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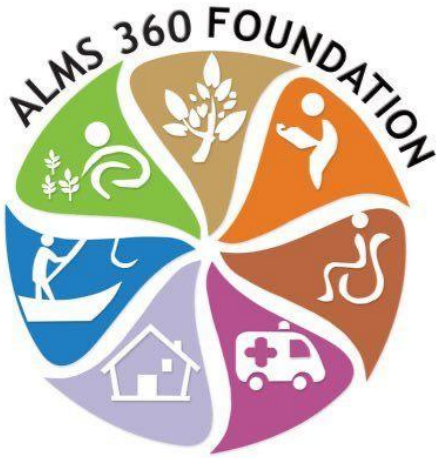

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Advocate Muhammad Alee

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Greetings again!

Continuing its legacy of issuing an annual review, School of International Law is honored to present its second edition of SIL Law Review (SILLR). The authors have put in immense effort to produce the legal analysis present ahead. Readers will find accounts pertaining to all sides of the legal spectrum, ranging from the topic of abortion to human rights.

The editorial team applauds the writers for their efforts to indulge in discussions which would encourage the readers to broaden their horizons.

We are grateful to our audience for taking time out to read what our writers have worked on, and for encouraging them even further. The opportunity to work with these scholars has been nothing short of a privilege. We hope you will enjoy what we have in store for you. This Journal and all the previous issues are available on our website: https://www.sil.edu.pk/.

Thank you!

SIL Law Review Editorial Team

THE VAGRANCY OF JUSTICE

*Muhammad Alee**

Justice is a vague and irregular concept. It is not linear, and its effective application is accepted by some, while simultaneously rejected by others. It is appraised and criticized alike; often enough justice is differently perceived at a single point in time.

Nevertheless, one must also ask what the relationship between law and justice is. The issue is an important, albeit a contentious one. Just as we need to be able to define law and justice accurately, we must also be able to delineate their coexistence within the sphere of the legal system. For if we have defined law and justice, to an acceptable level of accuracy, we cannot say that justice has been done in the courts or the legislative bodies, until we can say with certainty what role law and justice play in that legal system.

The argument presented here is a denial of any connection between the two. There may be an overlap, 'glitches' where the two concur and agree, but that is to be treated as a coincidence; an accidental feature of their functioning, but never as an essential one.

For the sake of simplicity, law will be taken here to mean the very basic concept: rules that regulate behavior and set standards. It is not our concern whether law is moral or positive, whether it is made by a legislative body or a judicial one. The primary focus is on the relationship between law and justice. This must not be confused with whether or not law is just or otherwise. It must be understood that law cannot be attributed values at all,[1] and even if it were, the value of just and not-just would not be relevant considerations for its validity.

Justice is a sociological phenomenon – an entity that is regulated by public opinion and mass acceptance of legal reasoning in different spheres of elemental existence. Our desired exploration for this essay does not require us to assess validity of law from the perspective of justice, but whether justice is connected to law i.e. whether it is even a relevant consideration. It is not intended to evaluate whether legal provisions are valid or invalid given their qualitative factor of justice inherent in the provision itself. Rather, the need is for the exploration of justice as a function separate from law, and then assessing what the connection between the two is, if any.

This agency of the law with justice, so prevalent in modern legal thought, is mistaken on the premise of coalescing the two as one. The two are separate – and must be separate – because their functions are distinct. Broadly speaking, the function of law pertains to what is right, whereas the function of justice pertains to what is fair. The initial argument will not be explored further, given the limited ambit of the current discussion. However, a single addition is deemed necessary: by right is not meant that which is objectively right in the religious or moral sense, but rather, by right is meant what is right *in the moment* to the extent where the law has already provided for a situation, resulting in a pre-determined consequence. The legality of an act is not determined as a result of the consequence; instead, the question asked is whether the action itself complies with the legal provisions applicable. It is only in the case of determining justice that we look at the consequences – another essential difference between the two concepts.[2]

On the second argument, more must be said. Justice pertains to fairness, given that it is a social phenomenon – and hence why it is separate from law, which is neither social nor moral in nature.[3] Justice is not what is argued in the legislative body, nor that which is adjudicated in the Courts. Justice is what is deemed to be fair by the polity and civil society,

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1 Hans Kelsen, 'Law, State & Justice in the Pure Theory of Law' (1948) 57 Yale Law Journal 377, 377

2 Hans Kelsen, *Pure Theory of Law* (Max Knight (tr), 2nd Edition, first published 1934, Lawbook Exchange Ltd 2009) 68

3 Kelsen, *Pure Theory of Law* (n 1) 59, Dhananjai Shivakumar, 'The Pure Theory as Ideal Type: Defending Kelsen on the Basis of Weberian Methodology' (1996) 105 Yale Law Journal 1383, 1385; Alf Ross & Henrik Palmer Olsen, 'The 25th Anniversary of the Pure Theory of Law' (2011) 31 Oxford Journal of Legal Studies 243, 245-46; Carsten Heidemann, 'Facets of Ought in Kelsen's Pure Theory of Law' (2013) 4 Jurisprudence 246, 250.

Separate from what the law dictates or provides for. Therefore, there is bound to be a difference in what we perceive to be just, where, for example, a law banning all religious affairs may be deemed unjust, but it is still law. On the other hand, there may be no law prohibiting abortions, but societal norms dictating it as unjust would lead to limited and shunned dialogue. The pluralistic dichotomy between the two is a rift sufficient to exemplify why the two must be separate.

Kelsen's predominant belief in the separation of law from the variances of social and moral phenomenon is hardly receptive of a subjective version of justice. It is implicitly a part of his doctrine that law be as separate from justice as it is from the equally subjective and relativistic concept of morality.[4] Nevertheless, it cannot be denied that the idea of justice – whichever variation is taken into consideration – is an important element that governs societal intercourse and human transactions of emotion and behavior. Much of the focus has rested on the idea of justice being a function of natural law phenomenon, which itself has been a prevalent belief in jurisprudence. Inherent within the concept is its failure to address the issue of relativity which Kelsen was at pains to highlight in both his works related to moral expression and later, justice.

Relativity in itself is nothing abhorrent, because it is capable of furnishing debate and development of thought which provides a welcome foundation for discussions on political frameworks and societal issues. The problem however becomes apparent where the idea is responsible for objective functions alone – i.e. subjective components of human life no longer form the focal point. This is the case concerning truth, law and justice. Currently, none of these precepts are capable of being defined in relative terms to ensure that their formal meaning is understood as applicable; nor, it is argued, should they be allowed to be *so* subjectively defined so as to render their function resolutely lost in the doctrinal cleavage of human analysis directed towards growth based on the subjective inclinations of factors such as social, economic, political and moral. Even if every individual in a state belongs to the exact same background (an empirical and statistical impossibility), the establishment of legal concerns – and those surrounding justice – on the basis of the environmental conditions present issues to the system, despite the individuals being catered to equally in every way. The system becomes unsustainable in the face of an outlier who would, unjustifiably, be required to adhere to the common morality and specific nuances of the society. In response to the argument that the outlier is expected to make do with his experience since he made a conscious and informed decision to be a 'visitor' to the society, it must be noted that the outlier is not necessarily an alien, and may even be from within the society – an individual who is no longer adamant to perpetually resign to the inner morality and idiosyncrasies of the society. To embrace a principle does not entail the advocacy of the principle for life, for reflection and subsequent reform are important parts of human existence. This does not mean that the system must provide for every outlier, since that too would be statistical impossibility; however, what is expected of the system is that it gives each individual a fair and equal opportunity.

Nevertheless, to say that the outlier should suffer under the system he has chosen to become a part of is to ignore the greater of two issues – the system is flawed. If an outlier has to surrender to legal systems, given the valiant variety of provisions that they exhibit, there must be something deeply wrong with the philosophy of that system. It cannot be denied that a system is made for its people, for the prevalent religious and political ideologies rampant in the region. But this too is a position lacking nuance, for systems must cater to more than simple geographical boundaries, especially so because of globalization. This is so because there can be a difference in religious and political opinion and thought within the same locality, let alone a larger State. Such differences do not give rise to the development of individual systems catering to the fundamental principles accepted by inhabitants of that system.[5] Indeed, that would be a tedious process, which once completed would need to be revised due to the rapid change in religious and political ideologies gaining traction at the time. Nonetheless, each system must go the furthest distance in ensuring that all outliers are provided for.

4 Hans Kelsen, *What is Justice? Justice, Law, And Politics in the Mirror of Science: Collected Essays* (1st edn, first published 1957, University of California Press 1971) 179: "...the values in which men actually believe are not absolute but relative values."

5 Robert Nozick, *Anarchy, State & Utopia*, (1st edn, first published 1974, Basic Books 2013) 26-7, 149. This is not to say that Nozick's idea of 'minimalistic states' is perfect, and cannot be criticized.

That would not result in the elimination of all outliers, but it would, ultimately, create a nuanced system capable of reflection and refraction. There is the additional issue of justice within this context being a simplistic and watered-down version of the ideologies of the prevailing majority. Such a conception of justice would resemble either the natural concept, or perhaps Platonic justice. It will nonetheless, fail to exhibit the virtue of objective justice.

Kelsen correctly identifies a problem at the heart of the issue:

> The problem of values is in the first place the problem of conflicts of values, and this problem cannot be solved by means of rational cognition. The answer to these questions is a judgment of value, determined by emotional factors, and, therefore, subjective in character – valid only for the judging subject, and therefore relative only.[6]

What is essentially meant here is that in assigning value, judgment of such assignment is an emotional phenomenon, and because it is based on human emotions it is automatically riddled with subjective inclinations. The conflict of values has as a solution the annexed requirement of choosing one value over another. For example, free speech and national security. The two conflict where the speech turns to hate speech that impedes public opinion of the state Government, and possibly endangering national security. A judgment based on rational cognition would attempt to align the two values and see which attributes more beneficial value, and thus being the favorable choice to protect from a legal perspective. But the arguments for the one being more beneficial than the other would be as plentiful as the arguments for the other being more beneficial. And they would be inherently subjective, given that such attribution of value is a determination of the emotional factors. The final decision would have to be relative to the subject; resultantly, being valid only for the subject. Can justice be relative in the modern world, where population is an exponentially increasing phenomenon?

Kelsen has no qualms of relative justice, but it is admitted that the relativity renders the decision applicable only to the subject at hand. In our current system, the subjects of legal system would well cross the threshold of millions of people and relativity would be a moot concept. The answer, however, lies in compartmentalization: groups of people, similarly placed in social environment, can be better suited to somewhat fixed versions of justice. The issue, however, rests with the concept of justice itself. Justice needs to be objective, since it must not be allowed to be exploitative, nor a function of governance and moralistic underpinnings. However, it is entirely likely that such a conception of justice fails to exhibit either the qualities of justice or a practical notion of it; thus, requiring a revision of our idea of justice.

This revision must come at a cost: that of its origin. It is generally perceived that justice is a direct function of law, or that it must come from offices affiliated with the law i.e. courts and tribunals. If it is admitted that justice is relative, then its value must come from a larger, more defined pool. The revision would entail justice finding its origin and its tenancy within an entirely different forum. The possibilities of such a shift are numerous, but the greatest probability entails occupancy within the largest stakeholder: the general public.

As a concept, the general public is no less ambiguous and subjective. Fundamentally, however, they are opinionated individuals who have subjective interpretations of right and wrong, good and evil, just and unjust. It is exactly this inclination that renders them the voice of justice, though no less right or wrong than any other voice. Their involvement at the nexus of the issue makes them the prime source of the reinforced concept of justice.

This introduces a larger issue: the idea that the general public's notions are subjective is at odds with the need for objectivity in justice. Three possibilities exist. First, the notion, introduced above, that justice is an exponent of society may be dropped. This has been done time and again, and is a well-documented phenomenon. However, this is precisely the problem; the tempest at the shore, the war-drums beating to the woes of the victims of a judicial system far removed from the public. Systems fail when the cogs and the spanners are interlocked in holy conflict; or, in the alternative,

6 Hans Kelsen, *What is Justice? Justice, Law, And Politics in the Mirror of Science: Collected Essays* (1st edn, first published 1957, University of California Press 1971) 4.

People part of that system does not own it. What is most fundamental for change is that the people who play the most crucial role are given a voice, and the ability to own the system; to occupy, adorn and polish it. Too often the attempts are made from the outside, with a critical eye, and an escape route. These foolish attempts fail for precisely the reason that they are made so poorly – those responsible are the least likely beneficiaries of the improvements and are often enough so far removed and out of touch with the system that they have no stake. To assume, then, that change would come from outside is precisely the problem. The inhabitants of a system must be the ones to have a leading role. It is argued that all previous attempts at justice have failed because the definition of justice has hinged on some religious, natural, sovereign or constitutional beliefs. A study of history reveals that the external beliefs are too often sacrificed at the altar of internal difficulties.[7]

It would be ideal for something far greater than the society to define justice. These definitions would, however, be a font that the people cannot read. If the purpose is to control a populace, then an external definition is welcome, and crucial, for it makes the job easier. But an internal definition ensures coherence. In logic, the rules that apply are always internal, and the inclusion of external factors and variables is deemed to be disruptive for the system. Therefore, to assume that people – the occupants of the judicial system – can be removed from its definition is cause for concern. This was well understood by Kelsen. In the Pure Theory of Law, the *Grundnorm* does not precede or predate the system in the spatial sense; it is only in the legal-logical sense that we can argue that the *Grundnorm* is the progenitor of the system. As far as the spatial value is concerned, the system is the antecedent to the *Grundnorm*. Therefore, justice must be defined through social oversight and its removal from the public sphere must be resisted.

Second, it may be argued that justice be made subjective, and submissive to ideologies. No argument needs to be provided against the sheer callow ignorance voiced by this notion, i.e. that something as fundamental to societal functioning as justice be made subjective for the sole reason that its adherence to a single code, a single monument or altar of precision is too difficult for pygmies to comprehend. Reservoirs of prior experience, the modern world, in particular the third world countries, may be cited. A quick glance, without the need to undertake in-depth study, denotes precisely the issues that arise from the subjectivity of justice. Justice is not a service to be haggled over; it is a right, and a promise, to be delivered as expeditiously as possible. It is not a currency to be traded. It is the entire economy that grants legitimacy to the republican enterprise of people. If justice is to be chosen as an illustration for the glasswork through which history will view society, it must be the hallmark of excellence. The cathedral does not want for prayers; even bereft of holy communion, a Sunday is still a holiday. We may deem justice to be fiat, but to do so is to err on three counts: logical, moral and semantic. It is, therefore, imperative that fairness is the writ at large for the sake of fairness alone. All attempts at colonializing a belief are sure to bury it in the sands of change; purely because the act itself exhibits the enforcement of the ideology.

Third, it may be argued – as is the intent of this essay – that the subjectivity of the populace's opinion on what is just can coherently be tied in with the objectivity of justice. Justice is not depleted, as if a source, due to dissent. The notion does not hinge upon agreement: society may differ, indeed it must, on what is just and fair. But to define would be to limit; the more urgent matter is to delineate how the legal system will deal with such a difference.

Let us take the example of a simple case: a young boy of 16 steals a motorcycle. A First Investigation Report is filed under Section 381-A of the Pakistan Penal Code, 1860. The determination for the judge, in the absence of any precedent, is to assess the situation afresh and do justice (which has yet to be defined, but has already, to an extent, been determined in the instant hypothesis). Possible considerations include the motive, the harm, and the context. If the boy is a habitual thief, then he ought to be punished. If, however, he did it out of hunger, he ought to be slapped on the wrists and let free. But, in the second scenario, a wrongful act is going unpunished. How, then, is that to be reconciled with fairness? Because in the alternative, if someone, compelled by hunger, steals a motorcycle and is punished similarly to a habitual thief, then the idea of justice is buried under the dead weight of equality. To treat the two as equal, simply by way of consequence, is limiting the scope of justice to kind eyes only. Under the circumstances provided, the two scenarios

7 Jérôme Mavidal and Emile Laurent, eds., Archives Parlementaires: Première série (Paris, 1867–1913), 8:110. *"It is too easy to get [the people] to abandon the constitution for bread."*

Differ, and so must their result. The issue at hand is not whether society wishes to punish a thief; it is whether or not society wishes to punish hunger. Since, currently, justice is left at the hands of the law (or the Courts), syntax is much

more important than context. And therein lies the fundamental flaw. The electorate does not, practically speaking, get a say in the provisions of the law; therefore, they get no say in the way justice is delivered. Cases are decided on the basis of precedents which hinder any connection with the local populace. However, by socializing justice, the society gains a footing in the delivery, and thus determines important questions.

by setting loose standards of acceptability, although not morality. Since, under the present circumstances, hunger is a language the citizens are fluent in, their idea of justice would be forgiving of a sin they are forced to commit. For too long, the notion of stealing bread has cornered the poor, despite their numbers, when cakes have been wasted for the sheer banality of the pleasure of those who can afford it.[8] Justice, unlike economic goods, must not be a commodity which people must be able to afford – it must be a subsidized, socialized property, benefiting all.

The issue then remains of the outliers, who are, once again, cast out of civilizations, as has often been their lot in history. Civilization, by its very definition, implies the existence of 'human debris' – a price paid for the formation of a civilized world. However, the solution offered is the localization of justice. For Pakistan, this would mean empowering High Courts to be the last Appellate Courts. The Supreme Court would be turned into a Constitutional Court which would only interpret the Constitution; all the statutes will be interpreted by the High Courts, that too without recourse to the other High Court's decisions. This would allow localization of justice within the limited jurisdiction of Province, whose inhabitants are, for the most part, similar and thus, possess a common idea of justice. The national abstraction of justice, having plagued the system with the disease of foliage, must be rid of this defect; thereby, allowing a fresh metaphysics to evolve from the corpse of this dangerous exaggeration of formalism.

One further suggestion may be made: the Ministry of Law & Justice must establish departments at the Union Council level to assess and moderate the idea of justice based on ground realities. The perpetual fear of the common man's voice in the halls of exemplary sophistication must be abandoned if the system is to be fixed. Until the proponents of the system are legitimately conscious of their ownership of it, the practical version of the system will be devoid of sound foundations. The suggestion would require Local Governments, which are provided for within the Constitution of Pakistan. Under Article 140A[9], all Provinces are required to establish local governments through legislation. It is unfortunate that the provision has been made dysfunctional: from sending the elected local governments home[10] to refusing to hold elections, our polity is plagued by a stark disregard for the rule of law mirroring the Dark Ages. Despite this fact, Article 140A must be interpreted in a manner which would 'read in' the element of justice as a devolved subject to the local administration. To put it another way, Article 140A must be interpreted to provide for 'Judicial Federalism'. Devolution would achieve what revolutions cannot.

We must forgive our ancestors for their recalcitrant sins of coalescing justice and law as one. But, as we learn from their errors, we must allow ourselves the chance to improve, and to build a more synergic society. The economy of justice must be afforded to all, and for that the part of the citizenry is crucial – irrespective of whether this would revive the sans-culotte nature of militancy or the bureaucratic tendency to ponder on the points. What is essential is the nature of acceptance offered to the idea that justice must be socialized and localized. The only version of interest, the tone of which is acceptable, is absolute. Far too long justice has been a treasure, locked inside the Captain's cabin. It must now be the bridge, the mast and the kitchen: allowing the crew agency and shares in the spoils. Languages, alone, are inept in endowing people; must we also employ the dialect of justice to this end?

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8 Anatole France, *The Red Lily*, (Unknown (tr), 1st edn, first published 1894, IndyPublish, 2006). "The poor must work for this, in presence of the majestic quality of the law which prohibits the wealthy as well as the poor from sleeping under the bridges, from begging in the streets, and from stealing bread."

9 *"**140A. Local Government.***
(1) Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.
(2) Elections to the local governments shall be held by the Election Commission of Pakistan."

10 See ***Asad Ali Khan versus Province of Punjab*** (**PLD 2021 SC 770**).

Protection of Women against Honor Killing in Pakistan

*Farhan Manzoor**

ABSTRACT

This article will focus on how Pakistan applies the legislations of Islamic Law to protect its women from being killed in the name of honor. A Comparison between Pakistan and other Muslim countries has been provided through a review of cases and existing literature in the light of statutes, to identify the existing gaps in information. There has been a growing concern of honor killings across the globe, however it has mostly been witnessed in Muslim countries, especially in Pakistan. Countries. In the past the Hudood Ordinance considered the murder of a woman as a private matter which was to be dealt by the family members. This has led to many women across Pakistan becoming prey to domestic violence.

Even though Islam idealizes equality of both the genders in line with their honor and poise, but people have started manipulating information about women's rights in attempts to desensitize them. Hence, in order to understand this stance, it is essential to characterize the term itself. There seems to be the presence of mediators in honor killings and many people coordinate in the process. However, the presence of such crimes in regions where the legal structure does not safeguard women is readable. The situation becomes vexed when Muslim countries that follow the Shariah law have already structured women protection laws fail to prevent such offenses.

Pakistan has been in a constant state of interlinking the Islamic principles of developing the legal system with the influence of the British pass overs. Several requirements of Islamic Law are integrated by the Pakistan Penal Code. Various differences in the public, criminal and Islamic regulations are reflected in the intersection and usual competition between the jurisdictions and court organizations, and these are embraced by the judicial framework of Pakistan. Under the umbrella of the Hudood Ordinance, various beliefs in the criminal court are catered to by the appellate courts.[11] The appellate courts collectively constitute the Federal Sharia Court (FSC) and the Shari'a bench of the Supreme Court, and it is a necessity for the judges of these courts to be Muslims.[12] Any lawmaking that is arbitrated can be overturned by the FSC in Pakistan if it is not unswerving with the beliefs of Islam. However, it was governed by the chief justice of the Supreme Court of Pakistan that a judgment made by the high court of provinces cannot be reread by the authority of the FSC. This is not possible even if the original reversal prerogative is owned by the FSC.

Thus, discrimination against women has been seen in the legal system of Pakistan, through the insight into the Hudood Ordinance of Pakistan on the basis of the provision of proof. After the announcement of the decision in the **Federation of Pakistan v. Gul Hassan Khan** case, a rather amiable surrounding for killings in the name of honor was promoted due to the initiation of the Hudood Ordinance.

The death sentence can be announced by the courts in Pakistan, and processes of "stoning, lashing, or amputation," can be forced upon for some wrongdoings.[13] Even though such misconducts rarely take place in areas other than the tribal regions. There are various subdivisions of the judiciary, such as the executive and the legislative ones. The former only grants restricted liberation to the judges, whereas the latter is always in the trials of eliminating themselves from legal omission. At the same time due to little public reliability, colossal surfeits, exploitation, and missing means, the judiciary agonizes.

The rule of the army has caused suffering to the expansion of the Rule of Law in Pakistan.[14]. Zia-ul-Haq's presidency brought about a number of changes in the Pakistani legal system which lead to the identification of various laws related to women's protection. A complex structure followed the program of Islamization led by Zia. His outlook was completely opposite to the contemporary ethos where people deemed themselves as religious personally but not publically. This led to the stimulation of factionalism as the country began to rely on Islamic policies and this was a result that was not expected. It was due to this promotion, that issues like honor killings were given birth. This was also due to the regulations of acts as Islamically acceptable and unacceptable. It was due to the elimination of preceding assemblages that Islam was unable to offer the intended unity due to which issues such as honor killings rose because Islam was not being referred to as a shared lexical for public ethics.

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[11] Hudood Ordinance, 1979 pdf (2022)

[12] Tahir Wasti, *The Application Of Islamic Criminal Law In Pakistan: Sharia In Practice* (Brill 2009).

[13] The Constitution of Pakistan, 1973 pdf

[14] XXXIX The Pakistan Army Act, 1952 pdf

The history of honor killings seems to have arisen from the image of an ideal lady being depicted in the society of Islam, and this was a trial of the state which touched every house intensely. In comparison to the contemporary framework of emotions in common working, this ideal was adversative. It has been found that the involvement of the FSC has surrounded troubles that have been usually noncriminal, other than the sentences based on the Hudood ordinance, and these were typically upturned by the FSC. The application of the rules of Islam by the FSC has been considered as a loosening element for issues like equivalent conduct based on the law, and the need for typical proof being part, especially of the justice framework of the military. Thus, the criminal law has been limitedly affected by the legal interruptions of the Islamic principles after 1993. This does not mean that there have been no possibilities of development, rather after 1989 the authorities have been active and improvement has been prominent in the FSC.

Complete compliance with the principles of Islam was ensured by the passing of the Shariat bill by the National Assembly in 1991 as the Fifteenth Amendment to the Constitution of Pakistan.[15] Unfortunately, there has been a lack of instituting these laws along with the trials of structuring and implementing the regulations and changes in the constitution after 1993. For the extremists in Islam, this step seems more of an unfilled procedure of standard operation and it was expected that the authorities would receive a certain amount of pressure, but that was not the case. Later at the end of 2006, the focus shifted to women's protection as there was a lack of regulations to protect women from issues due to gender discrimination. The 2006 Women Protection Bill changed the Hudood Ordinance due to which the Shariah court was responsible for the jurisdiction in terms of the cases such as rape, adultery, etc.[16] This was done under the presidency of Pervez Musharaf. It was during his rule that issues like rape, illicit sexual involvement moved from being tried on the principles of firm punishments in Quran, to gender extraneous sentences.

Laws of Women Protection and Honor Killing

Since then, there has been a frequent change in the law of honor killings in Pakistan. Some of the common laws which have been initiated to safeguard women include, "The 2006 Protection of Women Act, the 2011 Criminal Law Act, the 2016 Punjab Protection of Women against Violence Act, and the 2016 Criminal Law Act of 2016.[17] It was due to the increase in vigor due to national and international outlooks in 2004 that the penalty for honor killing was augmented. According to this penalty, the term to be spent in prison was decided to be more than six years and sometimes resulted in death punishment where the situation was extreme. In this scenario, the organizations working for women's and human liberty were cynical towards the results of this legislation, because murderers could not be stopped from purchasing their liberty due to the inability of this law to criminalize honor killing. This liberty was achieved when murderers would give money to the families of the people murdered, and this was a grave issue because murders in the name of honor were carried out by family members.

To prevent the act of honor killings and make the law strong a bill was passed in 2005, but it was disallowed by the legislature of Pakistan, and it was labeled as an act that was not Islamic. However, the bill was accepted the next year and was labeled as the 2006 Protection of Women Act. People still questioned its usefulness. According to this act, the penalty of kidnapping a woman or coercing her to marry against her will was sentenced for life, along with a fee. The description of rape was stretched which referred to having intercourse with a woman when she was not willing to. In addition to this, the penalty for a wrongful allegation of extramarital sexual involvement was stated.

Moreover, such allegations would only be indicted true if there are four men onlookers and the flexible penalty for this crime was eliminated. What needs to be highlighted here is that regardless of these offenses causing killings in the name of honor, honor killing was not mentioned in the legislation. Hence, when it is said that people distrusted the bill, it is this aspect that initiated the mistrust. Where women were being protected by The 2011 Criminal Law Act, from issues like marrying for stopping criminal accountability such as in the instances of rape or where public issues were being steadied, they remained a victim of honor killings.[18]

[15] The Constitution of Pakistan, 1973 pdf
[16] Ibid
[17] Farzana Bari, *Women In Pakistan* (Asian Development Bank, Programs Department (West) and Office of Environment and Social Development 2000).
[18] The Criminal Law Act, 2011 pdf

Five years later women's rights protection and their safety were addressed again and The 2016 Punjab Protection of Women against Violence Act was structured.[19] Three areas were highlighted in this act, which included the defense, liberation, and reintegration for women in all cases of vehemence against them. After passing this act it can

be observed that women were able to shield themselves when in a hazard or if they were not being served justly. They were able to maintain a protected shelter along with an organization of release and retrieval. In addition to this, there were certain orders of protection to safeguard women, along with the stance of commanding remuneration for themselves in the form of assets or money. Women were also given the authority to request involvement if they were in danger in order to be distanced from the scene of threat. To ensure the implementation of all of the said principles, a board of District Women Protection (DWP), was to be structured to support women.[20]

Despite the presence of the above-mentioned acts for the protection of women, there seems to be a need to improve women's safety measures and laws. These acts do cover the gaps covering the suffering of women in the name of honor and abuse, it seems that there is a lack of cooperation from the public's end. This is why the government made the much-needed amendments to the 2016 Criminal Law. According to The 2016 Criminal Law Act, the murderers involved in honor killings could no more be safeguarded by evading penalty.[21] This was because the gap was canceled by the government of Pakistan to maintain the legal system in line with the Shariah. The criminals could no more ask for forgiveness from the victim's family and did not receive light punishment. The name of this amendment in the law was called the Offences in the name or pretext of Honor. The central goal of this change was to reduce the percentage of honor killings in Pakistan and the crime was legally treated. The penalty for this crime was declared to be from 13 years to entire life in prison for all acts that were stanched to killing in the name of honor.[22]

Keeping in mind the above areas of the legal system of Pakistan it can be stated that the three factors including the British rule, the Islamic principles, and the military charge developed the country's legal scheme. It has been evaluated that a real perpetrator's exemption and their latitude was extended due to the presence of the concepts of Qisas and Diyat in contradiction with the antiquity of women being killed in the cultural settings. As a result of the continuous instability of the legal system of Pakistan not only has it been mistrusted but also it has been simple for women to be victimized through forceful marriages, divorce interlocks, or heritage claims. This means that murdering a person for alleged infidelity is not an act of crime because the murderer has no fear of being charged.

In the ploy of honor killing for Karo Kari or Siyah Kari or relevant acts, the suspect has been stripped of acting as the wali according to Section 305 of the 2004 Criminal Law Act.[23] In addition to this, the stance of compromise in Section 345 of the 1898 Criminal Procedure Code[24] was also changed and the court was given more authority as per Section 338-E of the 1898 Criminal Procedure Code to levy circumstances as per their consideration in agreement with the groups involved.[25] The court also gained authority to base the sentence about the murderer in the case of honor killing on the Islamic principles of Fisad-fil-Arz (which means exploitation on earth). According to the principles of Fisad-fil-Arz, the offender was to be jailed for more than 13 years regardless of being forgiven by the family of the victim. However, not all stances of killings in the name of honor were catered by this act especially not guaranteeing the part of the state being the Wali because the aim was to hold its authoritative advocator's character. In addition to this, there is also a lack of change to ensure that testimony is given in the court by witnesses other than the relatives of the victim and the offender. In cases where the sentence cannot be compromised, it was found that sometimes the victim or the offender would always withdraw their statements in the environments of examination.

It is essential for the state to accentuate the enactment of its obligation by looking into and impeaching the cases of killings in the name of honor. This has to be done with limpidity and genuineness towards the resolution because the tranquil provision of safeguard to women from such crimes is a persistent challenge. In order to ensure that offenders involved in honor killing do not roam free without punishment, the court must inspect implicating proof of the cases, especially when chances of conspiracies within the investigating organizations with the criminals through payoffs or political compressions are high. This will automatically lead to the prevention of human rights' defilement. If

[19] Punjab Protection of Women against Violence Act, 2016 pdf
[20] Deniz Kandiyoti, *Women, Islam, And The State* (2nd edn, Temple University Press 1991).
[21] The Criminal Law Act, 2006 pdf
[22] Ibid
[23] Section 305 of CLA (Criminal Law Act) 2004
[24] Section 345 of CPC (Criminal Procedure Code) 1898
[25] Section 338E of CPC (Criminal Procedure Code) 1898

This is not done, then the state will fail to protect the rights of women to their lives, only due to the lack of conciliation and increased abandonment in its role to stop discernment.

Amongst these rights were those which ensured that no person faced gender-based discrimination. In law, his amendments gave women a subsidiary standing. The Hudood Ordinances and the Qanun e Shahadat Order (also known as Law of Evidence Order), were a part of these amendments. The lawful rank of women became inferior due to these statutes and their testament was considered semi as that of a man's. Punishments according to the Islamic laws were established according to which honor killings were given recompense. The standard code of penalty did not cover rape according to these amendments. In fact, rape was considered under the Hudood Ordinance of 1979's subcategory known as the Zina Ordinance.

In 1985, considerable changes were brought again in the Constitution of Pakistan, which was later suspended by the military government after September of 1999.[26] It was after October of 2002 and before April of the next year, that these were reinstated again. After these changes, the law was supposed to be equally applicable and contained necessities of eliminating gender discrimination, and these were the only reason the Hudood Ordinances were allowed to exist side by side to the current laws.

Pakistan's Criminal Law

The Criminal Law 1860 is being used in Pakistan and its codes are being followed, despite the presence of the Shariah law which influences the formulations.[27] The Criminal Law 1860 was brought about by the British who were ruling the subcontinent at that time. According to this law, the husband is provided with clemency if the wife has been murdered due to serious and unexpected aggravation. However, in 1990, this law was changed in the trials towards bringing the country's legal system nearer to the Shariah law. The Federal Shariat Court announced that the nature of committing a murder is not lessened or reduced on the basis of any sort of suddenness or graveness of the reason behind it.[28] However, it has been stated that despite the presence of this amendment, there seems to be leniency being provided to men who kill women in the name of honor and judges have been seen to continuously follow the British law statement claiming that the leniency was given due to the grave and sudden provocation of the crime.

The weary line of honor killing promoted by Islam can be continued to be repeated, or the Pakistani law can be strengthened to ensure that the Islamic law is implemented to safeguard women. The latter is the optimal choice because of the stance of vehemence against women and the weakness of the legal formulations to penalize it has become a great issue for Pakistan. The threats of women being targeted through ferocity have been well known to Muslim intellectuals. In Pakistan, women's lives are being affected because there seems to be a loosened grip on the idea that women should be penalized if there are allegations. This is common in the less developed regions of the country where there seems to be a lack of literacy as well. All sects and classifications of Islam have announced honor killing as an act that is not tolerable in Islam, not only in Pakistan but also around the world even in non-Muslim countries like Canada, America, and Britain.

The most notorious honor killings case in Pakistan is that of **Samia Sarwar 1999**.[29] In the month of April, Samia Sarwar's family members assassinated her because she wanted to divorce her cousin to whom she was married, and wished to get married to a person of her choice. She was murdered because the family claimed to have been embarrassed by her act of asking for a divorce in the name of honor, and her assassination occurred in the workplace of Asma Jahangir and Hina Jilani, who were human rights promoters in Lahore. No arrests were made and nobody wanted a trial because the family was one of the wealthiest and well known. They had political links and even a docu-film was composed by BBC named License to Kill and it won accolades in the year 2000 in Pakistan.

Secondly, the **Ayman Udas 2009** case is another example of honor killing in Pakistan.[30] She was a Pashtun female artist who belonged to Khyber Pakhtun Khwa and was shot by her siblings because she took a divorce from her husband and then got married again to another person of her choice. She died on spot and no one was charged with the crime and she was considered by the family to have brought dishonor not only through her divorce but also due to her choice of profession. In another case of **Tasleem Khatoom Solangi 2008** in Khairpur the stance of honor killing can be

[26] Zina Ordinance, 1985 pdf
[27] The Criminal Law, 1869 pdf
[28] Wast (n 41)
[29] Samia Sarwar 1999
[30] Ayman Udas 2009

Viewed.[31] Tasleem was a teenager from a rural area who was first tormented while being pregnant and then murdered in the month of March by some people from the area she lived in. Her father who was 56 years old at the time spread this case and explicated that the villagers considered her to have brought shame to the village by carrying a baby from a person other than her husband. Her husband's father was suspected to be behind the killing and wanted to seize the girls' family ranch.

Fourthly, the case of **Five Women Killings 2008** in a tribal area of Balochistan reflected that three teenagers and two women of middle age were abducted, tormented, shot at, and then scorched to death by the men of the Umrani group.[32] This happened in July because the leader of the tribe had made arrangements of marriage for these victims and they did not conform to the decision. They had shown interest in pursuing marriage with people of their own choice. Not only were the tribal men a part of the murder, but the men from local government were also a part of this stance. This could be seen in the sluggish response from the government of Pakistan and the murder was defended by the then-senator Israr Zehri who said that he would still support the act because it was based on traditional beliefs.

In the **Farzana Iqbal (nee Parveen) 2014** case, it can be seen that a woman was murdered in the name of honor by being stoned until she died because she absconded with the person she was interested to marry and was in love with.[33] This happened in front of the High Court of Pakistan by the family members of the woman. The offender was the father of the woman and he justified his act by saying that her deeds caused insult to the name of the family by wedding a person without their permission. The father did not repent what he did and the victim's husband explained their engagement to be protracted with the agreement of the father. The father had demanded a specific amount to be paid in order to continue this relationship. Upon refusing to pay the amount demanded by the father and only being able to pay less, he became angry and killed his daughter. At the same time, the husband was already married before and had killed his former wife by strangulation in order to elope with Farzana and was let go by the court because his former wife's family had accepted a sum of money for settlement.

In the **Saba Qaiser 2015** case, a woman from Punjab was murdered because she married a low-income person without seeking approval from her parents.[34] Her father beat her and then she was shot because she eloped with the man. Her uncle was also involved in this and helped the father dispose of the dead body by putting in a sack and throwing it in the river. However, the victim survived and escaped from the satchel and was helped by the people around the shore. Instead of being provided with protection and lawful action against the offenders, she was forced to forgive them by the leaders of her society members.

During that epoch, the law in implementation was that of the amnesty law according to which if the victim's family opted for forgiveness the offenders could be let go without any penalty. Saba took the case to the court with the guidance of a lawyer but due to the pressure from the relatives she decided to forgive the offenders and the killers were freed from imprisonment. However, later the next year they were imprisoned again and the victim was under the constant pressure of life threats.

As discussed above, the **State vs. Qandeel Baloch 2016** case was a mere case of honor killing which occurred in July in Punjab.[35] Her brother murdered her in her hometown because she was a liberal person who used social media to share images and videos of herself that were not Islamically acceptable. One of the controversies raised included a Muslim cleric and the state playing the role of an accuser in this case which meant that her family was not capable of letting the murderer go through forgiveness. The murderer was the victim's brother and was caught by the police and also admitted to committing the offense because he considered her actions as a source of dishonor to the family. Furthermore, in the **Samia Shahid 2016**, it was observed that the victim had come to Pakistan from England by being misguided by her relatives.[36] The family members misled her and told her that her father was on his deathbed, and after five days of her arrival, she was found murdered after being raped and then strangulation.

She was at her former husband's (who was her first cousin) home during the visit and was murdered for leaving him and marrying again two years ago. The victim's father was also involved in the case and did not let the victim escape the house. The police arrested them both after the autopsy file showed the proof of rape and strangulation, despite the family's claim that she passed away due to a heart attack. The police arrested both the father and the offender, where the former died in imprisonment and the latter is still in jail.

[31] **Tasleem Khatoom Solangi 2008**
[32] Five Women Killings 2008
[33] **Farzana Iqbal (nee Parveen) 2014**
[34] **Saba Qaiser 2015**
[35] **State vs. Qandeel Baloch 2016**
[36] **Samia Shahid 2016**

Furthermore, in the **Rozi Khan and Zainab 2018** case, six people started firing on a couple where the husband was killed and the wife was injured severely but survived.[37] She was further hit with canes and a dagger. She was killed in the name of honor because she had married the person of her choice without the family's approval, however, she was allowed by her mother and one of the male siblings to do so. It was her nephew who was mainly involved in honor killing stance. He was detained at a private health care facility after the bout and he claimed that the injuries he had received were due to a

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Say No to Plastic

*Mashhood Hassan Azam Awan**

Safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being (Report of the Special Rapporteur, 2019).

Humanity owes much to this Planet Earth. From dawn of human history, we as its inhabitants are ultimate beneficiaries of this gift of nature. At the same time, we are its trustees as well. The focus of human efforts tended to reap benefits from it without caring a pin for corresponding obligations to protect its climate and environment. Ironically, our miserable failure in discharging such foremost obligations is inexcusable. In my view, healthy environment is a penumbra of the right to life, a right guaranteed as one of Fundamental Rights under Article of the Constitution of Islamic Republic of Pakistan (Constitution of Islamic Republic of Pakistan, 1973). However, duty to fulfil these obligations does not solely rest with the state. Humanity is equally bound to fulfil these obligations. Therefore, all human beings ought to fashion and streamline their activities for a sustainable environment. Each state and its populace need to work out a model action plan for sustainability of environment. For this purpose, state needs to legislate and administer and execute such legislation while populace needs to adhere to such laws in letter and spirit. Nature goes many steps ahead when climate and environment are protected by man-made endeavors and state efforts but it overreacts when climate and environment are left unprotected.

Major problem we face today relates to use of single-use plastic. At the very outset, it is necessary to comprehend what the term Plastic connotes. This term is employed for synthetic polymer. Polymer is a compound comprising large molecules made up of simple linked series of repeated monomers that are tied up together. Polymers exist naturally in plants too as a polysaccharide in the form of cellulose, the chief constituent of plant tissues and fibers.

Plastic, the synthetic polymer is man-made product. Polyvinyl Chloride (PVC) was beginning of first modern plastic which a German chemist Baumann had accidentally discovered in 1872. It is still considered as a mainstream product in this era. With passage of time, synthetic polymers were modified by adding plasticizers commonly known as additives. To enhance the properties and quality of plastics, chemical additives were also added in a large sum. In current time, equally burgeoning amount of additives and plastics exist in the market. Plastic is, on the basis of its properties, divided in general into seven types. (Mare Plasticum – The Plastic Sea, 2020)

Plastics are, in a large scale, made from conventional means of biomass which are petrochemicals. These are hydrocarbon-based, a carbon monomer produced from fossil fuels. Nearly all the plastics of the past and present times are fossil-based made from their feedstock. A very small quantity of plastic is, however, made from bio-based feedstock. Corn and sugarcane cash crops are its most common kinds. Plastic containing petrochemical compounds are non-biodegradable. These have been adding up in the biosphere after the invention of first synthetic polymer. Estimated amount of manufacture and usage of plastic across the globe prior to 1950 was between 4-8 million metric tons. This amount has exponentially increased over time.

Plastic has made human life easy on account of its diverse applications and uses. It serves as articles of commerce in different settings of life. It is widely used in everyday life as there is a thinking that it would be difficult to live without it. Plastics are obtained from both natural phenomena and man-made processes. Plastics are synthetically produced from the carbon atoms polymers (long chain) compounds from petrochemical materials and other fossil fuels (History and Future of Plastics). Some Plastic may be plant-based as well.

Usage of plastics has numerous benefits. Diverse properties of Plastics make it easy to use. The reasons for wide usage and acceptance of Plastic are its prominently distinguished qualities such as flexibility, durability, lightweight, inexpensiveness and all time availability in market in numerous shapes and sizes (Shalini, 2022). These attributes of Plastics have made living standards easier since 19th century. (Andrady). [1] Hudood Ordinance, 1979 pdf (2022)

Worldwide extensive use of single-use plastics has created comfort and ease in human activities. Plastics made from conventional means of fossil fuels in a long chain of carbon atoms are discarded after one time use. (Lindwall, 2020).

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These are normally used for packaging material in safe handling. Other purposes of single-use Plastics include: medical such as syringes etc; business, commerce and trade such as shopping bags commonly known as polythene bags for packaging and carrying with ease the commodities of daily use; and service wares such as disposable plates, cups, straws, bottles, wrappers, utensils and cutlery items on account of their lightweight and temperature resistant qualities.

Diverse attributes of Plastic as of seven types on the basis of its properties and forms help manufacture various products for common use in day to day human life. Numerous benefits of man-made plastic products apart, its adverse impacts on the health of living beings, climate and environment are colossal. Plastic contains toxic chemicals and hazardous substances obtained from petrochemical materials (Proshad, 2018). Micro plastics and Nano-plastics are very minute particles of chemical toxicity which are broken down from macro plastics going through various processes. The same circulate around the environment thereby causing number of irreversible injurious impacts on climate and environment with direct or indirect corresponding resultant severe threats to humanity and other habitats. These factors act as environmental pollutants causing humongous adverse repercussions on different communities. Human and all other forms of life on globe are vulnerable to the adverse implications of micro plastics emanating from the single-use plastics, that is to say, plastics intended to be thrown away after one time use. Ever increasing amount of single-use plastics is globally acknowledged as a major problem from its production to its usage and disposal. Single-use plastics litter aggregation being a grave threat to environment is a matter of societal concern across the globe because of its foreseeable humungous adverse outcomes in a near future. Such adverse effects would be of irreversible nature if these are not properly and timely managed by regulatory regimes and voluntary actions. (Chen, 2021).

Single-use plastic is a dominant variable of plastic pollution. Its increase with rapidity owing to its being discarded and thrown away after being once used is of gave magnitude in terms of ongoing adverse effects. This phenomenon comprises number of socio-economic factors, first, non-availability of systemic mechanism for recycling it due to underlying properties of Plastics; secondly, ignorance of communities and non-serious attitude of state functionaries about its adverse impacts; and thirdly, omission or inactions on the part of the communities and the states to recycle the discarded plastic products. The main and major serious consequence is that land and water suffer from these widespread pollutants. Litter thrown away is visible everywhere for two main causes: one is the gross negligence of people and the other is dereliction on the part of waste management authorities in a state. Single-use plastic pollution is a grave problem of countries which lack waste management systems (Macleod, 2021).

Plastic is divided into seven types on the basis of its properties. Plastic has different kinds of products with varying recycling properties. The following table is important in this respect:

Types	**Examples**	**Recycling property**
PET (Polyethylene Terephthalate)	Clothing, medicines, carpets, mineral water bottles, fiber	Commonly recycled
HDP (High Density Polyethylene)	Shampoo bottles, detergents, toiletries, construction pipes, milk containers	Commonly recycled
PVC (Polyvinyl Chloride)	Wires, plumbing pipes	Sometimes recycled
LDP (Low Density Polyethylene)	Plastic grocery bags, bubble wraps, cling films	Sometimes recycled
Polypropylene	Lunch boxes, yoghurt pots, syrup bottles	Occasionally recycled
Polystyrene	Packaging materials, plastic cutlery, disposable coffee cups, plastic food boxes	Commonly recycled but with difficulty
Others (Polycarbonate & Polylactide)	Gallon water bottles, compact discs, hangers, baby bottles	Difficult to recycle

The Constitution of Islamic Republic of Pakistan in its Articles 70 (4), 141 and 142 read in conjunction with Federal Legislative List in the Fourth Schedule provides that Provincial Assemblies shall have power to make laws on the subject of environment for their respective provinces while Parliament shall have power to make laws on the subject of environment in respect of areas under its administrative control (Constitution of Islamic Republic of Pakistan, 1973).

Another constitutional aspect regarding executive authority of provincial governments and federal government in relation to subject of environment is determinable on the principle laid down in Articles 90, 97, 129 and 137 of the Constitution to the effect that the provinces shall have executive authority in respect of environment within their

Respective domains while the federal government shall have the executive authority in respect of environment within its own sphere (Constitution of Islamic Republic of Pakistan, 1973).

A perusal of federal (The Pakistan Environmental Protection Act, 1997) and provincial statutes (The Khyber Pakhtunkhwa Environmental Protection Act, 2014) on the subject of environment having been enacted in the last three decades vis-à-vis plastic as a variable for environmental pollution will suggest that these laws need to be specifically improved upon in relation to man-made plastic products because these are one of the most widespread pollutants which adversely affect land, water, air and environment simultaneously.

The proposed legislative amendments need to be enacted on the basis of scientific approach. The proposed amendments must focus on five facets: first, banning the single-use plastic products through a gradual program extending over a period of only five years with resultant blanket ban at the end; secondly, as first step, amount of production of non-biodegradable single-use plastics needs to be reduced gradually in five steps each of one year at the rate of 20% of the total produce. In the meanwhile, every 20% annual reduction is to be replaced by manufacture of biodegradable products. Thirdly, besides replacement of non-biodegradable products through bio-degradable products during five years, the state must undertake legislative measures at federal and provincial levels with serious follow up of administrative and executive actions to engage private and public sector industries to manufacture substitute products of bio-degradable nature. Fourthly, the environment needs to be taught as a discipline at school, college and university levels. Besides, every university in public and private sector needs to set up a full-fledged department on environment. Fifth, the electronic and print media needs to be used as permanent platforms to regularly educate people on the importance of healthy environment and adverse impacts of non-biodegradable single-use plastics. Last but not the least, State in a bid to implement the intent of proposed legislations must ensure through its executive and administrative authorities zero tolerance on use of single-use plastic products during the short-term plan of five years so that the object of legislation is fully achieved within prescribed time and the use of non-biodegradable products is fully replaced by manufacture and use of biodegradable products leaving no room whatever for single-use plastic. This short term five years plan will bring far-reaching positive results on climate and environment if it is seriously pursued.

We all must join hands and work collectively to protect our environments so we may be able to leave a great legacy for our posterity.

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Amendment of the Pakistan Penal Code and the Code of criminal Procedure with reference to Enforced Disappearances

*Malaika Tareen**

ABSTRACT

The offence of enforced disappearances is such that it is not limited to that in itself, rather it is an amalgamation of a series of human rights violations, both international and those enshrined in the Pakistani Constitution. Such rights include the right to due process, the right to fair trial, the right to be free from torture, the right to dignity, life and liberty, and the right to privacy of the home. Enforced disappearances have been a stain on Pakistan's green and white flag, littering the history of the nation since 2001, ie the inception of the "War on Terror"[38]. Under the reign of Pervaiz Musharraf,

According to its monthly update report for September 2021, the Commission of Inquiry on Enforced Disappearances (COIED) has received over 8000 reports of missing persons/enforced disappearances since its inception[39]. The severity of the situation has resulted in numerous countries and human rights organizations, such as Amnesty International who, in a brief titled "Living Ghosts", urged Pakistani authorities to end the use of enforced disappearances as a tool of state policy[40]. As a response, amendments were made to the Pakistan Penal Code and the Criminal Procedure Code including enforced disappearances into Pakistani legislation. These amendments are meant to fulfill its commitments under the ICCPR as well as its own Constitution by upholding the fundamental freedoms owed to each individual of the State.

This article will analyze the success and limitations of the efficacy of these amendments, and compare it to international law standards, taking reference from the ICCPR, CED and enforced disappearance legislation in Nepal and Sri Lanka.

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[38] 'Pakistan: Enduring Enforced Disappearances' (Amnesty International, 2021)

[39] 'Monthly Progress On Cases Of Alleged Enforced Disappearances- August, 2021' (COMMISSION OF INQUIRY ON ENFORCED DISAPPEARANCES).

[40] Amnesty International, 'Living Ghosts: The Devastating Impact Of Enforced Disappearances In Pakistan' (Amnesty International 2021) <https://www.amnesty.org/en/documents/asa33/4992/2021/en/> accessed 8 December 2021.

Provides a definition for enforced disappearances within Pakistani Law

2. Insertion of new section 52B, Act XLV of 1860. - In the Pakistan Penal Code 1860 (Act XLV of 1860) hereinafter referred to as the Penal Code, after section 52A, following new section shall be inserted, namely: -

52B, Enforced disappearance.- The term enforced disappearance relates to illegal and without lawful authority arrest, detention, abduction or any other form of deprivation of liberty by an agent of the State or by person or group of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person is outside the protection of the law.

Explanation: There are three constitutive elements required to be present in order for an act to be classified as an enforced or involuntary disappearances and include:

(a) an unlawful or illegal deprivation of liberty, or a deprivation of liberty that was legal but no longer is;
(b) an act allegedly carried out by agents of the State or by person or group of persons acting with the support, authorization or acquiescence of the State; and
(c) refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person."

Criminalises Enforced Disappearances

3. Insertion of new sections 512 ,513 and 514 (Act XLV of 1860).

-

In the said Penal Code. after section 5l l, the following new sections shall be added, narnely: -

512. Forcible or involuntary disappearances.- Whoever illegally and without lawful authority commits, olders, solicits or induces the commission of attempts to commit, is an accomplice to or participation in the forcible or involuntary disappearances of a person or group of persons is said to cause forcible or involuntary disappearances of that person.

513. Punishment for forcible or involuntary disappearances.- Whoever illegally and without lawful authority causes forcible or involuntary disappearance of any person from Pakistan or within Pakistan shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to a fine.

Non Bailable and Non Compoundable

Amendment of Schedule II, Act V of 1898. - In the Code of Criminal Procedure, 1898 (Act v of 1898), in Schedule II, after section 5l l, in column I and the corresponding entries relating thereto in column's 2 to 8, the following shall be added, namely: -							
512	Forcible or involuntary disappearance	May Arrest without warrant (cognizable)	Ditto	Not Bailable	Not Compoundable	Imprisonment of either description for a term which may extend to ten years	Court of session

This Amendment officiates the first ever appearance of enforced disappearances into Pakistani legislation. By doing so, it makes enforced disappearances a punishable offense under criminal law, bringing the perpetrators to justice and providing closure to desolate families. Parts (a) and (c) of the Explanation put particular emphasis on the right to personal liberty of a human being, which is the foundation upon which all international human rights law and our own Pakistani Constitution rests. Furthermore, the definition provided by 52B is nearly identical to that of International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED), one of the most important legislative tools utilized by the international world to battle enforced disappearances[41]. Though this Convention has not been ratified or acceded to by Pakistan, it signifies Pakistan's attempt to implement international standards into domestic legislation, as the PPC has territorial jurisdiction that extends throughout Pakistan.

Furthermore, by making this a non bailable and non compoundable offence under the Cr.P.C, the Bill allows for the exclusion of the possibility that the perpetrator may strongarm the victim or the victim's family into an agreement in exchange for the charges to be dropped, therefore allowing the perpetrator to escape penalty. Its inclusion in criminal law is also in line with international obligations, as Article 4 of the ICPPED holds that States should take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

Such an implementation is mirrored in the Sri Lankan International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018, in which the UNs ICPPED was ratified directly into their national legislation. Article 5 of the Sri Lankan Act holds that every offense under the Act shall be a cognizable and non-bailable offense, within the meaning and for the purpose of their own Cr.P.C.

[41] International Convention for the Protection of All Persons from Enforced Disappearance 2006.

Limitations

Despite the bill being the first step towards the inclusion of enforced disappearances within legislation, adn a means of granting relief to the aggrieved parties, it is not without flaws. In fact the language of the Bill has been heavily criticized by rights groups like Amnesty International[42].

"*Illegal and without lawful authority"*

> *52B, Enforced disappearance.-* The term enforced disappearance relates to **illegal and without lawful authority** arrest, detention, abduction or any other form of deprivation of liberty by an agent of the State or by person or group of persons acting with the authorization, support or acquiescence of the State,

This is perhaps the most criticized aspect of the bill , and is the *only* distinction between the definition provided in the Bill and that of the internationally recognised ICPPED. Amnesty[43] identified this as creating a way for enforced disappearances to be "made lawful" by State agencies, contrary to international standards under ICPPED Article 1(1) and (2) which holds that there are no exceptional circumstances that will justify enforced disappearance[44]. It therefore leaves a major gap within the legislation and a loophole for instances of enforced disappearances carried out by state agents with lawful authority to avoid penalty. This bill therefore lacks the scope to identify lawful authorities who authorize enforced disappearances as perpetrators, which is clearly prohibited under Article 6 of the ICPPED which holds that anyone party to the offence will be held criminally responsible.[45].

Penalty for False Allegation

> ***514. That allegation of complaint in respect of Enforced Disappearance etc.-*** Whoever files a complaint or gives information that proves to be false, he or another person has been subjected to Enforced, Forcibly or Involuntary Disappearance, or an attempt has been made in this regard, he shall- be guilty of an offense punishable up to five years imprisonment and fine up to Rupees One hundred thousand.".

Additionally, rights groups are growing concerned regarding the penalty imposed in case of false allegation. In these situations the burden of proof would be placed on the complainant to prove that the complaint is not false. Failure to prove this resulting in a sanction can discourage family members into not bringing forward complaints about disappeared persons. This concern was also raised by Amnesty International in their report[46].

Non Cognizable Offense

[42] 'Pakistan: Amendments To Enforced Disappearance Bill A Backward Step On Promised Reform' (2021) <https://www.amnesty.org/en/latest/news/2021/10/pakistan-amendments-to-enforced-disappearance-bill-a-backward-step-on-promised-reform/> accessed 8 December 2021.

[43] Ibid n.2

[44] Ibid n.2

[45] Ibid n.2

[46] Ibid n.2

The label of a "cognizable offense" acts as a double edged sword in terms of legislation and implementation. On one

Amendment of Schedule II, Act V of 1898. - In the Code of Criminal Procedure, 1898 (Act v of 1898), in Schedule II, after section 5l l, in column I and the corresponding entries relating thereto in column;s 2 to 8, the following shall be added, namely: -							
512	Forcible involuntary disappearance	**May Arrest without warrant** **(cognizable)**	Ditto	Not Bailable	Not Compoundable	Imprisonment of either description for a term which may extend to ten years	Court of session

hand, as mentioned before, the international legislative standard is to regard forcible disappearance as a cognizable offense. This is due to the seriousness of the crime and allows for swift action to be taken by the authorities. However, in terms of practicality and implementation, this can be dangerous. Where it is State and Institutional Authorities or agents who become perpetrators of enforced disappearances, there would be a general lack of accountability, where it would be the same authorities who are to carry out the arrests. Pakistan currently has no active Commission for enforced Disappearances that may carry out these investigative functions, nor does it have an autonomous body to keep a check on State authorities or carry out arrests. It is suggested that such a mandate be given to the NCHR, which is a body independent of government influence, therefore can review any unwarranted arrests made by state authorities.

More loopholes for Authorities

The Bill also leaves much to be desired in terms of specification. The ambiguity of the Bill may prove to be problematic in terms of implementation, as it has not specified a mandate, nor any procedure or legal structure through which victims or their families may seek recourse, nor any procedure for authorities to conduct searches. By leaving these gaps in the legislation, it allows for authorities to interpret the law at their own discretion. Not only does this result in arbitrary decision making and inconsistency, it can lead to malafide actions taken on behalf of State Authorities under the disguise of the"lawful authority". It therefore neglects international standards with its ambiguity. Furthermore, it does not give any indication as to the compensation owed to victims and their families and on what basis the amount of compensation is to be decided.

Such mistakes are inevitable if such a complex topic is given only a small role in legislation. The Bill fails to intertwine the offense of forcible disappearance with that of torture, rape or other forms of sexual violence, and prohibition of using information obtained by torture as evidence amongst other things[47].It only speaks of the crime of enforced disappearances itself.

[47] Constitution of the Islamic Republic of Pakistan 1973, Article 14(2)

International Examples

Nepal

In their attempt to curtail enforced disappearance, The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act (2014)[48] was created. It provides extensive guidelines on enforced disappearances, not only focusing on the crime itself but any other related gross violations of human rights such as causing mutilation or disability, physical or mental torture, rape and sexual violence, looting, possession, damage or arson of private or public property[49].

The Nepal Act provides for the formation of a Commission to deal with enforced disappearances and other such gross violations and grants guidelines for qualifications on its members.In Article 13[50] of the Act, the Functions and Duties of said Commission, under which falls procedures for inquiry and power of investigation. Section 23 (2) deals with the reparations and compensation owed to the the victim and the victim's family, granting the power to the Commission to make recommendation to the Government of

Nepal to provide facilities and concessions to the victim or any member of their family as per their condition. These facilities include but are not limited to free education and medical treatment, and facilitation of employment.

From the Act, Nepal formed two organizations. Commission of Investigation on Enforced Disappeared Persons[51], and the Truth and Reconciliation Commission[52]. The former dealing with only cases of enforced disappearances, while the latter dealing with other forms of gross violations.

Taking example from this, it is suggested that rather than limiting the inclusion of enforced disappearances on such a small scale, where the scope remains limited, an Act or some other form of legislation that can cover the complexity on the matter of enforced disappearances in depth. Such an Act has been proven to create guidelines for inquiry and investigation as consistent with article 10(2) of the ICPPED[53] , the formation of a Commission, and a clear mandate to be pursued as well as a mechanisms for reporting as defined in Article 12 of the ICPPED[54].

[48] The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2071 (2014) 2014.

[49] Ibid n.10

[50] Ibid n.9

[51] 'Organization Structure – Commission Of Investigation On Enforced Disappeared Persons' (*Ciedp.gov.np*, 2021)

[52] 'Truth And Reconciliation Commission, Nepal' (*Trc.gov.np*, 2021)

[53] Ibid n.2

[54] Ibid n.2

Sri Lanka

Sri Lanka took a different approach. Their legislation, titled International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018[55], focuses primarily on the dignity of a natural person rather than all of the other human rights violations that go along with the offence, similar to Pakistan. Also like Pakistan, the Act incorporates the offence under the countries Criminal Code of Procedure as a cognizable and non-bailable offence, Sri Lanka has also included extensive information regarding penalties, jurisdiction of the Act, investigation and Prosecution. Furthermore the Office of Missing Persons (OMP) was set up by the Sirisena government in August 2016 as a method of ensuring transitional justice. The aim of the OMP was to locate the thousands of missing persons as part of Sri Lanka's commitment to the UN Human Rights Council (UNHRC) to promote "reconciliation, accountability and human rights" under Resolution 30/1[56]

Conclusion

To conclude, the offence of enforced disappearances is not limited to that in itself, it is tied into the violation of numerous fundamental rights as well as other gross infringements upon human autonomy and liberty. This bill gives a very rudimentary view of the offence, ignoring the depth of the matter, which gives way to lacunae in the law, leaving the bill open to interpretation by authorities who may exploit these loopholes to their own means. That being said, examples can be taken from international law such as the ICPPED[57], which provides a definition that is absolute, legally coherent and consistent with the norms of legal practice. It can further take example from other South Asian States such as Sri Lanka and Nepal who have implemented their own functioning mechanisms and legislation for enforced disappearances. Finally, until and unless the phrase "illegal and without lawful authority" is removed from the relevant provisions and the offence of false reporting is deleted from the Penal Code, the Amendment Act is just another

[55] International Convention for the Protection of All Persons from Enforced Disappearance Act, No.5 of 2018.

[56] Pathmanathan M, "International Investigation into Sri Lanka's Enforced Disappearances Only Chance for Justice" (Human Rights PulseMarch 2, 2021) <https://www.humanrightspulse.com/mastercontentblog/international-investigation-into-sri-lankas-enforced-disappearances-only-chance-for-justice> accessed January 28, 2023

[57] Ibid n.3

Why Do We Need Alternative Dispute Resolution

*Osama Amir**

Alternative Dispute Resolution—as the term itself suggests—is a tool which substitutes for conventional litigation. A dispute that is taken up for resolution outside the court employing methods other than that used inside the courtrooms falls in the category of Alternative Dispute Resolution (ADR). Some of its methodology, besides any other improvisation, includes negotiations, mediation, conciliation, arbitration, settlement and ombudsmen schemes. The Department for Constitutional Affairs has defined ADR as: "The collective term for the ways that parties can settle disputes, with the help of an independent third party and without the need for a formal court hearing"[58].

Alternative Dispute Resolution is based on problem-solving. The procedure adopted in ADR is distinct from that of conventional litigation. In ADR parties are identified and are provided with a broader assessment of their case according to which settlement would occur between the parties. This settlement is not imposed like that of a court decision; therefore, the parties are more satisfied with the outcome of ADR. Contrary to this, litigation focuses and decides the cases by creating a dichotomy of good guys and bad guys and the only decision the courts reach is imposing liability on the bad guys. However, the technicality of procedures attached with litigation along with insufficient evidence may sometimes cause problems in deciding fairly between the parties. Moreover, the parties in ADR are more open as compared to court proceedings for the reason that in ADR parties want to solve the issue, whereas in court proceedings parties more often hide the truth in order to escape liability.

Alternative Dispute Resolution is not an innovation. It goes way back to Ancient Greece. In the sixth century B.C, Arbitration found its way into domestic law wherein Solon (Athenian Law maker) successfully arbitrated and resolved the dispute amongst the debtor (peasants) and creditors (landowners)[59]. By the mid fifth century B.C, Arbitration had advanced into the earliest form of international law wherein most of the treaties contained a clause for settling disputes through judicial settlement. One such example is the peace treaty between Athens and Sparta effected in 445. As per claim of Thucydides, the moment Sparta refused to apply the provisions of that peace treaty on dispute settlement, it became infructuous resultantly the havoc that followed suit is remembered as the Peloponnesian War. Similarly, a clause for mutual resolution of disputes through arbitration on an equal footing, in accordance with established practice, could be seen in the Peace Treaty of 418 between Sparta and Argos. This leads to the understanding that resolution of disputes through alterative means was ingrained in the Hellenic conscience[60].

The importance of Alternative Dispute Resolution is accepted and established in the Divine Law. "If you fear a breach between the two, appoint an arbitrator from his people and an arbitrator from her people. If they both want to set things right, Allah will bring about reconciliation between them. Allah knows all, is well aware of everything." (Verse No.35 of Sura Al Nisa)[61]. The essence of this provision of law is that many issues cannot be unveiled in public, which includes the proceedings in a court of law, the same can be feasibly discussed privately and resolved in an amicable manner. In a dispute there may be issues quite large in number which the parties do not choose to disclose and make it public but in the proceedings of ADR the parties will not hesitate to put such issues on the table. Especially when a party desires to be favored with the moral and ethical aspect of the case, which may be otherwise totally irrelevant and of no worth under

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[58] Shipman 2006, 182

[59] Henry T. King Jr Arbitration in Ancient Greece (EBSCOHost, 1 September 1994) https://web.p.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=0&sid=f8f66357-1d77-4ca3-bdc3-cee2d7d762ed%40redis accessed 16 January 2023

[60] Alexis Keller, Inter- State Arbitration in Historical Perspective (Oxford Academic 8 October 2022) https://doi.org/10.1093/law/9780198796190.003.0035 accessed 24 January 2023

[61] The Holy Quran, 4:35

The law and the proceedings before a court. Such unseen issues can be raised and taken up for the just and fair resolution of the dispute without feeling the need to involve in legal technicalities, complications and limitations.

When a dispute of a family nature i.e. a case between husband and wife, arises, the Holy Quran has enjoined that it be resolved through alternate routes. On that analogy it can be inferred that any other dispute which touches upon the sensitivity of the society, it is advisable that ADR be utilized. Even in the case of murder, considered a heinous crime, the Holy Quran has appreciated a compromise of the legal heirs of the victim with the accused and referred to it a choice of benevolence. The Holy Quran promulgates "O You who have believed, prescribed for you is legal retribution for those murdered-the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother [i.e. the killer] anything, then there should be suitable follow-up and payment to him [i.e. the deceased's heir or legal representative] with good conduct. This is an alleviation from your Lord and mercy. But whoever transgresses after that will have a painful punishment" (Sura Al-Baqarah Verse 178)[62]. In line with the Quranic principles for these guidelines, a terrible offence i.e. murder, is unlike the Anglo-Saxon Jurisprudence—mostly in field of Pakistani Legal System, wherein the State does not allow compromise in murder cases[63]— is herein Pakistan considered an offence against individual(s), and The Pakistan Penal Code, 1860 has classified it into the category of offences that are compoundable i.e. those offence, in which the parties involved can effect a compromise while the case is under trial in the court of law[64]. The legislature has taken the effort of fixing the minimum value of diyat i.e. the compensation payable to the heirs of the victim. The domain of ADR nonetheless props up when it comes to gauging the financial position of the convict and the heirs of the victim—the mandate of the law—for the purpose of finalizing the compensation amount.

When it comes to the Rule of Law, the same can be seen in action when access to justice is ensured. In other words, access to justice is the fundamental principle of rule of law. The complex court procedures, pendency of cases for long intervals, and the inability to afford expenses of its processes are a few reasons amongst many others that leave no other option with an aggrieved person but to think the better of it than enforce his rights. Like that of any other country, legal system in Pakistan is fraught with these hurdles. Jirga and Panchayat—the indigenous avatar of ADR—deeply rooted in the sub-continental society have remained in vogue herein Pakistan which could offer an alternate i.e. outside the court, solution to disputes. Despite its own unique and enriched history of ADR which exists in the form of Jirga and Panchayat, the same was however not until very recently incorporated into the Pakistani legal system.

The advantage of ADR is undoubtedly far reaching. According to the report of the United States Department of Justice, in 2017, 75% of cases were resolved through ADR[65]. United Kingdom also has encouraged ADR. In a consultation paper prior to LASPO 2012, the government argued that the court system needs to ''focus more on dispute resolutions…The vision for the new system is one 'where many more avail themselves of the opportunities provided by less costly dispute resolution methods, such as mediation- to collaborate rather than litigate". According to a report in UK there was a 20% increase in year 2017-2018 than 2016 and as per reports the current success rate is 89%[66]. Furthermore, in 2019 out of 2 million civil cases only 3 % went to trial which leads to the idea that mostly disputes can be resolved without a judgment[67].

Herein Pakistan any suggestions towards these alternates have, however, faced huge criticism left, right and center. Amongst myriad opponents of Jirga and Panchayat, the Supreme Court of Pakistan if not the most vocal is surely the deadliest of it all. In a case titled "NATIONAL COMMISSION ON STATUS OF WOMEN VS GOVERNMENT OF PAKISTAN through Secretary Law and Justice"[68] the SUPREME-COURT of Pakistan had held that Jirgas are violation of the constitution of the Islamic Republic of Pakistan. According to the Apex court, Jirga/Panchayat do not have any legal basis for existence and these bodies—Jirgas/panchayats—besides undermining the judicial system, which is conferred upon

[62] The Holy Quran, 2:178
[63] Code of Criminal Procedure 1898, Section 345
[64] Pakistan Penal Code 1860, Section 310
[65] Alternative Dispute Resolution at the Department of Justice
[66] Practical Guide To Alternative Dispute Resolution | Myerson
[67] Views sought on dispute resolution vision - GOV.UK (www.gov.uk)
[68] 2019 PLD 218

courts under Article 175 (3)[69] of the constitution, violate the doctrine of Separation of Powers enshrined in the governmental setup of the state. The Supreme Court has further on observed that Jirgas/Panchayats deny individuals access to justice by refusing them their right to fair trial provided under Article 10(A) of the constitution. The apex Court has concluded that decisions of village gatherings—verdicts of jirgas—on matters related to liberty, danger to life or property have neither the legal justification nor the force of law, and those involved i.e. jirga elders, are warned that action shall be taken against them.

The Supreme Court nonetheless could not negate the importance of these long-established customs. No wonder, in the ibid judgment it was constrained to license Jirgas/Panchayats to operate as arbitrators or mediators when the dispute is of civil nature plus the parties express their consent for it. Therefore, it is safe to argue that the Supreme Court has not completely forbidden any approach to the alternative dispute resolvers.

As much as we appreciate the approach of the Supreme Court towards insurance of justice, the Court has failed to consider the pendency of cases in courts across Pakistan. As per the report of Law and Justice Commission of Pakistan, over 1.8 million cases are pending in various courts of Pakistan[70]. This pendency is a question mark on the credibility of the courts. Delayed justice, beautifully articulated in the legal maxim 'Justice delayed is justice denied', is the antithesis of ensuring justice. In the words of Justice Mansoor Ali Shah of the Supreme Court of Pakistan, "Litigation is a scenario in which you go in as a bull but leave as a sausage[71].

Sensing the need for alternate options, the state of Pakistan has made strides towards Alternative Dispute Resolution. Genealogy of mediation in the legal system of Pakistan can be traced back to 2002 wherein through enactment of Ordinance XXXIV of 2002 a new provision of law i.e. Section 89.A, has been added into the Code of Civil Procedure, 1908. Several other enactments have followed suit. Islamabad's ADR Act, 2017, the Punjab Alternate Dispute Resolution Act, 2019 and the Khyber Pakhtunkhwa Alternate Dispute Resolution Act, 2020 are some of its glimpses. Besides, the Lahore High Court in 2017 has established mediation centers. The judges, therein, refer cases to the appointed mediators. Now that it has been realized, better late than never, it is still high time to consider the significance of ADR and further steps shall be taken to facilitate ADR as societies are in transition similar to the transition from trial by ordeal to trial by judge and jury.

[69] The Constitution Of The Islamic Republic of Pakistan 1973
[70] Over 1.8 million cases pending in Pakistan's courts - Pakistan - DAWN.COM
[71] Alternative Dispute Resolution Gains Traction in Pakistan | The Asia Foundation

The application of '*ex turpi causa non oritur action'* on adverse possession claims under LRA 2002

*Iyfur Arafat**

ABSTRACT

The article will focus on the law of adverse possession (AP) under Land Registration Act (LRA) 2002 which has transformed the fundamental basis of entitlement of land from possession to registration. A detail analysis of the law of adverse possession will follow, concentrating on a comparison between the former and the current adverse possession scheme governed by the LRA 2002.

It will evaluate the protection of registered proprietors by reviewing the statutory and case law. The LRA 2002 has made it difficult for adverse possessors to have a successful claim. The position of legal proprietor is further strengthened by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, which has created a new offence of criminal.

With the incorporation of LAPSO 2012, the maxim '*ex turpi causa non oritur actio*' will be appraised in light of the recent case law including Rashid v Nasrullah [2018] and R (Best) v The Chief Land Registrar [2015].

In light of the findings, the issues detailed, it will be argued that the holistic interpretation of '*ex turpi causa*' maxim ensures a balance between the goals of adverse possession claims. The true owners have a more favorable position under the new regime, as it provides more cohesive rules for protection by focusing on the registered title compared to mere possession; thereby bring law in conformity with the policy considerations of the current era.

1925 is the predecessor of LRA 2002. This Act was based on the 19th century[72] initiatives which sought to introduce the system of land registration. LRA 1925 consolidated 3rd party proprietary rights by their entry into HM Land Register which binds future purchasers of the property. Furthermore three governing principles introduced by Ruoff[73] were incorporated by the land registration system: the mirror principle, the curtain principle and the insurance principle[74].

The registration of title under LRA 1925 revolutionised land law and majority of the real property was registered in the 20th century. Nonetheless, the Act identified to key issues that needed attention. Consequently, The Land Registration Act 2002 removed the ambiguities of true owner and registered owner.

The register proprietor is the only owner.[75] LRA (1925-2002) mostly deal with legal acquisition of property. However, the case law surrounding beneficial entitlement of land and TLATA 1996 has highlighted the role of implied trusts; which don't require formalities in the acquisition of property. The holistic approach taken by Lady Hale in Stack v Dowden[76] highlighted the role of common intention constructive trust in modern society. Similarly, resulting trust also plays a significant role in quantification of proprietary shares. The doctrine of Proprietary Estoppel is also an equitable remedy that entails entitlement of property without formalities. The similarities between the early days of constructive trusts and the present role of estoppel are striking. Another method for acquiring property without consent is adverse possession. Not only is this method different from trust and proprietary estoppel, it is also the most controversial method. Under this doctrine, a mere trespasser gets the opportunity to acquire a better title to land than the person who 'legally' owns it, through sustained actual possession, as well as the requisite intention to possess the land.[77] The basic idea behind adverse possession of land is that a person who takes possession of land, albeit wrongfully to begin with,

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[72] Land Registry Act 1862 (25 & 26 Vict c 53)

[73] Theodore Ruoff, *An Englishman looks at the Torrens System* (Law Book Compagny of Australasia, 1957)

[74] Gerald Dworkin, Registered Land Reform (1961) < https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1961.tb00658.x> accessed 20th January 2022

[75] *Swift 1st Ltd v Chief Land Registrar* [2015] Ch 602

[76] *Stack v Dowden* [2007] UKHL 17

[77] Victoria Boruta, 'The position of the estate owner and the adverse possessor: A comparison between England and

Acquires a possessory title to the land which, after the expiration of the relevant time period, is good against the whole world.[78] LRA 2002 determines basis for a successful adverse possession, however, unregistered land is still governed by the Limitation Act 1980.[79]

Even though title by registration under LRA 2002 has considerably altered the law on adverse possession from its start in medieval times. he LRA 2002 reform on adverse possession is also a consequence of societal changes. The new scheme favours registered proprietors, resonating with academicians such as Gray and Gray, who find the relevance of this concept 'increasingly strange' in today's world[80].

It has transformed the fundamental basis of entitlement of land from possession to registration as it put an end to the supremacy of single and exclusive possession as the basis for a successful claim to ownership of land through the principles of adverse possession.[81] Title by registration reflects the realities of contemporary times and is 'the closest thing in over 900 years to absolute ownership of land.'[82] It is true the Act has marginalised adverse possession of registered land; notwithstanding this, registration does not impose an absolute title.[83] Nevertheless, an adverse possessor can still take possession of land and establish a fee simple title, this is implicitly acknowledged in the LRA itself.[84] However, one of the avowed intentions of the Act was to offer 'much greater security of title for a registered proprietor' than existed and 'would confine the acquisition of land by adverse possession to cases where it was necessary either in the interests of fairness or to ensure the land remained saleable.'[85] Thus, the present LRA recognises, or at least appears to recognise, that relativity of title still prevails at the heart of English land law[86].

The new rules on adverse possession are contained in the schedule 6 of the LRA 2002. Even though adverse possession is not defined by the new LRA, the act states that it is necessary to provide evidence for adverse possession. Therefore, under the rules of new LRA a squatting can only be taken over from an earlier adverse possessor in exception circumstances where the successor has bought or inherited the land. Moreover, adverse possession for a trust of land cannot be successful if the interest of beneficiaries is in the possession. There is no equivalent of s 70(1) (f)[87] under LRA 2002. Therefore, the squatter cannot claim an overriding interest in the property. Additionally, there is no limitation for a mortgage charge[88] and the lender in possession will never bar the borrower.

Subject to aforementioned conditions, a squatter is allowed to register their title as a proprietor of the state after the competition of ten years.[89] Consequently, the Registry must serve the registered proprietor of the estate, any charge and any superior registered estate (if the estate is leasehold) with notice of the application and any person who receives such a notice is entitled to veto the application.[90] This "veto" system gives registered proprietor two years' time to bring proceedings to retrieve their position after receiving the squatters notice. Conversely, the adverse possession claim will succeed if registered proprietor does not object the basis of such claim or serve a counter notice or takes the necessary steps to evict the squatter from the land.[91]

Furthermore, there are three exceptional situations in Sch.6 of the LRA 2002 whereby the squatter can be registered with title despite the objection of the registered proprietor… this reflect a public interest that outweighs the "deprivation" of the registered proprietor.[92]

Wales, Scotland and the republic of Ireland'(2018) < https://www.plymouthlawreview.org/vol10/Victoria%20Boruta%20final.pdf > accessed 19th January 2022

[78] Panesar, S. 'The importance of possession in the common law tradition.' (2003) < http://wwwm.coventry.ac.uk/bes/law/about%20the%20school/Pages/LawJournal.aspx> accessed 19th January 2022

[79] Limitation Act 1980 c. 58

[80] Gray and Gray (n 37), 377

[81] Panesar, S. (n 42)

[82] Martin Dixon, Modern Land Law, (7th edn, Routledge 2010) 428

[83] Michael Nicol (n 83)

[84] Ibid

[85] Ibid

[86] Ibid

[87] Subject to the provisions of this Act, rights acquired or in course of being acquired under the Limitation Acts; LRA 1925 c. 21

[88] LRA 2002, s 96 (2)

[89] LRA 2002 has reduced the limitation period of action to 10 years from 12 years under LA 1980.

[90] Una Woods, 'The English Law on Adverse Possession: A Tale of Two Systems' (2009) 38 Comm L World Rev 27

[91] Ibid

[92] Martin J. Dixon, 'Case Comment Adverse possession in three jurisdictions.' (2006) Conveyancer & Property Lawyer 179

Among the three situations the first one is proprietary estoppel whereby it would be unconscionable to dispossess the squatter. This exception appears to provide an equitable defence to possessors and has, in recent cases such as King[93] and Best[94], been upheld fairly in practice.[95]

The second situation is known as independent right to the estate whereby the squatter can assert that the legal owner is holding the land on trust for the squatter. This exception allows possessors to acquire title if they are entitled to the land. Although this exception clearly includes scenarios such as receiving land through inheritance, it still appears vague and is only likely to apply in rare circumstances[96].

The final exception is the boundary dispute exception whereby the squatter has reasonable grounds to believe that the land adjacent to his property's boundary belongs to him. It protects possessors who have used land adjacent totheir own property, believing that such property belongs to them due to physical barriers being erected in the incorrect location along the boundary line. This exception appears to be the most applicable, as detailed and specific guidance is given as to when this exception will be engaged.[97] Even though Thrope[98]illustrates a successful claim of factual possession on an adjacent land, Dowse[99] however, paints a different picture. Here, the judge rejected the claim as the adjacent land did not cover substantial area. Therefore, the case law has confirmed that lenient statutory protection is no longer afforded to the possessors.

The scope of criminal Squatting under LRA 2002

Property law has ignored the conceptual differences between owner and possessor, treating them both simply as holders of rights to possess of differing strengths.[100] The synonymous status of possession and ownership made it easier for the proponents of adverse possession to justify it.[101] The idea that the owner is blameworthy is based on the traditional rationale which has been advanced for the doctrine of adverse possession known as the 'sleeping theory.[102]' This is because when the sleepy or unaware proprietors fail to exercise their rights as owners of the property, squatters can adversely possess land to ensuring the maximum utility. This gives the squatter the right to earn the title of the land. The 'earner' theory, justifies itself on the basis that it punishes the owner who fails to use the land or develop it and rewards the squatter for doing so and also for bringing it back onto the market once he has acquired title.[103] Such proposition suited the traditional English laws of adverse possession that were governed by the limitation act 1980. However, the same cannot be said about LRA 2002. With the introduction of title by registration, LRA 2002 demands a reassessment the scope of civil and criminal wrongs surrounding adverse possession claims.

The defence of illegality ('ex turpi causa non oritur actio') has been a long standing common law principle and it bars any claim arising from unlawfulness. However, common law requires possession to be adversely occupied by the possessor. Hence, common law test does not demand subjective good faith belief on the part of the possessor that he is entitled to the property.[104] Therefore, a successful adverse claim will not require the consideration of good faith and bad faith squatting or the defence of illegality. In such circumstances an adverse possessor will benefit from his wrongful conduct by ousting the lawful proprietor from their land. Although such approach could work in ancient times, however, law cannot support such an approach in modern times. This is because the registered proprietor land knows what the best use of land is and leaving the land idle may be a means of using the land in a productive manner, which may be

[93] *King v Suffolk CC* (2015) UKFTT 0867 (PC), (2017) PLSCS 19
[94] *Best* (n 8)
[95] Yui Nga Natalie Tsang, 'The Role of Adverse Possession in Modern Land Law' (2019) LSE LAW REVIEW
[96] Ibid
[97] Ibid
[98] *Thorpe* (n 61)
[99] *Dowse & Another v City of Bradford Metropolitan District Council* [2020] UKUT (LC)
[100] Larissa Katz, '"The Moral Paradox of Adverse Possession: Sovereignty and Revolution in Property Law"[2010] McGill Law Journal / Revue de droit de McGill, vol. 55 47,80
[101] See Martin Dockray, 'Why Do We Need Adverse Possession?' (1985) Conveyancer and Property Lawyer 272, 274
[102] Una Woods, 'Adverse Possession – Does the owner get his just deserts?' (2012) < https://ulir.ul.ie/bitstream/handle/10344/4305/Woods_2012_Owner.pdf?sequence=2> accessed 25th February 2022
[103] Ibid
[104] Thomas W. Merrill, 'Property Rules, Liability Rules and Adverse Possession' (1985) 79 Northwestern University Law Review 1122

unknown until the 'best use' becomes apparent.[105] Furthermore, by virtue of limitation act and poor record keeping, adverse possession could be justified under unregistered land. Nevertheless, as exhibited by the case of Pye[106] the

doctrine of adverse possession had to correspond with the realities of the 21st century. Thus many argue that, under the system of title by registration, on its face adverse possession is an antithesis to everything an integrated land registration system aims to achieve.[107] Therefore, the decision in Baxter v Mannion[108] can be quite rightly be justified under the new adverse possession scheme. In this judgement, the residual statutory protection safeguarding possessors was creatively 'subverted',18 as although the landowner, Mr Mannion, failed to challenge the adverse possession claim within the statutory 65-day time limit, he was able to maintain ownership of his land. In reaching this decision, the Court of Appeal held that the Schedule 6 rules protecting possessors are not absolute, as, after the title was acquired by the possessor, it was quickly 'rectified' on the register and returned to Mr Mannion.[109]

On the contrary, it is still worth noting that 60% of adverse possession applications received by the land registry are successful.[110] Therefore, one can argue – in line with Dixon – that it remains best to view adverse possession as a concept of 'incontrovertible logic'. It serves a practical and important function in reducing land neglect, an issue that is not resolved by increasing the incidence of land registration.[111] Consequently, case law does suggest that the new adverse possession scheme, which functions on more intelligible grounds, has attempted to achieve a fair balance between the sanctity of title and the possession of land.

The case of Rashid v Nasrullah holds that the doctrine of illegality as recently recast in Patel v Mirza has no application in relation to the limitation of actions[112]. Nevertheless, it highlights the importance of the new regime under LRA 2002 especially in cases of fraud. In this case it was held that even if property registration is invalidated due to fraud, possession for the necessary time will suffice for the ownership of property. The court of Appeal concluded that even criminals and scoundrels were entitled to the benefit of limitation periods as the defendant had completed the period of adverse possession before LRA 2002.

Thus the new regime provides more cohesive rules for protection to the true owner by focusing on the registered title compared to mere possession; thereby bring law in conformity with the policy considerations of the current era. Conversely, the role of adverse possession is modern law has come under further scrutiny after parliament's enactment of LASPO 2012 and in particular the introduction of s.144 on criminal squatting. The next section will explore the compatibility between adverse possession and LAPSO 2012 in light of the recent decision in the case of Best.[113]

Until recently, the doctrine of adverse possession could aptly be justified on the basis of, 'you snooze, you lose.[114]' However, the enactment of LAPSO 2012 has strengthened the view of critics[115], who question the applicability of adverse possession in modern times. This is because according to s. 144 of LAPSO under certain situations, squatting is criminal offence in residential buildings. Consequently, trespass is not just civil (tort) wrong but also a criminal offence. Section 144 became the first provision since section 7[116] of the Criminal Law Act 1977 ('CLA') to have a significant effect on adverse possession[117]. However, the act remains silent on commercial squatting. Importantly, it does not criminalise all residential squatting… Thus, the offence is not committed by a person who was a licensee or tenant when they entered the premises and who subsequently holds over, it applies only to trespass in a "residential building" (and not, for example, to land in the curtilage of a building); and only if the person is "living" in the building or "intends to live there

[105] Ifeoma Ekeoma,' The Future of Adverse Possession in Registered Land in England and Wales' (2022) < https://www.academia.edu/35122920/The_Future_of_Adverse_Possession_in_Registered_Land_in_England_and_Wales> accessed 25th March 2022
[106] *JA Pye* (n 63)
[107] Ifeoma Ekeoma (n 112)
[108] *Baxter* (n 103)
[109] Yui Nga Natalie Tsang (n 98)
[110] Stephen Jourdan and Oliver Radley-Gardner, *Adverse Possession* (2nd edn, Bloomsbury Professional 2011)
[111] Yui Nga Natalie Tsang (n 98)
[112] Max Thorowgood, 'Rashid v Nasrullah – Adverse possession when you're the registered proprietor?' (2020) < https://fieldcourt.co.uk/rashid-v-nasrullah-adverse-possession-when-youre-the-registered-proprietor/> accessed 2nd April 2022
[113] Best (n 8)
[114] Stake, 'The Uneasy Case for Adverse Possession' 89 (2000-1) Geo. L.J. 2419, 2434
[115] inquiring the validity of sleeping and earners theories
[116] Adverse occupation of residential premises (revised under s.144 LAPSO 2012)
[117] Stefania Garlicka,' Investigating the relationship between criminal trespass under section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the doctrine of adverse possession' (2021) < https://pure.qub.ac.uk/en/studentTheses/investigating-the-relationship-between-criminal-trespass-under-se. accessed 17th April 2022

for any period."[118]In other words, simply being on residential property does not mean an offence is committed and that simple fact cannot be taken as evidence that the squatting was "criminal.[119]" Therefore, it is important to understand that s. 144 LAPSO is designed to prove deterrence and practical help for homeowners… and was not intended to prove any collateral effect on the law of adverse possession or rebalance the competing interests of registered proprietors and squatters.[120] The case of best[121] highlights how the doctrine of adverse possession has been preserved by the courts even after the enactment of s. 144 LAPSO 2012.

In the case of 4.2.1 R (Best) v The Chief Land Registrar ,the Court of Appeal reasoned that what was required was the balancing of the public policies that underlie both the ex turpi causa (or illegality) test and that of acquisition of title by adverse possession in registered land. Thus the decision in Best has demonstrated that section 144(7) did not impliedly repeal or circumvent the law on adverse possession[122]. This comes as a relief, as a decision to the contrary decision could have resulted in adverse possession being abolished indirectly.[123]

It is interesting to note that in a report published by the Law Commission of England and Wales on 24 July 2018[124], the Commission noted that responses to their consultation on how the adverse possession scheme is operating under the Land Registration Act 2002 did not suggest that fundamental reform to the scheme was desirable. Instead, the Commission made some recommendations to deal with certain procedural or technical issues related to how the law operates[125].Further key recommendations from Law Commission in 2021 suggested that where a person is registered as the proprietor of previously unregistered land by reason of their adverse possession, time should continue to run in favour of their claim whilst their title is open. This issue has apparently been resolved by the decision of the Court of Appeal in Rashid[126].

Therefore, at things stand, the procedural and technical irregularities have been resolved to a larger extent by case law including Rashid[127] and Best[128] For instance, in the case of Best[129] the judge recognised that, in principle, the ex turpi causa maxim should be a convenient "starting point", but not "an absolute rule", "un yielding to any circumstance" (at para. [45]). Rather, the maxim should be disapplied where, on balance, the policies it serves (inter alia, not permitting criminals to profit from their wrongs) are outweighed by the broader policy goals of the relevant conflicting civil law regime. This approach is eminently sensible: it seems disproportionate to apply the ex turpi causa maxim mechanically, regardless of the seriousness of the crime, or the policies served by the conflicting civil law.[130] Thus Rashid[131] and Best[132] reminds us that "the application of the ex turpi causa maxim depends on context" something which is not new in matters of real property.[133]

In the words of Lord Denning '…a squatter…is one who, without colour of right, enters on an unoccupied house or land, intending to stay there as long as he can.'[134] However, when this concept is viewed through the lens of modern society, such an entry would be considered illegal once squatter has been asked by the owner to evacuate the property. Nevertheless, the concept of criminal squatting has been revisited by the court on several occasions and it has always been emphasized that "a recognition that the maxim ex turpi causa must be applied as an instrument of public policy,

[118] Martin Dixon, 'Criminal Squatting and Adverse Possession: The Best Solution?' (2014) < https://www.repository.cam.ac.uk/handle/1810/246191> accessed 27th March 2022
[119] Ibid
[120] Chris Bevan,*' Land Law'* (3rd edn, OUP 2022) 183
[121] Best (n 8)
[122]Yui Nga Natalie Tsang (n 98)
[123] Ibid
[124] Law Commission, *Updating the Land Registration Act 2002* (Law Com No 380) (Te Stationery Ofce, 2018) para 17.4
[125] Una Woods,' Protection for Owners under the Law on Adverse Possession: An Inconsistent Use Test or a Qualified Veto System?' (2021) Osgoode Hall Law Journal 57.2 (2021) : 342-380
[126] Max Thorowgood, 'The Law Commission's recommendations for updating the Land Registration Act 2002 – thoughts on the government response' (2021) < https://fieldcourt.co.uk/the-law-commissions-recommendations-for-updating-the-land-registration-act-2002-thoughts-on-the-government-response/> accessed 16th April 2022
[127] Rashid (n 7)
[128] Best (n 8)
[129] Best (n 8)
[130] Amy Goymour, 'Squatters And The Criminal Law: Can Two Wrongs Make A Right?' (2014) < https://www.jstor.org/stable/pdf/24693899> accessed 12th March 2022
[131] Rashid (n 7)
[132] Best (n 8)
[133] Martin Dixon (n 127)
[134] *McPhail v Persons Unknown* [1973] Ch 447, 456B

and not in circumstances where it does not serve any public interest."[135] Consequently, land registry suggested that this practice of the courts should be legislated by the parliament. This concern was also raised by the land registration during the drafting of LAPSO bill. Yet Parliament failed to insert a simple one-line subsection to assuage the concerns of the Land Registry and preserve adverse possession from the forewarned maelstrom.[136]

Furthermore, as highlighted, by Fox and Cobb, the value of empirical research is a precursor to any law reform project. Therefore it is important to consider how the law on adverse possession currently operates in practice: Who is affected and who benefits from the law on adverse possession?[137] Given the procedural or technical issues related to the operation of adverse possession, parliament should legislate on criminal squatting in order to bring clarity to the scope of successful adverse possession claims.

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[135] *National Coal Board v England* [1954] AC 403, 419
[136] Mark Jordan, 'Illegality And The Law Of Fast-Fish And Loose-Fish' (2017) Irish Jurist New Series, Vol. 57, 33
[137] Una Woods (n 139)

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Climate Change and Prisons

*Daniyal Akbar**

Background

On a global scale, the climate crisis is the twenty-first century's greatest health threat, and it is the world's most vulnerable populations who are most immediately at risk. It is always the actions of the wealthiest nations which have palpable consequences for the people of the third world, due to which the poorer nations are already facing political and social fallouts of hotter oceans and rising land temperatures.[1]

'Climate change' refers to long-term shifts in temperatures and weather patterns, such as temperature, rainfall, or wind, lasting for an extended period. Earth's climate has always been changing and evolving due to natural causes like volcano eruptions, forest fires etc., but since the last century, humans have had a big hand to play in accelerating this process by contributing to a phenomenon called the greenhouse effect, with the extended use of burning fossil fuels like oil, coal and natural gasses which release carbon-dioxide into the atmosphere, as well as engaging in activities like deforestation. The greenhouse effect happens when certain gasses known as greenhouse gasses collect and get trapped in the in the earth's atmosphere.[2] In recent times the Earth's temperature has gone up about 1° Fahrenheit in the last 100 years. This may not seem like much, but these seemingly insignificant small changes in the Earth's temperature can have overwhelmingly drastic effects.[3]

Incarceration and climate change are often examined separately, but there is evidence which suggests that their combined negative effect on health should be addressed collectively. Both incarceration and climate are associated with poor health outcomes. Both impact marginalized communities as well as people living in poverty, and people with disabilities. However it is only recently, that the two are being considered as mutually overlapping challenges rather than in isolation.[4]

Climate Change and Incarceration

Climate change and incarceration occurs when government authority and power is concentrated, leading to an abuse of power. This often leads to the most basic of needs among incarcerated people being unmet, including climate vulnerability. For example, during extreme heat waves, individuals who are not incarcerated have a lot of options available to them in order to stay cool and regulate body temperature, but these same acts are legally prohibited for incarcerated people.

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[1] What are the effects of climate change? | Greenpeace UK

[2] Greenhouse Effect | National Geographic Society

[3] https://nation.com.pk/2022/06/15/climate-change-critical-issue-of-our-time/

[4] https://www.thinkglobalhealth.org/article/climate-change-and-incarceration

People in prison are more susceptible to climate-driven extreme temperatures, disasters and diseases. Given the terrible medical conditions of the prison populations, addressing how health conditions and medications may increase health risks associated with extreme temperature exposure is critical. Incarcerated populations have higher rates of certain chronic diseases and mental health diagnoses, which are exclusively treated by prison and jail health care.

USA has the highest incarceration rate in the world with there being a prison population of 2.3 million people. The 8th Amendment to the U.S constitution protects incarcerated people from "Cruel and unusual Punishment". According to the U.S Supreme Court, this constitutional protection requires prisons and detention centers to provide medical care to incarcerated people and to protect them from physical and psychological harm. But despite this constitutional protection there is lack of standardization and the service they provide is subpar.

American Public Health association researched for legal cases regarding Eight Amendment Rights violations from temperature conditions from 1980 and 2019. There were 61 cases relating to cold exposure, 32 related to heat exposure and 7 related to both. In cases related to extreme heat, plaintiffs gave examples of temperatures exceeding 100° Fahrenheit, they expressed their issues regarding there being no air conditioning, there being limited cooling resources such as fans and access to water and there being a lack of ventilation. In four cases, Plaintiffs complained about getting exposed to extreme heat and there being no ventilation in transport vehicles and 4 deaths related to heat were recorded in Arkansas, Virginia, Texas and Tennessee. In cold related cases, plaintiffs expressed their distress on there being broken heating systems with temperatures below the freezing point. They also claimed that ice had formed on the prison cell's walls and toilet bowls. In more than 30% of the cases, the plaintiffs specified that there was inadequate clothing and blankets provided to them. There all resulted in the inmates getting health problems such as flu, frostbite, and joint swelling.[5]

Not only do incarcerated people get heavily affected by Climate Change, but they also contribute to accelerating the process by emitting high numbers of Carbon-dioxide while living in an enclosed space. According to research from 1997 to 2016, every incarcerated person accounts for 0.481% of carbon emissions. Mc Gee during his research was surprised himself by how such a small population 2.3 million people or 0.7% of the US population could produce such carbon-dioxide emissions.[6]

Incarcerated people all around the world face such ill treatment in prisons, detention centers and jails. As seen in in the case of (Alver v Estonia) where the applicant was sentenced for four years of imprisonment on charges of fraud and burglary. He claimed that there was overcrowding in cells, poor ventilation, poor lighting and sanitation, and insufficient food. Detainees in the prison were allowed to go out of their cells for just an hour a day and this led to the applicant getting diagnosed with liver damage, tuberculosis and hepatitis B and C. The applicant claimed that the prison breached article 3 of his convention rights which is 'Freedom from torture and inhuman or degrading treatment'. The ECtHR

[5] An Overlooked Crisis: Extreme Temperature Exposures in Incarceration Settings | AJPH | Vol. 110 Issue S1 (aphapublications.org)
[6] How the U.S. Prison System Contributes to Climate Change | by Drew Costley | Future Human (medium.com)

Held that there was indeed a breach of Article 3, and the State was bound to pay 3000 euros to the applicant.[7]

In the case of (Roxanne Martone v Brad Livingston), Roxxane Matone sued Brad Livingston and 9 othersas she blamed them for the death of her father who died due to intense heat in prison and for violating Mr. Martone's right to protection from cruel and unusual punishment under the Eight and the Fourteenth amendments. Mr. Martone was detained in Huntsville unite in Texas and temperature reached over 100° Fahrenheit with up to 87% humidity for eight consecutive days. Mr. Martone suffered from hypertension, depression and obesity which increased his susceptibility to heat stress. He explained to the guard who was supervising his cell that he was facing difficulty breathing, dizziness and was feeling dry. He got taken to the infirmary and there was only one nurse there who was "uninterested in doing her job and performing even a basic evaluation of Martone". Due to the nurse's negligence Mr. Martone ended up losing his life. The court denied nurse Rye's qualified immunity, finding that her actions- allegedly failing to take Mr. Martone's vital signs "were objectively unreasonable".[8]

Climate Change and Pakistan

Climate change has put a lot of countries in danger, but the risk for developing countries is much higher. South Asia has become more disaster prone, and the increasing rate of Climate change is proving to be disastrous for Pakistan as it had to face enormous economic, social and environmental consequences. Statistics from 2010 floods show the devastating effects of floods on the 20 million people in which many lost their lives, went missing or got injuries. Pakistan is a country that is moving towards industrializationbut still does mainly rely on agriculture, with agriculture being the occupation of 42% of Pakistani citizens. Irrigation from river Indus and its tributaries support around 90% of agriculture. Due to Climate Change, glaciers have been melting increasingly and they cause floods and mudslides down the stream. Rising temperature, irregular rainfall and glaciers melting have a negative impact on agriculture, food and on those who make an earning through agriculture. In many parts of Pakistan, the temperature can go more than 38° Celsius and when long heatwaves happen, major health consequences can occur. Pakistan faced 126 heatwaves between the 1997 and 2015 with the number of heatwaves per year increasing yearly in an upward trend.[9]

Minister for Climate Change Senator Sherry Rehman recently announced that South Asia will be facing a severe heatwave this year, adding that premature heatwaves are a sign of climate change and global warming. "Pakistan has been facing an unexpected heatwave since March. Temperatures in the border areas of Pakistan and India are expected to rise to 49-50 degrees Celsius," the minister said. Rehman cited the Pakistan Meteorological Department's (PMD) announcement that March 2022 was the hottest month since 1961.

[7] (2006) 43 E.H.R.R. 40

[8] 2014 WL 3534696

[9] Climate Change and its impacts in Pakistan - Pakistan Today

"In March alone, rainfall was recorded at 62% less than normal. In the year 2018, Nawabshah became the hottest city in the world in the month of April when the mercury went above 50 degrees Celsius," she stated.[10]

With such drastic changes in temperature affecting the common man in Pakistan, one can only imagine the horrors faced by the prisoners who live in horrific close knit quarters due to the severe overpopulation.

Pakistan's prisons are holding up to 57% more prisoners than their authorized capacity, leading to overcrowding that has had an adverse effect on the living conditions of both detainees and staff. This finding is part of a research titled "Addressing Overcrowding in Prisons by Reducing Pre-Conviction Detention in Pakistan" that has been developed by the National Counter Terrorism Authority (NACTA) in collaboration with Cursor for Development and Education Pakistan (CODE) and the International Committee of the Red Cross (ICRC).

The report gives a detailed analysis of the causes and consequences of prison overcrowding by highlighting the reasons behind the high number of inmates awaiting trial or court decision and the steps recommended to tackle them.

According to the report, two-thirds of the total prison population is still awaiting or undergoing trial. This has led to the overcrowding, which often results in appalling living conditions for inmates and prison staff by compromising on the hygiene and health facilities. Due to the huge numbers, prisons are increasingly unable to play a corrective and reformative role.

The report puts forth a number of recommendations for the government departments, ranging from balancing the use of imprisonment through de-criminalization of petty offences and introduction of alternatives to detention-like community service to prevent unnecessary arrest and imprisonment. Similarly, increasing the access to legal aid and providing better working conditions and advanced training modules to public prosecutors are also recommended. Introducing administrative measures at the level of the police and the prosecution for delays in submitting challans and taking measures against excessive adjournments are recognized as important steps to improve the situation.

The report is the outcome of a year-long research involving data collection and consultations with stakeholders like the federal government, the provinces and regions, police, prosecution, prisons, judiciary, lawyers, social activists, humanitarian organizations and subject-matter specialists.[11]

There is no population more captive to the effects of global warming than the incarcerated, the effects of which are already turning some prisons into ovens. These conditions are made worse by the unresolved problem of overcrowding in jails in prisons. As a result of overcrowding Pakistan's prisons, 6 to 15 people may occupy one single jail cell which is designed to be occupied by 3 people. An amnesty international report interviewing prisoners revealed that they have to take shifts to sleep as there is not enough roomon the floor for everyone. [12]

[10] https://tribune.com.pk/story/2354585/ministry-of-climate-change-issues-heatwave-alert-to-all-provinces

[11] https://www.icrc.org/en/document/overcrowding-pakistan-prisons-holding-57-more-inmates-capacity

[12] Pakistan: Overcrowding in Pakistan's prisons is a ticking time bomb - Amnesty International

A common consequence of heat in prisons is the potential for increased violence amongst the inmates and correctional officers. Fighting among inmates and assault incidents is on the rise due to the increase in temperatures. The number of people in a given enclosed space has a direct impact on the thermal conditions in that space. Therefore, overcrowding of correctional facilities prevents the interior environment from being tolerable. As external temperatures rise, overcrowding will become a bigger problem.[13]

Possible ways of tackling Climate Change and reducing its effects on prisoners

Politicians all around the world have taken notice of Climate Change and what it would bring about if nothing is done to stop it. For instance, 192 countries and the EU have signed the Paris accord to tackle climate change. The aim of these 193 parties is to significantly reduce global greenhouse gas emissions to limit the global temperature increase in this century to 2° Celsius, provide financing to developing countries to mitigate Climate Change and to enhance their ability to adapt to climate change and to review countries' commitments every five years. This agreement includes commitments from all countries to reduce their emissions and to work together to adapt to climate change.[14]

In general, Climate Change can be tackled by shifting towards using renewable energy resources that don't release greenhouse gases into the atmosphere. Such as using wind turbines to produce electricity. Similarly, Solar Panels can also be used to produce electricity which reduces the climate change risks associated with power generation using fossil fuels. Vehicles which are used nowadays, run by burning fossil fuels such as oil and petrol that release greenhouse gases into the air which harms the environment and shifting towards electric or solar powered vehicles may significantly reduce the percentage of dangerous gases in the atmosphere.

Plastic use and plastic consumption are seriously damaging to the planet. The excessive use of plastic causes contamination as toxic pollutants to be released into the atmosphere. This harms humans, animals, plants and contributes to the process of climate change. Using reusable products such as reusable plastic bags, reusable coffee cups help reducing the rate of climate change.

Planting more trees helps fight against climate change as trees absorb Carbon-dioxide from the atmosphere and give out oxygen. With more trees in the world, Carbon-dioxide absorption from the atmosphere will also increase. Pakistan took a huge step in fighting against climate change when the Khyber Pakhtunkhwa government introduced the Billion Tree tsunami initiative to counter Global warming and climate change. Pakistan hit the billionth tree goal in 2017, month ahead of schedule. In 2018, former Prime minister Imran Khan set an aim to plant 10 billion trees in Pakistan as a part of the larger Clean Green Pakistan movement. It also contained other goals such as improving access to clean drinking water and waste management.[15]

[13] https://www.bloomberg.com/news/articles/2015-09-25/how-global-warming-overheats-overcrowded-prisons

[14] The Paris Agreement | United Nations

[15] Pakistan is on its way to planting a 10 Billion Tree Tsunami. Here's how (globallandscapesforum.org)

For Incarcerated people specifically, the problems faced by them are overcrowding, poor medical treatment, no ventilation in prisons, getting subpar food and unclean water. Prisons in Pakistan are overcrowded with there being 57% more incarcerated people than the intended capacity. They live in horrible conditions with there being 6 to 15 people living in cells which are designed to hold 3 people at maximum. In horrible conditions, they are cramped together in tight cells, they have no access to air conditioning or fans, get below average food and the chances of them catching infectious diseases is high. Two-thirds of the prison population are still undergoing or waiting for trial which further increases the prison population. This can be avoided by decimalization of small crimes and giving alternate sentences such as community service. Specialist medical officers should be employed in prisons and prisoners' health should be their top priority. Simple things such as water coolers could be put in prisonsto help the incarcerated people fight against the heat. Incarcerated people should be allowed to get out of their cells more to get fresh air and Prisons should facilitate them with proper beds and with fans, so their ventilation is not restricted.

In the case of Ghulam Dastagir v the State[16], the court acknowledged the issue of overcrowding in prisons and sentenced the appellant who allegedly killed two markhors to community service instead of imprisonment. This may be a small step towards preventing overcrowding, but on the large scale if the courts started sentencing people to community service for petty crimes, it would help solve the issue of overcrowding. Similarly, in the case of Muhammad Bilal v the state[17], the Court again acknowledged the issue of overcrowding in prisons and granted bail to the appellant. They said that granting bail to the petitioner helps in preventing overcrowding in already overcrowded prisons.

Conclusion

In the light of the preceding discussion, it can be concluded that climate change is unquestionably a real existential threat to the world. It threatens the survival of humanity and if immediate action is not taken to combat it, its consequences would be quite catastrophic. Without drastic action today, adapting to these impacts in the future will be even more difficult and costly. It is also important for more studies to be conducted on the effect that climate change has on prisons in Pakistan due to the lack of information available on this topic. The issues faced by incarcerated people due to climate change need to be addressed globally as they are the people most vulnerable to it. Poor conditions they face in prisons and detention centers are already horrible and Climate change is worsening the conditions they live in. This is something which should take top priority as prison conditions are in dire of need of improvement as the way things stand goes against basic human rights.

[16] PLD 2014 BALOCHISTAN 100

[17] 2000 YLR 2676 LAHORE HIGH COURT

Simple Steps to Truth: Our thoughts are readily diverted from the truth; how can we seek it most effectively?

*Sayed Ibrahim Baacha**

Plato's renowned Allegory of the Cave[138], written in the fourth century B.C., depicts mankind as prisoners imprisoned in a fixed point in a dark cave, where they can only see shadows on a wall in front of them. They disregard anybody who tries to explain the outer world to them because they are blind to reality outside the shadows. "The Matrix," a 1999 film, revolutionized this metaphor by substituting the cave with a simulated world that enslaves humanity's thoughts.

The startling assumption underlying the epistemological, philosophical, and ethical concerns posed by Plato's allegory is that the vast majority of us are incorrect about what we believe to be true. The human psyche is a marvel, capable of astounding calculation and brilliant creativity. In addition, it is extremely impressionable, manipulable, and susceptible to overconfidence.

By examining disproved viewpoints that were formerly popular, such as geocentric and the assumption that a man's testimony is more credible than a woman's, we can establish that this concept, although being controversial, is often correct.

Recent work on cognitive biases, such as the overconfidence effect, supports Plato's argument. Infamously, the overwhelming majority of people rank their[139] driving skills and other qualities as "above average." The recent research[140] indicated that when individuals assess their confidence in recalling a piece of information between 80% and 90%, they are only right 55% of the time. Cognitive scientist **Philip Fernbach** and others showed in 2019[141] that the more informed an opponent of genetically modified foods claimed to be, the worse they performed on a test of objective knowledge about science and genetics.

Our inaccuracy in perceiving reality costs us when incorrect thoughts are turned into action—harmful governmental policies, wasteful commercial and charitable initiatives, and unhealthy personal choices. When truth is misinterpreted, every aspect of existence suffers.

Many statements, some of which are false, are made with great confidence in a society where disinformation, division, and brainwashing flourish. Is there any hope of finding the truth among all this chaos if our brains are so open to deception?

Step One: Develop Intellectual Discipline

Intellectual discipline, which involves recognizing our limits and weakness in formulating ideas, is the first step on the way to truth. When it concerns difficult topics without a clear response, the majority of us are incorrect about the majority of things, and we are all incorrect about at least certain factors.

In "The Apology," Plato relates Socrates' renowned teaching that a person is intelligent because he is aware of his ignorance. This brief statement of intellectual modesty was not a justification of nihilism, the idea that we do not comprehend anything or that we must not have beliefs. Obviously, the teaching itself asserts an entitlement to knowledge. Plato criticizes[142] philosophy students who “are always contradicting and refuting others” and “speedily get into a way of not believing anything” in Book 7 of "The Republic." To elaborate, he says, "But when a man begins to get older, he will no longer be guilty of such insanity; he will imitate the dialectician who is seeking the truth, and not the eristic." The idea of Socrates and Plato is that we need to start from a place of intellectual discipline if we are going to gain wisdom and follow the truth.

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[138] Plato- Allegory of the Cave (Translated by Shawn Eyer)

[139] Confidence in, and self-rating of, driving ability among older drivers by R A Marottoli and E D Richardson

[140] Cognitive illusions: A Handbook on Fallacies and Biases in Thinking, Judgement and Memory (Page. 236)

[141] Extreme opponents of genetically modified foods know the least but think they know the most by Phillips M. Fernbach, Nocholas Light, Sydney E. Scott, Yoel Inbar & Paul Rozin

[142] The Republic and other works by Plato (1973)

Recent study backs up the idea that intellectual honesty is an essential skill for recognizing the truth. Mark Leary, a psychologist, says[143] that those with high intellectual humility "distinguish strong from weak arguments more clearly." 2016 research[144] showed that intellectually honest individuals are better able to discriminate between authentic and false information and, in memory challenges "more successfully between sentences they had read previously and those they had not." Intellectual discipline allows us to evaluate information more precisely and to gain more from a wider variety of sources.

Step Two: Take an Intensive Logic Course

To tell the difference between truth and falsehood, individuals need both humility and good reasoning. But what is a good way to think? To answer this question, philosophers came up with the field of logic. Learning the fundamentals of reasoning can help us think more critically, just like learning the right way to run can help us run better. Like running, most people learn to reason to some degree on their own when they're young, but a little bit of study into logic can start taking someone a long way.

In order to evaluate the validity of the arguments[145] presented in support of various claims, it is helpful to comprehend the different types of valid arguments and how to deconstruct an argument into its basic elements will help you evaluate the strength of the justifications for various conclusions. Investing a little amount of time to memorize the most prevalent logical fallacies[146], such as red herrings, equivocations, and the composition fallacy, may serve you well for the rest of your life.

The study of logic has long been believed to aid in the development of thinking abilities, and there is evidence to support this assertion. In a 2019-research[147] of over 15,000 undergraduates, psychologists Rafael Quintana and Christian Schunn discovered that students from a range of majors improved their results in other courses after completing a single course in logic. Each year, philosophy majors who study logic extensively also rank among the highest scorers on examinations such as the LSAT[148] and GRE[149]. Logic empowers us to organize through information, identify weak arguments, and pursue strong lines of reasoning through enhancing our critical thinking. Thus, logic is another useful tool for individuals who seek the truth.

Step Three: Look objectively at the strongest arguments for and against

This tendency[150] is enhanced by social media[151], which curate material identical to the ones we've previously consumed. To leave our silos, we must investigate other viewpoints and question our views of the world.

Instead, reading critics' interpretations of arguments, read each side's arguments in their own words. It is uncommon for someone who does not have a certain position to accurately, fairly, and charitably describe it. Furthermore, examine the finest defenders of each perspective. Every viewpoint has its ineffectual supporters. Learn from people who are not only effective communicators but also generally known specialists in relevant subjects, and discover knowledgeable supporters of other positions who are prepared to share their opinions with you in a civil manner. You are likely to gain more from a discussion if you observe more than you say and avoid attempting to disprove others.

Apply the same level of scrutiny to yourself that you would expect from a person who differs with you. According to critical thinking[152] experts Linda Elder and Richard Paul, "[i]ntellectual integrity is manifested in the commitment to hold oneself to the same standards of evidence and proof one expects others to meet (especially one's antagonists)."

[143] The Psychology of Intellectual Humility by Mark R.Leary, Ph.D (2018)
[144] Knowing what you know: Intellectual humility and judgements of recognition memory by Samantha A. Deffler, Mark R. Leary, Ricky H. Hoyle
[145] Validity and Soundness
[146] Hansen, Hans, "Fallacies", *The Stanford Encyclopedia of Philosophy* (Summer 2020 Edition), Edward N. Zalta (ed.),
[147] Rafael Quintana & Christian Schunn (2019) Who Benefits From a Foundational Logic Course? Effects on Undergraduate Course Performance, Journal of Research on Educational Effectiveness, 12:2, 191-214, DOI: 10.1080/19345747.2018.1543372
[148] LSAT Scores of Economics Majors: The 2008-2009 Class Update By Michael Nieswiadomy
[149] Philosophy Dominates in Best Majors For GRE Scores Blog by Renee Vary
[150] What is Confirmation Bias? (Dayva Segal)
[151] Why our Media Silos Are Promoting Political Polarization
[152] Critical Thinking Competency Standards by Richard Paul and Linda Elder

And, if you are aware of your bias toward one side, researching both sides equally is not always enough. To balance what we're used to hearing, we must occasionally give the viewpoint with which we're less familiar more attention than that of the viewpoint with which we're already familiar. Separate yourself personally from the issue at hand and try to see it as an objective observer would.

In "Guide for the Perplexed,"[153] Maimonides states that “one of the causes which prevent men from finding truth” is sticking to the ideas “to which he has been accustomed from his youth.” No one is sufficiently clear to observe reality without bias, although we may become more objective by purpose and effort.

Step Four: Appreciate subtle distinction/difference

The universe is very complicated, and the mind is like a shot glass attempting to capture Victoria Falls. Because we can only comprehend so much information, we try to simplify to fit the world into our knowledge. Some simplification is important and beneficial, but we also make harmful generalizations, create fake difficulties, focus in the short term, and overlook context. Each of these sorts of oversimplification exemplifies lazy thinking, which Yale University researchers discovered to be the leading driver of the spread of "fake news." Social media favours simplistic and extreme viewpoints by limited the amount of characters and granting "likes" to direct, passionate comments, increasing the inherent human impulse to oversimplify and furthering division[154].

To avoid oversimplification-related mistakes, we should context information. A governmental policy (such as the cancellation of student loans) may have a good influence during a few of years, but a detrimental impact over five or ten years. The appropriate response to a question may rely on how its phrases are defined. A method may operate in one circumstance but not another. Both opinions may be incorrect or correct on various points if offered. As Algernon states in “The Importance of Being Earnest” that “The truth is rarely pure and never simple”.[155]

Therefore, we should investigate middle ground choices and avoid embracing extreme stances that hardly ever account for all available evidence. In addition, we should be wary about attributing ill intents to intellectuals and recognize that the majority of conflicts are between serious and well-intentioned parties. In our polarized world, this kind of goodwill is more crucial than ever.

Avoiding the Matrix

In "The Matrix," the actual world is terrible and poor, but ignorance is pleasure in the simulation. The movie poses the question: Will we embrace the truth even if we favour a lie?

When we choose to live in ignorance by taking the "blue pill," we lose out on information about how to better the world and benefit others. Furthermore, we lose the many hidden qualities and character modifications that the quest of truth needs and cultivates. Plato's response to this difficulty is that the search of truth is not just a worthwhile effort, but also a moral obligation.

[153] Page 41 of Guide for the Perplexed
[154] Political Polarization on twitter: Implications for the use of social media in digital governments
[155] The importance of being Earnest By Oscar Wilde

Commentary

A justice that is juvenile

*Hamza Imran Junjua**

Despite much development in recent years, uncountable number of children are livening in a vulnerable condition and striving hard to get their rights. Globally it is estimated that around 800 million children are living in a atmosphere which is highly affected by pollution, abuse, and where there is no education, proper medical care etc. Child rights are fragment of human rights and year 1989 was proven golden period when CRC-child right convention was introduced. It is international human rights treaty which laid down political, social, cultural, civil, health and other rights of children.

This treaty has ensured to protect child right through its articles and agendas where it has discussed discriminatory practices, talked about best interest, parental guidance, development, nationality, right of adoption, education and more. Pakistan has also ratified CRC back in year 1990 to ensure child rights, but what has Pakistan done for implementation and insurance of child rights.

For implementation of child rights along with treaties there is also a system called juvenile justice system which is made for child and deals with crime committed by juveniles. Child rights in Pakistan are also ensured by juvenile justice system.As per group development Pakistan (non-government organisation) there are nine juvenile courts across country with 1,300 juvenile offenders in year 2021 a statistic by dawn.

The question that comes here is that what is status of child rights in Pakistan after presence of such system? To answer this first it is important to know how juvenile justice system was born in Pakistan and history associated with it. In year 2000 Pervez Mushraf adopted JJSO-Juvenile justice system ordinance, this 15 sectioned document aimed at well-intentioned attempt for reforms in Pakistani criminal justice system for children.

JJSO defined child as someone who is under age of 18, established juvenile courts, formed procedure that no adult and child shall be tried jointly, it ensured assumption of privacy, arrest, bail and talked about custodial conditions of children. Not only the use of handcuffs was limited. All of the steps were taken for safety of rights but then a case [farooq Ahmed v Pakistan 2005] came that has challenged JJSO. In this case two Individuals were accused of killing add sodomising an 8 years child who was son of petitioner Farooq Ahmed later those 2 individuals submitted their school leaving certificates to show that they are juvenile And want protection of rights through juvenile justice system ordinance in response to this the petitioner had filed petition in High Court stated that the accused are not juvenile but adults and had argued that juvenile justice system ordinance was defective and had challenged its validity.

High Court after hearing the petition give significant reasons that why juvenile justice system ordinance should be struck off the statute book but when the case goes to Supreme Court in year 2005 it has suspended the judgment of Lahore High Court Some individuals think that the approach by Superior Court was absurd and has defamed that child rights Because the reasons given by Lahore High Court was found to be legitimate by common man and the reasons were that the age identified was unjustifiable and many provisions of the ordinance was not accurately drafted and the ordinance was clearly sacrificing the rights of victims and various rights of children through this ordinance was widely being abused because children were committing crimes on the behalf of their families knowing that they will not be held guilty as they are under 18.

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JJSO 2000, was repealed in consultation with a decision of the Lahore High Court in the case of [Ahmed Farooq v Federation of Pakistan]. The decision achieved a milestone in accentuating the inadequacies carried by the ordinance, it

was argued that the JJSO was purely unconstitutional, impractical, absurd, and unreasonable, as multiple provisions and laws of the this Ordinance aided in proliferating dilemma, it was replaced by JJSA-Juvenile justice system act 2018.

In JJSA the right of presenting juvenile after being in custody within 24 hours was included, it was ordered to inform juveniles about their rights in context to trial, in JJSA the authority to make one or more session sorts for juvenile proceedings and till then trials could be hold is given to high courts not just this the right of diversion from case was given to both victim and offender in juvenile cases. There were some harsh provisions in juvenile justice system ordinance 2000 regarding juveniles' custody, bail, punishment etc. those were made lenient in new act and police officers duties were made strict for protection and accurate proceedings as they play vital role.

The change of an ordinance into an act of parliament itself shows that how much child rights and juvenile justice system is important for Pakistan. But has this changed or improved the child rights in Pakistan? No doubt the juvenile justice system has improved and promoted the child rights yet it's been almost 30 years that Pakistan has ratified the convention on child rights-CRC but still the children in Pakistan are vulnerable and exposed to different kinds of violence which is affecting them physically, mentally and emotionally. As per UNICEF only 34% of children under five are registered properly at the time of birth, around 3.3 million are victim of child labour, 31% of children are married when they are at the age of 15, yes we are living in a modern world where there is equality but if this is how equality looks like then it's a question of mark on human rights.

The juvenile justice system through its act has no doubt contributed positively towards protection of child rights and the fiftieth periodic report of CRC which was held on 3rd of June 2016 welcomes the progress by state against child prostitution, child pornography and sale. Though the progress is slow but there is improvement with it like the as per UNICEF the mortality rate in children is decreasing every year it is 4.4 in 2021, 6.3 in 2020 and 7.8% in 2019. Pakistan is doing efforts to eradicate all practices that are discriminatory and found foul for children but at the same time there are some faults in juvenile justice system act like regarding age determination factor, training of police and security authorities, lack of juvenile courts, need for more care and rehab centres, and major thing is implementation of law these are some factors which must be improved otherwise it shows Pakistan adherence to child rights convention and flaws in juvenile justice system.