ISSN: 2790-9409
Vol 4 JUNE 2024 Issue 14

PREMIER LAW JOURNAL

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

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EDITORIAL NOTE

Premier Law Journal (PLJ) is a research Journal published by Premier Research Center, Premier Law College Gujranwala in English Language. This is a 4th volume, issue 14, which is going to be published in June, 2024. It is a quarterly Journal dedicated to provide original research articles in Legal Studies as well as analysis and commentary on issues related to Legal & Social Issues. This Journal brings together many of today's distinguished scholars and thinkers, practicing lawyers, teachers and students making their research available on Current Issues need to be legislated in Pakistan.

It is an interdisciplinary Journal of peer-reviewed research and informed opinion on various intellectual and academic issues in areas of Legal & Social Studies. Its readership includes Legal practitioners, policy makers, Judges, Teachers and Students of Law. The articles published in this Research Journal undergo initial editorial scrutiny, double blind peer-review by at least two experts of the field, and further editorial review.

Rana Azhar Siddique briefly presents in his article qualities—stability, order, institutional capability, accountability, progress, modernity, and patronage and clientelism—Pakistan needs bureaucracy. Formalism, nepotism, self-aggrandizement, favoritism, and red tape are some of the problems it encounters. In order to promote competency, excellence, professionalism, and responsiveness, the commission uses a merit-based, quick, fair, and open approach to choose and suggest qualified candidates. Amendments to secondary legislation, such as CSS Rules, are required for abolishment and responsibilities assignment.

Madiha Saeed and Dr Bibi Saira Nouman's article briefly investigates the pivotal role of local government in fostering national development and consolidating democracy in Pakistan, focusing on the contrasting approaches of the Pervez Musharraf dictatorship and the Pakistan People's Party (Parliamentarian) government. It underscores the significance of local governments as

conduits for grassroots engagement and representation, crucial for bolstering public involvement and responsive governance essential for a robust democratic system.

Dr. Mirza Shahid Rizwan Baig elaborate in his article growing numbers of individuals are becoming interested in artificial intelligence technology, particularly in light of its implications for the legal profession, which lawyers cannot afford to overlook. In order to ascertain the impact on the legal profession at both the macroscopic and microcosmic levels through the application and development trend of artificial intelligence technology in reality.

Rana Azhar Siddique and Dr. Attaullah Wattoo say that in today's legislative function is a crucial aspect of the modern welfare state, where the legislative body performs its duties according to the constitution or precedents. Post-legislative scrutiny, a concept that has been little discussed globally, is a growing need in Pakistan. The judiciary plays a specific role in adjudication for protecting people's rights and ensuring the smooth functioning of the social system. There is limited academic literature on post-legislative scrutiny, but the need for this concept is becoming increasingly evident in various articles, papers, and discourses.

Dr. Shahid Rizwan Baig and Saleem Shaheen explain briefly that as state governments are dealing with commercial activities more and more, the conflict of state sovereignty with contractual duties has developed as one of the very important issues in international law. This paper will now analyze the strategy of alternative dispute resolution (ADR) in the context of commercial disputes that transcend borders. It discusses the changed concept of state immunity, distinction between sovereign and commercial acts, and the effects of enforcing or not enforcing foreign arbitral awards. It is essential for Pakistan to ensure a balance between these two: creating a business environment for foreign investment and economic development yet upholding the commitment to the rule of law.

Bakhtawar Manzoor and M Waqas Gujjar and Anwaar Rana's aim of this research is to explain the 18th constitutional amendment significant move towards participatory federalism by implementing structural changes. It not only restored the essence of the original 1973 federal constitution but also eliminated the concurrent

legislative list and delegated control over seventeen ministries to provincial governments, in addition to activating federal dispute resolution mechanism. The structure and functions of the entity have been revitalized, resulting in an expanded scope.

Asad Randhawa's article explains that behind the struggle of Sub-continent Muslims, there was a motive to make an Islamic state. Muslims can easily be passed their life in the prescribed parameters of Islam. To cater to these questions a lot of cases were filed. And checked the status of Ar.2A. This research covered all these questions and also discussed the cases regarding the status of Ar.2A whether it was a Grundnorm or a simple document.

Muhammad Shaban and Farah Deeba explain briefly that developing commercial dispute resolution in Pakistan is crucial for promoting economic stability and growth. This article examines the evolution and current state of business conflict resolution in Pakistan, highlighting the role of mediation and arbitration. The article proposes legislative reforms, institutional commitment, public awareness campaigns, and international collaborations to improve ADR effectiveness in Pakistan. Future research directions include the impact of technological advancements on ADR, comparative studies with other jurisdictions, the experiences of SMEs, and ethical issues in ADR processes.

Ali Razzaq's article briefly explains that the concept of "human rights" encompasses a set of legal and ethical principles that belong to every person by virtue of their humanity. These rights are inherent, meaning they exist from birth, and universally applicable, meaning they extend to all people regardless of background. This includes race, ethnicity, gender, language, political beliefs, or any other distinction. In essence, human rights are fundamental, inalienable (cannot be surrendered), and indivisible (interconnected). The Constitution guarantees fundamental rights, such as the freedom of expression, thought, information, association, religion, press, assembly, and so forth. Thus, the government of Pakistan was able to ratify the main human rights conventions and treaties for defines and advancement of human rights thanks to the requirements outlined in the Constitution.

Muhammad Zakir Shah says that in today's landmark rulings on disappearances, torture, and discrimination empowered citizens and

held the state accountable. This study examines the impact of judicial activism on governance in Pakistan from 2006 to 2023. The period witnessed a rise in assertive judicial intervention, addressing human rights abuses and strengthening judicial independence. However, a functional government with the ability to formulate and implement effective policies is equally critical. Reforms promoting judicial accountability and transparency in decision-making can foster public trust and acceptance.

Tamoor Mughal and Dr Sajida Begum briefly present the complex and varied panorama of human security issues in South Asia, particularly Pakistan, is marked by a spectrum of socio-economic, political, and environmental challenges. Pakistan is confronted with a multitude of issues, such as environmental degradation, gender-based violence, poverty, inequality, terrorism, extremism, and inadequate healthcare and education systems. The population's safety and well-being are seriously threatened by these interrelated and aggravating problems.

Dr. Muhammad Amin explain in his article that the concept of Ihsan has been studied in Islamic literature in two contexts, tassuwaff and morality. Although, it is related to the core of heart form where all the virtue emerges. However, the pure linking of the term "*Ishan*" with the *tassuwu*f departs it form rights perspective which is a complete form of Islam. As we see in the *tassuwuf* history, the *mutasuwufeen* isolated from the society and they remained cut off from the society to solve the problems facing in the social, economic and political structure. It is obvious form the prophet's tradition that the *Ihsan* is used in the matter of right.

Dr. Muhammad Amin's aim of research is to explain this article is actually a study of the Preamble of the Constitution of Pakistan 1973. The status of preamble in every constitution is very clear, as it provides guidelines for making further constitution. However, it has no binding affects as compared to other parts of the constitution. The Article 2A embodies the concept of sovereignty as belonging to ALLAH Almighty, while the other constitutions across the globe entails the sovereignty other than ALLAH Almighty. Thus the Constitution of Pakistan has opted a different constitutional founding principle. So, with this perspective, it becomes necessary to know three things.

Sultan Ghulam Dastgir Sani and Dr. Bibi Saira Nouman's elaborate in his article the Level of democracy enjoyed by the average global citizen in 2021 is down to 1989 levels. Even India, the world's largest democracy, is not immune from this sweeping third wave of autocratization. This paper describes how the manner of the third wave of autocratization in India is not different from other autocratizing countries and attempts to explore how India became an anocracy or de facto ethnic democracy under Bharatiya Janata Party BJP rule which began in 2014. Due to some factors which include its constitution, past democratic history, and independent judiciary. For the description of autocratization in India, the ethnic democracy theory and democratic resilience theory have been used.

Barrister Hafiz Asif Rasa's article explains that Aggression against females lingers on a planetary pandemic that assassinates, crucifies, and mutilates corporeally, mentally, intimately, and financially. The trend of violence that exists in almost every society goes beyond consideration of race, group, status, earnings, generation & civilization. There is no part of the world where women heft in equal positions socially, economically, and legally such as men which is a big slap in the face of national as well as international human rights stakeholders. Unfortunately, females have been the prime targets of domestic abuse in their entire life circle and mostly the perpetrators are the nearest or dearest ones. Honour Killings in the name of honour, Dowry Violence, Marital Rape, Acid Attacks, and Stove Burnings. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which is no doubt a universal bill of rights for women can vindicate patriarchal norms in Pakistan through apex courts by using the notion of legal pluralism.

Farah Deeba and Komal Nawaz says in this article the concept of climate justice has evolved over the decades, shaped by growing awareness of the unequal effects of climate change on vulnerable communities and the disproportionate responsibility of wealthier nations. From early environmental justice campaigns in the United States to the global efforts led by the United Nations Framework Convention on Climate Change (UNFCCC) and youth-led movements like Fridays for Future,

Dr. Muhammad Amin
Editor in Chief

BUREAUCRACY; STATE STUDY FOR PAKISTAN WITH REFERENCE TO STATE GOVERNESS

RANA AZHAR SIDDIQUE[2]**

ABSTRACT; Because of its qualities—stability, order, institutional capability, accountability, progress, modernity, and patronage and clientelism—Pakistan needs bureaucracy. Formalism, nepotism, self-aggrandizement, favoritism, and red tape are some of the problems it also encounters. The legislature can monitor the government's performance, and the government has the authority to establish its policies.
Occupational categories established by the Federal Public Service Commission and the Establishment Division are part of Pakistan's legal bureaucratic system. In order to promote competency, excellence, professionalism, and responsiveness, the commission uses a merit-based, quick, fair, and open approach to choose and suggest qualified candidates.
Occupational groups are created by rules which are part of delegated legislation. Occupational groups cannot be abolished or changed through primary legislation, unless a new law is introduced. Amendments to secondary legislation, such as CSS Rules, are required for abolishment and responsibilities assignment.

INTRODUCTION: Few of the characteristics of bureaucracy like Stability and Order, Institutional

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[2] In charge Legislative Drafting Unit. Senate of Pakistan, PhD Law Scholar, Roll No. 113-SF/ PhDLAW/S19. IIUI

Capacity, Accountability, Development and Modernization, and Patronage and Clientelism to bring about in the society by the government a regulatory organ of the state entitle it a necessary part but formalism, favoritism, self- aggrandizement, nepotism, red tapes are the evils which run side by side as Aristotle tells that power corrupts and absolute power corrupts absolutely, a great saying that the state affairs cannot be run without the discretion and if discretion is conferred it is misused. Accordingly, the bureaucracy containing the characteristics like delegation of power, span of control, unity of command, hierarchical structure, and division of labor, accountability, impartiality and continuity are the qualities of the bureaucracy that make it an essential part of the government.

The government has to set its functions; government is all alone in all in giving the order of the bureaucracy no other organ of the state can hamper its strategically command over the running of the affairs of the bureaucracy however legislature can oversight its performance whether it is in accordance with the parent laws and also the judiciary with a viewpoint whether its function is under the rules and regulation and by or with the laws or it contravenes the provisions of laws or it remains within the vires fenced by the legislature .

Legal framework of bureaucracy in Pakistan:

The forthcoming provisions of statute and rules shall lead to construe that occupational groups have been formed by the office memorandums of Establishment Division from time to time there after those have been entrusted to Federal Public Service Commission to hold CSS exams regarding those occupational groups by conducting the competitive examination i.e. CSS on every year. The conduct of exams, training, probation, seniority,

promotion and all regulations of selected candidates have statuary backing but the creation of occupational groups has no statutory backing, rather it only has policy backing by an Office Memorandum.

Article 240 of the Constitution of Pakistan envisages Appointments to service of Pakistan and conditions of service. All the statutes made, laws passed ordinance issued or the rule making regarding the appointment of the government employees in Pakistan and conditions made thereunder have the constitutional mandate embedded in article 240. And Article 242 contemplates about Public Service Commission.[3] The commission Selects and recommends apt applicants through a process consisting merit-based, expeditious, just and transparent in order to encourage competence, excellence, professionalism.it also establishes a competence, efficiency, professionalism and responsiveness.

Governing laws of Federal Public Service Commission Are Federal Public Service Commission Ordinance, 1977 (No. XLV of 1977), Federal Public Service Commission Ordinance, is an Ordinance to repeal and, with certain modifications, re-enact the Federal Public Service Commission Act, 1973. Federal Public

Service Commission (Composition and Condition of Service) Regulations, 1978, which have been made in exercise of the powers conferred by sub-section (2) of Section-3 of the Federal Public Service Commission Ordinance, 1977, Federal Public Service Commission (Functions) Rules, 1978 which have been made in exercise of the powers conferred by section 10 of the Federal Public

[3] The Constitution of the Islamic Republic of Pakistan 1973, Article 240-242, https://na.gov.pk/uploads/documents/154988641_632.pdf

Service Commission Ordinance, 1977 (XL V of 1977). Section 7 of Federal Public Service Commission Ordinance, 1977 describes one of the main function of Federal Public Service Commission that is to manage assessments and examinations for employment of individuals to All-Pakistan Services, the civil services of the Federation and civil posts in connection with the affairs of the Federation in basic pay scales 16 and above or equivalent.

In exercise of the powers conferred by section 7A and 10 of the Federal Public Service Commission Ordinance, 1977 (XL V of 1977), the chairperson of the Federal Public Service Commission, with the endorsement of the Federal Government, creates the CSS, Competitive Examination, Rules every year. Under the rules it is announced that the competitive examinations shall be conducted by the commission in respect of the occupational groups and services. There are 12 occupational groups including Pakistan Administrative Services (formally known as District Management Group) and Police Service of Pakistan.[4]

Occupational Groups and Services (Probation, Training and Seniority) Rules 1990 were prepared inexercise of the powers conferred by section 25 read with Section 6 and 8 of the Civil Servants Act 1973 (LXXI of 1973). These rules took effect since 1st October, 1990. Civil Servants Act is An Act for regulation of the appointment of persons to, and the terms and conditions of service of persons in,

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[4] Pakistan, National Assembly of Pakistan, Federal Public Service Commission Ordinance, 1977 (XL V of 1977), https://fpsc.gov.pk/sites/default/files/FPSC%20Ordinance%201977%20-2007.pdf

the service of Pakistan while Article 260 of constitution defines service of Pakistan as:

"*service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of Majlis-e-Shoora (Parliament) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary or Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister or member of a House or a Provincial Assembly*;."[5]

Section 2 (VIII) of Occupational Groups and Services (Probation, Training and Seniority) Rules 1990 defines Occupational Group or Service as under

[5] The Constitution of the Islamic Republic of Pakistan 1973, Article 260 https://na.gov.pk/uploads/documents/63ea176f52421_610.pdf

"Occupational Group or Service" means any group or service recruitment to which is made through the competitive examination conducted by the Commission from time to time against BPS 17 posts under the Federal Government or any occupational group or service transfer to which is made from the Armed Forces by induction and includes the following: -

(a) Accounts Group
(b) Commerce and Trade Group
(c) Customs and Excise Group
(d) District Management Group
(e) Foreign Service of Pakistan
(f) Income Tax Group
(g) Information Group
(h) Military Lands and Cantonment Group
(i) Office Management Group
(j) Police Service of Pakistan
(k) Postal Group
(l) Railways (Commercial & Transportation) Group and
(m) Any other service or group which may be notified by the Government as such.[6]

[6] Cabinet Secretariat, Establishment Division, Occupational Groups and Services (Probation, Training and Seniority) Rules 1990, 23rd August,1990,https://establishment.gov.pk/SiteImage/Misc/files/Occupational%20Groups%20and%20Services(Promotion%2C%20Training%20Seniority)%20rules%2C1990.pdf

Formation of occupational groups by virtue of O. M. s

Name of the Group/Service	Estab. Division O.M. containing the provisions.
Accounts Group	Paragraph 4(e) of O.M.No.1/2/74-ARC, dated 23-1-1974
Commerce and Trade Group	Paragraph 4 of O.M. No. 6/2/75-ARC, dated 8-5-1975
Customs and Excise Group	Paragraph 3 of O.M. No.5/2/75-ARC, dated 9-5 1975
District Management Group	Paragraph 3 of O.M.No.2/2/74-ARC, dated 23-2-1974
Foreign Service of Pakistan	Paragraph 3 of O.M.No.3/2/74-ARC, dated 8-4-1974
Income Tax Group	Paragraph 3 of O.M. No.4/2/75-ARC,dated 9-5-1975
Information Group	Paragraph 4 of O.M. No. 2/8/75-ARC, dated 17-6-1977
Military Lands and Cantonment Group	Paragraph 4 of O.M. No.9/2/75-ARC, dated 11-5-1975
Office Management Group	Paragraph 8(a) of O.M.No.1/2/75-ARC, dated 27.1.1975
Police Service of Pakistan	Paragraph 3 of O.M No. 3/2/75-ARC,dated 31.5.1975

Postal Group	Paragraph3ofO.M.No.3/2/75-ARC,dated30.5.1975
Railways(Commercial Transportation) Group	Estt. Division O.M. No. 1/36/82-T.V, dated 8-4-1990].

Pakistan Administrative Service

Para 3 of O.M.No.2/2/74-ARC, dated 23-2-1974 reads that in extension of Establishment Division Office Communication No. 1/2/74-ARC, dated the 23rd January, 1974, decision had been made by the Prime Minister's approval to establish additional occupational group called the District Management Group, encompassing field posts in the civil administration of the district and the division viz. Commissioner, Deputy Commissioner, Additional Deputy Commissioner, Assistant Commissioner and such other posts as may be encompassed in the group from time to time.[7]

In observation of the significance of the post of Deputy Commissioner which at that point was a Grade 18 post resounding special pay, it had been decided as under: -

(i) The Deputy Commissioner post will be a post after selection and selection shall be completed from between officers possessing with minimum ten years' service in police, armed forces, civil administration or military lands and Cantonments Department. The nominated persons shall be trained in administration and law, if needed, before posting as Deputy Commissioner.

(ii) To confirm appointments of experienced persons, the post of Deputy Commissioner in main

[7] Cabinet Secretariat, Establishment Division, Paragraph 3 of O.M No. 3/2/75-ARC, dated 31.5.1975, Senate of Pakistan.

Districts will be placed in Grade 19. As in other groups, for promotion to Grade 19 at least experience of 12 years in Grade 17/18 shall be an essential pattern.

Police Service of Pakistan

Paragraph 3 of O.M No. 3/2/75-ARC, dated 31.5.1975 reads that in continuance of the Establishment Division O.M. No. 2/2/75/ARC, dated 21-2-1975, verdict had been made to institute another occupational group called the Police Group that shall include all Police posts in Grade-17 and above viz. ASP, SP, DIG, A.I.G, I.G, etc. stated in the schedule of the cadre strength of the former PSP as may be studied from timeto time.[8]

Entry 10(1) of Schedule II of Rules of Business 1973 mandates Establishment Division the directive of entirely affairs of over-all applicability of civil posts in linking with the activities of the Federal Government and the Rules of Business 1973 were framed in exercise of powers discussed by Article 90 and 99 of the Constitution of Pakistan.[9]

Section 2 (b) of Civil Servant Act 1973 defines "civil servant" as a person who is a member of an All- Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation. Civil Servants Act, 1973 is an Act to regulate the appointment of persons to, and the terms and conditions of Service of persons in, the service of Pakistan. It is to regulate by law, the appointment of persons to, and the terms and conditions of service of persons, in the service

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[8] Ibid

[9] Cabinet Secretariat, Establishment Division, Rules of Business 1973, https://moitt.gov.pk/SiteImage/Misc/files/%5BROB%20amended%20upto%204th%20April%2C%202018.pdf

of Pakistan, and to provide for matters connected therewith or ancillary thereto.[10]

CONCLUDING REMARKS

Separation of power bestows a set standard that three pillars of state shall run side by side living within its boundaries without encroaching the powers of each other however checks and balance shall hold the field with an associative, declarative and declaratory behavior. Bureaucracy operates under the third pillar of the state i.e. the executive known as the government. The legislature always empowers the executive by rules making provisions that is why in every parent legislation i.e. act, Law or statute it is inscribed that the Federal Government may, by notification in the official Gazette, make rules for carrying out the purposesof this Act. Meaning thereby the legislature itself empowers the executive to make the rules, regulations, by. Laws. Policies. Instructions or orders thereafter the legislature cannot utilize this power itself this powerbecomes the mandate of the executive i.e. the government. While the bureaucracy is operated by the government.

Since occupational groups are not formed or assigned responsibilities under a primary legislation i.e. Act of Parliament, abolishment of any of these groups or change in their method of recruitment or assignment of responsibilities cannot be done through an Act, unless a new law is brought with overruling provisions for all rules, regulations and policies regulating the civil service.

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[10] Pakistan, National Assembly of Pakistan, Civil Servant Act 1973, ACT NO. LXXI OF 1973, 26th September, 1973, https://pakistancode.gov.pk/pdffiles/administrator09f6f0996bae74d218dd6d1ecedd0318.pdf

Amendments will need to be made in the relevant secondary legislation i.e. CSS Rules for abolishment of Group(s) and withdrawal / amendment / supersession of respective OM would be required for assignment of responsibilities to them.

DECENTRALIZATION DILEMMA: A COMPARATIVE ANALYSIS OF PAKISTAN'S DEVOLUTION PLAN AND THE 18TH AMENDMENT"

MADIHA SAEED[11]**
DR BIBI SAIRA NOUMAN[12]**

ABSTRACT; This study investigates the pivotal role of local government in fostering national development and consolidating democracy in Pakistan, focusing on the contrasting approaches of the Pervez Musharraf dictatorship and the Pakistan People's Party (Parliamentarian) government. It underscores the significance of local governments as conduits for grassroots engagement and representation, crucial for bolstering public involvement and responsive governance essential for a robust democratic system. Furthermore, it examines how effective local governance can spur national growth through tailored policies, community-centric problem-solving, and resource optimization, particularly in sectors like infrastructure, healthcare, education, and socioeconomic advancement. Lastly, the research evaluates the impact of the Musharraf and PPP regimes on the devolution of authority to local administrations, highlighting obstacles and varying levels of commitment to decentralization efforts, offering insights into Pakistan's evolving dynamics of power decentralization.

[11] PhD Scholar Political Science Minhaj University
[12] Associate Professor Minhaj University

Key Words: Devolution plan, Amendment, Finance commission,

INTRODUCTION Decentralization, although a concept rooted in the ideas of Montesquieu, Rousseau, J.S. Mill, and Tocqueville, gained significant traction in the 1980s as global priorities shifted towards socio-economic development and good governance. This process is believed to improve accountability, transparency, grassroots participation, governmental responsiveness, and service delivery. In post-colonial India, a centralized system dominated local governance, whereas military regimes in Pakistan emphasized decentralization post-1947. General Pervez Musharraf's Devolution Plan of 2001 marked a significant move towards decentralization in Pakistan, granting substantial financial and administrative powers to local governments and applying the subsidiarity principle. This plan empowered local elected representatives over the bureaucracy for the first time, aiming to foster public political participation. Despite these efforts, challenges in planning, implementation, and bureaucratic acceptance hindered its full potential. The Local Government Plan revolved around five pillars: governmental authority transfer, management decentralization, administrative decentralization, expansion of power-authority nexus, and resource allocation. It also mandated 33% of seats for women and reserved seats for minorities, workers, and peasants at all levels.

The 18th Amendment to the Pakistani Constitution, ratified in April 2010, marked a historic shift of authority from the national government to the provinces, addressing long-standing demands for provincial autonomy. By

transferring numerous topics from the Federal Legislative List to the Concurrent Legislative List, the amendment allowed both federal and provincial governments to legislate on significant issues like energy, agriculture, healthcare, and education. It also eliminated the concurrent list, leaving only the Federal and Provincial Jurisdictive Lists, thereby enhancing provincial legislative power. Beyond redistributing legislative authority, the 18th Amendment restored the true essence of parliamentary democracy envisioned by the 1973 Constitution, addressing 102 articles and reflecting significant political maturity. This amendment is seen as a paradigm shift in Pakistani politics, significantly strengthening provincial status and autonomy.

How did the Pervez Musharaf and PPP eras impact the decentralization of power to local governments?

Research Methodology

This research is descriptive and comparative. A qualitative approach with secondary sources of data has been applied to complete this research work. It is about the comparative analysis on the Devolution plan and 18th Amendment. To gather data criteria were fixed and collect from the article 2010-23.

Literature review

Shah (2012)[13] argues in the paper that Pakistan's 18th Amendment should be viewed as a crucial first step toward extensive reform that will reorganize the nation's public governance structure. Although the amendment entails substantial risks for political and economic unity, it also has the potential to improve public governance. The

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Anwar Shah, The 18th constitutional amendment2012

unfinished reform agenda should include acknowledging local governments as the principal bodies in charge of providing public services and giving them greater authority. The goal of empowering local governments is to increase their capacity to protect citizens' property, rights to life, and freedom, as well as to improve the local economy and social outcomes. It was believed that the 18th Amendment marked the beginning of more extensive reform. It placed a strong emphasis on bolstering local governments' contributions to citizenship, nation-building, and the general welfare of the populace.

According to Kugleman (2012),[14] Pakistan's 18th constitutional amendment sought to decentralize political power and give provincial and local administrations access to federal resources and duties. Its goal was to meet people's needs by bringing services closer to them. But not much has been done to accomplish these objectives. Pakistan's poor tax collection is one important issue contributing to the challenges associated with the 18th Amendment. Provincial governments need to raise more money to fulfill their expanded duties, but they are unable to do so because of the nation's low tax revenue collection rates. It is imperative that the government and institutions of Pakistan assume a leading role in carrying out and guaranteeing the efficacy of the decentralization initiatives delineated in the amendment.

Alam and Wajidi (2013),[15] local government associations (in the widely accepted meaning) did not exist in Pakistan before to and for the most of the DOPP period. But under

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[14] M. Kugelman, Decentralization in Pakistan: The lost opportunity of the 18th amendment (2012)

[15] Munawwar alam, Mohammad Abuzar wajidi, Pakistan's Devolution of Power Plan 2001: A brief dawn for local democracy? (2013).

the DOPP, local government became more conscious of its role and more empowered, which encouraged elected officials to feel more unified and working toward a single goal. The Local Councils Association of the Punjab (LCAP), established in 2007, was the first initiative from the province of Punjab. Since its founding, LCAP has emerged as a preeminent national force, leading the way not only in influencing state and federal policy, but also in amplifying the voice of local democracy throughout the nation. New local government associations were established in Sindh, Baluchistan, and the North-West Frontier (Khyber-Pakhtun khawa) regions of Pakistan subsequent to the LCAP. A nationwide local government association was later established in November 2009.

According to Ali and Shafiq (2016),[16] the 18th Amendment's decentralization of authority is a significant development for federalism and democratic empowerment. However, it was not carried out correctly. Following the ratification of the Eighteenth Amendment, the bureaucracy and political elites in Pakistan have shown little willingness to support the decentralization process, which has presented obstacles. Transferring state authority from some departments and divisions of the central government to regional governments has been hampered by this unwillingness.

In his book, Hussain (2018) [17]explained how the federal, provincial, and local governments are no longer able to use taxes due to the 18th Amendment. It transferred authority,

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[16] Muhammad Ali, Muhammad Osama Shafiq, Redefining Right to Information, Federalism and Decentralization Mechanism in Pakistan: Post 18th Amendment perspective

[17] Ishrat Hussain, Governing the Ungovernable, institutional reforms for democratic governance (2018)

accountability, and funding for fundamental services to the district and provincial levels. He contends that appropriate inter-structure creation, policy formulation, and implementation are necessary. His book claims that Musharraf's local government system lacked total autonomy. The center essentially controls that local system. Their entire financial need could not have been met by that arrangement.

Aziz (2018)[18] According to his book, there was not complete autonomy under Musharraf's local government system. That local system is effectively under the center's authority. That arrangement may not have covered all of their financial needs. In his book, he said that Musharraf's local government system did not grant total autonomy. The center essentially controls that local system. They might not have had all of their financial demands met by that arrangement.

Khan and Shah (2021)[19] raised concerns about the devolution plan and its implementation without any proper planning. It replaced the district bureaucracy with Nazism and councilors who may not have been highly qualified for their roles. In contrast, the former deputy commissioners were civil servants selected based on merit and underwent meticulous training over several years. It is ironic that the qualification required for the district Nazism position was only a matriculation degree. Lack of proper planning and alert for qualifications can indeed pose challenges to effective governance and administration.

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[18] Sadaf Aziz, The constitution of Pakistan. A contextual analysis (1st ed) 2018

[19] Syed Faisal Hyder Shah, Shafique Ahmed Khan Devolution of power in Pakistan: A critical appraisal of Musharraf regime (2021).

Significant of research

The present study conducts a critical analysis of the development of local government in Pakistan between 2001 and 2013, evaluating its crucial function in promoting political stability and democracy at the community level. It explores power decentralization and how it affects state development by contrasting the local governance structures under the Musharraf and PPP regimes. Additionally, it examines obstacles encountered when putting devolution plans and constitutional revisions into practice under the PPP regime, highlighting both opportunities and shortcomings in local governance practices.

The Musharraf decentralization scheme's organizational structure

Under this concept, union, tehsil, and district councils were established, resulting in the formation of three levels of local administration. All levels of local government were composed of a supervisory structure, an elected body of both male and female council members, a Nazim, and a Naib-Nazim.Union Nazim and Naib-Nazim, respectively, were elected bodies that made up the district and tehsil councils. These Nazims governed locally in their capacities as leaders of their administrative councils. The Union Nazim headed the district council, while the Naib-Nazim headed the tehsil council. Every level of local administration has an elected body made up of Union Council members who were selected at large. At different local administration levels, representation and oversight were guaranteed by this hierarchical framework.[20]

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[20] Mohammad Zakir Abbasi and Razia Mussarat Devolution of powers to local governments in Pakistan during Musharraf regime.(2015)

Union Council

The first tier of Musharraf's local government structure was the Union council, which was made up of Union Nazim, Union Naib Nazim, and Union management. It was applied in both rural and urban regions, guaranteeing parity in representation. There were twenty-one seats in each Union council, and committees were in charge of specific duties. The secretary of the Union oversaw a variety of tasks, such as community development and municipal operations. Direct elections of Nazim and Naib Nazim enabled the devolution of power, whereas other members were chosen indirectly from wards.

Tehsil Council

The Tehsil Council, which is often referred to as the "Tehsil Municipal Administration," is made up of council conveners and tehsil nazims, or executive leaders. Town officers are in charge of infrastructure, planning, and coordination, while the tehsil municipal officer answers directly to the tehsil nazim. At the tehsil level, several municipal tasks are overseen by this structure.

District Council

The District Nazim (chief executive) and Naib Zila Nazim (assistant)[21] are members of the District Council, which is the highest ranked body in local administration. Elected indirectly by district council members, they are in charge of all district administration. Applicants for these positions need to be secondary school graduates. Because Nazim and Naib Nazim are running together, these elections are special. The council guarantees a third of the seats to

[21] Ali Hassan Devolution of Power in Pakistan(2005)

women and five percent to laborers, peasants, and non-Muslims. (Sanaullah, and Rehman, 2021)[22]

Dispersion

The devolution plan aimed to give more decision-making power to the province and municipal levels by shifting responsibility from the federal to local levels. The authority to organize and carry out development initiatives in the fields of infrastructure, rural development, health care, and education was granted to the district councils. It strengthened local governments and increased their capacity for decision-making and service delivery. Even so, there were issues with the plan, so it's imperative to keep learning from it and implementing the necessary changes.

Non Party Based Election

In an effort to lessen the power of national political parties and cut down on corruption and violence, Pakistan implemented non-party local government elections in 2001 as part of the Devolution Plan. Even with the declared non-party position, 75% of the people in the area thought parties had an impact on elections. [23]District nazims were elected in December 2000 to wrap up the first phase, while district council members and sub-district nazims were chosen in July 2001 for the second phase. In Pakistani history, these were the country's first non-party local elections.

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[22] Sanaullah, Tasnem Sarwat and Hina Rehman, Problems and Prospects of Decentralization in Pakistan(2021)

[23] Zahid Husnain, Devolution, accountability, and service delivery in Pakistan.

Finance Commission

In Pakistan's Devolution Plan of 2001, the Provincial Finance Commissions (PFCs) were instrumental in distributing provincial resources to district and tehsil councils. Through Provincial Finance Awards and the power to levy local taxes, they made sure local governments had enough money to deliver basic services. The goal of this arrangement was to promote harmony and trade. Various taxes and fees are levied by Zila Councils, Tehsil and Town Councils, and Union Councils. These include taxes on health and education, real estate and property taxes, licensing fees, and service costs. In addition, they charge for entertainment, certain municipal services, and public utilities.[24]

Responsibilities of Union, Tehsil and zila council

Zila Council	Tehsil and Town Councils	Union Councils
Educational tax.	Services of local tax	Fee for licensing of professions and vocations.
Health tax.	Tax imposed on the sale of real estate	Fee for animal sales in cattle markets.
taxes on automobiles that are not motor vehicles	Property tax on the lands' and buildings' yearly rental value	Market fee.

[24] Syed Muhammad Ali, Devolution of Power in Pakistan (2018)

Any other tax authorized by the Government.	Billboard and advertisement fees.	The cost to certify a birth, marriage, or death
Local rate for properties subject to land revenue assessments.	The cost of fairs, industrial exhibits, livestock fairs, agricultural displays,	Charges for specific services rendered by the union council.
Fee in respect of schools, colleges, and health facilities established or	Tournaments and other public events.	Rate of compensation for neighborhood and village guards.
Maintained by the district government.	Fees for building design approval, construction, and reconstruction.	Fee for carrying out or maintaining any public utility project
Fee for licenses granted by the district government.	Fee for licenses or permits and penalties or fines for violation of the licensing rules.	
Fee for specific services rendered by a district government.	Fees associated with carrying out and maintaining public utility projects like as	
Fees associated with collecting taxes on behalf	Fees for films, plays, theatre tickets, and other	

of the government.	forms of entertainment.	
Toll on newly constructed roads and bridges that are not part of provincial or national routes and are located inside a district.	Collection charges for recovery of any tax on behalf of the Government, District Government, Union Administration or any statutory authority.	

Generated by the researcher, Source: Local Government Ordinance, 2001.[25]

District Development Authority (DDA)

District-level development projects were planned and carried out by the District Development Authority (DDA), which was founded in accordance with Pakistan's Devolution of Power Plan (DOPP) 2001. It kept an eye on the project's development to guarantee its timely and cost-effective conclusion. The DDA was made up of elected politicians, representatives of civil society, and officials from the government, such as union council members, district nazim, and district council members. The district nazim chose representatives of civil society after consulting with other DDA members. By ensuring inclusive and participatory development projects, this structure improved cooperation and accountability. The DOPP's implementation was greatly aided by the DDA.

[25] Local Government Ordinance, (2001)

Direct election of District and sub-district Nazims

The Devolution of Power Plan (DOPP) increased the accountability and autonomy of local leaders by instituting direct election of district and sub-district Nazims. Bureaucracy, capacity constraints, corruption, and poor management all opposed this change, but e-governance and public engagement also advanced. With 36,187 of them being elected for the first time, women currently hold 33% of municipal body seats, which has a big influence on funding allocation and social initiatives.[26] Despite these advantages, women nevertheless have to deal with ingrained norms and the sporadic animosity of male council members.

Features of Devolution plan

By strengthening their financial, administrative, and political clout, local governments were to be given more responsibility under the Devolution of Power Plan (DOPP). District-level government was instituted, enabling local organizations to decide on matters pertaining to infrastructure, healthcare, education, and other areas. To ensure local representation, the proposal called for the democratic election of district Nazims and members of the Union Council. It also sought to improve service delivery and infrastructure development by implementing administrative changes and quick access to financial resources.[27]

The DOPP placed a strong emphasis on community involvement and local representatives' capacity building in order to guarantee effective local administration. It

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[26] Philip Allmendinger, Janice Morphet, Mark Tewdwr-Jones Devolution and the modernization of local government (2005)

[27] Ali Hasan Devolution Of Power in Pakistan(2005)

implemented checks and balances to stop the abuse of power and resources, and it was backed by strong legal protections and constitutional amendments. The strategy shifted from the old centralized power structure to one that featured increased funding for local governments, improvements to the police and civil service to better serve local communities, and a considerable transfer of authority from provinces to districts.

Local Government in Pakistan in Post-18th Amendment Scenario

The 18th Amendment's augmentation of the LGs' responsibilities meant that the provinces were expected to cede some of their authority and responsibilities to them. It's important to comprehend LG-related laws in the perspective of the 18th Amendment. The introduction of the laws by the LGs came after the aforementioned amendment was enacted.[28]

Federal ministries were eliminated.

The 18th Amendment gave the provinces control over the remaining federal ministries and abolished seventeen of them. The legislation listed above significantly increased the provinces' power, and it was expected that the provinces would grant the LGs a portion of their newly found power as well. The LG elections were held in three phases in the three provinces of Sindh, Baluchistan, and Punjab.

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[28] Mahboob Hussain, Rizwan Ullah Kokab Eighteenth amendment in the constitution of Pakistan: Success and controversies. (2012)
Zahid Shah, 18th Amendment act and federalism in Pakistan (2017)

List of Concurrent Legislation

After the Concurrent List was removed, laws on specific subjects could now be passed by both the federal and provincial governments. This measure aimed to reduce the number of overlapping jurisdictions and clarify the division of powers between the national and local administrations. The 18th Amendment transferred a number of subjects from the Concurrent Legislative List to the Exclusive Legislative List. This issue shift resulted in the provinces gaining more legislative and executive authority.[29]

Increased the share of Revenue

The 18th Amendment improved the financial autonomy of the provinces by increasing their share of national revenue, which boosted their share of the federal divisible pool from 57.5% to 60%. To enhance management and transparency, it includes financial changes such as the Fiscal Responsibility and Debt Limitation Act.[30] The amendment gave provinces increased authority over tax collection, enabling them to levy levies that had previously been handled by the federal government, like property and vehicle taxes. This change attempted to balance the budgetary differences between the federal and local governments while also enhancing provincial accountability.

The NFC, or National Finance Commission

A more equitable distribution of funding between the federal and local governments was the aim of the 18th Amendment. Under the revised NFC Award, the provinces

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[30] Anwar Shah, The 18th constitutional amendment: glue or solvent for nation building and citizenship in Pakistan?(2012)

now receive a higher share of resources, boosting their level of financial independence. As per the constitution, the President receives advice from the NFC regarding the appropriate allocation of funds between the federal and provincial governments. It is also responsible for providing advice to the federal and provincial governments about the use of grants-in-aid to the provinces and borrowing capacity. [31]The NFC was formed before to the 18th Amendment by one federal finance minister and four provincial finance ministers.

Gave the provinces control over the police

Before the 18th Amendment, the police were subject to federal subject status, which meant that the federal government was in charge of supervising and controlling the police force. The 18th Amendment placed the police to the province list, making them a topic of discussion in the province. The transfer of police authority to the provinces has various implications. At first, it has given the provinces more control over their own security and law enforcement. This is a result of the provinces now being in charge of selecting and training police officers, setting their own priorities for law enforcement, and allocating funds to the police. Because of their devolution, the public now holds the police more accountable.

The Council of Common Interests

The Council of Common Interests (CCI), a constitutional body tasked with mediating conflicts and encouraging cooperation between the federal government and provinces on issues of common interest, was established

[31] Sidra Akram, Dr Mian Muhammad Azhar, Dr Muhammad Waris, Implications of the 18th Constitutional Amendment for National Planning and Economic Coordination.(2015)

as a result of the 18th Amendment to Pakistan's Constitution. To ensure coordination and cooperation in policymaking, the CCI, which consists of the Prime Minister, the chief ministers of the four provinces, and three federal ministers, meets regularly to develop policies and recommendations on common topics. Established under Article 153, the CCI is required to convene at least once a year under the direction of the Prime Minister. Prior to adopting decisions, the CCI must come to a consensus; if not, Article 153(6) permits it to bring issues to Parliament for resolution.[32]

As a crucial mediator of intergovernmental conflicts and promoter of policy convergence, the CCI is a major improvement to Pakistan's governance structure.Its creation emphasizes how crucial it is for the federal and provincial levels to work together and coordinate in order to ensure effective government and solve issues of national significance by reaching consensus and making group decisions.

Similarities and differences between devolution plan and 18th amendment

Aspect	Musharraf's devolution plan	18th Amendment
Time Period	In 2001	In 2010
Initiator	Military dictatorship	Elected democratic

[32] Dr. Kamran Naseem & Dr. Amna Mahmood & Dr. Manzoor Ahmad Naazer An Analysis of the Performance of the Council of Common Interest in Post-18th Amendment scenario in Pakistan (2022)

Focus	Devolving power to local government	Empower provincial autonomy
Constitutional Amendment	17th Amendment	18th Amendment 102 made to the constitution
Provincial Autonomy	Partial	Supported
Structure of local government	District and Tehsil government	District and Tehsil government
Senate reforms	Unelected	Elected
Power of President	Enhanced	Reduced
NFC Award	Centralized	Provincial level
Removal of Concurrent list	No	Yes
Renaming of Provinces	No	Yes
Judicial Reforms	Yes Introduced NAB	Not specific
Baluchistan Package	Yes	No
More Empower local Governments	Yes	Specific number off
More Effectiveness	Considered to be more effective	Significant step towards
Flexibility	More flexible	Rigid
Scope	Transfer power to	Specific constitutional

	Lower level of government	amendment number of power devolved
Philosophy	to improve democratic institutions and encourage responsible leadership	to give the provinces more authority over the federal government
Implementation	developed slowly, with difficulties in putting the reforms into effect in several provinces	There has been uneven implementation; some provinces have made headway, while others have had difficulty
Impact	Has improved governance in some provinces, but it has also brought about bureaucratic duplication and made it difficult to coordinate initiatives.	Has had a mixed effect, bringing with it both obstacles and great developments.

Generated by the Researcher source (Abbasi, M. Z. & Mussarrat, R. 2015) (Ali, M., & Shafiq, M. O. 2016)

Merits of the devolution plan and 18th Amendment

Strengthened the institutions of local governance

The Devolution of Power Plan was put into effect in 2001 with the intention of fortifying local governing structures, encouraging citizen involvement, and improving grassroots public service delivery. Greater experimentation and innovation in the public sector were made possible by this shift towards devolution, which empowered local communities to take control of their own future and promoted civic involvement. Devolution, therefore, signaled a historic break from entrenched bureaucratic power dynamics and put local government officials in key positions of authority while also highlighting the limitations imposed by federal dominance.

Furthermore, by giving the provinces more federal authority and empowering them to better address local needs and promote regional development, the 18th Amendment further strengthened provincial autonomy. The amendment's creation of local governments increased community empowerment and decentralized decision-making, which enhanced governance and service delivery. Together, these reforms have improved Pakistan's government by encouraging effectiveness and responsiveness to the needs of its citizens, and further steps, including the creation of the Human Rights Commission of Pakistan, have guaranteed the preservation of fundamental rights. (Anjum, 2001)

Increased Accountability and Flexibility

By increasing the possibility that voters will hold their leaders accountable and stay educated about local concerns, delegating decision-making to lower governmental levels holds elected politicians more

accountable to their voters. By addressing problems within communities, this decentralization seeks to lessen reliance on federal or provincial authorities and more effectively handle public concerns at the local level, which may slow down the migration of people from rural to urban areas. In an effort to increase accountability and openness in government, the devolution plan also brought in the National Accountability Bureau (NAB) and the Right to Information Act. These actions have improved government performance and lessened corruption.[33]

Development of the economy

Devolution can promote economic development by allowing local governments to tailor their economic strategy to the particular needs of their regions. This might lead to more investment, the development of jobs, and economic growth. Pakistan is a big country with a lot of different geographical features. Devolution can help solve these disparities by giving local governments the power to build their own economies and meet the particular needs of their constituents. The local government system, particularly under Musharraf's leadership, made it possible for financial resources to be allocated in district and tehsil councils in accordance with local requests. By decreasing dependency on regional administrations, this financial independence aided in the development of a system of checks and balances. Local government expenditures.[34]

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[33] Kamran Naseem Amna Mahmood Implementation of Eighteenth Amendment in Pakistan

[34] Saima Rafique, Zahid Yaseen, Muhammad Muzaffar Deliverance of devolution plan 2001 in Pakistan: an analysis.(2023)

Fostering of national unity

In order to strengthen service delivery and encourage local democracy in order to promote national unity, the Devolution of Power Plan (DOPP) sought to include social transformation into local government reforms.[35] The DOPP promoted socioeconomic changes that enhanced local governance and community control by giving local governments some provincial authority. (Alam and Wajidi, 2001) These reforms, which were made clear by the results of the local government elections in 2001 and 2005, were crucial in fostering the growth of regional economies, societies, and cultures as well as the general progress and unification of the country.

Accountability

Through volunteer and self-help efforts, the Local Government System established Citizen Community Boards (CCBs) to promote community development and enhance services. These non-elected bodies prioritize social welfare concerns, including supporting underprivileged homes, widows, handicapped people, and marginalized individuals. By raising money through grants, donations, and volunteer labor, CCBs may meet community needs and maintain their financial independence. Moreover, project-based cost-sharing aid from local governments can be used to assist CCBs. As non-profit organizations, CCBs operate with assets and income committed to community welfare. Upon dissolution, their assets are returned to the community, guaranteeing ongoing local development.

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[35] Saad Abdullah Paracha Devolution Plan in Pakistan: Context, implementation and issues (2003)

Political reforms also diminished the president's power by giving the prime minister certain authority and doing away with the 58(2) (b) clause, which gave presidents the right to overthrow governments. These modifications have improved openness, decreased power concentration, and held the Pakistani government more accountable to the people.

Civil Right

By bringing decision-making closer to the people and enabling local governments to more effectively manage resources and customize services to meet local requirements, the devolution project aims to improve service delivery. It made it easier for underrepresented groups to take part in municipal politics by requiring women and minorities to have designated seats.

The Pakistani constitution's Eighteenth Amendment strengthened civil liberties by guaranteeing impartial trials, public access to information, and education for children between the ages of five and sixteen. Moreover, it ended the use of public disorder charges as a means of preventing parliamentary membership and lifted limitations on political parties accused of inciting hatred, thereby promoting fairness and political participation.[36]

Demerits

Economic Development

The federal government still maintained control over significant revenue sources like taxes and customs fees, local governments found it difficult to deliver basic services under the Devolution of Power Plan (DOPP). The

[36] Imran Ahmed, The 18th amendment: historical developments and Debates in Pakistan (2020)

inability of local governments to finance economic and infrastructure projects, as well as to address community demands, was a result of this financial dependency. By giving provinces a great deal of autonomy, the 18th Amendment made these problems worse by raising the possibility of "beggar-thy-neighbor" laws that restrict trade and factor mobility, fracturing the national market and impeding economic integration.

Unfair practices are raised by the 18th Amendment's protection of provincial rights to discriminate based on residency. Enforcement of compliance may be more difficult in provinces that depend on unrestricted federal contributions since they may not have the motivation to achieve federal requirements for public services. Further complicating the revenue-sharing arrangement are the division of services from products and agricultural income from ordinary income, as well as the challenges associated with enacting land and tax reforms. Changes in a province's autonomy without accountability may be met with resistance, which could pose serious challenges to efficient service delivery and economic growth.

Insufficient Transparency and Accountability

Due to the lack of independent supervision and federal control over local official nominations, the Devolution of Power Plan (DOPP) failed to promote accountability and transparency at the municipal level, allowing corruption and misuse of authority to flourish. Widespread corruption and accountable local administrations were the outcome of this. Local elites were able to maintain their power and disregard for the needs of the general public thanks to the non-party local government elections.

The 18th Amendment attempted to solve these problems, but its effectiveness has been hampered by insufficient public understanding of rights and responsibility as well

as inefficient execution. Furthermore, anti-corruption organizations are underfunded and ill-equipped to deal with corruption head-on, which encourages impunity and deters whistleblowers.

Lack of coordination and cooperation

A coherent development strategy was hampered by the Devolution of Power Plan's (DOPP) inability to create efficient cooperation between the federal, provincial, and local administrations. Local governance was further undermined by federal government political manipulation of local appointments and goals.

Similar difficulties arise for the multi-tiered governance model established by the 18th Amendment in the absence of major changes to funding, land policy, political party governance, and municipal devolution. In the absence of these modifications, provincial empowerment might not improve participation or accountability, allowing corruption and the misuse of authority to continue. Furthermore, the integrity of public decision-making is threatened by political influence and legislative meddling in provincial bodies.

Civil Rights

Due to execution problems such scarce resources, political meddling, and capacity constraints, the Devolution of Power Plan (DOPP) worsened regional inequities and fell short of local governments' demands. The system was abused and corruption was encouraged by the local elites' ability to take advantage of the lack of resources and qualified workers.

Although the protection of fundamental rights was greatly increased by the Eighteenth Amendment, public order may be jeopardized in the future if there are no protections against the abuse of these liberties. It will be difficult to

strike a balance between maintaining public order and defending civil rights if limits on the right of organization are lifted, especially as this could fuel sectarian, ethnic, or regional hostility.

CONCLUSION

Britain left Pakistan with a colonial state system that valued civil and military loyalty over democratic representation. Even with the formation of democratic institutions, socioeconomic considerations, geopolitics, internal conflicts, and security issues have restricted their efficacy. Pakistan's democratic progress has become even more complex due to a lack of elite agreement and institutional patience. A strong democratic system has not been able to emerge as a result of provincial governments' unwillingness to give local governments more authority. In the past, military regimes have used local government elections to maintain power rather than to advance true democracy.

Pervez Musharraf's 2001 Devolution Plan sought substantial decentralization by giving local authorities administrative and financial power, which improved socioeconomic indicators and service delivery. Nevertheless, the plan encountered difficulties, including underfunded local councils, unprepared district-level offices, and irregular elections. The 2010 18th Amendment aimed to further transfer authority from the federal to local and regional administrations. Local government empowerment was the main goal of the Musharraf Plan, however the 18th Amendment placed more emphasis on provincial authority, which had an indirect effect on local administration. While the goals and methods of the two measures were similar in that they sought to promote decentralization, the 18th Amendment offered a more comprehensive constitutional framework

that was subject to equitable devolution to local governments and efficient provincial implementation.

Recommendations

Continue holding local elections on a regular basis: Maintain a stable democratic cycle to enhance leadership and service delivery. Bolster local councils and authorities: Assign them the necessary funds and administrative support so they can fulfill their allocated duties. Simplify the handoff of authority: At all governmental levels, clearly define roles and responsibilities to avoid misunderstandings and conflicts.

To strengthen the governance and resource management skills of local councils and district administrators; to finance programs that increase capacity; and to offer protections against undue political influence on local government operations, so that local governments can function independently.

Watch how power is transferred from the federal to the provincial and local levels to ensure that it is done in a fair and equitable manner. In order to maintain a balanced system of governance, address concerns about future provincial domination and uneven devolution.

Start public awareness campaigns to educate the public about the importance of democratic processes and the role of local governments, as well as to ensure that local governments are accountable to the people and responsive to their needs. These campaigns should also encourage active participation in civic life.

Seek support and collaboration from other nations to strengthen democratic institutions, using their best practices and lessons learned as a reference. Engage in diplomatic efforts to reduce external pressures that can impede the spread of democracy and enhance regional stability.

ARTIFICIAL INTELLIGENCE AND LEGAL PROFESSION IN PAKISTAN: CHALLENGES AND PROSPECTS

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ABSTRACT; Growing numbers of individuals are becoming interested in artificial intelligence technology, particularly in light of its implications for the legal profession, which lawyers cannot afford to overlook. It will decide how professional growth and talent training in legal science education are developed in the future. In order to ascertain the impact on the legal profession at both the macroscopic and microcosmic levels through the application and development trend of artificial intelligence technology in reality, this paper first examines the current state of artificial intelligence development and application. It then examines the three questions of "what to cultivate," "how to cultivate," and "with what to cultivate," in an effort to suggest and clarify how law science education reacts to the influence of artificial intelligence development on the evolution of the legal profession.

Keywords: Artificial Intelligence (AI), Legal Profession, Pakistan, Challenges, Prospects, Technology, Legal Industry, Judicial System

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INTRODUCTION; The field of artificial intelligence (AI) is experiencing a renaissance owing to advancements in algorithms, growing data availability, and improved processing capacity . There have also been predictions about the future of the legal profession, with some suggesting that machines would replace attorneys, due to this obsession for predicting the end of humans. The resurgence of AI has raised hopes about its potential and given rise to dire forecasts of a post-apocalyptic world in which humans will become obsolete and there would be widespread unemployment.[39]

A more balanced viewpoint holds that although AI could make some legal tasks—like transactions, litigation, or advice—more manageable for human attorneys, it won't completely replace them.[40] In fact, AI will improve the capabilities of attorneys by raising the relative worth of uniquely "human" talents and streamlining processes. Although there has been prior discussion on AI complementing people rather than replacing them, this essay clarifies why and how that conclusion will apply to the legal profession.[41]

For hundreds of years, technology—from the wheel to the steam engine to the computer—has enhanced human

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[39] Yogesh K Dwivedi et al., "Artificial Intelligence (AI): Multidisciplinary perspectives on emerging challenges, opportunities, and agenda for research, practice and policy," *International Journal of Information Management* 57 (2021).

[40] Brent Mittelstadt, "Principles alone cannot guarantee ethical AI," *Nature machine intelligence* 1, no. 11 (2019).

[41] Teng Hu and Huafeng Lu, "Study on the influence of artificial intelligence on legal profession" (paper presented at the 5th International conference on economics, management, law and education (EMLE 2019), 2020).

activity.[42] These technological advancements improved human potential and altered the roles that people might play. Retraining was necessary for humans to learn how to use those technology. New positions were formed and other jobs vanished. Additionally, technology increased the value of human qualities and abilities.[43]

2. Artificial Intelligence: An Overview

Similar competing narratives about how legal profession be with the application of AI. We employ the word "AI" in this context broadly to refer to the assortment of computational techniques that are being applied in the practise of law, acknowledging that it may apply to quite diverse systems and models. This might include "expert systems," which are applications of logic or rule-based programming, as well as machine learning systems, which use data analysis to build and improve their models. The evolution of AI has not followed a straight line. Its present significance can be attributed, in part, to advancements in algorithms, as well as gains in computer processing power and price and the amount of information saved electronically.[44]

3. Evolution and Current State of AI in Legal Profession

In 1991, it was further suggested that 10 major topics of artificial intelligence were considered as part of Legal education and the legal profession. In 2016, Rose was the

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[42] Richard Rhodes, *Visions Of Technology: A Century Of Vital Debate About Machines Systems And The Human World* (Simon and Schuster, 2000).

[43] James Alrassi, Peter J Katsufrakis, and Latha Chandran, "Technology can augment, but not replace, critical human skills needed for patient care," *Academic Medicine* 96, no. 1 (2021).

[44] Lisa Webley et al., "The profession (s)'engagements with lawtech: Narratives and archetypes of future law," *Law, Technology and Humans* 1 (2019).

first Artificial Intelligence lawyer which was used by an American company and which standard legal services in the field of law and pleated case in the court of law. This artificial intelligence lawyer was able to communicate with other human beings provide legal opinions and provide legal assistance in the case of bankruptcy and other issues of corporate governance.[45]

Experience of artificial intelligence lawyer has been used in United Kingdom successfully and artificial intelligence lawyer under the name of **Do Not Pa**y was used to deal with traffic violation cases in addition to the use of robot in traffic problems this robot was used to deal with cases of allotment of housing units to homeless persons and to provide assistant to the applicants of refugees.[46] Artificial intelligence lawyer has been used by Israel in which the use of artificial intelligence was used in cases of corporate governance cases and to draw various contracts in which the accuracy of artificial intelligence lawyer was considered 9% better than human beings in roughing of contracts and dealing corporate governance cases. In addition, to in addition to corporate governance cases it was also noted that the efficiency of artificial intelligence lawyer was better than human beings.[47]

Artificial Intelligence (AI) is expected to transform the legal profession in the twenty-first century by automating certain aspects of the legal process. As a result, lawyers

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[45] Zhiqiong June Wang, "Between constancy and change: Legal practice and legal education in the age of technology," *Law in context* 36, no. 1 (2019).

[46] Athéna Vassilopoulos, "Can AI Chatbots Improve Access to Legal Information? A Case Study on the Inhibitors of AI Chatbots' Implementation in the Context of JuridiQC" (HEC Montréal, 2022).

[47] Michael Legg and Felicity Bell, "Artificial intelligence and the legal profession: Becoming the AI-enhanced lawyer," *U. Tas. L. Rev.* 38 (2019).

will need to not only leverage these new tools to improve their professional offerings, but also oversee, scrutinize, and interpret AI.[48] Crucially, it is useless to draw broad conclusions about how AI will affect attorneys or legal practice in general because to the variety of the profession with regard to industry, areas of practice, and firm structures. To investigate the varying implications of AI, this article concentrates on three particular instances of AI in action.

However, a lot of the work that attorneys already perform will remain, including making decisions, offering advice, and interacting with clients. By relieving attorneys of some of the repetitive, mechanical activities that have taken up their time in the past, AI will improve their ability to carry out those facets of their job. AI will also increase the demand for and value of legal talents that rely on a lawyer's humanity and ethics—qualities that AI cannot deliver. The legal profession faces issues as a result of the "rise of the machines," but artificial intelligence (AI) also offers a chance to improve a lawyer's skills and sense of purpose in their career.[49]

4. AI and Legal Profession Globally

The difficulty of accurately compiling and applying the information increases with the number and complexity of the data that must be taken into account when making a decision. Attorneys are subject to these restrictions. A machine learning system, on the other hand, can identify patterns and correlations in massive volumes of data

[48] Malik Zia-ud-Din and Fatima Ezzohra Elhajraoui, "Role of Artificial Intelligence in Legal Education in the 21 st Century," *FWU Journal of Social Sciences* 17, no. 2 (2023).

[49] Legg and Bell, "Artificial intelligence and the legal profession: Becoming the AI-enhanced lawyer."

without the need for any kind of "rule of thumb," "gut instinct," or even memory. The complements of predictions will increase in value in line with this. Data is typically the focal point; as they say, "data is the new oil." Data value increases with decreasing prediction cost. In order to create accurate predictions, machine learning requires access to a substantial amount of high-quality data; otherwise, its forecasts may not hold up. For attorneys, human judgment is an additional supplement that is very important.[50]

5. AI and Legal Profession in Pakistan

As compared to other professions, legal education has very little impact on scientific, industrial, and technical advancement. Right from the start of imparting legal education to training of advocates and judges legal profession has not developed a lot in Pakistan as compared to 12 countries. No fundamental change in the legal profession has been brought about by the latest technology there has been little use of Technology which are to have been used in the legal profession of Pakistan in the formation of legal cases in the course of law and rendering legal opinions to clients and legal assistance to judges.[51]

In recent times after the introduction of Artificial Intelligence and tools introduced by artificial intelligence, no Revolution has been introduced in the wealthy countries in the field of legal profession now in the present Era. Artificial intelligence has passed a new challenge for legal professionals in countries and Pakistan is also not an

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[50] Tania Sourdin, "Judge v Robot?: Artificial intelligence and judicial decision-making," *University of New South Wales Law Journal, The* 41, no. 4 (2018).

[51] Naureen Akhtar, Aamir Khan, and Mohsin Raza, "Technological Advancements and Legal Challenges to Combat Money Laundering: Evidence from Pakistan," *Pakistan Journal of Humanities and Social Sciences* 11, no. 1 (2023).

exception to it. It is considered that soon artificial intelligence will replace human beings in the field of legal profession either working as an advocate or working as a judge in the court of law as well as delivering a lecture in a law college.[52]

6. Current Use of AI in Legal Field

In the opinion of an American company Ottoman well, artificial intelligence would replace 85% of senior as well as junior lawyers soon as the use of artificial intelligence in the profession is increasing day by day. Artificial intelligence in contrast to other Technologies has brought a revolution in all fields of knowledge legal profession is not an exception it. The first international conference on artificial intelligence was held in Boston in 1987 in which artificial intelligence and legal science were discussed in the USA. That conference, the International Association of Artificial Intelligence and Law was established in 1981, the purpose of which was to promote the research and application of Artificial Intelligence and law which is a combination of various disciplines.[53]

Usually, human being took 92 minutes to complete an assignment which was completed by artificial intelligence lawyer in 26 seconds. In this whole situation, Pakistan has not been able to introduce the concept of artificial intelligence in the field of legal profession but to some extend the legal system of Pakistan has been upgraded by introduction of Technology and for which Article 16(4) of Qanoon-e-Shahadat Order 1984 has been introduce in

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[52] Zia-ud-Din and Elhajraoui, "Role of Artificial Intelligence in Legal Education in the 21 st Century."

[53] Jonas Schuett, "Defining the scope of AI regulations," *Law, Innovation and Technology* 15, no. 1 (2023).

which evidence can be recorded by means of digital devices. In addition to that it has been made possible to record evidence of the witnesses through video link and by this process efficiency of the course has been increased in addition to efficiency of the course it has also resulted in reduction of cost for the Judiciary as well as for the lawyers.[54]

According to a report of a London based legal firm in Civilization to 23rd the law firm in the near future according to this report it is expected that in 2030 artificial intelligence would replies human beings and most of the task in the legal profession would be performed by Artificial Intelligence and human beings will be job less. Later portion of this research article it will be discussed whether artificial intelligence is a threat for the human beings are it has post a new challenge for the human beings in the modern era.[55]

After the advancement of artificial intelligence in the field of law it's document preparation document contract crafting negotiations with the clients legal arguments in the quota quote of law new techniques of Investigation in criminal cases and interaction with the customers negotiations with the clients Court appearance case management and legal arguments in the courts of law the quality of judgment introduction of new tools of artificial intelligence in the legal profession. The overall impact of latest tools of artificial intelligence in the legal field will

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[54] Samantha A Zottola, William E Crozier, Deniz Ariturk, and Sarah L Desmarais, "Court date reminders reduce court nonappearance: A meta-analysis," *Criminology & Public Policy* 22, no. 1 (2023).

[55] Mahmood A Sheikh, Syed Muhammad Bin Ahmed, and Afrasiab Ahmed Rana, "Economic Security in Pakistan: Indicators, Issues, Impacts and Way Forward," *Issues, Impacts and Way Forward (June 30, 2023)* (2023).

be reduction in the budget which was firstly used farmer far performance of work by the human beings it will also result in efficiency and saving of time for all the stakeholders of the legal profession.[56]

7. The Impact of Artificial Intelligence on Legal Profession at Macro Level

At macro level, we can say that legal profession is going to change and it is expected that there will be structural changes in the legal profession due to which legal profession will undergo fundamental changes. Due to dependence on technology and electronic data it is expected that the spending of most of the budget on research and development will continue and most of the budget will be spent on artificial intelligence in the coming era for doing research and development in the field of legal profession.[57]

As a president of use of artificial intelligence New York City has introduced artificial intelligence for resolving parking violation cases in USA and it has resulted in quality provision of Quality Services at cheap and affordable rates to the general public. By use of artificial intelligence, the involvement of human beings has been reduced to a minimum level in 12 countries and the work of many persons can be performed by an artificial by way of artificial intelligence in short span of time.[58]

With the advancement of artificial intelligence in the legal profession it is expected that standardization of law is

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[56] Morris Wilner, "Artificial Intelligence and Its Usage in the Business and Practice of Law," *W. St. UL Rev.* 50 (2023).

[57] Wilner, "Artificial Intelligence and Its Usage in the Business and Practice of Law."

[58] Rupert Macey-Dare, "How ChatGPT and Generative AI Systems will Revolutionize Legal Services and the Legal Profession," *Available at SSRN* (2023).

likely to be completely replaced by artificial intelligence in near future. By use of a new human computer collaborative approach even Complex Sivan and criminal cases can be resolved and Justice can be imported to the parties.

8. The Impact of Artificial Intelligence on Legal Profession at Micro Level

At micro level, artificial intelligence has created is for all the stakeholders of the legal profession in the shape of judiciary or in the shape of advocacy and in the field of law teaching. Artificial intelligence has created a facility for the lawyers so that law firms can engage artificial intelligence instead of human beings to provide legal assistance and legal opinion to all their clients in the field of civil criminal family corporate and other related fields of law from preparation and documentation of documents preparation of case or comments in the court of law and provision of provision of latest judgements in the court of law has become much easier and a lot of time and energy can be saved our which could be performed by more than one human beings can be performed by the help of artificial intelligence.[59]

Artificial intelligence has created a facility for the judges so that up to date knowledge legal knowledge about the case is available and applied in a given situation objective conviction sentences and review of evidence collection judgment writing integrated sport in court voice image reading and trans case management and delivery of judgment and for using of Record has much easier and on

[59] Marcello M Mariani and Matteo Borghi, "Artificial intelligence in service industries: customers' assessment of service production and resilient service operations," *International Journal of Production Research* (2023).

the basis of all these documents and information a judgment in accordance with law can be passed and just speedy justice can be provided.[60]

9. Economical aspect of AI in Law

The relationship between AI and the lawyer may be analyzed from the standpoint that, from an economic standpoint, AI lowers the cost of prediction in order to help better grasp these developments. Prediction's complements will increase in value and its replacements will decrease in value as its price decreases. Human prediction is the primary substitute for machine prediction; hence, the value of human prediction will decrease as the quality of AI prediction increases. Heuristics and biases arise from the numerous cognitive constraints or constrained rationality that affect human prediction.[61]

As artificial intelligence advances, more and more investment is flowing into the legal profession. From 2011 to 2016, global legal technology companies received $739 million in financing, significantly less than emerging fields like financial technology ($1,164 billion in 2016). This highlights the need for further research and development in legal AI. Field of imparting Legal education artificial intelligence health also created is for the law teachers by use of artificial intelligence collection

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[60] Riya Sil, Alpana, and Abhishek Roy, "A review on applications of artificial intelligence over Indian legal system," *IETE Journal of Research* 69, no. 9 (2023).

[61] Adib Habbal, Mohamed Khalif Ali, and Mustafa Ali Abuzaraida, "Artificial Intelligence Trust, risk and security management (AI trism): Frameworks, applications, challenges and future research directions," *Expert Systems with Applications* 240 (2024).

of data analysis and research and development has become much easiest.[62]

Due to budget constraints in Pakistan to provide justice in the course of law is very costly and due to heavy load on the due to number of cases pending in the course it is expected that due to involvement of artificial intelligence chief justice can be provided to the clients and legal advice to parties due to involvement of artificial intelligence for advocacy as well as far in party justice in the capacity of judges.[63] Due to artificial intelligence, it has become possible to provide legal services at international level at affordable prices and within a short span of time with efficiency.[64]

10. Conclusion

From the above set discussion, it can be set that under the present modern age of artificial intelligence there are new changes faced by the legal profession in Pakistan. First option is that Pakistan should remain in isolation and should not embrace these modern changes in artificial intelligence and technology but it is not a voice policy and Pakistan cannot for to do so. Another important that which is faced by the Legal education is that there is an alarming situation for the human beings that artificial intelligence instead of human beings in the capacity of advocates, consultants, judges and law teacher. Artificial and Intel and reports can replace time. The reality is that artificial intelligence cannot replace human beings in all fields of

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[62] Ziyu Chen, "The Impact of Development of Financial Technology on China's Economy," *Highlights in Business, Economics and Management* 24 (2024).

[63] Ali Asghar, "CRIMINAL JUSTICE SYSTEM OF PAKISTAN," *ISSRA Papers* 15, no. 1 (2023).

[64] Sheikh, Bin Ahmed, and Rana, "Economic Security in Pakistan: Indicators, Issues, Impacts and Way Forward."

Legal education. Artificial intelligence has set some new standards and benchmarks for advocates, judges and law teachers. It is need of the hour that advocate advocates judges and law teachers should equipped themselves with modern tools of artificial intelligence and they should not confine themselves to the extent of knowledge provided by these tools. Under the present age artificial intelligence should not be taken as enemy of human beings rather it should be taken as a challenging news challenge to set some new benchmark and new standards which are over and above the standards and benchmark set by the artificial intelligence. Artificial intelligence is the need of the hour and it should be embraced with certain checks and balances and with new standard operating procedure.

11. Recommendations:

Following are the recommendations for the improvement of legal profession in the age of artificial intelligence.

Apprehension of unemployment due to artificial intelligence: There is an apprehension of unemployment that artificial intelligence reports can replace human beings in the near future and the advocacy and legal teaching can be done through robots instead of human beings. It is a wrong instead of it use of artificial intelligence should be done to find out some new avenues of knowledge with in legal profession. And moral concerns about artificial intelligence artificial intelligence. In Pakistan moral and ethical problems can arise in which Islamic principles are core of the legal system in Pakistan and software-based Intelligence and moral issues for Islamic countries with such kind of software which are compatible Islamic principles values and morality. New benchmark are new standards. Artificial intelligence is not and should not be taken as enemy of human being father it should be taken as a new challenge for legal practitioners

and law teacher and other persons attached with Legal education that they need to enhance and their standards and capabilities and they should not limit themselves to the extent of knowledge provided by artificial intelligence marks with new standard of knowledge.

License is required for legal practice: it is wrong to say that advocate advocacy can be done only through artificial intelligence reports because in the field of Legal education after completion of LLB are other equivalent degree in law license to practice the profession of law is condition president in all the countries so in a country like Pakistan robots cannot take the place of human beings under the present of the word intelligence report use of discretion. Use of discretion in the sea and half legal cases as a judge In Pakistan most of the enactments are based up on judicial discretion after judges and if as a hypothetical situation are bored Artificial Intelligence with human beings to decide the cases as a judge under the present contacts artificial intelligence of justice intelligence of a human being in Pakistan. Human beings should be on the driving seat in the legal profession in Pakistan.

Keeping in view the legal issues faced by the legal profession in Pakistan artificial intelligence both cannot be on the driving seat in the legal profession of Pakistan but they can be on the bags back seat to help and assist the human beings in the field of legal profession. Artificial intelligence reports should not replace human beings in law colleges and Universities.

EXORDIUM OF LEGISLATIVE FUNCTION

RANA AZHAR SIDDIQUE[65]**
Dr. ATTAULLAH WATTOO[66]**

ABSTRACT: Legislative function is a crucial aspect of the modern welfare state, where the legislative body performs its duties according to the constitution or precedents. Post-legislative scrutiny, a concept that has been little discussed globally, is a growing need in Pakistan. The concept of legislation is defined by the French philosopher Charles-Louis de second at, who introduced the separation of power theory, which divided the political authority of the state into legislative, executive, and judicial powers. The legislative function is focused on enacting laws, while the executive handles implementation. The judiciary plays a specific role in adjudication for protecting people's rights and ensuring the smooth functioning of the social system. There is limited academic literature on post-legislative scrutiny, but the need for this concept is becoming increasingly evident in various articles, papers, and discourses.

INTRODUCTION: Legislative function is one of the three core functions of the state staying on the top of the stature of the state in the modern welfare state functions where the legislative body performs this function as per the given legislative competence in the constitution or the set standard of the precedents in the lands of unwritten constitution. The concept of post-legislative scrutiny

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[66] Assistant Professor IIUI

stands on no principle its working across the globe has been discussed very little. There is need of establishment of systemic and organized forum for post-legislative scrutiny in Pakistan as a whole and Concept of Legislation, Primary legislation i.e. Acts of Parliament or Statutes, Secondary legislation, quasi legislations, Bill which is the most common type of legislation.

Overview of Paper:

After the French revolution the jurist of the world agreed upon theory of separation of power specified by a French social and political philosopher namely **Charles-Louis de Secondat, baron de La Brede ET de Montesquieu** in 18th century. The history of political theory and jurisprudence after His publication, *Spirit of the Laws*, is self-evident that the great work inspired the Declaration of the Rights of Man and the Constitution of the United States. The political authority of the state is divided into legislative, executive and judicial powers under this model, these three powers must be separate and act independently. The obligatory functions of government were divided into three distinguished wings on the bases of this theory, out of which, the Legislative function was considered for enactment of laws only and its implementation was left for executive and the judiciary was on the specific role of adjudication for protection of the rights of people and smooth functioning of social system. There is no principle on the concept of post-legislative scrutiny however its working across the globe has been discussed very little as a theory. Conversely, the seeds of the need in various articles, papers and discourses are becoming harbinger of the fact that post legislative scrutiny is the need of hour. Currently there is limited

academic literature found on papers on the subject the post-legislative scrutiny.[67]

Concept of Legislation:

Before discussing the procedure of legislation in various countries it is necessary to have the basic concept of legislation i.e., what does legislation mean. The Encyclopedia Britannica defines legislation as:

"*Legislation, the preparing and enacting of laws by local, state, or national legislatures. In other contexts, it is sometimes used to apply to municipal ordinances and to the rules and regulations of administrative agencies passed in the exercise of delegated legislative functions."*[68]

The dictionary by Merriam Webster defined legislation as following.

"1: the action of legislating

specifically: the exercise of the power and function of making rules (such as laws) that have the force of authority by virtue of their promulgation by an official organ of a state or other organization.

The major function of Congress is legislation

— W. S. Sayre

2: the enactments of a legislator or a legislative body

Legislation to help distressed homeowners

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[67] "Separation of Powers: An Overview," national conference of state legislatures. May 1, 2021. Accessed May 20, 2022, https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview.

[68]"Legislation | Definition, Types, & Examples | Britannica," britannica.com, February 6, 2018, Accessed 26 May 2022, https://www.britannica.com/topic/legislation-politics.

3: a matter of business for or under consideration by a legislative body She proposed new legislation to protect the environment."[69]

The Definition given in UK Parliament official website is: *"Legislation is a law or a set of laws that have been passed by Parliament. The word is also used to describe the act of making a new law."*[70]

Types of legislation:

Oxford law faculty talks about two main types of legislation

1. Primary legislation - Acts of Parliament or Statutes

2. Secondary legislation - Statutory Instruments (SIs, which are often called Codes, Orders, Regulations, Rules)[71]

Hobnob defines bills, simple resolutions, joint resolutions and concurrent resolutions as type of legislation:

i. Bill the most common type of legislation. Bill can be of many types like permanent or temporary, general or special in nature; public or private. Except for the revenue bills which only originate in House of Representatives all other bills can originate in either house i.e. the Senate or the House of Representatives.

ii. Joint resolution is not much different from a bill, except joint resolution can include a preamble that precedes the resolving clause.

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[69]"Legislation Definition & Meaning - Merriam-Webster," merriam-webster.com. n.d., accessed May 26, 2022, https://www.merriam-webster.com/dictionary/legislation.

[70]"Glossary - UK Parliament," parliament.uk. n.d., accessed May 26, 2023, https://www.parliament.uk/site-information/glossary/.

[71]"Law Reports | Faculty of Law," law.ox.ac.uk. n.d., accessed June 10, 2022, https://www.law.ox.ac.uk/legal-research-and-mooting-skills-programme/law-reports.

iii. Simple resolution is one that is considered in the House in which it is introduced.

iv. Concurrent resolution is introduced in issue affecting the processes of both chambers. [72]

Laws, news and network tell following types of legislation:

a) Supreme legislation i.e. legislation by state or supreme authority

b) Subordinate legislation i.e. legislation by anybody sanctioned by Supreme authority

c) Delegated legislation is one which is done by executive on the authorization of supreme authority.[73]

Primary legislation and secondary legislation are main kinds of legislation in the United Kingdom. Primary legislation includes the laws made by Parliament or the statues **and the** secondary legislation includes but not limited to the rule, regulations, orders, codes and bylaws made subordinate to the acts of Parliament. Quasi legislation and European community legislation is also a form of Secondary legislation.

While speaking on primary legislation Public General Acts and Local and personal acts are known as the types of Primary Legislation. Public general acts are the acts which are annexed with the explanatory notes of achieving the objective of the act with its context while local and personal acts are the acts which are relatable to the boroughs, railways, canal companies and enclosed land.

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[72] "Understanding the 4 Basic Types of Legislation - Hobnob Blog," hobnobblog.com. n.d., accessed June 10, 2022, https://hobnobblog.com/2010/09/understanding-the-4-basic-types-of-legislation/.

[73] Admin Lawnn, "Types of Legislation, Merits, Supremacy under Jurisprudence," lawnn.com. December 24, 2018, Accessed 10th June, 2022. https://www.lawnn.com/types-of-legislation/.

Secondary legislation is also called as sub ordinate, subsidiary or delegated legislation. The common terms of this legislation are known Orders, Regulations, Rules, and Codes etc. as this legislation is made by government, the executive pillar of the state. Such legislation is authorized by the parliament.

Quasi legislation has no classification however the circulars issued by the Government, rules provided by the regulatory bodies and the codes bringing in to force are the forms of legislation.

C onclusion:

The obligatory functions of government were divided into three distinguished wings on the bases of theory of separation, theory, out of which, the Legislative function was considered for enactment of laws only and its implementation was left for executive and the judiciary was on the specific role of adjudication for protection of the rights of people and smooth functioning of social system.

Legislative function or legislation means the preparing and enacting of laws by local, state, or national legislatures. Legislation is divided in many types like Primary legislation includes the laws made by Parliament or the statues and the secondary legislation includes rule, regulations, orders, codes and bylaws made subordinate to the acts of Parliament. Public General Acts and Local and personal acts are known as the types of Primary Legislation. Statutory Instruments (SIs, which are often called Codes, Orders, Regulations, and Rules) are also known as type of secondary legislation.

Another classification of legislation includes bills, simple resolutions, joint resolutions and concurrent resolutions.

STATE-COMMERCIAL CONFLICTS IN THE LIGHT OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

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MUHAMMAD SALEEM SHAHEEN[75]**

ABSTRACT; As state governments are dealing with commercial activities more and more, the conflict of state sovereignty with contractual duties has developed as one of the very important issues in international law. This dilemma, as many of the other dilemmas, presents itself before Pakistan: how to reconcile its assertion of state immunity with upholding the requirement for enforcing foreign arbitral awards against the government. This paper will now analyze the strategy of alternative dispute resolution (ADR) in the context of commercial disputes that transcend borders. It discusses the changed concept of state immunity, distinction between sovereign and commercial acts, and the effects of enforcing or not enforcing foreign arbitral awards. It holds that Pakistan has to adopt a balanced approach of utilizing ADR methods for resolving the conflicts and, at the same time, safeguarding legitimate sovereign interests. Specialized mechanisms are made recommendations for purposes of dispute resolution, the development of mediation and conciliation, and the country's legal framework with relation to participation in international cooperation. It is essential for Pakistan to ensure a balance between these two: creating a business environment for foreign

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investment and economic development yet upholding the commitment to the rule of law.

Keywords: Alternative Dispute Resolution (ADR), State Immunity, Foreign Arbitral Awards, Commercial Disputes

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INTRODUCTION; Alternative Dispute Resolution (ADR) refers to the generic term used to define a range of processes and techniques aimed at dispute resolution away from the precincts of the traditional legal system.[76] The term refers to such methods of resolving conflicts like negotiation, mediation, and arbitration designed to give the parties a better, cheaper way, often less adversarial than going to court. ADR has become a very important concept in the last few decades as an alternative to the high cost and long duration of litigation, particularly in the scope of commercial and international disputes.

On the other hand, State Immunity is the conventional theory of international law through which sovereign states are immune from being subjected to the jurisdiction of foreign courts. This doctrine traditionally afforded absolute immunity: a state absolutely was protected from the judicial processes of another sovereign. However, the operation of this doctrine became more balanced towards immunity when states started engaging in international commerce and trade. However, there emerged a growing but still unrealized need to exercise increasingly more

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[76] Menkel-Meadow, C. (2015). Mediation, arbitration, and alternative dispute resolution (ADR). *International Encyclopedia of the Social and Behavioral Sciences, Elsevier Ltd*.

balanced and nuanced state immunity in the 20th century.[77]

Accordingly, the developing restrictive State Immunity doctrine allowed states to be held responsible for their commercial activities, yet very firmly it reiterated that in sovereign acts they maintained their immunity. This move observed that, if a state enters the commercial arena, it should succumb to equal legal and economic consequences facing private entities engaged in parallel activities.[78]

Pakistan, like most other sovereign countries, has been engaging in disputes arising from its commercial activities that result in foreign arbitral awards against the government. Enforcement of it brings up questions about State Immunity, as to if the enforcement of this law has any effect on foreign investment, international trade, and Pakistan's fulfillment of its international legal obligations.[79]

This, therefore, is an essay that casts a critical eye on the concept of State Immunity vis-à-vis Foreign Arbitral Awards against the Government of Pakistan. It examines the historical development of State Imminity, the distinction between sovereign and commercial activities, and reasons to hold a restrictive view. Relevant case law shall be discussed to Pakistan vis-a-vis practice of states in enforcement or refusal to enforce foreign arbitral

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[77] Fox, H., & Webb, P. (2013). *The law of state immunity*. Oxford University Press (UK).

[78] Jamshidi, M. (2022). The Political Economy of Foreign Sovereign Immunity. *Hastings LJ*, *73*, 585.

[79] Abbas, R., Rashid, M. A., & Bilal, F. E. (2022). DISPUTES ARISING OUT OF FOREIGN DIRECT INVESTMENTS IN PAKISTAN: A NEW LOOK AT LEGAL AND POLITICAL ISSUES. *Pakistan Journal of International Affairs*, *5*(2).

awards. It will strike a balance as to the preservation of State Immunity and will propose potential solutions and recommendations for effectively resolving disputes with due regard to the promotion of commercial interests.

1.1 Definition of Alternative Dispute Resolution (ADR)

Alternative dispute resolution (ADR) is a general term, which is used to describe different dispute resolution mechanisms and approaches that provide litigants with meaningful alternatives to the conventional judicial process.[80] ADR methods are intended to be more users oriented, for example, relative low cost and efficiency in comparison with the legal court system. The common types of ADR methods include:

1. Negotiation
2. Mediation
3. Arbitration
4. Conciliation
5. Early Neutral Evaluation

ADR techniques have expanded their application to commercial disputes, family law cases, construction, labor, and many other fields. It provides the involved parties with better due process control and more confidentiality, which increases the possibility of relationship maintenance or rebuilding compared to the adversarial court process.[81]

1.2 Importance of ADR in resolving disputes

Cost and time efficiency: Generally, ADR methods are more cost and time-efficient compared to traditional ADR. The process also ensures a more rapid settlement of

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[80] Mnookin, R. H. (1998). *Alternative dispute resolution*. Harvard Law School.

[81] Sander, F. E. (1985). Alternative methods of dispute resolution: an overview. *U. Fla. L. Rev.*, *37*, 1.

disputes, hence sparing the parties from undue expenses that come with drawn-out court actions.

More flexibility and control: ADR provides parties involved in disputes with more flexibility on how to handle disputes. They could, therefore, design the procedures that best fit their particular situations. ADR procedures are flexible, unlike the hard-and-fast rules developed in court systems.

Relations between the parties: ADR techniques, especially those of negotiation and mediation, by their less contentious nature, also provide a setting in which the relations between the parties are preserved. This would be helpful in that kind of scenario where parties have to carry on with some sort of business relationship or some other kind of relationship after the settlement of the dispute.

Confidentiality: Most ADR procedures differ in the level of publicity accorded by public court proceedings. Protection of such sensitive information and reputations is, therefore, of most importance, especially in commercial and business disputes.

Satisfaction: It has been suggested that the outcomes of ADR are generally more satisfactory to the disputants than court-imposed decisions. This means that the parties have a greater say in the results that are reached and thus stand higher chances of compliance and commitment to the solution at hand.

Reduced pressure on the court systems: A wide use of ADR through ADR is likely to reduce pressure on the court systems, which are already overburdened, and thus they will free up judicial resources for formal litigation.

Specialized expertise: Whereas ADR processes such as arbitration permit parties to a dispute to choose a neutral third party who has special expertise in the subject matter of their dispute.

ADR has many merits in that it is an important and increasingly attractive means for the solution of disputes in the commercial, family, labor, and international domains.

3. State Immunity: Historical Background and Evolution

2.1 Doctrine of absolute State Immunity

Absolute State Immunity is deeply rooted in the bedrock of "par in parem non habit imperium"—that is, "an equal has no power over an equal." It was based on sovereign equality and the idea that subjecting any such one sovereign state to the courts of another state would mean that its sovereignty and dignity would be demeaned. Absolute immunity was rationalized from the belief that the states and their representatives are to remain free from the control of their counterparts and that protection in the proper running of governments should not be burdened with defending litigations abroad.[82]

This doctrine grants states absolute immunity from the jurisdiction of foreign courts in all cases, with no exception for any nature of the state's activities. Such immunity also extended to the state's representatives, its agents, and any state-owned entities. This was a historical situation under which the doctrine of absolute immunity was borne: one in which state activities were almost exclusively a matter of public realm, consisting of diplomatic relations, military operations, and other sovereign acts. In any case, state commercial activities at that time were relatively limited, and therefore, the

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[82] Bankas, E. K. (2022). The origins of absolute immunity of states. In *The state immunity controversy in international law: private suits against sovereign states in domestic courts* (pp. 33-51). Springer.

doctrine of absolute immunity appeared as a necessary protection of its sovereign functions.

However, as time passed and a large number of states became involved in commercial and international trade activities, the theory of granting absolute immunity became the center of a lot of criticism. It would, therefore, only be just and legally certain in commerce if a state, in engaging in its commerce, was exposed to the same legal and economic consequences as any other private entity. This is the criticism that gave rise to the subtle and gradual move toward the restrictive theory of State Immunity, which makes a distinction between sovereign and commercial acts.

While the doctrine of absolute State Immunity has been considered as having the nature of law, developments, with the view of the changing nature of state activities and the recent need to promote fairness in international commerce, have resulted in its diminution of application. The restrictive approach identified the grant of blanket immunity to such a state, engaged in commercial activities, as a discredit to the private parties' vis-à-vis a slowdown in the development of international trade and commerce.

2.2 Shift towards restrictive State Immunity

On this step, proportionately, as states entered upon commercial and industrial careers, with increased participation in international trade, serious doubt and criticism were cast upon the doctrine of absolute immunity. It will indeed look that when a state descends into the commercial arena, engaging in activities that are at the core, private or commercial in nature, the state party should be treated similarly to private entities carrying out comparable endeavors. Such blanket immunity to the states engaged in commercial activities would

prejudicially give them an unfair advantage and, at the same time, may have the effect of undermining legal certainty and fairness in international commercial transactions. The requirement of a gradual shift to the restrictive theory of State Immunity was recognized on this realization.[83]

This restrictive approach to State Immunity provides for the said distinction between sovereign acts (acta jure imperii) and commercial acts (acta jure gestionis) within this limit. This theory confines the State to Immujnity acts that are considered sovereign acts or public acts, for example, a legislative, administrative, or judicial acts, deemed to emanate from the sovereign authority of the state. However, a State does not enjoy immunity under matters involving its private or commercial character. This development testifies to the evolution of the nature of the state activities and the new criterion by which the requirement for respect of state sovereignty is weighed against the necessity of the fairness and predictability of international commercial rules.

2.3 Rationale behind the restrictive approach

The restrictive approach has a twofold basis for the sovereign principle of sovereign equality of nations and non-interference. Acting in a sovereign, it demonstrates sovereign authority when a state acts in sovereign or public acts, for example, those that it undertakes in a legislative, administrative, or judicial nature. This may amount to submission to foreign jurisdiction over these acts, which may be perceived as interference with the

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[83] Shan, W., & Wang, P. (2019). Divergent views on state immunity in the international community. *and Luca Ferro (ass. ed.), Handbook on Immunities and International Law (Cambridge University Press, 2019)*, 61-78.

sovereign functions of the state and breach sovereign equality. The second rational is alive to the call of commercial fairness and legal certainty. When a state involves itself in such activities, essentially of a private or commercial nature, it should be treated on a par with any other private entity involved in similar pursuits. Then, it would be unfair to the state entities who participate compared to private parties, in that the former would find an excuse to hide, considering the immunity from such cases and predictability and reliability in their point of view would be undermined in the international commercial transactions.[84]

The critical function of the restrictive theory of State Immunity is to find a balance between respecting state sovereignty and furthering fairness in international commerce through the clear distinction of sovereign acts from commercial acts. This doctrine hence recognizes that although state is supposed to be immune from foreign jurisdiction for its sovereign functions, it should be hold accountable for its commercial activities just like private entities. This approach does guarantee level ground and safeguards states from hiding behind immunity in such a manner that will shield them from legal and economic results of their commercial activities instead of confidence and reliability in international trade and investment.

3. State Immunity and Commercial Activities

As states increasingly engage in commercial activities and participate in international trade and investment, the application of the doctrine of State Immunity has become a subject of significant debate and evolving jurisprudence.

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[84] Waxman, S. P., & Morrison, T. W. (2002). What Kind of Immunity-Federal Officers, State Criminal Law, and the Supremacy Clause. *Yale LJ*, *112*, 2195.

The traditional notion of absolute immunity, which granted states complete protection from the jurisdiction of foreign courts regardless of the nature of their activities, has given way to the restrictive theory of State Immunity. This restrictive approach recognizes a crucial distinction between sovereign acts, undertaken by a state in the exercise of its public or governmental authority, and commercial acts, which are essentially private or commercial in nature. While sovereign acts continue to enjoy immunity from foreign jurisdiction, the commercial activities of states are subject to the jurisdiction of domestic courts, akin to the treatment of private entities engaged in similar pursuits.[85]

3.1 Distinction between sovereign and commercial activities

On the other hand, the restrictive theory of State Immunity focuses crucially on this clear difference between sovereign and commercial acts. On one hand, the sovereign act comprises those acts falling under the sovereign authority, such as legislative, administrative, or judicial functions of the state, among others. These are considered acts expressing the son object representation public or government authority of a state and usually enjoy immunity from the jurisdiction of any other state.

On the flip side, it could be said that commercial acts are essentially of a private or commercial character, undertaken by a State in exactly the same manner as a private individual or entity would. These could be entering into contractual agreements for the purchase and sale of goods and services, establishing commercial transactions,

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[85] McCormick, C. (1984). The commercial activity exception to foreign sovereign immunity and the Act of State Doctrine. *Law & Pol'y Int'l Bus.*, *16*, 477.

or involvement in any other nature of business-related pursuits.

3.2 Justification for denying State Immunity in commercial activities

The reasons due to which the State Immunity is denied in commercial activities lie in fairness, legal certainty, promotion of international trade and investment. This means that when undertaking commerce, a state's role is that of a private person and it shall be subjected to legal and economic implications that an ordinary private party, similarly situated, is likely to suffer.

Such an immunity, if it were to grant immunity to the states in such a situation, private actors would be granted an unfair advantage vis-à-vis in this way further distorting the already disfigured level playing field in commercial transactions. It would also undermine legal certainty and predictability because commercial dealings of private entities with states, where enforceability of contractual obligation or having recourse to law is not possible, may find the private entity in an awkward spot.

3.3 Impact on foreign investment and international trade

The other difference with state immunity in commercial activities is the difference of greater importance to foreign investment and international trade. However, the restrictive approach to State Immunity permit the jurisdiction of the foreign court and enforcement of legal obligations emanating from commercial activity of the State if it permits, therefore promoting confidence, and reliability develop in international commercial transactions.

But it is only then that foreign investors and business are most likely to get involved in commercial dealing with the

states when they have assurances whereby disputes can be adjudicated fairly and legal remedies are available in case of breaches or disputes. The latter, in its turn, creates favorable conditions for foreign investment, development of economic growth, and international trade.

On the other hand, blanket immunity to states in their commercial activities may dampen foreign investment, impairing the smooth operation of international trade since private entities will be unwilling, fearing that they might remain without remedying the impossibility of enforcement of their contractual obligations or have access to legal recourse against state entities.

4. Foreign Arbitral Awards against Pakistan

Pakistan just like most of the other nations that are involved in international commerce, found herself drawing lines in the disputes that come arising from their commercial activities. This resulted in foreign arbitral awards made against the government. While such awards usually relate to matters dealing with, among other things, breach of contract, investment disputes, or any other commercial disputes involving Pakistani State entities, these awards are by international arbitration tribunals or foreign courts. Their implementation, therefore, within the domestic legal system of Pakistan has thrown up complex questions of law regarding the application of the doctrine of State Immunity. On the other hand, when Pakistan asserts its sovereign rights, it may take the plea of State Immunity against the enforcement of such awards and, in view of the independent state and sovereign country it is, refuse to comply with the same. However, the tide of international law and practice had always been against giving State Immunity to commercial activity in order to preserve sanctity attached to international arbitration and give fillip to legal certainty in cross-border transactions.

The dichotomy of the ability of Pakistan to invoke State Immunity with a commitment to respect the international legal obligations has deep implications on foreign investment, economic development, and the standing of the country in the commercial world. In this context of foreign arbitral awards against Pakistan, the examination of the concept of State Immunity calls for referring to judgments with a lot of care toward developing the legal position which Pakistan can adopt and its wider implications on the commercial interest of the country and its international relations.

4.1 Overview of relevant cases

Karkey Karadeniz v. Islamic Republic of Pakistan

In 2017, the International Centre for Settlement of Investment Disputes (ICSID) gave a judgment in the sum of $760 million against a Turkish company, Karkey Karadeniz, for the enforcement of an arbitration award against Pakistan, which later pursued its enforcement in relation to claims by Pakistan regarding the alleged breach of its obligation under an agreement of a rental power project. Pakistan challenged the Award on the grounds of State Immjsonuability. However, in 2019, an English High Court, while deciding a case on the issue of Pakistani Commercial Award, ruled that Pakistan enjoyed no immunity from the enforcement proceedings.[86]

Tethyan Copper Company v. Islamic Republic of Pakistan

In 2019, a World Bank ICSID tribunal awarded Tethyan Copper Company, a joint venture between Antofagasta and Barrick Gold, $5.9 billion over its dispute on a mining

[86] Karkey Karadeniz v. Islamic Republic of Pakistan

lease with Pakistan. It was one of the highest amounts awarded against Pakistan. The case has brought to light the struggle of Pakistan with the natural resource challenges it faces, to balance its sovereignty rights with the obligations coming in through bilateral investment treaties.[87]

Hubco v. WAPDA

That year, in 2000, a Swiss arbitral tribunal awarded $292 million to an independent power producer, Hubco, against its case with the Water and Power Development Authority (WAPDA) of Pakistan, solely based on a Power Purchase Agreement. After protracted legal battles, Pakistan eventually paid the award amount in 2019 to avoid asset seizures abroad.[88]

Agility v. Pakistan

In 2011, a Dubai International Arbitration Centre (DIAC) tribunal awarded $63 million to Agility, a logistics company, against Pakistan's National Logistic Cell in a dispute related to the contract for shipping the goods to US/NATO forces in Afghanistan. Pakistan contested the enforcement by relying on State Immjsonce, but later courts in different jurisdictions upheld the award.[89]

4.2 Pakistan's stance on State Immunity

In the majority of the cases where foreign arbitral awards are given against Pakistani State entities or even against the government itself, Pakistan has pleaded persistently the defense of the doctrine of State Immunity against its domestic legal enforcement. The position of the government, based on its standing as a independent state, is immune from the jurisdiction of foreign courts and

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[87] Tethyan Copper Company v. Islamic Republic of Pakistan
[88] Hubco v. WAPDA
[89] Agility v. Pakistan

tribunals, and from enforcement more so in the cases under matters which are considered sovereign or public in character.

Pakistan has been consistently contending that submission by any state of its own self under the jurisdiction of any foreign arbitral tribunal or court in disputes emanating from sovereign acts or actions in the public interest would, in truth, be an erosion of its sovereignty and violative of the principles of sovereign equality and non-interference enshrined in international law. It has maintained that the government has the right to invoke State Immunity selectively, depending on the nature of the dispute and the activities in question.

However, the position of Pakistan on State Immunity has always faced harsh challenges and criticism from various quarters, particularly in cases that involve commercial activities or contractual obligations of the state entity or government. The overwhelming international jurisprudence does not allow State Immunity in such cases because it would defeat the sanctity of international arbitration and progress the cause of legal certainty in cross-border transactions.

Critics, therefore, saw this insistence by Pakistan to assert State Immunity, even in its commercial pursuits, as the assertion of an overriding sovereign power at the cost of its international legal obligations and, in turn, fostering a favorable atmosphere for foreign investment and economic development.

4.3 Implications of enforcing or refusing to enforce foreign arbitral awards

Enforcing the awards manifests respect for international arbitration and keeping the obligations under the bilateral investment treaties and commercial contracts. For promoting foreign investment and economic development,

consistent enforcement of awards would breed confidence among foreign investors and businesses. It would create a promising environment for foreign investment, which would ultimately develop into a source of economic growth in Pakistan.

Inability to enforce awards may expose them to liabilities like seizure of their assets abroad and imposition of fines or trade sanctions—all these, in the present world, have an adverse effect on international relations and economic interests of Pakistan. Reputational Costs, if it fails to honor the awards, will portray Pakistan as a country that does not stand by its commitments, hence raising the risk profile of the country and damaging its reputation as an internationally reliable and credible partner in commerce. The state of Pakistan invoke state sovereignty and the doctrine of State Immunity to defeat enforcement by arguing that some of the disputes are related to sovereign acts or public interests that should be entitled to immunity under foreign jurisdiction.

Thus, non-enjoinment, therefore, may lead to construing a violation against Pakistan of its commitment under various International Treaties, Conventions, and Bilateral Investment Agreements and thereby raise Diplomatic Tensions and Possible Legal Consequences. Encourage Foreign Investments: With these types of risks, even a moderate amount of foreign investments would not flow into the country. Readjustment awards may present an economic cost, among others, the losses in foreign investment opportunities, trade barriers, or punitive damages/penalties that the international arbitration tribunals/courts may impose. This absence of enforcement can add up to damages in the credibility and trust of the international legal and commercial arena, hence increase

the level of difficulty in luring and keeping foreign businesses and investors.

Finally, the decision on whether to enforce foreign arbitral awards against Pakistan focuses around a sensitive balance of assertion of sovereignty or State Immunity first and then consideration of possible economic, reputational, and legal impacts of failure to adhere to international legal obligations and commercial commitments, on the other.

5. Possible Solutions and Recommendations

Adopting a Consistent and Transparent Approach

Pakistan needs to explain and evolve a uniform policy regarding the application of State Immunity, more particularly, in those conditions where commercial activities and foreign arbitral awards are being considered. The policy in this context would, by all means, need to be quite transparent, predictable, and in accordance with international legal principles and practices. Establishment of well-defined criteria will certainly provide a great clarity to the foreign investor and, in general, the business fraternity, which will further bring confidence in the legal-commercial setup of Pakistan.

Establishing Specialized Tribunals or Mechanisms for Resolving Disputes

In the same way, the idea of specialized tribunals or dedicated mechanisms could be envisaged in disputes pertaining to commercial activities and foreign investment. This may entitle the courts to make an independent judgment over the matter in conformity with the balance of maintaining State Immunity and enforcing its contracting obligations. In this sense, these could be mechanisms with the purpose of facilitating the process of resolution, providing more predictability within the scope of the process to both the government and foreign parties.

Promoting Alternative Dispute Resolution Methods

Pakistan shall take all measures to ensure the promotion and encouragement of the use of various dispute resolution means, including alternative dispute resolution, mediation, and conciliation. In other words, ADR techniques are also more flexible, cost-effective, and an acceptable way of settling disputes, which might easily obviate years of legal warfare or arbitration actions. This would be supportive of keeping sound commercial relations and, at the same time, safeguarding the legitimate interests of Pakistan.

International Cooperation and Harmonization of Laws

The paper concludes that Pakistan has to be part of international efforts towards harmonizing laws with the institution of common frameworks to respond to issues regarding the State Immunity and enforcement of foreign arbitral awards. This, therefore, tends to bring more consistency and predictability in the legal environment that reduces conflicts and uncertainties greatly in cross-border commercial transactions through international collaboration with other countries and international organizations.

Capacity Building and Legal Reforms

It shows that further investment needs to be made by Pakistan in capacity building in the country's legal and judicial systems for better understanding and developing expertise to deal with complicated international commercial disputes and arbitration matters. This may comprise training programs, legal reforms, adaptation of international best practices to ensure that the legal framework in Pakistan is up to the contemporary standard and promotes foreign investment and commerce.

Balanced Approach and Case-by-Case Assessment

The consistent policy has to prevail, and Pakistan has also to look for developing the balanced approach which, on one side, allows the disputes to be entertained on a case-to-case basis. The approach would need to necessarily take into consideration the very nature of the dispute, the activities that are at play, and possible implications on the sovereign interests of Pakistan and international obligations. Through such a balanced approach, due consideration could be given to State Imm, to work out a compromise that is the right balance between the requirements of State Immunity and living up to commercial commitments.

First of all, implementation of these solutions and recommendations may save Pakistan from the rigmarole of State Immunity complexities, while allowing a more favorable environment for foreign investment, secondly promoting economic development, and thirdly maintaining its international credibility and reputation as a reliable partner in the global commerce business.

6. Conclusion

Alternative Dispute Resolution (ADR) has emerged as a dominant and popular way of resolving international disputes by providing a better choice in an expeditious, inexpensive, and low-tension resolution of disputes through court avoidance. While tangled in the juridical field of state immunity, ADR offers an impartial environment for conflict resolution against the partaking of commercial disputes and foreign states, which comes to the benefit not only of the parties in dispute but also to help encourage a climate that is more amenable to increased international trade and investment.

Yet, a problematic intersection of ADR and State Immunity presents its own issues. The biggest problem

here is the often slippery differentiation between acts jure imperii of a state and its commercial activities. Another criticism of the enforcement of foreign arbitral awards against states is bound to problems of enforcement with states holding a more restrictive view on state immunity.

This calls for a multi-pronged strategy in overcoming these challenges. Putting in place clear and consistent legal regimes at both national and international levels may provide the much-needed clarity with regard to the scope of state immunity in commercial transactions. That would also take a commitment to good faith on the part of the states and all parties involved in their dealings at an ADR. In a nutshell, this openness to discussing those sorts of issues in a transparent, genuine manner will enhance the reputation of the state as a reliable commercial partner and also serve for the betterment of the development of a more predictable and efficient, in light of the commerce, global marketplace.

Ultimately, only successful integration of the AADR into the landscape of state immunity holds out the potential of streamlined dispute resolution, promoting international cooperation, and a more stable and prosperous global economic environment in the ultimate future.

FEDERAL DISPUTE RESOLUTION IN PAKISTAN AFTER 18TH AMENDMENT: A GREAT LEAP FORWARD TOWARDS PROVINCIAL AUTONOMY

BAKHTAWAR MANZOOR[90]**
MUHAMMAD WAQAS GUJJAR[91]**
ANWAAR RANA[92]**

ABSTRACT; The 18th constitutional amendment represents significant move towards participatory federalism by implementing structural changes. It not only restored the essence of the original 1973 federal constitution but also eliminated the concurrent legislative list and delegated control over seventeen ministries to provincial governments, in addition to activating federal dispute resolution mechanism. Following the implementation of the 18th amendment, the Council of Common Interest (CCI) has emerged as the preeminent institution for national planning and coordination. CCI is responsible for managing shared responsibilities across 18 subjects listed in Part II of the federal legislative list. The structure and functions of the entity have been revitalized, resulting in an expanded scope. There have been several constitutional efforts in past uphold provincial autonomy and resolve issues among federal and provinces but they proved to be unfruitful. The establishment and improvement of the CCI as stipulated in the 1973

[90] Assistant Professor, School of Law and Policy, University of Management and Technology
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constitution and updated in 2010, was viewed as a positive step towards promoting provincial autonomy and resolving lingering issues. This article aims to examine how successful federal dispute resolution has been since the implementation of the 18th amendment in its pursuit of harmonizing relationship among center and provinces.

INTRODUCTION; Under the Constitution of Pakistan 1973, Council of Common Interest (CCI) was established as a body for resolving disputes between the federal and provinces.[93] In order to ensure participatory federalism, part II of the federal legislative list was created, which focuses on the common interests of the federal government and the provinces. The council provides a special and quite useful venue for the provinces and the center to settle political and economic concerns and to foster a climate that is favorable to peaceful and working relationships in order to ensure amicable solutions for economic and political issues.[94]

When the civilian government recuperated control of the country in 2008, it initiated an across the board constitutional reform program. As decided in the 2005 "Charter of Democracy," the package was adopted in the 18th constitutional amendment to bring back the 1973 constitution that was in effect prior to October 12, 1998.[95] The aforementioned change reinstated the dispute

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[93] Shahzad Munawar and Muhammad Mushtaq, 'Evolution of Federalism in Pakistan: A Constitutional Study' [2022] P 473

[94] Adeney, K. (2012). A step towards inclusive federalism in Pakistan? The politics of the 18th amendment. *Publius: The Journal of Federalism*, *42*(4), 539-565.

[95] Rabbani, Mian Raza. (2011). *a biography of Pakistani federalism: unity in diversity / Mian Raza Rabbani.* Islamabad [Pakistan] : Leo Books

settlement process between the provinces and federal. The amendment expanded the authority and duties of CCI, strengthening it even further. The 18th Amendment eliminated the Concurrent Legislative List (CLL) and delegated the control to provinces over 47 subjects and 17 ministries in three stages over the course of a year.[96]

Subjects concerning shared interest between the federal government and the provinces under CCI's jurisdiction are included in Part II of the Federal Legislative List.[97] Following the 18th Amendment, the CCI emanated as the regulating body and a primary venue for formulating policies for the mutual and shared interests of the federal government and the provinces.[98]

Prior to Pakistan's formation, the provinces were guaranteed the utmost degree of autonomy. For the purpose, the All India Muslim League (AIML) garnered support for the concept of Pakistan from several sub-nationalities in an approximant manner. However, Pakistan has mostly embraced federal form of government since its formation, which has sparked contentious discussions concerning federalism as the administrating mechanism in the country.[99]

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[96] Naseem, K., Mahmood, A., & Naazer, M. A. (2022). An Analysis of the Performance of the Council of Common Interest in Post-18th Amendment scenario in Pakistan (2010 to 2020). *Journal of Research in Social Sciences*, *10*(1), 1-18.

[97] Khan, I., Shah, H., & Ali, S. (2021). Political Economy of Conflict: An Analysis of Council of Common Interests in the Post-18 th Constitutional Amendment. *Turkish Online Journal of Qualitative Inquiry*, *12*(8).

[98] Zafarullah Khan, 'Future of Pakistani Federation: A Case Study of Council of Common Interests' [2015] 146- 160

[99] Asma-ul-husna [VNV] Faiz. (2015). *making federation work: Federalism in Pakistan after the 18th amendment*.

Polarization of society was the outcome of centralization which was based on majoritarianism along with prejudiced and one-sided approaches of constitutional frameworks. Especially, the scarcity of political and economic rights of federating unites of the country and the static dispute resolution structure marginalized provinces which eventually gave rise to their grievances. The negligence expanded the distance between central government and the provinces which led to uprisings which could be seen in the form of both peaceful, and occasionally violent resistance movements. Instances of insurgency were particularly prevalent in Baluchistan as well as what is now known as Bangladesh (formerly East Pakistan).[100]
In order to the address the concerns and grievances of the provinces and to further ensure the participatory federalism, the 18th Amendment established the "damage control system". After the 18th amendment, CCI has tackled significant national concerns *inter alia* the dispute over hydropower between Khyber Pakhtunkhwa Thus, it is critical to assess the extent of CCI's accomplishments in the years after the 18th Amendment. Additionally, is the CCI fulfilling its constitutional responsibilities? Or rather, how does the damage control system contrast in theory and implementation? This article endeavors to provide insights into these inquiries. The analysis is based on literary discourse drawing on the provisions of the Constitution of

[100] Adeney, K. (2012). A step towards inclusive federalism in Pakistan? The politics of the 18th amendment. *Publius: The Journal of Federalism*, *42*(4), 539-565.

Pakistan 1973 pertaining to CCI and conflict resolution between center and provinces.[101]

A Trip down the Memory Lane:

Pakistan is a multiethnic nation so the political and economic tensions as well as contentions between the center and the provinces must be addressed through an efficient conflict resolution mechanism. To deal with such issues, Pakistan has adopted diverse constitutional measures to address the tension and disputes between provinces and the center over the passage of time. For the purpose of better comprehension, it is important to discuss the colonial legacy of a centralized federal organization with some constitutional measures, a one-unit plan, and some institutional structures.[102] Unfortunately, the process of peaceful conflict resolution between the center and federating units proved to be inert and inefficient in pre 18th amendment scenario[103]. As a result, inequalities and injustices grew throughout the time and ignited ethnic tensions. The fall of Dhaka in 1971, merely two decades after gaining independence was a direct result of political and economic discriminations that fueled this ethnic turmoil.[104]

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[101] Irfan Khan and Bakhtiar Khan, 'Dispute Resolution Mechanism in Pakistan: An Analysis of council of Common Interest after 18th Constitutional Amendment' [2020] Pakistan Journal of Humanities & Social Sciences 63 – 82

[102] Zafarullah Khan, 'Future of Pakistani Federation: A Case Study of Council of Common Interests' [2015] 146- 160

[103] Shah, S. A. A., Shah, H., & Shah, B. S. S. A. (2021). The Eighteenth Amendment and its Impact on Function ability of Provinces. *FWU Journal of Social Sciences*, *15*(1), 67-80.

[104] Irfan Khan and Bakhtiar Khan, 'Dispute Resolution Mechanism in Pakistan: An Analysis of council of Common Interest after 18th Constitutional Amendment' [2020] Pakistan Journal of Humanities & Social Sciences 63 - 82

Notably, the belief that a centralized state would ensure Pakistan's prosperity has been proven to be a failure. The imprudent approach of centralists transformed the country into a "garrison state." Repeated military interventions not only disrupted democratic and federal structures but also reinforced Majoritarianism in the form of centralization.
Following the 18th Amendment, Council of Common Interest (CCI), National Finance Commission Award (NFC), and National Economic Council (NEC) were established by the Constitution of Pakistan 1973 as the formal authority to resolve disputes and to make amends for historical injustices.[105] The section II of the Federal Legislative List set forth the common interests of the federation and the provinces, which are governed by these institutions. Although constitution of 1973 was originally adopted by consensus among major political parties, its federal parliamentary structure was disrupted by subsequent military interventions. The functioning of these institutions came to a halt as the entire constitution went into abeyance during martial law and emergencies under Zia-ul-Haq and Pervez Musharraf's rule. Subsequently, the president exerted control over the institutions' powers and functions. Moreover, this centralized approach hindered representation of smaller federating units of the state.[106]

A Timeline of Approaches for Federal Dispute Resolution in Pakistan

Pakistan's society is characterized by a diversity of social, cultural, ethno-political and linguistic identities. As a

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[105] ibid

[106] Adeney, K. (2007). *Federalism and Ethnic Regulations in India and Pakistan.* New York: PALGRAVE MACMILLAN

federal nation facing complex sub-nationalities, Pakistan has had to implement various mechanisms in order to promote national integration and ensure equal economic, political and social development throughout the country. Therefore it is necessary to briefly outline these conflict resolution strategies that have been utilized in Pakistan since gaining independence under different constitutions.[107]

The idea of Federal State: Pakistan has been a federal state from the beginning, but this idea has not always been reflected in reality. Initially, it adopted the 1935 Indian Act with some amendments as an interim constitution that concentrated power at the center. In 1956, Pakistan created and implemented its first-ever constitution based on federalism; unfortunately, it proved ineffective. In 1962 President Ayub Khan introduced his own version of a Constitution that established a federated presidential framework aiming for more decentralized authority distribution; however just like previous attempts, this also led to martial law declaration due to political unrest resulting from inefficiencies of governance. Following the separation of East Pakistan, a new constitution was formulated in 1973 that incorporated significantly greater federal and consociation elements than its predecessors.

Consociationalism: Effective measures were taken in order to accommodate and provide favors to the underprivileged and neglected segments of society. The All India Muslim League advocated for these confederational policies prior to independence by demanding the highest level of province autonomy. Small

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[107] Hamid Khan (2012). *Political and Constitutional History of Pakistan*. Lahore: Oxford University Press.

provinces, which were promised maximal provincial autonomy and balanced development, wanted the same after independence. Previous constitutions had some provisions, but those were undermined during military dictatorships. The 1973 constitution contained a greater number of consociational measures than previous versions; however, weak political will prevented oppressed classes from receiving adequate redressal and opportunities towards achieving their grievances' ultimate goals.[108]

Islamic Ideology: Similar to pre-independence scenario, Islam was employed by Pakistan's civil and military leaders to assert legitimacy for their actions. Despite the fact that, a separate state was demanded on the principle of "Two Nation Theory," unfortunately, this concept was manipulated to gain sympathy and to engender confusion among people by casting aside the original goal of establishing a welfare state envisioned by founding fathers.

The four provinces of West Pakistan were combined into one in order to counterbalance East Pakistan's numerical advantage. These provinces saw the dissolution of their provincial governments, and a single administration centered in Lahore (which was in Punjab and served as both the federal capital of Pakistan, which was then relocated from Karachi to Islamabad in 1960, and the provincial capital of West Pakistan). The formation of One Unit took place back in 1955 but ultimately came to an end when Yahya Khan dissolved it come 1969. National assembly seats under this regime were allocated via parity

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[108] Adeney, K. (2007). *Federalism and Ethnic Regulations in India and Pakistan.* New York: PALGRAVE MACMILLAN

formula regardless of population size, something Bengali power elites consented to since their language, Bengali, had been granted national status on par with Urdu.[109]

The adoption of the federal system in Pakistan was considered more suitable for its diverse society since its establishment. To resolve political and economic disputes between the central government and provinces, institutions such as CCI, NEC, and NFC were established alongside a democratically elected Parliament with an upper house to maintain balance. However, these bodies created more tension than resolving issues over time by remaining passive entities. The divide between ruler vs ruled populations grew rather than being minimized across regions due to ineffective distribution of resources including natural resource ownership concerns at their core.

In the 1973 constitution, the dispute resolution mechanism holds significant importance for Pakistan's plural society and participatory federalism. This is not a new concept as inter-provincial coordination has been present in Pakistan since independence, with roots dating back to the adoption of the 1935 Act which served as an interim constitution.[110] According to Section 135 of the 1935 Act, his Majesty's government was authorized to establish an inter-provincial council for any disputes between provinces or matters of common interest Furthermore, the dispute resolution mechanism in the 1956 constitution which enumerates that "Under its original jurisdiction, the Supreme Court has the

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[109] Hamid Khan (2012). *Political and Constitutional History of Pakistan*. Lahore: Oxford University Press.

[110] Asma-ul-husna [VNV] Faiz. (2015). *making federation work: Federalism in Pakistan after the 18th amendment*.

authority to address any issue or disagreement that arises between provinces and the federal government."[111]

In addition, the 1956 constitution supplies provisions for establishing a council of interprovincial coordination under Articles 130 and 156. If there are any matters that concern multiple provinces, Article 130 allows the president to create this council and outline its structure and responsibilities. Meanwhile, Article 156 covers the formation of the NEC. Additionally, another important element provided by the constitution is NFC.[112] The 1962 Constitution has incorporated a dispute resolution mechanism similar to that of the 1956 Constitution, with some modifications. Unlike its predecessor, it does not utilize Article 130's Inter-Provincial Coordination; however, it preserves both the NEC and NFC mechanisms. The constitution allows the provinces to create laws on remaining subjects through Article 132, yet federal control is emphasized by Article 131. Specifically stated in Clause 2 of this article is that when considerations such as economic or financial stability, planning or coordination and achieving uniformity throughout any part of Pakistan are necessary for the national interests then central legislature can enact laws applying to every region within the country.

The 1973 constitution incorporates the NEC to address economic planning and eliminate inequalities. The NFC is responsible for allocating financial resources from the

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[111] Syed, F. Z., Mubariz, S., & Shah, S. N. J. (2020). Provincial Demands for Self-rule and Shared-rule under the 18th Amendment in Pakistan: An Assessment. *Journal of Politics and International Studies*, *6*(01), 149-163.

[112] Syed, F. Z., Mubariz, S., & Shah, S. N. J. (2020). Provincial Demands for Self-rule and Shared-rule under the 18th Amendment in Pakistan: An Assessment. *Journal of Politics and International Studies*, *6*(01), 149-163.

divisible pool, whilst the CCI handles shared interests listed in part II of the legislative list. In case of unresolved disputes, a joint session of parliament acts as an intermediary after CCI consultation; if necessary, dispute resolution can be referred to Supreme Court original jurisdiction when issues arise between center and federating unit[113]

The 'Damage Control' Activation

To develop a comprehensive set of reforms, the Special Constitutional Reforms Commission was created in 2008 after civil administration was restored. Led by Senator Raza Rabbani, this committee drafted and proposed the reform package known as the 18th Amendment to The Constitution which received legislative approval. Full restoration of the original 1973 Constitution occurred upon passing this amendment along with improvements mechanisms for "damage control" through effective devolution. The concurrent legislative list was removed from the constitution, and the provinces were granted more authority. This included transferring authority over many subjects from federal government jurisdiction to provinces, as persistently demanded by the provinces. Moreover, it enhanced the effectiveness of sharing management of subjects listed in Part II of the Constitutional Federal List so as to promote cooperation amongst center and provinces. Should any conflicts or dissent arise between central and provincial governments over these connections, either party involved may present their concerns to the CCI for resolution. If unsolved at this

[113] Shah, A. (2012). The 18th constitutional amendment: glue or solvent for nation building and citizenship in Pakistan?. *The Lahore Journal of Economics*, *17*, 387.

point, matters will be addressed through a joint parliamentary session. Following the 18th amendment's implementation CCI became the most influential national policy-making organization.[114]

The "damage control system" introduced by the 1973 constitution, namely CCI, NFC and NEC were largely ineffective. From its implementation until 2010, only 11 meetings were held by CCI despite being suspended and transformed into a quasi-presidential institution by military rulers. Prior to the 18th amendment, the president could appoint any federal minister as head of CCI while cabinet division served as its secretariat. However, after the amendment in 2010, the role and importance of CCI was enhanced significantly. The National Economic Council (NEC) faced similar challenges as well but NFC remained controversial without implementing its seventh award.[115]

The Establishment of Council of Common Interest (CCI)

For the purpose of regulating and coordinating policies pertaining to Part II of the federal legislative list through an effective interprovincial coordination forum, the 1973 constitution established Council of Common Interest (CCI). The CCI was established as a constitutional body to improve the troubled relationship between the provinces and the central. The federal system's fundamental component is regarded as the dispute settlement

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[114] Zaman, A., Subhan, F., Mumtaz, A., & Khan, A. Q. (2018). 18th amendment & provincial autonomy: challenges for political parties. *Bi-Annual Res J, Balochistan Study Centre, University of Balochistan*.

[115] Majeed, G. A., Qureshi, M. I., & Qayum, S. (2021). Impact of the eighteenth constitutional amendment on provincial autonomy in Pakistan. *Pakistan Journal of Humanities and Social Sciences Research*, *2*, 213-223.

process.[116] Although included in the 1973 constitution, the CCI provisions were essentially inoperative. This section provides a quick evaluation of CCI's performance.

Structural Reforms after 18th Amendment

The 1973 Constitution's Article 153 outlines the structure of the CCI. It enumerates that, following the Prime Minister taking oath, a CCI will be formed within thirty days with him/her serving as its chairman. The chief ministers from all four provinces and three individuals appointed by the prime minister from time to time shall also serve on this council. In addition, for enhanced accountability purposes, the Majlis-e-Shura (Parliament) is responsible for overseeing CCI operations as it must submit an annual report to both houses of Parliament. To further promote effective functioning, a permanent secretariat is required according to constitutional provisions while council meetings must take place once every ninety days.[117]

The CCI's functions and responsibilities are governed by Article 154, which outlines its role in formulating policies listed in Part II of the Federal Legislative List. Additionally, the Council is responsible for supervising related institutions and convening meetings as requested by any federating unit or the prime minister on urgent matters. After the implementation of 18th amendment, shared ownership of natural resources has become a contested issue between smaller provinces and center. The

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[116] Muntzra Nazir, 'The Problems and Issues of Federalism in Pakistan' [2008] Journal of Pakistan 109 - 128

[117] Irfan Khan and Bakhtiar Khan, 'Dispute Resolution Mechanism in Pakistan: An Analysis of council of Common Interest after 18th Constitutional Amendment' [2020] Pakistan Journal of Humanities & Social Sciences Research 63 - 82

council should work towards easing tensions around these interests to prevent disagreements among parties. Any dispute that arises between the provinces or between the center and the provinces will be presented before the CCI, and if the CCI is unable to reach a consensus by a majority vote, the matter may be brought before the parliamentary joint assembly, where the decision made will be final.
Electricity has been moved from the concurrent legislative list to Part II of the constitutional federal list, following its abolition.[118] The institution is responsible for resolving matters related to royalty and common interests between provinces and the center. Additionally in the same manner, Article 155 stipulates that the matter may be brought up and referred to the CCI in writing by the provinces, the federal government, and the former Federally Administered Tribal Areas, as well as "any of the inhabitants thereof in water from any natural resource or supply or reservoir, have been or likely to be affected prejudicially."[119]

Post 18th Amendment Scenario

The Legislature, the Executive, and the Judiciary are the three main pillars of the state that have been affected by the institutional changes brought by the 18th Amendment. It has broadened the definition of the fundamental rights protected by the constitution. Legislative authority and federal-provincial political and fiscal ties have been reinterpreted by the amendment. A novel idea of institutional power through the Parliament, provincial

[118] Muhammad Ahsan Rana, 'Decentralization Experience in Pakistan: The 18th Constitutional Amendment' [2020] Asian Journal Management Cases 64
[119] Aliya, Y., & Qazi, B. D. M. N. A. (2024). Provincial Autonomy under the 18th Amendment in the 1973 Constitution of Pakistan. *GUMAN*, *7*(1), 142-158.

legislatures, and federal forums such as CCI and NEC has also been established by the amendment.[120] The 18th constitutional amendment, which reclaimed the 1973 constitution, "amended 36% of the constitution's contents."[121]

"The Concurrent Legislative List was removed from the Fourth Schedule, along with some inclusions and exclusions in the Federal List (Part I and Part II)," as well as the Sixth and Seventh Schedules were deleted.[122] The amended law created a stronger and more capable CCI, which serves as a more efficient shared responsibility system. The prime minister is the chairman of the aforementioned amendment. Since CCI was required to give an annual report to both houses of parliament, it also held the organization accountable to them. Furthermore, as stated in the 18th Amendment, CCI must have a permanent secretariat. It will convene once every ninety days, and any impacted body may call extra meetings at their request.[123]

With the transfer of electricity to the Federal List Part II (as previously indicated, other Concurrent List items were delegated to the provinces), the comprehensive reform package of 2010 expanded the jurisdiction of the CCI. The administration of public debt, ports railways electricity, natural gas and oil, federal regularity authority, national

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[120] Zafarullah Khan, 'Future of Pakistani Federation: A Case Study of Council of Common Interests' [2015] 146- 160

[121] Asma-ul-husna [VNV] Faiz. (2015). *making federation work: Federalism in Pakistan after the 18th amendment*.

[122] Zafarullah Khan, 'Future of Pakistani Federation: A Case Study of Council of Common Interests' [2015] 146- 160

[123] Irfan Khan and Bakhtiar Khan, 'Dispute Resolution Mechanism in Pakistan: An Analysis of council of Common Interest after 18th Constitutional Amendment' [2020] Pakistan Journal of Humanities & Social Sciences Research 63- 82

planning and economic coordination, and the census are additional significant items that augment the responsibility of the CCI. It may out to be a useful mechanism, but sadly, political inertia has prevented it from ever being completely functional. Governments have frequently been charged with outright violating the constitution for neglecting to call regular sessions[124].

The constitution stipulated that shared ownership of natural resources would be allowed. If there was disagreement, the matter could be brought before the CCI or, if that was not possible, it could be referred to the joint parliamentary meeting, where the decision would be final.[125]

Critical Exposition

It is lamentable that the CCI forum has not been used to its full potential. The council was intended to play a key role in interprovincial relations and serve as a conflict-resolution tool. Nonetheless, the 18th Amendment significantly altered the constitution and improved democratic and participatory federalism. It has taken on significant national importance issues in the post-18th Amendment era, such as the hydropower royalty dispute between the federal government and Khyber Pakhtukhwa province, the census, issues pertaining to the national mineral policy and its formulation, water distribution issues, issues pertaining to oil and gas development, and

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[124] Ahmad Mehmood Zahid, 'Institutional Analysis of council of Common Interests (CCI) –A Guide for Functionaries' (UNDP Center for Civic Education in Pakistan 2013)

[125] Irfan Khan and Bakhtiar Khan, 'Dispute Resolution Mechanism in Pakistan: An Analysis of council of Common Interest after 18th Constitutional Amendment' [2020] Pakistan Journal of Humanities & Social Sciences Research 63- 82

the development of basic infrastructure in various sectors encompassing social, economic, and political aspects.[126]
The National Finance Commission (NFC), NEC, and CCI, the three components of the 1973 constitution's "damage control system" remained mostly ineffectual. Just eleven CCI meetings were conducted from the 1973 constitution's adoption and 2010. The military overlords suspended it, and it was later transformed into an institution akin to a quasi-presidential one. Prior to the 18th Amendment, the cabinet division functioned as its secretariat, and the president may name any federal minister as its head. 2010 saw the enactment of the 18th Amendment, which expanded the scope and significance of CCI. These were also the National Economic Council's (NEC) requirements. But NFC continued to be contentious in the absence of the seventh award.
To conclude, it is reasonable to say that the CCI is equivalent to the cabinet division (However, there are certain issues and complexities that are causing problems for the center and federating units, such as the failure to establish a permanent secretariat, the failure to hold meetings within the parameters set forth in the constitution, and the cabinet's decision to circumvent the council, among other things. The tiny provinces had received some respite from the 18th Amendment and the 7th NFC award. Some of the significant corrective measures include the multi-standard methodology used in the 7th NFC award, the devolution of seventeen ministries to the provinces under the 18th Amendment with varying

[126] Irfan Khan and Bakhtiar Khan, 'Dispute Resolution Mechanism in Pakistan: An Analysis of council of Common Interest after 18th Constitutional Amendment' [2020] Pakistan Journal of Humanities & Social Sciences Research 63- 82

levels of administrative and revenue-raising authority, and shared ownership of natural resources.[127] 2009 saw a partial resolution of the Khyber Pakhtukhwa hydroelectric royalty problem.

The center and the government of Khyber Pakhtukhwa inked an MOU in 2016 that was approved by the CCI in order to clear the outstanding debts. It is unreasonable to anticipate that the 70-year-old problems would be resolved overnight, but it is crucial that the CCI's consultation process continue. When it comes to reaching an agreement on matters of national significance that have impacted the center-provinces relationship over time, the CCI's function as a venue for conflict settlement is thought to be crucial. Another significant topic that is vital to Pakistani federalism and has reignited the debate over Punjab vs the smaller provinces is the China-Pakistan Economic Corridor (EPEC). A number of project components fall within the CCI (common interests) framework, including public debt, power, ports, railroads, and national planning and economic coordination. This is important because the CCI is in charge of developing regulations and policies for investments in ports, railroads, mining, oil, natural gas, and electricity all of which are important CPEC-related sectors.[128]

We would have anticipated the CCI to be heavily involved in the design and execution of the CPEC given its restored prominence and the province's concern over the CPEC's

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[127] ibid

[128] Boni, F., & Adeney, K. (2020). The impact of the China-Pakistan economic corridor on Pakistan's federal system: the politics of the CPEC. *Asian Survey*, *60*(3), 441-465.

implementation strategy.[129] On the other hand, the province disregarded requests for five years to discuss the idea. Except for one meeting on February 26, 2018, which took place in December 2019, there is no specific reference of China-Pakistan Economic Corridor (CPEC) in the meeting minutes from 2010 to May 2017.[130]
Additionally, the Senate Special Committee on the CPEC recommended that the Council of Common Interests be given authority of the project because of its centralized and shared interest structure.[131] In the framework of CCI, the CPEC discussion raises the possibility that the federal government circumvented the forum through centralized decision-making. It is important to note that the CPEC decision-making process was further centralized through the formation of a cabinet committee, which is still in operation under Premier Imran Khan, to enable former Prime Minister Shahid Khaqan Abbasi to make significant decisions on his own without considering the provinces.[132] Democracy is a constantly ongoing process that involves

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[129] Filippo Boni and Katherine Adeney, 'The Impact of the China-Pakistan Economic Corridor on Pakistan's Federal System: The Politics of the CPEC' (2020) Open Research Online <https://oro.open.ac.uk/67205/8/AS6003_02_Boni_and_Adeney.pdf> accessed on 17 November 2023

[130] UNDP. (2013, September). Three Day International Conference on Participatory Federalism and Decentralization: From Framework to Functionality. Retrieved from www.undp.org/: https://www.undp.org/sites/g/files/zskgke326/files/migration/pk/4e68ab67b889833848d913aa3fb9cc2c4f83b2b3553d0f3589a8c08769e4d14e.pdf

[131] Ali, Q., Qasmi, S. U., & Raza, K. (2023). Opportunities and Challenges for the Provinces after the Eighteenth Amendment. *Pakistan Social Sciences Review*, *7*(3), 1013-1024.

[132] Ahmad, S., Bhatti, M. F. N., Qureshi, F. N., & Ahmad, S. (2023). The Central & Provincial Relationship in the Context of 18th Amendment :(A Case Study of Punjab Province). *Al-Qanṭara*, *9*(4), 388-403.

change and Pakistan is undergoing a transition to democracy.

It would take some time for democratic institutions and the parliament to gain traction during this period of transition (Rabbani, 2016). Historically, the biggest obstacles to the federal system and province autonomy have been corruption and poor government. The 18th Constitutional Amendment is only the start of Pakistan's journey towards province autonomy and a sane federal structure. To Zafrullah Khan, "The 18th Constitutional Amendment is unquestionably not a magic bullet for all the ills this country faces as a result of the long-standing denial of democracy and disregard for claims for provincial autonomy." However, this might be seen as a paradigm change to recover Pakistan's natural federal spirit and identity.

Concluding Remarks

In diverse societies like Pakistan, dispute resolution mechanisms play a multifarious role. This Article was an attempt for a detailed discussion on Pakistan’s Federal dispute level mechanism and the structural and functional modifications made to the CCI by the 18th Amendment that how it operates now has been held. By granting the CCI broad authority, the 18th Amendment reorganized the organization and improved its standing. Regulatory agencies, water distribution among provinces, royalty from natural resources, and other significant issues between the federal government and provinces have all been addressed by CCI in the post-18th amendment. Theoretical and practical differences about constitutionalism still exist, nevertheless. The amendment specifies that the CCI will hold regular meetings after ninety days, yet this is not taking place. Additionally, the CCI was frequently disregarded during the PML (N)

administration, and decisions about matters were made in the cabinet regardless of their nature. In summary, the 18th Amendment significantly altered the Pakistani federation's dispute settlement procedure and quickened the pace of the process. Nevertheless, there are still issues with the implementation process that might be resolved with political will and constitutionalism.

Suggestions

It may be suggested that in order to prevent the council meetings from having an encumbered agenda and from further straining relations between the center and the provinces, the government should carry out its constitutional duties of calling sessions and forming the CCI on a regular basis. It is imperative that shared center-provinces cease avoiding the CCI. Subordinate legislation should be completed, and the ambiguous provisions of the constitution should be clarified. In addition, as stated in the constitution, the CCI should create a permanent secretariat. Acquaintance with mainstream politics would certainly increase if ethnic identities were acknowledged and fairly integrated into institutions, which is something that important.[133] In order to guarantee participatory federalism, the CCI might be quite important in this regard.

It is critical that the democratic process continues. Pakistan is now going through a period of change. A lawful civilian administration had peacefully taken control from a democratic one. To improve ties between the center and minor provinces or the center and provinces and

[133] Irfan Khan and Bakhtiar Khan, 'Dispute Resolution Mechanism in Pakistan: An Analysis of council of Common Interest after 18th Constitutional Amendment' [2020] Pakistan Journal of Humanities & Social Sciences Research 63- 82

address their problems, the Seventh NFC Award and the Eighteenth Amendment are only the beginning. For the sake of national cohesion and integrity, plurality acceptance and acknowledgment are vital. It will guarantee the idea of harmony among differences. Every institution ought to function within the bounds of the constitution. The beginning of an intra-institutional conversation to resolve disputes over jurisdiction, put a stop to past grievances, and cooperate to achieve national goals.[134] Owing to the significance and nature of the CPEC project, regular talks in the CCI meetings ought to occur. Its significance is multifaceted: the project aims to bring the neglected and underdeveloped areas (provinces) up to par with the advanced regions; discussions and the fair distribution of projects under the CPEC are crucial because the constitution states that any injustices from the past should be made right.

[134] Ahmed, I. (2020). The 18th amendment: historical developments and Debates in Pakistan. *ISAS Insights*, *641*, 1-6.

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

ASAD RANDHAWA[135]*
DR. MIRZA SHAHID RIZWAN BAIG[136]**

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

Keywords: Grundnorm, objective resolution as a preamble, Ar.2A.

INTRODUCTION: Pakistan appeared as an Islamic state on the chart of the globe. Behind their independence, there

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

The major purpose of making a separate land is to order their lives according to the injunctions of Islam's Holy Quran and Sunnah. For the accomplishment of this purpose, law authorities started their struggle in the formation of a constitution and made the 1956 and 1962 constitutions but due to some insufficient provisions above mentioned constitutions did not stand. After that in 1970, the chosen representatives prepared a sketch for Pakistan Constitution. And in 1972, lawmakers institute a meeting in which they thoroughly discuss the major purpose of the Constitution. The charge of the constitution was first assigned to Mehmood Ali Kasuri but after that, it was transferred to Mr. Pirzada. Finally, the sketch was prepared by the Ministry of Law and represented before the Assemblies in 1973. There were a lot of suggestions proposed by opposition parties and another member of the assembly and suggestions were considered. The 1973 constitution was approved by a majority of members and signed and enforced on the 14th of August, 1973.

The basic structure of the Constitution is based on Islamic provisions. In rights of minorities, rights of women, rights of inheritance, rights of the judiciary, parliamentarians' rights were also discussed. Because these rights were

infringed in the past by British rules and also by Hindus. To cater to this problem Liaqat Ali Khan proposed the Objective resolution in the first constituent assembly of Pakistan. It was proposed in 1949 on 7th March. The major elements of objective resolutions were-

- Sovereignty is ultimately in the hands of Allah.
- Allah Almighty deputed the powers to the people who perform their duties under the umbrella of Islam.
- Constitutional assembly makes a framework of the constitution.
- The elected persons shall perform their powers under the domain of Islam.
- The major rules and principles of equality, democracy, tolerance, freedom, and social justice must be protected under the injunctions of Islam.
- Muslims shall spend their lives under Islam and no one can infringe this right.
- The rights of minorities (Hindus, Sikhs, Christians, etc.) were also discussed in which they freely practice and profess their religion without any obstacle. And lawmakers shall institute specific provisions for their rights.
- The judiciary must be independent in its affairs.
- The state shall safeguard to ensure equality before the law and their fundamental rights must be protected like economic, social, and cultural life and also got freedom in belief, thought, religion, and make lawful association.
- Federal form of government shall be administered in the country and other subsidiary units got the status of province.
- The other rights like the right to land, rights on the sea, and right to air shall be prevented and guaranteed by the authority of the state.

- And lastly, international peace and security shall be protected in any circumstance[137].

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

Research Questions:

The research aims to answer-

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

Research Methodology:

The present research was conducted to determine the legal status of objective resolution in our constitution and checked its interference. The work of this research is qualitative. The research has been explored by reading different research articles, histories, and judgments on objective resolution and after taking a theoretical view this

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

study becomes comprehensive and coherent in form. This study covers all the areas that were necessary for the observation and implication Of Ar.2A.

Objective resolution as an operational article of the Constitution:

During the framing of objective resolution as a preamble of the constitution, there was also a discussion on taking a preamble as an operational article of the constitution.

Some of them are in favor of this debate while others negate it. Then after a lot of discussions, the preamble was inserted in constitution provisions with the name of Ar.2A and taken as a **"substantive part of the Constitution"**. The Ar.2A was included by **"presidential order No.14 of 1985"** dated March 2, 1985. The Ar.2A provision was enumerated in Constitution by General Zia-ul Haq in presidential power. After the addition of Ar.2A a lot of questions were raised like what was the need of Ar.2A in the presence of the preamble? And what was the intent of Zia behind the promulgation of Ar.2A? All these questions create a panorama in the minds of legislative authorities.

Firstly, after the enumeration of provisions, Ar.2A clears that the rights and duties mentioned in Quran and Sunnah create an obligation for everyone to oblige it. In this compliance of injunction of the Quran and Sunnah become the supreme law of the land and no one can derogate from it. And any law made against the injunction of Islam becomes null and void[138]. The next question arises how these rights were enforced? Or what was the authority behind the Constitution to enforce these rights or provisions? So, the enforcement of constitutional provisions must be in the hands of the court to ensure the

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

full compliance of injunctions of the Quran and Sunnah. The judges are duty-bound to see the cases in the light of Islam. The exact wording of Ar.2A is-

"The principles and provisions set out in the objective resolution reproduced in the ANNEX are hereby made substantive part of the constitution and shall have effect accordingly[139]"

Historical development of Pakistan on Ar.2A:

According to the provision of Ar.2A, the objective resolution was embodied as a substantive part of the constitution. In the history of Pakistan, Muslim leaders showed different views about the status of a preamble and Ar.2A. Like in the **Hakim Khan case**, the judge gave his view regarding the amendment situation on Ar.2A. In this judgment, it was not the intention of the legislators to make the objective resolution as an unamendable document[140]. Liaquat Ali Khan at the time of the proposal of Objective resolution prescribed the importance of the preamble" It is the main principle that is incorporated in the constitution on which the whole system of Pakistan relied". On the other side, the great leader of Pakistan Abdur Rab Nishtar in his declamation said "By its very nature Objective resolution is not a constitution"[141]. Another Muslim leader Nazir Khan showed his view on the status of objective resolution that the "objective resolution present in the state of preamble but it's not whole a constitution although it was just based on the

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

[140] PLD 1992 SC 595

[141] The constitution of Islamic Republic of pakistan,1973 by Abdul Basit, commentary, pg.76

injunctions of Islam and Pakistan made on the agenda of a separate Islamic state"[142].

The law Minister Hafeez Pirzada also elaborate on the status of the preamble (objective resolution)-

"He cleared that it was not the aim of the legislator to make the objective resolution (preamble) as an operational article of the constitution. And also shed light on the point that many people consider the Grundnorm of the constitution or a basic structure of the constitution. He negated this point and said that where the constitutional provision is easily understandable and there was no doubt in it in this case the preamble cannot be taken as an interpretive force. And many of the judges like the Supreme Court and High Court prescribed the vision on the Grundnorm or basic structure of the Constitution. In which they cleared that the preamble cannot be taken as an unamenable (supra-constitutional) document. But where the ambiguity persists in the provision of the constitution then they can take help from the preamble and cannot go beyond from the major purpose of constitution that was based on Islam"[143].

Examination of Basic Structure theory in light of Pakistan Cases:

The word basic structure theory means every constitution has been based on the basic structure and neither can deviate from it nor should it be deleted from the constitution. This theory was the first time provided in Indian judgments. And later on, Malaysia, Bangladesh, and Pakistan also used this theory in constitutional cases.

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[142] Nazir khan, in his speech the minister of the government presented the status of objective resolution.

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

Because every independent and sovereign state's constitution has basic features and principles on which the whole system was based. Based on this theory, it was a supra-constitutional thing or unamendable and neither Parliament amended it nor the judiciary. The above theory was also mentioned in the research project of German law professor, named Dietrich Conrad[144].

According to the above introduction of "BASIC STRUCTURE THEORY", the Indian Supreme Court supports the basic structure theory in his renowned judgment "**Kesavananda Bharati case"**, which explained that our constitution is based on some basic rights that cannot be changed by the legislature (or by the Parliament). And in this scenario, if the legislature made any law that was inconsistent with those fundamental rights that were mentioned in Indian Constitution then the judiciary has the power to annul the provisions or amendments. Similarly, in another judgment of India which Supreme Court declared the constitutional 39th and 42nd amendments null and void on the base of the doctrine of "BASIC STRUCTURE THEORY"[145].

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

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

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

In Pakistan's history, the word Basic Structure Theory matter first time was raised in the "**Asma Jilani case"**, in which the status of the preamble was determined by the Supreme Court. Chief Justice Hamood-ur-Rehman in his detailed judgment prescribed that, Pakistan has its own basic norm or basic principle in the form of objective resolution but the apex court did not authorize the basic principle to annul any provision of the constitution. So, in this case, the supreme court of Pakistan negates the idea of the "Basic Structure Theory" given by the Indian Supreme Court. According to this judgment basic structure theory persist just for the sake of determination of basic features or principle of the Constitution[146].

Another important case was "**Mahmood Khan Achakzai vs. the Federation of Pakistan"**. In this case, Sarmad Jalal Osmany Justice recognized the basic features of the constitution that are amalgamated with Islamic law including; a parliamentary form of Government, the judiciary must be independent in their work, and last one is Federal state. In this Judgment, Sarmad Jalal also refused the concept of "Basic Structure Theory". And clear that any article of the constitution cannot be null and void merely on the basis principle or basic norm of the constitution. In this case, claimants filed a case on behalf of basic structure theory to annul the 21st amendment and also raised a point on the legislature to eradicate or to amend any provision[147]. But on the other side, the apex court has declined the ability of "objective resolution" to terminate or annul any provision although the meaning of the provision was clear and absolute.

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[146] PLD 1972 SC 139

[147] PLD 1997 SC 426

Another case in history was the "**Pakistan Lawyers Forum vs. Federation of Pakistan".** In this case, SC also denied annulling any provision or article on the base of the basic principle of the Constitution but some perceive or acknowledged the concept of "Basic Structure Theory"[148]. The most important case of 1972, "**Zia-ur-Rehman vs. State".** In this case, SC again denied that the preamble has the power to annul any article or segment of the Constitution. In this case, one point was raised that in 1972 the "Objective Resolution" was not included as an article of the constitution so how the preamble alone supersedes the other provisions or articles of the constitution[149].
According to the above discussion and take a purview of judgments some points are inferred that the preamble was just taken as a document, and on its judiciary cannot annul any article of the constitution. And the judges denied the Basic Structure Theory concept that was introduced by Indian Supreme Court. Although Objective Resolution is a basic structure of the Pakistan Constitution that was especially based on our Islamic provisions but on the other side if the other provisions are clear and there was no contradiction between Islam and the article then cannot be null and void by the preamble.

Judicial Interpretation and Article. 2A:

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

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[148] PLD 2005 SC 719
[149] PLD 1973 SC 49

The most important cases in history were "**Kaneez Fatima vs Wali Mohammad"[150].** In this case, Wali (husband) has pronounced the dissolution of
Marriage or divorce from her wife (Kaneez). He just wants to get separation from her due to a lot of reasons. But under the **"Muslim Family Law Ordinance"** when the husband gives divorce to the wife then he his duty bound to send a notice to the **"Union Council Chairman"** and after that he also sent the copies of Talaq notice to the wife[151]. But Wali Mohammad divorced and didn't comply with this provision. There was also a provision under this Ordinance if any person doesn't fulfill the requirement of the above provision then he is **"liable to punishment of imprisonment for a term of 1 year or fine which may extend to 5 thousand rupees or both"[152].** Due to the non-compliance with the provision his wife sued in court against her husband on the ground that the divorce has no effect and was not canceled. And she also demanded a maintenance allowance. But under Islamic law, the procedure was different, if a husband pronounced a Talaq once a time it becomes effective and cannot be revoked or canceled by any higher authority. This case showed a dispute between Islamic law (as per Article. 2A of the constitution) and local law (i.e. sec.7 of the Muslim. family law ordinance).
The next important case in history was "**Asma Jilani vs. the Government of Punjab and others"[153].** This case was filed against the father (Ghulam Jilani) of Asma Jilani. During the martial law of Yahya Khan, the order has been

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[150] PLD 1993 SC 901
[151] Section. 7 (1) of MUSLIM FAMILY LAW ORDINANCE.
[152] Section. 7(2) of Muslim Family Law Ordinance, 1961.
[153] PLD 1972 SC 139

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

Another case was "**Hakim Khan vs. the Government of Pakistan"[154].** This case raised an issue on declared death sentences by military courts during martial regimes. But after that in 1988, Benazir Bhutto give guidance to the ex-president of Pakistan to commute all the death sentences that were awarded by the military. The constitution of Pakistan "shall grant powers to the President to commute, reprieve, or suspend any sentence granted or awarded by any court, by any higher authority, or by the tribunal"[155]. This type of provision also existed under **"Pakistan Penal Code, 1860"** in which the "President shall have authority to remit, pardon, or terminate the death sentence"[156]. So, the Hakim Khan upraise the issue on that point that it was against the injunction of Islam that was prescribed under Article. 2A or objective resolution of the constitution. Under Islam, the commutation of death sentence authority was in the hands of Allah. And this created a contradiction between Ar.2A and Ar.45.

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[154] PLD 1992 SC 595

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

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

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

CONCLUSION:

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

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

ADVANCING COMMERCIAL DISPUTES RESOLUTION IN PAKISTAN: THE ROLE OF MEDIATION AND ARBITRATION

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ABSTRACT; Developing commercial dispute resolution in Pakistan is crucial for promoting economic stability and growth. This article examines the evolution and current state of business conflict resolution in Pakistan, highlighting the role of mediation and arbitration. Historically, Pakistan transitioned from customary conflict resolution methods to a formal court system inherited from British colonial rule, which soon became burdened with delays. To address these inefficiencies, Pakistan adopted alternative dispute resolution (ADR) mechanisms, governed by laws such as the Arbitration Act and the Alternative Dispute Resolution Act 2017. These legal frameworks, along with international conventions like the New York Convention and Singapore Convention, aim to enhance the efficiency and recognition of ADR processes. Despite the benefits of ADR—such as speed, cost-effectiveness, confidentiality, and the preservation of business relationships—challenges remain, including cultural sensitivity, enforceability issues, and limited awareness. The article proposes legislative reforms, institutional commitment, public awareness campaigns, and international collaborations to improve ADR effectiveness in Pakistan. Future research directions

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include the impact of technological advancements on ADR, comparative studies with other jurisdictions, the experiences of SMEs, and ethical issues in ADR processes.

Key Words: Commercial Dispute Resolution, Economic Stability, Mediation, Arbitration, Alternative Dispute Resolution (ADR)

INTRODUCTION; Developing commercial dispute resolution in Pakistan is important for encouraging economic stability and economic growth. As businesses and companies engage in more complex transactions and contractual agreements, the need for efficient methods of resolving disputes becomes more pronounced. Unresolved or mishandled commercial conflicts can pose serious obstacles to business operations and economic development. The article examines the intricacies of business conflict resolution in Pakistan with a focus on the part that mediation and arbitration play. The historical trajectory of commercial dispute resolution in Pakistan reflects the movement from old customary ways to a modern legal framework. In the past, when local leaders had wisdom and authority, they took responsibility for conflicts within their communities. Consequently, those methods were effective in their context, but formality or consistency was not part of them. When post-independence period began in Pakistan, it inherited its courts from the British colonial era. The establishment of formal courts provided a structured and legally recognized avenue for dispute resolution. Nevertheless, this formal court system soon faced a case backlog leading to delays and inefficiencies. These delays necessitated the adoption of alternative dispute resolution (ADR) mechanisms such

as conciliation Courts[159] and Arbitration which aimed at offering faster means of resolving matters with greater impact. Pakistan has a legal system controlling the process of mediation and arbitration, including laws such as the Arbitration Act[160] and Alternative Dispute Resolution Act 2017. These provide guidelines for arbitral and mediating processes ensuring principles of party autonomy, confidentiality, enforceability of settlement agreements among other principles[161]. Pakistan's arbitration landscape is still significantly influenced by the old Arbitration act 1940. It stipulates methods of carrying out arbitrations, appointing arbitrators, and enforcing arbitral awards. The establishment of this legislation in 2017 constitutes a major milestone in Pakistan's journey towards encouraging ADR systems. It outlines a comprehensive framework for various ADR alternatives like mediation, reconciliation or arbitration mechanisms such as conciliation. This puts much emphasis on personal autonomy so that contesting parties can choose their most preferred mode of resolving conflicts.

Another way in which Pakistan's involvement in international conventions such as New York Convention[162] and Singapore Convention[163] can improve the efficiency of recognition and enforcement of arbitral awards and mediated agreements. These frameworks facilitate ADR outcomes across borders by providing a

[159]The Conciliation Courts Ordinance, 1961.
[160]Arbitration Act, 1940.
[161]Alternative Dispute Resolution Act, 2017.
[162]Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).
[163]United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention).

validation mechanism that increases trustworthiness in relation to ADR systems within the country. This means that by following these universal criteria, Pakistan is able to have its own alternative dispute resolution mechanisms acknowledged worldwide thus promoting foreign investments and international business ventures. ADR processes, however, come with numerous benefits over traditional litigation hence making them a favored alternative for resolving commercial disputes. ADR mechanisms are usually swifter than court processes and provide in time resolutions of conflicts. Also, these mechanisms are relatively cheaper thus saving much time and money spent by involved parties. Some forms of ADR such as mediation emphasize on collaborative problem solving which assists to keep business relationships intact. It also allows more adaptable and customized solutions that suit the specific needs of the warring parties. Moreover, it is normal for ADR proceedings to be confidential thereby protecting sensitive information belonging to the parties from getting into public eyes. Simplification of ADR processes and making them more accessible would assist in procedural refinement. This can be done through international collaboration with worldwide ADR bodies which could help align Pakistan's practices with those internationally and benefit from the best practices in this area. For the local context to be relevant, however cultural competence has been a part of integrating into ADR practice. Strategic choices about dispute resolution may require businesses to take into account certain things including nature of the dispute, relationship between parties among other desired outcomes that will make ADR more effective. Additionally, it is also possible for ADR to significantly enhance justice accessibility by offering a quicker and

cheaper way of solving issues instead of being dragged through courts. Although expensive litigation can emanate from unresolved disputes thus adopting ADR mechanisms may enable companies reduce the risks associated with extended litigations as well as uncertain results. Though there are clear benefits from ADR processes, there are still numerous practical challenges, including cultural sensitivity, enforceability issues, limited awareness and education, complexity of ADR procedures and resistance to change. Cultural sensitivity is important because ADR methods must be suited to the local setting for them to work[164]. Enforceability concerns result from the challenges involved in making sure that legal systems support ADR outcomes. Widespread lack of awareness and education on ADR methods means that many businesses and legal practitioners alike do not fully comprehend its benefits or procedures thereof. Besides, it might be hard for all people to understand the complex nature of ADR procedures given that they often focus on specific fields and require training. Lastly traditional litigants usually resist change.

In order to avail effective outcome of ADR in Pakistan, there is need of changing of conventional law, institutional commitment, springing up of public campaigns on ADR and culture sensitive mechanisms, incentivizing parties to use other means of resolving disputes, as well as encouraging research and development. The initial step would be the implementation of legislative amendments with clear enforcement mechanisms and procedural rules that will guide ADR. To provide a more comprehensive

[164]Nottage, L. (2019). 'International Arbitration and Mediation: A Practical Guide.' Edward Elgar Publishing.

framework for ADR work updating existing legislation and enacting new one is necessary. Therefore specialized centers for ADR and training programs are instrumental in facilitating widespread utilization of this process within Pakistan. They provide the training required by mediators and arbitrators besides being resource centers for businesses and lawyers alike. Public awareness campaigns can help increase the take-up of ADR solutions. Informing companies about advantages of such approach will lead to its wider usage among them[165].Local cultural context requires integrating cultural competency through diversity programs. Incorporation of cultural values into resolution processes makes it easier to accept these methods by disputants due to their effectiveness at reaching consensus based agreements. ADR can be incentivized through legal recognition and support to encourage businesses to select ADR as opposed to litigation. Tax benefits like reduced legal fees for choosing ADR can also help influence its use. In this case, supporting academic research and international collaborations that contribute towards global standards regarding the practice of ADR will enable Pakistan to maintain its leading position in relation to ADR. Research is helpful in evaluating the effectiveness of ADR methods and identifying areas where they need improvement. Looking forward, future research directions include studies on the impact of technological advancements on ADR, comparative studies with other jurisdictions, experiences of SMEs with ADR and ethical issues in ADR processes. For example, studying how technological advancements have affected ADR like ODR

[165]Susskind, R. (2003). 'Online Dispute Resolution: Resolving Conflicts in Cyberspace.' San Francisco: Jossey-Bass.

platforms provides insights on ways technology may improve such systems. Comparative studies with other jurisdictions can identify best practices and lessons learned from other countries' experiences with ADR. On the same note, a study conducted which looks into small and medium size corporations involvement in the process of alternative dispute resolution would offer significant recommendations based on their unique circumstances and constraints that are faced by them. Finally, examining ethical considerations in alternative dispute resolution processes such as ensuring fairness in them could enhance confidence building measures within these mechanisms. To start with, the most reliable way to enhance effective, available and culturally sensitive commercial dispute resolution in Pakistan is through tackling the challenges and implementing pragmatic recommendations. As a result; Embracing mediation and arbitration as viable alternatives to traditional litigation can boost economic stability and growth thereby benefiting businesses and other sectors of society. For that reason, Continued ADR mechanisms' transformations and improvements are essential for these purposes as well as for the progress of commercial dispute resolution in Pakistan.

Conclusion

Embracing and enhancing alternative dispute resolution (ADR) mechanisms in Pakistan is imperative for fostering economic stability and growth. The shift from traditional methods to a structured legal framework has laid the groundwork for effective dispute resolution, yet challenges persist. Legislative amendments, increased institutional support, and public awareness are critical to advancing ADR. Incorporating cultural sensitivity and leveraging international best practices can further refine these processes. By adopting these recommendations,

Pakistan can create a more efficient, accessible, and culturally competent commercial dispute resolution system. Continued development and research into ADR will ensure it remains a viable alternative to traditional litigation, ultimately benefiting businesses and contributing to the country's economic progress.

DOCTRINE OF DOUBLE JEOPARDY UNDER THE CONSTITUTION OF PAKISTAN

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DR. SHAHID RIZWAN BAIG[167]**

ABSTRACT; The concept of "human rights" encompasses a set of legal and ethical principles that belong to every person by virtue of their humanity. These rights are inherent, meaning they exist from birth, and universally applicable, meaning they extend to all people regardless of background. This includes race, ethnicity, gender, language, political beliefs, or any other distinction. In essence, human rights are fundamental, inalienable (cannot be surrendered), and indivisible (interconnected). Their core purpose is to ensure that all individuals can live with dignity and respect. Examining the ultimate legal document of the nation, the Pakistan's 1973 Constitution, human rights are outlined in the document. The Constitution guarantees fundamental rights, such as the freedom of expression, thought, information, association, religion, press, assembly, and so forth. Thus, the government of Pakistan was able to ratify the main human rights conventions and treaties for defines and advancement of human rights thanks to the requirements outlined in the Constitution. It permits the Pakistani government to incorporate international accords into national legislation. It requires the government's three branches—executive, legislative, and judicial—to uphold

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and protect the rights it outlines. Article 13 of the Constitution protects citizens against self-incrimination and double punishment, making it one of its key provisions.
Keywords: Human Rights, Double Jeopardy, Constitution of Pakistan

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INTRODUCTION; A criminal charge that a competent court has decided is final, regardless of whether it results in a conviction or an acquittal. It can also be pled to prevent a subsequent prosecution if the charge is, for same offense. It is recognized as one of the most significant fundamental rights and human rights protections against the state prosecuting the same offense more than once. People are shielded from being tried twice for the same offense in a court of law by double jeopardy. A centuries-old common law concept known as "double jeopardy" prohibits the prosecution of the same said crime twice. The regulation is essential to uphold the integrity of criminal justice and safeguarding the accused individuals' inalienable rights. Regardless of the structure of the system, the rule's presence is crucial to the administration of criminal justice. A second trial is prohibited as a procedural safeguard, and following a thorough trial by a court with appropriate authority, the accused is either found guilty or found not guilty. The maxim "Nemo Debet Bis Vexari Pro Uno ET Eadem Causa," which interpret as “no one shall be afflicted twice for the same cause”, is the source of the rule against double jeopardy.[168]

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[168] Wikipedia. “Double Jeopardy,” April 23, 2024. https://en.wikipedia.org/wiki/Double_jeopardy.

2. National Enactments Regarding Double Jeopardy in Pakistan

National legal rights are protected by the constitution, national laws and national rules and regulations of Pakistan. The Double Jeopardy have been incorporated under the law in below mentioned Enactments:

- A.13(a) of the Constitution of Pakistan, 1973
- S.403 of the Criminal Procedure, 1898
- S.26 of the General Clauses Act, 1897

3. General Concepts

3.1 Human Rights

Every individual possesses inherent human rights, irrespective of gender, race, nationality or any other attribute. These rights include, the right to life & liberty, freedom of expression & speech, as well as entitlements to employment and education, among others. These rights are universal and apply to all individuals without exception. As per the Pakistan's Constitution, these human rights are delineated as "fundamental rights," constituting the basic entitlements of every citizen.

3.2 Double Jeopardy

The simplest definition is when someone gets prosecuted again for same offense/crime. Legal protection against the state using certain various types of prosecution is known as double jeopardy.[169]

[169] Garg, Rachit. "The Doctrine of Double Jeopardy - iPleaders." iPleaders, May 2, 2022. https://blog.ipleaders.in/the-doctrine-of-double-jeopardy/.

3.3. Defense of Double Jeopardy

Typically, in countries that adhere to the principle of double jeopardy, an individual cannot face trial again, for said same offense arising from, same conduct.

3.4 Autrefois Convict

The principle of autrefois convict (previously convicted/punished) means that a person cannot be tried for an offense for the reason that he has been previously been convicted in an offense and the same can be combined with the plea of not guilty.

3.5 Autrefois Acquit

The principle of autrefois acquit (previously acquitted) means that a person cannot be tried again for an offense for the reason that he has previously been acquitted in the same offense.[170]

4. Legal Maxim

The doctrine or defense of Double Jeopardy is originated from the maxim *"Nemo debet bis vexari pro una et eadem causa"* meaning thereby "No person shall be vexed twice for the same cause"

5. Wording of Article 13 of the Constitution

Article 13 States as

"13. Protection against double punishment and self-incrimination.

No person:-

a) shall be prosecuted or punished for the same offence more than once; or

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[170] Admin. "Autrefois Acquit and Autrefois Convict - Academike." Academike, March 1, 2019. https://www.lawctopus.com/academike/autrefois-acquit-autrefois-convict/.

b) Shall, when accused of an offence, be compelled to be a witness against himself."

6. Doctrine of Double Jeopardy

Some rights are not given by any legislature or by any authority rather are available to human being just because of one being a human irrespective of his race, gender, religion or nationality these rights are called as Fundamental/Human rights. They are also called as Natural rights as they are provide to human by their very nature. As said earlier, these rights are not given neither provided by any legislature nor enacted by any act of legislature thus these rights can't be taken away by anyone or any being or body through any Law, enactment or any other such legislative act. Infect, these rights can't be changed/ molded through any amendment process. Amongst these rights, a right that has been ensured to human being is right of protection from double jeopardy. Throughout the legislation including national as well as international, a right that has been guaranteed by is the protection from double jeopardy which means that any being if has already been subjected to law suit for a crime/offense either false or true and whatever the result would be, either it ended with conviction of the said person or acquittal but under the law of Pakistan as ensured in the A.13 of the Constitution and also in S.403 of the Criminal Procedure, the said person can't under any circumstance be subjected to face prosecution again for the said same crime/ offense and can't be subjected to any court of law having similar jurisdiction before which he was vexed earlier for the allied earlier crime. However, he may be subjected to the court of appellate jurisdiction. This rights has been given and protected under the constitution to ensure that any should not be entangled again to face the trial for the same offense/ crime about which he had

already undergone the trial because if such practice would be allowed then one would get involve in never ending limbo of litigation which would remain continue until and unless the opposite party would get its desired results and even after getting the desired results , it may just to frustrate or to satisfy their vendetta would continue to prosecute against the said person (innocent or not) till the death of said person or till his own death. Thus the law has been made to reaffirm, reinsure that under the law of nature, it is by no stretch of imagine be allowed to subject any being to fact the agony of trial, once he had already been subjected.[171]

The concept of potentially subjecting someone to multiple trials for the identical crime is encapsulated in the term "double jeopardy." Practically all legal systems globally adhere to double jeopardy rule, which prohibits charging or attempting someone again for the same offense using the same facts and evidence after they have been previously charged, tried, and cleared of the original charge. The principle of double jeopardy in criminal law asserts that an individual should not face punishment more than once for the same occurrence, nor should they face the risk of being found guilty twice. Indeed, if an individual has been accused, tried, and acquitted of a criminality, they cannot be accused of that same offense again. The presence of this rule is essential across different legal systems to ensure the proper administration of criminal justice. The principle of double jeopardy is one of the values protected by the system, serving to uphold fairness and prevent individuals from enduring repeated

[171] Garg, Rachit. “The Doctrine of Double Jeopardy - iPleaders.” iPleaders, May 2, 2022. https://blog.ipleaders.in/the-doctrine-of-double-jeopardy/.

prosecutions for the same alleged offense. The utilitarian principle aimed at protecting individuals from facing multiple punishments for a single offense is only partially effective, as it is often undermined by legal fictions, anomalies, and intricate distinctions within the legal system.

The procedural defense of double jeopardy acts as a barrier against an accused person facing retrial for the same or, in certain instances, similar charges following a legitimate decision i.e. either acquittal or sentence. The concepts of autrefoiss convict and autrefois acquit form the basis of modern legal frameworks. These principles are regarded as fundamental elements in ensuring due process, which dictates that decisions made should be regarded as final, thereby safeguarding the accused's right to freedom. This legal concept is wise in that it upholds human dignity and does not reverse the prior formal charge and trial process in the situation of a suspect. Furthermore, if this technique is permitted, litigation will never stop, and nobody would be safe from risk or harm.

7. Historical Origin of Concept of Double Jeopardy

There is a longstanding tradition against putting a criminal suspect under double jeopardy. Although it is widely regarded as right today, its precise historical origin is still unknown. Although double jeopardy's doctrine have a long history, its definition has changed and its growth has been uneven. Under the influence of Coke and Blackstone, the English legal system progressively evolved to allow a accused to use a special plea in case of prosecution defeat—a past conviction or a previous acquittal. One of the first ideas in Western society is double danger. Although double jeopardy rules were present in prehistoric societies, it is unknown where they originated. According to a US state court ruling named Stout v. State (1913), the

theory was included in English common law. According to the court's ruling, the protection "simply always existed, with no particular origin." It is certain that the United States did not "invent" double jeopardy protection, regardless of its precise roots.

There were provisions against double jeopardy under Greek law. Athenian state man Demosthenes said in 355 B.C. that a person can’t be tried over again on same matter under same law. Additionally, limited legal protection for double jeopardy was as well offered by Ancient Rome. Another tenet of Roman law was "no one ought to be punished twice for the same offense." This idea was in fact so deeply ingrained in Roman custom that even Emperor Tiberius was powerless to reverse a jury's acquittal, according to the historian Tacitus. While this notion was known to ancient antiquity, its current form does not go back as far as Coke and others did in building the common law's foundations thousands of years ago.

The King v. Thomas case was the first on the topic; it included a murder trial brought under a 1534 statute that said the English neighbor had jurisdiction over misdeeds committed in Wales. The Welsh tribunal had cleared the accused, who argued that "Wales are to have the same immunities as English born, who on acquittal cannot be tried again." The assize court forwarded the dispute to Kings Bench, who decided that the accused should be released. The following and most important case, The King v. Hutchinson, was unrecorded; nonetheless, what is known from accounts of related instances is that the accused killed a man in Portugal and found innocent by that country's authority. When he got back to England, he was caught and sent to the King's Bench. The court passed verdict that he couldn’t be prosecuted again for the

identical offense in England when he showed an example of the Portuguese acquittal record.[172]

8. Double Jeopardy under Pakistani Law

In Pakistan, there are both legislative and constitutional guarantees for double jeopardy. The General Clauses Act's clause has also acknowledged the concept. While the CrPC, 1973 includes autrefois acquit, the Pakistani Constitution only recognizes autrefois convict. The Pakistani Constitution recognizes the ban on double' jeopardy as right. The state is only permitted to restrict someone's basic rights to the degree specified by established laws. According to Pakistani law, if an individual is held guilty of a crime by a court with appropriate authority, the conviction prevents him from being charged with the same crime again. According to the Pakistani Constitution, Article 13(1) guarantees protection against double jeopardy, but it specifies that this protection can only be invoked if the prior criminal proceedings, which form the basis of reliance, were initiated or continued in accordance with the prescribed procedure in the statute defining the offense. These proceedings must have resulted in either (i.e. conviction or acquittal) of the accused person. Article 13 of the 1973 Pakistani constitution upholds principles of justice and legal rights, aiming to ensure the integrity and fairness of the legal system while safeguarding individuals from facing dual punishment and from self-incrimination.

S.403 of CrPC addresses Double Jeopardy, recognizing both the concepts of autrefois acquit & autrefois convict. To raise either plea under the Code, certain conditions

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[172] Edwin I. Greenberg, Double Jeopardy: Its History, Rationale and Future, 70 DICK. L. REV. 377 (1966).

must be met: there must be a prior conviction or acquittal, rendered by court of jurisdiction, and the subsequent proceedings must involve the same offense. The term "same offense" signifies that the crime about which the accused is being retried must be identical and constructed on the same factual foundation as the previous one. The interpretation of this principle by the SCP in the case of Syed Alamdar Hussain Shah v. Abdul Bashir Qurashi & others clarifies that if the prosecution concludes with either result i.e. acquittal or a conviction, initiating a fresh prosecution would be prohibited.

9. Double Jeopardy under International Law & Other Jurisdictions

9.1 International Covenant on Civil and Political Rights

The ICCPR, ratified by 72 signatories and by 166 parties, acknowledges in Article 14 (7) that no individual should face retrial or retribution for crime for which they have already received a definitive conviction or acquittal according to the legal and penal procedures of each respective nation.

9.2 European Convention on Human Rights

All countries within the Council of Europe, which includes closely entirely European nations, have ratified the ECHR. The additional Seventh Protocol to this Convention, as outlined in Article Four, safeguards against double jeopardy by stating that individuals cannot undergo a second trial or sentence in criminal proceedings within the same State for an offense for which they have already received a final acquittal or conviction in accordance with that State's legal and penal procedures. Member states have the discretion to enact legislation permitting the re-trial of a case if and only if new evidence emerges or if

there was a substantial error in the previous proceedings.[173]

9.3 India

A safeguard against double jeopardy is an Essential Right protected under A.20 (2) of the Constitution of India, which states, "No person shall be prosecuted and punished for the same offence more than once". Similar to Pakistan, Such protection is also provided by provisions of Cr.P.C & General Clauses Act there.[174]

9.4 United States

The US Constitution's 5th Amendment also recognize the doctrine of Double Jeopardy

9.5 English Law

In England, the concepts of autrefois acquit and autrefois convict are construed in accordance with common law principles. Court decisions dictate that a lawful trial by court having authority and jurisdiction, culminating in a final verdict of acquittal, carries binding and conclusive weight in all successive proceedings involving the same parties. This principle was reaffirmed by the House of Lords in the case called as Humphrycase, solidifying it as a binding rule within English law.

10. Rationale behind Doctrine of Double Jeopardy

One longstanding justification for the double jeopardy' rule is its role in mitigating the risk of wrongful conviction. The potential for erroneous conviction is

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[173] Wikipedia. "Double Jeopardy," April 23, 2024. https://en.wikipedia.org/wiki/Double_jeopardy.

[174] Legal Articles in India. "Victim May Seek Enhancement Of Accused Sentence By Filing Revision Application: Bombay HC - Legal Articles in India," n.d. https://www.legalservicesindia.com/law/article/2611/5/Victim-May-Seek-Enhancement-Of-Accused-Sentence-By-Filing-Revision-Application-Bombay-HC.

notably heightened in a retrial, as the prosecution is equipped with prior knowledge of the defense strategies. Subjecting an acquitted individual to multiple attempts at retrial for the same occurrence/offense would subject them to humiliation, financial strain, and emotional turmoil, perpetuating a state of anxiety and insecurity. Moreover, the retrial process would significantly disrupt the accused's personal life. Without such a safeguard, the government could persistently prosecute an acquitted individual until securing a conviction, potentially weapon zing the legal system for personal vendettas. Evaluating the rationales behind the principle of double jeopardy underscores its protection of key values within the criminal justice administration. It demonstrates a concern for safeguarding the fundamental human rights of individuals ensnared in the complexities of criminal law. Another perspective suggests that innocent accused's may lack the necessary endurance and resources to continuously defend themselves against repeated prosecution by the state in criminal proceedings.[175]

11. Exceptions to Section 403/Rule of Jeopardy

Section 403 does not apply to cases where the subsequent offense being tried was not part of the alleged offense in the previous trial, nor does it apply when the subsequent offense is unrelated to the facts presented in the former trial. The scope of S.403 is limited to criminal proceedings only but not to departmental inquiries. Therefore, if being punished in a departmental inquiry does not protect from

[175] CrimeDoor. "Decoding Double Jeopardy: How It Applies to Different Crimes and Notorious Cases - CrimeDoor," January 9, 2024. https://crimedoor.com/articles/decoding-double-jeopardy-how-it-applies-to-different-crimes-and-notorious-cases/.

being prosecuted for offence under the Anti-Corruption Act. The restriction under S.403 does not cover cases that are entirely distinct or based on facts not raised in the Last trial. If the court, which conducted first trial had no jurisdiction or authority to hear the charges in second trial, S.403 would not apply. The provisions of S.403 do not pertain to ongoing offenses, a principle affirmed in case captioned as Khisro Nawaz v. Khanimulla and others. When an offense is punishable under different laws, the accused cannot be considered to have committed only one offense, and acquittal from one charge does not imply acquittal from the other.

12. Res Judicata & Double Jeopardy

The “principle of Double Jeopardy” shares similarities with the civil law principle known as "res judicata," where a fresh lawsuit is prohibited if a matter has already been decided by a court having power to adjudicate between the same parties on the same issues. This principle is enshrined in O.VII.R.11 of CPC, 1908. S.11 of the Code is centered on the fundamental concept that "a person shall not be twice troubled for the same cause," meaning that once an action has been brought and the merits of the issue have been discussed and a final judgment obtained, the parties are barred from revisiting the same question in another action. There are various reasons for prohibiting an individual from being tried twice for the same felonious conduct. While the rules of double jeopardy and res judicata are distinct, it is the principle of res-judicata that underpins the defense of double jeopardy.

13. Judicial Precedents

Below are some of the judgments on Double Jeopardy.

13.1. 2003 MLD 1050

The accused underwent initial trial proceedings in Military Court, but following the lifting of martial law, the case was subsequently heard by a magistrate, and finally, it was ordered to be transferred to a Sessions Court. However, the prosecution did not reach any definitive conclusion in these forums. The bar against fresh prosecution for the same said crime only applies when such prosecution has reached a final conclusion resulting in either acquittal or conviction. Therefore, initiating a fresh trial for the accused does not contradict the principle of "double jeopardy" as outlined in Article 13(a) of the Constitution.

13.2. PLD 2003 SC 668

There is no prohibition against filing separate references for distinct transactions that involve similar allegations. However, an individual cannot be charged a second time for the same allegation based on the similar evidence. Therefore, separate trials in multiple references of a similar nature relating to separate transactions can proceed.

13.3. PLD 1998 Lahore 211

A criminal case was registered against the petitioners under Section 223/224 of the Pakistan Penal Code, accusing them of facilitating the escape of an under trial prisoner from custody. Additionally, departmental proceedings were initiated against them, and a judicial inquiry was ordered. The petitioners contested the departmental proceedings and the judicial inquiry, arguing that since a criminal case was pending against them, any other proceedings correlated to the same incident, such as departmental proceedings or a judicial inquiry, should be suspended until the criminal case reached a final adjudication. The judicial inquiry being conducted against

them on the executive side was considered entirely separate proceedings, and it was asserted that the petitioners' claim of “double jeopardy” was unfounded.

13.4. 2002 SCMR 93.
If the accused/person has already completed a lawful sentence of life imprisonment for the charge of Qatl-I-Amd, an appeal seeking the enhancement of their sentence to death cannot be legally entertained. This is because any enhancement of the sentence, if granted, would be in violation of double jeopardy as mandated by Article 13 of the Constitution.

13.5. 2002 SCMR 403
The accused, having served their entire sentences, have been freed and the appeal filed by them was not followed. Consequently, the appeal filed by the complainant seeking the enhancement of the accused's sentence has become moot, as the accused cannot be convicted again.

13.6. PLD 2003 Lahore 593
An order made after considering the material presented to court at initial stage, when no evidence has been formally recorded, may not strictly be classified as an order of acquittal under S.403 of the CrPC.

13.7. 2003 SCMR 579
The accused were apprehended on February 12, 1985, and received a death sentence from the Military Court. They remained in the Death Cell until December 10, 1991. Following an appeal, the case was sent back to the Sessions Court for a retrial, which, on March 28, 1994, convicted the accused under Section 302/34 of the PPC and sentenced them to life imprisonment each, with the benefit of Section 382-B of the CrPC. Since the accused had completed a substantial and lawful sentence for the

offense of murder, they could not be subjected to another sentence for the same offense.

13.8. 2002 MLD 561.

The accused underwent trial in the Anti-Terrorism Court and was acquitted. Neither the State nor the complainant contested the acquittal, although the complainant had challenged the remand order on appeal before the Supreme Court. The retrial of the accused before the Sessions Court was clearly unlawful, as it infringed upon the fundamental rights guaranteed under the constitution and blatantly violated the CrPC and also General Clauses Act. Such actions amounted to an abuse of the legal process.

13.9. 2001 PCrLJ 1530

The payment of compensation to the heirs of the deceased under Section 544-A is separate from any sentence imposed on the accused for committing an offense. Therefore, the double jeopardy rule does not apply in this context.

13.10. 2000 MLD 364

The individual, who had heroin seized from them, was initially imprisoned and punished under the Customs Act, 1969 and they served. Subsequently, based on the same circumstances, the individual was summoned again and, upon admitting guilt, was punished under Section 9 of the Control of Narcotic Substances Act, 1997, by the Special Court. However, since the offense under the Customs Act, 1969, already encompassed the offense under the Control of Narcotic Substances Act, 1997, the individual couldn't be tried again under the latter Act. This double jeopardy situation, where the individual was punished, violates A.13 of the Constitution.

13.11. PLD 2002 SC 610

The accused charges under Section 156(1)/18/14 of the Customs Act as well as under Section 9 of the CNS Act 1997. The accused invoked the protection of S.403 of the CrPC, and the High Court, exercising its constitutional jurisdiction, nullified the proceedings under Section 156 of the Customs Act. The authorities argued that the violation of both laws simultaneously would not invoke the protection of S.403 of the CrPC, as the accused had committed the same offense. However, the violation of both laws was distinct from each other, so separate trial of the accused under both provisions was not prohibited. The High Court's decision to quash the proceedings contradicted the precedent set by the Apex Court. Leave to appeal was granted by the August Court under these circumstances.

14. Conclusion

As a procedural defense, double jeopardy protects an accused person from prosecuting again for the alike or analogous allegations following a valid acquittal or conviction. Under the doctrine of double jeopardy, an accused person in a common law jurisdiction may enter a plea of autrefoiss convict or autrefoiss acquit, signifying that they have been found guilty or not guilty of the same offense. This prevents them from their trial again. This widely accepted guideline protects a number of ideals inside the criminal justice. It has several benefits, two of which are preventing the state from arbitrarily using its authority against people and guaranteeing the finality of court cases, both of which are essential for protecting the accused's human rights. This idea, which has its roots in centuries of legal tradition, is still in place for good reason. Therefore, the existence of such a rule is indispensable for upholding the integrity of the criminal justice

administration itself. The fundamental principle of law, ensuring that an individual is not subjected to punishment again for a wrongdoing for which they have already been penalized or acquitted, serves to prevent unnecessary disruptions, delays, and prolonged litigation. Section 403 comprehensively addresses the consequences of prior convictions or acquittals. However, it's important to note that the room of S.403 is limited to criminal proceedings but not to civil proceedings or departmental inquiries.

JUDICIAL ACTIVISM AND ITS IMPACTS ON GOVERNANCE IN PAKISTAN FROM 2006 TO 2023

MUHAMMAD ZAKIR SHAH[176]**
DR. SHAHID RIZWAN BAIG[177]**

ABSTRACT; Landmark rulings on disappearances, torture, and discrimination empowered citizens and held the state accountable. This study examines the impact of judicial activism on governance in Pakistan from 2006 to 2023. The period witnessed a rise in assertive judicial intervention, addressing human rights abuses and strengthening judicial independence. However, this activism also created tensions with the executive and legislature, leading to policy implementation delays and political gridlock. The unpredictable nature of judicial intervention created uncertainties in policymaking, potentially discouraging bold reforms. The discussion argues for a balanced approach. A robust judiciary remains essential for upholding the Constitution and safeguarding fundamental rights. However, a functional government with the ability to formulate and implement effective policies is equally critical. Reforms promoting judicial accountability and transparency in decision-making can foster public trust and acceptance. Finally, fostering communication and cooperation between all branches of government is crucial for a more harmonious and effective system of governance. By striking this balance, Pakistan can benefit from a strong judiciary while ensuring a stable

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and well-functioning government that delivers for its citizens.

Keyw0rds: Judicial Activism, Governance, Pakistan, Human Rights, Rule of Law

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INTRODUCTION; Pakistan's legal system 0perates under the principle 0f separati0n 0f p0wers, where the judiciary interprets laws, the legislature creates them, and the executive branch enf0rces them.[178] H0wever, in recent decades, the c0ncept 0f judicial activism has emerged as a significant f0rce in Pakistani p0litics. Judicial activism g0es bey0nd simply interpreting existing laws. Activist judges take an m0re assertive r0le, s0metimes striking d0wn laws they deem unc0nstituti0nal, even if passed by the legislature, 0r creating new legal rights even if n0t explicitly pr0vided f0r. This appr0ach aims t0 ensure the law reflects s0ciety's needs and values, especially when the 0ther branches are seen as failing in this regard. H0wever, critics argue it's a 0verreach 0f p0wer, disrupting the separati0n 0f p0wers.

Understanding judicial activism in Pakistan requires examining its hist0rical c0ntext. Pakistan's p0litical landscape has been marked by peri0ds 0f military rule and instability. This has 0ften weakened the executive and legislative branches, creating a v0id that the judiciary has s0metimes filled.[179] In the early years after independence, the judiciary played a relatively passive r0le, s0metimes even legitimizing military interventi0ns. H0wever, the tides began t0 shift in the 1990s with a gradual increase in

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[178] (Sultana, 2012)
[179] (Niaz, 2020)

judicial activism, particularly in human rights cases. A turning p0int came in 2009 with the rest0rati0n 0f Chief Justice Iftikhar Chaudhry. This peri0d, f0ll0wing a public m0vement f0r judicial independence, ushered in an m0re assertive r0le f0r the c0urts in Pakistani g0vernance. As we delve deeper, we will expl0re the fact0rs that c0ntributed t0 this rise in judicial activism, analyze its key examples, and examine the 0ng0ing debate ab0ut its impact 0n Pakistani g0vernance.

A. Definiti0n 0f Judicial Activism

Judicial activism refers t0 a phil0s0phy 0f judicial interpretati0n where judges take an m0re assertive r0le in shaping the law and legal 0utc0mes. It g0es bey0nd simply interpreting existing laws and statutes.[180] Activist judges may

- **Read the C0nstituti0n br0adly** t0 pr0tect fundamental rights and principles.
- **Strike d0wn laws** they find unc0nstituti0nal, even if th0se laws were passed by the legislature.
- **Issue rulings** that create new legal rights 0r remedies, even if n0t explicitly pr0vided f0r in existing law.

This appr0ach can be seen as a way f0r the judiciary t0 ensure that the law reflects the needs and values 0f s0ciety, particularly when the legislature 0r executive branch is seen as failing t0 d0 s0. H0wever, it can als0 be criticized as an overreach 0f judicial p0wer and a vi0lati0n 0f the separati0n 0f p0wers principle, which dictates that each branch 0f g0vernment has distinct and limited r0les.

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[180] (Lindqquist & Cross, 2009)

B. C0ntext 0f Judicial Activism in Pakistan's P0litical Landscape (brief hist0rical 0verview)

Pakistan's hist0ry is marked by peri0ds 0f military rule and p0litical instability. This has 0ften led t0 a weakening 0f the executive and legislative branches, creating a p0wer vacuum that the judiciary has s0metimes filled.

- **Early Years (1947-1970s):** The judiciary played a relatively passive r0le, s0metimes even legitimizing military interventi0ns. F0r example, in the 1954 **M0lvi Tamizuddin Khan case**, the Supreme C0urt upheld the diss0luti0n 0f the legislature by the G0vern0r-General.[181]
- **Zia Ul-Haq Era (1977-1988):** Under General Zia's auth0ritarian rule, the judiciary remained subdued. H0wever, there were is0lated instances 0f judicial resistance, such as the **Federal Security F0rce case** (1983), where the c0urt limited the military's p0wer 0f arrest.
- **Pre-Activism Peri0d (1990s-2006):** This peri0d saw a gradual increase in judicial activism, m0st n0tably in human rights cases. H0wever, the judiciary still lacked the p0wer and public supp0rt t0 significantly impact g0vernance.

Turning P0int: The rest0rati0n 0f Chief Justice Iftikhar Chaudhry in 2009, f0ll0wing a peri0d 0f dismissal by the then-President Pervez Musharraf, marked a turning p0int. The Lawyers' M0vement, which successfully campaigned f0r his reinstatement, m0bilized public supp0rt f0r an independent judiciary. This peri0d ushered in a m0re assertive r0le f0r the c0urts in Pakistani p0litics.[182]

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[181] (Easterly, 2001)
[182] (Faqir, 2014)

II. Rise 0f Judicial Activism in Pakistan (2006-2023)

A. Fact0rs C0ntributing t0 Judicial Activism

The peri0d between 2006 and 2023 witnessed a significant rise in judicial activism in Pakistan. Several fact0rs c0ntributed t0 the rise 0f judicial activism in Pakistan during the peri0d 2006-2023. Here's a cl0ser l00k at s0me 0f the key drivers:

- **Weak Executive and Legislature:** Peri0ds 0f military rule and p0litical instability significantly weakened b0th the executive and legislative branches 0f g0vernment. This created a p0wer vacuum. The judiciary, seen as a relatively stable instituti0n, felt c0mpelled t0 step in and address issues that the 0ther branches were failing t0 handle effectively.
- **Public Distrust in Traditi0nal Instituti0ns:** Years 0f c0rrupti0n and inefficiency in the executive and legislature er0ded public trust in these instituti0ns. In c0ntrast, the judiciary was viewed with greater respect as a c0mparatively independent and impartial b0dy. This public percepti0n emp0wered the judiciary t0 take 0n a m0re assertive r0le.
- **Su0 M0t0 Jurisdicti0n:** A unique feature 0f the Pakistani judicial system is the c0ncept 0f Su0 M0t0 jurisdicti0n. This grants the higher c0urts the p0wer t0 initiate cases 0n their 0wn m0ti0n, even in the absence 0f an f0rmal c0mplaint. This p0wer pr0ved t0 be a significant t00l f0r judicial activism. The c0urts c0uld take up imp0rtant public interest cases and h0ld the g0vernment acc0untable, even if n0 citizen came f0rward.[183]

These fact0rs c0mbined t0 create an envir0nment where the judiciary felt it necessary t0 play an m0re active r0le

[183] (GOHAR, SARWAT, & SAJID, 2023)

in shaping Pakistani p0litics and g0vernance. The public's supp0rt f0r an independent judiciary further emb0ldened the c0urts t0 assert their auth0rity.

B. Key Examples 0f Judicial Interventi0n

The rise 0f judicial activism in Pakistan during the peri0d 2006-2023 manifested in a series 0f landmark interventi0ns acr0ss vari0us areas 0f g0vernance. Here are s0me key examples:

- **Human Rights Cases:** The judiciary emerged as a str0ng adv0cate f0r human rights. Cases like the **Darshan Masih blasphemy case** (2006), where a Christian man facing the death penalty was acquitted, sh0wcased the c0urts' willingness t0 challenge discriminat0ry laws and practices.
- **C0rrupti0n Cases:** The fight against c0rrupti0n received a maj0r b00st fr0m judicial activism. The **Nati0nal Rec0nciliati0n 0rdinance (NR0)**, a c0ntr0versial amnesty granted t0 p0liticians and bureaucrats by President Musharraf, was struck d0wn by the Supreme C0urt in 2009. This decisi0n sent a str0ng message ab0ut h0lding th0se in p0wer acc0untable.
- **G0vernance Issues:** The judiciary als0 intervened in issues related t0 g0vernance and public service delivery. F0r instance, the c0urts t00k su0 m0t0 acti0n 0n matters like p00r healthcare facilities, inadequate sanitati0n, and p0lice brutality. These interventi0ns aimed t0 pressure the g0vernment t0 impr0ve public services.

Bey0nd these br0ad categ0ries, s0me specific examples highlight the diverse nature 0f judicial activism:

- **Diss0luti0n 0f Parliaments:** The Supreme C0urt, in c0ntr0versial rulings, diss0lved the Nati0nal Assembly in 2007 and 2013 under the pretext 0f c0nstituti0nal vi0lati0ns. These decisi0ns raised c0ncerns ab0ut judicial 0verreach in the p0litical sphere.

- **Disqualificati0n 0f P0liticians:** The judiciary disqualified several p0liticians, including Prime Ministers, 0n the basis 0f n0t meeting c0nstituti0nal qualificati0ns. This p0wer, while intended t0 uph0ld standards, s0metimes became embr0iled in p0litical c0ntr0versies.
- **Public Service App0intments:** The c0urts intervened in s0me app0intments and dismissals in the civil service, aiming t0 ensure transparency and merit0cracy. H0wever, critics argued this c0uld disrupt administrative pr0cesses.

These examples illustrate the multifaceted nature 0f judicial activism in Pakistan. While s0me interventi0ns were widely applauded f0r uph0lding human rights and tackling c0rrupti0n, 0thers sparked debate ab0ut the appr0priate b0undaries 0f judicial p0wer.

III. Impacts 0f Judicial Activism

A. P0sitive Impacts

Judicial activism in Pakistan (2006-2023) has had a significant impact 0n the c0untry's g0vernance, with b0th p0sitive and negative c0nsequences. Let's delve int0 the p0sitive impacts first:

- **Strengthening Rule 0f Law and Human Rights:** 0ne 0f the m0st n0table p0sitive impacts has been the strengthening 0f the rule 0f law and human rights. Landmark judgments in blasphemy cases like the **Darshan Masih case** challenged discriminat0ry practices and pr0tected vulnerable gr0ups. The judiciary's activism als0 helped t0 bring greater f0cus 0n fundamental rights, such as the right t0 fair trial and freed0m 0f expressi0n.[184]

[184] (Amir, Muhammad, & Jan, 2022)

- **H0lding G0vernment Acc0untable:** Judicial activism has served as a crucial check 0n the executive and legislative branches. Cases like the **Nati0nal Rec0nciliati0n 0rdinance (NR0)** dem0nstrated the judiciary's willingness t0 h0ld th0se in p0wer acc0untable f0r c0rrupti0n and abuse 0f auth0rity. This has sent a str0ng message t0 p0liticians and bureaucrats, p0tentially enc0uraging greater transparency and ethical c0nduct.
- **Enhancing Public Trust in Judiciary:** C0mpared t0 the 0ften-criticized executive and legislature, the judiciary has emerged as a relatively trusted instituti0n. The public's percepti0n 0f the c0urts as impartial and independent act0rs has been b0lstered by their activism in uph0lding the law and challenging p0werful interests. This increased trust can f0ster greater c0nfidence in the justice system and pr0m0te public participati0n in dem0cratic pr0cesses.
- **Pr0m0ting S0cial Ref0rm:** Judicial interventi0ns have s0metimes acted as catalysts f0r s0cial ref0rm. F0r example, su0 m0t0 acti0ns 0n issues like healthcare and educati0n have put pressure 0n the g0vernment t0 address l0ng-standing pr0blems. This can lead t0 impr0ved public services and a better quality 0f life f0r citizens.

These p0sitive impacts highlight the p0tential 0f judicial activism t0 strengthen dem0cratic instituti0ns, pr0m0te human rights, and impr0ve g0vernance in Pakistan. H0wever, its imp0rtant t0 ackn0wledge the p0tential drawbacks as well, which we will expl0re in the next secti0n.

B. Negative Impacts

While judicial activism in Pakistan (2006-2023) has had p0sitive c0nsequences, its als0 imp0rtant t0 c0nsider the p0tential drawbacks:

- **Encr0achment 0n Legislative and Executive Auth0rity:** Critics argue that s0me judicial interventi0ns have 0verstepped the b0undaries 0f judicial p0wer, encr0aching 0n the d0main 0f the legislature and executive. F0r instance, diss0lving parliaments 0r disqualifying p0liticians based 0n technicalities raises c0ncerns ab0ut the judiciary dictating p0litical 0utc0mes. This can undermine the separati0n 0f p0wers principle and create an imbalance in the dem0cratic system.[185]
- **Disrupti0n 0f Dem0cratic Pr0cesses:** The assertive nature 0f judicial activism can s0metimes disrupt established dem0cratic pr0cesses. F0r example, su0 m0t0 acti0ns 0n g0vernance issues can bypass n0rmal channels 0f acc0untability, such as parliamentary 0versight. This can weaken dem0cratic instituti0ns and undermine public participati0n in decisi0n-making.
- **Ec0n0mic Uncertainty and Invest0r Disc0uragement:** The unpredictability 0f judicial pr0n0uncements, particularly regarding g0vernment acti0ns and p0licies, can create uncertainty f0r businesses and invest0rs. The fear 0f interventi0n thr0ugh c0urt 0rders can disc0urage investment and hinder ec0n0mic gr0wth. Furtherm0re, frequent changes in g0vernment leadership due t0 judicial decisi0ns can create instability and make l0ng-term planning difficult.
- **Er0si0n 0f Public C0nfidence in 0ther Instituti0ns:** While the judiciary's image has impr0ved, 0verreliance 0n judicial activism can er0de public trust in 0ther branches 0f g0vernment. The percepti0n that the c0urts are c0nstantly having t0 fix pr0blems created by the

[185] (Baig et al., 2024)

executive and legislature can lead t0 a sense 0f dysfuncti0n and a lack 0f faith in the 0verall p0litical system.

- **Judicial 0verreach and P0pulism:** C0ncerns have been raised ab0ut judicial decisi0ns being influenced by public 0pini0n 0r p0pulism. This can lead t0 rulings that may n0t be based 0n s0und legal principles but rather 0n a desire t0 appease p0pular sentiment. Such 0verreach can undermine the credibility and impartiality 0f the judiciary. These negative impacts highlight the p0tential pitfalls 0f judicial activism. Its crucial t0 find a balance between an assertive judiciary and respect f0r the separati0n 0f p0wers.

IV. Debate and Future C0nsiderati0ns

A. Arguments F0r and Against Judicial Activism in Pakistan

The rise 0f judicial activism in Pakistan has sparked a heated debate. Here's a breakd0wn 0f the key arguments 0n b0th sides:

Arguments F0r Judicial Activism:

- **Pr0p0nents** argue that a str0ng and independent judiciary is essential t0 pr0tect fundamental rights and h0ld the g0vernment acc0untable, especially when the 0ther branches are weak 0r c0rrupt.[186]
- Judicial activism can be an **f0rce f0r p0sitive s0cial change**, pr0m0ting human rights, tackling c0rrupti0n, and pushing f0r ref0rms in areas like healthcare and educati0n.
- It can **rest0re public trust** in the justice system and dem0cratic instituti0ns by dem0nstrating a c0mmitment t0 the rule 0f law.

Arguments against Judicial Activism:

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[186] (Munir & Khalid, 2020)

- **Critics** argue that judicial activism is an **overreach 0f judicial p0wer**, encr0aching 0n the d0main 0f the legislature and executive.
- It can **undermine the separati0n 0f p0wers** and create an imbalance in the dem0cratic system.
- Judicial pr0n0uncements can be **unpredictable**, creating uncertainty f0r businesses and invest0rs, hindering ec0n0mic gr0wth.
- 0verreliance 0n judicial activism can **er0de public trust in 0ther instituti0ns** like the legislature and executive.
- There are c0ncerns ab0ut **judicial 0verreach and p0pulism**, with decisi0ns swayed by public 0pini0n rather than s0und legal principles.

Finding a Balance:

The debate highlights the need t0 find a **balance** between an assertive judiciary and respect f0r the separati0n 0f p0wers. Here are s0me future c0nsiderati0ns:

- **Strengthening 0ther Instituti0ns:** Eff0rts t0 strengthen the legislature and executive can reduce reliance 0n judicial activism.
- **Judicial Ref0rm:** Measures t0 impr0ve transparency and acc0untability within the judiciary itself are crucial.
- **Clearer Guidelines:** Devel0ping clearer guidelines f0r the use 0f Su0 M0t0 jurisdicti0n can help t0 ensure it's used judici0usly.
- **Public Educati0n:** Pr0m0ting public educati0n ab0ut the r0le 0f the judiciary and the imp0rtance 0f the separati0n 0f p0wers can f0ster an m0re inf0rmed and engaged citizenry.

The future 0f judicial activism in Pakistan will depend 0n navigating these c0mplex issues and finding a path that

ensures a str0ng and independent judiciary c0exists with a well-functi0ning dem0cratic system.

B. Finding a Balance between Judicial Independence and Separati0n 0f P0wers

The rise 0f judicial activism in Pakistan has br0ught int0 sharp f0cus the need t0 strike a balance between judicial independence and separati0n 0f p0wers. Here are s0me key c0nsiderati0ns:

Challenges 0f Judicial Activism:

- **Encr0achment 0n 0ther Branches:** Judicial activism can lead t0 the judiciary 0verstepping its b0unds, interfering with the legislative and executive spheres. F0r instance, diss0lving parliaments 0r disqualifying p0liticians based 0n technicalities can be seen as dictating p0litical 0utc0mes. This weakens the separati0n 0f p0wers and undermines dem0cratic pr0cesses.[187]
- **Unpredictable Legal Landscape:** The assertive nature 0f judicial activism can create uncertainty in the legal landscape. Businesses and invest0rs may be hesitant t0 c0mmit t0 l0ng-term plans if they fear unexpected c0urt interventi0ns that c0uld 0verturn g0vernment p0licies 0r acti0ns. This unpredictability can hinder ec0n0mic gr0wth.
- **Er0si0n 0f Public Trust in 0ther Instituti0ns:** 0verreliance 0n judicial activism can er0de public trust in the legislature and executive. The percepti0n that the c0urts are c0nstantly having t0 fix pr0blems created by these branches can lead t0 a sense 0f dysfuncti0n and a lack 0f faith in the 0verall p0litical system.

[187] (Khan & Muhammad, 2020)

Strategies f0r Finding Balance:

- **Strengthening 0ther Instituti0ns:** Eff0rts t0 strengthen the legislature and executive can reduce reliance 0n judicial activism. This c0uld inv0lve measures t0 impr0ve legislative efficiency, address c0rrupti0n within the executive branch, and enhance public c0nfidence in these instituti0ns.
- **Judicial Ref0rm:** Internal ref0rms within the judiciary itself can pr0m0te greater transparency and acc0untability. This c0uld include measures t0 impr0ve judicial selecti0n pr0cesses, establish clear ethical guidelines f0r judges, and ensure diversity within the judiciary.
- **Clearer Guidelines f0r Su0 M0t0 Jurisdicti0n:** As a unique feature 0f the Pakistani legal system, Su0 M0t0 jurisdicti0n requires careful applicati0n. Devel0ping clearer guidelines f0r when and h0w this p0wer can be used can help t0 ensure its used judici0usly and d0esn't lead t0 judicial 0verreach.
- **Public Educati0n:** Pr0m0ting public educati0n ab0ut the r0le 0f the judiciary, the imp0rtance 0f the separati0n 0f p0wers, and the need f0r a well-functi0ning dem0cratic system is crucial. An inf0rmed citizenry can h0ld all branches 0f g0vernment acc0untable and adv0cate f0r a balanced appr0ach.

Finding the Right Balance:

Finding the right balance between judicial independence and separati0n 0f p0wers requires a multi-pr0nged appr0ach. Its n0t just ab0ut limiting the judiciary's p0wer, but als0 ab0ut strengthening the capacity and effectiveness 0f the 0ther branches. Ultimately, the g0al is t0 create a dem0cratic system where all instituti0ns 0perate within their designated r0les, w0rking t0gether t0 uph0ld the rule 0f law and serve the best interests 0f the Pakistani pe0ple.

CONCLUSION

The peri0d fr0m 2006 t0 2023 witnessed a surge in judicial activism in Pakistan, leaving an indelible mark 0n the nati0n's g0vernance. Und0ubtedly, it has played a laudable r0le in f0rtifying human rights pr0tecti0ns. Landmark judgments addressed issues like disappearances, cust0dial t0rture, and discriminat0ry practices, emp0wering citizens and h0lding the state acc0untable. Furtherm0re, it b0lstered judicial independence, a c0rnerst0ne 0f a healthy dem0cracy. By resisting p0litical pressure and asserting its auth0rity, the judiciary instilled greater public c0nfidence in the justice system. H0wever, the impact 0f judicial activism has been a d0uble-edged sw0rd. The assertive appr0ach 0f the c0urts s0metimes strained relati0ns with the executive and legislature. P0litical act0rs viewed certain judgments as 0verreach, accusing the judiciary 0f encr0aching 0n their d0main. This fricti0n hampered sm00th g0vernance, leading t0 p0licy implementati0n delays and p0litical gridl0ck. Additi0nally, the unpredictable nature 0f judicial interventi0n created uncertainties in the p0licymaking arena. The g0vernment, wary 0f p0tential judicial challenges, might hesitate t0 undertake b0ld ref0rms 0r l0ng-term initiatives. The path f0rward necessitates navigating a delicate tightr0pe. An r0bust judiciary that uph0lds the C0nstituti0n and safeguards citizens' rights remains param0unt. H0wever, equally imp0rtant is a functi0nal g0vernment with the ability t0 f0rmulate and implement effective p0licies. This might inv0lve ref0rms that strengthen judicial acc0untability, such as clear guidelines f0r inv0king su0 m0t0 (taking up cases 0n its 0wn m0ti0n) p0wers. Enhanced transparency in judicial decisi0n-making, thr0ugh well-reas0ned judgments that clearly 0utline the legal basis for intervention, could also f0ster public trust

and acceptance. Ultimately, f0stering better c0mmunication and cooperation between the judiciary and 0ther branches 0f government is crucial. Regular dial0gues and instituti0nalized mechanisms f0r c0llab0rati0n can ensure a more harmonious and effective system 0f g0vernance in Pakistan. By striking this balance, Pakistan can reap the benefits 0f a str0ng judiciary while ensuring a stable and well-functi0ning g0vernment that delivers f0r its citizens.

THE ISSUES OF HUMAN SECURITY IN SOUTH ASIA: A CASE STUDY OF PAKISTAN

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ABSTRACT; The complex and varied panorama of human security issues in South Asia, particularly Pakistan, is marked by a spectrum of socio-economic, political, and environmental challenges. This article analyzes the particular setting of Pakistan by using a case study technique to present an outline of the major concerns affecting human security in that nation. Pakistan is confronted with a multitude of issues, such as environmental degradation, gender-based violence, poverty, inequality, terrorism, extremism, and inadequate healthcare and education systems. The population's safety and well-being are seriously threatened by these interrelated and aggravating problems. The case study looks at the underlying causes, effects, and solutions to these issues, emphasizing the value of comprehensive and long-term strategies to solve South Asian human security issues. Policymakers, practitioners, and stakeholders can create focused interventions to advance human security and raise the standard of living for all citizens by having a thorough awareness of the intricacies of the Pakistani setting.

Key Words: Human Security, South Asia, Pakistan, Mitigation, Challenges

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INTRODUCTION; Human security is one of the many issues that South Asia, a locale recognized by its rich verifiable foundation, many societies, and moving international relations, should manage. Pakistan is a vital model among these nations in view of its essential area, past contentions, and socio-political elements. The paper "The Issues of Human Security in South Asia: A Contextual analysis of Pakistan" investigates the mind-boggling features of human security in this significant country. The objective of this study is to introduce a careful assessment of the manners by which different dangers — from psychological warfare, social disparity, and natural debasement to political flimsiness, financial imbalance, and ecological corruption — cross to influence Pakistan's general human security climate.

Past traditional thoughts of public safety, the idea of "human security" puts more accentuation on the strengthening and wellbeing of people than on the job of states. It remembers security for the region of the economy, food, wellbeing, climate, individual, local area, and governmental issues.[190] These parts of human security are habitually risked in Pakistan because of extended threats, hardships with administration, and financial issues; in this manner, it is pivotal to focus on them to fathom provincial strength and security in general.

This contextual analysis examines the verifiable and current components that add to Pakistan's human instability. It examines what the government assistance of the general population is meant for by public approaches, international concerns, and non-state entertainers. The concentrate likewise sheds data on networks' ways of

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[190] Kaldor, M. (2007). *Human security*. Polity.

dealing with stress and versatility notwithstanding difficulty, giving ideas for working on human security in Pakistan and, subsequently, all through South Asia. This study means to include to the bigger discussion human security by inspecting Pakistan's specific security concerns and proposing very much educated suggestions for professionals, scholastics, and legislatures focused on advancing a more steady and secure locale.[191]

Human security incorporates a wide assortment of financial, political, and ecological issues as well as the insurance and strengthening of individuals against various dangers to their prosperity. This is particularly evident in South Asia, a locale described by complex elements and persevering through weaknesses.[192] The challenges to human security in South Asia—with Pakistan as the focal point—cover a wide range of socioeconomic, political, environmental, and security concerns. Grasping these deterrents is imperative to form useful methodologies pointed toward handling the fundamental causes and lightening their effect on the government assistance and security of individuals living nearby.[193]

This article examines the issue of human security in South Asia with a focus on Pakistan and sheds light on the numerous challenges faced by the country's population. To address these issues in a comprehensive and coordinated manner, governments, civil society organizations, and foreign allies must collaborate. Upgrading human security

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[191] Datta, R. (2010). Beyond realism: human security in India and Pakistan in the twenty-first century. Lexington Books

[192] Tadjbakhsh, S., & Chenoy, A. (2007). *Human security: Concepts and implications*. Routledge.

[193] Othman, Z. (2009). Human security concepts, approaches and debates in Southeast Asia. In *Facing global environmental change: Environmental, human, energy, food, health and water security concepts* (pp. 1037-1047). Springer.

in South Asia, particularly in Pakistan, ought to put comprehensive turn of events, supporting establishments and administration, handling the basic reasons for radicalism and struggle, and building flexibility to natural and financial shocks at the highest point of the need list. By addressing these issues in depth, stakeholders can work together to create a more secure and prosperous future for everyone in the region.[194]

Generally speaking, human security stresses the significance of shielding people from a great many dangers, including brutality, destitution, infection, natural corruption, and political constraint, while likewise advancing their freedoms, respect, and prosperity.

Understanding Human Security in South Asia: A Case Study of Pakistan

Human security is characterized as "independence from dread and independence from need." This incorporates insurance from brutal struggle, as well as guaranteeing admittance to fundamental necessities, for example, food, water, medical care, and training. Human security alludes to the assurance of people and networks from both savage and peaceful dangers, including neediness, illness, ecological corruption, and political constraint. "The safety of people from pervasive threats to their lives, livelihoods, and dignity" is the definition of human security. This incorporates security from brutality, as well as guaranteeing financial and social privileges. Human security is depicted as "a multi-layered idea zeroed in on the security of people and networks from basic and

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[194] Gul, S., Asghar, M. F., & Faraz, S. (2021). Inclusion of human security approach to national security calculus: A case study of Pakistan. *The Discourse*, *7*(1), 1-15.

unavoidable dangers, as well as their strengthening to practice their freedoms, seek after their inclinations, and understand their true capacity."

South Asia, home to a different and crowded district, wrestles with a horde of human security challenges that range across various aspects. From destitution and disparity to illegal intimidation and ecological debasement, the district faces a perplexing snare of interconnected issues that sabotage the prosperity and security of its occupants. In this specific circumstance, Pakistan fills in as a convincing contextual investigation, offering significant experiences into the mind-boggling elements of human security worries in the district.[195]

Pakistan, in the same way as other nations in South Asia, battles with elevated degrees of destitution, joblessness, and pay imbalance. Regardless of some advancement as of late, huge bits of the populace actually need admittance to fundamental necessities like food, clean water, medical care, and instruction. Financial incongruities intensify social pressures and add to weaknesses that sabotage human security.

The political scene in Pakistan is set apart by precariousness, administration issues, and unseen fits of turmoil. With violent incidents and attacks targeting civilians, religious minorities, and security forces, extremism and terrorism pose significant threats to citizens' safety and security. The presence of outfitted gatherings, combined with frail policing administration

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[195] Scheffran, J., Brzoska, M., Brauch, H. G., Link, P. M., & Schilling, J. (2012). *Climate change, human security and violent conflict: challenges for societal stability* (Vol. 8). Springer Science & Business Media.

structures, further confounds endeavors to guarantee human security.[196]

Natural corruption, exacerbated by environmental change, presents extra difficulties to human security in Pakistan. Deforestation, water shortage, air contamination, and cataclysmic events, for example, floods and dry spells present critical dangers to occupations and worsen existing weaknesses. These natural difficulties excessively influence underestimated networks, compounding disparities and compromising human security.

Orientation based brutality and separation stay unavoidable issues in Pakistan, sabotaging the freedoms and security of ladies and young ladies. Practices like early and constrained relationships, honor killings, and restricted admittance to schooling and medical care sustain patterns of viciousness and disparity. Tending to orientation-based savagery and advancing orientation correspondence are fundamental parts of guaranteeing extensive human security.

The Threats to Human Security in South Asia: Case Study of Pakistan

The difficulties to human security in South Asia, with a particular spotlight on Pakistan, are different and multi-layered, enveloping financial, political, ecological, and security-related aspects. Understanding these difficulties is vital for creating successful techniques to address the main drivers and alleviate their effect on the prosperity and wellbeing of people in the area. In South Asia, particularly in Pakistan, the following are some of the primary obstacles and their manifestations:

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[196] Brauch, H. G. (2005). *Threats, challenges, vulnerabilities and risks in environmental and human security*. UNU-EHS.

Pakistan has wrestled with psychological warfare and fanaticism for a really long time, with different aggressor bunches working inside its nation. Fear based oppressor assaults focusing on regular citizens, strict minorities, and security powers have brought about loss of lives, uprooting, and mental injury, sabotaging human security in the country. The presence of radical philosophies adds to social polarization, strict bigotry, and dangers to opportunity of articulation and conviction.[197] Neediness stays an unavoidable test in Pakistan, with a huge part of the populace living beneath the destitution line. Monetary variations worsen social strains and imbalances, restricting admittance to fundamental administrations like medical care, training, and clean water. Absence of monetary open doors and social portability sustain patterns of neediness and weakness, especially among minimized networks.

Political flimsiness, powerless administration designs, and defilement thwart viable administration and administration conveyance in Pakistan. Deficient admittance to equity, erratic utilization of force, and absence of responsibility dissolve trust in foundations and subvert law and order. Political unpredictability and successive changes in government add to strategy irregularities and obstruct long haul advancement endeavors. Deforestation, pollution of the air and water, and the depletion of natural resources all pose significant threats to Pakistani human security. Environmental change worsens existing ecological difficulties, prompting

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[197] Swain, A. (2012). *Understanding emerging security challenges: threats and opportunities*. Rutledge.

more successive and serious cataclysmic events like floods, dry spells, and heat waves.[198]

Weak people group, especially those wards on farming and normal assets for their jobs, endure the worst part of these natural effects, confronting uprooting, food frailty, and loss of occupations. Orientation based brutality, including aggressive behavior at home, honor killings, and kid marriage, stays broad in Pakistan. Prejudicial accepted practices and man centric mentalities propagate orientation disparities, restricting ladies' admittance to instruction, business, and dynamic jobs. Ladies and young ladies are excessively impacted by orientation-based brutality, confronting dangers to their actual security, psychological well-being, and conceptive freedoms.

Successive changes in government, political strife, and debasement subvert viable administration. The military's critical job in governmental issues influences majority rule cycles and solidness. A huge piece of the populace lives beneath the neediness line, with high joblessness rates fuelling monetary weakness. Determined expansion and incapable monetary approaches strain family financial plans and diminish admittance to essential requirements. The presence of fear-based oppressor associations and aggressor bunches represents a consistent danger to individual and public safety. Philosophical radicalization, especially among the adolescent, fills progressing savagery and turmoil. Ladies and young ladies face huge hindrances in schooling, business, and individual security. Clashes among various ethnic and partisan gatherings lead to brutality and segregation. Poor health outcomes are

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[198] Pitsuwan, S., & Caballero-Anthony, M. (2014). Human security in Southeast Asia: 20 years in review. *Asian Journal of Peacebuilding*.

caused by inadequate infrastructure and limited access to high-quality healthcare services. Flare-ups of sicknesses, like polio and dengue fever, challenge the general wellbeing framework. Pakistan is profoundly powerless against environmental change, confronting outrageous climate occasions like floods and dry spells. Air and water contamination antagonistically influence wellbeing and occupations, especially in metropolitan regions.[199] Reliance on agribusiness makes the economy powerless against climatic varieties, influencing food creation. Political insecurity and struggle can upset food supply chains, prompting deficiencies and excessive costs.

Numerous youngsters, particularly young ladies, don't approach quality schooling because of neediness, social standards, and security concerns. The school system experiences lacking subsidizing, obsolete educational programs, and ineffectively prepared educators. Clashes and cataclysmic events uproot huge quantities of individuals inside and from adjoining nations, stressing assets and foundation. Failures and debasement inside the legal framework block admittance to fair and convenient equity. Reports of extrajudicial killings, torment, and other basic liberties infringement sabotage individual security.[200]

Tending to these difficulties requires a comprehensive methodology that coordinates political solidness, financial turn of events, social incorporation, and natural supportability. In order to improve human security in

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[199] Najam, A. (2003). The human dimensions of environmental insecurity: some insights from South Asia. *Environmental change and security project report*, *9*, 59-74.

[200] Thomas, C. (2000). *Global governance, development and human security: the challenge of poverty and inequality*. Pluto.

Pakistan, effective policymaking, international cooperation, and community resilience are essential.

Factors Interact to Impact Human Security in Pakistan

Financial, political, and natural variables converge in complex ways to affect human security in Pakistan. Understanding these communications is significant for creating viable approach and intercession systems to address the underlying drivers of uncertainty and advance the prosperity of the populace. These factors' interactions and implications for policy and intervention strategies are as follows:

Destitution, joblessness, and pay imbalance add to social strains, minimization, and weaknesses among portions of the populace. Restricted admittance to training, medical services, and financial open doors further fuels financial variations and sabotages human turn of events. Financial elements impact people's versatility to outside shocks and their capacity to adapt to emergencies, like catastrophic events or monetary slumps. Political insecurity, frail administration, and debasement subvert the adequacy of foundations and administration conveyance systems.[201] Absence of political soundness hampers long haul arranging and execution of arrangements pointed toward tending to financial difficulties and advancing human security.

Political contentions and battles for control add to social turmoil, intensify ethnic and partisan strains, and subvert social attachment. Ecological debasement, including deforestation, water shortage, and contamination, presents

[201] Asif, M., & Saleh, N. (2019). Human security and energy security: a case study of Pakistan. *Policy Perspectives*, *16*(1), 99-116.

huge dangers to human security in Pakistan. Environmental change intensifies ecological difficulties, prompting more continuous and serious cataclysmic events, like floods, dry seasons, and heat waves. Ecological variables influence vocations, food security, and admittance to clean water, influencing the prosperity and wellbeing of networks, especially those wards on farming and normal assets.

The interconnectedness of socioeconomic, political, and environmental factors should be addressed in an integrated approach by Pakistani security policies and interventions. Incorporated improvement programs that focus on different components of human security, like destitution lightening, schooling, medical care, and ecological protection, are fundamental for accomplishing feasible results. Reinforcing administration systems, upgrading straightforwardness, and fighting defilement are basic for further developing assistance conveyance and guaranteeing responsibility. Viable administration establishments can more readily answer financial difficulties, advance social consideration, and address the requirements of minimized populaces.[202]

Tending to basic political complaints, advancing exchange, and encouraging social union are fundamental for forestalling and settling clashes. Putting resources into compromise systems, advancing between local area exchanges, and addressing main drivers of contention can add to long haul harmony and solidness. Approaches and intercessions focused on natural manageability, like preservation endeavors, maintainable asset the board, and

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[202] Oberleitner, G. (2004). Human security: a challenge to international law? *Global governance*, 185-203.

environment variation measures, are pivotal for alleviating ecological dangers and advancing human security. Integrating natural contemplations into advancement arranging and dynamic cycles can assist with building versatility to ecological shocks and decrease weaknesses.[203]

Enabling people group, especially underestimated gatherings, and advancing their dynamic cooperation in dynamic cycles are fundamental for cultivating proprietorship and supportability of improvement drives. Local area-based approaches that influence neighborhood information and assets can upgrade the adequacy of mediations and advance social attachment. Tending to the complicated associations between financial, political, and natural variables is fundamental for advancing human security in Pakistan. Strategy and mediation techniques ought to take on a coordinated and comprehensive methodology, zeroing in on great administration, compromise, natural supportability, and local area strengthening to fabricate flexibility and guarantee the prosperity of all people in the country.

The contextual analysis of Pakistan offers significant bits of knowledge that can illuminate more extensive ways to deal with tending to human security issues in South Asia. By breaking down the difficulties looked by Pakistan and inspecting the systems carried out to address them, a few key examples arise: Pakistan's experience highlights the significance of embracing a coordinated way to deal with tending to human security issues. As opposed to treating financial, political, and ecological difficulties in

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[203] Ashraf, M. I., Begum, S., & Jathol, I. (2016). Human security concerns of south Asia: Pakistan's perspective. *Journal of Contemporary Studies*, *5*(1), 50-68.

disconnection, far reaching procedures that address the interconnectedness of these variables are more successful.[204]

Reinforcing administration systems and improving institutional limit are significant for tending to human security challenges. Other nations in South Asia can learn from Pakistan's efforts to improve governance, increase transparency, and combat corruption. Pakistan has confronted unseen fits of turmoil and political precariousness, featuring the significance of contention avoidance and goal in advancing human security. Putting resources into peace building endeavors, advancing discourse, and tending to fundamental complaints are fundamental for cultivating long haul strength.[205]

Climate change and environmental degradation pose significant threats to Pakistan's human security. Illustrations from Pakistan's experience underscore the significance of incorporating ecological manageability into advancement arranging and dynamic cycles. Engaging people group and advancing their dynamic cooperation in dynamic cycles are basic for cultivating possession and maintainability of advancement drives. Pakistan's experience highlights the significance of connecting with neighborhood partners and utilizing their insight and assets.[206]

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[204] Ali, F., Haider, S., & Nadeem, M. (2023). Non-Traditional Security Threats in 21st Century and its Socio-Political Impacts on Pakistan. *Journal of Social Sciences Review*, *3*(1), 975-988.

[205] Morton, A., Boncour, P., & Laczko, F. (2008). Human security policy challenges. *Forced Migration Review*, *31*(5), 05-07.

[206] ibid

Mitigating Human Security Challenges

Local collaboration can assume an essential part in moderating human security challenges in South Asia. By encouraging cooperation among adjoining nations, provincial collaboration can upgrade aggregate endeavors to address normal difficulties and advance harmony, strength, and thriving. This is the way territorial collaboration can add to alleviating human security challenges:

Terrorism, extremism, and environmental degradation are all examples of human security issues that frequently cross-national boundaries. Territorial participation empowers nations to arrange reactions to cross-line dangers, improve data sharing components, and fortify boundary safety efforts. Local collaboration works with asset sharing and limit building drives, empowering nations to pool their assets, aptitude, and best practices to really address normal difficulties more. Cooperative endeavors in regions like fiasco the executives, medical services, and training can reinforce strength and advance human security.[207]

By encouraging dialogue, confidence-building measures, and diplomatic initiatives between neighboring nations, regional cooperation can help prevent and resolve conflicts. De-escalation of tensions and mutual understanding can be helped by regional dialogue and mediation platforms. Ecological difficulties, for example, environmental change and cataclysmic events, require aggregate activity at the territorial level. Provincial participation systems can work with joint drives for

[207] Fukuda-Parr, S., & Messineo, C. (2012). Human Security: A critical review of the literature. *Centre for Research on Peace and Development (CRPD) Working Paper*, *11*, 1-19.

natural preservation, feasible asset the executives, and environment transformation, advancing versatility and moderating ecological dangers.

Exchange and financial combination drives can cultivate monetary turn of events, diminish neediness, and upgrade human security in the locale. Provincial economic deals, framework improvement undertakings, and speculation associations can set out open doors for development and thriving, adding to generally dependability and prosperity. From the contextual investigation of Pakistan feature the significance of a coordinated way to deal with tending to human security challenges in South Asia.[208] Territorial participation can supplement public endeavors by cultivating joint effort, sharing assets, and elevating aggregate activity to moderate normal dangers and advance harmony, dependability, and success in the district. South Asian nations can collaborate to create a more secure and resilient future for all by drawing on Pakistan's experience and embracing regional cooperation.

CONCLUSION

The multifaceted and intertwined challenges that the region faces are brought to light by Pakistan's human security concerns. Resolving these issues requires comprehensive and diverse methodologies that focus on the assurance and strengthening of people. By understanding the underlying drivers and elements of human security challenges, policymakers, professionals, and partners can foster designated intercessions pointed

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[208] Jolly, R., & Ray, D. B. (2007). Human security—National perspectives and global agendas: Insights from national human development reports. *Journal of International Development: The Journal of the Development Studies Association*, *19*(4), 457-472.

toward cultivating solidness, strength, and prosperity for all citizenry. Just through purposeful endeavors and cooperation could South Asia at any point conquer its human security difficulties and construct a safer and prosperous future for its kin. Pakistan faces different difficulties, including illegal intimidation, radicalism, neediness, imbalance, orientation-based viciousness, natural debasement, and insufficient medical services and school systems. These issues converge and intensify one another, presenting huge dangers to the prosperity and security of its populace. The contextual analysis analyzes the main drivers, effects, and reactions to these difficulties, featuring the significance of all-encompassing and reasonable ways to deal with address human security worries in South Asia. By grasping the intricacies of the Pakistani setting, policymakers, professionals, and partners can foster designated intercessions to advance human security and work on the personal satisfaction for all residents.

Recommendations

Handling these serious difficulties requires a complex methodology, including:

- Fortifying majority rule organizations and administration.
- Carrying out hearty monetary changes to lessen neediness and joblessness.
- Upgrading medical care foundation and general wellbeing reactions.
- Creating reasonable horticultural practices and debacle the board systems.
- Through reforms to laws and policies, promoting social inclusion and safeguarding human rights.

- Making an investment in education to boost literacy and give people from underrepresented groups more power.
- Successful coordinated effort between the public authority, common society, and global accomplices is fundamental to establish a solid and strong climate for all residents in Pakistan.

THE THEORY OF *IHSAN*; AN ANALYTICAL LEGAL STUDY

Dr. MUHAMMAD AMIN[209]**

ABSTRACT; The concept of Ihsan has been studied in Islamic literature in two contexts, tassuwaff and morality. Although, it is related to the core of heart form where all the virtue emerges. However, the pure linking of the term "*Ishan*" with the *tassuwu*f departs it form rights perspective which is a complete form of Islam. As we see in the *tassuwuf* history, the *mutasuwufeen* isolated from the society and they remained cut off from the society to solve the problems facing in the social, economic and political structure. It is obvious form the prophet's tradition that the *Ihsan* is used in the matter of right. The angel Gabriel asked the prophet, what is Ihsan? The prophet replied: "you worship Allah with this belief that you are seeing Allah, if this belief does not exist, then you must have confirmed belief that Allah is seeing you "The worship of Allah is a matter of right. Allah has rights over men that they worship him and not worship other than Allah. Likewise, people have rights among each other's. So they are bound to dispense with rights of Allah and rights of others with strong belief that Allah is overseeing their performing of duties and rights, if they don't do so, Allah is fully overseeing them, and he is strongly able to punish them against the infringement of rights. That's why the term "*Ihasn*" has been used in the Quran in rights perspective. This Article will assess the legal worth of

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principle of Ihasn in addition to its usage as a moral principle in Islamic literature.

Keywords: *Ihsan, Tassuwuf, Morality, Human Righs,*

INTRODUCTION; The concept of Ihsan has been studied in Islamic literature in two contexts, tassuwaff and morality. Although, it is related to the core of heart form where all the virtue emerges. However, the pure linking of the term "*Ishan*" with the *tassuwu*f departs it form rights perspective which isa complete form of Islam. As we see in the *tassuwuf* history, the *mutasuwufeen* isolated form the society and they remained cut off from the society to solve the problems facing in the social, economic and political structure. It is obvious form the prophet's tradition that the *Ihsan* is used in the matter of right. The angel Gabriel asked the prophet, what is Ihsan? The prophet replied:"you worship Allah with this belief that you are seeing Allah,if this belief does not exist, then you must have confirmed belief that Allah is seeing you"[210]
The worship of Allah is a matter of right. Allah has rights over men that they worship him and not worship other than Allah. Likewise, people have rights among each other's. So they are bound to dispense with rights of Allah and rights of others with strong belief that Allah is overseeing their performing of duties and rights, if they don't do so, Allah is fully overseeing them, and he is strongly able to punish them against the infringement of rights. That's why the term "*Ihasn*" has been used in the Quran in rights perspective. This Article will assess the

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[210].Muslim 2 : 4

legal worth of principle of Ihasn in addition to its usage as a moral principle in Islamic literature.

وَ قَضٰى رَبُّكَ اَلَّا تَعْبُدُوْٓا اِلَّآ اِيَّاهُ وَ بِالْوَالِدَيْنِ اِحْسَانًا[211]

(And your Allah has decreed that you worship none but Him and that you be dutiful to your parents.)

لطَّلَاقُ مَرَّتٰنِ١ فَاِمْسَاكٌۢ بِمَعْرُوْفٍ اَوْ تَسْرِيْحٌۢ بِاِحْسَانٍ[212]

(The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness.)

In the above mentioned both verses, the term "Ihsan" is used in rights perspective. In the first verse, Ihsan is a right of parent and in the second verse; Ihsan is the right of wife. Taking the term" *Ihsan*"in purely isolation sense as it is linked with tassuwuf, it will not give the sense of right. By doing so, the people totally to be sit in isolation from the rights context as it has been happened in the *tassuwuf* history.

Imam Samarqand explains *Ihsan* in rights, duties and obligations perspective. He says that Ihsan is "performing duties, obligations and rights with sincerity for Allah deepen in the heart of a person"[213]

Legal strength of Ihsan

The term" Ihasn"is used in moral perspective in Islamic literature. In Islamic literature, Ihsan morally means that people do something good in favor of others for which they are not bound to do. It means that *Ihsan* is their moral duty. It is an additional thing over rights. If a man does *ihsan* in favor of someone. He must be thankful to the

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[211].Qurʾan 17:23

[212] Al-Baqarah 2:229

[213]Samarqandi,Nasar ibn Muhammad ibn Ahmad, *Tafseer Samarqandi baharul uloom*, Darul kutab al- ilmia, Berut.V:2 P:241

person doing *Ihsan* because he is doing an additional duty for which he was not bound to do. In this sense, *Ihsan* is a thing very additional to right. If we take *Ihsan* just in a moral perspective or a very additional thing to right or a moral right, then what are the basis other than ihsan behind the rights of weak class of people such as the rights of women, the rights of children and the rights of the persons with disabilities. Why a quota system legally reserved in employment for disabled persons, if ihsan is just a moral duty of society to provide disabled persons with jobs. Why do disabled persons demand their jobs as a legal right? What is the legislative ground behind the legalization of the rights of disabled persons in the Quran and sunnah.
Allah Almighty says in the Quran:

اِنَّ اللهَ يَأْمُرُ بِالْعَدْلِ وَ الْاِحْسَانِ[214]
(Verily, Allah orders to do Al-Adl and Al- Ihsan.)

Here in this verse Allah orders people to do Al-Adl and Al-Ihsan. For performing these two acts, there would be two situations: Firstly,to do Al-Adl and Al –Ihsan simultaneously. Secondly, to do Al Adl and Al -Ihsan separately. An example to understand first situation is that someone pays someone Rs. 15,000 as a wage payment for the services he rendered. It is Al–Adl and if he pays Rs.5000 more as an extra amount over the wages, it is Al-Ihsan. In this situation, Al–Adl and Al–Ihsan are being done simultaneously and Al-Ihsan is used in moral sense.
Sayyad Abual ala modudi elaborates Al-Ihsan as a great morality
To give someone more or extra over his right and remainedselfly agreed and contended over receiving less

[214].An-Nahl 16:90

than his right is an additional thing over Al-Adl that is called Al-Ihsan. Al-Ihsan hasgreater Importance than Al-Adl in the society. If Al-Adl is a foundation of society,Al-Ihsan is a beauty and complement of the society. Al-Adl saves the society from injustice; Al-Ihsan fills in the society the loving sweet. No society can be existed only on the basis that every man in the society all the way measures what he receives. All the time, he plans how to receive his right and ignores the right of other due to him. He receives more than his right and gives other less than his right.[215]

The example in second situation, it is an Al-Adl that all the people must compete on open merit for getting jobs and employment. No special seats can be reserved for any class of people. Disabled persons are unable to compete on open merit because of their weakness in their bodies. According to Al–Adltheir employment needs cannot be fulfilled.Al–Adl is unable to help out the disabled persons in providing them with jobs. By acting upon Al-Adl, they would be left back in race of life. Now what should to do? By strictly sticking to Al-Adl, should they be left unhelpful? This difficult situation has been handled out in this verse, as the disabled persons should be provided with jobs and employment by reserving their seats from the open merit on the basis of Al-Ihsan. The rule extracting from this verse is "whatever cannot be given by Al-Adl,it should be given by Al-Ihsan" here in this case, Al-Ihsan can be used as a theory in legal context.

As a state law or international labor law consider the allowances as a separate part of salary and wages.

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[215] Modudi, abual ala, Sayyad.*TafheemulQuran*, V:2 P:565

"wages" means all remuneration, capable of being expressed in terms of money, which would if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behavior of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional rem- unration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include___ (a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the 4 * * * 5[Provincial Government]; (b) any contribution paid by the employer to any pension fund or provident fund ; (c) any travelling allowance or the value of any travelling concession ; (d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or (e) any gratuity payable on discharge.[216]

If Islamic jurists try to look out the basis for the allowances as a separate part of salary or wages of a person in the Quran. They may find that the allowances as a separate part of wages fall within the context of Al-Ihsan in the Quran.

[217]اِنَّ اللهَ يَأْمُرُ بِالْعَدْلِ وَ الْاِحْسَانِ

(Verily, Allah orders to do Al-Adl and Al- Ihsan.)

The wages are the prices for the services the employee rendered, therefor, these are given on the basis of Al-Adl

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[216].Seethe Payment of Wages Act, 1936 , Section 2 (Definitions), Sub Clause VI

[217] An-Nahl 16:90

and allowances, an extra amount over wages for any additional need of an employee that are given on the basis of Al-Ihsan.

Women are physically weak in proportionate to the men's physical structure. Therefore, Islam grants them rights over the men. The children's rights exist because of their childhood weakness. They need too much focused attention of their elders and states toward their growth. Disabled people have also rights because of their disability which is a physical weakness and an obstacle in their normal living. Now, the question arises, is their weakness a reason for granting them rights? Weakness on the basis of Al-Ihsan (if we take it in merely moral sense) can compel someone to give something to them. Weakness of a person or a class of persons may attract someone to give them something or not. It is totally depending upon kindness of a person, weather he gives or not. It cannot compel him to give. So the right of weak class of people does not fall under the heading of *ihasn* taken merely in moral sense. Inevitably, the concept of Al-Ihsan should be taken in the legal sense in order to assign the rights to weak class of people.

The Holy Quran itself categorizes the Ihsan in moral and legal domain. The Ihsan with mother is a moral and Ihsan with wife is legal. The mother cannot go to court to get a decree for maintenance and expenses demanding from her son because she has a moral Ihsan (moral right) while, on the other hand the wife can go to court to get a decree for maintenance and expenses demanding from her husband because Ihsan assists her in legal sense.

The Sunnah establishes legal quality of Ihsan as establishing the rights of week class of people. The Holy Prophet ﷺdivided the khaiber lands into 36 parts, of which he set aside 18 parts for collective benefits and

requirements of the Muslims and distributed the remaining 18 parts among the army.[218] In this case what rule was established? Sayyad abu ala modudi says: "actually here in this way the prophet ﷺ established a rule of Ihsan forthe ruler of the Muslims whenever a territory of non-Muslims comes under his control by fighting, he may let it kept with baitul mal to produce its fruits and benefits to the poor class of people on the basis of Ihsan, as the Holy Prophetﷺretained 18 parts of khaiber lands with baitul mal just to distribute its benefits to the poorclass of people"[219] Now we see how the rights of week class of people have been established on the basis of the *Ihsan* during the regime of the caliph Umar. It was the time when many countries were annexed to Islam, the Companions of the prophetﷺ were faced with the problem what should they do with the lands of Iraq and Syria conquered by them? Should these lands be considered in the nature of ghanimah or fai? After the conquest of Egypt, Zubair demanded distribution of the whole land of Egypt just as the Holy Prophetﷺ had distributed the khaiber's lands. About the conquered lands of Syria and Iraq. Bilal insisted on the distribution of all the lands among the fighting forces just as the spoils are distributed. On the other hand,'Ali gave opinion to leave these lands in possession of the peasants so that they continue to remain a source of income for the Muslins.Mu 'adh bin jabal said: If you distributed these lands, these will pass into the hands of those few people, who have conquered them. Then when these people pass way and their properties pass on to their heirs and there is left only one woman or only one man

[218]Abu dawood
[219] Abul ala, modudi, Sayyad, *Tafheemulquran,* V:5 P:398

from among them, nothing might remain for the future generation to meet their needs and even to meet expenses of safeguarding the frontiers of the Islamic state. Therefore, you should so settle things that the interests both of the present and of the future generations are equally safeguarded. In the light of the companion's opinion Umar calculated and found that if the lands of 'Iraq were distributed, each individual would receive two or three peasants on the average as his share. Thereupon he arrived at the judicious opinion that those lands should not be distributed. Thus, the reply that he gave to those who demanded their distribution was as follows: Do you want that for the people who come afterwards there should remain nothing?[220]

He called on a meeting of the companions and said to them: I have given you this trouble so that you may join me in shouldering the trust that has been put in me for governing your affairs. I am one of you, and you are the people who affirm the truth today. Every one of you has the option to agree to or differ from what I say. I do not wish that you should follow my desire. You have the Book of Allah, which states the whole truth. By God, if I have said something which I want to enforce. I have no object in view except the truth. You have heard those who think that I am being unjust to them and want to deprive them of their rights, whereas I seek Allah's refuge that I should commit an injustice. It would be vicious on my part if I withheld from them something which actually belonged to them and gave it to another. But I can see that no other land after these conquered lands is going to fall. Allah has given the lands of the Persians and their peasants in our

[220] Yaqoob ibn Ibraheem,Abu Yosuf.Kitabulkhiraj.

possession. I have distributed the booty taken by our armies among them after the deduction of the khums (one fifth), and I am hesitating to distribute the rest which yet remains. But as for the lands, my opinion is that I should not distribute them and their peasants, but should levy revenue on the lands and jizyah on the peasants, which they should always pay, and this should be the fai for the common Muslims and their weak class of people and the armies of today and for the generations yet to come.

The debate went on for two or three days. The companions remained in discussion with the caliph Umer, but nothing could be decided. At last, Umer rose and said: I have found an argument in the Book of Allah, which is decisive in this manner. Then, he recited the following verse of Surah Al-Hashr,

وَ الَّذِيْنَ جَآءُوْ مِنْۢ بَعْدِهِمْ [221]----------

"The people of this day only are not entitled to receive a share in these lands bestowed by Allah, but Allah has joined with them also those people who will come after them."

After recitation of the verses from the surah Al-Hashr (6-10) the caliph Umar said to the companions: Then, how can it be that we should distribute the fai lands which are meant for all.

Actually, all this was the process of establishing rights of weak class of people on the basis of*Ihsan*.

The motive and fervor was the kindness and sentiments of mercies(*Ihsan*) for the weak class of people in the heart of caliph Umar which forced him to remain in the long discussion and consultation with the companions and

[221] Al-Hashr 59:09

ultimately he succeeded in the establishing the rights of the weak class of the people.

The equity, a parallel concept of Ihsan in English Law

The concept of *Ihsan* can also be studied in the English legal system. In the Anglo- Saxon times, as well as in the early days of the development of common law, justice was administered by local Courts, presided over by laymen, who owing to their ignorance of legal principles, had to depend blindly on precedents. They were thus incapable of coping with the progress of the nation. The judges instead of moving with the progress of the people, preferred to remain where their ancestors were, and opposed any attempt to introduce any new juristic idea.[222] There was, moreover, no action of ejectment. The lack of remedies was felt chiefly in the class of personal actions. Torts were without any legal remedy, unless accompanied by violence. The judgment, given in favor of the plaintiff, was a recovery of the land, or a recovery of the chattels, or a recovery of a sum of money. There was no room for specific performance, injunction, appointment of receiver, or such other complete relief. At common law, there were a fixed number of forms and actions. A suitor could expect relief only if he could come in within any of these forms. The progress of society and civilization necessitated the recognition of new rights and remedies, for which a more elastic system was required. This led to the introduction of a separate jurisdiction for Equity. Lord Talbot summed up the relation between law and equity nicely; "equity is not part of the law, but a moral virtue, which qualifies moderates and reforms the vigor, hardness and edge of the

[222] Naveed,Abbas, *Principles of Equity*, Punjab law book house, Ed 2018,P:6-7

law; and is a universal truth"[223] Equity is thus supplementary law. The Court of Chancery supplemented the Common law Courts, in three ways (i) by creating new rights, e.g., the right to enforce a trust. (ii) By inventing new remedies, e.g. specific performance of contracts, and injunctions to restrain or stay. (iii) By adopting a 'new procedure *e.g.* compelling the defendant to give evidence, etc.[224]

In the days of Edward 1, there were three great Courts in existence-the Court of king's Bench, the Court of Common Pleas and the Court of Exchequer. Of these three Courts the Exchequer Court was not only a Court of law, but was also the Secretariat Department of the Government called the Chancery. The head of the Chancery was the Chancellor who was what may be called the king's Secretary of State for all departments, at that time he was not a Judge, but had a close connection with the administration of justice. The Chancellor came to be more directly connected with the administration of justice. From the earliest times, the king, who was conceived to be the foundation of justice, had an indefinite jurisdiction in extra ordinary cases. When a person did not expect a fair and impartial trial from the ordinary Tribunals, or where the law Courts were incompetent to grant relief, the only course open to the aggrieved party was to petition to the king, who decided the case with the help of his council. Afterwards, when, from the pressure of affairs of State, as well as from the large number of such petitions, it became inconvenient for the king personally to exercise this jurisdiction which was called "the prerogative of grace"the

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[223]Dudley v. Dulley (1705) 24 E.R. 118]

[224] B.M Gandhi, Equity, *Trust Specific Relief ACT*, Kausar Brothers, P:9-10

work of disposition of such petitions dispatched to the Chancellor, who was not only what may be called the king's Prime Minister, but was also a very learned member of the council. The Chancellor decided such cases, not according to the technicalities of the Common law, but according to justice, equity and good conscience.[225]

CONCLUSION

Here having briefly studied the development of legal history in England, we are seeing that common law was unable to provide the people with complete relief. Therefore, they had to recourse to the king for getting relief. The king had no basis for granting them relief other than equity and good conscience that is in the words of Lord Talbot "a high moral virtue "that can in comparative be seen as Al-*Ihsan* in Islamic law. The jurisdiction of the king for granting relief was "the prerogative of grace" that is *Ihsan* of the king for which he was not bound to grant but he did so as a grace (*Ihsan*) over his nation. As the equity introduced new rights and remedies, likewise the *Ihsan* in Islamic law could be basis for introducing and establishing new rights and remedies extending to somewhat from morality into legality.

[225]Snell's *Principles of Equity,* Ed, 27th P:6b

ARTICLE 2A: A DILEMMA OF CONSTITUTIONALISM IN PAKISTAN

Dr. MUHAMAD AMIN[226]**

ABSTRACT: This article is actually a study of the Preamble of the Constitution of Pakistan 1973. The status of preamble in every constitution is very clear, as it provides guidelines for making further constitution. However, it has no binding affects as compared to other parts of the constitution. The case of preamble of Pakistan's Constitution is different from the constitutions of other states of the world. Unlike the constitutions of other states, Pakistan has made the Preamble an integral and effective part of the Constitution through insertion of Article 2A. The Article 2A embodies the concept of sovereignty as belonging to ALLAH Almighty, while the other constitutions across the globe entails the sovereignty other than ALLAH Almighty. Thus the Constitution of Pakistan has opted a different constitutional founding principle. So, with this perspective, it becomes necessary to know three things. Firstly, what were the practical effects of making this preamble an effective and integral part of the constitution? Secondly, does the constitution of Pakistan with article 2-A prove better protection for human rights in international constitutionalism? Thirdly, is Article 2a of Pakistan's Constitution compatible with globalized constitutionalism, particularly in the area of human rights?

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Keywords: Preamble; Objectives Resolution; Article 2A; State Practice; Pakistan; High Court; Supreme Court

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INTRODUCTION: Introductory words are often attached to a book that explains the entire spirit entailed within its pages. A near-complete understanding of its contents can be revealed within these introductory words'. These introductory words are called the "Preamble". However, the preamble to the Constitution is of a different nature and function. It is used in Constitutional terms as a framework of guidelines'. It usually states the general object and intention of the legislature in enacting the same. All the principles laid down in the preamble find expression in the enactment and provide guiding light for true appreciation and understanding of the document.[227] The preamble is a guiding principle in all constitutions of the world. Under whose guidance all the components of the constitution are formed and promoted. Pakistan has given its constitution a distinct identity from all other democratic states in constitution making process. This identity of the state of Pakistan is enshrined in the preamble of its constitution as "Sovereignty over the entire universe belongs to Allah alone". The Legislature of Pakistan has not allowed this preamble to remain merely a policy principle. Rather, by inserting Article 2A in the Constitution, this preamble has also been made an integral and effective part of the Constitution.[228] In this sense, the status of the Preamble is not merely a preamble or a policy

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[227] Secretary of State v. Maharaja of Bobbili. ILR 43 Mad. 529 (PC)
[228] P. O. No. 14 8th amendment, 1985

principle. Rather, this formalization has become an important constitutional role in state

In the last three decades, with the existence of Preamble … Article 2A, there has been a debate in the High Courts of Pakistan that what will be the status of Article 2A in the Constitution? If any other Article of the Constitution conflicts with Article 2A, how will this conflict be resolved? Should Article 2A be superseded or subordinated to resolve the conflict? This question was not only important in terms of state practice for Pakistan, but also a sensitive issue. Because the state of Pakistan had adopted a unique constitutional way apart from other constitutions of the world. The high courts of a state are responsible for constitutional interpretation; although experts may provide their own opinions on the matter, the unanimous interpretation of expert opinion falls to the higher courts. In the case of Article 2A, the Supreme Court of Pakistan overruled the decision of the High Court, who had previously determined that the Article was dominant in case of conflict with other constitutional provisions.

The Supreme Court has referred the question of the supremacy of Article 2A back to Parliament, to resolve via constitutional amendment, as it is not the responsibility of the Court to declare… as it is not the job of the court to declare any part of the constitution null and void on the basis of another part. The abrogation of the Constitution is the responsibility of the Parliament.[229] Apart from that, the second part of this fundamental clause of the Preamble will certainly remain in the practice of the State. The second part of this clause is that "the authority of the representatives of the state is a sacred trust of Allah

[229]Saiqa Khanum v District & Education Officer PLJ1994, Note 12 at p: 7

Almighty. The representatives of the state shall exercise this authority within the limits set by Allah Almighty." Under this second part of the fundamental clause of the preamble, the Supreme Court ruled that the quota given to the members of the provincial assemblies for the recruitment of teachers in the education department, they did not exercise their authority as a sacred trust. Therefore the recruitment was void under Article 2A.[230]

In its interpretation of the Constitution, the Supreme Court of Pakistan has declared one aspect of the Preamble of the Constitution as unenforceable, whereas the other aspect has been ruled enforceable in terms of state practice. Over the past 30 years the status of the preamble for Pakistan has not been particularly clear. The reason is that the Supreme Court has avoided a determinative approach, leaving the Constitution open to ambiguity. The constitution of Pakistan has adopted two colors. Duplicity does not make any nation successful.

I. OBJECTIVES RESOLUTION, 1949 THEORATICAL BASE

The Objectives Resolution, 1949 forms the ideological basis of Pakistan. This theory was added to the Constitution of Pakistan, 1956, Assuming 1962 and 1973 as a Preamble. In fact, after the establishment of Pakistan, the question arose as to what would be the nature of the constitution of Pakistan. What will be the aims and objectives of the constitution? It was important to clarify these aims and objectives before framing the constitution. Liaquat Ali Khan (First Prime Minister) and key members of his cabinet presented a resolution in the Constituent Assembly on 7th March 1949 to clarify these aims resulting

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[230] *Ibid*

in the Objectives Resolution. This is called objectives resolution. The ideological basis of Pakistan was described in this resolution as "Whereas sovereignty over the entire universe belongs to God 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;"[231]Liaquat Ali Khan supported this resolution in the Constituent Assembly and clearly explained the original spirit and theoretical basis of this resolution saying and said that all the state powers are the sacred trust of Allah Almighty, which have been entrusted to us all by ALLAH Almighty to use them in the service of mankind.[232]Liaquat Ali Khan in his speech further emphasized that democracy, freedom, tolerance and social justice are the guiding principles of Islam, which guide us in all aspects of life.[233]He further said that Muslims will be enabled to organize their lives individually and collectively according to the teachings and requirements of Islam, which are described in the Qur'an and the Sunnah:[234] Liaquat Ali Khan's speech on 12th March 1949 concluded the debate on the Objectives Resolution with the majority acceptance leading to its passing. However, criticizing the objectives resolution Hamid Khan says…. "It is unfortunate that there was a division on the Resolution along communal lines. Muslim members voted against the amendments and non-Muslims members voted for the amendments. The resolution divided the two religions, it is a division on sectarian lines or sow the seeds of suspicion, alienation and mistrust

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[231] The Constitutional Assembly of Pakistan Debates, Vol V-1949, pp: 2-7
[232] Ibid
[233] Ibid
[234] The Constitutional Assembly of Pakistan Debates, Vol V-1949, p: 2-7

against the majority among the minorities."[235]This criticism of Hamid Khan is reviewed in two respects. Firstly there is no such thing in this resolution. Which affects the rights of minorities. In his speech, Liaquat Ali Khan completely rejected the apprehension of losing the rights of minorities based on this resolution. Secondly, majority consensus is not only the "rule of democracy", it is democracy's heart and soul; so, if the resolution was achieved with the consensus of the majority, how can this principle of democracy be rejected?

The principles and provisions set out in the Objective Resolution and reproduced in the Annex some explanation of what the Annex is might be helpful have been made substantive and effective parts of the Constitution through the 8th amendment. The State of Pakistan is named the Islamic Republic of Pakistan under the Constitution. This has direct nexus with the very reason and object of creation of the country, reflected in Art. 24 of the Constitution, known as Objective Resolution, which stated that wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teaching and requirements of Islam as set out in the Holy Qur'an and Sunnah. Individual and collective behavior of citizens is subject to teaching of Islam and Sunnah of Prophet Muhammad (peace be upon him).[236] Article 2-A was added to the Constitution of Pakistan 1973.[237] It is very important and is the sheet-anchor of the Constitution, for it reflects aspirations of the people of Pakistan and so to what they want and how they want to

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[235] Khan, Hamid. *Constitutional and political History of Pakistan.* Oxford University Press, Ed 3rd, p: 63

[236] PLD 2012 S.C. 610

[237] Via Presidential Order 14 of 1985

be governed. The amendment by P.O. 14 of 1985 has made the Objective Resolution a substantive part of the Constitution. After addition of Article 2-A in the Constitution, the Holy Qur'an and Sunnah have become the supreme Law of the Pakistan and courts are obliged to enforce the existing laws with such adaptations as are necessary in the light of the Holy Qur'an and Sunnah to uphold the holy provision thereof. Every organ of the State is duty bound to act and implement the Islamic principles as enshrined in the Holy Qur'an and Sunnah. It may be stated here that Article 2-A of the Constitution of the Islamic Republic of Pakistan, the principles and provisions positioned in the Objective Resolution have been made substantive part of the Constitution. The Holy Qur'an being the Supreme Law of the Country. Muslims must adhere to the ordains of the Holy Qur'an and the Sunnah of the Holy Prophet (P.B.U.H) in letter and spirit as practiced by the Holy Prophet (peace be upon him) to ensure dispensation of Justice to the individuals as well as to the society.[238]

II. NATURE OF THE CONSTITUTION OF PAKISTAN, 1973

The Constitution of Pakistan, 1973 is different in nature from other Constitutions of the world. Although, it is a democratic Constitution, it goes more in Islamic character. It contains provisions which seek to reconstruct society on the basis of the golden principles enunciated by Islam. Many of its features proclaim the glory of Islam and embody the essence of the Muslim faith. It can be safely said that this Constitution is more Islamic in Character. The word "Islamic" shows the peculiar characteristic of

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[238] 2011 CLC 1552

the Constitution, that there should be no law in the legal frame-work of the country which would be repugnant to the injunctions of Islam. It makes the State duly bound to provide such a legal order which would enable people of Pakistan to lead their lives in accordance with the principles enunciated by the Holy Qur'an and Sunnah. The word "Islamic" was introduced in the Objective Resolution of 1949 and was prefixed to the name of the State by the 1956 Constitution. After the promulgation of Martial Law in 1958, it was dropped by the Laws (Continuance in Force) Order, 1958. The 1962 Constitution, too, as originally promulgated, did not embody this word, however, it was restored to its original position by section 3 of the Constitution (First Amendment) Act, 1963. The present Constitution by embodying this word has maintained the spirit of Objective Resolution 1949 and the 1956 Constitution. Islam is "*Deen*" complete in all respect, principles of which are enshrined in the Holy Qur'an and Sunnah of Prophet Muhammad (peace be upon him).

While religion as a western concept means mere system of faith and worship, the practice of sacred rites, the word "*Deen*" in Arabic language of the Qur'an is not confined and used so restrictively. It also represents all that goes with "statecraft's" and "way of life". Islam is a "*Deen*" [239]which provide guidance for Muslims in all fields including economic contribution of Holy Qur'an as well as *Hadith* is marvelous and outstanding directions.[240]A

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[239] e.g., "The concept of Deen encompasses various dimensions. It includes Allah's commands, social obligations, and the removal of exploitation and injustice. It signifies Allah's sovereignty and extends beyond rituals to encompass all aspects of life.

[240] PLD 1976 Lahr 920

distinct improvement made in the present Constitution is that it is bold enough to declare that 'Islam' will be the State religion of Pakistan'. It would not be wrong to say that Pakistan was established in the name of Islam. The first fundamental right of a Muslim is to be ruled in accordance with Islam. This was the main object of the struggle of the Muslims of the Sub-continent. They wanted to get a homeland where they could profess and perform their ritual obligations free from fear and doubt; where they could lead their lives in accordance with the principles and requirements of Islam; where they could work for the glory of Islam. Members of the Armed Forces are afforded full opportunity to lead their lives in accordance with teachings and requirements of Islam as set out in the Holy Qur'an and Sunnah. No order would be passed by the Government/armed forces and/or policy decision taken by either of them, contrary to the teachings of Islam.[241]

III. THE CONCEPT OF SOVEREIGNTY IN THE CONSTITUTION OF PAKISTAN, 1973

The concept of Sovereignty in the Constitution of Pakistan, 1973 is not as it is conceptualized in other constitutions of the democratic world. Pakistan is an "Islamic Republic" and what distinguish it from other republics and states except certain Muslim states e.g. Iran and Afghanistan that it's Islamic character. The preamble to the Constitution declares that "Whereas sovereignty over the entire universe belongs to Almighty ALLAH alone, and authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust." Thus, the first thing that distinguishes the Republic

[241] PLD 2000 S.C. 322

of Pakistan from other republics is the concept of sovereignty. The United Kingdom is a monarchy in name but a republic in reality and fact. There, sovereignty vests in the King or the Queen. Lord Bridge said: "In our society the rule of law rests on twin foundations: the sovereignty of the Queen in Parliament in making the law and the sovereignty of the Queen's Courts in interpreting and applying the law."[242]The term 'sovereign' is totally unknown in the Constitution of the United States. Its preamble begins with the words "We the people of the United States…. Do ordain and establish this Constitution for the United States of America". The Americans announced themselves sovereign people of the United States.[243]

Implying that sovereignty vests in the people, which all power entrusted to government comes from the people and that government holds its power on 'trust' for the people. "It may be said, as a result, that both law-making and executive powers are conditionally conferred on those who hold public office, subject to the doctrine of trust which will be enforced by the courts in the name of the people.[244] In Pakistan also, it is "We, the people of Pakistan" who "do hereby….. Adopt, enact and give to ourselves, this Constitution", yet, they do so, as the trustees of Almighty ALLAH, to whom "Sovereignty over the entire universe belongs". Thus, in Pakistan, sovereignty does not, as it does in America, belongs to the people. It belongs to the Almighty ALLAH alone; the

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[242]*X Ltd. v. Morgan Grmapian Ltd,* (1990) 2 All ER 1, 13

[243]*Chisholm v. Georgia,* (1793) 2 US 419,

[244]Barnett, Hilaire. *Constitutional and Administrative Law,* Ed 8th, p: 154

people are His trustees, his delegates only.[245] Supreme Court of Pakistan holds the Legal Sovereignty as belong to ALLAH Almighty: "Our own grund-norm is enshrined in our own doctrine that the legal sovereignty over the entire universe belongs to Almighty ALLAH alone, and the authority exercisable by the people within the limits prescribed by Him is a sacred trust. This is an immutable norm which was clearly accepted in the Objective Resolution passed by Constituent Assembly of Pakistan in 1949."[246]Justice Muhammad Munir describes Legal Sovereignty as "In the political parlance 'Sovereignty' implies an unqualified power enacting, amending or repealing laws, constitutional or not, but the Legislature in an Islamic State is not sovereign in this sense because it does not have the power to make any law that it likes, that power being limited by the restrictions imposed by Islam on law-making, which are permanent and cannot be removed by any process of legislation."[247]

IV. THE CONCEPT OF SOVEREIGNTY IN THE QURAN

Every verse, every word, every topic and every subject of the Quran ultimately leads to the ALLAH Almighty. ALLAH Almighty is the center of the Qur'an. The understanding of the Qur'an is the understanding of reality and the greatest reality according to the Qur'an is ALLAH Almighty. All other facts are connected with knowing the truth of ALLAH Almighty. ALLAH Almighty's attribute "Khalq" is recognized by the majority of human beings.

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[245] Karim, Fazal, Justice. *Judicial Review of Public Actions,* Pakistan Law House, Lahore, 2018. Ed 2nd, p: 31

[246]AsmaJilani v Govt. of the Punjab, *PLD* 1972 S.C. 139

[247] Constitution by Justice Munir p. 68.

But the biggest rejection of man is ALLAH's attribute "order". Accepting Allah's attribute of "creation" and denying Allah's attribute of "order" is to make Allah powerless. A powerful person among humans or a powerful state does not allow itself to be powerless, so how will the most powerful being in the universe allow itself to be powerless? The Creator will never compromise with His creation (man) in matter of power (order). It is a separate matter that He has entrusted man with the will and authority for the purpose of testing whether he should accept His sovereignty or not. On the basis of this authority, a person becomes a flood (disobedience) in the calm river of life. ALLAH Almighty establishes the attribute of His sovereignty in the Qur'an with great force. All attributes of sovereignty and all powers are concentrated in only one ALLAH. There is no one in this universe who possesses these attributes and powers. He is supreme over all. Overall, Allah is all-knowing, flawless and faultless, the guardian of all? He is the giver of peace to all. Always alive and always awake. All options are in his hands. There is no one to revise his order. He is accountable to no one and everyone is accountable to him. His order remains in force and no one has the power to avert His order. All these attributes of sovereignty are reserved for ALLAH alone and no one has a partner in them. ALLAH Almighty has used the word "*Qahir*" for His sovereignty. There is no harsher word in the dictionary of the Qur'an nor in the dictionaries of humans other than "*Qahir*". ALLAH Almighty has established this attribute of his power "*Qahiriyat*" over all human beings. Humans cannot argue with him. But because of his wisdom and a special purpose of creation of human beings. He does not enforce his sovereignty over human beings by his own force. ALLAH Almighty says:

وَ هُو الْقَاهِرُ فَوْقَ عِبَادِهٖ١ وَ هُوَ الْحَكِيْمُ الْخَبِيْرُ[248]

"He is Irresistibly Supreme Over His servants. And He is the Wise, Acquainted with all things."

عٰلِمُ الْغَيْبِ وَ الشَّهَادَةِ الْكَبِيْرُ الْمُتَعَالِ[249]

"He knoweth the Unseen And that which is open: He is the Great The most High."

وَ مَا اخْتَلَفْتُمْ فِيْهِ مِنْ شَيْءٍ فَحُكْمُهٗۤ اِلَى اللّٰهِ١[250]

"Whatever it be wherein Ye differ, the decision Thereof is with ALLAH"

اِنِ الْحُكْمُ اِلَّا لِلّٰهِ[251]

"The Command is for none but ALLAH."

اَلَا لَهُ الْخَلْقُ وَالْاَمْرُ١ تَبٰرَكَ اللّٰهُ رَبُّ الْعٰلَمِيْنَ[252]

"Verily, His are the Creation and the Command Blessed Be ALLAH, the Cherisher And Sustainer of the Worlds!"

Just as there is no partner with ALLAH in creation. Similarly, there is no partner in the sovereignty of ALLAH Almighty. Sovereignty does not belong to anyone except ALLAH, nor can it belong to anyone, nor does anyone have the right to have any share in sovereignty.

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[248] Al-Anaam, 6: 18
[249] Al-Raad:9:13
[250]Al-Shura:10:42
[251] -Al-Yousuf: 12: 40
[252] Al-Aaraf: 7: 54

وَّ لَمْ يَكُنْ لَّهٗ شَرِيْكٌ فِي الْمُلْكِ[253]

"nor has He A partner in His Sovereignty"

لَهُ الْحَمْدُ فِي الْاُوْلٰى وَ الْاٰخِرَةِ١ وَ لَهُ الْحُكْمُ وَ اِلَيْهِ تُرْجَعُوْنَ [254]

"To Him Be praise, at the first And at the last: For Him is the Command And to Him shall ye (All) be brought back."

Only Allah has the right to command. Because He is the Creator. By creating the creation, He did not make the creation so powerful that the creation continued to command Him. This is just the creature taking an illegal advantage of the "will" of ALLAH Almighty.

اَلَا لَهُ الْخَلْقُ وَالْاَمْرُ[255]

"Verily, His are the Creation and the Command"

"It is he Who created The heavens and the earth With truth."

"Say: "ALLAH is the Creator of all things: He is The One, the Supreme and Irresistible."

Allah is also the owner, the commander and the administrator of His created creation:

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[253] Al-Furqan: 25:2
[254] Al-Qasas: 28: 70
[255] Al-Aaraf: 7:54
[256] Al-Anaam: 6: 73
[257] Al-Raad: 16:13

Any kind of interference in the law of Allah Almighty is not acceptable to Allah Almighty. People should not despise his religion by considering his religion as a religion. His religion is the complete code of life and law of human life. If people come to obey him, then they should follow the religion of Allah purely and do not mix anything with his religion. . Apart from that, they do not follow others or your own desires.

اِنَّاۤ اَنۡزَلۡنَاۤ اِلَيۡكَ الۡكِتٰبَ بِالۡحَقِّ فَاعۡبُدِ اللّٰهَ مُخۡلِصًا لَّهُ الدِّيۡنَ[258]

"Verily it is We Who have Revealed the Book to thee In Truth: so serve ALLAH, Offering Him sincere devotion."

وَ لَقَدۡ بَعَثۡنَا فِىۡ كُلِّ اُمَّةٍ رَّسُوۡلًا اَنِ اعۡبُدُوا اللّٰهَ وَ اجۡتَنِبُوا الطَّاغُوۡتَ[259]

"For We assuredly sent Amongst every People a Messenger, (With the Command), "Serve ALLAH, and eschew Evil":"

اِتَّبِعُوۡا مَاۤ اُنۡزِلَ اِلَيۡكُمۡ مِّنۡ رَّبِّكُمۡ وَ لَا تَتَّبِعُوۡا مِنۡ دُوۡنِهٖۤ اَوۡلِيَآءَ[260]

"Follow (O men!) the revelation Given unto you from your Lord, And follow not, as friends Or protectors, other than Him."

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[258] -Al-Zumar39:2
[259] Al-Nahal36:16
[260] Al- Aaraf 7:3

Not acknowledging sovereignty other than ALLAH is not devoid of the three degrees of disbelief, cruelty and transgression:

"If any do fail to judge By what ALLAH Hath revealed, they are Unbelievers."	وَ مَنْ لَّمْ يَحْكُمْ بِمَآ اَنْزَلَ اللّٰهُ فَاُولٰٓئِكَ هُمُ الْكٰفِرُوْنَ[261]
"If any do fail to judge By what ALLAH Hath revealed, they are Wrong-doers."	وَ مَنْ لَّمْ يَحْكُمْ بِمَآ اَنْزَلَ اللّٰهُ فَاُولٰٓئِكَ هُمُ الظّٰلِمُوْنَ[262]
"If any do fail to judge By what ALLAH Hath revealed, they are Those who rebel."	وَ مَنْ لَّمْ يَحْكُمْ بِمَآ اَنْزَلَ اللّٰهُ فَاُولٰٓئِكَ هُمُ الْفٰسِقُوْنَ[263]

Apart from the sovereignty of Allah Almighty, all the other sovereignty are the sovereignty of Jahiliyyah.

"Do they then seek after A judgment of (the Days Of) Ignorance? But who, For a people whose faith Is assured, can give Better judgment than ALLAH?"	اَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُوْنَ ۭ وَ مَنْ اَحْسَنُ مِنَ اللّٰهِ حُكْمًا لِّقَوْمٍ يُّوْقِنُوْنَ[264]

The Messenger is the representative of God's Legal Sovereignty in human life and his obedience is obedience to God. It is God's order that the commands and prohibitions of the Messenger and his decisions should be

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[261] Al-Maeda 5: 44
[262] Al-Maeda 5:44
[263] Al-Maeda 5: 47
[264] Al-Maeda 5: 45

accepted unhesitatingly, even if there is no distaste for them in the heart, otherwise there is no good in faith:

“We sent not a Messenger, But to be obeyed, in accordance With the leave of ALLAH.”	وَ مَآ اَرْسَلْنَا مِنْ رَّسُوْلٍ اِلَّا لِيُطَاعَ بِاِذْنِ اللّٰهِ ۱[265]
“He who obeys The Messenger, obeys ALLAH:”	مَنْ يُّطِعِ الرَّسُوْلَ فَقَدْ اَطَاعَ اللّٰهَ ۱[266]

The order of God and the Messenger is the supreme law according to the Qur'an. In comparison to which the believers can only adopt an attitude of obedience. In matters in which God and the Messenger have given their decision. Among them, no Muslim is authorized to make an independent decision, and deviation from this decision is against faith:

“It is not fitting For a Believer, man or woman, When a matter has been decided By ALLAH and His Messenger, To have any option About their decision: If anyone disobeys ALLAH and His Messenger, he is indeed On a clearly wrong Path.”	وَ مَا كَانَ لِمُؤْمِنٍ وَّ لَا مُؤْمِنَةٍ اِذَا قَضَى اللّٰهُ وَ رَسُوْلُهٗۤ اَمْرًا اَنْ يَّكُوْنَ لَهُمُ الْخِيَرَةُ مِنْ اَمْرِهِمْ ۱ وَ مَنْ يَّعْصِ اللّٰهَ وَ رَسُوْلَهٗ فَقَدْ ضَلَّ ضَلٰلًا مُّبِيْنًا[267]

[265] Al-Nisah4: 64
[266] Al-Nisah4: 80
[267] Al-Ahzab36:33

V. UNFAMILARITY WITH OBJECTIVES RESOLUTION AS SUBSTANTIVE AND EFFECTIVE PART OF THE CONSTITUTION

Justice Asif Saeed Khosa, giving his remarks in the case of contempt of court against the Prime Minister of Pakistan, says that the power of the court to punish a person for committing the crime of contempt of court is the power given by the people. This authority is a trust entrusted to the court by the people. The words of honourable Justice noted down as: "The power to punish a person for committing contempt of court is primarily a power of the people of this country to punish such person for contemptuous conduct", and that "such power to the people has been entrusted or delegated by the people to the courts through the Constitution."[268]These remarks of Honourable Justice are very contrary to the provisions of the objectives resolution. It appears that these remarks of the Honourable Justice are the result of unfamiliarity with the Preamble of the Constitution. Through his remarks, he has entrusted the authority of supreme sovereignty to the people instead of Allah Almighty, and in the same way, the authority that has been declared as the trust of the people instead of the trust of Allah. Justice Fazal Karim, while commenting on these remarks, says that it is his own observation which opens the door to a confused debate.

"The ultimate ownership of the Constitution, and of the organs and institutions created thereunder, so observes the learned Judge,….. rests with the people of the

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[268] Criminal Original Petition No. 6 of 2012- Contempt Proceedings against the Prime Minister of Pakistan, PLD 2012 SC 553

country…….It is open to comment.Justice Jawad [269]" Khawaja also gave remarks contrary to the objectives resolution in the above mentioned case and says that the powers of the officials and employees of the state are entrusted to the people and these workers are accountable for their work to the people of the state. Because people are paying their salaries. The Justice's remarks that "…the functionaries of the State are fiduciaries of the people and ultimately responsible to the people who are also their pay masters."[270] In another case, the Hon'ble Supreme Court made adverse remarks on the objectives resolution/preamble of the Constitution: "we have held that holders of public office have to remain conscious that in terms of the Constitution, it is the will of the people of Pakistan which has established the constitutional order under which they hold office.

As such, they are first and foremost fiduciaries and trustees of the people of Pakistan. And, when performing the functions of their office, they can have no interest other than the interests of the honourable people of Pakistan in whose name they hold office and from whose pockets they draw their salaries and perquisites."[271] Justice Fazal Karim criticizes the decision of the above-mentioned court and writes: "These views are open to one comment and that is about the absence of any mention of the "trust theory" as reflected in the first paragraph of the Preamble and the

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[269] Karim, Fazal, Justice. *Judicial Review of Public Actions*. Pakistan Law House, Karachi, 2018. Vol: 1, p: 31

[270] The appellate Bench, *Syed Yousuf Raza Gillani v. Assistant Registrar Supreme Court*, PLD 2012 SC 466

[271] *Muhammad Yasin v. Federation,* PLD 2012 SC 132

Annex to the Constitution. This comment is intended to dispel the impression that these views of the learned Judges is likely to create, namely, that the phrase "We the people" in our Constitution means the same thing as the phrase "We the people" in the US Constitution does."[272] Justice Fazal Karim further writes that "the only difference between the constitutions of America and Pakistan is the sovereignty of the Supreme. In the US Constitution, the people are the supreme sovereign, and the powers vested in the workers of the United States are entrusted to the people. Whereas in the constitution of Pakistan, instead of the sovereignty of the people, the sovereignty of ALLAH Almighty has been recognized and all the government workers of Pakistan have the authority of ALLAH Almighty as a sacred trust. The Justice says: "We have seen that what distinguishes the Islamic Republic of Pakistan from, say, the republic of the United States is that in Islam, sovereignty belongs to Almighty ALLAH alone and the people are mere trustees, whereas in America sovereignty vests in the people of the United States. It is submitted that the phrase "We the people" in the Preamble and the Annex to the Constitution must be understood accordingly. In the United States of America, holders of public offices hold their offices on trust from the people of the United States; in Pakistan, the people are the trustees and men and women in authority hold their offices on trust from Almighty ALLAH."[273]

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[272] Karim, Fazal, Justice. *Judicial Review of Public Actions*. Pakistan Law House, Karachi, 2018. Vol: 1, p: 31

[273] Ibid

VI. DOMINENT STATUS OF ARTICLE 2A IN THE HIGH COURTS

A large number of writ petitions were filed against the order of the President of Pakistan, under which the President (in exercise of his powers under Article 45 of the Constitution vide letter No. 8/15/88 PTNS, Islamabad dated 7.12.88 PTNS, Islamabad, 6.12.88) commuted all death sentences awarded by military or other courts. All death sentences awarded were commuted to life imprisonment. The Hon'ble Lahore High Court decided these writ petitions by a judgment delivered on 14.1.92. The Full Bench Lahore High Court ruled that Article 2A in the Constitution is supreme and dominant and thus every constitutional article and law inconsistent with Article 2A shall be void. Article 45 empowers the President to pardon the death penalty or commute it to life imprisonment. The articles of such a nature are not enforceable on the touchstone of Article 2A. The decision of the Full Bench of the Lahore High Court detailed as under: “Our humble view is that Article 2-A is an effective and operative part of the Constitution and no court can refuse to enforce it. Consequently, the Federal Shariat Court shall exercise its jurisdiction assigned to it under Chapter 3-A of the Constitution, whereas, the High Courts shall exercise their jurisdiction with regard to all other laws. They may declare them repugnant to the Injunctions of Islam, as contained in Quran and Sunnah of the Holy Prophet (PBUH) and may also grant relief, as may be called for in the circumstances of the case.

The crucial question falling for determination by this Bench is whether regardless of the date on which the punishment was awarded, and the date on which the President of Pakistan issued the order impugned, in view

of the provision of the Article 2-A of the Constitution of the Islamic Republic of Pakistan does the President of Pakistan enjoy such powers? Our answer to this question in the light of the judgments and the principles of the Holy Book as laid down in Qisas and Diyat Ordinance is in negative. The President of Pakistan had no such power to commute the death sentences awarded in the matter of Hadood, Qisas and Diyat Ordinance. In this view of the matter, we are of the considered view that the power of pardon in such cases only vests with the heirs of the deceased, therefore, the cases in which death sentences have been awarded, President had no power to commute, remit or pardon such sentences. However, the cases would be on different footings if a person has been punished by way of Tazeer as in such cases, the head of the State has the power to pardon the offender and that too in public interest."[274]

VII. OVERWHELMED STATUS OF ARTICLE 2A IN THE SUPREME COURT

An appeal was filed in the Supreme Court of Pakistan against the decision of the Full Bench of the Lahore High Court. All appeals P.L.A No. 100 of 1992, were combined under the title of "*Hakim Khan Son of Fazl Elahi and two others vs. Government of Pakistan etc.*" The Supreme Court delivered its decision on these appeals on 19.7.1992. This decision of the Supreme Court of Pakistan was the most important decision regarding the interpretation and status of Article 2-A of the Constitution. The Supreme Court in its decision said "that no article of the Constitution can be tested on the touchstone of Article 2A

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[274]*PLD* 1972 S.C. 182

nor can other articles be declared invalid on the basis of Article 2A. The judgment of the Supreme Court placed as under: "the Courts do not have the jurisdiction to declare any law invalid on the ground of its not being within the limits provided by ALLAH Almighty," such a plea would have furnished a ground with legislative but not have judicial review, because the limits to be observed in this regard have been addressed to the chosen representatives of the people and not to the Courts. Mr. Justice, Nasim Shah observed that "in my humble view, notwithstanding the insertion of Article 2-A, the Constitution has not been fundamentally transformed from the role envisaged for it at the outset; namely that it should serve as beacon light for the Constitution makers and guide them to formulate such provisions for the Constitution which reflect ideals and the objectives set forth these in". From this his lordship built up his view that if some inconsistency is shown to exist between the existing provisions of the Constitution and the limits to which the manmade law extended, this inconsistency will be resolved in the same manner as was originally envisaged by the authors and movers of the Objectives Resolution namely by the National Assembly itself. In practical terms, this implies in the changed contest that the impugned provision of the Constitution shall be corrected by suitably amending it through the amendment process laid down in the Constitution itself.'[275]

The Supreme Court further said in regard to Article 2A that the meaning of the adoption of objective resolution is that acknowledgment of the sovereignty of ALLAH is binding on them and judges must exercise powers within

[275]Hakim Khan v Govt. of Pakistan PLD 1992, SC 595

the limits prescribed by ALLAH. But these powers are those listed in the constitution. These are the sacred trust for them. A statement of the Supreme Court's decision in this regard is quoted as under: "Another effect of adoption of Objective Resolution as Article 2-A has been highlighted by the Supreme Court. It says: "that the acceptance of Sovereignty of ALLAH is binding on them". The interpretation of said phrase would be that judges must exercise powers within a limit fixed by the ALLAH, that follows that powers conferred upon them under the Constitution and law are a trust from ALLAH to them."[276] The Supreme Court of Pakistan took a further step in its interpretation of Article 2A, stating that the provisions of Article 2A seek to bring the existing laws in line with the injunctions of Islam and also provide that a law which is not in confliction with Islamic injunctions. The procedure for reviewing such law and legislation is provided under the Constitution. Courts, however, do not have the power to declare a law void on the touchstone of Article 2A as these are on the touchstone of Article 8 of the Constitution. "Provisions of Article 2A strive at bringing existing laws in conformity with Injunctions of Islam and also see to it that no law conflicts with such injunctions. Method for testing such legislations and enactments has been provided under the Constitution. The Courts, however, are not vested by the legislature to declare a law void on the touchstone of Article 2A as the Courts can do the same on touchstone of Article 8 of the Constitution."[277]

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[276]Zaheer-ud-Din v State, 1993 SCMR 1718
[277]Kaniz Fatima v Wali Muhammad, PLD 1993, SC 901

VIII. STATE PRACTICE WITH PREAMBLE-ARTICLE 2-A

Article 2-A- preamble-has two parts, the first is sovereignty belongs to ALLAH Al mighty and second is the authority of representatives of the state is a sacred trust of ALLAH Almighty. The representatives of the state shall exercise this authority within the limits of ALLAH Almighty. The supreme court of Pakistan while in the interpretation of article 2-A ruled that first part of preamble does not come within the ambit of the state practice unless it goes back to parliament to give it a dominant role in constitution. As it is envisaged in the above judgment of the supreme court Wherein the Supreme Court held that the Supreme Court cannot examine any statute, rule or regulation on the touchstone of Article 2-A or Article 227 of the Constitution but proceedings under the statute can be tried where judicial review is required: "In the same judgment, it has been further observed that principles of Islamic Law and Injunctions of Islam have to be kept in view and should be applied in interpretation of statutes or in cases where, administrative decision affect individual rights. The Superior court must not strike down such law, rule and regulation on the touch stone of Article 2-A or Article 227 of the Constitution but the action under law can be tested in cases where judicial review is permissible.[278]Former Chief Justice of Pakistan, Naseem Hasan Shah went a step further from the judgment known as the Hakem Khan case, saying that the fact that the resolution included objectives as is an important part of Article 2-A of the Constitution. However its touchstone cannot be placed on

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[278]*Ibid*

any other article (including the enhancement of fundamental rights).

However, while construing fundamental rights, the objective resolution should be kept in mind and courts should make the widest possible construction to further the goals/objectives set out therein: The "Fact that Objectives Resolution has been incorporated as substantive part of the Constitution by virtue of Article 2-A, does not justify reading into any Additional Fundamental Rights, however, while construing Fundamental Rights, Objective Resolution, should be kept in view and Courts should place widest possible construction to advance goals/target envisaged therein."[279]The political right of the winning political party which is a fundamental political right under Article 17 was further confirmed by the Supreme Court in its judgments by combining Article 17 with Article 2A:"that Political Justice include complete functioning of political parties which include full participation in election and the winning political party has a fundamental political right under Article 17 to be read with Article 2-A to complete the term provided under the Constitution."[280]Supreme Court has further said: "That for effective functioning of political system as enunciated in Islam, fair election and the existence of the political party is an essential adjunct for a functional democratic system. This observation is significant in view of opinion of some religious leaders."[281]The Supreme Court in its judgment laid down the principle that Article 2A does not have supremacy in the Constitution. But under any article of the constitution or under any law the powers of an institution

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[279]*Ibid*

[280] Muhammad Nawaz Sharif v President of Pakistan PLD 1993 SC p: 473

[281]Ibid

or a state personality can be declared null and void. If they are not used in accordance with Article 2A.

Thus the Supreme Court discouraged the trend of exploitation of the positions of elected representatives. On the basis that they had assigned the boundaries of ALLAH Almighty which were a sacred trust for them. There is betrayal in it. Here is a quotation from the Supreme Court's decision: "In other case the Supreme Court pointed out a curb on the powers of elected representatives to discourage the tendency on their part to exploit their position. Therefore, it was observed, "Authority to be exercised by the people of Pakistan through their chosen representatives within the limits prescribed by ALLAH, is a sacred trust and any abuse of position on the part of chosen representative will amount to breach of such sacred trust entailing heavenly and worldly punishment".[282]The Lahore High Court also invalidated the appointment of teachers appointed on the recommendation of the members of the Punjab Assembly under Article 2-A:"It was held "exercise of authority by individual MPAs in their constituencies regarding appointment of teachers, being in the breach of Constitution and law amounts misuse of trust. It was held that orders of appointment made by MPAs through under signature of District & Education Officer being void, contrary to Constitution, are to be ignored."[283]

Similarly, the extradition treaty between the United States and the Government of Pakistan was considered by the Lahore High Court in the light of Article 2-A in comparison with some other articles and said that the

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[282] Muhammad Muqeem Khoso v President of Pakistan PLD 1994 SC 412

[283]SaiqaKhanum v District & Education Officer PLJ 1994, Note 12 at p. 7

extradition treaty does not offend Islamic principles and therefore it does not violate the substance and spirit of Article 2-A. The court pronounced its decision in this matter as follows: "The provisions of Extradition Act and the 'treaty are not in any manner violative of the aforementioned injunctions of Quran. The provisions of Extradition Act as held in Nargis Shaheen's case supra, are in accord with the Injunctions of Quran and Sunnah inasmuch as the Treaty Al-Hudebiyah was the first extradition treaty entered into between the Holy Prophet (PBUH) Al-Quresh of Mecca according to which it was agreed upon that Muslim fugitive offenders shall be extradited to non-Muslims to be tried according to their laws. Abu Jandal brutally chained and staggering was extradited in pursuance of the said Treaty which was not even reciprocal in this behalf. This Treaty was approved by God Almighty in Surah Al-NISA as discussed in details in case of *Mst. Nargis Shaheen* case.

Therefore, Treaty of Extradition cannot be said to be against the Injunction of Quran and Sunnah. Even from another angle it is very strange that a subject could argue that an extradition Treaty is binding upon the State only but not on him. A Muslim citizen is a part of the State itself. If the State is bound by the Treaty, the subject is definitely bound by the same. A reference in this behalf can be made to Verse No. 59 of Surah Al-Nissa from Holy Quran, which is reproduced with its translation as under:

"O ye who believe: Obey ALLAH, and obey the Messenger and those of you are in authority; and if ye have a dispute concerning any matter, refer it to ALLAH and the Messenger if you are (in truth) believers in ALLAH and the Last Day. That is better and more seemly in the end."

Hence there is a Qur'anic injunction to obey God Almighty, his Prophet (PBUH) and persons in Authority, therefore, if there is some commitment made by the State subject, to say that he is not bound by the commitment made by an Islamic State merely because he may suffer the conservancies of his own act. We, therefore, hold that the provisions of Extradition Act, 1972, and Treaty in question are intra vires of the Constitution and are not inconsistent with the International Law, laws of the country, and are in accord with the injunctions of Quran and Sunnah.[284] Similarly, under Article 247 of the Constitution, the federal government and the parliament, the provincial government and the provincial assembly have been prevented from doing their respective jobs in the tribal areas. Their powers should be exercised in such a manner as to facilitate faithfully the introduction of representative administration in these areas. Here is a quotation from the Supreme Court's decision in this regard: "Under Article 247 of the Constitution Federal government and the Parliament, the Provincial Govt. and the Provincial Assembly have been precluded from exercising their respective functions in the tribal areas, but the Supreme Court observed that when Article 247 is read with the Objective Resolution. It places a special responsibility on the President and also on the Governor in respect of the tribal areas. The extraordinary power that has been vested in them must be exercised in a manner that would facilitate the introduction Representatives Administration in those areas."[285]

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[284]Mst. Akhtar Malik v Federation of Pakistan & others 1994 Cr. L.J. 229
[285] Govt. of NWFP v Muhammad Irshad PLD 1995 SC 281

The Supreme Court then reiterated its stand on Article 2A and said that Article 2A does not have a supremacy in the Constitution. It cannot supersede any provision of any law or constitution. Because this is the job of Parliament. The Supreme Court's decision as under: The above resume of case law shows that every year arguments are being given regarding the interpretation of Article 2-A. In the initial years the Superior Courts gave conflicting judgment, for instance, in *Habib Bank Ltd. v Muhammad Hussain*,[286] it was that by virtue of Article 2-A the Book of ALLAH and the sayings of the Holy Prophet (PBUH), which Muslims believe to be the paramount law and therefore, a Superior Law of Pakistan. It was held that Article 2-A is supra constitutional and over-ride and supersedes everything in all laws and even in the Constitution which comes into conflict with it. But this view was considered an extreme interpretation of Article 2-A almost similar but less harsh view was taken by Full Bench case reported as *National Industrial Corporated Credit Corporation Ltd. v President of Punjab*.[287]

But the Superior Courts of Pakistan remained consistent in their views that on the basis of Article 2-A, no law or Provision of the Constitution can be struck down because this can be done only by the Parliament. Moreover, Article 2-A does not add/confer any new fundamental right. In this context Article 8 clearly declares that no law can exist or be made in contravention of Fundamental Rights. However, the above discussion confirms that the superior Courts of Pakistan are unanimous in their opinion that for interpretation of the provision of the Constitution and all

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[286] PLD 1987 Kar. 612
[287] PLD 1992 Lah. 462

other laws' provisions of Article 2-A are to be kept in mind and also to be encouraged and applied wherever necessary.[288]The Shariat Appellate Bench of the Supreme Court of Pakistan, in one of its judgments, reviewed the previous judgments of the Supreme Court on the status and authority of Article 2A of the Constitution and said that every law made by the Parliament must be in accordance with the injunctions of Islam. Article 2A has increased the judicial review powers of the Supreme Court in Pakistan. The Shariat Appellate Bench did not discuss Article 2A's touchstone status.

IX. ANALYSIS OF OVERWHELMED STATUS OF ARTICLE 2A IN THE SUPREME COURT

Below is an analysis of the overwhelmed status of Article 2A along with the jurisprudential spirit of the Constitution as interpreted by the Supreme Court as follows.

Whether the constitution is written or unwritten, sovereignty is the starting point of the constitution. It is the dominant aspect of the Constitution. Sovereignty is foundational stone, where the constitutional discourse builds upon. It is the seed from which the constitution sprouts. So! In any case, "sovereignty" cannot come under supremacy of any constitutional provision. Rules of interpretation can remove any ambiguity, doubt, abrogation and contradiction. It can establish balance and equality in constitutional provisions. But it cannot make the aspect of the constitution which is in letter and spirit dominant to be overpowered. Just as the dominant colour of Pakistan is "Green". Similarly, the dominant color of the constitution is "obedience". In the constitution, the

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[288] Muhammad Nawaz Sharif v President of Pakistan, PLD 1993, S.C. 473

powers of all institutions and individuals are bound by the constitutional obedience. The spirit in every constitutional personality and every constitutional institution is "obedience". As all authorities and personalities are placed at the obedience to higher constitutional authority. The ultimate higher authority in the constitution of Pakistan is the sovereignty of ALLAH Almighty. So! All authorities are subordinate to the higher authority of ALLAH Almighty.

In the Constitution, the article 2A "Sovereignty over the entire universe belongs to ALLAH Almighty" is showing its dominant position. There is no need for such obvious words to show its dominant position. When a principle or an article reveals its dominant position by itself, then the demand that there should be any apparent words of dominance is against the jurisprudential spirit of the law and constitution. Whether the status of Article 2A is overriding or overwhelming? On assessing it, the Supreme Court held that Article 2A, has a parallel status. Except Article 8, no article in the Constitution has superior or subordinate status. Because Article 8 is showing its supremacy by its wording. According to the principle of Balanced Interpretation, a balanced interpretation of the Constitution will be done. So! Under the principle of overall balanced interpretation of the Constitution, if any article comes in conflict with Article 2A, it cannot be declared invalid. The guiding principle in the Supreme Court’s decision in the Hakim Khan case was "balanced interpretation of the law". But the Constitution is not a book of law, a balanced interpretation of which leads to a balanced conclusion. A constitution is a document of the state's constitutional institutions, constitutional personalities, their powers and scope. The entire order of the state is based on this document.

The powers of constitutional bodies and constitutional personalities cannot be balanced. Which will converge towards a balanced interpretation. The constitution of Pakistan is not a constitution like constitutions of the world in all respects, to which the rules and interpretations of the law should be fully adhered. This constitution is different in its nature and positions from other constitutions as the authority of ALLAH Almighty has been placed at pedestal and as a supreme principle. It is worth noting that what will be the status of the authority of ALLAH Almighty if compared to other constitutional authorities. The authority of Allah Almighty will be in a dominant position. That was the main point, on which the Supreme Court had to establish its position. In the decision of Hakim Khan Case, the Supreme Court has overruled the authority of ALLAH Almighty. However, to some extent, the Supreme Court has tried to fulfil its self-satisfaction according to the requirement of faith in such a way that the Supreme Court is working within the limits set by ALLAH Almighty. The limits that are mentioned in the constitution. This is just an attempt to fulfil the faith requirement. In fact, the Supreme Court has undermined the authority of ALLAH Almighty in front of the other constitutional authorities and personalities.

Every chain has a central link. All links are tied up with a strong central link. If all its links strongly connected with each other getting its strength in connection with central link. In the same way, all links (Articles) of the constitution are connected under the principle of "harmony" and are connected with the strong link of "Sovereignty of ALLAH Almighty" and thus the constitution becomes the strongest constitution. By

holding on to this strong link of the constitution, the nation can face success. That's why the links of Pakistan (Sindhi, Balochi, Pathan, Punjabi and Bengali) were not connected with the strong link of "Ideology of Pakistan - Allah's Sovereignty", then a link "Bengali" broke and separated from the unity of Pakistan.

In interpretation of any document, be it constitutional or legal, it is necessary to know the "will and intention" of the law maker. The will and intention of the law maker will be known from the "word of the law". . This is evidenced by the following text: "The object of interpretation being to find out the intention of the law-maker, the foremost way of discovering such intention, in the first instance, is to look at the words employed for conveying that intention."[289]

In the light of the above interpretation. The words "The Sovereignty of the whole universe belongs to ALLAH Almighty" are showing that when the ruler of the whole universe is ALLAH Almighty then the state is a part of that universe. Being a part of the universe, the sovereignty of ALLAH Almighty over the state is automatically established. A state in which the people recognize the sovereignty of ALLAH Almighty, its constitution becomes under supremacy of sovereignty of ALLAH Almighty. The representatives of the state, who are making the constitution, recognize the rule of the sovereignty of ALLAH Almighty over the entire constitution. So! In the interpretation of the Constitution, the will and intention of the constitutional institution in the words "The sovereignty of the entire universe belongs to

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[289]Mahmood, M. *The Constitution of Islamic Republic of Pakistan, 1973.* Al-Qanoon Publishers, Lahore, 2016, Ed, 15th. P: 225

ALLAH Almighty" is self-evident in the form of the supremacy of the clause of the sovereignty of ALLAH Almighty in the Constitution.

A state cannot exist without its centre and federation. Similarly, its constitution cannot sustain its existence without its centre. All the provinces of the state are its units. The unity of these units is the state. This unity is maintained by the Federation. Similarly, all the articles of the constitution are units of the constitution. The constitution is formed by the unity of articles. The unity of all these articles can be maintained only if all these constitutional articles are connected with one main article and that main article is "The sovereignty of the entire universe belongs to ALLAH Almighty" in the constitution of Pakistan, 1973.

There are three basic principles about preamble, which were established by the British High Courts from the early twentieth century. 1) Preamble gives guidelines to the framers for framing a law or constitution. 2) Expresses the general purpose and intent of the legislature in enacting and interpreting the Constitution and the law. 3) Guides to the correct definition and understanding of the document. If the piece of legislation is not strictly consistent with the preamble, the former, if expressed in clear and unambiguous terms, overrides the latter. But if the piece of legislation is ambiguous or doubtful, the preamble is used to remove the ambiguity or doubt, as it is a good means of ascertaining the meaning and the key to understanding the law. Below is a summary of these principles derived from the decisions of the British High Courts:

“A preamble is a brief statement affixed to a statue indicating the principles used as guide-lines by its framers. It usually states the general object intention of the

legislature in enacting the same. All the principles laid down in the preamble find expression in the enactment and provide guiding light for true appreciation and understanding of the document. If the enactment part is not exactly co-extensive with the preamble, the former, if expressed in clear and unequivocal terms, overrides the latter.[290] But if the enactment part is ambiguous or open to doubt, the preamble may be referred to resolve the ambiguity or doubt,[291] as it is a good means of finding out the meaning and a key to the understanding of the enactment."[292]

In the light of the above mentioned three principles, the preamble of the Constitution of Pakistan "Sovereignty of Allah Almighty over the whole universe" has a dominant position in the constitution as. 1) Preamble is the guiding principle. All constitutional principles are framed in the light of this guiding principle. Which clearly means that no constitutional principle will be formulated in opposition to this preamble. 2) The preamble clarifies the purpose, intent and intention of the legislature. So! Under this principle, the resolution of the legislature interprets and explains the objectives of the second part of the constitution. The explanatory principle always prevails. 3) If any constituent part of the Constitution is contrary to the Preamble, then the Preamble will either amend or nullify that constituent part.

The sovereignty of Allah Almighty over the entire universe is based on His strength. Man, who is a part of the universe, has been given the authority by Allah to

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[290] Secretary of State v. Maharaja of Bobbili. ILR 43 Mad. 529 (PC)
[291]Rajmal v. Harnam Sing, 1041 C 661.
[292] Sussex peerage Case, (1944) 11 C L & f 85, 143; Pakala Narayana Swami v. Emperor; AIR 1939 PC 47.

accept or not to accept the sovereignty of Allah over himself or his state. If the people of a state accept the sovereignty of Allah Almighty based on the authority given by Allah Almighty, then their acceptance is a contract and acknowledgment with the sovereignty of Allah Almighty. There is an agreement between Allah Almighty and the state and the people. This agreement is similar to the type of contract between the people and the states. By making the objectives resolution as an effective part of their constitution, the state and the people have made this statement a contract with Allah Almighty. They have taken a pledge to adhere to the principle of the sovereignty of Allah Almighty as a nation. This pledge is on behalf of every constitutional institution and constitutional personality. Because the constitutional institution and the constitutional personality also give an oath to fulfil this pledge. Breaking this constitutional covenant is a very ugly and bad act. A nation that does not abide by its words and resolutions. It cannot identify with success. If a nation unanimously or by consensus recognizes a basic principle as its guiding principle constitutionally, then it becomes necessary for the state's constitution, order and laws to be guided by this guiding principle. The sovereignty of Allah Almighty has been recognized as a guiding principle in the Constitution and then this principle was also declared an essential and effective part of the Constitution. This is a covenant of the nation. If article 2 remains in the overwhelmed position in the constitution, then it is breaking the word made with ALLAH Almighty. There is a breach of nation’s contract. The position of the Preamble as a guiding principle is agreed upon. Then the interpretation of the Constitution should be guided by this guiding principle. Actually, The Supreme Court has clearly pulled its hand and put this

responsibility on the Parliament to declare the supremacy of the clause of Allah's sovereignty in the Constitution. After recognizing the sovereignty of ALLAH Almighty, it is not a trivial matter not to set it as the final standard of the constitution in its interpretation work. Acknowledging the sovereignty of ALLAH Almighty and then underestimating it is not less severe to the act of denying God.

Under the British Rule, the Indian courts settled down the precedent that if the enactment part is not exactly co-extensive with the preamble, the former, if expressed in clear and unequivocal terms, overrides the latter.[293] But if the enactment part is ambiguous or open to doubt, the preamble may be referred to resolve the ambiguity or doubt,[294] as it is a good means of finding out the meaning and a key to the understanding of the enactment.[295] At the highest, it may perhaps be arguable that if the terms used in any of the articles in the Constitution are ambiguous or are capable of having two meanings, in interpreting them some assistance may be sought in objective enshrined in the preamble.[296]In the light of above precedent, the Article 2A needs to revise its position as in terms of dominance in the constitution.

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[293] Secretary of State v. Maharaja of Bobbili. ILR 43 Mad. 529 (PC)
[294]Rajmal v. Harnam Sing, 1041 C 661.
[295] Sussex peerage Case, (1944) 11 C L & f 85, 143; Pakala Narayana Swami v. Emperor; AIR 1939 PC 47.
[296] AIR 1960 Supreme Court (Ind.) 845.

X. COMPABILTY OF PAKISTAN'S CONSTITUTION WITH GLOBLIZED CONSTITUTIONALISM

Article 2-A embodied in the Pakistan's constitution as founding principle does not affect the compatibility of Pakistan's constitution with globalized constitutionalism as it provides better protection for human rights within the folds of sovereignty belonging to ALLAH Al mighty. While on the laying of stone of founding principle-sovereignty of ALLAH Al mighty in the preamble of Pakistan's constitution on the eve of presenting objectives resolution, Liaquat Ali Khan presented very beautifully reasoned arguments in support of this resolution, but the Hindu members of the Constituent Assembly from Bengal (East Pakistan) opposed the objectives resolution. Liaquat Ali Khan satisfying the non-Muslim members, said that the resolution, on the basis of the Islamic society that will be formed, the minorities will have rights in it, which are not available to them in any non-Islamic society. As Mr. BC Mandal has told that if this resolution is passed, the future generations will curse those who passed this resolution. I say with full assurance that on the basis of this resolution if we succeed in making Pakistan, future generations will not curse us. Rather, they will pray for mercy for us.[297]

XI. CONCLUSION

Having studied the state practice of Pakistan with preamble, we have come to conclude this research that as it is more concern for a state practice that the state must stand on unequivocal constitutional terms. Pakistan has to opt exactly what he made itself bound in the preamble

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[297]Ibid, p:8

giving it a force through Article 2A. As this article has a contractual status of the nation with its constitution. Rather, then status of other articles of the constitution. It's an unalterable Article in the constitution as the basic theme and format cannot be changed. For achieving this goal the Supreme Court can do a job of reinterpretation of the Article 2A, rather, placing the solution responsibility in terms of amendment on the shoulders of the Parliament. The best constitution is one that guarantees fundamental rights. Among the fundamental rights, the most important fundamental right is "right to life". Pardoning or commutation of sentence deprives the society of its basic right to life. The only thing that can stop a person from taking away one's right to life is the fear of being taken away from him in the same way. Just as he has taken away the right to life from another person. The same is the demand of justice that the right to life should be taken away from the one who took away the right to life from another person. So! The protection of the fundamental right "Life" can be guaranteed in the same way that Article 45 (Presidential Powers to pardon) should not exist in the Constitution. Article 45 itself has no justification in the Constitution. It does not only conflict with Article 2A but also it conflicts with article 8. The national interest lies in the fact that Article 45, which conflicts with Article 2A, loses its justification for its existence in the interpretation of the Constitution.

THE THIRD WAVE OF AUTOCRATIZATION IS CHALLENGING THE DEMOCRATIC RESILIENCE OF THE WORLD'S LARGEST DEMOCRACY

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DR. BIBI SAIRA NOUMAN[299]**

ABSTRACT; The Level of democracy enjoyed by the average global citizen in 2021 is down to 1989 levels. Even India, the world's largest democracy, is not immune from this sweeping third wave of autocratization. Following India's downgrade in 2020 into the category of electoral autocracy, electoral autocracy is the most common regime type (covering 44% of the world population). Unfortunately, autocrats are making the world less safe which is conspicuous from the blatant invasion of Ukraine. This paper describes how the manner of the third wave of autocratization in India is not different from other autocratizing countries and attempts to explore how India became an anocracy or de facto ethnic democracy under Bharatiya Janata Party BJP rule which began in 2014. Will this state ultimately show democratic resilience as South Korea and Benin proved resilient after the short episodes of autocratization? This study makes the case that Indian democracy can manifest resilience by showing breakdown resilience (at the second stage) after failing to project onset resilience (at the first stage of autocratization), due to some factors which include its constitution, past democratic history, and independent

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judiciary. For the description of autocratization in India, the ethnic democracy theory and democratic resilience theory have been used.
Key Words: Autocratization, Democratic Resilience, Secularism, Hindustan Ideology, Saffronisatio

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INTRODUCTION; Jawaharlal Nehru, India's first prime minister, described India as "some ancient palimpsest on which layer upon layer of thought and reverie had been inscribed, and yet no succeeding layer had completely hidden or erased what had been written previously".[300] It depicts how so many diverse communities contributed to the evolution of India that we know today. India's constitution is inclusive in its 'spirit' and Article 1 describes India as a Union of States (Constitution of India, as of 26 November 2021). With the Forty-second Amendment, in 1976, the constitution makes it clear that India is a secular nation; the Supreme Court of India in the 1994 case S. R. Bommai v. Union of India asserted that India was secular since the formation of the republic.

Contrary to the spirit of the constitution and the vision of its founding fathers, India is now widely considered an illiberal democracy or anocracy; following India's downgrade in 2020 into the category of electoral autocracy[301]. According to the V-Dem report 2022, thirty-

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[300] Jawaharlal Nehru, *the Discovery of India* (India: Penguin Random House India, 2016).

[301]Angana P. Chatterji, Christophe Jaffrelot, and Thomas Blom Hansen, *Majoritarian State: How Hindu Nationalism Is Changing India* (London: Oxford University Press, 2019); Pieter Friedrich, *Saffron Fascists: India's Hindu Nationalist Rulers*, 2020; Rana Ayyub, 'Opinion | A Timeline of Hate, Intimidation and Injustice in Modi's India', *Washington Post*, 16 August 2021,

three countries are autocratizing (including India, Turkey, Hungary, Poland, and Serbia et al.) The most striking feature of this wave of autocratization is that it has a liberal facade. Coups, autogolpes, and military takeovers are not in the playbook of new-age autocrats. Their tactics are subtle: they curb civil society organizations and media freedoms (spread fake news); polarize society; label political opponents as unpatriotic or anti-national, and do not allow space for dissenting voices. These tactics are observed in all autocratizing countries and the case of India does not look different.

Research shows that both autocracy and democracy are contagious and produce ripple effects that impact the whole region.[302] So, the backsliding of democracy in India not only affects India but the whole region as the invasion of Ukraine, Putin's war of choice that was unnecessary, affected the whole region and even pushed Germany to increase its military spending**.**[303] Similarly, Pakistan, despite being an underdeveloped country, continues to invest in the military instead of human development due to the fear, imaginary or real, of India. These facts make this topic relevant as autocratizaion in any country can disturb regional peace. The purpose of this paper is to

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https://www.washingtonpost.com/opinions/2021/08/16/india-modi-muslims-journalists-dissent-democracy-rana-ayyub/.

[302] Michael Coppedge, 'Democracy and Autocracy Are Contagious', Power 3.0: Understanding Modern Authoritarian Influence, 24 February 2022, https://www.power3point0.org/2022/02/24/democracy-and-autocracy-are-contagious/.

[303] Michael Brendad Doughert, 'Vlad's War of Choice', *National Review* (blog), 25 February 2022, https://www.nationalreview.com/2022/02/vlads-war-of-choice/; Deutsche Welle (www.dw.com), 'Germany Commits €100 Billion to Defense Spending | DW | 27.02.2022', DW.COM, 27 February 2022, https://www.dw.com/en/germany-commits-100-billion-to-defense-spending/a-60933724.

explore and describe the factors why scholars are arguing that India is autocratizing. The core research question is how has India descended into the category of electoral autocracy in 2020? It is a state whose democratic resilience has failed at the first stage. Will it reverse that downward slope in the second phase as many democracies prove resilient in the second stage?[304]

Literature Review and Methodology:

The Success of democracy requires constant vigilance, whenever people in the democratic world become complacent autocrats take advantage. It has been observed that democracies can die, in this third wave of autocratization was not with a dramatic coup d'etat, but rather due to elected leaders who slowly eroded the democratic institutions.[305] We should beware, scholars warn, "when a politician 1) rejects, in words or action, the democratic rules of the game, 2) denies the legitimacy of opponents, 3) tolerates or encourages violence, or 4) indicates a willingness to curtail the civil liberties of opponents, including the media".[306]

Autocratization, the antipode of democratization, and democratic backsliding means democratic breakdown or decline of core institutional requirements for electoral democracy.[307] The data shows that autocratization has a

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[304] Vanessa A. Boese et al., 'How Democracies Prevail: Democratic Resilience as a Two-Stage Process', *Democratization* 28, no. 5 (4 July 2021): 885–907, https://doi.org/10.1080/13510347.2021.1891413.

[305] Steven Levitsky, *How Democracies Die* (London: Viking, an imprint of Penguin Books, 2018).

[306] Levitsky.

[307] Nancy Bermeo, 'On Democratic Backsliding', *Journal of Democracy* 27, no. 1 (January 2016): 5–19; Vanessa A. Boese, Staffan I. Lindberg, and Anna Lührmann, 'Waves of Autocratization and Democratization: A Rejoinder', *Democratization* 28, no. 6 (18 August 2021): 1202–10, https://doi.org/10.1080/13510347.2021.1923006.

pattern and this paper will search for clues whether India has followed the same pattern. Autocratic regimes attack civil society, media, and academic freedom in the first stage; then polarize society with disinformation and attack dissenting voices; and finally attack the formal institution of the election process.[308]

For analyzing autocratization in India, news reports, articles, reports by think tanks and research work by scholars have been utilized. Before the explanation of Hindutva ideology, it is important to highlight that BJP's ideological godfather is Rashtriya Swayamsevak Sangh RSS, and there are thirty-six full affiliates with RSS and well over a hundred more that are either their subsidiaries or not yet designated as full; collectively RSS and affiliated organizations are called: Sangh Pariwar "the RSS family".[309] Another crucial concept for this study is Hindutva ideology, which is the core tenant of BJP's ideological project. RSS defines Hindutva as a cultural concept, not religious, which means devotion to Hindu civilization and RSS chief Mohan Bhagwat argued that one can practice any religion as long as worship is doneMwithin the framework of cultural Hinduism.[310] Scholars consider it a 'Saffronisation' of India, which means rejecting Indian diversity and pluralism. Shashi Tharoor, Indian scholar and senior leader of the Indian National Congress, writes "India is not united by a common ethnicity, language, or religion, but by the

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[308] Sebastian Hellmeier et al., 'State of the World 2020: Autocratization Turns Viral', *Democratization* 28, no. 6 (18 August 2021): 1053–74, https://doi.org/10.1080/13510347.2021.1922390.

[309] Walter K. Andersen and Shridhar D. Damle, *The RSS: A View to the Inside* (Gurgaon, Haryana, India: Penguin Viking, an imprint of Penguin Random House, 2018).

[310] Andersen and Damle.

experience of a common history within a shared geographical space, reified in a liberal constitution and the repeated exercise of democratic self-governance in a pluralist polity". Tharoor opined that "Hindutva, unlike the spiritual and inclusive strain of Hinduism that Gandhi promoted, is a purely political ideology that appropriates Hinduism to bigoted ends." "Hinduism is a religion which is the personal concern of every individual believer," he explains, "Hindutva, on the other hand, is a political doctrine that departs fundamentally from the principal tenets of Gandhiji's understanding of Hinduism".[311]

The research points out that the third wave of autocratization is engulfing countries as diverse as Brazil, Burundi, Hungary, Russia, Serbia, and Turkey; and clandestine ways of autocratization – harassment of the opposition, subversion of horizontal accountability – are on the rise. In the third wave of autocratization (starting in 1974 and peaking after the end of the Cold War), contrary to the first (began in the late 1920s) and second (began in the 1960s), the democratic institutions are encapsulated by autogolpe and this wave is mainly affecting democratic

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[311] Shashi Tharoor, 'How India Successfully Overcame Post-Independence Challenges?', English.Mathrubhumi, 16 March 2022, https://english.mathrubhumi.com/special-pages/mathrubhumi-100-years/how-india-successfully-overcame-post-independence-challenges-shashi-tharoor-mathrubhumi-100-years-1.7348859; Shashi Tharoor, 'Congress Must Rise to the Challenge', English.Mathrubhumi, 12 March 2022, https://english.mathrubhumi.com/columns/i-mean-what-i-say/congress-must-rise-to-the-challenge-shashi-tharoor-column-1.7336896; Shashi Tharoor, 'Gandhi's Hinduism Is Not What RSS Preaches. Why "Appropriate" Him?', TheQuint, 4 January 2021, https://www.thequint.com/voices/opinion/tharoor-rebuttal-to-rss-bjp-mohan-bhagwat-speech-gandhi-hinduism-idea-of-india-hindutva-patriotism.

countries, not electoral autocracies;[312] for instance, both Modi of India and Erdogan of Turkey were elected democratically but then gradually undermined democratic institutions. In short, democratic erosion, in the third wave of autocratization is subtle, not direct: incumbents legally access power and then gradually, but substantially, undermine democratic norms without abolishing key democratic institutions.[313]

THEORIES:

The world is so complex. For, its better understanding scholars rely on different theories.

Theories do not provide exact answers but try to simplify a complex situation. For a better description, of what is going on in India since the rise of the BJP in 2014 we can rely on ethnic democracy theory. Sammy Smooha, who developed the theory of ethnic democracy, argues that ethnic democracy is the product of ethnic nationalism; it is the ideology of a group that considers itself bound by racial, linguistic, religious, or other cultural characteristics and drives from these bonds a strong sense of belonging and often of superiority.[314] According to this theory, a majority group formulates its identity on the rejection of the other. Moreover, the existence of a threat (perceived or real) is used to mobilize the masses to protect the ethnic nation. This theory is applied to illustrate how Hindu nationalism is changing India, making it a majoritarian state, under the leadership of

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[312] Anna Lührmann and Staffan I. Lindberg, 'A Third Wave of Autocratization Is Here: What Is New about It?', *Democratization* 26, no. 7 (3 October 2019): 1095–1113, https://doi.org/10.1080/13510347.2019.1582029.

[313] Bermeo, 'On Democratic Backsliding'; Lührmann and Lindberg, 'A Third Wave of Autocratization Is Here'.

[314] Christophe Jaffrelot and Cynthia Schoch, *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy* (Princeton, 2021).

Narendra Modi.

Scholars argue that the BJP has changed India into a majoritarian state.[315] This paper not only explains this downward trajectory but attempts to apply democratic resilience theory in the case of India. Democratic resilience theory stipulates a two-stage process where democracies avoid democratic declines altogether (onset resilience shown by Switzerland and Canada) or avert democratic breakdown given that such autocratization is ongoing (breakdown resilience shown by South Korea from 2008–2016, and Benin from 2007–2012).[316] The theory portends that once autocratization begins, only one in five democracies manages to avert breakdown. Surely, predictions or prophecies are not easy, especially in the case of a large and diverse country like India. However, this theory is used to analyze whether Indian democracy will prove resilient and succeed in turning the autocratic tide engulfing the world's largest democracy.

Analysis and Discussion:

No coup has been reported from India. Neither emergency declared nor putsch. Elections were also held on time. Then, why scholars and V-Dem report authors are worried about the state of democracy in India is an intriguing and mind-boggling question. The devil lies in the detail: this hackneyed phrase perfectly summarizes the third wave of autocratization.

India is on the list of electoral autocracies due to the persecution of minorities, curbing of media freedoms, fiddling with constitutional articles, and the promotion of Hindutva ideology, which is exclusionary and

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[315] Chatterji, Jaffrelot, and Hansen, *Majoritarian State*.

[316] Boese et al., 'How Democracies Prevail'.

discriminatory, by the ruling BJP dispensation since 2014.[317] The situation became worse in 2019 when Narendra Modi was re-elected and began to implement his ideology that is why in 2020 India descended into the list of electoral autocracy.[318]

Modi, who was chief minister then, became infamous in 2002 after the killings of more than two thousand people in Gujrat and the US also banned his entry into the US due to gross human rights violations (this ban was lifted when he became the Prime Minister).[319] More recently, Christians have been living in constant fear as they are attacked, the pastor attacked due to his faith[320] and the statue of Jesus smashed by emboldened vigilante groups.[321] Persecution of Muslims has also been increased

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[317] Shashi Tharoor, *The Paradoxical Prime Minister* (New Delhi: Aleph Book Company, 2018); A. G. Noorani, *The RSS: A Menace to India* (New Delhi: LeftWord Books, 2019); Friedrich, *Saffron Fascists*.

[318] Hellmeier et al., 'State of the World 2020'.

[319] Jaffrelot and Schoch, *Modi's India*.

[320] Andrea Morris, '"Targeted Because We Are Christians": Indian Pastor, Wife Survive Violent Attack by Hindu Extremists', CBN News, 7 March 2022, https://www1.cbn.com/cbnnews/cwn/2022/march/targeted-because-we-are-christians-indian-pastor-wife-survive-violent-attack-by-hindu-extremists; The Wire Staff, 'Delhi: Christian Pastor Assaulted, Forced to Chant "Jai Shri Ram"; Police Lodge FIR', The Wire, 3 March 2022, https://thewire.in/rights/delhi-christian-pastor-assaulted-forced-to-chant-jai-shri-ram-police-lodges-fir.

[321] Hannah Ellis-Petersen, 'India's Christians Living in Fear as Claims of "Forced Conversions" Swirl', *The Guardian*, 4 October 2021, sec. World news, https://www.theguardian.com/world/2021/oct/04/india-christians-living-in-fear-claims-forced-conversions; Hannah Ellis-Petersen, 'Jesus Statue Smashed in Spate of Attacks on India's Christian Community', *The Guardian*, 27 December 2021, sec. World news, https://www.theguardian.com/world/2021/dec/27/jesus-statue-smashed-in-spate-of-attacks-on-indias-christian-community; Pieter Friedrich, 'Californian Clergy Coalition Prays and Speaks for Persecuted Indian Christians', *Religion News Service* (blog), 2 March 2022, https://religionnews.com/2022/03/02/californian-clergy-coalition-prays-and-speaks-for-persecuted-indian-christians/; Samaan Lateef and Joe Wallen, '"They Want to Exterminate Us": India's Christians Fear Rise in Violence as Hindu Nationalists Set to Win Key Vote', *The Telegraph*, 10 March 2022,

which is evident from the recent Delhi pogrom in which police collaborated with attackers,[322] cow vigilantism (cow protectors), sloganeering of 'Love Jihad' (Muslims are stealing Hindu girls), and calls for the Muslim genocide by the senior BJP leadership.[323] Discrimination could be evident from the very fact that the BJP had no elected Muslim MP in the Lok Sabha. At a site where the mosque was razed almost 30 years ago, Modi laid the foundational stone for the Ram Mandir to get the sympathies of Sangh Pariwar (the RSS family) as Erdogan reverted Hagia Sophia to Mosque to get the support of far-right Muslim groups.[324] These attacks on minorities increased in India because far-right Hindu nationalists feel

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https://www.telegraph.co.uk/world-news/2022/03/10/want-exterminate-us-indias-christians-fear-rise-violence-hindu/.

[322] Mira Kamdar, 'What Happened in Delhi Was a Pogrom', The Atlantic, 28 February 2020, https://www.theatlantic.com/ideas/archive/2020/02/what-happened-delhi-was-pogrom/607198/.

[323] Clarion Press, 'Muslims Are Not Equal to Hindus, Declares BJP Leader Subramanian Swamy | Clarion India', 3 April 2020, https://clarionindia.net/muslims-are-not-equal-to-hindus-declares-bjp-leader-subramanian-swamy/; Kamdar, 'What Happened in Delhi Was a Pogrom'; Barkha Dutt, 'Opinion | Shah Rukh Khan Was a Symbol of Hope in India. Now His Story Shows All That Is Being Corroded.', *Washington Post*, 20 October 2021, https://www.washingtonpost.com/opinions/2021/10/20/barkha-dutt-aryan-khan-shah-rukh-khan-case-india/; Rana Ayyub, 'Opinion | In India, Calls for Muslim Genocide Grow Louder. Modi's Silence Is an Endorsement.' *Washington Post*, 29 December 2021, https://www.washingtonpost.com/opinions/2021/12/29/india-muslims-hindus-genocide-elections-modi/; Ayyub, 'Opinion | A Timeline of Hate, Intimidation and Injustice in Modi's India'.

[324] Amrit Dhillon, 'Ayodhya: Modi Hails "dawn of New Era" as Work on Controversial Temple Begins', *The Guardian*, 5 August 2020, sec. World news, https://www.theguardian.com/world/2020/aug/05/ayodhya-narendra-modi-temple-foundation-stone-ceremony; Bethan McKernan, 'Erdoğan Leads First Prayers at Hagia Sophia Museum Reverted to Mosque', *The Guardian*, 24 July 2020, sec. World news, https://www.theguardian.com/world/2020/jul/24/erdogan-prayers-hagia-sophia-museum-turned-mosque.

secure and emboldened under Modi. Consequently, the United Nations expressed concern about the human rights situation in India.[325] Besides, another disturbing trend is the curbing of media freedoms.[326]

Massive protests also erupted like lava in different parts of India after the revocation of Articles 370 and 35A (which revoked the special status of the state of Jammu and Kashmir), the conclusion National Citizenship Act NCA (which stripped away the nationality of some two million Indians), and changes in farms law.[327] Besides, the Citizenship Amendment Act CAA (2019) makes it possible for illegal immigrants who are Hindu, Sikh, Buddhist, Jain, Parsi, or Christian to become citizens while denying it to Muslims. This bill violates the Constitution, which prohibits discrimination by religion. These steps were contrary to the constitutional guarantees: for instance, the state of Kashmir lost the autonomy that was given to them by the constitution, and NCA opened the

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[325] Aljazera, 'UN "Concerned" at India Arrests of Rights Activists, NGO Curbs', 21 October 2020, https://www.aljazeera.com/news/2020/10/21/un-concerned-at-india-arrests-of-rights-activists-ngo-curbs; OHCHR, 'UN Experts Urge Indian Authorities to Stop Targeting Kashmiri Human Rights Defender Khurram Parvez and Release Him Immediately', OHCHR, 22 December 2021, https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-indian-authorities-stop-targeting-kashmiri-human-rights.

[326] Ayyub, 'Opinion | A Timeline of Hate, Intimidation and Injustice in Modi's India'; Stanley Carvalho, 'An Intensifying Crackdown on Press Freedom | Deccan Herald', 9 March 2022, https://www.deccanherald.com/opinion/main-article/an-intensifying-crackdown-on-press-freedom-1089475.html.

[327] Jason Burke, 'India's Cancellation of Kashmir's Special Status Will Have Consequences', *The Guardian*, 5 August 2019, sec. World news, https://www.theguardian.com/world/2019/aug/05/india-cancellation-of-kashmir-special-status-will-have-consequences; Hannah Ellis-Petersen, 'Farmers' Protests in India: Why Have New Laws Caused Anger?', *The Guardian*, 12 February 2021, sec. World news, https://www.theguardian.com/world/2021/feb/12/farmers-protests-india-why-laws-caused-anger.

door of Indian citizenship for non-muslims from Pakistan, Afghanistan, and Bangladesh but did not allow a similar opportunity for Muslims.[328]

The pattern of autocratization is almost the same in India, Turkey, Bolivia, Brazil, and Hungary as in all of these countries' freedom of the media, academia and civil society was curtailed first.[329] Autocratization in India peaked after the second victory of Modi in 2019. In the same vein, autocratization reached high levels in Brazil with the victory of Jair Bolsinaro in 2018. Another similarity is that anti-Pluralist parties drive this third wave of autocratization in at least 6 of the top autocracies—Brazil, Serbia, Hungary,y Poland, Turkey, and India; their leaders lack a commitment to the democratic process., disrespect fundamental minority rights, encourage demonization of political opponents, and accept political violence.[330]

Scholars noted that "the Indian government rarely, if ever, used to exercise censorship as evidenced by its score of 3.5 out of 4 before Modi became Prime Minister. By 2020, this score is close to 1.5 meaning that censorship efforts are becoming routine and no longer restricted to issues sensitive to the government. In general, the Modi-led government in India has used laws on sedition, defamation, and counterterrorism to silence critics".[331] They also show us the bleak state of affairs and argue that the BJP has increasingly used the Foreign Contributions

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[328] Munir Akram, 'Kashmir: India's Afghanistan', DAWN.COM, 18 August 2019, https://www.dawn.com/news/1500179; A. G. Noorani, 'Destroying Kashmir', DAWN.COM, 17 August 2019, https://www.dawn.com/news/1499971.

[329] Hellmeier et al., 'State of the World 2020'.

[330] Boese et al., 'State of the World 2021'.

[331] Hellmeier et al., 'State of the World 2020'.

Regulation Act (FCRA) to restrict the entry, exit, and functioning of Civil Society Organisations (CSO); this FCRA was amended in September 2020 to further constrain the use of foreign contributions to NGOs within India.[332] These above-mentioned steps of BJP, prove the validity of ethnic democracy theory in the case of India. BJP, under Modi, changed India into a de facto ethnic democracy, making it an autocratic state, and majoritarian state.

It is time to apply our second theory in the case of India: the resilience of democracies. Will Indian democracy succeed in becoming a liberal or electoral democracy? Or will it continue as an electoral autocracy? Could we fear that it may become a closed autocracy, by regressing?

Further? It is the most profound lesson of history that "nothing is written". First of all, this paper argues that it depends on decisions and choices that would be made by the Indian leadership and its people that will shape their future. Secondly, resilience theory emphasizes the importance of the regional milieu. No country or nation progresses in silos; regional countries not just grow together but adapt to regional norms. Thus, the success of democracy in the neighbouring countries of India will also improve the situation in India. Thirdly, it is not just India that is facing this challenge; declines over the last ten years include the US, dropping from 0.91 in 2016 to 0.60 in 2020 during the Trump administration; with the succession of the Biden administration, the score improved to 0.78 in 2021.[333] If the US can revert, why not India? Fourthly, resilience theory articulates that judicial

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[332] Hellmeier et al.

[333] Boese et al., 'State of the World 2021'.

constraints on executive and strong democratic norms—not economic development— play a critical role in second-stage resilience (breakdown resilience). Indian constitution (which still reflects that India is a secular state in de jure terms) and independent judiciary can stand as a bulwark in front of the third wave of autocratization; the state's constitution is inclusive and embodies the spirit of pluralism. Last but not least, the liberal civil society of India can turn the wave of autocratization with the support of the media and the international community. One caveat can be attached to this hopeful scenario: out of 36 democratic regimes only eleven cases show resilience to breakdown therefore this struggle for democracy is not easy.[334]

CONCLUSION:

India, under RSS-BJP rule, moved away from the Gandhian, Nehruvian, and Ambedkarite principles of pluralism and secularism that are mentioned in the constitution of India.

Autocratization is not a phenomenon that is just hitting the doors of the world's largest democracy; in fact, it eroded the democracy of a plethora of diverse countries namely Turkey, Hungary, Brazil, Venezuela et al. As the end of the Cold War was not the end of history, today, fortunately, we are not witnessing the end of democracy. That being said, democrats can only take this challenge easily at their peril. The challenges for democracy are grave as a very high number of 33 countries are autocratizing. The choices that the Indian people and their leadership will make in the coming years will ultimately shape the destiny of this nation. As mentioned above, if

[334] Boese et al.

the US, South Korea, and Benin can turn the tide of coming autocratization, then why not India.

DOMESTIC VIOLENCE AGAINST WOMEN IN PAKISTAN & IMPLEMENTATION OF CEDAW

BARRISTER HAFIZ ASIF RAZA[335]**

ABSTRACT; Aggression against females lingers on a planetary pandemic that assassinates, crucifies, and mutilates corporeally, mentally, intimately, and financially. Factually, not less than one female out of five has been tortured or exploited by way of beating or erotic once in her life. Violence and aggression against women & girls are a highly prominent form of fundamental human breaches, which repudiate their status, position, safety, honour, pride, and interest to delight indispensable liberties. The trend of violence that exists in almost every society goes beyond consideration of race, group, status, earnings, generation & civilization. There is no part of the world where women heft in equal positions socially, economically, and legally such as men which is a big slap in the face of national as well as international human rights stakeholders. Unfortunately, females have been the prime targets of domestic abuse in their entire life circle and mostly the perpetrators are the nearest or dearest ones. In the case of Pakistani society, the patriarchal structure makes use of it as a tool for various forms of Domestic Violence i.e., Honour Killings in the name of honour, Dowry Violence, Marital Rape, Acid Attacks, and Stove Burnings. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which is no

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doubt a universal bill of rights for women can vindicate patriarchal norms in Pakistan through apex courts by using the notion of legal pluralism.

Keywords: *Domestic Violence, Patriarchal Norms & Pakistan, CEDAW, Implementation of International Instruments into Domestic Sphere through Apex Courts, Legal Pluralism.*

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1. INTRODUCTION; A country like Pakistan has numerous types of aggression and ferocious acts against females, whereas an eminent type of brutality is domestic violence. *Tinker* highlights that almost half of wedded women in Pakistani society have bodily suffered third-degree violence by numerous acts and 90% are pathetically and orally misconducted by their life partner.[336] According to the data of the Thomson Reuters Foundation Poll, Pakistan is the 3rd extremely desperate and hazardous country regarding women's safety in the entire world. This research also shows that more than a thousand women and girls are killed in the name of ''Honour Killing'' every year.[337] Domestic Violence against women in Pakistan was examined as a personal issue in the country, and it comes across with domestic sphere, because of this it never received apt attention for measurement, impediment, and basic reforms.[338] *Ayyub*

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[336] Anne G. Tinker, '*Improving Women's Health in Pakistan*' (Human Development Network HNP Washington DC World Bank 1998) 149

[337] Lisa Anderson, *'Trust Law Poll-Afghanistan is most Dangerous Country for Women'* (Thomson Reuters Foundation, 15 June 2011) <http://news.trust.org/item/20110615000000-na1y8/?source=spotlight> accessed 11/07/2024

[338] F. Fikree and Bhatti Li, *'Domestic Violence and Health of Pakistani Women'* [1999] 65 (2) International J Gynaecol Obstet 195-201. p. 198

affirms through her research that many victims of spousal violence in Pakistan don't like to contact anyone because they feel it is a personal matter and they don't want to share this matter outside the four walls of the house.[339] Domestic Violence in the Pakistani community, especially acknowledged previous twenty years is getting concentration and positive actions chiefly through the advocates and some eminent groups of female rights activists.[340] Patriarchal traditions have deep roots and snuggle in the Pakistani community, where females confront these cultural brutalities on a routine basis. *Kumar and Varghese* accepted that women are spending their lives under the shadows of men dominating society where they are like commodities and deprived of basic necessities of life.[341] In Pakistan, women live in an atmosphere of suspicion & apprehension, and they live according to the traditional pattern and patriarchal norms, *Acharya* mentioned similar positions and the value of females in the Asian region and asserted that in India, females' role in the socio-economic sphere of national life not acknowledged by people and the home.[342] This is the reason, *Goodwin* drew a blurred picture of Pakistani society and made an observation about the fixed status of women in Pakistan due to less information about their

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[339] Ruksana Ayyub, *'Domestic Violence in the South Asian Muslim Immigrants Population in the United States*' [2000] 9 (3) Journal of Social Distress and Homeless 237-248. p. 241

[340] US Department of State, *'Pakistan: Bureau of Democracy, Human Rights, and Labour 2009 Country Reports on Human Rights Practices'* (11 March 2010) <https://2009-2017.state.gov/j/drl/rls/hrrpt/2009/sca/136092.htm> accessed 11/07/2024

[341] H. Kumar and J. Varghese, *Women's Empowerment Issues and Strategies: Source Book* (New Delhi: Regency Publications 2005) 75

[342] J. Acharya, *'Women in Development: The Sericulture Experience in India'* (New Delhi: Indian Publishers 1994) 198

legal and lawful rights, and they did not know the alternative to infringement of these rights.[343]

Under this atmosphere and these scary feelings and notions of feeling subordinate, enforced through customary concepts in the community where men are prevailing position, females are tortured excessively into the four walls of the house.[344] The Annual Report 2023 of the Human Rights Commission of Pakistan statistically indicated that 226 women were reportedly victims of honour crime during 2023, 700 were abducted, 631 were raped and 227 were gang-raped; at least 66 women reported having been subjected to domestic violence.[345] Ironically *Brown* mourns the worst condition of American women that nearly two million are tortured physically through their so-called beloved husband or male companions.[346] *Browne & Brown* further stated that during the early period of the 1980s, almost 17,000 persons were killed and these killings were the outcomes of spouse/wedded partners, and tragically women killings were double in number as compared to men.[347]

In Pakistan, miscellaneous kinds of Domestic Violence implicate tangible, sexual, psychological, and behavioural offenses. The World Trade Press Report 2010 revealed

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[343] J. Goodwin, *'Price of Honour: Muslim Women Lift the Veil of Silence on the Islamic World*' (United Kingdom: Warner Books 1994) 39

[344] Parveen Azam Ali and Maria I. B. Gavino, *'Violence against Women in Pakistan: A Framework for Analysis'* [2008] 58 (4) Journal of Pakistan Medical Association 198-203. p. 199 <http://www.jpma.org.pk/full_article_text.php?article_id=1372> accessed 15/09/2016

[345] Annual Report, *State of Human Rights in 2023*, and Human Rights Commission of Pakitan (Pakistan: HRCP 2009). p. 17

[346] A. Browne, 'When Battered Women Kill' (New Jersey: Free Press 1987) 254

[347] A. Browne & L. S. Brown, Violence at Home (Washington DC: APA 1991) 77

that women in Pakistan are inclined day by day to violent behaviour and actions of men, these are kicking, slapping, marital rap, and stove burning, mutilation and honour killings.[348] The most prevalent kinds comprise Honour Killing,[349] dowry-related violence and spouse maltreatment, *Nasrullah, Haqqi & Cummings* affirm that gender-based violence is the preeminent kind of domestic violence in urban as well as rural localities[350] in Pakistan, ill-nature assault and tries to fire through other persons in the house. *Jouriles & Compte*[351] and *Malamuth, Sockloskie, Kess & Tanaka* elaborate on their empirical findings that females from various backgrounds with different educational levels and economic conditions, react differently at aggressive acts, especially in domestic violence, they further categorize according to the respondents on violence as some are concealers or bearers, some are escapist, some are concierge and some are aggravated.[352] The researches show that in Pakistan 44.6% reported violent cases within the boundaries of the house.[353]

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[348] World Trade Press, 'Pakistan: Society & Culture Complete Report' (USA: World Trade Press 2010) 23

[349] Muhammad Jehanzeb Noor, 'Daughter of Eye: Violence Against Women in Pakistan' (Massachusetts Institute of Technology 2004) 15

[350] Muazzam Nasrullah and others, 'The Epidemiological Patterns of Honour Killing of Women in Pakistan' [2009] 19 (2) European Journal of Public Health 193-197. p. 196

[351] E. N. Jouriles and S. H. Le Compte, 'Husbands' Aggression toward Wives and Mothers' and Fathers' Aggression towards Children: Moderating Effects of Child Gender' [1991] 59 (1) Journal of Consulting and Clinical Psychology 190-192. p. 191

[352] N. M. Malamuth and others, 'Characteristics of Aggressors against Women' [1991] 59 (5) Journal of Consulting and Clinical Psychology 670-681. p. 679

[353] Human Rights Watch, 'Crime or Custom? Violence against Women in Pakistan' (USA: Human Rights Watch 1999) <https://www.hrw.org/reports/1999/pakistan/index.htm> accessed 11/07/2024

This research work will focus on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women at the local level its mechanism and the Legal Framework of Pakistan. Because it is a particular treaty that emerged from the long struggles of the UN for the betterment of women and, especially abolish all forms of bigotry practices against women in the whole world. *Blanchfield* rightly predicates that CEDAW is a trademark of women's human rights which advocates not only the fundamental rights of women but also want to extirpate maltreatment against them.[354] Due to the unique nature of CEDAW, the number of legal jurists and human rights activists cogitate the covenant as an innovation regarding the rights of women, and *Merry* declared that CEDAW no doubt is a universal bill of rights in favour of women.[355] After this, the question arises whether CEDAW is de facto in a position to eradicate malicious orthodox, patriarchal, and hereditary traditions that are intensely implanted in Pakistani society, which is itself, a motto to eliminate discrimination directly affecting the lives of women. If the treaty is impuissant or inadequate to raze these massively deep-rooted pernicious patriarchies, it cannot wipe out the evils against women.

2. The Case Study of Pakistan

A report published by group of doctors and psychologists under the supervision of PIMS that statistically 90 percent

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[354] Luisa Blanchfield, 'the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Issues in the US Ratification Debate' [2011] 7-7500 Congressional Research Service 1-26. p. 6

[355] Sally Engle Merry, 'Human Rights & Gender Violence: Translating International Law into Local Justice' (Chicago: University of Chicago Press 2006) 90

Pakistani women abused and tortured by husbands.[356] *Mumtaz and Mitha* declare that history revealed the domination of orthodox norms in Pakistan, and tragically the community at large sustain and stand up for them.[357] Ms Gabr one of the member of the Committee on the Elimination of Discrimination against Women said in the thirty-eight session in 2007 that troubles arising from patriarchal traditions and stereotypes norms which are prevalent in Pakistani society.[358] Nothing so more appropriate elucidated through some of the incidents in the year 2016 which demarcation between rights and dignity of women and men, and also portrays the real picture of the society. In April 2016 in a city of Sindh province, Jacobabad, a very young girl, Khanzadi 17, was murdered by her newly groom due to the reason that she was not a virgin in the very first night of her wedlock. She was brutally assassinated on the accusation that she has lost her virginity and not pious in her character now. Another case in June 2016, Zeenat Bibi, 18-year-old girl left this world by her own ferocious mother who flamed upon selecting her life partner according to her own will, and their entire family members as well as relatives boycott dead body. In the same year a famous case took place, Qandeel Balooch, fashion-model, well-known figure, social media personage and a bold feminist who confronted the so called forbidden and prohibited traditions of the society, was killed disguisedly by her beloved brother on the name

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[356] Carol Anne Douglas et al., 'Pakistan: Women's Rights Activist Falsely Accused' Off Our Backs, Vol. 32, Issue 5/6, 1 May 2002, p. 1-26

[357] Khawar Mumtaz and Yameema Mitha, Pakistan, Tradition and Change (Oxford: Oxfam 1996) 45

[358] United Nations Committee on the Elimination of Discrimination against Women, Thirty-eighth Session, Summery Record of the 781st Meeting 19 July 2007, CEDAW/C/SR.781, 1-10. p 7

of fictitious honour.[359] No far from the above prototype cases, numbers of females continue to be killed on the name of culture, religion, family honour and restoration of the dignity of family elders. Every day females are the prime target to sacrifice for the hunger of the society and unfortunately few of cases reported in media or law enforcement agencies. That's why perpetrators spent and enjoy their life in front of the eyes of victims. Ara accepted in her research that mostly the criminals of domestic abuse are not punished.[360] Adversely, in a greater number the mentality of the society, including enforcement organisation, have a mind-set about females that if they disobey or jump out the rules of the family, traditions of the society or family honour then no compromise, provided death.[361] So for the sake of restoration of rights & respect, and protection of women, world community generally and the Committee on the Elimination of Discrimination against Women especially, must take mighty and austere steps against deep-rooted patriarchal traditions in Pakistan.

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[359] Nida Paras, 'Pakistan: Culture and Honour Killings in Patriarchal Societies' (Asian Human Rights Commission 2016) 2

[360] Nuzhat Ara, 'Has the Suffering of Pakistani Women Touched the General's Heart' (Lotus Social Welfare Trust International 1999) <http://www.lswti.itgo.com/women%20rights.htm> accessed 09/08/2017

[361] Sujay Patel and Amin Muhammad Gadit, 'Karo-Kari: A Form of Honour Killing in Pakistan' [2008] 45 (4) Sage Journal 683-694 <http://journals.sagepub.com/doi/10.1177/1363461508100790 > accessed 09/08/2017

2.1. Issues

- Domestic Violence is a grave personal and societal crime that cannot be excused or tolerated.
- Domestic Violence against Pakistani Women is not only an ethical but also a moral abuse that paralyses the whole nation as well as the country too.
- Domestic Violence against Women creates a gulf between males and females which destroys the confidence of the second one.
- Domestic Violence against Women is a prominent obstacle to the nourishment of International Relations.
- Domestic Violence against Women is an anti-Islamic (religious) teaching, and wrong/misinterpretation of Quranic Verses regarding this abuse.

2.2. Thesis Statement

The house is considered to equalize as a haven for males and females, however, facts reveal females face aggressive and brutal behaviour from other family members.

2.3. Sub-Questions

Q: - *What are the patriarchal norms that cause Domestic Violence against Women?*

Q: - *Is CEDAW equipped to extirpate the patriarchal and hereditary traditions against women?*

Q: - *Does the judiciary contravene the implementation of CEDAW regarding the eradication of patriarchal traditions?*

2.4. Methodology

This dissertation is concerned with domestic violence against women in Pakistan and the implementation of CEDAW, how effectively CEDAW and its mechanism are

handling this orthodox phenomenon. In accordance with the sensitivity and significance of the topic, it integrates the extraordinarily salient subject of house violence from the breed of Human Rights annexure to the applicability of ad rem Pakistani and International Instruments under the umbrella of the Law field.

Due to the sensitivity of the subject domain, it felt that the use of secondary sources is super convenient for this research. By using these sources, the moral/ethical concerns as a matter of course resolved created through primary sources. The secondary source-based study has several practical and productive advantages; mainly the data has already been gathered and moral issues have already been addressed especially in the most delicate subject area as domestic violence. It is the beauty of the secondary source-based research that provides the possibility of comparative analysis and also gives a chance to understand the wide picture of the issues and their reasons. It also resolves the issue/allegation of uninfluenced data collection during research work.

As far as the scope, variety, and research domain are concerned, this work considered that the utilization of supplementary data would perfectly be fine and ethical issues automatically resolved. *Diener and Crandall* (1978)[362], categorise ethical considerations into four basic sections. These may be; whichever is harmful to the person who takes part actively, may be the deficiency of information to their participants, even sometimes it may be destructive to the secrecy of the persons, and lastly,

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[362] E. Diener and R. Crandall, Ethics in Social and Behavioural Research (University of Chicago Press 1978) 266

chance of mystification may prevail during to accompany this search work.

The basic research material was managed by utilizing the main term or idiomatic expression associated particularly the mentioned domain of 'domestic violence against women in Pakistan' that produced plenty of research work. Despite this, the procedure or approach to finding a wealth of research work produces vulnerably untrustworthy roots, and on this account, merely literary/scholarly scripts, national and international publications, governmental research and policy papers, NGO reports and online/newspapers published articles, elected to address the domain of Domestic Violence against Women in Pakistan and Implementation of CEDAW. These kinds of sources bless to maintain ethical and moral consideration at its extreme level of supremacy that is highly authentic and trustworthy.

3. Patriarchal Norms and Domestic Violence against Women in Pakistan

There is no doubt Pakistani society chiefly hereditary and patriarchal in its customs and social pattern. Society male and female are transcendent into two different worlds. *Mullally* critically described that though the Constitution of Pakistan assures in the Chapter of Fundamental Rights that everyone (male or female) is equal before the eye of the law, but in practice women's rights are limited and slaughtered through the double-edged sword of religion, one side, and cultural norms, the other side.[363] The four walls of the house are associated with women in theoretical orientation as we as physically, whereas males

[363] Siobhan Mullally, 'As Nearly as May Be: Debating Women's Human Rights in Pakistan' [2005] 14(3) Social and Legal Studies 341-358. p. 343

person considered as a king outside the domain of the house. *Ali & Gavino* in their report draw fabricated mental demarcation pictures between social patterns and home scenarios, inside the walls of the house and outside the social setup is the indication of the philosophy of dignity and honour in Pakistan.[364] In the Pakistani social setup, women considered the honour of the family; especially her sexuality is a big threat to the dignity of the male members of the family. *Rashida* aptly observes this self-made honour is the big obstacle to her mobility and the cause of domestic violence.[365] Through this notion, most of the male members try to control women and enjoy this stupid system of confinement.[366] This patriarchal and hereditary social pattern is a way of domination over women and their nerves. This control leads to the cause of traditional social and abusive practices like 'marital rape', honour killings and dowry violence.[367]

In the typical Pakistani society traditional norms and patriarchal rigid setup are the prominent sources of discrimination as well as an open violation of women's rights. *Pakeeza* highlights in her empirical research that different types of indicators play brutal role in the lives of women and they face inhuman behaviour and practices.[368]

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[364] Ibid. (supra note. 14) p. 202

[365] Rashida Patel, 'Women versus Man: Socio-Legal Gender Inequality in Pakistan' (Karachi: Oxford University Press 2003) 109

[366] Asian Development Bank, 'Country Briefing Paper Women in Pakistan' (Programs Department (West) and Office of Environment and Social Development 2000) 2

[367] Camina Rose Giliotti and others, Implementing CEDAW in South Asia (2000) 5 <http://pages.uoregon.edu/aweiss/intl421_521/CEDAW_Report_South_Asia.pdf.> accessed 12/07/2024

[368] Dr Shahzadi Pakeeza, 'Domestic Violence and Practices in Pakistan' [2015] 6(1) VFAST Transactions on Education and Social Sciences 17-20. p. 17

It is an admitted phenomenon and widely referred fact that Pakistani society demonstrates a patriarchal mentality where male persons have a dominant position over the female family structure. This type of mindset and patriarchy reduce the scope and advantages for women and also the cause of domestic abuses and violent practices against women. So, for that lot of inhuman abuses endeavour in Pakistani society. *Awan* ironically picturesque the strict social background, rigorous traditions and patriarchal socio-setup are the prominent factors of domestic violence against women in Pakistan.[369] In Pakistan, men are dominant in the areas of political participation, economic structure and social domain whereas women contest gender discrimination and domestic abuse in their whole life circle. *Sharma* rightly pointed out the rigid social pattern of Pakistani society that never allowed women to participate equally in the development and advancement of society.[370]

Tarar & Pulla acknowledged this situation that women spent their lives in the shadow of danger, violence, and punishment and the perpetrators are mostly their husbands, brothers, fathers and in-laws.[371] In Pakistan, women's happiness and lives are assured in consideration of their Lord (husband) and societal patterns and norms. In other words, if she wants to live then she must follow the instructions of her husband and obey the patriarchal traditions too. This is her fortune because she was born in

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[369] Shehzadi Zamurrad Awan, 'Role of Civil Society in Empowering Pakistani Women' [2012] 27 (2) A Research Journal of South Asian Studies 493-458. p. 453

[370] U. Sharma, 'Women in South Asia: Employment, Empowerment and Human Development' (New Delhi: Authorspress 2003) 37

[371] Ibid. (supra note. 5) p. 59

a society where dominance and superiority are only for male people and all respect is attached to men. By birth, inferiority is attached to females and their duty to obey cultural norms and traditions. *Zakar & Kramer* correctly highlight that in Pakistani society there are different and distinct yardsticks and perceptions like female honour and female sexuality.[372] *Jafar* noted and quoted in her theoretical research that Pakistani social pattern is fully controlled and operates by patriarchal norms and rigid thoughts through men.[373] In the continuation of a long run to explore whether CEDAW is loaded to handle and extirpate domestic violence and stereotypes and prejudices against females which is part and parcel of its prime mission, this research will ponder upon 'honour killings', 'dowry violence' and 'acid attacks & stove burnings' as specific categories of domestic abuses, and its linked traditional norms which impede the full awareness of females' rights.

3.1. Honour Killings

The extreme form of domestic ill-mentality and violence is honour killings. In this sick and terrible mentality women are murdered for the perusal of honour and to maintain so-called family respect. *Farid & Others* point out that there are two prominent factors involved in the happening of this crime which are; the 'will marriage of the couple' and 'illegitimate relationship' in the eye of their family members. In the presence of these two factors,

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[372] Rubeena Zakar and others, 'Spousal Violence against Women in the Context of Marital Inequality: Perspectives of Pakistani Religious Leaders' [2011] 5 (2) International Journal of Conflict and Violence
371-384. p. 378

[373] Afshan Jafar, 'Women, Islam, and the State in Pakistan' [2005] 22(1) Gender Issues 35-55. p. 45

women are the prime target for the dignity and safety of the family honour.[374] These factors reveal the double standards of Pakistani society regarding women's rights. *Naveed* mentioned in his study that the perpetrator, after killing the woman tried to escape by saying that she had an adulterous relationship.[375]

In Pakistan, the majority of people follow the Hanafi School of thought which allows the women to marry their own will or choice.[376] It is a very tragic thing that women are slaughtered, if they use their own will, in the name of honour in hereditary social scenarios.[377] Even in Samina Waheed case Lahore High Court stamped and acknowledged the will of women in their marriages[378] and Supreme Court honoured the eighteen-year-old female in deciding her marriage.[379] In Pakistan, the ratio and number of 'honour killings' crimes are very high and alarming whereas the state machinery failed to eliminate this brutality even badly dwindle to reduce and overcome this crime. *Hossain & Lynn* lament that though the international community highlights the increasing number

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[374] Imran Ahmad Sajid and others, 'Violence against Women in Pakistan: Constraints in Investigation and Data Collection' [2010] 2(2) Pakistan Journal of Criminology 1-133. p. 102 <http://www.pakistansocietyofcriminology.com/publications/Vol2No2April2010.pdf> accessed 23/02/2017

[375] Baseer Naveed, 'Violence against Women in Pakistan' [2011] 5(6) Ethics in Action 1-54. p. 39 <http://www.ethicsinaction.asia/archive/2011--ethics-in-action/vol.-5-no.-6-december-2011/EIAV5N6.pdf> accessed 05/08/2017

[376] Azizah Al Hibri, 'Islam, Law and Custom: Redefining Muslim Women's Rights' [1997] 12(1) American University International Law Review 1-44. p. 37

[377] Are J. Knudsen and others, License to Kill: Honour Killings in Pakistan (Chr Michelsen Institute Development Studies and Human Rights 2004) 22

[378] Abdul Waheed vs. Asma Jahangir [1997] (PLD Lahore High Court) 301

[379] Anwar Mooraj, 'Dishonourable Killings' Dawn (Pakistan, 2 February 2004) <https://www.dawn.com/news/1065573/dawn-opinion-02-february-2004#3> accessed 12/07/2024

of this crime and pitiable situation of women but nothing to useful.[380] The black face of this crime is seen most of the time when a female is killed only the reason that she does not serve food properly or in a respective manner. Sometimes even it takes place when the husband feels or doubts that his wife is not loyal to him or she demands a divorce which is her fundamental right. In a prominent case of Samia Sarwar, 1999 a British Pakistani girl was killed by her mother on the reason that she got divorced from her husband who was the choice of her mother, and decided to marry her own choice.[381] *Abdullah* criticised in his comparative findings that Islam gives both rights to women, the right to marry as well as the right to divorce.[382] By removing the goggles of discrimination there is no fault of women for the enunciation of this brutal act of violence. After a careful observation of this crime, the main cause of action is control of power and dominant position. *Gauhar* appropriately catches the pulse of the society which is very astonishing that the perpetrators try to disguise themselves in the name of cultural norms and honour of family elders, that so-called norms/honour is the main tool for this brutality and killings.[383]

Another salient factor to corporate this crime is religious misinterpretation against women and they killed in the name of Islam (religion). *Kutty* rightly avers in his

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[380] Sara Hossain and Lynn Welchman, 'Honour: Crimes, Paradigms and Violence Against Women' (Oxford University Press 2005) 96

[381] Hillary Mayell, 'Thousands of Women Killed for Family "Honour", National Geographic News (12 February 2002) <https://www.unl.edu/rhames/courses/212/readings/honor-kil-ng.pdf> accessed 12/07/2024

[382] Said Abdullah, 'Women in Islam: A comparative Study' (Lahore: Islamic Publications 2003) 45

[383] Neha Ali Gauhar, 'Honour Crimes in Pakistan: Unveiling Reality and Perception' (Visible Solution 2014) 65

'Fatwa' (precedent in the light of Quran & Hadith) that the so-called concept of 'honour killing' did not exist in Islam.[384] *Fadel* also pointed out that 'honour killing' is a crime and it is absolutely against the true teachings of Islam.[385] The Holy Quran also says that;

"And do not kill the soul which Allah (God) has forbidden [to be killed]." (5:151)[386]

So unfortunately, due to misinterpretation of the holy book of Quran and distortion of the true teachings of religion, this crime has flourished in society. *Hekmat* elaborated that it is because of the male-dominated society, where the arbitrators are also males who want to maintain male dominance over the women although the man at the wrong position and the woman is innocent.[387] *Waheed* tragically highlighted that in Pakistan most of the social pattern is to solve their problems with the consultation of an Imam (religious leader) though he is not competent in Islamic Jurisprudence or State law, and mostly he passes a judgment in the favour of man.[388]

Sattar pointed out the mess of society that in this crime the victim is the woman and her family members when she murdered, by taking the version through accused is

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[384] Sheikh Ahmad Kutty, 'Fatwa: Honour Killing from an Islamic Perspective' (Canada: Islamic Institute of Toronto 2000) < http://www.islamawareness.net/HonourKilling/fatwa.html> accessed 23/08/20017

[385] Mohammed Fadel, 'Honor Killings ' (Islam Awareness, 2006) <http://www.islamawareness.net/HonourKilling/honor1.html> accessed 23/08/20017

[386] The Quran: Chapter Five Al Inaam, Verse: 151.

[387] Anwar Hekmat,'Women and the Quran:The Status of Women in Islam'(New York:Prometheus Books 1998)33

[388] Manar Waheed, 'Domestic Violence in Pakistan: The Tension between Intervention & Sovereign Autonomy in Human Rights Law' [2004] 29(2) Brooklyn Journal of International Law 936-975. p. 944

'respect', 'dignity' and 'honour', then they feel helpless. The big dilemma in these cases is that the family members of the victims on the one hand lost her either, a daughter, sister, or mother but on the other hand favour goes to the perpetrator of the crime. All are considered to be a brave person and give justification that it is not a crime in this sense.[389] Honour crime is very proposed form of domestic violence against women which is almost half of the Pakistani population.

Iqbal emphasized those game plans which played under the protection of honour crime whereas one of the surprising categories is extortion, but for getting the leniency in the crime, it is declared as 'honour killings', and after that, Jirga (local area of the elders' court system) announce a verdict in favour of the accused person.[390] Kaaro Kaari (suspected lover & bad woman) is a well-known term in tribal and ruler areas in the country and is committed in the name of honour and respect.[391] A well-known case of Mukhtarah Mhai in 2002, is the worst example in this regard where Jirga (tribal council) gave a verdict against her and she was gang-raped in the presence of the whole tribal council. This extreme violation also has been committed where male members considered that their respect and honour were damaged by their female members and considered that it is their duty to restore it by

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[389] Adnan Sattar, 'The Laws of Honour Killing and Rape in Pakistan' (Aawaz 2015) 10

[390] Muzafar Iqbal, 'Honour Killing and Silence of Justice System in Pakistan' (Centre for East and Southeast Asian Studies 2006) 19

[391] Muhammad Zia Ullah, 'Honour killings in Pakistan under Theoretical, Legal and Religious Perspectives' (Department of Global Political Studies 2010) 39

way of killing.[392] *Noor* explained that the majority of the females in Pakistan unfortunately bear numerous types of violence that took place inside the house by other members of the family ironically and these abuses start from slapping/kicking/abusing to killings.[393] This heinous and horrible crime has been executed in the whole of Pakistan in various types with different recognition. Ultimately the victim is a female person who is targeted by traditional and local cultural practices in the name of allegedly her bad conduct, her liberty, her sexuality and behaviour. So due to these non-sense mentalities their loved ones
Slaughter her.[394]

3.1. (a) High Courts' Judgements on Honour Killings

In these cases, the superior judiciary condemned and awarded punishments that committed the crime of honour killings.

Kamal Shah vs. the State 2009

In this case, the Lahore High Court held that murder in the name of 'Honour' did not fall under the mitigating circumstance that gave a lesser punishment to the accused. The laws of the country as well as religion never give liberty to commit "honour killing" which accounts for murder.[395]

Sabah Sadiaq vs. the State 2008

The High Court decided that after the admission of the accused to kill the deceased persons and taking the plea of

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[392] Attiya Dawood, 'Karo Kari: A Question of Honour, but whose Honour?' Dawn (Pakistan 1999) <http://www.geocities.ws/attiyadawood/arti03.html> accessed 23/08/2017

[393] Ibid. (supra note. 19) p. 32

[394] Sohail Akbar Warraich, 'Honour killings and the Law in Pakistan' (London: Zed Books 2005) 78

[395] Kamal Shah vs. the State [2009] PCRLJ 547

high provocation in the name of Honour as a brother never gave any relaxation to the accused and the conviction was sustained according to the circumstances.[396]

Mohammad Nawaz vs. the State 2005

In this case, the honourable Lahore High Court very clearly took a verdict that 'Honour Killings' is a heinous crime and it is against the dignity of the courts to support or courage Killings in the name of so-called "Honour".[397]

3.2. Dowry Related Domestic Violence

Dowry Violence is another category of patriarchal practices in Pakistan that directly affect the lives of women. Curse of Dowry prevails all over Pakistan and every family follows this atrocious custom. The Chief Justice of Pakistan, Mr Sh. Riaz Ahmed, in his address in Islamabad, the capital of Pakistan, to the Inaugural Session of the National Workshop on Draft Law, *"Prohibiting Excessive Expenditure on Marriage Ceremony and Dowry"*, dated 25th July 2013 said;

"……the problems of the poor and deprived classes, who are being crushed by unhealthy practices, are increasing by the day, and call for immediate action……the primary objective of the draft law is to prevent the abuse of the social practices to an extent that the solemnization of marriage and its related festivities is increasingly being perceived as a social evil. The same is the case with the custom of giving dowry to the bride. Dowries are paid, and now also openly demanded. This is wrong and unacceptable, as it is against all norms and values, known to society."[398]

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[396] Sabah Sadiaq vs. the State [2008] YLR 227

[397] Mohammad Nawaz vs. the State [2005] PCRLJ 937

[398] Chief Justice Sh. Riaz Ahmed's Speech, 'Prohibiting Excessive Expenditure on Marriage Ceremony and Dowry – PKLJC 59. (30-32) 31

In this scenario, women are handled badly and confronted with horrible types of domestic abuse based on a negative mentality and sick mindset of the male domination culture. *Engineer* explained that some ignorant people gave justification for the name of Islam about dowry, whereas religiously groom gives Mahr (gift money) to the bride.[399] The Holy Quran clearly says:

"And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease." (4:4)[400]

Farooqi claimed in her clinical research that the most common type of violence women faced in the four walls of the house is dowry-related violence and she is beaten in the shape of kicking, slapping, pushing, punching, biting, and choking by their family members or in-laws due the less volume of dowry items.[401] This spot is the main reason for facing domestic abuse throughout their life circle in different ways like physically, psychologically and emotionally. *Perveen* has made an investigation by noting that in most of the houses in Pakistan mothers and their sons combination are dangerous for wives and sisters-in-law because this combination never likes to face any disobedience against their will and commandments.[402] In some cases mothers' aggression against their daughters-in-law only for the reason that their son brings his wife

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<https://www.commonlii.org/pk/other/PKLJC/reports/59.html> accessed 30/08/2017

[399] Asghar Ali Engineer, 'The Rights of Women in Islam' (London: C. Hurst & Company 1992) 76

[400] The Quran: Chapter Four Al-Nissa, Verse: 4.

[401] Yasmin Nilofer Farooqi, 'Physical Violence in Pakistani Families' (Lahore Publications 1992) 13

[402] Rakhshinda Perveen, 'Dowry: The Most Frequently Forgotten Form of Gender Violence in Pakistan' (Pakistan: Best Publishers 2006) 13

against the likeness of his mother whereas his mother wanted to bring her sister's daughter or brother's daughter as his wife. In this way, she is so innocent and never does any wrong but she faces abuse.[403]

Ramzan explained that the most drastic scenario is created when she gives birth to a female baby child then she is the worst creature in the world according to her husband and her in-laws and again faces distinguish types of domestic violence.[404] *Pardee* affirms that in Pakistan at the time of female birth, it is considered a misfortune and burden economically.[405] *Veena* discussed that in certain cases husband or his family members demand luxury items like a car or diamond jewellery in dowry and sometimes directly asked money in millions, if she fails to accomplish her husband's or in-laws' will or demands according to requirements then she faced domestic violence.[406]

Niaz admits in her findings that after a marriage with a male person, some sluggish types of people including the husband, who is the life partner and companion of good and bad days, and also in-laws put their concerns to the newly married bride that they are dissatisfied with less dowry, and then she started to face dowry violence.[407]

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[403] Rakhshinda Perveen and others, 'Forgotten: Dowry A Socially Endorsed Form of Violence in Pakistan' (Pakistan: SACHET & UN Women 20011) 32 <http://www.creativeangerbyrakhshi.com/resources/policy/un_women%20_report.pdf> accessed 23/08/2017

[404] Muhammad Ramzan, 'Domestic Violence against Women in Pakistan' [2016] 1 <http://www.pljlawsite.com/2016art35.htm> accessed 27/08/2017

[405] Laurel Remers Pardee, 'The Dilemma of Dowry Death: Domestic Disgrace or International Human Rights Catastrophe' (London: Ariz J. Int'l. & Company 1996) 490

[406] Talwar Oldenburg Veena,'Dowry Murder: The Imperial Origins of a Cultural Crime' (New Delhi: Oxford University Press 2002) 7

[407] U Niaz, 'Violence against Women in South Asian Countries' [2003] 6(3) Archive of Women's Mental Health, 179

Shahnaz exchanged the verdict of *Straus & Rubin* which unveil another dark side of the society that mostly marriages are a kind of deal between kinship relations and women considered as a valuable award or allowance. Even her sexuality in the eyes of selfish parents is a priceless treasure and they are ready to sell in consideration of their overwhelming greedy desires.[408]

3.2. (a) Judgement of Supreme Court of Pakistan on Dowry

In a judgement dated 5th November 2004, the Chief Justice of Pakistan Mr Nazim Hussain Siddiqui ordered in paragraph 27 as under;

"The exploitative customs observed on the eve of marriage ceremonies in our country and the social evils emanating therefrom have not only added to the miseries of the poor but have put at stake their very existence too. It is customary in our society that ostentatious displays of Jahez (dowry articles) and other dowry articles are placed in front of all the guests to make it known to them as to what is being given to the bride by her parents and the parents of the bridegroom. Dowries are given and now also openly demanded. The lower middle and poor classes of society are being crushed under the evils of extravagance and ostentatious displays of wealth. It is unacceptable as it is against all norms and values known to a civil society. It must stop."[409]

<http://jthomasniu.org/class/781/Assigs/nias-violwom.pdf> 179 accessed 21/02/2017

[408] Shehnaz Khan, 'Zina, Transitional Feminism and the Moral Regulation of Pakistani Women' (Vancouver: UBC Press 2006) 75

[409] Supreme Court of Pakistan, Constitution Petitions No 23 of 1999 & 21 of 2004 CMA No. 1466/2001. p. 21

3.3. Stove Burnings and Acid Attacks

Stove Burning and Acid Attacks are also forms of domestic violence that take place in the domain of houses and sometimes in the presence of whole family members, which is the cruelty and dreadfulness against women. *Jill Reilly* reported that there are an estimated more than a hundred female victims of acid attack and stove burning, and most are not reported. There are multiple causes of these crimes including; loss of temper over debate, disobedience, or personal hatred.[410] These kinds of crimes are not only disrespectful of humanity but also a gross violation of women's human rights. In a patriarchal society like Pakistan these are very common crimes and their rates are very high. *Terzieff* pointed out that due to these crimes, a woman was physically mutilated for her whole life and left scars not only on her body but also on her soul.[411] *Marcus* affirms that in Pakistan women are humiliated through acid attacks and burned by stove bursting.[412]

Pratap claimed that most of the abusers have a lot of justification regarding these crimes like, it happen as slander bursting, clothes catching fire during cooking, presser cooker bursting, or explosion inside the kitchen,

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[410] Jill Reilly, 'Katie Piper's surgeon and his mission to save the acid attack victims who have been burned alive'. Dailymail (UK, 15 January 2013) <http://www.dailymail.co.uk/news/article-2262653/Female-survivors-acid-attacks-reveal-horrific-tales-torture-families.html#ixzz2RvJ1crr5> accessed 27/08/2017

[411] Juliette Terzieff, 'Pakistan's Fiery Shame: Women Die in Stove Deaths' We.news (27 October 2002, <http://womensenews.org/2002/10/pakistans-fiery-shame-women-die-stove-deaths/> accessed 27/08/2017

[412] Rachel Marcus, 'Violence against Women in Bangladesh, Pakistan, Egypt, Sudan, Senegal, and Yemen' (UK: Bridge Development-gender, Report no. 10, March 1993) <http://www.bridge.ids.ac.uk/reports/re10c.pdf> accessed 28/08/2017

etc.[413] *Barlas* highlights that in reality, the abusers make a proper plan to kill her through kerosene oil or gas, just only because they decided to teach a lesson to her about their disobedience.[414] As reported cases in the newspaper women faced multiple violence against women in Pakistan, from 2000 to 2010 stove burning and acid attacks were high volume. In every province of the country, these crimes are almost the same.[415]

Schneider observed in her research that these crimes against women for mutilation in Pakistan are alarming and very dangerous, which shows the ill mentality of the accused and also shows his inner approach to get control and domination over women.[416] *Orenstein* affirms that this lust to get power and control ended with the death of an innocent human being.[417] After facing this terrible act she bears another unnatural thing, which is that nobody is ready to marry her. *Khaleeli* discussed that the ratio of acid burning is very high in the province of Punjab, even though the people are more educated than in other provinces, but the situation is still dangerous and high.[418]

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[413] Anita Pratap, 'Ghastly Domestic Abuse: Burning Women' <http://www.cnn.com/WORLD/9702/10/pakistan.women> accessed 15/08/2017

[414] Asma Barlas, 'Believing Women In Islam: Unreading Patriarchal Interpretations of the Quran' (Karachi: Oxford University Press 2002) 79

[415] Ibid. (supra note. 113) p. 39

[416] Elizabeth M. Schneider, 'Battered Women and Feminist Lawmaking' (London: Oxford Press 2000) 54

[417] Natalia Orenstein, 'Acid attack victim inspires Pakistani legislation' Newsdesk (Pakistan, 8 June 2010) 78 <http://newsdesk.org/2010/06/acid-attack-victim-inspires-pakistani-legislation/> accessed 28/08/2017

[418] Homa Khaleeli, 'Saving Faces in Pakistan' The Guardian (Pakistan, 12 February 2012) 21 <http://www.guardian.co.uk/lifeandstyle/2012/feb/12/saving-faces-pakistan-acid-attacks> accessed 28/08/2017

According to the reports the other two provinces are less in occurrence of this crime.[419]

3.3. (a) Landmark Judgement of SC of Pakistan on Acid Attack

The apex judiciary of the country, the Supreme Court of Pakistan, played its conspicuous role in favour of women's human rights by taking a Suo Moto action and setting aside the decision of the High Court on a publishing story, "A Ray of Hope" in the newspaper, "The New" when the newspaper highlights the High Court decision in favour of the culprit on Naila's acid attack case. Nail 13, was acid attack by a boy, Irshad Hussain, on refusing to go with him. The session court gave the sentence of 12 years imprisonment and 1.2 million fine to the culprit, while High Court passed an order giving relaxation to the culprit, if he paid the fine then he would be released. She was the first brave acid attack girl who pursued her case from the magistrate court to the Supreme Court of Pakistan without bothering the pressure from the culprit party.[420]

In this landmark judgement the Chief Justice of Pakistan, Mr Iftikhar Muhammad

Chaudhry decided as under;

"The accused involved in the commission of the crime, in which the face of Naila Farhat has been completely defaced by throwing acid on her, has been set aside vide judgment dated 13th November 2009……The Government of Pakistan shall also take steps for the

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[419] Kristin Solberg, 'Pakistan Moves to Tackle Acid Violence' [2010] 376(9748) The Lancet 1209– 1210. p. 1209

[420] 'SC Action in Acid Violence Case Hailed' The News (Islamabad, 26 November 2009) <http://www.thenews.com.pk/archive/amp/208544-sc-action-in-acid-violence-case-hailed> accessed 29/08/2017

rehabilitation of such victims. However, as in an appeal referred herein before matter has been disposed of and the appeal filed by the mother of the victim has been accepted, therefore, no further action is called for except observing that let the Government take necessary steps in this behalf in view of the observation made herein before.[421]
In short, though the above type of punitive and retributive decision is not advantageous for a long period rather than to take concrete and solid steps by governmental, community and private sector.

4. CEDAW, Its Committee and Implementation in Pakistan

In the history of human rights development, on the day of 18th December, 1979 a landmark nature convention regarding women's rights, CEDAW was adopted by the United Nations General Assembly, and on September 3rd, 1981 came into force. According to its uniqueness and peerless nature till July 2024, 189 states are parties which is the highest volume of any International Human Rights Treaties. The sole purpose of the creation of this treaty is to promote women's rights and eradicate all kinds of discrimination and abuses/violence against women universally. Among all of the UN treaties, CEDAW is the distinguishing piece of the treaty that particularly highlights women's rights.[422] *Merry* declared that CEDAW was late in the 1970s which enunciated similar characteristics as UDHR 1948, due to this it was mentioned as a women's rights document.[423] *Walter*

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[421] Supreme Court of Pakistan, Human Rights Case No. 12912-P of 2009. p. 1-2
[422] Ibid. (supra note. 24) p. 19
[423] Sally Engle Merry, 'Human Rights & Gender Violence: Translating International Law into Local Justice' (University of Chicago Press 2006) 76

affirms that this short but comprehensive document about women's rights covers all the issues related to women especially talk about all kinds of discriminatory practices against women.[424] Due to the outstanding position of CEDAW concerning women's human rights, it has been defined as 'Innovative'. Considerably, as *Schopp-Schilling* discusses CEDAW is the primary and mere human rights document that imposes an obligation on the member parties to reshape and nullify societal behaviours and cultural norms and customs that are the root causes of discrimination between sexes.[425]

4.1. Binding Nature of CEDAW

By incorporation and nature, CEDAW is a women's rights treaty, and under international law, treaties are binding at those states that ratify the treaty. Thus, CEDAW imposes and demands some commitments and obligations according to the articles which are enunciated. *Gray, Kittilson & Sandholtz* believe that the process of ratification in CEDW is a significant ingredient in the development of women's human rights.[426] According to the treaty, international partners must monitor its implementation with letter and spirit.

4.2. Ratifying State Obligations

Rehman perceived that CEDAW, as compared to the other UN treaties, is the paramount treaty that has matchless and

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[424] Lynn Walter, 'Women's Rights: A Global View' (Greenwood Press 2001) 15

[425] Hanna Beate Schopp-schilling, The Nature and Scope of the Convention in Hanna Beate Schoppschilling and Cees Flinterman (eds), The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women (New York: The Feminist Press 2007) 10

[426] Mark M. Gray and others, 'Woman Norms Matter? Norm Localization and Institutional Change in Asian Regionalism' [2006] 58 (spring) International Organization 239-275. p. 258

sublime characteristics about women's dignity and respect.[427] According to the law of Vienna Treaties after the ratification of the CEDAW, its obligations were automatically enacted on the ratifying state parties. Following of the obligations are as under;

(i) The law of the treaty enforces commitments and responsibilities, which are statutory incumbent on the ratifying party.

(ii) States parties promised to modify or legislate local laws and procedures, at the issues that are the binding nature of the treaty required.

(iii) According to the treaty requirement ratifying States present for audit in way of periodic reports.

4.3. Article Base Structure of CEDAW

- Articles 1-5: Common Nature of Substantive Framework
- Articles 6-16: Core Substantive Domain
- Articles 17-22: Procedural Matter and Committee
- Articles 23-30: Administration and Interpretation.[428]

4.4. Purview of the Germane Articles

There is no doubt that CEDAW helps and promotes unambiguous cultural alteration in female roles and destroys dangerous deep-seated negative customs against women in society and family as well. The intention behind the makers of the treaty and preamble un-shut acknowledgement that there is a need to change the role

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[427] Javaid Rehman, International Human Rights Law (2nd edn, Essex: Pearson Education Limited 2010) 520

[428] *Ian Brownlie and Guy S. Goodwin Gill, Basic Documents on Human Rights (4th edn, Oxford University Press 2002) 212*

and position of women in the community and inside the house.

Article 2(e) & (f) of the treaty comprehensively declares that Member States are needed for proper condemnation of all kinds of double standard patterns and behaviours against women and ready to chase policies for eradication of discrimination against women without any postponement. These further describe to legislate, amend and enact equality-based laws and national constitutions which are fruitful for women in every sphere of their lives. So, these particular clauses focus on the formation of lawful safety and protection through local laws of the country and organizations from any person(s) or discriminatory patriarchal practices.[429]

Next to this, article 5(a), specifically, articulates sublime commitments by mentioning the "stereotype role of men" under the shell of patriarchal systems, traditional customs and religion which require to modify those prejudices and norms against women.[430]

Further article 16 dominantly clarifies the marriage institution and family relationship regarding the equality between men and women.[431]

The above-mentioned articles encourage abolishing prototype traditional draconian practices and their linked and associated problems against women's rights. In the special case of Pakistan, these articles are very important being a state party to put efforts under the guideline of these CEDAW provisions for the elimination and

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[429] *UN General Assembly, Convention on the elimination of All Forms of Discrimination Against*
Women, 18 December 1979, United Nation, Treaty Series, vol. 1249. art. 2(e) (f)
[430] *Ibid. art. 5(a)*
[431] *Ibid. art. 16*

eradication of patriarchal patterns and practices in the four walls of the house. *Cook & Cusack* assure that the compulsion and responsibilities of the member states of CEDAW in the context of the above articles show valuable unexploited possibilities in the struggle to defeat gender patriarchy.[432] In the crux of the above-mentioned articles, CEDAW can theoretically remove harmful and prejudiced practices against women, but practically it is a different working scenario of provisions.

4.5. CEDAW's Supervisory Mechanism & Committee's Views about Pakistani Patriarchal Traditions against Women

Under the umbrella of the United Nations framework, a number of human rights treaties have their broader check and balance mechanism regarding the implementation of treaty provisions. CEDAW has also a reporting mechanism according to Article 18, that after the enforcement of the treaty, the state party is bound to submit its report within one year, and thereafter, every four years to submit its periodic report about legislation, judiciary, administration or other dimensions that have chosen by them to make effective to the prescience of the treaty. The efficacy and importance of this reporting mechanism are established to disclose and embarrass, not coercion.[433] In one aspect the party mostly represents human rights issues but they are not ready to describe their struggles and achievements for eradicating human rights violations and making & implementing better policies in

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[432] Rebecca J. Cook & Simone Cusack, 'Gender Stereotyping: Transnational Legal Perspectives' (Philadelphia: University of Pennsylvania Press 2010) 75

[433] United Nations, Division for the Advancement of Women (1981) Convention on the Elimination of All Forms of Discrimination against Women. New York: United Nations. p. 101

the domain which is the spirit of the framers of article 18 of the treaty. *Chink in & Freeman* lament that the most disheartening phase of the treaty is when the state parties avoid to play its bona fide role regarding their treaty obligations.[434] After receiving the periodic report from the state party, the treaty committee gives concluding observations along with highlighting the alarming concerns and reservations regarding the implementation of the treaty in its letter and spirit.

Although, factually 'Concluding Observations' and 'General Recommendations' are not lawfully binding on state parties which made its position and status vague and dubious in the structure of the treaty somehow. This vague and ambiguous position of 'CO' and 'GR' makes a golden opportunity for those treaty partners who do not expunge violence against women.

Pakistan has been submitted its fifth periodic report in 2018 which was due in 2017, and the committee expressed its concluding observations in March 2020 by appreciating the state party's efforts to enact and amend the number of laws and provisions for preventing and stopping violence against women.[435] In the presence of the above struggles, the committee has mentioned number of alarming factors which are increasing day by day such as stereotype gender violence, honour killings, karo-kari, stove burnings and acid attacks in Pakistan.[436] The committee has given

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[434] Christine Chinkin & Marsha A. Freeman, 'Introduction' in Marsha A. Freeman, Christine Chink in & Beat Rudolf (eds.) The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary (Oxford: Oxford University Press 2012) 3

[435] United Nations Committee on the Elimination of Discrimination against Women, Concluding Observations on the fifth periodic report of Pakistan, 10 March 2020, CEDAW/C/PAK/CO/5. Para. 4. p. 1

[436] Ibid. para. 29. p. 7

several recommendations to the government of Pakistan relating to the gross level of domestic violence against women. At the same time committee members praised state efforts and drew a list of enacting and amending laws including 'The Acid and Burn Crime Act of 2018', the Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act, and the Criminal Law (Amendment) (Offences relating to Rape) Act, both in 2016.[437]

4.6. Difficulties CEDAW Confront Orthodox Patriarchy in its Pursual Regarding Domestic Violence & Patriarchal Abuses in Pakistan

The Convention on the Elimination of All Forms of Discrimination against Women does not have a strict and rigid mechanism for implementation and execution. Its paramount implementation system is the reporting process from the state party which is inaccurate regarding its compliance and most of the state parties fail to promulgate in the timeline, same as Pakistan had submitted its combined initial, second and third periodic report after one decade of its ratification.[438] So the submission of combined reports with adjoining reports and improper timing from the party to the treaty shows its willingness with CEDAW and women's rights. *Steiner & Alston* lament that inexorably careless behaviour from the state party, to the most significant portion of the treaty enforcement process, does not a sign of exuberant

[437] Ibid. para. 4 (a) (e). p. 1-2

[438] United Nations Committee on the Elimination of Discrimination Against Women, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on Combined initial, second and third periodic report of Pakistan 3 August 2005, CEDAW/C/PAK/1-3, 1-130

preference to brush off dangerous patriarchal traditions and stereotype norms.[439]

After the ratification of CEDAW, Pakistan still did not adopt the treaty's Optional Protocol, which entered into force for the betterment and implementation of treaty provisions regarding examination and investigation procedures. If the state party adopts Optional Protocol of CEDAW, then the protocol authorities examine individual complaints against women and inquire about violations of the treaty. Unfortunately, Pakistan is not a member of this protocol furthermore it has a reservation on Article 29(1) of CEDAW, an implementing article, which even closes the doors of implementation mechanisms. *Semler and others* critically examined the committee has expressed a lot of time that Pakistan should adopt the Optional Protocol and also finish reservation on Article 29(1) for the better implementation of CEDAW.[440] Pakistan has announced in response to CEDAW that its constitution has a lot of provisions about fundamental rights and rights of women, and further, some particular laws protect women's rights.

5. Constitution, Amendments and Legal Framework to Combat Domestic Violence against Women in Pakistan

5.1. 1973 Constitutional Provisions of Pakistan

The constitution of Pakistan assures basic fundamental rights which are incorporated in its first two chapters. This shows that like other countries of the world Pakistani

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[439] Henry J. Steiner and Philip Alston, 'International Human Rights in Context: Law, Politics, Morals' (Oxford: Oxford University Press 2000) 101

[440] Vicki J. Semler, Anne S. Walker, Leonora Wiener, Tina Johnson and Jane Katz Garland, 'Rights of Women: A Guide to the Most Important United Nations Treaties on Women's Human Rights' (New York: International Women's Tribune Centre 1988) 35

constitution embodied these natural rights for the welfare and respect of the citizens. It is also a sign that the state and its founder and makers were strict with these cardinal human rights.[441] In these rights there are some very important rights to mention here according to the subject of the research, which are as under;

Article 25 (1) of the Constitution about the equality of persons. Under this article, every citizen is equal in the eye of the law and has the same lineage of protection according to the law. *Article 25 (2)* ensures that discrimination is not allowed just only on a 'sex' basis.[442] *Article 27* of the constitution declares that in respect of government services, there will be no discrimination on the point of sexuality, racism, religious thoughts, and caste.[443] *Article 34* guarantees the full contribution and engagement of women in national life.[444] Furthermore, *article 38(a)* put some obligation on the shoulders of the state in the way of the prosperity of the citizens, and enhancement of life standards, regardless of rank/class, sexuality, faith, and ancestry.[445] All of the above constitutional provisions safeguard the fundamental rights of women irrespective of race and religion.

5.2. Landmark Amendments and Legislations for Women After 2000

After 2000, new laws were introduced for the protection of women's rights which is considered the landmark action in the reference of legal reforms and amendments.

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[441] M Rafiq Butt, 'The Constitution of Pakistan 1973 with Commentary' (Revised Edition edn, Mansoor Book House 2004) 60
[442] Ibid. p. 84
[443] Ibid. p. 103
[444] Ibid. p. 106
[445] Ibid. p. 107

However, there is still a need for more steps to be taken for the empowerment of women in Pakistani society. These amendments and legislations are the outcome of the pressure of some prominent national as well as international organizations and some state machinery. Pakistan is trying to act upon its international commitments through legal amendments and legislation for the protection of women after the year 2000. A series of laws as under;

- Criminal Law (Amendment) (Honour Crimes) Act 2004[446]
- Protection of Women (Criminal Laws Amendment) Act 2006[447]
- Criminal Law (Amendment) (Sexual Harassment) Act 2010[448]
- Protection against Harassment of Women at the Workplace Act 2010[449]
- Criminal Law (Second Amendment) (Acid Crime Protection) Act 2011[450]
- Criminal Law (Third Amendment) (Prevention of Anti-Women Practices)
Act 2011[451]

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[446] The Gazette of Pakistan, Criminal Law (Amendment) Act, 2004 (Senate Secretariat: Islamabad, 10th January, 2005)

[447] The Gazette of Pakistan, Protection of Women (Criminal Laws Amendment) Act, 2006 (Senate Secretariat: Islamabad, 2nd December, 2006)

[448] The Gazette of Pakistan, Criminal Law (Amendment) Act, 2010 (Senate Secretariat: Islamabad, 2nd February, 2010)

[449] The Gazette of Pakistan, Protection against Harassment of Women at the Workplace Act, 2010 (Senate Secretariat: Islamabad, 11th March, 2010)

[450] The Gazette of Pakistan, Criminal Law (Second Amendment) Act, 2011 (Senate Secretariat: Islamabad, 28th December, 2010)

[451] The Gazette of Pakistan, Criminal Law (Second Amendment) Act, 2011 (Senate Secretariat: Islamabad, 28th December, 2011)

- Women in Distress and Detention Fund (Amendment) Act 2011[452]
- The Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act 2016
- The Criminal Law (Amendment) (Offences relating to Rape) Act 2016
- The Acid and Burn Crime Act 2018
- The Women in Distress and Detention Fund (Amendment) Act 2018
- The Enforcement of Women's Property Rights Act 2020
- The Criminal Law (Amendment) (Offences relating to Rape and Gang Rape) Act 2021
- The Anti-Rape (lnvestigation and Trial) Act 2021
- The Enforcement of Women's Property Rights (Amendment) Act 2021

5.3. Struggles to Combat Domestic Violence in Pakistan

In the year 2009, the lower house of the Parliament passed the Domestic Violence Bill with a high volume of support, this law for the first time properly defined and explained all aspects of domestic violence and abuses against women. Though there are some deficiencies in this bill but at least a proper and separate law about women's rights was going to be enacted. This was the time in the history of Pakistan when these patriarchal abuses were going to be penalized. This bill faces a lot of criticism, as it is totally against the spirit of Islamic teaching and highlights the flaw shown by the lack of interest in this law. The highest

[452] The Gazette of Pakistan, Women in Distress and Detention Fund (Amendment) Act, 2011 (Senate Secretariat: Islamabad, 5th January, 2012)

Islamic institutions also criticize this bill which is continuing, according to the views of the heads that it creates the difference between male and female. Their top reservation is that women are not only the victims of this crime but men also face this crime which is not covered under this law. This thing also shows the patriarchal mindset in society. Some criticized it by saying that it is also against the basic principle of the Constitution of Pakistan that everyone is equal in the eye of the law.[453] Later on, it was tragic to hear that due to the lapse of the timing in the Upper House of the Parliament bill could not be further for debate because 90 days have expired.

Then it was the time when 18th amendment was passed by the parliament with both houses and this amendment requires that important legislation should be incorporated by the provincial level as compared to the federal government. So, among the entire provinces only Punjab province is passed a bill about domestic violence.

5.4. Administrative and Legal Hurdles & Deficiencies to Combat DVAW

5.4.1. Un-Reported Crime

The very initial and big hindrance to combating the DV is the non-registration and non-reporting of the First Information Report because after this the state machinery will put into action otherwise it will be ignored. The problem is that DV cases can be seen reported in the newspapers but not in the police stations. A lot of factors behind not lodging the FIR, like, harassment of the victims, and fear of the family members because she will have to live in the same house again.

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[453] Ibid. (supra note. 112) p. 2

5.4.2. Ambiguous Motives behind DVAW

Motive is the main thing in every committed crime, and it is the duty of the investigating officer that must have to find and fetch out what was the motive behind the crime. However, the astonishing situation is that the cases of domestic violence against women were mostly unclear and ambiguous. It is the supreme example of honour killings where nobody knows what the motive was and why this brutality happens. It is a reported thing that in domestic violence cases mostly the accused is the life partner, brother, or father of the deceased person. In some cases, like stove burnings and acid throwing the reported version and situation is different and probed facts are different. Here is also the matter of power and control and most victims are in a fearful state of mind and do not tell the real matter which needs to be properly investigated.

5.4.3. Lack of Female Police Officers

It is also one of the main deficiencies in the case of domestic violence, although in some of the districts of the provinces now lady police officers are deployed but the ratio is very low. It is necessary that the DV cases should be handled by woman police officers to combat these crimes. The psych behind this research that woman may be easily describe the incident to the same sex. It is a natural thing that women can feel easy with women, especially in describing the violent abuses against them. Research shows that in a patriarchal society like Pakistan, women feel not easy to describe cruelties against them in front of men because the perpetrator was always a man, even maybe a husband, brother, father or brother in-law. But it is also a problem for women to do a job in the department of police that's why woman police officers are

very low volume in the country of Pakistan. If the government wants to combat these heinous crimes against women, it should deploy more and more female police officers. After that, they should make separate women's police stations and separate interview cells for DV cases.

5.4.4. Training Deficiencies in Female Police Officers

The main problem faced by the existing female police officers is the lack of training and education in this department. There is no proper training to handle domestic violence cases because the victim needs sometimes to tackle it psychologically and sometimes needs to handle it emotionally. So, it is the duty of the provincial government that should arrange training courses for these female police officers to combat domestic violence cases.

5.4.5. Insufficient Gear in Medical Laboratories

Advancement of the medical field and research in forensic science are playing a very important role to investigate cases, especially Domestic Violence cases. If the cases are not properly investigated by utilizing the latest medical technologies there may be remained some deficiencies in the domestic violence and honour killing cases. Then it may be the weak case of the prosecution and this advantage goes to the perpetrator of the crime. In DV cases especially acid throwing and stove burning as well as honour killing cases medical reports are very important to gauge the real nature of the crime. So, one of the main problems is medical laboratories which are not sufficiently equipped. If it is not properly examined the case will automatically be lost.

5.4.6. Evidence of Witness

In the presence of previous laws, it was the main hurdle in Zina (Rape) cases that the eyewitnesses. In these cases, the witness deal with Islamic Law where the most advantage

goes to the rapist. Now, with the latest amendment in the law, it is easy to solve cases where witnesses are required.

5.4.7. Legal Trail Difficulties

It is an admitted fact that weak investigations face problems during trials in court. Thus, it is necessary to provide proper training for the investigation offices. All cases revolve around the investigation, if the investigation is poor then a real case will be destroyed.

6: Pakistan's Odyssey towards CEDAW & Its Implementation

6.1. Pakistan's Journey towards CEDAW

Risse, Ropp and Sikkink asserted that after the adoption and enforcement of the CEDAW by the UN in 1981, in Pakistan voices were raised through civil society and human rights activists for its ratification. After a continuous struggle by these stakeholders, it was finalized after fifteen years and Pakistan decided to become a part of this women's rights treaty.[454] During that time a lot of occasions, it was decided to sign the treaty but cancelled. Even once in 1987 serious efforts started but again all were vain. *Ali* stated that the main reluctance and delay to adopt treaty, just because lack of will and thinking, no article or provision of the treaty is against the Holy Quran and the teachings of Hadith and Islam.[455] After that during the second tenure of Benazir Bhutto made serious efforts for the ratification of this treaty, "CEDAW". For this purpose, a lot of meetings and sessions were conducted to specify

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[454] Thomas Risse and others, The Power of Human Rights: International Norms and Domestic Change (New York: Cambridge University Press 1999) 77

[455] Shaheen Sardar Ali, 'Law, Islam and the Women's Movement in Pakistan' [2000] In: Rai (edn.) International Perspectives on Gender and Democratisation. Basingstoke: Macmillan, 41-63. p. 55

the framework for the present law system and international treaty. Several NSOs and human rights activists played their role to put pressure on the Government that ratify CEDAW without any reservations, by giving some examples of Muslim societies who adopted CEDAW without reservations. Later on in March 1996 a subsequent document presented with Declaration and Reservation at Article 29 (1).[456]

6.2. CEDAW's Implementation in Pakistan

In international law, two concepts exist at the state level, dualists and monists. In monism, if the international treaty (law) is ratified by the state party then the local law and the international treaty have the same enforcing effects in the domestic sphere. Whereas, in dualism, the international treaty itself does not binding effects at the local level, although the treaty has been ratified by the state party, unless the legislatures enacted it as a law inside the country. [457] Pakistan is a dualist state where local laws always prevail. Thus, the implementation and applicability of CEDAW need legislation because it will not be automatically incorporated. Pakistan's legal framework is based on dualism where there is a need for legislation to incorporate international treaties or law.[458] For the implementation of CEDAW in Pakistan, the government of Pakistan didn't take any serious steps even though the submission of its periodic report. The

[456] Convention on the Elimination of All Forms of Discrimination against Women, in Treaty Series, Pakistan Declarations and Reservations. <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec> accessed 30/08/2017

[457] J. G. Starke, An Introduction to International Law (8th edn, London: Butterworths 1977) 82

[458] John Laws, *Monism and Dualism,* [2000] Presses Universitaires de France, 18-22. p. 18

constitution of Pakistan is also ridged as any international document or treaty is not part of the country's legal system just only because of the act of ratification.

The first and paramount action for the implementation of CEDAW is to make legislation for incorporation through the approval of the majority of the parliament. The government of Pakistan never took any action regarding the implementation of CEDAW by act of parliament. After submitting the third report to CEDAW the committee has demanded incorporation of CEDAW into the procedural laws. The government of Pakistan submitted its point of view at the time of submitting 4th-period report to the CEDAW committee by saying that only the ratification is not enough for the incorporation of CEDAW in our legal system.[459] In short, the case of the Pakistani position at CEDAW is very shaking and unbalanced due to the reservation and declaration.

6.3. Implementation of CEDAW and Judicial Application

6.3.1. Some Judicial Instances from the World

There are some worldwide instances of courts where the Judiciary has played its role in incorporating and enacting international treaties at the local level.

6.3.1. (a) Egyptian Supreme Constitutional Court Case

Case of Polygamy

In this case, the Supreme Constitutional Court of Egypt interrupted and stopped the husband from using polygamy and gave a verdict in favour of woman. The Court said that

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[459] UN Committee on the Elimination of Discrimination against Women Consideration of reports submitted by States parties under article 18 of the Convention: Fourth periodic reports of States parties of Pakistan 24 September 2011 CEDAW/C/PAK/4/Sec. 1 para. 37

"Though Allah (God) allows polygamy in the Holy Quran but this permission is conditional permission which is 'fairness'. If a husband wants to marry again, he must guarantee 'fairness' between both of them, otherwise, one marriage is enough. If fairness is not sustained then it is harmful for the first one which is not allowed. They further articulated the Hadith principle "no harm and no harming".[460]

Lombardi & Brown discuss that the judiciary has been capable to equilibrium between community interests and religious norms. The judges of apex courts were competent to protect and support women's human rights through law and Islamic jurisprudence (Legal pluralism).[461]

6.3.1. (b) Indian Supreme Court Case

Vishaka vs. State of Rajasthan

This case is based on sexual harassment at work. Where a woman is sexually harassed by her colleagues at workplace. In this case, it was taken a plea by the petitioner that according to the Indian Constitution, international law will be enacted provided contradictory. The outcome of this case is very fruitful in the shape of legislation in favour of women who sexually harass at their workplace. The Supreme Court of India held that "Any International treaty that would not contradict with national laws must be read with the provision of local laws."[462]

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[460] Supreme Constitutional Court no. 35, 1 September 1994. Egypt: Al Gareeda al Rasmeya 2265

[461] Clark B. Lombardi and Nathan J. Brown, 'Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law' [2006] 21(3) American University International Law Review 379-435. p. 391

[462] Vishaka vs. State of Rajasthan. AIR (1997) SC 3011.

6.3.1. (c) Nepalese Supreme Court Case

Sharma & Ors. Vs. Ministry of Women, Children & Social Welfare

This prominent case was filed in the apex judiciary in Nepal where raised a point against sexual harassment in dance bars and restaurants. The Supreme Court of Nepal made constitutional legal interpretation under the guidance of the provisions of CEDAW and ICESCR and as a result, the government of Nepal made legislation on Sexual Harassment in the Workplace.[463]

6.4. Role of Pakistani Apex Judiciary and Implementation of CEDAW

Being a dualistic status, it is very tough to incorporate international treaties in the Pakistani legal framework without the majority of the acts of parliament. Then the question hits, how a private person will be held answerable before the national as well as international legal framework when he violates the provisions of the international treaty?

If legislatures are not ready to incorporate international treaties domestically, then there is only one institution has the power to incorporate international laws, which is the Judiciary. Apex Judiciary is one of the key pillars regarding the incorporation of CEDAW domestically. There is no doubt judicial mechanism is the paramount tool for the implementation of CEDAW through its decisions. The judiciary can play a vital role in the execution of the international treaty. It is a famous saying that "judges never speak but their decisions speak".

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[463] Sharma & Ors. vs. Ministry of Women, Children and Social Welfare. Writ No. 2822 of 2062.

6.4.1. Pakistani Apex Judiciary Cases

After a very careful observation that till from the ratification of the CEDAW by Pakistan, there are only a few cases where the higher judiciary especially quoted by giving the particular references of international treaties' articles. This thing reveals that if the judiciary wants to fulfil country's obligation being a state party by incorporating the provisions of different international treaties.

Here is the list of cases where higher judiciary quote CEDAW article;

1. Federal Shariat Court Judgement 2007
2. Mst. Sarwar Jan vs Abdur Rehman 2004
3. Mst. Saima and 4 others vs The State 2003
4. Mst. Humaira Mehmood vs The State and Others1999

Federal Shariat Court Judgement 2007

--- In first this case law the court view the laws and declared that according to the principle of Islamic teaching that every duty must be obeyed and on the other hand being a signatory of the international treaty state of Pakistan is bound to fulfil the promises according to international law.[464]

Mst. Sarwar Jan vs Abdur Rehman 2004

--- In the Second case law Court mention the Cairo Declaration and CEDAW conventions and explained that Government is duty bound to obey the teaching of Quran and Hadith as we as Women Rights treaty CEDAW which

[464] Sou Moto [2007] (Federal Shariat Court) 23

imposes some obligation as regard to institution of dissolution of marriage.[465]

Mst. Saima and 4 others vs The State 2003

--- In the third case law Court describe that if a couple are agreed for the consummation of marriage then the claim through mother that her daughter commit Zina (Rape) even not fall in Hadood (Islamic) Law and court further mentioned particularly quoting article 16 of the CEDAW for accepting the international point of view.[466]

Mst. Humaira Mehmood vs The State and Others 1999

--- In this fourth case law Court highlighted the discrimination according to Pakistan Citizenship Act 1952 and particularly refer the international commitments by signing International Document.[467]

6.5. Notion of Legal Pluralism

Notion of Legal Pluralism is a growing concept in the domain of Human Rights which applies especially in countries where multiple cultural regime and multiple legal domains. Griffiths defines legal pluralism as under;

"Legal Pluralism is thus but one of the forms in which the ideology of legal centralism can manifest itself. It is, to be sure by the terms of that ideology an inferior form of law, a necessary accommodation to a social situation perceived as problematic."[468]

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[465] Mst Sarwar Jan vs Abdur Rehman [2004] (Shariat Court AJ&K) 17

[466] Mst Saima and 4 Others vs The State [2003] (PLD, Lahore High Court) 747

[467] Mst Humaira Mehmood vs The State and Others [1999] (PLD, Lahore High Court) 494

[468] John Griffiths, 'What is Legal Pluralism' [1986] 24 (1) Journal of Legal Pluralism and Unofficial Law 1-55. p. 8

He further criticised the legal theories of Gillissen and Vanderlinden by explaining that both are confused in legal diversity and legal mechanism with legal pluralism.[469]

6.5.1. Examples of Notion of Legal Pluralism

Melissaris highlights some of the best examples of legal pluralism, like East India

Company is one of the examples of legal pluralism in the Sub-Continent regarding Quranic principles for Muslims and Shaster for Gentoos. He further stated another instance of Danish Government with regards to Greenland for acceptance of customary laws through courts.[470]

So Pakistan is dominantly enriched Islamic culture and majority of population follow this culture. Butt quoted the preamble of the constitution of Pakistan, clearly enunciated that no law should be enacted which is contradictory against Islamic concepts.[471] This is the reason Pakistan put one "Declaration" on CEDAW after its ratification which glorify the position of Constitution of Pakistan and even some of the counties including Germany and Netherlands ruled out.[472] Through the ideology and philosophy of this theory for the protection of human rights multiple laws can be merge within good faith. This theory can apply there were multiple laws are and mix culture in a dominant position. Tamanaha claims that the use of this theory (legal pluralism) it is very easy to protect individual human rights, because of the emerging concepts in the states like monism and dualism

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[469] Ibid. 9

[470] Emmanuel Melissaris, 'the More the Merrier? A New Take on Legal Pluralism' [2004] 13 (1) Social and Legal Studies 57-79. p.74

[471] Ibid. (supra note. 127) p. 47

[472] United Nations, Multilateral Treaties Deposited with the Secretary-General, [1977] UN Doc. ST/LEG/SER.E/15. p. 175

it is very tough to protect the right of individual if particularly the right protected by international law or international treaty. So in this situation notion of legal pluralism is very effective and useful for the incorporation of International Treaties through local apex courts.[473]

In the case of Pakistan, its legal framework is dualist and international treaty cannot incorporate automatically. In the above-mentioned Decisions of Apex Judiciary of Pakistan are the best example of Legal Pluralism. Pakistani apex courts utilize this theory as ***Constitutional Law + Islamic Law + International Treaty Law (CEDAW)*** for the protection of women human rights.

In her recent work, Hadi interviewed different lawyers and the majority agreed that court is the last refuge for implementation of international treaty (CEDAW) because justices are not bound with state interest but they are bound with justice.[474]

The judgment followed Justice Jilani's style of drawing upon plural legal norms: the Constitution, Islamic law and international human rights law. A fascinating aspect is how its use of both Islamic law and CEDAW supports a key argument of this domain – that Islamic law may be used for women's rights to equality and non-discrimination.

Mayer aptly pointed out that;

"The Holy Quran not only hit and destroy the barbarian cultural traditions against women in pre–Islamic Arabia but also highlight the character of woman in shape of

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[473] Brian Z Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' [2007] 29(07- 0080) Sydney Law Review 1-64. p. 28

[474] Ruby Mehdi, 'The Islamization of the Law in Pakistan' (New York: Routledge 2013) 55

mother, daughter, sister & wife, and their social as well as personal rights in the 7th century."[475]
Feenan profess that if the judiciary play its best role for the betterment, empowerment and welfare of the women rights then huge volume of discrimination, patriarchal norms and violence abuses could be eradicated by implementing International Treaties.[476]

7. CONCLUSION

In a patriarchal Pakistani society, the violence against women still exists in an organized way where men want to full control and power not only inside the private sphere but also publicly. *Gishkori* affirms that these patriarchal norms entrenched into the society and have very strong roots, and this lust of power and control some time make them vandal regarding their very close relations.[477] They even forget their relationship and does some barbarian acts of brutality and its worst instances are 'Honour Killings', 'Dowry Violence' and 'Acid Attacks & Stove Burnings'. Though some new laws and amendments regarding women introduces by the government which is a good sign for the betterment and empowerment of the Pakistani women. But more steps need to be taken by the government. Judiciary is also trying to play its role through judicial decisions and efforts to make incorporating international treaties by use notion of legal pluralism. After a very careful observation this research

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[475] Ann Elizabeth Mayer, 'Islam and Human Rights: Tradition and Politics' (Westview Press 1995) 94
[476] Dermot Feenan, 'Women Judges: Gendering Judging, Justifying Diversity' [2008] 35(4) Journal of Law and Society 490-519. p. 509
[477] Zahid Gishkori, 'Law against Domestic Violence Still A Far Cry' The Express Tribune (Pakistan, 15 April 2012) <http://tribune.com.pk/story/364897/law-against-domestic-violence-still-a-far-cry/> accessed 31/08/2017

work ravels that Constitution of Pakistan, Islamic Law and CEDAW almost at the same page about the rights of women just only need to more efforts both the state party and
CEDAW committee elaboration regarding implementation mechanism. Even committee should make arrangement and involvement of Apex Judiciary of Pakistan for execution of CEDAW provisions.

8. Recommendations

- DV against women is the burning issue in Pakistan which need to be highlight at town and city rather than provincial and country level. It needs to be properly addressed by utilizing every system of local government for educating and effective presentation to the elimination and culmination of these abuses against women.
- The government should take all the necessary steps and engagements for take those measures that highlight these issues especially under the supervision of women.
- The government should make committees who properly collect the entire data related to women crimes especially domestic violence and after collecting the relevant data authorities should make proper policies and code of conducts for the implementation of law related to violence against women. Furthermore, these committees should organize meeting with human activists at national as well as international level for the better vindication of women human rights.
- There is also need to create centres for trainings and counselling, and also make shelters houses for the safety and well-being of the women and these centres provide education to women about their rights.
- The government should also engage NGOs for educating women to protecting their rights according to

laws and draw a mechanism to arrange legal help and legal aid in case of court proceedings.

- The government should increase the number of female police officers for tackling the high volume of the domestic violence and should educate these officers for proper and fair investigation by understanding the sensitivity of the matter of DVAW.
- The government should also make separate female police stations for the betterment and protection of the women human rights.
- There should also be created proper report and complaint cells which have special cognizance for the elimination of the women related crimes.
- The ministry of human rights should play the role by arranging seminars and try to make a proper female force who is ready to go to local girls' schools and women colleges and universities for educating the women about their rights and also encourage to engage them by participating national life and play their vital role for economically, politically and socially.
- Local Government should facilitate to Darul Amans (Rehabilitation Centres) for the women empowerment and also arrange short courses and handicraft type technical programmes.
- The government should arrange proper staff to prepare women manual book for guidance about domestic violence and rehabilitation.
- The government should take necessary steps for the implementation and incorporation of international treaties and collect proper data from governmental as well as non-governmental organizations for submitting its periodic report.
- Parliament should also play its role by abrogating discriminatory laws against women and make new laws

for the protection of the mal-treatment against women in the country.

- Judiciary should also play its prominent role for incorporating the international laws by using notion of legal pluralism.
- Government should arrange media cells for the campaign of women rights and aware the reporting and complaint procedures.

ENVIRONMENTAL MOVEMENTS TO CLIMATE JUSTICE: HISTORICAL DEVELOPMENTS AND IMPLICATIONS

FARAH DEEBA[478]
KOMAL NAWAZ[479]

ABSTRACT; The concept of climate justice has evolved over the decades, shaped by growing awareness of the unequal effects of climate change on vulnerable communities and the disproportionate responsibility of wealthier nations. Rooted in broader environmental justice movements, climate justice highlights the ethical, social, and moral dimensions of climate change. This article traces the historical development of climate justice, examining key events, movements, and frameworks that have shaped its trajectory. From early environmental justice campaigns in the United States to the global efforts led by the United Nations Framework Convention on Climate Change (UNFCCC) and youth-led movements like Fridays for Future, the discussion underscores the need for equitable solutions to address climate change. As the world grapples with the realities of global warming, this exploration of climate justice emphasizes the imperative of fair distribution of responsibilities and protection of the most affected communities. The historical context offers insights into the ongoing struggle for fairness in the global climate debate.

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Keywords: Climate justice, social inequality, vulnerable communities, equitable solutions, global climate movements.

INTRODUCTION

I. Early Concepts and Perspectives on Environmental Justice

The Notion of climate justice has undergone a transformation over the years, adapting and expanding in response to emerging challenges and changing societal dynamics as a response to the ethical, moral, and social justice dimensions of climate change. It underscores the necessity for fair and solutions that ensure fairness and equality, placing the needs of the most vulnerable people and redress historical and structural injustices. Climate change is widely recognized as one of the most significant threats humanity has ever faced, posing unparalleled challenges to the well-being and sustainability of our planet and its inhabitants all around the world. The richer countries in the Global North have mostly caused it, but it's the poorer countries in the Global South that face the worst consequences and struggle the most to deal with them. This makes climate change a fairness issue. Collaborative efforts among nations are crucial in addressing the complexities of climate change effectively, and the UNFCCC[480] is the main place where they can make official agreements. But fairness has always been a point of argument in this global discussion[481]. People

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[480] United Nations Framework Convention on Climate Change

[481] Lina Lefstad & Jouni Paavola (2023) The evolution of climate justice claims in global climate change negotiations under the UNFCCC, Critical Policy Studies.

started talking about fairness as soon as climate change became a big topic in politics. The countries that are poorest and most in danger from climate change are suffering the most, even though they haven't done much to cause it. Climate justice is all about making sure that we pay attention to how different people are affected by climate change, and making things fair for everyone[482].

The concept of climate justice has developed gradually in response to the increasing acknowledgment of the disproportionate effects of climate change on vulnerable communities and the unequal distribution of responsibilities for tackling climate change. While it doesn't have a singular point of origin, several significant events and trends have contributed to its emergence and evolution, which are as follows[483]:

a) **Early Environmental Justice Movements**: Climate justice can be traced back to broader environmental justice movements of the late 20th century. These movements, particularly prominent in the United States, drew attention to the disparity in distribution of environmental benefits and responsibilities based on race and socioeconomic status.

b) **United Nations Framework Convention on Climate Change (UNFCCC)**: Established in 1992, the UNFCCC marked a crucial step in global efforts to combat climate change. However, concerns regarding fairness and

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Available at https://www.tandfonline.com/action/showCitFormats?doi=10.1080%2F19460171.2023.2235405 last visited on 21-03-2024

[482] Ibid

[483] Struggles for Climate Justice, Uneven Geographies and the Politics of Connection,By Brandon Barclay Derman · 2020

justice were evident early on, especially from developing nations. They argued that historical emissions from developed countries had heavily contributed to climate change, disproportionately affecting developing nations.

c) **2009 Copenhagen Climate Conference**: The Copenhagen Climate Conference brought issues of equity and justice to the forefront of international climate negotiations. Developing countries advocated for a more balanced distribution of emission reduction responsibilities and financial support for adaptation and mitigation efforts.

d) **Contributions of Climate Justice Advocates and Scholars:** Climate justice advocates and scholars have played pivotal roles in promoting and refining the concept within broader social justice frameworks. Their work emphasizes addressing both the impacts of climate change and the underlying factors driving vulnerability and inequality.

e) **Global Climate Justice Movements:** The emergence of global climate justice movements, including youth-led initiatives like Fridays for Future, has further popularized the concept. These movements mobilize support for transformative actions to combat climate change in a fair and equitable manner.

II. Emergence of Climate Justice as a Concept

Climate justice is a frequently discussed concept in global climate discussions, but it has often been stagnant or lacking in significant development[484] .The idea of climate justice goes back to the bigger environmental fairness movements that started getting stronger in the late 20th

[484] SUSANNAH FISHER,The emerging geographies of climate justice, the Geographical tournai, Vol. 181, No. 1, March 2015, pp. 73-82,

century. When scientists started showing more proof of climate change, people began to realize that it was hitting some groups harder than others. These were usually the poorer communities, especially in places like the Global South, and people who were already struggling in richer countries. These communities often don't have as much money to deal with climate change and depend more on nature for their lives. Climate change is a big unfairness that affects everyone. It brings problems like weird weather that messes up growing food, and rising sea levels that can cause huge floods. These problems are happening all over the world and they're really big. It's unfair because some countries benefit from things that make climate change worse, while other countries suffer because of it. Climate change, according to the way scientists talk about it, means a long-term change in the weather that we can see through things like changes in temperature and weather patterns[485]. It's something that's been happening naturally for a long time, but lately, it's been getting worse because of things people do. One big reason is because of the gases we produce when we burn stuff like coal and oil. These gases retain thermal energy within the Earth's atmosphere, and make the planet warmer. Another problem is the damage we're doing to the ozone layer, which also makes the planet warmer. This damage is

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[485] CONCEPT OF CLIMATE JUSTICE: IS IT THE RIGHT WAY TO ADDRESS ISSUES RELATING TO CLIMATE CHANGE, RUDRA CHANDRAN L ASSISSTANT PROFESSOR MAR GREGORIOS COLLEGE OF LAW, available at https://deliverypdf.ssrn.com/delivery.php?ID=570005095083087101015007100740161041000510810670900530880241151051270240700720810700390120440611040100481210151131020900931230190530410130580030110070100920670020740020390631160861250721010161270980160171020900641160281120740900910721221111060041210 90&EXT=pdf&INDEX=TRUE , last visited on 20-03-2024

caused by things like certain gases and pollutants that come from factories and cars.

In different discussions, like the United Nations meetings about climate change, there was talk about who should do what to fix it. Developing countries said that rich countries had caused most of the problem with their industries, but it was the poorer countries suffering the most from the results. Climate justice became connected to the bigger fairness movements about the environment. It wasn't just about fixing the problems from climate change, but also about dealing with the bigger issues of fairness in society, like poverty and inequality. This shows that climate change isn't just an environmental problem; it's also about fairness and justice for people. Overall, the idea of climate justice shows that people are starting to understand that fixing climate change isn't just about the environment. It's also about making sure everyone is treated fairly and equally. So, it's not just about stopping climate change's effects; it's also about dealing with the reasons why some people are more vulnerable to it in the first place[486].

III. Origins of Climate Justice Movements

The environmental justice movement began because people, especially those from minority backgrounds, wanted to make sure everyone had fair protection from environmental harm. Professor Robert Bullard explained that communities of color, whether in cities, rural areas, or Native American reservations, often face severe environmental problems, either because of intentional decisions or neglect. In the 1960s, during the Civil Rights Movement, people started to notice how pollution and

[486] A Research Agenda for Climate Justice,edited by Paul G Harris, 2019

other environmental issues were harming their families and neighborhoods[487]. Some of the prominent global movements for the climate justice are as follows:

a) Memphis Sanitation Strike

In 1968 The Memphis Sanitation Strike happened, purpose of this strike was that people thought they were being treated unfairly in Memphis, Tennessee. Reverend Dr. Martin Luther King, Jr., who was a big leader in the Civil Rights Movement, looked into what was happening. The workers were asking for fair wages and safer working conditions. This strike was important because it was the first time African Americans got together on a big scale to fight against unfair treatment in the environment[488].

b) Bean v Southwestern Waste Management Corp Case

In 1979 In Houston, Texas, a group of African American homeowners found themselves in a tough battle. They didn't want the Whispering Pines Sanitary Landfill to be built close to a local public school. It was planned to be just 1500 feet away, and within two miles of six other schools. These homeowners came together and formed the NECAG[489]. They teamed up with their attorney, Linda McKeever Bullard, to take legal action. They filed a class

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[487] Environmental Justice Timeline, United States Environmental Protection Agency, available at https://www.epa.gov/environmentaljustice/environmental-justice-timeline last vistied on 23-03-2024

[488] Environmental Justice Timeline, United States Environmental Protection Agency, available at https://www.epa.gov/environmentaljustice/environmental-justice-timeline last vistied on 23-03-2024

[489] Northeast Community Action Group

action lawsuit called Bean v. Southwestern Waste Management, Inc. This lawsuit was a big deal because it was the first time in the United States that anyone had used civil rights laws to accuse unfair treatment in where waste facilities are put. Although they didn't manage to stop the landfill from being built, their lawsuit made a strong statement. It showed that people were ready to fight for fairness when it came to environmental issues, no matter where they were in the country[490].

c) The Environmental Threat of Toxic Waste in America

In 1987 The UCC[491] issued a comprehensive report titled as "Toxic Waste in the United States." The report investigated the correlation between the placement of hazardous waste sites and the racial and socioeconomic composition of communities across the country. The findings were alarming: In regions across the United States, over fifteen million African Americans, eight million Hispanics, and nearly half of all Asian/Pacific Islanders and national Americans were found to be living in areas where at least one toxic waste site had been abandoned or remained uncontrolled. This groundbreaking UCC study was the first to discuss the complex interplay of race, class, and issues related to climate at a State scale. It discussed that while the economic status of individuals did influence the placement of hazardous waste sites, the most significant determining factor was the race of the people living in those communities.[492]

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[490] ibid

[491] United Church of Christ Commission on Racial Justice

[492] Climate Justice: A Voice for the Future
T.Thorp · 2014

d) Indigenous Environmental Network

In 1990 IEN[493] was founded by indigenous individuals working at the community level to address issues of environmental and economic justice. Their goal is to create sustainable communities by empowering indigenous groups and tribal governments. The IEN focuses on helping these communities in devising plans to preserve their revered locations, territories, waterways, atmosphere, biodiversity, and the well-being of their communities and all living organisms[494].

e) Conference on Racial Disparities in Environmental Hazards Hosted by the University of Michigan

Dr. Bunyan Bryant and Dr. Paul Mohai organized a conference at the University of Michigan. They called it the Michigan Conference on Race and Environmental Hazards. This conference made people take environmental justice more seriously as something to study. After the conference, Dr. Bryant, Dr. Mohai, and others worked together to advise the USEPA[495] on how to make fairer environmental policies, The EPA called this group the "Michigan Coalition." They had meetings with the EPA in the early 1990s to discuss these important issues[496].

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[493] The Indigenous Environmental Network

[494] ibid

[495] United States Environmental Protection Agency

[496] Environmental Justice Timeline, United States Environmental Protection Agency, available at https://www.epa.gov/environmentaljustice/environmental-justice-timeline last vistied on 23-03-2024

f) Environmental Justice Summit at the White Hous

Cabinet secretaries and other important officials from various government agencies were part of the inagural gathering of White House Forum on Environmental Justice. This meeting showed that the Obama Administration was dedicated to making sure everyone in the country is safe from harmful things in the environment. More than 100 leaders in environmental justice from diverse areas across the United States attended this day-long event.

g) The Environmental Justice Interagency Working Group (EJ IWG)

In 2016, EJ IWG[497] launched the Participation & Insight Webinar Series. This series, held monthly, serves as a platform for the public to engage with the working group. Its primary objectives are to raise community awareness regarding federal agency strategies for environmental justice and to promote comprehensive community-based solutions to address related issues. The series aims to provide insights into how federal agencies collaborate and what resources are available to individuals interested in enhancing health, quality of life, and economic prospects in overburdened communities[498].

IV. Fairness in Climate Actions and Past Accountabilities

Since 1992, countries have agreed on a principle called "common but differentiated responsibilities" for the environment. This means that while all States should help with climate change, richer countries should do more. There are two main reasons for this. First, richer countries

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[497] The Environmental Justice Interagency Working Group

[498] ibid

have caused more global warming because they've released more greenhouse gases in the past. Second, richer countries have more money to deal with climate change. Many experts think both reasons are important. But people don't all agree on how much each reason matters. This affects how we decide what each country should do to fight climate change. For example, some argue that richer countries should provide more financial help to poorer countries to tackle climate change together[499]. The discussion about whether history or wealth is more important in deciding who should do what about climate change needs to consider a bigger issue that hasn't gotten much attention in the climate justice debate. This bigger issue is about whether countries have been working together in fair and reliable global institutions, like those for climate control that can create a sense of trust and responsibility over time. To show why these background institutions are important for deciding historical duties, let's look at a different idea from political thinking called the social contract tradition, especially the ideas of John Rawls. This tradition talks about how certain rights and responsibilities only make sense when people are part of fair political and social systems[500]. So, when we think about who should take responsibility for climate change, we need to consider not just how much a country has contributed to the problem in the past or how wealthy it is now, but also how trustworthy and fair the global systems have been that have guided their actions[501].

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[499] Climate Justice and Historical Responsibility, available at https://repository.essex.ac.uk/22167/3/Climate%20Justice%20and%20Historical%20Responsibility%20%28Final%29.pdf last visited on 23-03-2024

[500] ibid

[501] ibid

V. Conclusion

The historical evolution of climate justice reflects a growing recognition of the inequities embedded in the global climate crisis. What began as part of broader environmental justice movements has developed into a key principle in addressing climate change, one that demands attention to fairness, equity, and the protection of vulnerable populations. From the early movements advocating for environmental rights in marginalized communities to the global discussions under the UNFCCC, climate justice has become central to international negotiations and activism. It highlights the unequal burden of climate change on the Global South, despite its limited contribution to global emissions, and calls for a fair distribution of both the responsibilities and resources needed to combat climate change. This evolution underscores that climate change is not merely an environmental challenge but a profound moral and social issue. As the impacts of climate change intensify, the concept of climate justice offers a critical framework for ensuring that the most affected communities are not left behind. Moving forward, international cooperation, equitable policies, and sustained activism are essential for bridging the gap between those most responsible for climate change and those most vulnerable to its effects. Climate justice, therefore, remains not just a guiding principle but a necessary path forward in the fight for a sustainable and fair future.