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EDITORIAL NOTE

Premier Law Journal (PLJ) is a research Journal published by Premier Research Center, Premier Law College Gujranwala in English Language. This is a 3rd volume, issue 11, which is going to be published in Sep, 2023. It is a quarterly Journal dedicated to provide original research articles in Legal Studies as well as analysis and commentary on issues related to Legal & Social Issues. This Journal brings together many of today's distinguished scholars and thinkers, practicing lawyers, teachers and students making their research available on Current Issues need to be legislated in Pakistan.

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

Wajid Ali's paper analyzes the fundamental rights frameworks under the original Indian and Pakistani constitutions from the perspective of conformity with international human rights standards articulated in the International Bill of Rights. This research suggests that further structural reform is imperative in both countries to fully integrate international human rights principles into constitutional frameworks, limit arbitrary derogation of rights and expand state obligations towards vulnerable sections.

Shabnum Amanat's article presents briefly the opportunities that were restricted to access to the court system before Pakistan's independence. This article lays down principally two significant implications: "governmental sovereign legitimacy" and "guaranteeing of fundamental rights." This paper eventually affects how well fundamental rights are protected, which was the PIL's goal.

Hafiza Madiha Shehzadi analysis the maxim “Nemo moriturus praesumitur mentire” that is basis for "dying declaration" "This study will look at the value of the deathbed statement as evidence in various nations, which is one of the most important pieces of evidence. This study will also examine the proper format for a declaration of intent to die. Which documents should be utilized to declare one's impending death?"

Rana Zaheer-ud-Din Ahmad's article leads a careful assessment of the laid out security gave to strict minorities in India and Pakistan. The attention is on contrasting the established arrangements of the two countries and distinguishing positive components for minority security. This article dives into the sacred shields proposed to strict minorities in the two countries, with an essential spotlight on their separate established provisions.

Omar Mahmood Wattoo's article explores the impact of international human rights treaties on Pakistan's criminal justice system. It highlights the historical context of Pakistan's commitment to these treaties and their influence on legislation and legal reforms.

Farah Deebea and Waheed's article endeavors to illuminate the multifaceted landscape surrounding the Right to Development (RTD) from a global perspective, with a particular focus on the complexities and judicial dynamics inherent in its realization within the context of Pakistan. Furthermore, the study interrogates the intersectionality of the RTD with other human rights and development goals, highlighting the imperative of an integrated and rights-based approach to sustainable development. It underscores the importance of addressing systemic inequalities, empowering marginalized communities, and fostering inclusive growth to realize the full potential of the RTD.

Dr. Muhammad Amin's article presents briefly the United Nations Convention on the rights of child and the European convention on human rights have made sure the principle that no country should discriminate against the children on the ground of parent's status. In UK in initial phrases at the common law the child only legitimated if the parents were married as it was based on the Christianity but later on, in the twentieth century a legal development has been made to common law by allowing children

of unmarried couples as legitimates if their parents get married at the time of their birth.

Dr. Muhammad Amin's analyzes this Article assess and reviews the ICT Rights of Persons with Disability Act, 2020. This Act passed by the National Assembly for the ICT Capital territory. This Ordinance obtained its legal effectivity and applicability to the whole of Pakistan through the 8th Amendment in 1985. Actually ICT Rights of Persons with Disability Bill, 2020 was put in the National Assembly as a result of protesting voice of persons with disabilities who were on the roads for certain years.

Dr. Muhammad Amin's article explores 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 *tassuwuf* departs it from rights perspective which is a complete from of Islam. 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. That's why the term "*Ihasn*" has been used in the Quran in rights perspective.

Anwaar Rana and Sundus Rauf and Bakhtawar Manzoor explain briefly that the women rights and status of women have always been under discussion throughout the world during all the points of time. Media reports also portray the picture of various incidents which create misconceptions of deprivation of women rights on religious grounds and in such situations Islam is considered to be the prime reason for implying impositions on women treating them rigidly and in a conservative manner. The Divine book Al-Quran has not only provided strict instructions regarding women rights but also has mentioned for strict liability for those who will cross the limits of Allah while violating these rights

Dr. Muhammad Amin
The Editor

EXAMINING FUNDAMENTAL RIGHTS REGIMES: A COMPARATIVE ASSESSMENT OF THE INTERNATIONAL BILL OF RIGHTS AND THE INDIAN AND PAKISTANI CONSTITUTION

WAJID ALI*
BARRISTER HAFIZ ASIF RAZA^{1*}
DR. SHAHID RIZWAN BAIG**

Abstract; This paper analyzes the fundamental rights frameworks under the original Indian and Pakistani constitutions from the perspective of conformity with international human rights standards articulated in the International Bill of Rights. Doctrinal legal research and comparative analysis are employed to study the two national charters relative to the global rights paradigm. The study is limited to the constitutional text available online. Significant commonality is observed between the civil and political rights under the constitutions and rights enshrined in major UN human rights treaties. However, gaps are identified on socio-economic entitlements and rights of vulnerable sections. Another finding is the broader limitations allowed on exercise of certain freedoms in Pakistan compared to India. While progressive in adopting certain economic rights, the Indian constitution also permits expansive state restrictions indicating a balanced approach between liberties and regulation. The research suggests that further structural reform is imperative in both countries to fully integrate international human rights principles

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into constitutional frameworks, limit arbitrary derogation of rights and expand state obligations towards vulnerable sections.

Keywords: Fundamental Rights, International Bill of Rights, Indian Constitution, Pakistan Constitution

Introduction;

With the formation of independent India and Pakistan in 1947, the constitutional framers were presented with the opportunity to break from colonial governance models and enshrine an indigenous rights paradigm reflective of national identity and developmental needs. The traumatic partition shaped the divergent trajectories pursued by both nations, though they shared the common challenge of designing constitutional schemes to uphold civil liberties within a post-colonial context. The Universal Declaration of Human Rights (UDHR)² adopted in 1948 provided the earliest universal benchmark, further strengthened by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966.³ Together they comprise the International Bill of Rights setting global standards on the rights that all human beings are entitled to by virtue of their innate dignity. This paper undertakes a structured doctrinal analysis of the fundamental rights frameworks under the Indian

²Universal Declaration of Human Rights (UDHR): United Nations. (1948). Universal Declaration of Human Rights.

³International Covenant on Civil and Political Rights (ICCPR):United Nations General Assembly. (1966). International Covenant on Civil and Political Rights.

Constitution of 1950 and the 1973 Constitution of Pakistan. It employs qualitative comparative techniques to evaluate conformity with international bill of rights on key parameters of civil-political rights, socio-economic entitlements and protection of vulnerable groups. The study holds contemporary policy relevance amidst global criticism of human rights compliance and domestic debates on constitutional reform.⁴

1.1 The International Bill of Rights Paradigm

The UDHR, ICCPR and ICESCR articulate an extensive charter of human rights encompassing civil-political freedoms, social welfare entitlements, equality, non-discrimination and dignity. Key civil and political rights under these treaties include right to life, liberty and due process, equality before law, freedoms of opinion, expression, assembly, association, movement, residence, and rights of accused. The ICESCR guarantees crucial socio-economic rights including right to work, social security, adequate standard of living including food, clothing and housing, health, education and culture. Rights of vulnerable sections like women, children, minorities, migrant workers are addressed across various provisions. Certain rights are made non-derogable even during public emergencies. Thus, the International Bill of Rights establishes threshold global standards on the fundamental rights and freedoms accorded to all human beings regardless of nationality or jurisdiction.⁵

⁴Baruah, Sanjib. "Nationalizing space: Cosmetic federalism and the politics of development in Northeast India." *Development and Change* 34, no. 5 (2003): 915-939.

⁵Lord, Janet E., and Rebecca Brown. "The role of reasonable accommodation in securing substantive equality for persons with disabilities: The UN Convention on the Rights of Persons with Disabilities." In *Critical perspectives on human rights and disability law*, pp. 273-307. Brill Nijhoff, 2010.

1.2 Constitution of Pakistan

The Constitution of Pakistan was promulgated in 1973 and is the supreme law of the land. It established Pakistan as an Islamic republic and provides for a parliamentary system of government.

Chapter 1 of Part II of the Constitution deals with fundamental rights of citizens. This Chapter of the constitution strengthened many of the rights provided in earlier 1956 and 1962 constitutions. Some key additions were right to fair trial, inviolability of dignity of man, right to information, and right to education. There are still certain aspects like full gender equality that can be further strengthened. As Pakistan's supreme law, the constitution guides protection of fundamental rights, though additional legislative and judicial reforms are needed for full realization of these rights.

In summary, these fundamental rights aim to ensure security, equality and dignity for all citizens while allowing reasonable restrictions in certain cases in the public interest.⁶

1.3 Constitution of India

The Indian Constitution is the supreme law of India and lays out the framework defining fundamental political principles, structure, procedures, powers, and duties of government institutions. It also sets out

⁶Nelson, Matthew J. "Indian basic structure jurisprudence in the Islamic Republic of Pakistan: Reconfiguring the constitutional politics of religion." *Asian Journal of Comparative Law* 13, no. 2 (2018): 333-357.

fundamental rights, directive principles, and duties of citizens.

Fundamental Rights are enshrined in Part III of the Constitution of India. The Fundamental Rights are a set of civil liberties guaranteed to all citizens of India regardless of race, religion, status or gender. They act as limitations on state power and ensure no law passed by the state can infringe on these rights.⁷

2. OVERVIEW OF RIGHTS

2.1 Civil and Political Rights

Right to Equality and Non-Discrimination

Articles 14-18 under the Indian charter guarantee equality before law, prohibit discrimination on grounds of religion, race, caste, sex or place of birth and abolish untouchability. In Pakistan, Articles 25-27 similarly assure equality of citizens and non-discrimination in public access based on religion, race, caste, sex etc. Thus, both frameworks comply with ICCPR and UDHR provisions on equality and non-discrimination. However, by explicitly abolishing untouchability, India's constitution indicates sensitivity to egregious discrimination faced by marginalized castes. Pakistan's text does not address this issue even though UN treaties uphold equality for disadvantaged groups.⁸

Right to Life and Liberty

⁷Sahoo, Abhijit, and Tusarkanta Pattanaik. "Making of the constitution of India: A critical analysis." *Odisha Review* 7 (2015).

⁸Parashar, Sakshi. "Affirmative Action and Social Discrimination: A Functional Comparative Study of India, USA and South Africa." In *Comparative Approaches in Law and Policy*, pp. 171-187. Singapore: Springer Nature Singapore, 2023.

The right to life and personal liberty is recognized under Article 21 of the Indian constitution and Article 9 of Pakistan's constitution. However, preventive detention legislation is subject to stricter requirements in India compared to more permissive standards under Pakistan's original constitutional text. Only 3 months detention without charges is permitted in Pakistan versus elaborate procedural checks in India, bringing the latter closer to ICCPR safeguards.⁹

Fair Trial

Articles 10 and 10A of Pakistan's constitution guarantee due process rights of the accused including access to counsel, speedy trial, presumption of innocence etc. identical to Article 22 under Indian constitution. Both adhere to fair trial norms under ICCPR and UDHR. However, India also constitutionally abolished retroactive criminalization and self-incrimination under Article 20 which is absent in Pakistan.¹⁰

Freedom of Expression and Religion

Freedoms of speech, assembly, association, movement, residence and profession are guaranteed under Articles 15-19 in Pakistan and Articles 19-22 in India subject to reasonable restrictions, indicating conformity with ICCPR. However, Pakistan's text omits explicit p Rahman, Muhammad Mahbubur. "Right to Life as a Fundamental Right in the Constitutional Framework of India, Bangladesh and Pakistan: An

⁹Rahman, Muhammad Mahbubur. "Right to Life as a Fundamental Right in the Constitutional Framework of India, Bangladesh and Pakistan: An Appraisal." *Dhaka Univ. Stud. Part F* 17 (2006): 143.

¹⁰Ahmed, N., B. Munir, and A. N. Khan. "An Assessment of Right to Fair Trial Under the." (2020).

Appraisal." *Dhaka Univ. Stud. Part F* 17 (2006): 143.rotection for press freedom which is guaranteed under Article 19(1)(a) in India. Further, grounds for limiting rights in India are specified as public order, morality etc. whereas Pakistan has an open-ended limitations clause potentially enabling overreach. Both constitutions ensure freedom of religion and rights of religious minorities broadly in line with UN treaties.¹¹

2.2 Socio-Economic Rights

A key point of divergence is the inclusion of directive principles of state policy under Articles 38-51 in the Indian constitution and Articles 29-40 in the constitution Pakistan which mandate the state to strive for securing socio-economic welfare including adequate livelihood, equitable distribution of material resources, public health, just legal order etc. These provide the constitutional basis for subsequent legislation on positive entitlements though not directly enforceable. Thus, both nations fall short of fully complying with welfare rights under ICESCR.¹²

2.3 Rights of Minorities, Women and Children Protections for Minorities

Beyond formal non-discrimination rights, additional safeguards for religious and cultural rights of minorities are addressed in Articles 29-30 in the Indian constitution. Pakistan's constitution lacks similar elaborations of minority rights. India's protections for minority institutions are argued to be a response to apprehensions of marginalization and assimilation

¹¹Eley, Geoffrey. "Nations, publics, and political cultures: Placing Habermas in the nineteenth century." (1990).

¹²¹²Merlan, Francesca. "Indigeneity: Global and local." *Current anthropology* 50, no. 3 (2009): 303-333.

expressed by minority communities during the constitution drafting.¹³

Rights of Women

Both constitutions originally permitted only limited non-discrimination rights for women such as equal access to public spaces under Article 26 in Pakistan and special state provisions favoring women under Article 15 in India. Explicit rights to gender equality and non-discrimination on grounds of sex were incorporated decades later through amendments in Pakistan and judicial interpretation in India. This indicates that gender equality was not prioritized at the outset by both nations, falling short of standards under CEDAW. Malik, Iftikhar H. *Religious minorities in Pakistan*. Vol. 6. London: Minority rights group international, 2002.¹⁴

Rights of Children

While prohibiting child labor under the age of 14 years, the Indian charter goes further in advancing rights of children by mandating free and compulsory education as a fundamental right under Article 45. Under article 25A Pakistan's constitution has similar provisions for education entitlements and child welfare. Thus, both constitutions are closer to rights of the child under the CRC though extensive lacunae remain in fully adopting global standards.¹⁵

¹³Sodani, Priyanshi, and Ashwarya Sharma. "The Principle of Non Discrimination as a Vehicle for the Protection of Economic, Social and Cultural Rights." *Issue 5 Int'l JL Mgmt. & Human*. 5 (2022): 480.

¹⁴Malik, Iftikhar H. *Religious minorities in Pakistan*. Vol. 6. London: Minority rights group international, 2002.

¹⁵Weiner, Myron. *The child and the state in India: Child labor and education policy in comparative perspective*. Princeton University Press, 1991.

3. COMPARATIVE ANALYSIS

The comparison of the human rights in the International Bill of Rights and the fundamental rights in the Constitutions of Pakistan and India:

3.1 Similarities

- Right to equality and non-discrimination
- Right to life and liberty
- Prohibition of slavery, forced labor, human trafficking
- Freedom of speech, expression, assembly, association
- Freedom of movement and residence
- Right to fair trial and due process
- Right to religion and conscience
- Rights of minorities and vulnerable groups
- Right to participate in cultural life and education
- Right to own property
- Equality of opportunity in public employment
- Explicit right to education
- Directive Principles enunciate additional rights and duties¹⁶

3.2 Differences

- **International Bill of Rights:**
 - Broadly covers civil, political, economic, social and cultural rights
 - Emphasizes individual duties to community and human rights of others
 - Allows limitations to prevent discrimination or protect public order, health, morals
- **Pakistan Constitution:**

¹⁶Lester, Anthony. "The Overseas Trade in the American Bill of Rights." *Columbia Law Review* 88, no. 3 (1988): 537-561.

- Relatively narrower range of fundamental rights
- Islam declared as state religion impacting certain rights
- Preventive detention allowed controversially up to 3 months without trial
- **Indian Constitution:**
- Wider range of fundamental rights covering more areas
- Fundamental duties of citizens added in 1976

In summary, the international human rights framework is more comprehensive while Pakistan and India adapt it to their national contexts, with India's Constitution covering more areas explicitly than Pakistan's. But both constitutions incorporate key civil, political, economic, social and cultural rights with reasonable restrictions allowed.¹⁷

5. WHICH CONSTITUTION BETTER ENSHRINES FUNDAMENTAL RIGHTS?

Based on the overview and comparison, some analysis on which constitution better enshrines fundamental rights in line with the International Bill of Human Rights:

- The Indian Constitution provides for a wider range of fundamental rights covering more areas explicitly than the Pakistan Constitution.
- The Indian Constitution incorporates additional rights such as fundamental duties of citizens.
- India's constitution prohibits discrimination on a wider set of grounds including race, place of birth, and expressly prohibits untouchability.
- Pakistan's lacks explicit protection for some vulnerable groups.

¹⁷Merry, Sally Engle. "Human rights law and the demonization of culture (and anthropology along the way)." *PoLAR* 26 (2003): 55.

- Pakistan's constitution allows for preventive detention without trial for up to 3 months, which is controversial and can be misused to curb civil liberties.
- The broad directive principles in India's constitution direct the state to uphold additional rights related to work, livelihood, health, environment etc. which align with economic and social rights in the IBHR.
- The fundamental rights in India's constitution only allow for reasonable restrictions on the grounds expressly specified, following the IBHR approach more closely. Pakistan imposes some restrictions.
- India's constitution gives more autonomy to minorities in establishing and administering educational institutions of their choice as envisaged in IBHR.

In conclusion, while both constitutions have incorporated key rights from the IBHR, India's constitution seems to enshrine fundamental rights in a more comprehensive manner, covering more areas explicitly while restricting grounds for limitation of rights closer to the IBHR framework.¹⁸

6. LIMITATIONS ON RIGHTS

An important aspect is examining the latitude available to the State in restricting exercise of fundamental freedoms. The Pakistani constitution permits vague limitations “subject to law” on key rights like free speech, assembly, movement and association whereas the Indian charter spells out tailored grounds like public order, morality for limiting each right. Preventive detention legislation also imposes fewer constraints in Pakistan compared to India. The Indian

¹⁸Okere, B. Obinna. "The protection of human rights in Africa and the African Charter on Human and Peoples' Rights: a comparative analysis with the European and American systems." *Hum. Rts. Q.* 6 (1984): 141.

constitution subjects the right to property to comprehensive regulation and acquisition by the State to achieve land reforms and socialist goals. In contrast, Pakistan's constitution adopts a more classical liberal approach to property rights. Thus, while the Indian charter permits broader legal limitations on exercise of liberties in the interest of public welfare and state intervention, the Pakistani constitution envisages minimal derogations aligned with a libertarian orientation. However, wide clawback clauses also raise risks of abuse and overreach unless constitutionally guarded.¹⁹

7. CONCLUSION

Through a structured comparative analysis, this paper attempts to shed light on the fundamental rights regimes adopted by India and Pakistan at independence from the lens of conformity with evolving international human rights law. On key civil and political liberties, significant commonality exists between the two national charters and major UN human rights treaties affirming a shared post-colonial developing world perspective. However, there are notable variations in the expansiveness and limitations of these first generation rights. Serious lacunae exist in relation to second generation socio-economic entitlements which find no explicit recognition in Pakistan's constitution and only limited articulation in India. The Indian constitution does adopt a broader reformist vision by addressing rights of minorities, children and incorporating certain welfare rights. But both countries fell short of fully aligning with global

¹⁹Gerards, Janneke, and Hanneke Senden. "The structure of fundamental rights and the European Court of Human Rights." *International Journal of Constitutional Law* 7, no. 4 (2009): 619-653.

standards on social, cultural and vulnerable group's rights at the outset. Incremental evolution of rights jurisprudence through legislation and judicial interpretation has bridged many gaps over subsequent decades. However, further structural reform to harmonize constitutional principles with the Universal Declaration and International Covenants continues to remain an imperative for both nations. Embedding justiciable socio-economic guarantees and wider state obligations within constitutional frameworks offers a potential pathway.²⁰

²⁰Sezgin, Yüksel. "Legal unification and nation building in the post-colonial world: a comparison of Israel and India." *The Journal of Comparative Asian Development* 8, no. 2 (2009): 273-297.

GENESIS OF PUBLIC INTEREST LITIGATION

SHABNUM AMANAT*
HAFSA SIBGHAT^{21**}

Abstract; This Before Pakistan's independence, the opportunities were restricted to access to the court system. However, it was quite simple for Pakistanis to write their own constitution without any outside help. Excessive lag time and to accomplish the goals of independence, one of which was to provide quick and affordable access to justice. The Pakistani common man could not access justice through the old British courts. In 1973, Article 184(3) was added to the Pakistani Constitution to give the Supreme Court jurisdiction in cases involving the violation of fundamental rights that are significant to the public. At first, the Supreme Court was unaware of its authority and how crucial a role it could play in delivering immediate justice to Pakistan's poor. The apex Court and the High Court's began to hear cases involving violations of fundamental rights immediately, removing any restrictions imposed by a writ or procedural limitations. a system of justice access that is adversarial. Through Public Interest Litigation, the Objectives Resolution's increased legal standing also significantly contributed to enabling the lower classes of society to access the constitutional courts in search of justice. The Islamic Republic of Pakistan's Constitution of 1973 (Constitution, 1973), which is based on the notion of the "social contract," principally has two significant implications: "governmental sovereign

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legitimacy" and "guaranteeing of fundamental rights." However, due to socioeconomic and lego-political factors, these rights may not have been well preserved over the years. In this way, the "sovereign legitimacy" of the government has continually been impacted. Since the judiciary is bound as a "sovereign delegate," it is right that it created the technique of Public Interest Litigation (PIL) to preserve these rights in order to avoid such a dire situation. This tactic actually results from constitutional interpretation, which employs judicial review as a method of operation. However, 'judicial restraint' and 'judicial activity' both suffer from 'pro-majoritarian' or 'counter-majoritarian' difficulties in their interpretations, which have an impact on constitutional democracy and supremacy, respectively. All of this could be attributed to the absence of a sensible standard for interpretation. This circumstance eventually affects how well fundamental rights are protected, which was the PIL's goal.

Introduction:

In plain English, "Legal action taken to protect "Public Interest"—such as the avertance of pollution, terrorism, traffic accidents, risks at construction sites, etc.—is referred to as "Public Interest Litigation." There is no single exact manifestation of public concern litigation in any law or act. Judges have construed it, nonetheless, to take into account and determine the general public's intent. Social action litigation is well known for strengthening the rule of law, advancing the causes of justice, assisting in the protection of civil

freedoms, and quickening the process of constitutional goal realisation.²²

The term "PIL" initially appeared in the US in the middle of the 1980s. Since the seventeenth century, several initiatives had resulted in the development of public interest law, a branch of the legal aid movement. In New York, the first legal assistance agency was founded in 1876. In the 1960s, the PIL movement began to receive funding from the Office of Economic Opportunity, which inspired lawyers and civic-minded people to take on cases for the underprivileged and fight against threats to the environment and public health as well as consumer exploitation and oppression of the weaker segments of society. In Pakistan, the court has started to play a constructive role in redressing injustice done to the populace in response to demands from the society, particularly the weaker and underprivileged segments of the society. This has been accomplished via public centric litigation strategies. The goal of this kind of litigation is to eliminate societal ills using the "law". This attempt is being made fully within the bounds of the Pakistani Constitution and in accordance with its requirements. The ultimate Court is empowered to issue any suitable order under Article 184(3) to correct a legal mistake. According to Article 187 (1) of the Constitution, which gives the Supreme Court the right to issue any orders necessary for carrying out complete justice in any case or matters before it, the Apex Court has the necessary powers and authority to carry out its role effectively in the administration of justice, particularly distributive justice.

²²Brown Jr, Ralph S. "Advertising and the public interest: legal protection of trade symbols." *Yale LJ* 57 (1947): 1165.

For the country's constitutional interpretation, stability, and administration of justice, the final Court of Pakistan's advisory jurisdiction is extremely important. The honorable apex Court has the unusual authority, established by Article 186 of the Constitution, to offer non-binding opinions and recommendations on legal issues of public importance that are presented to it by the President or the Government.

The chief Court's advising function, which it performs in its capacity as the custodian of the constitution, is an essential mechanism for resolving legal ambiguities and upholding the fundamental values of justice and fairness in the Pakistani legal system. Additionally, Article 189 specifies that the lower courts must follow the Judicial apex Court's rulings. In addition, Article 190 of the Islamic Republic of Pakistan's 1973 Constitution mandates that all governmental and judicial bodies support the topmost Court in its decisions. The Highest Court has loosened the rules of procedure while deciding such cases. Numerous instances saw exceptions made to the regulations governing court fees, the filing of affidavits, hiring lawyers, etc.

GENESIS OF PUBLIC INTEREST LITIGATION

When Benazir Bhutto challenged the Political Parties Act of 1962 before the Supreme Court in 1988, her case served as a trigger for the beginning of public interest litigation in Pakistan. She requested the court's attention by filing a constitutional petition pursuant to article 184 (3), arguing, among other things, that as a result of some registration-related provisions therein violating the fundamental right to form a political party as stipulated in article 17 (2), they were invalid. According to the aforementioned constitutional clause,

"every citizen shall have the right to form and be a member of a political party, subject to reasonable restrictions imposed by law.". She had also criticized the Freedom of Association Order of 1978, claiming that it violated some constitutional rights. Invoking the court's authority under Article 184 (3), Ms. Bhutto asked for a ruling that the limitations imposed by the aforementioned Act were null and unconstitutional from the beginning in order to register her party and run in the elections that were to take place in the latter half of that year.²³ The Political Parties Act of 1962 was found to have violated the petitioner's constitutional right to form and register a political party, and the Highest judicial Court upheld this finding.

The Court of last resort awarded her locus stand on the grounds that the case addressed the protection of all citizens' fundamental rights, which was in the public interest. In this case, there was a clear departure from the prior, constraining views on locus standi and the rules of procedure. The Federation made a preliminary objection, arguing that her petition could not be upheld because she lacked locus standi to speak on behalf of a political party and there was no infringement of her ultimate rights. Similar legitimate representation would not be permitted under the older, more restricted interpretation of the judiciary. In Pakistan, the Benazir Bhutto case planted the germ for public interest litigation and resulted in a revered decision that completely altered the earlier limited interpretation of the enforcement of fundamental rights. Haleem CJ and his eleven fellow judges on the Bench upheld Miss Bhutto's claim of bona fide

²³Khan, Maryam S. "Genesis and evolution of public interest litigation in the supreme court of Pakistan: toward a dynamic theory of judicialization." *Temp. Int'l & Comp. LJ* 28 (2014): 285.

representation in a prestigious ruling. The aforementioned judgement had to inescapably eliminate the "locus standi" restricting mechanism by pointing out flaws in Pakistan's judicial system.

UNDERSTANDING THE PUBLIC INTEREST LITIGATION

The modern industrial society that is characterised by mass production and consumption and the resulting "massification" of society is the origin of people's interest litigation. This sparked issues that had previously been virtually hidden and resulted in the socialisation of formerly individual rights. This demonstrates that while "individuality" was emphasised in the past, "collectivity" is a concept that is more prevalent today and contributes to the growth or improvement of the concept of public interest litigation. Collective rights litigation is described as non-formal remedial litigation that is undertaken to benefit a class of individuals who are being exploited or oppressed and who are being denied their constitutional rights rather than one specific person. This type of litigation enables these people to access the court for the enforcement of their fundamental rights.²⁴

Citizen interest litigation is described by the court as "not a means to satisfy the people's curiosity but a litigation which is instituted with a desire that the court would be able to give effective relief to the whole section of the society" The fundamental premise of this idea is that populist interest litigation should be capable of overcoming the flaws and limitations of the adversarial judicial system, which prevents vulnerable groups in society from taking advantage of the rule of law and

²⁴Cummings, Scott L., and Deborah L. Rhode. "Public interest litigation: Insights from theory and practice." *Fordham Urb. LJ* 36 (2009): 603.

justice. (Public Interest Litigation in Pakistan Dr Faqir Hussain).A idea that is still developing in the area of adjudication is social action interest pleadings. Legal action taken in the public interest is referred to as public cause litigation. The term "public" refers to the general public, which includes all social classes and divisions of society without regard to a person's gender, social standing, financial situation, ethnicity, religious beliefs, or cultural orientation. Public favoured litigation's main goal is to overcome the current legal, technical, and procedural barriers in order to deliver justice, particularly social justice, to a specific person, group of people, or community that is barred from seeking redress in a court of law due to some personal shortcoming, economic or social hardship, or state oppression.

In this context, this type of lawsuit is in fact a novel legal prescription for addressing the formal flaws in the legal system in order to ensure that the general public, in especially the underprivileged and destitute, receives real and substantive justice. In a way, public interest litigation gives the underprivileged the ability to access justice while also helping to address their issues. It is a tactic to meet the needs of changing reality and the demands of the present. It is the same development as the evolution of the law of equity and is as important. It is a situation that has never happened before in the history of the judiciary and may have just as much, if not more, significance than the Marbury v. Madison judgement, which gave rise to the theory of judicial review. A technique for releasing the legal system from its formalistic and technical connotations and releasing justice from the shackles of wealth and social pressures is public interest litigation. Aftermath, allowing the

downtrodden and underprivileged to invoke the temple and get the bountious grace.

WIDE APPLICATION OF PUBLIC INTEREST LITIGATION PROTECTION OF NATIONAL RESOURCES:

It is well known that when limited resources are wasted, work is duplicated without a need, those in charge of carrying out public works renounce their responsibilities, and it would be very difficult to hold anyone accountable as a result of implementing and carrying out projects and schemes through a body or Board that the law did not authorise, citizens' fundamental rights are jeopardised.²⁵ Regardless of whether they are controlled by a board or autonomous and semi-autonomous entities, Article 9 of the Constitution requires that national wealth and resources be effectively secured. An illegal or unconstitutional act cannot be made constitutional over time or give anyone the right to benefit from it. This is another important point to remember. The Constitution's mission is, in reality, supreme, thus it goes without saying that any legislative document or Order that is found to be in contravention of a provision of the Constitution will not be allowed to be in effect. When assessing the validity of a legislative act or an order under its judicial review authority, this Court may consider both the authority's competence and the legal requirements themselves. Laws that infringe upon fundamental rights are, in accordance

²⁵Manning, Robert. "Visitor experience and resource protection: A framework for managing the carrying capacity of National Parks." *Journal of Park & Recreation Administration* 19, no. 1 (2001).

with Article 8 of the Constitution, declared unlawful "to the extent of such inconsistency" and are subsequently made ineffective or inoperative to the same extent. Following the swearing-in to support and defend the Constitution, it is the bound duty of this individual to do so when an Act or Order is unconstitutional or violates fundamental or constitutional rights.

RIGHT TO CLEAN AND HEALTHY ENVIRONMENT: DOCTRINE OF PUBLIC INTEREST

Dramatic changes to our planet's climate system have resulted from climate change, which is a key issue of our day. These climate changes in Pakistan have mostly led to severe floods and droughts, which has led to considerable worries about the security of food and water. On the basis of legality and constitutionalism, this is a resounding cry for the safeguard of fundamental rights of Pakistani citizens, especially those from weak and vulnerable groups who cannot access the High Court. Fundamental rights, such as the right to have life, which involves the right to a healthful environment and the right to human self-esteem, along with constitutional principles of democracy, parity, public justice, and political and economic justice, encompass and commit to global environmental regulations of everlasting development, the precautionary principle, environmental impact assessments, and intergenerational equity and social trust doctrine. In the system of our constitutional rights, the environment and its protection have assumed a central role. Existing environmental law must be modified to address the needs of something more pressing and powerful, namely climate change. The High Court established the Climate Change Commission

because the Government has not made any significant progress towards implementing the Framework, and since it is now clear that doing so effectively and immediately away is essential to protecting and preserving peoples' basic rights. Word life demands much more from the state than just breathing; this includes taking action to eliminate any threats that could compromise this guarantee. The term "life" as employed in Article 9 of the Constitution also mandates that the State assist its citizens in refraining from using any impure foods or other health-harming or hazardous substances items if same are otherwise at permitted.

ADVANCED AGE EDUCATION AS RIGHT TO LIFE: PRINCIPLE OF RESPONSIBILITY

The responsibility principle, It is legal to prevent a Pakistani citizen of advanced age from pursuing education of his choosing and to obstruct his ability to select the academic discipline he wants to pursue and the time in his life when he wants to do so. A citizen's fundamental right to have secure life, protected by article 9th of the Constitution, would undoubtedly be violated if such a restriction were to be placed on him or her. Depriving a person of the opportunity to raise his level of living by working towards a higher professional education, even later in life, would surely violate that person's fundamental right to life.²⁶

RIGHT TO GO ABROAD:

Pakistan's political culture has been permeated with retaliation and corruption for the past 20 years. The successive administrations were forced to enact

²⁶Ward, Michael J. "Coming of age in the age of self-determination." *Self-determination across the life span* (1996): 3-16.

accountability legislation in response to the vociferous popular demand for the accountability of dishonest politicians, bureaucrats, industrialists, and feudal lords. Even though these laws were upheld, organisations were founded, and Special Accountability Courts were established to address the corruption problem, it seemed like it was all just a public relations stunt to appease the public and the media. Due to the incompetence or political motivations of the ruling regimes, such laws were largely misused and innocent or irresponsible individuals suffered. Again, the victims' only chance in that environment came through the judiciary.

The courts correctly granted the petitioners' remedy under the right to life, as well as other constitutional provisions, when the limits on travelling abroad were primarily challenged under article 9 of the Constitution. The High Court of Sindh refused to acknowledge that the right to travel abroad did extend to the right to life in *Nahid Khan v. Govt. of Pakistan*, stating that it might be curtailed in the public interest. And that it was a subjective act, disregarding all already established legal precedent that stated that the public interest was not a subjective concept. Primarily, the Lahore High Court ruled that orders to list the petitioner, another central PPP leader, on the ECL were unlawful and without legal authority, essentially on the same grounds as *Nahid Khan*.“ The right of the citizen to travel abroad, which is a fundamental right protected by Articles 2A, 4, 9, 15, and 25, was curtailed due to a lack of reasonable classification guidelines and incommunicado, admitting that such right of the State through legislative measures had to be tested on the basis of the Constitutional provisions. In the case of Federation

of Pakistan v. Mirza Muhammad Iqbal Baig, the court also reaffirmed it.²⁷

Similar to how the Peshawar High Court expanded the application of Article in Sikandar Hayat Khan, by adopting the same line of reasoning, an order was thrown aside. In a another instance, the Sindh High Court adopted the same strategy to deem the petitioners' names being added to the ECL as illegal if the reasons were not disclosed, overruling its own decision of Nahid Khan. When the same type of incommunicado order was contested, the court ruled that Articles 4, 9, 14, and 15 of the Constitution protected and guaranteed the rights of all citizens, and that as a result, those rights had to be jealously guarded. Any action that denied or restricted a citizen's freedom without a valid reason was illegal and could be overturned. The Sindh High Court reaffirmed its stance. Along with other fundamental rights, the Supreme Court declared that the right to life was an inalienable right of a citizen in a well-known case involving a former prime minister. Therefore, it could not be contracted out of or waived. Additionally, the right to travel internationally has been recognised as a right to life or liberty, which is guaranteed under Article 9 of the Constitution. It was also reiterated in the case of Farooq Saleh Chauhan v Government of Pakistan. Any trial conducted in absentia violates the terms of Article 9 of the Constitution since the freedom to travel is equivalent to the right to life. In the instance of a bail, it was determined in Riaz Hussain v. State that even the lack of counsel would constitute absentia.

PREVENTION OF WASTAGE OF FOOD

²⁷Parker, Reginald. "The Right to Go Abroad: To Have and to Hold a Passport." *Va. L. Rev.* 40 (1954): 853.

Public interest litigation is brought before the court to advance and defend the public interest, not to enforce one person's rights against another. It mandates that a great number of persons who are underprivileged, illiterate, or in a position of social or economic disadvantage should not have their legal or constitutional rights violated without anyone seeing and doing anything about it. Both the presence of a food crisis and the lack of measures to redirect food waste in Pakistan were confirmed by the High Court. "Even though Pakistan is mostly an agricultural nation. One in six Pakistanis lack access to food. Seven nations, including Pakistan, collectively account for two-thirds of the world's undernourished people."²⁸

The Court also considered best practises from other countries for preventing food waste, including Italy's decriminalisation of food theft committed "to satisfy one's hunger," the Philippine government's programme for food redistribution, and France's penalization of supply chain food waste, which is enforced by fines of up to €75,000 per violation. The Holy Prophet (PBUH) also commanded the redistribution of food in Fatawa al-Lajnah al-Daa'imah to prevent food waste. "If there are no needy people, leftover food should be given to animals, even after it has dried out, for the person who is able to do that. Leftover food must be kept for the next time. The petition for a writ of mandamus was granted by the High Court, ordering various government agencies to "do whatever is required of them by law in order to preserve, conserve, and manage excess of food and waste of food. In order to accomplish the

²⁸Schneider, Felicitas. "Review of food waste prevention on an international level." In *Proceedings of the Institution of Civil Engineers-Waste and Resource Management*, vol. 166, no. 4, pp. 187-203. ICE Publishing, 2013.

aforementioned goals, specific directives included finalising and strictly implementing draught regulations related to food waste, taking actions to "preserve, manage, and conserve the food wastage," raising public awareness, establishing a system to redistribute food to those in need, and passing new laws or amending existing laws.

REJECTION OF PUBLIC INTEREST PETITION

The petitioner, a lawyer who regularly represents clients in this Court, submitted this constitutional petition in the form of a public interest lawsuit to contest his appointment. He asserts that only the Advocate General, who is eligible to serve as a judge of the High Court, may be appointed by the Governor under Article 140 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"). A High Court judge must retire at age 62, per Article 195. Respondent No. 2 is not qualified for the job because he is 73 years old. The current petition is a Public Interest Litigation.²⁹

"Lexically, the expression public interest litigation means a legal action initiated in a court of law for the enforcement of public or general interest," according to Law Halsbury of India. "The public or a class of the community have a pecuniary interest or some interest by which their legal rights or liability are affected." "The purpose of public interest litigation is to overcome the existing legal, technical, and procedural limitations and provide justice, specifically social justice, to a significant individual, class, or community who are prevented from bringing a claim before a court of law due to any personal deficiency, economic or social deprivation, or

²⁹Zaret, David. "Petitions and the" invention" of public opinion in the English Revolution." *American Journal of Sociology* 101, no. 6 (1996): 1497-1555.

state oppression," claims Dr. Faqir Hussain. The courts view PIL as a "part of the participatory justice process" and a very significant jurisdiction. It must, however, be used with extreme caution and discretion.

In *Javed Ibrahim Paracha v. Federation of Pakistan and others*, the Hon'ble Supreme Court of Pakistan held that under the pro bono publico doctrine, a person could assert the constitutional jurisdiction of the superior courts, but he would first need to show that he is defending in the public interest and then for the public good, or the concern of the common public. The courts should dismiss nefarious PIL applications that challenge legitimate government measures in an effort to advance ulterior purposes or buy popularity. Additionally, they waste their valuable time and impede the resolution of other cases, thus this is important. The Indian Supreme Court dismissed the PIL case filed by a lawyer between *Sanjeev Bhatnagar and Union of India & others* with costs of Rs. 10,000/- because it was meaningless and a "publicity interest litigation." Meanwhile, the Supreme Court determined that the PIL petition was an attempt to air personal complaints in *Dattaraj Nathuji Thaware v. State of Maharashtra & others*. As a result, it upheld the High Court's judgement to charge a member of the bar with 25,000 rupees in costs for submitting a pointless and vexatious plea. The problem brought forth in the current petition is not one of res integra. It has long been resolved. This petition, in my opinion, has without merit. Consequently, it is dismissed with costs of Rs. 25,000.

PUBLIC INTEREST LITIGATION: MISUSED JURISPRUDENCE

The Honourable court described social interest litigation as "not a means to satisfy the people's curiosity

but a litigation which is instituted with a desire that the court would be able to give effective relief to the whole section of the society". The fundamental premise of this idea is that citizen interest litigation should be capable of overcoming the flaws and limitations of the adversarial judicial system, which prevents vulnerable groups in society from taking advantage of the rule of law and justice. In the well-known case between *Charn Lal Sahu v. Union of India*, the petitioner claimed in a collective rights Litigation application that the Supreme Court's judges were very ambivalent in their work, that the Court had become liable under the Constitution without being able to stop the illegal acts of the government, and that the Court was dozing off on the issues. The Court took the attempt to tarnish the Court seriously and employed the Public concern Litigation process to defeat it. The High Court reaffirmed in the most recent case involving the Government of Punjab that there is no "right to indulge in frivolous litigation without any genuine cause of action and the necessity of seeking redress of some real grievance," warning that "certain minimum conditions must be satisfied before the courts shall lend assistance to such litigant asking for relief."³⁰

CONCLUSION

All around the nation, collective interest pleaders have not been pleased with such court outcomes. They do worry that this may spell the end for the PIL concept's emphasis on community. Genuine Indian litigants, however, need not worry. Only PIL advocates who want to submit baseless complaints would be required to compensate the opposing parties. It is actually a positive

³⁰Pomerance, Michla. "The Badinter Commission: The Use and Misuse of the International Court of Justice's Jurisprudence." *Mich. J. Int'l L.* 20 (1998): 31.

step since no one in the nation can argue that even PIL advocates need to be accountable and responsible. It is also noteworthy that the Customers Protection Act of 1986 has been modified to pay compensation to opposing parties in situations where customers make unfounded complaints. In any case, PIL needs to be completely reorganised and rethought. In any case, PIL may only become stale and ineffective through misuse and abuse. Given that it is an exceptional remedy that is accessible to all citizens of the country, it shouldn't be used by all litigants as a replacement for conventional remedies or as a means of making unfounded complaints.

A CRITICAL ANALYSIS AND EVIDENTIARY VALUE OF DYING DECLARATION

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Abstract; The maxim “Nemo moriturus praesumitur mentire” is basis for "dying declaration", which means essentially saying that "a man will not face his maker with a falsehood in his mouth." Leterme Mortem is the name for a pronouncement of death. Leterme Mortem translates to "words spoken before death.".

"This study will look at the value of the deathbed statement as evidence in various nations, which is one of the most important pieces of evidence. Whether an unsupported deathbed pronouncement may be used to penalize someone, it will be further analyzed using examples from previous case law studies. If they are shown to be reliable and sincere, there would be no need for more evidence; rather, it would only become necessary if a court's conscience was not pleased with the legitimacy of a deathbed pronouncement.

This study will examine the proper format for a declaration of intent to die. Which documents should be utilized to declare one's impending death? What should the aim of this proclamation be? Who is qualified to make a dying declaration on record? Which information has to be remembered before making a final statement? What last thoughts and suggestions do you have in

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regards to the admissibility of dying statement evidentiary values?

Introduction;

“Truth always sits on the lips of a person who is about to die”³²

“A person, who is about to die, would not lie”³³

In every legal procedure, hearsay testimony has no significance, but dying declarations are an exception. A dying declaration is a crucial piece of hearsay documentation. It is admissible as evidence in judicial proceedings.

Death announcements are very reliable. Because no one would dare face God's vengeance by dying with a falsehood on her lips, the conventional argument relates to believing the evidential value of deathbed declarations. The recording of a person's declaration of death is a crucial step. If a deathbed pronouncement is properly documented while keeping in mind the necessary components, it keeps all of its meaning. If even one component of the deathbed proclamation is absent, it raises suspicions and criminals may profit from its flaws. If it is confirmed to be sincere and accurate, it can serve as a solid foundation for belief.

According to established legal precedent, it is risky to prosecute an accused person based only on a deathbed claim that lacks supporting documentation. A deathbed declaration must satisfy a reliability test before it can be

³²Matthew Arnold, 1884.

³³Raghuvanshi, Raghvendra Singh, Dying Declaration - 'A Man Will Not Meet His Maker with a Lie in His Mouth' (February 25, 2010).

used as evidence in court. As a result, the court has an obligation to carefully consider it.

A dying pronouncement is seen as a powerful piece of evidence, but it also has to be supported.

The court has the option to convict the accused on the basis of the deathbed declaration if it determines after closely reviewing it that it is truthful without any further evidence. The established view on the admissibility of a deathbed declaration as evidence is that it must be authentic, factual, and carefully written by someone who was in the deceased's right mind and anticipating his demise.

➤ **Weight age of Hearsay Evidence in the judicial proceeding:**

Hearing-only evidence is disregarded because it is not seen to be reliable enough. Hearsay evidence is rejected because it does not pass the oath and cross-examination standards that must be met for evidence to be admitted. Hearsay evidence has no significance in court proceedings since the witness who provides it does not share his own experiences but rather those of a third party who cannot be cross-examined to confirm the facts of the case. The hearsay rule does not apply in cases of death declarations.³⁴

Since it is seen to be insufficiently reliable, hearsay evidence is disregarded. Due to the fact that the witness is not sharing his experiences but rather those of a third party and cannot be cross-examined to confirm the truth, these evidence types have more weight in court. When a witness's hearsay statement is not protected by subsection (1) of section 46 of the Evidence Act, it is not admissible as evidence. The hearsay rule is based on the

³⁴ Ranger 4. (2010). Ranger's crimes

idea that the test of cross-examination is the best way to uncover and reveal any potential sources of inaccuracy and reliability that may be hiding beneath a witness's naked, untested declaration, if any such sources are there. The hearsarule has two considerations: I a situation (i) a circumstance probability of trustworthiness, (ii) a necessity for the evidence may be examined more closely.³⁵

➤ **History of the Dying Declaration:**

Non morituruspraesumiturmentiri, which literally means "a dying person is not presumed to lie," was first established by English courts in the Medieval Ages. In a 1202 case, it was discovered that a dying declaration had been submitted as evidence. The term "death statement" refers to testimony that, while ordinarily prohibited as hearsay, may nevertheless be admissible as evidence in specific circumstances because it represented the final words of a dying person.³⁶

That was first firmly stated in the 1789 decision in the matter of Woodcock. This case makes reference to a 1720 ruling as well as the 1722 ruling in *R v. Reason and Tranter*. Nevertheless, nothing in that situation indicates that the rule has any limitations. A sequence of instances from 1678 to 1765 demonstrate that, throughout that time, declarations of deceased people' causes of death were accepted even when the declarant had reasonable

³⁵ HP Gupta (2006). Allahabad: Dwivedi & Company, Desai's Law Pertaining to Confession and Dying Statement.

³⁶ M. N. Howard, "Phipson on Evidence," October 2012

expectations of recovering at the time of the declaration.³⁷

Nonetheless, occasionally courts will infer the declarant's awareness of impending death from terrible medical circumstances. Modern courts particularly enjoy it when a declarant demands last rites, proclaims that she/he is about to die, or is notified of this by a medical practitioner.³⁸

Yet, courts typically reject deathbed pronouncements today if the declarant was unaware that death was approaching.

➤ **Legal Maxim relating to Dying Declaration:**

"Nemo MoriturusPraesumiturMentiri" is a legal rule that governs when a deathbed declaration can be used as evidence. It implies that a man won't go to his grave telling lies. To put it another way, a person who is close to death or who is dying never tells a falsehood; instead, they always speak the truth. The adage "Nemo MoriturusPraesumiturMentiri" serves as the foundation for the admissibility of the Dying Declaration. This adage serves as a foundation for the acceptance of a dying declaration's probative validity.³⁹

The adage **"Nemo morituruspraesumiturmentire"** serves as the foundation for death declarations. The hearsay rule is broken in cases of death announcement.⁴⁰

According to the legal theory surrounding the legitimacy of dying declarations, such declarations are made under duress when the party is close to passing

³⁷Benites, E. (1915).

³⁸Orenstein A. Her Last Words: Dying Declarations and Modern Confrontation Jurisprudence. U. Ill. L. Rev.. 2010:1411.

³⁹Ranger 4. (2010). Ranger's crimes

⁴⁰Giriraj Shah 8. (2002). Anmol publications: New Delhi, crime and criminal investigation

away, when all traces of this world are gone, when all motivations for lying are silenced, and when the man is moved by the strongest consideration to speak only the truth.⁴¹

In the **Rashid Ahmed v. State case**, the dead filed an F.I.R. before passing away while still aware. The deceased passed away in a hospital the day after the incident. The dead was well aware of the accused. In his statement, the deceased not only disclosed all relevant information on the accused in advance of his passing, but he also accurately detailed the incident. The deceased narrated his statement regarding the occurrence, how it transpired, and the accused's role in it. The deceased also provided explanations for what happened.

According to Article 46 of the Qanun-e-Shahadat Order, 1984, the statement made by the dead before his death was not only pertinent, but it was also free from outside prodding. There was no history of animosity between the dead and the accused, and there was no justification for the deceased to have intentionally and unjustly implicated the accused. Eye witnesses who were undeniably there at the scene had no motivation to testify falsely against the accused in an effort to seriously hurt him. Crime was perpetrated by the accused after careful forethought and for a specific reason; as a result, it could not be characterized as a random act of violence.

Under the circumstances, the prosecution provided exceptionally reliable evidence that firmly backed the accusations levelled against the defendant. It was determined that the defendant had received a death sentence and that the murder case had been dropped.⁴²

⁴¹Thakur Naveen 3. (1998). Criminal Law Journal, Vol. II, Jan.-March, pp. 77-80, "Dying Declaration-its Admissibility in law."

⁴²2003 (PCr. LJ 480 Lahore)

➤ **Relevant Provisions of Dying Declaration:**

Article 46 of the Qanun-e-Shahadat Order is an exception to the general rule of exclusion of the hearsay evidence.

Under the conditions outlined in clause (1) to,8 a person's written or verbal statement of relevant facts made by a person who is deceased, cannot be located, has become incapable of giving evidence, or whose attendance cannot be obtained without a certain amount of delay or expense, is considered to be relevant facts .

Article 46 clause (1), states that any written or oral declaration of pertinent facts made by a person about the reason for or any circumstances surrounding his death may be used as evidence. They are usually referred to as "death declarations." Such claims are accepted as evidence under the necessity principle.⁴³

➤ **Statement of Need and Values Regarding Dying**
The declaration of a dying person is admissible into evidence under the rule of necessity because it cannot be refuted by the accused's cross-examination.⁴⁴

If deemed trustworthy, a deathbed declaration may serve as the foundation for a conviction. A deathbed declaration is considered to be valid evidence just like any other piece of evidence. The victim is typically the sole key eyewitness to the crime, therefore excluding the statement might interfere with the course of justice. The second reason for admittance is the victim's awareness of approaching death, which imposes a consequence equivalent to the need of an oath.

The general principle on which this species of evidence is admitted is that they are declaration made in

⁴³ Ibid Naveen.

⁴⁴Friedman RD. Confrontation Clause Re-Rooted and Transformed. Cato Sup. Ct. Rev.. 2003:439.

extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice.⁴⁵

In this instance, the accused's deathbed declaration served as the foundation for the conviction. When a person is dying, the circumstance in which they are lying on their deathbed is so serious and peaceful that the grave position in which they are put is the cause in law to recognise the authenticity of their testimony. Because of this, the requirements for an oath and a cross-examination are waived.⁴⁶

➤ **Acceptance of the Dying Statement under Section 46(1) of the 1984 Qanun-e-Shahadat Order:**
There is a crucial issue that must be shown in order for the statement of a deceased person to be admissible under Article 46(1) of the Qanun-e-Shahadat Ordinance, 1984

- (i) The individual who made the statement is dead;
- (ii) He was cognizant when he said it; and
- (iii) He said it knowing he would die.

In a case the Medical Officer at the Civil Hospital in Tandlinwala sent Rqqa to the S. H. O. at the Tandlianwala Police Station to let them know that Nur Ahmad son of Nijabat was in a serious condition but was

⁴⁵Ibid Naveen.

⁴⁶Gopal Chaturvedi (2008). Filed's Commentary on the Law of Evidence, Delhi

still capable of giving a statement. As a result, Jafar Hussain Shah, A. S. I., arrived at the hospital. In the presence of the doctor, Nur Ahmad, who was then in the operating room, described the incident to him and included the pertinent details. A formal F. I. R. was filed at the police station in Tandlianwala based on this statement. It was decided that there was enough evidence on file to confirm the veracity of the deathbed declaration.⁴⁷

➤ **Necessity and principles regarding Dying Declaration**

The general rule under which this type of evidence is accepted is that it must be a declaration made under duress, when the party is on the verge of death, when all hope for the world has been lost, when every motive for lying has been silenced, and when the mind has been persuaded to speak the truth by the strongest considerations. The law views such a solemn and legal circumstance as imposing an obligation equivalent to that imposed by a positive oath administered.⁴⁸

In this instance, the accused's deathbed declaration served as the foundation for the conviction. When a person is dying, the circumstance in which they are lying on their deathbed is so serious and peaceful that the grave position in which they are put is the cause in law to recognise the authenticity of their testimony. Because of this, the requirements for an oath and a cross-examination are waived.⁴⁹

⁴⁷Muhammad alias Mammi and others vs. the state P C r .LJ 1183 Lahore, 1983.

⁴⁸Ibid Naveen.

⁴⁹Gopal Chaturvedi (2008). Filed's Commentary on the Law of Evidence, Delhi Law House, New Delhi.

The rule that hearsay evidence is not admissible is an exception for dying declarations. It is now a settled principle of law that the dying declaration is substantive evidence, and an order of conviction can be safely recorded even on the basis of a dying declaration if the court is fully satisfied that the so-called dying declaration made by the deceiver was true. The dying declaration is substantive evidence only because a person in acute agony is not expected to tell a lie and in all likelihood it is expected from such a person to disclose the truth.⁵⁰

The hearsay rule has long been exempted under the dying declaration exemption. It accepts out-of-court declarations as true where the declarant is unavailable, the declaration involves the cause of the declarant's impending death, and the declaration is made while the declarant feels his death is close at hand.⁵¹

➤ **Objects of Dying Declaration:**

Objects of a statement by a dying person may be of following:

1. It is assumed that a person who is going to pass away wouldn't lie.
2. It is also claimed that a person who is ready to pass away has the truth on their lips.
3. Because the victim is the only eyewitness, such evidence should not be disregarded.⁵²

➤ **Competency of Person:**

A deathbed pronouncement needs to come from a witness who is qualified to provide testimony. Hence, the

⁵⁰Ibid Naveen.

⁵¹Gopal Chaturvedi (2008). Filed's Commentary on the Law of Evidence, Delhi Law House, New Delhi.

⁵²Hackmann J. Defending the "good name" of the Polish nation: politics of history as a battlefield in Poland, 2015–18. *Journal of Genocide Research*. 2018 Oct 2;20(4):587-606.

final testaments of insane people or young children who are unable to give a testimony are not accepted.⁵³

In a situation where the statement of a child—who at the age of four was too young to comprehend the theory of a future state—was not accepted. In another instance, a boy's ten-year-old declaration was deemed valid.

➤ **Evidentiary Value of Dying Declaration made in Presence of Relatives of Declarant:**

Most of the time, a deathbed statement is suspicious if the declarant's family were there when he made his final declaration before passing away. In some circumstances, the presence of the declarant's family does not raise suspicions about the deathbed statement. Thus, in.

Most of the time, when the declarant's family are present when the dying statement is being recorded, this raises questions about the validity of the document.⁵⁴

In the case of Waheeduddin vs. Allah Ditta and 5 others, it was held by the Court, dying statement which is recorded at police station in presence of deceased's relatives always becomes suspicious and less worthy of credence than one recorded by a Magistrate after excluding relatives.⁵⁵

In the case of Nazim Khan and 2 others vs. The State, it was held by the Court that dying declaration which is recorded at Police Station in presence of relatives of deceased is not worthy of credence.⁵⁶

➤ **Evidentiary Value of Dying Declaration which is Recorded by a Magistrate:**

⁵³Ibid Naveen.

⁵⁴Mehmood Ehsam (2008). Order of Qanun-e-Shahadat, Lahore: Mansoor Book House, 1984

⁵⁵PLD 1977SC 72

⁵⁶1984 SCMR 1092

According to the legislation, a Magistrate is not required to record a dying declaration. That will always rely on a number of different things. A police officer's recorded deathbed declaration is likewise admissible, and a conviction may be based on it. A dying statement that is correctly recorded after satisfying many requirements that must be kept in mind at the time of recording a dying declaration keeps its complete admissibility as evidence and can be used to support an accused person's conviction.⁵⁷

A dying declaration that the magistrate has recorded after concluding that the declarant is expecting to die and is both mentally and physically fit to make the declaration is admissible in court as evidence. As a result, a Magistrate's recording of a deathbed declaration has great probative significance.

➤ **Evidentiary Value of Dying Declaration which is Recorded by a Police Officer:**

There is no legal necessity that police officer record a pronouncement of someone's impending death. That will always rely on a number of different things. A police officer's recorded deathbed declaration is likewise admissible, and a conviction may be based on it. A dying statement that is correctly recorded after satisfying many requirements that must be kept in mind at the time of recording a dying declaration keeps its complete admissibility as evidence and can be used to support an accused person's conviction.⁵⁸

⁵⁷Cheema SA, Khan SU. Dying Declarations in Pakistan and India: A Case Law Study of their Evidentiary Value. Pakistan Journal of Social Sciences (PJSS) Vol. 2013 Dec 31;33:97-108.

⁵⁸Gopal Chaturvedi (2008). Filed's Commentary on the Law of Evidence, Delhi Law House, New Delhi.

➤ **Evidentiary Value of a Dying Declaration Recorded by a Private Person:**

There is no legal necessity that police officer record a pronouncement of someone's impending death. That will always rely on a number of different things. If a judge or police officer are unable to be there, a private individual may record the dying pronouncement. A private officer's recorded deathbed declaration is likewise admissible, and a conviction may be based on it. A dying statement that is correctly recorded after satisfying many requirements that must be kept in mind at the time of recording a dying declaration keeps its complete admissibility as evidence and can be used to support an accused person's conviction.⁵⁹

A deathbed declaration made before a private person that is free from any outside influence qualifies as a substantial piece of evidence and is accepted.⁶⁰

➤ **Conclusion:**

The majority of judicial rulings now consider a deathbed declaration to be reasonably unambiguous as evidence. With an increase in cases where a dying statement served as the basis for a prosecution, the significance of a dying declaration as a piece of strong evidence is growing. Even while there might not be any obvious physical proof of a crime, a deathbed declaration can speak for itself and demonstrate far more than might be shown by eyewitness testimony. Men may lie, but circumstances do not, it is said in truth. It is sacred and equally reliable as any other piece of evidence.

⁵⁹Orenstein A. Her Last Words: Dying Declarations and Modern Confrontation Jurisprudence. U. Ill. L. Rev.. 2010:1411.

⁶⁰Article 46 of the Qanun-e-Shahadat of 1984

➤ **Recommendations and Suggestions:**

There are some suggestions that a deathbed declaration is a significant piece of evidence that can be utilized to support an accused person's conviction. A deathbed declaration's importance as evidence cannot thus be discounted.

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OPPRESSION STRICT MINORITIES IN PAKISTAN AND INDIA: A PROTECTED UNDER CONSTITUTIONAL COMPARISON

RANA ZAHEER-UD-DIN AHMAD*
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Abstract; This article leads a careful assessment of the laid out security gave to strict minorities in India and Pakistan. The attention is on contrasting the established arrangements of the two countries and distinguishing positive components for minority security. The discoveries uncover that while the Indian constitution offers better shields for strict minorities contrasted with Pakistan, it is significant to recognize that victimization minorities actually exists in India. The article proposes three ways to deal with address this issue: political split the difference, protected assurances, and adherence to worldwide principles. Underscoring the meaning of constitutionalism, the article features that a composed constitution alone has restricted effect, and it is the obligation to maintain protected values by overseeing bodies and people that really guarantees the acknowledgment of freedoms. The segment of English India in 1947 prompted the foundation of two separate countries, India and Pakistan, in light of strict lines. Regardless of the goal to make nations where strict minorities could openly rehearse their convictions and protect their societies, the truth has been perplexing. This article dives into the sacred shields proposed to strict minorities in the two countries, with an essential spotlight on their separate established provisions. Pakistan was proclaimed an Islamic state, and its pioneer, Muhammad Jinnah, guaranteed strict minorities the opportunity to

rehearse their religions and safeguard their social legacy. As needs be, the Constitution of Pakistan included central privileges and opportunities for minorities. Nonetheless, these sacred certifications were not enough carried out, prompting what is going on for minorities. At present, Pakistan is broadly perceived as one of the most antagonistic states for strict minorities around the world. In later years, Pakistan moved towards a more safe methodology, stressing Islamization, and political contentions based on strict hostilities. In contrast, India embraced a mainstream personality, meaning to give equivalent freedoms and potential open doors to every strict local area. While India's constitution offers better security for strict minorities contrasted with Pakistan, the truth actually misses the mark regarding the ideal. Oppression minorities endures in different forms. The article highlights the meaning of constitutionalism in maintaining the genuine soul of a country and carrying out rules that advance reasonableness and equity. Just having a composed constitution isn't adequate; it is the responsibility of ideological groups and pioneers overseeing the state to maintain established values that genuinely guarantee the acknowledgment and insurance of minority opportunities.

Keyword; MinorityRight, constitutionalism, Human right, Constitutional Assembly Debate

INTRODUCTION;

According to a humanistic viewpoint, social variations frequently arise in social orders because of different factors like orientation jobs, monetary contrasts, racial qualifications, and strict affiliations. These qualifications can prompt the act of 'othering,' where one

prevailing gathering sees and treats different gatherings as untouchables or sub-par. Such 'othering' can make strains and clashes between various gatherings. Resolving this issue includes three essential methodologies:

Acknowledgment and Affirmation: Settling social inconsistencies can start with perceiving and esteeming the different encounters, characters, and commitments of all gatherings inside a general public. It is fundamental for regard and value the social, racial, ethnic, and strict variety present, it is minimized or barred to guarantee that no gathering.

Compassion and Understanding: Cultivating sympathy and understanding between various gatherings is another fundamental methodology. This can be accomplished through advancing discourse, instruction, and attention to challenge generalizations, inclinations, and biases. By empowering people to draw in with and understand the encounters of others, the holes between gatherings can be spanned, and strains decreased.

Equivalent Open doors and Social liberties: Addressing hidden imbalances and giving equivalent chances to all gatherings is a significant part of settling social variations. This includes pushing for approaches and practices that guarantee impartial admittance to training, work, medical services, and different assets. By handling financial differences, social treacheries, and biased rehearses, an all the more and comprehensive society can be constructed.

⁶¹It is important to note that resolving the issue of 'othering' and reducing tensions between different groups

⁶¹ BIPAN CHANDRA and MRIDULA MUKERJEE et al., INDIA'S Battle FOR
 Interdependency
 Freedom of Religion and Religious Minorities in Pakistan:

requires a comprehensive and multi-faceted approach. It involves challenging and transforming social structures, promoting inclusivity, and fostering a sense of belonging and shared humanity among all members of society.

In 1947, the English government settled on the choice to segment India in light of strict lines, bringing about the making of two separate countries, India and Pakistan. This parcel was a political choice that coming up short on help of the overall population. There was no mandate or boundless general assessment of public sentiment directed before the arrangement of Pakistan. Preceding 1947, the Hindu and Muslim people group, the two biggest strict networks, coincided in brought together India with relative agreement. This strict amicability and resilience were apparent during the Swadeshi development, otherwise called the Parcel of Bengal in 1905.

During this period, the two significant strict networks, Hindus and Muslims, combined efforts to challenge the English strategy of segment. The Parcel of Bengal was proposed by the Morley Minto Changes Demonstration of 1905. In any case, because of boundless public opposition and agitation, the English government in the long run renounced the choice to parcel Bengal in 1913.

It is imperative that these two critical strict networks, who had recently battled together contrary to English rule, at last moved their position and supported for the making of two separate countries following 40 years. This shift can to a great extent be credited to the impact of one individual, Muhammad Ali Jinnah (1876-1948). Jinnah, an English-taught legal counselor, at first enlisted in the Indian Public Congress in 1913 when the

political places of the Muslim Association and the Hindu people group were adjusted and helpful.

Nonetheless, after Jinnah was chosen as the head of the Muslim Association in 1916, the interest for a different Muslim state bit by bit acquired unmistakable quality inside the party's plan. Albeit the Hindu and Muslim people group had recently battled together for autonomy, they started to veer on the issue of discrete statehood for Muslims. In October 1916, the Muslim Association introduced a goal upholding for isolated electorates for Hindus and Muslims, alongside an interest for 33% portrayal of Muslims in the Focal Government. This interest for corresponding portrayal of minority networks was acknowledged by the Indian Public Congress at the Lucknow Agreement in 1916.

Be that as it may, toward the finish of 1927, the Indian Public Congress changed its situation and requested total freedom from English rule. On August 28, 1928, Motilal Nehru, as the head of the Congress Party, introduced the Nehru Report at the All-Gatherings Meeting.

Moreover, the Muslim Association declared that leftover powers would be designated to the territories on the grounds that the Muslim people group perceived that they would be a larger part in the North-East and North-West locales of India. They accepted that by controlling their common states, they could defend their minority advantages. Talking before an enormous crowd at the Lahore Goal in Walk 1940, Jinnah expressed, "Muslims are not a minority as normally known and comprehended... Muslims are a country as per any meaning of a country, and they should have their countries, their domains, and their state."⁶²As a result of

⁶²A Study of Judicial Practice' (1995) 19 Fordham Int'l L.J. 40

persistent demands for a separate Muslim state led by Jinnah, the British Parliament decided to create two separate entities, India and Pakistan. On July 18, 1947, the British Parliament passed the Indian Independence Act, 1947, which laid the groundwork for the establishment of Pakistan and India as two separate dominions of the British Raj. Thus, due to the religious agitation and based on the principles of the two-nation theory, the new country of Pakistan came into existence. However, the demographics of the newly formed Pakistan were not entirely homogeneous, and there were significant numbers of non-Muslim communities residing in Pakistan at that time. Jinnah and his fellow Muslim leaders believed that they would be able to improve the socio-economic conditions of both Muslims and non-Muslims equally without establishing a secular state.

On August 11, 1947, in his speech to the first Constituent Assembly of Pakistan, Jinnah addressed the minority communities, stating, "...you are free; you are free to go to your temples, you are free to go to your mosques or to any other places of worship in the state of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the state."

Treatment of Non-Muslim Minorities by the Essential Wellsprings of Islam under a Muslim Nation

Islam, as a religion, maintains upsides of love, love, empathy, and kindness, which structure the epistemological groundwork of its lessons. These qualities are thought about in Islam's position strict opportunity and its accentuation on common regard and understanding. The Qur'an expressly expresses that there

ought to be no impulse in religion, asserting the right of people to uninhibitedly pick their confidence (Qur'an 2:256).

Islam urges its supporters to take part in objective assessment and decisive reasoning in regards to their convictions. The Qur'an over and over calls upon individuals to consider, reflect, contemplate, and notice the indications of God's creation (Qur'an 2:164; 5:58; 13:4). This accentuation on scholarly request infers that Islam esteems an insightful and individual conviction of confidence, instead of impulse or visually impaired adherence.

Islam doesn't advocate the utilization of power or participate in fights to change individuals' strict convictions. The fights battled by Prophet Muhammad were basically legitimate or with regards to the mistreated. Islam advances serene concurrence and exhorts against clashes in view of strict contrasts. The Prophet Muhammad stressed the significance of regarding the privileges of strict minorities and cautioned against abusing them (Hadith No: 3052, Hadith No: 3166).

⁶³During the early time of Islam, non-Muslims living under Muslim rule, like Christians, Jews, and other strict networks, were conceded the situation with dhimmis. Dhimmis were qualified for the opportunity to rehearse their religion, gave they recognized the power of the Muslim state and settled the Jizya charge. This duty, a long way from being expected to debase or embarrass non-Muslims, filled in as a way to communicate reliability to the political power and added to the security

⁶³Ispahani, Farahnaz. *Purifying the Land of the Pure: A History of Pakistan's Religious Minorities*. Oxford University Press, 2017.

and security of the strict minority networks (Ahmed and Ahmad 1975).

Islam maintains the standard of equivalent privileges for the two Muslims and non-Muslims in the state and thinks of them as equivalent in societal position. Spots of love having a place with strict minorities are to be regarded and protected. The activities of the subsequent caliph, Umar ibn al-Khattab, in safeguarding the spots of love of strict minorities, exemplify the significance Islam puts on saving the privileges of every strict local area (El-Wakil 2016).

All through the caliphate period, the strict opportunity conceded during the hour of Prophet Muhammad kept on being maintained. Strict minorities were permitted to uninhibitedly practice their confidence, and their freedoms and ceremonies were regarded.

Generally, Islam advances strict opportunity, common regard, and non-separation. It energizes objective request, sympathy, and understanding among people of various strict convictions. These standards are gotten from Islamic lessons found in the Qur'an and the acts of the Prophet Muhammad.

Prelude and Starting Arrangement in the Constitution of Pakistan

The Introduction of the Pakistani Constitution, normally known as the 'Objective resolution ' was consolidated as a critical part, Article 2A, through the eighth Amendment in 1985 by the then President, Zia-ul-Haq. While this arrangement is frequently perceived for integrating Islamic standards or reasoning into the Pakistani Constitution for administering the country, it likewise addresses strict minorities. The Goals Goal proposes ways to deal with be taken on by the state to

empower strict minorities to "pronounce and rehearse their religions uninhibitedly." Notwithstanding, when it was incorporated as a vital piece of the Pakistani Constitution as Article 2A, the word 'openly' was excluded. It very well may be contended that this exclusion didn't have a huge effect as Article 2A likewise discusses shielding the "genuine interests of minorities." By the by, the term 'real' requires evaluation as it permits the public authority to limit specific strict acts of minorities.

For instance, Segments 298B and 298C of the Pakistan Punitive Code, 1860 (the 'PPC'), censure the demonstration of straightforwardly examining or rehearsing the Ahmadi confidence. This result can be ascribed to the unclear phrasing of the Targets Goal. It was exclusively under the eighteenth Sacred Alteration, passed in 2010, that the term 'openly' was once again introduced into Article 2A.

⁶⁴With respect to effect of the past prohibition of 'openly' from Article 2A, one could contend that since it was anything but a supra-protected arrangement, it didn't have an expansive effect. Before its consideration in the Pakistani Constitution as Article 2A, the Goals Goal was a non-justiciable piece of the Constitution and just held an overall obligation to make an Islamic culture. Researchers have battled that through legal understanding during the 1990s, the High Court decided that Article 2A didn't work as a general arrangement overriding different arrangements of the Constitution. Be

⁶⁴Waheed, Sarah Fatima. *Hidden Histories of Pakistan*. Cambridge University Press, 2022.

that as it may, milestone cases like the Zaheeruddin Case keep on testing this standard.

Consequently, the impact of Article 2A was to such an extent that regulations should be as per Islam, and Article 2A was given general impact with regards to strict minorities in Pakistan. Albeit the eighteenth Amendment once again introduced the term 'uninhibitedly' into Article 2A, meaning to address a verifiable off-base, none of the other unfair arrangements of the Pakistani Constitution were canceled, revised, or tended to. This proposes that the pre-alteration regulation, as well as the ongoing inclinations and separation, actually endure. It is additionally vital to take note of that Article 2 of the Pakistani Constitution proclaims Islam as the 'state religion.' While this arrangement isn't harsh in itself, it might act as the establishment for a few other challenged articles, which will be examined thusly.

Hakim Khan v Administration of Pakistan PLD 1992 SC 595

Because of *Hakim Khan v Council of Pakistan* (PLD 1992 SC 595), various appellants brought the contention against the Public power of Pakistan as respondents. The High Court of Pakistan, including Judges Nasim Hasan Shah, Shafiur Rahman, Saad Saood Jan, Abdul Shakurul Salam, and Muhammad Afzal Singular, heard the case and conveyed the judgment on July 19, 1992.

During the techniques, the court made references to genuine guidelines and laid out game plans. It inspected the interpretation of the saying "extensive," describing it as an essential part or constituent, and relied upon Dull's Guideline Word reference for clarification.

The court's consideration centered around Article 2A of the Constitution of Pakistan, which is generally called the Objectives Objective. The court focused on that ensuing to being incorporated as a significant piece of the Constitution, the Objectives Objective achieved comparative weight and status as various articles of the Constitution.

In its assessment, the court dissected the point and significance of Article 2A and its relationship with the ongoing Constitution. It questioned whether another Constitution was key then again in case the ongoing plans could fulfill the objectives outlined in the Objectives Objective. The court zeroed in on the meaning of unraveling the Constitution with everything taken into account and organizing any conspicuous abnormalities between its courses of action.

⁶⁵The court imparted stresses over considering Article 2A as a supra-laid out game plan, as it could really challenge the consistency of existing safeguarded game plans with the Objectives Objective. Such a comprehension was seen as negative to the Constitution, as it could provoke legitimate hardships against various game plans.

In addition,⁶⁶ the court highlighted the regulatory point behind adding Article 2A to the Constitution. It communicated that the executives didn't intend to permit the repeal of existing laid out plans. The court alluded to legitimate perspectives and rehashed that the courts, being creatures of the Constitution, missing the mark on ability to ruin courses of action inside it.

⁶⁵AMES WYNBRANDT, A BRIEF HISTORY OF PAKISTAN, 183-185, (Infobase Publishing House, New York, 2009)

⁶⁶ Hamid khan , Constitutional and political history of Pakistan.

The judgment in like manner alluded to Islamic regulation and referred to the three pieces of the express: the boss, regulatory, and lawful leader.

Basic Right

Under the particular constitutions of Pakistan and India, the two nations give arrangements to the ability to speak freely in Article 19. Be that as it may, there are prominent contrasts between the two. The Pakistani Constitution permits discourse limitations "in light of a legitimate concern for the brilliance of Islam" (Article 19), which is missing from the Indian Constitution's arrangement on free discourse.

Article 19 of the Pakistani Constitution has been utilized to legitimize irreverence regulations in Pakistan, which were altered by Broad Zia-ul-Haq during the 1980s. These regulations have been censured for encroaching upon strict opportunity and opportunity of articulation. Furthermore, the corrected regulations were found to disregard the opportunity of religion by the Assembled Countries Sub-Commission on the Counteraction of Segregation and Security of Minorities.

Both the Pakistani Constitution (Articles 20-27) and the Indian Constitution (Articles 25-30) contain principal privileges straightforwardly connected with religion. For example, Article 20 of the Pakistani Constitution manages the opportunity to proclaim and rehearse religion "dependent upon regulation, public request, and ethical quality." The expression "dependent upon regulation" is questionable, with potential translations including references to different arrangements of the Pakistani Constitution, regulations established by the assembly, or both. Notwithstanding, sacred arrangements ought to for the most part beat

different regulations. Notwithstanding this, there are prejudicial arrangements inside the Pakistani Constitution that could be utilized to legitimize limitations on Article 20.

Interestingly, Article 25 of the Indian Constitution doesn't utilize such rigid language, as it expressly expresses the grounds on which the opportunity to maintain and rehearse religion might be confined. While proviso (1) of the arrangement subjects the opportunity to "public request, ethical quality, and wellbeing," condition (2) gives a few intriguing special cases. While proviso (2)(a) avoids monetary, political, and mainstream exercises related with strict practices from the ambit of statement (1), condition (2)(b) guarantees that provision (1) can't be utilized to prevent "social g⁶⁷overnment assistance" and the launch of "Hindu strict foundations" for "all classes and areas of Hindus." This shows that while condition (2)(a) concedes wide powers to the public authority to confine the opportunity conceded in provision (1), statement (2)(b) of Article 25 explicitly centers around tending to divisions in light of rank inside the Hindu greater part. Hence, while this arrangement might be utilized to control strict minorities in India somewhat, it additionally seems to target reinforcing the Hindu people group.

Luckily, neither one of the constitutions forces religion-based charges. Article 21 of the Pakistani Constitution unequivocally disallows the burden of any unique expenses "for the spread or support of any religion other than his own."

⁶⁷ Hamid khan , Constitutional and political history of Pakistan

Policy GuidelinesState policy directive principles

In spite of the fact that dissecting the Orders referenced in the two constitutions might be viewed as an activity with restricted enforceability in courts, the state actually has a commitment to work as per these Goals. Also, they can assist with deciding the expectations of the designers or the general responsibility level of the constitution in regards to different issues, including the freedoms and status of strict minorities. In the wake of breaking down the standards figured out in the two constitutions, it is clear that they need accentuation on the particular necessities of strict minorities.

For example, Article 32 of the Pakistani Constitution expresses that unique portrayal ought to be given to "laborers, workers, and ladies" in neighborhood bodies, yet strict minorities are not referenced as a different weak gathering. Additionally, Article 33 of the Pakistani Constitution intends to forestall "parochial, racial, ancestral, partisan, and commonplace biases" by the state, yet there is no notice of predispositions against religions other than Islam. This oversight is a critical issue in current Pakistan.

One more risky Goals in the Pakistani Constitution is the one that arrangements with the "real" interests of minorities (Article 36), as examined To some degree I of the paper. Moreover, as per Article 38(d), the state should give fundamental necessities of life to residents who can't accomplish them all alone, paying little mind to orientation, standing, doctrine, or race. Notwithstanding, religion and consequently strict minorities have been rejected from the rundown of classes, in spite of the expansion in religion-based clashes in Pakistan.

While it tends to be contended that "all such residents" may incorporate strict minorities too, the reason for these Goals is to explicitly feature specific gatherings while resolving important issues. Also, when the Targets distinguish explicit gatherings while recognizing issues, it demonstrates that the state ought to zero in additional on such gatherings while settling those specific issues. Despite the fact that there is no bar that disallows strict gatherings, the way that a particular gathering has not been referenced doesn't reveal direct insight into their necessities or social remaining in the country.

For example, it is generally recognized that Pakistani ladies face orientation based separation in different regions, which is the reason this perspective has been tended to in a few Targets by expressly referencing orientation. Nonetheless, a similar consideration has not been given to strict minorities in spite of their deteriorating financial circumstances in Pakistan.

The Assurance of Minorities in Indian Lawful Structure

⁶⁸India stands apart among South Asian nations because of its assorted strict scene. Significant religions and their particular minorities call India home. The Hindu people group includes the greater part, representing 79.8% of the absolute populace, while any remaining strict networks consolidated make up 20% and are viewed as minorities. Among these minorities, Islam is the biggest with roughly 14% of the populace, trailed

⁶⁸ MADIHA AFZAL, PAKISTAN UNDER SIEGE EXTREMISM, SOCIETY AND THE STATE, (Brookings Institution Press, 2018)

by Christianity (2.3%), Sikhism (1.72%), Buddhism (0.70%), Jainism (0.37%), and others (0.9%). Islam is spread all through the country.

India has a long history of strict resistance and pluralism. Perceiving this, the composers of the Indian constitution presented the idea of secularism in the Constitution of India in 1950. The constitution broadcasts that there will be no state religion and underscores strict opportunity and equivalent treatment for every single strict local area. Secularism in India doesn't mean being hostile to religion; it regards all religions and convictions without sticking to a particular religion. There is no state religion, and all strict gatherings partake in a similar established security with negligible predisposition or separation.

Article 25(1) of the Indian Constitution ensures each individual the opportunity of heart and the option to unreservedly affirm, practice, and spread religion. It ought to be noticed that this right isn't confined to residents alone; any individual, including outsiders, is qualified for it. Article 30(1) awards two rights explicitly to semantic or strict minorities: the option to lay out and the option to control instructive foundations. These opportunities are restrictive to phonetic or strict minorities and not reached out to different segments of the populace. This is the tremendous distinction between Article 29(1) and Article 30(1).

In any case, the expressions "minority" and "minorities" are not unequivocally characterized in the Indian Constitution. The expression "minorities" in Article 30 additionally stays questionable. In the Re Kerala Training Bill Case, the High Court saw that while the term isn't characterized in the Constitution, it by and large alludes to any local area that is mathematically

under half of the number of inhabitants in a specific state. Consequently, when a guideline that connects with minority privileges is a state guideline, the "minorities" are resolved in view of the number of inhabitants in that state. In *D.A.V School v. Province of Punjab*, the High Court dismissed the contention by the Territory of Punjab that a strict or semantic minority ought still up in the air as per the whole populace of India.

On account of *Territory of Bombay v. Bombay Instruction Society*, the High Court perceived that Parsi Indians, who are both a strict and phonetic minority, reserve the privilege to protect their language, content, and culture under Article 30(1). The Theosophical Society, then again, isn't viewed as a strict minority.

2.1 State of Bombay v. Bombay Educational Societyair 1954 SC 561 (india)

⁶⁹On account of *The Region of Bombay versus Bombay Educational Society and Others* (1954 AIR 561, 1955 SCR 568), a seat comprising of Judges Sudhi Ranjan Das, Mehar Chand (CJ), Ghulam Hasan, Natwarlal H. Bhagwati, and B. Jagannadhadas heard the matter. The judgment was followed through on May 26, 1954.

The case included the Bombay Guidance Society, which worked a notable English medium school called Barnes Optional School. The school got help from the Territory of Bombay and led its schooling in the English language. The Territory of Bombay gave a round request that denied the confirmation of understudies who were not of Early English Indian drop or of non-Asiatic beginning to schools where English was the vehicle of guidance.

⁶⁹ (1954 AIR 561, 1955 SCR 568)

A few residents, including an individual from the Indian Christian people group and one more from the Gujarati Hindu people group, tested this request as it denied admission to their particular kids in view of their native languages. The Guidance Society and its chiefs documented an application in the Bombay High Court looking for a writ of mandamus to limit the State from upholding the request and to permit the confirmation of non-Early English Indian understudies to the school.

The Bombay High Court acknowledged the application and conceded the writ as mentioned. The Region of Bombay pursued against the choice of the Great Court.

The High Court held that the round request, which denied admission to understudies who were not Early English Indians or of Asiatic drop to the Early English Indian school, was void and unenforceable. The court decided that it disregarded the principal right ensured to all residents under Article 29(2) of the Constitution, which protects the right to induction into instructive foundations kept up with or supported by the State.

The Court deciphered the language of Article 29(2) to cover all residents, independent of whether they had a place with the larger part or minority bunch, and stressed that the security reached out against the State or anybody denying the gave right.

Besides, the Court noticed that the Early English Indian schools reserved the privilege to concede non-Early English Indian understudies as a condition point of reference for getting awards from the Public authority. The condemned request kept the schools from satisfying their sacred commitment and presented them to the gamble of relinquishing their unavoidably safeguarded right to the extraordinary award.

The Court likewise perceived the principal freedoms of minorities, like the Early English Indian people group, to save their own language, content, and culture. It declared that the State, through its police power, can't direct the vehicle of guidance that conflicts with such key opportunities.

All in all, the High Court pronounced the decried request as unlawful and maintained the choice of the Bombay High Court. The decision certified the significance of safeguarding the privileges of all residents and regarding the freedoms of semantic and social minorities in India.

2.2 Occurrences of mutual brutality influencing India's strict minorities, 1964 – 2013

- In January 1964, broad mobs emitted in Calcutta (presently Kolkata), West Bengal, and later spread to Jamshedpur (presently in Jharkhand) and Rourkela (presently in Odisha, then known as Orissa). These mobs brought about an authority loss of life of 134, however the assessed number of passings was a lot higher, arriving at a few thousand.⁷⁰ The savagery was purportedly set off by the burglary of a holy remnant from the Hazratbal Mosque in Srinagar, Kashmir, in 1963. This occurrence ignited shock and prompted public strains in different pieces of India, including the referenced urban communities.

During the mobs, there were conflicts between various strict and ethnic networks, bringing about death toll, property harm, and removal of individuals. The particular causes and conditions of the brutality shifted in

⁷⁰ADIL HUSSAIN KHAN, FROM SUFISM TO AHMADIYYA: A MUSLIM MINORITY MOVEMENT IN SOUTH ASIA, 91-93, Indiana University Press, (2015)

every locale, except strict and public strains assumed a huge part.

Experts in the impacted areas put forth attempts to contain the viciousness and reestablish request. Nonetheless, the mobs significantly affected the impacted networks, causing dread, injury, and enduring social divisions.

It is essential to take note of that demonstrations of viciousness and collective pressures are profoundly deplorable and don't mirror the serene lessons of any religion, including Islam. The standards of adoration, empathy, and resilience are crucial to the Islamic confidence, and demonstrations of viciousness or mistreatment conflict with the genuine soul of Islam.

Endeavors to advance harmony, understanding, and concordance among various strict and ethnic networks stay fundamental in forestalling such episodes and cultivating a unified society in light of common regard and acknowledgment. It is fundamental for people and networks to participate in discourse, encourage compassion, and embrace variety to construct a general public where quiet conjunction is focused on. By regarding each other's convictions and societies, we can pursue a world that celebrates solidarity in the midst of variety and rules out brutality and contempt.

- In September 2013, the locales of Muzaffarnagar and Shamli in Uttar Pradesh, India, saw annihilating mutual mobs that prevalently designated Muslims. The brutality brought about the disastrous demise of no less than 65 individuals, and around 50,000 people had to escape from their homes. The uproars were likewise set apart by upsetting degrees of sexual savagery against minority women. The turmoil was set off by charges of a Muslim man purportedly irritating a Hindu lady from the

Jat people group. These claims raised pressures and spiraled into enormous scope viciousness between various strict and ethnic gatherings in the region. Local specialists confronted huge analysis for their inability to successfully mediate and subdue the spread of savagery. Their apparent failure to maintain law and order additionally exacerbated the circumstance and permitted the strife to continue.

The common uproars in Muzaffarnagar and Shamli devastatingly affected the impacted networks. Lives were lost, families were dislodged, and dread and question saturated the region. The episodes of sexual savagery against minority ladies added an extra layer of misfortune to a generally critical situation. It is pivotal to underline that demonstrations of brutality and segregation have no bearing in an equitable and comprehensive society. No matter what their strict or ethnic foundation, all people reserve the privilege to live in security and amicability.⁷¹ The standards of harmony, congruity, and regard for basic liberties are fundamental for the texture of a different and pluralistic country.

Endeavors to address the hidden reasons for shared pressures, advance discourse, and reinforce interfaith connections are imperative in forestalling the repeat of such heartbreaking occasions. Building extensions of grasping, encouraging compassion, and seeking after equity and compromise are fundamental stages towards recuperating and making a more comprehensive society for all. By encouraging a climate of shared regard and understanding, India can endeavor towards a future where mutual congruity wins and variety is praised as a wellspring of solidarity.

⁷¹BIPAN CHANDRA and MRIDULA MUKERJEE et al., INDIA'S Battle FOR
Independency Freedom of Religion and Religious Minorities in Pakistan

2.3 Impediments to equity for designated minorities in India

Notwithstanding the current arrangements, a few difficulties impede endeavors to accomplish equity for minority networks who have been casualties of common brutality in India. These difficulties remember postpones by the police for enrolling First Data Reports (FIRs), FIRs with blunders, tension on casualties to pull out their cases prior to arriving at a goal, and delayed preliminaries. Institutional inclination inside the policing framework further compounds these hardships.

One more critical variable that hampers the quest for equity is the idea of public viciousness in India, frequently entwined with political cycles like races. Those associated with such demonstrations of viciousness frequently use political impact, making it especially testing to consider them responsible for their activities.

Endeavors by common society gatherings and NGOs to look for equity have likewise confronted impediments, especially through prohibitive guidelines forced on associations getting unfamiliar subsidizing. The Unfamiliar Commitment (Guideline) Act (FCRA) has gone through prohibitive revisions that don't line up with global principles. These activities have seriously obstructed crafted by associations endeavoring to advance and safeguard the freedoms of minority networks in India. A few associations, including the Sabrang Trust and Residents for Equity and Harmony, which have been at the very front of chasing after equity for basic freedoms infringement during the 2002 Gujarat riots, have had their licenses to get unfamiliar financing denied.

These activities have made critical obstructions for associations attempting to guarantee responsibility for public viciousness and protect the freedoms of minority networks. They have smothered the fundamental work of these associations in looking for equity and considering culprits responsible for denials of basic freedoms.

⁷²It is essential to address these difficulties and establish an empowering climate that maintains the standards of equity, correspondence, and basic freedoms for all. This requires extensive changes in policing to address institutional predisposition and guarantee quick and unprejudiced examinations. Moreover, the public authority ought to reexamine and upgrade guidelines that confine the exercises of common society associations and hinder their endeavors to advance and defend minority privileges. By making these strides, India can move towards a more comprehensive society, where all people, no matter what their strict or ethnic foundation, are treated with pride and get equivalent insurance under the law.

The Comparative Examination

The aberrations in the conditions of minorities in India and Pakistan can be ascribed to a few explicit reasons. The established frameworks of the two nations, first and foremost, contrast altogether. The Constitution of Pakistan pronounces it as an Islamic state with Islam as the state religion. Conversely, the Constitution of India broadcasts India as a common country where power lies with individuals. While the Constitution of Pakistan safeguards the privileges of minorities, the Constitution of India gives more unequivocal and extensive

⁷²Jaffrelot, Christophe. *Dr Ambedkar and Untouchability: Analysing and Fighting Caste*. C. HURST & CO. PUBLISHERS, 2005

assurances for strict opportunity and the privileges of minorities, including the opportunity of heart, the option to rehearse and spread religion, and the option to oversee strict issues and organizations.

Moreover, the circumstance of minorities in India and Pakistan is affected by the particular arrangements and ensures gave in their separate constitutions. The Constitution of India explicitly defends the social and instructive freedoms of minority networks through arrangements like Article 29 and Article 30. These arrangements guarantee the safeguarding of their language, content, and culture, as well as the option to lay out and control instructive foundations. Interestingly, the Constitution of Pakistan doesn't give explicit privileges and assurances to strict minorities with respect to their social opportunities.

⁷³Thirdly, the various methodologies of the state legislatures in India and Pakistan assume a huge part in the treatment of minorities. Pakistan has been reprimanded for its absence of thorough drives to remember minorities for the standard of society, bringing about separation and abuse of strict minorities. The public authority of Pakistan, especially during Zia-ul-Haq's system, carried out strategies that upheld Islamic philosophies and disregarded the freedoms of strict minorities. Conversely, India has carried out common training in its school educational program and doesn't force strict guidelines or love in instructive foundations. The Indian government has likewise acquainted approaches and commissions with address the social and

⁷³RADHAKRISHNAN, *EAST AND WEST: SOME REFLECTIONS* 40-41 (George Allen and Unwin Ltd, London, 1955) 1954 SC 561 (india).

financial backwardness of strict and etymological minorities.

Generally speaking, the particular conditions of minorities in India and Pakistan can be ascribed to the distinctions in their established designs, the particular assurances gave to minorities, and the methodologies of their separate states towards inclusivity and minority government assistance strategies. While India has done whatever it may take to guarantee the privileges and prosperity of minorities through its common and comprehensive methodology, Pakistan's difficulties lie in tending to the worries of strict minorities and advancing a more comprehensive and equivalent society for all.

Conclusion

Since the beginning of time, India has been known for its strict resilience and congruity. In any event, during the Mughal period, a few Muslim rulers showed resistance and regard towards their non-Muslim subjects. Head Akbar, specifically, took on a strategy of strict resistance and secularism during his rule. Be that as it may, after India's freedom, the nation was parceled, prompting the making of Pakistan as a different country for the sake of Islam. Tragically, Pakistan has seen a portion of the most exceedingly terrible maltreatment and persecution of strict minorities, in spite of the underlying confirmation by Muhammad Ali Jinnah, the organizer behind Pakistan, with respect to the opportunity of minorities. For a critical piece of its set of experiences, Pakistan has been under the immediate rule of its tactical elites. During their standard, religion has been taken advantage of for political interests, giving open doors to fanatic powers to instigate scorn against minorities and other non-Muslim people group, subverting the nation's

pluralistic and moderate qualities. The forceful Islamic plan sought after by revolutionary outfits in Pakistan has brought about viciousness, badgering, constrained transformations, and abuse of minorities.

The ongoing circumstance in Pakistan mirrors this reality. In 1947, minorities comprised around 23% of the complete populace, yet presently they make up just 3-4% as of roughly 2012. A few noticeable political researchers have scrutinized progressive Pakistani states for their inability to protect strict minorities, alluding to it as a "quiet slaughter." Curiously, the two India and Pakistan have revered specific central privileges for minorities in their particular constitutions. Notwithstanding, in Pakistan, these freedoms have frequently remained unimplemented by and by. Under military systems and the impact of fanatic philosophies, minority freedoms have been dismissed, becoming simple manner of speaking.

Thusly, when the soul of constitutionalism is deficient with regards to, the privileges and opportunities of minorities likewise endure. As Dr. Ambedkar properly noticed, regardless of how great a constitution might be, it will undoubtedly be undermined by those liable for its execution. Thus, the soul of the country and obligation to constitutionalism are urgent elements in guaranteeing the security of minority freedoms. The two India and Pakistan should truly maintain the standards of strict opportunity, resistance, and equivalent open doors for all residents, no matter what their strict foundation. State-run foundations ought to find substantial ways to maintain and protect the freedoms of minorities, making a comprehensive society where variety is praised and regarded. This requires a veritable obligation to secularism, pluralism, and law and order. By encouraging

a climate of resilience and acknowledgment, the two nations can pursue a future where the privileges and pride, all things considered, no matter what their strict convictions, are safeguarded and maintained.

THE ROLE OF INTERNATIONAL HUMAN RIGHTS TREATIES IN SHAPING PAKISTAN'S CRIMINAL JUSTICE SYSTEM

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Abstract; This article explores the impact of international human rights treaties on Pakistan's criminal justice system. It highlights the historical context of Pakistan's commitment to these treaties and their influence on legislation and legal reforms. The role of civil society, challenges in implementation, and future prospects for alignment with international standards are discussed. Pakistan's evolving role in promoting human rights on the global stage is also addressed. The article concludes by emphasizing the significance of Pakistan's experience for other nations grappling with human rights and justice challenges.

Keywords: human rights, justice, Pakistan, international treaties, legislation, legal reforms, civil society, challenges, future prospects

Introduction;

The concept of human rights stands as the cornerstone of a just and equitable society. When it comes to criminal justice systems, the importance of human rights cannot be overstated. Fundamental rights, such as the right to a fair trial, protection against torture, and the presumption of innocence until proven guilty, underpin the principles of justice and ensure that

individuals are treated with dignity and respect throughout the legal process. These rights serve as safeguards against potential abuses and miscarriages of justice, and they form the bedrock upon which criminal justice systems worldwide are built.

Pakistan, with its rich cultural heritage and intricate socio-political landscape, presents a unique backdrop for its criminal justice system. This system encompasses various components, including law enforcement agencies, the judiciary, and correctional facilities, all working cohesively to maintain law and order, prosecute criminal offenders, and guarantee the equitable administration of justice. Yet, similar to many global counterparts, Pakistan's criminal justice system faces ongoing challenges that necessitate continuous adaptation to adhere to the evolving principles of human rights.

International human rights treaties have played a pivotal role in guiding and shaping Pakistan's criminal justice system. These treaties provide a framework for legal and practical reforms, aiming to ensure that Pakistan complies with global standards for human rights and justice. This article seeks to explore the multifaceted impact of these international treaties on Pakistan's criminal justice system, examining their influence on legislation, legal reforms, practical implementation, challenges, and controversies. By doing so, we gain valuable insights into the complex relationship between international treaty obligations and the domestic criminal justice system, as well as the broader implications of this interaction for both Pakistan and the international community (Tanguay-Renaud, F., 2002).

Historical Context

To grasp the international human rights treaties role in shaping Pakistan's criminal justice system, it's crucial to explore the historical progression of human rights within the country. Pakistan's journey toward embracing human rights principles is closely interwoven with its historical development. Since its inception in 1947, Pakistan's dedication to human rights has undergone significant changes, influenced by a complex interplay of domestic and global factors. These shifts have laid the groundwork for the nation's engagement with international human rights treaties.

One pivotal milestone in Pakistan's endeavor to align its legal and justice systems with global standards was the formal endorsement of key international human rights treaties. The nation took a substantial step by becoming a signatory to various conventions and agreements aimed at upholding and safeguarding human rights (Reilly, N., 2007). This act signifies Pakistan's acknowledgment of the importance of adhering to worldwide human rights principles and its commitment to fulfilling the obligations outlined in these international treaties.

Within the realm of criminal justice, there exist several international human rights treaties that bear special relevance to Pakistan. These treaties establish benchmarks and directives for the treatment of individuals within the criminal justice system. Notable agreements include the International Covenant on Civil and Political Rights (ICCPR), which ensures rights; right of fair trial and freedom from torture, and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). These treaties directly

influence the configuration of the legal landscape and the practices embedded within Pakistan's criminal justice system, reflecting the nation's dedication to international human rights standards.

Impact of International Human Rights Treaties on Legislation

Examining the legislative landscape in Pakistan reveals instances where international human rights treaties have significantly influenced the shaping of local laws and regulations. Notable examples include the Protection against Harassment of Women at the Workplace Act of 2010, which derives inspiration from treaty obligations to safeguard women's rights in the workplace. Additionally, the National Commission for Human Rights Act of 2012 reflects Pakistan's commitment to the principles outlined in these international treaties, facilitating the establishment of an independent body tasked with overseeing and safeguarding human rights.

However, it's essential to acknowledge that Pakistan's legal framework does not consistently adhere to international human rights standards. Discernible gaps within the legislation highlight instances where the country falls short of meeting these global standards. A telling example of such a deficiency is the absence of comprehensive anti-torture legislation, despite Pakistan's formal endorsement of the Convention against Torture. This legislative gap underscores a significant disparity between the country's legal framework and its obligations under the treaty. To attain full compliance with these treaty commitments, it is imperative for Pakistan to address this specific legislative deficiency and take concrete steps towards enacting comprehensive anti-

torture laws. This action would not only rectify the incongruity between national laws and international obligations but also serve as a tangible demonstration of Pakistan's dedication to upholding human rights standards on a global scale.

The Constitution of Pakistan plays an instrumental role in integrating international human rights principles into the nation's legal framework. As the supreme law of the land, its provisions often echo the core values enshrined in international human rights treaties. The Constitution, notably through its fundamental rights chapter, reinforces principles such as the right to life, liberty, and security of person, along with guarantees for freedom of expression, association, and religion. These rights, enshrined in the Constitution, not only embody international human rights ideals but also provide a foundation for the integration of treaty obligations into Pakistan's legal framework. The Constitution acts as a bridge, connecting Pakistan's domestic legal structure with the broader sphere of international human rights standards, ensuring a harmonious coexistence between the two.

Challenges and Controversies

Integrating treaty obligations into Pakistan's justice system presents a multitude of intricate challenges that demand meticulous examination and resolution.

Pakistan, like numerous other nations, grapples with resource limitations that can significantly impede the full implementation of international treaty obligations. The scarcity of funding and limited institutional capacity presents substantial hurdles when aligning domestic laws and practices with global standards. To ensure comprehensive compliance with human rights treaties,

addressing these resource constraints is not only crucial but also demanding. It requires strategic resource allocation and the development of effective mechanisms to overcome financial and capacity challenges.

Pakistan's remarkably diverse cultural landscape adds a layer of complexity when applying international human rights standards. Striking a harmonious balance between these global norms and deeply ingrained cultural practices and beliefs is a multifaceted and continuous undertaking. The challenge lies in reconciling the universal nature of human rights with the imperative to respect local cultural values. Achieving this harmony necessitates ongoing efforts to understand, accommodate, and harmonize these elements (Wotipka, C. M., & Tsutsui, K., 2008). It often requires educational initiatives, intercultural dialogue, and the development of culturally sensitive approaches to justice.

Ensuring equitable access to justice for all citizens, with particular attention to marginalized groups, remains an enduring and pressing challenge in Pakistan. Disparities in legal representation, accessibility to the justice system, and the effective enforcement of rights continue to be significant impediments. To address these issues comprehensively, it is imperative to implement targeted reforms that guarantee equal access and legal protection for all citizens. This may encompass measures such as improved legal aid services, community outreach programs, and initiatives to address socio-economic disparities that hinder access to justice. Ultimately, the objective is to fulfill treaty obligations while promoting fairness and equity within the justice system (Jamshed, J., 2018).

Interpreting and applying international human rights treaties can be challenging in a cultural context as

diverse as Pakistan's. Controversies often emerge when certain international human rights norms appear to clash with deeply ingrained cultural and religious beliefs. Balancing universal human rights principles with the imperative to respect cultural sensitivities is a complex undertaking. This dynamic raises intricate questions, particularly concerning personal freedom and identity. Striking a balance between respecting the values and beliefs of a diverse population while adhering to international standards is a nuanced endeavor, requiring ongoing dialogue, education, and cultural sensitivity in legal and policy considerations.

Controversies frequently arise due to the selective application of international treaties in Pakistan. The inconsistent enforcement of certain provisions, often influenced by political or social factors, can result in disparities in rights protection. Such disparities underscore concerns about the equitable application of justice and fairness. The selective application of international treaties can lead to perceptions of injustice and inequality within the legal system, necessitating a commitment to consistent, non-discriminatory enforcement of human rights standards. Ensuring that rights are protected uniformly for all individuals is a fundamental aspect of upholding the rule of law and international obligations.

The interpretation and application of international human rights treaties become more complex when viewed in the context of counterterrorism and national security. Controversies may arise over the degree to which international human rights standards should be applicable in these situations. Debates surrounding the need to safeguard individual rights and privacy versus the necessity of ensuring national security give rise to

intricate moral and legal dilemmas. Effectively managing this balancing act remains a substantial challenge, necessitating a thoughtful examination of the legal and ethical boundaries that can be established to safeguard both security and individual rights. Achieving this equilibrium is crucial to ensure that human rights are upheld, even in the presence of national security concerns.

Interpreting and applying international human rights treaties can give rise to controversies and intricate debates within Pakistan's legal landscape.

Pakistan, as a sovereign nation, staunchly upholds its right to formulate laws and policies based on domestic priorities and cultural values. This commitment occasionally leads to tensions when international obligations appear to encroach upon this autonomy. Striking a balance between preserving national sovereignty and fulfilling international obligations demands adept negotiation and diplomacy. It involves creating legal frameworks and policies that respect both Pakistan's unique cultural and political context and its international commitments.

International obligations demand accountability and transparency, but ensuring accountability within the context of established power structures and practices in Pakistan can sometimes challenge established norms. Achieving the delicate equilibrium between national autonomy and international accountability is of vital importance (Ali, S. H., 2015). This often requires reinforcing institutions responsible for monitoring and enforcing compliance with international standards. It also necessitates robust mechanisms for addressing grievances and human rights violations while respecting the principles of justice and fairness.

Achieving full compliance with international standards while respecting Pakistan's sovereignty calls for skilled negotiation and diplomacy. Striking this intricate balance is crucial for upholding international obligations while respecting the distinct cultural and political landscape of the nation. It involves continuous dialogue and cooperation with international bodies and stakeholders to create an environment where Pakistan can meet its commitments without compromising its national sovereignty. This process demands careful negotiation and a commitment to upholding human rights, even as the country asserts its autonomy in shaping its laws and policies.

Effectively navigating these challenges and controversies is an ongoing and multifaceted endeavor as Pakistan continues to uphold its commitment to international human rights treaties while respecting its unique cultural and political context. Balancing national sovereignty and international obligations necessitates a delicate and adaptable approach that ensures human rights are both protected and upheld in a manner consistent with the values and identity of the nation.

The Role of NGOs and Civil Society

Contributions of non-governmental organizations and civil society in promoting human rights

Non-governmental organizations (NGOs) and civil society play a pivotal role in promoting human rights in Pakistan, contributing in various significant ways:

NGOs and civil society organizations are vocal advocates for human rights in Pakistan. They raise awareness about rights violations by disseminating information, conducting public campaigns, and mobilizing public opinion. They focus on a range of issues, including

gender equality, minority rights, and freedom of expression. Through their advocacy efforts, they push for policy reforms and societal change.

NGOs often provide crucial legal aid and support to individuals facing human rights abuses. This support is especially significant for marginalized and vulnerable groups who may lack the means to seek justice. By offering legal assistance, NGOs empower victims to seek legal redress, initiate legal proceedings, and hold perpetrators accountable for their actions. This aspect of their work ensures that human rights are not just theoretical concepts but practical tools for justice.

NGOs in Pakistan engage in in-depth research and documentation of human rights violations. This work involves the systematic collection of data and evidence on rights abuses. The research conducted by these organizations is invaluable in substantiating their advocacy efforts (Benedetti, F., & Washburn, J. L., 1999). It serves as a foundation for raising awareness, influencing policy change, and holding violators accountable. The evidence-based approach is essential for making a strong case for human rights improvements. NGOs actively work to enhance the capacity of local communities, legal professionals, and institutions to understand and defend human rights, conducting training programs, workshops, and educational initiatives to empower individuals with knowledge and skills, fostering a culture of human rights awareness, enabling people to stand up for their rights, and equipping them to advocate for their own rights and those of their communities in Pakistan. Additionally, these NGOs engage with government bodies and international organizations to influence policy development and implementation, participating in legislative processes,

advocating for the alignment of national laws with international human rights standards, proposing legal reforms, providing expert input on human rights issues, and collaborating with government agencies to create a legal framework that respects and upholds human rights. In essence, NGOs and civil society organizations are the driving force behind many human rights improvements in Pakistan. Their work extends from advocacy and legal support to data-driven research, capacity building, and policy influence. They serve as essential partners in the endeavor to protect and promote human rights in the country.

Case studies of successful advocacy and awareness campaigns

Numerous successful advocacy and awareness campaigns have been conducted by NGOs and civil society organizations in Pakistan. Some notable examples include:

The annual Aurat March, organized by women's rights activists and NGOs, has gained significant traction. It advocates for gender equality, reproductive rights, and an end to violence against women. It has sparked important conversations about women's rights and continues to push for policy changes. Meanwhile, Malala, a Pakistani education activist, and Nobel laureate, represents a successful case of civil society advocacy. Her campaign for girls' education garnered international attention, leading to increased investment in education and girls' rights. Whereas, HRCP is a prominent NGO that has been advocating for human rights in Pakistan since 1987. They publish an annual report on the state of human rights in Pakistan, shedding light on critical issues and recommending

reforms(Strasser, P. G., 2014).

Collaboration between the government and civil society in addressing human rights issues

Collaboration between the government and civil society is indispensable for effectively addressing human rights issues. To ensure this, the government and civil society should engage in constructive dialogues to identify shared goals and strategies for advancing human rights. Regular consultations and meetings are pivotal in facilitating this collaboration. Moreover, the government can play a pivotal role in capacity building for civil society organizations, equipping them with the necessary resources and training to enhance their advocacy efforts. Collaborative efforts may also result in legislative reforms, aligning national laws with international human rights standards, with civil society organizations providing their valuable input and expertise. Furthermore, this collaboration can extend to human rights monitoring and reporting, where civil society organizations independently document violations, and the government responds with investigations and accountability measures, ensuring a comprehensive and concerted approach to safeguarding human rights in Pakistan.

In Pakistan, the partnership between NGOs, civil society, and the government is essential for addressing human rights challenges comprehensively and ensuring that the country remains committed to upholding international human rights standards.

Future Prospects

Potential for further alignment with international human rights treaties

Pakistan has significant potential for further alignment with international human rights treaties. This alignment can be achieved through several key avenues. Firstly, prioritizing legislative reforms is essential to bring national laws in line with international human rights standards. This entails amending or enacting laws that protect and uphold fundamental human rights, including gender equality, freedom of expression, and minority rights. Secondly, while Pakistan has ratified numerous human rights treaties, the effective implementation of these treaties remains a challenge. The country can strengthen its commitment by improving the enforcement of human rights provisions and enhancing the mechanisms for monitoring and accountability. Finally, investing in capacity building, both within government institutions and civil society, is critical. Enhanced training and resources can empower individuals to better understand and advocate for human rights, thereby fostering a culture of respect for these rights and facilitating their broader realization in Pakistan.

The role of Pakistan on the global stage in promoting human rights

Pakistan's impact on the global stage in promoting human rights is undeniably significant. The nation can contribute through various means, starting with diplomatic engagement. Pakistan can actively participate in international organizations and forums to advocate for human rights, not only within its own borders but also on

a global scale. It can leverage its diplomatic influence to raise awareness about human rights issues worldwide.

Furthermore, as a participant in peacekeeping missions, Pakistan plays a crucial role in safeguarding human rights in conflict zones. The nation can continue to contribute to international peace and security efforts, advocating for and promoting respect for human rights in areas affected by conflicts (Bassiouni, M. C., 1982). Its role as a peacekeeper allows it to directly impact the protection of human rights in some of the most challenging environments.

Additionally, Pakistan has the opportunity to share its experiences, both its successes and challenges, in promoting human rights with other nations. This sharing of best practices can foster international cooperation and knowledge exchange in the realm of human rights. By sharing its insights and lessons learned, Pakistan can contribute to the global dialogue on human rights and encourage other nations to adopt effective strategies for human rights promotion and protection.

Recommendations for strengthening Pakistan's commitment to international human rights standards

To bolster Pakistan's commitment to international human rights standards, a set of comprehensive recommendations should be considered.

Firstly, Pakistan should prioritize legislative reforms aimed at expediting the alignment of national laws with international human rights treaties. This entails a proactive approach to amending or enacting laws that safeguard fundamental human rights, including gender equality, freedom of expression, and minority rights.

Secondly, there is a critical need for substantial investments in human rights education, training, and

resources. This should encompass government officials, law enforcement agencies, and civil society organizations to enhance their capabilities in both protecting and promoting human rights. An educated and skilled workforce is pivotal in creating a culture of respect for these rights.

Thirdly, Pakistan should establish and reinforce transparent and accountable mechanisms for monitoring and reporting human rights violations. Timely, impartial investigations and the accountability of perpetrators should be paramount. This ensures that human rights abuses are met with appropriate consequences.

Furthermore, strengthening civil society is essential. Supporting the operations of civil society organizations and non-governmental organizations by creating an enabling environment is vital. This involves encouraging their active participation in policy development and human rights advocacy, allowing them to effectively amplify the voices of marginalized and vulnerable groups.

Diplomatic efforts are crucial in Pakistan's role on the global stage in promoting human rights. The nation should actively engage with international organizations and forums to advocate for human rights, both domestically and internationally. Collaborating with other nations to address global human rights challenges is a fundamental step in fostering global respect for these rights.

Lastly, raising public awareness about human rights is key. Pakistan should work towards ensuring that all citizens have a profound understanding of their rights and are empowered to protect them. Public education and awareness campaigns can be instrumental in achieving this goal. These recommendations collectively form a

comprehensive strategy to strengthen Pakistan's commitment to international human rights standards.

Conclusion

In conclusion, the influence of international human rights treaties on Pakistan's criminal justice system is unmistakable. These treaties have significantly impacted legislation, legal reforms, and the practical application of justice, leaving an enduring imprint on the pursuit of justice and human rights within the country. Pakistan's ongoing commitment to aligning with international standards not only holds significance for its own citizens but also serves as a beacon of hope and a source of lessons for other nations grappling with similar human rights and justice challenges. The world watches with anticipation, recognizing the broader implications of Pakistan's journey and the potential it holds to inspire positive change in the global arena of human rights and justice.

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UNVEILING THE RIGHT TO DEVELOPMENT IN GLOBAL PERSPECTIVE: COMPLEXITIES, AND JUDICIAL DYNAMICS IN PAKISTAN

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Abstract: This paper endeavors to illuminate the multifaceted landscape surrounding the Right to Development (RTD) from a global perspective, with a particular focus on the complexities and judicial dynamics inherent in its realization within the context of Pakistan. The Right to Development stands as a fundamental pillar of international human rights law, encapsulating the vision of equitable socio-economic progress for all individuals and nations. Through a comprehensive examination of international perspectives, this study delves into the conceptual foundations and practical challenges that underpin the RTD. It elucidates the intricate interplay between various stakeholders, including governments, civil society, and international organizations, in navigating the complexities of development rights on a global scale. Central to this exploration are the contextual challenges and judicial responses specific to Pakistan. By analyzing key legal frameworks, court decisions, and jurisprudential trends, the paper sheds light on the evolving role of the judiciary in safeguarding and promoting the RTD within the Pakistani context.

Furthermore, the study interrogates the intersectionality of the RTD with other human rights and development

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goals, highlighting the imperative of an integrated and rights-based approach to sustainable development. It underscores the importance of addressing systemic inequalities, empowering marginalized communities, and fostering inclusive growth to realize the full potential of the RTD.

Key Words: Right to Development (RTD), Global perspective, judicial dynamics, Socio-economic progress, Legal frameworks

I. Introductory View

The notion of RTD has obtained a precious position in the midst of other human rights; it engrossed the global attention and had become the center of international debate during 1960 to 1970s. Later on, RTD gained its worth by the inventiveness of UN through UNDRTD. The RTD was recognized by the United Nations as a right which ensures the civil liberties of the human being; because of its nature this right guarantees the improvement in the living standards of the individuals, social and economic growth of the country.

Acceptance of RTD is still a part of heated controversy at global level, because, the supporters of RTD consider that prime responsibility is on the shoulders of state to implement and shelter the rights of the masses, in this connection it is also the responsibility of the developed states to cooperate with the developing states. Therefore, because of this interpretation of RTD it has become unacceptable concept among the developed states and lot of hurdles have been fashioned in the way of acceptance of RTD. It is pertinent to mention here that, the RTD is not a legally binding instrument.

Although RTD has achieved the milestone of its recognition at international level, but still this right has not gained the status of legally binding instrument under

international law. Developed states can be held morally responsible for providing development assistance to the developing states, but cannot be held legally responsible for the enforcement of RTD⁷⁶. UNDRTD was not created any legal obligation in respect of the implementation of RTD, due to this fact; Developed states can provide assistance to developing states on moral grounds but not under any legal obligation⁷⁷.

II. Global Implementation Mechanism

In 1986 UNDRTD recognized the right to development, since then a debate on the recognition and implementation of RTD has been aroused among the states at global level. In this heated controversy the world has divided into two groups, one of them consisted of developed states named as 'North Pole' and the other consisted of developing states called 'South Pole'. After the recognition of RTD in United Nation Declaration, The countries of South Pole demanded the international assistance, equal opportunities and access to resources for development, on the other side the South Pole completely refused the existence of this right and its contents.⁷⁸

The evolutionary journey of RTD was infertile because of above mentioned divergence between the developed and developing states. Recognition of RTD gave nativity to many questions with its recognition more specifically about the identification of vulnerable beneficiaries of the RTD and identification of the factors responsible for

⁷⁶ The Right to Development- where do we stand, by Felix kirchmeire- 2006

⁷⁷ The Right to Development- A Review of the Current State of the Debate for the Department for International Development by *Laure-Hélène Piron* , April 2002

⁷⁸ Alston, Philip & Quinn, Gerard. "The Nature and Scope of State Parties' Obligations under the International Covenant on Economic Social and Cultural Rights" Human Rights Quarterly, 156, 1987

promotion of RTD, and what is the impact of RTD in human rights regime? The UNDRTD tried its level best to answer the above mentioned questions by declaring RTD as one of the basic and most urgent human rights and states and international community is the responsible for the implementation of RTD and declare the individuals and states, the beneficiaries of RTD, but, despite of the efforts of UNDRTD still world is divided on the recognition and enforcement of RTD, this dissection of the world community on the identification of contents of RTD and its definition blocked the promotion of RTD. The developing states are demanding the access to resources and international cooperation to attain the equal opportunities of economic development and prosperity.

a) Measures taken by United Nations for Implementation of RTD

Despite of all the legal and practical complications and critiques the UN has never stepped back from the campaign of proper realization and implementation of RTD, Rather, United Nations took remarkable measures to achieve the milestone of realization of RTD by introducing the developmental policies and other practical reforms. In this connection, to remove the hurdles for the implementation of RTD the United Nation established different working groups and also appointed an independent expert ‘professor Arjun sengupta’ burdened with the responsibility of providing smooth way in the implementation of RTD.

Arjun sengupta provided a mechanism of international cooperation among the states at international level, for the implementation of RTD⁷⁹; He suggested a method of

⁷⁹ E.S. Nwauche and J.C. Nwobike “Implementing The Right To Development” international journal on Human Rights. Issue-2, june 2004.

give and take responsibilities among the states. Furthermore, sengupta recommended the duty of developing nations to prepare a mechanism at national level to ensure the protection of RTD and imposed the duty on developed states and international financial institutions to cooperate with the developing countries by providing financial assistance, equal opportunities for progressive development and transfer of resources for the comfortable and satisfactory progress to meet the goals of development with human dignity. Furthermore, UNDP also played a tremendous part in the realization of RTD, UNDP established a correlation between RTD and human rights, and it focused on the core ingredients of the UN Charter which includes economic development, eradication of poverty under the umbrella of sustainable development⁸⁰. Many other organizations of UN also took part in the very purpose of realization and implementation of RTD, such as WHO and ILO were the part of debates on the realization of RTD, World Bank, EC⁸¹ and OECD⁸² have also worked with different groups to encourage the implementation of RTD.

III. Worldwide Approaches on Right to Development

Germany- Countries all over the world have different opinion on right to development, which divides the whole world on the realization of RTD. Germany has fully realized the RTD having a view that it is the duty of the developing nations themselves to implement the RTD in their national legal system, and element of international cooperation is denied by the Germany. RTD was fully

⁸⁰ See United Nations Development Program, Integrating Human Rights with Sustainable Human Development

⁸¹ European Commission

⁸² Organization of Economic Cooperation and Development

supported by the Germany with a view of self-determination of states and equal participation of individuals in the processes of development. German Federal Ministry made out different policies and programs for the realization and implementation of RTD and insertion of this right into the family of Human rights. Germany never accepted the whole contents of RTD as demanded by the developing countries.

United Kingdom- UK is also one of the advocates of Right to development. UK focuses on the international cooperation for the realization of RTD and its implications. According to the UK perspective international cooperation and aid helps a lot to the developing states to achieve their targets of economic development and prosperity. UK is engaged with the mission of supporting the developing countries by fulfilling the obligations and attaining the satisfying results in the region with harmony and self-determination⁸³. UK is of a view that it is the duty of the developed states to provide opportunities and cooperation to the poor deserving states.

African Countries- the Countries in the Africa region and NAM countries have witnessed the imbalance economic development of the world, they are in favor of RTD as it provides equal opportunities to the deprived states, equal utilization of resources with the help of developed states in the form of development assistance. Africa is opined that National measures and international cooperation both are inevitable for the implementation of RTD at international level.

United States- position of US on right to development is not very much clear. United States recognized the RTD as right of individuals of the countries being human, but,

⁸³ The Right to Development- where do we stand, by Felix kirchmeire- 2006

states have no right to development as states do not possess any human right. So, United States refused the existence of international responsibility of assistance towards the developing states. According to the United States point of view it is the responsibility of the states at national level to provide conducive environment to the people of the country to enjoy participation and equal opportunities in the process of development. US also stood against the legal status of RTD and given an opinion that RTD is not legally binding instrument on the international community. US always discussed this right as individuals right which cannot create any obligation on the international community to transfer resources, providing help is a national issue of every developed state they can provide aid or not it is their own decision, they cannot be enforced to provide assistance. Implementation of article 6 of United Nations Declaration was one of the complex issues faced by the United States as this article requires the guarantee for the protection of socio-economic rights of the people and US was not up to the mark in this concern. In 2003, a U.S. delegation on human development explained:

We do not consider the RTD as a human right nor did it impose any legal obligation for its realization, therefore, states are under no duty to assure the implementation mechanism for RTD.

United States has also many questions on the definition and contents of Right to development, according to the US the definition and contents of RTD are not clear they are vague in nature. United States has given negative vote to the right to development and while explaining its position the US representative described that there exist no universally accepted definition of RTD. Despite of the efforts made by the United Nation, working groups and

independent experts there is still confusion on the definition of the RTD. US had declared that RTD is not a separate new right but it is a combination of rights of individuals and not the right of the states. Prior to the UNDRTD the US has recorded its objection during the preparedness of draft of declaration that US is not in favor of this right in shape of any legally binding instrument or international commitment⁸⁴.

IV. Impediments to the Implementation of RTD

Subsequent to the recognition of Right to Development in United Nation Declaration as a member of human rights family RTD is facing many challenges in way of its implementation. The concept of RTD remained contentious from the time of its beginning; the UN has made tremendous efforts to remove the hurdles and to ensure the implementation of RTD worldwide. RTD has faced dreadful obstacles in its realization and implementation, which includes the confusion over the contents and nature of the right, lack of political will, hurdles in resource transfer and lack of global cooperation. Until and unless the hurdles are not removed, the RTD cannot be implemented properly and desired results cannot be achieved. Major challenges in the realization of RTD are discussed as follows.

a) Inadequate Foreign Assistance

Insufficient International cooperation is considered as one of the realistic challenges for the realization of RTD. RTD was recognized by United Nation in a Declaration, although the Declaration neither declared this right as a legally binding instrument, nor imposed any legal responsibility of cooperation on international community. However, there is a moral duty which demands the

⁸⁴ Stephen Marks -The Human Right to Development: Between Rhetoric and Reality

development assistance for the third world countries for their progressive development. International aid is inevitable to eradicate the inequality and to provide equal opportunities to the ignored poor countries by realization of their right to development, in scarcity of international development assistance right to development cannot be realized and implemented in its true letter and spirit and it will remain ignored. Despite of the efforts made by the United Nation the foreign assistance towards the deserving states the results are not satisfying. In this regard, United Nation has shown its distress and asked the international community to maximize the international assistance for the deserving states for the betterment of world economy.

b) Attitude of Global Corporations

Among other obstacles in the realization of RTD, the impediment of multinational corporation's activities is also worthwhile to be addressed. It is need of the time to establish a new universal mechanism to monitor and control the activities of worldwide corporations and other financial institutions. UN has appointed an expert and also established working groups and a task force, in their recommendations they demanded legislative reforms for the regulations of global corporations and trade activities⁸⁵. It has been observed that without the effective control over the financial institutions and multinational corporations the balance could not be

⁸⁵ The Working Group was established in accordance with Commission on Human Rights Resolution 1993/22 of March 4, 1993, and met for five sessions during its three year mandate; its main purpose was to identify obstacles to the realization of the right to development and to recommend ways and means toward the realization of the right. An important recent development regarding multinational corporations is the "Global Compact" initiative on business and human Rights See The Global Compact

achieved. Imbalance trade activities and finance distribution are the hazards for the promotion of RTD.

c) Violation of International Law

Non-compliance of International law and implications of domestic law also discourages the Right to development of the people and states. Priority of the National law over the International law has a negative impact on the foreign trade, investment and foreign assistance which directly affect the economic development of the country⁸⁶. United Nation has adopted a program of action through a resolution, in which UN recommended the countries to avoid the adoption of such programs which are against the international law, because this will directly or indirectly harm the progression of development of a country. It is pertinent to mention here that, the UN also suggested to create harmony among the states and not to create hustle by using political or financial pressure on the developing states, as it would endanger the RTD and other inalienable human rights as well. Disobedience of International law caused the trade and economic sanctions on the disobedient countries, which leads towards the deprivation of the people of the country from the right to economic development and progressive lives, as the people will lose the opportunities to work and growth, lack of health and education facilities and also deprived of other necessities of livelihood. So, International law and policies are unavoidably to be followed for progressive results in field of living

⁸⁶ G.A. Res. 141, U.N. GAOR, 53th Sess., 85th mtg., U.N. Doc. AIRES/53/141 (1999) (calling for countries to refrain from implementing unilateral sanctions); see also G.A. Res. 11, U.N. GAOR, Hum. Rts. Comm., 38th mtg. at 1, U.N. Doc. EICN.4/RES/1998/11 (1998). G.A. Res. 21, U.N. GAOR, Hum. Rts. Comm., 52d mtg. at 1, U.N. Doc. E/CN.4/RES/1999/21 (1999) (stating that States should not impose measures contrary to international law).

standards of the people and economic growth of the society.

d) Lopsided Trade Opportunities

In the conversation of obstacles of realization of RTD, imbalance trade practices have also a dynamic impact on the easiness of implementation of RTD. This obstacle has very different aspects including dumping of the products, cost of labor and lack of transfer of resources, but the major aspect is the role of developed states and developing states in the WTO⁸⁷. The Discriminatory behavior against the developing states in WTO tends towards the unequal trade and investment opportunities, which is a great harm to spirit of RTD. The developed states have more and more opportunities to make larger scale trade, but, as compare to the developed states the developing nations are facing hurdles in form of sanctions, high tariffs, high quality standards and other barriers. The developing countries lose their international competition capability due to lack of resources and financial assistance from the international community. Because of this lopsided trade and investment policies the living standards of the people of developing countries are not up to the mark and right to development and other human rights are being infringed due to this discrimination.

V. Global Concurrence on RTD

Although the whole world is not at the same page about the identification of RTD as a whole, but, still there is an accord in the international community on some points. United Nation has done immense efforts in bringing the whole world to an agreement for the realization of RTD.

⁸⁷ Bernard Hoekman & Michael Kostecki, *The Political Economy Of The World Trading System: From Gatt To Wto* 240 (1998) (discussing the change in developing countries' position within international economic institutions)

Some of the points which are agreed upon globally are discussed below:

a) Better Standards of Living

Better standards of living, is one of the contents of RTD which are agreed upon by the whole world. International community has a consensus on improving the standards of living of the people by eradication of poverty. Financial institutions of the world like IMF, World Bank etc are preparing their policies by keeping in mind the above mentioned core objective of poverty eradication and enhancement of opportunities of development. Lack of opportunities to grow, lack of abilities also include in the domain of poverty along with the monetary capabilities⁸⁸. Recognition of RTD provides the opportunities to everyone to participate and contribute to the process of development which results better standards of living and abolition of poverty. The whole world is at the same page about the poverty eradication.

b) International Development Targets

International community established some targets to achieve by the year 2015 at the platform of United Nation. These targets cumulatively called Millennium Development Goals (MDGs). The reflection of RTD can be witnessed in these goals, as MDGs established 8 targets which included eradication of poverty, improvement of education facilities eradication of discriminatory behavior and protection of environment. The whole world also found a consensus on these goals. Different institutions of the world have also endorsed these goals in their policies and program of actions.

c) International Development Assistance

⁸⁸ A Review of World Bank Participatory Poverty Assessments: Consultations with the Poor, Poverty Group, World Bank, September 1999 and World Development Report, 2000-01: Attacking Poverty

Although international development assistance as a content of RTD is still part of a controversy, but, still there are some grounds which are agreed upon by the international community on which international development assistance can be provided to the developing nations from the developed states. Whole world is at an accord that development assistance can be provided to the deserving developing countries on the ground of humanity and global solidarity. Developed states helped the poor developing countries by elimination of discriminatory behavior and tariff reductions and by giving easy access to the international markets. Participation in different international forums was also given to the developing states, so that they can contribute to the world decision making. Access to modern techniques and skilled labor was also provided to the developing countries by the developed states on the humanitarian grounds.

International policies established that international cooperation for economic development is not obligatory and does not establish a legal duty on the developed states; this is just a moral duty which can be performed on the ground of humanity and solidarity⁸⁹.

d) International Agreements for Development

International consensus can also be seen in international agreements for economic development which is guaranteed by the right to development. International instruments and policies expressed that developed and developing states can engaged themselves in international mutual agreements for development assistance to achieve the goals of better standard of living, protection of human rights, prosperity and

⁸⁹ The Monterrey Consensus – Final Outcome of the International Conference on Financing for Development, March 2002

economic development⁹⁰. These partnership agreements provided the equal opportunity to participate in development process, decision making procedures and transfer of resources for the poor developing countries. International agreements for economic development imposed some obligations on both the partners' i.e. developing and developed states. These arrangements were made on the moral grounds not on legal grounds, because UNDRTD never created any legal obligation on the developed states to provide any cooperation for development.

VI. Prominence of RTD in Pakistan

Pakistan is one of the UN member states who favored the UNDRTD, 1986. Although Pakistan did not incorporate expressive legislation in its National Legal System on Right to Development since the adoption of UNDRTD, but, Constitution of Pakistan, 1973 provides implied provisions on right to development. Constitution of Pakistan declared many civil and political rights as fundamental rights; enforcement of these fundamental rights not directly but impliedly addressed the right to development of the people to attain the better standards of living and economic growth in the country⁹¹.

Article 4 deals with the dignity of man and rule of law, it states that every citizen of the country has a right his fundamental rights shall be protected with due respect and dignity. Article 9 of the Constitution of Pakistan talks about the protection of life of the people, life includes good food, health, cloths, and environment. Article 18 provides freedom to the masses

⁹⁰ A Better World for All: Progress Towards the International Development Targets, June 200, p. 2

⁹¹ Iqbal K. The right to development in international law: the case of Pakistan: Routledge; 2009

that they can do what they want for the fulfillment of economic needs and to make their lives better. Article 25 talks about the equality, equal opportunities to grow, equal protection of law of the citizens, these provisions impliedly deals the concept of RTD in Pakistan. Article 37 of Constitution of Pakistan, enlightened the concept of social justice by means of which inequality and injustice in the society shall be stopped and equal opportunities shall be provided to the citizens. Judiciary of Pakistan is performing its part of responsibility in the realization of RTD in the country through the powers envisaged by the Article 184 and 199 of 1973 Constitution.

Provisions of Art.184 grant suo-moto power to the Apex Court in the cases of public welfare and protection of fundamental rights, by virtue of this power Apex Court ensure the protection of fundamental rights of individuals including right to development. Pakistan is facing a serious threat of terrorism since long; due to this menace Pakistan has not performed well for the people of the country to improve their standards of living. Pakistan has beard huge financial loss in order to control terrorism, but, despite of the fact Pakistan has shown tremendous efforts for the betterment of the people of the country⁹².

In Pakistan, Constitutional provisions provide a comprehensive enforcement mechanism for the fundamental rights of the people. Pakistan is a developing country which always took theoretical and practical measures for the realization of RTD and its recognition as a human right. After the adoption of UNDRTD, Pakistan started a campaign for the removal of impediments in the way of implementation of RTD

⁹² Pakistan Today, available at <https://www.pakistantoday.com.pk/2018/04/27/pakistan-suffered-126bnlosses-due-to-terrorism-in-17-yrs-pakistan-economic-survey/>

and acceptance of RTD as a collective right. Pakistan demanded international cooperation for the developing states. Pakistan is a member of SAARC and this association also accepted the RTD as a human right and has proposed the member states to take steps to remove the blockage in the way of realization of RTD. Though the member states have not display a satisfying show but they are working on the implementation of RTD⁹³. Constitution of Pakistan also guarantees the RTD by ensuring the rule of law, good governance, right to life, right to liberty of the citizens.

VII. Judicial Response on RTD in Pakistan

No right can be realized without effective enforcement mechanism in a society. A strong, effective and competent judicial and legislative mechanism guarantees the strong enforcement mechanism for the implementation of basic rights. Such mechanism plays very crucial positive role in therealization of RTD and national economic development, because, liberated and proficient judiciary affords shelter to the legally aggrieved persons and promotes the equality. Assurance of socio-economic and other basic rights through an effective legislative and judicial system is a guarantee to a standard life, otherwise life of the citizens is of no means. Judicial resources are also another element to be discussed for the speedy and cost efficient access to justice for all. Judicial resources includes judicial budget, number of judges appointed for the speedy disposal of the cases and availability of modern techniques. Economic development and fair judicial system are interlinked with each other. Those countries which have a competent legislative and judicial system, those countries

⁹³ Iqbal K. The right to development in international law: the case of Pakistan: Routledge; 2009.

have a strong mechanism of enforcement of rule of law and resultantly they also have a progressive economy and prosperity in the country. In the realization of RTD, the judiciary acts as a catalyst in a country.

In case of Pakistan, As it has been discussed above, that there is no express provision in the Constitution of Pakistan, 1973 which address the RTD directly, but there are implied provisions which protects the fundamental rights of the citizen and provide equality and protection of Law. In this scenario, role of Pakistan judiciary is of extravagant significance for the realization and implantation of RTD in Pakistan. Article 199 of Constitution of Pakistan 1973, grants power to the High Courts of Pakistan and Article 184 provides power of suo-moto to Apex Court to protect the fundamental rights including right to life and socio-economic rights offered by the Pakistan's Constitution. Economic development is not just development of infrastructure and some financial gain but it also includes rule of law, equality and justice. Economic development is heavily attached with good decisions of judiciary. In presence of independent and competent judiciary, foreign investors feel comfortable to bring their investments in the country, which opens the doors for new businesses and creates opportunities for the natives to earn and grow and it also helps in eradication of poverty. Rule of law and judiciary are two main pillars which support the economic development, realization of RTD and betterment of society⁹⁴. Just and fair resolution of disputes by the judiciary will be used as examples for the resolution of future disputes. Therefore, judiciary provides a framework of protection of

⁹⁴ Syed Shahabuddin, Role of the judiciary in economic development, NOVEMBER 1, 2019 available at <https://dailytimes.com.pk/492636/role-of-the-judiciary-in-economic-development/>

individual's rights, supervision of law and economic development⁹⁵.

Pakistan's apex Court also performed its duty well for the enforcement of rule law and national development. For example in a land mark case of *Shehla*⁹⁶, Court focused on the protection of fundamental rights granted by the constitution, SC explained the 'right to life' by exposing the meaning of word 'life' Supreme Court expressed that 'life' means enjoyment of all socio-economic rights which support a standard life with due respect and dignity.

In another case of *Mr. Aman Ullah*⁹⁷, the Apex Court of Pakistan held that 'environmental justice, equality and protection of socio-economic rights are also included in the definition of right to life. In case of *Mr. Nawaz Sharif*⁹⁸, Supreme Court protected the right of association of citizens, Court also observed that every citizen has a freedom of association; no one can deny this right of the citizens. The decision of Supreme Court in *aljeah*⁹⁹ case also highlights the importance of equality and social justice. Court held in this case that the fundamental rights of the citizens must be protected. In case of *Mr. Shafique ul rehman*¹⁰⁰, the Supreme Court grants the rights to the transgender to be included in the census. Supreme court directed the authorities to make special arrangement for

⁹⁵ Fahed Abul-Ethem, The Role of the Judiciary in the Protection of Human Rights and Development: A Middle Eastern Perspective, Fordham International Law Journal, Volume 26, Issue 3 2002, Article 8

⁹⁶ Suprem Court of Pakistan, *Shehla zia v. wapda* 1994, p. 693.

⁹⁷ Lahore High Court Lahore, *Maulana Aman Ullah Haqani v. Government of Pakistan* (2018), at p.364

⁹⁸ Supreme Court of Pakistan *Muhammad Nawaz Sharif v. President of Pakistan* (1993), at p.413.

⁹⁹ Suprem Court Monthly Review, *Al-Jehad Trust* (1999), at p. 1379

¹⁰⁰ Lahore High Court, Lahore, *Mohammad Shafique Ur Rehman v. Federation of Pakistan* (2017), at p.558

the disables and transgender. In case of *Mrs. Nasreen*¹⁰¹, the Court held that urgent measures should be taken by the concerned authorities for the eradication of poverty and development of illiterate persons in the country. In case of *Naimat ullah khan*¹⁰², Supreme Court directed the concerned authorities to ensure supply of electricity to the citizens, as electricity is has very deep concern with the right to trade and business which is a fundamental right of the citizens. Loadshedding also affects the right to life and dignity of the individuals in the society. Supreme Court also held that safe transportation with due respect and dignity also to be ensured by the concerned authorities.

In another *suo-moto*¹⁰³ case Supreme Court held that closure of shops during the COVID-19 on Saturday and Sunday is the infringement of right to trade and business of the citizens. Supreme Court declared the direction null and void. In case of *M.Suleman*¹⁰⁴, the Lahore High Court held that it is the duty of the Superior Courts to protect the freedom of citizens and ensure equality and social justice among them, as this duty is given to the Courts by the Constitution of Pakistan.

In case of *M.Rafique*¹⁰⁵, Lahore High Court Lahore held that article 18 of the Constitution of Pakistan 1973 grants the right to trade and business to the citizens; they can enjoy this right in the prescribed limits provided by law, for enjoyment of life with better standards. In case of

¹⁰¹ Supreme Court of Pakistan, *Nasreen v. Fayyaz khan* (1991) at p.412.

¹⁰² Supreme Court of Pakistan, *Naimat Ullah Khan vs. Federation of Pakistan* (2020) at p.1488

¹⁰³ 2020 SCMR, 987

¹⁰⁴ Lahore High Court Lahore, *Muhammad Suleman Vs. Station House Officer* (2020) at p.534

¹⁰⁵ Lahore High Court Lahore, *Muhammad Rafique vs. Tehsil Municipal administration Chakwal*, (2020) at p.1360

*M.Pansota*¹⁰⁶ Lahore High Court Lahore appreciated the PIL because PIL protects the fundamental rights of the public at large. In case of *Tamour and company*¹⁰⁷, the apex Court of Lahore held that “to use the vehicles and containers which are loaded with the material for business transaction and trade practice, for blocking the roads in order to maintain public peace and avoiding any protest, is clear violation of right of trade and business guaranteed by the Article 18 of the Constitution of Pakistan 1973. In a *suo-moto*¹⁰⁸ case Court held that right to freedom and right to association cannot be used against the fundamental rights of others, in this case Supreme Court protected the right to trade, business and transportation of the citizens by declaring any assemble or meeting on roads, illegal.

VIII. Conclusion

The journey through the exploration of the Right to Development (RTD) from a global perspective, with a particular focus on Pakistan's judicial dynamics, has provided valuable insights into the complexities surrounding this fundamental human right. The world has come to understand that the RTD is not just a lofty ideal but a crucial tool for ensuring that all individuals and nations have the opportunity to progress socioeconomically in a fair and equitable manner. Throughout the analysis, this paper has uncovered the various challenges that hinder the realization of the RTD, ranging from systemic inequalities to legal barriers. However, it has also seen the important role that the judiciary plays in navigating these complexities and

¹⁰⁶ Lahore High Court Lahore, Muhammad Ahmad Pansota vs. Federation of Pakistan (2020) at p. 229

¹⁰⁷ Lahore High Court Lahore, Tamour ishraq and company vs. Federation of Pakistan through secretary ministry of interior Islambad (2020) at p. 15

¹⁰⁸ Supreme Court of Pakistan, 2019 PLD, at p.318

upholding the rights of individuals, particularly in a country like Pakistan. By examining court decisions, legal frameworks, and jurisprudential trends, we've gained a deeper understanding of how the RTD is being interpreted and enforced within Pakistan's legal system. There are several instances where the judiciary has served as a champion for the RTD, ensuring that marginalized communities have access to justice and opportunities for development. In essence, our exploration of the RTD has highlighted the interconnectedness of human rights, development, and justice. As we continue on our journey towards a more equitable and sustainable world, it is imperative that we remain committed to unveiling the RTD and ensuring that it becomes a reality for all, regardless of their socio-economic status or geographical location. Only then can we truly achieve a world where everyone has the opportunity to thrive and reach their full potential.

RIGHTS OF CHILDREN OF UNMARRIED COUPLES IN ENGLISH AND ISLAMIC LAW

Dr. MUHAMMAD AMIN^{109**}

ABSTRACT; The United Nations Convention on the rights of child and the European convention on human rights have made sure the principle that no country should discriminate against the children on the ground of parent's status. In UK in initial phrases at the common law the child only legitimated if the parents were married as it was based on the Christianity but later on, in the twentieth century a legal development has been made to common law by allowing children of unmarried couples as legitimates if their parents get married at the time of their birth. However, Islamic law doesn't recognize such marriage. In secrets and in private capacity if someone get married after making out of marriages relations, Islamic law doesn't intervene with this situation unless it unfolds. The matter unfolds means it goes to the court and follow the evidential procedures. Islamic law doesn't suspect any child as illegitimate and doesn't support and indulge in DNA testing for proving legitimacy of the child unless someone claims succession and inheritance in property and some other denies his succession by saying that he is not a legitimate child of his father. However, Islamic law maintains minimum standards for making legitimacy of the child and remains in support to restore the honor and prestige of the children and persons by not declaring them as illegitimate. However, Islamic

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law recognizes all the rights of children of unmarried couples if the situation arises.

Keywords: Islamic Law, Common Law, Legitimate, Illegitimate, Children.

INTRODUCTION; All human beings tie with tribes, families and nations. Men found family and can be alive within social boundaries of a family. Marriage is a way to establish a family system. All blood relations emanates from a marriage. Marriage establishes relation between a man and woman as a husband and wife. Husband and wife then can have issues as a result of this marriage and these issues become brothers and sisters in themselves and daughters and sons to their parents. These sons and daughters then get married and for their children, they become uncles and aunts on part of their parents. Out of marriage no blood relation and family system can be established, therefore, the importance of marriage is too much high in human life. Although the west is sex free zone, but the UK has passed the family act 1989 and family reform act 1976 which define the legitimate and illegitimate child. The actual problem in our society is the matter of the honor which is of different nature and concept in the west and east. In the east, if the girl becomes pregnant out of marriage relation she feels shame and thinks herself a sinful person, so that she tries to abort the pregnancy, If she remains unable to do so she throws the baby anywhere to conceal her sin, if the baby fortunately remains alive, the NGOS uplift such babies and undertake their care on their own responsibility. The *Edhi* Foundation works for handling this situation in such a way that it installed cradles in different places in

Karachi where the unmarried lady leave the illegitimate child.

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

It is making sure the principle in the United Nations Convention on the rights of child¹¹⁰ and the European convention on human rights¹¹¹ not to discriminate against the children on the ground of parent's status while the matter is different in society laws. (English and Islamic law)

UK LAWS ON CHILDREN OF UNMARRIED COUPLES

At common law children were only "legitimate:" if the parents were married when they were born or conceived.

¹¹²A child born to unmarried parents was a *filius nullius* or *filius populi*; no legal relationship was recognized with the mother or father nor with any other "relatives". Hence the child had no legal right to succeed to their property, nor to receive maintenance¹¹³ and other benefits deriving from the status of parent and child. However, in the twentieth century two separate developments have

¹¹⁰The anti-discrimination principle in Art. 2. Art. 18 requires States' Parties to use their best efforts to ensure the recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.

¹¹¹ Art. 14. In *marckx v. Belgium* (1979) 2 E.H.R.R. 330 and *Inze v. Austria* (1987) 10 E.H.R.R. the European Court of Human Rights held that discrimination against illegitimate children in relation to inheritance rights breached their Art. 14. But the inheritance of a little is not protected: *Re Moynihan* [2000] 1 F.L.R. 113 HL and *X. v. U.K.* (1978) 2 E.H.R.R. 63.

¹¹² Blackstone, Commentaries, p; 454. A child born after the husband's death or divorce was also legitimate: *Knowles v. Knowles* [1962] p; 161.

¹¹³ Note, however, according to R.H. Helmholz, "Support orders, Church Court and the rule of *Filius Nullius*. A reassessment of the common Law" (1977) 63, Rev. 431 the church courts gave a right of support.

been made to relax the stiffness of the common law. First, the definition of “illegitimate” was narrowed and allowed to include the children whose parents married after their birth to be legitimated.¹¹⁴ And also recognized as legitimate some children born of void marriages.¹¹⁵ Secondly, rights accorded to children born within marriage were extended to all children. For example, the Fatal Accidents legislation¹¹⁶ virtually eliminated the distinction for the purpose of “dependency” claims brought under it, and the law of inheritance was changed to enable a child born outside marriage to claim under a will,¹¹⁷ the father’s intestacy¹¹⁸ and to seek family provision¹¹⁹

This process has been made in the Family Law Reform Act 1987, which ended the distinction between children based on their parent’s marriage. As to be noted down here;

“ references (however expressed) to any relationship between two persons shall, unless the contrary intention appears, be construed without regard to whether or not

¹¹⁴The Legitimacy Act 1926 allowed legitimation if the father was domiciled in England at the date of the marriage and neither party was married to anyone else at the date of child’s birth. The Legitimacy Act 1959 allowed a child born of an adulterous relationship to be legitimated. The Children Act 1975, Sched. 1 made changes to the status conferred by legitimation. These provisions were consolidated in the Legitimacy Act 1976, sec.8 which provides that a legitimated person should have all the same rights as a legitimate one but it did not affect titles, nor dispositions made before January 1, 1976.

¹¹⁵ The Legitimacy Act 1959, consolidated in the Legitimacy Act 1976, sec.1 treated such children as legitimated provided the father was domiciled in England at the time of birth and at least one parent believed at the time of marriage was valid.

¹¹⁶ See Fatal Accident Act 1976, (as substituted by Administration of Justice Act 1982) sec.1 (5) (b).

¹¹⁷ Family Law Reform Act 1969, sec.16.

¹¹⁸ Family Law Reform Act 1969, sec.14: (the Legitimacy Act 1926 allowed succession under the mother’s intestacy).

¹¹⁹Family Law Reform Act 1969, sec. 18; Inheritance (Provision for the Family and Dependents) Act 1975, ss. 1 , 25(1)

the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time,”¹²⁰

This rule is applied to some existing statutes.¹²¹ but where the rule did not apply, it began to necessary to determine the child was or is legitimate; and the provisions of the Legitimacy Act 1976 applied¹²² Thus all children’s inheritance rights¹²³ and rights of support are now the same, but where the parents are not married the child does not automatically ¹²⁴have a father with legally recognized rights, nor qualify for British citizenship where only the father is British.

However, the government rejected this apparently because there were no adequate legal procedures for determining paternity.¹²⁵ The Law Commission says that proof of parentage was not a problem and suggested that British or overseas birth certificates or declarations could be used.¹²⁶ The advent of DNA testing, which is capable of proving a child’s parentage¹²⁷ and is used for this in

¹²⁰ Sec.1 (3) defines a person “whose father and mother were married to each other at the time of his birth” to include all legitimate, legitimated and adopted children. See also, D. pearl, “Recent changes in the law relating to children of unmarried parents” (1989) 1 J.C.L. 126 and N. Lowe, “The family Law Reform Act 1987-Useful reform but an unhappy compromise” [1988] Denning L.J. 77.

¹²¹ Family Law Reform Act 1987, sec.2.

¹²² Sec.1 (3) the definition of children treated as legitimate is amended by Family Law Reform Act 1987, sec.28; see below.

¹²³ Family Law Reform Act 1987, ss.18-20; but inheritance of titles of honour and succession to the throne are generally not affected.

¹²⁴ Financial support for all children is now provided under the Children Act 1989, Sched.1.

¹²⁵ Law Com. 118, para. 11.8. It was not appropriate to devise such procedures just for citizenship claims.

¹²⁶ *Ibid.* para. 11.21.

¹²⁷ D. Webb, “The use of blood grouping and D.N.A fingerprinting tests in Immigration proceedings” [1986] *Immig. & Nat. l. & P.* 53; R. White and J. Greenwood “D.N.A. fingerprinting and the law” (1988) 51 *M.L.R.* 145.

immigration disputes,¹²⁸ removes objections based on problems of proof but there have been no further developments in relation to citizenship. The British Nationality Act 1981 abolished the so-called *ius soli*, the rule by which everyone born in the United Kingdom automatically acquired British citizenship. Entitlement to citizenship depends on the citizenship and marital relationship of the child's parents.¹²⁹ Children whose parents are not married are at a disadvantage in two main factual circumstances. A child born in this country to a British father and a foreign mother will not be entitled to British citizenship if the parents are not married.¹³⁰ Similarly, a child born abroad to a father who is a British citizen, otherwise than by descent and a mother who is either foreign or a British citizen by descent only, will not be entitled.¹³¹ In each circumstance the child would have been entitled if the parents had been married.¹³² However, a child born in the United Kingdom who spends the first 10 years of life here will be entitled to registration as a British citizen provided that he or she has not been absent for more than 90 days each year during this time.¹³³ It is thus extremely difficult for a child born overseas, whose parents were not married, to

¹²⁸ See Hansard, H.C., Vol. 154, col. 464 written answers, June 14, 1989.

¹²⁹ British Nationality Act 1981, sec.1. For further explanation, see Law Com. No. 118, paras 11.3 etseq; I. Macdonald, *Immigration Law and Practice* (5th ed., 2001).

¹³⁰ The Immigration and Nationality Directorate's policy is to register the child as a British citizen where there are no doubts about paternity, no reasonable objections from the parents or those with parental responsibility and no good character objections: Macdonald, *op. cit.*, para.2.37.

¹³¹ British Nationality Act 1981, ss.1 (1), 2(1), 50(90) (b).

¹³² This is contrary to the non-discrimination principle in the U.N. Convention on the Rights of the Child, Art. 2, but the U.K. Government made a reservation relating to nationality and immigration see; 2nd Report to the U.N. committee on the Rights of the Child by the U.K. (1999), para.7.31.

¹³³ British Nationality Act 1981, sec.1 (4); Macdonald (2001), para.2.43.

enter this country to live with one parent while the other is alive and capable of looking after the child elsewhere.¹³⁴ States have a wide margin of appreciation; the legitimate aims of immigration policy were weighed against rights to family life,¹³⁵ and the interest of the child are not paramount.¹³⁶ In this area of law children's rights depend on their parent's rights and status are not moderated by considerations for their welfare.¹³⁷

ISLAMIC LAWS ON RIGHTS OF CHILDREN OF UNMARRIED COUPLES

In Islamic law every male and female is responsible for his\her sperm. No one can throw his\her sperm at his\her own choice as it is not merely a sperm, it is an entity attached with rights. A sperm is being perished in mother womb is unlawful to be aborted unless it causes any harm to the mother. Out of marriages relations are strictly banned with severe punishments just to save the family system. The societies in which out of marriage relations are established, the family system of the society is collapsed. However, before proceeding to the study of Islamic law on rights of children of unmarried couples, Islamic teachings should be seen in moral perspective. Islam tries to solve the issues first of all morally. As in the case of illegitimate child, Islam makes bound the

¹³⁴ *Ibid.* para. 297 (e), (f). The parent must have had "sole responsibility for the child's upbringing" and "there are serious and compelling family or other considerations which make exclusion the child undesirable and suitable arrangements have been made for the child's care."

¹³⁵ R. on app. Mahmood v. secretary of State for the Home Department [2001] 1 F.L.R. 757, CA; R. v. Secretary of State for the Home Department, ex p. Liskoc [2001] 1 F.L.R. 930 CA.

¹³⁶ R. v. Secretary of State for Home Department, ex p. Gangadeen [1998] 1 F.L.R. 762 at 775 per Hirst L.J.

¹³⁷ See: "The status of immigration children in the UK and conflicts between immigration law and procedure and the welfare of the child" in society for advance legal studies, Family law Working Group, Report on the cross border movement of children (1999), p; 19.

society to close eyes on such issues and not bring them in public. Unless such issues remain to be secret not come to public, these issues remain in between ALLAH and Person. May ALLAH forgive him; it totally depends upon the will of ALLAH and the *touba* of the sinful person.¹³⁸ As we see this moral aspect in the *hadith* of *Ghamidiya* women who became pregnant due to *zina* and came to prophet ﷺ for confession and applying *hadd*(punishment of *zina*) but the prophet ﷺ sent her back and refused to hear what she wants to say and asked her go back. The prophet means, she does not to discuss the matter with anyone and let the matter be remained between ALLAH and herself. While setting moral standards, Islamic law tries even not come a doubt of illegitimacy in someone's mind. A man came to the prophet ﷺ and said, O ALLAH's Apostle!, A black child has been born for me. The prophet ﷺ asked him, have you got camels? The man said, yes. The prophet ﷺ asked him, what color are they? The man replied, Red. The prophet ﷺ said, is there a grey one among them? The man replied, yes. The prophet ﷺ said, whence comes that? He said, May be it is because of heredity. The prophet ﷺ said, may be your latest son has this color because of heredity.¹³⁹

Islamic law while maintaining highly moral standards does not indulge in proving the legitimacy or illegitimacy of a child by conducting the test of DNA. Islamic law maintains status quo as on whom bad child born, he

¹³⁸ Moududi, Abul-Al-Aala, Sayed. *Tafheem-ul-Quran*(Al-Noor) Tarjman-UI-Quran, Lahore1991 Vol;3, p;320-326

¹³⁹ Bukhari, Muhammad-bin-Ismael, Abu-Abdullah, *Sahih Al Bukhari*, Dar-UI-Salam, Lahore Vol; 4 p; 870

belongs to him; he would be father of that child. Islamic law supports the conducting of DNA test only if the situation comes that some child demands some property in succession, and other heirs denies his succession, they said that he is not a son of their father, then the court orders the conducting of the DNA to prove the heredity. Alongside, a moral perspective, Islamic law maintains minimum criteria of assessing legitimacy of the child as the Quran says “the period of pregnancy and feeding the child is 30 months”¹⁴⁰ and at another place the Quran fixes the period of feeding the child as 24 months “the mothers should feed their child two years as a whole”¹⁴¹ it means that if 24 months of feeding the child reduces from 30 months, the six months remains for the period of pregnancy. The Quran maintains six months minimum period for assessing a child as legitimate. If a child born after six months from the marriage, he would be considered as legitimate in the eyes of Quran. There is another criterion of assessing the legitimacy of the child in Islamic law as settled down by the prophet ﷺ in the *hadith* narrated by the *Ayesha*. The essence of this principle lying under it is that rather looking into assessing legitimacy or illegitimacy of the child, base the matter apparently and decide the matter according to what happened on the screen and not peep down into the secrets of the people. The wording of the prophet ﷺ is “The child belong to the person on whom bed he is born” basically this is a verdict of the prophet ﷺ given in the case of *Saad-bin-Abi-Waqas*. This case detailed in the *hadith* as that *Utba-bin-Abi-Waqas*(Non-Muslim) brother of *Saad-bin-Abi-Waqas*(Muslim) made a *wasiya* to his

¹⁴⁰ Al-Ahqaf 46:15.

¹⁴¹ Al-Baqrah 2:233

brother *Saad* at the eve of his death that the son of *Zamaa* (from the womb of his she- slave) is from my sperm so that you keep him after my death under his guardianship, *Saad-bin-Abi-Waqas* adopted under his guardianship the son of *Zamaa* as his nephew but another son of *Zamaa*(*Abd-bin-Zamaa*) came to the prophet ﷺ and said that, the child (claimed by *Saad* as his nephew) from the womb of she-slave of my father *Zamaa*. Therefore, he is in relation my brother. I request oh prophet ﷺ, handover to me this boy as my brother. *Saad-bin-Abi-Waqas* told the prophet ﷺ that he is son of my brother *Utba-bin-Abi-Waqas* as according to the *wasiya* he made. The prophet ﷺ decided the case not in favor of *Saad-bin-Abi-Waqas* but decided it in favor of *Abd-bin-Zamaa* and said that the child is brother of the son of *Zamaa*(*Abd-bin-Zamaa*) as he is born on the bed of *Zamaa*.¹⁴²

Now, we quote here the *hadith* of *Ghamidiya* which entails certain rights of children of unmarried couples.

فَجَاءَتِ الْغَامِديَّةُ، فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنِّي قَدْ رَبَّيْتُ فَطْهَرْنِي وَإِنَّهُ رَدَّهَا، فَلَمَّا كَانَ الْعَدُو، قَالَتْ: يَا رَسُولَ اللَّهِ، لِمَ تَرُدُّنِي لَعَلَّكَ أَنْ تَرُدُّنِي كَمَا رَدَدْتِ مَاعِرًا قَوْلَ اللَّهِ إِنِّي لِحُبْلَى، قَالَ: إِمَّا لَا فَأَذْهَبِي حَتَّى تَلِدِي، فَلَمَّا وَلَدَتْ أَتَتْهُ بِالصَّبِيِّ فِي خِرْقَةٍ، قَالَتْ: هَذَا قَدْ وَلَدْتُهُ، قَالَ: أَذْهَبِي فَأَرْضِعِيهِ حَتَّى تَفْطِمِيهِ، فَلَمَّا فَطَمَتْهُ أَتَتْهُ بِالصَّبِيِّ فِي يَدِهِ كِسْرَةٌ خُبِرٌ، فَقَالَتْ: هَذَا يَا نَبِيَّ اللَّهِ قَدْ فَطَمْتُهُ وَقَدْ أَكَلَ الطَّعَامَ، فَدَفَعَ الصَّبِيَّ إِلَى رَجُلٍ مِنَ الْمُسْلِمِينَ، ثُمَّ أَمَرَ بِهَا فَحُفِرَ لَهَا إِلَى صَدْرِهَا وَأَمَرَ النَّاسَ، فَرَجَمُوهَا،¹⁴³

“A woman from tribe of *Ghamidiya*, came to the prophet ﷺ and told that she has committed the offense of

¹⁴² Bukhari, Muhammad-bin-Ismael, Abu-Abdullah, *Sahih Al Bukhari* The Book of sales, Dar-UI-Salam, Lahore Vol; 2 p; 472

¹⁴³ Al-Qushairy, Abu-al-Hussain, -Muslim-bin-Al-Hajaj, *Sahih Al Muslim* The Book of Hudood, Dar-UI-Qudas Lahore 2011, Vol; 3 p;336.

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

The rights of children of unmarried couples deduced from this *hadith* include right of feotus, right to life, right to feeding, right to guardianship, right to welfare, right to honor.

Right of feotus

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

Right to life

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

Right to feeding and nursing

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

Right to guardianship

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

Right to welfare

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

Right to honor

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

SIMILARITIES AND DIFFERENCES

The British Nationality Act 1981 abolished the so-called *ius soli*, the rule by which everyone born in the United Kingdom automatically acquired British citizenship. Entitlement to citizenship depends on the citizenship and marital relationship of the child’s parents.¹⁴⁴ But in

¹⁴⁴ British Nationality Act 1981, sec.1. For further explanation, see Law Com. No. 118, paras 11.3 etseq; I. Macdonald, *Immigration Law and Practice* (5th ed., 2001).

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

As it has been mentioned above, the strict rule of common law “A child legitimates only if the parents were married when he was born or conceived” in the twentieth century, this rule to some extent was relaxed by allowing children to be legitimated if their unmarried parents get married immediately after their birth. Basically the poor law began the intervention between birth outside marriage and criminality as to just avoid a charge on the community by the illegitimate child. The Stephen M. Cretney writes in this regard “this legal intervention was originally primarily concerned to protect against the financial consequences of children becoming a charge on a community; and thus the poor law began the formal association between birth outside marriage and criminality, relics of which lingered on for

many years”.¹⁴⁵ Islamic law doesn’t match with this rule as it doesn’t recognize such marriages. In our society, a practice in secret happening if a girl becomes pregnant because of having out of marriage relations, the family members try to get the couple married so that the honor or prestige of the family to be protected. This matter in secret and in private capacity can be handled so but publically a legislation to be made in this regard can’t be done as if it is done so then it falls within the parameters of transforming the *Haram* into *halal* in Islamic *shariah*. In UK the Fatal Accidents legislation¹⁴⁶ virtually eliminated the distinction for the purpose of “dependency” claims brought under it, and the law of inheritance was changed to enable a child born outside marriage to claim under a will,¹⁴⁷ the father’s intestacy¹⁴⁸ and to seek family provision.¹⁴⁹ In Islamic law a bill (*wasiya*) can be made by anyone to an illegitimate child as it is ruled in Islamic law that *wasiya* can’t be made in favor of a relative who has not share in inheritance.

CONCLUSION

This article concludes the matter that no child can be discriminated on the bases of parent’s status. All are human beings weather they are legitimate or illegitimate. They are all equal before law. This distinction in humanity has not been made in the life of the prophet ﷺ. The woman of *Ghamidiya* who has been pregnant

¹⁴⁵ Cretney S.M., Judith M.Masson, *Principles of Family Law*, Thomson Sweet& Maxwell, London 2002 Ed; 7 Sec; 17-019 p; 517

¹⁴⁶ See Fatal Accident Act 1976, (as substituted by Administration of Justice Act 1982) sec.1 (5) (b).

¹⁴⁷ Family Law Reform Act 1969, sec.16.

¹⁴⁸ Family Law Reform Act 1969, sec.14: (the Legitimacy Act 1926 allowed succession under the mother’s intestacy).

¹⁴⁹ Family Law Reform Act 1969, sec. 18; Inheritance (Provision for the Family and Dependents) Act 1975, ss. 1, 25(1).

because of out of marriages relations, the prophet ﷺ gave her all respect and provided all the rights for her illegitimate child. The prophet ﷺ got angry with the *Khalid-Bin-Walid* who gave bad remarks about this woman. Islamic law sets minimum standards for legitimacy of the child and not supports the DNA testing for declaring the legitimacy or illegitimacy of a child.

Islamic law sets highly moral standards and orders the people to close their eyes on such issues and let them in secret and not tries to bring it to the public. But if the matter comes to the public then it leaves no stone unturned unless it implements its principles.

The United Nations Convention on the rights of child and the European convention on human rights have made sure the principle that no country should discriminate against the children on the ground of parent's status. In UK in initial phrases at the common law the child only legitimated if the parents were married as it was based on the Christianity but later on, in the twentieth century a legal development has been made to common law by allowing children of unmarried couples as legitimates if their parents get married at the time of their birth. However, Islamic law doesn't recognize such marriage. In secrets and in private capacity if someone get married after making out of marriages relations, Islamic law doesn't intervene with this situation unless it comes to its folds. It means that the matter approaches to the courts and evidential procedures. Islamic law doesn't suspect any child as illegitimates and doesn't support and indulge in DNA testing for proving legitimacy of the child unless someone claims property in succession and inheritance and some other denies his succession by saying that he is not a legitimate child of his father. However, Islamic law maintains minimum standards for making legitimacy of

the child and remains in support to restore the honor and prestige of the children and persons by not declaring them as illegitimate. However, Islamic law recognizes all the rights of unmarried couples if the situation comes.

THE ICT RIGHTS OF PERSONS WITH DISABILITY ACT, 2020: A LEGISLATIVE REVIEW

Dr. MUHAMMAD AMIN^{150**}

ABSTRACT; This Article assess and reviews the ICT Rights of Persons with Disability Act, 2020. This Act passed by the National Assembly for the ICT Capital territory. Previously, there was an ordinance promulgated by Gen. Zia-Ul-Haqq in 1981 titled as “Disabled Persons (Employment and Rehabilitation) Ordinance, 1981”. This Ordinance obtained its legal effectivity and applicability to the whole of Pakistan through the 8th Amendment in 1985. Actually ICT Rights of Persons with Disability Bill, 2020 was put in the National Assembly as a result of protesting voice of persons with disabilities who were on the roads for certain years. Disabled Persons (Employment and rehabilitation) Ordinance, 1981 was insufficient to cater for needs of persons with disabilities. It was a dire need in the country to improve this ordinance through making a legislation on the subject. The ICT Rights of Persons with Disability Act, 2020 tried to do this job but unfortunately, this legislation was very hastily made and didn’t reach at the stage where the rights of persons with disabilities come into complete conformity with the Islamic injunctions, Provisions of the Constitution of Islamic Republic of Pakistan, 1973 and the UNO Convention on the Rights of Persons with Disabilities. This Act seems to be a policy rather than an enactment. It needs to revise and make it bring in line

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with UNO Convention on Rights of Persons with Disabilities.

Keywords: Disability, Constitution, Convention, Ordinance, Rights, Legislation

INTRODUCTION; The women have rights as they are half of population of the world. Since the very beginning of human history, the women have been oppressed in every society. The children have rights as they are a generation of future. The Capital invested on children can never be gone waste as a capital of today invested on them will come with a double capital tomorrow. Women and children all are very beneficial to the society and its development. That's why their rights are necessary to be protected but the rights of persons with disabilities, why are necessary? While they are not beneficial to the society on part of their disability. Even they are not beneficial for their families. Unfortunately they are burden on their families. They also can't perform any material service for their family and country. Secondly, it is against justice to get a certain percentage of income of certain class of people in the term of taxes and spend it on other class of people. What we may answer this question in a logical way? In answer to all these questions, we may say that the society the more upholds moral goals and values, it goes more grow. The society as a whole bears burdens, hurdles and restrictions, it creates in itself an ability and power to develop. The person who have a limitation in his body, he can serve the family and country in a better way if he has been rehabilitated. As it is a common practice, the people don't throw the electronics items if they are defective or they become out of order and remained un-useable for

them. They get these items repaired and make them re-useable. Likewise, the human's with disabilities are rehabilitated and tried to remove any physical and mental defect in them through rehabilitation process and are made useable for the society. You can chose a difference in both persons, one is a worst criminal person in a society and other is a blind or a physically disabled but is a very pious man, who is better, first person or second one?

All persons have sufficiency and insufficiency naturally. ALLAH Almighty created all persons with different abilities. The one has an ability, the other has not that ability. This sufficiency and insufficiency of men doesn't mean a disability and nor it makes someone superior and someone inferior. It also doesn't have a barrier in delivering rights and duties but it emphases to perform the duty. The thing which makes a person disabled, that is giving a person a sense of disability socially. If the rights and duties are to be performed because of insufficiency and sufficiency. The society will not have an element of disability socially.

The Disability is a means of creating a positive motion in a society. When non-disabled persons who are idle and lazy in a society see the persons with disabilities to work hard, they get an inner power to work and grow. The society which makes the persons with disabilities useful citizens, actually, it makes itself useful. It is almost seen a common phenomenon in people that a person has a disability in his body, he can do have an alternative ability in his body. The society can benefit from his alternative ability.¹⁵¹

¹⁵¹ See the introductory pages of the book written by the author titled as "Disability Rights; Problems and Solutions" Ed. 1st, Maktbah-Al-Qalam, (2009), p; 27-31

Having an introductory words, we come to our core topic “ICT Rights of Persons with Disability Act, 2020; A legislative review”. As the ICT Rights of Persons with Disability Act, 2020 in its preamble ensures the rights of persons with disabilities to bring in line with the Islamic injunctions, provisions of the constitution of the Islamic Republic of Pakistan and the UNO Convention on the rights of persons with disabilities.¹⁵² Therefore, it is necessary to review and analyze this act in the light of these three angles. This act is also viewed technically to see what Legal drawbacks it has and also to see does it have conformity with Islamic Injunctions, Constitution, 73 and UNO Convention on disability rights. It is a factual fact that unless we don’t have a brief overview of disability legislations made in the near past in the world, we can’t analyze and review the legislation we made in our country in 2020. Therefore, before we go to proceed on our core issue. We come to take a brief overview of disability legislations in the UK, USA and Pakistan.

A BRIEF OVERVIEW OF DISABILITY LEGISLATIONS IN THE UK, USA AND PAKISTAN

In the 19th and 20th century, the legislations for persons with disabilities were made in the UK. For example, Mental Deficiency Act, 1913 passed to set out arrangements for dealing with those considered to be 'mentally defective': 'idiots', 'imbeciles', 'feeble-minded persons' and 'moral imbeciles' (defined in section 1). It is principally concerned with the provision of appropriate accommodation for them. The role of local education authorities is referred to in sections 2, 30 and 31. They are required to ascertain and certify the children aged 7 to

¹⁵² See for instance, the preamble of the Bill “ICT Rights of Persons with Disabilities” passed by the National Assembly of Pakistan in 2020.

16 in their areas who are 'defective' and would 'not benefit from instruction in special schools or classes' (section 31).¹⁵³

The Poor Law Amendment Act, 1834 was not directly related to persons with disabilities but its effect extended to them. As it was an 'Outdoor relief' (assistance provided outside of a workhouse) that was withdrawn unless a person was unable to work due to old age or 'infirmity'. Those who were 'able-bodied' but unemployed could not draw state support unless they entered a workhouse, where they earned their keep. Workhouses also housed the sick, 'mentally ill', unmarried mothers, the elderly and 'the infirm'. The government's intention was to make the experience of being in a workhouse worse than the experiences of the poorest laborers outside of the workhouse. This policy was to become known as the principle of 'less eligibility'. The Poor Law Commission was replaced by the Poor Law Board in 1847, with the intention of improving accountability to Parliament. Workhouses and Boards of Guardians were abolished in 1930 by the Local Government Act 1929, and their powers and responsibilities were passed to local and national government bodies.¹⁵⁴

¹⁵³ Mental Deficiency Act, 1913 comprises 28 chapters, actually this act made to further and better provision for the care of feeble-minded and other mentally defective persons and to amend the Lunacy Acts. [15th August 1913.] Currently, this act is the part of Crown copyright material that is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.

¹⁵⁴ The Royal Commission into the Operation of Poor Laws, chaired by the Bishop of London, launched an investigation into the administration of the Poor Laws in 1832. The commission reported back in March 1834, concluding that poverty was being perpetuated by the provision of Poor Law relief. This conclusion led the commission to recommend that all able-bodied people and their families should stop receiving relief. The recommendations of the commission formed the basis of the Poor Law Amendment Act 1834, dubbed the 'new Poor Law', which overhauled the system of providing support to the poor in August 1834. The Act grouped local parishes into Poor Law unions,

In the mid of 20th century, the England passed the Disabled Persons Employment Act, 1944. In the 1975, the British Government improved the social environment in their country and enhanced the Mobility Allowance. The British Government took a further step to improve the Disabled Persons Employment Act, 1994. However, in the 1995, the British Government replaced this Act with Disability Discrimination Act, 1995. In the 1995, the British Government also celebrated an anniversary of Disabled Persons Employment Act, 1944. The British Government eliminated the element of discrimination against Persons with disabilities in the society through Disability Discrimination Act, 1995.

In 2010, the UK Government passed the equality Act. In the equality Act 2010, a person is defined as having a disability if he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his ability to carry out normal and day-to-day activities.¹⁵⁵ The Act states that a person discriminate against a disabled person if he treats that person unfavorably because of something arising in consequence of his disability, and he cannot show that the treatment is a proportionate means of achieving a legitimate aim.¹⁵⁶

Section 20 of the Act makes provisions regarding the requirement to make reasonable adjustments for disabled people in relation to public services and functions;

The duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. The first requirement covers changing the way things are

under 600 locally elected Boards of Guardians. Each of those boards had its own workhouse

¹⁵⁵ See Section 6. UK Equality Act 2010.

¹⁵⁶ *Ibid*, Section 15.

done (such as changing a practice), the second covers making changes to the built environment (such as providing access to a building), and the third covers providing auxiliary aids and services (providing special computer software which are a different nature of services).¹⁵⁷

USA has evolved the last century for disability rights. However, in the very beginning the campaigning of disability rights started from the ideology that disability equates to weakness.¹⁵⁸ At this stage, the disability was a personal issue and political regime didn't support the individual with disabilities.¹⁵⁹ In 1960s the civil rights movements started and disability advocates joined this movement. These movements gave the individuals with disabilities to fight for their rights.¹⁶⁰ As a result of disability movements, the Americans with Disability Act was passed in 1990.¹⁶¹ Meanwhile, on a global scale, the United Nations has established the convention on rights of persons with disability.

In Pakistan, first time in legislative history in 1981, the president of Islamic Republic of Pakistan promulgated an ordinance about employment and Rehabilitation of Persons with Disabilities named as Disabled Persons (Employment and Rehabilitation) Ordinance, 1981. As an Ordinance it has its effectivity for six months but the 8th amendment in the Constitution, 1973 made the status

¹⁵⁷ Explanatory Notes to the Equality Act 2010, P: 25.

¹⁵⁸ Fleischer & Zames, Doris & Frieda (2001). *The Disability Rights Movement: From Charity to Confrontation*. Temple University Press.p:9

¹⁵⁹ *Ibid*

¹⁶⁰ See a report on "A brief history of the disability rights movement and disability discrimination" prepared by Disability Rights Centre Staff, 2004-2010. Bancroft Library, University of California, Berkley. P: 1-28

¹⁶¹ Befort & Donesky, Stephen & Tracey (2000). "Reassignment under the American Disability Act: Reasonable Accommodation, Affirmative Action, or Both?" University of Minnesota Law School. P:1-10

of this ordinance as a permanent legislation? This Ordinance comprises three pages including a preamble and 22 sections as a whole. After 1981, in Pakistan there has not been any legislation on the subject and have not improved and updated this ordinance. This ordinance had many drawbacks and shortcomings in the Disability Rights perspective. As a part of this Ordinance and in continuance of disability legislation in Pakistan the Government of Pakistan has passed the bill of Rights of persons with disability in 2020. The drawbacks and shortcomings in previous legislations should have to be removed through the new legislation but unfortunately the previous legislation has not to be improved through the ICT Act. The Rights of Persons with Disability Act, 2020 seems to be just a formality and dust thrown in the eyes of persons with disabilities. As this Act has been abruptly come into force as the result of protest of persons with disabilities. Now we review this legislation parallel with the ordinance, 1981.

THE DISABILITY DEFINED IN THE ACT

ICT Rights of Persons with Disability Act, 2020 defines disability as;

““disability” means a long term physical or mental condition that limits a person's movements, senses or activities and shall include physical, mental, intellectual and developmental disorders or sensory impairments which in interaction with participate fully and effectively in day to day performance and interaction with others on an equal basis”¹⁶²

This definition is not a full-fledged definition expressing the disability as a whole. What does mean by “a long term” in this definition? For how long if disability lasts it

¹⁶²See Section 2 for definition clause “disability” ICT Rights of Persons with Disability Act, 2020.

would be considered as a disability. For how many months or how many years, the term “long term” includes. This definition doesn’t explain “the adverse substantial effect of disability”. If the word “substantial” is not used in the definition than the very least disability can fall into the definition of disability.

THE RIGHT OF POLITICAL PARTICIPATION

ICT Rights of Persons with Disability Act, 2020 prescribes the Right of Political Participation of persons with disabilities as;

“Persons with disabilities shall have full right to participate in the political activity in the country including exercising right of vote and right to be elected to an elected body”.¹⁶³

Although, this section gives persons with disabilities right to exercise the vote and right to be elected to an elected body but this section ignores a basic political perspective. As it is a common perception that parliament of a country has a representation of people from different areas and different classes of people. The minorities have their specified seats in parliament to represent themselves. The women have also a reserved quota of seats in the Parliament. The people from tribal areas have also their specified seats in the Parliament. Why this particular political presentation of people from different areas and classes? The one class of people from a specified area of a country doesn’t understand the problems and issues of other area and class of people. It is just as a patient who knows the intensity of his disease. The non-patient doesn’t know what pain and disease is? The minorities know their problems and issues. The women acquaint with their problems. The people of tribal areas know their conditions and problems. Likewise, the

¹⁶³ See Section 16. ICT Rights of Persons with Disability Act, 2020.

persons with disabilities know their problems and issues. Therefore, it is necessary to reserve seats for them in the parliament as they have been given a quota in the employment. We have also an example of political participation from the Islamic history. The Prophet ﷺ appointed Abdullah-ibn-Ummeh-Maktum (a blind companion of the Prophet ﷺ) a Governor of Madinah in his absence when he ﷺ traveled to Makkah for performing Ummrah in 6th hijri. Abdullah-ibn-Ummeh-Maktum also performed the function of Imam in Madinah Mosque in the absence of the Prophet ﷺ.¹⁶⁴

THE RIGHT OF EMPLOYMENT

Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 Section 10/1 says about the right of employment as detailed in the quota system:

“Not less than one percent of the total number of persons employed by an establishment at any time shall be disabled persons”¹⁶⁵

ICT Rights of Persons with Disability Act 2020, Section 24 says about the right of employment as detailed in the quota system:

“Not less than one percent of the total number of persons employed by an establishment at any time shall be persons whose names have been registered with the Council or its designated office of the area in which such establishment is located and against whose names in the register maintained under section 23 an endorsement exists to the effect that they are fit to work”¹⁶⁶

¹⁶⁴Mubarak Puri, Safi-ur-Al Rahman, *Alraheeq-ul-Maktum*. Maktabah Al-Salfiyah, Lahore, Ed 1995. P:459

¹⁶⁵See Section 10, sub section 1, Disabled Persons (Employment and Rehabilitation) Ordinance, 1981.

¹⁶⁶See Section 24, ICT Rights of Persons with Disability Act, 2020.

In both legislation the previous and new one, we see the percentage of employment of persons with disabilities remained same (one percent). While a period of forty years (1981-2020) exists in both legislations. Has the number of persons with disabilities not increased in the population of country in forty years? Does this one percent quota proportionate to the estimate of ten percent of the number of whole population of a country as entailed by WHO?

ICT Rights of persons with Disability Act, 2020, section 10/3 says:

“The government shall reserve an employment quota as prescribed by the Federal Government to be periodically reviewed, at various levels for persons with disabilities in government departments, institutions, entities and corporate entities owned and managed by the government and the concerned department shall implement the allocated quota.”¹⁶⁷

This section seems apparently that the quota percentage would be reviewed periodically but the question is here that why didn't upraise the one percent quota according to the population of persons with disabilities. The more better way was firstly to upraise the one percent quota according to the number of persons with disabilities of the whole population of the country so that the gap between 1981 to 2020 in respect of the number of persons with disabilities to be filled in and then secondly, the section 10/3 of ICT Rights of Persons with Disabilities to be inserted.

Another loophole and technical fault of this legislation is to be seen in section 25

¹⁶⁷ See Section 10, sub section 3, ICT Rights of Persons with Disability Act, 2020.

“Establishment to pay to the Fund.- An establishment which does not employ a person with disability as required by section 24 shall pay into the Fund each month total sum of money it would have paid as salary or wages to a disabled person had he been employed”.¹⁶⁸

This loophole and technical fault was existed in Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, Section 11

“An establishment which does not employ a disabled person as required by section 10 shall pay into the Funds each month the sum of money it would have paid as salary or wages to a disabled person had he been employed”.¹⁶⁹

We see in both sections in both legislations that if any establishment does not want to employ a person with disability, shall pay into the fund each month the sum of money it would have paid as salary or wages to a disabled person had he been employed. The previous and new legislation made the right of employment of a person with disability as a discretion of the head of the institution. He may or may not employ a person with disability. Both legislation put the right of employment of the person with disability totally at the disposal and discretion of the head of the institution. Both sections 25 and 11 of the new and old legislation respectively make the right of employment non-obligatory and create a question of choice in the hand of the head of the institution. If he doesn't like to employ a person with disability or he doesn't have a person of his own choice, he will deposit the wages of vacancy into the fund and left the vacancy vacant. He doesn't feel any burden of

¹⁶⁸*Ibid* at Section 25, sub section 1.

¹⁶⁹See Section 11, sub section 1, Disabled Persons (Employment and Rehabilitation) Ordinance, 1981.

this situation as he is not paying into fund from his own pocket.

In fact, the loophole in both sections is a great barrier in the way of exercising the right of employment for persons with disabilities. The dangerous element of both these sections is that the right of employment of a person with disability may be gone on the prejudice of the head of the institution as the question of choice rises here.

BOARD OF ASSESSMENT AND DISABILITY CERTIFICATE

Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, Section 12/2 is about issuance of disability certificate.

“The Provincial Council shall, if it thinks necessary, cause each disabled person registered under subsection(1) to be assessed as to the nature of his functional disability and also as to his aptitude and the nature of work he is fit to do by a medical officer authorized by it in his behalf or by such assessing board consisting of not less than one medical officer as it may appoint, and the medical officer or, as the case may be, the assessing board shall submit its report to the Provincial Council in such form as may be prescribed by the¹⁷⁰[Government].”¹⁷¹

Medical Officer is a member of assessing board. He is off course, a medical specialist but he doesn't have any skilled knowledge in disability studies. Therefore, it is not possible for a person to give an opinion on any specialized issue unless he has got a knowledge of that specialized area through a specialized degree. There has

¹⁷⁰Substituted by the Disabled Persons (Employment and Rehabilitation) (Amendment) Act 2012 (XIII of 2012), for the words “Provincial Government”.

¹⁷¹See Section 12/2, Disabled Persons (Employment and Rehabilitation) Ordinance, 1981,

not been setup any criteria in this section to assess the disability. Sometimes, the person has a very low nature of disability which doesn't affect his day to day performance, gets a disability certificate.

NATIONAL COUNCIL FOR THE RIGHTS OF PERSONS WITH DISABILITIES

ICT Rights of Persons with Disability Act, 2020, Section 21/1 strengths and reconstitute the National Council for the Rehabilitation of disabled persons and make this council stand reconstituted as the council of rights of persons with disabilities. This council consists of sixteen persons including Chairperson and Vice Chairperson with fourteen members. Three of them are persons with disability. The following is the structure of the National Council for the Rights of Persons with Disabilities;

“A Minister -in-Charge; Chairperson, Vice Chairperson Secretary of the Division allocated with business of this Act; two members from the Senate, one each from government and the opposition; Members; Two members from the National Assembly one each from government and the opposition one representative from Ministry of Information, Broadcasting, National History and Literary Heritage not below the rank of Joint Secretary one representative from Ministry of Finance, Revenue and Economic Affairs not below the rank of Joint Secretary, one representative from the Division allocated with business of education not blow the level of Joint Secretary, one representative from the Division allocated with the business of poverty alleviation and social safety not below the rank of Joint Secretary, an officer not below the rank of a Joint Secretary of the Division to which business of this Act stands allocated, chairman, Capital Development Authority (CDA), chief Executive

or Head of National Institute of Rehabilitation Medicine (NIRM). Three persons with disability.¹⁷²

The Chairperson, Vice Chairperson and members of the council belong to different departments of the state. The function of the council is to manage and supervise the administration of rights of persons with disabilities. They also representatives of persons with disabilities. Chairperson and Vice Chairperson and other members belonging to different departments of the state, have already a huge burden on their heads to manage and administer their own departments. How can it be possible for them to bear a burden of another department (the rights of persons with disabilities)? In this way, can they do justice with their jobs? Off course, if they don't express the feeling of extra burden over their job verbally but they have ill feeling about this extra burden in their heart. Secondly it is also injustice with them to take the services for which they are not payed. Thirdly, this council comprises only three members with disability. This thing force us to think keeping in view the proverb "that a person who have a pain in his body, he knows what a pain is"? The persons who haven't any disability, how can they know what disability is? Therefore, the section 21 has a technical drawback and fault to make the council comprises proximately 90% representation of non-disability element in the council.

ICT RIGHTS OF PERSONS WITH DISABILITY ACT, 2020 SEEM TO BE A POLICY RATHER THAN AN ACT

ICT Rights of Persons with Disability Act, 2020 seem to be a policy rather than an Act. This act where it entails the services or rights in its sections, it uses the terms "Shell Ensure, Shell take measures, Shell take necessary

¹⁷² See Section 21, ICT Rights of Persons with Disability Act, 2020.

steps, Shell establish, May set up” These terms are often used in a policy rather than in an Act. Secondly, there is no any time framework or time limits for Provision of services to persons with disabilities. As we note in section 7;

“The government as well as the private sector shall take necessary measures towards allowing ease of access to the persons with disabilities to public buildings, hospitals, recreational facilities, public transport, streets and roads for which the old buildings and vehicles shall be appropriately modified and new buildings and vehicles shall be built conforming to appropriate standards in conformity with guidelines developed by the Council:

Provided that the government shall ensure accessible washrooms, toilets and bathrooms with all the facilities and necessary accessories”.¹⁷³

The section 7 has six total number of sub-section. All these sub-sections entails the right of ease of access and mobility but there has not been entailed any time framework or time limit for provision of these services. What will make bound the services providers in public and private sectors to provide these services up till this time (month/year). Section 7 has an ambiguity in this Act.

Redesigning the discrimination clauses in the constitution of 1973 in order to bring the disability rights in line with the provisions of the constitution of 1973

As it is claimed in the preamble of ICT Rights of Persons with Disability Act, 2020 that all issues related to disability should come in line with the Provisions of the

¹⁷³ See Section 7, ICT Rights of Persons with Disability Act, 2020.

constitution of the Islamic Republic of Pakistan. In order to obtain this objective, it is a dire need to redesign the discrimination clauses in the constitution of 1973. Clause 25 is about equality of citizen. Its sub clause says about discrimination.

“(1) all citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children”.¹⁷⁴

The Clause 26 sub clause 1 says about discrimination in respect of race, religion, caste, sex, residence or place of birth.

“In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth”.¹⁷⁵

The Clause 27 sub clause 1 says about discrimination in respect of services and employment.

“No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.”¹⁷⁶

The above mentioned clauses of the constitution of Islamic Republic of Pakistan says about non-discrimination against any person on the basis of race, religion, caste, sex, residence or place of birth. There is no mention of discrimination on the basis of disability in these clauses. It is therefore, necessary to redesign the

¹⁷⁴See Article 25, sub clause, 2. The Constitution of Islamic Republic of Pakistan, 1973

¹⁷⁵*Ibid* Article 26, sub clause, 1

¹⁷⁶*Ibid* Article 27, sub clause, 1

discrimination clauses in the constitution of 1973 by inserting the word “disability” in order to bring the disability rights in Pakistan in line with the provisions of the constitution.

CONCLUSION

As there have been a protest of persons with disabilities in the country for the last certain years. The federal government has very hastily enacted the bill of ICT Rights of Persons with Disability Act, 2020 as the result of that protest. Actually, this act is a dust thrown in the eyes of the persons with disabilities or just it is a “dalasa” consolation to the persons with disabilities. We may say that this enactment is a “tikki Taaffe” given to the persons with disabilities and they have been happy with this “tikki Taaffe”. There is a dire need to remove technical drawbacks and short comings in this Act and revise this enactment.

IHSAN COURTS: AN ALTERNATIVE DISPUTE RESOLUTION REMEDY

Dr. MUHAMMAD AMIN^{177**}

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 *tassuwuf* departs it from rights perspective which is a complete from 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 from 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. That’s why the term “*Ihasn*” has been used in the Quran in rights perspective. This Article will assess the legal worth of principle of Ihasn in addition to its usage as a moral principle in Islamic literature. It will also discuss the principle of Ihsan as providing the basis for establishing Ihsan courts as an alternative dispute resolution remedy.

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Keywords: Ihsan, Tassuwuf, Morality legality, Human Rights, Ihsan Courts,

I. 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 *tassuwuf* departs it from 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 from 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”¹⁷⁸

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. That’s why the term “*Ihsan*” has been used in the Quran in rights perspective. This Article will assess the legal worth of principle of Ihsan in addition to its usage as a moral principle in Islamic literature.

¹⁷⁸.Muslim 2 : 4

وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا¹⁷⁹

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

لَطَّاقٌ مَرَّتَيْنِ ۖ فَاِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ¹⁸⁰

(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”¹⁸¹

II. HOW IHSAN DEVELOPED FROM MORALITY INTO LEGALITY

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 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*

¹⁷⁹.Qur'an 17:23

¹⁸⁰ Al-Baqarah 2:229

¹⁸¹Samarqandi,Nasar ibn Muhammad ibn Ahmad, *Tafseer Samarqandi baharul uloom*, Darul kutab al- ilmia, Berut.V:2 P:241

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:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ¹⁸²

(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 remained sally agreed and contended over receiving less than his right is an additional thing over Adl that is called Ihsan. Ihsan has greater Importance than Adl in the

¹⁸².An-Nahl 16:90

society. If Adl is a foundation of society, Ihsan is a beauty and complement of the society. Adl saves the society from injustice; 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.¹⁸³

The example in second situation, it is an 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 Adl their employment needs cannot be fulfilled. Adl is unable to help out the disabled persons in providing them with jobs. By acting upon Adl, they would be left back in race of life. Now what should to do? By strictly sticking to 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 Adl, it should be given by Ihsan” here in this case, 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.

“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

¹⁸³ Modudi, abual ala, Sayyad. *Tafheemul Quran*, V:2 P:565

person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration 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 Government¹⁸⁴; (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.¹⁸⁴

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.

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ¹⁸⁵

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

The wages are the prices for the services the employee rendered, therefore, these are given on the basis of Adl and allowances, an extra amount over wages for any additional need of an employee that are given on the basis of 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

¹⁸⁴. See the Payment of Wages Act, 1936, Section 2 (Definitions), Sub Clause VI

¹⁸⁵ An-Nahl 16:90

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 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 not attract someone to give them something or not. It is totally depending upon kindness of a person, whether 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 *ihsan* taken merely in moral sense. Inevitably, the concept of 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 weak class of people. The Holy Prophet ﷺ divided 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.¹⁸⁶ 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 for the ruler of the Muslims whenever a territory of non-Muslims comes under his control by

¹⁸⁶ Abu dawood

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 Prophet ﷺ retained 18 parts of khaiber lands with baitul mal just to distribute its benefits to the poor class of people”¹⁸⁷

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 prophet ﷺ 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 رضي الله عنه demanded distribution of the whole land of Egypt just as the Holy Prophet ﷺ had distributed the khaiber’s lands. About the conquered lands of Syria and Iraq. Bilal رضي الله عنه 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 Muslims. Mu ‘adh bin jabal رضي الله عنه 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 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

¹⁸⁷ Abul ala, modudi, Sayyad, *Tafheemulquran*, V:5 P:398

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 رضى الله عنه 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?¹⁸⁸

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 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

¹⁸⁸ Yaqoob ibn Ibraheem, Abu Yosuf. Kitabulkhiraj.

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 رضي الله عنه, but nothing could be decided. At last, Umer رضي الله عنه 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,

وَالَّذِينَ جَاءُوا مِنْ بَعْدِهِمْ¹⁸⁹ -----

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

¹⁸⁹ Al-Hashr 59:09

III. 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.¹⁹⁰ 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 law; and is a universal truth”¹⁹¹ 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

¹⁹⁰ Naveed, Abbas, *Principles of Equity*, Punjab law book house, Ed 2018, P:6-7

¹⁹¹ Dudley v. Dullely (1705) 24 E.R. 118]

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.¹⁹²

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 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

¹⁹² B.M Gandhi, Equity, *Trust Specific Relief ACT*, Kausar Brothers, P:9-10

law, but according to justice, equity and good conscience.¹⁹³

IV. CONCLUSION

Here having briefly studied the theory of *Ihsan* in legal perspective and 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. It is dire need of the time to revive the equity courts in English law as well as *Ihsan* courts in Islamic law as an alternative dispute resolution remedy.

¹⁹³Snell’s *Principles of Equity*, Ed, 27th P:6

CRITICAL ANALYSIS OF UNIVERSALISM/RELATIVISM OF WOMEN RIGHTS IN THE CONTEXT OF ISLAMIC NOTION THROUGH THE PRISM OF CEDAW

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ABSTRACT: The women rights and status of women have always been under discussion throughout the world during all the points of time. Media reports also portray the picture of various incidents which create misconceptions of deprivation of women rights on religious grounds and in such situations Islam is considered to be the prime reason for implying impositions on women treating them rigidly and in a conservative manner. Rather, the women rights provided by Islam are liberal to such an extent which no other religion has previously ensured. The Divine book Al-Quran has not only provided strict instructions regarding women rights but also has mentioned for strict liability for those who will cross the limits of Allah while violating these rights. This research paper has been intended to describe the status of women as provided by Islam and highlight their fundamental rights as mentioned in the Holy Qur'an and Sunnah. Application of CEDAW and its limitations have also been discussed

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in various scenarios and in combination with the Islamic provisions regarding the subject matter giving reference to and comparison between two of the Islamic Jurisdictions i.e. Saudi Arabia and Malaysia to identify, explore and finally conclude as to whether the Islamic concept of women rights is universal or relative.

Key Words: Women Rights, Islamic concept, Universal, Relative, CEDAW

INTRODUCTION: The position of Muslim countries on women's rights has always been under discussion at various platforms. Media also plays a major role while reporting about the women rights and the relevant incidents if happen anywhere. Conceptual construction about enforcement of these rights through the prism of media particularly with respect to Muslim nations often built misconceptions at international level as being departed from the actual story. While writing or speaking about the Islamic perspective on any issue, one ought to know about the normative teachings of Islam. To understand what are the teachings of Islam, it is necessary to resort to the primary sources of Islam and those are; Quran and Sunnah.¹⁹⁷ Quran is the divine revelation which provides a complete code of life for mankind, whereas, Sunnah pertains to the actions of the Prophet Muhammad (PBUH), the last Messenger of Allah, in accordance with the Quranic Injunctions.

Talking about what the Women Rights are, if we simply look into its literal definition according to the Oxford dictionary i.e. “*the Rights that promote a position of legal and social equality of women with men*”, we come across

¹⁹⁷ Badawi, J. A. (2016). *Gender Equality in Islam: Basic Principles* (2nd ed.). Durban: IDM Publications and Research Unit.

a very narrow view limiting these rights only to the parameter of equality. It is not as simple as putting these words together because there are involved many aspects such as social, religious and practicality of these equal rights. If the matter is viewed in religious context, the definition will be found different from that which is provided in the dictionaries.

Every religion ensures rights of individuals through its laws and teachings and determines whether these rights are universal, relative or subjugated. If we have to determine what kind of rights any society or religion offers to women, we have to analyse the laws which are creating rights and duties, to observe whether these rights follow the *rule of proportionality*. In the Shariah legal system the rights of women are theoretically depicted as universal. Countries all around the world are expected to follow the guidelines adopted by the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) which is an international legal instrument requiring elimination of discrimination against women and girls promoting equal rights for women and girls.¹⁹⁸

Through this research it has been tried to critically analyse in the light of the CEDAW, the extent to which the Islamic concept about the right of women as to their universality could be validated in practice. The study has also highlighted application of CEDAW in Saudi Arabia and Malaysia, two of the most important Islamic countries, exploring the limits of application of the CEDAW within their jurisdiction.

¹⁹⁸ UN Women. (2016). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Youth*. UN Women Headquarters.

Status of Women in Pre-Islamic Era

Before understanding the rights of women after advent of Islam as ensured under Muslim law it is essential to recall the status held by the women in the time of ignorance and the common practices and customs exercised in ancient civilizations. The fact cannot be denied that the women in the past were treated inhumanly and in an oppressed manner before emergence of Islam. For centuries the women were considered to be inferior to men and this belief was linked with the 'Natural law' despite of being contradictory to the divine revelations of that time which were also providing teachings of equal treatment, kindness and humanity for everyone.¹⁹⁹

In the past, the women were treated badly and were held liable for the acts they had not committed. Examination of the Babylonian civilization revealed that, the act of murder committed by a man was held punishable with the death of his wife.²⁰⁰ Further, in the Greek civilization which is also known as great civilization people believed in the existence of an imaginary woman known as *Pandora* who was deemed as the reason of all evils.²⁰¹ She was considered as the first woman and also was believed as wrath of Zeus. The people alleged her responsible for bringing all the illness to the world.²⁰²

Even in the Roman civilization the women were used to be treated poorly and were considered merely to be the instrument for sex and pleasure. Prostitution was also legal and no rights were given to women. They used to

¹⁹⁹ Engineer, A. A. (2008). *The Rights of Women in Islam* (3rd ed.). New Delhi: Sterling Publishers Private Limited.

²⁰⁰ ACW. (2017, January 11). *Ancient Babylonian Civilization*. Retrieved from <https://ancientcivilizationworld.com/babylonians/>

²⁰¹ Cartwright, M. (2015, July 27). *Definition: Pandora*. Retrieved from <https://www.worldhistory.org/Pandora/>

²⁰² *ibid*

be maltreated to such an extent that a husband had the authority to kill his wife and daughter if they ever disobeyed his command or challenged his order.²⁰³

These situations portray what kind of life the women were used to living in that era and how brutally they were behaved under oppression and tyranny in a male dominating society rather better to say, a male ruling society, where the fate of women was used to be written by men. Finally, the darkness ended with the dawn of Islam which brought revolutionary changes by uplifting the status of women giving them respect, dignity, and assurance of protection of their rights.

Women rights within Islamic Nations: A Universal or Relative Notion?

The origin of Islam dates back to the 7th Century in the Arabian Peninsula. Before the emergence of Islam in the Arabic nations it was believed that the birth of a female child was dishonor and an embarrassment and very often, they buried the child alive.²⁰⁴ Further, in the Indian sub-continent the treatment with women was worst as they were indulged in a practice similar to the Arabic Nations wherein, they used to bury the newborn females alive at the time of their birth, but it did not stop only here.

There was another inhuman custom of *Sati* practiced by the Hindus which involved burning of wife of the deceased with his corpse as they believed that the wife has no purpose left to live after the death of her husband. In fact, this practice of *Sati* is still prevalent in certain rural areas of India even as of today. The ruling head is

²⁰³ Simkin, J. (2020). *Women in the Roman Empire*. Retrieved from <https://spartacus-educational.com/ROMwomen.htm>

²⁰⁴ Islamweb.net. (2018). *Status of Women before Islam*. Retrieved from <https://www.islamweb.net/en/>

the elder male member of the family who takes decisions for all the family members without seeking consultation or opinion of any of the females who are also not considered entitled to any property rights as it is assumed that their needs are only limited to food, clothing and shelter which is being provided to them and their duty is to serve the family and look after the house without any interference in any matter.

Islam provides entirely different status to women giving them due respect and declaring their rights and privileges. This research is relating its discussion with respect to the position of women in Islam in four different domains of life including i) spiritual, ii) economics, iii) social and iv) political.²⁰⁵

Discussing the first aspect as to whether men have been attributed with the higher level of *spirituality* than that of women it is evident from the verses of the holy Qur'an that men and women have the same human spiritual nature as has been mentioned in the verse²⁰⁶:

"O mankind! reverence your Guardian Lord, Who created you from a single person (nafsin-waahidah), created, of like nature, his mate, and from them two scattered (like seeds) countless men and women; reverence Allah through Whom you demand your mutual (rights) and (reverence) the wombs (that bore you): for Allah ever watches over you"

These verses establish the fact that every human whether man or woman, are both created from same entity. Spiritually no one is better than the other and if both originate from the same place then the idea of one being superior over the other cannot arise. In Islam the

²⁰⁵ Badawi, J. A. (2016). *Gender Equality in Islam: Basic Principles* (2nd ed.). Durban: IDM Publications and Research Unit.

²⁰⁶ Al-Qur'an, Surah-An-Nisa (4:1)

superiority of men is not measured by virtue of ancestry, family, status, position or gender but it is weighed on the basis of *Taqwa* which can be explained as “*Consciousness of the responsibilities towards Allah, fear of Allah, obeying Allah and trying to please him by doing good deeds, avoiding sins and refraining from hurting people*”.²⁰⁷

In the holy Qur'an Allah has clearly declared that, “*Indeed the most noble of you in the sight of Allah is the most righteous of you*”.²⁰⁸ The important of *Taqwa* as the criterion in grading of people before Allah has also been stated by the Holy Prophet (PBUH) in the words, “*The most superior people in my eyes are those who have Taqwa, no matter who they are and whatever rank and position they hold*”.²⁰⁹

The next is the position of women in *economic aspect*. Islam is the only religion which has provided economic protection to women declaring their rights and creating obligations for the men, who are their custodians in any capacity, to ensure their financial rights for their respectable subsistence and sustenance in life. For the first time in Islam the share of women in property of their parents, husband and close relatives was defined with a specified ratio with the strict command of not depriving them of their right to their share.²¹⁰ Women are not required to spend money on household or bear expenses for their survival as they are declared to be the responsibility of their men. Women are also held entitled for financial support and maintenance²¹¹ during the

²⁰⁷ IGMG. (2023, February 2). *Superiority is only with Taqwa*. Retrieved from <https://www.igmg.org/en/superiority-is-only-with-taqwa/>

²⁰⁸ Al-Qur'an. (49:13). Surah Al-Hujurat.

²⁰⁹ Ibn-Hambal. (V-236).

²¹⁰ Al-Qur'an. (4:11-14). Surah Al-Nisa.

²¹¹ Al-Quran. (4:34). Surah Al-Nisa.

period of their marriage and the period of *Iddah*²¹² in case of dissolution of marriage, even she is entitled to her share from the property of her deceased husband. In case of dissolution of marriage husband is liable to afford expenses of his children out of that wedlock whether they live with him or with their mother.

Along with economic stability and protection, Islam also shows a very liberal behavior towards women with respect to their individual growth in *social* and *political*²¹³ prospects. Islam acknowledges their wisdom and bravery and recognizes their talent which has been bestowed upon them from Allah as men and women have been created equally in their inherent tendencies. Although the men have been produced naturally with physical strength and valour and are entrusted with the responsibility to lead as head of the family and custodian yet Islam does not provide for any discrimination among men and women on any basis. If women have the tendency to excel in any walk of life they are not religiously prohibited.

Hazrat Khadija (R.A.) was an eminent merchant of her time and was the first woman who embraced Islam. She was the first wife of the Holy Prophet (PBUH). Due to her entrepreneurial prowess, managing skills and integrity she surpassed all other Quraysh traders in scale and reputation for fair dealings and high-quality goods while trading between Mecca, Syria and Yemen.²¹⁴

²¹²Asari, K. N., M. Makhtar, N. A. Hamid, F. Abdullah Asuhaimi, and N. A. Pauzai. "Iddah Maintenance: Concept, Issues and Methods of Enforcement." *PERTANIKA JOURNAL OF SOCIAL SCIENCE AND HUMANITIES* 25 (2017): 145-151.

²¹³ Nadia, Z. (2017). Women Political Participation in the Era of Prophet Muhammad: Study on the Hadith Transmitters of the Women Companions. *Al-Albab*, 6 (1), 55.

²¹⁴Dawat-e-Islami. (2023). *Biography of Khadija Tul Kubra*. Retrieved from <https://www.dawateislami.net/events/en/khadija-tul-kubra>

Hazrat Aisha (R.A.) who was the last wife of the Holy Prophet (PBUH) and daughter of the Caliph Hazrat Abu Bakr (R.A.) was an enlightened thinker, source of Ahadith and Sunnah, science expert and brave woman.²¹⁵

Women in the recent times are enjoying strong social status as Islam teaches about the equal status of men and women without any discrimination. The father with two or more daughters who treats them well, brings up them in good manner, educates them and then get those married, has been promised by the Holy Prophet (PBUH) that he will be shielded from the Fire on the Day of Resurrection and will be with Him in Jannah.²¹⁶

The Qur'an went further to rebuke the unwelcoming attitude of some parents upon hearing the news of the birth of a baby girl, instead of a baby boy:²¹⁷

“When news is brought to one of them of (the birth of) a female (child), his face darkens, and he is filled with inward grief! With shame he hides himself from his people because of the bad news he has had! Shall he retain her on (sufferance and) contempt or bury her in the dust? Ah! What an evil (choice) they decide on!”

Islam has explicitly banned this practice and under Shariah Law it is liable to be criminalized.

With the participation in the social well-being of the society, Islam has also not imposed any restriction on the participation of women in political in various roles starting from voting in elections, to holding position as a legislator, a judge or a head of state. Allah has not defined any specific social or political role specifically to be performed either by men or women. In the Islamic

²¹⁵ Bilal, A. (2012, June 24). *Qualities of Aisha and her Role in Islam*. Retrieved from <https://www.quran-o-sunnat.com/qualities-of-aisha-and-her-role-in-islam/>

²¹⁶ Sunan Ibn Majah 3669. (n.d.). Hadith 13. *Book 33*, 5.

²¹⁷ Al-Qur'an. (16:58-59). Surah Al-Nahl.

history there have been eminent female personalities who ruled the countries and participated in politics.²¹⁸

Effects and Limitations of CEDAW

Convention on the Elimination of All forms of Discrimination against Women (CEDAW) is an international Treaty devised by the United Nations General Assembly. It is often described as bill of Rights for Women.²¹⁹ It was presented on 3 September 1981 and has already been ratified by 189 countries including countries like Saudi Arab, UAE, and India but has not been ratified by the USA. Countries that ratify CEDAW are required to work towards the implementation of its provisions and to send to the CEDAW Committee a periodic report, usually every four years, providing proof of their progress.²²⁰

Some of the major provisions of this convention include Article 16 of the Convention which provides for the rights of women regarding marriage. Further, Article 15 of the Convention talks about the above discussed dilemma concerning the biggest hindrance to establishing the rule of universal rights for all women, which are the norms and the domestic law of the nation or their culture. According to this convention, state parties are expected to review the effectiveness of current laws on women, amend certain laws that discriminate against women and

²¹⁸ Rahman, F. N., & Memon, D. K. (2015). Political Participation of Women: Contemporary Perspective of Gender and Islam. *researchGate* .

²¹⁹ United Nations General Assembly. (1979, December 18). *Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979*. Retrieved from [https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women#:~:text=The%20Convention%20gives%20positive%20affirmation,human%20rights%20and%20fundamental%20freedoms)

women#:~:text=The%20Convention%20gives%20positive%20affirmation,human%20rights%20and%20fundamental%20freedoms

²²⁰ *ibid*

send regular reports on their progress to the UN Division for Women's Advancement (DAW).²²¹

Article 5 of this convention enunciates that State parties shall try to change the social and cultural behavioral patterns of men and women in order to eradicate discrimination based on the stereotyped belief of women being inferior. We can see here that the CEDAW has blurred the division between the public and private realms and is the first international treaty to do so, however, every Islamic country which has become a party to the convention has voiced their concerns that certain elements of the CEDAW may be contradictory to the Islamic traditions.

This article poses multiple questions regarding the practicality and applicability of this convention. As discussed earlier almost all Islamic countries have ratified to this convention but mere ratification will not ensure that the parties will amend the norms prevalent in their society. Hence, it raises the question regarding the practicality and applicability of this convention. This leads us to the fact that simply making a treaty or law is not nearly enough and what is most important is the execution of that act or law into the various different societies and cultures existing within the parties to such conventions.

Women in Saudi Arabia

Countries like Saudi Arabia which is the birthplace of Islam and considered to be one of the places where Islam is practiced in a strict sense is also among those parties who have ratified to CEDAW. A *prima facie* analysis of

²²¹ Weiss, A. (2003). Interpreting Islam and Women's Right Implementing CEDAW in Pakistan. *International Sociology*, 18 (3), 581-601.

Saudi Arabia allows us to discern that there are so many contradictions within the rights of women provided by the nation and those prescribed under CEDAW and it can be conclusively stated that Saudi Arabia uses Islam as an excuse to dominate and oppress women.

Article 5 of CEDAW states that parties will amend and makes new rules that ensure the eradication of discrimination against women, Saudi Arabia however still makes it illegal for women to swim in an open-air public pool.²²² Further, despite the fact that Saudi Arabia ratified to CEDAW on 7th September 2000, obtaining a driving license or driving was illegal in Saudi Arabia until 2018²²³ which is a clear contravention to the provisions laid down under the CEDAW which explicitly states that state party will make new laws and amend those which threatens or is biased against women.

There are many such biased laws in place in Saudi Arabia for example even though women are now allowed to drive, they cannot do so alone and must be accompanied by a male member of their family being either husband, son, father or brother.²²⁴ Moreover, women of Saudi Arab faced many practical problems for example shopping for their private things, wearing articles or utility products was to be done at shops that were controlled and operated by male helpers as women were not allowed to work and this made them highly

²²² United Nations General Assembly. (1979, December 18). *Convention on the Elimination of All Forms of Discrimination against Women* New York, 18 December 1979. Retrieved from [https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women#:~:text=The%20Convention%20gives%20positive%20affirmation,human%20rights%20and%20fundamental%20freedoms)

women#:~:text=The%20Convention%20gives%20positive%20affirmation,human%20rights%20and%20fundamental%20freedoms

²²³ BBC. (2017, September 27). *Saudi Arabia Driving Ban on Women to be Lifted*. Retrieved from <https://www.bbc.com/news/world-middle-east-41408195>

²²⁴ *ibid*

uncomfortable and uneasy.²²⁵ However, after considering the sensitivity and nature of the problem, it was decided that the areas where there is an absolute need for women, be operated by the female workers but they would be employed only with the permission of their 'Mahram'.

Mahram is an Arabic term that means the guardian and includes their father, brother, husband or son. Even today women are still not allowed to be employed or to work without the permission of their Mahram.²²⁶ Without accompanying the Mahram no Saudi women is allowed to travel freely around the country even any women coming from other Muslim country was not allowed in recent past to enter into the borders of Saudi Arabia without Mahram or prior formalities as to permission or reason to travel alone. However, some leniency in this rules has been observed after the royal decree passed by Muhammad Bin Salman giving special permission to women to travel without the Mahram.²²⁷ In fact, in Saudi Arabia there is a restriction on the clothing that is donned by women and women are prohibited from revealing their skin or being a part of the fashion or media industry.²²⁸

Women in Malaysia

Examination of religious practices has also been made in this research about another Islamic Republic Country

²²⁵ The Week. (2021, September 25). *What Women can and can't do in Saudi Arabia*. Retrieved from <https://theweek.com/60339/things-women-cant-do-in-saudi-arabia>

²²⁶ Wagtendonk, A. V. (2019, August 3). *Saudia Arabia Changed its Guardianship Laws, but Activists who Fought them Remain Imprisoned*. Retrieved from <https://www.vox.com/world/2019/8/3/20752864/saudi-arabia-guardianship-laws-women-travel-employment-mbs>

²²⁷ *ibid*

²²⁸ *ibid*

where Islam is practiced as an official religion which is Malaysia. Malaysia ratified to the CEDAW on 5th July 1995 with a number of controversial reservations with respect to certain articles or provisions laid down therein.²²⁹ These reservations were mainly attributed to and include Article 16 which is related to women and family.²³⁰

Article 16 of the CEDAW provides that the parties to this convention shall take the appropriate measures to eliminating discrimination against women in all matters relating to marriage and family relations ensuring equality between men and women. Malaysia's concern, however, was not to include the entire Article 16 but was restricted only to certain sub clauses of the same which are as follows:

- a. *The same right to enter into the marriage;*
- b. *The same right freely to choose a spouse and to enter marriage only with their free and full consent;*
- c. *The same rights and responsibilities during marriage and at its dissolution.*
- f. *The same rights and responsibilities with regard to guardianship, ward-ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*
- g. *The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.*²³¹

²²⁹ Syahirah, S. (2010). *The Implementation of CEDAW in Malaysia: A Human Rights-Based Analysis*. Retrieved from https://www.researchgate.net/publication/273700191_The_Implementation_of_CEDAW_in_Malaysia_A_Human_Rights-Based_Analysis

²³⁰ *ibid*

²³¹ OHCHR. (1979, December 18). Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979. *Article 16*. United Nations General Assembly.

The reason why Malaysia expressed their concern regarding the aforesaid sub clauses of Article 16 to the convention was because they considered it to be against their culture and religion.²³² For example, article 16 (c) states same rights to enter into marriage and dissolution but according to Islam the rights to enter into a marriage are equal to both men and women, however, the procedure for dissolution of the marriage is not equal.

Critical Analysis between Two Countries: Saudi Arabia and Malaysia

In contrast to Saudi Arabia, half of the enrolment of pupils in primary and secondary schools is female and the proportion of women is high. According to the national statistics the number of women in a Malaysian public university in 2005 was 61.2 percent.²³³ In practical field from parliament to technician work, many women contribute in a professional field and unlike Saudi Arabia, in Malaysia women go out to work and engage in various professions ranging from full-time practical jobs to odd part-time jobs. Women have complete freedom and equal opportunities to work alongside men in Malaysia.

The reason behind discussing Malaysia is that although it is also an Islamic country like Saudi Arabia but still the perception and practice of Islam is very different. Further, in Malaysia, consumption and sale of alcohol is legal and there are cinemas, pubs and clubs for tourists, therefore, it is safe to conclude that if a country has some conservative practices and norms it is not because of the religion or in the context of Islam, instead it is their

²³² *ibid*

²³³ Sheikh, S. S. (2010, November). The Implementation of CEDAW in Malaysia: A Human Rights-Based Analysis. *ResearchGate* .

society and its customary practices for them. The contradiction between two Islamic countries clearly indicates that when any particular country suppresses any class or gender of the society it might be because of their cultural norms or anarchy but the religion has nothing to do with it. The Malaysian government believes in universality of rights among all. Two countries same religion one beliefs in women should have equal rights and ensure it by their legislation consequently giving equal opportunities to women.

When any country uses its religion to impose a partiality or biased perception against any particular gender or religion, this should be unacceptable and must be condemned. Today, most of the Islamic nations provide and ensure same and equal opportunities for women to showcase their talent. The above comparison allows deducing that countries like Saudi Arabia or Afghanistan impose strict rules under the guise of Islam as a religion to the extent that they infringe some of the most basic and crucial fundamental rights of them.

Islam however does not propagate such biased ideologies and, in fact, it has put an end to these barbaric rituals of killing²³⁴ as it had set examples even during early times by allowing women to contribute equally and alongside men. Women were even allowed to participate in wars, were assigned roles on the basis of their skills and had held positions such as nurses etc. Islam also actively sought and encouraged women to be free to choose whatever profession they were interested in. In the era of Prophet Muhammad (PBUH), women also used to serve as teachers. In Islam women had been the brilliant

²³⁴ When Women Demand Prayer Space. (2019). *Journal of Middle East Women's Studies*, 125-134.

judges, politicians, military officials, doctors, scientists etc. whatever they liked to be.

There is absolute freedom for women to choose their profession even in the so-called radical countries like Pakistan where there is a misconception that they are rigid and extremely orthodox even then they had their same female Prime Minister for twice and the female Chief Justice of the High Court along with so many other renowned females in various professions and fields. As compared to the rest of the countries of South Asia²³⁵ or the Middle-East, Islam is being practiced very moderately in Pakistan, especially with respect to gender equality as the equality has been ensured by the constitution of Pakistan itself.²³⁶

Conclusion

To conclude, it is safe to say that the difference in conceptualizing the status of women in various countries is due to the interpretation of the concept according to the social and cultural requirements but the teachings of Islam remain the same everywhere. The rights of women are universal it does not matter if you live in the USA or Syria your rights remain the same. CEDAW which is considered as a Bill of Rights although has certain limitations. It would not be wrong to say that it is the only but most powerful document safeguarding the rights of women. CEDAW demands reports on the progress of the state parties yet did not take a serious stance if there has been any violation of the rights. Countries like Saudi

²³⁵ Abbas, M. B. (2014). Gender and Islam in Southeast Asia: Women's Rights Movement, Religious Resurgence, and Local Traditions. *American Journal of Islamic Social Sciences* , 31 (2), 75-99.

²³⁶ The Constitution of the Islamic Republic of Pakistan. (1973). Fundamental Rights. Art 8-28 .

Arabia and Afghanistan are part of this Convention, yet they make no efforts to uplift their deprived ones. Certain actions from CEDAW can make a lot of difference, instead of having a ceremonial annual meeting they could adopt strict policy and if any country fails to comply, it could result in imposition of certain sanctions or cancellation of aid. When there is violation of human rights it ought to be taken seriously and dealt with more severity. Many countries in Africa and Middle East who ratified the convention still violate it openly, but no measures are taken to ensure that the difference is eradicated. Many countries have used Islam as their shield to establish the superiority of males and have oppressed the women. This essay has explained well the Islamic point of view about women rights and their status basing on equality and fair-play and can be rightly concluded at the end that it is just a manipulation of concept to hold the dominant or superior position as against the women to create gender bias. Islam was revealed at the piece of land where immoral and inhuman customs and practices were common with male dominancy and disrespect for women. Islam uplifted the status of women providing the universal rules for equal treatment, elimination of gender discrimination, equal opportunities, freedom and free choices, protection from men and a respectful treatment which were incorporated in the CEDAW to be accepted and implemented as golden principles by all the nations irrespective of their religious background. Therefore, the universality of the Islamic concept of women right cannot be denied and is an established fact.