



PREMIER LAW JOURNAL

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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 3rd volume, issue 9, which is going to be published in March, 2024. It is a quarterly Journal dedicated to provide original research articles in Social and Legal Studies as well as analysis and commentary on issues related to 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 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.

Asad Ali says in her article one of the fundamental rights that humans have enjoyed since the beginning of time is "freedom of speech and expression," which subsequently came to be protected by a number of international charters, conventions, treaties, and constitutions. The qualitative research methodology is adopted in this research to explore the hidden aspects of freedom of speech that's is either related to electronic cites, social media, media etc. In terms of faith, belief, and religion, it achieved a balance between "freedom and diversity in society" because unchecked freedom could lead to anarchy and turmoil in the community.

Maraj Alam explain in this article Pakistan being a common law depending on parties to the case to extract evidence which is the utmost requirement for the fair and to meet the end of justice from the court of law for that purpose parties put their efforts in the form of Questions from the witness to find out the truth of case ,one of the mode is leading question which conferring the answer to the person putting before such type of questions and expected or wish

to get a desirable answer from witnesses in order to reach at the ambit of truth, leading questions are also called binding, hinting, suggestive and pointing questions which required answer in No or Yes without going in length to answer.

Dr. Muhammad Amin Explain in this article takes up an empirical study of customer's perception of service quality for Mustaqeem Soneri Islamic Banking. The soneri bank is currently Operating with over 500+ branches across Pakistan, including 58 Islamic Banking branches. The critical area of Soneri Bank's operation is Islamic Banking. Soneri Mustaqeem Islamic Banking Division is expanding quickly with 58 dedicated Islamic banking branches and 15 Islamic Banking windows across Pakistan. Most of the customers of Islamic Banking understand toward Islamic Banking that the end result of Islamic Banking and Conventional Banking is the same.

Saleem Shaheen's paper is about the study of constitutional development in Pakistan in relation to the political instability or stability of the country. As the constitution provides a set of rules for people of a state who agrees to live together and it is the basic set of principles through which a state is governed. This article analyses the making process of constitution in Pakistan.

Ghulam Mohy ud Din says in his article that Social welfare experienced an important transformation in the developing countries. Against a circumstantial of economic crises, structural adjustment and globalization, social welfare came to pronounce a policy framework for addressing poverty and exposure ability. Whereas social assistance in developed countries is fundamentally an "outstanding safety net charged with welfare a small underground of individuals and households from the effects of social problem,"

Dr. Muhammad Amin
The Editor in Chief

RIGHT OF FREEDOM OF SPEECH AND EXPRESSION AN ANALYSIS: A CASE STUDY OF PAKISTAN.

ASAD ALI^{1*}
DR. SHAHID RIZWAN BAIG^{2**}

ABSTRACT; One of the fundamental rights that humans have enjoyed since the beginning of time is "freedom of speech and expression," which subsequently came to be protected by a number of international charters, conventions, treaties, and constitutions. This fundamental right has been further celebrated by the international community, state legislatures, and jurists. It is also enshrined, albeit with significant limitations and prohibitions, under Article 19 of the Islamic Republic of Pakistan, 1973. The qualitative research methodology is adopted in this research to explore the hidden aspects of freedom of speech that's is either related to electronic cites, social media, media etc. In terms of faith, belief, and religion, it achieved a balance between "freedom and diversity in society" because unchecked freedom could lead to anarchy and turmoil in the community. Without the media, there can be no advancement in the right to free speech. Regrettably, there are numerous examples throughout Pakistan's history where the media was subjected to capricious restrictions under the pretext of defending "national interest." We may observe that the number of victims targeted for their open expression of opinion has sharply increased in the last several years. Freedom of speech encompasses more than just speaking in public; it also includes writing columns, editorials,

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books, blogs, and even expressing oneself on social media. The government recently passed the PECA act, which restricts and limits fundamental freedoms guaranteed by the constitution in an effort to scare the public. The author also seeks to explain the rationale for restrictions on or repression of free expression. The author will also look into any potential repercussions and available fixes for this problem. In fact, ignoring sexual harassment won't make it stop.

Key Words: Freedom, Speech, Freedom of Expression, Constitution of Pakistan, Democratic rights,

INTRODUCTION: The culmination of years of Pakistani liberation struggle was the Pakistani Declaration. The covenant of March 23, 1940, promoted the defense of Muslim rights in the region during the development of independent nations. In essence, this landmark document is a defense of civil liberties. This short text highlights the significance of civic safeguards for "other communities" and "Muslims" in India. Thus, freedom of speech and expression was a tenet of the Lahore Declaration, or Pakistan Resolution as it was finally called. "Suitable, applied, and critical protection for communities should be clear as specified in the charter," states the final clause of the treaty. At the time, Muslims made up a minority in the population. The intention of these actions was to protect the "religious, social, financial, civic, bureaucratic, and many other rights and liberties" of Muslims and several other communities.³ Taking into account the previously cited excerpts, it is possible to infer the right to freedom of expression from

³ Sadaf Liaquat, Ayesha Qaisrani, and Elishma Noel Khokhar, "Freedom of Expression in Pakistan: A myth or a reality," (2016).

the Pakistan Declaration. "The idea of the fundamental right of humanity to voice one's views socially without being afraid of restriction or retribution" is known as freedom of speech. Speech is commonly understood to encompass a variety of modes of expression and is not just restricted to public speaking. The right is protected by the (UDHR) and is officially recognized by the majority of international legal frameworks. However, there are wide variations across countries in the actual level of upholding of the right.

The English common law thinkers Rousseau and Locke, who lived in the 17th and 18th centuries, created the concepts of fundamental rights. The U.S. Constitution and its amendments formalized the novel and fresh idea of rights that new immigrants to the country brought with them. For nearly a century now, American courts have been articulating, interpreting, and expanding upon these ideas. Following the UN General Assembly's December 1948 recognition of thirty human rights, these rights became guiding principles for inclusion in the constitutions of all other member nations worldwide. When it comes to the ability to communicate one's views, feelings, and ideas to others, freedom of speech is considered the mother of all rights and a priceless gift from God. The definition of fundamental rights must take into account the freedom of speech and expression, as well as personal freedom and self-determination. Optimism and dynamism define a democracy. Pakistan's 1973 Constitution guarantees the right to free speech and expression in Article 19. "Freedom of speech and expression" is a fundamental human right that is mandated

by civil society and safeguarded by regional and international treaties and charters.⁴

In addition to emphasizing certain limitations and remedies for exercising the right to free speech and expression, defamation law also offers a number of defenses to supplement that freedom. Veracity of the assertion made in the public interest, an honest assessment of the public behavior of public employees, a statement that represents an opinion about a person's behavior, a natural and accurate reporting of court proceedings, an honest assessment of the case's merit, a fair assessment of the quality of public performance, a genuine censure issued by an authority figure, accusations made to a person in power by someone acting in good faith; accusations made to protect a person's private interests, their public welfare, or both.⁵

Affecting Factors for Speech Freedom Constitutional Framework

The submission focuses on issues related to the statutory, permissible, and established framework rather than attempting to cover every aspect of freedom of expression. These issues include (i) Apostasy laws as they effect the rights of expression abuse of women in the media freedom to speak freely on the internet.⁶

i. Apostasy laws as they effect the rights of expression

⁴ Naveed Ahmad and Muhammad Ejaz Malik, "Freedom Of Speech And Expression In The Contemporary World: A Case Study Of Pakistan And Limitations Of Article 19 Of The Constitution Of Pakistan, 1973," *Journal of the Punjab University Historical Society* 33, no. 02 (2020).

⁵ Abdul Ghaffar Korai, Ahad Ghaffar, and Abdul Samad, "Freedom of Speech under Constitution of Pakistan," *Journal of Law & Social Studies (JLSS)* 5, no. 2.

⁶ George Kahale III and Matias A Vega, "Immunity and Jurisdiction: toward a uniform body of law in actions against foreign states," *Colum. J. Transnat'l L.* 18.

Article 20 of Pakistan's replies to the Checklist said that laws against heresy were implemented during British control, which is partially true given that clause 295 was passed at the time. Nevertheless, the PPC's articles 295 B and C which carry the death penalty were passed after that period of colonial occupation. Four distinct types of blasphemy are forbidden by the PPC. e.g., "anyone who defiles the holy status of the Holy Prophet Muhammad (PBUH) by remarks, either spoken or released, or by the system of indications, or by any accusations, rumors, or presumption, expressly or implicitly " According to PPC Section 295-C, the penalties are either life in prison, the death penalty, or perhaps a fine. Article 295-B punishes "Anyone who intentionally profanes, harms, or violates a manuscript" with a life imprisonment. Article 295-B punishes "anyone who deliberately profanes, destroys, or dishonors a manuscript of the Holy Qur'an" with a life sentence. Therefore, anyone who puts down in danger intends to hurt the religious sentiments of any segment of Pakistani society," faces up to 10 years in prison and/or a fine under Article 295-A of the PPC. Article 295 of the Pakistan Penal Code provides that an individual may face a maximum two-year prison sentence and/or a fine for "whoever obliterates, hurts."⁷

ii. Abuse of women in the media

Article 4 of Pakistan's replies to the Checklist highlights the state's pro-women policy, although these policies are not being carried out. The system has made an effort to support the passage of laws that support women, such as the "Safety against Sexual Harassment of Women at Workplace Act 2010 minimal safeguards." For this reason,

⁷ Noman Asad and Rida Ahmad, "An Analysis of the Right of Freedom of Speech and Expression: A Case Study of Pakistan," *Current Trends in Law and Society* 2, no. 1 (2022).

only a small number of journalistic organizations have enforced the Act. Even with guarantee laws that shield women from discrimination and abuse generally, as well as Pakistan's responsibilities to combat hatred and oppression against women in general and in the workplace, sex and gender-based abuse and intimidation experienced by female journalists and media workers remains a serious problem.⁸

Women never spoke up, in my experience. Financial difficulties, shyness, fear of losing her job, sensitivity, the sensation that she is ruining her name and image in front of her coworkers, concern that she would be made fun of, fear of being threatened, and many other factors could be the cause. In my opinion, women should be required to speak up and take action against those who abuse them in any way whether it verbal, physical, mental, religious, or emotional before they become susceptible. All women have the right to combat these abusers so that they will be aware of their rights, feel fear, and believe that women are stronger than males. This begs the question, "Why do women always end up on the abuser's menu? When asked what they had done or would do to increase awareness about harassment, the majority of respondents claimed they had done nothing; however, a small percentage said they had organized trainings, seminars, and workshops to empower women. One of the respondents also mentioned that they asked the head to create harassment policies, which their business just finished."⁹

⁸ Kashif Javed, Li Jianxin, and Asif Khan, "Constitutional exceptions of right to speech: Evidence from the apex courts of Pakistan," *Journal of Humanities, Social and Management Sciences (JHSMS)* 2, no. 1 (2021).

⁹ Muhammad Ramzan et al., "Freedom of speech: Infringement of women rights in Pakistan," (Saussurea, 2019).

iii. freedom to speak freely on the internet

In a January 2016 article submitted to the Judicial Branch, the Pakistan Telecommunication Authority (PTA) stated that it had blocked about 84,000 websites that contained objectionable content and that 400,000 ridiculous websites were shared with all Internet companies for entity-level prevention. PTA has blocked 04 domains belonging to illegal groups and 937 Uniform Resource Locators (URLs) in order to prevent internet usage.¹⁰ Additionally, a number of magazines have abruptly closed. Examples of restricted websites are as follows: (i) In July 2013, after publishing an article titled "Pakistan's Bin Laden Report," which presented the findings of a panel of inquiry assembled by Pakistan's government and defense ministries to look into the Bin Laden operation, Aljazeera's homepage was blocked.¹¹ On February 27, 2015, a Facebook page called "The Beauty of FATA" was taken down following discussions on the controversial Border Activities Management Law of 1901 from Pakistan. In September 2013, queer. Pk Pakistan's first LGBT (lesbian, gay, bisexual, and transgender) portal, was shut down. Iv. Computer and mobile services have been often suspended during times of political unrest, usually on the basis of broad allegations purportedly related to national security.¹²

Rights of Speech in Islam

Every Muslim is entitled to the right to free speech, but their religion also teaches them to exercise that right

¹⁰ Jafar Riaz Kataria and HS Sharif, "Freedom of Expression and Justiciability in Pakistan," *South Asian Studies* 34, no. 01 (2019).

¹¹ Kahale III and Vega, "Immunity and Jurisdiction: toward a uniform body of law in actions against foreign states."

¹² Saima Parveen and Muhammad Nawaz Bhatti, "Freedom of expression and media censorship in Pakistan: A historical study," *Journal of Historical Studies* 4, no. 2 (2018).

properly. In Islam, it is considered a fundamental human right to voice one's thoughts, provided that it is not done in a way that does unfair harm to other people. It is specifically stated in Islam that no one can damage others unjustifiably, as the misuse of the right to freedom of speech might result in violence in a peaceful community. Islam thereby restricts the extent to which individuals can express themselves.

Blasphemy through Social media vs Junaid Jamshed case:

In December 2014, after singer-turned-preacher Junaid Jamshed sermon went viral on social media, accusing him of making blasphemous remarks regarding Prophet Muhammad's wife, a blasphemy complaint was filed against him. A Sunni Three leader's complaint led to the case's registration under Sections 295-C and 298-A. Jamshed was forced to issue an apology via video message, pleading for forgiveness for his comments. Amir Liaquat of rival Geo TV, a televangelist, took particular notice of the blasphemous film and said live that Jamshed transgression could not be pardoned. Jamshed was recently accosted at the Islamabad airport by a group of Sunni individuals who were calling for his death due to his alleged blasphemy. However, authorities intervened to save him.

Overview on Restrictions over Freedom of Expression

When considered collectively, basic rights might be compared to a rope that supports people's essential constitutional safeguards. In appropriate situations, fundamental rights should be viewed as a whole and implemented as such, rather than being thought of and administered in isolation. The phrase "freedom" is suitable for elaborating on the fundamental rights guaranteed by the constitutions. However, unqualified freedom that is,

the ability to act in accordance with irrational desire can only be attributed to the vicious creatures that live in caves or among jungle beasts. Rights are linked to or balanced by civic duties, which should be emphasized just as much as rights. Individual freedom that is unrestrained and absolute is not acceptable in any state at this time. The interests of the collective, security, and peace are crucial in any organized society. Should the state be unstable and in jeopardy, then in that nation, fundamental rights are meaningless. Therefore, it's important to maintain a balance between fundamental rights and justifiable limitations. The Pakistani Constitution's Article 19 presents the case for regulation in addition to the preservation of free speech. As to the Pakistani constitution, the freedom of expression is actually a residual freedom. In these words, the Pakistani constitution presents and regulates the right to freedom of expression.¹³

Press freedom History

In Pakistan as well as other democratic societies, press freedom is a fundamental principle. Pakistan's history as a journalistic nation has been tumultuous, marked by periods of relative openness punctuated by severe limitations on press freedom, especially during military dictatorships. A cause for concern in recent years has been the state of free speech in the nation. According to the 2023 World Press Freedom Index, Pakistan is ranked 150th out of 180 countries, which reflects a sharp decline in press freedom in recent years. Journalists in Pakistan face numerous challenges, such as intimidation and harassment threats.

¹³ J Riaz, Z Suleman, and ZI Cheema, "Confrontations and Limitations on the Freedom of Expression in Pakistan," *Global Mass Communication Studies Review* 4 (2020).

Newspapers first came to Pakistan in the 19th century, and the country has a rich and distinguished journalistic history. But the press didn't start to flourish in earnest until the late 1940s and early 1950s, when it offered a vibrant and varied selection of magazines covering a broad spectrum of topics. But this golden age of press freedom was fleeting, as press freedom was brutally curtailed by authoritarian regimes in the 1960s and 1970s.

Pakistan's government was given broad control over the press in 1960 with the Press and Publications Ordinance, which allowed it to outlaw publications deemed dangerous for the country's security or ideology. When journalists questioned the regime, they risked being arrested, imprisoned, and tortured, which affected the caliber and veracity of their reporting. Strict censorship laws were also put in place during Zia-ul-Haq's (1978–1988) tenure, giving the government previously unheard-of authority to block any news that was deemed controversial or critical of the dictatorship.

Corporate media firms expanded under General Pervez Musharraf's military government (1999–2008), but press freedom remained constrained. ARY News, Dawn News, Express News, and Geo TV were all owned by large corporations. Censorship was upheld and journalists who opposed the government faced persecution under Musharraf's rule. The Pakistan Electronic Media Regulatory Authority Ordinance (PEMRA), passed by Musharraf in 2002, gave the government extensive authority over electronic media. Because of this rule, there have been physical assaults, threats, and harassment of journalists, which has decreased the caliber and veracity of their reporting.¹⁴

¹⁴ Altaf Ullah Khan, "Pakistan's war on free speech: challenges and probable solutions," (2019).

The underpinnings of democracy are in danger as a result of Pakistan's dangerous restriction of free speech and journalistic freedom. The nation's past serves as a sobering lesson of the perils of repression and the importance of a free press. Reputable journalist Beena Sarwar asserts that "it is journalists' job to hold those in power accountable and the media is the watchdog of democracy." It is imperative that Pakistani journalists keep covering topics of public interest and holding the elite accountable in the face of growing crises.

The Democratic Background of Freedom of Expression and Speech Rights

Democracies require freedom of expression for the following three reasons:

- i. Freedom of expression also has a political value that is essential to a democratic government since it allows people to participate in the process of formulating laws and making decisions.
- ii. In order to preserve diversity and plurality in the society with regard to religion, lifestyle, views, nationality, and ethnicity, freedom of expression is crucial for democracy. Nevertheless, in order to be pluralist, the society must coexist with a variety of opposing viewpoints.
- iii. Since everyone in a democratic society is free to voice their opinions, any restriction would violate that person's moral autonomy, which makes freedom of expression morally necessary to the society.¹⁵

¹⁵ Attiya Iram, Rao Shahid, and Maham Shams, "Freedom of Expression Under Censorship in Democratic Pakistan," *Pakistan Journal of Social Research* 4, no. 04 (2022).

Freedom of speech, Expression and its Democratic Essence:

Freedom of expression and speech have the democratic essence which may be fulfilled by the inabilities of the grounds to be discussed. Democracies require freedom of expression for the following three main reasons

- i. Since the right to free speech allows people to engage in political processes such as lawmaking and decision-making, it also has political significance and is essential to democratic governments.
- ii. Since everyone in a democratic society is free to voice their opinions, any restriction would violate that person's moral autonomy, which makes freedom of expression morally necessary to the society.
- iii. In order to preserve diversity and plurality in the community with regard to religion, lifestyle, views, nationality, and ethnicity, freedom of expression is crucial for democracy. Nevertheless, in order to be pluralist, the community must coexist with a variety of opposing viewpoints.

Common practices in Pakistan for restricting speech based on a person's sexuality/ gender based

Right to property

The most essential thing for a person in this day and age is both tangible and intangible property. Since women are an essential component of society, they cannot be excluded from property ownership. Sadly, uneducated people in Pakistan attempt to restrict women's property rights. Sometimes brothers might be callous, refusing to provide their sister's inheritance rights based on her status. In order to preserve the property, they may even marry their sisters using the Quran, and other times they put pressure on them

to give up their rights. Boys may fail to give their mother her fair share as well.¹⁶

Right to Marriage

Every woman is free to decide whether or not to be married, and she is also free to say who she wants to marry. However, family guardians violate a woman's right to free expression when it comes to her own marriage. If a lady were to rebel against her guardian, she might be executed as an honor killing. Women in Pakistan are not allowed to say, "I absence to wed with." Most of the time, guardian's advice females to marry the person they recommend. If a girl expresses her preferences or wishes, she will be cursed and occasionally punished.

When some females want to marry for their choice or, as it is stated, love many problems arise. Occasionally, she passes away because her family members killed her for honor. When a girl declines a boy's marriage proposal, acid is flung in her face, leaving her permanently deformed and handicapped. She exercised her right to free speech and expression, which is why she was subjected to this savagery. The Universal Declaration of Human Rights (UDHR) asserts unequivocally in its first article that "Every human being is born free and equal in dignity and rights." They ought to behave kindly toward one another because they are gifted with reason and conscience.¹⁷

Right to job, profession and vote

There was a terrible period when females were not allowed to attend school, but today's obstacle is in the workplace, where women in Pakistan's rural areas are not permitted to work in some departments. Women with medical degrees

¹⁶ Muhammad Ramzan and Dr Tauseef Iqbal, "Freedom of Speech: A Study on the Infringements of Rights of Women in Pakistan," *Available at SSRN 3550736* (2019).

¹⁷ Ramzan and Iqbal, "Freedom of Speech: A Study on the Infringements of Rights of Women in Pakistan."

are not permitted to practice as doctors, not even in industrialized cities. Following their union, they become housewives. Quranic verse 32 in Sura Al Nisa does not forbid women from working. Verse 32 of Sura Al-Nissa makes it quite evident that a woman owns all she earns. Islam empowers and permits women to see and seize their own potential for their own well-being as well as the benefit of Muslim society at large.

According to Pakistan's constitution, everybody who has achieved the age of eighteen and has their name on the voter list is eligible to vote without facing any prejudice. Being a democratic nation and a member of the commonwealth club, Pakistan does not practice discrimination or privilege when it comes to voting rights; everyone is treated equally in this way. In many remote areas of Pakistan where polling stations are located, the percentage of female voters is lower than that of male voters. Certain ladies prefer to stay at home and avoid displaying themselves.\

Limitations on the Freedom of Expression/ right to vote

The NA's operations are not subject to constitutional restrictions, according to Article 5. This clause establishes each citizen's duty to uphold the Constitution and show loyalty to the State. Thus, the infringement of Article 5 might be drawn against citizens based on proof in a court of law following the presentation of evidence and the giving of an accused party's hearing. In this instance, it would be the opposition party members who are accused of working with a foreign government to remove the prime minister. As a result, the Deputy Speaker's assertion that the RNC violates Article 5 is presumptive, unilateral, and unfounded.¹⁸

¹⁸ (P L D 2022 Supreme Court 574)

The Constitution's Article 95 combines procedural and substantive law. According to a simple reading of Article 95, members of the Opposition Parties seated in the National Assembly ("NA") are entitled to vote on the resolution proposing a vote of no-confidence against the Prime Minister ("RNC"). This privilege is a substantive constitutional one. However, before a Prime Minister can be removed from office, certain procedural requirements must be met. Specifically, 20% of the NA's total membership must agree to move an RNC, and the majority must vote in favor of the move within 4–7 days of the RNC being moved. All of these topics are specifically addressed in Article 95, which is the actual wording of the Constitution. Pakistan.¹⁹ As a result, these issues both procedural and substantive have been taken out of the NA's purview, or its "internal proceedings," which are its own internal affairs.²⁰

Challenges and criticism on Freedom of Speech in Pakistan

The death of a talented student

This shift in public consciousness was demonstrated by Mashaal Khan's violent murder on April 13, 2017. "Just another unsettling consequence of the harsh anti-free speech laws" was the young man's murder. Policies implemented by the Pakistani government" that have been in effect for the previous ten years. The 23-year-old student of journalism at Abdul Wali Khan University in Mardan, Khyber Pakhtunkhwa, was lynched by other students on the campus. His "outspoken" approach and his criticism of the dishonest practices inside the university administration on a local TV channel, Khyber News, are just two of the several grounds for this ruthless death. The

¹⁹ PLD 1997 SC 426

²⁰ Federation of Pakistan v. Muhammad Nawaz Sharif

conclusion is easy to comprehend. Everything that transpired that day and in the days that followed "has shown the nasty side of our radicalized a culture where individuals have descended to a new low by using sacred and divine beings to settle petty disputes and score points. Many have questioned the notion of the state's "helplessness" on several occasions. By aggressively bolstering its legal arsenal and fostering a climate of dread and terror, the state has also participated in the murder. Which, albeit restricting freedom of speech, has also given in to the increasing power of radical crowds. The irony served simply to highlight the harsh, unforgiving realities of Pakistani society.

The role of PEMRA

The Pakistan Electronic Media Regulatory Authority (PEMRA) promises not to undermine news sources, revoke licenses, or impose fines in Pakistan's responses to the List of Issues. Nevertheless, in accordance with its 2009 Rules and the Electronic Media Code of Direct 2010-2015, PEMRA has suspended a few media channels for altering their durations. An extensive and justifiably restrictive set of principles established in the 2009 Rules prohibits, among other things, the analysis of the military and any viewpoints "against public or hostile to state perspectives against essential social qualities, profound quality, and great habits." It is expected of broadcasters to warn viewers of potentially upsetting or unsettling content.

Telecasters must maintain consistency in order to receive a permit. PEMRA regularly issues directives to work out command over the media in violation of the Rules and Code of Conduct, undermining media autonomy and severely restricting opportunities for expression. In the last four years, restrictions on channels or projects have been

made twenty times or more to the north. The authority to abruptly shut down any news outlet that disobeys the PEMRA General set of regulations was appointed to the executive position by PEMRA on February 20, 2016, which is likely to accelerate the pace of media shutdowns. Appropriate procedural safeguards are required for the executive to authorize the PEMRA Code of Conduct. Shutdowns must be authorized through irregular cycles and frequently terminated through authority.

Consequences of government employee Speaks freely

Pakistani government workers have an obligation to refrain from providing the media with sensitive information about their jobs. However, academia is not like other government agencies. A university in the public sector is an independent body. In contrast to the formal bureaucratic public service organization, academia is the public face of society. It is unfair to gag university employees or professors in the name of current public service regulations. Furthermore, the greatest way for the government to influence academia is through the legal system, even if it chooses to do so. Sadly, there are regions of the nation where this isn't the case. In Pakistan, the struggle for ideas is really a struggle for story and discourse dominance. Journalism, the media, and critical intelligence can all be used as tools and means of expressing oneself freely. That is why many in positions of authority dread and despise these institutions. In Pakistani history, ties between the government and the media have never been favorable in this regard. The Pakistani media promoted an adversary model and the preservation of a free press at the time of independence. They held the opinion that journalists have a crucial role in preserving the truth and serving as mentors and instructors for the public.

It's also true that in a country like Pakistan where there is a great deal of conflict, the uncontrolled and disorderly misuse of social media has made governance issues worse. It has impacted people's perceptions as well. But there are restrictions on the actions that a government could do. It is important to strike a balance between the stability of the government and the right to free speech. Sadly, Pakistan has not experienced this.

Conclusion and recommendations

The right to free expression is guaranteed to all people by Article 19 of the Pakistani constitution. This right must be upheld by the executive, legislative, and judicial branches of government. The Constitution examines restrictions and regulations based on several factors, including those limitations. It has come to light that laws restricting the ability to voice one's opinions violate the fundamental right to free speech by broadening its scope. Furthermore, a number of terminologies have unclear or inaccurate definitions, which could cause misunderstandings. The author of this study suggest changing the law to better align it with the ideals of free speech. The current administration does not adhere to the aforementioned principles when it comes to the free expression of ideas in any form. There is nothing novel about this. The ruling class in Pakistan has never had a favorable rapport with the media. The current restrictions on the right to free speech are not new.

The states are also urged to change any such legislation that go against the spirit of these recommendation. Speaking freely should be protected within the bounds of the government's obligation to the people. To guarantee these liberties unnecessary restrictions on the right to freedom of expression, such as laws on sedition which criminalize speech," are not appropriate from the

government. Pakistan has certain limitations on freedom of expression, even though the constitution guarantees it. There are numerous variables that have led to the current situation of free speech. Confined by severe regulations and methods like intimidating or killing vocal people like human rights activists and Journalists, it's frequently restricted. There are two more choices: suppressing religious minorities and allowing free speech. Rules are necessary to restrict free speech, but they also punish law-abiding citizens and give powerful criminals a clean slate. Controlled verbiage. The application of the law must be done so in a fair and impartial manner. Governmental organizations have to respect the law and be receptive to feedback from the general public. Because the freedom of speech is an essential human right.

The law should be fairly and impartially translated. On the one hand, the state agencies are responsible for upholding the restrictions; on the other hand, they should be addressed by social reactions and public opinion. Furthermore, as the ability to express oneself is a fundamental freedom, it should be used to the fullest. However, this opportunity should be limited to a certain amount. The government should invest in its own to profit from the segment profit, stop bad behavior and violations of common liberties, and assemble a peaceful age through a comprehensive advancement approach, rather than handling internal security issues from the perspective of public safety.

Article 19 of the Pakistani Constitution guarantees the right to freedom of expression to every person of Pakistan. It is the duty of the legislative, executive, and judiciary to make sure that additionally, the freedom of expression is expressly restricted by the constitution. It is discovered that laws restricting freedom of expression have grown

more expansive at the expense of the principle of freedom of expression by examining constraints and laws based on those restrictions. Furthermore, a number of the terminology are unclear or poorly defined, which facilitates misunderstandings.

The media in Pakistan has all the flaws that media systems are expected to have. Additionally, they possess the advantages that any media could be proud of yourself. It is true that the credibility of mainstream media has been damaged by recent conflicts between competing media groups, the rise in fear among media professionals, and an overly materialistic and money-oriented approach to news and ideas. As a result, the public has lost faith in the media.²¹

According to the aforementioned research study, the freedom of "Speech and Expression" is widely acknowledged on a global scale as the fundamental right that all people receive from the beginning of time. Its extent and Considered the mother of all liberties, its significance has far-reaching effects on the creation of a peaceful, democratic, tolerant, equitable, and promising civil society. However, this freedom must be subject to certain limitations and restrictions by striking a balance between it and a diverse society that is varied in terms of language, ethnicity, religion, and sect, among other things.

²¹ Altaf Ullah Khan, "70 years of freedom of speech and expression in Pakistan: An intracultural analysis of press/media in time and social processes," in *Transcultural Humanities in South Asia* (Routledge, 2022).

ADMISSIBILITY OF LEADING QUESTIONS DURING EXAMINATION OF WITNESS: AN ANALYTICAL STUDY

MARAJ ALAM^{22**}

DR. SHAHID RIZWAN BAIG^{23**}

ABSTRACT; Pakistan being a common law depending on parties to the case to extract evidence which is the utmost requirement for the fair and to meet the end of justice from the court of law for that purpose parties put their efforts in the form of Questions from the witness to find out the truth of case ,one of the mode is leading question which conferring the answer to the person putting before such type of questions and expected or wish to get a desirable answer from witnesses in order to reach at the ambit of truth, leading questions are also called binding, hinting, suggestive and pointing questions which required answer in No or Yes without going in length to answer.

Leading questions usually puts by the cross-examiner under Article 138 of QSO to save time of court and brings him to materials points as soon as possible, in a leading questions witness are struck to play both side of the pitch Leading and pointing questions are not allowed in examining-in-chief because witnesses have to answer according to his own sense of mind what he want to tell and what he actually saw or heard or conceived by any other sense of organ court want to hear from his mouth itself without any kinds of filtering it by the counsel.

The questions that put in cross-examination by the adverse party to witness are often difficult and confusing to answer in the point of time. The Questions may include negatives,

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double negatives, leading questions, closed questions with complicated syntax and vocabulary.

INTRODUCTION; In an adversarial legal system, there will be no value of witness evidence unless he may go through different stages of examination (cross-examination, direct-examination and redirect-examination) cross-examination is always conduct by the adverse party and examination in chief and re-examination is done by the calling party under Article 132 of QSO 1984. In cross-examination witnesses always have to confront such a complex and confusing types of questions of cross-examiners among them leading questions are one of them. Leading questions are also called close-ended questions that ask from witness to pick up from the set of pre- noticed and pre-define response are inherently leading, it restrict the witness to play in one direction only in the form of ‘NO’ or ‘YES’ without explaining the answer in length.

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

Unless the court forbids the question or orders the witness not to respond, a party may ask from witness a leading-question and pointing questions during cross-examination and in direct examination, If the court is determined that the fact would be ascertained in better way if leading questions were not to be used, the question must be disallowed or the witness must be told not to answer it.²⁴

²⁴1995, EVIDENCE ACT- SECT 42

In court, witnesses usually support the party who brought them, and this emotion compels them to withhold some information and mislead others that they believe may be harmful to the side they are testifying for. When we combine the partisanship of the witness with the lawyer leading the examination, it is simple to produce evidence that deviates vary widely from the exact truth. This partisanship in the witness box is most fatal to fair evidence. Overzealous practitioners frequently accomplish this by asking leading questions or combining two basic questions into one, tricking the witness into answering "yes" to both of them, and therefore producing an altogether false result.²⁵

The court of evidence gives permission to put leading and suggestive questions to a calling Party from hostile witness identified as adverse party by the court and may use leading-questions because the witness is unfavorable to the calling party. The court would not extend that permission to other parties in whose favor witness (to whom the witness is not hostile and identical to that party) diverted his state of mind completely.

A leading question is one that gives the witness a hint about response which the examining party wants to hear. The general view is that that the leading question has suggestive abilities and undesirable for witness, but the same tradition allows exceptions for witnesses who are hostile, uncooperative, or biased, witnesses who have communication issues, witnesses who are children, witnesses whose memories have been exhausted, and witnesses whose testimony is unchallenged in the earliest stages.²⁶

²⁵ the art of Cross-Examination by Francis well man of the New York Bar

²⁶Evidence sections 774–778 in Wig more (3d ed. 1940)

Determination of leading questions

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

Furthermore, in the court of evidence judges has a lot of latitude in deciding what constitutes a leading question in his court of law, and the higher court judges are always reluctant to set aside a decision on the grounds that improper leading and hinting questions was permitted during taking evidence in subordinate court by way of direct-examination.²⁷

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

Purpose of asking leading questions

The rationale behind the leading questions is to take back the witness towards the proceeding and as soon as possible to the bulk of material point upon which he is to speak, counsel may persuade him on that line length and may lead him the recognized facts of the case which have been

²⁷United States v Ranney 719 F.2d 1183, 1190 (1st Cir. 1983)

already established. Presumption would be that evidence has been accepted by the opponent against whom it was given now it's his turn to question to disprove such presumptions²⁸

The concept of the basic importance for putting such type of suggestive and leading-question is to lead him to an disputed point to save the time and to avoid him to repeat what has been already accepted by him or to skip it over the undisputed facts.²⁹

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

1) To put the Queries and presentation of evidence effective and essential for determining and to find out the truth.

2) In order to avoid time consumption of court of law.

3) To provide Protection to witnesses from intimidation or excessive stress and confusion, the court would supervise the exercise of reasonable control over the manner in which witnesses are questioned and the order in which evidence is presented.³⁰

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

²⁸(YLR ,2009, 289)

²⁹[ILR (1977) Bom. 1505]

³⁰Haw. rev. stat. § 626-1, Rule 611 (2010).

Obtained may be completely unconnected with the facts testified before court³¹

Why leading questions not permissible in Examination-In-Chief

Ordinary, the rules prohibit use of leading questions in Examination-in-chief and Re-examination because witness is regarded as biased towards the party questioning him and could therefore be prompted. If Leading-questions are allowed it would empower a party to construct their Concocted and false story and develop it in court using their own words and the testimony of their witnesses. It would generally make it more difficult to tell a narrative is concocted and made up. If a witness is given a freedom to tell his story in his own words, he is surely leave some gaps in the account of it and it would be easy for Cross examiner to reach at the real story of the case otherwise it is not possible if the witness is dictated in examination in chief

The state Prosecutor cannot put leading questions on the material Part of evidence from his Witness and Witness must be allowed to account to what he himself had seen and perceived by his senses.³²

Leading suggestive pointing and hinting questions cannot be asked in direct-examination because of the following main reasons

Reason-I) Witness always potentially biased in favor of the calling party and shows hostility against the opponent party.

Reason-ii) Asking leading questions may only bring out only the evidence which favors to the calling party in that situation asked leading questions is synonymous to extract

³¹ Lalta Prasad v. Inspector General of Police, 1954 a 438.

³²Review of AIR.1993, 1892. SC.

only so much knowledge and information of the witness which would favoring to his side only or even put false gloss upon the whole?³³

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

The ordinary rule that leading questions must not be asked on material points by a party to his own witness, because he often impatient to assist the party from whose side he is representing as a witness so this rule is to protect against the bias in favor of the side to which his Evidence is paramount, where no such bias is apprehended rule must of its utility.³⁴

Exception to leading questions in Direct-Examination and Redirect- examination.

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

- 1) When the court declared that the witness is hostile on the application of the calling party, when witness not willing to speak truth or associated with an opposing party under Article 150 Qanun-e-shahadat Order 1984
- 2) When the calling witness gives evidence in order to surprise or deceive the examiner.
- 3) When it is important to develop a witness testimony before the court
- 4) When it is required to establish the undisputed and preliminary matters to the suit³⁵

³³Best, 12th Edn., S 641, p. 561

³⁴Review of AIR.1931, 401. Cal.

³⁵Connecticut. Superior Court. 1999. *Connecticut Code of Evidence*. Leading Questions

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

Introductory matter

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

Undisputed matters

The rule against leading questions also relaxes in undisputed matters which are not in the point of dispute like the relation between the parties, date of institution of suit, disputed property, reasons of dispute, these types of questions don't injure the right of any side, instead it saves the time of court and parties as well and to put the witnesses before the disputed facts as soon as possible.

Matters sufficiently proved.

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

Witness to contradict former witnesses

If witnesses summoned to contravene another over language used by the previous, the first witness will be questioned about whether the language in question was actually used rather than just what was said, as this would prevent a contradiction from being established³⁶

³⁶(Edmonds v. Walter, 3 Stark 7; Courteen v. Touse, 10 RR 627)

The leading remark, however, is inappropriate in cases where the conversion is not only demonstrated for the sake of contradiction.³⁷

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

Opportunity to explain the contradiction must be given to the witness before branding him as a prejudice when confronting him³⁸

To refresh memory of witnesses

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

³⁷ (Hallet v. Cousens, 2 M&R 238)

³⁸PLD.1964, 194. Pesh(DB).

When the nature of the case prevents the witness from focusing on the subject of issue without a specific description of that subject, such as when he is summoned to rebut other witness regarding the contents and subject of a lost dairy and is unable to recall every detail off-hand, the specific lines may be referred to him at least after his unassisted recollection has been depleted so that he may recall his memory regarding the said subject.³⁹

When the witness declare hostile

The court may, under Article 150 of QSO has a discretionary power to allow the calling party to ask from that witness any question that might be asked of him during cross-examination by the opposing party, and since a party is permitted to put leading questions to their own witness As it put during cross-examination and same rules will be followed. Leading questions are permitted to be asked from witness who by his act of conduct in the witness cell, obviously shown to be biased in favor of the opponent party than the calling party may ask for court to declare a witness hostile so that the party may impeach the credit of a witness by putting leading questions. A party cannot demand as a right to treat the witness as hostile it's up to the court so as to entitle the party calling him to put leading questions to him⁴⁰

The evidence of a hostile witness cannot be wholly disregarded; it must be taken into account just as the testimony of other witness to the case, but with due care because of the simple facts that he had used different tone of voice. Which voice he tells the truth in will be determined by the Court. In these situations, the evidence

³⁹ (Courteen v. Touse, (1807) 10 RR 627; Taylor, § 1405.)

⁴⁰QSO article 150 and 151

must be examined for consistency with the other evidence as well as for independent source confirmation.⁴¹

It is never acceptable to label a witness as hostile and permit his cross-examination simply because his answers are in stark contrast to the testimony of other witnesses. Yet, the court has complete authority to permit a witness's cross-examination so that they may put leading questions.⁴²

The judge has the exclusive power to determine whether a witness is hostile based on his appearance or the manner in which he provides his testimony. The appellate court is not authorized to examine the judge's determination. If a Judge allows a leading question, pleader should insist on having question and order disallowing it recorded⁴³

Where the leading questions make evident that the fact that the favoring counsel lead the calling witnesses to what he calculated and fixed that they should say about the main part of the prosecution case so that it will go against the accused, that would be not permitted and unfair with the accused and offends his right to fair trial enshrined under It is not a curable irregularity,⁴⁴

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

⁴¹ PLD 1959 Dac 613 Ref. PLD.1964,1053 lahr

⁴²SCMR, 1984 ,154, E.A560 Muhammad Boota

⁴³[AIR 1918 Low Bur 22] (AIR 1916 Cal 188)

⁴⁴[AIR ,1993 ,SC 1892]

One party considerably harm the interest of another party with whom the witness is neither friendly nor unfriendly with any side we may call him neutral witnesses who is not favors one side in such types of certain cases leading-questions are reasonable for both parties⁴⁵

The evidence act 1995 also provides way to ask leading questions in the direct and redirect examinations which is as follows

- a. The testimony provided by the witness during the chief interrogation goes adverse to the party who produced the witness before court.
- b. If any witness interest overlaps to the interest cross-examiner.
- c. If a witness has a favorable attitude towards the party who leads the cross-examination either in general or with regard to a specific point.
- d. If a witness replies may be affected by their age or any physical, mental, or intellectual disability they may have.⁴⁶

Leading questions and children witness

Leading questions or close ended questions are that which suggests the answer itself in yes or no but in some situations it is unreasonable to disallowed the leading questions to the calling party when the victim and witnesses are also child the rationale behind allowing leading questions is that the child are always in fear and in upset mood. Most of the countries that are following adversarial system allow the leading questions to calling party because child witness in a very upset mood and was unaware that it was necessary to prove that the defendant had permeated her. When a witness is incapable of

⁴⁵Federal rule of evidence 611(c)

⁴⁶Evidence act 1995 sec 42 sub-sec (a, b, c, d)

understanding, such as a child, or someone who may be illiterate, the rule against leading questions may occasionally be relaxed.

Allowing the state prosecution to put leading-questions during the direct-examination of child witnesses or victim itself of sexual assault was not have misuse its power of discretion in this case because the victim was extremely hesitant to testify about her victimization and the questioning had to be stopped several times so that she could assemble herself and be willing to discuss the events happening⁴⁷

If the court decides that allowing leading and pointing questions at the court of evidence by the prosecution or defense counsel from any victim or witness in a case whose age is below than 10 years age will advance the interests of justice, it may do so in any criminal case prosecution for a sexual abuse or a bodily offence. In any criminal case involving the sexual molestation of a kids under the age of 16, the claimed victim is a youngster who is under the age of 16 years, A leading question's scope and extent may be limited by the court at the request of either the state represent by prosecution or the defense or on the court's own initiative⁴⁸

The court of evidence has discretionary power to allow hinting-questions for young victim and witnesses or when the sensitivity nature of the subject matter forbids elaborate response to general inquiries. The ruling did provide a caution that testimony obtained through the use of leading questions might not hold the same weight as voluntary evidence. The decision to allow leading-questions was up to the trial court and was not subject to reconsideration on a writ of certiorari by higher forum.

⁴⁷(United States v. Tome, C.A.10 (New Mexico), 3 F.3d 342, }

⁴⁸ALA. CODE § 15-25-1 (2010)

Moreover, that there was no error committed by the trial judge when he permitted the prosecution to put leading-questions on 13-years old victims and witness.⁴⁹The initial court of evidence did not misuse its discretionary power to allow the State to put leading-questions in its direct-examination of the victim, who was just five at the time of the event happening and six at the time of the when commence proceeding.⁵⁰In a criminal case to permit the use of leading-questions is wide discretion of court when the witnesses are minor⁵¹.the rule relax for the young ones who have suffered usually feel hesitation and doesn't know the importance of their speaking by his own mouth which is consider as best piece of evidence to reached at the culprits, by that reason court allows prosecution in criminal cases to put leading and hinting questions so that the child collect the memory and feel confident to tells what happened with him or with his companion before the trail court of law.

Kinds of leading questions

There are following kind of leading questions which are asking in court among them directive and non- directive leading questions are important one.

A directive leading question is one that compels respondents to offer a particular response, typically the yes. Directive leading questions are presented in an exceptionally aggressive manner, in contrast to other forms of leading questions.

Non-directive statements are open-ended and do not require a yes or no response instead, they ask the witness to defend a position, articulate their opinions, or make a decision.

⁴⁹Anderson v. State, 101. 202 (Fla. 1924),

⁵⁰Eisenstein v. State (1985), 367 N.W.2d

⁵¹State v. Brown 285 N.W.2d 843 (1979);

In cross-examination, they distinguish between direct and indirect leading questions. The lady who come to the door and opened had hair covered, didn't she? This is an example of a directive-leading Question form, and 2nd "Does the woman who opened the door have hair covered?" is the example of non-directive leading form.

The legal system implicitly recognizes that in unusual and challenging circumstances, witnesses can provide reliable testimony. But a single word alteration in a proposition might an impact on the way people react. Although the question's content is the same, asking, "Are you lying?" (Non-directive) may have a very different impact on a witness who is used to and apprehensive in a courtroom. As opposed to "You're lying, aren't you?" this is directive.⁵²

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

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

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

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

Firstly, it is accepted principle by all means that leading-questions may in general be put in examination but this does not mean that the counsel of both side may go to the

⁵² R v McDonnell (1919 Cr App R 322

depth of putting the exact words into the mouth of such witness so that the same fact and words would echo back again.⁵³⁵⁴

Secondly, a question which presumes facts and statement as proved but which had not been proved against witness yet. Or which considers or deemed that particular kind of statement and reply have been given, which in fact have not been given by the witness yet is not reasonable to consider either in direct examination and redirect-examination or in cross-examination.⁵⁵ Or may not be assume that particular kind answers have been given which have no connection to the fact.⁵⁶

This is no reason to say that the party who calls the witness has taken an evil upon once own head, sometime a witness who make his mind to defraud with party or fixed already with any party might concealing his biasness in favor of any party in order to compel or induce other party to summons him as witness or to show him as attesting-witness or any other person whom it was essential to call him to establish any part of fact in nutshell these two may be a neutral witnesses for both parties, to allow a counsel to ask leading questions from such a witness to get the favorable reply suggested to him before through the medium of leading-questions would be sheer unjust and against the natural justice⁵⁷

Where an opponent witness shows by his conduct while answering the above mentioned two questions to be biased

⁵³ R. v. Hardy, (1794) 24 St Tr 659 (755). Taylor was of the opinion that the true objection to such a course as to the value of answers so obtained in the case of a witness obviously too friendly to the cross-examiner's side. See Taylor, footnote (e) to § 1431, 913 of the 12th Edition.

⁵⁴ Malaysian evidence act sec 143,a

⁵⁵ Taylor, § 1431. See notes under the heading "Kinds of leading questions, questions assuming a controverted fact." 4. Wig more, § 773, Taylor, § 1431.

⁵⁶ Malaysian evidence act 1950

⁵⁷ Taylor, § 1431. For further notes on this point. See notes to section 154.

in favor the adverse party while cross-examination the danger of declaring hostile witness and leading-questions arises so such type biased questions may therefore, be forbidden to avoid consuming lengthy time of court without any fruitful output from such kinds of Questions.

Restrictions on the Right of Cross-Examination

As a general rule only the adverse counsel Have the Right to cross-examination under the Evidence Act. So, the defendant may only have to cross-examine and a Co-defendant right to Cross arises only where the interest and claims of Co-defendant is at conflict with the defendant claims. A defendant who does not have a conflict of interests with the plaintiff cannot question the plaintiff in a cross-examination. The only party who has the right to cross-examination is the opposing party. The law permits the right of cross-examination to the extent of co-defendant interest is permissible.

Co-respondents may exercise their right to cross-examination if their interests are directly in conflict with one other. When the interests of Defendants No 2 and 3 are somewhat related to those of Defendant No 1, the court will allow them to cross-examine to Defendant No. 1 and will then ask the Plaintiff to do same.⁵⁸

Conclusion

Leading questions is a part of questions which are usually put in the order of examination by both sides in the circumstances of the case. The rationale to allow leading and pointing questions is to put before adverse witness Or hostile witnesses to test the accuracy and correctness of evidence and to check Reliability and general value of the

⁵⁸Sarkar at pp 3381-3382: (By P S Ranjan & Co. Advocates & Solicitors Malaysia)

evidence given and to analyses the facts already stated by the witness it is sometime becomes essential for a party to put That types of hinting questions in order to extract facts in support of his case, even though the facts obtained may be entirely unconnected with facts testified to in an examination-in-chief. It is up to the Judge conducting the inquiry to disallow a particular question when that question is of mixed nature, irrelevant or confusing and Favoring one side.

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

AN EMPIRICAL STUDY OF CUSTOMER'S PERCEPTION OF SERVICE QUALITY FOR *MUSTAQEEM SONERI ISLAMIC BANKING*

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ABSTRACT: This article takes up an empirical study of customer's perception of service quality for Mustaqeem Soneri Islamic Banking. The soneri bank is currently Operating with over 500+ branches across Pakistan, including 58 Islamic Banking branches. The critical area of Soneri Bank's operation is Islamic Banking. Soneri Mustaqeem Islamic Banking Division is expanding quickly with 58 dedicated Islamic banking branches and 15 Islamic Banking windows across Pakistan. Most of the customers of Islamic Banking understand toward Islamic Banking that the end result of Islamic Banking and Conventional Banking is the same. They question why do they appear similar? The validity of a transaction does not depend on the end result but rather the process and activities executed. If a transaction is done according to the rules of Islamic Shari'ah, it is halal even if the end result of the products may look similar to Conventional Banking products.

Keywords: Customer's perception, service quality Mustaqeem Soneri Islamic Banking

I. INTRODUCTION;

It is necessary, first of all to give some introductory words to Islamic Banking before proceeding on the core subject. The basic element which differentiate Islamic Banking

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from conventional banking is interest. The origination of the term “interest” dates back to 17th century with the emergence of banking system at global level. Interest means giving and/or taking of any excess amount in exchange of a loan or on debt. Hence, it carries the same meaning/value as that of Riba. Further, it is narrated that “the loan that draws interest is Riba”.⁶⁰

Currently Banking can be classified into two main domains: conventional banking and Islamic banking. Conventional Banking, also referred to as interest-based banking system, is based essentially on a two chain relationship with the bank as connecting party; the debtor-creditor relationship between the depositors and the bank on one hand, and between the depositors and the bank on the other. Interest is considered to be the price of credit, reflecting the opportunity cost of money, where the investor is assured of a predetermined rate of interest.⁶¹

Islamic banking, also generally be referred to as Islamic finance or Shari’ah- compliant finance, refers to financial activities that adhere to shari’ah (Islamic law). This system prohibits the use of interest (Riba), Qimar, Gharar and Maisar and instead the risk is borne by the customers, the bank which is a component of trade participate in financing on profit and loss sharing. Islamic Banking introduces concepts such as profit sharing (Mudarabah), safekeeping (Wadiyah), joint venture (Musharakah), cost plus profit (Mudarabah), and leasing (Ijarah). All the funds received from the depositors on the basis of Mudarabah are invested in Shari’ah Compliant financing modes such as Mudarabah, Ijarah, Diminishing Mudarabah, Salam, Istisna, etc., thus returns received from depositors are loan

⁶⁰ Dr. Muhammad Imran Ashraf, Islamic Banking (Darul Ishaat Karachi, 2002) 37

⁶¹ Mufty Ehsan Waqar, Mutaqem liability products hand book (Soneri Bank Limited Publication, 2022) 05

based and are invested in interest based transactions, thus render their income as Haram.⁶²

There are three prohibited elements that need to be removed from any financial transaction as per Shari'ah are as follows:

1. Riba (Riba Al Nasiah and Riba Al Fedhal) - Every loan that draws any agreed benefit

“Riba Al Nasiah” is defined as excess, which result from predetermined interest (sood) which a lender receives over and above the principal (RasulMaal) in any loan transaction. This is the real and primary form of Riba. Since the verses of the Holy Quran have directly rendered this type of Riba as haram, it is also called “Riba Al Quran.”

The second classification of Riba is RibaAlFedl. Since the prohibition of this Riba has been established on the basis of Sunnah, it is called “Riba Al Hadees.” Riba Al Fadl actually means that excess which is taken in exchange of specific homogenous commodities and encountered in their hand-to hand purchase & sale.

2. Maysir (Speculation/Gambling) - Game of chance
Maysir is an Arabic terminology and it means gambling. Literally maysir meaning is getting something too easily’, or ‘getting a profit without working for it’. Maysir is a game of chance by which, a person either wins or loses. Earning through it have been strictly declared as Haraam. Historically, the word Maysir stood for a game or play with untethered or headless arrows. Gambling can briefly be defined as wagering money or other valuable things upon the outcome of an event or making money upon some chance. Thus it is a game of chance by which you either win or lose.

⁶² Mufty Ehsan Waqar, Mustaqeem liability products hand book (Soneri Bank Limited Publication, 2022) ,5

3. Gharar (uncertainty) - Short sales, future sales, sales of derivatives, option or swap, etc.

Gharar in literal sense means “Uncertainty”. Following are different from of Gharar:

- Any bilateral transaction in which the liability of any party is either uncertain or contingent.
- Consideration of either is not known.
- Ultimate result of any one party is uncertain.
- Delivery is not in control of the obligor.
- Payment from one side is certain, but from the other side is contingent.⁶³

Now we come to introduce core issue of our subject. Soneri Bank Limited is a leading full-service commercial bank established on September 28th, 1991, to provide innovative financial solutions and quality customer service. The soneri bank is currently Operating with over 500+ branches 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. Soneri Mustaqeem Islamic Banking Division is expanding quickly with 58 dedicated Islamic banking branches and 15 Islamic Banking windows across Pakistan.⁶⁴

II. CUSTOMER’S PERCEPTION OF SERVICE QUALITY WHILE PUTTING SOME QUESTIONS TO MUSTAQEEM SONERI ISLAMIC BANKING

Most of the customers of Islamic Banking understand toward Islamic Banking that the end result of Islamic

⁶³ Mufty Ehsan Waqar, Mutaqem liability products hand book (Soneri Bank Limited Publication, 2022), 06

⁶⁴ <https://soneribank.com/islamic> {last time visit: 29-07-2024, 5: 25 pm}

Banking and Conventional Banking is the same. They question why do they appear similar?

The validity of a transaction does not depend on the end result but rather the process and activities executed. If a transaction is done according to the rules of Islamic Shari'ah, it is halal even if the end result of the products may look similar to Conventional Banking products. For example, a normal McDonalds in USA and Pakistan look similar, smell similar and taste similar but the former is haram and the latter is halal due to its compliance of Islamic guidelines of slaughtering animals.

Similarly, if a person is feeling hungry, he may steal a piece of bread and eat or alternatively buy a piece of bread to eat. The apparent end result would be same but it is permissible in shari,ah and the other is not allowed. The same is also true for Islamic and Conventional Banking. Therefore, it can be concluded that it is underlying transaction that make something “Halal” (allowed) or “Haram” (prohibited) and not the result itself. Apparently, Islamic Banking may look similar to Conventional Bank, however the contracts and products structures used by Islamic Banks are quite different from that of the Conventional Bank. In the verse 2:275 of the Holy Quran, Allah Almighty has responded to the apparent similarity between trade and interest by resolutely informing that he has permitted trade and prohibited Riba (though they may look similar to some).⁶⁵

The customers also say that if Islamic Banks do no invest in interest based activities then how do they generate profit to pay to their customers? The Islamic Banks use its funds in various trade, investment and service related Shari'ah compliant activities and earns profit thereupon. The profit

⁶⁵ Mufty Ehsan Waqar, Mutaqem liability products hand book (Soneri Bank Limited Publication, 2022) 17-22

earned from such activities is passed on to the depositors according to the agreed terms.⁶⁶ It is also said that Islamic Banks use KIBOR i.e. an interest-based benchmark to determine profit sharing ratios. In this context, how these banks can be said to be Islamic when they base Conventional benchmark? Islamic Banks should ideally have their own benchmark system for determination of profit. Since, the industry is in its initial stage of development, it is using the available benchmark for the banking industry. It is expected that once it is grown to a sizeable level, it would have its own benchmark. However, using interest-based benchmark for determining the profit of any permissible transaction does not render the transaction as invalid or haram. It is the nature/mechanism of the transaction that determines its validity or otherwise.⁶⁷

For example, Mr. A and Mr. B are two neighbors. Mr. A sells liquor which is totally prohibited in Islam whereas Mr. B being a practicing Muslim dislikes the business of Mr. A and starts the business of soft drinks. Mr. B wants his business to earn as much profit as Mr. A earns through in liquor. Therefore, he decides that he will charge the same rate of profit from his customers as Mr. A charges over the sale of liquor. Thus he has tied up his rate of profit with the rate used by Mr. A in his prohibited business.

One may say that Mr. B uses an undesirable benchmark in determining the rate of profit, but obviously no one can say that he profit charged by him is haram because he has used the rate of profit of the business of liquor only as a benchmark. The same is true for Islamic Banks, it is most desirable and preferable that Islamic Banks develop their

⁶⁶ Ibid

⁶⁷ Mufty Ehsan Waqar, Mutaqem liability products hand book (Soneri Bank Limited Publication, 2022) 17-22

own benchmark however; in the absence of any such alternative, interest rate related benchmark can be used.

There are continuing debates on whether the spirit of Shari`ah is being violated by the practice of "benchmarking" linked interest rate benchmark such as London Interbank Offered rate (LIBOR) plus an agreed mark-up in also pricing returns on Islamic finance transactions . At a very fundamental level, the reason for the debates is the lack of understanding to clearly discern the difference between the use of LIBOR as a benchmark for pricing and the use of non-Shari`ah compliant assets as a determinant for returns.

However, benchmarking touches upon the integrity of Islamic Finance as a whole, and the concept of Shari`ah-compliance vs Shari`ah-based approach in particular. There are practical challenges delaying a switch to participation-based structures, such as Musharakah and Mudarabah that require financiers to participate in the underlying asset in a financing transaction.

The question also arisen by customers that is it permissible for an Islamic bank to impose penalty in case receivables are delayed?

In Islamic law it is permissible to penalize debtor who is financially sound but delays payment of debt without any genuine reason. Such act of the debtor is unjust as the prophet (PBUH) has said, "A rich debtor who delays payment of debt commits Zulm".⁶⁸

A heavy non-performing portfolio and default on part of the clients is a serious problem confronting the financial institutions all over the world including Pakistan. This problem could be a threat to success of Islamic banking system. If clients do not honor their commitment in respect

⁶⁸ Mufty Ehsan Waqar, Mutaqem liability products hand book (Soneri Bank Limited Publication, 2022) 17-22

of timely payment of debt created in installment sale, Murabaha, leasing or do not pay the banks' share of profit in participatory modes or do not deliver goods at stipulated time in Salam and Istisna, it could cause irreparable loss to the system, the banks and financial institutions and ultimately to the saver and the economy. The jurists allow punishment (t' azir) to such borrower in the form of fine.⁶⁹ In the opinion of some maliki jurists a delaying borrower would be obliged to pay for charitable activities. In view of severity of the problem, all Shari'ah bodies like Islamic Fiqh Academy of the OIC, Shari;ah Appellate Bench of the supreme court of Pakistan, etc. Have approved the provision of the penalty clause in the contractual agreements that keeps a balance between the requirement in view of severity of the problem and that of the Shari'ah conditions/principles to keep the fine difference between interest and Murabaha profit intact.⁷⁰ However, the penalty proceeds would be used for charity because penalty on default in repayment cannot become an automatic source of income for the creditor.

The question is also asked by the customers that can Islamic banks claim compensation or liquidated damages on account of late payment/default by the clients?

The contemporary Shari'ah scholars have evolved a consensus that banks are authorized to impose late fees on the delinquent. However, the proceed of such penalty are to be used for charity purposes.⁷¹ It is the court or any recognized alternative independent dispute resolution body which can allocate any part of the penalty as liquidated damages/solarium for the banks.

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Mufty Ehsan Waqar, Mutaqem liability products hand book (Soneri Bank Limited Publication, 2022) 25

Liquidated damages can be given to the banks in case of default on the part of the banks' clients, provided on actual financial loss. The court of a recognized adjudicating forum may reasonably adjust the amount of compensation. The actual financial loss cannot be the loss in terms of conventional opportunity cost. It has to be proved by the bankers themselves to the satisfaction of the court or any arbitrator.⁷²

There is another question, can be price of cash sale and deferred sale be different?

If commodity is sold in exchange for money, the seller while fixing the price may take into consideration different factors including the time of payment. A seller, being the owner of commodity may charge a higher price which may be agreed by the purchaser. Thus, at the time of the execution of the sale transaction, the seller can charge a higher price if the buyer is paying on a deferred basis. In credit sale/purchase, price once fixed cannot be changed even in the case of a delay in payment.⁷³

Is profit rate to depositors guaranteed by announcing weightages? In actual, the weightages are only preference profit ratios amongst (Rabb-ul-Maal) the different categories and are announced at the beginning of the period to eliminate any chances of guaranteeing a particular profit rate. Based on the actual gross profit of the pool, the Mudarib and depositors' shares will be distributed as per the announced weightages.⁷⁴

Why does the profit rate of deposit account in Islamic and Conventional Bank look similar? Islamic Banking Group is a financial market player which is following the market

⁷² Ibid

⁷³ Ibid

⁷⁴ Mufti Ehsan Waqar, Mutaqem liability products hand book (Soneri Bank Limited Publication, 2022)23

norms to remain competitive. Currently, we do not have a full-edged Islamic Banking market and therefore, we have to follow the Conventional Banking benchmarks in profit rates. Following the pricing system does not make a transaction invalid.

Can Islamic bank open accounts for every individual? No, individual whose whole or predominant income is from Haram sources are not eligible to open an account that is for Islamic Banking, the business activities of its customers cannot conflict with Shari'ah. Such Haram sources/activities include:

- a) Liquor
- b) Pork
- c) Gambling
- d) Conventional insurance
- e) Conventional leasing companies
- f) Conventional Mutual Funds.⁷⁵

Any other business defined negative by the CRO/ Relevant Risk Head/CCC or the RSBM/Shari'ah board from time to time based on experience.

Are deposits in Islamic Current Account treated as Amanah? No, it is not treated as Amanah because Amanah cannot be used by the holder and the holder cannot be held responsible for any damage or loss suffered to Amanah without the holder's negligence. In Islamic Banking, depositors permit the bank to utilize their Current Account balances and guarantee the principle as per account Opening TORS. Therefore, Current Account deposit are treated as Qard.⁷⁶

What happens in the case of loss in Mudarabah Based Accounts? In the case of loss, as per the Mudarabah rules,

⁷⁵ Ibid,27

⁷⁶ Ibid 24

the deposit pool (pool member) bears the loss on a pro rata basis (according to their investment ratios).⁷⁷

What happens if a customer redeems his/ her share before maturity? If a customer redeems his/her share before the time of maturity, the schedule of early redemption will be applied and all profit payment (accrual/paid) will be adjusted accordingly.⁷⁸

III. THE BASIC METHOD ADOPTED BY SONERI MUSTAQEEM ISLAMIC BANKING

The common misconception regarding “deposit” is that it is a form of Amana (security / trust). However, according to Shariah definition, deposit has more resemblance to Qard (loan) than Amana. This conclusion is based on the fact that in islam an item is termed as Amana, if it bears all the features of Amana. Deposit cannot be termed Amana, as they do not have two of its special features, i.e.

- Amana cannot be used by the bank for its business or benefit.
- The bank cannot be liable in case of any damage or loss to the Amana resulting from circumstance beyond its control.

Whereas in banks, deposit are primarily placed to earn profit, which is only possible when the bank uses these deposit to invest in other business. Hence deposits do not fulfill the first condition of Amana, which say that it should not be used by the caretaker for his own business or benefit.

Secondly, the bank is held 100% responsible for these deposits in all circumstances even in case of loss of damage to the bank. This feature releases deposits from

⁷⁷ Mufty Ehsan Waqar, Mutaqem liability products hand book (Soneri Bank Limited Publication, 2022) 17-22

⁷⁸ Ibid

the ruling of Amana where the assets will not be returned in case of any damage to the assets resulting from circumstances beyond caretaker's control. According to this justification, all three kinds of deposit namely current accounts, fixed deposits and saving accounts are not used as Amana by Soneri Mustaqeem Islamic Banking. They are all governed by Qard.⁷⁹

One school of thought says that only fixed deposit and saving accounts fall under the laws of Qard but current account is governed by Amana. However, this is also not correct because the bank is as much liable to current accounts holders as it's PLS accounts holders and is called the "guarantor" in fiqh terminology. Due to this feature, current accounts are also governed by Qard.

The depositors are not interested in terminology but the end-result of holding an account. Therefore, if a bank does not offer security to the assets, the depositors under normal circumstance will never keep their assets at such a bank. Similarly if the depositors are told that the status of their account will that of Amana and in case of any loss to the assets, without any negligence of the bank, will not be returned to them, not a single person would put his asset in the bank. Therefore the bank provides the security to the assets, which the depositors themselves want

We therefore conclude that the main intention of the depositors is not to put the assets in banks as amanah; rather as Qard by having collateral security by appointing the bank as guarantor.⁸⁰

Hazrat Zubair bin Awwam (RA) was famous for his honesty and trustworthiness. Prominent people used to leave with him their properties in trust. Based on their needs they would also withdraw all or part of their

⁷⁹ Dr. Muhammad Imran Ashraf, Islamic Banking (Darul Ishaat Karachi, 2002) 167

⁸⁰ Ibid

properties. It has been reported in Al Bukhari and Tabaqaat-e-Ibn-Saad in respect of Zubair bin Awaam (RA) that he would decline to accept such property as amanah (Trust) but rather accepted them as Qard (loan). The reason for this action on his part was his fear that the property may be lost and it may be suspected that he was neglectful in its safekeeping. As such, he decided to consider it a loan so that the depositor felt more comfortable and his reputation remained intact. Another reason for it was that it could become possible for him to employ these funds for trading and earn profit out of them. The loan amount calculated at 2.2 million at the time of his death by his son Abdullah bin Zubair was specified as Qard not Amana. He also used term loan while instructing his son before his death to dispose of my property to settle the loans”⁸¹

From the above discussion, the Mustaqeem Soneri Islamic Banking takes all three forms of banks deposits as governed by the law of Qard as a consequence of which the account holder may withdraw only the assets deposited. Any increase on it will be interest. It is also clear that there is a consensus of Muslim scholars on the point that the transactions in Fixed Deposit and Saving Account is prohibited because the bank pays excess to their account holder over actual capital, which is interest. The Islamic Fiqh Academy Jaddah in their 2nd session has further endorsed such transaction as interest based transaction. Therefore it is illegal for a Muslim to keep their deposits in such accounts. As far as the current account is concerned, the bank does not pay any excess (interest) over the actual capital, therefore holding such an account is allowed.

⁸¹Dr. Muhammad Imran Ashraf, Islamic Banking (Darul Ishaat Karachi, 2002) 169

To sum up, profit given on fixed deposit and savings accounts is interest and therefore prohibited. However if the banking system is based on Islamic principle, Musharakah can play a very important role. Therefore, the Mustaqeem Soneri Islamic Banking operates on Musharakah basis. Where it receives deposits from customers which is called the liability side and on the other hand where it advance finance to investors and businessmen which is called the assets sides. Both sides can operate on Musharakah basis. As far as deposits are concerned, Musharakah is the only instrument in which money can be received from customers meaning that every depositor will become a partner in banks business through their deposited money.⁸²

Role of the Bank as an agent

Mustaqeem Soneri Islamic bank under Islamic Shariah can act as an agent (on Al-Wakalah basis) of the customer and can carry out the transaction on his behalf. Moreover it can charge agency fee for the services.

The agency fee can be charged in the following cases:

- Payment / receiving of cash on behalf of the customer
- Inward bill of collection
- Outward bill of collection
- LC opening and acceptance
- Collection of export bills /bills of exchange. In this case the undertaking are guarantee commission and take-up commission can be Islamized. Bank will charge an agency fee for accepting the bills, which is bought at face value.

⁸² Ibid

- Underwriting & IPO services.⁸³

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Role of the Mutaqem Islamic Banking as Guarantor

Mustaqem Soneri Islamic bank gives a guarantee on behalf of its customer but according to Shariah, guarantee fee can be charged. Normally banks charge fee for following guarantees:

- Letter of guarantee
- Shipping guarantee ⁸⁴

Other allowed Islamic financial services & products in Mutaqem Soneri Islamic Banking

- Remittance
- Zakat deduction
- Sale & purchase foreign currency
- Sale & purchase of travelers checks (local & foreign currency)
- ATM services
- Electronic online transfer
- Telegraphic transfer (of cash)
- Demand draft
- Pay order
- Lockers & custodial services
- Syndicate funds arrangements services (non-interest or markup based) for some fee
- Opening of bank account (current & non-interest or no-markup)
- Clearing facility
- Sales & purchase of share / stock (of companies involved in halal activities)
- Collection of dividends

⁸³Dr. Muhammad Imran Ashraf, Islamic Banking (Darul Ishaat Karachi, 2002) 171

⁸⁴ Ibid

- Electronic banking window
- Telephone banking⁸⁵

IV. GENERAL PRODUCT STRUCTURE OF SONERI MUSTAQEEM ISLAMIC BANKING

Two general modes used in Islamic banking

There are two general modes used in Islamic banking for deposit product:

- Qard: Qard in literal sense means the transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it. In general terms it can be referred to as an interest-free loan.
- Mudarabah: Mudarabah is a partnership in profit whereby one party provides capital (Rab-ul-Maal) and the other party provides labiur (Mudarib). The distribution of profit must be on the basis of an agreed percentage of the profit. Profit is shared as per agreed ratios and loss is borne by the investors as per the proportion of their capital⁸⁶

Type of Accounts and underlying Contract

TYPES OF ACCOUNTS	OF	UNDERLYING CONTRACT
Non - profit Bearing Transactional Accounts		Qard
PROFIT Accounts and Deposits	Bearing and Term	Mudarabah

Current Accounts

⁸⁵ Dr. Muhammad Imran Ashraf, Islamic Banking (Darul Ishaat Karachi, 2002) 172

⁸⁶ Mufty Ehsan Waqar, Mustaqeem liability products hand book (Soneri Bank Limited Publication, 2022) 15

Current Accounts provide the convenience of putting money in a Riba-free account and accessing it without any restrictions on withdrawal while enjoying a host of professional conveniences from Islamic Banking.

a. Qard

Qard is a loan without interest, profit and conditional Riba (gift). The borrower is only required to pay the principal amount borrowed and must return the amount to the depositor upon his/her request. In the perspective of Islamic Bank Current accounts, the Bank is the borrower who provides safekeeping services to its depositors.

Deposit Products in Qard offered by Islamic Banking have been mentioned below.⁸⁷

b. Jari Accounts

The relationship between the Bank and the customers holding the Jari Account (Current Account) is based on the Islamic principle of Qard and no profit or loss shall be paid on the balances in the said accounts.⁸⁸

ACCOUNT TYPE	CURRENT
Initial Deposit	Rs.100/-
Monthly Average Balance	Not Required – No Minimum Balance required
Transactions	Unlimited

Saving Accounts

Pakistani Rupee Saving accounts have been developed using the Mudarabah mode of Islamic Finance; these

⁸⁷ Mufty Ehsan Waqar, Mustaqeem liability products hand book (Soneri Bank Limited Publication, 2022) 8

⁸⁸ Ibid

accounts can be used for the purpose of general saving and business saving ⁸⁹

Term Deposit

These products allow depositors to deposit a fixed sum of money with the Bank for a specific period and in return, the Bank agrees to pay a profit to depositors through pre-determined profit sharing ratio and weightage. These deposit products are also developed using the Mudarabah mode.⁹⁰

Mudarabah

This is a form of partnership where one partner provides finance to another for investing in a commercial enterprise; investment comes from the first partner who is called ‘Rabb-ul-Maal (investor). The management and work is the exclusive responsibility of the Mudarib however, finance losses are borne by Rabb-ul-Maal (only when there is no evidence of negligence from Mudarib side). However, it should be noted that Islamic banking has stringent risk management policies in place to avoid/reduce of financial losses.

Deposit Products in Mudarabah offered by Islamic Banking are mentioned below.⁹¹

UNDERLING ISLAMIC MODE	MUDARABAH
Type of Product	Current Account Remunerative
Acceptable Currency	PKR Rupee

⁸⁹ Mufty Ehsan Waqar, Mustaqeem liability products hand book (Soneri Bank Limited Publication, 2022) 10

⁹⁰ Ibid

⁹¹ Ibid

Minimum Balance requirement	Monthly average balance condition not required
Initial Deposit	RP.100/-
Profit calculation	Daily product
Periodicity of Profit distribution	Monthly

Deposit Products at a Glance

Sr. No.	Deposit Products	Contract/Mode Type
1	Jari Account	Qard
2	Pensioners Current Account	Qard
3	Current Account	Qard
4	Jari FCY Account	Qard
5	Bachat Account	Mudarabah
6	Munafa Account	Mudarabah
7	Pensioners Savings Account	Mudarabah
8	Savings Account	Mudarabah
9	Meaadi Account	Mudarabah

CONCLUSION;

Service quality of Mustaqeem Soneri Islamic Banking is very high but customer's perception about service quality is very low. The reason for this, the awareness of service quality of Islamic Banking has not properly been dispensed. Most of the customers of Islamic Banking understand toward Islamic Banking that the end result of Islamic Banking and Conventional Banking is the same. They question why do they appear similar? The validity of a transaction does not depend on the end result but rather the process and activities executed. If a transaction is done according to the rules of Islamic Shari'ah, it is halal even

if the end result of the products may look similar to Conventional Banking products.

CONSTITUTIONAL RESTRAINTS IN ITS MAKING PROCESS IN PAKISTAN

SALEEM SHAHEEN⁹² **

Abstract This paper is about the study of constitutional development in Pakistan in relation to the political instability or stability of the country. As the constitution provides a set of rules for people of a state who agrees to live together and it is the basic set of principles through which a state is governed, on 14th of August, 1947 the newly established state of Pakistan initially adopted the 1935 British India Act to run the affairs of the State. The process to frame a new constitution started after the Objectives Resolution in 1949, while Islamic and democratic values were considered as foundations to formulate a constitution for Pakistan. Objective Resolutions, 1949 was a base of constitutional development in Pakistan. After passing the Objective Resolutions from the Constituent Assembly of Dominion of Pakistan, Politicians in Pakistan worked together for new constitution for a country in the guidelines of Objective Resolutions. Pakistan took 9 years after independence from British rule to form its own constitution. In 1956 Pakistan made its first constitution and it will remain in the country for only 2 years when Military overthrown the elected government and suspended the constitution. Objectives Resolution was a preamble in 1956 constitution as well as in 1962 constitution and 1973 constitution.

Keywords: Pakistan, Constitution, Military, Martial Laws, suspension of Constitution, 1973 Constitution.

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INTRODUCTION; Pakistan was founded in 1947 as a Dominion of United Kingdom. During its first few years of existence the British Monarch was also Pakistan's head of state, as is still in the Canada, Australia, New Zealand and British Columbia. Before writing a constitution, a Constituent Assembly passed the Objectives Resolution, on the insistence of the ulema and Jamaat-e-Islami, in March 1949 to define the basic directive principles of the new state and to declare state recognition of the sovereignty of Allah over the Universe. The Objectives Resolution affirmed the role of democracy and contained religious provisions to enable society to adhere to the teachings of the Quran and Sunnah. The Objectives Resolution has henceforth been inserted as a preamble into each of Pakistan's subsequent constitutions which are 1956, 1962, 1972 (Interim Constitution) and 1973 Constitution.

Pakistan became a republic when its first constitution was approved in 1956 but this was abrogated in 1958 after a military Coup d'état. Pakistan's second constitution was approved in 1962. It granted executive power to the President of Pakistan and abolished the office of the Prime Minister. It also institutionalized the intervention of military in politics by providing that for twenty years, the President or the Defense Minister must be a person who had held a rank not lower than that of lieutenant-general in the army. The 1962 Constitution was suspended in 1969 when Commander In Chief of Pakistan Army proclaimed martial law in both wings of the country (East and West Pakistan).

1935 BRITISH INDIA ACT AS AN INTERIM CONSTITUTION OF PAKISTAN IN 1947

Pakistan became independent of the United Kingdom in 1947, but remained a British Dominion. Under Section 8 of the Indian Independence Act, 1947, the Government of India Act 1935 with certain changes served as the working constitution of Pakistan; still, the need of a full independence and a constitution to be framed by the elected representatives of the people was all the more necessary for the free citizens of a sovereign State of Pakistan.⁹³ Therefore, the first Constituent Assembly was formed under the Independence Act. The powers and functions of the central legislature under the Government of India Act were conferred on the Constituent Assembly. The Constituent Assembly could, however, amend the Indian Independence Act, 1947 or the Government of India Act, 1935 and no Act of the British Parliament could be extended to Pakistan without legislation by the Constituent Assembly. The first Constituent Assembly originally consisted of 69 members; subsequently the number of members was increased to 79.⁹⁴ There made addition of ten members in the Constituent assembly of Dominion of Pakistan.

The first major step in the framing of a constitution for Pakistan was taken by the Constituent Assembly on 12 March 1949, when it passed a resolution known as Objective Resolution. It laid the foundation of the constitution and indicated the broad outline of its structure. Objective Resolution gave the basic structure and

⁹³ See for instance, The Parliamentary History Archived at the Way back Machine. Dated: 5th July, 2021 (Last visit; Date and Time 03-02-2021 / 08:40 pm)

⁹⁴ See for instance, Constitution of Islamic Republic of Pakistan, 1956 (Preamble)

guidelines for a new constitution. It was a key step to form a new constitution for a newly established State of Pakistan.⁹⁵ The resolution was moved by the first Prime Minister of Pakistan Liaquat Ali Khan. While moving the Resolution, he said that, Sir, I consider this to be a most important occasion in the life of this country, next in importance only to the achievement of independence, because by achieving independence we only won an opportunity of building up a country and its polity in accordance with our ideals. I would like to remind the house that the Father of the Nation, Quaid-e-Azam, gave expression of his feelings on this matter on many occasions, and his views were endorsed by the nation in unmistakable terms, Pakistan was founded because the Muslims of this sub-continent wanted to build up their lives in accordance with the teachings and traditions of Islam, because they wanted to demonstrate to the world that Islam provides a panacea to the many diseases which have crept into the life of humanity today.⁹⁶

OBJECTIVE RESOLUTION, 1949

The Objectives Resolution was passed by the Constituent Assembly of Pakistan on 12th March, 1949. Prime Minister, Liaquat Ali Khan, had presented it in the assembly on 7th March, 1949. Out of 75 members of the assembly, 21 voted for it. All the amendments proposed by minority members were rejected. Consequently, all ten of them voted against it. The resolution proclaimed that the future constitution of Pakistan would not be modeled entirely on a European pattern, but on the ideology and democratic faith of Islam. The resolution, in its entirety,

⁹⁵ Ibid.

⁹⁶ Kazmi, Muhammad Raza. Liaquat Ali Khan: His Life and Work. Oxford University Press, Karachi. Ed. 2003.

has been made part of the Constitution of Pakistan under Article 2(A).it was the first article and it was done by that time Prime Minister of Pakistan Nawabzada Liaquat Ali Khan.

SALIENT FEATURES OF OBJECTIVE RESOLUTION, 1949

1- Sovereignty over the entire world belongs to Allah Almighty alone and the authority which. He has delegated to the state of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust.

2- This Constituent Assembly representing the people of Pakistan resolves to frame a constitution for the sovereign independent state of Pakistan.

3- The state shall exercise its powers and authority through the chosen representatives of the people.

4- The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed.

5- The Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah.

6- Adequate provision shall be made for the minorities to freely progress and practice their religions and develop their cultures.

7- Pakistan shall be a Federation and its Provinces will be autonomous.

8- Fundamental rights shall be guaranteed. They include equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to the law and public morality.

9- Adequate provisions shall be made to safeguard the legitimate interests of minorities and backward and depressed classes.

10- The independence of the judiciary shall be fully secured and there will be no pressure of the Judges in the Country.

11- The integrity of the territories of the federation, its independence and all its rights, including its sovereign rights on land, sea and air shall be safeguarded.

12- The people of Pakistan may prosper and attain their rightful and honored place among the nations of the world and make their full contribution towards international peace and progress and happiness of humanity.

Objective Resolution, 1949 combined the features of both Western and Islamic democracy, it is considered one of the most important documents in the constitutional history of Pakistan. ⁹⁷It was strongly supported by Maulana Shabbir Ahmad Usmani, Dr. Ishtiaq Hussain Qureshi, Dr. Omar Hayat Malik, Sardar Abdur Rab Nishtar, Noor Ahmad, Begum Shaista Suhrawardy, Ikramullah, Muhammad Hussain and others. At the time it was passed, Liaquat Ali Khan called it "the most important occasion in the life of this country, next in importance only to the achievement of independence".⁹⁸ However, not everyone in Pakistan had such as high praise and unbounded admiration for it. ⁹⁹The non-Muslim members of the constituent assembly strongly opposed it, and all of them voted against it. Birat Chandra Mandal said that Quaid-e-Azam Muhammad Ali

⁹⁷ See for instance, "The Objectives Resolution 1949". www.pakistani.org. 27th March, 2017.

⁹⁸ Ibid.

⁹⁹ Khan, Hamid Constitutional and Political History of Pakistan. Ed. 2005.

Jinnah had unequivocally said that Pakistan would be a secular state.

**PRIME MINISTER OF PAKISTAN
MUHAMMAD ALI BOGRA`s FORMULA**

The Bogra Formula was a political compromise presented and proposed by Prime Minister Muhammad Ali Bogra on 7th October, 1953 before the Constituent Assembly of Pakistan. ¹⁰⁰Upon taking the control of the Prime Minister's Secretariat, Prime Minister Muhammad Ali Bogra announced that drafting of the codified Constitution was his main target, and within six months of a short span of a time, he announced a proposal that leads to the drafting of the constitution writ in both wings of Dominion of Pakistan. The framework proposed the establishment of more effective bicameral Parliament of Pakistan that would be composed of National Assembly and the Senate with equal representation from five provinces: Punjab, Northern Western Frontier Province (Khyber Pakhtunkhwa), Baluchistan, Sindh, and East Bengal. A total of 300 seats were to be reserved for the National Assembly on the basis of proportionate representation and 50 for the Senate that would be equal representation for all the five provinces of the country. ¹⁰¹ Under this framework, the larger number of constituencies was given to East Bengal which had 165 reserved seats in contrast to Punjab which had 75 seats, Northern Western Frontier Province (Khyber Pakhtunkhwa), which had 24 seats, Sindh which had 19 seats, and Baluchistan which had 17 seats reserved seats. ¹⁰² Tribal areas (Khyber Pakhtunkhwa), Karachi

¹⁰⁰ Haque, Monaz, Mir. "Mohammed Ali Bogra". www.bogra.org. Dated: 1st March, 2015. (Last visit; Date and Time 04-02-2021 / 12:40 pm)

¹⁰¹ Burki, Shahid Javed. "Mohammed Ali Bogra". Encyclopedia Britannica, Inc. 5th March, 2015. (Last visit; Date and Time 04-02-2021 / 12:55 pm)

¹⁰² Kalim, Bahadur. Democracy in Pakistan: Crises and Conflicts. Har-Anand Publications, New Delhi. Ed. 1998. P; 36.

metropolitan area, Bahawalpur, Khairpur, Baluchistan States Union, were combined as 24 reserved seats. In this Muhammad Ali Bogra's formula, East Bengal had given more seats due to its social homogeneity in the National Assembly than the combined reserved seats for the four provinces and the Federal Capital of Pakistan which, all were socially heterogeneous and ethnically diverse.¹⁰³ But combined the reserved seats in the four provinces were in balance with Bengal in the bicameral parliament. Both the houses were given equal power, and in case of a conflict between the two houses, the issue was to be presented before a joint session of Parliament of Pakistan. The Muhammad Ali Bogra's formula also mentioned the check and balance to avoid the permanent domination by any five provinces where a provision was made that if the President was elected from the West Pakistan then the Prime Minister was to be elected from East Pakistan.¹⁰⁴ The President was to be elected for a term of 5 years from the indirect elections by the Electoral College formed by the both houses National Assembly and the Senate in Pakistan. The Supreme Court of Pakistan and High Courts of all 5 provinces were to be given more power and institutional judicial independence that would permanently replace the Islamic clergy to decide if a law was in accordance with the basic teachings of the Quran and Sunnah or not. The compromise did not settled to its ground when Governor General of Pakistan Malik Ghulam Muhammad, threatened to use his powers to dissolve the Constituent Assembly in 1954 with the support of Pakistan

¹⁰³ Hannan, Muhammad, Abdul. Mohammed Ali (Bogra): A Biographical Sketch. Dacca, East Pakistan. Ed. 1967.

¹⁰⁴ "Muhammad Ali Bogra". Story of Pakistan. www.bogra.org. Dated: 13th February, 2015. (Last visit; Date and Time 05-02-2021 / 10:40 am)

Military and civil Bureaucracy in Pakistan and Judiciary of Pakistan¹⁰⁵. Leadership in the Military of Pakistan played negative role in the politics of Islamic Republic of Pakistan. It was the first time when Military directed to Governor General of Pakistan Malik Ghulam Muhammad to dissolve the constituent assembly of Pakistan.

CREATION OF ONE UNIT

Failure on reaching concession on Prime Minister Muhammad Ali Bogra's Formula, he began working towards the controversial One Unit program that integrated the Four Provinces into a single West Pakistan Unit and East Bengal as a single East Pakistan Unit and began advocating for such idea when he quoted: There will be no Bengalis, no Punjabis, no Sindhis, no Pathans, no Balochis, no Bahawalpuris, no Khairpuris, no Kashmiris, no Gilgiti. The disappearance of these groups will strengthen the integrity of Pakistan.

CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1956

The Constitution of 1956 was the fundamental law of Pakistan from March 1956. It was the first constitution adopted by independent Pakistan. There were 234 articles 13 parts and 6 schedules. The Constitution of 1956 was lengthy and detailed. It contained 234 articles divided into thirteen parts and six schedules. The Constitution of 1956 provided Federal Legislature system with the principle of equality between East Pakistan and West Pakistan. The Federal Legislature was to perform like the British Parliament. The Federation was invested with such powers as to take unilateral action in emergency and it could influence the provincial autonomy. The Constitution of 1956 of Pakistan provided for the Federal Parliamentary

¹⁰⁵ Ali, Hamde, Syed. "Mohammed Ali Bogra". The Daily Star. Dated: 13th February, 2015. (Last visit; Date and Time 05-02-2021 / 11:40 am)

form of government, where real executive authority was vested in a cabinet, collectively responsible to the Federal Parliamentary Legislature. The cabinet was presided over by the Prime Minister. The Constitution declared that there would be only one house of parliament known as the National Assembly and equality between the both units (East Pakistan and West Pakistan) was maintained in it. The Governor General was replaced by a President, who was to be elected by the Electoral College of Pakistan composed of members of the National Assembly and Provincial Assemblies. Dominion of Pakistan changed to Islamic Republic of Pakistan in 1956 Constitution.

SALIENT FEATURES OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1956

- 1- 1956 Constitution was in written form. This is a written and lengthy document. It consists of 234 Articles divided into 13 parts and 6 schedules.
- 2- 1956 was a flexible Constitution. This constitution could be amended through a process requiring the amendment to be passed by at least a two-thirds majority of the Parliament. However the President had the right to veto the draft, which then could be overridden by simple parliamentary majority.
- 3- The name of the country was adopted as the Islamic Republic of Pakistan.
- 4- The objective resolution was included as a preamble of the constitution.
- 5- The constitution, 1956 provides for a federal system in the country. Powers was divided between the center and the provinces. The subjects were divided into three lists. The Federal List, the Provincial List, and the Concurrent List.
- 6- The legislature would consist of a single house. Both the wings of the country were given representation

in the National Assembly. The National Assembly consisted of 300 members. 150 members were drawn from each wing.

7- A parliamentary system was adopted, according to it the president was the head of state and the Prime Minister the head of government.

8- The President required being a Muslim of at least forty years of age. The tenure of his office was five years. In case of internal or external danger he could declare a state of emergency in the country. He was authorized to appoint the Governors, the Judges of the Supreme Court, Auditor General and the Advocate General.

9- The Prime Minister was to be the leader of the Parliamentary group and was thus indirectly elected by the people. He could choose his cabinet from the members of the National Assembly; the cabinet was answerable to the Assembly.

10- Provincial Autonomy Curtailed in the constitution to a great extent.¹⁰⁶

11- No law would be passed against the teachings of the Quran and Sunnah.

12- An independent judiciary in the country. A Supreme Court interpreted the constitution, advised the state whenever required, and decided the issues whenever required.

13- Fundamental Rights included freedom of movement, freedom of speech and expression, freedom to choose profession and freedom to profess religion. Right to life, liberty, and property.

14- In 1956 Constitution of Islamic Republic of Pakistan it was clearly mentioned that, there will be two

¹⁰⁶ See for instance, Constitution of Islamic Republic of Pakistan, 1956, Salient Features.

official languages of a Pakistan one is Urdu and second is Bengali.¹⁰⁷

SUSPENSION OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1956

On 7th October 1958, President Major General (R) Iskander Mirza staged a coup d'état. He abrogated the 1956 constitution, imposed martial law and appointed General Muhammad Ayub Khan as the Chief Martial Law Administrator and Aziz Ahmad as Secretary General and Deputy Chief Martial Law Administrator.¹⁰⁸ However, three weeks later Chief Marshall Law Administrator General Muhammad Ayub Khan who had been openly questioning the authority of the government prior to the imposition of martial law deposed President Major General Iskandar Mirza on 27 October 1958 and assumed the presidency, which practically formalized the militarization of the political system in Pakistan.¹⁰⁹ One of the first major steps taken by President and Chief Marshall Law Administration of Pakistan General Muhammad Ayub Khan was the appointment of a Constitution Commission on 17th February 1960. The objective of this commission was to submit proposals, as to how best democracy can be strengthened and molded according to the country's socio-political environment and Islamic principles of justice.¹¹⁰ The Commission submitted its report to the government on 29th April 1961. On the basis of this report a new Constitution was framed and given to

¹⁰⁷ Ibid.

¹⁰⁸ See for instance, "President Iskander Mirza". Ministry of Information and Public Broadcasting, Government of Pakistan. Dated: 16th January, 2014. (Last visit; Date and Time 05-02-2021 / 12:10 pm)

¹⁰⁹ Khan, Hamid. Constitutional and Political History of Pakistan. The First Martial Law in Islamic Republic of Pakistan. Ed. 2009.

¹¹⁰ Lentz, Harris M. Heads of States and Governments since 1945. Rutledge, New York City. P; 1896.

the nation on 1st March, 1962. This constitution was only made to legitimize Commander-in-Chief of Pakistan Army General Muhammad Ayub Khan's Marshall Law Government.

CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1962

The Constitution of 1962 was the fundamental law of Islamic Republic of Pakistan from 8th June, 1962 until martial law was declared in 25th March, 1969 by then Commander-in-Chief of Pakistan Army General Muhammad Yahya Khan.¹¹¹ On 17 February 1960 President and Chief Marshall Law Administrator of Pakistan General Muhammad Ayub Khan appointed a commission to report on the future political framework for the country. The commission was headed by the former Chief Justice of Pakistan, Muhammad Shahabuddin, and had ten other members, five each from East Pakistan and West Pakistan, composed of retired judges, lawyers, industrialists and landlords. The report of the Constitution Commission was presented to President General Muhammad Ayub on 6th May, 1961 and thoroughly examined by the president and his Cabinet. In January, 1962, the Cabinet finally approved the text of the new constitution.¹¹² It was promulgated by President General Muhammad Ayub Khan on 1st March, 1962 and finally came into effect on 8th June, 1962. The Constitution contained 250 articles divided into twelve parts and three schedules. With the enforcement of this Constitution after 44 months, martial law came to end. Pakistan was named the Republic of Pakistan. The constitution provided the

¹¹¹ See for instance, The Daily Times newspaper, Democratizing Pakistan. www.dailytimes.com. (Last visit; Date and Time 05-02-2021 / 01:00 pm)

¹¹² Chaudhry, G. W. Constitutional development in Pakistan. Longman London. P; Vol. 40.

federal system with the principle of parity between East Pakistan and West Pakistan. Both the provinces would run their separate provincial governments. The responsibilities and authority of the Centre and the provinces were clearly listed in the constitution. The central legislature had one house known as the National Assembly. There were 157 members of the National Assembly. The equality between the two wings were maintained in it. The constitution provided for a presidential form of government, as opposed to the parliamentary form of government under the 1956 Constitution. The president, who had to be a Muslim not less than 35 years of age and qualified for election as a member of the National Assembly, was to be elected indirectly by an electoral college in accordance with the provisions outlined in the Constitution. The Electoral College formed by not less than 80,000 Basic Democrats (BD Members), equally distributed between the two provinces (40,000 from East Pakistan and 40,000 from West Pakistan). Under the Constitution of 1962, if the number of candidates for election to the office of President exceeded three, the Speaker of the National Assembly was to convene a joint session of the members of the National and Provincial Assemblies to select only three candidates for election, the remaining candidates then would not be eligible. This screening was not applicable to a person who was holding the office of the president, so if the sitting president was also a candidate the number of candidates would be four. The term of the president was five years to act as head of state as well as chief executive, solely responsible for country's administration. Governors and Ministers were appointed and removed by him. He was eligible to promulgate

ordinances and veto against legislated laws only override able by two-thirds of the National Assembly.¹¹³

SALIENT FEATURES OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1962

- 1- The Constitution of 1962 was a written document. It consisted of three schedules and 250 articles.
- 2- 1962 constitution was a rigid constitution and can only be amended through a particular process. If an amendment to the constitution is passed by at least two-thirds majority of the parliament then it becomes a part of law after authentication by the president.
- 3- A federal system was introduced in the country. It consisted of a central government and two provincial government comprising east and West Pakistan.
- 4- In 1962 constitution there was a Presidential form of government; the president was the head executive of the nation. He was empowered to nominate the ministers of his cabinet.
- 5- In 1962 Constitution there was unicameral legislature.
- 6- There was indirect method of election. The president was elected by an Electoral College comprising 80,000 Basic Democrats, equally distributed between the two provinces.
- 7- There were two provincial governments. Each of them was headed by a governor. He enjoyed powers in the province which the president enjoyed in the center. The governor was empowered to appoint provincial ministers with the sanction of the president of Pakistan.
- 8- Each province was provided with a legislature. It originally consisted of 150 members. However, later on this number was increased to 218.

¹¹³ See for instance, Constitution of Islamic Republic of Pakistan, 1962, Schedule 1, Introduction.

9- Powers of president According to the 1962 Constitution the president should be a Muslim with the term of 5 years. He was eligible to promulgate ordinances and veto against legislated laws only override-able by two-thirds of the National Assembly. However, the president was not empowered to dissolve the Assembly except the cost of his office also.¹¹⁴

10- The president was not allowed to hold any office of profit in the service of Pakistan but was not prevented from holding a managing private property.

11- Islamic law No law would be passed against the teaching of Quran and Sunnah and the existing laws would be made Islamic in character.

12- Fundamental rights The Constitution of 1962 laid down fundamental rights of speech and expression, freedom to choose profession and freedom to profess religion. With regards to civil rights, familiar rights such as the rights of life, livery and property were granted.

13- The Judiciary was responsible for the interpretation of laws and executive orders in the light of the principles embodied in a written constitution.

14- A Supreme Judicial Council consisting of two judges of Supreme Court chief justice of Supreme Court and two judges of high courts was to be established.

15- The preamble of the Constitution of 1962 was based on the Objectives Resolution.

16- The Constitution laid down simply that the state of Pakistan shall be an Islamic republic under the name of Islamic Republic of Pakistan.

17- According to the principles of policy, steps were to be taken to enable the Muslims of Pakistan individually and collectively, to order their lives in accordance with the

¹¹⁴ See for instance, Constitution of Islamic Republic of Pakistan, 1962, Salient Features.

fundamental principles and basic concepts of Islam, and should be provided with facilities whereby they may be enabled to understand the meaning of life according to those principles and concepts.

18- No law shall be enacted which is repugnant to the teachings and requirements of Islam as set out in the Qur'an and Sunnah and all existing laws shall be brought in conformity with the Qur'an and Sunnah.

19- Only a Muslim could be qualified for the election as president.¹¹⁵

20- Teaching of the Quran and Islamiyah to the Muslims of Pakistan was made compulsory.¹¹⁶

21- Proper organization of Zakat, waqf, and mosques was ensured.

22- Practical steps were to be taken to eradicate what were seen as social evils by Islam, such as the use of alcohol, gambling, etc.

23- A novel Islamic provision in the 1962 Constitution had introduced an Advisory Council of Islamic Ideology to be appointed by the president. The functions of the council was to make recommendations to the government as to means which would enable and encourage the Muslims of Pakistan to order their lives in accordance with the principles and concepts of Islam and to examine all laws in force with a view to bring them into conformity with the teachings and requirements of Islam as set out in the Qur'an and Sunnah.

24- There shall be an organization to be known as Islamic Research Institute, which shall be established by the president. The function of the institute was to undertake Islamic research and Instruction in Islam for the

¹¹⁵ Ibid.

¹¹⁶ Ibid.

purpose of assisting in the reconstruction of Muslim society on a truly Islamic basis.

25- The state should endeavor to strengthen the bonds of unity among Muslim countries. ¹¹⁷

SUSPENSION OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1962

The second martial law was imposed on 25th March, 1969 by Commander-in-Chief of Pakistan Army General Agha Mohammad Yahya Khan, after General Ayub Khan handed over power to the army Commander-in-Chief, and not the speaker of National Assembly as lay down by the constitution.¹¹⁸ On assuming the presidency, General Yahya Khan acceded to popular demands by abolishing the one-unit system in Pakistan on 1st July, 1970 and ordered general elections on the principle of one man one vote¹¹⁹. However, the dissolution of one unit did not lead to the positive results that it might have occurred earlier. General Yahya Khan also made an attempt to accommodate the East Pakistanis by abolishing the principle of parity in the hope that a greater share in the assembly would redress their wounded ethnic regional pride and ensure the integrity of Pakistan. Instead of satisfying the Bengalis,¹²⁰

it intensified their separatism since they felt that the west wing had politically suppressed them since 1958, which caused the rise of anti-West Pakistan sentiment in the East Pakistan. The first ever general elections were held in December 1970; however, the government was not transferred to the Awami League Elections. This resulted

¹¹⁷ Ibid.

¹¹⁸ See for Instance, Yahya Khan: president of Pakistan. Encyclopedia Britannica. 22nd July, 2020. (Last visit; Date and Time 06-02-2021 / 12:00 pm)

¹¹⁹ Ibid.

¹²⁰ Jaffrelot, Christophe. [The Pakistan Paradox: Instability and Resilience](#). Oxford University Press. Ed. 2015. P; 226–227.

in destruction of national unity and eventual the separation of East Pakistan was fought. That was a black period of Pakistan`s history when Pakistan was divided into 2 States. It was all due to again and again successive Martial Laws in the country and immaturity of Politicians who want support from General Headquarters again and again.

CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1972 (INTERIM CONSTITUTION)

The interim constitution, 1972 was that provisional document adopted by the national assembly on 17th April, 1972 and enforced on 21st April, 1972 which provided the guideline for running the administration of the country till 14th August, 1972 when the permanent constitution of 1973 became operational. The emergency declared by Yahya Khan continued and Bhutto entered into the corridors of power riding on the horse of martial law. However, the political opposition could not let him behave dictatorially and tried to rein in his authority. So, a Presidential Order, National Assembly Order 1972, authorized the assembly to draft the interim constitution before the permanent one. The interim constitution provided for a Presidential form of government. The president was required to be a Muslim of at least 40 years who was also the Supreme Commander of Pakistan Armed forces. The President elected for 5 years was assisted by a council of ministers each of which was required to be a member of the National Assembly of Pakistan. It means the 1972 Constitution afforded a Presidential system with a blend of the Parliamentary system as it made the cabinet or the council of ministers responsible to the parliament. Moreover, the office of the Vice-President was also given. A unicameral legislature empowered to legislate on all matters or subjects included in the Federal and the Concurrent lists. Similarly, in the provinces, a unicameral

legislature was provided. The assemblies elected in the 1970's election were to constitute the provincial assemblies under the interim constitution. They were empowered to legislate on subjects written in the provincial legislative list and the concurrent list. Moreover, the parliamentary system was introduced at the provincial levels. Governor was the head of the provincial Executive aided by a council of Ministers headed by the Chief Minister. The council was collectively responsible to the provincial assembly. As for Martial law, it was lifted with the enforcement of the Interim Constitution 1972 but some specified martial law regulations and orders were deemed to have become Acts. The power for amending the constitution however vested in the President of Pakistan who was empowered to make such necessary adaptation required to put it into effective operation. On the day, the Interim Constitution was adopted by the National Assembly a committee for drafting the permanent Constitution for a country was also constituted. Abdul Hafiz Pirzada was the chairman of this committee. Irrespective of all given difficulties, the permanent constitution was adopted by the assembly and replaced the interim constitution on 14th Aug 1973.¹²¹

CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

The Constitution of the Islamic Republic of Pakistan is the Supreme Law of Pakistan. It was drafted by the government of President Zulfikar Ali Bhutto, with additional assistance from the country's opposition parties; it was approved by the Parliament of Pakistan on 10th April, 1973 and ratified on 14th August, 1973. The Constitution is intended to guide Pakistan's law, its political culture, and system. It identifies the state, people

¹²¹ See for instance, Constitution of Islamic Republic of Pakistan (Interim), 1972.

and their fundamental rights, state's constitutional law and orders, and also the constitutional structure and establishment of the institutions and the country's armed forces. The first three chapters establish the rules, mandate, and separate powers of the three branches of the government: a bicameral legislature; an executive branch governed by the Prime Minister as chief executive; and an apex federal judiciary headed by Supreme Court. The Constitution designates the President of Pakistan as a ceremonial Head of State who is to represent the unity of the state. The first six articles of the constitution outline the political system as federal parliamentary republic system; as well as Islam as its state religion. The Constitution also encapsulates provisions stipulating the legal system's compliance with Islamic injunctions contained in the Quran and Sunnah. The Parliament cannot make any laws which may be contrary to the Constitution; however the Constitution itself may be amended by a two-thirds majority in both the houses of the bicameral Parliament, unlike the previous legal documents of 1956 and 1962.¹²² It has been amended over time, and most recent impulses for political upgrades and reforms has been amended. Although enforced in 1973, Pakistan, however, celebrates the adoption of the constitution on 23 March, when the first set was promulgated in 1956, each and every year as Republic Day. There are 26 amendments but 23 amendments were made in constitution and three were not passed by the Parliament. The law experts, constitutional analysts, and country's reputed clergymen worked on formulating a constitution that they hoped would represent the will and desire of people. Unlike earlier attempts, the convention was not meant for new

¹²² See for instance, Constitution of Islamic Republic of Pakistan, 1973, first three chapters, Fundamental Rights.

laws alterations, but for the "sole and express purpose of revising the 1956 articles. Also, the convention was not limited to the religion, exigencies of government and the preservation of the State; rather it was intended to maintain delicacy in commerce, finances, issue of loans to federation, and Separation of powers. The Constitution ultimately established a bicameral Parliament, with the National Assembly as the lower house and the Senate as the upper house. It also established the parliamentary form of government with Prime Minister as its head of Federal Government; the elected National Assembly genuinely representing the will of the people¹²³.

SALIENT FEATURES OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

- 1- Like the previous constitutions of 1956 and 1962 the Constitution of 1973 is a written document. It is very comprehensive and consists of twelve parts consisting of 280 articles.
- 2- Introductory and the Objectives Resolution It commences with an introductory which slates the Islam shall be state religion. The principles and provisions set out in the Objectives Resolution have been made substantive part of the constitution.
- 3- The inclusion of Islamic Provisions has given the 1973 Constitution an unprecedented Islamic character. It ensures an Islamic system in the country.
- 4- It is a rigid constitution. No Government can change it at will. It is not easy to make amendments in it. Two-third majority of both the Houses is required for this purpose.
- 5- The 1973 Constitution proposes a Parliamentary form of Government in the country. Prime Minister is the

¹²³ Ibid.

head of the Parliamentary system. He is leader of the Majlis-e-Shoora (Parliament). He is elected on direct adult franchise basis. The Prime Minister selects a cabinet of central ministers from the members of Parliament which conducts the affairs of the country. According to 1973 Constitution the Prime Minister enjoys wide powers.¹²⁴

6- The Constitution provides for the establishment of a bicameral legislature in Pakistan. The Majlis-e-Shoora (Parliament) consists of two Houses named Senate and National Assembly. The Senate or the Upper House consists of 63 members (the 8th Amendment has raised this number to 87). The National Assembly consists of 200 members (Now this number has been raised to 207). The Majlis-e-Shoora enjoys wide powers of legislature.

7- The 1973 Constitution ensures the following fundamental rights to the citizens of Pakistan. Security of person Safeguard against unlawful arrest and detention Prohibition of slavery and forced labor Freedom of movement Freedom of assembly Freedom of association Freedom of business Freedom of speech Freedom of profess religion Right to hold property Equality before law Right to preserve language, script and culture and Safeguard against discrimination in services.

8- The Constitution stresses upon the establishment of an independent judiciary. Full job security has been provided. The judges are appointed by the President. They cannot be removed from service before the end of their term except on the recommendation of the Supreme Judicial Council. In addition the Judges are paid respectable salaries.

9- The 1973 Constitution has declared Urdu as the national language of Pakistan. However English has been

¹²⁴ See for instance, Constitution of Islamic Republic of Pakistan, 1973, Salient Features.

retained as the official language for 15 years. Similarly regional languages have been provided full protection.

10- The 1973 Constitution establishes rule of law in Pakistan. According to rule of law no person can be deprived of his fundamental rights. All the citizens of Pakistan are equal before law.¹²⁵

ISLAMIC FEATURES OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

1- The official name is "Islamic Republic of Pakistan" as selected for the state of Pakistan.

2- Islam is declared as the state religion of Pakistan.

3- Enabling of living life, culture, and customs of Muslims, individually or collectively, in accordance with the fundamental principles and basic concepts of Islam.

4- Teachings on Arabic, Quran, and Islamiyat to be compulsory in country's institutions and to secure correct and exact printing and publishing of the Quran.

5- Proper organizations of Zakat, Waqf, and mosques are ensured.

6- Prevent prostitution, gambling and consumption of alcohol, printing, publication, circulation, pornography, and display of obscene literature and advertisements.

7- Required to be a Muslim to run for bid of becoming the President and/or Prime Minister. No restriction as to religion or gender on any other post, up to and including provincial Governors and Chief Ministers.

8- All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Quran and Sunnah and no law shall be enacted which is repugnant to such injunctions.

9- A Council of Islamic Ideology shall be constituted referred to as the Islamic advisory council.

¹²⁵ Ibid.

10- The Constitution of Pakistan defined a Muslim as a person who believes in the unity and oneness of Allah, in the absolute and unqualified finality of the Prophet hood of the Islamic prophet, Muhammad, and does not believe in, or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad.¹²⁶

11- In keeping with this definition, the Second Amendment to the Constitution (1974) declared for the first time the Ahmadiyya Community and/or the Lahori Group as non-Muslims, since their leader, Mirza Ghulam Ahmad, claimed to be prophet of God.

12- However, the Fourth Amendment (1975) set aside six seats in the National Assembly for non-Muslim representatives to protect minority rights.

13- The state shall Endeavour to strengthen the bonds of unity among Muslim countries.

14- Islamic revisions were introduced into the Pakistan Penal Code.¹²⁷

PARTS OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

- 1- Preamble
- 2- Introductory (Articles 1-6)
- 3- Fundamental Rights and Principles of Policy (Articles 7-40)
- 4- The Federation of Pakistan (Articles 41-100)
- 5- Provinces (Articles 101-140A)

¹²⁶ See for instance, Constitution of Islamic Republic of Pakistan, 1973, Islamic Features.

¹²⁷ Ibid.

- 6- Relations between Federation and Provinces (Articles 141-159)
- 7- Finance, Property, Contracts and Suits (Articles 160-174)
- 8- The Judicature (Articles 175-212)
- 9- Elections (Articles 213-226)
- 10- Islamic Provisions (Articles 227-231)
- 11- Emergency Provisions (Articles 232-237)
- 12- Amendment of Constitution (Articles 238-239)
- 13- Miscellaneous (Articles 240-280)

SCHEDULES OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

- 1- First Schedule-Laws exempted from the operation of Article 8(1), 8(2), 8(3b), and 8(4)
- 2- Second Schedule- Election of President. Article 41(3)
- 3- Third Schedule-Oaths of Office: Article 42, Article 91(5)–92(2), Article 53(2)–61,
- 4- Fourth Schedule-Legislative Lists
- 5- Fifth Schedule-Remuneration and Terms and Conditions of Service of Judges (Article 205)

AMENDMENTS IN CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

1973 Constitution OF Islamic Republic of Pakistan cannot be changed; instead constitutional amendments are passed; altering its effect. Amendments to the Constitution are made through the Parliament, where a Two-thirds majority and voting is required in both houses for a constitutional amendment to take its effect, in accordance to the Constitution. In addition to this, certain amendments which pertain to the federal nature of the Constitution must be ratified by a majority of state legislatures. As of 2019, 25 amendments have been made to the Constitution. Among the most important of these are the Eighth (1985)

and Seventeenth Amendments (2004), which changed the government from a parliamentary system to a semi-Presidential system. By far the largest change to the Constitution was the Eighteenth Amendment made in (2010) which reversed these expansions of presidential powers, returning the government to a parliamentary republic, and also defined any attempt to subvert, abrogate, or suspend the constitution as an act of high treason. The latest of these amendments, the Twenty-Fifth amendment incorporated the former Federally Administered Tribal Areas into the province of Khyber Pakhtunkhwa.

SUSPENSION OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 ON 5th JULY, 1977

On 5th July, 1977 coup by Chief of Army Staff of Pakistan General Muhammad Zia-ul-Haq, overthrowing the government of Prime Minister Zulfikar Ali Bhutto and his Cabinet. He also suspended the Country's 1973 Constitution and dissolve all the assemblies and Parliament and dismissed all Provincial Governors, Chief Ministers and their Cabinets. In announcing the coup, General Muhammad Zia-ul-Haq promised "free and fair elections" within 90 days and will restore 1973 Constitution in its original form, but these were repeatedly postponed on the excuse of accountability and it was not until 1985 that general elections were held without party based. General Muhammad Zia-ul-Haq himself stayed in power for eleven years until his death in a plane crash. 1973 Constitution was restored in the country in 1985 but not in its original form. 8th Amendment in the Constitution by General Muhammad Zia-ul-Haq made the Parliamentary Constitution into the Semi Presidential Constitution. The eighth amendment strengthened the authority of the President and also granted additional

powers to dismiss the elected Prime Minister's government. These powers included the right, expressed in sub-section 2(b) inserted into Article 58, to dissolve the National Assembly if, in his or her opinion, "a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution and an appeal to the electorate is necessary." Constitution of Islamic Republic of Pakistan, Article 58(2b) with the consequence of dismissing the Prime Minister and his or her Cabinet.

PROVISIONAL CONSTITUTIONAL ORDER, 1981

After the martial law 1977, the constitution of Islamic Republic of Pakistan, 1973 was suspended. The first Provisional Constitutional Order was declared on 24th March, 1981 by then President Zia-ul-Haq. Under this new order, the senior Justices of the Supreme Court of Pakistan were asked to take an oath of office under the provisions set by the PCO. On March 1981, President Zia terminated 19 senior justices of the Supreme Court when they refused to take the oath. Chief Justice Dorab Patel and Senior justice Fakhrauddin Ibrahim declined to take the oath; thus opting for retirement. Senior justice Anwar-ul-Haq also resigned after refusing to take the oath whilst the senior Judge Mushtaq Hussain who was willing to take the oath was not asked to do so. Senior justices Hussain and Haq had previously approved Bhutto's hanging were reportedly restrained to take an oath under the secretive directives issued by President Zia. All of these senior Judges were asked to tender their resignation.

SUSPENSION OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 ON 12th OCTOBER, 1999

On 12th October, 1999 Pakistan Military takeover in Pakistan was a bloodless coup d'état initiated by the

Military Staff at the Joint Staff Head Quarters working under Chairman of the Joint Chiefs of Staff Committee General Pervez Musharaf seized control of the civilian elected government of Prime Minister Mian Muhammad Nawaz Sharif. Simultaneously tenuring as the Chief of Army Staff, Chairman of the Joint Chiefs General Pervez Musharaf, who then acted as the Pakistan's Chief Executive, declared a state of emergency by issuing a controversial provisional order in a direct violation of that suspended the writ of the Constitution of Pakistan on 14 October 1999, only two days of seizing the control of the federal government from the legal advice taken from his legal team led by Sharif-ud-Din Pirzada.

PROVISIONAL CONSTITUTIONAL ORDER, 1999

Chairman Joint Chiefs of Staff Committee and Chief of Army Staff of Pakistan General Pervez Musharaf immediately imposed the martial law against the elected government of Prime minister Mian Muhammad Nawaz Sharif on 12th October, 1999. General Pervez Musharaf effectively imposed the state of emergency and suspended the constitution after introducing the Provisional Constitutional Order. Nearly, all senior Judges were forcefully required to take an oath of office under this new order, and concerns were raised that this would "erode the independence of the judiciary".¹²⁸ Provincial Constitutional Order, 1999 ends the independence of Judiciary in Islamic Republic of Pakistan and forces the Judges to take oath from Chief Executive of Pakistan General Pervez Musharaf.

¹²⁸ Omar, Imtiaz. Emergency powers and the courts in India and Pakistan. Kluwer Law International, England. ISBN 904111775X.

SUSPENSION OF CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 ON 3rd NOVEMBER, 2007

A state of emergency was declared by President and Chief of Army Staff of Pakistan General Pervez Musharaf on 3rd November, 2007 and lasted until 15th December, 2007, during which the constitution of Pakistan was suspended. When the state of emergency was declared, General Pervez Musharaf controversially held both positions of President and Chief of Army Staff.¹²⁹ He later resigned as Chief of Army Staff of Pakistan 25 days into the emergency on 28 November. The state of emergency and its responses are generally attributed to the controversies surrounding the re-election of General Pervez Musharaf during the Presidential election on 6 October 2007, including his holding of both offices of President and Chief of Army Staff at the time. Chief Justice of Pakistan Iftikhar Muhammad Chaudhry reacted promptly to the emergency declaration, convening a seven member bench which issued an interim order against General Pervez Musharaf's action. He also directed the Armed Forces of Pakistan and Police not to obey any illegal orders by General Pervez Musharaf. Subsequently, the 111th Brigade of the Pakistan Army entered into the Supreme Court of Pakistan Building and removed Chief Justice of Pakistan Iftikhar Muhammad Chaudhry and several other judges from the Supreme Court of Pakistan and arrested them.¹³⁰ It was announced early that the state of emergency would likely end in late November or early December, 2007. After being sworn in for a second Presidential term on 29

¹²⁹ See for instance, "[Pakistan Judges Refuse Oath Demanded by Pakistan's Rulers](#)". Waycross Journal. 7th May, 2011. (Last visit; Date and Time 09-02-2021 / 06:15 pm)

¹³⁰ See for instance, "[The History of Pakistan: The Kushans](#)". www.kushan.org. 30th April, 2010. (Last visit; Date and Time 09-02-2021 / 09:55 pm)

November 2007, General Pervez Musharaf immediately declared that the state of emergency would end on 15th December, 2007.

PROVISIONAL CONSTITUTIONAL ORDER, 2007

In 2007, another Provisional Constitutional Order was issued by President and Chief of Army Staff of Pakistan General Pervez Musharaf. The Provisional Constitutional Order was issued on 3rd November, 2007 and later amended on 15th November, 2007. Once again Constitution of Islamic Republic of Pakistan, 1973 was suspended. All fundamental rights and liberty of citizens was also suspended it was again a black period in the history of Pakistan. ¹³¹Provisional Constitutional Order, 2007 was lifted on 15th December, 2007 on the serious pressure on General Pervez Musharaf by Pakistani Lawyers, social activists, civil society, politicians, students, western media and countries, print and electronic media.

18th AMENDMENT IN THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

The Eighteen Amendment in the Constitution of Islamic Republic Pakistan was passed by the National Assembly of Pakistan on April 8, 2010, removing the power of the President of Pakistan to dissolve the Parliament unilaterally, turning Pakistan from a semi-Presidential to a parliamentary republic, and renaming North-West Frontier Province to Khyber Pakhtunkhwa. This package was intended to counter the sweeping powers amassed by the Presidency under former presidents General Pervez Musharaf and General Muhammad Zia-ul-Haq and to ease political instability in Pakistan. The bill reversed many infringements on the Constitution of Pakistan over several

¹³¹ Rao, V, B. World history from early times to A.D. 2000. Pàgines mostrades amb permís de Sterling Publishers. Ed. 2005. P; 97

decades by its Military Dictators. The amendment bill was passed by the Senate of Pakistan on 15th April, 2010 and it became an act of a parliament when President Asif Ali Zardari put his signature on the bill on 19th April, 2010. It was the first time in Pakistan's history that a President relinquished a significant part of his powers willingly and transferred them to Parliament and the office of the Prime Minister of Pakistan.

EFFECTS OF 18th AMENDMENT IN CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

- 1- The name of the former president of Pakistan, General Muhammad Zia-ul-Haq, has been removed from the text of Constitution.
- 2- Northern Western Frontier Province (NWFP) Province has been renamed Khyber-Pakhtunkhwa.
- 3- The 17th Amendment and Legal Framework Order as introduced by General Pervez Musharaf has been repealed.
- 4- The ban on third time Prime Minister Ship and Chief Minister Ship has been lifted.
- 5- Holding constitution in abeyance is tantamount to high treason. (Article 6)
- 6- The Council of Common Interests has been reconstituted with the Prime Minister as its chairperson and the body should meet at least once in 90 days.
- 7- A Judicial Commission will recommend the appointment procedure of superior judges and the final names of judges will be decided by Parliamentary Commission
- 8- A Chief Election Commissioner of Pakistan will be appointed through consensus between treasury and opposition.

9- Establishment of Islamabad high court and benches of High Courts in Mingora (Khyber Pakhtunkhwa) and Turbat (Baluchistan).

10- Recognition of the children's right to education and insertion of a new section under Article 25A to provide constitutional guarantee that state will provide free and compulsory education to all girls and boys up to age 16.

11- The power to dissolve the Parliament was withdrawn from the President of Pakistan.¹³²

CONCLUSION

Constitution is the backbone of every sovereign state. Every State in the World has its own Constitution. Pakistan adopts several constitution but 1973 Constitution was a unanimous and a final constitution in the Islamic Republic of Pakistan. After adaptation of 1973 Constitution, Military dictators suspended it 3 times. One time General Muhammad Zia-ul-Haq on 5th July, 1977 and two times General Syed Pervez Musharraf on 12th October, 1999 and 3rd November, 2007. After restoration of democracy in the country in 2008, Government and Opposition parties unanimously pass the 18th amendment to stop future Marshall Laws in the Islamic Republic of Pakistan.

¹³² See for instance, Milestone in the Democratic history of Pakistan, The Australian Newspaper. Theaustralian.com.au. (Last visit; Date and Time 10-02-2021 / 12:555 pm)

IMPLICATION OF PUBLIC INSPIRATION AND FAMILY ARRANGEMENT ON THE INTERESTS IN WOMEN'S INCOME GENERATING ACTIVITIES

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ABSTRACT; Social welfare experienced an important transformation in the developing countries. Against a circumstantial of economic crises, structural adjustment and globalization, social welfare came to pronounce a policy framework for addressing poverty and exposure ability. Whereas social assistance in developed countries is fundamentally an "outstanding safety net charged with welfare a small underground of individuals and households from the effects of social problem," In developing countries, social assistance has a major role within social welfare and is progressive in latitude." This study was conducted in rural areas of District Gujranwala. Multistage sampling technique was used. At the first stage, one Tehsil was selected by using simple randomly sampling technique. At the second stage, four union councils were selected through simple random sampling technique. At the third stage, four villages one from each union council was selected through simple random sampling technique. At the fourth stage 200 respondents

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(50 from each village) were selected conveniently. Well-structured interviewing schedules were used for data collection. The collected data was analyzed by using statistical package for social sciences (SPSS).

INTRODUCTION; Women represented 93 % of aggregate work in dairy production. Contingent on the financial status, Women play out the errands of gathering grain, gathering and preparing compost. Manure treating the soil and conveying to the field is attempted by Women. Women additionally plan cooking fuel by blending waste with twigs and product buildups. Despite the fact that Women assume a critical part in domesticated animals' administration and creation, Women' control over domesticated animals and item. In this way as lion's share of the dairy agreeable enrollment is accepted by men, leaving just 14% to Women.¹³⁶

Another wellspring of budgetary help is dealers of neighborhood advertise. An expansive greater part of gifted Women is hostage by these merchants, who misuse their competency and their skills. So, arbiters are also working in this setting who pay to these country Women not as much as market degree and compact with the offer of their article in city territories at a advanced cost.¹³⁷

Access of budgetary help is very greater for any salary producing action. In Pakistan there are 2 parts that principally give money related help, the in formal division and the formal

¹³⁶ United Nations, (2005).Improvement of the situation of the women in rural areas of the session, 2nd Committee, Item 66 of the provisional Agenda Advancement of women.

¹³⁷ Hoque, A. (2008).Social Condition of Rural and Urban Working Women in Pakistan: A Comparative Study. Pakistan Development Review, 32(1), 101-125.

segment. In casual division Women are reliant on budgetary help for neighborhood cash loan specialists on high financing cost.¹³⁸

In spite of the way that the situation of Women in urban zones are better than the nation zones Women, regardless of way that the previous circumstances and religious ties are critical restrictions for improvement of Woman in the overall population that constrained Social benchmarks, some are great for others in people in general eye. Pakistan the essential Islamic country on the planet who picked a Woman as its pioneer twice.¹³⁹

A big number of people in the past misuse by far most of successes and country stay destitute individuals. Assorted pointer shows that women have cut down wage status as appear differently in relation to various countries of the world have rights to take. Such Women are scattered in our country and in all parts of the globe too. It is a perfect chance to stimulate the Women bolster in various sorts of actions.¹⁴⁰

Animals assume an essential part in the improvement. Domesticated animals give half of the estimation of worldwide agribusiness yields. Domesticated animals are significant wellspring of nourishment in our nation. There is colossal increment in domesticated animals' items cost. Domesticated animals are the basic piece of the rustic and additionally the nation improvement. In provincial territories it adds to country

¹³⁸ Hudon, M. (2007). Fair Interest Rates When Leading to the Poor. *Ethic and Economics* .5(10), 1-18.

¹³⁹ Sharif, M.B. (2002). *Women rights in Pakistan*. Alden press Oxford Britain, U.K. P-98.

¹⁴⁰ Ahmed, F., Chamhuri, & Nor, I. H. (2001). Contribution of rural women to family income through participation in micro-credit: An empirical analysis. *Am J .Applied Sociology*, 238-245.

business, employments and poverty diminished. Customarily live stock is a piece of ruler life.¹⁴¹

Savagery against Women is an infringement of human rights and has been perceived as a noteworthy social, medical problem, everywhere throughout the world.¹⁴²

In our country Women social and money related headway isn't only problem about modifying Women with males however rather an issue of state's budgetary change. Decency and incentive among individuals are an academic problem anyway most basic is the ground reality which says that in regards to bit of the masses is falling behind in fluctuating foundations and choice of calling for women are generally immaterial and the detachment in view of sex has shown counter profitable.¹⁴³

In Pakistan Women are 50% of the ordinary subjects. Women esteem all exercises concerning change age. Their obligation make work mainly in the post-harvest hones is basic. Afterward the gain, dehydrating, cleaning and limit, filtering and win knowing are the administer assignments of Woman. In Pakistan, cotton offers occupations for incalculable related with its change, current use and trade. Most by a wide edge of these cotton-pickers are Women and the explanation after force of Woman authorities is that the males starting from the cotton-production belt have more alternatives in the field attachment and move for mechanical or change work to city areas. The nonattendance of elective work openings in the nation

¹⁴¹ Upton, M. (2004). The Role of Livestock in Economic Development and Poverty Reduction. FAO. Pro-poor Livestock Policy Initiative. 35-36.

¹⁴² Krug., S. & Paul, (2002). Providing Vocational Training and skills. "National Paper" Aug. 20. 2000.

¹⁴³ Gulam, Z. (2009). Impact of Agricultural Trade on Gender Equity and Rural Women's Position in Developing Countries.

economy in addition prompts development of women experts in the midst of the cotton-gathering season.¹⁴⁴

The town Women of Pakistan are the bit of tamed creature works out. Women enthusiasm for various kinds of exercises like depleting, watering, cleaning and disapproving of animals, empowering and cleaning of sheds. Women are furthermore drawn with other forming work like harvesting, feed cutting, sowing seeds, accumulating of grain, dealing with treatment of deplete thing. The totally open Women of Pakistan are in like manner jobs for sustenance status.¹⁴⁵

Right differentiated and semi-industrialized Muslim nations such as Turkey and Malaysia, one catches that the portrayal Women in money related deeds in Pakistan are liberally inferior. Regardless, asking to take notice of past adult women masses has progressed in the national financial scene, yet Woman's commitment in non-agrarian region is only 6.7%.¹⁴⁶

Sexual introduction differentiates in work force bolster have convoluted work promote matters internationally. One of the essential features in growing differentiations among diverse states can be elucidated through the level of women's interest in labor drive. Pakistan has the larger part people of women's interests in labor markets are restricted by various socio-political concerns. In view of lesser enthusiasm for salary delivering works out, women are by and large dismissed for the course of action of their

¹⁴⁴ Kiran, Z. (2009). Dealing providing encouragement and skills. Local Research in Mandi Baha Ud din.

¹⁴⁵ Amin, I. T., Ahmad, M. & Zafar, (2009). Capabilities and Competencies of Pakistani rural women in performing household and agricultural tasks: A case study in Tehsil Faisalabad. Pakistan. J. Agri.sci. 46(1), 58-63.

¹⁴⁶ Jamaji, M. (2013). M.Phil. Thesis on impact of industry on IR. University of Agriculture Faisalabad.

basic rights. The lack of regard of such a colossal degree of people prompts poor state of human resource by cutting down work productivity and pay.

Various social analysts assume that neediness in making countries could be adjusted theory on women progression and their fortifying. Gujranwala is a cutting-edge city; cultivating couldn't contribute towards destitution facilitating. A substantial part of the Women was involved with wage creating practices i.e. cultivating, handicraft and working in organizations, in this joint of the "Women in wage delivering activities could be a ground-breaking gadget to reduce neediness and hunger, diminish brutality, improve kid sustenance and certification access to better prosperity and direction workplaces. Give consider deals the Woman's wage making practices in natural locales of Gujranwala.

OBJECTIVES

✓ **General Objective**

To evaluate the sociological study of women's income generating activities in rural areas of Gujranwala.

✓ **Specific Objectives**

1. To evaluate Sociological study of women's income generating activities in different areas of Gujranwala
2. To check the level of contribution of Women in revenue producing actions.

REVIEW OF LITERATURE

Regular perception about the rustic populace of Pakistan which is a huge bit of it has dishonorably low expectation for everyday life because of absence of chances for Women particularly. One ponders that how individuals oversee and make due in a low wage. In Pakistan research demonstrates that power and level of neediness is substantially higher in towns than in urban regions.

Conversely the accessible information about family spending plan and country pay demonstrated that the normal affinity of provincial family unit is higher than national normal. In this way in provincial regions pay creating exercises ought to be enhanced for Women like sewing at home, education schools, workmanship and painstaking work. These exercises empower Women to take an interest more to satisfy their fundamental needs and that they may include in basic leadership process, especially the choices about their own needs.¹⁴⁷

The effect of smaller scale credit on it number of pointers of strengthening. They found that Women' entrance to credit was a critical determinant of the size of monetary commitments detailed by Women. Smaller scale acknowledges as connected for an expansion in the advantage property in their own names and with an expansion in their activity of obtaining power.¹⁴⁸

The women progressively advancing from subsistence cultivating to money trimming, with more prominent support in bazaar budget of Nepal. In comparative relations, it was the man who was monitoring and investing greater energy in real money edit cultivating and less in sustenance crops creation, bringing about a more prominent work weight and weakness among Women. Monetary and social pointers depict more noteworthy occurrence of family unit destitution prompting total neediness exploiting and minimizing Women the most. Sexual orientation division of work and time utilize, design demonstrates Women'

¹⁴⁷ Azhar, N.(1995).Gender Perspective on Population and Development in Pakistan. Pakistan's Population Issues in 21st century, Population Association of Pakistan, Islamabad.

¹⁴⁸ Hashmi, A.H.(1996).Socio-Economic Analysis of Livestock towards poverty alleviation and gender participation in livestock management in rural areas of Punjab, Pakistan.

opportunity assignment and commitment to general family unit salary was considerably higher than that of men.¹⁴⁹

Women constrained standard, with low data about market, being dependent upon providers go between, are abused having no entrance to the defensive laws. The Women are dynamic members in the financial and also beneficial exercises inside the home and outside the home. Regardless of this they need to confront Women absence of aptitudes, credit data, preparing and opportunities.¹⁵⁰

Women of participation in Pakistan utilizing work drive study. The examination demonstrates that the impact of habitation on Women works drive cooperation in city territories is negative.¹⁵¹ Out of whole labor done the biosphere's 2/3 time was spent by the Women. In making republics 1/3 of people were worker and Women. These Women generally tackle their domain and make sustenance for their families. Women receive only a solitary 10% of the total wage of the globe and were proprietor of below 1 % assets. They were waiting behind in depiction of family heads, in preparing and in money related circumstances, They were not simply connected with transplanting, weeding, use of excrement, assembling yet moreover raising and raising of close to nothing broad ruminants, their care and promoting. They in like manner fallen behind mechanical improvements and worked with indigenous advancement of sustenance security like cleaning and winnowing of sustenance grains.¹⁵²

¹⁴⁹ Nadra, (1998).Participation of Women in Income Generation Activities.

¹⁵⁰ Qamar, J.(2000).Role of Women in income Development of Pakistan. Ph. D. Thesis University of Baluchistan, Quetta.

¹⁵¹ Jamil, K.(2001).The Role of Rural Women in Agriculture and its Allied Fields: A case study in District Faisalabad.

¹⁵² FAO,(2002).The state of food and agriculture. Women in agriculture: Closing the gap of development.

The most pressing issue that the lives of the vast majority in towns Pakistan is an entirely inadmissible neediness. The biggest number of the poor lives in provincial regions, where the country advertises described by low wages and as an outcome of this, a significant area of the rustic work compels lives in a condition of under-sustenance, starvation and gloom.¹⁵³

Domesticated animals assume a vital part in the improvement of domesticated animals gives half of the estimation of worldwide agribusiness yields. Animals are significant source of huge increment sick domesticated animal's items cost. Animals' is the essential part of the rustic and the nation advancement. In country zones it adds to rustic business, jobs and neediness diminishment. Generally, animals are a part of provincial life.¹⁵⁴

Domesticated animals added jobs of more than 33% of the world's population rustic poor and to a noteworthy minority of the per-urban poor. They likewise detailed domesticated animals keeping had rotated around putting away riches, nourishment and dietary security, giving draft influence, transport and fertilizer and serving, customary social capacities.¹⁵⁵

Influence of plot of NRSP on the budgetary forms of women system in area Rawalakot, Azad Jammu and Kashmir Pakistan. 100 Women were picked by direct subjective investigating framework and meet all around created and pre-head a go at meeting design ultimately dismembered with the help SPSS. From the results assumed that 48% of the defendants had gotten info about praise plot after colleagues.¹⁵⁶

¹⁵³ Ahmad, B., Tabassum, & Gill, (2003). Diagnosing priorities for rural women's welfare through participatory approaches in Punjab, Pakistan. *PLA Notes* 46.73-76.

¹⁵⁴ Upton, M. (2004). *The Role of Livestock in Economic Development and Poverty Reduction*. FAO. Pro-poor Livestock Policy Initiative. 35-36.

¹⁵⁵ Hollmann. 2005. *The Role of Livestock in Poverty alleviation*.

¹⁵⁶ Javaid, S. (2006). *The Role of Rural Women in Agriculture and households: A case study in District Jahang*.

Women have incredible worth in horticulture settings. In every nation Women assume their indispensable part in this profitable segment. Be that as it may, Women are paid less as contrast with men. This can be sexual orientation segregation. Karl Marx likewise called attention to this situation that Women are less paid in cultivating that couldn't acknowledge Women cooperation in horticulture division any more. Official measurements additionally don't present the first information with respect to Women' part in nation's improvement. Women are assuming indispensable part for the advancement of numerous creating nations, yet Women are additionally underestimated in cultivating in like manner different divisions. In all social orders Women advancement is an essential for general national advance. Women have customarily shared men's activity when the economy required it.¹⁵⁷

The increased monetary exercises driving to producing pay for the rustic Women were the essential helps that caused from minor scale agriculture change in provincial Bangladesh. The expanding commitment of the Women dressed in agriculture had real indication of expanded freedom at the household and societal level. With improved participation in agriculture, financial states of the women inside their homes and society had expanded encouragingly.¹⁵⁸

In the region Bahawalpur to explore the requirements of village Women engaged with horticulture administrations. Rustic Women in region filled in as a populace of the investigation. The outcome showed that Women were keen on various task with respect to yield and domesticated animals' generation. It was

¹⁵⁷ Bhutto, A. W. & Bazmi, A. (2007). Sustainable agriculture and eradication of rural poverty in Pakistan. *A United Nation Sustainable Development Journal*, 31(4), 253-262.

¹⁵⁸ Sahirajeet, S. S., Salehin, & Ahmad, (2010). The changing face of women for small Scale Aquaculture development in rural Bangladesh. 15(2), 8-16.

additionally led that the lion's share of town Women in the examination zone remained in central age class. It has start that the time of defendants was associated trim generation exercises. In the commonplace set-up of farming augmentation office Women expansion specialist ought to be designated to direct mentor Women about yield creation.¹⁵⁹

A ton of work had been done on the planet however a small data as accessible about the cooperation of the Women in salary producing exercises in the distinctive field i.e. ,horticulture, domesticated animals, modern segment, and so forth, in provincial territories of Pakistan, especially in the region Gujranwala so the current examination is intended to research the interest of Women in wage creating exercises in country zones of District Gujranwala.

METHODOLOGY

Data Collection

The information was gathered by the specialist herself, in an eye-to-eye circumstance. Every one of the respondents were met actually. The meeting plan was interpreted in English yet asked in Urdu and Punjabi. In any case, the scientist took full mind that the words, expressions and inquiries did not lose their implications all the while. Inquiries were rehashed and clarified at whatever point required.

Interviewing Procedure

The examination was produced by the specialist itself. The information was orchestrated in English since this examination was led on the adolescent who are contemplating in the college and the respondents discover

¹⁵⁹ Luqman, G.& Khan,(2011).Female Labor force Participation rate in Rural Pakistan: Some Fundamental Explanation and Policy Implementations, The Pakistan Development Review,26(4).

it effortlessly to peruse out and to comprehend the inquiries, they reaction positively. The analyst tried to make the climate great and well-disposed with the respondents in the respondent's male and Woman are incorporated on the grounds that the real importance of the investigation was to discover the sexual orientation state of mind. So, along these lines scientist don't discover any kind of issue to discover the appropriate responses of the inquiries.

Statistical Analysis

The accompanying factual systems were utilized for the information examination

The Uni-variate examination which joins the frequencies, rates and techniques for different components. There are various quantifiable examinations which are found how this examination was taken up after the gathering of data. Is it bankrupt around the gamma test and the chi-square in the examination? It is used to find the covariate among the different variables which relate with each other, Mean and repeat find the correct answers and through the strategy for mean and rate it is found that there is the thing that number of levels of different elements having values.

STATISTICAL TEST

Chi-square test

To test the importance of relationship amongst free and ward variable chi-square test was utilized. The recipe for chi-square is as under:

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

Where:

O	=	Observed frequency
E	=	Expected Frequency
\sum	=	Sum of the observations

Gamma Test

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

Where:

$$\text{NS} = \text{Sum ordered pair}$$

$$\text{ND} = \text{Different ordered pair}$$

CONCLUSIONS AND DISCUSSION

Association between inspiration of the respondents and their interest in salary creating exercises:

Motivation	Contribution in revenue producing activates			Total
	Small	Medium	Large	
Family	15	55	67	137
	10.95%	40.15%	48.90%	100.0%
Friends	6	6	7	19
	31.5%	31.5%	37.0%	100.0%
Colleagues	6	5	4	15
	40.0%	33.3%	26.7%	100.0%
Relatives	10	9	10	29
	34.5%	31.0%	34.5%	100.0%
Total	37	75	88	200
	18.5%	37.5%	44.0%	100.0%

$$\text{Chi Sq} = 10.67 \quad \text{D.F} = 4 \quad \text{P. Value} = 0.003$$

$$\text{Gamma} = 0.392$$

Higher the inspiration of the respondents, higher will be the interest in salary creating exercises Table 1.

Table gives the connection between the inspiration of the respondents and their salary/income enhancement exercises. Chi-square esteem gives the critical connection amongst age and investment in wage producing exercises. Gamma tells about the connection between the factors. Greater part of 44.0% of respondents were having a place in large contributing bunches so their support in wage

producing exercises was high. While the gathering of over 37.5%, 18.5% their contribution level is low. So, the theory:

"More prominent the contribution of the respondents, lesser will be the inspiration in revenue producing exercises" is acknowledged.

Association between the family arrangement of the respondents and their support in salary producing exercises.

Motivation	Participation in income generating activates			Total
	Small	Medium	Large	
Nuclear	19	29	32	80
	30.0%	37.5%	32.5%	100.0%
Joint	36	45	39	120
	23.75%	36.25%	40.0%	100.0%
Total	55	74	71	200
	27.5%	37.0%	35.5%	100.0%

Chi-square = 12.689 D.F = 2 P-value = .002**
Gamma = 0.410 highly- Significant

Increasingly the living in the joint family arrangement of the respondents, higher will be the cooperation in wage creating exercises. An assessment of the level of contribution of women in revenue producing: Actions in agriculture sector in District Gujranwala.

Main Findings:

✓ Qatar presents the relationship between the inspiration of the respondents and their investment in pay creating exercises. Chi-square esteem demonstrates a profoundly noteworthy relationship between of the respondents and interest in salary producing exercises.

Gamma esteem demonstrates a positive connection between the factors. It implies high inspiration respondents had more cooperation in salary producing exercises. Greater part of respondents was exceptionally energetic by family so their cooperation level is high than others. So, the theory "Higher the inspiration of the respondents, higher will be the investment in pay creating exercises "is acknowledged.

✓ Data presents the relationship between the family arrangement of the respondents and their support in wage producing exercises. Chi-square esteem demonstrates a very critical relationship between the family arrangement of the respondents and cooperation in salary producing exercises. Gamma esteem demonstrates a positive connection between the factors. 60% of respondent's interest level is high from others since they were living in the joint family framework.

So, the theory "All the more living in the joint family arrangement of the respondents, higher will be the investment in pay producing exercises "is acknowledged.

CONCLUSION

Pakistan is a farming nation so horticulture is the pillar of the economy Pakistani Women' are confronting more wholesome issues as contrast with men. For the advancement of their expectation for everyday comforts and family unit life it has to enhance Women' wage producing exercises, so they can more readily bolster their home and bolster themselves and furthermore end up free which build up their certainty.

It is presumed that significant extents of the respondents were unskilled. A large portion of the respondents had up to Rs.8000/- months to month pay. It was presumed that lion's share of the respondents performed cooking; and

cleaning exercises, care for the elderly wards, horticultural exercises, vegetable picking, sewing of the garments, educating, working in material.

SUGGESTIONS

- There is a critical prerequisite of the teach people in general in by and large and guys specifically to provide approach rights to Women through instructing and preparing guys with formal and casual means since their youth stages.
- The mindfulness with respect to Women rights ought to be a piece of instructive modified.
- The working organizations ought to be set up in for rustic Women and sensible wages ought to be paid for their works.
- The religious researchers, particularly Ulma's should assume a crucial part by their proclaiming as per Islamic musings where Women and men have parallel privileges of wellbeing, training and employments.
- Government law should lifeless the coercive and dictator mentalities against Woman.