

PREMIER LAW JOURNAL

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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 12, which is going to be published in Dec, 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.

Shabnum Amanat's article explains well a confidential statement must be kept secret by the recipient for the benefit of the communicator that is referred to as privileged communication. A privileged communication is not admissible as evidence in court, even if it is pertinent to the case.

Laraib Yasin explains briefly in her article that in spite of the fact that Muslims are the vast majority of Pakistan's population, this country is also home to individuals of a diverse range of other racial and religious backgrounds. Every member of a religious minority is guaranteed under the constitution, which was ratified in 1973, the freedom to freely exercise their faith. This study comes to a close with ideas that may be put into action to help ease tensions amongst Pakistan's many different religious communities.

Zummar Naveed discusses the legitimacy and acknowledgment of children. This research not only took the purview of the general law regarding the legitimacy of a child but also see the Islamic perspective on the paternity of a child. This research paper also

inferred that there is a need for time to amend the Ar.128 of QSO, 1984. To make some leniency on the legitimacy of the child.

Shahid Rizwan's article assesses a person who has been accused of committing a crime may present an alibi as part of their defense in order to demonstrate their innocence and show that they were not at the scene of the crime.

Jannah Saeed, in his research paper emphasizes on the need of reformation of laws of abortion in Pakistan with the relevant statistics of maternal mortality due to the unsafe abortion complications. The restricted rulings have only proposed a higher death rate and degrading community of health care.

GhulamMohyUd Din assesses in his article the values which we like in our day-by-day life living in a general public. Living in the Muslim society having Islamic values which are issued by our Islam when a man receives them everybody value them. Today there is much distinction among old and present values and the new age have been completely changed because of embracing new values and modern advancements. This research was conducted in Gujranwala. Helpful inspecting strategy was utilized for information accumulation.

Farah Deeba and Waheed's article well explains the Right to Development (RTD) stands as a fundamental pillar in the global pursuit of social justice and equity. This article offers a comprehensive exploration of the RTD, delving into its intricate intersections with human rights principles and proposing viable strategies for its effective implementation, particularly within the context of developing nations operating within the United Nations (UN) framework.

Dr. Muhammad Amin's in his research paper views and assesses the implementation of ILO wages conventions in Pakistan. Before going into core discussion, two things are ascertained. First, the origin, nature and establishment of international Labor organization as it is fundamental source of Labor laws in the world This situation is same with the Pakistan. Wages have not been specified and paid as up to the ILO wages conventions. ILO reported that those women and children who are working in people's homes in Pakistan are hidden workers. Pakistan has yet to ratify the ILO convention 177 on home based workers. The

Labourers and employees are paid wages unstandardized at the minimum wages conventions of the ILO.

Dr. Muhammad Amin's article well explains about doctrine of necessity maxim used several times in Pakistan. First time this maxim was used in Pakistan by Justice Munir and its 5 member's bench of Federal Court of Pakistan in favor of Governor General Ghulam Muhammad and Federation of Pakistan. In countries with a strong commitment to constitutional government, a coup is particularly traumatic because acceptance of the revolutionary government effectively invalidates the constitution. A new regime cannot lawfully exist within a constitutional framework if it came to power in direct contravention of it. New un-elected government can run the county on basis of doctrine of necessity.

Dr. Muhammad Amin

Editor In Chief

AN ANALYTICAL STUDY OF PRIVILEGED COMMUNICATIONS UNDER QANUN-E-SHAHDAT ORDER 1984

SHABNUM AMANAT ¹

DR SHAHIDA NAZ ²

DR. SHAHID RIZWAN BAIG ³

Abstract: A confidential statement that must be kept secret by the recipient for the benefit of the communicator is referred to as privileged communication. A privileged communication is not admissible as evidence in court, even if it is pertinent to the case. Privileged communications are contentious because they omit crucial information from the pursuit of the truth. The regulations that govern civil and criminal trials are typically created to permit the inclusion of pertinent evidence. In most cases, the information necessary to produce a just outcome in the case is available to the parties. Exceptions to this rule include communications that are privileged. Because society prioritizes the secrecy of some interactions or their intended purpose, privileged communications are common. Wife and husband conversations, clergy communications, and patient communications with a therapist are among the established private communications.

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KEY WORDS: Communication privilege, SO 1984, Qualification for confidential interaction.

INTRODUCTION: Evidence is crucial to a trial because it aids in drawing conclusions and delivering verdicts. Evidence may be provided orally, in writing, or electronically. Any event that a witness has seen or heard can be the subject of his testimony. A protected communication is one that cannot be used as evidence. As privileged communications, these are confidential discussions that a witness cannot be forced to reveal even if they relate to important facts are referred to as privileged legal communications. A witness cannot be compelled by the court to reveal such encounters. A privilege is a legal principle that shields communications between specific parties from being forced to be revealed in court. The attorney-client privilege is one such privilege that has been in existence for a long time and is applicable in all legal contexts. Correspondence between an attorney and a client made with the intention of receiving legal counsel may not be divulged without the client's agreement.

CATEGORIES OF PRIVILEGED COMMUNICATION:

Qanoon-e-Shahadat Order, 1984 has apparently dissected privileged communications in two ways as communications under privileged from disclosure and communications which are prohibited to disclose at all. Confidential interactions which are privileged from disclosure are at discretion of parties and may be disclosed with their consent. However, the prohibited communication are at bar from being revealed. All such types of communications are found under article 4 through 12 of QSO, 1984.

These articles manifest the necessity of protective provisions that are laid down for public purposes and for the benefit of counsel. However, they can be waived and may not remain under privilege if they fall under exceptions enumerated by law.

Privileged communication is described as statements made by individuals within protected relationships (such as a husband and wife or an attorney and a client) that are shielded by the law from being made public during testimony. There are three main sorts of privileges:

Absolute—prevents the defendant or the court from looking into any communications or records of communications that take place between a victim and a qualifying service provider in support of psychological and emotional healing.

Absolute diluted: A privilege that was first granted as absolute but was later modified by a court to permit an in-camera (in chambers) assessment of the spoken

communication or the documents. A court will typically weaken an absolute privilege out of concern that the defendant will lose their right to due process.

Qualified: A judge or administrator may decide to conduct an in-camera review to decide whether the details contained in the secret communication will be utilized as evidence in the hearing, if the privilege is applied as written.

QUALIFICATIONS OF PRIVILEGED COMMUNICATIONS:

It is crucial to remember that the following conditions must be met for any communication to qualify as a privileged communication:

A protected legal connection should exist between the parties communicating.

The discussion should be held in private.

As the privileged status terminates when the information is disclosed to a party who was not involved in the contact, the information communicated cannot be exposed to a third party. The communication between the two parties must take place in a private venue, such a meeting room, where they have a reasonable expectation that others won't overhear them in order to maintain the relationship's confidentiality.

SELF RESTRAINING PRIVILEGE:

⁴A judge or magistrate may use the limited privilege set forth in Article 4 of the Qanun-e-Shahadat to speak about their own actions while serving as a judge or magistrate or to speak about anything that comes to their attention while serving in that capacity. The usual rule that a witness must tell the complete truth and produce any document in his or her possession that is pertinent to the topic at hand is disregarded by this rule. Some information is protected from disclosure due to public policy considerations, and witnesses cannot be forced or allowed to respond to inquiries about such information. Sections 121 to 131 of the Evidence Act, 1872 (formerly Articles) specify certain topics on which witnesses are exempt from questioning. Although the court will have to determine whether the communication was made in confidence, the public officer in question has been designated as the sole arbiter of whether the public interest would be jeopardized by disclosure. According to this Article, a Judge or Magistrate may not be ordered to produce a document or provide an explanation regarding: his conduct in Court as such Judge or Magistrate; or anything that he learned in Court while serving as such Judge or Magistrate, unless the Court to which he is subordinate so orders.⁵The witness, who is the Judge or Magistrate to whom the inquiry is made, is granted the privilege by this Article. He cannot use a

⁴ PLD 1960 lah 1189

⁵ (1881)3 AI 573J

false statement to claim a privilege if he waives it or does not object to answering the question. A Committing Magistrate cannot be compelled to answer questions about his own actions in court as such a magistrate by a Sessions Judge while the matter is being tried.⁶Every pertinent evidence the Arbitrator can provide is legitimately admissible in cases where there is an accusation of dishonesty or partiality. Nonetheless, care must be taken to ensure that any relevant evidence permitted in response to a claim of dishonesty or bias is not exploited for an unrelated purpose.

THE SPOUSAL COMMUNICATION PRIVILEGE:

The rule established by this Article is based on the obvious presumption that the admission of such testimony would strongly tend to disturb family harmony, encourage domestic disputes, and deteriorate, if not completely destroy, feelings of mutual confidence, which are the most endearing comforts in married life.⁷The underlying prominent principle behind this protective shield to marital interactions is to preserve the domestic peace and conjugal confidence between spouses during covertures alliance with injunctions of Islamic teachings.⁸In case of commission of adultery ,the husband was not permitted by court to bring on record such documents like letters written to his wife by a third person to prove the offence ,in order to maintain the

⁶ [AIR 1914 PC 105 (p. 108)]

⁷ AIR 1970 SC 1876

⁸ PLD 1962 Lah 558

secrecy of the marital bond of spouses.⁹The privilege is for couples who are lawfully married to each other if the marriage is void, no privilege can be claimed.

¹⁰As a result, when a widow testified in the case of *Nawab Howladar v. Emperor* that her husband had spoken to her about a murder, the court did not consider her revelation because it had not been made with the maker's consent. The following circumstances exist when the privilege under Article 5 has been waived, either by a legislator or a court of law: spouse's approval; a legal dispute between married couples;

Charges brought against the spouse;

The testimony of strangers can be used to correctly prove matrimonial communication.

When there is a disagreement between the married couples or when one of them is being investigated for a crime committed against the other, this privilege is not available. Such evidence can be used as testimony in court if the party who made the communication gives consent to its disclosure by surrendering this privilege.

PREDOMINANCE OF PUBLIC INTEREST: STATE AFFAIRS

¹¹While examining the claimed privilege, public interest is of paramount importance. It is to be noted that all records and documents related to matters of state are not confidential but only those which would cause inquiry to

⁹ Woodroffe Ev.9 Ed 930

¹⁰ *Nawab Howladar vs Emperor*

¹¹ PLJ 2007 LHC 676

public interest. In case of conflict between public and private interest, public interest would get a cardinal position.

¹²It was held that the state can claim privilege for documents if they are unpublished records for the betterment of public interest despite the fact that this claim may affect the private interest of the accused.

¹³When, disclosing the official documents would risk the national defense, affect diplomatic affairs and disturb the proper regulation of public services, and then non-production of official documents as evidence is justified ground.

¹⁴Involvement of danger to the security of the state is prioritized from holding any document from the court.¹⁵The discretion lies in the hands of the head of the department to allow the production of documents even if there is possibility that its reveal theoretically could lead to some kind of injury to public interest. The protective provisions emphasizes on principle that interest of state is the foremost priority over interest of individuals.

It is evident that only the Court has the authority to determine whether a document qualifies as a "unpublished document of state affairs" given the specific facts and circumstances of each case.

¹² 1975 PCr.LJ 1411

¹³ 1966 Nag 385

¹⁴ 1972 Scrw law Rep 258

¹⁵ 1992 S.C 492

CLIENT-COUNSEL PRIVILEGE:

The foundation of this rule is based on the impossibility of regulating legal business without professional assistance and on the necessity in order to render the assistance effective, for securing full and unreserved interaction between the two.

The principle envisioned in Articles 9 to 12 is justified as follows:

If such communication was not protected, no man would dare to consult a professional counsel with a view to his defense or the enforcement of his right, and no man could come to court securely with a view to either enforce or defend his right.

¹⁶The article provides privilege to communication between client and advocate, a client is a person who is party to proceedings, and in this regard a witness's communication to counsel is not protected and obliged under this provision.

¹⁷Privilege initiating from relation of counsel and client is claimable even if the client is not concerned in the case.¹⁸When the counsel is well versed with contents of will for the performance of its professional obligations, he/she is under privilege to not disclose the contents even if called as witness.

When a right may be waived:

When a client has given permission; When a communication is made in furtherance of an illegal

¹⁶ PLD 1962 Lah 558

¹⁷ PLD 1963 Lah 141

¹⁸ AIR 1929 Bom 414(415)(DB)

purpose; When fraud of some type has been committed;
 When a court orders the production of a document that
 the attorney has; When the attorney attests to the
 document as a witness;
 when a legal adviser does not obtain its factual
 information through dialogue;
 When both parties retain the same legal counsel;
 Suit brought by the attorney against the client

COMMUNICATION IN OFFICIAL CONFIDENCE:

¹⁹The phrase "communication in official confidence" in this article refers to all information shared between officers in the course of their duties and does not imply any specific level of confidentiality or a guarantee of its preservation.

This section includes both official communications between public officials as well as private citizen communications made in confidence to a public official.

²⁰The state can assert its right to confidentiality with relation to communications between superior authorities about the confirmation or denial of a government employee in a particular post that he holds. However, it must provide relevant information in the affidavit it submits in response to a petition filed by a government employee and make the document available for the court's inspection so that only the private portion of the correspondence is not entered into the record and the remaining information is used for the case's decision

¹⁹AIR 1915 MAD 1113

²⁰AIR 1964 All 415 (419)

while also ensuring that the judgment is founded on accurate information.

²¹Officials of a government must always act in the public interest and within the bounds of their duties. It is also very much in the public interest for groups of officials involved in one particular area of government activity to act as a single unit, bound to one another by a certain loyalty, always, of course, within the bounds of the public interest. Where there is a lack of what is appropriately referred to as *esprit de corps*. It is obvious that the political system must be heavily biased. Clearly, this article's goals go beyond merely dispelling these arguments. The duty of the court is also triggered when a disclosure is anticipated that, in the court's opinion, could be detrimental to the public interest. In such a case, the court must determine whether the communication in question was made to the witness in official confidence and then notify the witness—who might not be aware of the applicable legal provisions—that it is up to him to decide whether he will disclose the matter and whether to testify.

²²Prior to filing a claim under this article, it must be established, in the public officer's opinion, that disclosing the communication would be harmful or detrimental to the public interest. Hence, before denying any claim of privilege under this article, the court must use its judgment and carefully review each document since it may include information that cannot be divulged without

²¹PLD 1958 SC 333

²²1973 Cri L.J 931

harming the public interest. It is really not in the public interest to allow the production of a document that is partially privileged and partially, so the court is neither competent nor justified in ordering its production. Except in situations when the court determines that the disclosure of the information or document's content is necessary or statement would not in any way injure or adversely affect public interest, the claim of privilege under this article can be rejected but not otherwise.

²³Anything said to a public official in confidence is free to be revealed willingly by that person. A public official is free to reveal communications that were given to him in confidence when he is accused of dishonesty or acting in ill faith.

RULES REGARDING CRIMINAL PROCEEDINGS:

In contrast to civil procedures, where there is a greater scope, it is rather limited and imitated in criminal processes. Certain sorts of documents, such as those pertaining to the privilege in criminal procedures, are meant to be utilized in criminal cases. It is against the law to use legal professional privilege to safeguard materials that have already been disclosed. The English Courts have not allowed professional formations or documents protected by privilege on grounds of public policy or professional privilege to prevail in cases where they are relevant for establishing the defense and grounds

²³1950 Pak LR lah 888

of public policy or legal innocence of an accused. This includes information used in preparation for, in furtherance of, or as a part of any criminal design or fraud.²⁴

In short, the view is that if the documents are relevant to establish that the accused committed a fraud crime and were not created for legitimate purposes, such as the preparation of the accuser's defense, then the interests of justice may require that they be kept confidential. According to the courts, public policy then prevails over all private claims to privilege. An alternative to this criterion is whether a legitimate and tenable charge of fraud or criminality is made. According to some, allowing privilege to prevail would hinder justice and The Criminal Courts have a tendency to exclude the privilege in criminal trials when doing so directly tends to prevent an accused from disclosing information about any potentially incriminating material or when doing so indirectly prevents him from presenting evidence that may be intended to support an argument that is going to be made in defense of the charges. The trial can only be a farce without giving the accused a complete opportunity to defend him, and it would suffer from an inherent vice that may taint the entire process. Justice in a criminal case cannot be sacrificed at the altar of truth, which is the foundation upon which this magnificent Islamic State of Pakistan's infrastructure is built.

²⁴ PLD 1992 S.C. 492

EXCEPTIONS:

Conversations made for the aim of committing a crime are not protected.

Any fact discovered in the course of employment by the attorney, pleader, vakil or barrister to be fraud or a criminal committed since the beginning of employment is not protected

If the client offers specific approval, the message can be disclosed by an attorney, pleader, vakil or barrister. If a third party who is not the listener's agent overhears a communication, it is no longer private and hence not protected by the attorney-client privilege. Secretaries and other staff members of the listener are agents. A conversation between a psychotherapist and a patient, for instance, would be protected even if the psychotherapist's secretary overheard it. The secretary could not be compelled to testify regarding the correspondence in this situation. On the other hand, a conversation between a psychotherapist and a patient in a shared elevator with other people inside would not be confidential and may be used as evidence in court.

CONCLUSION:

"Private communication" refers to private or confidential exchanges between parties who are entitled to legal protection. One of these exchanges is no longer confidential once a third party finds out about it. According to the privileged communication rule, a

person in this protected connection cannot be asked to reveal any information about this conversation in court.

The main goal of this principle is to safeguard the confidence that a client has in a lawyer, a patient has in a doctor, and spouses have in one another. The law also stipulates sanctions in the case it is broken. There are a few exceptions; therefore this privilege is not without restriction. It may be violated in a variety of circumstances that are either stated in the law itself or in a variety of situations manifested by the court.

CRITICAL ANALYSIS OF RELIGIOUS FREEDOM IN PAKISTAN: A CASE STUDY OF RELIGIOUS MINORITIES

LARAIB YASIN
DR SHAHIDA NAZ
DR. SHAHID RIZWAN BAIG

Abstract: In spite of the fact that Muslims are the vast majority of Pakistan's population, this country is also home to individuals of a diverse range of other racial and religious backgrounds. Every member of a religious minority is guaranteed under the constitution, which was ratified in 1973, the freedom to freely exercise their faith. This may be primarily attributed to the fact that Islam promotes the idea that all individuals should be free to practice their religion as they see fit. There is evidence to suggest that certain Pakistani Muslim clerics are attempting to restrict the amount of religious freedom afforded to adherents of religions other than Islam. Their hostility of those who practice other religions runs counter to the principles of Islam. This research outlines these Islamic ideas and asks the issue of whether or not it is beneficial to persecute Pakistan's religious minority. In order to do this, it is necessary to examine Islamic viewpoints towards the rights and liberties enjoyed by non-Muslim minorities in Pakistan in addition to religious freedom. This presentation takes the form of an analytical critique. The freedom of Pakistan's many religious minorities to freely practice their religion is

implicitly protected by both the Constitution of Pakistan and Islamic law. The study comes to a close with ideas that may be put into action to help ease tensions amongst Pakistan's many different religious communities.

KEY WORDS: Pakistan, Islam, religious freedom, religious minority, social harmony.

INTRODUCTION: Under international law, individuals are granted the right to choose their religious affiliation and to change that affiliation at any time. In particular, it is absolutely forbidden to violate the fundamental rights of any person under any circumstances. According to the Siracusa Principles, which were established in 1985, there are now twelve fundamental rights that are not up for debate and are protected by international law. The lack of religious prejudice and the ability to practice any religion without interference are two of these rights. Therefore, everyone has the right to be free in topics that relate to their faith, conscience, and ideas, regardless of the context. This right includes the freedom to change one's religion. Changing one's religious affiliation or the beliefs that guide one's life may be accomplished either in concert with other people in one's community or on one's alone.²⁵

The phenomena which have been ever since the beginning of recorded history (Christen, 1981), is not

²⁵Azoulay, Ariella. "Palestine as symptom, Palestine as hope: Revising human rights discourse." *Critical Inquiry* 40, no. 4 (2014): 332-364.

unique to any one religious group in particular. It has been present ever since the beginning of written history. For example, during the early days of Islam, the Persian Emperor Khusraw Parvez led an invasion of Byzantium that resulted in the death of more than one hundred thousand Christians, the destruction of monasteries and churches, and the construction of fire temples across the region:

"To the contrary, I insist that Harqal, the King of Rome, be shackled and brought before me to serve as a vassal. I will not make peace with him until he renounces Christianity and embraces Zoroastrianism as the official religion of the Persian Empire. I will not make peace with him until he does this".

The word "minority" encompasses a wide range of identities, including those of individuals with disabilities, gender minorities, racial minorities, age minorities, and religious minorities. South Asian cultures have a long history of religious observance. This is a point that Javaid makes. India seems to be the most secular Asian nation when compared to its neighbors.

India has the largest Muslim population of any nation in the world, with over 200 million people identifying as Muslims living there. They are a religious minority in a country that is mainly Hindu, and they are subjected to a high number of religiously motivated homicides, discrimination, and other actions that impede the right to express and practice one's beliefs. They experience a high percentage of religiously motivated homicides because they are a religious minority in a country that is

predominantly Hindu. Over 1100 people were killed in 7484 episodes of religiously motivated communal violence between 2008 and 2017, according to statistics supplied by the Ministry of Home Affairs²⁶.

Anyone who violates this regulation by attempting to construct mosques or Madrasahs runs the possibility of obtaining a six- to six-year jail term, in addition to a fine and many years in prison. Over the course of the last several years, there have been hundreds of acts of violence committed against the Muslim community. The residences of Muslims have been set on fire, their dwellings have been damaged, their stores have been robbed, and their mosques have been assaulted. The ideas and teachings of Islam have often been mocked by groups practicing extreme Buddhism.

On August 14, 1947, the Islamic faith was chosen to serve as the cornerstone upon which Pakistan would be established. There were around 23% of non-Muslims residing in Pakistan at the time of the partition in 1947, making up the majority of the country's overall population. In other words, Muslims made up the majority of the people in Pakistan.

The following statement was made by a resident of a Christian colony in Lahore who took part in a survey regarding the rights of minority groups: "When individuals in other countries made insulting comments about the Holy Prophet (PBUH), we in Pakistan were

²⁶India: International Religious Freedom Report. 2019. Available online: <https://www.state.gov/wp-content/uploads/2020/06/INDIA.pdf> (accessed on 29 September 2020).

subjected to death threats and one of our churches was burnt down by a religious fanatic." a publication from the Bureau of Democracy, Human Rights, and Labor study on the subject that was released in 2006.

In recent years, the need for the freedom of religion has become even more pressing as a direct result of the religious fanaticism that may be found among adherents of a variety of faiths. After September 11, acts of bigotry, intolerance, and prejudice were more common across the globe. After the events of September 11, an attitude of "us" against "them" began to prevail, which deepened existing religious differences.

The goal of this research is twofold is to demonstrate that religious minorities in Pakistan are allowed to freely practice their faiths; and to examine how religious minorities in Pakistan put into practice their fundamental rights, including the freedom to worship as they see fit. The study aims to determine whether or not all of Pakistan's religious minority enjoy the religious freedom granted by the country's constitution.

OVERVIEW OF RELIGIOUS MINORITY GROUPS AND THEIR FREEDOM OF RELIGION IN PAKISTAN:

In 1947, the year when the two nations were separated, about 23% of Pakistan's total population consisted of persons who did not practice Islam. The percentage of the population that is not Muslim has fallen to roughly 3.7% as a direct consequence of a variety of challenges, including discrimination in society and the workplace,

intimidation, forced conversions, and acts of violence, amongst other things. According to the results of the Census carried out in 2017, Muslims constitute 96.28 percent of Pakistan's total population.

Christians account for around 1.59 percent of the overall population and are most prevalent in the provinces, in addition to Islamabad, the nation's capital. According to data collected by Pakistan's Bureau of Statistics in 2017, Hindus constitute roughly 1.60% of the total population and may be found most often in rural Sindh. At the moment, the bulk of Sikh communities may be found in and around the Peshawar area. The percentage of people who identify as Sikh is now believed to be 0.03 percent, and the bulk of those people live in the cities of Lahore and Nankana Sahib in Punjab.²⁷

The data shown here is derived from the most current statistics that have been compiled. According to research conducted by Barrett et al. in 2000, more than 0.04% of the world's population considers themselves to be Baha'is. The majority of these individuals live in Pakistan, particularly in the cities of Karachi and Lahore. According to the Department of State of the United States, there are 20,000 persons in Pakistan who follow the Buddhist religion. The remaining few Buddhists are today concentrated in the hilly Swat and Gandhara regions of Northwest Frontier Province as well as the Ladakh area of Kashmir.

²⁷Pio, Edwina, and Jawad Syed. "Marked by the cross: The persecution of Christians in Pakistan." *Faith-based violence and Deobandi militancy in Pakistan* (2016): 187-207.

The number of religious minorities increased when the Ahmadis, also known as Ahmaddiyyas, were officially recognized in 1974. Earlier on, members of an Islamic religious cult were established to be among them. After the Second Constitutional Amendment Act was passed in 1974, Ahmadis were seen as legally falling outside of the Muslim faith. Estimates put the number of Ahmadis in Pakistan at 0.22% of the total population.

religious minorities are routinely subjected to pressure in order to convert to Islam. The forced conversion of religious minorities to Islam may bring up a host of difficulties for such communities. The majority of the time, the religious beliefs and faith of those who are not Muslims are devalued. The majority of religious minorities face challenges as a direct result of the decreased accessibility of their places of worship. A panel issued a report in 2010 stating that religious minorities are subject to danger and do not have the freedom to practice their faith as they see fit.

Pakistan is still seen to be a hazardous environment, one in which members of religious minorities are subjected to abuse and feel unsafe. In the most recent few decades, there has been a rise in both the number of targeted homicides and the amount of violence directed at religious minorities. This is due to a certain subset of religious academics who promote acts of violence and assaults of this kind in the sermons that they deliver and in the media that they comment on.²⁸

²⁸Malik, Iftikhar H. *Religious minorities in Pakistan*. Vol. 6. London: Minority rights group international, 2002.

On September 30, 2008, the host of a well-known religious show proclaimed members of the Ahmadi sect to be *wajib-ul-qatl*, making it obligatory for Muslims to murder Ahmadi wing members. This announcement was made by the host of the program on a well-known religious program. In the space of only forty-eight hours after the airing of this televised message, two prominent Ahmadis were killed by gunfire.

A mob attack on the Christian community in March 2013, after an accusation of blasphemy, resulted in the burning of many dwellings belonging to a man who is Christian 2013 Dawn.com. This event took place in Punjab. This took place in the midst of a riot that broke out in response to the charge. A mob in southern Pakistan was responsible for the burning of a Hindu community center that existed there the next year, after it was stated that The Qur'an had been desecrated by Hindus. According to the report that was compiled and distributed by the United States Commission on International Religious Freedom in the year 2015, a total of four Hindu temples were the targets of further assaults.

On May 28, 2010, gunmen assaulted two Ahmadi mosques in Model Town and Garhi Shahu, both of which are situated in the city of Lahore, Pakistan; as a direct result of the incident, 96 individuals lost their lives. Later, on November 15, 2010, a renowned land thief assaulted the Church, which is located in Lahore, Pakistan. Armed men dressed in police uniforms proceeded to damage the structure before breaking it with a crane. The place of worship might be found throughout

Pakistan. During the attack, a number of goods, including sacred literature like as Bibles and crosses, were among the things that were destroyed, and the church building itself was completely leveled.

In its Annual Report for 2013, the United States Commission on International Religious Freedom focused most of its emphasis on the country of Pakistan. The research highlighted the nation's 1800 reported deaths from religion-related violence as well as the nation's 200 documented attacks on religious organizations. This rate of religion-related violence is among the highest rates in the world. According to the findings of a research that was conducted and distributed, Pakistan now holds the top spot on the "People under Threat" list for the whole globe.²⁹

Thankfully, according to a number of sources, the number of violent crimes perpetrated over the course of the last two years (CRSS Annual Security Report Special Edition 2013-2018) against members of minority communities has dropped. On the other hand, we are unable to assert unequivocally that the existing condition of things may be deemed acceptable in its present configuration. As a direct result of counterterrorism operations carried out by the military across the nation, the number of persons murdered in acts of violence fueled by religious intolerance began to diminish, and by

²⁹Minority Rights Group International. 2013. MRG Condemns Attack on Christians in Pakistan and Calls for Increased Protection of Minorities in the Country. September 23. Available online: <https://www.refworld.org/publisher,MRGI,,,50ffbce5799,,0.html> (accessed on 17 May 2014).

2019, there were only 228 fatalities, compared to 11,704 deaths in the years before. In 2019, there were only 228 deaths, compared to 11,704 deaths in the years prior.

CONSTITUTION OF PAKISTAN ON RELIGIOUS MINORITIES:

Pakistan came into being on August 14, 1947, with Islamic principles as its guiding ideology. Although Islam was the dominant religion in Pakistan, there were other non-Muslim minorities in the nation. Muhammad Ali Jinnah, Pakistan's national founder, was aware of this fact. Therefore, he made sure to include the following for minorities in his maiden statement to the Constituent Assembly on 11 August 1947:

"You are free to attend your own temples; do so immediately. While in this region of Pakistan, you are welcome to attend any mosque or other religious institution of your choosing. As long as it doesn't interfere with the operation of the state, you're free to follow whichever faith, caste, or creed you choose."³⁰

He continued, "Now, I think we should keep that in mind as our goal, and eventually, Muslims and Hindus will no longer be distinguishable from one another. This is not the case with regards to one's religious beliefs, which are private, but it is the case with regards to one's political beliefs, as citizens of the State. That should always be our goal, and we should always retain that as our goal" .

³⁰Ispahani, Farahnaz. *Purifying the land of the pure: Pakistan's religious minorities*. HarperCollins Publishers India, 2015.

Religious viewpoints and issues that are related to the state have to be kept apart from one another. The leaders of the Pakistan Movement presented express guarantees regarding freedom of religion, due process, the rule of law and an agenda of progressive legislation. These guarantees constitute an implicit social agreement with Pakistan's religious minorities.

Several sections of this covenant include safeguards for members of religious minorities. These articles include "freedom of religion will be guaranteed". In his address to the people of the United States, Jinnah is said to have stated that "the constitution of Pakistan has not yet been drafted by the Pakistan Constituent Assembly." At this point in time, I do not have any information on the specific format of this constitution. I have no clue what kind of government it will have, but you can bet your bottom dollar that it will be democratic, and you can also bet that it will respect the core tenets of Islam.

The same may be said about their applicability to the actual world now as it was 1300 years ago. Democracy is something that Islam has imparted to us thanks to its lofty worldview. It has taught lessons about equality between the sexes, fairness, and playing by the rules. Every Pakistani constitution that was written after the first one stated that every individual had the right to freely propagate, practice, and express any religious beliefs they held. The most important constitutions were ratified in the years 1956, 1962, and 1973 respectively. preserving the basic rights of individuals while regularly

using the term "minority" According to the Constitution of Pakistan, Article 25 (1) declares that:

"In other words, all people have the same rights and responsibilities under the law."

For example, Article 5 states that "adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures." This clause is meant to ensure that minorities are able to do all of these things without interference. The rights of those who belong to religious and cultural minorities are going to be protected by this paragraph. An article together in which they discussed this subject. All of Pakistan's many religious and ethnic minorities are afforded protection under the law by virtue of the free exercise guarantee included in the country's constitution.³¹

THE ZAHEER-UDDIN CASE AND ORDINANCE XX:

These Ahmadis argued that the Ordinance violated, among other things, their right to freedom of religion as guaranteed by **Article 20** of the Constitution of Pakistan. The Supreme Court of Pakistan issued its decision in Zaheer Uddin as a result of these appeals. The Ahmadis maintained that their criminal prosecution and punishment under Ordinance XX was unconstitutional because it violated Article 20 of the Constitution by restricting their freedom of religion. This argument was

³¹Swett, Katrina, and Marry Ann Glendon. "Pakistan must protect religious freedom." *National Interest*. Available online: <http://www.uscirf.gov/newsroom/op-eds/the-national-interest-pakistan-must-protect-religious-freedom> (accessed on 3 June 2020) (2015).

based on the fact that the restriction of their freedom of religion was a direct result of Ordinance XX.

Article 20 of the Constitution protects "the right of every religious denomination and every sect ". This right allows "every citizen to profess, practice, and propagate his religion, subject to law, public order, and morality."

According to Ordinance XX, also referred to as "The Anti-Islamic Activities of the Qadiani Group, the Lahori Group, and the Ahmadis (Prohibition and Punishment) Ordinance, 1984," it is "expedient to amend the law to prohibit the Qadiani group, the Lahori group, and the Ahmadis from indulging in anti-Islamic activities." In 1984, legislators passed this particular piece of legislation into law. As a direct result of the amendments that Ordinance XX brought about to the Pakistan Penal Code, it is now against the law for Ahmadis to practice their religion in public.

In Zaheer-Uddin, **Justice Shafiur Rehman** wrote a dissenting judgment that deemed a significant portion of the Ordinance to be in violation of the Constitution. However, the view held by the majority, which was written by **Justice Abdul Qadeer Chaudhry**, rejected all of the challenges and affirmed Ordinance XX in its entirety. Because their views and theological teachings are not in line with those of the majority of Muslims, Ahmadis are not considered to be Muslims, according to the majority viewpoint, which devotes the vast majority of its attention to the establishment of this thesis.

The Court stressed this point despite the fact that the appellants' counsel had made it plain that this topic was

not before the Court and that the Court must give the Ahmadis protection regardless of how they are categorized according to their religious views.

EVOLUTION OF MODERN INTERNATIONAL LEGAL NORMS ON FREEDOM OF RELIGION:

The problem of protecting people's freedom of religion remains at the center of discussions on international law, just as it has been since the dawn of human civilization. The decision that was made in 1948 by the United Nations General Assembly to accept the UDHR was the first significant step toward the development of a worldwide standard for ensuring the protection of religious liberty. **Article 18** of the UDHR takes its cues from the United Nations Charter, which includes the principle of nondiscrimination on the basis of religion as one of its fundamental precepts in the context of the protection of human rights.³²

In contrast, Pakistan's delegate referred to the adoption of the UDHR as "epoch-making event" and insisted on elaborating his nation's position on article 19's protection of religious freedom in all of its manifestations, including the opportunity to convert to another religion. This was done so that the world would know exactly where Pakistan stands on this issue. In response to a question regarding the protection of religious liberty, he said the following: "the Muslim religion had declared itself

³²Bhattacharya, Sanchita. "Internal Conflicts in Pakistan." *Emerging Conflicts and Regional Security in South Asia* (2018): 83-98.

against any kind of compulsion in matters of faith or religious practices."

As a consequence of this, the Pakistani delegation intends to support Article 19, and they will not agree to any limits on the extent of its application. After the United Nations General Assembly passed the UDHR, a number of multilateral treaties and declarations were ratified that included the right to freedom of conscience.

It is a violation of the Geneva Conventions to restrict people or hostages from freely practicing their faiths during times of conflict, since this is a human right. In line with Article 18 of the International Covenant on Civil and Political Rights, it is imperative that the right to freedom of thought, conscience, and religion be extended to each and every individual.

The freedom to have or adopt a religion or believe of one's own choosing, as well as the freedom to publicly or privately worship, observe, practice, and teach one's faith, are all components of this right. No one has the right to be coerced into practicing a religion or belief system against their will, and no one has the right to prohibit another from practicing their religion or belief system out of fear of punishment.

This right applies whether or not the faith is practiced by the individual. The "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" was adopted as an international effort to codify religious freedom that was based on a global agreement.

CONSTITUTIONAL PROVISIONS RELATED TO RELIGION FREEDOM AND MINORITY RIGHTS:

Article 36

To put it another way, "the state shall protect the interests of minorities," which includes ensuring minorities are fairly represented in government agencies at the federal and provincial levels.

Article 20

"Every person has the right to openly and freely express, exercise, and spread his or her religious beliefs."

"The freedom to form, organize, and lead houses of worship belongs to each and every religious group."

Article 21

"No one may be coerced into paying an additional tax if the money collected from such tax goes toward advancing or promoting a religion that is different from their own."

Article 22

Protections for educational institutions with regard to matters of religion and other topics.

"No one has to go to a certain place of higher education or take part in a particular religious rite or act of worship if doing so would violate his beliefs or values."

"Regarding the granting of tax exemptions or concessions, there will be no prejudice against any community in regard to any religious organization that is being considered for such treatment."

Subject to law:

“The provision of religious instruction by a religious community or denomination to its members' children in a school that is wholly maintained by that religious community or organization is protected under no circumstances.”

“Publicly funded institutions of higher learning must not discriminate against any person on the grounds of race, religion, caste, or country of origin in admitting students.”

Article 25

Equality for all of the people.

"Every individual has the right to be treated fairly by the law."

"There shall be no gender bias."

"The state may adopt further safeguards for the safety of women and children, and nothing in this Article may be construed to impede such measures."

Article 26

There should be no exceptions to this rule, and no one should be excluded from public spaces due to discriminatory considerations.

"There should be no discrimination against any citizen on the basis merely of religion, domicile, or place of birth with regard to admission to places of public enjoyment or resort that are not designated only for religious reasons. "

"Will restrict the state from adopting any policies or programs that provide additional benefits for females."

Article 27 (1) & 28: Subject to Article (25)

Protect customers against prejudice in services

"Regardless of a person's ethnicity, religion, caste, gender, or location of residence or birth, they must not be denied any employment in the service of Pakistan."

"Subject to legislation, people with a unique language, script, or culture has the right to protect and advance that identity and to found organizations to do so."

ISLAM'S PRIMARY SOURCES TREATMENT OF NON-MUSLIM MINORITIES UNDER MUSLIM POLICY:

A saying attributed to the Prophet Muhammad (PBUH) that discusses the rights of individuals who belong to religious minorities is "Be careful, if someone hurts a contracting man, takes away his rights, makes him work more than he can handle, or takes something from him without his permission, I will speak up for him on the Day of Judgment".³³

The Prophet Muhammad (PBUH) once made the following proclamation: "Whoever kills a person having a treaty with the Muslims shall not smell Paradise even if the smell of Paradise can be perceived from a distance of forty years." This was a reference to the fact that whomever killed a person who had a treaty with the Muslims would not enter paradise. The fact that Muhammad made this remark proves that he understood the significance of the lives of non-Muslim minority groups. This verse demonstrates the Prophet Muhammad's (PBUH) attitude on the lives of non-

³³Abu Daud, Hadith No: 3052

Muslim minority groups, as reported by Al Bukhari in Hadith No. 3166, which may be found here.

Dhimmi was a term that was used to discriminate against non-Muslims. Over the course of time, "the word means a protected person" status was extended to non-Muslims of a variety of religions in addition to Muslims. Some examples of these faiths are Buddhism and Hinduism. Because preventing damage to religious minorities was the primary objective, this practice was carried out. As Lewis (1984) puts it, members of a community should be able to "practice their religion, subject to certain conditions, and enjoy some measure of communal autonomy." They were granted authorization to go in that direction. In return for their acquiescence to Muslim control, they were assured protection for both themselves and their property (ibid). Non-Muslims and Muslims are accorded the same level of respect and dignity inside the state, as stipulated by Islamic law, and are seen as having the same standing in society. Their blood is genetically indistinguishable from ours, at least according to the Islamic leader known as the fourth caliph (Sayyed n.d.).

By the year **637 A.D.**, the city of Jerusalem had been conquered by Muslims under the leadership of Umar ibn al-Khattab, who was serving as the second caliph of Islam at the time. Umar was given a tour of the city, and a trip to the Church of the Holy Sepulchre was one of the most memorable parts of the excursion. While Sophronius was in the middle of praying, he offered Umar to join him in the church, but Umar denied the

invitation. His primary argument against worshipping there was that doing so would provide Muslims with proof to convert it into a mosque, therefore robbing Christians of one of their holiest sanctuaries. This was his major reason for not wanting to pray there. Umar did not pray within the church; rather, he did so at what is now referred to as Masjid Umar, which literally translates to "the Mosque of Umar."³⁴

During the time of the second caliph of Islam, Umar ibn al-Khattab, the head of the Christian army of Mery, exchanged letters with Shamoan of Persia and other Muslim officials. These letters were sent across the whole caliphate. It has been discussed and debated that: "The Arabs have a wonderful dynasty that has been blessed by God, and they do not fight Christianity. In fact, they are our supporters, respect our God and do revere our saints, and they donate money to our churches and monasteries." According to Sayyed (n.d.), it is forbidden for any Muslim, whether a king, an official, or a normal citizen, to wrongfully confiscate the property of a non-Muslim. This includes the right to own property. During his lifetime, the Prophet Muhammad (PBUH) offered the same amount of freedom to religious minorities as was enjoyed by the majority of Muslims, and this practice persisted throughout the Caliphate. The same constitution that had been created for the Christians of Najran by the Prophet Muhammad (PBUH) during his

³⁴Bonnéric, Julie. "An Archaeology of Light in Classical Islam. Studying an Immaterial Phenomenon in Medieval Mosques." In *8th International Congress on the Archaeology of the Ancient Near East*, vol. 3, pp. 15-26. 2012.

holy period was reaffirmed by the first two caliphs of Islam. This was done so in order to ensure that the Christians of Najran were able to continue to practice their religion freely. No city in the caliphate or the Muslim empire ever made it illegal for its people to practice their traditions, such as blowing conch shells or ringing bells (during religious services to call the congregation to attention).

They were given permission to preach about the Holy Trinity during the whole of their religious gatherings. Islam has a very soft corner towards minorities living in an Islamic state." The Islamic law, which is applicable to Muslims as well as non-Muslims, unreservedly protects and maintains the rights of all people to life, property, honor, and the ability to practice their religion without interference. (Musferah and Furqan 2018) Stated in Islamic teachings is the possibility that a really global brotherhood may emerge if Muslims abandoned their practice of discrimination towards those who do not practice Islam.

CONCLUSION:

One of Pakistan's many advantages is that it is home to a number of the world's largest religious communities. Pakistan's heritage of diversity should be celebrated, not used as a weapon of sectarian and religious discord due to the country's immensely diversified cultural and religious background. There is a tragic lack of tolerance for Pakistan's various religious minorities in modern Pakistan.

The current situation in Pakistan stands in stark contrast to Muhammad Ali Jinnah's vision of a tolerant and diverse Pakistan, which was offered at the time of the country's founding. As a result of their religious beliefs, members of religious minorities are often excluded from mainstream society and exploited by extremist groups.

To prevent this from happening again, the country's youth must be taught that Islam and the country's Constitution share a commitment to treating religious minorities with justice and fairness. Both Islam and the Bill of Rights seek to protect members of religious minority from persecution. Everyone in a society where several faiths coexist must respect and appreciate the reality of religious variety.

Acquiring an understanding of the religion and teachings of various religious organizations may assist a person to accept and appreciate the views of others who adhere to different religious traditions. The ability to freely practice one's religion is one of the most important human rights; it does not matter if a person identifies as Muslim or not; this right must not be disregarded in any community or nation.

Each successive constitution under Pakistan's constitutional framework guarantees an individual's right to freely express, exercise, and spread his or her faith. Every religious group, including subgroups, has the freedom to form, sustain, and regulate its own religious institutions. Pakistan was a leading factor in the worldwide movement to define the human rights to freedom of thought, conscience, and religion.

LEGITIMACY AND AN ACKNOWLEDGMENT OF PATERNITY OF CHILD WITH SPECIAL REFERENCE TO ISLAMIC LAW

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DR SHAHIDA NAZ
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ABSTRACT: This Article discusses the legitimacy and acknowledgment of children. This research not only took the purview of the general law regarding the legitimacy of a child but also see the Islamic perspective on the paternity of a child. Ar.128 of QSO, 1984 added after independence. Being an Islamic state, Pakistan repeals all provisions of law that against the injunctions of Islam. Ar.128 considers the birth during a marriage as conclusive proof of legitimacy. While under Islamic law, somehow the same perspective but schools of Islamic law have a different perspective on the delay of the birth of a child. It shows leniency in legitimacy rather than stigmatization. Lastly, the acknowledgment of a child is only recognized by Mohammedan law. In which only son ship is not necessary but lawful legitimacy of son ship is a requirement of acknowledgment. The major purpose of acknowledgment is to give a right of inheritance to the acknowledged person from the acknowledger property. This research paper inferred that there is a need for time to amend the Ar.128 of QSO,1984. To make some leniency on the legitimacy of the child.

Keywords: legitimacy, acknowledgment, child, ordinance, Islam.

INTRODUCTION: The legitimacy of a child always become a serious issue in society with time. The issue has been raised when a female demand khula from the husband or the husband give a divorce to his wife and the maintenance of children is imposed by law on the hands of the husband. Majorly issues stand when inheritance shares are distributed and then at that time, the question of legitimacy takes first place. So, when a child is born from wedlock is legitimate. Instead, under the Islamic charter, an infant born out of the nuptial is illegitimate or considered *filii nullius* which means a “**son of nobody**” or bastard. Section 337 under Mohammadan Law describes parentage as the relation of parents (real father and mother) to their children³⁵. The word parentage is further divided into two categories: (1) Paternity means a relationship between father and infant (2) Maternity means a relationship between mother and newborn. The well-settled rule of paternity is established by the marriage of parents³⁶(real father and mother) under Islamic Law and they begot a child from the nuptial ³⁷. Marriage may be valid (sahih), or irregular

³⁵ Ibid, see Sec.337 of D.F Mulla’s principles of Mohammadan law, chapter 17, parentage

³⁶ PLD 1988 SC 8

³⁷ Sec.250 of Mohammadan law, marriage or Nikah means a contract which has for its object the procreation and legalizing of children.

(fasid), but it must not be void (batil)³⁸. While maternity of a child is established in the woman who gives birth to the child, irrespective of the lawfulness of her connection with the begetter³⁹.

Marriage may be confirmed by prima facie evidence, and in the desertion of direct proof or prima facie evidence it may be established by drawing the presumptions of certain facts, or presume from an acknowledgment of the legitimacy of the child, or presume from prolonged cohabitation and when the paternity of the infant is established, its legitimacy is also confirmed⁴⁰. Under the Islamic charter, the son considers legitimate if he/she is an offspring of a male, his spouse, and his bond slave, and any other children are considered to be of illicit intercourse or Zina and consider an illegitimate children⁴¹. If a male commits Zina with a female, and an infant is born as a result of illicit intercourse (Zina), then it considers to be a child of its mother and acquires a share of property from her and her relatives⁴². And the begot not belong to the father of the infant because paternity is only confirmed by marriage, not by illicit intercourse. In that case, the child did not inherit from him and considers to be illegitimate or a bastard.

Under Pakistani law, childbirth during nuptials considers to be definitive evidence of legitimacy and cannot be

³⁸ Ibid, see Sec.339 of Mohammadan law (PLD 2010 Lah.422)

³⁹ Ibid, see Sec.338 of Mohammadan law

⁴⁰ AIR 1922 PC 159

⁴¹ Baillie, p. 391.

⁴² See, Qanun-e-Shahadat ordinance, 1984, page 200., para: 1 (revised edition 2018) by M. IQBAL (PLD publishers)

rebuttable. While under Islamic law scholars have different views Sunni law has a different perspective and Shia law has a different purview on the legitimacy of a child. The rationale behind the legitimacy of an infant is to prevent stigmatization (the child is born from a valid marriage to the husband). Pakistani courts held that our Islamic law leans in favor of legitimization rather than stigmatization⁴³(Sikandar Ali vs the State) and also abhors the contention of legitimacy⁴⁴ (Manzoor-ul-Haq vs Kaneez Begum).

This Article was coined to discuss the view of Islamic jurists, societal norms, and peculiarities of a particular class of community on the legitimacy of the child. It also discusses the statutory provision of Article.128 of the Qanun-e-Shahadat Ordinance, 1984 which affirmed stipulates that the legitimacy of a child born from marriage is definitive evidence. And the acknowledgment (*Iqrar*) of a child is also discussed.

The legitimacy of the child mostly prevails in Pakistan. Pakistan as an Islamic state follows the injunctions of Islam and cannot make any law that is against the injunctions of the Quran and Sunnah. If any law is made against the injunctions of Islam then the state declares it to be null and void⁴⁵. Other Islamic countries like Saudi, Iraq, Iran, UAE, etc. also recognize the legitimacy of a child.

⁴³ See, 2000 PCR. LJ 214, PLD 1995 Pesh 124

⁴⁴ 1993 CLC 109

⁴⁵ See, Article. 8 of the Constitution of Pakistan, 1973

RESEARCH METHODOLOGY:

This research article is qualitative. This research explores the data after reading articles, case laws, views of Islamic scholars, laws, rules, principles, and judicial precedents on “legitimacy and acknowledgment of child”. With a theoretical view, research becomes comprehensive and coherent in form. And cover all areas which are necessary to know about the legitimacy of a child.

THE RELEVANT PROVISION OF LAW-

The relevant provision of law is Article.128 of QSO,1984 coined that “a child born from the continuation of valid nuptial(between his mother and husband) and not earlier than the end of 6 lunar months from the date of nuptial(approximately 180 days), or within 2 years after the dissolution of marriage, and the mother remains single shall be definitive or conclusive that legitimate child is the son of that male⁴⁶, except (a) the husband disown the newborn⁴⁷(b) or the child has been begotten after 6 lunar months from the date on which the female had accepted the period of iddat had come to an end⁴⁸.But this provision of law repeals the effect of section.112 of the Evidence Act,1872 after partition in which “a child born within 280 days(which is approximately 9 months) after the dissolution of a continuance of valid nuptial shall be a conclusive evidence of lawful son of that person except the parties had no access to each other at the time of

⁴⁶ See, Article. 128(1) of QSO,1984

⁴⁷ See, 2001 YLR 731 and also see Ar.128 of QSO,1984

⁴⁸ See, Ar. 128 (1)(b) of qso,1984

begotten”. Article.2(9) of QSO,1984 states that “when one fact is declared by this order to be conclusive proof of another, the court shall on the proof of one fact, regard the other as proved, and shall not allow giving evidence to disprove it” and it is also known as” rebuttable presumption” and when the Ar.128(1) of QSO, 1984 become to operate the court cannot allow giving evidence to disprove the legitimacy of a infant begot within the duration aforementioned⁴⁹.

Principles of paternity under Islam-

The four principles assert by Islamic law for the establishment of paternity.

1. The first principle for the establishment of paternity is a valid marriage is sufficient evidence that the newborn is begotten from this marriage. The assumption of paternity according to Sunni Law is that infant is begotten not earlier than 6 months from the date of nuptial or born within 2 years after the dissolution of marriage by way of a divorce, by the demise of the husband and the simple denial of paternity by husband cannot take away from the legitimacy of the child⁵⁰.In *Musammata Kaniza vs. Hasan* the Oudh Court defines “valid marriage” means “flawless”⁵¹.

Note: An infant begotten within 2 years after the dissolution of the nuptial is assumed to be law full except

⁴⁹ PLD 2015 SC 327

⁵⁰ See the commentary of QSO,1984 by M. IQBAL (PLD publishers) revised 2018 edition

⁵¹ (1926) 1 Luck, 71,92 I.C. 82, (26) A.O. 231

disclaim by li'an⁵² and this is the settled principle of Hanafi law. Under Shafei and Malki school of law, the duration is 4 years while under Shia law is ten months⁵³. In *Ashraf Ali vs. Ashad Ali*, Calcutta case in this case court before passing the Evidence Act, the court diminish to act in accord with this principle of Mohammedan law in which an infant is begotten within 19 months, after the date of divorce on the ground to hold that such infant as lawful "would be contrary to the course of nature and impossible"⁵⁴. Another rule under Islamic law is that an infant begotten under 6 months after marriage is illicit⁵⁵. In other circumstances, if an infant begot after 6 months from the date of nuptial is assumed to be lawful unless the putative father disowns the newborn by li'an⁵⁶.

2. The second principle under Islam is regarding the age of the child. So, the minimum age for a child to be born alive and properly formed according to Quran is six months and this is the shortest period of gestation admitted by all schools⁵⁷. While the longest duration of gestation⁵⁸ is 2 years and the usual time is 9 months⁵⁹.

⁵² Lian in which husband has falsely charged the wife with adultery and wife is entitled to seek a divorce. See, sec. 333 of Mohammadan law.

⁵³ See the commentary of sec.340 of D.F mullah principles of Mohammadan law page.468, para second, third rule of Mohammadan law (Pakistan edition)

⁵⁴ (1871) 16 W.R. 260

⁵⁵ See, the commentary of sec. 340 of D.F mullah principles of Mohammadan law, page 467, last para of the page (Pakistan edition)

⁵⁶ See the commentary of sec.340 of D.F mullah principles of Mohammadan law, page. 468, first para, second rule of Mohammadan law

⁵⁷ See the commentary of Ar.128 of QSO,1984, page:128 by M. IQBAL (PLD publishers) revised edition 2018

⁵⁸ Period of gestation means fetal development period from the time of conception until birth.

3. The third principle under Islam is regarding the attribution of paternity. This is a different concept. Our law is very stringent against immorality and considers adultery a great sin. According to Hadith and Quran:

“Zina or fornication or adultery has been declared a major sin and an evil way. The believers are strictly forbidden to come near it”. Quran says: “nor come nigh to adultery for it is a shameful (deed) and an evil, opening the road (to other evils)” (17:32)⁶⁰.

If married women commit adultery⁶¹ with another person, then the paternity of the child does not belong to the person to whom the adultery was committed. But it is referred to her husband unless he repudiates it, but the acceptance of such repudiation suffers many restrictions and reservations under the method of acknowledgment⁶².

4. The last and fourth principle of Islamic law is acknowledgment or Iqrar. Under Sunni law father alone establish the paternity of the child with the total debarred of the mother and other relatives⁶³.

The legitimacy of a child may also presume from presumptive marriage-

Marriage must presume from direct proof but in the absence of direct proof the legitimacy of a newborn

⁵⁹ PLD 1995 Pesh. 124

⁶⁰ Book” women’s rights in Islam” by M. sharif Chaudhary, chapter# 17 right to protection of honour, page. 139

⁶¹ Adultery means a voluntarily sexual intercourse between a married person and a person who is not their spouse.

⁶² PLD 2010 Pesh. 10, 2001 YLR 731

⁶³ See the commentary of Ar.128 of QSO,1984 of M. IQBAL(PLD publishers) revised 2018 edition, page 198

may be assumed from the conditions that the nuptial held between the parents (father and mother)⁶⁴. Marriage is also assumed from prolonged cohabitation⁶⁵ between husband and wife, through acknowledgment by the father in respect of the paternity of a child and the conditions of acknowledgment must be fulfilled⁶⁶, and the acknowledgment by the man or woman of his wife⁶⁷, and the community always perceive as a husband and wife, and also consider by a respectable member of the locality. Ar.46(5) of QSO,1984 also provides that the statement regarding the existent of relation by marriage, bloodline, or adoption between persons or persons declare that has special means of knowledge and all these statements provided when the question regarding relationship in dispute was raised are relevant⁶⁸. Another article provides that when the court made a point of view concerning the relation of one person to another and the opinion of any person who is a member of a family or has special means of knowledge expressing the existence of a relationship is considered a relevant fact⁶⁹. In *Mohd Haneefa vs. Pathummalbeevi* states that an infant born in

⁶⁴ See the sec. 341 of D.F MULLAH principles of Mohammadan law, Pakistan edition, page 469

⁶⁵ *Khaja Hidayat vs. Raj Jan* (1884) 3 M.I.A 295

⁶⁶ *Habibur Rahman vs. Aitaf Ali* (1921) I.A. 114

⁶⁷ *M. Amin vs. Vaakil Ahmad, Murad khatoon vs. M. Afzal Khan* 1993 MLD 719.

⁶⁸ See the Ar. 46 of QSO,1984 by M. IQBAL(PLD publishers) revised edition 2018-page:85, para: second.

⁶⁹ See the Article.64(opinion on relationship when relevant) of QSO,1984 by M. IQBAL (PLD publishers) revised edition 2018-page: 121.

nuptial cannot be bastardized except on direct evidence of distance⁷⁰.

DENIAL OF THE LEGITIMACY OF A CHILD-

Sec.2 of the Muslim Personal Law Shariat Application Act, 1962 provides that, “Notwithstanding any custom or usage, in all cases questions regarding succession, marriage, legitimacy, bastardy, will, gifts, wakf, property.....subject to the provisions of any enactment for the time being in force shall be the Muslim personal law(Shariat) in cases where the parties are Muslim”⁷¹. Where both parties are Muslim the above provision applies and creates a conflict against Article.128 of QSO,1984. Under Pakistani law, the father denies the legitimacy of a child if he is not born within a stipulated period prescribed under Ar.128 of QSO,1984. While Muslim personal law (Shariat) is a well-settled rule in this context. According to Imam Abu Hanifa, the paternity of the child or legitimacy of a child must be denied by the father promptly after the nativity of a newborn⁷² but according to Imam Muhammad and Imam Yousaf father denies the legitimacy of a child within 40 days after the nativity of a newborn (within the post-natal duration). Islamic law does not permit anyone to deny the paternity of a child after a stipulated period. And all of

⁷⁰ 1972 K.L.T. 512

⁷¹ See the Sec.2 of Shariat Muslim personal law.

⁷² See the page 200 of QSO,1984 by M. IQBAL (revised edition 2018) PLD publisher

the Islamic scholars, fatwa-e-Alamgir and Hedaya agreed on this principle of paternity.

The superior court held that the statute does not permit anyone and especially unethical and immoral fathers, to make outlawed and illegal assertions and become a basis of hurt to children as well as their mothers⁷³. Our Constitution also protects the marriage, family, mother, and child⁷⁴. And duty imposed on the state to protect family, etc. But according to the customs, a husband can renounce the infant, on the day of his nativity, at the time of purchasing articles that are necessary for the birth of a child, or during the period of re-joining. One view is that if the husband is not present, he must renounce the newborn promptly after he was enlightened of his birth⁷⁵. In case of the husband's demise or procured divorce to the wife, and the woman at the time of Iddat, admits that she bore a child within 2 years of separation of nuptial, and the husband denied the nativity of the newborn or his heirs denied the fact then the birth of child proved by 2 trustworthy male witnesses or by one male witness and two woman witnesses having a good reputation unless the husband or his heirs formerly contended that the women bore a child or she was pregnant or unless the signs of pregnancy were manifest⁷⁶. When the woman bears pregnancy after 6 lunar months of the nuptial or the infant is born after six lunar months of marriage, the

⁷³ PLD 2015 SC 327

⁷⁴ See the Article.35 of Constitution of Pakistan,1973

⁷⁵ Hamilton's Hedaya, Vol. 1 Book IV, chp. 10, p. 26, see pg. 201 of QSO, 1984 (revised edition 2018) by M. IQBAL (PLD publishers).

⁷⁶ Hamilton's Hedaya, Vol. 3 book, 24, chp .5, p. 426

child cannot consider illegitimate unless denial has been made and the wife and husband appeared before a judge and take an oath against each other after that judge make an order of their separation⁷⁷. The child was held illegitimate in criminal proceedings having no evidentiary value in civil proceedings⁷⁸.

ACKNOWLEDGMENT OF CHILD:

The acknowledgment of a child or Ikrar is only recognized by Mohammedan law. Where the paternity of a newborn cannot be established from a lawful nuptial of parents at the time of conceiving of nativity child but an acknowledgment of the legitimacy of a child only descent from his father⁷⁹. Under Sunni law, the acknowledgment or son ship is only established by the father with the entire debarred of the mother or all other relatives. In a case, where no prima facie evidence of nuptial is accessible and paternity is also not established, in this scenario Muslim law prescribes a method through which marriage and paternity are established as a “substantive law for purpose of inheritance” and this is an acknowledgment of paternity⁸⁰. Where prima facie evidence of marriage is accessible then the question of acknowledgment does not arise.

⁷⁷ Baillie, book 3, chp 10, p 334, 336

⁷⁸ PLD 1995 Pesh. 124

⁷⁹ See the p. 470 of D.F Mullah Principles of Mohammedan Law (Pakistan edition)

⁸⁰ M. Allahdad khan vs. M.Ismail khan (1887)

Conditions for Valid Acknowledgment:

There are some conditions for valid acknowledgment which must have to fulfill-

- **Express or implied;**

The acknowledgment is not necessary to present only in express form but also present in implied form. It may be implied when a father habitually treated someone as his child or his conduct towards the child, is considered his legitimate child⁸¹(Mohammed. Azmat vs. Lalli begum).

- **Age;**

There must be an age gap between the acknowledger and the acknowledged person. The age of the acknowledger is such that he is admitted as a father of a child⁸²(Habibur Rehman vs. Altaf Ali). The age of the acknowledger must be 12 ½ elder than the person acknowledged⁸³.

- **The intention of legitimacy;**

There must be an intention of a legitimate son but not merely sonship. The acknowledgment of merely a sonship has no evidentiary value⁸⁴(Usmanmiya vs. Valli Mahomed).

- **Competency;**

Acknowledger must be a competent person. It means he can make a contract, sound, and sane mind person.

⁸¹ (1831) 91.A..8,18,8 Ca.422

⁸² (1921) 48 I.A. 114, 120-121

⁸³ Baillie, 411

⁸⁴ (1916) 40 Bom.

- **Revocation;**

The acknowledged person revokes the acknowledgment when he understands the terms and conditions of the transaction performed.

CASE LAWS ON PATERNITY-

A child begotten within 6 months of a valid marriage is a lawful child under Shariah law⁸⁵. When the legitimacy is inferred from surrounding circumstances, the court is reluctant to declare a child bastard and generally refused to admit legitimacy⁸⁶. A newbornis begotten during a valid marriage; the father cannot supplant false allegations of legitimacy to avoid the liability of paying maintenance to his child⁸⁷. A child born within 229 days (approximately seven and half months) of husband's coitus, and child appearing mature and full term, illegitimate⁸⁸. To resolve the problem of the paternity of a child conducting of blood test is admissible⁸⁹.

Conclusion:

According to Muhammadan law, the child only considers legitimate if born from a valid wedlock and all the conditions of a valid marriage are fulfilled by the parents. But on the paternity of child schools of Islamic law has differently opined. Under Mohammedan law, the presumption on the legitimacy of a child is if the

⁸⁵ PLD 2003 Lah 264

⁸⁶ PLD 1976 S.C 767 (p.775)

⁸⁷ 1997 MLD 142

⁸⁸ PLD 1950 P.C. 75

⁸⁹1994 PSC (Cr) 864

infant is begotten within 6 months of nuptial (180 days) or born within 2 years after the separation, although, Islamic law could not consider the child illegitimate on the bases of premature birth or born the usual delay of two years. Scholars have differently opined on the delay of birth of a child. Because Islam is in favors of legitimating rather than stigmatization. The other perspective is our local law which is Ar.128 of QSO,1984 which considers the birth of a child as conclusive proof, it gives no leniency in the premature birth of a child. If the infant is born in a prescribed period that is mentioned under Ar. 128 then consider a legitimate child otherwise, the husband has a right to disown the child to get rid of the maintenance and inheritance shares. This a huge drawback in legislation that considers this provision of law irrefutable and there is a dire to amend and made leniency on this presumption of law.

PLEA OF ALIBI: AS ONE OF BEST FORMS OF EVIDENCE TO PROVE THE INNOCENCE OF ACCUSED

LARAIB YASIN
DR SHAHIDA NAZ
DR. SHAHID RIZWAN BAIG

Abstract; A person who has been accused of committing a crime may present an alibi as part of their defense in order to demonstrate their innocence and show that they were not at the scene of the crime. A more compelling excuse doesn't leave any space for doubt and can be established much earlier on in the process. An alibi needs to be supported by testimony or other detailed material; if neither is available, the alibi won't be taken into consideration, which won't make the investigation any easier to handle. The absence of an alibi cannot be the sole basis for a conviction because it does not make the accused responsible for their actions. The court is now viewing the accused person with extreme caution because of the perspective that he is trying to create data because of the awareness of regret that he committed the crime, and this could be explained in the court before which he is trying to prove his innocence so that he would not be convicted of the crime. The accused suffers harm when they do not provide an explanation or fabricate evidence. If this is taken into consideration by the court, the tag is changed to "dark" if there is any additional evidence that can confirm and strengthen the accused person's stated

intention. If there is no room for reasonable doubt in this case, the accused will be found guilty of the crime they have been accused of committing. The prosecution bears the responsibility of establishing the defendant's guilt and must do so in a way that leaves no room for reasonable doubt. Producing an alibi is the most effective way to demonstrate that the person who is being accused did not take part in the crime. It is possible that the accused would have committed the crime if he had been present at the scene of the crime; however, there is no evidence to suggest that he would have done so even if he had been there. If this can be proven, then the person who is accused can possibly be cleared.

INTRODUCTION; Alibi offers the most convincing evidence of a man's innocence. The Latin word "alibi" means "somewhere else" or "elsewhere." In most cases, the accused person will use it as evidence to demonstrate that he was not present at the scene of the offense but was present elsewhere. This is used as evidence to support the contention that the accused was not present at the location of the alleged crime, but was instead present elsewhere, and that even if the latter were accurate, the accused could not have been responsible for the alleged offense. It is practically impossible for a man to be present in two locations at once. If the prosecution succeeds and the defendant takes a suspect plea, this must also be established beyond a shadow of a doubt. It

is the responsibility of the prosecutors to prove beyond a shadow of a question that the defendant is guilty.

PLEA OF ALIBI:

“A person who is suspected of committing a crime may enter a claim of alibi if they can demonstrate that they were not present at the scene of the crime or at the time it was committed.”

Alibi is a defined rule of evidence under **Section 11** of the Evidence Act, not an exemption.

The principle behind the plea of Alibi:

“Things that wouldn't normally be important suddenly become important”.

(1) If some facts conflict with relevant or applicable facts, they become significant even though they are not generally relevant.

(2) If they, by themselves or when combined with other pieces of information, cast substantial question on the actuality or plausibility of any pertinent fact or fact that is currently being considered.

This section covers alibi, the justification that a person is somewhere else. The fact that a person who was involved in the same crime could not be present in two locations at the same time proves that the person who has been accused of perpetrating the crime is blameless and has nothing to do with the purported crime. The presence of a person in a particular location during the normal course of life is not important.

Basis of Plea of Alibi:

It is based upon those facts which are extraneous with facts in the issue or relevant facts.

NATURE OF PLEA:

An alibi may be presented as evidence in accordance with Article 24 of Qanoon-e-Shahadat because it postulates that the accused was in another place when the crime was committed, it is logically impossible for him to have been at the scene of the crime at the time it was committed.

The only way for an alibi defense to be accepted by a court is if it can be demonstrated that the defendant was at such a remote location at the pertinent time that he could not have been present at the location where the crime was perpetrated.

An alibi defense is the most feeble form of defense, and it is impossible to give any weight to such a defense unless it can be demonstrated that it was based on a very compelling, reasonable, and persuasive reason.⁹⁰

EFFECTS OF PLEA OF ALIBI:

Benefit can be extended to the accused who takes a plea of alibi. Such as: If the charge on the accused is of Qatal 302 and he proves the plea of alibi, the court can award bail U/S 497 of C.r.Pc.⁹¹

ESSENTIALS OF ALIBI:

- The first step in committing a crime is to break the law.
- The person indicted shouldn't have been there when the offense was committed.

⁹⁰2002 YLR 804

⁹¹Section 497(1) CrPC

- When the crime was done, the accused should have been at a very far location, making it difficult for them to go there.
- Only those who have been accused may make an alibi plea.
- The request for an alibi should come first.

WHEN CAN AN ALIBI'S PLEA BE TAKEN?

The Plea of Alibi should be entered as soon as feasible, ideally, during the preliminary hearing or at the time the charges are first filed, as the earlier it is submitted, the more likely it is to be granted weight. An immediate and not delayed alibi is required.

CASE LAW:

The court ruled in this instance that the defenses of self-defense and alibi cannot be compared and equated. Alibi should not be raised afterward; it should be raised at the beginning of the case.⁹²

DELAY OF RAISING ALIBI:

As time passes, the likelihood that the accused will forget what happened a week, a month, or a year ago, the accuracy of the details, or the probability that the accused will pass away are all aspects that the judge must take into consideration when determining whether to rely on the plea of alibi. The best defense to get someone out of a

⁹²Lakhan Singh @ Pappu V. The State of NCT of Delhi

case is an alibi, but if it can't be confirmed beyond a reasonable doubt, it might work against the defendant.

However, the fact that the revelation was delayed is not sufficient reason to disregard the alibi evidence; it is not possible to disregard the evidence based solely on the fact that the delay occurred. It does not mean that the revelation should be instantaneous during the first investigation or on the day of the arrest; rather, it simply means that the Confession of Alibi should be made prior to the hearing in order to ensure that there is sufficient time for investigation. This is done in order to ensure that there is sufficient time for investigation. If it can be shown that the alibi claim was false or if the evidence does not support it, then the defendant will be found culpable of the offense.

CASE LAWS:

The Supreme Court of the United States declared that in order to disprove the possibility that the accused would be exhibiting the scene of the crime; the alibi defense must be supported by evidence that is both convincing and irrefutable. The court also highlighted that the admittance of an alibi must be made at the very beginning of the case; otherwise, it will be regarded as an afterthought, which will decrease the believability of the alibi and make it impossible for the accused person to be exonerated based on that premise. Instead, the suspected

person will be found culpable of the crime, and their alibi defense won't even be considered.⁹³

ADMISSIBILITY OF ALIBI:

An alibi must be supported by witnesses, and each witness's testimony will have an impact on the alibi's strength or weakness. Even the defendant's friends and relatives can testify about the alibi, but such testimony will raise questions regarding whether their claims were made in good faith to prevent the convict from being found guilty.

After hearing the testimony, the judge determines if the witness is credible. The court might assess whether or not the family or friend's testimony was credible, which could lessen the evidence but not eliminate the defense as a whole.

An alibi can be supported by testimony from a witness who is unrelated to or unfamiliar with the defense. The Alibi may be strengthened further when more than one witness gives testimony about it. The Plea of Alibi can be strengthened with the aid of other supporting evidence, such as pictures, videos, and GPS, which is more trustworthy because it doesn't lie, however, there may be questions about the correctness of records as well, which must be established.

If the defendant is unable to provide an alibi, the prosecution must prove the defendant's culpability beyond a shadow of a question; however, if the alibi is

⁹³Dhananjoy Chatterjee v State of West Bengal

provided, the defendant will not be found guilty solely on the basis that it was not established with sufficient evidence. It is not enough for the prosecution to simply be unable to disprove the defendant's alibi in order to establish that the accused was present at the location of the crime; they need additional evidence.

CHALLENGE THE VERACITY OF THE EVIDENCE:

The witness's credibility may be called into doubt if it is implied that the witness is related to the accused and is lying to defend the accused. If a witness's doubts are confirmed to be unfounded, the judge will not accept the witness' credibility. The accuracy of the evidence generated, such as the voice recordings or videotapes, might be questioned in addition to the physical evidence by claiming that the defendant was not the one who altered or warped them.

CASE LAW:

In this instance, the alibi defense was raised before the High Court for the first time while the appeal was continuing, and the supporting documentation was also submitted to the appellate court. There were several concerns made regarding the reasons cited for the excessive duration of time it took to produce the evidence supporting the alibi claim while the matter was still pending in the lower courts. Also, the eyewitnesses' veracity was questioned because both of them had

injuries, and it is important to highlight that this raises issues with their testimony that cannot be ignored.⁹⁴

FABRICATION OR FALSITY OF THE ALIBI:

It is possible to use the fact that the alibi was shown to be untrue as circumstantial evidence to demonstrate that the accused attempted to influence the proceedings in order to escape being convicted for the alleged crime. Due to the alleged fake alibi, the trial has become more cautious, and the investigating process has also been impacted.

CASE LAW:

The suspect was accused of committing a crime, and he asserted his innocence by claiming that he had an exam the day before the alleged crime was committed. However, during the investigation, it was discovered that the exam had been scheduled for the day before the alleged crime was committed, and there had not been an exam on that day. The accused's plea was false, and he or she was unable to prove otherwise.⁹⁵

The Supreme Court reaffirmed its previous ruling in this case, stating that a false alibi claim alone does not imply culpability for the claimed offense. Alibi refers to the claim that the defendant was not at the scene of the crime when it was committed. However, if the defense of alibi was asserted and it was later determined that it had been falsely raised, this fact alone cannot be used to convict the defendant, additional evidence must be presented to

⁹⁴State of UP v Mukunde Singh

⁹⁵Hari Chand v State of Delhi

argue the false alibi. Falsely asserting an alibi works against the accused because it exposes his attempt to provide fake proof to absolve himself of responsibility. The Supreme Court has emphasized this issue several times to help people acknowledge that an alibi is a stand-alone defense and that the prosecution must prove it with corroborating evidence for the accused to be found guilty of a crime.⁹⁶

OBLIGATION TO DISCLOSE ALIBI:

A person who has been suspected of perpetrating a crime has the right to maintain their silence until their case has been resolved. The individual has the constitutionally protected right not to be compelled to witness against themselves and to utilize any statement they provide in a manner that is to their advantage. The accused are permitted to raise the defense of Alibi without renegeing on their basic rights to silence and immunity from self-incrimination.

ALIBI AS A RULE:

SURVIVAL OF THE ALLEGED DECEASED:

This rule applies when the victim of a murder is discovered alive in a different location or at a different time, in which case it is important to show that the murder did not occur. For instance, if A is charged with killing B on February 20, 2005, but B is

⁹⁶Babudas v State of MP

afterward discovered to be alive on March 4, 2020, both facts are pertinent under section 11 of the Evidence Act.

THIRD PERSON COMMITTING THE OFFENCE:

In the event that a person is suspected of having assassinated the decedent and that person has evidence to demonstrate that a third party has performed the offense and that the accused person has not been unjustly framed in the case, then the accused person may have been wrongfully framed. For instance, if A is accused of stealing treasures from B and A has proof to demonstrate that C resided in that particular location instead of A, then the evidence in question is considered to be pertinent.

SELF-INFLICTION OF HARM:

When A is accused of murdering B and it is discovered that suicide, rather than murder, was the cause of death, then such evidence may be employed in a court of law as admissible proof. In other words, the accusation of murder may be dropped.

NON-EXECUTION OF DOCUMENT:

If A files a claim for ownership of the land it acquired from B and B demonstrates that the claim cannot be made since the document has not yet been executed. The right of the party that makes the document legitimate only manifests itself when it is duly performed

TO PROVE THE ILLEGITIMACY OF THE CHILD:

There must be evidence to show that the husband and wife did not cohabit in a marriage where the husband challenges the paternity of the child and the validity of the same because the couple's cohabitation will prove the child's legality.

BURDEN OF PROOF:

The accused is the one who is responsible for providing evidence to support this submission, and if they are successful in doing so, they will have the right to be acquitted of the charges against them.

The burden is on the accused however it is not essential for the accused to prove the plea of alibi to the hilt and more so it is for the prosecution to establish the guilt of the accused beyond the shadow of the doubt.⁹⁷

The Supreme Court has explicitly stated that the burden of proof rests with the party asserting the alibi defense, who need not be the accused but may be the petitioner. Whoever asserts the alibi defense is responsible for establishing the accused's guilt beyond a reasonable doubt.⁹⁸

In this particular case, the Supreme Court ruled that the petitioner undoubtedly possesses the right to raise the alibi defense provided that it is proven, just like any other piece of evidence that is presented in court, and is not

⁹⁷PLD 2002 S.C 77

⁹⁸Jumni and others v State of Haryana

taken as absolute proof; rather, it must be backed by adequate evidence and be supported by additional evidence to allow the court to reach a decision. In other words, the petitioner possesses the right to raise the alibi defense provided that it is proven, just like any other piece of evidence that is presented in court. To put it another way, the petitioner has the legal right to present the alibi defense, just like they do with any other piece of evidence that is presented in court, provided that it can be demonstrated that it is credible.⁹⁹

PLEA OF ALIBI IN CIVIL CASES:

The use of the alibi defense is not just limited to criminal cases. In civil proceedings as well, a party who is accused of signing a document may assert his innocence by stating that he was never there at the time the document was signed. That simply implies that the defendant can defend himself by claiming that he was never there in that location when the specific act that the other parties allege to have committed occurred.

CASE LAWS ON PLEA OF ALIBI

During the course of the cross-examination, the witness in question admitted that he had not provided any evidence to the officer who was investigating the case indicating that he possessed a valid license to operate any vehicle. The officer was responsible for determining whether or not the witness possessed a valid license to

⁹⁹Rajendra Singh v. State of U.P

operate any vehicle. While he was testifying in front of the District Court, he also unequivocally acknowledged that he had altered the statement he had made previously. Another witness for the defense stated that the only time he had ever dined with the accused was on February 14, 2014, and not February 15, as the other two witnesses for the defense had testified. In light of the facts and circumstances, the execution sentence that had been handed down to the defendant in accordance with Section 302(b) of the Penal Code was modified to a punishment of life incarceration. However, the appeal against the conviction was rejected. In addition to this, said witnesses confirmed that the defendant had enhanced his earlier testimony while he was testifying before the District Court.¹⁰⁰

Alibi defense argument The information presented by the defense in support of the alibi, while not particularly compelling, was not contested by the prosecution. The accused is granted the benefit of the doubt in this situation.¹⁰¹

The charged person does not suffer any disadvantage as a result of the failure to substantiate the admission. The prosecutor is the one who is responsible for proving their case at every stage.¹⁰²

Alibi and probability. The suspected individual was located 190 kilometers distant from the crime scene. It is highly unlikely that he will be able to make it back to his

¹⁰⁰2021 YLRN 127 LAHORE-HIGH-COURT-LAHORE

¹⁰¹PLD 1969 SC 293 Usman Khan

¹⁰²(SC) 1969 SCMR 584 Illahi Bakhsh.

service station in time. The accused is granted the benefit of the doubt in this situation.¹⁰³

It is a circumstance that confirms the suspected person's culpability when it is discovered that their alibi is untrue.¹⁰⁴

Alibi provided by the patient who was treated outside. The doctor's register was requested, and it was discovered to contain inconsistencies. Under section 193 of the Pakistan Penal Code, the session judge issued an order to initiate legal action against the practitioner.¹⁰⁵

The accused person's excuse was proven to be true, which affected the other accused as well. In a case involving a homicide, the testimony of eyewitnesses established that one of several suspects had been wrongly implicated in the crime. This was accomplished by proving the suspect's alibi defense. If the testimony of these eyewitnesses cannot be substantiated by other evidence, the court should not be compelled to believe what they have to say about the other defendants and should instead find them not guilty of the charges brought against them. At the time of the incident, the accused Rang Ali had just been transferred to Sahiwal Prison. A co-defendant was granted the benefit of the doubt and found not guilty.¹⁰⁶

The person who is charged has the responsibility of proving their excuse, which must be proven by the legal system.¹⁰⁷

A statement made pursuant to section 161 in support of an alibi claim would not be pertinent and would not be

¹⁰³PLJ 1982 Cr. C. (Kar) 343 Muhammad Yaqub etc.

¹⁰⁴(DB) PLJ 1982 Cr. C. (Lh.) 417. Khalid Javed.

¹⁰⁵(SC) 1974 SCMR 282 Faquir Muhammad etc.

¹⁰⁶(DB) PLD 1958 Lah. 242 Rang Ali etc.

¹⁰⁷PLD 2001 Kar 279

acceptable for the purpose of inferring the accused person's innocence.¹⁰⁸

A claim of having an alibi is the most ineffective form of defense, and it cannot be given any weight unless it can be demonstrated that it was supported by evidence that was extremely persuasive, believable, and compelling.¹⁰⁹

In the event that the particular circumstances of the case so justify, a defendant facing a capital charge may be granted bail on the basis of an alibi plea.¹¹⁰

S.497---The consideration of a combined shooting in response to evidence in support of co-accused individuals was of no assistance to the accused during the bail stage because the same would be established at trial to determine whether or not the accused should be released on parole.¹¹¹

It is only possible to investigate a plea of alibi during the prosecution itself; this cannot be done during the parole hearing. The entire body of evidence that is on file cannot be called into question by the submission of a statement written by a relative in support of this argument. During the actual hearing, the trial court has the ability to consider such a submission.¹¹²

According to the Complaint, the suspect was present, and he was the one who had discharged the deadly shot at the deceased person. A petitioner requesting parole in the High Court on the grounds of investigating the Officer's opinion regarding the innocence of the accused of his departure from the place where the occurrence took place. The High Court did not grant bail, citing the fact

¹⁰⁸NLR 2001 Cr. (S.C.) 380

¹⁰⁹2002 YLR 137

¹¹⁰PLD 1998 S.C. 97

¹¹¹Shahbaz v. State 2011 P. Cr. L. J 338 Karachi High Court, Sindh.

¹¹²1998 P.Cr.L.J. 1648

that the accused's claim of alibi could not be used as a basis for parole because it would have to be investigated during the prosecution stage. The decision of the High Court was affirmed by the Supreme Court.¹¹³

At this point in the proceedings, the accused person's claim of having an excuse cannot be appraised.¹¹⁴

The Hon'ble Supreme Court has been generously granting more opportunities to post bail, and the excuse defense was sufficient to get bond approved.¹¹⁵

The petitioner was granted bail after making the defense argument that he had a plausible excuse, which was supported by documentation evidence.¹¹⁶

At this stage in the proceedings, where the petitioner has been assigned a specific role of inflicting physical compulsion upon the deceased along with his co-accused, an alibi defense cannot be assessed or evaluated as part of the parole process. This is because the petitioner has been assigned a particular role of inflicting physical compulsion upon the deceased along with his co-accused.¹¹⁷

His plea of alibi was accepted based on admissible evidence, which included the number of witnesses who appeared before the Investigating Officer and stated that they were present along with the accused in the mosque to offer prayer at the time of the alleged occurrence. Bail was granted to the individual who was accused of the crime. During the course of the investigation, it was determined that the accused did not commit the crime;

¹¹³PLD 1974 S.C. 83

¹¹⁴2003 MLD 72

¹¹⁵Khalid Javid v. State, PLD 1978 S.C. 256, Malik Noor Ahmed v. State PLD 1993 S.C. 500

¹¹⁶Iqbal Ahmed v. State 1989 P.Cr.L.J. 2122

¹¹⁷PLD 1974 S.C. 83

consequently, his name was entered into Section No. 2 of the challan. In addition to that, the challan was updated to include Section No. 2 with his name in it.¹¹⁸

Given the specific plea of alibi taken by accused, the burden had shifted to them to prove such plea; however, accused were not ready to support such plea by their sworn testimony, so a negative inference could not be drawn against them for not recording their statement under oath as required by Section 340(2) of the Criminal Procedure Code. Because neither of the defendants who were pleading an alibi testified in support of their claim under oath in the courtroom, the defense's account was neither reasonable nor trustworthy. It is believed that the deceased were murdered because of "Siakari" (Zina), and the accused discovered both deceased in an objectionable position. The effect is that the prosecution was able to demonstrate beyond a reasonable question that the suspects were accountable for the deaths of both victims--Accused, in circumstances were rightly found guilty under **S.302(c), P.P.C.**, instead of **S.302(b), P.P.C.**¹¹⁹

Due to the fact that it was presented as an afterthought, the accused person's alibi defense, which claimed that he had been committed to the hospital and was still receiving treatment there, was ruled inadmissible. Due to the fact that the accused did not enter the previously mentioned plea of alibi during the investigation, the District Court was within its legal rights to dismiss the accused's alibi plea.¹²⁰

¹¹⁸Rehmatullah Butt Versus State 2009 P Cr. L J 104 Lahore High Court, Lahore

¹¹⁹Daleel Khan V. Sessions Judge, Kalat Division 2008 MLD 1663 Quetta High Court, Balochistan

¹²⁰Shah Nawaz V. State 2008 YLR 2449 Lahore High Court, Lahore

CONCLUSION:

An alibi is not an exception to a general rule; rather, it is a rule of evidence that can be submitted in front of a court of law as a defense. This is because an alibi is a rule of evidence, not an exception to a general rule. However, in order to successfully use an excuse as a defense, it must first be demonstrated beyond the realm of any and all reasonable doubt. Until the prosecution demonstrates the allegations against the accused absolutely without any question in the minds of any reasonable doubt, the accused is entitled to the presumption of innocence. It is possible for the suspected person to be exonerated if other information can be shown to be consistent with their excuse. Due to the existence of the benefit of the doubt, an accused person is automatically released from custody in the event that the prosecution is unable to provide sufficient evidence to establish their guilt.

REQUISITE REFORMATION OF ABORTION LAWS IN PAKISTAN ON THE BASIS OF ISLAMIC JURISPRUDENCE

JANNAH SAEED RANA

Abstract; The research paper emphasizes on the need of reformation of laws of abortion in Pakistan with the relevant statistics of maternal mortality due to the unsafe abortion complications. The restricted rulings have only proposed a higher death rate and degrading community of health care. The evaluation of abortion as a ethical and moral conduct has also been put to consideration alongside the highly accentuated Islamic Jurisprudence on the matter.

INTRODUCTION; “The rotating debate on abortion and its respective laws has allegedly brought forth an unspoken matter to the surface since several states of the United States of America strengthened their restriction on the ban of abortion. Similarly, the laws of abortion Worldwide are extremely restricting and create an enormous level of suffering for both the parents and the unborn child. In the view of the societal norms and the legislative Contributions, abortions are if not, completely, then extremely looked down upon. With the consideration of the society tearing itself into two-halves as of that of Pro-life and

Pro-choice, the practicality of the situation is not discussed and emphasized as much as it should be.

The Global Legislative systems have disregarded the matters in view of killing of a human be it inside the womb, and hypothetically even regarded as a fault of the mother. The matter is duly worthy of attention as it is one of the leading conditions of maternal morality in the world. (B. 2009).¹ although society largely turns a blind eye toward the topic, every year around 42 million women choose abortion that have been dealing with unintended

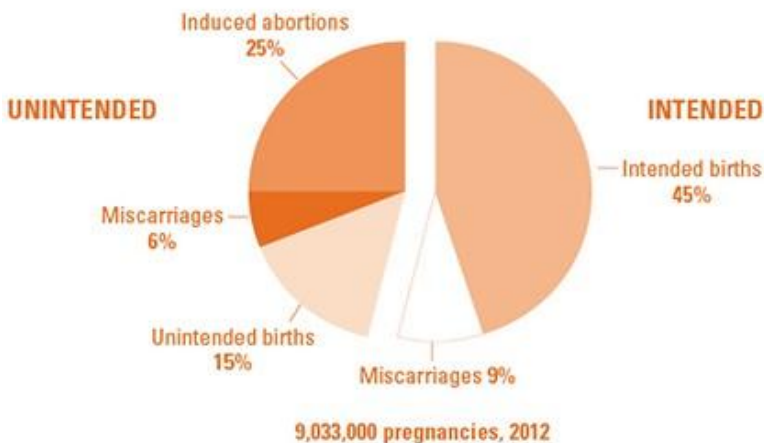
Pregnancies. Unfortunately, 20 million, nearly half of these procedures, due to the regulatory laws and strict bans, are unsafe. The resulting scenario is the death of approximately 13% that is, 68,000 women, through unsafe abortions.

The research will be dealing with Abortion with the emphasis on the laws of Pakistan on abortion and the Islamic Jurisprudence towards the issue. Once again, clarifying, that the matter not only stands of grievous importance worldwide but is a huge dilemma in Pakistan as well.

Pakistan although has done a grand job in putting the matter under the rug, has not been able to completely wipe of the problem from the country. The laws mainly dealing with the matter are covered in Section 388 A-C of the Pakistan Penal Code. (RR n.d.)²The punishments

standing severe are only exempt if the termination of pregnancy is conducted to save the life of the mother or to provide necessary treatment. The failing implementation and limited broadness of the law has caused women to seek help or terminate pregnancies through induced abortions.

In 2002, approximately 2.4 million women in Pakistan had experience unintended pregnancies. 900,000 pregnancies amongst these, were concluded by induced abortion. **(Sathar ZA 2007)** ³The occurrence of such a severe procedure through risky tactics is because abortion has been legalized for only a few people in extremely limited circumstances. The procedure of seeking abortion itself is so difficult that the legal timeline and approach becomes impossible in the country. Hence, those who fail to seek it in the legal manners subject themselves to mostly unsafe procedures and clandestine. Besides, the poorer population of these act on their decision through untrained providers ending up in hospitals by post abortion conditions.



The extreme health complications, maternal deaths and long-term disabilities concluded from the unsafe procedures reckons the health care system to a great extent. A large rate of women suffer complications but fail to ever reach the hospitals, yet the statistics of those that do reach stand at 200,000 women per year. (**Sathar ZA 2007**)⁴

These rates though only consider the complications and legality of the matter. The discussion on whether abortion in terms of necessity and faith is right or wrong, is yet to be explored.

ISLAMIC JURISPRUDENCE AND HORIZON ON ABORTION LAWS

It is evident that all schools of thoughts in Islamic Jurisprudence agree upon the fact that abortion is permitted if the pregnancy poses a threat to the mother's life through the pregnancy's timeframe. (BBC 2009)⁵ The timestamp of abortion laws in Islam are dependent upon the stages of a baby's formation, here Islamic perspectives can be found to be far more flexible than the perspectives of the legislation and the worldwide community.

According to the majority of scholars, Abortion is permitted before 40 or 120 days, this has been regarded from the Hadith of the Messenger (peace be upon him) narrated by Abdullah stating that the first forty days, the

creation is collected in the womb of the mother which becomes a clot for the same next time span and then moves on to become a piece of flesh. Lastly after the angel's writing, the soul is breathed into his body. **(Bukhari 846)**⁶

Placed on the stage variation scale, Islam permits a woman to go through an abortion but the legislation system of the Islamic Republic of Pakistan does not. Moreso, Islamic scholars have been seen observing and honoring the flexibility in Islam. Evidently, a difficult decision such as Abortion is taken under difficult circumstances, mainly emphasized in cases of Rape, Child Marriages, and the bearing of a child by a mother of mental conditions. Islamic Jurisprudence has played a significant role in defining the lines of mannerisms to adopt during such difficult stages of life. Although, Muslims strongly believe that an embryo no matter through fornication, rape, or any circumstance must be respected as it is a life. **(Hakeem 2022)**⁷ **(Al-Salami 2012)**⁸

The belief also extends to the fact that it is a test through God If the victim has to suffer on the child birth and the raising alone (Hakeem 2022). Though, the time stamp of permissibility exists and the incidents where permissibility had been gained through scholars is evident. In this regards, the event of mass rape in Bosnia caused by the Serbian army brought forth the Fatwa on abortion giving the Bosnian raped victims the permission to abort before the 120 day mark. Similarly, on a mass event in Algeria, the jurists had declared under the

grievance of the matter that the women that had been raped can abort the child under the given time span. **(BBC 2009)**⁹

Demonstration of flexibility under the Islamic Shariah and compassionate measures can be seen through the reports. Correspondingly, In Egypt Muhammad Sayed Tantawi issued a Fatwa on the permissibility of abortion in Rape cases in 2004. Given that he was the Grand Sheikh of

Al-Azhar, it became the law and legitimized abortions in cases of Rape **(Said 2005)**.¹⁰

Deviation from Islamic Jurisprudence in Pakistan

With the acceptable circumstances in Islam, one would expect the notion to be indifferent and under the given conditions to be more welcomed. Unfortunately, this is not the case, a woman

approaching the health care for an abortion is simply turned down unless she is on her death bed and even then, the medical staff is hesitant in the procedure due to the strict laws that declare abortion as ‘murder’. Not to be forgotten that the law has not decreased abortions but simply given people a reason to go for the unsafe and illegal methods of abortion.

With a survey done by a National study it was found that only 7% of women from the poor rural areas acquired abortions from trained and certified doctors. Meanwhile, 42% of them preferred to go for dais (uncertified birth attendants). At large, an approximate 49% of nonpoor

women from urban areas went to doctors while the rest went to dais (**Council 2004**).¹¹

Postabortion complications are hence, a grand issue proved through the findings of 2012, the rate stood at 50 abortions in every 1000 women of national abortion rate. It has grown extremely high since 2002 where it was only 26.5 in every 1000 women (**Guttmatcher 2015**).

¹²Statistics stand compatible to the proof that the country standing in the name of Islam is not quite giving the ease and flexibility that has been concluded through extensive research for the welfare of their citizens.

Going through the numbers and statistics of the abortion rates, one would find it hard not to question why there has been no reformation in law till date? Whether the crime, if a necessity, in cases, should by far be reconsidered and made more flexible?

ETHICAL DEBATE VS. LEGAL DILEMMA

The reformation and restrictions in law are all a result of the ethical debate or the pro-life perspective as discussed before. The agenda proposes that abortion is killing of a life and the brutality of murder negating the option in all circumstances. Keeping in view that the agenda does not give way to Rape, incest, or mentally ill mother, proposing that a victim that has already been through mental anguish must go forward with the child birth and nurturing no matter their personal mental space. It goes on to further evaluate that the widening of abortion laws will be causing evil mainly, Zina to be aided in the community of Pakistan. Notwithstanding that the option

of contraceptives are already available and accessible to the society and the fact that abortion is only an extreme option that should at least be provided to those that require it.

Although we can not turn a blind eye in the discussion on the fact that in Pakistan, most women that approach the means of abortion do it for the purpose of Family planning along with poverty and not due to the cause of rape, child marriage or incest. In a national study, it was found that the women having abortions were almost all married (M 2007).¹³Hence, there still remains proof that the ethical issue of evil rising and deviation from laws of Islam, can occur if the abortion laws are widened, solutions for this will be provided below.

REQUISITE REFORMATION IN ABORTION LAWS

The Pakistani Law completely prohibits and considers it a criminal offence to have an abortion. Meanwhile, countries like Denmark have a extremely wide horizon of abortion where it is completely legal but still stands at a very low rate in comparison to Pakistan standing at 16% of abortions in Denmark and 29% of abortions in Pakistan (Stewart 2021).¹⁴Countries such as India and United States too, are lenient comparatively in Abortion Laws giving way to the rape victims and situations of atrocity.

There is a dire need of reformation in abortion laws in Pakistan as legitimizing it would save the healthcare from the atrocities of illegal postabortion complications. We

have viewed that the abortion rates have only grown higher no matter the legal value of the offence, Hence, the solution to the problem of citizens facing such ineffective healthcare is quite evident.

The legislation on abortion laws and reformation of the Sections 388 A-C must be adapted and changed as per the Islamic laws and permissibility through Islamic scholars. Not only would this give way to a better and more functional health care but would save the lives of, by previous statistics, at least 68,000 women each year. The time span of 120 days is extremely effective and must be given way and consideration in Pakistan's legislation as the majority of women are effective in regulating their abortion within it opting for the safest procedure of the first trimester.

92.7% of the abortions takes place in the first trimester, which were performed at less than 13 weeks gestation standing as an extreme ratio. They were performed within the line of 120 days that Islam has drawn. Only a small number of abortions were performed at 14-20 weeks gestation and even fewer, that is less than 1.0% were performed at 21 weeks gestation. (CDC 2021) ¹⁵

Therefore, abortion should be made more accessible to rape, incest and forced marriage victims, the law should also put under consideration the mental health of the mother and the foreseeable physical health of the child. After providing lenience to the same, 120 days should be a mark put standard for the accessibility of abortions. Nonetheless, choice must be left to both the parents, and the will of the mother must be made of utmost value and

supreme priority. The implementation would open the tied hands of medical practitioners and bring to viewpoint a safer health care environment for all citizens.

LITERARY REVIEW

A large volume of journal articles through the works of Lisa B Haddad and Nawal M Nour has been emphasized. The notion of abortions in the medical perspective has been understood from their work on Unsafe Abortions. Moreover, BMC medical ethics through the works of Abdurahman Al Mattary has been evaluated for the understanding of the surgical procedures of first and second trimester abortions. The severity of discussion and survey of viewpoints has been taken through a study conducted by channel of 'Middle Ground' where perspectives of rape victims, anti and pro-abortion community was taken into account. The literature taken into account has been heavily studied and re-evaluated for the proposal of only accurate and worthwhile information in the research paper.

**IMPLICATION OF GENDER AND GENDER
DISCRIMINATION ON MODERNITY,
CHANGING LIFESTYLE AND ADOPTING NEW
TECHNOLOGIES.**

QAMARULNISA¹²¹, DR. ASMA ISLAM¹²²,
GHULAMMOHYUD DIN¹²³

Abstract; Values are those things which we like in our day-by-day life living in a general public. Living in the Muslim society having Islamic values which are issued by our Islam when a man receives them everybody value them. Today there is much distinction among old and present values and the new age have been completely changed because of embracing new values and modern advancements these are because of the exceedingly adapted fields of apparel preparing music correspondence and strikingly tabs and cell phone and the most imperative thing is the utilization of web on pads. There are much contrast among nourishment beverages and medications when we contrast it with the past. Non-customary dispositions go before the rise of changing sexual orientation part practices or the other way around isn't beloved. The research was conducted in Gujranwala. Helpful inspecting strategy was utilized for information accumulation. Information was

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gathered from youth at various Colleges in Gujranwala. Add up to test of 150 respondents were chosen. Data was analyzed using statistical packages for social science (SPSS).

Introduction; It is presumption that the dispositions of the couple and they have inverse part in the general public. Husband have the commanded part into the individual from the general public since Pakistan culture male overwhelmed society and they driving part into the general public and if their better half move toward becoming not partake into the general public, they may wind up despondent if their significant other unconsciously not deal with them. They work all the day in and other working ladies ding work into the open-air exercises then again, the female rebuffed of their follow up on these behaviors.¹²⁴

There are many reasons that to have some effect among as socially and candidly this distinction might be independently and in gathering .first ,sex shrewd make contrast as sexually and strong connection second, both male and female feel extraordinary and acknowledged some distinction as social standards method for livings ,third male and female can be unique in relation to the each other on the base of intensity ,fourth sex diverse can be happen because of the utilization of the power and finally contrast amongst male and female can be on the

¹²⁴Gerson.Kathleen.1993. No. Man's Land: Men's Changing Commitments to family and Work. New York Basic Books.

base of their part in various day by day exercises all these distinction every one of these distinctions might be the onlooker to features the contrast between ender.¹²⁵

Dialect change and utilization of the dialect is an approach their think from one to the next individual from the general public. Also, impact of the general population to each other by dialect. Distinctive dialects were utilized from the beginning of the world in wherever of the world. Diverse dialects were utilized from the beginning of the world in wherever of the world. Diverse new developments are going to change and come quickly they have assume a Vitol part into the innovation. Today is the day of PC and distinctive dialect can be utilized as a part of PC for the working and pass on their talk.¹²⁶

Individuals of the urban regions have incredible mindfulness about the social and electronic media which are change the old customary way correspondence advertisement it have awesome impact on the living standers of the general population. Subsequently there are se new systems are going to changed and created diverse method for the interchanges. Web correspondence going to much and all the more simple method for correspondence among taught youth. Individuals going to leave their customary method for the living and embrace innovation. Through web media transmission the pattern of talking come increasingly and simple route through thusly we can get the things all the

¹²⁵Von Wallenberg Pachaly, A. (2000). Group psychotherapy for victims of political torture and other forms of severe ethnic persecution. In R. Klein & V. Schemer (Eds.), Group Psycho-therapy.

¹²⁶Crystal, 2001. The Effects of Globalization: Examining Change.

more effectively and in genuine path yet in really meaning.¹²⁷

Diverse zones have distinctive level of significant worth and standards. Distinctive level of the life demonstrated that the diverse level of the general public exist and individuals of this general public what have and what have they to do and these sort of exercises not the same as society to society. Pakistani societies have uncommon stander of living with the considerable esteem which they have and they not quite the same as other countries. it change from family in the other family and from one gathering to the next gathering. Distinctive families have their diverse qualities and convention to run their general public these custom exceptionally starting with one place then onto the next place from one territory of the other zone.¹²⁸

Distinctive sorts of the characterization can be the reason of the diverse violations. With the quick development of the innovation there are distinctive kinds of wrongdoing happen and they have demolished the quiet condition of the world. In the PC f period the techniques for cries likewise changed and the youthful age going to include into various kinds of the wrongdoings. On the best the sexually wrongdoing going to expanded day by day. In this section the creator attempt t recounted the sensible story of wrongdoing and presents diverse sorts of the

¹²⁷Wilson SM, Peterson LC. 2002. "The Anthropology of Online Communities" Annual review of Anthropology 81: 449-60.

¹²⁸Handling, L. Moor. 2004. Comparative Research on Values: Tilburg University Press.

hypotheses which are identified with the wrongdoing in display time and furthermore depict its reasons.¹²⁹

Way life and alternate offices which are important for the existence they not quite the same as one. The way if living onto the general public and classifications from one to the others are extraordinary. The target of this investigation showed the each general public have their own particular manner of living and they have not quite the same as each other. The living way can be arranged fro into the general public and the other hand it will be the not the same as others. In straightforward importance the lifestyle is diverse method for the life is distinctive method for the life and benefactors which are vital for the living of individuals.¹³⁰

Diverse tribes, group, society families and gatherings have their own particular manner of life and incentive as indicated by these qualities they make some way of life on these on these lifestyles they can spend their lives and they depicts their part in the general public man ordinarily play the outside exercises and alternate hands the female participate in the family exercises and they can care for their kids and different exercises this procedure recognize the distinctive part of the male and female in the general public if called sex for the

¹²⁹Jeffery, R. K., L. Jens and F.K. Lawrence.2005. Neighborhood Effect on Crime for Female and Male Youth: Evidence from Randomized Housing Voucher Experiment .Quarterly Journal of Economics. 120;87-130.

¹³⁰Benjamin, D.Z. and M. K. Rosa Beth. 2006. "The Differentiation of Lifestyle" Annual review of Sociology. 2:269-298

pretending individuals utilize distinctive dialect to pass on through various dialects and images and signs.¹³¹

A rapidly change into the conduct and lifestyle of the general population are changed and it's have the pessimistic impact on the general population and it case the broken of the esteem chain and it additionally changed the lifestyle into the general public .With fast a development of the general public individuals have extraordinary changed into their lives and instruction, business, and different open doors likewise play an imperative; part for social difference in the people. Particularly the dressing, sustenance, method for living and other essential change happened because of the innovation and other compelling impact of in entomb. Diverse scholar likewise demonstrates the sexual orientation part and esteem change into the society.¹³²

Valance through the cutting edge innovation will expand step by step and the particularly female are more victim of these kinds of wrongdoings. Connection between the distinctive sexual orientations are all the more particularly expanded and they are less esteem. On the name of the training neighborhood networks have more casualty of the violations and after they propel too confer suicide. In the Modern world the general population are a

¹³¹Merriam-Webster. (2007). Gender Retrieved February15,2007, from Merriam-Webster's online Dictionary.

¹³²Mason, Karen. John L. Czajka and Sara arber.2008. "Change in the US Women's Sex-Role Attitudes, 1964-1974." American Sociological Review 41:573-96.

long way from their qualities and they lead an esteem less life.¹³³

Dialect assumes the essential part into the improvement of the general public they have critical support into the variety into the qualities and conventional method for living and through various dialects the esteem can partake into the social advancement and the part of dialect in the public arena. Distinctive dialects can impacts of the new innovation and their contribution to the difference in the general public. Dominant part of the new advancement the PCs will change with various verities of the renditions and information sources. The social change are the significant contribution to the advancement of the general public. Self-awareness and the advancement of human cerebrum is going to sharp and the quickly built up this sort of development effect sly affect the human being.¹³⁴

At the level of the nation there are some extraordinary change operators which have incredible part into the improvement of the general public and reason for its change. Sex part into the changing quality is quickly is caused of the esteem changed. An investigation have been directed on the esteem changed and its impacts on the sex part. Training is significantly more imperative into the improvement of society and they are the reason for the esteem changed. Diverse method for talking for this distinctive dialects. Social exercises, recreations,

¹³³UNESCO (2009) "Statement on Women's Contribution to a Culture of Peace. "Presented to the 4th World Conference on Women, Beijing.

¹³⁴Giddens, Anthony (2010), *Modernity and Self-Identity: Self and Society in the late Modern Age*, Stanford, CA: Stanford University Press.

social trades exercises and the other and the changing into the sexual orientation part. Practices and the state of mind of the individual from society vastly expanded diverse classes assume distinctive part into the social trade and esteem change activities.¹³⁵

Changing of the tie the quickly developing exercises in various field are more than and I have impact on the part broadening of male and female in various field of life. Youthful age in the cutting edge territories have more successful interest into the changing of the esteem and standards.¹³⁶

New youthful age have essential part into the investment of the esteem changing and the standards as individual from the society. In Pakistan quickly changing into the general public are occurred and individuals embrace new innovation and new development. Modernization is vital for the advancement of the financial level of the nation learning about the new innovation and alternate hands they denied from the selection of the old conventional qualities.¹³⁷

Conjugal changing into the general public quickly expanded day by day. They have awesome part into the esteem changing in any general public the youthful age have real part for the reception of new innovation and the evolving esteem. Urban development and the fast

¹³⁵Miller, Joanne and Howard H. Garrison.2011. "Sex-Role: The division of Labor at Home and in the Workplace." *Annual Review of Sociology* 8:237-62.

¹³⁶Yogendra, S. 2012. *Modernization and its contradiction; contemporary Social Change in India.*

¹³⁷Cooperstown, M.A. (2013) *the Storms of Youth: Violence's, Depression and the Needs for Adolescent Research*, *Pennsylvania Psychologist Quarterly*, 59(8), (pp.10,22).

development of the new advancement into the general public have awesome part into the society. Adoption it got from the estimation of the general population which set it for the side of their families.¹³⁸

Youth of any nation assume an essential part into bring some change into. The society and everywhere throughout the world. Today is the period of the new innovation and new development and new innovation have part into the appropriation of the new advancements. Youthful age changed their exercises they replicated the other culture and make it the piece of their day by day life. This thing denied them from their lateness and esteem which exchange from their parent's side.¹³⁹

Objectives

1. To recognized the socio economic background of the identified population.
2. To observed the socio culture and monetary problem which have effects n role of male and female.
3. To detect the participation of male and female about the varying ethics.
4. To learn the relation difficulties which play a role into the adoption of the traditions.
5. To make some suggestion about the changing and savings the values in rural areas.

REVIEW OF LITERATURE

¹³⁸Benokraitis, N. (2015, Marriage and families, changes, choice and constraints, 6th Edition) New Jersey: Pearson Education.

¹³⁹Christopher, A.S. 2003.the Value of Families.

The present period, the part of male and female is less as indicated by esteems. The esteem and standards are the method for living in any general public and give a decent help to their living arrangement. Diverse part are at various time. Ladies for the most part play out their family unit exercises and customarily lived in their home. In the advanced time the time is changed, now female have changed their part and doing their activity in the manufacturing plant and different spots. At the contrary men help their spouses in any business related to their expert and family unit exercises. Presently ladies can participate into the basic leadership.¹⁴⁰

The utilization of the new innovation and its effects on the practices of the general population. An example was chosen from the tremendous populace which utilizes phone for day by day works. Test was chosen through particular examining procedure. The consequence of this examination he found that lion's share of the general population utilized the old sort of the phone sets in 1980 and a few people will change their method for living and know about the fresh debut of mobiles.¹⁴¹

The innovation happens with the section of the time in light of the fact that the time isn't statics. From twentieth century the advancement is going too quickly and it changed the living style of the general population.

¹⁴⁰Thornton, Arland.1990. "Changing Attitudes towards Family Issues in the United States" *Journal of Marriage and Family*51:873-94.

¹⁴¹Booth, Alan, David R. Johnson, Lynn K. White, and John N. Edwards.,1991. "Material Instability Over the Life Course: Methodology Report and Code Book for a Three Wave Panel Study" Department of Sociology, University of Nebraska, Lincoln, NE.

Offices for the kids are rapidly going excessively changed and it has awesome impact on the psyche of the youngsters. N each field of extraordinary of old rational values in the public arena, youngsters are keener on the reception of new innovation.¹⁴²

The wedded female are more current then the unmarried female. In various stages, female have their distinctive parts in house they perform diverse parts and the working ladies assumed 2 parts in their home and at their working spot .The unmarried ladies have their own specific manner of living and wedded ladies have more obligations and weight of work. At work put they confront distinctive issues and unmarried ladies faces diverse part shapes in the diverse social orders. The method for living in the house and playing out the family obligations this pattern will change and the female do work all the more viably and with awesome duty.¹⁴³

The connection between the part in the individual from the general public and they assume these kind of part successfully and well privately. Diverse genders have distinctive parts as normally male have more power than the female and hello hardest work performs from the side of the men and the low limit work performs from the individuals from the female side. Be that as it may,

¹⁴²Clarke, John (1992), "Style in Resistance through Rituals" ed. Stuart Hall and Tony Jefferson, London: Hutchinson,175-91.

¹⁴³Molm, Linda D. 2000. "Sex-Role Attitudes and the Employment of Married Women: The Direction of Casualty." *Sociological Quarterly* 19:522-33

expand in the pretending has impacts on the everyday based exercises.¹⁴⁴

Sex part and the pretending into the diverse fields of life. This wonder is moving from the beginning of the world and with the section of the time it has not been changed. In various stages the distinctive parts are played into the general public and they perform diverse fills in as the individual from the general public and satisfy their essential needs. At various levels individuals have their part and they act as per the all-around characterized standards and esteem which are given from the side of the guardians.¹⁴⁵

Females have part into the transmission of the qualities and the standards starting with one age then onto the next age. The change operator assumed an imperative part in the general public. At political and societal level they perform distinctive part and exchange their insight starting with one age then onto the next. Be that as it may, time will change and the part of female Have more obligations and men. They play out their obligations in house and working spot.¹⁴⁶

An example of the general population chose with the end goal of the investigation and distinguished the effect on the individual from the general public. The present yields of the investigation demonstrates that the estimation of the diverse families is not quite the same as one family to

¹⁴⁴Martin, C. L., Ruble, D. N., & Szkrybalo, J. (2002). Cognitive theories of early gender development. *Psychological Bulletin*, 128,903.

¹⁴⁵Ticknor, J. A. (2001) *Gender in International Relations*. New York, NY: Columbia University.

¹⁴⁶World Bank (2003) *World Development Indicators*. Washington DC.

the next and this thing may have distinctive impact on the individual from the general public. In any case, with the immense change and the advancement impact for the reception of the old customs and esteem which are given from the side of their families. The striking buster changing of the new developments have extraordinary impact on the individual from society and it will be changed the estimation of the general public.¹⁴⁷

The distinctive channels change the method for living into the general public and have impact on the living stander. The progressions are happen physically and in addition rationally and it have been expanded the immense change into the general public. Distinctive nations have diverse esteem change diverse gathering part have their own particular manner of life. These social orders have diverse qualities. In India they have an incentive as per their religion and Pakistanis have diverse incentive from alternate nations since it is an Islamic nation. Individuals can't embrace the Hindu's custom in Pakistan and Hindu can't receive estimations of alternate religions.¹⁴⁸

Youth quickly embrace the method for living into the individual from the general public. The western nations have their own creating exercises and they went through their own particular time on earth style. Social changes are the adjustment in which the youthful age receives the

¹⁴⁷Carole L. Juriewicz, 2004. "The Interaction of Materialistic and Post-materialistic Values in Predicting Dimensions of Personal and Social Identity" Vol. 57, No. 11, 1379_1405

¹⁴⁸Ansari, S.2005 Star plus Injecting Poison in Pak Households. The Daily Newspaper, Sep.8, 2005.

distinctive new verities of the things. Female of those nation do works into the diverse kinds of work and they embrace the distinctive verities of the work. New innovation has been changed the method for living things and the youthful age have incredible part for the changing of the general public and furthermore the change of the qualities starting with one then onto the next age.¹⁴⁹

Individuals have a place with various periods have distinctive kinds of the identity and the advancement of the singularity. Youthful age is the real part player into the esteem change and selection of the new innovation. All these social specialists including the online networking and other portable innovation. With the considerable difference in the business individuals have the immense interest into the improvement of nation. Individuals have awesome level of the advancement however they have no particular impediment and not spare qualities.¹⁵⁰

Fast development of the modernization and different fragments which have the real part into the esteem change. There are some obvious confirmation which have unmistakably demonstrated that they are change operators and change the esteem and customs of the general population.¹⁵¹

¹⁴⁹Dannie, K. And A Soren.2006. The Globalization of Youth culture: the Global Youth Segment as Structure of Difference. *Journal of Consumer Research*. 33;231-247

¹⁵⁰Crusader 2007. Valentine's Day Amid Social Restrictions in India. Hub Pages.

¹⁵¹Chom.2008 The Effects of Globalization: Examining Change.

Couple of years prior the general population of the distinctive territories have diverse sorts of very much characterized supporters of life and as indicated by those example they carry on with a solid life. Individuals of various regions put distinctive states of uniqueness as indicated by their religion esteems. Diverse individuals have a place with the better place have distinctive standards and vales which are important for the improvement of the general public. There is some political changing of the old conventional qualities changes and the new examples of the life will be embraced from the side of the general population they receive distinctive new innovation and new advancement which are unmistakably characterized from their family, society and their religion.¹⁵²

Ascending of the outcomes from this investigation that American culture step by step grew to an ever increasing extent and new advancements and innovation changed the practices of the general population. Modernization is a procedure of progress esteem and the changing of the example of life. They can change through instruction, internet based life, cell phone and other social operators which have extraordinary part for the evolving. From the youth to till death the changing procedure persistently changed step by step.¹⁵³

¹⁵²Ronaldson, B., & Bjork, U. (2008). Being an efficient or dialogue-oriented rural Municipality on the net: Farming civil servants' confidence in e-services. *International Journal of Internet Sciences*, 3 (1). 55-67.

¹⁵³Aries' Philippe (2009) *Centuries of Childhood: A Social History of Family Life*, New York: Vintage.

Females in the house can change nature of the house and it likewise assume a part for the exchange of qualities and starting with one age then onto the next age. In each general public the female have enormous part in execution of family unit exercises and other related take care of kids. Every one of the individuals from the general public are reliant to each other and have the wellsprings of the appropriation of various qualities reception. A female can partake into the distinctive exercises yet in a few exercises female have no part in basic leadership. Female all the day play out their exercises into the house and in addition their open air exercises in any general public yet toward the end they denied from the basic leadership process.¹⁵⁴

In the period of new innovation and in the time of cell phone. World based web and new programming have awesome part into the advancement of the general public; media in western nations have impact on the everyday exercises of the general population. For the reception of the new web innovation individuals have the enormous change in qualities and conventions of the neighborhood network.¹⁵⁵

In Pakistan the female have incredible part for the improvement of the nation they have extraordinary part into the creating exercises and they likewise have part

¹⁵⁴UN (2010) Improving Concepts and Methods for Statistics and Indicators on the Situation of Women New York, NY: United Nation Publication.

¹⁵⁵Dons Bach, W., Rentsch, M., & Walter, C.(2011,May). Social Media as news Source.;

Empirical Evidence from our countries. Paper presented at the 61st annual Conference of International Communications Association, Boston.

into the advancement of the national economy. They do work all the day in the houses and the working ladies going occupation into the working spots. They generally disregarded from their fundamental rights and t wellbeing offices, training and different necessities which are the solid day by day exercises and for greater improvement of the general public. They work into the farming field and other play out the exercises which are the reaction of the improvement, however they generally denied from the new development and advancements.¹⁵⁶

The effective life the general population have similar examples and the convictions which have awesome part for the advancement of the general population. Female investment for the creating exercises are sure part however toward the finish of the day diverse exercises. Individuals have awesome cooperation for the improvement of nation.¹⁵⁷

The that mother assume an essential part for the new age into the esteem change starting with one then onto the next age. In objective families mother denied from the instructive and from the fundamental need however they have crucial part into the creating conventions and different exercises. From the beginning of the youth and till the demise family and their condition have incredible part into the improvement of the general public and

¹⁵⁶Ahmad, I...2012 Modernization and Social change among youth. Jawaharlal Nehru University, New Delhi

¹⁵⁷Eccles J. S., Asler, T. F., Futterman, R., Goff, S. B., Kaczala, C.M. Meece, J. L. , &Midgly, C.(2013). Experiences, values and academic behaviors. In J. T. Spence (Ed). Achievements and Achievements Motivations (pp. 75-146). San Francisco, CA: W.H. Freeman.

different exercises. Portable clients will increment and the conventional method for correspondence going to change. In coming days it will be more exercises and all the more intense device for age social changes into the general public.¹⁵⁸

Online life will be extremely normal into the fast difference on the planet. They grew progressively and better approach for correspondence, through various methods for the advancement individuals have pattern to pass on their message from various ways yet a few people have not the eager to change their own particular manner of life. Email PC and other social TV sources have the colossal impacts of the improvement of the female who have awesome part for the advancement of the general public and they exchange the esteem and conventions of the family. From the beginning of the youth to the seniority these social specialists have awesome impact in the advancement of the people in any general public. Member of female and male into the creating exercises is useful for the improvement of the world.¹⁵⁹

Realm of the monetary improvement individuals have the business advancement and different components which have the part to adopt and turn into the reason of

¹⁵⁸Altman, Sydney L. And Frances K. Grossman. 2014. "Women's Career Plans and Maternal Employment." *Psychology of Women Quarterly* 1:365-76.
Bite, D., G Kornberg., Z. And L. Jan mere. 2016. "Economic Science for Rural Development Conference Proceedings." 38:91-91.

¹⁵⁹Kate, R. K., L. Jens and F. K. Lawrence.2015. Neighborhood Effect on Crime for Female and Male Youth: Evidence from Randomized Housing Voucher Experiment. *Quarterly Journal of Economics*. 120;87-130.

significant worth change. For the acquiring purpose of perspectives the general population get more instruction and more chances of the advancement in the general public they began their business with one nation to the next and thusly individuals changed their lifestyle and leave their old conventional social exchanges. Social traded exercises these days will be expanded and tin along these lines one network trade their qualities to the following network.¹⁶⁰

METHODOLGY

Interview Schedule

In the present investigation information was gathered from the understudies through the meeting timetable and it is a huge information and et of inquiries through which the information was gathered. The masterminded information was settled through up close and personal every one of the inquiries organized by the investigation goals. Each respondent takes 10 minutes to satisfy the survey.

Statistical Analysis

Univariate examination which incorporates the frequencies, rates and methods for various factors. There are numerous measurable examinations which is discovered how these investigation taken up after the accumulation of information. Is it broke down by the

¹⁶⁰Oyekale, A.S. and T.O. oyeakle. 2016 Applications of Health Belief Model of Promoting Behavior Change among Nigerian Single Youth. African Journal of Reproductive Health. 14: 63-75

gamma test and the chi square in the examination? It is utilized to discover the covariate among the diverse factors which relates with each other, Mean and recurrence discover the exact answers and through the method for mean and rate it is discover that there are what number of level of various factors having values.

STATISTICAL TEST

Chi-square test

To test the significance of association between independent and dependent variable chi-square test was used. The formula for chi-square is as under:

$$X^2 = \sum(O-E)^2/E$$

Where:

O = Observed frequency

E = Expected Frequency

\sum = Sum of the observation

To know the significance of association between attribute, the calculated values of chi-square were compare with corresponding table values at 0.05 level of chi-square was greater than table values otherwise it is rejected a non-significant (Brainy,2011).

Gamma Test

$$\text{Gamma} = \frac{NS-ND}{NS+ND}$$

Where:

NS = Sum order pair

ND = Different order pair

RESULTS AND DISCUSSIONS

HYPOTHESIS TESTING

Association between age of the respondents and Modernity and changing lifestyle.

Gender	Gender discrimination in adopting new technologies.			Total
	To Great extent	To some extent	Not at all	
Male	34	45	15	94
	22.6 %	30.0 %	10.0 %	62.6 %
Female	26	22	8	56
	17.3 %	14.6 %	5.3 %	37.4 %
Total	60	67	23	150
	40.0 %	44.5 %	15.5 %	100.0 %

Chi Square = 9.970 d.f = 4 Significant = .017
Gamma = -0.454

This table indicates that there is association between age of the respondents and in modernity due to which lifestyle changing day by day. Chi square value (9.970), d.f (4), gamma value (-0.454) which shows that there is association between the age of respondents and their changing lifestyle due to the modernity. In this way the hypothesis improved. In different age structure the way of changing lifestyle is due to the modern technologies. There is an association between gender and gender discrimination in adopting new technologies. There is an association between gender and gender discrimination in adopting new technologies.

Gender	Gender discrimination in adopting new technologies			Total
	To great extent	To some extent	Not at all	
Male	34	45	15	94
	22.7%	30.0%	10.0%	62.7%
Female	26	22	8	56
	17.3%	14.7%	5.3%	37.3%
Total	60	67	23	150
	40.0%	44.7%	15.3%	100.0%

Chi Square = 1.566 d.f = 2 Significant = 0.282
Gamma = -0.156

This table shows the relation among gender and the discrimination in adopting the new technologies. Chi Square = 1.566 and d.f = 2 and Significant = 0.282 and gamma -0.156 shows that there is somewhat association between the gender and their differences in using the modern technologies in the present era.

SUMMARY

Qualities means to make differences among sublime and frightful stuffs. Qualities strategies to make disconnect between radiant and alarming which we similar and which we extremely disdain and among astounding and amazing effects. The probability of personal makings is not effectively the same as separate to single in this way it moves from people to civilization.

The potentials is not the same as relatives to families' homeland to nation and old fashioned to time pressure over principles are as reliability as believable raised in friendship with rehearses for sex sensibility being made joint effort. Now and then, program officers or accomplices are centered on that development of sex consistency would interface with close by values and along these lines feel sex communication should not be progressed for good motives.

In numerous belongings, the social approximations of a specific locale are delineated as a central need on tries for sensual overview change, and thusly improvement is acknowledged to be upsetting for supportive motives. Communal sales and collective solicitations are not stationary.

Finished the considerations of manliness and womanliness happen just in comparable suggestion with each additional. In that utmost, enjoyableness does not occur vivaciously of maleness and there is substitute way. Sex influences and is pretentious by community party-political, money related and secular forces. The result of carnal summary are found and shrouded amidst all period life. Youngster originate to recognize pardon mannishness and femaleness proposes through clearly insignificant performs. Male can permissions the home unreservedly, reimbursing little notice to whether it be for effort or extricating up meanwhile some subdivision of their sensual associate share is with reinforce the domestic they are not vital to ask for decide to be in the road. Amongst Muslims early parenthood is an old-

fashioned of acclimation to new occasion of life times and new communal wishes.

CONCLUSION

By the day's conclusion, communal requesting is not standardized and not at all doubts can be complete about a synchronization on communal makings so likewise, sensual overview shares are understood negotiating measure connected with individuals and ladies inside a given social occasion, philosophy or structure.

The control emphasis of this audit is to a take a gender at the bit of sexual rough guide in fluctuating potentials among formative year which they are on stage. The contemporary time adolescence is receiving under the satellite TV stations which are heart-rending the sensibly and informally and more over changing their method of life time and the additionally bandage have been altered.

Indian shows and motion picture have changed the intelligences of the vivacious old-fashioned. He watched that the star regardless of channel incredibly effect on the Pakistani culture and hypnotizing the young lady's mind which are understandings the Hindu's method of life.

Recommendations

- The proposals are being exhibited in the light of outcomes drawn from the information and discoveries.
- Adolescence ought to be given a genuine mind around the Islamic lifestyles by these individuals.
- Our organization should make sense of how to keep up a fundamental partition from the negative impacts of association.

- Youth ought to comprehend that how the telecom is influencing us be in this world and Pakistani accepts.
- Islamic influencing must to be accepted by the gatekeepers in the youthful in this way they will remain predictable for going with enhanced life.
- Here ought to be crusade nearby assembling India standards to make more care and create standard affectability on these issues.
- These standard respects ought to be revoked by tolerating unmistakable social requests.
- Our social respects ought to accord our Islamic respects and guards ought to mirror this material crucial and this is responsibility of watchman to drifting their young people as per our morals.
- Much extra examination is depended upon to find that how the makings have been varying an aftereffect of the change such strolls hold take to direct it.

**A COMPREHENSIVE UNDERSTANDING
OF THE RIGHT TO DEVELOPMENT:
EXPLORING ITS INTERSECTIONS WITH
HUMAN RIGHTS, AND STRATEGIES FOR
IMPLEMENTATION IN DEVELOPING
NATIONS WITHIN THE UNITED NATIONS
FRAMEWORK**

WAHEED AHMAD CHUGHATTA¹⁶¹
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Abstract: The Right to Development (RTD) stands as a fundamental pillar in the global pursuit of social justice and equity. This paper offers a comprehensive exploration of the RTD, delving into its intricate intersections with human rights principles and proposing viable strategies for its effective implementation, particularly within the context of developing nations operating within the United Nations (UN) framework. The study begins by elucidating the multifaceted nature of the RTD, emphasizing its significance as a catalyst for socio-economic progress and human dignity. It examines the historical evolution of the RTD, tracing its roots in international law and its evolution over time within the UN system. A central focus of the paper is the intricate relationship between the RTD and human rights. By analyzing key international instruments and legal frameworks, the study uncovers the symbiotic connection between these two domains, highlighting how the realization of one is contingent upon the fulfillment of

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the other. Through a nuanced exploration of case studies and empirical evidence, the paper illustrates how advancing the RTD can serve as a catalyst for the promotion and protection of human rights, particularly among marginalized and vulnerable populations.

Key Words: Right to Development (RTD), Developing nations, Social justice, Equity, Marginalized populations

I. Introductory View

Man's freedom is worthwhile and imperative. But man's survival is even more important. In order for man to survive, certain basic needs must be met, needs like food, clothing, health, shelter, and better standards of living¹⁶³. In this context, Right to development (RTD) is one of the core rights among other human rights, which undoubtedly ensures the existence of the man and enhance the potential of the masses and society as well, to attain the better standards of living, prosperity and sustainable development by reducing the poverty in the society. "RTD is a right which provides opportunity to everyone to participate and enjoy the socio-economic, cultural and political development"¹⁶⁴. In the ancient era, the Development was not considered as a right, but, since the 90's, Development has gradually been considered as a right¹⁶⁵. Although, RTD is a recognized principle of international law, but, the people of third world countries are still deprived of this right. The third world countries have objections over the behavior of Developed countries since long, demand of the third world countries is that the developed countries should contribute towards the

¹⁶³ THE UN AND THE RIGHT TO DEVELOPMENT, *Ragnar Hallgren, Institute of International Law, University of Lund, Sweden

¹⁶⁴ United Nations Declaration on the Right to Development, (UNDR), 1986

¹⁶⁵ Realization or deprivation of the right to development under globalization? Debt, structural adjustment, and poverty reduction programs, by, Robert E. Mazur, Sociology Department, Iowa State University, Ames, I A 5001

development of the underdeveloped countries, so, the people of the underdeveloped countries can also enjoy the better standards of living and prosperity, to attain this purpose a Resolution was adopted by the United Nation, named as 'Declaration on Right to Development' 1986. This resolution recognized the RTD as one of the fundamental principles of International law without any hesitation. No state can prosper, flourish and progressive without giving equal opportunities to the people of the state, to contribute in the socio-economic and cultural development. Article 4 of the Declaration describes that “ states should make policies for the realization and recognition of RTD for speedy development”¹⁶⁶in this modern era, the world has become a global village, in this globalized world RTD has gain an inevitable momentum and has become integral part of the legal systems of number of developed countries. The countries have started to recognize this right as basic human right and developed their legislation for the implementation of this core right. Resultantly, people are enjoying their lives, while having better opportunities to grow and to live better, which also improving the economic growth of the country. RTD and Human rights both are interconnected with each other, RTD cannot be exercised in the abrogation of other human rights and human rights cannot be enjoyed in the exclusion of RTD.

II. Historical Background of RTD

Emerging concept of RTD as a human right is a new phenomenon which is still aquestionablenotion. Still there is a debate on its definition, scope and nature at

¹⁶⁶ Article 4 of United Nation's Declaration on Right to development 1986, “ that States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development. Sustained action is required to promote more rapid development”

global level. Historically speaking the first step towards the recognition of RTD was linked with an eminent jurist Mr. Keba, who introduced this right and explained the positive impacts of RTD on the society in 1972. Mr. Keba proposed RTD as a right belongs to human rights family, afterwards RTD was recognized by an African organization named as Organization of African Unity (OAU) as a result RTD got incorporated in African Charter on human and people's Rights in 1981. Provisions of this legal document focus on equality, liberty, prosperity and development of human beings. Article 22 of the African charter describes that everyone is entitled to social, economic, and cultural right with due respect and dignity and it is the duty of the state to guarantee this right. Afterwards, RTD was recognized in 1986 by United Nation through a declaration called UNDRTD¹⁶⁷. UN charter mainly focuses on the enforcement of basic human rights and mutual cooperation between states at global level to enhance the economic and political relations worldwide¹⁶⁸. In order to attain global economic stability, recognition of RTD is a method which can play a pivotal role in this regard. Keeping in mind, the UNDRTD put light on the concept of RTD through article 1, which says that "RTD enables everyone to take part in the process of development, which is a basic human right"¹⁶⁹. Subsequently, two

¹⁶⁷ United Nation Declaration on Right to Development, 1986

¹⁶⁸ Charter of United Nations- available at <https://www.un.org/en/charter-united-nations/>

¹⁶⁹ Article 1 of United Nation's Declaration on Right to Development "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

different resolutions¹⁷⁰¹⁷¹ passed in different time spans endorsed the RTD as a human right of urgent nature. Recently, RTD has been recognized as a human right in the Durban Declaration and Programme of Action 2001¹⁷². This Declaration mainly gave attention towards diminishing the elements of racism, discrimination, inequality, xenophobia and any kind of intolerance. It was adopted at Durban in a conference held at global level namely World Conference against Racism (WCAR). Necessary measures were taken as result of this declaration in order to protect right to development and other human rights, which anyone can enjoy with due respect and dignity in a society. ¹⁷³As the time passed the concept of RTD become more controversial in its recognition and enforcement as a human right. Initially

¹⁷⁰ The Vienna Declaration and Programme of Action reaffirms “the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.” Para.10.

¹⁷¹ The Millennium Declaration states: “We are committed to making the right to development reality for everyone and to freeing the entire human race from want.” Para. 11.

¹⁷² The Durban Declaration recalls the commitment of the Millennium Declaration “to make the right to development a reality for everyone” (Para.19) and affirms “the solemn commitment of all states to promote universal respect for, and observance and protection of, all human rights, economic, social, cultural, civil and political, including the right to development, as a fundamental factor in the prevention and elimination of racism, racial discrimination, xenophobia and related intolerance.” Para. 78.

¹⁷³ Available at <https://www.un.org/en/durbanreview2009/ddpa.shtml#:~:text=The%20Durban%20Declaration%20and%20Programme%20of%20Action,-The%20Review%20Conference&text=Adopted%20by%20consensus%20at%20the%20discrimination%2C%20xenophobia%20and%20related%20intolerance>
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the developed states were held responsible for the recognition and enforcement of RTD through their cooperation towards the underdeveloped states. But, the developed states rejected this scope of the RTD. Furthermore, a controversy related to the acceptance of RTD as a human right was also aroused¹⁷⁴. When US and USSR was engaged in a war against each other, at that time the developing states decided not to join anyone of the super powers. But, to remain independent and impartial, in this regard an association of 120 states has been established, main purpose of this association was just to focus on national integrity, protection of rights and sovereign independence of the states and not to align with any of the super power. This community was named as NAM and it was established in 1961 in Serbia. NAM played a significant role in bringing the economy of the world towards improvement. NAM was the second biggest forum after UN, having 120 states as member states, therefore, NAM started a result oriented campaign and demanded a system in which equal opportunities of economic development should be given to the developing states, wherein those states can ensure the better standards of living and prosperity of the people. NAM has unanimously declared RTD as a human right and drawn the attention of international community over this right for the better international cooperation and economic relations¹⁷⁵.

III. Significance of Right to Development (RTD)

RTD as a human right acts as a catalyst in the process of development of mankind and economic prosperity of the

¹⁷⁴ The Right to Development-A Review of the Current State of the Debate for the, Department for International Development by Laure-Hélène Piron, April 2002

¹⁷⁵ Non Aligned Movement- available at <https://www.nti.org/learn/treaties-and-regimes/non-aligned-movement-nam/> last visited 24-09-2020

states, because, implementation of RTD provides the equal opportunities to the people to participate in the development process and utilization of sources on basis of equality, social justice and rule of law. A state with weak administration of justice, rule of law and feeble enforcement mechanism of RTD can never be prosperous and developed. The RTD is recognized as a right which enables the human to increase their standards of living with due respect and empowers the states to improve their economic stability¹⁷⁶. Good governance and administration of justice are very crucial components for the progressive lives of the masses and economic sovereignty including economic development of the states, because, if Governance improves and rule of law is adhered to then the nations gain a speedy momentum towards the economic growth. Literature review reveals that the RTD has a very close nexus with the Rule of Law, Good Governance and Access to Justice. RTD is a sum of political, social, economic and cultural rights; it has gain a distinctive position among other human rights because RTD ensures the human existence with due dignity. Recognition and implementation of RTD guarantees the economic growth of a state. UNDRTD describes the main theme of the RTD, this declaration declared the man to be the central object of prosperity and well-being, man is the primary right holder of RTD and man can participate in the national development processes through equal contribution and utilization of natural resources of the country. In this context states must arrange appropriate environment by taking

¹⁷⁶ Evolving Paradigm of Right to Development in International Human Rights Law and its Transformation into National Legal System (NLS): Challenges and Responses in Pakistan by *Naeem Ullah Khan*, *World Academy of Science, Engineering and Technology, International Journal of Humanities and Social Sciences Vol:13, No:3, 2019*

legislative actions and establishment of strong enforcement mechanism”¹⁷⁷. RTD has positive impact on the development of states, no evidence of negative impact on development has been found since the recognition of RTD. RTD is an emergent need for developing countries in order to attain trade balances and investment opportunities.

IV. Nexus amid Right to Development and Human Rights

RTD is an inalienable Human Right. Very first initiative of recognizing RTD as a component of human prosperity and economic development of states, was taken by a judge of Senegalese Apex Court named as Kaba in the year of 1972, the Honorable Judge Supreme Court in an address described that “to live better is a basic right of every person, he further elaborated two fold theory of development i.e. Law of development as an objective right and RTD as a part of prosperity of people”. Contemporaneously, Professor Carillo belongs to Spain in his lecture also explained the RTD as a human right, he said that every human being has a right to live a free, prosperous, healthy and happy life for his better existence in the country¹⁷⁸.

RTD has been recognized as human right by the international community at the platform of United Nation in 1986 through a Declaration and afterwards, an international conference in Austria, VDPA¹⁷⁹,

¹⁷⁷ Article 2 of United Nations’s Declaration on the Right to Development, 1986 “the human person is the central subject of development and should be the active participant and beneficiary of the right to development. All human beings have a responsibility for development, individually and collectively. States have the right and the duty to formulate appropriate national development “

¹⁷⁸ Man's right to development-K.L. Dalal-India International Centre Quarterly, Vol. 15, No. 2 (SUMMER 1988), p.3, Published by, India International Centre, available at : <http://www.jstor.org/stable/23002052>

¹⁷⁹ Vienna Declaration and programme of Action in 1993

1993 reaffirmed the concept presented by the UNDRTD, and recognized RTD as human right. RTD is still in developing process, but, despite of this fact, RTD has been recognized as an emerging right among other human rights. The RTD has gained greater importance in the human rights community.

Human development is highly dependent on the social, cultural, economic and political factors, and all these factors are also the component of human rights. Access to justice, Right to education, health facilities, food facilities, are basic human rights, and assurance of all these human rights automatically resulted in individual and collective human development which is right of every person. An eminent scholar Arjun SenGupta explored that there are many controversial dimensions of the concept of RTD, however, the most controversial aspect is the claim of RTD as a human right, Arjun sengupta also suggested that for the better recognition and implementation of RTD as basic human right, it is the duty of developed states to build a mutual cooperation with the third world countries.

But, responsibility of the developing states does not diminished with the mere excuse of non-cooperation from the developed states¹⁸⁰. In this context, article 22 of African Charter elaborates that “every person have a right to develop with dignity and freedom and it is the duty of the states to take measures for the enforceability of RTD”¹⁸¹. It is pertinent to mention here that;

¹⁸⁰ Reflections on Right to Development- Arjun sengupta, A negi, M Basu- 2005- New Delhi, Thousand Oaks, London , at p.13

¹⁸¹ Article 22 of the African Charter on Human and Peoples' Rights- ‘[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind’ and that ‘States shall have the duty, individually or collectively, to ensure the exercise of the right to development. Available at <https://www.achpr.org/legalinstruments/detail?id=49#:~:text=their%20national>

population growth is one of the factors which are creating hurdles in the way of development. Now a days, the world has facing an enormous increase in the population rate, specifically; the underdeveloped countries have a larger population growth rate than the developed countries.

In this regard, the problems will become worse if the population rate would not be controlled worldwide¹⁸². It is the prime responsibility of every person to restrict the multiplication of population; state should also take measures in this regard otherwise, the results will be unbearable, uncontrollable, and it will affect the whole world, whole human community. It can be said that virtually RTD and Human rights are two similar things, so enforcement of Human rights by ignoring the aspect of right to development is just a theory but not practical. In this context, UNDP¹⁸³ explains the concept of realization of RTD as being about creating and offering an environment wherein people can improve their living standards, and can participate in the national development processes, according to their interests and needs with due respect and dignity¹⁸⁴. However, after the establishment of a framework of RTD through UNDRTD, main concern was the implementation of Declaration in its true letter and spirit, for this purpose working group suggested a detailed procedure in a

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¹⁸² The Right to Development in International Law- Subrata Roy Chaudhary at- al, free University, Amsterdam, Netherland,

¹⁸³ United Nations Development Program

¹⁸⁴ Evolving Paradigm of Right to Development in International Human Rights Law and its Transformation into National Legal System (NLS): Challenges and Responses in Pakistan by *Naeem Ullah Khan*, *World Academy of Science, Engineering and Technology, International Journal of Humanities and Social Sciences Vol:13, No:3, 2019*

meeting in 1987 for the implementation of United Nation Declaration. In that procedure the working group proposed different steps including responsibility of the member states and concerned agencies to spread detailed information about the concept of RTD as a human right. Furthermore, publications and research activities and other relevant instruments must be promoted on United Nation and other recognized forums.¹⁸⁵

V. **RTD and Proposal of Developing Countries**

In this Globalized world, uprising developments in the fields of life have made the economic relations between the states more resilient. The globalization facilitated the investment and trade among the countries¹⁸⁶. In the past, the third world countries were deprived of development as they were not provided with the equal opportunities for trade and investment, they have to face very high tariff reductions and low development assistance from the developed states, which was a great hurdle in the way of their economic development. In 1970 some developing countries with mutual cooperation, prepare and presented some proposals for their own advancement, at the platform of United Nations, wherein, they demanded a better environment for trade and investment by improving the terms of trade and investment and by reducing the tariff rates. The set of proposals presented by the developing states was accepted and a New International Economic Order (NIEO) came into existence by replacing the old economic system called Bretton woods system, which was only favorable for the developed states. Some of the states called it a

¹⁸⁵ Man's right to development-K.L. Dalal-India International Centre Quarterly, Vol. 15, No. 2 (SUMMER 1988), pp. 89-96-Published by, India International Centre, available at : <http://www.jstor.org/stable/23002052>

¹⁸⁶ The Human Right to Development in Globalized World- Daniel Aguirre-2008, at p.1

revolutionary challenge to the previous economic system of the world. The UN in an international session on economic activities embraced the concept of RTD through acceptance of NIEO, because NIEO gave the right to development to the states which were previously deprived of this right. The primary purpose of NIEO was to promote economic growth and prosperity of the poor nations by diminishing the inequality, which was performed before NIEO. The Developed countries of the world still have some objections over the NIEO they require some amendments, but, for the best interest of economy of whole world it is necessary that there must be an agreement which can satisfy the whole world, so the world can enter into new era of progress.

VI. United Nation's Mechanism for the Implementation of RTD

a) United Nation Working Group

Historical perspective reveals that several attempts have been made globally, specifically by the United Nations for the recognition and implementation of RTD. Establishment of an intergovernmental working group for the better understanding and implementation of RTD was also one of the efforts made by the UN¹⁸⁷. Human Right Commission of United Nation established this group in 1998 with a core mission to promote RTD in compliance of the core responsibility imposed by the UNDRTD. The working group deeply monitored the obstacles, International cooperation and progress of every state on the recognition and implementation of RTD and also made recommendations to the human right

¹⁸⁷ The Open-Ended Working Group and the Independent Expert were established pursuant to Commission on Human Rights Resolution 1998/72

commission for the better understanding and better results of RTD¹⁸⁸.

b) United Nations Task Force

The intergovernmental working group of United Nations has done a remarkable work for the recognition and enforcement of RTD. The aforementioned working group also submitted some recommendations to the human right commission for more progressive results in the field. As a result of those recommendations submitted by the working group, a task force came into being by the human right commission with an aim to implement the recommendations of working group. This task force was named as high level task force, which was hampered with a mission of enforcement of RTD in its true letter and spirit at national and international level, through awareness and elimination of obstacles which are inevitable for the promotion of RTD. This task force came into existence with a resolution of human rights commission of United Nations in 2004; the major purpose of this task force was to assist the working group in achieving the goal. The task force played its role in coping with the challenges of implementation of RTD¹⁸⁹. Accordingly, the task force in the continuation of its assigned duty prepared a detailed report and submitted it to the working group. In the report the task force mentioned the aspects which are mandatory to be followed for the implementation of right to development¹⁹⁰.

¹⁸⁸ Development is a human Right-available at <https://www.ohchr.org/EN/Issues/Development/Pages/WGRightToDevelopment.aspx> last visited 05-10-2020

¹⁸⁹ Development is a human right available at <https://www.ohchr.org/EN/Issues/Development/Pages/HighLevelTaskForce> last visited 05-10-2020

¹⁹⁰ The task force submitted to the Working Group the criteria and operational-sub-criteria for the implementation of the right to development. With the purpose of translating the right to development from political commitment to

c) **Appointment of Special Rapporteur**

Enforcement of RTD has become a dynamic aspect for the economic development of the world. Therefore, United Nation gave its full attention towards the satisfactory implementation of RTD. In this regard along with other important initiatives taken by the UN appointed an eminent expert as a special Rapporteur through a resolution in 2016. The main task assigned to the Rapporteur was to work for the assurance of right to development¹⁹¹.

In spite of the fact that RTD was recognized through the UNDRTD since 1986, but, still a large number of human beings across the world are not aware of right to development, they are deprived of this right. Resultantly, their lives are far behind than the people of developed states.

According to a report¹⁹² more than 800 people are still living under the poverty line and dying cause of hunger. Hunger, lack of health facilities, malnutrition, and slum like circumstances for people are still the major problems worldwide in many countries. Therefore, to overcome the aforementioned problems the appointment of a special Rapporteur was a vital step. In the completion of his mandate the special Rapporteur prepared effective plans to establish a strong enforcement mechanism for RTD in the ignored areas.

He does a remarkable performance at national and international level, including the representation of right

development practice, the criteria were designed to serve as an operational tool to.

¹⁹¹ Special Rapporteur on the Right to Development available at <https://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/SRDevelopmentIndex.aspx> last visited 10-10-2020

¹⁹² The 2015 Millennium Development Goals' report

to development in 2030 agenda and integration of RTD in the structure of human rights. The Rapporteur gave importance to the world financing in development policies and practices for the appreciation of RTD and other related rights for human development.

VII. Conclusion

This comprehensive exploration of the Right to Development (RTD) has underscored its pivotal role as a cornerstone of social justice and equity within the global community. By elucidating its intricate intersections with human rights principles and offering targeted strategies for implementation, particularly in developing nations operating within the United Nations (UN) framework, this study has sought to shed light on the pathways toward inclusive and sustainable development for all. Throughout this paper, it became evident that the RTD is not merely a theoretical concept but a fundamental imperative that requires concerted action at both national and international levels. By acknowledging the symbiotic relationship between the RTD and human rights, we recognize that the advancement of one is inherently linked to the realization of the other. Thus, efforts to promote development must be grounded in principles of equality, participation, and empowerment, ensuring that the most vulnerable and marginalized populations are not left behind. Moreover, the analysis of implementation strategies highlighted the importance of context-specific approaches tailored to the unique needs and challenges of developing nations. From capacity building to resource mobilization and institutional reform, the recommendations put forth in this study aim to provide practical guidance for policymakers and stakeholders seeking to translate the principles of the RTD into tangible action. As we navigate the complexities of the

contemporary global landscape, characterized by persistent inequalities and evolving development challenges, it is imperative that we remain steadfast in our commitment to realizing the RTD. By fostering a deeper understanding of its significance and operationalizing it within the UN framework, we can forge a path toward a more just, equitable, and sustainable world for present and future generations. Ultimately, the fulfillment of the RTD is not just a moral imperative but a collective responsibility that demands unwavering dedication and solidarity from the international community.

IMPLEMENTATION OF ILO WAGES CONVENTIONS IN PAKISTAN

Dr. MUHAMMAD AMIN^{193**}

ABSTRACT; This article views and assesses the implementation of ILO wages conventions in Pakistan. Before going into core discussion, two things are ascertained. First, the origin, nature and establishment of international Labor organization as it is fundamental source of Labor laws in the world. Second; the impact of ILO on the development of Labor laws in Pakistan. ILO has passed proximately 8 basic wages conventions. It is particularly viewed in this article to what extent these conventions are complied with in Pakistan. As there are so many evidences from the reports of ILO committee of experts that ILO wages conventions have not been complied with in ratifying states. This situation is same with the Pakistan. Wages have not been specified and paid as up to the ILO wages conventions. In order to prove this statement, several quotations have been cited from the HRCP's reports. The quotations from the reports of expert's committee of ILO have also been given to evidence it. The wages of home based women workers have also been discussed. ILO reported that those women and children who are working in people's homes in Pakistan are hidden workers. They are not paid their wages as up to the ILO wages conventions and have not been given legal benefits attached to their job and salaries under the Labor laws. Pakistan has yet to ratify the ILO convention 177 on home based workers. Likewise, there is a large number of Pakistanis who

¹⁹³ He is Doctor Professor (Islamic Jurisprudence, Labor Laws and Philosophy) as well as director research and development at Premier Law College, Gujranwala.

migrate from Pakistan to other countries in search of jobs. The reason behind it that ILO wages conventions and standards have not been complied with in Pakistan. The Labourers and employees are paid wages unstandardized at the minimum wages conventions of the ILO.

Keywords: international Labor organizations, Labour, wages, conventions, implementation, Pakistan.

This article views and assesses the implementation of ILO wages conventions in Pakistan. Before going into core discussion, it is necessary to ascertain two things; first; the origin, nature and establishment of international Labour organization as it is fundamental source of Labour laws in the world. Second; the impact of ILO on the development of Labour laws in Pakistan.

INTRODUCTION; In 1919, A Labor commission detailed in Paris through a peace dialogue among League of Nations and this commission proposed to establish an international Labor organization, the responsibility of which is to settle down the Labor disputes and issues. Therefore, on the recommendations of the Labor commission, in 1919, the ILO appeared as a world Labor forum to structure internationally Labor policies, conventions and recommendations.

Dr. Werner Sengenberger¹⁹⁴ Writes down about the purpose of international Labour organization;

The International Labor Organization (ILO) was founded in 1919 as part of the Treaty of Versailles. It is

¹⁹⁴.Dr. Werner sengenberger has been Director for ILO employment strategy department, Geneva. He remained also director for ILO international institute for Labor studies. In 2001 he retired from directorship of these institutions. After retirement, he joined UN Labour agencies as adviser.

approaching its centenary. In 1946, it became the first specialized agency of the United Nations. The ILO embodies a vision of universal, humane conditions of Labor to attain social justice and peace among nations. The contemporary expression of this vision is the Decent Work Agenda.¹⁹⁵

International Labour organization has a history of one hundred years. It comprises three characters; governments, employers and employees.¹⁹⁶In 1946, ILO has become a constituent unit of United Nations. The basic function of ILO is to protect the rights of Labourers and maintain international Labour standards. Until now, ILO has passed 189 conventions and 202 recommendations, which have been ratified by 185 states.¹⁹⁷

What are basic principles of ILO? Chandra Roy writes about these principles.

The founding documents of the ILO included a Charter of Labour during the peace Treaty of Versailles based on the following principles. Abolition of Child Labour, Adequate wages, Equality of treatment, Equal pay, Inspection systems, Labour should not be seen merely as a commodity or an article, of commerce, Reasonable working hours, Right of association.¹⁹⁸

¹⁹⁵. Sengenberger Werner, *The International Labour Organization*, Friedrich Ebert Stiftung Ed, 2012, p:9

¹⁹⁶. Missions and Objectives, ILO, <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>

¹⁹⁷. Alphabetical List of ILO Member Countries, ILO, <http://www.ilo.org/public/english/standards/relm/country/htm> (last time Visited: 02/01/2019)

¹⁹⁸. Roy, Chandra, *The international Labour organization*, Minority Rights group international (MRG)2002, UK, p:4

Dr Amit Kumar Singh¹⁹⁹ writes about the objective and purposes of ILO in his research article.

The primary objective of action in the ILO is the creation of the international Labour standards in forms of Resolutions and Recommendations. Resolutions are international treaties and instruments, which generate legally binding responsibilities on the nations that ratify those nations. Recommendations are none –binding but better set out guidelines orienting countrywide policies, procedure and help in developing actions. Labour law control matters, such as, remunerations, Labour employment, and conditions of employment, trade union, industrial and Labour management relations. They also include social legislations regulating such a characteristics reimbursement for accident triggered to a worker at work place, maternity benefits fixations of minimum wages, and distributions of company’s profit for the organization’s workers etc. Most of these acts regulate rights and the responsibilities of employee.²⁰⁰

ILO has specified working time hours for Labourers first time in history. It also gave Labourers the right of making union. This right of Labour union generated the right of protest for Labourers. Michael Summer²⁰¹ writes in this regard.

Many historic achievements are due to the ILO-including for example, the 8 hours’ workday, the right to

¹⁹⁹. Dr Amit Kumar Singh has been head for business management department, Sri Vishwnath P.G College, Sultan pur, U.P India. He also remained professor in business management department, university of Mizoram, India.

²⁰⁰. Amit Kumar Singh, *Impact of ILO on Indian Labour Laws*, International journal of research in management & Business studies(IJRMBS 2014)Vol:1 issue 1 Jan March 2014

²⁰¹. Michael Sommer has been chairman for German confederation of trade union (DGB). He has written the foreword of Dr werner’s book “The International Labour Organization”.

unionisation, and as a consequence thereof, the right to strike.²⁰²

ILO has made Wages and Labor standards and specified the rights of Laborer's. United nation and European social charter have conceded these Labor rights and standards as human rights. Dr Werner writes about these Labor rights and standards.

The main subject areas of the international Labour standards included the fundamental rights at work, which are contained in the eight so-called core Labors standards of the ILO. These are freedom of association and the right to organize, the right to collective bargaining, the abolition of child Labor, the prohibition of workplace discrimination, as well as the mandate for equal for men and women for work of equal value.²⁰³

Dr Sengenberger Werner writes more about Labor rights and standards.

The remaining ILO Convention are also part of international law and refer to substantive (in ILO, jargon technical) standards for the Labour market, working hours and rest period, workplace health and safety, particularly vulnerable workers, and collective Labour relations and social dialogue.²⁰⁴

ILO consists of two parts, one is legislative and second is administrative. The legislative part is called international Labour conference. Its session is held in every year in the month of June. ILC is also called the world parliament of Labour. In both parts there are half seats reserved for member states and other half for employers and employees. The legislation of ILO appeared in the form of its conventions which are considered as a source of

²⁰². *Ibid*, p:9

²⁰³. *Ibid*, p:9

²⁰⁴. *Ibid*, p:9

international Labor laws and also international Labour standards.²⁰⁵

ILO has passed different wages conventions. G.P Politakis²⁰⁶ writes about wages conventions.

Labour Clauses (Public Contracts) Convention, 1949 (No. 94). Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84) – Protection of Wages Convention, 1949 (No. 95) the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), which revises Article 11 of Convention No. 95. Protection of Wages Recommendation, 1949 (No. 85). Minimum Wage Fixing Convention, 1970 (No. 131). Minimum Wage Fixing Recommendation, 1970 (No. 135). Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173). Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180). Other instruments (This category comprises instruments which are no longer fully up to date but remain relevant in certain respects.) Minimum Wage-Fixing Machinery Convention, 1928 (No. 26). Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99). Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89)²⁰⁷

ILO has an impact over the development of Labour laws in the world as the ratifying states are bound to follow the policies of international Labour organization. There are 185 member states of ILO. These states legislate their Labour laws as up to the ILO Labour conventions. The

²⁰⁵. *Ibid*, p:9

²⁰⁶. G.P Politakis is an expert for international Labour laws. He was a member of the experts committee of ILO for making and drafting Labour standards which were published at the 75 years anniversary of ILO.

²⁰⁷. Politakis G.P *International Labours standards*, International Labour office CH.1211 Geneva. First addition 2002, p:232

ILO Labour conventions are so helpful in protecting the rights of Labourers and employers.

Dr Amit Kumar Singh's statement supports this view.

International Labour organization supports countries to lure their own set of Labour legislations for the well conduct of Labour class, and the preservation of their rights.²⁰⁸

There are 8 basic wages conventions which protect Labourers and their wages. These 8 wages conventions are actually the human rights of Labourers. Dr Amit Kumar Singh says that these wages conventions have laid great positive effects on Labour legislations in ratifying states.

The eight Core Conventions of the ILO (also called fundamental human rights conventions) are: Forced Labour Conventions (No.29), Abolition of Forced Labour Convention (No.105), Equal Remuneration Convention (No.100), and Discrimination (Employment Occupation) Convention (No.111). Freedom of association and protection of right to organized Convention (No.87), Right to Organized and Collective Bargaining Convention (No.98). Minimum Age Convention (No.138), Worst Forms of Child Labour Convention (No.182).²⁰⁹

In subcontinent, the development Labour laws started in the period of British colonization. The British political and economic movements and concepts have been basis for the development of these laws. In the binging it was very difficult for the British institution to manage and solve the problems of workers and their unions because

²⁰⁸.Singh, Kumar, Amit, Impact of ILO on Indian Labour Laws. International journal of research in management & Business studies(IJRMBS 2014)Vol:1 issue 1 Jan March 2014

²⁰⁹.*Ibid*

of having no Labour laws. Therefore, in order to overcome the Labour problems, the Labour laws began to be developed. Likewise, the textile industry started to expand, the British Indian government has been forced to making Labour laws for industrial units in India. Dr Amit Kumar Singh writes about the historical origins of Labour laws.

In the initial phases it was very difficult to get adequate regular Indian workers to run British organizations and hence Labour law became essential.....The Factories Act was first time introduced in 1883 because of the pressure carried on the British parliament by then textile tycoons of Manchester and Lancashire. Thus, we acknowledged the first requirement of eight hours of work for Labour. The abolition of child Labour.²¹⁰

In the 19th century the small industrial units started its working in the hometowns and the possibilities of new jobs have risen. People started to migrate from rural areas to urban areas. The employers gave less wages to the employees and made for them prolong working hours. Therefore, for this reason, the British Indian government had to make Labour legislation. This Labour legislation started in 1881. Dr Amit Kumar Singh confirms this statement in these words.

During time, in lack of any control on organization's Labour by the state, the employers were very less concerned for the need of their workers: wages were very low, very long working hours and unsatisfied factory the employee's employment conditions. The situation led to the depiction of a large number of Labour

²¹⁰.Op.cit

legislations beginning since the year of 1881. These Labours.²¹¹

In subcontinent, these Labour laws were developed. Factories act 1881, workmen's compensation Act 1923, Payment of wages 1936, Employment of Children Act 1938, Trade Dispute Act 1929, Trade Union Act 1926, Benefit Maternity Act 1939. Dr Amit Kumar Singh says that ILO has great effect over the development of these Labour laws.

Most of the labour legislations in India are before independence.....

The ILO guidelines provided basic principles on which most of Labour legislations were drawn. By observation on various amendments and enactments in Labour laws it can be easily seen that the ILO have a countless impact on the Indian Labour Laws. A large number of Laws were passed to incorporate the guidelines of the resolutions of the ILO.²¹²

As there are so many evidences from the reports of ILO Committee of experts that ILO wages convention have not been complied with in ratifying states. This situation needs also to be examined weather the ILO wages conventions have been fully complied with in Pakistan or not. Here it is also overviewed weather the wages in Pakistan have been specified and paid as up to the ILO wages conventions. Human rights commission of Pakistan writes in its report, 2015 that there are so many Labourers and employees who have been deprived of their minimum wages. The report says as follows.

²¹¹.Amit Kumar Singh, Impact of ILO on Indian Labour Laws. International journal of research in management & Business studies(IJRMBS 2014)Vol:1, issue 1 Jan March 2014

²¹².*Ibid*

Due to weak regularity mechanisms and non-compliance of Labour law, a large number of workers remained deprived of minimum wage in the year 2015. According to the latest Pakistan Labour Force Survey, the national average monthly wages were Rs13, 154. The survey noted 17.17 per cent of workers getting Rs5, 000 and 41.31 per cent between Rs 5,000 to Rs 10,000 per month as salary. Wages of a small percentage of workers_18.21 per cent _ranged between Rs10, 000 Rs to 15,000. About one –fourth (24.31per cent) earned Rs 15,000 or above.²¹³

Labor force survey also describes the disparity in the wages.

Significant wage differential existed between sectors as reported in the LFS. Agriculture was the lowest paid occupation, with average monthly wages amounting to Rs.6, 327. The highest-paid sector was banking and financial services where a worker earned Rs 37,978 per month on a average. Wage differential for employment status was even greater: a manager earned Rs 52,300 per month compared to elementary occupation who earned Rs 8,228 _ about seven-fold difference. Gender wage differential and rural-urban difference were also very high, indicating growing inequality²¹⁴.

There are so many complaints of nonpayment of wages. In this regard HRCP says in its report, 2015.

The most basic right at workplace is timely payment of wages. Violation of this right remained as rampant in 2015 as ever. In many instances, this violation was committed by the government agencies. There was report

²¹³.See the Report on state of Human rights in Pakistan 2015, Published by Human Rights Commission of Pakistan (HRCP) Latiffi Printers, Lahore, March 2018, p:6

²¹⁴.*Ibid*, p:6

(February to October) from Bajaur Agency, Quetta, Hyderabad and Karachi above non-payment of wages to Lady Health Workers and workers engaged in polio vaccination campaigns. In June, more than 140 employees of the Punjab Revenue Authority protested against non-payment of their salaries. In July, the daily wages employees of the Capital Development Authority (CDA) protested non-payment of three months' salaries. Thousands of employees of Karachi Metropolitan Corporation (KMC) had petitioned the Sindh High Court (SHC) in 2013 over not being paid their salaries and pensions on time. In July, the court directed the local government secretary and the KMC to ensure payment of salaries and pensions. In August, employees of the Karachi Municipal Administration staged a demonstration over delay in the payment of salaries. In August, the employees of Karachi Dental and Medical College boycotted work over non-payment of salaries for three months.²¹⁵

Now here, certain quotations from the HRCP reports of 2017, are taken which tells us about the nonpayment of minimum wages rates in Pakistan. The industries and other institutions hesitate to pay the minimum wages rates to their Labourers and employees. The report says as follows.

The minimum wage for unskilled workers, announced by the federal and provincial governments at the time of the annual budget presentation, was never implemented for the majority of employees as most industries and commercial establishments were still reluctant to pay even that wage. For the fiscal year 2017-18 this rate has been fixed at Rs.15, 000 per month, only Rs 1,000 above the last fiscal year. It is a known fact that the majority of

²¹⁵. *Ibid*, p:7

industrial and commercial establishments do not pay the minimum wage and there is no effective government mechanism to enforce it.²¹⁶

In the said report, it is mentioned that the women workers in health department, have not been paid their minimum wages rates which make up their bread.

In another research study on ‘Socio-economic impacts of delayed wages on lady health workers and their families’ it was found that 68% of the households of LHWs reported having a member with a major disease. According to the findings of Salman Kazi, an assistant professor at PAF-Karachi Institute of Economics and Technology, the average reported family income of LHWs was Rs23, 682 with an average budget deficit apparently standing at Rs5, 885 per month, which necessitated borrowing from local retailers.²¹⁷

Visually impaired people protested in support of their job and wage demands. The HRCP report, 2017 says as follows.

Visually impaired people from across the Punjab held a series of protests in support of their demands. In March, the visually impaired took out a protest rally in Dera Gazi Khan against non-payment of salaries which they said had been pending for four months. In Lahore, protest were held in October and December calling for the proper implementation of the three percent quota for employment, an increase in the quota, regularization of the jobs, and increase in salary.²¹⁸

²¹⁶.See the Report on state of Human rights in Pakistan 2017, Published by Human Rights Commission of Pakistan (HRCP) Latiffi Printers, Lahore, March 2018, p:192

²¹⁷. See the Report on state of Human rights in Pakistan 2017, Published by Human Rights Commission of Pakistan (HRCP) Latiffi Printers, Lahore, March 2018, p:194

²¹⁸.*Ibid*, p:195

The employees of Pakistan steel mills have also faced the problem of nonpayment of their wages.

Current and retired employees of Pakistan Stills mills (PSM) remained on protest against non-payment of their salaries, dues and pensions. PSM has been virtually non-functional for over two years. The fate of over 12,000 employees hang in the balance as the management has been unable to pay salaries for months and Government of Pakistan is reluctant to cover those costs.²¹⁹

In December 2017 the employees received their salaries for the month of August and September 2017. The release of salaries depends on decisions being taken by the federal cabinet. The Sindh High Court ordered that accumulated dues outstanding since 2013 for 850 retired employees, estimated to be around Rs3.43 billion, should be paid by 7 December.²²⁰

In May 2017, in Khaadi textile many employees have also been deprived of their jobs because they were protesting in favor of minimum wages.

In May 2017, social media was flooded with posts and news about the protests of workers who had been terminated by the textile garment manufacture Khaadi. The textile brand had allegedly fired 32 workers after they tried to form a union and demanded the minimum wage.²²¹

ILO reported that home based woman workers are neither legally protected at their job place and nor they are paid their minimum wages rates. The ILO report says as follows.

²¹⁹. *Ibid*, p:196

²²⁰. *Ibid*, p:196

²²¹. See the Report on state of Human rights in Pakistan 2017, Published by Human Rights Commission of Pakistan (HRCP) Latiffi Printers, Lahore, March 2018, p:197

Highlighted the vulnerability of home-based workers. The majority of them are women and they lack legal protections and access to collective bargaining. Their wage rates are generally set by middlemen and they are ‘chronically and significantly underpaid.’²²²

ILO also reports that 5 million home based workers are also deprived legal benefits.

It is estimated that there are 5 million home-based workers and they are deprived of all legal benefits available under the Labour laws. Pakistan has yet to ratify the ILO Convention 177 on Home-Based Work.²²³

There is an European union report which shows that ILO Labor conventions have not complied with as yet in Pakistan.

The report says: Implementation remains a problem for all laws and policy areas in Pakistan. For the Labour laws a system of a Labour inspection has been put in place, with adoption of a Labour inspection policy and Labour protection policy in 2006, but result have been limited. Only about 340 Labour inspectors cover the entire Pakistan and they have been accused of corruption and of collusion with employers.²²⁴

There is a large number of Pakistanis who migrate from Pakistan to other countries in search of jobs. The reason behind it that ILO Wages conventions and standards have not been implemented in Pakistan. The Labourers and employees are paid wages unstandardized at the minimum wages conventions of the ILO. In this regard, a quotation from the report of ministry of Labour and manpower to be noted down.

²²².See ILO report published in 2017, Pakistan’s Hidden Workers: Wages and conditions of home-based workers and informal economy

²²³.*Ibid*

²²⁴.See the EU’s first report released in 2016 expressed dismay over the non-implementation of ILO Conventions.

According to the Export of Manpower analysis 2016 report, compiled by the Bureau of Emigration & Overseas Employment, a total of 946,571 Pakistanis went abroad for job purposes in 2015, which was the highest number in the history overseas workers in a particularly years. The half year emigration statistics indicate that the majority of the workforce (144,193 or 55%) went to the UAE, followed by Saudi Arabia (77,600 or 30%) and Oman (23,841 or 9%).²²⁵

Here to be noted down another important point weather the employees and Labourers are paid their wages as up to the ILO minimum wages convention. ILO specifies a minimum wage as a wage which meets basic needs of Labourer and his family. ILO report says as follows.

Minimum wage may be understood to mean the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his/her family, in the light of national economic and social conditions.²²⁶

The minimum wage is more explained in the ILO committee of experts.

As was observed by the 1967 Meeting of Experts, the concept of the minimum wage “contains three ideas: (a) the minimum wage is the wage considered sufficient to satisfy the vital necessities of food, clothing, housing, education and recreation of the worker, taking into account the economic and cultural development of each

²²⁵.See the Report on the Export of Manpower analysis 2016 , compiled by the Bureau of Emigration & Overseas Employment

²²⁶. See ILC, 79th Session, 1992, Report III (Part 4B), para:42, p:13

country [...]; (b) the minimum wage represents the lowest level of remuneration permitted, in law or fact, whatever the method of remuneration or the qualification of the worker; (c) the minimum wage is the wage which in each country has the force of law and which is enforceable under threat of penal or other appropriate sanctions. Minimum wages fixed by collective agreements made binding by public authorities are included in this definition”²²⁷.

In the light of above two statements of the ILO committee of experts, it is envisaged that the standard of minimum wage is the wage amount is such as meets the basic needs of the Laborer and his family. Now it is overviewed whether the ILO minimum wages standards are complied with in Pakistan or not. For this purpose, only two basic pay scales (1st and 22) which are redesigned in Pakistan in 2017 are examined.

BPS	Minimum pay	INCR	Maximum pay
1	9,130	290	17,830
22	82,380	5,870	
	164,560 ²²⁸		

The disparity and difference in wages for both basic pay scales (1st and 22) is about Rs. 146,670 while the employees of both basic scales purchased the wheat flour and medicine at the same rates.

In the financial budget, 2015 the minimum wage rate to be noted down.

The minimum wages was raised from Rs.12000 to 13,000 in 2015 by the federal Government. The provincial governments of Punjab, Sindh and Baluchistan

²²⁷.See Schedule, 2017 for Basic Pay scales of the civil servants, Annexure -1 office Memorandum No.F.1(3) imp/2017-500, Dated 03-07-2017

²²⁸. See Schedule of wages Rates, 2017, (Annex-A) Vide Notification. Ro, (Tech) FD 2-2/2016, Dated 28th December 2017

raise the minimum wage to Rs13, 000 in their budgets for 2015-2016. Sindh notified the raise in November, Punjab in August.²²⁹

In 2017 the minimum wage rate for unskilled workers was determined not more than Rs.15000.²³⁰ In Pakistan the minimum wage rate in the basic pay scales are not determined as up to the ILO minimum wage standards and conventions. The Supreme Court expressed its discontent on the wages in Labor sectors.

In April, a two-judge bench of the Supreme Court, in a *sou motu* notice about the payment of minimum wages by the federal and provincial governments, sought reports from all the four provincial Labor secretaries on the volume and the status of the complaints of non-payment of minimum wage and measure taken by the provincial governments.²³¹

CONCLUSION

This article concluded with this point that ILO wages conventions have not been completely complied with in Pakistan. Wages are not specified and paid as up to the ILO wages conventions. The wages given to employees and Laborers are not such that meet the basic needs of the Laborer and his family. While the minimum wage criteria set out in the ILO minimum wage convention is wage which fulfill the basic needs of the Laborer (housing, clothing, food, medicine and education). It is very dire need for Pakistan government to legislate wages laws and reconsider the Labor laws in Pakistan and make them

²²⁹. *Ibid*

²³¹. See the Report on state of Human rights in Pakistan 2017, Published by Human Rights Commission of Pakistan (HRCP) Latiffi Printers, Lahore, March 2018, p:192

fully complied with the ILO wages conventions as the Pakistan is the ratifying state to the ILO conventions. Pakistan should also legislate on the home based working women and children as they are not being paid their wages as up to the ILO wages conventions and have not been given legal benefits attached to their job and salaries under the international Labor laws. Pakistan has yet to ratify the ILO convention 177 on home based workers. So the Pakistan should immediately move to ratify the ILO convention on home based workers.

MARTIAL LAW REGEIMES AND DEMOCRATIC VALUES IN PAKISTAN

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

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it. If the new government continues to function, it becomes the functional governing body of the country; the constitution continues to exist in name only. New unelected government can run the county on basis of doctrine of necessity.

Keywords: Doctrine of Necessity, Pakistan, Military Dictators, Marshall Laws, Supreme Court

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

The doctrine of necessity is a term used to describe the basis on which extra constitutional actions can be taken by administrative authority, which are designed to attain power on the pretext of stability, are found to be constitutional even if such an action would normally be deemed to be in contravention to established norms or conventions. It also includes the ability of a private

person to violate a law without punishment where the violation of law was necessary to prevent even worse harm. The maxim on which the doctrine is based originated in the writings of the medieval jurist Henry de Bracton, and similar justifications for this kind of extra-legal action have been advanced by more recent legal authorities, including William Blackstone.

In modern times, the doctrine was first used in a controversial 1954 judgment in which Pakistani Chief Justice Muhammad Munir validated the extra-constitutional use of emergency powers by Governor General, Ghulam Mohammad. In his judgment, the Chief Justice cited Bracton's maxim, 'that which is otherwise not lawful is made lawful by necessity', thereby providing the label that would come to be attached to the judgment and the doctrine that it was establishing.²³³ Federation of Pakistan and Governor General Ghulam Muhammad challenged the decision of Chief court of Sind in Federal Court of Pakistan.²³⁴

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

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

On 19th October, 1954 Governor General Ghulam Muhammad dismissed Constituent assembly of Pakistan and dismissed Prime Minister Khawaja Nazimuddin and its Cabinet which was publically elected. Moulvi Tameez.u.Din who was President of Constituent

²³³ See for instance, "Governor General's Case, PLD 1955 Federal Court of Pakistan 477.

²³⁴ See for instance, Judgment Order of the Chief Court of Sindh, PLD 1955 Sind 96. Dated: 9th February, 1955.

assembly challenged the decision of Governor General in Chief Court of Sind. Chief Court of Sind restore the assembly and Government and declared Governor General's decision unlawful.²³⁵

Chief Justice Muhammad Munir and 5 member's bench heard the case. And after hearing the case Federal Court declared Chief Court Sind order null and void and said that Governor General and Federation are sovereign bodies and they made their decision in emergency powers.²³⁶ Justice Munir and its 4 member's bench gave their verdict on the state of doctrine of necessity.²³⁷

While Justice Alvin Robert Cornelius disagreed with the judgment and written in his disagreed note that there is no importance of doctrine of necessity and constitution is most important and it cannot be violated. Justice Cornelius dissented on the necessity issue, asserting that the Governor-General's actions went too far beyond his authority under the existing constitutional framework.²³⁸

Although the justice recognized that during an emergency state necessity may justify interference with the rights of citizens, he stated that it cannot justify "interference with constitutional instruments." Cornelius contended that the sources which the majority cited to uphold executive exercise of legislative powers were

²³⁵ Khan, Hamid. *Constitutional and Political History of Pakistan*. Oxford University Press, Karachi. Ed. 2005. P; 86.

²³⁶ See for instance, Moulvi Tameez-u-Din Case; PLD 1955 FC 240. Dated: 24th October, 1954.

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

²³⁸ Wolf-Phillips, Leslie. "Constitutional Legitimacy: A Study of the Doctrine of Necessity." *Third World Quarterly*, Vol. 1, No. 4 (October 1979) 98.

anachronisms which no longer should be accorded any precedential weight.²³⁹

The verdict dealt a blow to the notion of parliamentary supremacy in Pakistan. The irony was that Pakistan was an independent dominion created by the Indian Independence Act 1947.²⁴⁰ The British parliament enjoyed parliamentary supremacy in its own realm. But the Federal Court's verdict stripped Pakistan's parliamentary supremacy, even though Pakistan itself was an independent realm of the British monarchy.²⁴¹ The verdict paved way for the future judiciary to support unconstitutional and undemocratic actions, such as military coups. The doctrine of necessity was applied by successive Pakistani and Bangladeshi courts to validate the actions of martial law authorities.²⁴² This doctrine of State of Necessity was a base for every Martial Law in Pakistan as well as in Bangladesh. This Doctrine of State of Necessity has very vast implications on third world countries.²⁴³ And Military dictators of third world countries forced courts in their countries to validate unlawful government on the basis of doctrine of necessity.

1- DOSSO VS FEDERATION OF PAKISTAN

Dosso vs. Federation of Pakistan was the first constitutional case after the promulgation of [Constitution of Pakistan of 1956](#) and an important case in [Pakistan's](#)

²³⁹ Newberg, R Paula. *Judging the State: Courts and Constitutional Politics in Pakistan*. Cambridge University Press. Ed. 1995. P; 35-41.

²⁴⁰ See for instance, Chief Justice Muhammad Munir: his life, writings, and judgments. Research Society of Pakistan. Ed. 1973.

²⁴¹ Newberg, R Paula. *Judging the State: Courts and Constitutional Politics in Pakistan*. Cambridge University Press. Ed. 1995. P; 25-35.

²⁴² Omer, *Imtiaz*. [Emergency powers and the courts in India and Pakistan](#). *Martinis Nijhoff Publishers*. Ed. 2002. P; 55-60.

²⁴³ Munir, *Muhammad*. [From Jinnah to Zia](#). *Vanguard Books*. Ed. 1980, 2018. P; 79.

political history. The case got prominence as it indirectly questioned the first martial law imposed by President Iskander Mirza in 1958.

Dosso was the tribal person from district Loralai in Baluchistan then under Provincially Administered Tribal Areas who committed a murder and got arrested by tribal authorities and handed over to Loya jirga which convicted him under Frontier Crimes Regulation (FCR). Relatives of Dosso challenged the decision in Lahore High Court the then west Pakistan High Court which ruled in favor of Dosso. Federal Government went on to the Supreme Court of Pakistan which reversed the High Court's decision by referring to the Hans Kelsen theory of legal positivism famously the doctrine of necessity.²⁴⁴

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

²⁴⁴ See for Instance, *Noorani, Ahmad. The News International*. "[Embarrassing verdicts in Pakistan`s history](#)". 19th December, 2019. (Last visit; Date and Time 08-04-2021 / 03:40 pm)

Relatives of Dosso filed a petition against his conviction by Loya Jirga in West Pakistan High Court that he is the citizen of Pakistan and being a citizen of Pakistan he must be tried according to the Pakistani laws, not the FCR. Articles 5 of the Constitution of Pakistan of 1956 states that all citizens are equal before law and under article 7 enjoy equal protection of the constitution. Dosso's relatives also challenged the relevant provisions of FCR considering them against the article 5 and 7 of the constitution. West Pakistan High Court decided the case in favor of Dosso and declared that FCR is against the 1956 Constitution. The Constitution of Pakistan ensures the equality and protection of citizens and declared the proceedings of Loya Jirga as null and void. The effect of West Pakistan High Court's decision was that after declaring Frontier Crimes Regulations against the constitution and proceedings of Loya Jirga as null and void, the cases which were decided since the promulgation of new constitution of 1956 were in question. It was said that if conviction of Loya Jirga in Dosso case is declared null and void then what about the previous convictions of Loya Jirga after promulgation of Constitution in 1956.

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

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

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

Laws (Continuance in Force) Order 1958 which validated the decision of Loya jirga. Dosso case has a far reaching effect on the political history of Pakistan.²⁴⁵ The recognition of martial law and with the reborn of Kelsen's theory which afterwards was applied in many other cases in Pakistan as well as in the outer world. Judgment of this case made Pakistan an uncivilized state in the eyes of the west. Furthermore doctrine of necessity was used second time in the political history of Pakistan. The Judgment given by Supreme Court of Pakistan in Dosso case greatly impacted the politics in Pakistan and opened the doors for the future martial laws in the country. Legitimization of martial law given power to Chief Marshall Law Administrator General Muhammad Ayub Khan who used it to rule the country for 11 years²⁴⁶. Democratic process in the country was destroyed which had recently been on the road after the promulgation of first constitution in 1956 and made the country to run on the track of dictatorship. Military was encouraged by it for future interventions which occurred three times afterwards. The decision also deprived country of its first constitution just after two years of its promulgation after the struggle of nine long years. Abrogation of the 1956 Constitution also disturbed the ties between East and West Pakistan which were recently settled by establishing parity between both wings and incorporating both Urdu and Bengali as national language. Legitimization of Marshall Law made Bengalis angry and they started their struggle for fundamental rights. The decision of the Supreme Court re-validated

²⁴⁵ See for Instance, *Qazi, Sabina*. "[Necessity as the mother of laws](#)". The Dawn newspaper. 19th December, 2019. www.dawn.com.pk (Last visit; Date and Time 08-04-2021 / 05:05 pm)

²⁴⁶ Khan, Hamid. Constitutional and Political History of Pakistan. Ed. 2009.

the British implied legacy of Frontier Crimes Regulation, which was known as the Black Law continued to be enforced in the tribal region till 2018. The decision of the Supreme Court of Pakistan was a serious blow to the independence of judiciary and judiciary was bound to render its service under new legal order. The decision also deprived the courts to hear appeals against the action of government. The judiciary once again bowed down in front of executive in this case and concept of separation of powers further diminished.

2- ASMA JILLANI VS FEDERATION OF PAKISTAN

There were two appeals, one filed by Miss Asma Jilani in the Lahore High Court for the release of her father Malik Ghulam Jilani, and by Mrs. Zarina Gohar in the Sindh High Court for the redemption of her husband Althaf Gohar, under Article 98 of the Constitution of Pakistan 1962. The restraint of Malik Ghulam Jilani and Althaf Gohar had been made under the Martial Law Regulation No.78 of 1971. So the restraint of these persons was challenged in Lahore and Sindh High Court respectively. The High Court adopted that it had no jurisdiction because of the clause 2 of the Jurisdiction of Courts Order No.3 of 1969 banned the courts from questioning the validity of any act committed under the Martial Law Regulation No.78 of 1978. Asma Jilani petition to Supreme Court which held that this country was not a foreign country which had been affected by any army with General Agha Mohammad Yahiya khan as its Head, nor was it an foreign territory which had been occupied by the said Army. Martial Law could not have founded in the situation. Pakistan had its own legal doctrine-The Qur'an, and the Objectives analysis. Therefore Martial

law was never above to the Constitution. After listening arguments Supreme Court gave its observation that acts done by Military dictator were unlawful but they took support of Kelson`s theory of Doctrine of necessity and said that Chief Marshall Law Administrator and President of Pakistan General Agha Muhammad Yahiya Khan as head of Federation, Government and Armed Forces can promulgate Marshall Law and have power to suspend or amend constitution or any law in the country.²⁴⁷ Unfortunately when Judgment of Supreme Court of Pakistan released General Agha Muhammad Yahiya Khan was not in power and Zulfikar Ali Bhutto was in Power and he was President of Pakistan, Head of Government and civilian Chief Marshall Law Administrator. Supreme Court further held that neither Yahya khan was neither a victor not a Pakistan was an occupied territory and thus declared him a 'usurper' and all his actions were also declared illegal. Asma Jilani's case paved the way for the restoration of democracy in the country. Due to the judicial pronouncement in the case of Asma Jilani, Zulfikar Ali Bhutto was compelled to remove the Martial law and restore the democracy in the country.

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

The promulgation of martial law was shocking for whole of Pakistan as well as rest of the world. Pakistan People`s Party who was democratic elected government of that time has been over thrown by that time Chief of Army Staff General Muhammad Zia-ul-Haq. Pakistan People`s Party decided to challenge it in court. Pakistan People`s Party know that the seat of Chief Justice of Pakistan`s

²⁴⁷ See for instance, Ali Shah, Syed Akhtar. "[Tailor made laws](#)". The Express Tribune. 19th December, 2019.

would now be occupied by a Chief of Army Staff General Muhammad Zia-ul-Haq friendly judge Justice Anwar-ul-Haq. Justice Anwar-ul-Haq was replaced as Chief Justice of Pakistan by Chief Justice Yakoob Ali Khan on Sept 20, 1977. The same day as Nusrat Bhutto made a petition in the Supreme Court of Pakistan to challenge dictatorship was filed. The constitutional petition was filed by Begum Bhutto under Article 184 (3) against the Chief Martial Law Administrator and Chief of Army Staff of Pakistan General Muhammad Zia-ul-Haq, challenging the validity of the Chief of Army Staff to promulgate martial law, as well as the detention of Former Pakistani President and democratically elected that time Prime Minister Zulfiqar Ali Bhutto and 10 other Pakistan People's Party leaders who were arrested on Sept 17, 1977 under Martial Law Regulation No 12. The application was admitted for hearing. A nine member bench was constituted to hear the constitutional petition; the judges included Chief Justice Anwar-ul-Haq, Justice Waheedudin Ahmad, Justice Mohammad Afzal Cheema, Justice Mohammad Akram, Justice Dorab Patel, Justice Qaisar Khan, Justice Mohammad Haleem, Justice G. Safdar Shah and Justice Nasim Hassan Shah. In her petition, Begum Nusrat Bhutto took the plea that the Chief of Army Staff of Pakistan General Muhammad Zia-ul-Haq had no right to overthrow the elected government and that all his actions were illegal. The petitioner contended that the Chief of Army Staff had no legal authority under the 1973 Constitution to impose martial law in the country or to promulgate the Laws (Continuance in Force) Order, 1977. This intervention, Begum Bhutto argued, amounted to an act of treason as stipulated by Article 6 of the 1973 Constitution. As a consequence, the proclamations of martial law on July 5,

1977, and the laws promulgated, were all without lawful authority. Since the martial law government had no authority, the petition said, the detention of Zulfikar Ali Bhutto and 10 other Pakistan People's Party leaders was also illegal. The Federation was represented by A.K. Brohi, who based his arguments over the post March election scenario. He claimed that as a result of Zulfikar Ali Bhutto's massive rigging, his government had lost whatever constitutional validity it earlier had. The ensuing widespread disturbances amounted to a repudiation of Zulfikar Ali Bhutto's authority to rule and the specter of civil war was averted only thanks to the timely action by the Chief of Army Staff General Muhammad Zia-ul-Haq on July 5, 1977. Senior lawyer Sharif-ud-Din Pirzada said that General Zia's action on that day was not a coup, but was valid based on the old Roman doctrine of state necessity, as the only proper means of ousting a usurper who had illegally assumed power as a result of massive rigging.²⁴⁸

After hearing both sides, the court delivered its verdict on Nov 10, 1977, referring to the doctrine of necessity, the court dismissed the petition, saying it was not maintainable.²⁴⁹ The Supreme Court of Pakistan said that the legal consequences of an abrupt political change, by imposition of martial law, have to be judged not by application of an abstract theory of law in vacuum but by consideration of the total milieu preceding the change.²⁵⁰ The court held that the "objective" political situation

²⁴⁸ See for instance, The Dawn newspaper. "Necessity as the mother of laws". www.dawn.com.pk. 19th December, 2019. (Last visit; Date and Time 08-04-2021 / 07:45 pm)

²⁴⁹ See for instance, Constitutional History of Pakistan. www.pja.gov.pk. (Last visit; Date and Time 09-04-2021 / 11:50 pm)

²⁵⁰ Newberg, R Paula. Judging the State: Courts and Constitutional Politics in Pakistan. Cambridge University Press. Ed. 1995. P; 165.

prevails at the time, its historical imperatives, compulsions, motivations of persons bringing the change and the extent of preservation of suppression of old legal order all needed to be considered. In paragraph IX of the verdict, the court said that the true position emerging out of the facts of the case and the law applicable there to is that the 1973 Constitution still remains the supreme law of the land, subject to the condition that certain parts thereof have been held in abeyance on account of State machinery.²⁵¹ The mere fact that the judges of the superior courts have taken a new oath after the proclamation of martial law does not in any manner derogate from the position as the courts had been originally established under the 1973 Constitution and have continued in their functions in spite of the proclamation of martial law.²⁵² The Chief Marshal Law Administrator General Muhammad Zia-ul-Haq assuming power by means of an extra-constitutional step was held to be a matter of state necessity and was deemed as being a step taken for the welfare of the people.²⁵³ He was now entitled to perform all acts and promulgate all legislative measures. The verdict recalled events that took place during and after the March 7, 1977 polls, and the allegations of rigging.²⁵⁴ The verdict added that given the broken state of law and order, and the shattered economy, the Chief Marshal Law Administrator took over administration for a short time to arrange for fresh

²⁵¹ Wolf-Phillips, Leslie. "Constitutional Legitimacy: A Study of the Doctrine of Necessity". Ed. 1979. Vol. 1, P; 98

²⁵² See for Instance, *Qazi, Sabina*. "[Necessity as the mother of laws](#)". The Dawn newspaper. 19th December, 2019. www.dawn.com.pk (Last visit; Date and Time 11-04-2021 / 12:05 pm)

²⁵³ Omer, *Imtiaz*. [Emergency powers and the courts in India and Pakistan](#). *Martinis Nijhoff Publishers*. Ed. 2002. P; 55.

²⁵⁴ Munir, *Muhammad*. [From Jinnah to Zia](#). *Vanguard Books*. Ed. 1980, 2018. P; 82.

elections within the shortest possible time.²⁵⁵ The new arrangements dictated by consideration of state necessity and welfare of the people of Pakistan and restoration of democratic institutions in Pakistan, and were therefore justified on the basis of doctrine of necessity.²⁵⁶

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

On 12th of October, 1999 Chairman Joint Chiefs of Staff Committee General Pervez Musharaf with other Army Corp Commanders overthrew the elected government of Prime Minister Mian Muhammad Nawaz Shareef and detained Mian Muhammad Nawaz Shareef with other party members in various jails of a country.²⁵⁷ Zafar Ali Shah a senior lawyer and a senior member of Pakistan Muslim League files a constitutional petition in the Supreme Court of Pakistan against the Coup of Pervez Musharaf with his Army fellows.²⁵⁸ The Supreme Court of Pakistan led by Chief Justice Arshad Hasan Khan and also including later Chief Justice Iftikhar Muhammad Chaudhry not only “rejected” the petition but also empowered the fourth dictator of Pakistan General Pervez Musharaf to himself amend the constitution, a relief which was not even sought.²⁵⁹ This black judgment pushed Pakistan into a blind alley. The backbone of

²⁵⁵ See for instance, The [Encyclopedia Britannica "Mohammad Zia-ul-Haq President of Pakistan"](#). (Last visit; Date and Time 12-04-2021 / 12: 35 pm)

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

²⁵⁷ Baxter, Craig. *Pakistan on the Brink: Politics, Economics, and Society*. Lexington Books, Oxford. Ed. 2003. P; 56-59.

²⁵⁸ See for instance, The Newspaper of BBC "How the 1999 Pakistan coup unfolded". Dated; Oct. 13th 1999. News.bbc.com.uk (Last visit; Date and Time 12-04-2021 / 12:45 pm)

²⁵⁹ Hirschl, Ran. *Constitutional Theocracy*. Harvard University Press. Ed. 2010. P; 15-25.

country's economy was broken and incompetent dictators and his associates played havoc with country's energy and all other sectors. ²⁶⁰Pakistan became one of the leading countries worst hit by terrorism. No plans were made to meet electricity shortage and future gas requirements. The Supreme Court of Pakistan validated the martial law in a view of "doctrine of necessity" but provided its legality only limited to three years; But Musharaf remained in the power for almost 9 years with brutal decisions made by him.²⁶¹ Pakistan suffered a lot because of every dictator and especially of General Pervez Musharaf. His decisions there are totally kayos in the country. ²⁶²It was held by the Supreme Court that on 12th of October 1999 a situation arose for which the Constitution provided no solution and intervention by the Armed Forces through an extra-Constitutional measure became inevitable and the said act was validated on the basis of the doctrine of state necessity. It was further held that the 1973 Constitution would remain supreme law of the land subject to the condition that certain parts thereof would be held in abeyance on account of state of Doctrine of Necessity. ²⁶³

Supreme Court of Pakistan given their judgment against Zafar Ali Shah and once again took shoulder of Doctrine of necessity. Because of this General Pervez Musharaf became President through a referendum held in April

²⁶⁰ Jan, Abid Ullah. "The Height of Collective Helplessness". The Musharaf Factor: Leading Pakistan to Inevitable Demise. Trade Paperback Books. Ed. 2005. P; 21-41.

²⁶¹ Aziz, Mazhar. "The politics of military coup d'état theoretical implications". Military Control in Pakistan: The Parallel State. Rutledge, London. Ed. 2008. P; 79-96.

²⁶² Shah, Aqil. "From Zia to Musharaf". The Army and Democracy. Harvard University Press, Stanford. Ed. 2014. P; 381.

²⁶³ Aziz, Sartaj. Between Dreams and Realities: Some Milestones in Pakistan's History. Oxford University Press, Karachi. Ed. 2009. P; 408.

2002, not an election where there would be other candidates. At the general elections held in October 2002, the Muttahida Majlis-e-Amal (MMA), an alliance of religious parties and the pro-Musharaf Pakistan Muslim League (Q) won comfortably. In 2003, the Seventeenth Amendment to the Constitution validated the various acts done by Musharaf, including the revival of the President's power to dissolve Parliament. The President to Hold another Office Act, 2004 (PHAA) permitted Musharaf to be both President and Chief of Army Staff.

PAKISTAN LAWYERS FORUM VS FEDERATION OF PAKISTAN

Pakistan Lawyers Forum challenged both the Seventeenth Amendment and the PHAA in the Supreme Court of Pakistan. The petitioners relied on Zafar Ali Shah's case where the Court had held that the Constitution had certain 'salient features'. The Supreme Court validated both the Seventeenth Amendment and the PHAA. Having referred to the mandate that Musharaf received at the referendum, the Court stated that it was no longer correct to think of the Constitution of Pakistan as providing for a purely parliamentary system according to the Westminster model. 'Instead, what can be seen is that over time, Pakistan has evolved its own political system so as to suit the political conditions found here. No objection can now be taken to the said system on the basis that it provides for a balance of powers (as opposed to concentrating all powers in the hands of the Prime Minister). As such, the vehement protests of the petitioners that the impugned provisions have destroyed the basic structure of the Constitution appear to be considerably overwrought and no weight can be placed

on those arguments.’ The Court observed that even though there were certain salient features of the Constitution, it has been the consistent position of the court ever since it first enunciated the point in Zia’s case (PLD 1973 SC 49) that the debate with respect to the substantive vires of an amendment to the Constitution is a political question to be determined by the appropriate political forum and not by the judiciary²⁶⁴. The position adopted by the Indian Supreme Court in *Kesvavananda Bharati* case (AIR 1973 SC 1461) is not necessarily a doctrine which can be applied un thinking to Pakistan. Pakistan has its own unique political history and its own unique judicial history. There is a significant difference between taking the position that Parliament may not amend salient features of the Constitution and between the positions that if Parliament does amend these salient features, it will then be the duty of the superior judiciary to strike down such amendments. Clearly, the Court was now extending the doctrine of state necessity. The basic features doctrine enunciated in *Zafar Ali Shah*’s case that stood in its way was not followed. ‘In legitimizing the power of the military and executive over the Parliament, this case further strengthened the popular perception of the subservience of the Supreme Court to the military regime.’ Pakistan being a jurisdiction with post-enactment judicial review, it is difficult to see how the power of review would not extend to the review, in the absence of a specific constitutional provision to that effect. This was all done because of doctrine of necessity which was firstly given in 1955 by that time Supreme Court. Every Marshall Law Administrator pressurized the

²⁶⁴ Aziz, Sartaj. *Between Dreams and Realities: Some Milestones in Pakistan's History*. Oxford University Press, Karachi. Ed. 2009. P; 408.

Superior Courts to legitimate their illegal government on the basis of Doctrine of Necessity.

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

On 09 March 2007, President and Chief of Army Staff General Pervez Musharaf suspended the Chief Justice of Pakistan, Justice Iftikhar Mohammad Chaudhry, and giving rise to lawyers' protests all over the country. On 20 July 2007, a 13member Bench of the Supreme Court of Pakistan unanimously reinstated the Chief Justice. On 03 November 2007, President and Chief of Army Staff General Pervez Musharaf declared a state of emergency and again suspended the Constitution and Parliament. Supreme Court judges were locked up. A Provisional Constitutional Order was issued prescribing a special oath for judges of the Superior Courts as a requirement for continuing to hold office. 13 out of the 18 judges of the Supreme Court and 61 out of 93 Judges of the various High Courts did not take the oath. General Pervez Musharaf thought that he will suspend Chief Justice of Pakistan and validate his actions by Supreme Court of Pakistan on the grounds of Doctrine of Necessity but that time Judiciary was not in position to accommodate General Pervez Musharaf.²⁶⁵

After the general elections in February 2008 in which General Pervez Musharaf supported Pakistan Muslim League (Q) was badly defeated, the Constitution was restored and an elected Government revived. General Pervez Musharaf resigned in August 2008. In September 2008, several of the deposed Judges rejoined the Court,

²⁶⁵ Aziz, Sartaj. *Between Dreams and Realities: Some Milestones in Pakistan's History*. Oxford University Press, Karachi. Ed. 2009. P; 408.

and finally, on 16 March 2009, Justice Chaudhry was reinstated as Chief Justice.²⁶⁶

Prime Minister of Pakistan Syed Yusuf Raza Gillani case was on 19th June, 2012, the Supreme Court of Pakistan refused to resurrect ‘the malignant doctrine of necessity which has already been buried, because of the valiant struggle of the people of Pakistan.’²⁶⁷

When General (R) Pervez Musharaf was tried for high treason; he issue of the legality of his actions came up before the Special High Court which refused to invoke the doctrine of necessity to validate his actions. Referring to former Chief Justice of Pakistan Justice Muhammad Munir original invocation of the doctrine, the Special High Court stated: ‘Had the honorable Superior Judiciary, at that time, not invoked the Doctrine of Necessity, and had proceeded against usurpers, abrogaters, subvertors, the Nation would not have seen this day at least, where an officer in uniform repeats this offence’.²⁶⁸

Addressing a judge’s conference on 02 February 2019, the then Chief Justice of Pakistan, Mian Saqib Nisar said that the infamous doctrine of necessity that had given the judicial nod to successive martial laws in the country now lay buried. He furthermore added that this harmful doctrine will not use ever in the Pakistan.²⁶⁹ Pakistan bearded a lot of loss due to this doctrine. Because of this doctrine Pakistan splits into two countries Pakistan and Bangladesh.

²⁶⁶ Aziz, Sartaj. *Between Dreams and Realities: Some Milestones in Pakistan's History*. Oxford University Press, Karachi. Ed. 2009. P; 409, 410.

²⁶⁷ *Ibid.*

²⁶⁸ See for instance, The Jang newspaper, 5th February, 2019. www.jang.com.pk (Last visit; Date and Time 12-04-2021 / 12:50 pm)

²⁶⁹ See for instance, The Dawn newspaper, 4th February, 2019. www.dawn.com.pk. (Last visit; Date and Time 12-04-2021 / 12:55 pm)

On 22 April, 1960, speaking to the Lahore High Court Bar Association on his retirement, Former Chief Justice of Pakistan Muhammad Munir referred to the controversial cases he dealt with and stated that holding against the Governor General would have entailed enforceability issues and caused bloodshed. ‘The mental anguish caused to the judges by these cases is beyond description and I repeat that no judiciary anywhere in the world had to pass through what may be described as a judicial torture’, he added. In 1962, Munir accepted a Cabinet position in Ayub Khan’s regime under a Constitution which did not have fundamental rights. In his book ‘From Jinnah to Zia’ published in 1979, Justice (R) Muhammad Munir does not utter a word about his infamous judgments or about the doctrine, probably out of remorse.²⁷⁰

He warned against the dangers of the doctrine’s application in constitutional law. ‘Doctrinally, courts should be reluctant to permit deviations from constitutional norms. Approval must be reluctant because courts, in reviewing a state necessity claim, must consider the legitimacy of readjusting fundamental political, social, and legal values. This consideration must be made in cases where the challenged state action affects individual rights as well as in cases involving changes in the governmental structure.’²⁷¹

CONCLUSION

The use of the necessity doctrine to legitimize a coup d’état or other revolutionary alteration of the government is inappropriate. This application of the doctrine is

²⁷⁰ Aziz, Mazhar. "The politics of military coup d'état theoretical implications". *Military Control in Pakistan: The Parallel State*. Rutledge, London. Ed. 2008. P; 133, 189.

²⁷¹ See for instance, The Jang newspaper, 5th February, 2019. www.jang.com.pk (Last visit; Date and Time 12-04-2021 / 01:33 pm)

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