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RESEARCH ARTICLE

**JUDICIAL SYSTEM AND INDEPENDENCE WITH REFERENCE TO FUNDAMENTAL RIGHTS IN
PAKISTAN AND CANADA**

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ABSTRACT

The research paper aims to look into the applied aspects of fundamental rights in Pakistan and Canada. The Canadian Judicial System has strengthened basic norms of Canadian political society due fair judiciary as custodian of fundamental rights of the Canadian society. Pakistan is going through its transitional phase which still needs to be addressed in the light of basic principles of justice and fair decision making. The purpose of this paper is to explore new dimensions out of Canadian Judicial system for Pakistan.

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INTRODUCTION

The judicial system of Pakistan is consist of several courts differing in levels of legal superiority and separated by jurisdiction assigned to them. Some of our federal and others provincial the top court is Supreme Court. The following graphical model will help out to understand working behavior/ organization of judicial hierarchy of judicial system of Pakistan^{1A}

Canada judicial system is consists upon various courts differing in levels of legal hegemony and separated by jurisdiction. Some of the courts are federal in nature while others are provincial or territorial. The Canadian constitution gives the federal government the exclusive right to legislate criminal laws while the provinces have exclusive control over civil laws. The judicial system of Canada is consist of many courts differing in levels of legal superiority and separated by jurisdiction. The Canadian judicial system is unique in the world. Two official languages (English and French) and two legal traditions (Common law and Civil law) co-exist with system. Outline of Canada's court system is given in the following organ gram:^{1B}

Judicial independence is broadly considered to be a basis for the rule of law and safeguard of the constitutional rights. No political system work effectively without the survival of a stronger and independent judiciary.¹ Third column of the State is judiciary and an independent judiciary shows a basic role in providing justice in society.²It is rightly said that judiciary is the back bone of the rule of law. Independence of judiciary in

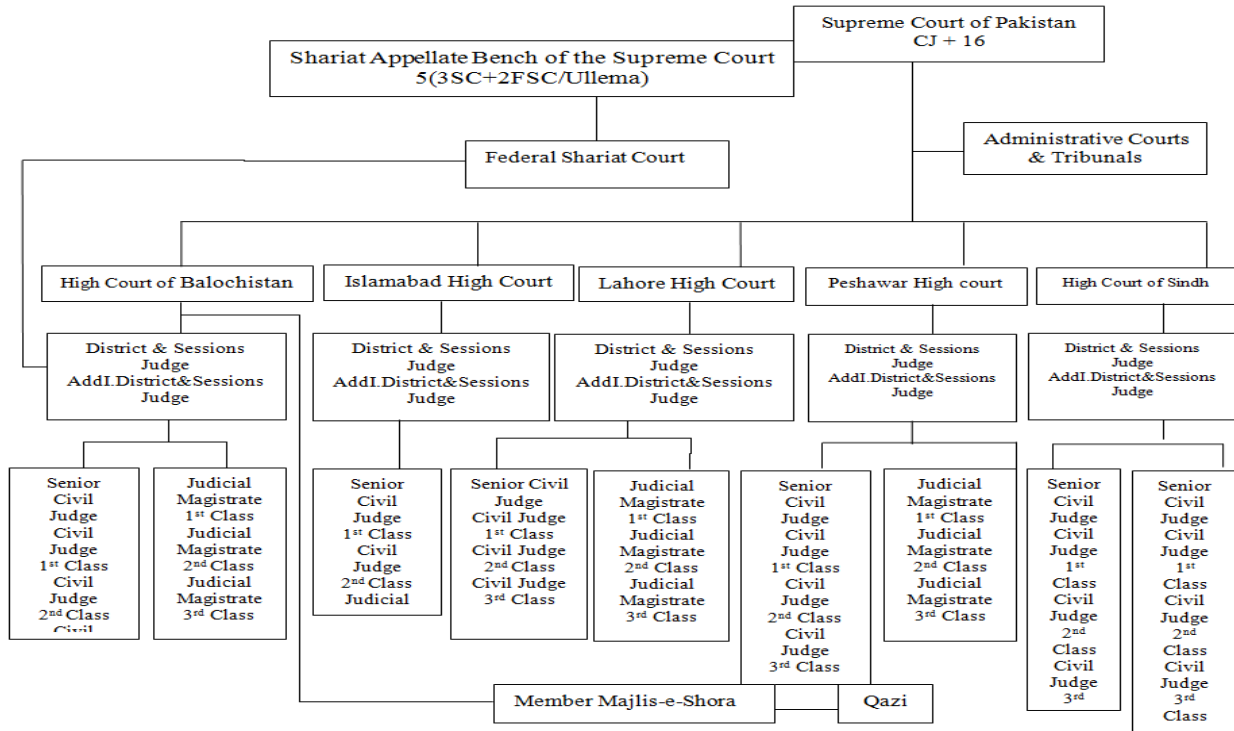
Islam means independent of an individual judge or a combined judiciary to resolve impartially according to the injunction of Islam.³ Independence of the judiciary commonly speak to becoming independent from the command of the administration.⁴The concept of judicial independence is linked to the doctrine of the separation of powers. Aristotle and John Locke identified the division between the legislative and executive powers of the State. However, it was Montesquieu who recognized, in his Sprit of the Laws, that an independent judiciary adjudicating legal disputes exercised a judicial power that was distinct from legislative and executive powers. The dichotomy of powers between three different branches of governments to prevent any one branch from dominating the exercise of government powers⁵the separation builds a system of check and balance and stabilities that confines each branch to its lawful role.

Although it is perception that judiciary is the feeblest pillar of the State as compare to remaining two legislature and executive and due to reason that it does not have resources or influence as the Legislature or the Executive have but under Constitution judiciary has been gave very important and delicate role to play, viz., to make sure that all organs of the state act according to the Constitution and in view of the nature of judiciary's work, it was made-up in the Constitution that the judiciary shall be independent.⁶During the whole history of Pakistan the executive has looked to control the judiciary⁷ and deny it of its liberty and has done so with achievement.

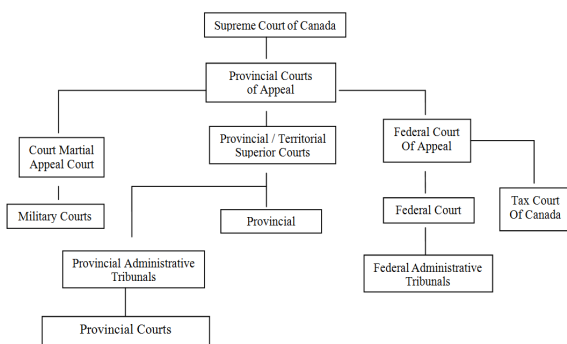
The then Federal Court, now the Supreme Court, in his renowned judgment in *The Federation of Pakistan versus Moulvi Tamizuddin* set affairs of judiciary-executive. In this case the dismissal of first legislative assembly in 1954 was challenged by Moulvi Tamizuddin President in the Chief Court, now the Sind High Court. The Chief Court acknowledged the dismissal of the Assembly not well-grounded, but subsequently Justice Muhammad Munir of Federal Court set aside the said verdict of Chief Court on technical grounds. It was the most important judicial decision in the history of Pakistan⁸ had it uphold the decision; the history of legislative democracy and judiciary-executive relations in Pakistan would have been overall different.

decision had wide implication; the most important being that success was the only test of the legality of an armed overthrow and no court verdict could make it unlawful, another inference was that army interference⁹ and this time Gen ZiaulHaq, on the foundation of necessity and welfare of the peoples legalize. This time Zia rule, true to its character, attempted to put the judiciary in series of interconnecting links, the most ill-reputed of which was the Provisional Constitutional Order (PCO) 1981 under which the judges of superior court who were not taken oath under the PCO stopped to continue their office.¹⁰

Organization of Judicial Hierarchy



Outline of Canada's Court System



Another test of the judiciary and its independence came when the legitimacy of 1958 martial law regime was challenged before Federal Court in *The State versus Dosso and Others*. The court, again presided by Justice Munir and illustration inspiration from Hans Kelsen's doctrine of necessity maintained that a successful revolution or coup by military has been a globally recognized means of changing a Constitution. Therefore, the Laws (Continuation in Force) Order 1958 publicized by Gen Ayub set up the new lawful system from which all legal tools and organizations as well as courts resulting their authority and legality. The judicial

In view of the doctrine of necessity the Pakistan judiciary in an unprecedented judgment the apex court chose to give death sentence to Zulfikar Ali Bhutto, although three judges had pronounced him not guilty.

Even justice Naseem Hassan Shah, one of the judges who awarded the sentence, had himself admitted that the death sentence was signed by him under governments' pressure. Arguably, this admission had turned the balance of judgment in Bhutto's favour¹¹ there is complete agreement of opinion that Bhutto was not given opportunity and a fair trial so as to eradicate popular political leader in order to save the rule of a military dictator. The entire exercise of trial and appeal greatly damaged the reliability¹² and independence of judiciary.

According to 1973 Constitution of Pakistan Article 175 (3) which visualizes that the judiciary had to be separated from the executive within 14 years after its coming into effect initially three years was kept the specified time, which was substituted by 5 years through the Constitution Fifth Amendment Act, 1976 and then to fourteen years by President Order No. XIV of 1985. The object of providing clause (3) in Article 175 by the framers of the Constitution seems to be

ensuring independence of judiciary in order to enable it to perform its functions according to the mandate of the Constitution. In spite of expiry of 14 years period, no action was taken by successive Governments, therefore the jurisdiction of Sindh High Court; was invoked against the Federal and Provincial Governments to apply the directive of the Constitution contained in Article 175, which were allowed through a common judgment¹³ by a Full Bench and Province of Sindh was directed to issue necessary Notification by bifurcating magistracy into Judicial Magistrate and Executive Magistrates by placing the Judicial Magistrates under the control of High Court; notifying the High Court as authority under "Sindh Civil Servants (Efficiency and Discipline) Rules 1978" and "Sindh Civil Services (Appointment, Promotion and Transfer) Rules 1974" make necessary amendment in the "West Pakistan Civil Courts Ordinance, 1962", "Criminal Procedure Code", "Sindh Civil Servants Act, 1973", "Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974" and in other enactments to make the same in conformity with Articles 175 and 203 of the Constitution. Against this judgment the Sindh Provincial Government and Federation of Pakistan filed appeals, which were disposed of vide judgment in which the main opinion, dilated as to the meaning of independence of judiciary :-

- (a) "That every judge is free to decide matters before him/her in accordance with his assessment of the facts and understanding of the law without improper influences, inducements or pressures, direct or indirect, from any quarter or for any reason; and"
- (b) "That the judiciary is independent of the Executive and Legislature, and has jurisdiction directly or by way of review, over all issues of a judicial nature."¹⁴

In Pakistan Constitution, judicial independence has not been left to be inferred or implied. Its preamble declares that it is will of the people of Pakistan to establish an order, wherein, among others, the independence of the judiciary shall be fully secured and lest there be any doubt about it, the same words are repeated as a substantial part of the Constitution in Article 2A, read with its Annex. Thus, independence of judiciary is now not merely one of the general principles of the Constitution of Pakistan; it is part of its substantive provisions and the relevant constitutional provisions¹⁵ must be construed accordingly to ensure the independence of judiciary

On March 1996 in the judges appointment case the judiciary declare its independence and free itself from the fetters of the executive choice in the appointment of the members of the higher judiciary The Supreme Court decision was a brave attempt but again, the racket between the judiciary and the executive during (1997-99) is an aggressive chapter in the constitutional history of Pakistan under which the Supreme Court decided the interruption of the constitution on Nov 3, 2007 was not anything less than momentous and the bravest of altogether judicial verdicts in Pakistan. The verdicts delivered by judges along with more than fifty other members of the superior judiciary were removed¹⁶ by the military dictators.

The appointment of judges' process and security of their tenure and other terms and conditions are linked and

connected with independence of judiciary.¹⁷ There were special provisions made with regard to the appointment of judicial officers under Government of India Act, 1935. On the other hand the Constitution of Pakistan 1973 does not make any such provisions in this regard. This matter is now governed under rules framed by the Provincial Governments prescribing qualifications and the manner of appointment. Normally, recruitment to the cadres of the Civil Judges and Magistrates was made through the Provincial Service Commissions and now by High Court. However, the Constitution provides that the terms and conditions of service of persons in Pakistan will be regulated by law. These terms and conditions inter alia govern the presiding officers of civil courts and the magistrates of criminal courts. Judicial independence has become principle that extends to all courts, not just the higher courts.¹⁸ The Pakistan; Constitution conceives separation and independence of judiciary¹⁹ from lower to higher ranks of judiciary. The separation and independence of lower judiciary is to be equally secured as part of hierarchy. Its separation and independence is to be equally secured as that of the superior judiciary²⁰ in a sense judicial independence tantamount to judicial accountability. Even for the accountability of judge of higher judiciary²¹ the 1973 Constitution provides Supreme Judicial council to deal about it under Article 209. Similarly all judicial officers are likely to discharge their duties neutrally, fairly and in accordance with the law. For complaint/answerability of judges of district judiciary²² there are member inspection teams in respective High Courts. But again for the greater protection of magistrates and other acting judiciary, it is provided in the Judicial Officers Protection Act, 1850²³ that no judicial officer is liable to be sued in any civil court for an act done or ordered to be done in discharge of his/ her judicial duties. The district judiciary enjoys a further privilege afforded against criminal action under Pakistan Penal Code section 77²⁴ and the Code of Criminal Procedure section 197²⁵ afforded protection and section 228 of the Pakistan Penal Code.²⁶ Although appointment to the superior courts are technically made by the president (on the advice of the Prime Minister) the 1973 Constitution itself mandates him to consult judicial functionaries before effecting such appointments. A judge of the High Court can only be appointed²⁷ in consultation with the Chief Justice of Pakistan, the Governor of the province respectively and the Chief Justice of the concerned High Court. Also the Constitutions of 1956 and 1962 contained similar provisions and this was also the practice in pre-partition days. It is, therefore, a misunderstanding to assume that such appointments were ever intended to be in the exclusive domain of the executive.

As per practice and trend, fresh appointments in the High Courts are made by way of additional judges²⁸ for a limited duration (normally a year). While the executive does contribute to the initial selection process at the stage of a regular appointment on permanent basis, which largely depends on the performance of the selectee, the recommendations of the Chief Justice, as a matter of propriety are generally honored. The practice of appointing additional judges is generally approved which provides an opportunity to rectify a wrong selection and also enables an appointee to choose out if he finds it difficult to adjust to a judicial office.

Recently, the judiciary in Pakistan has expressed its independence by giving remarkable judgments in two petitions filed against the Proclamation of Emergency on 3rd day of November, 2007 and Provisional Constitution Order No 1. Of 2007 issued by the Chief of Army Staff. The apex court maintained that the Constitution of Pakistan, 1973 remains to be the Supreme Law of the land certain parts thereof have been held in abeyance in the larger interest of the country and the people of Pakistan.²⁹

The additional Constitutional steps of Provisional Constitution Order No 1 of 2007 were declared to have been validly made by the Chief of Army Staff/ President subject to condition that the country will be governed, as minimum as may be, in accordance with the Constitution. All acts and actions taken for smooth running of the State and for the well-being of the people were also validated. In absence of the Parliament, Chief of Army Staff/ President, in pursuance of the Proclamation of Emergency of 3rd November, 2007 may, in the larger public interest and the safety, security and integrity of Pakistan under the principle of *salus populi supremalex* may perform.³⁰ The essence of the Constitution visualizes separation of judiciary from the Executive (founded in the Islamic Judicial System) to ensure independence of judiciary at every level intend to work under the control of High Court. Excess to justice is a basic right for all, and it cannot be implemented without an independent judiciary which is impartial, fair and just.

The Courts / tribunals which work and run by executive authorities, without being under the regulator and administration of the High Court in terms of Article 203 of the Constitution, cannot come across the pre requisite of the Constitution³¹ Most recently, a Supreme Court full bench gave new motivation for the independence of judiciary.³² In his judgment the full bench set aside the Presidential Reference against the former Chief Justice of Pakistan as well as the order of the President, March 9, 2007, and the order, of the same date of the Supreme Judicial Council restraining the Chief Justice from acting either as the Chief Justice or even as a judge of the Supreme Court.³³ The judiciary has always been recognized as one of the co-equal institution of a State along with the executive and legislature. But in the recent past, the public has magnified its importance manifold-some may feel unreasonably. No doubt a great admiration³⁴ but then it means that the courts must be prepared to suffer a close scrutiny of its action.

After the restoration of judiciary the National Judicial Policy Making Committee approved a National Judicial Policy besides plan of action for disposal of pending cases. The National Judicial Committee recommended that in order to ensure independence of judiciary, no Chief Justice or judge of any superior court would become acting Governor of a province or hold any public office in future.

Similarly, retired judges of the superior courts will not accept any appointment below the status of a judge. Accordingly judges were advised to relinquish charge of such posts in the interest of judiciary's independence and its separation from the executive. The government was also asked to relieve such judges and may not make such appointments in future. The practice of posting serving judges at executive posts in federal

and provincial government departments on deputation should be discontinued and such judges should be repatriated to the respective High Courts. Similarly, all special courts/tribunals under the administrative control of the executive should be placed under the control and supervision of the judiciary and their appointments/postings should be made on the recommendations of the Chief Justice of the High Court.³⁵ The main purpose is that there should be no involvement of judges in non-judicial duties like election, inquiries into controversial issues of public policy as it turn away the judicial officers from professional duty and complaints of corrupt practices tarnish the image of judiciary.

Canada has undergone some very important changes in the relationship between individuals and the State. The judiciary in Canada has the necessary knowledge and experience to contribute significantly to the maintenance and ongoing evolution of free and democratic society. The role of the courts, as adjudicators of disputes, interpreters of the law and defenders of the Constitution and the Charter, is completely separate from all other components in the legal system. Canada's tradition of judicial independence guarantees that the courts will continue to be accessible to everyone and that the proceedings remain public, transparent and free of interference from the government.³⁶ Independence of the judiciary is often used to signify, from a public service point of view, impartially and, from a constitutional view point, an absence of discretion.³⁷ In Canadian judicial system, judicial independence is a keystone. Under the Constitution the judiciary is separate from and independent of the executive and legislative. Judicial independence is a guarantee that judges will make decisions free of influence and based solely on fact and law it has three components: safety of tenure,

Financial safety and governmental freedom.³⁸ Rule of law demands that disputes about the application of the law be settled as neutrally as possible. The mechanism of judicial independence developed in rule-of-law countries to promote judicial impartiality; it refers to procedures that are intended to insulate the outcome of a particular decision or class of decisions from any influence outside of legitimate court room activity, including the general public but especially the legislative or executive branches of government. In Valente decision of 1985 which is Canada's Supreme Court's decision on protection of judicial independence under section 11 (d) of the Canadian Charter of Rights and Freedoms set out three basic conditions for judicial independence: (1) security of judicial tenure (judges can be removed only for judicial misbehavior and only after a fair trial and impartial hearing), (2) financial security for judges (their salaries must be established by general legislation), (3) and the institutional independence of tribunals on all matters directly affecting adjudication.³⁹

Section 11 (d) of the Canadian Charter of Rights and Freedoms guarantees that any one charged with an offence has the right to a fair and public hearing by an independent and impartial tribunal.⁴⁰ Garry D. Watson in his findings under the heading "the Judge and Court Administration" believes a satisfactory solution to the problem of court administration in Canada will only be possible if they can grow a connection of common faith and high opinion among the judiciary and the executive in court management, and a

willingness to genuinely co-operate together to develop a sound administrative system. This problem has two aspects. One is the development of an appropriate overall structure which can form an acceptable basis for mutual trust and co-operation. The other has to do with the attitudes of the judiciary and the executive and the way they conduct themselves in their respective roles. He suggest, on its part, the executive must convince the judiciary that its intentions are bona fide and that its sole desire is to develop a sound and efficient court administration system in the public interest, the sole purpose of the concept is to ensure that every citizen will have his case heard by a judge who is free of government or private pressures that may impose upon the ability of that judge to render a fair and unbiased decision in accordance with the law. He further elaborate mean by an independent judiciary and to more clearly identify areas of individual and corporate responsibility.⁴¹ Clearly every judge must retain his or her personal liability and impartiality with regard to those matters which bear direct upon the realization of a judgment in a specific case. But beyond that, he suggest, that the independence of the judiciary calls for corporate responsibility and team work.

Another view taken by W.R.Ledermanis that the elements of judicial independence fall into two groups individual elements and collective ones and individual elements stated in terms that a Judge is not a civil servant, rather he is a primary self-sufficient officer of State in the judicial jurisdiction, just as cabinet ministers and members of parliament are the primary official persons in the executive and legislative jurisdictions respectively.⁴²

For judges accountability and education the Canadian Judicial Council was created in 1971 to promote efficiency and uniformly, and to improve the quality of judicial service, in superior and county court in the Tax Court of Canada. Parliament also gave to the Council a statutory mandate to consider any complaint or allegation concerning the conduct of a federally-appointed judge.⁴³ The procedure for handling complaint is also set out by Canadian Judicial Council.

When the Canadian Judicial Council conducts an inquiry into a complaint against a judge, section 63(4) of the **Judges Act** provides that the Council is "deemed to be superior court." As consequences of this fiction there is no appeal or judicial review of its jurisdiction or decision.⁴⁴ First there is no statutory rights of appeal and therefore no appeal in any court.

Independence is a normative demand of the judicial function of adjudication. While impartiality suggests absence of bias, independence and its consequence, the separation of powers, deal with the relationship of judges⁴⁵ with others, especially those in the executive and legislative branches of government.

The independence of judiciary is not a complete concept, but one that can be measured by degrees along a best of possibilities.⁴⁶ Once it is recognized that there has to be political involvement in the control of many aspects of the administration of justice, the question of independence is reduced to the appropriate mix of powers⁴⁷ of executive, the legislature, and the judiciary.

The judiciary should possess a high level of independence because adjudication is a form of third party conflict resolution, and a judge must be a genuine third party. Justice cannot be done and public confidence could not survive if the judges were associated with certain parties involved in disputes. This view has been articulated in Lockean political philosophy, in which great emphasis was placed upon the settlement of disputes concerning rights by impartial judges who possessed some measure of independence from those with political authority.⁴⁸ Justice Bora Laskin while defining the meaning and scope of judicial independence observed that the judge must remain and be seen to remain impartial.

Compromise which would impair judicial independence and integrity is out, as the judge is to remain in judicial office.⁴⁹ The independence of the judiciary is not and cannot be absolute; the proper performance of the judicial function requires a certain measure of cooperation from the legislature and executive for example, the provision of adequate funds for judicial services, the existence of a workable set of procedural rules and efficient mechanisms for executing judgments.⁵⁰ The basic logic of judicial independence starts from the fact that courts exist for the resolution of conflict in consensus with established legal values. However, the resolution cannot be convincing to the loser unless the third party is genuinely a third party, without ties to either of the party engaged in a legal dispute, but for all its logical and practical importance, independence from private parties is only a small part of the problem; independence from government is far more critical for reasons. First, government is the single largest litigator as a Crown in criminal case as an enforcer in regulatory cases, as a defendant in a variety of law suits for injuries or damages, and, more indirectly, in any law suit involving one of the hundreds of federal and provincial Crown corporations that are such a distinctive component of the Canadian way of doing things.

Take away the court cases involving government, and there would be no backlog of cases, no caseload crisis. Moreover, government tends to be a very successful litigator, which means that questions about influence and advantage are highly relevant. Second more indirectly democratic government is by its nature endlessly subjected, and endlessly responsive, to pressures transmitted through a wide range of channels. Without of certain separating bar, some effective cordon sanitaire,⁵¹ it is only to be expected that this pressure would simply be passed on to the court whenever the stakes were high enough to make it worthwhile. Such a consideration could potentially cloud any decision, disturb any loser, and thereby weaken the legality of the procedure.⁵² The basic ultimate of judicial independence is therefore the independence of judges from government itself.

Superior courts in Pakistan and its decisions on fundamental rights are appreciable⁵³ in the case of *MS Benazir Bhutto V. Federation of Pakistan* and another⁵⁴ the aggrieved provisions of the Political Parties Act, 1962 were struck down. In one more case of *Federation of Pakistan and others V. Malik Ghulam Mustafa Khar* the citizen's Constitutionally guaranteed unchallengeable right to be treated in accordance with the law was acknowledged over and above the supposed protection granted to the actions of the Martial law authorities under Article 270-A of the Constitution itself.⁵⁵ In the case of

Shirin Munir and others V. Government of Punjab and another the Fundamental Right guaranteed by Article 25 of the Constitution was agreed and the discrimination in admission to medical colleges on the basis of sex alone was rejected.⁵⁶In another important case of Ghulam Ali and others V. MS. Ghulam Sarwar Naqvi in which rights of an illiterate and deprived female populations of the country over their privileges of inheritance and property were safeguarded.⁵⁷The Superior Courts in Pakistan for the purpose of safeguarding essential rights for the common people and to give justice to deprived segments of the society also delivered important judgments, in the well-known cases of Ms. Bilqis Fatima V. Najam-ul-Ikram⁵⁸ the first case decided by Superior Court in Pakistan regarding right of khula and it was held that the wife is entitled to dissolution of marriage on restoration of what she received in consideration of marriage if the judge take in for questioning that parties will not observe the limits prescribed by God. In case of Ms. Khursheed Bibi V.

Baboo Muhammad Amin⁵⁹ right and a freedom of wife to seek dissolution of marriage by way of khula was discussed and it was hold that women have same rights of khula against men similar to those that men have talaq against them according to the well-known rules of equity and wife is entitle for khula, if she satisfied the Court that it will amount to forcing her into intolerable union.

Asma Jilani V. Government of Punjab⁶⁰ in which it was debated that the law cannot view quiet. Nor can the judges become mere slaves of the precedents and that the rule or stare decisis not apply with the same harshness in criminal, financial and constitutional matters where the liberty of the subject is involved or some other serious unfairness is likely to happen by strict obedience to the law.

Selection of women as Qazi/ Judge was challenged in Ansar Burney V. Federation of Pakistan⁶¹ and a basic right of women was involved to serve and appoint as Qazi/ Judge and it was hold that it is not good argument for keep out women from selection as Qazi that the Holy Prophet or his four next Caliphs did not appoint any woman as such the rule is that what is not prohibited by Holy Quran and Sunnah is allowed and the burden of proof about anything being prohibited is on the person who claims it to be so.

Another example of case of Benazir Bhutto V. Federation of Pakistan⁶² wherein the court aimed to provide access to justice to all people of Pakistan based on public interest litigation. This case has opened doors of superior courts to the public interest litigation in order to provide access to justice to all, an internationally well-known individual right.

The court while taking judicial notice of violation of fundamental rights on a telegram by some brick-kiln bonded labourers regarding their illegal detention by employer with a request to get them released of this practice, found it a fit case of enforcement of fundamental rights and grated needed help.⁶³

While taking judicial notice of violation of fundamental right of petitioner for her complaint about high voltage transmission lines at the grid station in residential locality

which showing-off serious threats to the health of the residents and granted appropriate relief in the public interest.⁶⁴

In a case of a foreign husband who married to a Pakistani woman and wife refused to get Pakistan's citizenship for her foreign husband; while a married man was entitled under section 10 of Pakistan Citizenship Act, 1951 to obtain Pakistan citizenship for her foreign wife and under Article 25 (1) of the Constitution of Pakistan all citizens are equal before law and are entitled to equal protection of law and court directed the government to take appropriate steps for amendment of section 10 (2) and other provisions of the Citizenship Act, 1951 within a period of six months.⁶⁵

A female student Ummara passed her SSC examination in one sitting and got 946 marks out of 1050. She stood 12th in 15th highest students and 6th amongst female students. Board ignored her for granting National Talent Scholarship. Two boys who passed the same examination had respectively secure 945/1050 marks and 940/1050, and had been accorded the said scholarship being female. Boys have been given preference by the board on the ground that the Board Rules have limited the scholarship for 5 girls only. Boys had been given preference over girls without reason and the court held that this discrimination is against Article 25 (2) of the Constitution declares that there should be no discrimination on the basis of sex.⁶⁶

Similar in Canada there are several land mark judgments of higher judiciary which reflects the independence of judiciary and protection of fundamental rights of citizens, in Rodriguez V. British Columbia (AG) it was held that criminal prohibition of assisted suicide does not violates the Charter. The judgment draws a distinctive between suicide and assisted suicide. The latter is criminal, the former is not. The effect of the distinction is to prevent people like Rodriguez who was diagnosed with disease not curable, from exercising the autonomy over their bodies available to other people. The objective that motivates the legislative scheme that Parliament has enacted to treat suicide is not reflected in its treatment of assisted suicide. It follows that section 241 (6) of the Criminal Code of Canada prohibition violates the fundamental principles of justice and that section 7 of Charter of Rights and Freedoms breached.

In Gosselin case section 29 (a) of the Social Aid Regulation, the Quebec government provided \$ 170 per month which amounted to only a third of the regular benefit in social assistance to those who were single, unemployed and under age of 30 years old. Full benefits were only available if the individuals would participate in employability programs the objective would participate in employability programs the objective behind was to encourage youth to either find work or go to school.

Gosselin was un-employed and under 30 during 1984 to 1989 the period when this social Aid Regulation was provided and to meet the expenses to feed herself she reduced to selling herself, she brought a class action for violation section 15 equity rights and section 7 security right but it was hold that social assistance scheme, as it stood from 1987 to 1989 did not violates section 7 of Charter of Rights and Freedom.⁶⁷In case of Andrews section 15 of the Canadian Charter of Rights

and Freedoms was challenged by Andrews, a lawyer and a permanent resident in Canada who met all the requirement for admission to the provincial bar with the exception that he was not a Canadian citizen and it was held that a rule which bars an entire class of persons from certain forms of employment, solely on the grounds of a lack of citizenship status and without consideration of educational and professional qualifications or merits of individuals in the group infringes equality right.⁶⁸

In the case of Ford V. Canada the court struck down part of the Charter of the French Language, commonly known as Bill 101. This law had restricted the use of commercial signs written in languages other than French. The court holds that Bill 101 violated the freedom of expression as guaranteed in the Canadian Charter of Rights and Freedoms.⁶⁹

In another case the Calgary store Big M Drug Mart⁷⁰ was charged with unlawfully carrying on the sale of goods on a Sunday contrary to the Lord's Day Act of 1906 the constitutional question put before the court was whether the act infringed the right to freedom of conscience and religion and it was held that the Lord's Day Act violates section 2 of the Charter and is in valid.

It was a decision by the Supreme Court of Canada in Native Women's Association of Canada on section 2, 15 and 28 of the Canadian Charter of Rights and Freedoms, in which the court decided against the claim that the government of Canada had an obligation to financially support an interest group in constitutional negotiations to allow the group to speak for its people. The case resulted from negotiations for the Charlotte town Accord, in which various groups representing Aboriginal people in Canada were financially supported by the government, but the Native Women's Association of Canada (NWAC) was not. Since NWAC claimed the other Aboriginal groups primarily represented Aboriginal men, it argued that section 28 (sexual equality under the Charter) could be used so that section 2 (freedom of expression) required the government to provide an equal benefit to Aboriginal women.⁷¹

In one of the land mark judgment of Supreme Court of Canada in Canada (Prime Minister) V. Khadr⁷² facts of the case are that Omar Khadr, a Canadian citizen, has been detained by the United States government at Guantanamo Bay, Cuba, for over seven years. Canadian officials interviewed detainee knowing that he had subjected to sleep deprivation and sharing contents of interviews with U.S authority's .Khadr was 15 years old when he was taken prisoner in 2002 by U.S forces in Afghanistan.

He was alleged to have thrown a grenade that killed an American soldier in the battle in which he was captured, Khadr requested the Government of Canada to ask the United States to return him to Canada after repeated requests by Khadr that the Canadian government seek his repatriation, the Prime Minister announced his decision not to do so then Khadr applied to the Federal Court for judicial review after several efforts and long battle the application for judicial review was allowed and court declares that through the conduct of Canadian officials in the course of interrogations in 2003-2004, on the basis of evidence established actively

participated in a process contrary to Canada's international human rights obligations and contributed to Khadr's ongoing detention so as to deprive him of his right to liberty and security of the person guaranteed by section 7 of the Charter, contrary to the principles of fundamental justice hence costs awarded to Khadr.

It reveals that judiciaries of both countries are free, independent and active so also safeguard the rights of citizens'. A truly independent judiciary has three major qualities. First, it is impartial, i.e. judicial decisions are not influenced by any personal interest. Second, judicial decisions, once rendered are respected specifically by the executive. And third, the judiciary is free from all interventions.

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