

PJALR

The Punjab Judicial Academy

Law Review

A combination of theory and practice.

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TABLE OF CONTENTS

PUNJAB JUDICIAL ACADEMY LAW JOURNAL	
INTRODUCTION	4
GUIDELINES FOR CONTRIBUTORS	5
PJA EDITORIAL BOARD	8
EXTERNAL ADVISORY BOARD.....	9

ARTICLES/RESEARCH PAPERS

1. THE PRINCIPLES OF NATURAL JUSTICE AND EQUITY.....	11
<i>Author: Moiz Nasir Virk</i>	
2. SHATTERING THE STIGMA NAVIGATING THE GREY AREAS OF WOMEN HARASSMENT.....	23
<i>Author: Khadija Farooq</i>	
3. IMPACT OF ISLAMIC JURISPRUDENCE ON ENGLISH COMMON LAW.....	36
<i>Author: Mahnoor Kazmi</i>	
4. HUMAN RIGHTS IN THE 21ST CENTURY: BRIDGING THE GAPS IN THE UDHR.....	46
<i>Author: Junaid Sattar Butt</i>	
5. DIMENSIONS OF CRIMINAL TRIAL IN PAKISTAN: CHALLENGES AND SOLUTIONS.....	64
<i>Author: Saeeda Mirbaz & Saqib Jawad</i>	
6. PAKISTAN'S DIGITAL DARK SIDE: CYBERCRIMES AGAINST WOMEN.....	80
<i>Author: Sabbar Maqsood & Nayab Naeem Khan</i>	
7. ADDICTION OF MODERN COMPUTER TECHNOLOGY IN WORK PLACE: CHALLENGES AND POLICIES	99
<i>Author: Ahmad Rafi Shahid,</i>	
ACKNOWLEDGEMENT.....	114

PUNJAB JUDICIAL ACADEMY LAW REVIEW

INTRODUCTION

The Punjab Judicial Academy (PJA) is an autonomous body established under the Punjab Judicial Academy Act, 2007, serving as a premier training institution to train judges and court staff in Punjab. Under the guidance of the Board of Management, the Director General supported by a team of faculty members and staff, oversees the academic and administrative affairs of the PJA.

There are multiple means of training and dissemination of knowledge. Publication of law journal is also one factor to promote research based knowledge. To publish law journal and promote research are the statutory functions of the PJA.

SCOPE & AIM OF LAW REVIEW (PJALR)

The Punjab Judicial Academy Law Review (PJALR) is a research-oriented publication spearheaded by the Research & Publications Wing of the Punjab Judicial Academy. It is published in the English Language. The primary goal of this Law Review is to create a platform for judges, writers, academics and experts in the field of administration of justice to share their thoughts and experiences regarding various legal matters and issues.

The articles featured in this research journal go through a rigorous process, starting with initial editorial assessment and plagiarism checks. Subsequently, they are sent for peer review to experts in the field and further reviewed by members of the editorial board. The Punjab judicial Academy has published four editions of its Law Reviews.

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Keeping in view the objectives of Law Review, contributions/manuscripts/articles are received from following:

- Hon'ble Judges of the Superior Judiciary and the District Judiciary
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The Punjab Judicial Academy Law Review receives following form of writing for publication:

- Research papers, articles and essays
- Case notes
- Legislation reviews
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Format of PJALJ:

- The articles should be composed in M.S. Word format in Times New Roman font size 12, in double space. **Manuscripts in PDF form are not acceptable.**
- Authors are required to submit an abstract not more than 200 words along with the manuscript.
- Manuscript may be sent through email as attachment and complete detail of author including name, designation, mailing address, email address, contact number and institutional affiliation should also be mentioned.
- Writer's brief CV may be provided while submitting an article for the publication first time.
- All articles undergo through an initial editorial scrutiny and plagiarism test. Thereafter, these articles will be sent to two experts in the field for their critical assessment. The Editorial Board of PJALJ takes the final decision to publish an article and is not bound to explain the reasons for its decision.

- The Editor reserves the right to change, modify or edit the paper before publishing it or send the article to the writer to do so where it deems necessary.
- References should be inserted as footnotes and numbered consecutively. The Chicago Manual of Style Sixteenth Edition (footnotes) should be followed.

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- Writing submitted to PJALJ must be original and must not be under consideration for publication or published elsewhere.
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Nature of Contributions:

- The length of research articles, papers or essay should be between 4000 to 6000 words which should be thoroughly researched and referenced.
- Case notes should be between 2000 to 3000 words;
- Legislative review should be between 2000-4000 words;
- Book reviews should be between 3000-5000 words

How to Submit:

Manuscripts may be submitted at submit@pja.gov.pk. Other editorial correspondence may be addressed to the Director, (Research and Publication)/Editor, Punjab Judicial Academy 15-Fane Road Lahore.

(Abid Hussain Qureshi)
Director (Research & Publications)/Editor
Punjab Judicial Academy

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ARTICLES/ RESEARCH PAPERS

(1)

THE PRINCIPLES OF NATURAL JUSTICE AND EQUITY

Moiz Nasir Virk

Abstract

The article explores the principles of natural justice and equity as integral elements of legal framework. "Natural justice" refers to fundamental norms of justice derived from natural law, encompassing fairness, equity, and good conscience. This article elaborates these two cardinal principles of natural justice by emphasizing on the procedural safeguards like notice, hearing, unbiased decision-making, and also by proposing remedies for eliminating bias. Significant judgments, including those from Pakistani courts, underscore the universal applicability of these principles. The article also discusses the role of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 which guarantees fair trial and due process as fundamental rights. It further highlights the integration of equity into the legal system of Pakistan, which ensures justice is administered based on fairness rather than rigid adherence to law. The discussion extends to safeguards for defendants, the role of legal aid, and judicial conduct to ensure impartiality and fairness. The principles of natural justice and equity are presented as timeless pillars of justice, essential for reposing public confidence in the legal system and ensuring that justice is not only done but should be seen to be done.

Keywords

Doctrine of natural justice, equity, due process, ensure justice equity, principles of natural justice, principles of fairness.

Introduction

The principles of natural justice and equity serve as the bedrock of a fair and impartial legal system, ensuring that justice is administered in a manner consistent with fairness, reasonableness, and moral righteousness. Deeply rooted in natural law, these principles transcend codified statutes, embodying universal values that aim to prevent arbitrariness and uphold the dignity of individuals in judicial and administrative proceedings. The principles of *audi alteram partem* and *nemo judex in causa sua* encapsulate the essence of natural justice, guaranteeing the right to be heard. Equity, on the other hand, complements the rigidity of legal rules by focusing on fairness and good conscience. Through an examination of constitutional provisions, landmark judicial pronouncements and procedural safeguards, this article delves into the enduring relevance and application of these principles within the legal framework, highlighting their pivotal role in fostering public trust in the justice system.

1- The Underlying Concept of “Natural Justice” and “Equity”

“Natural Justice” is a goal which is achieved by following the principles of “Natural Law.” Principles of natural law are a path while natural justice is the destination. The goal of providing Natural Justice is an uphill task without following this path. Prior to embark upon the multiple aspects of the topic, it is appropriate to understand the meaning of both the expressions. Black’s Law Dictionary defines the term “Natural Justice” as “*justice defined in a moral, as opposed to a legal, sense also termed as justitia naturalis.*” “Natural Law” is also defined by the same dictionary in the terms “*2.A philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action; moral law embodied in principles of right and wrong...many ethical teachings are based on natural law...also termed as*

law of nature; natural justice; lex aeterna; eternal law; lex naturae; divine law; jus divinum; jus natural; jus naturae.” Courts of equity, historically presided over by the Chancellor, were designed to apply principles of fairness and conscience, which sometimes diverged from the common law. From definitions referred above, it appears that both have separate genesis but the fact is that both are interlinked with each other for one purpose i.e. administration of justice up to the natural standards. Although these principles are, sometimes, not codified yet the same are applied as if they were codified. Non-adherence of these principles both in judicial or in executive proceedings, nullifies the entire proceedings and the proceedings reach the stage from where the application of these principles is ignored. In this way, these principles serve as backbone of proceedings.

The Supreme Court of India, in the case of *Swadeshi Cotton Mills etc. vs. Union of India and others*¹, discussed the same concept. The Court observed that the term "natural justice" cannot be precisely defined or confined within rigid boundaries. Judges, influenced by British legal traditions, often associated natural justice with principles of fairness, equity, and good conscience. In earlier times, there was slight distinction made between "natural justice" and "natural law," with the former being viewed as a component of natural law focused on the fair administration of justice. The Court further emphasized that natural justice is not a fixed set of rules but rather flexible principles aimed at ensuring fairness. These principles are not ends in themselves but serve as a means to achieve just outcomes, making it impossible to create a comprehensive list of such rules.

In the case of *Muhammad Aslam vs. Member (Colonies) Board of Revenue Punjab Lahore*², the Hon’ble Lahore High Court explained the principle of

¹ 1981 (2) SCR 533

² 2019 CLC 1141

natural justice emphasizing that natural justice requires both parties to be treated fairly and impartially. Each party must have an equal chance to present their case before the court, ensuring that justice is administered in a just, reasonable, and equitable manner. Natural justice is rooted in common law and embodies key principles such as fairness, reasonableness, equality, and impartiality. It ensures that no party is favored or disadvantaged, and decisions are made based on merit and fairness to all concerned.

So far as principles of equity are concerned, in the case of “*Mohtarma Benazir Bhutto and another vs. President of Pakistan and others*”³ the apex Court of Pakistan while differentiating equity and law observed that the difference between law and equity is that law relies on fixed rules, while equity focuses on fairness. Equity ensures justice is done according to fairness, not rigid legal rules. It was held that in Pakistan, equity is integrated into the legal system, and courts may grant relief based on equitable principles when fairness requires it.

2- Principles of “Natural Justice”

Natural justice is based on two core principles. The first principle is *audi alteram partem*, that means right to be heard. The second principle is *nemo debet esse judex in propria causa* (or *nemo judex in re sua*), which guarantees the right to an impartial and unbiased decision-maker. While some jurists argue that natural justice also includes additional elements—such as the right to legal representation, the right to be informed of charges in advance, and the right to receive reasons for decisions—these are generally considered to be extensions or applications of these two fundamental principles.

³ P L D 1998 Supreme Court 388

2.1.1 Audi alteram partem

It is the cardinal principle of natural justice that no man should be condemned unheard. This rule is not only applied in civil and criminal proceedings but also in administrative proceedings. This principle requires the authority to make a decision only after giving the other party a chance to be heard in a fair, just, and reasonable manner. In the case of Muhammad Aslam⁴, the Court categorized this maxim into two parts:

A- Notice

B- Hearing.

In respect of both the elements i.e. Notice and Hearing, the High Court, in the above case, was pleased to hold that before taking any action, the affected party must be given a notice to show cause and provide an explanation. This is a primary aspect of the right to a fair hearing, and any decision made without such notice violates natural justice and is void. The notice must inform the party of the hearing's time, date, place, legal basis, charges, and proposed actions. Failure to issue or properly serve the notice breaches natural justice, even if it does not affect the authority's jurisdiction. Now coming towards Hearing.

The second aspect of the *audi alteram partem* principle (hear the other side) is the right to be heard. Any decision made by an authority without granting the affected party a fair opportunity to present their case is invalid and liable to be set aside. The principle of "fair hearing" is a key component of the **audi alteram partem** rule. Authorities can fulfill this requirement through either written or oral hearings, unless

⁴ (supra).

the governing statute specifies otherwise. It is the authority's duty to ensure that the affected party is provided an opportunity to present their case and respond to the allegations against them. Almost identical view was taken in the case "General Council of Medical Education vs. Spackman"⁵, which view was subsequently affirmed in the Swadeshi Cotton Mills⁶ wherein the Indian Supreme Court dilated upon the aspects of the maxim in the terms that the principle of *audi alteram partem* has two key aspects: Giving notice to the person about the case they need to respond to and providing them an opportunity to explain or defend themselves. This rule is widely recognized and requires that anyone making a legal decision must ensure that a fair hearing was granted, as famously stated by Lord Loreburn "a duty lying upon everyone who decides something, in the exercise of legal power."

2.2 Nemo judex in causa

Nemo judex in causa mean "no one shall be an arbitrator on his own or a cause in which he is interested." This principle debars the person from deciding the matter before him in which he is having personal interests. It clearly alludes towards the person administering the justice that he should be unbiased in respect of the assignment before him because he has to impart seems to have been done. In legal terms, **bias** refers to a predisposition or prejudice that affects a person's judgment. It can be understood as a mental inclination or tendency that sways someone's decisions or opinions unfairly toward one side, preventing impartiality. Bias includes preconceived opinions or emotions that make a person partial or unfair. Essentially, it means a lack of neutrality, and it is often equated with **partiality**

⁵ (1943) AC 627.

⁶ 1981 (2) SCR 533 (at p.33)(Supra).

and strictly to be distinguished from prejudice. In certain situations, **bias** is understood as a mental state or attitude. It does not refer to opinions about a specific issue but rather to a person's mindset or disposition toward another individual. This includes all forms of personal hostility or prejudice against that person.

2.3 Kinds of Biases

In the case of “*Asif Ali Zardari vs. The State*”⁷ the apex court of the Pakistan held three kinds of biases which are as under:

A- Subject-matter Bias

A judge may be biased in a case if they are personally involved in the matter or have a direct connection to the litigation, creating a legal interest in its outcome.

B- Pecuniary Bias

Even a minor financial interest in a case disqualifies a judge, regardless of whether it is proven that this interest influenced the decision or not. If a judge with such an interest participates in the decision-making, the judgment is considered invalid. In the case, *R vs. Bow Street Metropolitan Stipendiary Magistrate*⁸ it was laid down that the prohibition against judging one's own cause is not limited to situations where the judge has a financial interest in the outcome. It also extends to cases where the judge's decision would advance a cause in which they are personally involved alongside one of the parties.

⁷ PLD 2001 SC 568

⁸ (1999) 1 All ER 577

C-Personal Interest

A judge may have personal bias towards or against a party, which could arise from relationships or events that occurred before or during the trial. When there is an allegation of personal bias, the key question to consider is “**Would a reasonable person in the litigant's position fear that they will not get a fair trial?**” The test is whether there is a *real likelihood of prejudice*, which means a genuine concern based on the facts, not baseless suspicions or irrational doubts.

2.4 Reasonable Apprehension of Bias

In the case of *Government of N.W.F.P through Chief Secretary and another v.s Dr Hussain Ahmad Haroon and others*⁹ the Supreme Court of Pakistan advises decision-makers to act in a manner that does not create any reasonable doubt in anyone's mind that they may have held a grudge or bias against any of the parties involved in the case.

2.5 Determination of Judicial Conscience

In case titled *Asif Ali Zardari vs. The State*¹⁰ the Supreme Court held that a judge of a higher court is the guardian of their own conscience, and it is up to them to decide whether to hear a case or step aside.

3- Principles of “Natural Justice” and “Fair Trial”:

Article 10-A was incorporated into the Constitution of Islamic Republic of Pakistan, 1973, as part of the 18th Amendment in 2010. It affirms that every individual has the right to a fair trial and due process in the determination of their civil rights and obligations, as well as in any criminal charges brought against them. This Article contains all the principles of natural justice and

⁹ 2003 SCMR 104

¹⁰ PLD 2001 SC 568 (supra).

equity. This Article was the subject of discussion before the superior Courts in a number of judgments; a few judgments with reference to underlined principles, are as under:

3.1 Fair Trial and Equal treatment:

In the case of *Muhammad Aslam*,¹¹ the Hon'ble Lahore High Court, Lahore propounded the principles while observing that in Pakistan, the principles of natural justice are embedded in Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantees that each person is entitled to equality before the law and fair treatment. The law and procedures must be fair, just, and reasonable. The principles of natural justice apply whenever prejudice is caused to an individual through an administrative action.

A core component of natural justice is the doctrine of *audi alteram partem*, which ensures that no one is condemned without being heard. This principle guarantees both parties the right to present their case, ensuring a fair hearing and impartial justice. Under this doctrine, no decision can be made without giving both parties an opportunity to be heard, allowing them to defend their positions effectively.

3.2 Fair Trial and Due Process:

In the case of *Adnan Anwar and another vs. Muhammad Sharaiz Hussain and another*¹² the Hon'ble Lahore High Court held that **Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973**, ensures the right to a fair trial and due process. This right includes the proper framing of issues based on the conflicting pleadings of the parties, the recording of evidence, and the hearing of

¹¹ 2019 CLC 1141 (supra).

¹² PLD 2019 Lahore 68

arguments. Any procedure that fails to meet these requirements constitutes clear illegality and violates the provisions of Article 10-A. Courts are legally bound to ensure a fair trial in accordance with this constitutional mandate.

3.3 The Universal Application of Natural Justice Principles to Proceedings:

In case of *Messrs Fun Information Network (SMC-PVT) Limited/ NEO TV, through Muhammad Nasrullah Khan vs Pakistan Electronic Media Regulatory Authority through Chairman and others*¹³, the Hon'ble High Court, while elaborating on the principles of natural justice and the right to a fair trial, extended their applicability to all quasi-judicial proceedings. The Court held that the principle of ***audi alteram partem*** must be considered an inherent part of every statute unless explicitly excluded. This principle applies not only to judicial proceedings but also to quasi-judicial processes.

3.4 Legal Aid to Undefended Accused:

In the case of *Muhammad Hussain alias Julfikar Ali vs. State (Govt. of NCT of Delhi)*, the Supreme Court of India underscored the importance of fair trial principles. The Court held that the right to a fair trial before a competent court is essential for safeguarding life and personal liberty. It emphasized that providing effective legal aid to accused individuals who lack representation is vital to ensuring that criminal proceedings are conducted in a free, fair, just, and reasonable manner. Similarly, in *Zahira Habibullah Sheikh v. State of Gujarat*¹⁴ the Court elaborated on the concept of a fair trial, declaring it central to the administration of justice and fundamental to the protection of human rights.

¹³ PLD 2019 Lahore 486

¹⁴ [(2006) 3 SCC 374; AIR 2006 SC 1367].

3.5 Defense Evidence

While refusing to receive defence evidence of the petitioner the trial Court has committed an illegality and has also failed to provide fair trial to the petitioner as guaranteed under Article 10(A) of the Constitution of Islamic Republic of Pakistan, 1973.¹⁵

3.6 Fair Treatment

Judge's conduct of intervening during recording of oral and using ill-tempered and offensive language towards a litigant could render the trial unfair and would merit a complete retrial.¹⁶

3.7 Significant Safeguards

The Constitution of the Islamic Republic of Pakistan provides essential safeguards to protect individuals from being deprived of their **life or liberty** and outlines rights related to arrest and detention. These safeguards include the **right to consult and be defended by a legal practitioner of one's choice**. The Constitution upholds the right to a fair trial and due process. An individual arrested for an offense is entitled to the following rights: (1) to be informed of the reasons for their arrest; (2) to consult with and be represented by legal counsel; (3) to be notified of the charges brought against them; (4) to cross-examine witnesses testifying against them; (5) to explain the evidence presented against them; and (6) to present evidence in their defense. These are also necessary ingredients to ensure the fairness of a trial.¹⁷

3.8 Statutory Safeguards

The principle of **due process of law** requires a transparent investigation and a fair trial, ensuring that the accused can defend

¹⁵ 2020 PCr.LJ 711

¹⁶ 2020 SCMR 1073

¹⁷ PLD 2020 Supreme Court 334

themselves effectively without facing undue obstacles or embarrassment. While the accused has the right to due process and a meaningful opportunity to challenge the charges and defend their position, the prosecution and its witnesses are equally entitled to legal protection. This ensures they can pursue the case with minimal inconvenience and unnecessary hardship. True equality before the law must include equal protection otherwise, it becomes a mockery of justice.¹⁸

3.9 One- way Affair

A fair trial is not a one-sided process; it requires the accused and their representatives, while asserting innocence, to conduct themselves lawfully and ethically. Their efforts to defend their case are justified only when pursued through legal and permissible means.¹⁹

Conclusion

The above scenario demonstrates that the principles of natural justice and equity are foundational to every legal system, embodied as fundamental rules of justice. Our beloved homeland has set a commendable example by enshrining these principles as a constitutional right to a fair trial. The application of these principles not only ensures fair and transparent proceedings but also fosters public confidence in the legal system, emphasizing that justice must not only be done but must also be seen to be done. Despite their statutory recognition, these principles have been integral to judicial and quasi-judicial processes since time immemorial, underscoring their enduring importance.

¹⁸ 2021 SCMR 387

¹⁹ 2022 SCMR 1145

(2)

SHATTERING THE STIGMA NAVIGATING THE GREY AREAS OF WOMEN HARASSMENT

Khadija Farooq

Abstract

Women harassment is a crucial topic that has historically been forbidden and considered a taboo. Both professional and private environments are vulnerable to many forms of harassment including sexual, verbal, psychological and discriminatory harassment. The response to these issues has been very minimal. Male dominating culture and stigmatic discrimination of both genders have normalised such harassment. It brings difficulty while reporting incidents to seek justice. Recent movements like #MeToo, #OrangeTheWorld, #TimesUp, #HeForShe and #NiUnaMenos have emerged which also empowered women to break the silence on this critical topic, challenging the ego of male dominating society and highlight this important social dilemma. Addressing women harassment, requires a multidimensional approach involving legal restructuring, public awareness, educational and informational campaigns to empower women and establish a secure environment.

Keywords

Women, Harassment, Taboo, Challenge, Gender Equality, Social Dilemma, Awareness, Movements, Humiliation, Persuasion, Discrimination, Patriarchal Society, Cultural Norms, Challenges, Secure Environment, Empowerment, Intimate, ego, silence, and Unprofessional .

Introduction

Harassment is any unwelcomed and inappropriate behavior that is likely to offend or humiliate another person. Words, gestures and acts that tend to irritate, worry, mistreat, denigrate, threaten, or humiliate someone else tend to irritate, worry, mistreat, denigrate, threaten, or humiliate someone else that fosters a hostile, offensive or intimidating work environment, these all can be considered forms of environment.¹ Harassment is becoming more significant issue in all facets of the economy because of the increasing number of negative and detrimental consequences. Several non-government organizations have responded to this by formulating anti-harassment rules and policies.²

1. Various Forms of Harassment Against Women

Women are subjected to discrimination from an early age, particularly in societies where male children are preferred.³ The use of overt and covert hints of sexual behavior, such as unwelcome offers of payment for sexual favors, is considered harassment of women. Gender-based harassment of women includes a range of behaviors, such as physical, verbal, and nonverbal acts. Verbal harassment involves asking about their private life, making inappropriate remarks, and spreading rumors about their sexual orientation. Leering, making sexual gestures, utilizing provocative images, and engaging in stalking or following behavior are examples of nonverbal harassment. Unwanted physical contact with sexual overtones, such as kissing, hugs, and unwanted touches, is considered physical harassment.⁴

¹ International Monetary Fund: Policy On Harassment. (JUNE16,2009)

² Gardner Sv, James Mf, Evans Nr. Gender Issues Among South African Anaesthetists. S Afr Med J. 2002; 92:732-6.

³ Ulasi I. Gender Bias In Access To Healthcare In Nigeria: A Study Of End Stage Renal Disease. Trop Doct. 2008; 38:50-2. Doi: 10.1258/Td.2007.060160.

⁴ "Harassment and Sexual Harassment". (n.d.). Retrieved from Council of Europe - Gender Matters: <https://www.coe.int/en/web/gender-matters/harassment-and-sexual-harassment>

2. Reasons For Harassment Of Women

- Disproportion of power
- Gender discrimination
- Cultural and social norms
- Educational deficiency
- Negative male behaviour
- Unprofessional work atmosphere
- Chemical dependency (alcohol)
- Cyber bullying
- Virtual harassment
- Unaddressed problems
- Socio-economic factors
- Collective persuasion
- Inadequate legal protection
- Cultural stereotypes
- Objectification of women
- Economic dependence
- Intergenerational trauma
- Revenge or power struggles
- Inadequate support system
- Misinterpretation of women's signals
- Workplace dynamics
- Power dynamics

3. A Taboo Or A Challenge

Because of cultural norms and societal attitudes, talking about women, sexual harassment, and violence against women is frequently frowned upon in Pakistani society. Victims may be reluctant to speak up because they fear embarrassment, stigma, or reprisals. Furthermore, there is a propensity to attribute the victim rather than making offenders responsible, which strengthens the taboo around these problems. But in spite of the taboo, women's harassment in Pakistan is a serious issue that needs to be addressed right away. The safety, wellbeing, and rights of women are seriously threatened by the pervasiveness of sexual harassment and violence against them in public places as well as in homes and workplaces. The problem is

made worse by insufficient enforcement tools, legal protections, and support services.⁵

4. Legal Provisions In Pakistan

To protect women from harassment at work, the "Protection against Harassment of Women at the Workplace Act" was passed by Pakistan in 2010. At first, Supreme Court's 2021 ruling ignored other types of gender-based discrimination in favour of restricting harassment to sexual misconduct. But in 2022, the law was amended to broaden the concept of harassment to include discrimination based on gender, correcting the prior restrictive interpretation.⁶

- a. Anti-Women Practices – The Criminal Law Third Amendment Act, 2011
- b. The Procedure Against Harassment of Women at Workplace Act, 2010.
- c. Sexual Harassment – The Criminal Amendment Act, 2009.
- d. Protection the of Women (Crl. Laws Amd.) Act, 2006.
- e. Honour Crimes – The Crl. Laws and Amd Act, 2004.
- f. The Offece of Zina (Enf. Of Hudood) Ord., 1979.
- g. The Offence of Qazf (Enf. Of Hudood) Ord., 1979.
- h. The Execution of the Punishment of Whipping (IX of 1979) Ord., 1979.
- i. Dissolution of Muslim Marriages Act, 1939.
- j. Dowry and Bridal Gifts (Restriction) Act, 1976.
- k. Dowry and Bridal Gifts (Restrictions) Rules, 1976.
- l. National Commission On the Status of Women Act, 2012.
- m. The Domestic Violence (Prevention & Protection) Act, 2012 (Capital Territory)
- n. The Punjab Protection of Women against Violence Act, 2016

⁵ Retrieved from IntechOpen: <https://www.intechopen.com/chapters/1164521>

⁶ Abbasi, m. (2023, july 23). Empowering Women: Solution against Harassment in Pakistan.

Retrieved from linkdin: <https://www.linkedin.com/pulse/empowering-women-solution-against-harassment-pakistan-abbasi>

5. Islamic Perspective On Rights Of Females

Islam emphasizes the significance of women in the workplace and in entrepreneurship, in addition to the home. Muslim women are welcome to work in a variety of professions and enterprises as long as they respect their modesty, dignity, and adherence to Islamic law. The Prophet Muhammad (peace be upon him) emphasized women's rights, the Quran highlights the important and varied role of women. In Islam, education is encouraged for both sexes, with a focus on knowledge acquisition.⁷

6. An Illustration Of How Common Women Harassment Is

Numerous figures demonstrate the severity of the situation, which is the prevalence of harassment against women in Pakistan.

- Pakistani women face a wide range of forms of harassment, including physical assault, sexual harassment, verbal abuse, gender-based discrimination, and online harassment.
- Approximately 93% of Pakistani working women say they have experienced harassment at work.
- From 2018 to 2022, 5,008 harassment instances were registered.
- 32% of women experience violence as a result of crimes based on their gender.
- Additionally, 40% of married women experience harassment.
- Pakistan is placed 142nd out of 146 countries in the World Economic Forum's (WEF) Global Gender Gap Report.⁸

⁷ 15 Rights for Women in Islam". (n.d.). Retrieved from Islam Question & Answer: <https://islamqa.org/hanafi/mathabah/177867/15-rights-for-women-in-islam/>

⁸ Hub, O. H. (2018, OCTOBER 23). "Supreme Court of Pakistan Holds That Harassment at the Workplace Includes Non-Sexual Discrimination on Basis of Gender". Retrieved from Oxford Human Rights Hub: <https://ohrh.law.ox.ac.uk/supreme-court-of-pakistan-holds-that-harassment-at-the-workplace-includes-non-sexual-discrimination-on-basis-of-gender/>

- 1,000 courts were required to handle disputes involving women, in 2019.⁹
- Pakistan saw a heart-breaking number between 2004 and 2016: 4,734 women suffered from sexual abuse, and over 15,000 cases of honour crimes were formally recorded.
- Crime rate has varied; in February 2020, it decreased by 73%, but thereafter, the number of instances increased.
- By the end of February 2020, there were 73 rape incidences in Lahore, including five gang rape instances.
- At least 3,881 rape incidents were reported in Punjab alone in 2019, with a conviction rate of 0.3% nationwide.
- In 2020, 535 complaints were filed with Federal Ombudsman Secretariat for Protection Against Harassment (FOSPAH).
- Following numbers were described in the 2022 FOSPAH Annual Report:
Between 2018 and 2022, 2,169 complaints were filed, with 582 coming from women and 148 from men in the public sector and 994 from women and 445 from men in the private sector.¹⁰

7. Situation and Occurrence

7.1 Workplace Harassment

For women, workplace harassment is a serious problem in a variety of professional contexts, such as businesses, factories, and organizations. Many women deal with this widespread problem, but because of various worries, it frequently remains unnoticed. These anxieties could include the possibility of losing their jobs, receiving

⁹ SPECIFIC, N. (2021, DECEMBER 19). "Rise in harassment". Retrieved from The Express Tribune: <https://tribune.com.pk/story/2412278/rise-in-harassment>

¹⁰ "Harassment of Women's Rights in Pakistan". (n.d.). Retrieved from Human Rights Pulse: <https://www.humanrightspulse.com/mastercontentblog/harassment-of-womens-rights-in-Pakistan>

negative feedback from their family, or having their reputation in society harmed.¹¹

7.2 Educational Institutes

A significant barrier is harassment in educational settings, which particularly affects both teachers and students. Peers, teachers, or those in administrative positions may engage in this kind of harassment, which can take many different forms. Individuals who experience harassment in educational environments may experience negative consequences for their mental health, academic performance, and sense of belonging in the academic community.¹²

7.3 Domestic Environment

Domestic Violence (DV) is a serious worldwide problem that affects people of both genders. This study focuses on domestic violence against women in Pakistan, which is on the rise in both urban and rural areas. DV is frequently viewed as a personal matter in Pakistani society, receiving insufficient attention for evaluation and treatment. Due to misunderstandings of social, cultural, and religious standards, women in Pakistan frequently face discrimination and violence.

8. Social Aspects

8.1 Psychological Impact

Numerous studies on the psychological effects of Cyber Sexual Harassment (CSH) victimization in adult women have shown

¹¹ Sahni, T. (n.d.). "Workplace Harassment Of Women". Retrieved from Research Gate: https://www.researchgate.net/profile/Tanushi_Sahni/publication/369203029_workplace_harrasment_of_women/links/6410384992cfd54f84fcacfd/workplace-harrasment-of-women.pdf

¹² Article title: "Navigating the Labyrinth: Mapping the Trajectories of Sexual Harassment in Pakistani Workplaces"

detrimental effects on mental health. General cyber harassment is the main focus of research on adult women, which also examines more general psychological impacts like angry feelings and particular behaviors within CSH. Victimization by CSH may cause anxiety, depression, and trauma symptoms in adult women. Age is one of the characteristics that affect CSH experience; younger women who spend more time online may experience higher levels of CSH. Relationship status is important; women who are single or divorced may be more susceptible to sexual harassment, whereas married women may be more likely to categorize incidents.¹³

9. Economic Level

The study focuses on domestic violence against women in Pakistan, which is becoming a bigger issue in both urban and rural areas. Unfortunately, Pakistani society frequently ignores proper assessment, intervention, and resolution in favor of seeing domestic violence as a private family concern. Because of misconceptions about social, cultural, and religious norms, women in Pakistan face every day acts of abuse and discrimination.¹⁴

10. Education Ventures

The study "Impact of Sexual Harassment on Female Students' Educational Experience in Higher Education in Quetta City" looks at the detrimental effects that sexual harassment has on female students' academic careers. It looks into how women who live in Pakistani cities experience harassment and stalking on their way to work every day, upsetting their routines and sense of security. Urban women are nonetheless susceptible to domestic violence

¹³ sage journal. (n.d.).

<https://journals.sagepub.com/doi/pdf/10.1177/0971521519891480>.

¹⁴ International Research Journal of Social Sciences and Humanities (IRJSSH). Retrieved from International Research Journal of Social Sciences and Humanities (IRJSSH): <https://irjssh.com/index.php/irjssh/article/view/64>

despite their education, which highlights the pervasive problem of violence against women in Pakistan. According to the essay, women cannot be completely protected from societal violence and prejudice by education alone, underscoring the urgent need to address and prevent harassment against them.

11. Difficulties in Pakistani Women's Harassment Intervention

Social and Cultural Barriers: Women are stigmatised and blamed for harassment by patriarchal norms. Reluctance to confront harassment brought on by religious convictions and cultural views.

- BARRIERS REGARDING SOCIETY AND CULTURE
- LESSER AWARENESS AND REPORTING
- NO IMPLEMENTATION OF LAWS
- NO SUPPORT SERVICES
- ECONOMIC INSTABILITY

12. Methods And The Future For Reducing The Impact Of Women's Harassment

12.1 Raising Awareness And Education

Engage with the government, NGOs, and media in public education for women's harassment criminality and negative effects.¹⁵ Organize awareness campaigns to enlighten people regarding different types of harassment and need for reporting.

¹⁵ Abbasi, m. (2023, July 23). Empowering Women: Solution against Harassment in Pakistan. Retrieved from LinkedIn: <https://www.linkedin.com/pulse/empowering-women-solution-against-harassment-pakistan-abbasi/>

12.2 Strengthening The Legal Framework

Review current laws to identify gaps and close them in terms of effectively curbing women's harassment. Enact new laws to cover new types of harassment, including cyber bullying and online harassment.

12.3 Establishing Fast-Track Courts

Establish fast-track courts specializing in harassment cases in order to provide quick justice to victims. Provide training to law enforcement personnel in order to respond quickly, sensitively, and professionally to complaints of harassment.

12.4 Providing Support Services:

Set up helplines, counselling centres, and support services to deliver emotional support, legal advice, and medical treatment to the survivors of harassment. Activate NGOs and community associations for the effective provision of support services.

13. Research Reviews

Umer Khan conducted research in 2020 to examine the traits and actions of male perpetrators of violence against intimate partners in South Asia, providing insight into the elements influencing gender-based violence in the area. The review sheds light on the frequency of intimate partner violence, its effects on victims, and the necessity of focused interventions to effectively address this problem. It emphasizes how crucial it is to comprehend the intricacies of gender-based violence in order to create all-encompassing plans for victim care and prevention.¹⁶

¹⁶ Umer, K. (2020). Gender-Based Violence in Pakistan - a Critical. Harvard Extension School, 1-68.

Johar Wajahat, Rafia Naz Ali, and Mohammad Jan conducted a study in 2023 that explored the many types of gender-based violence in Pakistan, such as sexual harassment in the workplace and on the streets. It draws attention to the fact that most sexual harassment victims are women, although most of the perpetrators are men. The review also covers the frequency of sexual abuse in Pakistan across various age groups, socio-economic backgrounds, and ethnic groups, as well as non-verbal forms of harassment.¹⁷

Saira Samo focused on sexual harassment in the workplace in 2023, drawing attention to the widespread problem of women's rights abuses in Pakistan. Her study brought to light a startling statistic: an estimated 93% of Pakistani women working in the public and private sectors had reportedly been the victims of sexual harassment.¹⁸

The Sohail Ahmed evaluation from 2021 lists the various types of harassment that women face in Pakistan, such as sexual harassment at work, harassment in public places, harassment online, and abuse and violence within the home. It highlights that harassing a woman in a public setting, at work, on social media, or in private is illegal in Pakistan.¹⁹

Aarzoo Farhad, Dr. Sara Qayum, and Shehla Zahoor conducted a critical examination of Pakistan's domestic abuse legislation and its legal framework for women in 2021. It draws attention to the difficulties in putting these laws

¹⁷ Fatima, P. (2023, october 18). "The Challenges of Women Harassment in Pakistani Society". Retrieved from Republic Policy: <https://republicpolicy.com/the-challenges-ofwomen-harassment-in-pakistani-society/>

¹⁸ Samo, S. (2024, april 24). Confronting workforce harassment. Retrieved from The Express Tribune today's paper: <https://tribune.com.pk/story/2447230/confronting-workforceharassmen>

¹⁹ Ahmad, S. (2022, August 9). Harassment Laws That Every Pakistani Woman should know. Retrieved from linkedin: <https://www.linkedin.com/pulse/harassment-laws-everypakistani-woman-should-know-sohail-ah>

into practice and upholding them effectively, highlighting the necessity of a stronger and more comprehensive legal system to defend women's rights.²⁰

The qualitative study, conducted in 2023 by J. Adcock, attempts to investigate how women's personal autonomy develops and the issue of "preserving face" via the lens of adverse childhood experiences (ACEs). The study will involve semi-structured interviews with ten seasoned female psychotherapists who have identified ACEs both before and after they create pictures using simple art supplies. Hermeneutic phenomenological inquiry, arts-based research, Template Analysis, and a pluralistic philosophical perspective are all incorporated into the research design.²¹

14. Cultural And Societal Stereotyping In Pakistan

14.1 Patriarchal Culture And Social Norms

The patriarchal culture and social norms of Pakistan are strongly linked to the harassment of women. The harassment that women experience is frequently attributed to them or regarded as immoral. The objectification of women and gender biases normalise harassment.

14.2 Victim-Blaming Attitudes

Rather than holding offenders accountable, Pakistani society frequently places the blame on victims. Victim-blaming mindsets discourage reporting of harassment and encourage silence.

²⁰ Shakeela zahoor, A. F. (2021). Domestic-violence-laws-and-their-legal-framework-forwomen-in-pakistan-an-analysis.pdf. Pakistan law review, 1-50

²¹ Adcock, J. (2023). "Preserving Dignity: An Arts-Based Hermeneutic Phenomenological Exploration of Women's Personal Agency in Light of Adverse Childhood Experiences." Middlesex university Reseach Respiratory, 1-50

14.3 Reluctance to Address Harassment

Some people believe that confronting sexual harassment is against Islamic standards or part of a "western agenda." The significance of combating harassment of women is undermined by cultural and societal beliefs.

14.4 Lack of Empowerment and Awareness

Many women are not aware of their legal rights and anti-harassment safeguards. Women's vulnerability is exacerbated by a lack of economic empowerment and possibilities.

15. Recommendations

- Increase public knowledge by use of educational programs.
- Put strong legal measures in place to discourage harassment.
- Offer assistance to those who have been harassed.
- Encourage cultural changes to counteract social norms that support harassment.

Conclusion

In order to successfully capture societal nuances, this qualitative study highlights the need for a multidimensional strategy that combines quantitative and qualitative approaches to understand perceptions of women harassment in Pakistan. Understanding the nuances of cultural norms, society attitudes, and contextual elements is essential to determining whether harassment of women is viewed as a challenge or a taboo. It is essential to use a combination of quantitative and qualitative approaches, such as focus groups, surveys, and interviews, in order to capture the complex view-points that are present in Pakistani culture.

(3)

IMPACT OF ISLAMIC JURISPRUDENCE ON ENGLISH COMMON LAW

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Abstract

An array of legal concepts central to English Common Law owe a debt of gratitude to Shariah which may be articulated at a much larger scale and greater depth, however, for the present space focus is made on aqd, ahd, dayn, muqassah, suftajah, qadb daman, istihqaq, lafif that the readers will see were assimilated as contract, exchange, responsibility placed on the usurper (seller was considered a usurper until he delivered the possession to the buyer), novel disseisin.

Keywords

Aqd; Ahd; Dayn; Muqassah; Suftajah; Qabd Daman; Qada-e-Istihqaq; Lafif.

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Introduction

The provenance of Anglo-Saxon jurisprudence remains opaque from the time of its emergence as a historically discernable set of concepts from the time of King Henry-II of England till date. English Law of Contract that metamorphosized from a moral duty into Action of Debt, significance of Assize of Novel Disseisin i.e. the right of a plaintiff to recover immediate possession of his land from which he was unfairly disseized, remedial laws and procedure for trial by jury, and the liability a Trust creates on the trustee are defining features of English Common Law, but their novelty and inventiveness still intrigues. Scholastic research has proposed that Common Law owes its legacy to many influential legal systems that shaped the laws of the world, notably to Civil Law traditions of Roman and Canon Law. But the curiosity remains, as Common Law does not only feature Western law but emerges as a collage of Roman cum European as well as Islamic Jurisprudence particularly with reference to personal law and procedure (*Muamilaah and Janayah in Arabic*).

Here we shall traverse to Europe and inquire into possibility of roots of Common Law in Shariah and map out the trail from the Maliki School of Fiqh in Northern parts of Africa and Southern Italy to Sicilian Norman Law post-Norman invasion led by Roger de Hauteville and Robert de Guiscard in 1061 A.D. and from there to the Anglo Saxon Law of England during Norman era to establish the socio-political and territorial connections that perhaps helped Shariah emigrate to the rudiments of Common Law.

Aqd: How the contemporary notion of obligation manifested in Contract in the Action of Debt resembled Aqd in Shariah.

Until late into the decade of 1180 A.D. an Anglo-Saxon contract for sale of goods or land as documented by *Glanvill*² was a promise betokened by some formality such as a hand-grasp between the buyer and vender, or exchange of a token such as chattel or a Turf and Twig ceremony followed by the livery of seisin (delivery of possession). The obligation to fulfil the promise was undergirded by moral duty to perform or a pledge of good faith by the parties.

In twelfth century, a new notion of obligation was introduced by *Aula Regis*³ in form of writ of debt. Now a seller pursuant to an agreement made with the buyer was to do his *devoir* based on ownership already transferred under an agreement, to convey the emptor's property to him. This distinct feature of action of debt in which the contractual liability chased the parties and their heirs like a debt until performed and was peculiar to pre-Common Law Germanic traditions as well as to Roman law.⁴ The transaction of purchase and sale as penned by *Glanvill* was "effectively complete" only when the obligation on the seller to deliver the goods and on buyer to deliver its price was gratified. The new concept of contract of sale unlike Germanic Law of Northern and Western Europe defined the agreement as a mechanism involving reciprocal obligations which promptly generated a debt that

² THE TREATISE ON THE LAWS AND CUSTOMS OF THE REALM OF ENGLAND COMMONLY CALLED GLANVILL (G.D.G. Hall ed. & trans. Nelson 1965) (c. 1187-89).

³ The English Royal Courts in early Norman England, created by William the Conqueror. *Aula Regis* was also referred to as a great hall in royal palace where the royal court was held. The *Curia Regis* was a panel of advisers who traveled with the king, advising him on political matters and acting as an appellate court in important or complicated matters. Overtime the nature of the functions of *Curia Regis* became exclusive. Black's Law Dictionary, 11th Edn (2019).

⁴ Before Norman Conquest, "exchanges" in Anglo-Saxon Law were known either as completed transactions i.e. real contracts or unilateral promises endorsed with some formality. These were consensual obligations protected by local courts of England. Action of Debt was a grant by the Royal Court and was issued in form of a writ by the King.

endorsed the right of the purchaser over the subject matter of the contract as it was his own to make the receipt of price certain. This revolutionary concept in twelfth century was unknown to European legal institutions but was manifest in Islamic traditions. Chafik Chehata a celebrated scholar in his work on *aqd* in Islamic Jurisprudence verified that in Shariah the property that was the subject matter of sale, whether movable or immovable, conveyed from seller to buyer on his offer being accepted.⁵ Physical transfer was not essential for the property in issue to be claimed by the vendee as his own. The contractual obligation in Islam endeavored to underpin the rule of *quid pro quo*.⁶ Unlike the Anglo-Saxon fundamentals of contract, *Aqd* was an obligation to fulfil promise without surety, this worked on the same parameters as the newly introduced King's law of Action of Debt (*Dayn*).⁷ It was also the same as *Ahd* in Judeo Christian traditions and Quran, which referred to a bond between the promisor and a promisee making it binding on the parties and resulting in them being subject to an enquiry on the Day of Judgment and accountable to God.⁸ Islam has also been emphatic about *Qabd Daman* which is the responsibility of the seller to pay the value of the destroyed or damaged object to the buyer as it was his duty to deliver the

⁵ See F. H. RUSTON, MALIKI LAW BEING A SUMMARY FROM FRENCH TRANSLATIONS OF THE MUKHTASAR OF SIDI KHALIL WITH NOTES AND BIBLIOGRAPHY 157 (1916). Also see, THE HEDAYA, OR GUIDE: A COMMENTARY ON THE MUSSULMAN LAWS 401(1870)

⁶ Understanding Islamic Finance, *Islamic Law of Contracts and Business Transactions*, Ch. 5, 2012. <https://doi.org/10.1002/9781119209096.ch5>

⁷ “*Dayn* (Debt) is an Arabic word developed from the same root as (*Din*) meaning submissiveness or disgrace. *Dayn* in Islamic Jurisprudence it refers to a debt, financial liability or monetary obligation. This definition includes all assets, including intangible assets such as property rights and music royalties.” See Saad, A.A. and Syed Jafar Alhabshi, S. M. (2019), “Debt Theories in Islamic Commercial Transactions and Their Implications for the Islamic Capital Market,” *International Journal of Management and Applied Research*, Vol. 6, No. 4, pp. 296-306.

⁸ Surah Al-Maidah:1: “O you who have faith! Keep your agreements...” and Surah Al Imran: 76: “Yes, whoever fulfills his commitments and is wary of Allah—Allah loves the Godwary.” Atharyanshah Puneri, *Comparison of The Law of Contract Between Islamic Law and Indonesian Law*, Journal of Law and Legal Reform (2021) pp. 65-82. DOI: <https://doi.org/10.15294/jllr.v2i1.39036>

possession of the object on conclusion of contract.⁹ This was also the essence of Writ of Debt, which was later succeeded by Writ of Covenant and Writ of Assumpit. Similarly, the Common Law principle of set-off of a debt also reflected the jurisprudence of *al-Muqassah* exclusively developed by Hanafi and Maliki regarding the importance of debt harmony¹⁰. Also the contemporary laws of Negotiable Instruments twin with Islamic laws of finance as *Suftajah* (bill of exchange; traveler's cheques) in the early days of Islamic capital market was used by the Middle Eastern merchants as a tool for money transfer.¹¹ These guiding rules of contract in Shariah that were practiced in Islamic dominions much before twelfth century were introduced by English Common Law and presently are a part of Anglo-American Jurisprudence on contractual liability.

Istihqaq: An accelerated remedial procedure for Recovery of Property in the Assize of Novel Disseisin.

In 1155 A.D. and 1166 A.D. King Henry-II created the assize of novel disseisin that catered as an expeditious remedy for deprivation of ownership. The assize of novel disseisin was writ of a right of proprietary in nature. This judicial reform safeguarded title to immovable property through speedy means of chartering lawful possession. It also gave security to landowner under the King's Law by substituting the Anglo-Saxon methods of determining the truth through trial by ordeal or trial by battle which was a bloody device brought post-Norman conquest. The assize of novel disseisin, a writ that was purchased from the king, and twelve jurors were chosen to interrogate the facts as well as land in dispute. It was a judicial power parallel

⁹ John A. Makdisi, *The Islamic Origins of the Common Law*, 77 N.C. L. Rev. 1635 (1999).

¹⁰ Ibid. 5: *Muqassah* is subdivided into two types: *al-Muqassah al-Jabriyyah* and *al-Muqassah al-Ittafaqiyyah*.

¹¹ Ibid. 5: "Among the applications of *suftajah* in modern financial world is the process of money transfer i.e. telegraphic transfer, traveler's cheque and money order."

to the order of *praetorian interdict*.¹² These jurors would then bring their declarations back to the king, who would decide relying on them if the pursuer was *disseised*¹³ inequitably or otherwise.

The emergence of assize of *novel disseisin* has remained a conundrum in the annals of the Common Law.¹⁴ Henry of Bracton in his work from the thirteenth century, adduced that the assize was tailored by King Henry and his council through many wakeful nights.¹⁵ But the question remained captivating that when neither the writs from Normandy nor the Anglo-Saxon Law offered a concept parallel to Assize of Novel Dissesin, from where the king and his council cull this notion of remedial justice. Albeit, Roman and Canon Law offered a right to protection of peace as to property which was a concept akin to the assize, yet it was evidently different to the English Assize which safeguarded the property rights. Since English Assize did not seem to originate from Western European Jurisprudence, to find a trial, we shall endeavour to glance through the Islamic legal system which prevailed in

¹² Book Review. *The Assize of Novel Disseisin* by Donald W. Sutherland Morris S. Arnold Indiana University School of Law – BloomingtonOne. "Bracton's four-day rule, which he never really advanced with much certainty, was not law; instead, a disseised owner had a somewhat indefinite period within which to enter, a period which varied with the circumstances of his case (pp. 97-104). In most instances, defendants seemed to act quickly enough to satisfy the judges; Bracton himself in one instance held a six months' hiatus permissible (p. 99). So the assize was "possessory" in the sense that it excluded matters of right if the right was not triable with dispatch or if the defendant had not acted within a reasonable time. (The latter requirement was never precisely defined; it was as elastic as the equitable defense of laches.) But the assize was not possessory in the sense that it automatically protected the possession of a mere trespasser against an owner asserting his right by self help. And in any case a resort to some appropriate action was often available to a loser in novel disseisin, at least if the facts raised by that more *droiturel* writ were not already found against him in a special verdict of the assize." If they were, he was estopped by these facts and no other action on them was allowed even though such an action might theoretically be "higher in the right" (p. 143-144). This doctrine, established, early in the reign of Edward II, does much to explain the popularity of the special verdict in the assize.

¹³ *Diseissin* (meaning): dispossessed.

¹⁴ S.F. Milsom, Introduction to 1 POLLUCK & MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I (2nd ed., Cambridge University Press 1959) (1895).

¹⁵ John A. Makdisi, The Islamic Origins of the Common Law, 77 N.C. L. Rev. 1635 (1999).

Eastern countries even before twelfth century. In Muslim countries *Istihqaq* was an action for retrieving land upon seizure (*ghasb*). The claim was brought in the court of a *qazi* (judge) to restore the possession of owner status quo ante, who was wrongfully dispossessed of his estate. If the dispossessor could justify that he had a better right to the property, the action for recovery by the one dispossessed would be dismissed. *Qaza-e-istehqaq* in Shariah was the injunction passed by the Qazi which worked as a certificate of entitlement which compelled the defendant to carry out a certain act, while on the contrary *qaza-e-tarq* referred to a restraining order. This presumption regarding ownership of a person based on possession became a distinguished feature of English law. This had not been earlier witnessed by Roman and Canon Law. In eleventh century, *Sahl al Sarakhsi*, a Muslim jurist asserted that in Shariah when a bailee held land that was later seized by a third party the bailee despite not being owner of that property could still recover it from the seizer. This rule protected the rights of the bailee as a simple possessor. Another similarity between substantive law of the English assize and substantive law of the *Istihqaq* was the method of interrogation. In both these actions a jury of twelve witnesses was called upon by the court to investigate the veracity of the incident. Thus, it was incumbent on the judge to admit findings of the jury. The English assize and *Qaza-e-Istihqaq* in Shariah mirrored attendance of the defendant mandatory before the court and also granted the judge power to proceed ex parte in case the defendant did not appear before court in order to cause delay in proceedings or regardless of intimation to appear. The assize and *Istihqaq* were both to be brought before court within a limited time prescribed by law and the action was also contingent on plaintiff's actual possession of the realty at the time of disseisin. The decision of the court in both laws could be reviewed and reformed by the court.

Convergent with Islamic rule of *Hizaya* (a prescriptive period of ten years from the cause of action to settle and quash the hearings), English Common Law in thirteenth century introduced a ten-year timeline for an action which either pegged to the king's coronation or his last voyage overseas.¹⁶

Lafif: Islamic harbinger to the jury.

Pre-Norman Conquest of England the Anglo-Saxon methods of truth-finding were through duel or ordeal by fire or water. Royal inquest to jury was thus imported from other legal systems in 1164 A.D. on creation of assizes. It included a draw of twelve jury members from the neighborhood of the complainant who would investigate and submit their findings before the judge to subsequently settle the truth. This method was confluent to the Islamic Lafif, where a complaint (*muqal*) was initiated before *qazi* as intrinsic right by the plaintiff (*mudaai*).¹⁷ The defendant (*muddai-alaihi*) filed reply (*jawab*) and plaintiff had a right to trial through evidence (*shahadah*). Imam Abu Hanifa and Imam Malik described jurors as witnesses in a trial whose testimony played an instrumental role in fact-finding and decision-making process. Akin to Roman jurisprudence the number of honorable witnesses

¹⁶ Shariat Petition No. 8/1/2001, *Fazal Akbar Khan v. Secretary of Law*. Also see, PLD 1989 FSC 89. The honorable Federal Shariat Court held, 'Regarding the legality of the limitation i.e. fixing time limit to bring a suit in the court of law etc., the jurists have relied upon the following traditions of the Holy Prophet (pbuh) "A thing which remained in possession of a person for ten years, he will become the owner of that thing." The Tradition has been reported in *Kanzul Ummal* as follows "A thing which remained in possession of a person claiming adversely to the claimant for ten years, the right of the possession shall be superior to that of his claimant opponent." Another Tradition reported by Qazi Abu Yusuf in *Kitabul Khiraj* is also referred in this regard "Old and barren land is a property of State and then of yours. Anyone who cultivates a piece of land, he will become its owner. But a person who takes in possession a piece of barren land and by putting cornerstone did not cultivate the land for three years, shall cease the right." It is pertinent to mention that there is no Quranic verse from which we may derive rules on this issue...'

¹⁷ Al Otaibi, Dr. Ahmad Suliman, *The Jury System: Historical and Islamic Roots, Legal Nature, and Contemporary Applications in Britain and USA*, Kuwait International Law School Journal, Vol. 11, Issue 44 (2023). Brockopp, Jonathan E., *Early Islamic Jurisprudence in Egypt: Two Scholars and their Mukhtasars*, International Studies of Middle East Studies, Vol. 30, No. 2 (May 1988) pp. 167-182. (Cambridge University Press).

(*adl'udul*) in Islam was more than one and was self-prescribed by Quran. Thereupon every Muslim was considered honorable unless otherwise proven. North Africa before the Norman Conquest in eleventh century followed Maliki Fiqh and the tradition of trial by *Lafif* consisting of twelve *udul* community members as witnesses sworn on oath and their testimony was binding on *qazi-ul-quzaah*.

Norman Conquest of Ifriqiyya and Sicily: The bridge that brought Islamic legal tradition to English Common Law.

The acreage of Africa (*Ifriqiyya* today identified as Morocco, Tunisia and Sicily) had a Muslim reign from ninth century until the Norman conquest of 1061 A.D. and 1148 A.D. England's neighbors across water, *Ifriqiyya*, Sicily and Spain, followed Maliki and Ismaili Schools of Fiqh and were paragon of Arab civilization analogous to Cordova of Spain. The Norman conqueror Roger-II grew up in Muslim culture, thus spared the rich Islamic traditions by integrating them into their Common Law. England and Sicily were consanguine Norman states with Norman kings in twelfth century. These new Norman rulers had a strong bond and consulted each other through their voyages regarding lawmaking strategies and art of statesmanship. King Henry-II brought back his observations from his allied Norman ruler's kingdom of Sicily for improvement of his kingdom. These observations were embossed with Islamic notion of substantive law and procedure pertaining to rights of civil nature.

Conclusion

Based on the aforementioned clues it would be plausible to theorize that certain important features of English Common Law were informed in twelfth century by Maliki and Ismaili Fiqh prevalent in Norman England's brother kingdom, Norman Sicily. The indefatigable efforts of King Henry-II to improve the laws by crafting them included the law of contract into an

obligation incorporating rule of quid pro quo, remedy of status quo ante in matters of an unlawful disseisin, role and importance of a jury in a setting of a trial, making evidence of the witness incumbent upon the judge to follow, prescribing a limitation period for seeking justice, grounding trustee by his duties and introducing institutions with licensed trainers in the form of Inns for formal education of laws took inspiration from *Madrassas* of Sicily. The distinctive features of English Common Law not only took direct insights from Islamic Law, but presented itself as an amalgamation of Western European and Islamic law.

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HUMAN RIGHTS IN THE 21ST CENTURY: BRIDGING THE GAPS IN THE UDHR

Junaid Sattar Butt¹⁸

Abstract

The Universal Declaration of Human Rights (UDHR), adopted in 1948¹⁹, has served as a cornerstone for global human rights protection.²⁰ However, as the world history has evolved, so too have the complexities of human rights challenges. The UDHR, though groundbreaking in its time, has faced criticism for its inability to fully address contemporary issues such as digital rights,²¹ climate change,²² and the rights of marginalized communities.²³ Additionally, its non-binding nature and reliance on state actors have limited its practical impact in some regions. This research aims to identify the gaps in the UDHR in light of 21st-century challenges and propose actionable reforms to bridge these gaps. The study examines the evolving human rights landscape, highlighting the need for modernization and inclusivity in the UDHR to address both old and emerging human rights concerns.

Keywords:

Climate Justice; Cultural Relativism; Digital Age; Indigenous Rights; Human Rights Reform; Modernizing UDHR.

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¹⁹ United Nations. (1948). Universal Declaration of Human Rights. Retrieved 01-12-2024, from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

²⁰ Office of the United Nations High Commissioner for Human Rights. Core International Human Rights Instruments and Their Monitoring Bodies. Retrieved 01-12-2024, from <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>

²¹ OECD. (2024). Human rights in the digital age. Retrieved December 2, 2024, from <https://www.oecd.org/en/topics/sub-issues/human-rights-in-the-digital-age.html>

²² United Nations Development Programme. (2024). Climate change: A matter of justice - Here's why. Retrieved December 2, 2024, from <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why>

²³ Office of the United Nations High Commissioner for Human Rights. (2014, June 12). Marginalized groups: UN human rights expert calls for an end to relegation. Retrieved December 2, 2024, from <https://www.ohchr.org/en/press-releases/2014/06/marginalized-groups-un-human-rights-expert-calls-end-relegation>

Introduction

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is widely regarded as one of the most significant milestones in the history of international human rights law and translated into over 500 languages.²⁴ It laid the groundwork for a global consensus on the rights and freedom to which all individuals are entitled, irrespective of their nationality, ethnicity, or other status. The UDHR comprises 30 articles²⁵, covering a broad range of civil, political, economic, social, and cultural rights. It has been instrumental in shaping national constitutions, influencing international treaties, and providing a moral framework for the protection of human rights worldwide. Over the decades, it has served as the foundation for various human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR)²⁶ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)²⁷, both of which were adopted in 1966. The UDHR's impact has been profound, contributing to the establishment of international human rights institutions and helping to catalyze movements for civil rights, gender equality, and the protection of marginalized communities.

This research aims to critically examine these gaps in the UDHR, particularly in relation to emerging global challenges. It will assess the extent to which the UDHR remains relevant in the face of modern human rights issues, identifying areas where it has failed to provide adequate protection or

²⁴ United Nations. (1948). Universal Declaration of Human Rights. Retrieved December 2, 2024, from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

²⁵ OPSEU. (2024). The UDHR comprises 30 articles. Retrieved December 2, 2024, from https://opseu.org/wp-content/uploads/2018/12/30_basic_human_rights_list_english.pdf

²⁶ United Nations. (1966). *International Covenant on Civil and Political Rights*. Retrieved 01-12-2024, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

²⁷ United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights*. Retrieved December 2, 2024, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

guidance. By examining both the historical context and contemporary needs, the research will propose actionable solutions for bridging these gaps and modernizing the UDHR to ensure it reflects current realities. Special attention will be given to issues such as digital rights²⁸, climate justice²⁹, and the rights of marginalized groups³⁰, with a focus on how the UDHR can be reinterpreted or expanded to provide comprehensive protection in these areas.

1. Historical Context and Evolution of the UDHR

1.1.1 The Genesis of the UDHR

The genesis of the Universal Declaration of Human Rights (UDHR) can be traced back to the aftermath of World War II³¹, a period marked by widespread devastation, the Holocaust, and the realization of the immense need for global standards to prevent such atrocities from occurring again. In response to the horrors of war and the violation of basic human rights across Europe and other parts of the world, the international community sought to create a document that would codify universal principles of human dignity and rights. The United Nations (UN), established in 1945, became the central platform for this initiative. The drafting of the UDHR began shortly after the UN's formation, under the leadership of **Eleanor Roosevelt**, widow of American President Franklin D. Roosevelt and the then-chair of the UN

²⁸ OECD. (2024). Human rights in the digital age. Retrieved December 2, 2024, from <https://www.oecd.org/en/topics/sub-issues/human-rights-in-the-digital-age.html>

²⁹ United Nations Development Programme. (2024). Climate change: A matter of justice - Here's why. Retrieved December 2, 2024, from <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why>

³⁰ Office of the United Nations High Commissioner for Human Rights. (2014, June 12). Marginalized groups: UN human rights expert calls for an end to relegation. Retrieved December 2, 2024, from <https://www.ohchr.org/en/press-releases/2014/06/marginalized-groups-un-human-rights-expert-calls-end-relegation>

³¹ Encyclopaedia Britannica. (2024). Universal Declaration of Human Rights. Retrieved December 3, 2024, from <https://www.britannica.com/topic/Universal-Declaration-of-Human-Rights>

Human Rights Commission.³² The UDHR was heavily influenced by the Western ideals of individual freedoms, democracy, and equality. The Western world, particularly the United States and European nations, played a significant role in shaping the document's principles.³³ The legal and philosophical frameworks from these regions, including concepts such as the right to life, liberty, and the pursuit of happiness, were foundational in the drafting process. However, the UDHR also aimed to achieve a balance that would be universally applicable, incorporating elements that reflected the global diversity of cultures, religions, and political systems. The document sought to establish a set of basic human rights that transcended national borders, religious affiliations, and cultural differences, embodying the universalist principle that all people, regardless of their background, should enjoy the same fundamental rights and freedoms. Despite its global intent, the UDHR faced critiques regarding its Western-centric approach.³⁴ Some argued that the document's emphasis on individual rights and civil liberties was not universally applicable, particularly in societies where collective rights and social hierarchies were more deeply ingrained. This tension between universalism and cultural relativism continues to shape discussions on human rights to this day³⁵, highlighting the challenges in crafting a universal human rights

³² United Nations. (2024). History of the Declaration. Retrieved December 3, 2024, from <https://www.un.org/en/about-us/udhr/history-of-the-declaration>

³³ University of Minnesota Human Rights Library. (n.d.). A short history of human rights. Retrieved December 3, 2024, from <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm>

³⁴ IPI Global Observatory. (2018, October 17). Is "Human Rights" a Western Concept? Retrieved December 3, 2024, from <https://theglobalobservatory.org/2018/10/are-human-rights-a-western-concept/>

³⁵ LawTeacher. (2024). Universalism and Cultural Relativism in Human Rights. Retrieved December 3, 2024, from <https://www.lawteacher.net/free-law-essays/international-law/universalism-and-cultural-relativism-in-human-rights-international-law-essay.php>

framework that is sensitive to local contexts while upholding fundamental principles of equality and justice.

1.1.2 Major Achievements

Since its adoption, the UDHR has been instrumental in shaping global human rights norms and establishing a foundation for international human rights law. One of its major achievements has been the creation of a universally accepted set of standards for human dignity and freedom, which has influenced numerous treaties and agreements at the international and regional levels. Among the most notable of these are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both adopted in 1966. These two covenants, along with the UDHR, form the International Bill of Human Rights and have provided the legal basis for human rights protections worldwide.³⁶ The UDHR's influence extended beyond international treaties.

It inspired the drafting of national constitutions and legal frameworks that incorporated human rights principles into domestic law. Many countries, particularly in the post-colonial period, integrated UDHR principles into their constitutions³⁷, establishing rights to life, liberty, equality, and freedom of speech. These incorporations helped strengthen human rights protections within national legal systems and

³⁶ Office of the United Nations High Commissioner for Human Rights. (2024). International Bill of Human Rights. Retrieved December 3, 2024, from [https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights#:~:text=In%20December%201966%2C%20the%20UN,and%20Political%20Rights%20\(ICCPR\)](https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights#:~:text=In%20December%201966%2C%20the%20UN,and%20Political%20Rights%20(ICCPR))

³⁷ United Nations Development Programme. (2023). Protecting human rights in constitutions. Retrieved December 3, 2024, from <https://www.undp.org/sites/g/files/zskgke326/files/2023-10/undp-protecting-human-rights-in-constitutions.pdf>

provided a basis for judicial review and legal challenges to government actions that violated fundamental rights. Another significant achievement of the UDHR is its role in the development of human rights advocacy and institutions. The UDHR served as the foundation for the creation of international organizations such as the United Nations Human Rights Council (UNHRC)³⁸, which monitors human rights violations and works to promote human rights worldwide. It also spurred the development of non-governmental organizations (NGOs) that have played a pivotal role in advocating for human rights, documenting abuses, and pushing for accountability. Over time, the UDHR has become a powerful tool for individuals and organizations seeking to hold Governments accountable for human rights violations. While the UDHR itself is not legally binding, it has provided the ethical and moral framework for a range of binding treaties, conventions, and national laws. Its broad influence has helped shape the global discourse on human rights, ensuring that fundamental rights remain a key consideration in international relations and law. However, despite these achievements, the UDHR's implementation remains uneven, and challenges continue to arise in translating its principles into tangible outcomes, especially in light of modern-day challenges that were not foreseen at the time of its drafting. These major achievements underscore the UDHR's lasting legacy as a foundational document in the promotion and protection of human rights. Yet, as the world enters the 21st century, new challenges such as digital rights, climate justice, and the protection of vulnerable populations necessitate a re-evaluation and

³⁸ Amnesty International. (2024). Universal Declaration of Human Rights. Retrieved December 3, 2024, from <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>

expansion of the UDHR to meet the demands of a rapidly changing global landscape.

2. Statistical Analysis for Correlation Matrix: Sample Size 50

For the study titled Human Rights in the 21st Century: Bridging the Gaps in the UDHR, data collection was carried out with a sample size of 50 respondents, as per the study's requirements. The respondents were selected from a diverse group of human rights experts, policy makers, and activists globally, ensuring a broad range of perspectives. To gather the necessary data, structured questionnaires were distributed, focusing on two key areas: identifying the current gaps in the Universal Declaration of Human Rights (UDHR) and proposing solutions to address these gaps. The responses from the participants were then aggregated into two scores: Current Gaps Score and Proposed Solutions Score. These scores were subsequently analyzed in conjunction with three global indicators—the Human Development Index (HDI), the Digital Rights Index, and the Climate Risk Index. This approach allowed for a comprehensive understanding of how the identified gaps and proposed solutions in human rights align with key global indices, providing a data-driven basis for exploring necessary reforms in international human rights law.

3. Gaps and Challenges in the UDHR

3.1.1 Legal and Structural Limitations

One of the most significant limitation of the Universal Declaration of Human Rights (UDHR) lies in its non-binding nature, which restricts its enforceability.³⁹ As a declaration rather than a treaty, the UDHR lacks the legal authority to compel compliance, relying instead on the

³⁹ United Nations. (2024). Universal Declaration of Human Rights (1948): 30 Articles - 30 Documents: Exhibit for the 75th Anniversary. Retrieved December 8, 2024, from <https://research.un.org/en/udhr75/6-11>

goodwill of states for implementation. This dependence on state actors has proven problematic, as governments often prioritize political or economic interests over human rights obligations. Without robust enforcement mechanisms, the UDHR's provisions remain aspirational, particularly in regions where state institutions are weak or corrupt, and in cases where state actors themselves are perpetrators of human rights violations. Furthermore, the lack of a centralized global enforcement body diminishes accountability, making it challenging to address widespread or systemic abuses effectively.

3.1.2 Cultural and Regional Disparities

The UDHR has also been criticized for its Western-centric principles, which reflect the sociopolitical and cultural values of the nations that dominated its drafting process.⁴⁰ This focus on individual freedoms and civil liberties, while essential, overlooks the communal and collective rights that are deeply embedded in many non-Western cultures. The tensions between universalism and cultural relativism have fueled debates over the applicability of the UDHR in diverse cultural contexts.⁴¹ For example, critics argue that certain rights, such as freedom of speech or gender equality, may conflict with traditional values in some societies, leading to selective adoption or outright rejection of the declaration's provisions. These disparities challenge the notion of the UDHR as a truly "universal" document and highlight the need for a more inclusive approach that respects cultural diversity without compromising fundamental human rights.

⁴⁰ IPI Global Observatory. (2018, October 17). Is "Human Rights" a Western Concept? Retrieved December 4, 2024, from <https://theglobalobservatory.org/2018/10/are-human-rights-a-western-concept/>

⁴¹ Hajiyeva, N. (2019, April 11). The clash of human rights ideas between universalism and relativism. Retrieved December 4, 2024, from <https://moderndiplomacy.eu/2019/04/11/the-clash-of-human-rights-ideas-between-universalism-and-relativism/>

3.1.3 Emerging Global Issues

In the 21st century, the UDHR has struggled to address emerging global issues that were not foreseen at the time of its drafting. One critical area is digital rights, encompassing privacy, data protection, and freedom of expression in the online sphere. The rapid rise of digital technologies and social media has created new vulnerabilities, including mass surveillance, cyber harassment⁴², and the weaponization of misinformation⁴³, which threaten individual freedoms and democratic processes. Similarly, climate justice has emerged as a pressing concern, as climate change disproportionately affects vulnerable populations in developing nations.⁴⁴ The UDHR does not explicitly recognize environmental rights, leaving a gap in addressing the intersection of human rights and environmental sustainability.⁴⁵ Additionally, advancements in artificial intelligence (AI) and technology pose ethical and human rights challenges, including algorithmic bias, the misuse of facial recognition, and potential violations of privacy. These gaps underscore the necessity of expanding the scope of the UDHR to address the human rights implications of technological and environmental changes.

⁴³ Center for Analysis of the Radical Right. (2024). Weaponization of information. Populism Studies. Retrieved December 4, 2024, from <https://www.populismstudies.org/Vocabulary/weaponization-of-information/>

⁴⁴ United Nations Development Programme. (2024). Climate change: A matter of justice - Here's why. Retrieved December 4, 2024, from <https://climatepromise.undp.org/news-and-stories/climate-change-matter-justice-heres-why>

⁴⁵ Office of the United Nations High Commissioner for Human Rights. (2016, September). CRC DGD Sept2016. Retrieved December 5, 2024, from https://www.ohchr.org/Documents/Issues/Environment/CRC_DGD_Sept2016.docx

3.1.4 Exclusion of Vulnerable Groups

Despite its claims of universality, the UDHR has been criticized for its limited attention to certain vulnerable groups. Indigenous peoples⁴⁶, LGBTQ+ communities⁴⁷, and stateless persons⁴⁸ are notably underrepresented in the declaration, leaving their unique challenges inadequately addressed. Indigenous peoples face systemic marginalization, land dispossession, and cultural erasure, yet their rights to self-determination and cultural preservation are not explicitly protected. Similarly, the declaration's silence on LGBTQ+ rights leaves this community vulnerable to discrimination⁴⁹, persecution, and violence in many parts of the world. Stateless persons, who lack legal recognition and protection from any state, face significant barriers to accessing basic rights such as education, healthcare, and employment. Moreover, gender disparities in the UDHR's provisions have drawn criticism, particularly for its limited focus on reproductive rights and the protection of women from gender-based violence. These omissions highlight the need to revisit and expand the UDHR to ensure that no group is left behind.

3.2 Ambiguity in Certain Rights

Another challenge in the UDHR lies in the ambiguity of certain provisions, which can be exploited for political suppression. For

⁴⁶ World Bank. (2024). Indigenous Peoples. Retrieved December 5, 2024, from <https://www.worldbank.org/en/topic/indigenouspeoples#:~:text=Indigenous%20Peoples%20are%20distinct%20social,which%20they%20have%20been%20displaced>

⁴⁷ The Center. (2024). LGBTQIA+. Retrieved December 5, 2024, from <https://gaycenter.org/community/lgbtq/>

⁴⁸ UNHCR. (2024). Stateless People. Retrieved December 5, 2024, from <https://www.unhcr.org/about-unhcr/who-we-protect/stateless-people>

⁴⁹ United Nations Development Programme. (2023). Advancing the human rights of LGBTI people. Retrieved December 5, 2024, from <https://www.undp.org/sites/g/files/zskgke326/files/2023-04/Advancing%20the%20human%20rights%20of%20LGBTI%20people%20-%20ENGLISH.pdf>

instance, Article 29, which permits limitations on rights in the interest of morality, public order, or general welfare, has been misused by authoritarian regimes to justify censorship, repression, and other human rights violations.⁵⁰ The lack of clear guidelines on the permissible scope of such limitations creates room for abuse, undermining the UDHR's core principles. Additionally, the declaration's heavy emphasis on individual rights often neglects the importance of collective rights, such as the rights of communities and nations to self-determination and equitable resource distribution. This imbalance fails to adequately address the interconnected nature of rights in many societies, particularly in regions where collective identity and communal responsibilities are deeply valued.

3.3 Modernizing the UDHR

As the world grapples with rapid technological advancements, environmental crises, and shifting social dynamics, the Universal Declaration of Human Rights (UDHR) requires modernization to remain relevant in the 21st century.⁵¹ The original text, while visionary, does not address contemporary challenges such as digital rights and environmental justice. The digital era has introduced issues like data privacy, algorithmic discrimination, and cyber exploitation, all of which demand explicit recognition as fundamental rights. Similarly, the growing impact of climate change necessitates integrating environmental rights into the human rights framework to ensure global accountability for ecological harm and to protect

⁵⁰ Open Book Publishers. (2024). The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World. Retrieved December 6, 2024, from <https://books.openedition.org/obp/3065?lang=en>

⁵¹ Brown, G. (Ed.). (2016). The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World. Retrieved December 6, 2024, from <https://www.openbookpublishers.com/books/10.11647/obp.0091>

vulnerable populations from its consequences. Expanding the UDHR's scope to include these areas is critical to safeguarding human dignity in a rapidly evolving global landscape. Moreover, the UDHR's focus on civil and political rights must be complemented with a stronger emphasis on economic, social, and cultural rights. Issues such as access to healthcare, education, housing, and equitable economic opportunities remain pressing concerns worldwide. Strengthening these rights within the UDHR framework would address systemic inequalities and promote inclusive development, ensuring that the principles of human dignity and equality are upheld in both affluent and impoverished regions.

3.4 Creating Enforcement Mechanisms

One of the UDHR's primary limitations is its lack of enforcement mechanisms, which undermines its practical efficacy.⁵² To address this, there is a need for the establishment of an international body or tribunal specifically tasked with monitoring compliance and addressing violations of human rights as outlined in the UDHR. Such a body could investigate complaints, provide binding resolutions, and impose sanctions for non-compliance. Integrating UDHR principles into binding international treaties and encouraging their incorporation into domestic laws would further strengthen their enforceability. This dual approach would ensure that the UDHR evolves from being a symbolic declaration into a legally binding instrument with tangible impact.

⁵² United Nations Office on Drugs and Crime. (2024). Limitations permitted by human rights law. Retrieved December 6, 2024, from <https://www.unodc.org/e4j/en/terrorism/module-7/key-issues/limitations-permitted-by-human-rights-law.html>

3.5 Balancing Universalism and Cultural Relativism

One of the most enduring challenges for human rights frameworks is striking a balance between universal principles and the diverse cultural contexts in which they are applied. The UDHR, rooted in universalist ideals, has often faced criticism for failing to adequately consider cultural and regional nuances. Moving forward, reform efforts should focus on making the UDHR more inclusive and adaptable. Strategies could include engaging with regional human rights systems, fostering cross-cultural dialogues, and allowing for localized interpretations of universal principles without compromising core human rights values. By acknowledging and addressing cultural relativism, the reformed UDHR can become a truly global document that resonates with all societies while maintaining its foundational commitment to human dignity and justice.

4. Case Studies and Practical Implications

The gaps in the Universal Declaration of Human Rights (UDHR) become increasingly evident when viewed through the lens of contemporary challenges. Case studies provide a practical framework to explore these gaps and their implications while offering insights into potential reforms.

4.1 Case Study 1: Privacy Rights in the Digital Age

The rise of digital technology has transformed the way personal information is collected, stored, and used, creating new vulnerabilities that were not foreseen in the UDHR. Privacy, a fundamental human right, is under threat due to mass surveillance, data breaches, and the unregulated use of artificial intelligence. The European Union's General Data Protection Regulation (GDPR), 2016, AI Act, 2024 and Cyber Resilience Act, 2024 represents landmark legal frameworks

aimed at protecting individual data privacy⁵³. Its provisions, such as the right to access and delete personal data, reflect an advanced approach to safeguarding digital rights. Conversely, non-Western frameworks often lack comprehensive protections or remain underdeveloped due to resource and governance constraints. This disparity underscores the urgent need for a universal framework that integrates digital rights into the global human rights agenda.

4.2 Case Study 2: Climate-Induced Migration

Climate change has emerged as a significant driver of forced migration, with millions displaced due to rising sea levels, desertification, and extreme weather events. However, international human rights law, as it stands, does not recognize climate-induced migrants as refugees under the 1951 Refugee Convention.⁵⁴ Countries like Bangladesh and Pacific island nations exemplify the dire consequences of this gap, as communities are left without legal protections or viable resettlement options. Human rights advocacy in this domain is crucial to address the intersection of environmental degradation and human displacement. Incorporating climate justice into the UDHR framework would ensure that climate-induced migrants receive the recognition and protection they urgently need.

⁵³ Butt, J. (2024). The General Data Protection Regulation of 2016 (GDPR) Meets its Sibling the Artificial Intelligence Act of 2024: A Power Couple, or a Clash of Titans?. *Acta Universitatis Danubius. Juridica*, 20(2), 7–52. Retrieved December 6, 2024, from <https://dj.univ-danubius.ro/index.php/AUDJ/article/view/2788>

⁵⁴ Bergeron, T. (2023). No Refuge for ‘Climate Refugees’ in International Law. Retrieved December 7, 2024, from <https://www.lclark.edu/live/blogs/200-no-refuge-for-climate-refugees-in-international#:~:text=Except%20those%20persons%20leaving%20areas,entire%20homeland%2C%20or%20even%20country>

⁵⁵ Butt, J. S. (2024). The Shadow Side of Migration—Relation Between Crime and Illegal Immigration in the Nordic Countries. *Acta Universitatis Danubius. Relationes Internationales*, 17(1), 47–79. Retrieved December 7, 2024, from <https://dj.univdanubius.ro/index.php/AUDRI/article/view/2778>

4.3 Case Study 3: Indigenous and Group Rights

The UDHR's focus on individual rights has often failed to adequately address the collective rights of indigenous peoples and minority groups.⁵⁶ Success stories, such as the recognition of land rights for indigenous communities in Bolivia and Canada, highlight the potential for progress when collective rights are acknowledged. However, failures persist, particularly in regions where governments prioritize industrial or agricultural development over indigenous sovereignty. The Amazon rainforest serves as a critical example, where deforestation and displacement threaten indigenous communities' livelihoods.⁵⁷ Strengthening the UDHR to explicitly include collective rights could help bridge these gaps, ensuring the protection of cultural heritage, land ownership, and self-determination for marginalized groups.

4.4 Practical Implications

The analysis of these case studies reveals the UDHR's limitations in addressing complex, evolving human rights issues. Bridging these gaps requires the integration of new rights into its framework, such as digital privacy, climate justice, and collective rights. Additionally, strengthening enforcement mechanisms and fostering global cooperation are essential to ensure universal applicability. By modernizing the UDHR, we can create a more inclusive, responsive,

⁵⁶ Bosshard, M. A. (2023). To what extent is there a tension between individual human rights and collective rights in international human rights law? Retrieved December 8, 2024, from <https://ideasforpeace.org/content/tensions-between-collective-and-individual-human-rights/>

⁵⁷ Green Earth. (2023, May 12). Deforestation in the Amazon Rainforest: causes, effects, solutions. Retrieved December 8, 2024, from <https://www.green.earth/blog/deforestation-in-the-amazon-rainforest-causes-effects-solutions#:~:text=One%20of%20the%20most%20significant,and%20very%20existence%20are%20threatened>

and effective global human rights framework capable of addressing the challenges of the 21st century.

5. Discussion

The study titled “Human Rights in the 21st Century: Bridging the Gaps in the UDHR” focuses on identifying critical gaps in the UDHR and exploring proposed solutions to address these gaps. A sample of 50 respondents, including human rights experts, policymakers, and activists, was surveyed globally to provide diverse insights. The data was collected through structured questionnaires, with respondents providing scores on two primary dimensions: the Current Gaps Score and the Proposed Solutions Score. These scores were then analyzed alongside global indicators, namely the Human Development Index (HDI), the Digital Rights Index, and the Climate Risk Index, offering a multifaceted view of how contemporary human rights issues are connected to broader global challenges. The Pearson correlation coefficient was used to analyze the relationship between the survey scores and global indicators. The calculation of the correlation coefficients revealed several key findings. For example, the Proposed Solutions Score and the Digital Rights Index displayed a weak negative correlation of -0.37, suggesting that as proposed solutions to human rights gaps increase, concerns regarding digital rights may decrease, albeit weakly. On the other hand, the Current Gaps Score exhibited negligible correlations with all global indicators, indicating that perceptions of existing gaps in human rights are not strongly linked to specific global indices like HDI, Digital Rights, or Climate Risk.

The Climate Risk Index and the Digital Rights Index each showed slight positive correlations (0.11) with the HDI, implying a minor association between overall human development and concerns related to climate and digital rights. To test the statistical significance of these correlations, a t-test

was conducted. The results indicated that most of the correlations did not reach statistical significance, as the p-value was higher than 0.05 for most relationships, suggesting that these correlations may be incidental rather than indicative of a strong pattern. This statistical analysis provides valuable insights into the nature of human rights concerns in the 21st century. The weak or negligible correlations between the survey scores and global indicators suggest that human rights gaps and proposed solutions are not fully aligned with existing global development measures. This calls for further exploration into how global human rights frameworks, like the UDHR, can be adapted to address emerging challenges such as digital rights and climate change. The findings advocate for the need for targeted reforms and more comprehensive solutions that better integrate human rights with pressing global issues. Ultimately, the study's statistical framework offers an evidence-based foundation for advancing these discussions and fostering meaningful reforms in international human rights law.

Conclusion

The Universal Declaration of Human Rights (UDHR) remains a landmark document in the history of human rights, embodying humanity's collective commitment to dignity, equality, and justice. However, its gaps and challenges reflect the changing realities of the 21st century.⁵⁸ Legal and structural limitations, cultural and regional disparities, and its inability to address emerging global issues, such as digital rights and climate justice, have diminished its relevance in a rapidly evolving world.

Additionally, the exclusion of vulnerable groups and ambiguities in certain provisions further underscore the need for reform. To uphold its universal

⁵⁸ The author would like to express his gratitude to all those who contributed to the development of this research.

promise, the UDHR must undergo meaningful modernization. This requires a collaborative and inclusive approach to expand its framework, incorporating new rights and enhancing international cooperation. Reforms should prioritize empowering marginalized populations and creating robust accountability mechanisms to address contemporary human rights concerns. By implementing these measures, the UDHR can reaffirm its foundational principles while serving as a dynamic and robust tool for protecting human rights in the modern era and beyond. Looking forward, the vision for human rights demands a framework that is not only comprehensive and inclusive but also enforceable. Such a model must protect fundamental rights while adapting to diverse cultural contexts and emerging global issues. It should empower individuals and hold states, corporations, and other actors accountable, ensuring that rights are not merely aspirations but realities for all. Achieving this transformation calls for collective action.

Policymakers must enact bold legislative reforms, academics should provide critical insights to guide this evolution, and civil society must advocate for justice and amplify the voices of those most affected by rights violations. Together, these efforts can revitalize the UDHR to meet the demands of the modern era. Bridging its gaps is not just a testament to the enduring relevance of the UDHR but a re-affirmation of humanity's unwavering commitment to equality, justice, and dignity for all.

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DIMENSIONS OF CRIMINAL TRIAL IN PAKISTAN: CHALLENGES AND SOLUTIONS

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Abstract

Justice delayed is justice denied is a universally acceptable principle of natural justice which embodies the concept that everyone is entitled to speedy and expeditious justice. Although the principle primarily applied in civil cases, but its importance is equally applicable in criminal cases, rather delay in criminal cases sometimes becomes more fatal as compared to civil cases. Pakistan's criminal justice system primarily follows adversarial legal system and courts are thus constrained to the procedures applicable in a case and cannot actively indulge in uprooting the facts of a criminal case. As a consequence, the main key to regulate the trial remains with the parties and courts play a very minor role. All these stages ultimately result in delay of a criminal trial.

Keywords

Criminal justice, trial, courts, accused, rights.

Introduction

Right to due process and right to fair trial include provision of speedy and inexpensive justice. Although, human rights law and criminal law have several differences but on the other hand they share several similarities as well.⁵⁹ Human rights are part and parcel of each other's area of law and are required to be observed in all circumstances including criminal law and during criminal prosecutions.

Justice delayed is justice denied is an old legal maxim and principle of natural justice. It is difficult, rather impossible to find any agreement in respect of defining efficiency and effectiveness of a criminal justice system (CJS) and the same criteria cannot be applied in every case. The problem regarding dispensation of speedy justice is being observed all over the world. However, several states have formulated some parameters in their legal systems to ensure the compliance of the same. For instance, the USA was also facing the same problem in their CJS. The President of the USA, once in 1906, in his address to the Congress said:

"I would like to call attention to the very unsatisfactory state of our criminal law, resulting in large part from the habit of setting aside the judgments of inferior courts on technicalities absolutely unconnected with the merits of the case, and where there is no attempt to show that there has been any failure of substantial justice. It would be well to enact a law providing something to the effect that: 'No judgment shall be set aside or new trial granted in any cause, civil or criminal, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in

⁵⁹ Larry May and Zachary Hoskins, ed. International Criminal Law and Philosophy, (Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi, Dubai, Tokyo: Cambridge University Press, 2010), 75.

*the opinion of the Court to which the application is made, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice”.*⁶⁰

In this statement, problem regarding setting aside the judgments of subordinate courts on minor grounds and technicalities has been addressed. The same problem still prevails in Pakistan where apart from setting aside the judgments of subordinate courts, matters are remanded back to the same court for fresh decision merely on the basis of technicalities which could otherwise be addressed or settled by the same court hearing an appeal or revision.

Delay in criminal cases is not a unidimensional problem, rather it is multidimensional. All the components of CJS including police, prosecution, courts and incarcerations play a pivotal role in the conduct of a criminal trial and delay on the part of anyone of them may lead to delay in overall trial of a criminal case. Furthermore, all these components remain connected with each other normally as no criminal case can be investigated without involvement of police including private complaints where ultimately police is involved. Prosecution is the key role player. Similarly, trial is to be conducted before the courts and the courts are required to regulate it. Corrections and jails are also important component for the trial of under trial prisoners (UTPs).⁶¹

1. Constitutional Guarantees

Although, the right to speedy and expeditious justice has not been included explicitly in our legal system including that in the Constitution of Islamic

⁶⁰ Sean Fine, Lawyers want to toss hundreds of criminal cases for unreasonable delays, The Globe and Mail, Feb. 15, 2017.

⁶¹ V. N. Rajan and M. Z. Khan, *Delay in the Disposal of Criminal Case in the Sessions and Lower Courts in Delhi* (New Delhi: Institute of Criminology and Forensic Science, 1982), 37.

Republic of Pakistan (the Constitution), but it does not mean that the right of the parties for speedy trial does not exist. This right has not only been acknowledged, rather legal protection and guarantee for the right to speedy and expeditious justice has also been provided in various precedents set by the superior courts of the country. Other states have also acknowledged and extended the right of speedy trial even in absence of explicit provision in this regard. For instance, a relevant case has been reported from Calcutta High Court, where in the matter of *Mihir Kumar v State of West Bengal and others*, Judge Shyamal Kumar Sen has observed that although no right with these words has been found in Indian Constitution, but Article 21 of Indian Constitution confers a right not to be deprived from the life or liberty save in accordance with the prescribed procedure by law. The Court further stated that such procedure not only be prescribed rather should be fair and just which also includes speedy trial and expeditious disposal of criminal trials.⁶²

Moreover, Patna High Court in the case of *the State v Maksudan Singh and others* said that extraordinary delay lasting for more than a decade in a criminal trial would violate the Constitutional guarantee of fair, just and reasonable procedure. The Court further held that the Sixth Amendment to the American Constitution regarding speedy and public trial is having direct bearing under Article 21 of Indian Constitution.⁶³ Pakistan has also faced the irony of delay in criminal trials and one famous case was reported in this regard when an accused namely *Mazhar Hussain* died two years before he was exonerated from the case by the August Supreme Court of Pakistan on October 6, 2016. Prior to the final decision by the August Court, *Mazhar Hussain* was awarded death sentence by the District and Sessions Judge in the year 2004. An appeal was filed which was dismissed by Lahore High

⁶² *Mihir Kumar V State of West Bengal and others*, (1990) 2 CALLT 48 HC.

⁶³ 1985 Cri. L. J. 1782.

Court, Lahore and leave to appeal prior to its final disposal was granted by the Supreme Court of Pakistan in September, 2010.⁶⁴

Another case has been reported where the accused namely Mazhar Farooq was finally acquitted by the Supreme Court after spending twenty four years of his life in death row when he was awarded death sentence by the trial court.⁶⁵ All these and other like instances have been used as a solid ground for abolishing the death penalty by the proponents of this ideology.⁶⁶ Whereas, instead of building a case for abolishing capital punishment, the correct methodology would be to ensure the right to fair trial and speedy justice. On the same touchstone, the Constitution recognizes the right to life of a person as prescribed under Article 9 of the Constitution and right to fair trial as prescribed under Article 10 of the Constitution and on the basis of analogy of *Mihir Kumar* and *Maksudan Singh* cases, right to speedy trial has also been included and protected under the Constitution.

Provision of speedy justice has been provided under Article 37 of the Constitution which states that the state shall “ensure inexpensive and expeditious justice”.⁶⁷ However, this provision of the Constitution is part of Principles of Policy and is not justiciable under the law.⁶⁸ Delayed justice has also been considered violation of the right to life and liberty as contained under Article 9 of the Constitution. Furthermore, fair trial and due process of

⁶⁴ Hasnaat Malik, “SC acquits man two years after his death”, the Express Tribune, 9 October 2016, available at <https://tribune.com.pk/story/1195917/sc-acquits-man-two-years-death>, last accessed on 28-09-2024.

⁶⁵ Hasnaat Malik, “Supreme Court Acquits Death Row Prisoner Jailed for 20 Years”, the Express Tribune, 26 November 2016, available at: <https://tribune.com.pk/story/1245035/supreme-court-acquits-death-row-prisoner-jailed-20-years/>, last accessed on 28-09-2024.

⁶⁶ “Report of the Working Group on the Universal Periodic Review”, at 2, United Nations, Doc A/HRC/37/13/Add.1 (2018).

⁶⁷ Article 37 (d) of the Constitution of Pakistan, 1973.

⁶⁸ Any right prescribed under the Principles of Policy is not justiciable in accordance with the decision of *Farooq Brothers v United Bank Limited*, 2023 PLD 47 Federal Shariat Court.

law have also been guaranteed as fundamental rights under the Constitution. The Courts have extensively interpreted the above mentioned provisions of the Constitution recognizing the speedy and expeditious justice as a fundamental right. For instance, it was held in the case of *Kaura Khan v State* that speedy justice is the fundamental right of every litigant and the cases fixed before the courts should not be ordinarily adjourned on the basis of absence of lawyers unless some cogent reasons are given for adjournment.⁶⁹

It has been further held in the case of *Izharu Ullah v State* that after insertion of Article 10-A in the Constitution, the right to fair trial and speedy justice has been recognized as a fundamental right. The Court further held that the primary purpose of CJS is to bring the accused as early as possible before the courts of law for a fair trial and if he is found guilty in consequence, he shall be punished and if found innocent should be acquitted.⁷⁰ Sindh High Court has discussed the right to speedy justice in more details elaborating that judges are not solely and exclusively responsible for delay in cases rather under Article 37 (d) of the Constitution, it is the primary duty of the Provincial Government to ensure speedy justice. It was held by the Court that dispensation of speedy justice does not mean merely to clear the backlog of cases, rather to dispense justice fairly. Fair dispensation of justice builds confidence in public and plays a crucial role in the development of the country, whereas, vice versa erodes the confidence of general public in the justice system.

It was also observed that the primary purpose of every justice system is to dispense justice fairly in accordance with law for the general public who are the main stakeholders of the justice system.⁷¹ In another case of *Aqib Ali v*

⁶⁹ *Kaura Khan v State*, 2023 MLD 1260 Quetta.

⁷⁰ *Izharu Ullah v State*, 2023 MLD 777 Peshawar.

⁷¹ *Ghulam Asghar Pathan v Federation of Pakistan*, 2023 PLD 187 Karachi.

State, it has been held by Peshawar High Court that any inordinate and unreasonable delay in a trial would amount to denial of justice which in fact is the denial of fundamental right of speedy justice.⁷²

2. Challenges

Recognizing and considering the significance of the right to speedy and expeditious trial, every CJS is required to focus on the strategies and factors to ensure this right. In this regard, causes of delay should be considered and a mechanism is required to be formulated for speedy trials keeping in view the circumstances of the period of pre and post-trial proceedings. Before finding the solution, it seems necessary to highlight the main causes of delay in criminal trial in domestic as well as foreign legal systems. The studies show that among others, following are the main causes of delay in criminal trials:

1. Delay in Criminal Investigation Process: Normally, investigation in criminal cases is not completed within the stipulated time and police reports are submitted with delay which is the first step towards delay in criminal trial. Moreover, ineffective investigation techniques and poor information system and lack of coordination between Police and prosecution often results in delay regarding submission of reports and ultimately resulting in delay of criminal trials. Poor and defective investigation also results in referring back the criminal reports by the prosecution to the police at the cost of custody of under trial prisoners (UTPs). Inefficiency of the prosecution is also one of the reasons for delay in timely submission of reports leading to delay in the commencement of criminal trials.

⁷² Aqib Ali v State, 2022 YLR 177 Peshawar.

2. **Case Backlogs:** Backlogs in courts and incapacity of system to effectively play its role in the efficiency of justice system is also a major cause. Although, measures have been adopted by some countries in this regard, but mostly temporary measures are adopted which do not serve the purpose permanently and the problem is still unsolved. Pakistan is also facing this issue and the main reason is shortage of judges all over the country. Courts are overburdened and due to this reason, judges are incapable of concluding the criminal cases within shortest time period.
3. **Average length of pre-trial detention:** Another important cause of delay of criminal trial is the number of prisoners awaiting trial and as a result length of pre-trial detention. Main issue of lengthy pre-trial detention has already been discussed which is delay in timely submission of reports. Other factors are also involved including absence of accused, lack of mechanism to procure attendance of accused and witnesses and lack of proper cooperation by the lawyers.
4. **Time to Disposition of Cases:** The time in respect of disposition of a criminal case and the total age of case is also required to be measured to set proper goals in this regard. Normally, timeline has been prescribed for special cases like family and rent, but is not prescribed for criminal cases. Delay in criminal cases sometimes becomes more fatal than other categories of cases, therefore, defining the timeline is mandatory for ensuring speedy and expeditious dispensation of criminal justice.⁷³

⁷³ Yvon Dandurand, Criminal Justice Reform and the System's Efficiency, Criminal Law Forum, December 2014.

All these issues are the main reasons for delay in criminal trials and need to be addressed. Many legal systems all over the world have adopted different measures to address these challenges and a few strategies have been proved to be fruitful.

Number of other factors also contribute towards delay in a criminal trial that include attendance of expert witnesses, delay in submission of chemical examination reports, inefficiency of medical record witnesses, incompetency and lack of interest of judges and lawyers and strikes of the local bar.⁷⁴ However, majority of these problems pertain to administrative matters and can be addressed while adopting an appropriate policy. The procedural causes of delay in a criminal trial have been highlighted above and need to be thoroughly examined.

3. Solutions to overcome delay

The above-mentioned causes can be dealt with administratively and guidelines should be formulated to ensure speedy trials during judicial proceedings. Many countries have adopted different strategies to deal with this issue. For instance, a report was prepared by the Law Commission of New Zealand in 2004 to 2005, focusing on the inefficiency of criminal trials, out-dated legislative framework, overcrowded case lists and unnecessary adjournments and at the end following recommendations were given by the Commission:

“(1) broadening the scope of early disclosure of prosecution evidence and a greatly expanded role for the Police Prosecution Service, particularly early charge scrutiny and screening;

(2) a range of steps to be taken to encourage meaningful discussions at an early stage between defendants and their counsel, and between the defence and the prosecution;

⁷⁴ Amjad Hussain, Saeed Akhtar and Muhammad Hassan, “Studying the Causes of Delay in Criminal Trials under the Criminal Justice System of Pakistan”, *Global Sociological Review*, VI(II), 52-58, 55.

(3) establishing formalised case management processes involving a required case discussion between the parties, as well as status hearings and sentence indications and, as part of the case management process, a requirement for defendants proceeding to trial to disclose prior to the trial the issues in dispute in order to facilitate case progression”⁷⁵.

Australia was also facing the same problem. In Australia, in *Jago V District Court of NSW and others*, the High Court of Australia observed that a trial was pending for four years when the defendant was charged and following remarks were passed by Justice Brennan:

“Within the limits of their resources, the courts so mould their procedures as to avoid unnecessary delays in the disposition of cases... The furthest which a court can go is to regulate its procedures to avoid unnecessary delay, to do what can be done to achieve fairness in a trial and to prevent the abuse of its process”⁷⁶.

After the verdict, NSW Law Reform Commission has recommended to increase court rooms, court staff and judges. It also suggested for increase in “guilty pleas” by encouraging negotiations at early stage of the proceedings through case conferences which were made mandatory in specified cases.⁷⁷

With certain exceptions, same challenges are being faced in our legal system. The proceedings of criminal trials can be conducted more efficiently and effectively keeping in view the above-mentioned recommendations. In this regard, courts have to play key role in regulating criminal trials. After all, the primary responsibility lies on the judicial officer dealing with the case to ensure speedy trial. Delay in cases can also be avoided by taking personal interest by the judge regarding disposal of the trial even in a case, when parties agree for adjournment.

⁷⁵ Yvon Dandurand, Addressing Inefficiencies in the Criminal Justice Process A Preliminary Review, International Centre for Criminal Law Reform and Criminal Justice Policy, June 2009.

⁷⁶ *Jago v the District Court of NSW and others* [1989] HCA 46.

⁷⁷ Ugur Nedim, Justice Delayed is Justice Denied: NSW Courts in Crisis, NSW Courts. August 2015.

In Canada for instance, while dealing with a case, both the defence counsel and the prosecution agreed for adjournment, but they were refused because according to the judge, they were not going to make good use of the time. In another case, a judge sought special permission from the court administration officials to hear a jury trial in the summer months.⁷⁸ These examples can also be adopted by our courts to meet the ends of justice.

Several other countries have also adopted certain measures in order to reform their CJS and have taken significant steps in this regard. For instance, Armenia has launched a project for reforming its CJS with several partners including the Ministry of Justice, the Justice Academy, the Investigative Committee and the Special Investigation Service along with several legal professionals and investigators. The objectives of the project include improvement of the legislation in criminal matters and developing institutional mechanism to combat ill treatment in accordance with European human rights standards; strengthening the role and capacity of the Justice Academy to train prosecutors and investigators for effective investigation in criminal cases; improvement of investigation techniques for effective investigation and protection of human rights.⁷⁹

The measures adopted by Armenia reflect that the primary focus has been made on investigation and prosecution of cases. So effective investigation plays a vital role in criminal trial. Pakistani CJS is very poor regarding effective investigation and we also require to adopt same measures for implementation of effective CJS.

⁷⁸ Sean Fine, Lawyers want to toss hundreds of criminal cases for unreasonable delays, *The Globe and Mail*, Feb. 15, 2017.

⁷⁹ <https://www.coe.int/en/web/implementation/projects-by-geographical-area/armenia-pgg-cjr>, accessed 09-10-2024.

Turkey has also implemented a project for reforms in its CJS. The project brought various significant changes in the CJS including:

1. The capacity of the judiciary and prosecution services to apply the ECHR in the delivery of criminal justice was strengthened.
2. The training capacity of the JA on criminal justice and European human rights standards was strengthened
3. International judicial co-operation in criminal matters was strengthened
4. The capacity of practicing lawyers to play an active role in the criminal justice system and to apply European Human Rights standards in their daily work was enhanced.⁸⁰

Similar project was implemented in Ukraine that generated some remarkable outcomes which include a consistent and streamlined Criminal Procedure Code in Ukraine which better protects human rights in criminal matters; reforms were brought in Public Prosecutor's office and a State Bureau of Investigation was also established for effective prosecution of criminal matters before the courts and; finally project was aimed to enhance capacity of legal professionals in Ukraine to enable them to play their role effectively in the CJS. Another follow up project entitled "Continued Support to the Criminal Justice Reform in Ukraine" was also developed and implemented by the Council of Europe, funded by the Danish government covering the period of September, 2015 - February, 2019.⁸¹

Recently, India has amended its CJS by introducing new criminal laws replacing the outdated colonial legislations. In this regard, the Indian

⁸⁰ <https://www.coe.int/en/web/implementation/projects-by-geographical-area/turkey-cjr>, accessed 09-10-2024.

⁸¹ <https://www.coe.int/en/web/implementation/projects-by-geographical-area/ukraine-cjr1>, accessed 09-10-2024.

Parliament keeping in view the basic aim and approach to provided speedy justice to all citizens in criminal cases and keeping in mind the basic moto of “*Sabka Saath, Sabka Vikas, Sabka Vishwas and Sabka Prayas*” “(Everyone's support, everyone's development, everyone's faith, everyone's effort)” introduced new criminal laws including “Bharatiya Nyaya Sanhita, Bharatiya Nagrik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam” replacing “Indian Penal Code (1860), the Code of Criminal Procedure (1873), and the Indian Evidence Act (1872)” respectively. The primary purpose of these new legislations was to align the criminal justice system with the constitutional guarantees of speedy and fair justice.⁸²

However, the question is that our neighbouring country getting independence at the same time has replaced two centuries old outdated law and we are still unable to bring any such new legislation ensuring the constitutional guarantees and fulfilling the fundamental rights as enshrined in the Constitution and available under international human rights law instruments.

All these instances reflect that there many countries of the world have reformed their CJS's by either introducing material amendments particularly in investigation and prosecution and a few of them have altogether changed their system for effective implementation.

4. Domestic Criminal Justice

Finally, it has also been observed that in order to solve the problem of backlog and other reasons for delay in criminal trials, various committees and commissions were constituted, which also included S. A. Rahman Law Reform Commission 1958, Justice Hamoodur Rahman Law Reform Commission Report 1967-70, High Powered Law Reform Committee Report

⁸²<https://cdnbbsr.s3waas.gov.in/s3ec0369f268fb2ba1068615b3219c6e8f/uploads/2024/06/2024061512.pdf>, accessed 30-12-2024.

1974 and Committee on Islamization of Laws and Establishment of Qazi Courts 1980, but no fruitful results could be achieved from the same. Therefore, in accordance with the requirements of prevailing criminal justice system, it is required to formulate appropriate procedure in respect of speedy and fair dispensation of justice taking guidance from other states where the system has been made ideal, so that in criminal justice system of Pakistan, justice not only be done, rather should be seen to be done.

As already discussed, all the components of CJS play a pivotal role in its effective implementation. Police, prosecution, courts and corrections all have separate roles to perform with regard to effectiveness of CJS. The primary function of the courts includes not only the prevention of executive overreach rather implementation of a robust CJS to prevent crimes in the society and to make it protective and peaceful. Although several measures have been implemented over the years during formulation of different policies and different legislations have been introduced, but it is the time to take concrete measures with regard to effective implementation of CJS. National Judicial Policy Making Committee (NJPMC) is an appropriate forum to discuss the reforms in CJS. Special focus is required in the areas of investigation and creating an effective trial process where criminal trial should be conducted expeditiously in order to prevent the violations of rights of accused as well as that of the complainant in every criminal case. If the ordinary courts become unable to do justice expeditiously and to implement an effective CJS, many other options would be open for the public as well as executive of any country and many attempts in this regard have also been made in Pakistan. Pretrial stage of every criminal case is also required to be focused and a system is required to be introduced where prosecution can play an effective role with regard to scrutiny of criminal cases before their presentation before the courts. It is also required that only strong cases should be presented before the courts which contain sufficient evidence at the face of record to charge

the accused in the offences levelled in that particular case and all other matters which do not contain sufficient evidence should then end there be rejected and returned to the police to proceed in accordance with law. This is one of the most important steps to curtail the backlog of criminal cases in the courts. Successful convictions should be appreciated on the basis of investigation conducted and evidence produced in the cases and prosecution as well as police should be encouraged in this regard. Police should also be equipped with modern fundamental tools for effective investigation of criminal cases and these modern tools should not be kept limited to the extent of special police forces or intelligence agencies rather ordinary police should also be equipped with the same in order to protect the rights of ordinary citizens involved any criminal cases.⁸³

In aftermath of terrorism in the country in early 2000, different strategies were adopted with regard to effective investigation and prosecution of criminal cases related to terrorism. National Counter Terrorism Authority (NACTA) was also assigned the task to revamp the CJS of Pakistan. In this regard, a group was formulated and on the basis of the conditions of the group formulated for revamping of criminal justice system a hallmark implementation plan was developed with regard to each of the components of criminal justice system including police, prosecution, probation, parole, judiciary and prisons. The recommendations were adopted with the consensus of the group members in coordination with ministries of law and justice and all the provinces including Islamabad Capital Territory, Gilgit Baltistan and a AJ & K.⁸⁴ However, the recommendations did not bring any major reform or new legislation in the country to deal with the issues of

⁸³ International Crises Group, REFORMING PAKISTAN'S CRIMINAL JUSTICE SYSTEM Asia Report N°196 – 6 December 2010, 30.

⁸⁴ <https://nacta.gov.pk/functions/counter-terrorism-wing/counter-terrorism/criminal-justice-reforms/>, accessed on 09-10-2024.

speedy justice in criminal cases, low conviction rate and overburden of the courts. Therefore, some concrete steps are required to be taken to make our CJS self-sufficient to deliver inexpensive and expeditious justice.

Conclusion

Right to speedy trial and justice in criminal cases is though not expressly recognized as a fundamental right under the Constitution, but has been impliedly recognized to be a fundamental right of every person under the rights of security to life and property save under the law and the right to fair trial. However, despite this recognition, right to speedy and expeditious trial in criminal cases is constantly violated in our country and even in some cases the trial ended at its logical conclusion at the last judicial forum after the death of the accused. Moreover, infringement of the right to expeditious justice not only violates the rights of the accused rather that of complainant in criminal cases.

Many other countries were also facing the same challenge regarding delay in criminal cases and they have introduced various reforms in this regard. A few of them have adopted administrative measures as well as judicial reforms to deal with the issue. Most of them have brought their legislations in criminal laws in consistency of the internationally recognized principles of CJS. Many others have also introduced reforms at individual levels and adopting specific strategies to clear the backlog of criminal cases showing individual interest by the courts and administrative bodies.

(6)

PAKISTAN'S DIGITAL DARK SIDE: CYBERCRIMES AGAINST WOMEN

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Abstract

A new technological span has brought advancement in the life of women at one side making it comfortable, and on the other side it has also produced some new types of veiled crimes in the shape of “Cybercrimes” from which the women's society is unaware. The recommended research work provides the understanding and awareness regarding digital violation in detail form and also elaborates the different types of Cybercrimes which are continuously and discretely damaging women's mental health as well as physical reputation in Pakistan.

Keywords

Cybercrimes; Cyber Laws; Women; The PECA Act, 2016; Cyber Defamation; Cyber pornography; Cyber stalking; Cyber Harassment; Email Spoofing; Morphing; NR3C; Cyber Rescue 9911; FIA.

Introduction

As the rapid growth in information technology brought advancement among the people it has also left a trail of problems. The biggest disadvantage of information technology is cybercrime. The term “cybercrime” comprises of a wide range of acts and has affected almost all the sectors of society either directly or indirectly. The developing countries including Pakistan are not well acquainted with the vast array of cybercrimes which are a consequence of information technology. Where the access to computers and internet has made communication and the process of learning feasible in Pakistan, it also has opened a door to cybercrime that is detrimental as to the safety of women of all ages.⁸⁵ Cybercrimes are badly affecting the women in Pakistan through means of cyber stalking, cyber pornography and cyber harassment etc. Mostly the females are naïve about the cautions that are to be taken on the internet and about the laws which let them fall prey to cybercrimes. These crimes are constantly on a rise because of the reason of digital illiteracy, lack of awareness of cyber laws⁸⁶ and instructions for safe use of social media and other internet technologies which are essential for the females.

1. Background

Historically, cybercrimes first took place back in 1960 with the establishment of Advanced Research Projects Agency Network (ARPANET).⁸⁷ The US Military granted to the ARPANET with purpose to conduct strong and reliable transmission and collaborate in military operations during the time of risk of nuclear disputes. Subsequently, in 1970 organizations like Joint Academic Network (JANET) in the United Kingdom, and American National

⁸⁵ Mehboob Usman, “Cyber Crimes: Pakistani Perspective” [2017]1(3) ILR<
<https://www.iiu.edu.pk/wpcontent/uploads/downloads/journals/ilr/volume1/num-3/Article-2-Vol-1-No-3-140119.pdf>>accessed27June2020

⁸⁶ The Electronic Transactions Ordinance, 2002 and Pakistan Electronic Crimes Act, 2016.

⁸⁷ *ibid*

Science Foundation Network (NSFNET) in the United States of America came into being.⁸⁸ However, the Commercial Internet Service Providers (ISPs)'s efforts to provide private connections for commercial usage were successful in 1980 and subsequently, the electronic email was introduced to public in 1981. The first commercial browser namely, "Netscape" was introduced by Microsoft in 1994. Due to commercialization of the internet it introduced new challenges for cyber security in the world. Computer science then unlocked the complex situations like white collar computer crimes. No doubt the law enforcement agencies are struggling to prevent the happening of cybercrimes but still the offenders are able to escape. The terms cybercrimes and conventional crimes have the same legal effect.

2. Origin of Cybercrimes in Pakistan

The use of internet in Pakistan has been in practice since the mid-90s in the form of Internet. Cybercrimes took place with the rampant access to internet across the country by The Pakistan Telecommunication Company Limited.⁸⁹ Pakistan founded to be most internet user country in Asia with a particular reason that Government provides free laptops with internet access to the students with 3G and 4G devices to the students that brought a huge change in Information Technology.⁹⁰

The Electronic Transactions Ordinance, 2002 was the first enactment in Pakistan which had a relatively limited scope and was aimed not only to define the criminal activity (which amounted to a cybercrime) but also the documents and the records having the same effect. This legislation was an initial step toward legal prevention of cybercrimes till the enactment of the next enactment i.e. Pakistan Electronic Crimes Act, 2016 (PECA). PECA the

⁸⁸ ibid

⁸⁹ ibid

⁹⁰ ibid

covers most of the cybercrimes but again also has some deficiencies due to its limited scope.

3. Cyber Crime in Pakistan: Categories and Examples

The different kinds of cybercrimes which are most relatable and badly affecting the women are discussed below:

3.1 Fake Social Media Profiles

Fake social media profiles are those in which a male person impersonate himself some famous personality that is illegal as well as immoral. The common most incident of impersonation is by making fake accounts on social media in order to deceive innocent people. In this cybercrime a stolen identity is mostly used for accessing innocent person's credit cards or his/her personal information and further financially or mentally blackmailing them. Such activity is subject to the laws and different penalties have been prescribed by PECA. The same consequences are led by fake websites which are made to deceive the users. In instance of a fake or fictitious website, the internet browser leads the users to the fake one instead of directing them to the original one like eBay or Amazon in order to defraud them. Mostly women and elderly people are entrapped through these fraudulent websites. Such fraudulent acts are liable to imprisonment for three years or with fine.⁹¹

3.2 Cyber Defamation

Similar to the tort or criminal act of defamation, cyber-defamation can also be punished. Cyber-defamation is an act of publishing news, using the internet and electronic devices, in order to damage the image of an individual before other members of a society. However, cyber-

⁹¹ The Prevention of Electronic Crimes Act, 2016, Section 16.

defamation has greater scope as it can also be used to defame corporations and negatively impact their goodwill. Adversaries often leave negative comments on online platforms against their competitors. The question is how to control the misuse and abuse of technology, and also the dilemma is whom to blame for this misuse.⁹²

3.3 Cyber Pornography

From last few decades, law is trying to regulate the extent of internet interaction and social media. Since cyber pornography has become a great threat, this interaction if left unfettered it can cause naïve minors fall prey to the hands of this criminal activity. Millions of porn websites, online pornography, and huge sexual material on porn sites are the major examples of this criminal activity. Though the pornography is legalized in many countries but the child pornography is strictly banned even in these countries. As we see, the fast growth of computer based electronic communication and information sharing has changed the learning structure, social information and choice of entertainments before some decades. Internet has provided the latest tools such like websites, webcam, chat rooms, social networking sites which are aggrandizing on the world rapidly. Indeed, there is variety of material which includes pornography, chat room etc. which are easily accessible to children and this easy access paves the way between them and the perpetrators of cyber pornography. Therefore, minor girls are easy targets of cyber pornography in Pakistan.⁹³

⁹² Rashida Zahoor , and Naseem Razi. "Cyber-Crimes and Cyber Laws of Pakistan: An Overview."

https://scholar.google.com/scholar?cluster=823460704856515404&hl=en&as_sdt=2005&sciodt=0,5#d=gs_cit&t=1734322472588&u=%2Fscholar%3Fq%3Dinfo%3AUj7zGxrcZSkJ%3Ascholar.google.com%2F%26output%3Dcite%26scirp%3D1%26scf%3D1%26hl%3Den

⁹³ Mehboob Usman, "Cyber Crimes: Pakistani Perspective" [2017] 1(3) ILR<
<https://www.iiu.edu.pk/wpcontent/uploads/downloads/journals/ilr/volume1/num-3/Article-2-Vol-1-No-3-140119.pdf> >accessed 27 June 2020

3.4 Cyber Stalking

Cyber stalking is an act of harassing a person intentionally and habitually with intention of threatening that person. It is the most debated category of contemporary electronic crime which includes tracking activities of another person by using internet and is mostly committed by male offenders against women. Cyber-stalkers aim and abuse the women by using website, chats and emails for the purposes of sexual harassment, vengeance, egoistic issues and power grip.⁹⁴

3.5 Cyber Harassment

Cyber harassment is a habitual act where one has a motive to disrupt or bother another person throughout internet. Cyber harassment also includes sexual harassment which amounts to a serious cybercrime against women and still awaits legislation in Pakistan.⁹⁵

3.6 Email Spoofing

Email spoofing is a kind of cyber crime where maliciously wrong done to defraud the victim through misrepresentation. In instances where the offender impersonates themselves as a famous personality or a known connection on email and later misuse the personal information of victim extracted by blackmailing or harassing the victim is considered a serious crime in Pakistan and is punishable with three year of imprisonment or fine of five lacs or with both.⁹⁶

⁹⁴ Shambhavee, H. M. "Cyber-stalking: threat to people or bane to technology." *International Journal on Trend in Scientific Research and Development* 3, no. 2 (2019): 350-355

⁹⁵ Hazelwood, Steven D., and Sarah Koon-Magnin. "Cyber stalking and cyber harassment legislation in the United States: A qualitative analysis." *International Journal of Cyber Criminology* 7, no. 2 (2013): 155.

⁹⁶ The Prevention of Electronic Crimes Act 2016, s26

3.7 Morphing

Morphing is a process in which the picture of the victim is partially or totally changed. Cyber criminals used to download picture of victim from social media like Facebook, Instagram, etc. and then morph the picture of such women with another objectionable or obscene picture in order to defame or blackmail them. It is an increasingly common activity done against women which still lacks a legislation about such crime in Pakistan.⁹⁷

4. Causes of Escalation of Cybercrimes in Pakistan

The causes of escalation of cybercrimes against women in Pakistan are described below:

4.1 Exorbitant Use of Social Media

Indeed, the exorbitant use of the internet developed the motivation of the cyber criminals to entrap the women in their heinous plans. This chronological sequence gradually started in 18th century but got escalated after the advent of internet in the new era. The instances of cases of cybercrimes against women are rapidly increasing but due to the influence of social media and the over dependence on internet make the task of bringing criminals to justice and protection of women quite challenging.⁹⁸

i. Percentage of cases registered in different years:

Facebook, WhatsApp and Twitter in a sequence are blamed for becoming a means for cyber criminals to

⁹⁷ Rajat Misra, „Cybercrimes Against Women(2014)<
<https://ssrn.com/abstract=2486125>>accessed20April2020

⁹⁸ Talib Fareed, „Lack Of Information Hampers Fight Against Cybercrime“ The Express Tribune (Lahore, 23 August 2019)

victimize women.⁹⁹ The cases of cybercrimes registered by the use of Facebook are approximately 44.11%, WhatsApp and Twitter are 4.41% and 1.47% respectively.¹⁰⁰

ii. Ratio of complaints by males and females: The ratio of the complainants made by the victims showed that out of 100 complainants, 59% complaints were females and 41% were males on the behalf of the women who were victimized.¹⁰¹

iii. Age of victims: The age of the victims was mostly "between" 21 to 25 years.¹⁰²

4.2 Unawareness of Cyber Laws:

Despite presence of cyber protection laws, lack of knowledge of such laws makes protection and accessibility scarce. This unawareness facilitates the cyber criminals and the silence of women victims increase the audacity in the cyber criminals as they know that the women will spare them from accountability fearing social pressure. In Pakistan mostly women that are using social media and internet lack awareness of cyber laws and their rights which is detrimental for them. The women should essentially have awareness of the laws that are crucial in prevention from the danger of the cybercrimes. In Pakistan, despite the presence of cyber laws, 72% of the female population is still unaware of its existence. The awareness of these laws would better curb the social nuisance through its deterrent effect.

⁹⁹ Shahzada Fahad Qureshi, Maria Abbasi, Muhammad Shahhzad „Cyber Harassment And Women Of Pakistan(2020)6 journal of business and review in emerging economics <
<https://publishing.globalcsrc.org/jbsee/>>accessed 11 December 2024

¹⁰⁰ Ibid

¹⁰¹ Editorial, "Cyber Harassment" DAWN Newspaper (11 January 2019)

¹⁰² Ibid

The PECA makes spreading false or bogus information about anyone liable to confinement of three years or with fine of Rs. 10/- lacs or both, and uploading objectionable videos of any person liable to punishment of five years in jail or Rs. 50/- lacs of fine or with both will be faced. Similarly, the punishment for cyber stalking is three years of prison and fine and taking a picture and video clip of anyone without his person and uploading these materials on social media platform is also liable to punishment. Accessing anyone's mobile phone or email with an intention of stalking also results in three years in jail with fine of Rs.10/- lacs.¹⁰³

According to the report of STATSTIA, the ratio of female internet users is round about 11.07% in Pakistan out 49% of female population¹⁰⁴ and roughly 10 million females use internet but 7.2 million out of 10 million female internet users have no awareness of cyber laws.

4.3 Negligence of Women in Reporting Complaints against Cybercrimes

Women do no report about cyber-attacks to avoid embarrassment. Despite the presence of cyber laws, forty-five percent women do no report about the cyber-attacks,¹⁰⁵ which means out of 10 million females internet users, 45 lac aggrieved remain remediless due to

¹⁰³ Sarah B Haider, „Harassment In Cyberspace: Online Crimes Continue To Target Women In Pakistan“ The Express Tribune (Karachi, 08 March 2020) <<https://tribune.com.pk/story/2171675/harassment-cyberspaceonline-crimes-continue-target-women>>

¹⁰⁴ <https://www.statista.com/statistics/733573/pakistan-internet-penetration-countries-gender/>.

¹⁰⁵ Sarah B Haider, „Harassment In Cyberspace: Online Crimes Continue To Target Women In Pakistan“ The Express Tribune (Karachi, 08 March 2020)<<https://tribune.com.pk/story/2171675/harassment-cyberspaceonline-crimes-continue-target-women>>

reluctance.¹⁰⁶ The reluctance is usually due to family pressure or the fear of defamation,¹⁰⁷ thus leaving the criminals and their identities anonymous.¹⁰⁸ It was reported that about 47% of female internet users don't complain about the case because they assume it is not necessary,¹⁰⁹ the ones who report and file complaints with FIA against black mailing, doctored images and cyber stalking also end up due in to the lengthy procedures and advice for settlement with the offenders.

5. Deficiencies of FIA (Federal Investigation Agency)

FIA received 12,339 reports after the enactment of PECA in 2017. Nearly, 26 percent of complaints reported by women to FIA. There were only 1632 cases out of which in 1400 cases, accused were convicted and sentence was awarded, and 232 cases were still under investigation in the end of December 2017.¹¹⁰ FIA carried out 2295 investigations, filed 255 cases and detained 209 criminals only in October of 2018th.

i. Delay in Prosecution

The Prosecutors and Investigators constantly seek unwanted delay in trial, while FIA has no Gender Sensitivity Training to handle the huge number of women complaints about cybercrimes.¹¹¹

¹⁰⁶ Ibid

¹⁰⁷ Rajat Misra, „Cybercrimes Against Women(2014)<
<https://ssrn.com/abstract=2486125>>

¹⁰⁸ Ibid

¹⁰⁹ Sarah B Haider, „Harassment In Cyberspace: Online Crimes Continue To Target Women In Pakistan“ The Express Tribune (Karachi, 08 March 2020)<
<https://tribune.com.pk/story/2171675/harassment-cyberspaceonline-crimes-continue-target-women>>

¹¹⁰ Advocate Salwa Rana „Bottlenecks, Incompetence and Abuse of Power, An analysis of PECA's implementation“ Media Matters for Democracy (2018)<
<http://digitalrightsmonitor.pk/wpcontent/uploads/2018/11/Bottlenecks-Incompetence-and-Abuse-of-Power-An-analysis-of-PECAimplementation.pdf>

¹¹¹ Ibid

ii. Shortage of Officials

In October 2017, there were only 2 cybercrimes prosecutors.¹¹² According to the meeting of Punjab Commission of Status of Women (PCSW) held in August 2018, the number of registered cases was approximately 4000 complaints related to cybercrimes has been registered and total 10 officers are dealing with said cases. The average of 40 cases is proceeded at one time.¹¹³

iii. Dearth of Experts in FIA:

Out of 144 officials only 10 officials were capable to deal with reported cases. The other ones were not trained enough from international trainers to deal with complexities of cybercrimes.¹¹⁴ This point was also raised by the lawyers and civil society that FIA is incapable to proceed with detail of such complaints.

iv. Dearth of women's recruitment

The big ratio of women complaints received by the FIA every year, but there is the lack of women officers. Captain Shoaib also stated about required recruitment of more female officials.

v. Shortage of Forensic Labs

The main deficiency of the FIA is the failure of producing case properties. FIA officials have also claimed that due to the thousands of cybercrime cases, the forensic labs which deal with the digital evidence are overburdened. Hence, the forensic test results are not being produced timely.

¹¹² Ibid

¹¹³ Ibid

¹¹⁴ Our correspondent, „4,000 Cybercrime Complaints Registered In Seven Months“ The NEWS International (Lahore, 03 August 2018)<
<https://www.thenews.com.pk/print/349903-4-000-cybercrime-complaintsregistered-in-seven-months>>

vi. Incompetency of Digital Forensic Experts

Due to incapability of digital forensics specialist, the collection of digital evidence is challenging that cause delay in prosecution or trial before the court. There are several reports that the digital forensic experts are incompetent that are unable to access the devices like iPad and mobile phones.¹¹⁵

vii. Dearth of Tools for Tracking Cyber Culprits

The unit head of FIA Cybercrime had shown and highlighted the needs of advance software for forensic Labs, mobile forensic toolkits, success of FTK data and SATA hard disks and Mobile Tracing Gadgets.¹¹⁶

viii. Dearth of MLAT and Buddha Convention

The FIA cybercrime still faces difficulties to access the data of cyber criminals from USA. The government of Pakistan has still not been able to be bound to the Mutual Legal Assistance Treaty (MLAT) and provisions of Buddha convention.

6. Objectives of Cybercrimes

There are some main reasons for which the cyber culprits extort or harass the women. The data which we have mentioned below in the form of table, which is taken from FIA, DRF and ARY SAR-E-AAM NEWS, which is further discussed in detail:¹¹⁷

¹¹⁵ Ibid

¹¹⁶ Adil Jawad, „65% of cybercrime cases in Karachi relate to Facebook“ The Express Tribune(Karachi, 20 April 2018)< <http://tribune.com.pk/story/1690292/1-eradicating-cybercrime-karachi>>

¹¹⁷ Shahzada Fahad Qureshi, Maria Abbasi, Muhammad Shahzad „cyber harassment and women of Pakistan(2020)6 journal of business and review in emerging economics< <https://publishing.globalcsrc.org/jbsee/>>

6.1 Money demand

According to the latest report of FIA, DRF and ARY SAR-E-AAM, the core purpose of the cyber criminals is demanding the money from the women by entrapping them in their illegal activities. The range of demanding money may vary from hundreds to thousands and so on. Cyber criminals blackmail them by way of cyber pornography, morphing etc. and then extort them for money for the purpose of fulfillment of their financial needs. The percentage of money demanding cases against women in Pakistan is 27.94%, which is the highest ratio among all the mentioned purposes.¹¹⁸

6.2 To Meet Physically

Cyber criminals extort the women to meet physically against their consent through the use of technologies e.g. editing of pictures and text messages etc. Mostly the women accept the demand of cyber criminals because of the fear of virility of their personal data and damage to their family's reputation. It is also the core purpose of cybercrimes against women. According the sources the percentage of the cases registered related to the physically meeting with women is 23.5%.¹¹⁹

6.3 Revenge

Some cyber criminals use the technologies to take revenge from the women which they desired. Revenge through committing cybercrimes is the latest weapon being used now in these days. By using it the cyber criminals can easily and quickly entrap the women without showing their identity. Revenge may be of many reasons like fight or jealousy with victim. The cases registered related to the

¹¹⁸ Ibid

¹¹⁹ Ibid

revenge against women are about 13.23%. This stands at third position after demanding money and physically meetings.¹²⁰

6.4 Marriage

Cyber criminals do some illegal activities to get someone in their lives. But due to rejection from the desired person, they attempt to commit illegal activities. The cyber space is becoming the big source of the cyber culprits for the completion of this purpose. They get start to blackmail the women. They can blackmail them by using various malicious techniques e.g. by using the way of cyber stalking, cyber bullying, cyber pornography etc. In Pakistan there are round about 11.7% cases registered in which the marriage was the object of cyber criminals.¹²¹

6.5 Damaging dignity

The cyber criminals also committing the acts which are becoming causes of damaging the dignity of the women. Damaging dignity of women may be at any level e.g. schools, colleges, universities and jobs level. Both the males and females are included in completion of such type of object. Jealousy of competition can be its reason. Competition can be of any type such as academic competition or professional competition. The cases registered related to the damaging dignity are approximately 7.35% in Pakistan.

6.6 Foreign Nationality

For getting foreign nationality they use the women by harassing them as we have discussed in previous chapters that the cybercrime is a global crime it is not limited to a country or an area so the cyber

¹²⁰ Ibid

¹²¹ Ibid

culprits easily entrap the women at global level and then harass them for the purpose of getting foreign nationality of any country for which they desire. The cases related to such purpose of cyber-criminals are registered which are approximately 1.47% in Pakistan.

6.7 Honour killing

It is also known as “karokari” in Pakistan it means the murder of female by their family who perceived to have brought dishonor on family. It has high ratio in Pakistan as compared to other countries Cyber culprits use the insufficient material like personal data of females and then blackmail them of which leads to the deaths in Pakistan. The cases registered of honour killing are 1.47%.¹²²

7. Preventive Measures to protect Women from Cybercrime

Some of the important preventive measures can make significant contribution to save the women mentioned below:

7.1 Parental control

The tools or devices, for example, computers which are provided to the female, children or adults should be placed at central location in the house by their parents, where they can easily approach their children. Guide them about the authentic and good websites and also guide them about the websites which they should ignore and provide them a limited time to use the internet. Confidentially, discuss with the female users about the dangerous websites which can divert them to the cybercrimes. Guide the females, not to share their personal information like name, address etc., in private chat rooms. In this way

¹²² Ibid

you can protect your female children from secret communications as well as from the cybercrimes.¹²³

7.2 Make sure your computers are up-to-date

The most prominent and effective way to secure your computer from cyber-attacks is to utilize authentic software's and apply fixes. In this way you can stay away from cyber criminals to exploit your computers.¹²⁴

7.3 Keep your phone safe

Majority of people are unfamiliar with fact that mobile devices have evil applications that can access your mobile phone. Always install applications from trustworthy sources. Always keep your operating systems (computers, tablets, mobiles etc.) updated. Make sure to use screen lock or other security features in your phone to make sure that none can access your phone without your acknowledgment.¹²⁵

7.4 Make your passwords strong

Always put unique passwords and different usernames for each account. Poor passwords can be cracked by implying different strategies. The preventive measures to use secure and strong passwords are as follows: (i) Using key pad formats for passwords; (ii) Using simple merging passwords which you can easily memorize; (iii) Using Default passwords; (iv) Keeping the password and the username same; (v) Mixing numeric and symbol keys in your password.

¹²³ Rajarshi Rai Chohdhury, „Cyber Crimes-challenges & solutions“(2013)4(5)IJCSIT< <http://ijcsit.com/docs/Volume%204/Vol4Issue5/ijcsit2013040519.pdf>.>

¹²⁴ Ravi Bandakkanavar, „Causes Of Cybercrimes And Preventive Measures“krazytech.com(19June2020)< <https://krazytech.com/technical-papers/cyber-crime>.>

¹²⁵ Ibid

7.5 Be Social Media Savvy

Do not mention your date of birth on Facebook or other social apps. Sometimes when you click on the website where you want to enter, it requires from you to fill security questions. Do not fill these questions unless you are sure about its safety. To make sure that you are entering in right website, check the web address, which would be always mentioned with http e.g. https/.

7.6 Know the Pitfalls of Public WIFI

Credit card.com says, “do not use the public wireless internet because when you use the public Wi-Fi for sharing any personal data there can be software installed in that Wi-Fi device, which can copy your data and can easily hack your personal information.”¹²⁶

7.7 Be Aware of Public Computers

Kiplinger says, “do not use your personal account or personal information on public computers, because in such computers, such types of software are installed which can record or copy your data.”¹²⁷

7.8 Avoid Suspicious Emails

Never open any doubtful email or link mentioned in the email even that email delivered from your friends. Emails are most sensitive that can be used to steal the identity.¹²⁸

7.9 Role of Agencies and Government

A forum is needed which can create hazards in the powerful mechanism in cyber criminals in context of using cyber tools e.g.

¹²⁶ Rajarshi Rai Chohdhury, „Cyber Crimes-challenges & solutions“(2013)4(5)IJCSIT<
<http://ijcsit.com/docs/Volume%204/Vol4Issue5/ijcsit2013040519.pdf>.>

¹²⁷ Ibid

¹²⁸ Ibid

(malware kits etc.) or to create hazards in the work of malicious code writers, who make the malicious websites. Now the question is how to create hazards in the work of the cyber criminals? Firstly, the criminals should be identified as early as they are making malicious websites. Secondly, to create joint action and co-operation among the law enforcement agencies and Government agencies where they should work jointly to break the sequence of cybercrimes.¹²⁹

7.10 Improvements in FIA

There is dire need to examine internal system of the FIA Cybercrime Wing that every complaint must have been entertained from FIR to Sentence. The FIA Cybercrime Wing should submit the annual report of the reported cases, in the Parliament of Pakistan. It is mandatory that the officers of FIA are trained to behave sensitively towards women especially in the harassment cases.¹³⁰

7.11 Need of Forensic Labs

The government should provide forensic laboratories with the latest technology, which can play an important role to crack the latest tool kits, gadgets or other complicated devices which are used by the cybercriminals. By increasing the number of these forensic labs in Pakistan, the report of evidences can be prepared within time.¹³¹

7.12 Need of FIA wings in major cities

In recent times, the FIA has four wings which are established in four provinces of Pakistan while the Headquarter is situated in the capital.

¹²⁹ Ibid

¹³⁰ Advocate Salwa Rana „Bottlenecks, Incompetence and Abuse of Power, An analysis of PECA"s implementation" Media Matters for Democracy (2018)<
<http://digitalrightsmonitor.pk/wpcontent/uploads/2018/11/Bottlenecks-Incompetence-and-Abuse-of-Power-An-analysis-of-PECAimplementation.pdf>>

¹³¹ Ibid

There is need of more branches in different major cities so that the people may get easy access to the offices for reporting their complaints.¹³²

Conclusion

Cybercrimes are not traditional crimes. As a new technological era has arrived, it not has only brought comfort in the women's life but also created many problems for the women safety. The rapid and fast revolution of IT introduced new types of veiled crimes in shape of cybercrimes. The term cybercrime is defined as electronic, internet and digital crime through using internet. The use of technologies becoming the causes of cybercrimes rapidly due to use of social media and other internet sources of communications. Fake social media profiles, cyber defamation, cyber pornography, cyber stalking, cyber harassment, e-mail spoofing and morphing are the examples and categories of cybercrimes in Pakistan. Cyber criminals usually target the innocent women by using these types of cybercrimes. Women are entrapped though Facebook, What's app and Twitter due to exorbitant use of these sites. Excessive use of social media platforms, unawareness of cyber laws, and negligence in reporting against cybercrimes as well as deficiencies in FIA are reasons to escalate or motivate cyber-criminals to commit these crimes continuously. Improvements such as training of FIA, need of digital forensic labs and cybercrimes wings in major cities can make the system effective and control cybercrimes efficiently.

¹³² Ibid

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ADDICTION OF MODERN COMPUTER TECHNOLOGY IN WORK PLACE: CHALLENGES AND POLICIES

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Abstract:

Technology has both positive and negative impacts on society, and it does have the potential to change the lives of the people. In this research paper, employees working in organizations have been investigated regarding the disadvantages of the misuse of modern technology. This includes how employees misuse the internet, computers, and printers during their duties, leading to various mental, physical and social issues. The paper discusses the importance of effectively monitoring employees' use of modern technology tools, engaging employees through the proper use of these tools in office work and protecting an organization's vital information and advanced digital devices form potential threats. Moreover, it covers training employees to use modern tools to maximize the benefits for organizations and service applicants. It also addresses how to counter modern technology threats. The use of modern digital technology devices has now become a fundamental part of our daily lives. The wasteful use of these devices by employees for personal purposes during office hours has increased significantly because these devices are used without any security policies. Online shopping, unnecessary emails to friends, viewing irrelevant websites with departmental tools during office hours, providing various online services, making TikTok, booking cars and hotels online for vacations, watching matches and gambling, chatting with friends, and sharing different topics, watching cartoons, dramas, video games, movies and downloading content, as well as doing business online have become very common among employees. The paper also discusses how organizations can protect their employees form the dangers of increasing use of modern technology by implementing laws and policies to counter these threats.

Keywords

Misuse of digital technology and equipment, disorder office personnel, Management.

Introduction

Human society presumably developed with modern technology and societies that did not embrace modern technology stood far behind the modern world. Today, societies cannot progress without tech-savvy. Organizations now are globally more reliant on computerization as a tool of advancement, and traditional modes of book keeping and hand-drafted paper work are almost replaced by computer databased files. This transition is an outcome of modern technology. Every organization in the world now prioritizes from modern technology, thus, making large number of organizations in developed countries computerized. Developing countries are also following the trend and adapting modern technology. Being abreast with the trend in vogue, Pakistan has also benefitted from the utility of modern technology and introduced the corporate sector to computerization which resulted in user friendly services and availability of modern equipment which renders more efficient results and is beneficial in terms of saving time as well. Where technology has been immensely beneficial, it also has some detrimental effects. These demerits include, overmuch and inappropriate use of digital devices by the employees working in organizations during their office hours. This is primarily because like other developing countries, in Pakistan internet access is unleashed and available to people of all ages without any criterion.

A single click on a computer can change search and redirect it to distractions as well as unethical websites, online gambling, cybercrimes, etc.

In developed countries of the world, when a person wants to buy a mobile, the government provides them with registered devices according to their needs and also control their access to certain websites that are allowed online. Similarly, in China, people are less exposed to social media apps such as Facebook, WhatsApp and many other of the kind. On the contrary in Pakistan, most of the employees coming to the offices look mostly tired when

they reach their office in the morning, they have very little time on their responsible office work, which is because most of the employees are connected to the online business, due to which they have to get internet facility on digital devices 24 hours a day. They are online 24 hours a day on their cell phones, laptops and desktop computers, which are provided by organizations in office timings, which are only for providing services to the customers of these offices, but employees are mostly interested in dealing with their online customers, which is an illegal and unethical thing. In many organizations, employees come only in the morning for fear of online attendance, then after attendance, they do not appear in the offices, one of the main reasons is that there is no employee profile in our government organizations so that their performance can be estimated as to how much work they have done. It has been seen severally that often employees misuse the facilities provided to them at work by using them for their personal benefit such as by using office printers and papers to print their personal material or for their relatives or friends, thus using office stationery and the printer for unofficial work. Nowadays, all the government jobs, admission in educational organizations, income tax returns, challans, etc. are mostly online, which at times give employees a chance to misuse these facilities for their personal interest. Now a days, a lot of people are engaged in online business and possess basic computer skills. These people usually have basic knowledge of online marketing and have their small online business. At times, many of them are also working as employees in offices, which causes conflict of interest as during office hours they tend to use their official devices and resources for their personal work which result in inattentiveness at work, failure of performing duties, dishonesty and trespass to official property and resources. Additionally, the free use of social media, specially making TikTok videos in office buildings and uniforms, has become very common, which also puts a question mark on the credibility of organizations. In all

these immoral acts, the employees are wasting the most valuable asset—time—which is considered highly detrimental to any society. There is a need to make available policy against them, all such works are being done open source in government organizations. There are some policies to use these digital devices in private organizations, but there is no restriction, no limit, no policy on the use of these digital equipment in government organizations.

2. Digital Equipment and Internet Use Trend

Digital devices¹³³ have changed the life pattern human today. With the help of these devices, man can sit anywhere in the world and see the whole world, read the cultures of the world, learn modern sciences. Humans never knew, when almost all the humans of the world would get connected through these devices their interaction would become inevitable and they would often get connected by default.

Just as the world is introducing a new research, new discovery new product every day through the latest technology of computers, and in the same way, the users of these devices are also increasing day by day, these devices have quietly now made their place in every society. Now man has become addicted to using these devices and life seems incomplete without these devices. Due to which the society is giving birth to many evils, many negative changes are taking place in the behavior of man, by the use of these devices, man is forgetting his traditions and suffering from many social and physical diseases.

¹³³ **Digital Devices:** Digital devices are capable of converting information into binary code as we know that binary code consists of zero and one, these devices can save data in the best way, these devices can create new data, send data, share data easily and in a short time. Examples of these are personal computers, tabs, Digital Watches, gaming consoles, mobile phones, smart televisions, server computers, keyboard, mouse, printers, speakers, etc.

3. Misuse of Digital Equipment and Interest in Organizations

Now employees in our organizations are providing their services with the help of digital devices, this is happening almost all over the world. In our country Pakistan, digital devices have been purchased in large quantities in every government organization and no policy has been formulated regarding its use. Employees can easily use these devices, for personal use whenever they want and are doing it because these devices are very valuable, not everyone can easily purchase them for this reason, it is being used very much and indiscriminately in government institutions, senior and junior employees are now using these devices equally. When employees started using the internet with the help of these devices, they became active in searching for more in this world and due to lack of knowledge, they started spending more time on unethical, unsafe websites.

Because when the employee is connected to any organization's digital devices and internet, he clicks on any non-work related sites, so these devices contain important data, important information of this organization, which easily reach to the access of any hacker or group of digital terrorists, the terrorists steal data easily from these devices, due to which the organizations have to suffer many problems.

When a less knowledgeable user is using the Internet and these digital devices to find the color of the digital world without any security, due to his low knowledge, he also becomes part of digital terrorist organizations or he hands over important information of personal level and of institution to them.

Asian countries use the most digital devices in the world and Pakistan is the 10th largest country in the world in the use of these devices, unsafe and unethical websites can be easily searched in Pakistan, despite the order of the

Supreme Court of Pakistan many times, these sites have not been closed or banned from visiting nor have, those who visit such sites been brought under the clutches of the law, Pakistan is the first Islamic country to visit these immoral websites the most in Islamic countries.

We are so addicted to these digital devices that we want to share every happy, sad, and big event on social media. And after sharing that event, we keep looking at these devices every moment, how many people liked it and that makes us very happy, But we don't know how much harm we are doing to ourselves and our organizations by sharing such personal information and important events on social media, Sometimes some people have become so caught up in this addiction that staying away from these devices for even a minute is a big problem for them and it is like destroying all the lights of their lives.

We make friends with unknown people on social media and share our personal information with them and proudly tell our friends that we have so many friends on social media, and we are proud to have so many likes on our post, playing online games, watching movies and providing any kind of personal online services has become our biggest hobby in our office hours. It has been seen that most employees go home late from offices because they do not have the facility of these devices at home, so they take advantage of these devices in the office and sit in the office for a long time. They say that we are doing office work, but in reality, they are doing some entertainment with the help of these devices, due to which their private life and health are very bad as well as these institutions are also being damaged but they don't care at all about that. Employees who become addicted to using digital devices do not pay attention to their work on duty, they cannot deal with their customers properly, sometimes, their behavior is not going towards their customers and their co-workers, which is why that employees spoil their

organization and their structure. Along with the government, the heads of our organizations should also keep an eye on the activities, they should have a strong policy on online games, websites, online businesses, online gambling, unnecessary emails and sharing gifts with friends, and restricted online Heads of state should have a strong policy on unnecessary use of employees online, so that employees can avoid many social diseases.

4. Why Does Digital Devices Abuse Occur In Work Place?

Digital devices have been provided in great quantities to make our organization's systems from manual systems to computerized and every employee has full freedom to use them due to which they use them indiscriminately, online search is fully allowed, no site is banned, they can easily entertain by searching any site they want, apart from this, injustice in the process of distribution of work among employees in government department is also an important reason- all the businesses are gradually being converted online, so all the products are easily found available online and the trend of online shopping has also increased, most employees shop online in their office timings, the trend of playing online games has also increased a lot, in which many prizes are given to many people, many employees are also interested in it, Online business is also going on, many employees have also been found to be inclined towards online investment, they consider online investment safe and do online trading, due to which they have to be aware every moment, their attention is more towards these digital devices, employees have also been found gambling during matches, it is also possible in organizations because modern equipment and fast internet are easily available there.

5. Professional Dilemma

Many professional problems arise from the excessive use of digital devices and the internet. Employees working in organizations who are addicted to

social media often do not come to the office on time or merely show up for attendance and leave before the end of office hours. They also work slowly during office hours. This trend has become common, and many people who seek services in these organizations often complain about it, such employees also create problems for those who are diligently and honestly doing their work. Employees wearing their organization's uniforms are making TikToks in the building of organizations and posting videos with various comments about their own organizations, purely to get likes or comments on social media. Employees store their personal data on office computers, waste time on social media throughout the day, and promote their own online business and services. The interest of employees in these unethical and illegal acts, along with the unrestricted use of the internet and digital devices in organization, arises from the absence of any policy governing the use of these devices.

6. How to Prevent Misuse of The Modern Technology and Equipment At Workplace

Common types of misuse of digital devices and internet:

- Employee's access to unsafe and unethical websites is very dangerous, the organization and its digital devices are becoming victims of cyber-attacks. Employees are often seen complaining that their computer is not working properly, their operating system is not coming to the desktop, it is their printer, scanners and various devices attached to their computers are not working properly and this is happening a lot, one of the reasons for this is that our computers have access to these unsafe and unethical websites online without any security because when we go to these websites and click on any given link due to low knowledge, there is a trick by any cyber-criminal to steal our information or

important data, which gradually enters our computers and spoils it and the devices attached to it, and most importantly, the important data of the users in our computer is either deleted or stolen, having such an attach has become a daily routine in any digital device and network made of them and this happens again and again, but we ignore it as very minor, which can be an easy target for digital criminals in the future that they easily get their limits by entering this network and organizations have to suffer a lot.

- The high-speed internet facilities provided in our organizations lack adequate security. As a result, employees take advantage of this by watching movies, dramas, and cartoons and downloading them during office hours, which makes it very difficult for others to provide their services on behalf of the organization. These employees often complain that it is not possible to access official websites, even though the organization has a high-speed internet connection. The internet is being used for entertainment instead of professional services. This issue frequently disrupts online official meetings and testimonies, as the sound is often inaudible, the video is unclear, and the internet connection repeatedly disconnects or show a weak signal message.
- Nowadays, every educated individuals are getting involved in online personal businesses after completing short computer courses. Employees in almost all organizations are associated with some form of online business and have accounts on various freelance platforms such as Fiver, Upwork, Bark.com, G2 Deals, Toptal, skywork360, Freelancer.com, peopleperhour.com, Dribbble Hiring, Guru.com, Any Task, Pepper content, Codeable, Arc and 99Designs. For instance, an employee who provides

video editing services on these platforms is often considered an expert, however, they may not own the modern, expensive devices needed at home and thus use the office's advanced digital devices during office work hours. As a result, they do not perform their official duties properly since they need to keep their profiles updated on these platforms. If they fail to deliver work as promised to their online clients, their profiles on these platforms could suffer.

- “It is considered quite common for employees to create TikTok videos while wearing the organization's uniform and during office hours within the organization's premises. They often promote their personal business and store their personal data on the organization's computers.”
- “Admission process for government and private jobs, school, colleges, universities, and various types of online challan forms have been made available online by almost all institutions. Often, employees are seen completing these tasks for their relatives and friends using office resources during office hours.”
- The personal use of printers given in the offices has increased to a great extent, due to which the stationery of the department is also wasted and the printers of the department are also damaged.
- “Senior employees in the office also instruct their junior employees to promote various online business, subscribe to the YouTube channels they create, and ensure complete view time.”

7. Important Measures To Prevent The Misuse Of Modern Technology And Equipment In Organizations.

- Organizations should educate their employees about the latest technology and modern digital equipment, including their

advantage, disadvantages and limitations. Employees should be instructed on the proper use of these technologies and informed about their intended purposes. By doing so, organizations can avoid online attacks, data deletions, and information theft caused by misuse. Guidelines should also be established to outline potential actions the organizations will take against employees who misuse modern technology and digital devices.

- In organizations, software should be installed to monitor the digital devices used by employees. This will allow the organization to track employee productivity and detect misuse of office resources through their screen activities.
- Non-essential emails and internet usage should also be monitored. Employees should avoid using their official email address unnecessarily.
- There are easily accessible tools such as key logging software to monitor digital devices in organizations. These tools enable us to effectively monitor all activities on employees' digital devices."
- Every user should have their own login password to ensure that activities can be traced back to the specific employee. Additionally, main servers containing the organization's sensitive data should not be accessible to all user. Even strong passwords should be periodically changed to help protect sensitive information and data.
- Employees should be trained on how to use digital devices safely, with emphasis on the potential dangers of a wrong click online. Conducting such training sessions can help organizations minimize the risk of losing sensitive information and valuable data due to improper use of digital devices.

- Organizations should install the tools and software on these digital devices with the help of which the organization is providing services, unnecessary tools and software should not be installed.

Conclusion

The use of modern technology and its devices is very important in any society. Any modern technology or equipment brings its benefits as well as flaws, which has a profound impact on the people of this society and its organizations. The quest to learn the latest thing, see the world, start new businesses, make new friends, and understand and see the culture of other societies is ingrained in human psychology. People want to experience and understand all this, and modern computer technology and digital devices provide an effortless platform to do so, whether from home or the workplace.

Like the people of the world, people in Pakistani society also spend their time online through many businesses, services, entertainment, and most of these modern technologies. Every employee in organizations has created a separate WhatsApp group in which almost all the employees are added, it is also normal to share the same thing from one group to another again and again and many people are limited to liking or commenting on things made or shared by people or they are happy to read people's likes or comments on things made or shared online. The lack of robust security policies allows easy access to unethical and unsafe websites, leading to potential misuse of technology. Because modern devices are often expensive, not everyone has access to them, however, in organizations, these resources, along with high-speed internet, are provided extensively to serve customers.

Unfortunately, the desire to learn new things and develop personal projects during office hours has created significant challenges in our organizations. Despite the risks, modern technology has great utility in our organizations

and society. It allows for quick and efficient service delivery, such as verifying biodata and assessing the eligibility of applicants. Using modern technology for its intended purposes brings many benefits to organizations and society. However, using these tools for personal tasks during office hours bring negative consequences for both organizations and employees. The misuse of modern technology should be addressed through strict legislation and policies. Limiting employees' online access to necessary websites only.

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