83]Court can start a contempt proceeding by submitting an application or by the court acting on its own motion which we call suo-moto. Regardless of the situation, contempt procedures must be started within a year of the claimed contempt offence. The ability of a court to penalize for contempt is found with the contempt statute. only the Supreme Court and High Courts have the authority to punish any individual found guilty of contempt of court who meets the criteria laid down in Clause (2) of Article 204 of the Constitution.

Any power granted to a court for contempt of court was further regulated by law subject to rules of court. [84]According to Article 204(3) of the Constitution, Parliament passed the Contempt of Court Act, LXIV of 1976, which was later repealed by the Contempt of Court ordinance, 2oo3, which was also repealed by the Contempt of Court Act, 2012. The Supreme Court, however, overturned the Contempt of Court Act 2012 in August 2o12, which led to the restoration of the Contempt of Court ordinance 2003 as a result of its ruling. The Contempt of Court ordinance, 2003, has classed and divided into. Each sort of contempt has been specified in Sections of the said ordinance The "Civil Contempt," "Criminal Contempt," and "Judicial

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[83]Parliament. 1973. *Constitution of Pakistan*. Vol. sec 204(2).

[84]Parliament. 1973. *Constitution of Pakistan*. Sec 204(3).

Contempt" is the three separate species of contempt [85]the general rule that every superior court shall have the authority to punish a contempt committed in regard to it is stated and reaffirmed in Section 4 of the ordinance. A fair and constructive comment on a decision regarding a matter of public interest in a case that has been definitively resolved and is no longer pending is not considered to be contempt of court, according to the exception provided by the ordinance.

It is not a prerequisite for entry into neither court nor a matter of vanity or reputation for the judges or court to get an unqualified apology in every instance. The contempt notice may be dismissed if the court accepts the contemnor's apologies. The contempt case does not terminate when an unqualified apology is given, though. It is up to the courts' discretion whether to accept or reject an unconditional apology, and all circumstances must be taken into account case to case.Police officer found guilty of contempt of court after acting inappropriately towards the court bailiff. The police officer made unreserved, sincere, and sincere apologies in his appeal to the Supreme Court. Supreme Court overturns conviction and sentence. [86]Any individual who disobeys the court may be penalized with a fine of up to $100,000or six months of simple imprisonment or both [87] Section 19 of the ordinance 2003 permits an appeal against the judgments rendered by a superior court in contempt proceedings. The Appellate Court has a thirty-

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[85]President. 2003. *CoNTEMPT of CoURT 0RDINANCE*. sec. 2(a), (b), & (c).

[86]Review of *Raja Munawar Case.* 199o. SCMR 215.

[87]*C0NTEMPT of C0URT 0RDINANCE*. 2003. Vol. sec o5.

day deadline for submitting appeals. According to the ordinance, if a decision is made by a single judge of a High Court, it can be appealed to a panel of two or more judges. If the original decision is made by a Division or larger Bench of a High Court, it can be appealed to the Supreme Court. If the original decision is made by a single judge or a panel of two judges of the Supreme Court, it can be appealed to a panel of three judges. And if the original decision is made by a panel of three or more judges, it can be appealed to a panel of five or more judges. The Contempt ordinance gives the Appellate Court the power to temporarily stop the implementation of the decision until the appeal is resolved.[88]

A subordinate cannot initiate a proceeding of contempt of court against the contemnor it can only refer to High court for initiating proceeding against the offender. Every High Court that is subject to subsection (3) of the Contempt ordinance shall have the same jurisdiction, powers, and authority over courts that are subordinate to them as it has over contempt of itself, and shall use those same powers and jurisdiction in accordance with the same method and practice. The Contempt of Court ordinance, 2003 gave higher jurisdiction and broad powers to take suo-motu for proceedings on various contempt matters. But the same ordinance under section 4 sub-section 3 limit the powers of high court to proceed in cases which are trial able by the subordinate court under ppc 196o. However, the Constitution and the 2oo3 Contempt of Court ordinance

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[88]*CoNTEMPT of CoURT oRDINANCE*. 2oo3. Vol. sec 19(1),(2),(3).

do not include any such limitations or exclusions on the Supreme Court's authority, allowing it to hear cases of judicial misconduct from all around Pakistan.

## 4. ABUSES OF EFFECTIVE POWER OF CONTEMPT

This court's "legitimacy and moral authority must rest on the standard or merit of its judgments, not by inflicting judicial censorship on critics of its judgments"
Justice Babar Sattar

The contempt jurisdiction would only become relevant if the conduct interfered with the administration of justice; it would never apply to the administrative duties carried out by the courts. one of the most contentious areas of law is contempt by scandalizing because it predates monarchy. Justice must be permitted to endure the inspection and respectful, if outspoken, opinions from ordinary men because she is not a virtue that is kept to oneself.Scandalizing the court is ambiguous and gives the court unrestricted discretion, which causes inconsistent use and abuse of the authority. This discretion is predicated on the notion that scandalizing the judiciary will decrease public trust in it. Although this premise cannot be confirmed, the court, like all other authorities in a democracy, builds public trust by carrying out its tasks with the highest integrity rather than by repressing dissent.[89]

"This court believes that even if the respondent makes harsh and wrong criticisms about its judgment, it

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[89]Katju, Mr. Justice Markandey. 2007. Review of *Contempt of Court: The Need for a Fresh Look* .

won't seriously harm or disrupt the court's ability to deliver justice. So, the respondent cannot be charged with contempt of court." The petitioner in this case did not claim that Mr. Chaudhry offered an opinion about the legal issue that was being considered by the court. The remarks made in the address that had been singled out as being in disobedience of the court were in response to an IHC ruling. Such remarks would be considered to be in the category of judicial rather than criminal contempt.[90]

The judges should not repress individuals who speak against them or use this jurisdiction of contempt to defend their own dignity. They shouldn't hate it or be afraid of it. Since the right to free speech itself is at risk, there is something much more important at stake. They shouldn't respond to every criticism levelled at them or engage in public debate; instead, they should let their actions speak for themselves. Mendacious criticism should be disregarded, but the court should take into account legitimate criticism. He should not be upset or angry, but should have arms broad enough to brush off false remarks.

## 5. Restrictions on the contempt power of court

Besides the powers of contempt there are certain restrictions firstly no any high court have the power to initiate contempt proceeding if the said offence fall under ppc 186o and is punish by the subordinate court.The administration of justice is not impacted by a judge's defamation. The judge has access to the standard redress

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[90]Review of *Saleem Ullah Khan, Advocate versus Fowad Ahmed Chaudhary, Former Federal Minister*. n.d., Criminal original No. 157 of 2022. IHC.

for libel. When a judge's judicial actions are not criticized, there is no contempt of court and court restricts to proceed over it.[91]Due to the accused's actions falling under Section 228 of the P.P.C., the High Court was informed that it lacked jurisdiction to hear the matter. While the judge was performing administrative tasks, the accused's behavior was observed, and no contempt was found to have been committed.[92]A judge of apex court is not accountable for accusations of contempt of court.[93]No judge may order another to appear in court on a contempt charge. For personal animosity, contempt procedures cannot be initiated. Dismissed in-limine.[94] "No man may be judged in his own cause." Courts find it difficult to imagine situations in which this maxim would not be applicable since it is "so universally accepted." It would undoubtedly prevent a former prosecutor from taking the bench and subsequently adjudicating a former defendant. [95]It is also unquestionably true that a judge cannot preside over a case in which they have an interest in the outcome.

## 6. "TRUTH" AS A DEFENSE

In exchange for the media telling the truth about something, I will reward them. "I think that in a contempt

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[91]Review of *Debi Prashad v. K.E. 21o IC 111;* n.d. 46 Cr.LJ 318.
[92]1969 Ikramullah. (SC) P.Cr.LJ 92o
[93]Review of *Mujeebur Rehman Shami v. a Judge of the High Court.* n.d. PLD 1973 Lah. 778, PLJ 1973 Lah. 15o.
[94]Review of *Mujeebur Rehman Shami v. a Judge of the Lahore High Court.* n.d. (7 Judges) (DB) PLD 1973 Lah. 778, PLJ 1973 Lah. 15o.
[95]Review of *Williams v. Pennsylvania*. 2o16. 579 U.S. 1, 9–1o .

case, the truth ought to serve as a defense," **Justice Khare**

Judges are not exempt from criticism, and courts are not permitted to censor the truth. A reasonably phrased, respectfully pressed, and unpublicized claim of the judge's bias does not amount to contempt.[96]

According to Soli J. Sorabjee, "The idea that truth is nodefense plainly restricts press freedom and journalistic activity. When it should have made comments in the public interest, the press would have refrained. A freedom as important as journalistic freedom cannot be put dependent on excessive sensitivity of judges' some contend that since the truth is a total defense in a libel case, it should also be a total defense in a proceeding of contempt case as well.

"The court can allow, in any case for contempt of court, justifying by truth as an adequate defense if it finds that it is in the public welfare and the request for employing the said defense is bona fide." So long as the court's decision-making is informed by the dual considerations of the public interest and the sincerity with which the defense is being asserted, it is within its discretion to accept truth as a defense to contempt proceedings.[97]Courts and judges are amenable to legitimate criticism. Judges are not exempt from criticism, nor are courts allowed to censor the truth. It is not contempt to assert a reasonable claim of prejudice against the judge and act upon it in a respectful way with no publicity.[98]

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[96]Review of *Yousaf Ali Khan.* n.d. PLD 1977 SC 482 .

[97] Indian Contempt of Courts Amendment Act 2oo6,Section 13(b)
[98]Yousaf Ali Khan, PLD 1977 SC 482

## 7. Persons likely to come within the Contempt Net

The administration of justice is an essential part of how the government functions, and the rules for showing respect to the courts apply to everyone, including regular citizens and top government officials. These rules are meant to maintain the authority and dignity of the judiciary. Certain people, who are part of important institutions, may face trouble with contempt of court not because of their personal interests but because of their improper behavior while performing their official duties. It's crucial to pay attention to these groups of people because the contempt law can create tensions and conflicts in the state.

### 8.1 Law-Makers

Law makers are important part of court proceedings in Pakistan they have to follow the directions of court under articles of constitutions of Pakistan for the proper administrations of justice there are many example in Pakistan the former prime minister Yousaf Raza Gallani disqualify on contempt of court by not following court direction. Moreover the prime minister of AJK was also disqualifying on the same issue of contempt. The law makers are not allowed to debate on the conduct of judges of apex court in the discharge of duties under the constitution of Pakistan. [99]But the privilege committee may discuss the conduct of judges in some certain situations. or if anything negative comes about, only the Speaker is qualified to handle it. He may

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[99]*Constitution of Pakistan.* 1973. Vol. sec, 68.

remove the remarks from the records of the legislature or suspend the legislator, but the court is never to take any action.

## 8.2 Political Executives

on the Contrary, while dealing with political officials, the Court typically aims to prevent conflict between the two important government entities and leaves with a note of expectation urging greater caution and prudence on the behalf of political leadership. In particular cases, the Court recognizes the executive's inherent liberty to comment on the nation's law-and-order situation or to criticize the judicial and legal systems as a whole.[100] Trying something different might not provide a positive outcome for the State. Such restraint is warranted by the historic 1997 altercation between Pakistani Prime Minister Nawaz Sharif and Chief Justice Sajjad Ali Shah.

## 8.3 Judicial officers

In fit cases, even judges of higher or lower courts may be subject to contempt proceedings in the right circumstances. The judges of the higher courts are typically given a warning instead of punishment. However, if a Subordinate Court Judge does not rigorously adhere to his code of conduct, he runs a larger danger of being charged and punished.[101]

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[100]Review of *Mainul Hosein and others v. Sheikh Hasina Wazed* . n.d.

[101]Review of *Shamsuddin Ahmed v. Md Golam Rabbani &others* . n.d. 52 DLR 1999 (AD) 68:) .

An Assistant Judge was found guilty of disrespecting the Supreme Court by publishing a newspaper article. The Appellate Division, however, spared the Judge after four years because they felt he had already endured enough suffering. The Appellate Division stated that this case should serve as a reminder to everyone involved that the Court will not hesitate to deal with members of the lower judiciary if he is not circumspect, restrained, polite, and courteous with regard to the higher judiciary.

## 8.4 The Civil-Servants

The main deterrence against disloyal public employees has been the contempt law. Public employees have regularly been charged with contempt for intervening with court business, making snobbish remarks on judicial wing property, even though their departmental channel, disrespecting the judiciary, and blatantly disobeying judicial orders or directives.[102]Tehsildar ought to have complied with the judgement when an advocate informed him that the High Court had issued a stay order. Tehsildar was ordered to imprisonment until the court raised and a fine of Rs. 2,000 by the High Court for violating the order, Appeal was rejected by the Supreme Court.[103]

[102]Review of *State v. Abdul Karim Sarkar* . n.d.
[103]Review of *Agha Rashid Ahmad*. n.d. NLR 1982 Cr. 1.

## 8.5 The-Press

In the event of a contempt charge, the community of journalists, print media columnists, and participants in talk shows on electronic media is the most vulnerable sector of society. Even telling the truth is not a defense in their eyes. Here, the Court looks at whether something leads to disrespect for or motivates someone to lose faith in the legal system rather than whether it is factual. It is likewise discouraged to use "good faith" as a defense for believing something to be true.[104]A bench of the Indian Supreme Court ruled that the concept of "good faith" as it relates to criminal law is entirely distinct from the notion that the person in question has genuinely believed what has been uttered to be true.) When an apology is given wholeheartedly, however, and the accused places him entirely at the mercy of the court, the legal system becomes less strict. Such an unqualified apology and surrender to the Court's good graces are typically accepted.As a result, an apology and statement of regret on paper that is written rather than expressed from the heart are not likely to be accepted.

## 8. CLASSIFICATIONS OF CONTEMPT OF COURT

Contempt of court can be categorized based on its intent (obedience to court orders, protecting parties' rights to litigation, protecting the sanctity of the judicial system, maintaining public confidence in the courts, etc.), how it was committed, where it was committed, what

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[104] Mominur Rahman J Supra Note 1, Per SAN p. 5-6

was actually said in court, and the type of relief that was granted.

It is crucial to categorize contempt into different forms because, despite sharing specific features, they may be subject to differing procedural safeguards and penalties. They are "Intentional and Unintentional Contempt," "Criminal and Civil Contempt," "Direct and Indirect Contempt," or "Contempt in Facie Curiae means in the face of presiding officer of the court and Contempt Ex Facie Curiae means outside the court in the absence of officer of the court," and others.[105] Contempt of court act 2003 also divide the contempt into three types such as civil, criminal and judicial under article 2, 11 and 12 which are as follows

## 9.1 Criminal Contempt

Criminal contempt is the use of language or conduct that tends to impede the proper administration of justice, disrespect the court or its proceedings, or both. It typically occurs when a participant in the proceedings, or a third party, engages in actions that defame the administration of justice. It may be done before the matter is actually heard, or while it is under consideration in courtor after the hearing is over.

According to the CJ of Ghana, criminal contempt is defined as "...any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere in any way with the course of justice. This offence is committed not only against the

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[105] Liberty- Press Case, 135, per Akufo-Addo CJ; Mensah-Bonsu Case 392-394, per Bamford-Addo JSC; Elikplim Agbemava Case 61-62, per Dotse JSC; Ex parte Kennedy Agyapong Kulendi JSC)

courts but also against the community as a whole that the courts serve. Such behavior is considered contempt of court and is illegal. Toscandalize the courts through words or actions is to violate the law. Making comments that would violate the law would be considered contempt of court. Making statements that invite the prejudice, hatred, or mockery of humanity against the courts or the parties who use them is considered contempt of court.[106]
Criminal contempt is a crime that is penalized by law; the punishment is severe and done so in the public's interest to uphold the legitimacy and honor of the court. It is illegal and punishable by law as a misdemeanor. Criminal contempt convictions and sentences are final, so the contemnor cannot be absolved of his contempt. The only option left to him is to appeal against either or both of the conviction and sentence. Criminal contempt can take at least three different forms, which are as follows:

### 9.1.1 Physically interfering with the course of justice ("contempt in facie-curiae");

The first category of criminal contempt is "contempt in the face of the presiding officer of court" (contempt in facie-curiae), also referred to as "direct-contempt," and it refers to actions that are taken directly in front of, or very close to, the court so as toobstruct or interrupt the proper and orderly course of proceedings. Therefore, it is prima facie curiae contempt when someone misbehaves in the court, says anything disrespectful there, or conducts themselves improperly

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[106]*Akuffo* Addo *C.J* 1968 REPUBLIC v. *LIBERTY PRESS* LTD *Akuffo* Addo *C.J*

while the court is in session. The judge typically has the advantage of seeing the act that constitutes the contempt firsthand in circumstances of direct contempt, such as insulting the judge or a party to a proceeding or engaging in acts of violence in court. Additionally, since the court saw the unlawful behavior firsthand, no additional evidence may be needed for contempt proceedings.[107]

### 9.1.2 Publication of matters undermining public-confidence in the administration of justice ("scandalizing the court")

The second kind of criminal contempt is known as "contempt of scandalizing the court," which includes any action taken or statement in writing made with intended to undermine public faith and confidence in a court or judge. As a result, it entails criticizing a judge or casting doubt on their independence or impartiality. This kind of contempt is typically done after a judge has presided over a case and has been subjected to hateful abuse while acting in that role. This kind of contempt is typically done after termination of proceeding and a judge has presided over a case and has been subjected to hateful abuse while acting in that role.[108]

### 9.1.3 Publishing information that may prevent a fair trial. ("Breaching the sub-judice rule").

The last category of criminal contempt is "contempt of breaching the'sub judice' rule," which

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[107] Adade JSC Mensah-Bonsu Case (n2) 393,394.

[108] Mensah-Bonsu Case, Abu-Ramadan Case (n-3) , Sophia JSC.

forbids interfering with legal cases that are still pending before the courts. When a party knowingly the pendency of case before the court acts in an action or omission that attempts to prejudice or interfere with the fair trial of the case despite the lack of a court order, they may be found in contempt of court.

The law's justification is that, once a court has been given jurisdiction to hear a case, nothing should be done to usurp (layman) the judicial authority granted to the court by the Constitution and laws of the country. Additionally, this power retained up until the court issues its ruling.

## 9.2 Civil-Contempt

The act of willfully disobeying a court's ruling, order, or other process constitutes civil contempt. It is quasi-contempt when a party disobeys a court order in order to benefit or promote the interests of another party involved in the court proceedings.

A party to any litigation would typically allege civil contempt when they believe that a court's order has been ignored or interfered with. When civil contempt is involved, there is no crime or offence involved because it is a quasi-crime. The penalty for civil contempt is corrective in favorof the plaintiff and upholds their private right.

"A person who willfully disobeys a court order requiring him to do anything other than pay money or refrain from doing something is in contempt of the court and may be sent to prison; the order sought to be enforced should be transparent and must be understood by the parties involved. The rationale for this is that a court will only hold someone in contempt for willfully

disobeying a clear court order that demands compliance with its requirements. Therefore, non-willful disobedience that is found cannot be subject to penalties.[109] The applicant must prove that a ruling or order that gives rise to the issue of contempt is indeed in effect. Then, he must prove to the court that the defendant was aware of the said order and his obligation to perform or refrain from performing a specific act. Finally, the petitioner must show that the defendant deliberately or willfully ignored the court's decision or judgement.

The court would only penalize a violation of an injunction as contempt if it was convinced, among other things, that the injunction's contents were unequivocal and explicit and that the defendant had adequate notice of them. It was decided that unless a person got notice of the order, they could not be held in contempt of it under the law as a whole. The necessary element is that the contemnor willfully disobeyed the aforementioned verdict or decree. A party must be proven to have engaged in intentional disobedience or willful violation of a court order for their actions to constitute contempt of court.[110]

## 9.3 Judicial contempt

"Judicial contempt" refers to the contempt of court that occurs when there is a willful disobedience or

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[109] Bamford Addoo ,116 Republic v. High Court, Laryea Mensah

[110] JSC, Prof. ocran . 2oo4. Review of *Tsatsu Tsikata v. the Republic* . SCGLR ,1o68.

disrespect shown towards a court, judge, or judicial proceeding. It may include actions like disrupting court proceedings, ignoring court orders, showing disrespect to the judge or court officers, or any act that interferes with the administration of justice.

A superior court can take action against someone who shows contempt for the court, either on its own accord or based on information provided by any person. Contempt of court means showing disrespect or disobedience towards the court, its orders, or its authority. However, if someone provides false information about someone committing contempt, that person can also be held accountable for contempt of court. If the contempt proceedings are about a judge or initiated by a judge, the judge in question cannot hear the case. Instead, it will be referred to the Chief Justice, who may handle it personally or appoint another judge to handle it. If the judge himself is the Chief Justice, the case will be referred to the most senior judge available for handling.

Additionally, any proceedings for judicial contempt must be initiated within one year from the time the contemptuous act occurred. After that one-year period, no further action can be taken on the matter.

### 9.3 Indirect Contempt (Contempt Ex-Faciae Curiae)

Contempt committed outside of court is referred to as indirect (or constructive) contempt or contempt ex facie-curiae. The term is primarily used in reference to a party's failure or refusal toobey a valid order, injunction, or decree of the court placing upon him a duty to comply or forbearance. They are thatcontempt that arises from matters that don't take place in or near the presence of the

court, but which typically hinder or defeat the administration of justice. All types of criminal contempt, with the exception of contempt in facie curiae, fall under the category of contempt ex facie curiae. Therefore, examples of indirect contempt include violating the sub judice-norm, scandalizing the court, and a stranger willfully disregarding a court order.

## 9.4 Intentional & Unintentional Contempt

Both intentional and unintentional contempt of court violations are possible. When the offensive behavior was carried out willfully, deliberately, knowingly, or carelessly, it is said to have been done with intention. It is undeniably purposeful contempt to willfully disobey a court order in civil contempt. To establish contempt, the applicant must demonstrate beyond a reasonable doubt that the accused disregarded a court order with the intent, knowledge, or reckless disregard that such behavior would undermine the legitimacy of the court. Additionally, criminal contempt may be committed knowingly, in which case the penalty is steeper than for unintentionally offences.

When the offensive behavior was carried out accidently or without intent, it is referred to as unintended contempt. Only criminal contempt has thus far been possible to commit unintentionally. Because it is well-established law that ignorance of the impending action, lack of knowledge of pendency of case is not a defense and can only be taken into account when imposing a sentence to lessen punishment if his action was in fact in contempt of court.If the appellants committed an act that interfered in any way with the case's trial while it was still pending, they would be in

contempt of court and their claim that they were not personally delivered with the writ would be useless. Because neither ignorance of the ongoing litigation nor lack of intent to commit contempt constitutes a defense[111]

## 9. CONTEMPT OF COURT AND FREEDOM OF SPEECH AND EXPRESSION

Unquestionably, the freedom of opinion and speech is the most important fundamental right in any constitutional society and the fulcrum on which all other rights depend.[112]

People must have faith in the judicial system in order to preserve a robust democracy. Repeated attempts to intimidate the court, gross professional misconduct, and immoral actions might undermine the legal system, and democracy would not endure in such conditions. For the courts to remain honorable and for the public to continue to have faith in the system, a contempt action is necessary.

Even while the right to freedom of expression is a basic right of individuals but the judiciary's honors must also be preserved. The contempt action is used to protect the administration of justice from being criticized, not to settle judges' personal scores. The general public's confidence in the judiciary is essential. People who choose to criticize the judiciary should be aware that there is a boundary that should not be passed when

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[111] Narh v. Dombo,1970

[112]Benin JSC. 2016. Review of *Ghana Independent Broadcasters Association v. Attorney-General & Anor*, p. 2. (unreported)

exercising their right to publish and transmit information and their freedom of expression.

Freedom of speech and press have been declared the core values in our free constitutional democracy where political speech now can neither be abridged nor be limited. In a landmark judgment announced on WP No. 59599 of 2o22 16, Justice Shahid Karim of the Lahore High Court struck down the Section 124-A of the Pakistan Penal Code (PPC) as being "void as a whole" and also being inconsistent with and in derogation of fundamental rights enshrined in the Constitution of the Islamic Republic of Pakistan, 1973

The great English jurist and oracle of the common law, Blackstone, anticipated this line when he stated that "Every a citizen has an undoubtedly right to lay what the emotions he pleases before the public: to forbid this, is to undermine the freedom of the press: but if he publishes what is improper, arrogant, or illegal, he must take repercussions of his own temerity."

Justice Baber of the IHC states that when it consider judicial contempt based on criticism of the decision in a case that has been decided by a court, the court must exercise control and maintain the right of freedom of expression so that the law of contempt operates in a manner that is least disruptive of the freedom guaranteed by Article 19 of the Constitution."[113] The courts and judges are not immune to criticism, but remarks that are flagrantly false, distort the truth, or erode public confidence should not be tolerated. When

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[113]Review of *Advocate Saleemullah Khan vs Fawad Chudhry*. 2022. islamabad HC.

accusations are made against the judge in his official role without any reason or support, like in the case of Padmahasini v. C.R. Srinivas, it often reveals the ulterior intention of the critic. Such unfounded accusations against a judge should not be made because they could undermine public confidence in the legal system. Justice should be carried out alongside free speech and criticism. This is only conceivable if judges follow the standards that place restrictions on the judiciary's discretion. This will prevent favoritism and the inappropriate use of contempt brought on by excessive sensitivity. This will also guarantee that the judiciary has the means to stop attacks that pose actual and potential dangers to the administration of justice.

In order to defend the high importance put on freedom of speech in the constitutional system of governance, many expressions and basis for that freedom have been utilized to varying degrees by courts throughout the civilized world. In this way, the ability to think and speak freely is essential to the development and propagation of political truth. But a dialogue would be pointless without the right to free speech. The people are the state's trustees, and they are ultimately answerable to them because they are also their employers.[114]

Articles 19 and 19A of the Constitution provide a right to acquire information in all subjects of public interest while also guaranteeing freedom of speech. It is absurd to think that a colonial legislation passed with the express intent of stifling expression would still hold

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[114]Review of *Syed Yousaf Raza Gillani v. Assistant Registrar Supreme Court* . n.d. PLD 2o12 SC 466.

precedence over the constitutional requirements of free speech and the freedom of the press.

In opposition tothis tyrannical approach, Justice Shahid declares that "Section 124-A of the Pakistan Penal Code (PPC) is unconstitutional and offends the fundamental rights enshrined in Articles 19 and 19A of the Constitution." The court's ruling also upholds the principle that those in positions of public trust must always remember that, according to the Constitution, Pakistan's constitution was formed by the country's citizens' expressed will. They are in charge according to this will. As a result, they are trustees and fiduciaries first and foremost for the Pakistani people. In addition, they are only allowed to act in the best interests of the Pakistani people, on behalf of whom they hold office and from whose wallets they receive their salary, when carrying out the duties of their position. In a culture that values fresh perspectives and in-depth study to advance, such provisions have no place. But speaking is a strong tool. It is essential toour growth as people, the lifeblood of democracy, and a requirement for discovering the truth. The verdict also states that "The offence of sedition in section 124-A goes beyond the boundaries placed by Article 19 regarding the role of the press and its freedoms, which must not be curtailed on the misguided belief that the government of the day may curtail political speech at will."

In a nutshell, the citizens of this nation are the masters, and those whooccupy government positions are the public servants. By giving the government employees the ability to suppress the masters, this arrangement cannot be turned upside down. Therefore, it has been correctly determined that Section 124-A of the PPC is incompatible with the guiding principles of constitutional

democracy and has been relegated toobscurity as a bygone relic.

## 9.1 PRASHANT BHUSHAN CONTEMPT CASE

Article 19(1) of the Constitution provides citizens with the right to freedom of speech and expression, but this right is not absolute and is subject to certain restrictions mentioned in Article 19(2). These restrictions pertain to the interests of state sovereignty, integrity, security, friendly relations with foreign countries, public order, decency, morality, contempt of court, defamation, and incitement to an offense.

In a recent case, Mr. Prashant Bhushan, a renowned PIL lawyer known for his involvement in significant public interest cases, faced charges of contempt of court under Article 129. The charges were based on derogatory tweets he made criticizing the Supreme Court. One tweet focused on the Chief Justice of India (CJI) riding a bike, while the other criticized the functioning of the Supreme Court as contributing to the "destruction of democracy."

The court took suo moto cognizance of the matter after a petition was filed against Mr. Bhushan's tweets. In response, Mr. Bhushan claimed that his tweets were an exercise of his right to freedom of speech and expression and represented fair and constructive criticism of the judiciary, underline his misery at the non-physical functioning of the Supreme Court for the last more than three months without intending to target the dignity of the institution.

However, the court rejected his arguments, citing various precedents, and held that Mr. Bhushan's tweets had the potential to create hatred and shake public

confidence in the judiciary and the CJI. The court found the tweets to be scandalous, declaring him guilty of criminal contempt. The court directed Mr. Bhushan to apologize for his conduct, but he refused, maintaining that his actions were based on constructive criticism. As a result, the court imposed a fine of Re.1/- (Rupee one) on him, which he paid to avoid further consequences. Nevertheless, Mr. Bhushan stated that he does not accept the court's decision, seeing it as an attempt to curb his right to freedom of speech and expression, and he filed a review petition against the judgment.

## 10. CONCLUSION

In a nutshell, if the legal system as a whole and its courts are devoid of their dignity and the public's faith in the administration of justice, then their mere existence is still pointless. This work skillfully discussed and argued for the necessity of effective use of the contempt power tosanitize and eradicate the numerous contemptuous conducts that poison the outflow of eternal streams of justice in order to raise awareness and protect the dignity and trust of the public in our courts and the noble tasks they are called upon and anointed to perform. There had been detailed explanations of the nature and several types of this ability. Additionally, the components of the boundary between one's exercise of free speech and expression and the contempt power had been defined. According to the article, in order to preserve the integrity of the Superior Courts' autonomy, which is protected by the Constitution, the exercise of the President's prerogative of mercy power with regard to criminal convictions should not be extend to cover criminal contempt cases brought by the apex courtson their own

motion. The judiciary is the protector of the rule of law and has a responsibility to uphold the structure of democracy of the country as well as the interests of the population as a whole. In carrying out this duty, the judiciary must make certain decisions that are related to the dignity of the judiciary as well as the well-being of the general public. The judiciary, which is the fourth and most important pillar of democracy, has a duty to defend and advance both the rights of citizens and the rule of law because it is the highest authority. However, none of these rights are unlimited and do result in some constraints and limitations, as stated in the Constitution, which does give its citizens some fundamental rights that must be preserved.

One of the elements required to make a crime is the mens rea, courts punish people who are deemed to have committed a contempt either intentionally or through negligence. It is important to note that courts only penalize willful contempt unless the accused exhibits extreme negligence in omitting information that would impede the court's ability to administer justice properly. The issue of "contempt of court" and "freedom of speech" in Pakistan presents a delicate balancing act between upholding the judiciary's authority and protecting citizens' fundamental right to express them. Throughout Pakistan's history, the tension between these two principles has been evident in various legal cases and public controversies.

While freedom of speech is a fundamental right enshrined in the Constitution of Pakistan, the concept has its limitations, including restrictions on speech that undermines the integrity of the judiciary or interferes with the administration of justice. Contempt of court laws are meant to safeguard the judiciary's independence,

maintain public confidence, and ensure the proper functioning of the justice system. However, the implementation and interpretation of contempt of court laws have been subject to scrutiny and criticism. Critics argue that these laws can be used to stifle legitimate criticism and dissent, potentially infringing upon the right to freedom of speech. There have been instances where journalists, activists, and individuals expressing dissenting views have faced contempt of court charges, leading to concerns about the misuse of this power and its impact on media freedom and democratic discourse. To strike a fair balance between protecting the judiciary's honor and preserving freedom of speech, it is essential for Pakistan to review its contempt of court laws and procedures. Reforms should focus on ensuring that these laws are not used as tools to suppress dissent or silence criticism, but rather to genuinely address instances of obstruction of justice or attempts to undermine the court's authority.

Moreover, promoting judicial transparency, accountability, and openness to constructive criticism can bolster public trust in the judiciary, making it less susceptible to unwarranted attacks on its integrity. Judges should be equipped to handle criticism professionally, and mechanisms for citizens' grievances regarding judicial conduct should be accessible and transparent. Ultimately, a robust and healthy democracy requires a judiciary that commands respect and is independent, as well as a society that values and safeguards the right to freedom of speech. Striking the right balance between these two vital principles remains an ongoing challenge for Pakistan, requiring continuous dialogue, legal refinement, and a commitment to uphold both the rule of law and the principles of democracy.

# DIGITAL DEMOCRACY OR DIGITAL DYSTOPIA? ANALYZING THE INTERSECTION OF FREEDOM OF EXPRESSION AND ONLINE SURVEILLANCE IN PAKISTAN

ALI HAIDER**
DR. MIRZA SHAHID RIZWAN BAIG**

**Abstract;** Since its creation, digital media has drawn a lot of attention from those wanting to strengthen democracy. The four waves of the utopian future had been established. Digital democracy is defined as a concept. The next step is to separate the six direct democracy and consultant ideas that support certain digital media political and governmental programmes. The claims and accomplishments of 25 years of work to realise virtual democracy in the areas of information supply, online discussion, and decision-making are listed in the paragraph that follows. The main claim seems to be the giving of information. Participation in politics and media is the topic of the last section of this chapter. Government and citizen-based initiatives are covered. Total citizen-based apps seem to be the most popular. In general, institutional politics and governance no longer effectively include participation. Every person in Pakistan has the inherent right to freedom of speech, although this freedom is seldom used due to the bureaucratic apparatus. In order to understand some of the variables that contribute to the current situation, particularly the safety of its citizens, this research attempts to analyse the contemporary nation of freedom of speech. The essay analyses the social structure and

draws conclusions from a wide variety of events occurring in the United States under the name of freedom of speech, as guaranteed by certain constitutional values, using a normative framework. Despite the existence of a constitutional clause, research indicates that Pakistan's right to freedom of speech is restricted for security reasons. The present picture of the exploitation of freedom of speech is caused by a number of elements. This exploitation has been linked to an increase in blasphemy cases, missing persons cases, and extrajudicial executions that not only threaten democracy but also endanger public safety. As hate speech and online monitoring have increased, Pakistan's online space for criticism and free expression has decreased. This investigation found that, in order to avoid abuse, it is necessary to identify the areas of ambiguity in a few constitutional clauses. To avoid the general public misinterpreting freedom of speech as the right to disparage other people's religion, beliefs, or points of view, it is also important to retool and explain this concept's specific expertise.

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## INTRODUCTION;

When the Internet and mass-produced personal computers first appeared in the 1980s and 1990s, these media rapidly sparked the creativity of early users, scientists, and watchers of destiny.[115] He presented more or less utopian predictions for the future of politics and

[115]Castells, Manuel. *The Internet galaxy: Reflections on the Internet, business, and society*. Oxford University Press, USA, 2002.

policy. The following capabilities of computers connected to the Internet were seen to have novel or at the very least, transformative implications for the widespread democratization of politics and society.
The Internet was seen as a:

The idea of teledemocracy began to take hold in the 1980s.[116] The most important source of inspiration for the notion that people living in networks may desire to engage in politics and learn about what was happening in the center of society via their cable TV terminals (before) and Internet connections (later) came from the Athenian Agora. From. It was anticipated that the elimination of space restrictions via ICTs and their primary storage capacity would be able to support certain forms of direct democracy without the need for intermediaries, parties, or representatives. A virtual community approach first surfaced in the early 1990s.[117]

The growth of Usenet services and other online communities in this environment will encourage both online communities (groups of hobbyists) and communities online (supporting existing physical communities). The main goal was to fill the "lacking network" in modern society, which predicted the demise of traditional village and community sociability, via these virtual groupings.

After the internet grew to be a major part of society around the turn of the century, it became a moment of internet frenzy. Here, ideas of a "new

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[116] Arterton FC, *Teledemocracy: Can Technology Protect Democracy?* (Sage Publications ; Roosevelt Center for American Policy Studies 1987)
[117]Rheingold H, *The Virtual Community: Homesteading on the Electronic Frontier* (Addison-Wesley Pub Co 1993)

democracy" and "new economy" began to take hold.[118] The fundamental idea evolved into the potential for widespread Internet engagement in politics and policy-making. To build their own political and policy reality, some people may even forego institutional politics and the nation. The initial attempts from a government's point of view were online conversations and consultations with individuals about government initiatives. The main hope was that this would increase involvement.
Three years after the "Internet bubble" burst, the now-famous Web 2.0 methodology appeared.[119]

## Digital Dystopia

How open should we be about our lives? Modern cultures struggle with this issue as connected items, social networks, categorization, artificial intelligence, face popularity, cheap computing power, and several other advances make it easier and easier to collect, purchase, and review private information. On the one hand, these changes offer a more civilised society devoid of fraud, corruption, and preferred non-compliance with the laws and conventions that we recall vital to maintain a prosperous live together. - Major facts beyond. On the other hand, powerful players concerned with vast informational series in private privacy have civil and human rights courts concerned about mass monitoring. They worry that systems and governments would accumulate and preserve too many records on what makes us unique as individuals.

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[118]Shapiro, Andrew L. *The control revolution: How the Internet is putting individuals in charge and changing the world we know*. Perseus Books, 1999.
[119]O'Reilly, T. *What Is Web 2.0*. O'Reilly Network, (2005).

With an emphasis on the excesses that may arise from the careless use of information integration, this essay seeks to provide weight to and highlight each aspect of the argument. Although examples of contemporary non-digital programmes will be given, this study is best seen as an exercise in science fiction (social) technology. In fact, I wouldn't argue against the fact that, so far, information integration utilising non-public systems or governments has primarily resulted in dystopic repercussions. Instead, it is important to understand the channels via which a dystopic society might arise when new technologies reach their maturity and in light of the serious hazards offered by such potential, in order to better create legal and constitutional protections.[120] The benchmark is section 2. It uses literary devices as its basis. Economic traders worry about their social standing and have either short or lasting connections with others. Circles of family, friendships, community connections, and worker links are all examples of strong ties.

## Freedom of Expression and Online Surveillance

Many international and regional agreements, treaties, and institutions consider freedom of speech as a fundamental component of human and civil rights. In other words, the freedom of speech guarantees that individuals may actively participate in preserving democracy. In today's democratic system, the ability to express oneself freely not only helps decision-makers

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[120]Freedman, Lawrence. *The transformation of strategic affairs*. No. 379. Routledge, 2017.

recognise the value of competing ideas, but also contributes to their validation.[121]
In terms of the right to freedom of speech, democratic nations now confront tough conditions. Striking a balance between promoting freedoms of speech and maintaining public order, social peace, and social stability in a nation with a variety of opinions, views, and ideologies is the most challenging challenge. However, freedom of speech is swiftly curtailed within the most advanced democracies in the world, including the US. Since the unlimited exercise of such freedom may inevitably lead to global anarchy, these restrictions are based on research that rejects the concept of total freedom of expression or speech.

Unrestrained speech is not often seen as a moral responsibility since every democratic government puts some kind of restriction on it.[122] Regulations on freedom of speech are put in place when they run afoul of other people's ideas or authorities, according to one study, and this may be ascribed to either constitutional or civil punishment, or even both. Like many democratic nations, Pakistan upholds the right to freedom of speech notwithstanding religious and national security limitations. This essay's goal is to examine Pakistan's contemporary culture of free speech and the legislative changes made outside of the country's legal and constitutional framework. Additionally, it looks for the key indicators that are crucial in determining the modern and victorious viewpoint.

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[121]Medi, Medika. "Online Surveillance and Freedom of Expression in Kenya." PhD diss., University of Nairobi, 2021.
[122]Dutton, William H. *Freedom of connection, freedom of expression: the changing legal and regulatory ecology shaping the Internet*. UNESCO, 2011.

**Freedom of Expression in Pakistan: An overview**

All Pakistanis are guaranteed the right to freedom of speech under Article 19 of the 1973 constitution, but it also places certain limitations on that right in the interests of "the glory of Islam," "social order," and "national defence." These clauses have been utilised against a variety of populations, particularly spiritual minority, who have been subjected to blasphemy laws and voting slavery.[123] Freedom of expression includes not only the right to free speech but also the freedom to choose and practice one's religious beliefs, their political freedom, access to information, and the freedom from offensive speech.

However, such rights are far from guaranteed under the existing theocratic-political regulatory paradigm. Religious students and other authorities often take use of free speech protections to promote hate speech, accuse minorities and other Muslims of blasphemy, and block access to data on the grounds that it is a danger to "national sovereignty" or "internal sovereignty." Keeping the United States safe “While understanding the concept of freedom in terms of challenging the electric power structure of the society, it's argued that individual opinion creation is also confined inside the Pakistani democratic system, where freedom of speech is limited. Instead, the mob mentality that permeates the United States prevents new ideas from flourishing. Furthermore, laws are crucial in controlling one's right to free speech since they might be non-

[123]Liaquat, Sadaf, Ayesha Qaisrani, and Elishma Noel Khokhar. "Freedom of Expression in Pakistan: A myth or a reality." (2016).

existent. By not prosecuting active speakers, strong offenders are allowed to operate without consequence.[124] He asserts that as a consequence of terrorism, Pakistani subculture has become "intellectually dishonest, socially irrational, and spiritually biased." He thinks it is very essential that society's intellectual culture upholds the freedom of speech. It has long been said that Pakistan's constitution has Articles 19 and 19A on the right to free speech[125] and the right to the truth when it comes to online platforms and its ramifications for Pakistan, but postings No precise rules regarding content are present. Internet-sourced and retrieved. On the other hand, it provides with Pakistan Telecommunication Authority (PTA) Acts and Ordinances regarding documents published on digital media. In a similar vein, the issue of blasphemous material spread by foreign governments and the Pakistani government's response to it (using the YouTube ban as an example) has been investigated.

## Views of Democracy and their Favorite Digital Applications

The pursuit and practise of democracy in any ideology via the use of digital media in both online and offline political discourse is known as "digital democracy." The distinction between online and offline actions must be addressed since political activities take

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[124]Uddin, Asma T., and Haris Tarin. *Rethinking the" red Line": The Intersection of Free Speech, Religious Freedom, and Social Change*. Washington, DC: Project on US Relations with the Islamic World, Saban Center for MIddle East Policy at Brookings, 2013.

[125]Constitution (Fourth Amendment) Act, 1975 (71 of 1975), Article 4 (with effect from November 21, 1975) for "defamation"

place both offline and online, even during physical conferences where mobile virtual media are employed as support.[126]

## Government-centric views

The conventional Western understanding of democracy is criminal democracy, or the so-called procedural principle of democracy, according to which the constitution and other legal principles and regulations serve as the inspiration for democracy. Separation of powers (judicial, legislative, and executive branches); a system of checks and balances among the three branches of government; and illustration are the three guiding concepts. The purpose and methods of democracy are decision-making and representation. According to this perspective, the greatest problem that may be resolved with the use of digital media is the lack of information that has been accumulated and disseminated by the nation. It is better to have a tiny, effective nation that runs off of records and communication. Digital media must be employed for data campaigns, citizen information retrieval, and resident statistics collection.

Competitive democracy is a different definition of democracy. Particularly popular are presidential systems or nations with two birthday celebrations.[127] This viewpoint contends that candidates and events fight for

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[126]Gillespie, Marie. "BBC Arabic, social media and citizen production: An experiment in digital democracy before the Arab Spring." *Theory, Culture & Society* 30, no. 4 (2013): 92-130.
[127]Kura, Sulaiman Y. Balarabe. "Political parties and democracy in Nigeria: candidate selection, campaign and party financing in People's Democratic Party." *Journal of Sustainable Development in Africa* 13, no. 6 (2011): 268-298.

voter support. This elitist interpretation of democracy places a strong emphasis on consultant leaders and selection processes. Digital media is often utilised for advocacy and statistics.

**Citizen-centric views**

The methods used by the four basic ideas of democracy are rather varied. They are driven by civil society, not the government. The socialisation of politics is the aim of these theories' proponents. This method gives social service organisations and individual citizens a more differentiated place. It is believed that computer networks made out of the Internet would provide people the power to influence politics via opinion-making, to forego institutional politics, or to update it with their own political affinities.[128]

Plebiscite democracy is the most extreme ideology present here. This point of view contends that elections or referendums are how political decisions are formed. Direct democracy is given preference over consultant democracy in this method. Computer networks' ability to conduct online discussions and polls as well as conduct digital referenda have immediately attracted proponents of this viewpoint. Some people use this viewpoint to symbolise or overtly defend populism in politics. It could now seem really classy. When it comes to holding referendums and other forms of direct democracy, Politicians and unmarried problems are very relevant.[129]

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[128]Hawkins, Kirk A., and David R. Hansen. "Dependent civil society: The círculos bolivarianos in Venezuela." *Latin American Research Review* 41, no. 1 (2006): 102-132.
[129]Reedy, J. and Wells, C., 2008. Information, the internet, and direct democracy. In *Routledge handbook of Internet politics* (pp. 157-172). Routledge.

Even after reaching the decision-making stage, more information will not always lead to more democracy. Gathering more information isn't always the best way to make judgments. All decisions eventually come down to judgment, and the skill of judgment may practically be hindered by an abundance of information.[130]

Plebiscite and libertarian democracy proponents in particular have advocated this strategy. However, the evidence thus far suggests that large-scale Internet competitions in online forums, surveys, communities, and pressure companies may succeed without impacting decisions in respectable politics. A mild touch is made to the consultant device. Television, the press, and in-person political communication continue to have more sway. Perhaps this will alter events once the era of internet politics really gets going. - Poupa refers to the present social network and e-voting trends as direct democracy movements in this book.[131]

Then, electronic voting, referendums, and polls may have more influence. They will apply increasing pressure to the traditional representative gadget. The future will most likely consist of a mix of direct democracy and consulting, entirely supported by a communications community.

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[130]Street, John. "Remote Control? Politics, Technology and Electronic Democracy'." *European Journal of Communication* 12, no. 1 (1997): 27-42.

[131]Wagner, Markus. "Debating Europe in the French Socialist Party: The 2004 internal referendum on the EU constitution." *French Politics* 6 (2008): 257-279.

## E-Participation

E-Participation is a notion that has gained a lot of popularity recently with the emergence of Web 2.0 and user-generated content.[132] E-democracy and virtual democracy are only two subsets of this notion. Political issues and inhabitants' interactions with governments or political representatives are discussed in the later time frame. E-participation generally has to do with coverage concerns and how individuals interact with both public agencies and governments. E-participation is the use of virtual media to mediate and change how individuals interact with governments and public agencies in order to encourage more citizen engagement. In addition to public service concerns that affect how people interact with the government on a daily basis, political issues in the widest sense are also at stake. Participation, however, has a very democratic feel to it, particularly from the viewpoint of a democracy that values its citizens. Consequently, there are several issues with digital democracy.

As it relates to policy, eParticipation may be related to the well-known tiers of the policy system: schedule setting, policy training, selection making, policy execution, and policy evaluation. Currently, schedule setting, policy training, and policy evaluation levels have produced the majority of eParticipation experience. E-participation is aggressively used in decision-making and the execution of policies. Directly involving citizens in policymaking and execution is viewed with scepticism by

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[132]Weller, Katrin. "The digital traces of user-generated content: how social media data may become the historical sources of the future." *Managing Digital Cultural Objects: Analysis, Discovery and Retrieval* (2016): 61-86.

democratic theories that place an emphasis on representation, consultant democracy, legalistic perspectives, and competitive viewpoints. These phases are meant to be used only by political leaders and governmental agencies charged with carrying out decisions made by governments and parliaments. E-balloting in the consultant device may be their most practical alternative in this situation.The thirteen most well-known eParticipation apps in 2010 may be listed after the policy-making process and separated into methods that are focused on the government and on the citizens.[133]

## Agenda setting

Governments sometimes allow individuals to respond to or contribute their own ideas, proposals, or legal cases on government websites in addition to informing citizens about their policies. The most popular e-participation application is information delivery. To discuss participation, it is not adequate to just provide numbers. An opportunity to comment on the records presented must be included, at the very least.

Citizens may establish or utilize e-petitions in various countries to bring single issues, legal cases, or demands to the attention of politicians or authorities. Residents of Scotland are urged to complete petition lists on a website, and this has shown to be a genuine initiative of Parliament. EPetitions may be highly

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[133]van Dijk, J. A. G. M. "Participation in policy making,[w:] Study on the Social Impact of ICT." *Report for European commission, information society and media directorate-general, Issue. European Communities* (2010).

effective tools in nations where it is permissible to bring issues before the parliament after gathering a sizable number of signatures.[134] The Internet is a much more effective instrument than the conventional method of collecting signatures for achieving this objective. This form of petition was once used to influence decisions in the UK. After the first petition against it garnered significant support, the Brown administration dropped the street charging idea.

## Policy preparation

Many Western countries conducted trustworthy online discussions with citizens to debate official plans that had previously been planned during the Internet boom years. Its goal was to include more individuals in the planning process than simply those who were more or less recognised as knowledgeable advocates at government meetings. The same kind of lobbying as before was evident, and governments did not obtain the findings since they were no longer regarded as consultants, which often led to poor outcomes.[135]

However, with the growth of the Internet and the current state of technological development, there are more opportunities for online making plans consultation as more citizens are able to take part and because a number of innovations, such as plans conception and

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[134]Jiang, Min, and Heng Xu. "Exploring online structures on Chinese government portals: Citizen political participation and government legitimation." *Social Science Computer Review* 27, no. 2 (2009): 174-195.

[135]Van Dijk, J. A. G. M. "Digital democracy: Vision and reality." *Public administration in the information age: Revisited* 19 (2012): 49.

imitation, are introduced in planning consultation.[136]

## Decision making

Computer networks provide fresh ways for people to participate in elections and referendums. There should be a distinction between electronic system voting and electronic remote vote casting. Here, the final form of voting is stated. This opens up new possibilities for those who live far from the voting place, are punctual, or are handicapped. However, a significant amount of data from the few instances where online e-voting has already been implemented, particularly among international voters, suggests that it no longer, or very rarely, has an impact on voter participation. Out is too much.[137]

How crucial eCampaigning can be for elections was shown by Barack Obama's campaign. He developed a volunteer army that participated in his marketing effort and raised more than $500 million via his Internet programmes. There was heavy use of email, YouTube, social networking websites, and expanded personal websites. Governments may also be pressured by citizens themselves by using eCampaign methods. Additionally, it takes place outside of election hours. Thousands of European fringe organisations are making an effort to influence government decisions online. However, e-vote casting instructions, which are well-known in many European nations, are now the most significant e-

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[136]Van Dijk, J. A. G. M. "Digital democracy: Vision and reality." *Public administration in the information age: Revisited* 19 (2012): 49.
[137]Kaliyamurthie, K. P., R. Udayakumar, D. Parameswari, and S. N. Mugunthan. "Highly secured online voting system over network." *Indian Journal of Science and Technology* 6, no. 6 (2013): 1-6.

campaigning applications for citizens. These are methods for making decisions that are provided by more or less independent public policy and research organisations. They assist individuals in selecting the best party, candidate, or referendum option based only on a few views and statements.[138]

**Policy Execution**

Of course, governments utilise digital media extensively to police crime and violating the law. However, the government should employ more eyes to observe what is happening in society. Actually, it takes the form of policy implementation involvement. We're talking about city and police websites where citizens may report all kinds of offences, from the sighting of someone using a mobile phone while driving to infant pornography. The public is becoming more and more aware of these ripping websites. They may also be used to file lawsuits challenging government actions and to gather evidence of crimes committed by public employees.[139]

A strong deliver-aspect focus continues to define the delivery of e-government services. The goal is to give more and more public offerings online in modern codecs, with entirely electronic transactions. But it seems that there is seldom a connection between the provision of such services and the need of persons who are far behind.

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[138]Vaccari, Cristian. "“Technology is a commodity”: The Internet in the 2008 United States presidential election." *Journal of information technology & politics* 7, no. 4 (2010): 318-339.

[139]Pavlik, John V. *Journalism and new media*. Columbia university press, 2001.

Projects that fall under the category of eParticipation really belong to more user-driven and demand-driven online government services. Residents may strengthen their voices in this manner to enhance government services. An fundamental foundation for believing in government is trust in its offers. Political ramifications follow.[140]

## Policy Evaluation

Some governments, especially those at the municipal level, have connected online first-class panels or character comments structures in their online public service supply. Residents might charge for the degree of service delivered and repay tips. It presents a chance for governments to constantly enhance their services.[141]

The quickest-growing e-participation tools, however, are a variety of control websites and records services that individuals may use on a regular basis to evaluate the outcomes of government policy and make choices for their everyday life. enables as well as the demand for a living space. The topics at hand are not as politically charged as the common policy discussions on the Internet and in other media. However, even individuals who have no political drive find them to be incredibly alluring. Examples of such websites are those

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[140]Formal, C. V., ICT4D Blog, and Sociedad Red Blog. "Smarter, Faster, Better eGovernment. 8th eGovernment Benchmark Measurement, November 2009." *Gestión* 19, no. 21 (2023): 41.
[141]Brown, Alan, Jerry Fishenden, Mark Thompson, and Will Venters. "Appraising the impact and role of platform models and Government as a Platform (GaaP) in UK Government public service reform: Towards a Platform Assessment Framework (PAF)." *Government Information Quarterly* 34, no. 2 (2017): 167-182.

where local residents may report noise levels near airports and pollution in particular areas or bodies of water. Sociogeographic maps of neighbourhoods and neighbourhoods, which detail their crime rates, housing costs, and high standard of living, are quite popular.[142]

## Conclusion

The earliest phases of the coverage method, including time table creation and coverage training, are when e-Participation is most often employed. Another area where individuals (and their companies) are often the driving force is policy evaluation. Governments and public agencies virtually ever grant access to the fundamental levels of policy execution and decision-making. They contend that it is wholly at odds with the duties of public administration and our democratic political system. Therefore, it is without a doubt a certain democratic mindset that has contributed to governments' popularity of eParticipation projects.

Reviews of e-participation initiatives suggest that those started by citizens, civic organisations, or new media developers are more effective than those started by governments. Many governments experimented with online plan consultations in the late 1990s, but the results in terms of increased participation were dismal. Now, open-ended plan consultations and legitimate online discussions may be held via ePetitions, eVoting publications (created by independent businesses of politically motivated citizens and software engineers),

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[142]Mathur, Somesh K. "Indian information technology industry: past, present and future and a tool for national development." *Journal of Theoretical and Applied Information Technology* 2, no. 2 (2006): 50-79.

eComplaints, and citizen control websites. are more well-liked.

Even while these eParticipation programmes may be more well-known than more conventional ones, not everyone can utilise them. They seek to supplement traditional citizenship skills (social skills, knowledge of how government and decision-making operate, and what the laws and regulations are) with a variety of virtual abilities, which is a major problem. These abilities include computer system operation skills, Internet browsing and navigational skills, informational skills for accessing data on the Web, and strategic skills for utilising Internet tools like eParticipation to your benefit. In the general population, these abilities are distributed relatively unevenly. E-participation will not empower individuals in earlier methods of participating if this is not constantly altered by employing more readily available and useable e-participation equipment and in addition training in virtual skills. Instead, it might strengthen an additional barrier.

The impact of eParticipation on political decisions, however, is the deciding factor in democratic terms. On this basis, we must draw the conclusion that involvement has little to no influence on institutional politics and coverage. With one of the rare exceptions being UK Avenue pricing, citizen input via eParticipation has influenced a few decisions made by the government, political representatives, and public workers. The old channels may simply include the utilised digital involvement channels. The illustration, expense, and exceptionality of inputs from new sources are questioned by decision-makers. Few decision-makers are prepared to just accept how eParticipation affects their decisions.

It is inferred and encouraged that the government

wants to make urgent changes to the legislative framework to ensure that law enforcement agencies, solicitors, and the court can handle such matters without intimidation or compulsion. Respectfully fulfil your commitments. To ensure that they are no longer abused, blasphemy laws need to be changed.
Additionally, any person accused of blasphemy, their family, any solicitors or prosecutors engaged in their case, any holy places of spiritual minority, and any other characters must all get proper protection against spiritual abuse, violence, and compulsion from the authorities. Should offer, and in this situation, you could be threatened. This document claims that the Pakistani government has several motives other than those related to security or social order for disabling the network equipment.

Community shutdown, on the other hand, is a control measure to prevent oppressed "others" from participating in political discussions and documenting their concerns, continuing activity, and assisting the government. It is an act of diplomacy. This division erects virtual barriers not just to the outside world but also inside civilizations, limiting people's capacity to connect with one another. In the end, it's a far more tightly controlled weapon of authoritarian administration than simply shutting online services or restricting access to the public internet.

The use of shutdown as a governance strategy by the government and political institutions has to be thoroughly examined and discussed. Democracy and the media are inseparably connected. Because they both improve differently, when one is absent, the other suffers. The government must take strong action to support the media in upholding professional standards and doing its

responsibility with honor and objectivity, especially to ensure the safety of reporters

## PROVINCIAL AUTONOMY AND FEDERALISM IN PAKISTAN

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DR. SHAHID RIZWAN BAIG**

**Abstract;** The issue of provincial autonomy in Pakistan has a murky past and a complex current. On the one hand, provincial sovereignty may be a helpful tool for developing democracy and development since it allows regions to tailor their policies to the needs of their own people. The stability of the country as a whole may be threatened by increased territoriality, secessionism, and instability, on the other hand. The link between national unity and autonomy for provincial governments in Pakistan is examined in this article. It begins by reviewing the historical development of provincial autonomy in Pakistan, placing special attention on the constitutional provisions that regulate relations between the national and provincial administrations. It argues that establishing a clear division of labor between the national leadership and the provinces, strengthening the central government, and promoting collaboration between the federal and provincial governments can lessen these risks. Province autonomy might be an effective tool for promoting democratic government and development in Pakistan, but it must be carefully monitored to ensure that it doesn't undermine national unity. By implementing the suggestions stated in this article, Pakistan may strike

a balance between provincial freedom and national unity and establish a more successful and cohesive federation.
**KEY WORD;**Federation, Democracy, Development, Politics leadership, Constitutional provisions, Disputes, Stability, National unity, Pakistan.

## Introduction;

Under a federal system form of government, a centralized administration and its constituent states or areas each have an appropriate amount of authority. A constitution often outlines this authority structure, with the federal government having some powers that are higher over all the states while the states have some that are the greatest over their own area Federalism has a number of advantages. Minority rights may be supported by the fact that every state has an administration that may represent the interests of its own residents. In order to attract businesses and investment, nations can compete between one another, which can support economic growth. The United States, India, Canada, & Australia all employ federal systems[143]

### What is Provincial Autonomy?

The degree of a province's autonomy of the federal government under a federal system is referred to as that province's level of power and independence. It refers to a province's independence to adopt laws, determine tax rates, and control its own resources.

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[143] UK EASSY (NOVEMBER 2018) The History Of Provincial Autonomy Politics Essay, 2015

The degree of provincial autonomy varies from one country to the next. In certain federal frameworks, the provinces enjoy a lot of autonomy, whereas they have less in others. In Pakistan, for instance, provinces have a great level of autonomy in matters relating to health, education, and agriculture. However, the federal government has authority over matters like national security, foreign policy, and currency.[144]

The importance of regional autonomy cannot be overstated. It gives provinces the ability to meet the needs of their own citizens in a way that the federal government might not be able to. It also promotes diversity and pluralism since it allows for different laws and cultures in each province.

For instance, there are different languages and traditions in each of Pakistan's provinces. Because of provincial autonomy, each province has the opportunity to design its own plans for economic development, healthcare system, and educational system. This can help to ensure that everyone's needs are met, regardless of where they reside in the nation.

## Background and context of Pakistan's federal system

Pakistan is a federation country with a strong central Pakistan is a federal republic with a joint federal and provincial administration. The national government is in control of issues like defiance, international affairs, and money, while the provinces are in control of items like education, health, & agriculture. Vices have joint power. The federal government is in control of things

like defence, foreign policy, and money, while the provinces are in control of matters like education, health, and agriculture.[145]

## CONTEX

The Pakistani federal system was established during the British colonial era. Under British administration, India was a single country with a single central government with absolute power.

This strategy, however, proved to be ineffective in a country with the size and variety of India. In the years leading up to its independence in 1947, there was a great deal of debate over India's future. Some argued for a federal government, while others backed a unified one. But ultimately, a federal state via some degree of provincial autonomy was accepted.

## FEDERAL SYSTEM OF PAKISTAN

When Pakistan gained independence in 1947, it took on the federal structure of India. Since the newly constituted country was even more diverse than India, it was sometimes not possible for the federal structure to take into consideration the varying needs and objectives of the provinces.[146]

As a consequence, there were a number of problems, including hostilities between the central government and the provinces and an absence of

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[145] UK EASSY (NOVEMBER 2018) The History Of Provincial Autonomy Politics Essay, 2015

[146]UK EASSY (NOVEMBER 2018) The History of Provincial Autonomy Politics Essay, 2015

economic development in various areas of the country. In an effort to address these concerns, the Pakistani Constitution was amended in 1973.

The 1973 Constitution introduced a variety of new groups to help settle disputes between the federal government and the provinces, including the Council of Mutual Interests (CCI). The provinces received more power under the 1973 Constitution. The 1973 Constitution also established a new province, creating KPK, Baluchistan, and Sindh.

## CHALLENGES

The 1973 Constitution was an important step forward in Pakistan's construction of a federal structure. But it hasn't been without its challenges. The federal government and the provinces have had a number of conflicts as a consequence of the provinces' persistent quest for more autonomy.

Despite these challenges, Pakistan's federal structure has mostly remained stable. This can be attributed, at least in part, to the country's lengthy democratic tradition. Pakistan has had frequent elections since gaining its independence, allowing citizens to choose their leaders.

The federal system has also profited from the fact because provincial governments have certain autonomy. They can fulfill the needs of their own population in a way that the federal government might not be able to.

## Historical Evolution of Federalism in Pakistan

### Constitutional advancements prior to independence

Federalism in Pakistan originally appeared during the period just before independence. When the Administration over India Act was passed in 1935, British India's federal system of government was established. The Act created the two levels of government as the federal government and the provinces. The national government was in control of things like defence, foreign policy, & communications while the provinces were in control of things like education, health, & agriculture.

The Act was developed to cater for the wide range of ethnicities, religious beliefs, and linguistic groupings that made up British India. The purpose of the federal framework was to provide a way for every province to participate in national affairs.

### The creation of the constitutions of 1956, 1962, 1973, and later

When Pakistan gained independence in 1947, it took on the federal structure of India. Since the newly formed country was even more diverse than India, the federal system wasn't always able to make into consideration the various needs and aims of the provinces.

There were a number of problems as a result, including conflicts between the national administration and the provinces including a lack of economic development in some areas of the country. The Pakistani Constitution was amended in 1956, 1962, and 1973 in an effort to address these problems.

But the 1956 Constitution wasn't without its problems. The relationship between the federal government and the provinces was overly convoluted and burdensome, and there was no discernible division of authority between them. As a result, more conflict and instability emerged.

With the 1962 Constitution, the 1956 Constitution underwent a considerable change. This paper was considerably easier to grasp and made the division of powers between the federal government and the province more obvious. However, the 1962 Constitution was just as dictatorial and did not permit any true democratic participation.

The 1973 Constitution marked a significant milestone in Pakistan's federal structure. It was a greater democratic document that granted the provinces greater power than the Constitution of 1962. The Declaration of 1973 also established a number of new institutions, including the Senate serving as the National Assembly, to strengthen the federal system.[147]

## Political developments and historical context's effects on federalism

The political changes and country's historical context have had a significant impact on Pakistan's federalism expansion. The nation has gone through multiple periods of instability and bloodshed, making it difficult to establish a strong central administration.

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[147]Government of Pakistan, Wikipedia

The several provinces of Pakistan have a variety of languages, traditions, and economic interests. It is now difficult to strike a compromise between the demands for regional autonomy and a cohesive national front.

## The structure for Provincial Autonomy in the Constitution

The Pakistani Constitution establishes a federal system of governance with a separation of power between the central government and the provinces. Only a handful of the constitutionally specified federal government's exclusive duties include defense, international affairs, and monetary policy. These are referred to as exclusive powers. The Constitution also lists a number of areas, including as agriculture, health, and education, where the federal government and the provinces share jurisdiction. This is what we mean by concurrent abilities. The federal government has the capacity to create laws on these subjects when there are numerous authorities, but provincial governments also have the choice to do so. The exception is when a provincial regulation clashes with a federal law.[148]

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[148] Uzma khan (2021) Centralization towards Provincial Autonomy, The Discourse volume 2

## Legislative and Administrative Challenges to Provincial Autonomy

### Conflicts brought on by conflicting jurisdictions

This dispute may arise for a variety of reasons. For example, the national government could enact laws covering a topic that is the province's domain. The federal law will take precedence in this case. However, the provinces can pass their own legislation if the federal government does not take any action. The two laws may then conflict as a result of this.

### Resources distribution concerns and financial limitations

A lack of financial resources makes it difficult for the provinces to expand their economies and provide for the needs of their citizens. Therefore, the provinces could have little choice but to rely on the federal government for financial support. As a consequence, the national government could be allowed to dictate how the provinces spend their funds, thereby reducing their autonomy.

### ❖ Suggestions to Enhance Provincial Autonomy and Recent Reforms

The 18th Constitutional Amendment became enforceable in 2010. This significant move resulted in a significant transfer of authority from the federal government to the regions.

**Through the 18th Amendment, the following powers were given to the provinces**:

• **Agriculture:**

All aspects of agriculture, including land usage, water supplies, and agricultural development, were assigned to the provinces.

• **Education**

The provinces were granted authority for the curriculum, teacher preparation, and physical plant of the schools.

• **Health**

Hospitals, clinics, and public health initiatives were granted to the provinces as part of the health package.

• **Local government**:

Local governance, including the establishment of town boards and the distribution of funding to local governments, was handed to the provinces.

• **Taxation:**

Certain taxes, such sales tax and property tax, were granted to the provinces as authority to collect.

Provincial independence in Pakistan has been significantly impacted by the 18th Amendment. Provincial governments now have more authority to manage their own affairs. Improvements in health and education results as well as faster economic growth have resulted from this.[149]

❖ **Striking a balance between the wider national interest and regional concerns**.

It's crucial to strike a balance between local interests and the bigger national interest. This entails

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[149] Faisal(2010)

giving provincial governments the freedom to respond to the demands of their own citizens while simultaneously giving the federal government the authority to ensure security and unity across the country.
There are several strategies for striking a balance between local interests and the bigger national interest. **These consist of:**

Creating a distinct separation of authority among the federal government & its provinces: This will guarantee that every level of government is in charge of its own concerns.

Establishing an effective central government: Upholding security and unity at home depends on a strong central administration.
Encouraging federal-provincial cooperation: The federal authority and the regions should collaborate to handle national challenges.

❖ **Role of political leadership in maintaining a cohesive federation**

A strong federation is maintained in large part by political leadership. Leaders in politics must be able to strike a balance between the requirements of the provinces and those of the nation. Additionally, they must be able to foster mutual respect and collaboration between the federal and provincial governments.
Political leaders can take the following actions to keep the federation cohesive:

- **Encourage the development of consensus**: Political leaders should seek to create consensus on important national problems. Finding common ground with all interested parties entails doing this.

- **Encourage agreement**: elected officials should be prepared to make concessions on matters in which there is no unambiguous agreement. The multiple tiers of government will be able to work together and develop trust as a result of this.
- Government officials should be competent to settle conflicts in a peaceful manner. Instead of utilizing force or violence, this implies engaging in communication and negotiation.

[150]

Political leaders may prevent regional autonomy from undermining national unity by implementing these measures to preserve a coherent federation.

## ❖ A review of the Federal Budget Commission (NFC) Award system

The National Financing Commission (NFC) is the organisation in charge of distributing funds between the federal and provincial governments. The formula for resource distribution is outlined in a document called the NFC Award.

It has been said that the present NFC Award is unjust to the provinces. The provinces claim that a proper proportion of the money is not being distributed. This has caused a variety of issues, including an absence of investment in health and education and a lack of provincial economic growth.

The NFC Award has been the subject of several reform suggestions. These suggestions consist of:

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[150] Chapter four;'' the national interest''

- Raising the proportion of resources allotted to the provinces, which would be accomplished by altering the resource allocation formula.
- Allowing the provinces more discretion over how they use their funds would provide them the freedom to take care of their own needs. A crucial step towards enhancing Pakistani provincial autonomy would be to reform the NFC Award. It would guarantee that the provinces receive an equitable distribution of resources and give them more discretion over how they use those resources.[151]

## CONCLUSION

There have been a number of adjustments and proposals made to strengthen the autonomy of Pakistan's provinces. These changes have improved the provinces' autonomy, but more has to be performed. By changing the NFC Prize and further transferring authority and resources to the provinces, Pakistan may get closer to achieving a more equitable and balanced division of responsibilities between the federal government and the provinces.

Pakistan's federal system is continuously being created. Nevertheless, it has made tremendous recent progress. By assisting in the establishment of the federal system, the Pakistani people have shown their dedication to freedom and the 1973 Constitution. Future developments under Pakistan's federal system will

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[151] 1ST BIANNUAL MONITORING ON THE IMPLEMENTATION OF NFC AWARD;REPORT(2013)

depend on the government's ability to resolve current problems. Conflicts among the federal and regional administrations, a lack of collaboration between them, instability, and poverty are a few of these challenges.

If these problems can be resolved, the government will be in an excellent position to strengthen the federal system and achieve its goals of democracy, development, and security.

# PRAGMATIC APPROACH ON INTERNATIONAL COMMERCIAL ARBITRATION IN COSMOPOLITAN ARENA: PAKISTAN'S EXPERIENCE AND WAY FORWARD

FARAH DEEBA**[152]

**ABSTRACT;** In a globalized world, international commercial arbitration (ICA) has gained significant importance due to the increasing integration of economies. This paper examines the rise of ICA in resolving trade disputes, highlighting its preference over traditional litigation for its perceived neutrality, speed, and cost-effectiveness. The focus is on the significance and challenges of ICA in Pakistan and India, where legal systems have historically resisted international arbitration provisions on public policy grounds. Despite this, both countries have ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, necessitating reforms to enhance arbitration effectiveness. Pakistani courts have shown a growing respect for international arbitration, with landmark cases affirming the importance of honoring foreign arbitration clauses to maintain international commercial credibility. This shift aligns with global trends, though enforcement challenges remain due to public policy objections. The research underscores the need for legislative and structural reforms, greater awareness, and the establishment of arbitration centers to promote ICA. As

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Pakistan's engagement in global trade deepens, the preference for arbitration is likely to increase, necessitating updates to the Arbitration Act of 1940 to meet contemporary needs.
**Key Words**: Arbitration Clauses, Enforcement of Foreign Awards, Judicial System, Economic Integration, Alternative Dispute Resolution (ADR)

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## INTRODUCTION;

## I. EVALUATION AND DISCUSSIONS

It is argued that in globalized world, international commercial arbitration (ICA) has acquired added importance in view of growing integration of economies in the world in recent decades. Among other things international commercial and investment-related transactions have increased manifold in both Pakistan and other parts of the world economies. To resolve trade related disputes most of foreign parties like to choose for international arbitration as a means of dispute resolution for a variety of reasons including their greater faith in the neutrality of such for a and desire to have access to speedy and inexpensive justice. It is indeed now a conventional wisdom that ends of economic become public policy through instrumentality of law. In a free market model there should be, inter alia, a sound system of deciding contractual obligations of various actors. Legal judicial system in a market economy must establish the standard rules of socio-economic interaction. The candidate proposes to thereof focus on the international commercial arbitration, its significance and potential challenges in the promotion ICA in Pakistan and some other countries like India. The case law study explores that National courts however, have

been exhibiting for a long time reluctance to accept this trend. International arbitration provisions are usually resisted on the ground of public policy. This attitude is out of tune with the prevalent practice elsewhere in better globalized countries and obstructs integration of these economies with international mainstream. The situation is fortunately evolving in a positive direction but the pace is slow.

The international business community has realized that court cases were not only time consuming but also very expensive. Businessmen always want to make the best use of their time, money and energy, with the result that arbitration is preferred to court litigation[153]. Despite all this there are still many lacunae in the arbitration laws and practice which, need to be removed for trade and development. Another positive factor in favor of ICA is the existence of international conventions relating to arbitral awards, existence of, international institutions for facilitating arbitration, internationally acceptable arbitral rules and the flexibility to choose the procedure and designate the arbitrators. This makes arbitration more popular than the conventional litigation. To recognize the international trend both Pakistan and India have ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. To comply with this treaty both countries have promulgated the arbitration laws. However, legislative and structural reforms are still needed to further improve the situation so that arbitration system becomes really effective and attractive for the parties engaged in international commerce, both in these countries and in

[153] DM Popat, ICA and India: An Overview, 749 (Dec.2004).

their foreign trading partners. The Pakistani court has accepted the significance and the use of Arbitration Clauses in commercial contracts. [ Mr. Justice Ajmal Mian (as he then was) of the Supreme Court of Pakistan in Hitachi Limited v. Rupali Polyester, 1998 SCMR 1686 and 1687 ], which stated as follows:

" I may observe that while dealing with…foreign arbitration clause like the one in issue, the Court's approach should be dynamic and it should bear in mind that unless there are some compelling reasons, such an arbitration clause should be honored as generally the other party to such an arbitration clause is a foreign party. With the development and growth of International Trade and Commerce and due to modernization of Communication/Transport system in the world, the contracts containing such an arbitration clause are very common nowadays. The rule that the Court should not lightly release the parties from their bargain that follows from the sanctity which the Court attaches to contracts must be applied with more vigor to a contract containing a foreign arbitration clause. We should not overlook the fact that any breach of a term of such a contract to which a foreign company or person is a party, will tarnish the image of Pakistan in the comity of nations…. [A] ground like that it would be difficult to carry the voluminous evidence or numerous witnesses to a foreign country for arbitration proceedings or that it would be too expensive or that the subject matter of the contract is in Pakistan or that the breach of the contract has taken place in Pakistan, in my view, cannot be a sound ground for refusal to stay a suit filed in Pakistan in breach of a foreign arbitration clause contained in contract of the nature referred to hereinabove. In order to deprive a foreign party to have arbitration in a foreign country in

the manner provided for in the contract, the Court should come to the conclusion that the enforcement of such an arbitration clause would be unconscionable or would amount to forcing the Plaintiff to honor different contract, which was not in contemplation of the parties and which could not have been in their contemplation as a prudent man of business.[154]"

As noted above, most foreign awards that have come for enforcement before Pakistani Courts have been filed under the 1937 Act. Such awards have almost always been upheld and the Courts have invariably rejected challenges and objections to their enforcement by Pakistani defendants. It is only in rare cases, where the objection is of such a nature that the defect is floating on the face of the award, that the Courts have upheld the objection and declined to enforce the award. It is interesting to note that a great many of the cases relate to awards made by the Liverpool Cotton Association with regard to the export or import of cotton from or to Pakistan. This is of course not altogether surprising given the fact that cotton is one of Pakistan's main agricultural crops, and the textile industry is one of the leading manufacturing sectors in the economy. However, the Courts have also had occasion to deal with awards made under the Rules of Arbitration of the International Chamber of Commerce or ICC and other international bodies of a similar nature. Again, the Courts have shown a pronounced respect and sensitivity for the2 Eckhardt & Co. GmbH V Muhammad Hanif PLD 1993 SC 42,

[154] Metropolitan Steel Corporation Ltd v. Macsteel International U.K. Ltd. High Court, Karachi, 7 March 2006, suit no. 1369 of 2004 [Year Book of Commercial Arbitration Vol-XXXII-2007]

52international dimension of such awards. Thus, in a 1999 decision, it was observed by learned Judge of the High Court of Sindh that:[155] "…if Pakistan is to attain some respectability in the commercial world, it is necessary that trans national commercial agreements must be honored and judicial process must not be used merely to delay the implementation of such agreements or judicial or quasi-judicial decisions passed in disputes arising from such agreements."

The same learned Judge observed even more trenchantly in a subsequent case:[156] "Increasingly, it is seen that the parties who are involved in Transnational or International Agreements agree to an arbitration clause at the time of entering into [the] agreement but when as a result of that agreement an award is made against them they raise frivolous objections and deliberately refrain from seeking remedy of appeal available to them under the agreement or other rules and attempt to delay or avoid payment under the award by simply initiating proceedings in a Court in Pakistan…. I do believe this is tantamount to abuse of the process of the Court…

[And] may lead Pakistan into becoming pariah in the commercial world, In order to curb such tendency Courts ought not to entertain objections to a foreign Award i.e. executable in Pakistan unless these strictly lie within the four corners of section 7 of Arbitration (Protocol and Convention) Act, 1937 and such assessment should be made from the Award itself. The Award should thus, be interfered with only if the error in it is apparent on the face of the award. Courts ought not to set themselves up

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[155] A. Meredith Janes Co. Ltd v Crescent Board Ltd. 1999 CLC 437, 441

[156] Conticotton S.A. v Farooq Corporation and others 1999 CLC 1018, 1022-23

as an Appellate Court or to go behind the award to reappraise the evidence. Additionally the Court should decline to entertain the objections to Foreign Awards unless all remedies available under the Arbitration Agreement or Rules, by which the parties are bound, are exhausted." These comments are consistent with, and contemplative of, the overall court's attitudes to international arbitration agreements and foreign awards. The case law study explores that Pakistani Courts are fully acquainted of, and sensitive to, the international dimension of contracts containing foreign arbitration clauses or in which the opposite party is a foreign entity. The Courts have chosen not simply to hold parties to their bargain (which may simply be regarded as an aspect of the law of contract) but have, in effect, taken a policy decision to uphold Pakistan's position in the comity of nations by insisting on the due enforcement of foreign awards. Pakistani courts have thus moved in step with the developing global consensus and this is all the more relevant given the fact that this has been done in the context of the 1937 and 1940 Acts and not the New York Convention. It is pertinent to mention here that in HUBCO v. WAPDA and Reko Diq cases[157] the courts declared the arbitration agreement illegal and void ab-initio on the ground of public policy.

This research has also explored the enforcement of foreign awards has also been much easy and the legal regime reinforced in favor of the award. The detailed provisions of section 7of the 1937 Act have already been examined. The equivalent provision under the Act, 2011 simply and concisely states that the enforcement of

[157] PLD 2013 SC 641

foreign awards “shall not be refused except in accordance with Article V of the Convention”. Article V covers precise and explicitly listed grounds on the basis of which enforcement of an award may be declined. Since the Act, 2011 [Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards)] does not, unlike section (3) of the 1937 Act, confer any residuary discretion on the Court to refuse enforcement, it follows that the grounds listed in Article V are comprehensive in a nature. Furthermore, Article V provides that the Court “may: refuse enforcement if any of the grounds do exist. In other words, the Court may, however, order enforcement of the award even if the party challenging the same is able to make out a case under Article V. Again, this is unlike the 1937 Act where sub-sections (1) and (2) of section 7 were mandatory and non-compliance with the provisions thereof meant that the award would not be enforced. The court now has a discretion pointing in the opposite direction. The Convention, and hence the Act, can be said to have a “reinforcement” bias and a robust case can be made out that the grounds under Article V are to be applied restrictively and interpreted narrowly.[158] However, public policy is regarded as one of the major hindrance in the enforcement of foreign awards and violation of public policy of the enforcing state is a ground for refusing recognition enforcement of foreign awards [as discussed in above paragraph]. An arbitral tribunal needs to be mindful of the application of public policy, particularly in the context of enforcement of the tribunal’s award. No doubt, arbitration has gained considerable popularity among the world mercantile

[158] Redfern & Hunter, op. cit, paras 10-34 and 10-35

community and with the growth of trade and involvement in the world trading system; it is likely to become increasingly preferred mode of dispute resolution in Pakistan. However, the Arbitration Act of 1940 requires important changes to meet the requirements of the 21st century. For this purpose awareness about the advantages of arbitration should be created among the lawyers and chambers of Commerce, trade associations and training programs, seminars and workshops should be conducted. There is also a need for establishment of various arbitration centers through combined efforts of the public and the private sector as well as the legal and business community. At the academic level also main emphasis must be given to arbitration as subject.

**I. Way Forward:**

Before the Act, 2011 the process of settling international commercial disputes in Pakistan "made lawyers laugh, and legal philosophers weep"[159]. Judicial interference, long bureaucratic delays and unpredictable decisions by arbitrators marred the arbitration process leaving little to no alternative for international business to resolve their disputes. However, with the Pakistan's emergence as growing economic power, Pakistan needs to reform its domestic and international arbitration system to establish the trust of international business stakeholders. The promulgation of the Act, 2011, Pakistan has implement international standards of ICA under the UNCITRAL Model Law, making arbitral proceedings noticeably shorter, more expectable and rational, less technical, and subject to less judicial scrutiny.

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[159] Motiwal, O.P. Alternative Dispute Resolution in India. 15 J. Intl'l Arb. 117 (1998)

a) In Pakistan the Courts and legislature should assume a policy against taking too active a starring role in arbitration proceedings only to recurrence the mistakes of the past. One way to safeguard this is by keeping in line with the mandates of Model law which provide primacy to arbitral autonomy and the parties' freedom to contract. In doing so, Pakistan can prosper in building its repute as an international arbitration welcoming country and complete its conversion into a legitimate forum for international commercial arbitration.

b) Awareness about the benefits of arbitration is to be raised among the lawyers, business community and academia.

c) Arbitration should be introduced as a major subject in law and business schools so as to give better attention to the subject.

d) Capacity building is required for businessmen, lawyers, and government people as the area of international arbitration lacks the expertise.

e) International bodies like ICC and UNICTRAL etc should be involved in Training programs, seminars and workshops to cooperate in capacity building.

f) The Act, 2011 [Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards)] was enacted in response to address extreme latency in the court system, attract foreign direct investment (FDI) and to establish Pakistan as viable forum for international commercial arbitration. This Act has proven largely successful on these fronts, significant problems remain in providing interim measures of protection, enforcing and challenging arbitral awards, defanging arbitral subject-matter, challenging and removing biased arbitrators. An underlying issue

throughout arbitration process is the involvement of Judiciary which threatens the very autonomy of the Act. And moreover, public policy ground should be interpreted scarcely. Therefore, the law of arbitration in Pakistan should be looked over again and positive improvements should be made. The Act, 2011 need serious fundamental amendment in order to cater for the needs of new era.

g) Hubs to provide Arbitration facilities should be established in country with the cooperation of public and private sector, lawyers, businessmen and academia to promote aid and assist those who choose arbitration to resolve their disputes.

h) Courts should accept the significance of ICA and the enforcement of foreign arbitration awards which has a closest nexuses with the promotion of trade and investment.

# RIGHT TO DEVELOPMENT: MODERN DILEMMAS AND FUTURE PROSPECTS

Farah Deeba**[160]
Waheed Ahmad Chughatta**[161]

**ABSTRACT:** The Right to Development (RTD) is pivotal in enhancing living standards and fostering prosperity globally. The UN Declaration on the Right to Development (UNDRTD) underscores that human beings are central to development, aiming for its benefits to reach every individual. This paper explores how various international instruments, including the UDHR and CERDS, advocate for RTD, emphasizing equality, human dignity, and mutual cooperation for socio-economic progress. Despite recognition through key declarations and charters, the implementation of RTD remains contentious due to legal and political disputes between developed and developing nations. Developing countries' calls for international development assistance are often unmet, hindering RTD's practical application. RTD encompasses critical elements such as equitable trade practices, resource distribution, development aid, and poverty eradication, intertwining with other fundamental human rights. The UN's efforts, including working groups and special rapporteurs, have yielded limited success. Effective RTD implementation is crucial for achieving Sustainable Development Goals (SDGs) and requires robust enforcement mechanisms. Pakistan's context illustrates the challenges and progress in RTD

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implementation, affected by economic constraints, terrorism, and insufficient international support. Despite constitutional protections and proactive court rulings, Pakistan faces hurdles in aligning with regional counterparts. Enhancing RTD awareness through educational programs is essential for improved application. This paper argues for stronger international cooperation and structural reforms to realize RTD's full potential, linking it with sustainable development and environmental balance amidst global challenges like COVID-19.

**Key Words**: Sustainable Development Goals (SDGs), International Cooperation, Implementation Challenges, Developing Countries, International Assistance, Poverty Eradication

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## INTRODUCTION;

## I. RIGHT TO DEVELOPMENT AND PRESENT DAY PREDICAMENTS

RTD is a right which ensures the improvement in the living standards and increased the opportunities to gain the prosperity of the people. The UNDRTD is a comprehensive story of RTD in the world. According to UNDRTD human being is the main concern of development, and development should reach every individual on earth. UNDRTD brought the concept of RTD near to veracity. In this context, UDHR also apprehended the concept of RTD; according to UDHR equality and human dignity are the core values to achieve social justice and peace in the society. CERDS, 1974

also explores that sovereign equality and mutual cooperation are the ingredients of wellbeing of mankind and socio-economic development of the Society[162].
Although, RTD has been recognized through UNDRTD 1986, Vienna Declaration 1993, Millennium Declaration 2000, Durban Declaration 2001 and African charter, but, still there is a controversy worldwide on the implementation mechanism of RTD. There are legal and political disputes on the contents and definition of RTD between developed and developing states, and deserving poor countries are still ignored by the Developed states in the violation of RTD. Developing states demanded international development assistance from the developed states through new international economic order, but developed world is not on the same page about international development cooperation, resultantly, the way of implementation of RTD is blocked due to this controversy. RTD is a incredible right which almost covers all basic needs of the individuals. Major components of RTD are elimination of imbalance trade practices, eradication of unequal distribution of resources and income, demand of development aid, equal contribution in the development processes and international decisions and elimination of poverty. All these components are the ingredients of other human rights available to mankind, so it can be said that RTD is

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[162] Audiovisual library of International Law, available at https://legal.un.org/avl/ha/cerds/cerds.html#:~:text=The%20General%20Assembly%20adopted%20resolution,to%206%2C%20with%2010%20abstentions.&text=The%20Charter%20was%20adopted%20by,by%20resolution%203281%20(XXIX). Last visited 10-11-2020

a comprehensive right which also provide shelter to other inevitable rights[163].

United Nations have taken very serious result oriented measures such as establishment of different working groups, appointment of special rapporteur for the realization of RTD, but the achieved results are not satisfactory. It is pertinent to mention here that, RTD has secured its place in the human rights family, and realization of RTD leads the society towards the attainment of SDGs. Protection of human rights is only completed by the realization of RTD in its true letter and spirit. RTD is one of the most dynamic rights which enable the people to take part in the progressive development of the country[164].

Enforcement of social justice along with Right to development is the requisite for the peace and economic development in the country. Many developed states have not included RTD in their National Legal System (NLS), because United Nations Declaration on Right to Development did not make this right obligatory to the international community. However, there are some contents over which the world community is at consensus. The whole world is at an accord that RTD can be claimed and implemented for the sake of better life of the mankind. Developed states are also agree with the development assistance demand of developing states only on the grounds of morality. Sustainable development and

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[163] Right to Development, minority right group international, available at https://minorityrights.org /law/right-to-development/

[164] The Right to Development and Least Developed Countries, United Nations Human Rights office of High Commissioner, available at https://www.ohchr.org/EN/ Issues/Development /Pages/LDCIV conferenceandRighttoDevelopment.aspx

realization of RTD are interlinked with each other. RTD requires the equal utilization of resources without any discrimination in the society; all these factors are directly attached with the achievement high targets of development. In absence of a strong enforcement mechanism no right can be enforced, even rule of law, good governance or social justice, nothing can be attained in a week enforcement mechanism. Environmental balance is also one aspect which is correlated with the RTD.

In this globalized world every country has a desire to use its resources at maximum level in order to win the race of economic development, and in this race environment is suffering a lot globally. Environmental issue has become one of the major issues in these days. RTD and environment has adverse effects on each other. Realization of RTD was a great challenge in the presence of COVID-19 for whole world community. COVID-19 infringed the right to development of the people including infringement of other human rights like right to life, right to liberty, right to health and food etc. during this pandemic lives of the people are badly effected as the world economy was destroyed because of this virus.

In the political and economic scenario of Pakistan, implication of RTD is a great challenge for government of Pakistan. Pakistan is a developing country which requires development assistance from development states and international financial institutions like World Bank, WTO etc. WTO can provide trade facilities and low tariff rates to Pakistan for the economic betterment of the country. Pakistan is among the countries which who favored the UNDRTD and accepted the RTD as a human right. Pakistan was also the member of all the proceedings conducted by the United Nation in favor of

the acceptability of RTD. Pakistan government has taken many effective measures to implement this right in the country. But, the results are not pleasing; terrorism is one of the other major reasons which stopped the way of RTD in Pakistan. Pakistan has beard a lot due to the menace of Terrorism in the country. Pakistan has spent a lot of its budget on the operations conducted in fight against terrorism and for the reformation of internally displaced persons.

Constitution of Pakistan provides protection to human rights, although there is no direct provision in the Constitution of country but there are implied provisions which grant the security to fundamental rights of the masses, like right to life, right to trade, right to business and right to life which includes the right to development in them. Courts of Pakistan act as instrumental force for the realization of RTD in the Country. Apex Courts of Pakistan has decided many cases and declared the RTD as a basic human right, which must be enforced for the prosperity of human being. A strong enforcement mechanism is the key for any right including RTD. Pakistan is an Islamic Country, and Islam also talks about the equality, rule of law, and to help the deserving. Study of Islam reveals many of Quranic verses in favor of economic development, trade balance and equal opportunities for all. Islam teaches the Muslim to sacrifice their beloved things for the welfare of other deserving poor Muslims.

Generally, it is a perception that Pakistan has performed well in the protection of RTD among all other human rights in the Country. But, still Pakistan is little behind than the comparable countries of South Asia. Awareness programs, trainings, seminars and workshops should be conducted in order to enhance the applicability of RTD.

literacy rate of Pakistan is under the required rate, it also effects the implementation of RTD in country.

## II. FUTURE PROSPECTS

The UNDRTD was adopted in 1986 by UN, but still future of RTD is unpredictable. There is a chaos about the realization of RTD and about the identification of duty holders and right holders. Still there is a dispute on the contents of RTD as whole and the component of international development cooperation. The pace of realization of RTD is slow. Developing countries are still demanding their share in the development, their contribution in the international development decisions and procedures. The minorities are the main target of this anarchy, as they are touching the line of extreme poverty due to non-realization of basic rights. RTD enables the people of developing states to make efforts for themselves and for the country, in this sense they become the contributor in the world economy. The Jurists, scholars and experts are seeking the inclusion of RTD into national legal systems of the world and the best enforcement mechanism to enforce the RTD. In this context some practical initiatives are required to resolve the controversy and to achieve the satisfactory progress. Some applicable recommendations in the fulfillment of aforesaid purpose are given below:

- The first and foremost recommendation is that, the whole world should exhibit a compromise over the definition of RTD, and the definition provided by the UNDRTD should be accepted universally. Contents of RTD should be admitted as a whole, including international cooperation towards developing nations.
- Policy coherence must be shown by the international community, and RTD should be given

priority base treatment through its inclusion in the National Legal System.

- UN should impose some legal obligations on the international Community to accept this right and its contents and provide financial assistance to the developing states.
- Legislative measures should be taken by every country at domestic level to improve the situation of realization and implementation of RTD.
- International conferences and seminars should be conducted for the awareness about the benefits of realization of RTD
- Research activities should be promoted worldwide
- Better understandings of international law and treaties should be promoted and accountability mechanism should also be introduced
- Intergovernmental discussions and reciprocity should be promoted, and mutual cooperation on the moral grounds should be ensured.
- A strong enforcement mechanism for the implementation of RTD should be introduced globally
- Developing States should be made part of the discussions and procedures of international development policies and program of actions.
- Trainings and seminars should be conducted for the purpose of capacity building of the people and awareness should be given to the people about modern devices and modern techniques
- States are primarily responsible for the realization of RTD; they should have followed some international models and establish an effective frame work in the country for the protection of RTD.

## III. CONCLUSION;

The Right to Development (RTD) stands as a cornerstone for elevating living standards and fostering prosperity on a global scale. Rooted in the UN Declaration on the Right to Development (UNDRTD), the concept emphasizes the centrality of human beings in the developmental process, striving to extend its benefits universally. This paper has examined how various international instruments, including the Universal Declaration of Human Rights (UDHR) and the CERDS, advocate for RTD, emphasizing principles of equality, human dignity, and mutual cooperation for socio-economic advancement. Despite its recognition through significant declarations and charters, the practical implementation of RTD remains contentious due to legal and political disputes between developed and developing nations. The calls for international development assistance by developing countries often go unanswered, thwarting the effective application of RTD. Encompassing crucial elements such as equitable trade practices, resource distribution, and poverty eradication, RTD intersects with other fundamental human rights, making it a comprehensive right essential for societal progress. While the UN has undertaken serious measures, including the establishment of working groups and the appointment of special rapporteurs, the results have been suboptimal. Effective implementation of RTD is imperative for achieving Sustainable Development Goals (SDGs) and necessitates robust enforcement mechanisms. The context of Pakistan exemplifies both challenges and progress in RTD implementation, influenced by economic constraints, terrorism, and insufficient international support. Despite constitutional protections and proactive court rulings, Pakistan faces hurdles in aligning with regional

counterparts. Enhancing RTD awareness through educational programs is vital for its improved application. This paper advocates for stronger international cooperation and structural reforms to realize the full potential of RTD, linking it with sustainable development and environmental balance amidst global challenges like COVID-19.