



**PREMIER JOURNAL**  
**of**  
**SOCIAL SCIENCES**

----- **Premier Research Centre** -----  
A Project of Premier Law College Gujranwala



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## EDITORIAL NOTE

Premier Journal of Social Sciences (PJSS) is a research Journal published by Premier Research Center, Premier Law College Gujranwala in English, Urdu and Arabic Languages. This is a 2<sup>nd</sup> volume, issue 8, which is going to be published in Dec, 2023. It is a quarterly Journal dedicated to provide original research articles in Social 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 Social Issues.

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 Social and Legal practitioners, policy makers, Judges, Teachers and Students of Social Sciences. 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.

**Muhammad Zahid** says in his article Evidence is like a backbone for any trial procedure. Islamic law of evidence has a complete and fruit full mechanism for admission of Oral Testimony. The detailed conditions imposed by Islamic law regarding authentication of women's testimony, hearsay rule and purgation process are also not legislated in QSO according to the spirit of Islamic law. These areas need to be explored, highlighted and discussed due to increased importance and are overlooked by Qanun-e-Shahadat Order, which is a matter of serious concern. Being a Muslim country law of evidence of Pakistan must abide by the rules of Quran and Sunnah.

**Dr. Muhammad Amin** says in his article that the United Nations Convention on the rights of child and the European convention on human rights have made sure the principle that no country should discriminate against the children on the ground of parent's status. In secrets and in private capacity if someone get married after making out of marriages relations, Islamic law doesn't intervene with this situation unless it unfolds. The matter unfolds means it goes to the court and follow the evidential procedures.

**Tamoor Mughal's** article views and assesses the trademark rights protection in Pakistan. Trademark is the identification mark of any company or organization. A customer relates any trademark with the quality of products and reputation of the company that is using it. It is a distinctive name, word, phrase, symbol, logo, design, image, or a combination of these elements that identifies a product, service or firm that has been legally registered as the property of the firm. If any organization is using the registered trademark of another company without permission, that means it is not only committing a crime but also causing damage to the business of the company and damaging the brand name of that company. The organization might be using others trademark to use its market reputation and market stake to enhance its own business without extra efforts. These kind of activities mainly fall under two heads Infringement and Passing Off.

**Ghulam Mohy ud Din** says in his article that 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.

**Saleem Shaheen** says in his article that International Labor Organization adopted a Convention No. 189 on 16<sup>th</sup> June, 2011

concerning domestic workers. Domestic workers are actually hidden workers. ILO unhidden them first time in history in 2011 by exploring their rights and setting standards and principles. All ratifying states made and amended their existing laws in line with this convention. This article actually is a study of domestic labor work and its problems in Pakistan in the light of ILO Convention No 189 emphasizing on a dire need of ratifying this convention and bringing domestic workers legislations in line with this convention.

Dr. Muhammad Amin  
The Editor in Chief

# AN ANALYTICAL STUDY OF COMPETENCY OF WITNESS AND ITS ADMISSIBILITY IN EVIDENCE UNDER THE QANOON-E-SHAHADAT ORDER 1984

MUHAMMAD ZAHID\*  
DR. SHAHID RIZWAN BAIG<sup>1\*\*</sup>

**ABSTRACT;** Evidence is like a backbone for any trial procedure. Islamic law of evidence has a complete and fruit full mechanism for admission of Oral Testimony. It ensures authentic and reliable oral testimony in all respects. Qanoon-e-Shahadat Order on the other hand follows evidence Act 1872 except few articles that were changed during the process of Islamization. Purpose of this research is to highlight the lacunas in Qanun-e-Shahadat Order regarding authentication of Oral Testimony in Shariah. Islamic law of evidence stipulates strict conditions regarding number, character, screening, and rejection of witnesses, which are not taken seriously by Qanun-e-Shahadat Order and need to be analyzed and compared in detail to have a better picture of lacunas present in Qanun-e-Shadat Order. The detailed conditions imposed by Islamic law regarding authentication of women's testimony, hearsay rule and purgation process are also not legislated in QSO according to the spirit of Islamic law. These areas need to be explored, highlighted and discussed due to increased importance and are overlooked by Qanun-e-Shahadat Order, which is a matter of serious concern. Being a Muslim country law of evidence of Pakistan must abide by the rules of Quran and Sunnah.

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<sup>1</sup> Assistant Professor Of Law Govt College University, Faisalabad



**Keywords:** Qanun-e-Shahadat Order (QSO), Evidence, Authentication, Oral Testimony, Purgation.

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**INTRODUCTION;** Islam introduced a very compact and universally applicable law of evidence. The in-depth wisdom under these rules is still being discovered by the Jurists and legal experts. Their effectiveness in Islamic legal history can be witnessed by the courts prevalent at that time, like Ottoman and Abbasid courts etc. The speedy trial procedure prevalent in classical Muslim Empires is the clear evidence. There is no legal aspect that is not covered by the Islamic law of evidence. It is a well-versed system. Evidence Law in English legal system is based on man-made rationale. It is different from Islamic law in many ways, for instance, it does not possess a system of purgation of witnesses. Another major difference is that Islamic law of evidence classifies different nature of cases and crimes and fix different number of witnesses for each. In English law there are no such compulsions regarding number of witnesses. Another difference is limitation of blood and close relations for rectification in each other's favor, as who can testify for whom. Like, in Islamic law, a wife cannot testify for her husband. A brother and father cannot testify for brother or son. These are just a few examples. English law does not put any such conditions. There are many more differences between both. In fact, their base is different. One is God made law and other is man-made law. Unfortunately, Pakistan has adopted Evidence Act 1872, which was English law (man-made law). This law prevailed in Pakistan till 1984.

After that Qanun-e-Shahadat 1984 (Q.S.O) Order was enforced, repealing previous Evidence Act 1872. But

Q.S.O is a mere repetition of Evidence Act 1872 except article 3, 4 to 6 (with reference to Hudud), adding article 44 and addition of a proviso to art 42.

This research is going to make a detailed shariah analysis of provisions of Qanun-e- Shahadat Order that are related to authentication techniques of oral evidence. There are many un-Islamic provisions in Qanun-e-Shahadat Order. This article shall focus on validity of provisions that are particularly related to Oral Testimony. Law of evidence is the backbone of all the procedural laws. So, this area is quite important and must not be neglected. A lot of research has been done in the area of Islamic law of Evidence. But very less work is done to highlight the lacunas in QSO from Sharaiah perspective. Islamic ideology council proposed a draft of QSO which was presented before promulgation of QSO 1984.

## **GENERAL PRINCIPLES OF EVIDENCE IN ISLAMIC LAW**

In judicial procedures, the judge plays a crucial role in establishing both the Lord's (public rights) and the individual's (private law) rights to dispute resolution through the collection of reliable evidence. There are three methods the judge can learn information;

1. By confession
2. By oath
3. By evidence

The matter can be resolved speedily if the accused confess the facts. If he does not accuse does not confess, then the plaintiff is supposed to produce evidence. In case the plaintiff fails to produce evidence, the defendant shall be required to take an oath in favour of denial.<sup>1</sup>

Oral testimony (*Shahādah*) is a major type of evidence in Shar'īah. Other evidences include written documents,

circumstantial evidence and scientific evidence. The word used for Evidence in Arabic is “*bayīnah*”.

The literal meaning of this term is “visible or glowing”. It is derived from the word “*tibyān*” which means an act of explaining and showing how something works or is done or emphasizing; publishing; making evident. It means visible or strong evidence.<sup>2</sup> Technically, it denotes the strong argument, or evidence. It means a very strong proof. The technical definition of this word is *bayīnah* is very well defined by *Ibn Qayyim*.<sup>3</sup>

It is worth mentioning here that similar kinds of proofs are mentioned under the English legal system, other than Oath and ‘*Ilm al Qāḍī* (knowledge of a judge), as modes of authentication for physical There is not much difference in the law of evidence in English law and Sharī‘ah law. Both the legal systems require that the evidence must be reliable, authentic, and must not be hearsay. But the techniques of authentication of evidence, especially oral testimony are not similar.<sup>4</sup>

## SHAHĀDĀH – ORAL TESTIMONY

This mean of proof is dealt in Islamic law as the oral testimony (*Shahādah*) which is equally important in the western legal systems. It plays an important role in proving facts before the court. When someone is accused of a crime and he denies it, the burden of proof lies on the plaintiff. Thus, the judge asks the plaintiff to bring his witnesses or any other evidence to support his claim.<sup>5</sup>

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<sup>2</sup> *Book 18, Number 4244, The Book Pertaining to Judicial Decisions, Sahih Muslim.*

<sup>3</sup> *Ibn Qayyim al-Jawziyya (1292–1350 CE / 691 AH–751 AH)*

<sup>4</sup> *Al-Yamīn (Oath), al-Iqrār*

<sup>5</sup> *Kāsāni, vol.7, 287*

General rules of testimony in Islamic law are discussed in the books of *fiqh*, under “*kitāb-al-shahādāt*”. These fiqh books have categorized this topic under the following headings; rules of admissibility of testimony, conditions for the admissibility of testimony; the reasons of rejection of testimony; disagreement of witnesses in their testimony, etc.

Testimony in court is dealt as a religious duty.<sup>6</sup> It is an important obligation upon all Muslims. Messenger of Allah (PBUH) is reported to have said:

“*Should I not tell you of the best witnesses? They are the ones who produce their evidence before they are asked for it*”<sup>7</sup>

Quran states that witness cannot refuse to give testimony once they are demanded. In Islamic law, it is a sin to conceal facts in front of the court. The reason behind it is that it affects the rights of mankind. A verse of *Qura'n* regarding this matter is;

وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ<sup>8</sup>

“And do not conceal testimony, for whoever conceals it - his heart is indeed sinful”

This verse denotes that *shahādah* is a religious duty and it must be treated as *Amānah*. Returning of *Amānah* is obligatory on a Muslim.

## CATEGORIES OF SHAHĀDAH

<sup>6</sup> Burhān al-din Abu al-Ḥassan ‘Ali ibn Abī Bakr Farghāni Marghīnānī,

*AlHidāyah*

, vol. 3) Beirut: Dar ahya turas al-arabi, n.d), 116.

<sup>7</sup> Reported by Muslim in his Saheeh, Book of Judgments, hadeeth no. 4494; and at Tirmidhee in his *Al-jaami*’, Book of Testimonies, hadeeth no. 2295.)

<sup>8</sup> *Al- Qur’an* [2:283]

There are different classifications of testimonies. Islamic Law deals with different crimes requiring different number of witnesses for each. For instance, some Hudud crimes require four witnesses and some require two. Similar is the case with other crimes.

*Marghīnānī* states in his book that there are two broad categories of testimony in Islamic law;<sup>9</sup>

1. Testimony in the matters related to right of Allah Almighty

2. Testimony in the matters related to right of man  
In the two prior instances, there were varying numbers of witnesses. In actuality, the Qur'an regulates it on a case-by-case basis. The right of Allah Almighty is at stake when people testify for 'udd' offences. The right of man is in jeopardy in issues involving private rights and money.<sup>10</sup>

The guidelines for testimony are stricter in udd instances. Women are explicitly prohibited from testifying in these cases as witnesses.

However, witnesses have the option of testifying or not in the instances of Hudd and Qia. In these situations, it is better to conceal the testimony.<sup>11</sup> When someone testified, the Prophet (peace be upon him) remarked, "Truly, it would have been best for you if you had hidden it."<sup>12</sup> Yet this When testimony is not urged to be withheld in cases of theft, this rule does not apply. Rather it is an obligation to give testimony. The reason of excluding theft from this

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<sup>9</sup> Al-Hidāyah, vol. 3, 116.

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Burhān al-din Abu al-Ḥassan ‘Alī ibn Abī Bakr Farghānī Marghīnānī,

rule principle is that otherwise the right of proprietor will be compromised which is against the rules of justice.<sup>13</sup>

Discussing the rationale of preference to conceal testimony in case of ḥudūd and qiṣāṣ, *Marghīnāni* says that it protects from two harms; first is, defamation of character of offender and secondly the *ḥadd* punishment itself.<sup>14</sup>

Witness in ḥudūd and qiṣāṣ must be male and thus the evidence of a woman is not admissible in these instances. This opinion is unanimously agreed upon by pre-modern jurists, including Imām *Mālik*, Abū Ḥanīfa, Shāfi‘ī, and Aḥmad bin Ḥambal.<sup>15</sup>

The numerical strength of witness varies according to the nature of the matter. Matters related to Ḥudūd involve right of Allah Almighty while financial and private matters include right of man.<sup>16</sup> In Ḥudūd offences where Right of Allah Almighty is involved, are the once which affect the society. Punishments of these offences are harsher and deterrent as compared to personal rights.

Essentially, there are four categories of testimony;

1. Testimony requiring four witnesses
2. Testimony requiring two witnesses
3. Testimony of one man and two women
4. Testimony of woman alone

Four males must testify under Islamic law in cases of fornication and slander. The penalty of Qi and all other "udd" offences call for two male witnesses. In instances of business transactions, two men must testify. In the absence of two male witnesses, the evidence of two women and one man is acceptable. When the presence of a man is extremely rare, a lady may testify alone.

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<sup>13</sup> Ibid

<sup>14</sup> *Al-Hidāyah*, vol. 3, 116.

<sup>15</sup> Abu Ḥussain Yahyah bin ‘Abī al-Khaīr al-‘Imranī al-*Shāfi‘ī*, “*Al-Bīyān fī Mazhab Imam Shāfi‘ī*”, vol. 13

<sup>16</sup> *Al-Qur’an* [4:15], *Al-Qur’an* [ 2:282]

It is pertinent to mention here that the rules regarding number of witnesses in English law are not fixed like Islamic law. However, QSO stipulates in art 17 about competence and number of witnesses. It says that in financial matters two men will testify. In case of a woman two women will testify instead of one man. But all conditions regarding number of witnesses are not applicable for Hudood cases.

It is further stated, that in all matters (other than Hudood and financial matters), testimony of one man or one woman shall be admissible. Here no specification is made for family matters. Islamic law deal with every matter separately. As far as matter of single women's testimony is concerned, there are no separate rules regarding in QSO. Although narrations of Prophet (PBUH) guide in detail about it. Most important matter of Hudood laws is neglected by QSO as if it does not exist. It vaguely states that all other matters other than financial matters would be testified by one male or one female testimony. Without differentiating between family matters or custody etc. in all other matters there is no way one women's testimony is equal to the testimony of one man.

### **CONDITIONS OF TESTIMONY IN ISLAMIC LAW**

As far as the conditions for carrying or bearing of testimony (Shurūt at-taḥammul) are concerned, they are broadly categorized into two categories:

1. General or basic Qualifications
2. Special Qualifications

The Muslims jurists are of the view that admissible and competent testimony arises out of three main qualifications. These are sound mind, majority and sightedness (i.e., witness must have observed the event directly). As Holy Prophet (PBUH) said, "If you know like

the sun, then bear witness otherwise do not”<sup>17</sup>. Imām Sarakhsī states in al-Mabsūt, that hearsay by mean of widely circulated information is not allowed in the cases of property. He further added about the cases of marriage that as a general principal hearsay should not be allowed in cases of marriage. The reason behind it is the sensitivity of the cases. But it is permissible by way of Istihsan in matters related to kinship, appointment of judges, marriage and death.<sup>18</sup> There are special qualifications for testimony in Islamic law are related to the number of witnesses, their gender as discuss.

### **CONDITION PERFORMANCE**

The conditions of performance of testimony include, Al-‘Aqal (the intelligence), Al- Bulugh (puberty), al\_Hurriyah (Freedom), al-Nutq( the ability to speak), al-Basirah (ability to see), Good memory, legal responsibility (Takleef), Justice (Adalah), and Islam. Last two are elaborated further in order to analyse them from the perspective of QSO.

### **JUSTICE (‘ADĀLAH)**

Muslim jurists have unanimously agreed that a witness whose testimony entails a judgement must have the quality of being *’adil* (that is, observing *’adālah*). This condition is essential for distinguishing truth from falsehood. Allah Almighty ordains the Muslims, “take for witness two persons from among you, *endured with justice*”<sup>19</sup>. The insistence here is on the witness’s devoutness and

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<sup>17</sup> Muḥammad bin Aḥmad bin abī Sahl shams al-’Āa’ema al- Sarakhsī, *Al- Mabsūt*,

Vol. 16. (Beirut: Dār al-Ma’rafa, 1993), 112.

<sup>18</sup> Sarakhsi, *Al-Mabsūt*, vol. 6, 266-267. Also in, Kāsānī, “*Badā’i’ Al-Ṣanā’i*”, vol. 6, 266.

<sup>19</sup> Al- Qur’ān [65:2].



uprightness. It follows that the testimony given by a fāsiq is not acceptable in court of law.<sup>20</sup>

Testimony of ‘Ādil is a compulsory. Mālīk defined ‘*Adālah* as ‘the one who avoids major sins (al-kābai’r), returns deposits and has good dealing with people. His good deeds are more prominent than the bad ones. Testimony of such a person is admissible.<sup>21</sup> Hunbalis consider Adil the one: who fulfils his duties (farāīḍ), avoids major sins (al-kabāī’r), and he does not insist upon minor sins. He has the quality of generosity and graciousness. *Shafī’ī* considers graciousness as a necessary condition.<sup>22</sup> Imām Kāsānī states that a just person is the one who is not known as a wicked person. While the other scholars say that a just person is the one whose good deeds are not more than his bad deeds.

In Islamic law the evidence is authenticated by way of receiving it from a pure channel i.e Shahid Adil Witnesses with sound character (Ādil). The probity and just characters (‘adl) of witness makes the evidence reliable. These just witnesses act like a right hand of a judge to solve the case.

### **TESTIMONY OF A NON-MUSLIM**

The majority of scholars, including Shāfī, Mālīk, and Abū Thaūr,<sup>23</sup> opine that a non-Muslim cannot testify. This ruling is the same irrespective of whether he is testifying for a Muslim or a non-Muslim. They rely largely on the commandment of Allah Almighty. Allah Almighty says, “And take for witness two persons *from among you*,

<sup>20</sup> Yahyah bin ‘Imranī al- *Shafī’ī*, “*Al- Bīyān fi- Mazhab Imam Shafī’ī*”, vol. 13, 278

<sup>21</sup> Al- Kasani, 7/268.

<sup>22</sup> AL- Sharbīnī al- Shāfī’ī, *Mughnī al- Muhtāj*, vol.6/391.

<sup>23</sup> Ṭārāblisi al- Mālīkī, *Mūāhib al- Jalīl*, 150/6, Sharbīnī, *Mughnī al- Muhtāj* 427/4.

*endued with justice*, and establish the evidence as before Allah.”<sup>24</sup>

However, an exception that is recognised by some of the jurists relates to giving testimony regarding wills during a journey. The exception is such that, the testimony of a non-Muslim will be admissible in places where there were no Muslims who could have testified. Proponents of this view have relied on the verse of Qur’ān where Allah Almighty says: “O you who believe! Let there be witnesses between you when death approaches one of you, at the time of bequest, two witnesses, just men from among you, *or two others from outside, in case you are travelling in the land and the disaster of death should strike you.*”<sup>25</sup>

The "anaf" jurists also hold the view that a dhimm's evidence is completely admissible in cases involving the union of a Muslim man and a dhimm woman. They believe that non-Muslim testimony is valid if it is given by another non-Muslim, regardless of whether they both practise the same religion or two distinct ones.<sup>26</sup> His testimony is only admissible if both of them are citizens of the same nation, according to another rule that the "anaf" jurists have imposed on him. The statement made by one of them in support of the other is not admissible if it is not.<sup>27</sup>

QSO stipulates in Article 17 that courts will accept testimony of witness that fulfill conditions stipulated in Quran and Sunnah. But the same article stipulates in proviso that is such person are not available they would take testimony from anyone who is available.

There is no doubt that the conditions stipulated in Islamic law are not easily available in witnesses nowadays. But it

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<sup>24</sup> Al- Qur’ān [65:2].

<sup>25</sup> Al- Qur’ān [5:106,].

<sup>26</sup> Ibn Nujaīm, *Al-Baḥr ar-Rā’iq*, Vol. 3, p. 97.

<sup>27</sup> Al-Maūsūah al-Qūīīah al-Fiqhīah, vol.26/223.

should not be overlooked completely. At least, the qualities that are available in today's time period must be ensured. There must be some principles for taking the testimony.

### **CONDITIONS FOR REJECTION OF EVIDENCE**

There are a number of sins which if committed by a person, will result in the loss of Justice in a witness. Imām Kāsānī states that if a person is addicted to alcohol and singing loses the title of a just witness. Similarly, if people gather around singer for intoxication and he provokes people of decadence then he is not just in character. Or a person who keeps pigeons or plays chess is not just in character. In case of chess, it is allowed in some school of thoughts but *Hanafī* jurist disallow chess because it is a game.<sup>28</sup> May be, it shows irresponsible behavior of a person. But according to these conditions many of people shall not be apply. But there must be some restrictions at least. Because rectification is a religious duty according to Islamic law.

There are certain other reasons due to which the testimony of an otherwise eligible witness might be rejected. For example, the testimony of someone who has grudges against another person, whether he is a Muslim or not, his testimony has to be rejected. The Holy Prophet (PBUH) has said, "The testimony a deceitful man or woman, of an adulterer and adulteress, and of one who harbors rancor against his brother is not allowable."<sup>29</sup>

The same rule goes for testimony of a person who would testify for himself. His testimony will not be accepted if he is also the litigant, the reason being, he may prioritize his interest over cause of justice. It is stated by the early learned jurists that testimony of a partner is not admissible

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<sup>28</sup> Al- Kāsānī, 6: 268-270.

<sup>29</sup> *Abū Dā'ūd Sulaīmān al-'Ash'ath, Sunan Abī Dā'ūd, vol.3 (Beīrūt: Al-Maktabah al-'Aṣrīyah, n.d), 306.*

where he has a share. Testimony of a *Mudhārib* (dormant partner) is also not admissible where he has a share. Testimony of a lawyer in a case which he is going to plead is not admissible too.<sup>30</sup> In all these cases testimony of a person means he is testifying for himself.

Testimony of a master for slave is not admissible because money of slave belongs to the master and it is considered as testimony for one's own self.<sup>31</sup> It is also agreed by few jurists that spouses are not allowed to testify for each other. This is the opinion of Sha'bī, Nakh'ī, *Mālik*, and Abū Ḥanīfah. On the contrary, *Shafi'ī*, Ḥassan, permitted testimony of a spouses for each other because they consider this contract, a contract of benefit (*manfa'ah*).<sup>32</sup> Same is the case of parents and their off springs. Neither of them can testify for each other.<sup>33</sup>

There is no such restriction in English law regarding the conditions of witnesses testify for their close relations. Spouses can testify for each other; sons can testify for their parents. The child's testimony is admissible. Qanūn-e-Shahādat does not specify any such condition. In fact, Article 3 stipulates such conditions but unfortunately makes it ineffective by itself.

If a witness is not present, the Tribunal may take a statement from another witness who might be available, provided that the Court decides the witness's competence in accordance with the requirements outlined by Islamic law as found in the Holy Quran and Sunnah for a witness. So, the last line of the above proviso of article 3 "who may be available" makes the provision ineffective. There is no

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<sup>30</sup> Abū Muḥammad Maūfiq al-Dīn 'Abdullah 'Aḥmad bin Qudāmah al-Ḥablī, *Al-Mughnī li- 'Ibn-Qudāmah*, vol. 10

<sup>31</sup> *Al-Mughnī li- 'Ibn-Qudāmah* 10/174

<sup>32</sup> Ibid. Abū al-walīd Muḥammad bin Aḥmad Ibn Rushd, "*Bidāyat al- Mujtahid wa nihāyat al-Muqtaṣid*", n vol. 4. (Cairo: Dār al-Ḥadith, 2004), 247.

<sup>33</sup> Sharbīnī, "*Mughnī al-Muhtāj*", 6/390.

system of any screening of witnesses. That is why the whole fabric of judicial system is torn. The witnesses take oath in court and lie in front of judge in the court room. Buying of witness on rental basis, for giving false evidence is a common practice in present courts of Pakistan.

## WOMEN'S TESTIMONY

The testimony of women in cases of 'udd and Qia' is not admissible, according to all four schools of thought, unlike in instances of 'ahl-Zhir'.<sup>34</sup> However, in financial matters, both a man and two women's testimony is admissible, so this is not the situation.<sup>35</sup> Women's testimony is acceptable in all circumstances, including financial ones, according to Imam Abanfa, with the exception of udd and Qia.<sup>36</sup> These issues include "Iddah," "ul," "Nika," divorce, and the release of captives. Two female testimonies will be accepted if a woman testifies in lieu of a man.<sup>37</sup>

The situation is different in cases involving property. The woman's testimony is allowed in property cases.<sup>38</sup> In contrast, there is disagreement among lawyers regarding issues involving parenting, marriage, divorce, and other related topics. The Anafi legal scholars believe that women can testify, whereas the Shfai legal scholars hold the opposite view.<sup>39</sup> Shafi'i disagree with this viewpoint and claim that women's testimony is only admissible in cases involving money. They claim that the women's

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<sup>34</sup> Abū Muḥammad ‘Ali bin ‘Aḥmad bin Saeed ibn Ḥazam, “*al-Muḥalā bil Āthār*”, vol. 8 (Beirut: Dār al-fikr, n.d), 478.

<sup>35</sup> Al-*Qur’an* [ 2:282]

<sup>36</sup> Marghīnānī, *al-Hidāyah*, vol3/ 116. Also, in Ibn Rushd, “*Bidāyat al- Mujtahid wa nihāyat al-Muqtaṣid*”, 4/ 247.

<sup>37</sup> Ibid

<sup>38</sup> Al Quran [2:282]

<sup>39</sup> Marghīnānī, *al-Hidāyah*, vol. 3/ 116. Also in Ibn Rushd, “*Bidāyat al- Mujtahid wa nihāyat al-Muqtaṣid*”, 4/ 247.

testimony is unreliable because of their cognitive impairment, incapacity for leadership, and memory loss.<sup>40</sup> Al-Marghunn believes that women can testify initially because they are capable of managing everything needed for testifying, that is, after witnessing the event, remembering it, and relaying the pertinent information to the judge. Al-Marghunn said it makes no difference if they lack 'aql. He claims that although women's memories are generally not as good as men's, the anafs do allow women to testify because they can gather the essential elements of a testimony. According to him, this issue of being unable to accurately recall the events is solved by requiring two female witnesses for every male witness.<sup>41</sup>

### **SINGLE WOMAN'S TESTIMONY**

In matters that are not exposed to males, the testimony of women only is generally accepted by schools of thought. These are the situations in which it is typically impossible for men to testify and be present because there has been no male examination. Menstruation, childbirth, the explanation of female sexual abnormalities, etc. are a few examples. Only one woman's testimony is admissible in these instances.<sup>42</sup>

Similarly, evidence of one woman is sufficient regarding virginity defects in private parts which cannot be exposed to men. This principle is derived from saying of Prophet (PBUH).

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<sup>40</sup> Al-Shīrāzī, "Al-Muhazab fī al-fiqh al-Imām Shafi'ī", vol. 3/437.

<sup>41</sup> Marghīnānī, *al-Hidāyah*, vol3/ 116 Translated by Karen Bauer, "Debates on Women's Status as Judges and Witnesses in Post-Formative Islamic Law", 7.

<sup>42</sup> Sarakhsī, *Al- Mabsūt*, vol.5/10` 1. Also, in 'Ibn Rushd, *Bidāyatu 'l-Mujtahid*, 4/248.

ال يستطيع الرجل النظر الي شهادة النساء جائزة فيما<sup>43</sup>

“The evidence of women is valid with respect to such things as is not fitting for man to behold”.<sup>44</sup>

In matters of child weaning (al-Radhā‘h) *Abū Hanīfah* is of the view that testimony of women alone is not admissible because this is the matter which is disclosed to men.<sup>45</sup> The rule regarding virginity is such that when a man buys a female slave on condition of her being a virgin and afterwards he wants to return her because she is not. Another woman would examine her and give testimony. If she is not virgin, the buyer will have the option to rescind the contract.<sup>46</sup>

However, there is a difference of opinion among the jurists about the number of women to testify for these matters in which men cannot participate. Imām Abū Ḥanīfa is of the view that one woman is enough to testify. Imām Malik requires testimony of at least two women. Imām Shāfi‘ī requires testimony of four women in these matters because Allah Almighty has made two just women equivalent to one just man. So, for that purpose two just men can only be replaced by testimony of four just women.<sup>47</sup> (“If there are not two male witnesses, then a man and two women from among those witnesses who please you; so if one of the two women errs, the other will remind her”).<sup>48</sup>

Imām Sarakhsī says that it is a fact that the basis for not allowing women to testify alone is their lack of rationale (‘aql) and religion (dīn), which the Prophet of Allah (peace

<sup>43</sup> Sarakhsī, *Al- Mabsūt*, vol.5/101.

<sup>44</sup> The Hidayah or Guide: A commentary on the Mussalman Laws, Trans. Charles Hamilton, vol. 2 (London: T. Benslay, n.d), 668.

<sup>45</sup> Ibn Rushd, “*Bidāyat al- Mujtahid wa nihāyat al-Muqtaṣid*”, 4/ 247.

<sup>46</sup> Sarkhsī, “*Al – Mabsūt*”, Vol. 13/111.

<sup>47</sup> Ibn Rushd, “*Bidāyat al- Mujtahid wa nihāyat al-Muqtaṣid*”, 4/ 247.

<sup>48</sup> Al- Qur’ān [2:282]

be upon him) described as "deficiency," thus creating doubts about its complete absence.

Forgetfulness and errors are common in women, they make relatively more mistakes than men, and the inclination towards pleasure is usually higher in them. These are the serious problems with respect to testimony. So, by analogy women alone should not be allowed to testify alone. But this analogy is not always used because of the saying of the prophet (PBUH) which allows women to testify alone in matters which men cannot see.<sup>49</sup> No such specification is present in QSO, which are mentioned in Islamic law and saying of Prophet (PBUH).

Authentication of evidence in Islamic law as mentioned above is conducted through firstly, through ensuring specific number of witnesses and secondly, by checking character of witnesses.

### **HEARSAY RULE AND EXCEPTIONS:**

Other than rumours in their true meaning, very few situations are allowed under Islamic law for rumours. In some well-known instances, Islamic law permits rumours. For instance, many people are familiar with instances of birth or death. Or related situations.<sup>50</sup> In article 1688 of Al-Majallah, it is stated that "the witness must directly know what he is declaring in order to give his testimony. They are not permitted to testify that they only have "hearsay," or "words from individuals."<sup>51</sup>

However, if a witness states: "I have heard of a trustworthy individual" in reference to being waqf compliant or the fact that a person is deceased, his testimony is taken to be

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<sup>49</sup> Sarkhsi, *Al – Mabsūt*, Vol. 16, 114.

<sup>50</sup> Encyclopaedia of Islam, "Shahid", vol. 9 (Leiden: Brill, 1997), 208.

<sup>51</sup> *Majallah al-Ahkām al-'Adaliyah*, (Karachi: Kārkhāna Tijārat Kutub, n.d), art: 1688.



reliable. It is acceptable for someone to speak based on hearsay in cases involving vilat, death, and parentage.<sup>52</sup> In other words, a person may give a testimony based on facts that are generally known. It is acceptable to do this without actually seeing the occurrence or act that is the subject of the testimony. Al-Shahdah bi-Tasmay is how Islamic law refers to it. As a result, information about a person's ancestry, marital status, or death can be provided without that person being seen or noticed at the moment of his birth, his marriage, or his death.<sup>53</sup>

In these four situations, it is acceptable to testify based on hearsay (Al-Tasmay'). To prevent difficulties, these cases are permitted (araj). The cases mentioned above are those that are immediately observed by few people but quickly gain notoriety in society. For instance, because so few people are present when someone passes away, the word of their death suffices to attest to it. However, the news that such a person passed away spreads rapidly. He is permitted to speak about it in accordance with the news reports.<sup>54</sup>

If someone sees that a person is sitting in a court room and a lot of people are coming to him for decisions. He is allowed to testify that he is a judge on the basis of hearsay.<sup>55</sup> In Islamic legal system judge has the discretionary power to admit or reject any exceptions to the hearsay rule on the basis of credibility of hearsay. Marghīnānī says that analogically or as a matter of general rule, it is not lawful to give evidence on the basis of hearsay. The reason is that the foundation of testimony is entirely based on sight and direct observation. That is the

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<sup>52</sup> Ibid.

<sup>53</sup> Encyclopedia of Islam, s.v. "Shāhid", (Leiden: Brill, 1997) vol.9, 208.

<sup>54</sup> Sarakhsi, *Al-Mabsūt*, Vol.16, 150. Maghīnānī, *Al-Hidāyah*, vol. 3, 120-121. Also in Kāsānī, *Badā'i' al-Ṣanā'i*, vol.6, 266.

<sup>55</sup> Ibid 371

only way of deriving knowledge. These exceptions are permitted on the basis of istiḥsān.<sup>56</sup> That means adhering strictly to the rule of hearsay creates hardship for the general public.

The above mentioned four cases, in which hearsay is permissible, are the ones which are seen or observed by a few people. These cases usually carry element of privacy. It will cause a great hardship for people at large if it is expected to have a direct testimony on these cases. That is why they are permitted by way of hearsay. For instance, birth is an event for which none is present but midwife. Marriages and deaths are seen by few and cohabitation is seen by none. From all these events a number of consequences arise. For instance, consequence of birth is inheritance, marriage is dower and maintenance etc. So, a credible hearsay testimony is permitted to solve this problem.<sup>57</sup>

As compared to western law, Islamic law is very strict in hearsay testimony. There are a large number of hearsay exceptions which are permitted in western law. For instance, *Present Sense Impression, Excited Utterance, Existing Mental, Emotional, or Physical Conditions etc. There are almost 30 hearsay exceptions present in US law of Evidence.*<sup>58</sup>

But in Islamic law only these four cases are allowed. In other words, western law is broad in allowing hearsay and Islamic law is very cautious and limited. It permits hearsay in only those cases which are already known by way of public knowledge. So, these cases are not hearsay in the strict sense. Qanun-e-Sahadat Order, stipulates in article

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<sup>56</sup> Maghīnāni, *Al – Hidāyah*, vol. 3, 121.

<sup>57</sup> Ibid

<sup>58</sup> See Federal Rules of Evidence of USA. Rule number 803 “Hearsay Exceptions”

17 that every witness giving testimony must have directly seen, heard and observed directly. It gives two exceptions to the hearsay rule. First is expert testimony, second is inspection of real evidence by the court.

## SECONDARY TESTIMONY

Islamic law of evidence offers secondary witness (*Shahādah 'ala Shahādah*). It is different from hearsay evidence (*Al-Shahādah bi-Tasāmay'*). In this kind of testimony if the primary witness is either too far or is unable to attend the court for testimony due to any reason. He transfers his testimony to another just witness. He makes him his representative. This kind of testimony is permissible in Islamic law. In other words, if a witness has a legal excuse for not being able to attend the court session, he can transfer his testimony to other two just witnesses. It is called *Shahādah bi-Tasāmay'* in Islamic law. However, secondary testimony is inadmissible in Ḥudūd offences or Qiṣāṣ.<sup>59</sup>

Imām *Abū Hanīfah* says that one secondary witness is enough for one primary witness. Two witnesses will testify in place of two.<sup>60</sup> But Imām *Shafi'ī* opines that two secondary witnesses will take the testimony of one primary witness and four secondary witnesses will testify in front of the judge for two witnesses.<sup>61</sup> Imām *Sarakhsī* says this kind of testimony is allowed in all cases except Ḥudūd and Qiṣāṣ.<sup>62</sup>

Qanun-e-Shahadat Order stipulates that if a person is ill or dead or unable to come to court then he can transfer his testimony to someone else that is *shahadah ala shahadah*

<sup>59</sup> Encyclopedia of Islam, "Shāhid", (Leiden: Brill, 1997) vol.9, 208.

<sup>60</sup> Al-'Aīnī, "*al-Bināyah Sharh al-Hidāyah*", vol. 9/127.

<sup>61</sup> *Sarakhsī*, "*Al-Mabsūt*", Vol.16, 138.

<sup>62</sup> *Ibid* 138

### **COMPARISON IN ENGLISH AND ISLAMIC LAW:**

The above-mentioned facts made it clear that the general principles of Islamic law of evidence are different from the English law. There are some major differences in English and Islamic law on oral testimony when purgation, hearsay and just characteristic of the witness comes under discussion. Secondly, the detailed conditions specified for the witness in Islamic law are not discussed in similar detail in the English law. The standards of admissibility are somewhat similar in both the English and Islamic Law.<sup>63</sup>

### **CONCLUSION**

Oral testimony is the first and the most important means of proof in both the Islamic and Western law, but with a lot of differences. For instance, Islamic law does not accept testimony of a person who is not just in character (Ādil)... A witness who has a doubtful character cannot lead to truth. There is a long discussion of Muslim jurists explaining the attributes of a just witness. Although the standards of the Muslim Jurists regarding these characteristics relaxed with the passage of time, there is still a criteria to meet. QSO does not stipulate any such condition on witnesses. Islamic law also introduces a highly effective mechanism of purgation of witnesses. It developed a complete system of accredited witnesses who subsequently became the helpers of the judge. QSO on the other hand does not have any such procedures which involve purgation of witnesses. The law of Pakistan on oral testimony is influenced by one fact. That is the Qanun-e-Shahadat order 1984 was previously called

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<sup>63</sup> These standards include the evidence must be relevant, authentic, direct and best evidence rule.

Evidence Act 1872, which is an English law. QSO 1984 is a mere repetition of Evidence Act 1872. The standard applied for oral testimony are those which are followed in western law. So, the standards applied for oral testimony in QSO 1984, are those which are in English law. These standards have nothing to do with Islamic laws. Although Pakistan is a Muslim country but the laws being followed by them are western. Witnesses who come for testimony for e-evidence are the ones which qualify through English law.

The qualification for admissibility of oral testimony, in Pakistan, must be based on Sharī‘ah.

Different classifications in terms of number of witnesses also adds in to the differences between Western and Islamic law. At least, four witnesses are necessary for testifying in case of Hudūd offences such as slandering and fornication. Other crimes and financial matters require at least two witnesses. QSO stipulates such conditions on financial matters only. It ignores Hudūd. There is no classification such as *Hadd* offences and other offences. Pakistani law is completely silent on these matters, which means it follows English law.

Unlike English Law, the Islamic law differentiates in women testimony. Women are not allowed to testify in cases of *Hudūd* and *Qisās*. It is proven by the *Sunnah* of Prophet (PBUH) and '*Ijma*'. It is allowed only in cases other than *Hudūd* and *Qisās*, financial matters, property, marriage, divorce, freeing of slave, '*Iddah* and *sulh*, etc. Opinion of scholars is different regarding admissibility of women's testimony, which would be equally applicable to electronic evidence. The biggest among them is she cannot testify in case of Hudūd and Qisās. Another one of them is that in case her testimony is admitted, two women would replace one male testimony. QSO equates two women

with one man in financial matters only and no other case.  
This is repugnant to Islamic law.

## **ISLAMIC RIGHTS OF CHILDREN BORN OUT OF MARRIAGES RELATIONS: SOCIAL IMPACT, LAW AND COMPABILITY TO INTERNATIONAL HUMAN RIGHTS LAW**

Dr. MUHAMMAD AMIN<sup>64\*\*</sup>

**ABSTRACT;** The United Nations Convention on the rights of child and the European convention on human rights have made sure the principle that no country should discriminate against the children on the ground of parent's status. In secrets and in private capacity if someone get married after making out of marriages relations, Islamic law doesn't intervene with this situation unless it unfolds. The matter unfolds means it goes to the court and follow the evidential procedures. Islamic law doesn't suspect any child as illegitimate and doesn't support and indulge in DNA testing for proving legitimacy of the child unless someone claims succession and inheritance in property and some other denies his succession by saying that he is not a legitimate child of his father. However, Islamic law maintains minimum standards for making legitimacy of the child and remains in support to restore the honor and prestige of the children and persons by not declaring them as illegitimate. Islamic law recognizes all the rights to the children born out of marriages relation.

**Keywords:** Islamic Law, Children born out of marriages relation, Legitimate, Illegitimate, Social impact.

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<sup>64</sup> He is Doctor Professor (Islamic Jurisprudence, Labor Laws and Philosophy) as well as Director Research and Development at Premier Law College, Gujranwala.

## I. INTRODUCTION;

### **We are Soneri**

Soneri Bank Limited is a leading full-service commercial bank established on September 28th, 1991, to provide innovative financial solutions and quality customer service. Over the years, we have grown our branch network and now operate with over 500+ branches and ATMs across Pakistan, including 58 Islamic Banking branches. The critical areas of operation are Branch Banking, Corporate & Investment Banking, Treasury, SME, Financial Institutions and Islamic Banking. Our Soneri Mustaqeem Islamic Banking Division is expanding quickly with 58 dedicated Islamic Banking branches and 15 Islamic Banking windows across Pakistan.

Our products and services aim for financial inclusion and ease of transactions. We operate with a strong growth mindset that values diversity and inclusivity as part of the brand culture. Soneri Bank envisions a prosperous Pakistan and promises to provide innovative and efficient financial solutions so our partners and customers can enjoy financial freedom and stay Roshan Har Qadam.

All human beings tie with tribes, families and nations. Men found family and can be alive within social boundaries of a family. Marriage is a way to establish a family system. All blood relations emanates from a marriage. Marriage establishes relation between a man and woman as a husband and wife. Husband and wife then can have issues as a result of this marriage and these issues become brothers and sisters in themselves and daughters and sons to their parents. These sons and daughters then get married and for their children, they become uncles and aunts on part of their parents. Out of marriage no blood



relation and family system can be established, therefore, the importance of marriage is too much high in human life. Now the question arises how the matter of citizenship would for the child having no paternity/born out of marriage relation be solved? How his fatherhood would be registered in NADRA? In Islamic law he can never attribute to someone as his father as Quran says; “no child can be given a name of particular father who is not his actual father” How a prestige or honor of the illegitimate child can be restored in society? An opinion may come out here as to just restore the honor or prestige of the child in the society, so that the people should not call such child as a *harami* and the Quranic spirit laying in calling children to their actual father, doesn't have any violating affect. This situation may be solved if a child may be registered with NADRA with any general fatherhood, supposed as names of Abdullah, Ahmad, Muhammad, Adam. These names are not of some particular persons, on whom names the children can have rights which can have from actual father.

Islamic law doesn't match with this rule as it doesn't recognize such marriages. In our society, a practice in secret happening if a girl becomes pregnant because of having out of marriage relations, the family members try to get the couple married so that the honor or prestige of the family to be protected. This matter in secret and in private capacity can be handled so but publically a legislation to be made in this regard can't be done as if it is done so then it falls within the parameters of transforming the *Haram* into *halal* in Islamic *shariah*. In Islamic law a will (*wasiya*) can be made by anyone to an illegitimate child as it is ruled in Islamic law that *wasiya* can't be made in favor of a relative who has not share in inheritance.

## II. SOCIAL IMPACT

The actual problem in our society is the matter of the honor which is of different nature and concept in the west and east. In the east, if the girl becomes pregnant out of marriage relation she feels shame and thinks herself a sinful person, so that she tries to abort the pregnancy, If she remains unable to do so she throws the baby anywhere to conceal her sin, if the baby fortunately remains alive, the NGOs uplift such babies and undertake their care on their own responsibility. The *Edhi* Foundation works for handling this situation in such a way that it installed cradles in different places in Karachi where the unmarried lady leave the illegitimate child.

The NGOs in Pakistan are taking care of children having no paternity in their *Dar-ul-Amman*. However, the welfare of these children is being performed very well but their legal issues are still unsolved and their civil rights are unprotected.

It is making sure the principle in the United Nations Convention on the rights of child<sup>65</sup> and the European convention on human rights<sup>66</sup> not to discriminate against the children on the ground of parent's status while the matter is different in society laws.

## III. ISLAMIC LAWS ON RIGHTS OF CHILDREN BORN OUT OF MARRIAGES RELATIONS

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<sup>65</sup>The anti-discrimination principle in Art. 2. Art. 18 requires States' Parties to use their best efforts to ensure the recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.

<sup>66</sup> Art. 14. In *marckx v. Belgium* (1979) 2 E.H.R.R. 330 and *Inze v. Austria* (1987) 10 E.H.R.R. the European Court of Human Rights held that discrimination against illegitimate children in relation to inheritance rights breached their Art. 14. But the inheritance of a little is not protected: *Re Moynihan* [2000] 1 F.L.R. 113 HL and *X. v. U.K.* (1978) 2 E.H.R.R. 63.

In Islamic law every male and female is responsible for his\her sperm. No one can throw his\her sperm at his\her own choice as it is not merely a sperm, it is an entity having rights. A sperm is being perished in mother womb is unlawful to be aborted unless it causes any harm to the mother. Out of marriages relations are strictly banned with severe punishments just to save the family system. The societies in which out of marriage relations are established, the family system of the society is collapsed. However, before proceeding to the study of Islamic law on rights of children born out of marriages relation, Islamic teachings should be seen in moral perspective. Islam tries to solve the issues first of all morally. As in the case of illegitimate child, Islam makes bound the society to close eyes on such issues and not bring them in public. Unless such issues remain to be secret not come to public, these issues remain in between ALLAH and Person. May ALLAH forgive him; it totally depends upon the will of ALLAH and the *touba* of the sinful person.<sup>67</sup> As we see this moral aspect in the *hadith* of *Ghamidiya* women who became pregnant due to *zina* and came to prophet ﷺ for confession and applying *hadd*(punishment of *zina*) but the prophet ﷺ sent her back and refused to hear what she wants to say and asked her go back. The prophet means, she does not to discuss the matter with anyone and let the matter be remained between *ALLAH* and herself. While setting moral standards, Islamic law tries even not come a doubt of illegitimacy in someone's mind. A man came to the prophet ﷺ and said, O *ALLAH*'s Apostle, A black child has been born for me, and he has not been born out of my sperm. The prophet ﷺ asked him, have you got camels?

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<sup>67</sup> Moududi, Abul-Al-Aala, Sayed. *Tafheem-ul-Quran*(Al-Noor) Tarjman-UI-Quran, Lahore1991 Vol;3, p;320-326

The man said, yes. The prophet ﷺ asked him, what color are they? The man replied, Red. The prophet ﷺ said, is there a grey one among them? The man replied, yes. The prophet ﷺ said, whence comes that? He said, May be it is because of heredity. The prophet ﷺ said, may be your latest son has this color because of heredity.<sup>68</sup>

Islamic law while maintaining highly moral standards does not indulge in proving the legitimacy or illegitimacy of a child by conducting the test of DNA. Islamic law maintains status quo as on whom bed child born, he belongs to him; he would be father of that child. Islamic law supports the conducting of DNA test only if the situation comes that some child demands some property in succession, and other heirs denies his succession, they said that he is not a son of their father, then the court orders the conducting of the DNA to prove the heredity.

Alongside, a moral perspective, Islamic law maintains minimum criteria of assessing legitimacy of the child as the Quran says “the period of pregnancy and feeding the child is 30 months”<sup>69</sup> and at another place the Quran fixes the period of feeding the child as 24 months “the mothers should feed their child two years as a whole”<sup>70</sup> it means that if 24 months of feeding the child reduces from 30 months, the six months remains for the period of pregnancy. The Quran maintains six months minimum period for assessing a child as legitimate. If a child born after six months from the marriage, he would be considered as legitimate in the eyes of Quran. There is another criterion of assessing the legitimacy of the child in

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<sup>68</sup> Bukhari, Muhammad-bin-Ismail, Abu-Abdullah, *Sahih Al Bukhari*, Dar-Ul-Salam, Lahore Vol; 4 p; 870

<sup>69</sup> Al-Ahqaf 46:15.

<sup>70</sup> Al-Baqrah 2:233

Islamic law as settled down by the prophet ﷺ in the *hadith* narrated by the *Ayasha*. The essence of this principle lying under it is that rather looking into assessing legitimacy or illegitimacy of the child, base the matter apparently and decide the matter according to what happened on the screen and not peep down into the secrets of the people. The wording of the prophet ﷺ is “The child belong to the person on whom bed he is born” basically this is a verdict of the prophet ﷺ given in the case of *Saad-bin-Abi-Waqas*. This case detailed in the *hadith* as that *Utba-bin-Abi-Waqas*(Non-Muslim) brother of *Saad-bin-Abi-Waqas*(Muslim) made a *wasiya* to his brother *Saad* at the eve of his death that the son of *Zamaa* (from the womb of his she- slave) is from my sperm so that you keep him after my death under his guardianship, *Saad-bin-Abi-Waqas* adopted under his guardianship the son of *Zamaa* as his nephew but another son of *Zamaa*(*Abd-bin-Zamaa*) came to the prophet ﷺ and said that, the child (claimed by *Saad* as his nephew) from the womb of she-slave of my father *Zamaa*. Therefore, he is in blood relation my brother. I request oh prophet ﷺ, handover to me this boy as my brother. *Saad-bin-Abi-Waqas* told the prophet ﷺ that he is son of my brother *Utba-bin-Abi-Waqas* as according to the *wasiya* he made. The prophet ﷺ decided the case not in favor of *Saad-bin-Abi-Waqas* but decided it in favor of *Abd-bin-Zamaa* and said that the child is brother of the son of *Zamaa*(*Abd-bin-Zamaa*) as he is born on the bed of *Zamaa*.<sup>71</sup>

#### IV. ISLAMIC RIGHTS OF CHILDREN BORN OUT OF MARRIAGES RELATION

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<sup>71</sup> Bukhari, Muhammad-bin-Ismail, Abu-Abdullah, *Sahih Al Bukhari* The Book of sales, Dar-UI-Salam, Lahore Vol; 2 p; 472

Now, we quote here the *hadith* of *Ghamidiya* which entails certain rights of children born out of marriages relation.

فَجَاءَتِ الْعَامِدِيَّةُ، فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنِّي قَدْ زَنَيْتُ فَطَهَّرْنِي وَإِنَّهُ رَدَّهَا، فَلَمَّا كَانَ الْعُدُ، قَالَتْ: يَا رَسُولَ اللَّهِ، لِمَ تَرُدُّنِي لِعَلَّكَ أَنْ تَرُدَّنِي كَمَا رَدَدْتَ مَا عَزَا فَوَاللَّهِ إِنِّي لِحُبْلَى، قَالَ: إِمَّا لَا فَاذْهَبِي حَتَّى تَلَدِي، فَلَمَّا وُلِدَتْ أَتَتْهُ بِالصَّبِيِّ فِي خَرْقَةٍ، قَالَتْ: هَذَا قَدْ وُلِدْتُه، قَالَ: اذْهَبِي فَأَرْضِعِيهِ حَتَّى تَقْطُمِيهِ، فَلَمَّا قَطَمَتْهُ أَتَتْهُ بِالصَّبِيِّ فِي يَدِهِ كِسْرَةَ خُبْزٍ، فَقَالَتْ: هَذَا يَا نَبِيَّ اللَّهِ قَدْ قَطَمْتُهُ وَقَدْ أَكَلَ الطَّعَامَ، فَدَفَعَ الصَّبِيَّ إِلَى رَجُلٍ مِنَ الْمُسْلِمِينَ، ثُمَّ أَمَرَ بِهَا فَحُقِرَ لَهَا إِلَى صَدْرِهَا وَأَمَرَ النَّاسَ، فَرَجَمُوهَا،<sup>72</sup>

“A woman from tribe of *Ghamidiya*, came to the prophet ﷺ and told that she has committed the offense of *zina* so that purify her with implementation of *hadd-e-zina*. The prophet ﷺ ordered her to go back and don't discuss the matter. But she very next day came again and said to the prophet ﷺ not to send me back as you ﷺ sent back *Maaiiz*. I swear by God, that I became pregnant because of *zina*. Than the prophet ﷺ said her now go back and come again when you deliver the child. The time come when she delivered the child and took the child along with her to the prophet ﷺ. The prophet ﷺ told her go back and feed the child till his feeding completed. She came again to the prophet ﷺ when the feeding of the child completed and child started the eating of meals and a piece of bread was in the hand of child while he was eating it. The prophet ﷺ hand over the child to a person of Muslim society for the upbringing of the child and ordered the companion to apply the *hadd* of *zina* over the women.”

<sup>72</sup>Al-Qushairy, Abu-al-Hussain, -Muslim-bin-Al-Hajaj, *Sahih Al Muslim* The Book of Hudood, Dar-Ul-Qudas Lahore 2011, Vol; 3 p;336.

The rights of children born out of marriages relation deduced from this *hadith* include right of fetus, right to life, right to feeding, right to guardianship, right to welfare, right to honor.

### **Right of fetus**

As the Prophet ﷺ sent back the *Ghamidiya* woman pregnant lady because of *zina* and told her to come back when she delivers the child. It means that the prophet ﷺ protects the right of fetus.

### **Right to life**

When the *Ghamidiya* women delivered the illegitimate child, she came to the prophet ﷺ and the prophet ﷺ sent her back till she completes the feeding of the child.... It means that the prophet ﷺ recognized the right to life for illegitimate child.

### **Right to feeding and nursing**

The prophet ﷺ ordered the *Ghamidiya* woman to feed the illegitimate child; it means that the illegitimate child has right to feeding with his mother.

### **Right to guardianship**

When the illegitimate child completed the feeding and nursing from his mother *Ghamidiya*. The prophet ﷺ handed over the illegitimate child to a person from Muslim society who took care of this child; it means that the prophet ﷺ made that person as a guardian of illegitimate child.

### **Right to welfare**

As the prophet ﷺ gave child of *Ghamidiya* to a person from Muslim society as he agreed that he would do all the best for welfare of the child.

### **Right to honor**

The society of the *Madina* at the time of the prophet ﷺ said nothing bad about this illegitimate child and his mother *Ghamidiya*. *Khalid-bin-Walid* said something bad about this woman but the prophet ﷺ got angry with him and said to *Khalid* “don’t remarks bad about this woman she repented to *ALLAH* on her sin, *ALLAH* forgive him if her repent is distributed upon all the sinful persons of *Madina*, all would be forgiven.”

## V. THE COMPABILITY WITH INTERNATIONAL HUMAN LAW

Islamic Law on rights of children born out of marriages relation has full compability with international human rights law. It has no contradiction with international human rights law in perspective of dispensing rights to the children having no paternity. Islamic Law is in agreement with the United Nations Convention on the rights of child and the European convention on human rights that have made sure the principle that no country should discriminate against the children on the ground of parent’s status.

## VI. CONCLUSION

This article concludes the matter that no child can be discriminated on the bases of parent’s status. All are human beings weather they are legitimate or illegitimate. They are all equal before law. This distinction in humanity has not been made in the life of the prophet ﷺ. The woman of *Ghamidiya* who has been pregnant because of out of marriages relations, the prophet ﷺ gave her all respect and provided all the rights for her illegitimate child. The prophet ﷺ got angry with the *Khalid-Bin-Walid* who gave bad remarks about this woman. Islamic law sets minimum



standards for legitimacy of the child and not supports the DNA testing for declaring the legitimacy or illegitimacy of a child.

Islamic law sets highly moral standards and orders the people to close their eyes on such issues and let them in secret and not tries to bring it to the public. But if the matter comes to the public then it leaves no stone unturned unless it implements its principles. However, Islamic law recognizes all the rights to the children born out of marriages relation.

## TRADE INFRINGEMENT AND PASSING OFF

TAMOOR MUGHAL<sup>73\*\*</sup>

**ABSTRACT;** This article views and assesses the trademark rights protection in Pakistan. Trademark is the identification mark of any company or organization. A customer relates any trademark with the quality of products and reputation of the company that is using it. It is a distinctive name, word, phrase, symbol, logo, design, image, or a combination of these elements that identifies a product, service or firm that has been legally registered as the property of the firm. Trademarks grant the owner the right to prevent competitors from using similar marks in selling or advertising. A trademark can be used for identifying and distinguishing a particular seller's goods from others. Trademark also shows the origin of the goods i.e. a customer can identify the manufacturer and also assume about the quality of goods that all goods bearing the particular trademark are of a particular quality desired by the customers. Trademarks are widely used for the advertisement purposes also which helps to customers in associating any good with the quality, reputation and goodwill of any company. So it is very important for any organization to take precautions while allowing any one to use its trademark because the name and reputation of the company is directly associated with the trademark.

If any organization is using the registered trademark of another company without permission, that means it is not only committing a crime but also causing damage to the business of the company and damaging the brand name of that company. The organization might be using others

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<sup>73</sup> PhD Scholar), School of Political Science, Minhaj University Lahore

trademark to use its market reputation and market stake to enhance its own business without extra efforts. These kind of activities mainly fall under two heads Infringement and Passing Off.

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**INTRODUCTION;** Trademark is the identification mark of any company or organization. A customer relates any trademark with the quality of products and reputation of the company that is using it. It is a distinctive name, word, phrase, symbol, logo, design, image, or a combination of these elements that identifies a product, service or firm that has been legally registered as the property of the firm. Trademarks grant the owner the right to prevent competitors from using similar marks in selling or advertising.<sup>74</sup> There has been various new concepts have emerged in relation to trademark due to the technological revolution in the communication, media and other areas and due to the increased knowledge and perception of individuals, business enterprises are showing more interest in registering non-conventional marks such as color marks, shape marks, smell marks, sound marks, advertisement slogans, trade dress etc. to capture the market.

A trademark can be used for identifying and distinguishing a particular seller's goods from others. Trademark also shows the origin of the goods i.e. a customer can identify the manufacturer and also assume about the quality of goods that all goods bearing the particular trademark are of a particular quality desired by the customers. Trademarks are widely used for the advertisement purposes also which helps to customers in associating any good with the quality, reputation and goodwill of any

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<sup>74</sup>Colston, Catherine *Modern intellectual property laws*, Kirsty Middleton, P:466

company. So it is very important for any organization to take precautions while allowing any one to use its trademark because the name and reputation of the company is directly associated with the trademark.<sup>75</sup>

If any organization is using the registered trademark of another company without permission, that means it is not only committing a crime but also causing damage to the business of the company and damaging the brand name of that company. The organization might be using others trademark to use its market reputation and market stake to enhance its own business without extra efforts<sup>76</sup>. But such companies are not using the exact trademark of other company but they generally go for use of similar marks and here the problem came in to existence. These kind of activities mainly fall under two heads Infringement and Passing Off.

## **VIOLATION OF TRADE MARK**

- A.** By infringement
- B.** By passing off

## **INFRINGEMENT**

Section 29 of the Trademark Act-1999 talks about various aspects related to infringement as given in S.29(1) that a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use

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<sup>75</sup><http://www.wisegeek.com/what-is-trademark-infringement.htm>

<sup>76</sup><http://tcattorney.typepad.com/ip/>

of the mark likely to be taken as being used as a trade mark.

Other subsections describes that in course of the use of the trademark it is said to be infringing the rights of other company due to use of similar or identical trademark using for marketing of similar kind of goods and services or use of identical or deceptively similar trademark for any other kind of goods and services. It is further given in the Sub Section (9) of this section that the infringement can also be done by the spoken use of those words as well as by their visual representation.<sup>77</sup> There are certain elements of infringement of a trade mark:

- 1) Someone else use one's trade mark
- 2) Registered trade mark
- 3) Dilution of mark
- 4) Mislead others

Infringement occurs when someone else uses a trademark that is same as or similar to your registered trademark for the same or similar goods/services. Trademark infringement claims generally involve the issues of likelihood of confusion, counterfeit marks and dilution of marks. Likelihood of confusion occurs in situations where consumers are likely to be confused or mislead about marks being used by two parties. The plaintiff must show that because of the similar marks, many consumers are likely to be confused or mislead about the source of the products that bear these marks.<sup>78</sup>

Dilution is a trade mark law concept forbidding the use of a famous trade mark in a way that would lessen its uniqueness. In most cases, trade mark dilution involves an unauthorized use of another's trade mark on products that do not compete with, and have little connection with, those

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<sup>77</sup> F:\trademarks tm\Trademark Infringement & Passing Off.htm

<sup>78</sup> <http://www.wisegeek.com/what-is-trademark-infringement.htm>

of the trade mark owner. For example, a famous trade mark used by one company to refer to hair care products might be diluted if another company began using a similar mark to refer to breakfast cereals or spark plugs.<sup>79</sup>

The concept of infringement can be explained with the help of the following case laws:

In the case ***Castrol Limited Vs P.K. Sharma***

Facts of the case: Plaintiff is the registered owner of the trade marks Castrol, Castrol Gtx and Castrol Gtx 2 in respect of oils for heating, lighting and lubricating. During the month of December 1994, plaintiffs came to know that the defendant was carrying on business of selling multigrade engine oil and lubricants under the trade mark 'Castrol Gtx & Castrol Crb' IN IDENTICAL containers as used by the plaintiffs. Plaintiff filed a suit for perpetual injunction.

Held: The user of the said trade marks by the defendants, who have no right whatsoever to use the same is clearly dishonest and is an attempt of infringement. The prayer of the plaintiff is accepted.

***In Ranbaxy Laboratories Ltd. Vs. Dua Pharmaceuticals Ltd.*** the plaintiff company manufactured drugs under the trade name "Calm pose". The defendant company subsequently floated its similar product under the trademark "Calm prose". The said two trademarks having appeared phonetically and visually similar and the dimension of the two strips being practically the same including the type of packing, the color scheme and manner of writing, it was found to be a clear case of infringement of trade mark and the ad interim injunction granted in favor of the plaintiff was accordingly made absolute.

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<sup>79</sup><http://www.wisegeek.com/what-is-trademark-infringement.htm>

## PASSING OFF

The specific description of passing off is not given in the trademark act but the courts have drawn its meaning from common law that if the infringement of trademark done in such a manner where the mark is not only deceptively similar to the trademark of other company but also creating confusion for the customers, which ultimately results in damage for business of the company.

Taking business by presenting goods or services as someone else's is actionable at common law. The tort is known as "passing off" in the British Isles and most of the Commonwealth, "palming off" in the USA and unfair competition elsewhere. The usual remedies are injunctions, delivery up of offending items and inquiries as to damages or accounts of profits. There is an international obligation to assure effective protection against unfair competition under art 10bis of the Paris Convention.<sup>80</sup>

Passing off is judge made law. The modern law is to be found in a handful of cases of which the most recent are the decisions of the House of Lords in *Reckitt & Colman Products Ltd. v Borden Inc* [1990] RPC 341 and *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] AC 731. In the first of those cases, Lord Oliver said, at page 406, that a claim may be brought where:

- 1) the claimant's goods or services have acquired a **goodwill** or reputation in the market and are known by some distinguishing feature;

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<sup>80</sup><http://www.amazon.co.uk/Passing-Off-Intellectual-Infringement-Personality/dp/6130343809>

2) there is a **misrepresentation** by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the claimant; and

3) The claimant has suffered, or is likely to suffer, **damage** as a result of the erroneous belief engendered by the defendant's misrepresentation.

This restatement of the elements of passing off is often referred to as the "classic trinity".

## **RELATED CAUSES OF ACTION**

The action of passing off is closely allied to the law of trademarks, the Trade Descriptions Act 1968 and Community legislation on the protection of geographical designations of origin. Claims for passing off are usually brought at the same time as actions for infringement of a registered trade mark.<sup>81</sup>

## **ENFORCEMENT**

Claims for passing off are brought in the Chancery Division of the High Court of Justice. The vast majority of such claims are disposed of upon an application for interim injunction. The reason for that is that the losing party either has to change its packaging or quit the market. Either way, it has much less interest in the brand by the time the action comes on for trial.

An actionable misrepresentation may also be an offence under the Trade Descriptions Act 1968. Prosecutions are brought by local authority trading standards officers.<sup>82</sup>ss

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<sup>81</sup>Lynne, Judith, The psychology behind trademark infringement and counterfeiting, Zaichkowsky, P; 19

<sup>82</sup>Phillips, Jeremy, Trade marks at the limit, P; 256



## RISK FACTORS

Brands are among the most valuable assets of a business and the action of passing off is indispensable for their protection for two reasons. First, not every type of branding qualifies for registration as a trade mark. Secondly, no action may be brought on a mark until after registration.<sup>83</sup> If goodwill, misrepresentation and damage can be proved an action will lie regardless of whether the wrongdoing was intended and there is no threats action to protect those accused of passing off from intimidation of their customers.<sup>84</sup>

## KINDS OF PASSING OFF

These are as follows

### 1. Extended passing off

One of the instances where passing off is actionable is the extended form of passing off, where a defendant's misrepresentation as to the particular quality of a product or services causes harm to the plaintiff's goodwill. An example of this is *[Erven Warnink v J Townsend & Sons \(Hull\) Ltd](#)*<sup>85</sup> [1979] AC 731, in which the makers of [advocate](#) sued a manufacturer of a drink similar but not identical to advocate, but which was successfully marketed as being advocate.

The extended form of passing off is used by celebrities as a means of enforcing their [personality rights](#) in common law jurisdictions. Common law jurisdictions (with the exception of [Jamaica](#)) do not recognize personality rights

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<sup>83</sup>*Ibid*, P; 256

<sup>84</sup>[Lambert M. Surhone](#), *Passing Off: Tort, Trademark, Common Law, Intellectual Property, Trademark Infringement, Personality Rights*

<sup>85</sup> [1979] AC 731

as rights of [property](#). Accordingly, celebrities whose images or names have been used can successfully sue if there is a representation that a product or service is being endorsed or sponsored by the celebrity or that the use of the likeness of the celebrity was authorized when this is not true.

## **2. Reverse passing off**

Another variety, somewhat rarer is so-called 'reverse passing off'. This occurs where the defendant markets the plaintiff's product as being the defendant's product (see *John Roberts Powers School v Tessensohn*<sup>86</sup> [1995] FSR 947. It will be recalled that orthodox passing off entails the defendant representing that his product is the plaintiff's product. In many cases, reverse passing off can be explained under the ordinary rules: for example where a defendant may represent that he or she made goods which were in fact made by the plaintiff so as to pass off his own business as a branch of the plaintiff's.

## **WHAT PROBLEMS CAN PASSING OFF CAUSE?**

There are a number of problems that passing off can cause your business; depending on the type of business and the extent of passing off taking place.

### **1. Missing Customers**

If your customers are led to believe that another business is yours (or associated with you); then you may find that your customers simply vanish, using the other business by mistake. If you obtain a lot of your custom by word of mouth, then new customers searching for you may never realise that the business passing off is not you.

### **2. Future Custom**

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<sup>86</sup> [1995] FSR 947

If your customers realise that another business has gained their custom inappropriately, they may lose trust in you and feel hesitant about using your services again. If the other business treated them badly they may go elsewhere altogether, and (If they do not realise they have used a different business) could even tell other people of their disappointment with your business.

### **3. Reputation**

If your business is respected in your marketplace, the appearance of a business passing off as you could cause customers to think less of your business; especially if the passing off business provides poor quality products or services.

If the passing off business causes bad word of mouth publicity, this can cause serious damage to your image and reputation.

### **4. Finances**

If a business is passing off as you, then your financial damage is not limited to the money from customers you lose to them and through bad publicity. Any money you spend on advertising or other promotions (e.g. Leaflets, web banners, 'pay per click' listings) becomes less effective as some of the customers you can gain may end up using the passing off company.

## **DIFFERENCES BETWEEN PASSING OFF AND INFRINGEMENT**

### **1) As to remedy**

Statutory remedy is available for infringement whereas the action for passing off is a common law remedy.<sup>87</sup>

### **2) As to identity**

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<sup>87</sup><http://www.bowman.co.za/LawArticles/Law-Article~id~2132417158.asp>

For infringement it is necessary only to establish that the infringing mark is identical or deceptively similar to the registered mark but in the case of a passing off action, the need is to prove that the marks are identical or deceptively similar which is likely to deceive or cause confusion and damage to the business of the company.<sup>88</sup>

### **3) Registration as to particular category of goods**

When a trademark is registered, registration is given only with regard to a particular category of goods and hence protection can be given only to these goods and action of infringement would be taken but in a passing off action, the defendant's goods need not be the same, they may be related or even different.<sup>89</sup>

### **4) As to action**

For a passing off action registration of trademark is not relevant. It is based on property in goodwill acquired by use of the mark. On the other hand infringement is based on statutory right acquired by registration of trademark.<sup>90</sup>

### **5) As to goods**

In case of a passing off action, the defendant's goods need not be same as that of the plaintiff; they may be allied or even different. In case of an action for infringement, the defendant's use of the offending mark may be in respect of the goods for which the mark is registered or similar goods.

### **6) As to confusion**

Passing off action identity or similarity of marks is not sufficient, there must also be likelihood of confusion. But in case of infringement if the marks are identical or similar no further proof is required.

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<sup>88</sup><http://www.amarjitassociates.com/index.htm>

<sup>89</sup><http://www.bowman.co.za/LawArticles/Law-Article~id~2132417158.asp>

<sup>90</sup>Ibid

### **7) As to forum of remedy**

The remedy of passing off has been found in one form or another for centuries. It is part of the common or so-called unwritten law. In contrast, the system of statutory protection of trade marks by way of the registration thereof, has, relatively speaking, not been in existence that long. The law relating to passing off was thus, put differently, made by judges, and the law relating to trade mark infringement was created by the relevant legislative bodies. The latter origin does not necessarily indicate a greater degree of rigidity insofar as the application of legislative instruments is concerned. The courts obviously interpret the legislation continuously, and in a sense the words of the statute form only a broad framework within which the judiciary functions, and "finds" the law.<sup>91</sup>

### **8) As to related rights**

Rights relating to passing off are established "gradually", with use, and the central question would be when it can be said that a reputation has been acquired insofar as a specific mark is concerned. The establishment of a reputation is dependent on a number of factors, including the nature of a mark, that is, the degree of distinctiveness, sales figures, promotional expenditure on the marketing of products bearing the mark or get-up, and the period of use. Protection in terms of the Act is available immediately, on registration, and is not, in the short term, dependent on use of the mark. Although the obtainment of statutory rights would seem, from this perspective, to be a more expedient way in which to obtain rights, such an observation is not borne out by reality. This is on account of the fact that the time frame within which an application will proceed to registration can be a matter of up to three or four years at

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<sup>91</sup><http://www.tms.org/pubs/journals/jom/matters/matters-9610.html>

this stage. This factual consideration does however not change the theoretical position.

### **9) As to allegation**

A further difference is that in cases of alleged passing off, it is said that it is the goodwill built up through the use of a mark that is protected, whilst in instances of trade mark infringement, it is the right to the mark itself that is being protected. Flowing from this fact is a practical difference between the two remedies, namely that passing off involves a comparison of the two marks and the get-up of the products in relation to which they are used. In other words, the mere fact that a mark, whether registered or not, is used by A, does not automatically imply that he would be liable towards B for passing off. Colors and shapes or the addition of other distinctive material can thus be considered by the court to determine whether or not there is a likelihood of confusion. On the other hand, in the instance of trade mark infringement, the comparison is solely between the two marks themselves, and extraneous matter cannot be taken into consideration. In a manner of speaking, a holistic approach is adopted in passing off cases. Trade mark infringement is concerned only with the mark that has been registered, and if that mark is used by the respondent along with other distinctive material, the addition of the latter is disregarded. In line with the above, in infringement cases there is a prohibition on the use of the mark in issue, but the wording of an interdict in passing off cases rather relates to steps to be taken to distinguish the products concerned.<sup>92</sup>

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<sup>92</sup><http://www.amazon.co.uk/Passing-Off-Intellectual-Infringement-Personality/dp/6130343809>

### **10) As to remedy relates to a particular geographical area**

Lastly, it is important to bear in mind that the remedy of passing off relates to a particular geographical area in which a reputation can be said to exist. In other words, where a mark is used in Bracken fell, it will not necessarily be possible to prevent the use of the mark in Brakpan. In the case of a registered mark, the registration will in principle be enforceable in the whole country. In summary, it appears that there are a number of instances where relief in terms of passing off will achieve the rights holder's objective of the protection of his intellectual property, whilst in other instances relief in terms of the Trade Marks Act will be more appropriate.

### **CASE LAW THAT DIFFERENTIATE PASSING OFF AND INFRINGEMENT**

In the case *DurgaDutt Sharma V. N.P. Laboratories*, a Supreme Court judgment, the difference between the two has been laid. It was held that "An action for passing off is a Common law remedy, being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another. But that is not the gist of an action of infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to use the trade mark."<sup>93</sup>

### **JUDICIAL RESPONSE**

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<sup>93</sup><http://www.amarjitassociates.com/index.htm>

Courts have given several judgments in these kinds of disputes where the infringement and passing off of trademark were in question. Few of them I am discussing in this paper where courts have dealt with these questions and formulated several concepts related to them.<sup>94</sup>

### **CASES OF INFRINGEMENT**

No one can use the trademark which is deceptively similar to the trademark of other company. As in the case of *Glaxo Smith Kline Pharmaceuticals Ltd. v. Unitech Pharmaceuticals Pvt. Ltd.*<sup>95</sup> the plaintiff claimed that defendants are selling products under the trademark FEXIM that is deceptively similar to the plaintiff's mark PHEXIN, which is used for pharmaceutical preparations. The defendants are selling anti-biotic tablets with the trademark 'FEXIM' with the packing material deceptively similarly to that of the plaintiff, whereby intending to not only to infringe the trademark but also to pass off the goods as that of the plaintiff as the two marks are also phonetically similar. The Court restrained the defendant from using the trademark 'FEXIM' or any trademark deceptively similar to the trademark of the plaintiff 'PHEXIN', any label/packaging material deceptively similar and containing the same pattern as that of the plaintiff.

If a party using the deceptively similar name only for a single shop and not spreading its business by use of that particular name then also that party could be stopped from using the trade name of other company. This is given in *M/s Bikanerwala v. M/s Aggarwal Bikanerwala*<sup>96</sup> where the respondent was running a sweet shop in with the name

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<sup>94</sup> *Ibid*

<sup>95</sup> [MANU/DE/2840/2005]

<sup>96</sup> [117 (2005) DLT 255]



of AGGARWAL BIKANERVALA and the plaintiff was using the name BIKANERVALA from 1981 and also got registered it in the year 1992. Hence they applied for permanent injunction over the use of the name AGGARWAL BIKANERWALA for the sweet shop by the defendant. Court held in favor of the plaintiff and stopped defendant from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in food articles for human consumption under the impugned trade mark/trade name/infringing artistic label 'AGGARWAL BIKANER WALA' or from using any trade mark/trade name/infringing artistic work containing the name/mark 'BIKANER WALA/BIKANERVALA' or any other name/mark/artistic work which is identical or deceptively similar to the plaintiff's trademark 'BIKANERVALA'.

If the trademark is not registered by any party but one party started using it before the other then first one would have the legal authority on that particular mark. As in the case of *Dhariwal Industries Ltd. and Arnav. M.S.S. Food Products*<sup>97</sup> where appellants were using the brand name MALIKCHAND for their product and the respondents were using the name MANIKCHAND which is similar to the previous one and both parties have not registered their trademarks. Court held in this matter that even though plaintiff have not registered their trademark they are using it from long time back and hence court granted perpetual injunction against the respondents.

Even if a company is not doing business in country, but it is a well-known company or well-known goods, then also it would be entitled to get authority over its trademark. As given in case of *N.R. Dongare v. Whirlpool Corp. Ltd.*<sup>98</sup> where the defendants have failed to renew their

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<sup>97</sup>[AIR 2005 SC 1999]

<sup>98</sup>[(1996) 5 SCC 714]

trademark ‘WHIRLPOOL’ and in the meantime the plaintiffs have got registration of the same. In this case court said that though there was no sale in India, the reputation of the plaintiff company was travelling trans-border to India as well through commercial publicity made in magazines which are available in or brought in India. The “WHIRLPOOL” has acquired reputation and goodwill in this country and the same has become associated in the minds of the public. Even advertisement of trade mark without existence of goods in the mark is also to be considered as use of the trade mark. The magazines which contain the advertisement do have a circulation in the higher and upper middle income strata of Indian society. Therefore, the plaintiff acquired transborder reputation in respect of the trade mark “WHIRLPOOL” and has a right to protect the invasion thereof.

### **CASES OF PASSING OFF**

Even if the goods are not same or similar to each other, then also no one can use the registered trademark of a company for any kind of goods which may result in the harm to the business and reputation of the company which is the owner of the trademark. In *Honda Motors Co. Ltd. v. Mr. Charanjit Singh and Ors*<sup>99</sup> defendant Company was using the trade name HONDA for ‘Pressure Cookers’ which they are manufacturing in India and even when their application for registration of this trademark had been rejected by the registrar they continued using it and again applied for registration and hence plaintiff has brought this plaint. Plaintiff is the well-known company having presence all over the world in the field of Motor Cars, Motorcycles, Generators and other electronic appliances.

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<sup>99</sup>[2003(26)PTC1(Del)]

They are doing business in India in association with the SiddharthShriram Group with the name Honda Siel Cars India Ltd. Plaintiff has established that his business or goods has acquired the reputation and his trade name has become distinctive of his goods and the purchasing public at large associates the plaintiff's name with them. The use of trademark HONDA by respondents is creating deception or confusion in the minds of the public at large and such confusion is causing damage or injury to the business, reputation, goodwill and fair name of the plaintiff. Hence court has restricted the defendants from using the trademark HONDA in respect of pressure cookers or any goods or any other trade mark/marks, which are identical with and deceptively similar to the trade mark HONDA of the plaintiff and to do anything which amounts to passing off to the goods of the plaintiff. In the case of *Smith line Beecham v. V.R. Buntaria*.<sup>100</sup> The plaintiff applied for permanent injunction to restrain the defendant from infringing the trademark, passing off, damages, delivery etc. of its registered trademark ARIFLO, used in respect of the pharmaceutical preparations. Defendants were using the similar name ACIFLO for their product of the same drug in India. Plaintiffs were not doing business in India for the particular product and argued that since their advertisements are been published in medical journals hence they have a trans-border reputation and defendants should be stopped to use the similar trademark which creating deception in customers.

Court said that mere publication of an advertisement in a journal cannot establish a trans-border reputation. Such reputation if any is confined to a particular class of people, i.e., the person subscribing to the said specialized journals

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<sup>100</sup>[MANU/DE/2890/2005]

and the same can't be said to be extended to the general consumers. Thus any adverse effect on the firm in such a case can't be amounted to the offence of "passing off".

Though the dispute resulted in compromise where the defendant agreed and accepted the plaintiffs' exclusive right on the use of mark i.e. ARIFLO in India and abroad and further agreed to not to manufacture pharmaceutical preparations under the mark ACIFLO or any other mark identical or similar to ARIFLO.

There are two types of remedies are available to the owner of a trademark for unauthorized use of its imitation by a third party. These remedies are:-an action for passing off in the case of an unregistered trademark and an action for infringement in case of a registered trademark. An infringement action and an action for passing off is quite different from each other, an infringement action is a statutory remedy and an action for passing off is a common law remedy. Accordingly, in order to establish infringement with regard to a registered trademark, it is necessary only to establish that the infringing mark is deceptively similar to the registered mark and no further proof is required. In the case of a passing off action, proving that the marks are deceptively similar alone is not sufficient. The use of the mark should be likely to deceive confusion. Further, in a passing off action it is necessary to prove that the use of the trademark by the defendant is likely to cause injury to the plaintiff's goodwill, whereas in an infringement suit, the use of the mark by the defendant need not cause any injury to the plaintiff. Trademark infringement laws help the trademark holders to keep awareness about infringement of trademark.

## **CONCLUSION**

There are two types of remedies available to the owner of a trademark for unauthorized use of its imitation by a third party. These remedies are:-an action for passing off in the case of an unregistered trademark and an action for infringement in case of a registered trademark. An infringement action and an action for passing off is quite different from each other, an infringement action is a statutory remedy and an action for passing off is a common law remedy. Accordingly, in order to establish infringement with regard to a registered trademark, it is necessary only to establish that the infringing mark is deceptively similar to the registered mark and no further proof is required. In the case of a passing off action, proving that the marks are deceptively similar alone is not sufficient. The use of the mark should be likely to deceive confusion. Further, in a passing off action it is necessary to prove that the use of the trademark by the defendant is likely to cause injury to the plaintiff's goodwill, whereas in an infringement suit, the use of the mark by the defendant need not cause any injury to the plaintiff. Trademark infringement laws help the trademark holders to keep awareness about infringement of trademark.

So by this discussion we can draw following inferences

- Registered trademark is the property of the holding company and it is directly associated with the name, reputation, goodwill and quality of products of a company.
- There are very slightly differences between infringement and passing off
- A company cannot use the trademark of another company.

No one can use even the similar trademark which is creating deception or confusion for the customers.

- No one can use the trademark of a company, which is well known and having a transponder reputation, even if it is not registered

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

QAMAR UL NISA<sup>101\*\*</sup>

DR. ASMA ISLAM<sup>102\*\*</sup>

GHULAM MOHY UD DIN<sup>103\*\*</sup>

**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

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<sup>101</sup> PhD Scholar Sociology at Riphah International University  
Faisalabad Campus

<sup>102</sup> Assistant Professor Department of Sociology Riphah  
International University Faisalabad Campus

<sup>103</sup> PhD Scholar Sociology at Riphah International University  
Faisalabad Campus

accumulation. Information was 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).

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**INTRODUCTION;** It is presumption that the dispositions of the couple and the 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.<sup>104</sup>

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 base of their part in various day by day exercises all these

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<sup>104</sup> Gerson.Kathleen.1993. No. Man's Land: Men's Changing Commitments to family and Work. New York Basic Books.



distinction every one of these distinctions might be the onlooker to features the contrast between ender.<sup>105</sup>

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.<sup>106</sup>

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 more effectively and in genuine path yet in really meaning.<sup>107</sup>

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<sup>105</sup> Von Wallenberg Patchily, A. (2000). Group psychotherapy for victims of political torture and other forms of severe ethnic persecution. In R. Klein & V. Schemer (Eds.), *Group Psychotherapy*.

<sup>106</sup> Crystal, 2001. *The Effects of Globalization: Examining Change*.

<sup>107</sup> Wilson SM, Peterson LC. 2002. "The Anthropology of Online Communities" *Annual review of Anthropology* 81: 449-60.

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 society 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.<sup>108</sup>

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 hypotheses which are identified with the wrongdoing in display time and furthermore depict its reasons.<sup>109</sup>

Way life and alternate offices which are important for the existence they not quite the same as one. The way if living

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<sup>108</sup> Handling, L. Moor. 2004. Comparative Research on Values: Tilburg University Press.

<sup>109</sup> Jeffery, 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.

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.<sup>110</sup>

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 pretending individuals utilize distinctive dialect to pass on through various dialects and images and signs.<sup>111</sup>

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,

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<sup>110</sup> Benjamin, D.Z. and M. K. Rosa Beth. 2006. "The Differentiation of Lifestyle" Annual review of Sociology. 2:269-298

<sup>111</sup> Merriam-Webster. (2007). Gender Retrieved February 15, 2007, from Merriam-Webster's online Dictionary.

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.<sup>112</sup>

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 long way from their qualities and they lead an esteem less life.<sup>113</sup>

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

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<sup>112</sup> Mason, 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.

<sup>113</sup> UNESCO (2009) "Statement on Women's Contribution to a Culture of Peace. "Presented to the 4<sup>th</sup> World Conference on Women, Beijing.

is going to sharp and the quickly built up this sort of development effect sly affect the human being.<sup>114</sup>

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, social trade's 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.<sup>115</sup>

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.<sup>116</sup>

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

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<sup>114</sup> Giddens, Anthony (2010), *Modernity and Self-Identity: Self and Society in the late Modern Age*, Stanford, CA: Stanford University Press.

<sup>115</sup> Miller, 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.

<sup>116</sup> Yogendra, S. 2012. *Modernization and its contradiction; contemporary Social Change in India*.

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.<sup>117</sup>

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 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.<sup>118</sup>

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.<sup>119</sup>

### **Objectives**

1. To recognized the socio economic background of the identified population.

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<sup>117</sup> Cooperstown, M.A. (2013) the Storms of Youth: Violence's, Depression and the Needs for Adolescent Research, Pennsylvania Psychologist Quarterly, 59(8), (pp.10, 22).

<sup>118</sup> Benokraitis, N. (2015, Marriage and families, changes, choice and constraints, 6<sup>th</sup> Edition) New Jersey: Pearson Education.

<sup>119</sup> Christopher, A.S. 2003.the Value of Families.

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**

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.<sup>120</sup>

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

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<sup>120</sup> Thornton, Arland.1990. "Changing Attitudes towards Family Issues in the United States" Journal of Marriage and Family51:873-94.

and a few people will change their method for living and know about the fresh debut of mobiles.<sup>121</sup>

The innovation happens with the section of the time in light of the fact that the time isn't static. From twentieth century the advancement is going too quickly and it changed the living style of the general population. Offices for the kids are rapidly going excessively changed and it has awesome impact on the psyche of the youngsters. In each field of extraordinary old rational values in the public arena, youngsters are keener on the reception of new innovation.<sup>122</sup>

The wedded female are more current than the unmarried female. In various stages, females 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 face 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.<sup>123</sup>

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<sup>121</sup> Booth, 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.

<sup>122</sup> Clarke, John (1992), "Style in Resistance through Rituals" ed. Stuart Hall and Tony Jefferson, London: Hutchinson, 175-91.

<sup>123</sup> Molm, Linda D. 2000. "Sex-Role Attitudes and the Employment of Married Women: The Direction of Casualty." *Sociological Quarterly* 19:522-33



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, expand in the pretending has impacts on the everyday based exercises.<sup>124</sup>

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.<sup>125</sup>

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

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<sup>124</sup> Martin, C. L., Ruble, D. N., & Szkrybalo, J. (2002). Cognitive theories of early gender development. *Psychological Bulletin*, 128,903.

<sup>125</sup> Ticknor, J. A. (2001) *Gender in International Relations*. New York, NY: Columbia University.

and men. They play out their obligations in house and working spot.<sup>126</sup>

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 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.<sup>127</sup>

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.<sup>128</sup>

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<sup>126</sup> World Bank (2003) World Development Indicators. Washington DC.

<sup>127</sup> Carole L. Juriewiez, 2004. "The Interaction of Materialistic and Post-materialistic Values in Predicting Dimensions of Personal and Social Identity" Vol. 57, No. 11, 1379\_1405

<sup>128</sup> Ansari, S.2005 Star plus Injecting Poison in Pak Households. The Daily Newspaper, Sep.8, 2005.

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 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.<sup>129</sup>

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.<sup>130</sup>

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.<sup>131</sup>

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<sup>129</sup> Dannie, 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

<sup>130</sup> Crusader 2007. Valentine's Day Amid Social Restrictions in India. Hub Pages.

<sup>131</sup> Chom.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.<sup>132</sup>

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.<sup>133</sup>

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

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<sup>132</sup> Ronaldson, 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.

<sup>133</sup> Ariès, Philippe (2009) *Centuries of Childhood: A Social History of Family Life*, New York: Vintage.

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.<sup>134</sup>

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.<sup>135</sup>

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 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

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<sup>134</sup> UN (2010) Improving Concepts and Methods for Statistics and Indicators on the Situation of Women New York, NY: United Nation Publication.

<sup>135</sup> Dons Bach, W., Rentsch, M., & Walter, C. (2011, May). Social Media as news Source.; Empirical Evidence from our countries. Paper presented at the 61<sup>st</sup> annual Conference of International Communications Association, Boston.

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.<sup>136</sup>

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.<sup>137</sup>

The 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 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.<sup>138</sup>

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<sup>136</sup> Ahmad, 1...2012 Modernization and Social change among youth. Jawaharlal Nehru University, New Delhi

<sup>137</sup> Eccles J. S., Asler, T. F., Futterman, R., Goff, S. B., Kaczala, C.M. Meece, J. L. , & Midgley, 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.

<sup>138</sup> Altman, Sydney L. And Frances K. Grossman. 2014. "Women's Career Plans and Maternal Employment." *Psychology of Women Quarterly* 1:365-76.

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.<sup>139</sup>

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 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.<sup>140</sup>

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Bite, D., G Kornberg. Z. And L. Jan mere. 2016. "Economic Science for Rural Development Conference Proceedings." 38:91-91.

<sup>139</sup> Kate, 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.

<sup>140</sup> Oyekale, A.S. and T.O. oyeakle. 2016 Applications of Health Belief Model of Promoting

## **METHODOLOGY**

### **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 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

$\Sigma$  = 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
	<b>22.6 %</b>	<b>30.0 %</b>	<b>10.0 %</b>	<b>62.6 %</b>
Female	26	22	8	56
	<b>17.3 %</b>	<b>14.6 %</b>	<b>5.3 %</b>	<b>37.4 %</b>
Total	60	67	23	150
	<b>40.0 %</b>	<b>44.5 %</b>	<b>15.5 %</b>	<b>100.0 %</b>

**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 dew 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 there changing lifestyle dew 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.

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Total	60	67	23	150
	<b>40.0%</b>	<b>44.7%</b>	<b>15.3%</b>	<b>100.0%</b>

**Chi Square =1.566                      d.f = 2                      Significant = 0.282**

**Gamma= -0.156**

This table show 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 and 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 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.

## **DOMESTIC WORKER'S RIGHTS; IN THE LIGHT OF ILO CONVENTION NO. 189; A DIRE NEED TO RATIFICATION AND LEGISLATION**

SALEEM SHAHEEN<sup>141\*\*</sup>

**Abstract:** International Labor Organization adopted a Convention No. 189 on 16<sup>th</sup> June, 2011 concerning domestic workers. Domestic workers are actually hidden workers. ILO unhidden them first time in history in 2011 by exploring their rights and setting standards and principles. All ratifying states made and amended their existing laws in line with this convention. In Pakistan, though it has not ratified this convention but amended the Punjab employment of children act in 2011 making it in line with this convention. For Pakistan, it is difficult to solve the domestic workers problems as domestic work does not fall within ambit of regularized and contracted jobs. In public sectors, the government may increase easily the wages at certain percent ratio but the wages for are not easily increased the work being done behind the walls, can't possible to increase its prices as household employer don't like because they can have the cheapest labor due to increased number of population. This article actually is a study of domestic labor work and its problems in Pakistan in the light of ILO Convention No 189 emphasizing on a dire need of ratifying this convention and bringing domestic workers legislations in line with this convention.

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<sup>141</sup> He is Master degree holder in Law and Commerce. He is Director of Premier Law College, Gujranwala.

**Keywords:** Pakistan, Domestic, Workers, Convention 189, Ratification, Legislation

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**INTRODUCTION;** Domestic workers are actually hidden workers. These workers include Men, Women, and children of every age group. This work may include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children or elderly or sick members of a family, gardening, guarding the house, driving for the family, even taking care of house hold pets. ILO Convention No 189 defines domestic work as “work performed in or for a household or households”<sup>142</sup> These workers in Pakistan mostly work at low rate of wages. A woman provides services of washing of clothes for a whole family comprising about 8 to 10 members and she receives for this job about Rs 2500 to 3000 per month. If these clothes are washed at laundry market rates, the family has to pay about Rs 15000. But unfortunately, they don't pay domestic lady worker a rightly wage for this job so that she makes up a bread for herself and her children. In subcontinent, the feudalism culture is still so strong. Waderaism and feudal lords keep the men, women and children work at their homes and dears under their brutal clutches at daily bread and pay them no wages. Actually, these domestic workers are their slaves. In certain cases, they pay some money in advance and keep them at their houses as slaves. Children below fourteen years of age are seemed to work in kitchens. They welcome visitors by opening the home's gate, they bring groceries from shops, wash clothes and serve their master's children. People prefer the children to employ at home as they pay them cheapest wages.

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<sup>142</sup> See the definition clause for domestic work in Convention No 189.

A home based network in Pakistan says ``there are 20 million home-based workers in the country, of which 12 million are women. The conditions for home-based workers are unregulated and unprotected, involving repetitive and hazardous work, long shifts lasting from 14 to 16 hours, and low wages. They also have to rely on, and are subsequently exploited by, contractors or middlemen``<sup>143</sup>. Home-based workers in Karachi held a protest in December calling for an end to workplace harassment and demanding wages equal to their male counterparts.<sup>144</sup>

### **Existing laws on domestic workers in Pakistan**

It is all this happened in spite of the laws on prohibitions of employing children. Punjab employment of children (Amendment) Act 2011 says. “No child shall be employed or permitted to work in any occupation set forth in part 1 of the schedule or in any workshop as set forth in part 2 of the schedule.”<sup>145</sup> In line with manifesto of the Pakistan people’s party, the Government envisaged a Labor policy in 2010. Article 20 of this policy says “Workers between the ages of 14 and less than 18 years will not be engaged in hazardous working conditions and other working environments that adversely affect their physical and moral development. They will also be provided greater access to education and training particularly training, tailored to identify labor market needs. Children and young person’s will be withdrawn and prevented from hazardous nature of work as, for example, mining,

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<sup>143</sup>The statement mentioned above accorded as by a Home Net Pakistan Institution, a membership-based network of home-based workers.

<sup>144</sup> See for instance, the report of HRCP, 2018 p; 213.

<sup>145</sup> See section 3, vide Punjab employment of children (Amendment) Act X of 2011, dated 2.5.2011.



tanneries, brick kilns, construction, and glass bangles. Special programmers will be designed to focus young domestic workers employed in private households. Payment of minimum wage will also be ensured to the young persons<sup>146</sup>. The first time in history of Pakistan the Sindh Assembly passed the law for protection of home based workers. `` Which would register and regularize home-based workers and ensure equal treatment to them and their dependents in cases of sickness, maternity leave, injury, or death. All home-based workers involved in the production and manufacturing of goods or provision of services at a home premises or any other place near a home would benefit from this law. The rules of business had yet to be framed<sup>147</sup>. Other provinces have yet to follow suit. Here it can be clearly seen from the report of HRCP how the number of domestic workers in Pakistan is increasing and their rights are infringed. The report says ``domestic workers are roughly estimated to be over 8 million. Most of these are women and girls whose labor is undocumented, rendering the compiling of accurate statistics impossible. A high number of these workers are children. The treatment meted out by employers only comes to light when media reports highlight extreme abuse, and anecdotal accounts speak of long work hours and heavy workloads, low pay, no rest or holidays, allegations of theft, and physical and sexual abuse<sup>148</sup>. The Punjab Domestic Workers Bill 2018 was tabled in early December in the Punjab Assembly. A similar Bill was reportedly under preparation at the Ministry of Human Rights, to be tabled in parliament. The Punjab Bill finally recognizes the economic and social value of

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<sup>146</sup> See article 20, Labor policy 2010.

<sup>147</sup> In May, the Sindh Assembly passed the Sindh Home-Based Workers Act 2018.

<sup>148</sup> See for instance, the report of HRCP, 2018 p; 213.

domestic workers in the country, addressing the exclusion of domestic workers from labor and the need for social protection. However, there are some anomalies in the Bill that raise concern, work for example in setting the minimum age at 15 years, and making no mention of the hazards faced<sup>149</sup>.

## **INTERNATIONAL PERSPECTIVE ON DOMESTIC WORKERS**

International labor organization adopted the Convention No.189 on 16 June 2011, concerning domestic workers. This convention uses a term of decent work for domestic work. This term puts pleasant psychological effect on the minds of domestic workers as they feel that they are performing an excellent job. This convention is basically a treaty in nature adopted by the international labor conference, which is made up of government, worker and employer delegates from the 183 member's states of the ILO. This convention offers specific protection to domestic workers. It also lays down basic rights and principles and makes states bound to take steps and measures for making domestic work an honorable job and good reality for domestic workers. All ratifying states should firmly make a commitment to implement all the obligations provided in this convention. This convention may be implemented in ratifying states by extending or adopting existing laws and regulations and these states may also develop new and specific laws and regulations as required under this convention progressively. A domestic worker may work on full-time or part-time basis. He may be employed by a single household or by multiple employers. He may or may not reside in the household of the employer. All domestic workers are covered by this

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<sup>149</sup> Ibid at 213.

Convention, although countries may decide to exclude some categories, under very strict conditions. The employer of a domestic worker may be a member of the household, for which the work is performed, or any agency or enterprise that employs domestic workers and makes them available to households. The convention requires Government to consult with the most representative organizations of employers and workers.

Convention No. 189 affirms the fundamental rights of domestic workers. Such as support for the ratification and implementation of the Convention, promotion and protection of the human rights of all domestic workers, respect and protection of protection of rights at work and protection against all forms of abuse, harassment and violence, fair terms of employment and decent living conditions<sup>150</sup>.

Article 10 says “Measures aimed at ensuring equal treatment between domestic workers and workers generally with respect to normal hours of work, overtime compensation, periods of daily and weekly rest, and annual paid leave”<sup>151</sup> This convention also sets a minimum wage standards and a criteria for payment of wages in cash or in kind. The wage in cash must be paid directly to the workers, and at regular interval of no longer than one month.<sup>152</sup> This convention varieties verifies occupational safety and health as a right to safe and healthy working environment and set standards concerning child domestic worker as a minimum age for entry into domestic work. Domestic workers aged 15 years old but less than 18 year old their work should not deprive them of compulsory

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<sup>150</sup> See for instance, articles 3, 4, 5, 11 of ILO convention No 189, 2016.

<sup>151</sup> Ibid at article 10.

<sup>152</sup> Ibid at article 11, 12.

education.<sup>153</sup> This convention also sets standards for living conditions of domestic workers as they have a decent live-in that respect the workers' privacy.<sup>154</sup>

This convention actually a written contract that is enforceable in the country of employment, or a written job offer. Dispute settlement, complaints, and enforcement are also set forth in this convention as an effective access to the court, tribunals or other dispute settlement mechanisms, including accessible complaint mechanisms.<sup>155</sup>

Universal declaration of human rights put emphasis in its initial phases on the right of everyone to work as the article 23 says ``everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interest``.<sup>156</sup>

Likewise United Nation Organization Convention on the rights of the Children says that ``State parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development``.<sup>157</sup> Now we sees

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<sup>153</sup> Ibid at article 13, 4.

<sup>154</sup> Ibid at article 6.

<sup>155</sup> Ibid at article 17.

<sup>156</sup> See article 23 (1-4) Universal Declaration of Human Rights 1945

<sup>157</sup> See for instance, article 32(1) United Nations Convention on the rights of the child.

the reports of ILO on the estimation of labor force induction in public and private sector in Pakistan ``estimated that around 7,096 trade unions were registered in Pakistan in December 2016. It also estimated that the total unionized workforce at the same time stood at 1,414,160, as well as 1,390 collective bargaining agents (CBAs) in the country``.<sup>158</sup>

The ILO further estimates that ``around 2.32% of the total workforce is organized in trade unions, independent economists believe this number is no more than 1%. Most of the trade unions in Pakistan exist only in formal sectors and, according to the estimates, only 15.55% of the informal sector workforce is organized under trade unions``.<sup>159</sup>

There is another phenomena of employment in Pakistan, mostly a third party involved in employment named as `contractors` for this reason most of the people lost their jobs and became unemployed. As this situation can be seen in human rights commission report ``large number of workers lost their jobs under the new mode of employment. The contract employment situation was further exacerbated with the introduction of the third-party employment system, in which the workers are employed by a private contractor to work for a particular company on a daily wage or piece-rate basis. That means the workers are not employees of that company whose products they are producing and they are not provided any appointment letter or identity cards of that company, despite the fact in many cases they go to the premises to work. This third-party contract employment is now

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<sup>158</sup> See for instance, the report published in 2018 by International Labor Organization (ILO) Pakistan-A profile of trade unionism and industrial relations in Pakistan.

<sup>159</sup> Ibid at 205.

adopted by most of the industries and commercial establishments in Pakistan, which has virtually changed the employment scene<sup>160</sup>.

In December 2017 the Supreme Court of Pakistan in a historic verdict declared the third-party contract system against the Constitution and fundamental rights and ordered all the employers to retrospectively regularize their workers employed on contract or third-party contract.

<sup>161</sup>

Human Rights Commission of Pakistan comments on the order of the Supreme Court of Pakistan ``during 2018, no steps were taken to implement that order. The labor representatives filed a petition in the Supreme Court of Pakistan for implementation of the order, but the Supreme Court refused to entertain their petition, ordering them to file a petition in any high court under Article 199 (jurisdiction of the High Court)``.<sup>162</sup>

Private Sector workers are the main victims of their wages payment. As the report of Human Rights Commission of Pakistan says ``private sector workers are the main victims of the current financial situation. Their workplace conditions are pathetic, where occupational health and safety standards are mostly ignored. The absence or ineffectiveness of the state's inspection system has resulted in numerous industrial accidents, many of which are unreported. Throughout the year, there were reports of deaths and injuries caused by roof collapses, cylinder blasts, and falls at factories``<sup>163</sup>.

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<sup>160</sup>See for instance, State of Human Rights in 2018, a report issued by Human Rights Commission of Pakistan in 2018. p; 205.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> Op cit. at 208.

### **Women domestic workers in Pakistan**

Women entered into labor force in the past 15 years in Pakistan more than 50 percent as The Human Rights Commission of Pakistan report, 2018 says:

While women's labor force participation in Pakistan has increased by more than 50 percent over the past 15 years, only one out of every five women participates in the labor force. A woman's entry into the labor force in Pakistan is dependent on several socioeconomic and cultural factors—among them education levels, family and domestic restrictions, transport etc. Pakistan's labor laws do not create an enabling working environment for women and suffer from inconsistencies in the definitions of labor and labor rights, among other problems, according to a gender audit carried out by Women's Action for Better Workplaces.<sup>164</sup>

Women entered into Agriculture sector that is also a domestic work job in nature in Pakistan. Landlords and `vaderaas` mostly keep the women working at their homes and `degas` involved in their agriculture lands as a rural women in Pakistan Status Report, 2018 says;

With almost two-thirds of Pakistan's population in rural areas, seventy-five percent of women and girls are employed in the agriculture sector. Sixty percent of their work is being utilized as unpaid—in family farms and enterprises—while only 19% are in paid employment. The literacy rate of rural women between the ages of 15-64 years is 35 percent, while in urban areas it is 69 percent.

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<sup>164</sup> See for instance, a study Gender equality in public administration jointly released in March, 2018 by the United Nations development program (UNDP) and the United Nations Entity for gender equality and the empowerment of women (UN WOMEN PROGRAMME).

Twenty percent of rural women are classified as own account workers. Support for microenterprises is still limited to low return skills and average loans of Rs.25, 000 per woman.<sup>165</sup>

The report further says, ``rural women are not prepared to cope with the changes resulting from urbanization, climate change, environmental degradation and shocks, and technological innovations. The report concluded that legislation, policy, and activism are required to address the rights and wellbeing of women agricultural workers, and emphasized the need for research ranging from the introduction of new technologies, the value of unpaid care work and the care economy, and rural women entrepreneurs, to the links between climate change and rural women, the impact of CPEC, and violence against women``.<sup>166</sup>

### **Domestic Violence as regard to domestic workers**

Domestic violence can be defined as threatening behavior, violence or abuse (psychological, physical, sexual, financial or emotional)<sup>167</sup>. It is widespread, common and likely to cause both physical and emotional injury not only to the victim but to children caught up in violence.

In 1992 the Law Commission in its Report on Domestic Violence had explained domestic violence thus.

The term “violence” itself is often used in two senses. In its narrower meaning it describes the use or threat of physical force against a victim in the form of an assault or battery<sup>168</sup>.

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<sup>165</sup> See for instance, rural women in Pakistan status report, 2018, launched in July, 2018 by United Nations.

<sup>166</sup> Ibid

<sup>167</sup> A definition used by the Home Office: see family document 5.3

<sup>168</sup> See Law Commission Report No.207, 1992. Para 2.3.



Each definition has been drafted for and takes its meaning from a specific context, whether homelessness applications, immigration legislation or the criminal or family law but all now recognize that domestic violence can be physical, emotional. Sexual, intimidating and is not limited to either male or female. In *Yemshaw* Baroness Hale, talking in context of part VII of the housing act 1996 made the point that ‘domestic violence’ is not a term of art. It is capable of bearing several meanings and applying to many different types of behavior’.<sup>169</sup> She continued: ‘There may also be a concern that an expanded definition is setting the threshold too low. The advantage of the definition to adopted by the president of the Family Division is now that that it deals separately with actual physical violence, putting a person in fear of such violence, and other types of harmful behavior .It has been recognized for a long time is dangerous to ignore what may appear to some to be relatively trivial forms of physical violence. IN the domestic context it is common for assaults to escalate from what seems trivial at first .Once over the hurdle of striking the first blow, apologizing and making up ,some people find it much easier to strike the second, and the third, and go on and on But of course, that is not every case. Isolated or minor act of physical violence in the past will not necessarily give rise to a probability of their happening again in the future. This is limiting factor.’<sup>170</sup>

The 2001 British Crime Survey (BCS) included a detailed self-completion questionnaire designed to ascertain: the most accurate estimates of the extent and nature of domestic violence, sexual assault and stalking for England

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<sup>169</sup> UKSC3, [2011] FLR 1614, p; 27.

<sup>170</sup> *Ibid*, at 34.

and Wales.<sup>171</sup> There were an estimated 12.9 million incident of domestic violence acts against women and 2.5 million against men in England and Wales in the year prior to interview.

The following risk factors can be found in domestic violence,

- Women are more at risk than men of inter-personal violence and especially of sexual assault.
- Younger people are more at risk of all forms of inter-personal violence than older people.
- It may be that poverty is associated with the onset of domestic violence, or it may be that in fleeing domestic violence or reduced to poverty.
- The presence of children in the household is associated with nearly double the risk of domestic violence for women.

The domestic violence also reported by Human Rights Commission of Pakistan as commission report says ``alleged torture of a 20-year-old maid, Anees Bibi, by police in Gujranwala was reported in January 2018. Her employer, a landlord in Bhamowali village, had alleged she had stolen some expensive items from his house. She was arrested and reportedly tortured. An inquiry committee appointed by the chief minister held the police officials guilty and recommended action against them``.<sup>172</sup> Another case of agricultural domestic violence was reported by the human rights commission of Pakistan as the report say ``the son of a former federal minister was arrested in December at the Seventy-five percent of women and girls are employed in the agriculture sector

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<sup>171</sup>Webley and Allen Domestic violence, Sexual Assault and Stalking: Findings from the British Crime Survey (Home Office Research Study 276, 2004).

<sup>172</sup> See for instance, state of human rights in 2018, a report issued by human rights commission of Pakistan in 2018, p; 177.

Women 177 Supreme Court on charges of detaining and abusing his maids, Yasmin and Saima, over a theft allegation. The exploitation and abuse of (mostly) female domestic employees— children number among these to an alarming extent—is an issue that is rarely brought out into the open. Considered indispensable in middle and upper class households, these women are nonetheless often subjected to long working hours, low pay, heavy workloads, no rest, no holidays and, worst of all, physical abuse. Even the more considerate employers do not have contracts for their domestic staff, which means that they are unregistered and unrepresented<sup>173</sup>.

Here you may see a case of child domestic violence in Human Rights Commission of Pakistan as the commission report says ``the case of the ill-treatment of the young maid Tayyaba captured the country's attention in December 2016. In April 2018, the Islamabad High Court sentenced an additional district and sessions judge and his wife to one year each in prison and ordered them to pay a fine of Rs50, 000 each for keeping their then 10-year-old child maid Tayyaba in wrongful confinement, burning her hand over a missing broom, beating her with a ladle, detaining her in a storeroom, and threatening her with 'dire consequences'. A week later, a division bench of the Islamabad High Court suspended the one-year jail sentences handed down to the judge and his wife. The parents of Tayyaba told the Islamabad High Court that they did not wish to pursue the case. In June, the Islamabad High Court accepted an appeal filed by the state and increased the prison sentence from one year to three years with a fine of Rs500, 000. ``<sup>174</sup>The bench observed that the criminal justice system had failed to protect the most

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<sup>173</sup>Ibid at 178.

<sup>174</sup> Op cit. at 196.

vulnerable members of society from neglect, inhuman treatment, and the worst form of abuse, and had only started functioning after publicity on social media and the subsequent suo motu notice taken by the Supreme Court. A couple were arrested in Gujjar Pura for allegedly torturing their 11-year-old maid, Sumera, clubbing and burning her with an iron rod. Another 11-year-old girl, Kinza, was beaten with blunt instruments by her employers—a woman army officer and her doctor husband. The husband was arrested in November after his interim bail expired. The wife, named as the prime suspect, was already being investigated by army authorities.

Seven-year-old Hadia was shot dead by her employer, and her six-year old sister Safia injured, when they arrived late for work. The incident took place in Lakki Marwat, in the province of Khyber Pakhtunkhwa.<sup>175</sup>

The Human Rights Commission of Pakistan report comments on the alleged cases of domestic violence as ``these are the tip of the proverbial iceberg—incidents that only come to the attention of the authorities and the media when neighbours report them or parents complain. Far too often, however, parents who have farmed out their children because of their own impoverished circumstances are persuaded to stay silent with financial inducements``.<sup>176</sup>

## **MINIMUM WAGES FOR UNSKILLED DOMESTIC WORKERS**

Implementation of minimum wages for unskilled workers has not been observed in the Provinces as the Human

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<sup>175</sup> See for instance, state of human rights in 2018, a report issued by human rights commission of Pakistan in 2018, p; 196.

<sup>176</sup> Ibid.

Rights Commission of Pakistan report says ``after the 18th Amendment, the provincial governments were bound to announce minimum wages every year for unskilled workers under the Minimum Wages Law (each province has a separate law). Usually minimum wages are announced at the time of budget, but the former government did not announce it at federal or provincial level. After the elections, only the Sindh government announced the minimum wage for unskilled workers, increasing the amount from Rs15, 000 to Rs16, 200 per month. The other three provinces have kept the old rate of Rs15, 000 for the second consecutive year. Implementation of the minimum wage is still scarcely observed``.<sup>177</sup>

### **CHILD DOMESTIC LABOR**

The dire situation of child labor in the country showed no signs of improvement. Pakistan Labor Force Survey shows `` It is estimated that over 12 million children are involved in child labor in the country, many of them due to poverty aged between 10 and 14 years active in child labor, 61 percent were boys and 88 percent came from rural areas. Estimates of the number of children can never be accurate because children working in unregistered small or family businesses or in domestic service are not covered by surveys``.<sup>178</sup>

In February, the previous Punjab administration announced a drive to eradicate child labor in brick kilns. Following this, 32 child laborers were reportedly freed and owners arrested in Sialkot. In April, activists called for detailed information on the Punjab government's

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<sup>177</sup> See for instance, State of Human Rights in 2018, a report issued by Human Rights Commission of Pakistan in 2018. p; 204

<sup>178</sup> See for instance, Pakistan Labor Force Survey 2014-15.

Integrated Project for Elimination of Child and Bonded Labor 2014.<sup>179</sup> The following statements of HRCP are very important to see this case ``the government had apparently allocated Rs5.1bn for this project and claimed to have removed 88,000 children from brick kilns and rescued around 41,000 from child labor in other sectors``<sup>180</sup>. Human Rights Activists and people working with brick kiln laborers said that ``the schools were empty and children were still working. In district Sheikhpura, 204 one-room schools set up informally under this project were reported to have been closed down``<sup>181</sup>. The report further says ``previous Khyber Pakhtunkhwa cabinet in its last meeting on 24<sup>th</sup> May, 2018 approved what they said was the first every child labor policy of its kind, claiming it would discourage child labor and help in preparing a solid strategy for preventing the factors responsible for child labor``. The government is careless to check the employment of children in homes as the HRCP report says ``continues to prevail unchecked and only surfaces in the media when extreme cases of neglect and abuse are reported. The regularity with which reports surface even after employers have been exposed and prosecuted demonstrates once again that legislation alone cannot eliminate child labor and it is the implementation of laws and initiatives that presents the main obstacle``.

## CONCLUSION

In the end, as it is above studied and discussed the phenomena of domestic work in the light of ILO Convention No. 189, and other international laws and

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<sup>179</sup> See for instance, the Report of Human Rights Commission of Pakistan 2018, p; 210

<sup>180</sup> Ibid at 211

<sup>181</sup> Ibid at 212

policies and the reports of HRCP concluded the matter that there is not a good situation in Pakistan regarding the rights of domestic workers. Pakistan is still hesitating to ratify the ILO Convention No 189. Therefore, there is a dire need to ratify the International Labor Organization Convention No. 189 and bring all existing labor laws in line with this convention and introduce new laws and legislations in the country which set standards and principles for domestic work.