

WORKMEN'S MINIMUM WAGE FIXATION
COMPARATIVE ANALYSIS OF SHARIAH AND PAKISTANI LAW

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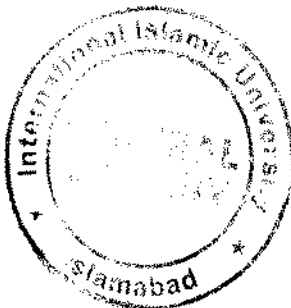
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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

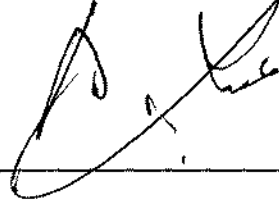
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FINAL APPROVAL BY THE VIVA VOCE COMMITTEE


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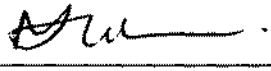


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DEDICATIONS

This thesis is dedicated to:

My Parents,

Teachers,

Siblings,

&

Wife

ACRONYMS

BIRA	Baluchistan Industrial Relations Act, 2010
CMO	Coal Mines (Fixation of Rates of Wages) Ordinance, 1960
DWCP	Decent Work Country Programme
DWTF	Decent Work Task Force
EER	Employer-employee Relationship
FMRW	Fixation of Minimum Rates of Wages
IES	Islamic Economic System
ILO	International Labour Organization
IRA	Industrial Relations Act, 2008
IWE	Islamic Work Ethics
KIRA	Khyber Pakhtunkhwa Industrial Relations Act, 2010
MRW	Minimum Rates of Wages
MWL	Minimum Wage Laws
MWP	Minimum Wage Policy
NEA	The Newspaper Employees (Conditions of Service) Act, 1973
PIRA	Punjab Industrial Relations Act, 2010
PLP	Pakistan Labour Policy
PWA	Payment of Wages Act (1936)
SIRA	Sindh Industrial Relations Act, 2011

INSTRUMENTS

INTERNATIONAL INSTRUMENT

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

C095 - Protection of Wages Convention, 1949 (No. 95):

C131 - Minimum Wage Fixing Convention, 1970 (No. 131)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)

International Covenant on Economic, Social and Cultural Rights, 1966

NATIONAL INSTRUMENTS

Payment of Wages Act 1936

Coal Mines (Fixation of Rates of Wages) Ordinance, 1960

The Minimum Wages Ordinance 1961

The Newspaper employees (Conditions of Service) Act 1973

Workmen's Compensation Act, 1923

ACKNOWLEDGEMENT

The purpose of this thesis besides the fulfillment of partial requirements LLM (Islamic Commercial Law) degree from International Islamic University, Islamabad is also to make an effort to explore and highlight the concept of minimum rate of wages in Pakistan, especially from Shariah point of view, and to submit some practicable suggestions for bringing it into compliance with the injunctions of Shariah.

I am positive that this attempt will help and motivate not only those concerned with the process for Islamization of Pakistani Laws but those students of law who would prefer to expand research in this particular area of labour laws.

I am extremely grateful to my teacher and supervisor Mr. Abdullah Rizq Al-Muzaini for his proper guidance in finalizing this research work. I highly appreciate his expertise and intellect in this regard. I owe my gratitude to Dr. Faizan and Mr. Akbar Khan for their guidance that motivated me in preparing my thesis proposal.

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Muhammad Umar Khan

ABSTRACT

The purpose of minimum wage laws' (MWL) implementation as a universal practice is to eliminate exploitation of the low-wage workmen in the hands of guilty-minded employers. Unfair wages is one of the crucial workmen-related issues that had badly affected workmen and their families' lives. As the centre of economic activities and factor of production, the dissatisfaction of the workmen results in strikes which badly affect the final productivity and ultimately economic instability is at large in countries.

The research is conducted to reveal the provisions of the MWL in Pakistan in the light of Shariah's general principles of justice and preservation of the public interest. The interference of an Islamic state, like Pakistan, in the individual affairs of the subjects on the basis of the Islamic Doctrine *Siyasah Shariyy'ah* will be allocated considerable place and will be applied to the issue in hand.

As a member of the International Labor Organization (ILO) Pakistan, like other members, is following ILO's Conventions in this regard. The research shows that the MWL, in Pakistan, are not implemented in word and spirit. Therefore, the causes behind ineffectiveness of the MWL and subsequently the ILO's guidelines for the effective enforcement mechanism are to be analyzed.

In the last chapter, Shariah Modal of Workmen's Minimum Wages is to be presented along with recommendations in order to make the current MWL in Pakistan by making them Shariah-compliant in the contemporary context of the labor reforms going on in the country by the Federal and Provinces after the 18th Constitutional Amendment.

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CHAPTER ONE: INTRODUCTION TO THE RESEARCH

1.1. INTRODUCTION

Making a living is a prerequisite for fulfillment of basic human needs. It is therefore considered by Islam as a personal obligation (*fardh-i-aiyn*) and one of the basic human rights.¹ Islam is very much concerned with the protection and security of every man in the society including workman, an important factor of production² and centre of all economic activities.

The concept of fixation of minimum wages was not much known until 1890s, when states in Europe started legislating minimum rates for the low-wage workers. With the passage of time the idea got its place in the labour laws of almost every country. Currently, 90% of the countries are using the minimum wage as a policy instrument in their respective labor policies.³

Pakistan, like other countries, has legislated wages related laws to regulate the conduct of employers in order to pay minimum rates of wages as per the prevailing laws, revised by the governments from time to time keeping in view the economic conditions and cost of living in the country. The relevant pieces of legislation are payment of Wages Act, 1936, Coal Mines (Fixation of Rates of Wages) Ordinance, 1960, The Minimum Wages Ordinance, 1961, Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969, Newspaper Employees Conditions of Service Act 1973.

It is noteworthy that as Pakistan is an Islamic country where its supreme law has made it mandatory that no law shall be enacted against the injunctions of Islam and the existing

¹Hamza Al-Jamee Addamohi, *Aw'amil Al-Intaj fi Al-Iqtis'ad Al-Islami*, p.210

² Afzal-ur-Rahman, *Economic Doctrines of Islam*, p.189

³ Hansjorg Herr and others, *the theoretical debate about minimum wages*, paper no.6, Feb 2009, p.1

laws are to be Islamized.⁴ Therefore, there is an immense and dire need to analyze the prevailing minimum wage fixation laws and workmen policies from the perspective of Islamic Law and to come up with Shariah-complaint system for the well-being of workmen.

Therefore, I have a keen interest to conduct my research in the area of minimum wage fixation. The research is mainly aimed to discuss and find answers to the following issues in the light of Islamic Law.

- a) What is the concept of work, workman and wages in Shariah and role of the state in individual affairs of its subjects including fixation of prices and wages?
- b) Whether Shariah allows fixation of minimum rates of wages or not?
- c) Is it possible, from *Shariah* perspective, to base the case of fixation of minimum rates of wages on the fixation of prices of the goods (التسعير)
- d) When did the idea of wages and salaries fixation took place in the modern world and why it became popular and then used as a policy instrument?
- e) Whether the instruments and guidelines of the UNO and ILO regarding the protection of minimum wages can really heal wounds of workmen, a large portion of the society?
- f) Whether the existing minimum wage legislation in Pakistan is Shariah-compliant or not?
- g) Whether Islamic Law and man-made Laws have any similarities in dealing with the fixation of wages or not?

⁴ The Constitution of the Islamic Republic of Pakistan 1973, Art.31

- h) It is important to examine whether the principles of Islamic Law protect workmen in the same way as it is provided for by the enacted laws or it has a different scheme of policy.
- i) In the light of the general principles of Islamic Law we shall see whether the existing laws regarding the fixation of wages in Pakistan are in conformity with Islamic Law, if yes, to what extent?
- j) It is important to search out that what are the provisions which are not in conformity with Islamic Law and how can they be brought into conformity with Shariah in the present scenario.
- k) Is it the inflation which causes the insufficiency of a workman's wages or there are other reasons and what is Islamic solution of controlling inflation?
- l) How can a balanced environment, based on the general principles of Shariah, be created in which workmen's and employers' interest will be guaranteed?

1.2. SIGNIFICANCE OF THE RESEARCH

Fixation of workmen's wages is used as a policy instrument in the developed and developing countries alike but as a matter of fact the current minimum rates of wages in most of the countries, especially developing one, are insufficient for a workman to make both ends meet and thus to ensure decent life himself as well as for his/her family. Islam supports free-market economy but in exceptional cases the state is required and entitled to step in to the market to play its due role under the Doctrine of *Siyasah Al-Shariaah*. In Islam, state is the custodian of its subjects as it is mentioned in *Hadith* "you are all caretakers and you all will be asked about your inferiors..."⁵ so, the leader is caretaker and will be asked about his subjects irrespective of the social set up they are in. As a factor of production, workmen's problem of not obtaining fair wages is considered by the modern states and International Organizations such as the United Nations and International Labour Organization.

Likewise, Pakistan, as a part of the international community, has promulgated various Laws on federal and provincial level which are mostly based on ILO guidelines but there are numerous flaws in the prevailing minimum wage laws in Pakistan.

Therefore, it is important to make comparative analysis of Shariah with the existing Minimum Wage Laws of Pakistan which will make it possible to us that whether the provisions of these laws are Shariah-compliant or not. The importance of this topic is so profound that it is needed to find out relevant *Shariah* teachings on the subject and to include them in the present minimum wage Laws and to bring these laws to the process of Islamization of the existing laws.

⁵ Abu Abdullah Muhammad ibn Ismail Al-Bukhari, *Al-Jami' al-Sahih al-Bukhari*, Kitab Al-Jumoa; Babul Juma fil Qura' wal Mudun, Hadith: 853

1.3. OBJECTIVES OF THE RESEARCH

This research is aimed to;

- a) Examine the prevailing concept of fixation of minimum wages, used as a policy instrument, in the light of general principles of Islamic law of *Al-Adl wa Al-Ihsan* and preservation of interests of people (صيانة مصالح العباد) by an Islamic state under the doctrine of *Al-Siyasah Al-Shariyy'ah*.
- b) To analyze the origin of the idea of fixation of wages, from Shariah view point as well as from modern states laws view, and the reasons of its reputation round the globe.
- c) To scrutinize the contemporary minimum wage legislation in Pakistan from the perspective of Islamic law regarding the fixation of workmen's wages.
- d) To point out the causes behind the insufficiency of fixation of wages, if any, which are contrary to the dignity of workmen from the perspective of Islamic Law?
- f) To search out an alternative mechanism from the perspective of Islamic Law in which not only the workmen of the present definition but all the workmen and market at large shall be flourishing.

1.4. LITERATURE REVIEW

I have searched and assessed a variety of literature on the subject and found that classical Fuqaha have not discussed, in their respective books, the issue of fixation of minimum wages of workman, imposed by the state as a policy which indicates that the system of awarding wages by the employers was very much stable that no room was left for the state's interference in the market.

Perhaps just one example is found in the classical books of Fuqaha, quoted by Imam Abo Yousuf in his book titled الخراج that in the era of Umar (RA), he fixed Dirham.7000-9000 for the Islamic Army's commanders.

The following valuable work was found on the subject by the authors in the gulf countries which has dealt with the issue to the great extent.

1. Adnan Muhammad Yousuf Rababia in his thesis⁶ "نظرية الأجر في الاقتصاد الإسلامي" دراسة مقارنة talked about the fixation of minimum rates of wages under Islamic law in comparison with Capitalism and Socilism in the context of labor laws of Jordan. It seems that he is focused on the opinions of classical Fuqaha while discussing various aspects of the issue. His work is missing important area of the subject which has to be covered by my research viz. he paid no heed to the prevailing financial policies of the developing countries affected by the dictations given to them, to be incorporated in the financial policies, by the world's financial institutions like IMF (International Monetary Fund) and World Bank etc.
2. Dr. Husain Husain Shahatah⁷ in his article "معايير تحديد الحد الأدنى والحد الأقصى للأجور" في المنظور الاقتصادي الإسلامي discussed standards for minimum and maximum levels of wages in the Egyptian context but his main focus is on the salaried-workmen (government servants) engaged in various government departments. He has pointed out that along with economic conditions and cost of living certain standards should be observed by the government to fix wages of a workman i.e. necessities and comforts including food, clothing, shelter, medical care and

⁶ The dissertation was presented to the Faculty of Islamic Economics, University of Yamook, Jorden (1999).

⁷ Professor of the University of Azhar Ashareef, Egypt and supervisor of the website www.Darelmashora.com

necessary education. But he has discussed the issue in the light of general principles of Islamic law without discussing the real causes behind the insufficiency of the existing minimum wages and what is the way out for an Islamic State. Thus his article seems to forward certain standards to be observed and followed by the policy makers while determining minimum wages/salaries of the government servants in various department. Thus his research is limited to the boundaries of Egyptian salaried employees and has nothing to do with my research area as its primary concern is the prevailing Pakistani minimum wages laws regarding workmen engaged in industries by excluding government servants' salaries.

3. Muhammad Ibn Abdullah Ibn Ali Al-Nafeesi, in his thesis⁸ titled "الأجور وأثارها الاقتصادية في الاقتصاد الإسلامي" "دراسة مقارنة", highlighted the issue in the light of opinions of the Fuqaha and general principles of Islamic law in comparison with the socialism and capitalism. He has recommended that the yard stick for fixation of wages as well as state's role in this regard. His work is seems to be of general nature as it is not focused on a particular class of workmen. Therefore, his thesis has no comparison with mine.
4. Dr. Safwat Qabil, likewise, in his article "الأولويات الاقتصادية في المرحلة الانتقالية" has done worthy contribution on the issue of fixation of minimum and maximum wages of workmen from the perspective of Egypt. He suggests that wages of workmen shall not be below the minimum survival level. Moreover, an environment of fair competition among the workmen shall be created in order to

⁸ The dissertation was presented to the Faculty of Shariah and Islamic Studies, Ummul Qura University, Saudi Arabia (1991)

ensure and ascertain much more production. It seems that his discussion is defective as it is very brief and is not based on the evidence from the primary and secondary sources of Islamic Law. Therefore, there is a dire need to discuss the issue from the perspective of primary and secondary sources of *Shariah* and to heal the grievances of low-wage workmen generally and in Pakistan particularly.

By reading the above literature, it was found that there is much room left on the issue to be discussed as there are some contemporary issues behind the insufficiency of wages of workmen that is to say discrimination between workmen by creating various classes and paying no heed to controlling inflation. Moreover, slow revision and improvement of wages as compare to increase in prices and rapid changing life style and other similar issues. So far, no author has done a precise work on the existing Pakistani minimum wage laws from the perspective of *Shariah*.

Therefore, I have the opportunity to do my research on one of the burning issues of workman of our days under the title "Workmen's Minimum Wage Fixation, comparative analysis of *Shariah* and Pakistani Law".

1.5. RESEARCH METHODOLOGY

In order to conduct a best research work the following methodology has been adopted:

1. An analytical method seems appropriate to be followed for this research work. The concept of wages and other related issues are to be analyzed form the *Shariah* perspective generally and no specific opinion of *Fuqaha* will be given preference. Then the same idea will be discussed in the context of Pakistan's minimum wage

laws. The provisions which are not Shariah-compliant will be pointed out and a *Shariah* model will be introduced in which workmen's wages are best protected in accordance with the contemporary situation.

2. It is a traditional library-research and therefore it will be of pivotal importance to consult Fiqh books, enacted statutes and articles on the subject.
3. The principles of Islamic jurisprudence will be applicable to examine and interpret the contemporary workmen's legislation in Pakistan in the light of *Shariah*.
4. For the purpose of quoting examples of foreign countries the work of different authors in books, on-line papers and reports on the subject will be given room.

1.6. CONCLUSION

This research work is mainly focused on the comparative analysis of Pakistani Minimum Wage Laws in the light of Shariah and on its perusal for making them Shariah compliant. The International Labour Organization (ILO) and the United Nations Organization (UNO) guidelines in the shape of Conventions which are working is a motivating force behind the minimum wages laws are to be taken into consideration. Pakistan inherited its roots of minimum wage laws in the shape of Payment of Wages Act 1936 and it was too late that when Pakistan enacted its own laws such as Coal Mines (Fixation of Rates of Wages) Ordinance, 1960, The Minimum Wages Ordinance, 1961, Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969, Newspaper Employees Conditions of Service Act 1973.

The first chapter of this thesis is concerned with the basic concepts of work, workman, wages, employer-employee relationship, Islamic State's role in exceptional cases and other related issues and aspects of workman and wages from Islamic view point. The second chapter is about the evolution of the wages, its various forms, its grounds for fixation, popularity of the idea of the minimum rates of wages and role played by the UN and the ILO in this respect. Chapter three of the thesis is about the enactment of minimum wage laws in Pakistan and other related issues to the concept of Minimum wage legislation. The last chapter is about Shariah analysis of the prevailing pieces of minimum wage laws where few provisions of the relevant laws seem to be not in conformity with the injunctions of Shariah. At the end some recommendations, a "Shariah Model for Workmen Minimum Wage Fixing" is presented and then the chapter as well as the research work has been concluded is made part of the last chapter.

CHAPTER TWO

ISLAMIC CONCEPT OF WORK, WORKMAN AND WAGES

2.1. INTRODUCTION

Islamic economic system has a natural as well as rational solution to all problems of human kind including economic problems as it is based on unique footings, i.e. *Al-Adal wal-Ihsan*, to be followed in all action done by a Muslim. For a man, to maintain his body and soul and to sustain his family, he needs to earn as per the requirements of Islam. Being the vicegerent (*Khalifa*) of Allah (SWT) permitted (*Halal*) work is considered as a personal obligation (*fard-i-ayn*) of every Muslim as it results in pure earnings through which the basic needs of a Muslim and his family are fulfilled in order to serve the great purpose i.e. the worship, for which he had been created.

Workman is not considered, by Islam, just a factor of production but he has to play a pivotal role in the upholding of Islamic economy. to enable himself, his family and Muslim society as a whole to lead happy and prosperous life, maintaining contemporary minimum level of standard decent living because Allah (SWT) wants us to be so.

As the custodian of its subjects the supervisory role of an Islamic state and keeping an eye on the market is one of the duties it is required to perform. Under the doctrine *Siyasah Shari'ah* a state is authorized to enact new rules for the preservation of public interest and to eliminate unfair practices on the part of both employer and employee. Under normal circumstances fixation of prices in the market is not recommended as Islam is in favour of free-market economy but in exceptional cases it is authoritative to take bold steps to regulate market affairs including fixation of prices of goods and services.

2.2. MEANING AND IMPORTANCE OF WORK AND WORKMAN IN ISLAM

Work (عمل) is a common word used for every action of man. In our context, here, it is used as an alternative to the word labor which means any hard work undertaken for some monetary reward.⁹ Islam demands from every Muslim to earn from *Halal* (permitted sources) and spend on *Halal* (permitted things). No doubt, earning is considered *Halal* when it is from permitted source under Shariah.¹⁰ It is an important principle of Islamic Law that all those works which cause harm or exploit people are *Haram* in Islam.¹¹

It is the duty of every Muslim to fulfill and provide basic needs and provisions of life to himself as well as to his family i.e. food, clothing and shelter (housing), medical care in case of illness, necessary education for illiterate and general Islamic instructions for all.¹²

Earning *Halal* plays a pivotal role in establishing and developing of an energetic society for a Muslim's individual and collective life alike. Therefore it is important to work for the following reasons:

1. Islam considers work as the highest form of virtue and blessing of Allah (SWT) as it is mentioned in the Quran more than once and the Muslims are motivated to strive for its achievement. The A'yah says: "when the (*Jumua'h*) *Salah* (prayer)

⁹ Afzal-ur-Rahman, *Economic Doctrines of Islam*, Islamic Publications (pvt) LTD, Lahore, Pakistan, p.189.

¹⁰ Saeed Abul Fotooh Muhammad Basyooni, *Al-Hurriyah Al-Iqtisadiyyah fil Islam wa Asaruha fi Attanmiyah*, p. 371

¹¹ Abu Al-Wafa Al-Maraghi, *Min Qadhaya Al-Amal wa Al-Maal fil Islam*, Book .21, (Islamic Researches Series) p.24

¹² Munawar Iqbal, *Distributive Justice and Need Fulfillment in an Islamic Economy*, p. 258

- is ended, you may disperse through the land and seek the bounty (blessing) of Allah (SWT) by working".¹³
2. Islam stresses upon social justice and one of the most important elements of this structure is the ownership pattern of assets. It is for this reason that man has been warned against concentration of wealth¹⁴: "[Let] it (i.e. wealth) become not a commodity between the rich among you".¹⁵
 3. Islam considers earning *Halal* as *Jihad* as Allah says, "He knew that there will be sick among you and others doing work in earth for earning their livelihood."¹⁶
 4. Allah Almighty does not make astray someone's good efforts as it is mentioned in the verse of the Holy Quran that "there is nothing for a man but what he strives for and that his effort will be seen and he will be repaid with fullest payment".¹⁷
 5. Distributive justice in Islam requires that every member of the society should get his own as well as of his family's basic needs fulfilled satisfactorily. As the scholars laid down that the first source for fulfillment of basic needs is one's own income to be obtained through permitted means.¹⁸
 6. It is the way of all the prophets of Allah (SWA) that have adopted various professions to earn their livelihood. As followers of our prophet, it the duty of every Muslim to fulfill his need through earning.¹⁹

¹³ Quran:62:10

¹⁴ Syed Nawab Haider Naqvi, H.U Beg, Rafiq Ahmad and Mian M. Nazee. *Principles of Islamic Economic Reforms*, Ch.3, p.17.

¹⁵ Quran: 59:7

¹⁶ Ibid.73: 20

¹⁷ Ibid.53:39

¹⁸ Shafinah Rahim , *Distributive justice: A perspective from Islamic economics literature*, p.6

¹⁹ Abo Al-Wafa Mustafa Al-Maraghi , *Min Qadhaya Al-Amal wa Al-Maal fil Islam*, Book. 21, (Islamic Researches Series) p.15

2.3. LEGITIMATE AND ILLEGITIMATE EARNINGS IN *SHARIAH*:

Islam places great emphasis on work in its various form and in different fields, whether that is physical or intellectual, and does not prohibits from work except in case where it is against someone's life, intelligence and honor,²⁰ or which is clearly prohibited by Islamic teachings like intoxicants (all kinds of alcoholic drinks), gambling, *Al-Ansab*²¹, *Al-Azlam*²², dead animals, blood, flesh of swine and *Riba* (usury). It is, therefore, defined clearly in Islamic Law that which are Lawful (*Halal*) earnings and which unlawful (*Haram*) earnings. As a matter of fact, many Qur'anic verses disapprove the wrongful earning by way other than that has been approved by Islamic teachings because it is against the interest of man.

In the following some of the relevant Qur'anic verses are to be mentioned as under:

1. "O you who believe (in the oneness of Allah)! Eat of the lawful things we have provided you with, and be grateful to Allah, if it is indeed He Whom you worship."²³
2. "Do not devour another's property wrongfully – unless it is by trade based on mutual consent."²⁴
3. "Eat of the good (*Hala'l*) things and do good deeds."²⁵

In the light of the mentioned Qur'anic teachings it is obvious that the believers are restricted from eating others' wealth by illegal means.²⁶

²⁰ Ibid, p.14

²¹ *Al-Ansab* are those "animals that are sacrificed/ slaughtered for the idols. *An-Nusub* were stone-alters at fixed places or graves, whereon sacrifices were slaughtered on certain occasions in the name of idols, Jinn, angles, pious men and saints in order to honor them or to expect some benefit from them" (Commentary by The Noble Qur'an).

²² Ibid., *Al-Azl'am* are arrows for seeking luck or decision (for something good or bad)

²³ Quran:2:172

²⁴ Ibid.,4:29

²⁵ Ibid.,2:168

The Prophet (SAW), when once asked about the best form of Hala'l earnings, emphasized on the importance of lawful ways of earning in his own words "A man's work with his hands, and every lawful sale".²⁷ In another tradition of the Prophet (SAW) it is mentioned that a man who eats from *Haram* earnings his prayers are not granted acceptance by Allah (SWT).²⁸

2.4. PROFESSIONS AND WORKS OF VARIOUS PROPHETS (AS)

Indeed the prophets, along with their duty of conveying message of Allah (SWT), used to do different sort of works and had adopted various professions through which they used to earn their livelihood and so that they be an ideal example for their followers.

In order to sustain in this worldly life, the Prophets (AS) were not behind others as they used to adopt a permissible and suitable profession to lead an honorable life. It was too the order of Allah (SWT) to do so as in one of the tradition the prophet said: "O you people! Indeed, Allah is good and does not accept except which that is good. Allah has also commanded the believers with which He has commanded the Prophets. He said: O (you) Messengers! Eat of the *Tayyibaat* [all kinds of Halal (legal) foods which Allah has made legal (meat of slaughtered eatable animals, milk products, fats, vegetables, fruits, etc.)], and do righteous deeds." He also says: "O you who believe! Eat of the lawful things, provided to you, and be grateful to Allah, if it is indeed He whom you worship".²⁹

²⁶ *Islamic tenets concerning business transactions: keenness to earn Halal (legitimate) earnings*
<http://www.slideshare.net/agengcahya35/keenness-to-earn-halal-legitimate-earnings> (last visited on March 15, 2014)

²⁷ Musnad Imam Ahmad, Hadith :1576

²⁸ *Saheeh Al-Muslim* Hadith:1015

²⁹ Hussain Ibn Abdul Aziz Aal Sheikh, *Earning Lawfully*,
http://www.islaam.net/main/display_article_printview.php?id=374, (last visited April 22, 2014)

Therefore, the prophets had chosen different professions as in the prophet's traditions: "No one ever ate any food superior to that which came from the labor of his hands. The prophet of Allah Dauood (AS) used to eat from the labor of his hands."³⁰ Adam (AS) was a Ploughman, Idris (AS) was a tailor, Nuh (AS) was a carpenter Salih (AS) was a trader, Ibrahim and Lut (AS) were farmers, Musa, Shoaib and Muhammad (AS) were shepherds and Daud (AS) was a manufacturer of armor.³¹

2.5. EMPLOYER-EMPLOYEE RELATIONSHIP; ISLAMIC VIEW POINT.

Indeed the employer-employee relationship is based, in Islam, on the basis of humanity, brotherhood, sympathy, cooperation, equity, willingness and the prevailing customs.³² Since ancient times, the relations between "haves" and "have-nots" have been problematic and remaining till today. Actually, it is the case with almost all cultures that the greediness of man has always led him to make his fellows into slaves and subordinates.³³

The Holy Quran refers to a contract of service between two famous prophets, Moosa and Shoaib (AS) in the story of Prophet Moosa which is an ideal example for employer-

³⁰ *Saheeh Saheeh Al-Bukhari*, Hadith:2073, Darul Fikr, Beroot.

³¹ *Earning a Living*. <http://www.java-man.com/pages/Minhaj/Work.html>, (last visited April 24, 2014)

³² Wahba Azzuhaili, *Al-Fiqh-ul-Islami Wa Adillatohoo*, Dar al-Fikar Beirut, 2005.vol. 4, p.70

³³ Abdul Qadir Salih, *Employer and Employee Relations in Islam* <http://www.thepenmagazine.net/employer-and-employee-relations-in-islam/> (last visited 24 April, 2014)

employee related matters. The relevant verses of the Qur'an throw light on this contract of service and terms thereof as follows:

The following fundamental requirements are derived from the above mentioned ayah:

1. Proposal of the daughter Shoaib (AS) to her father to employee Mosa (AS) on the basis of honesty and competency,
2. Offer of employment to Mosa (AS) by Shoaib (AS),
3. Acceptance from Mosa (AS) to be employed,
4. Subject matter of employment i.e. graze sheep and taking care of them,
5. Reward and duration of work was clearly mentioned,
6. Keeping promise by both the parties, and it is obvious from the subsequent ayah:” Then, when Musa had fulfilled the term (of employment)...³⁴

Concluding a contract of service is highly recommended by Islam. It is also recommended that all contracts should be reduced into black and white.³⁵ It has been emphasized in the Holy Quran “You should not become weary to write it (your contract) whether it be small or big, for its fixed term, that is more just with Allah, more solid as evidence, and more convenient to remove doubts among yourselves.”³⁶

³⁴ Hussain Hussain Shahath, *Al-zawabit-u-Ashariah Lil Amal Wal Ummal Fi Annizamil Iqtisad Al-Islami*, p.10

³⁵ Muhammad Sharif Chaudhry, *Fundamentals of Islamic Economic System*, Ch:8, http://www.muslimtents.com/shaufi/b16/b16_13.htm, (Last visited 24 April, 2014)

³⁶ Quran: 2:282 (The Noble Quran, by the King Fahad Complex for the printing of the Holy Quran)

2.5.1. OBLIGATIONS OF WORKMAN

Islam guaranties rights of both, employer and employee, in their respective places. Indeed Islam has given dignity to the workman and his rights have been ensured and, thus, motivated him for performing his duties with commitment.³⁷

Knowledge regarding Work:

A workman should be aware of the work/ duty he is performing, weather that is in accordance with the rules of Islamic Law and permissible or it is otherwise. Moreover, he must have knowledge of all Dos and Donts of his work, work and who has employed him as it has been reported from Khalifa Umar-ibn-Al-Khattab (RA) when he announced:” A trader should not sell in our market if he has no knowledge, (of what and how he is dealing) otherwise he may eat Riba, wished or denied”.³⁸

Perfection in performance of duty:

Islam does not only motivates on doing Halal work in whatever manner it be but it also requires that the workman performance of duty must be disciplined and perfect.³⁹ Islam rewards a workman with a very precious and huge title and that is the pleasure and blessing of Allah (SWT) and His love as it had been narrated in the tradition of the prophet (SAW):

”Allah will be pleased with those who try to do their work in a perfect way.”⁴⁰

Honesty and Commitment towards Employer and Work:

It is also obligatory on the part of worker to work whole heartedly as the prophet remarks, “God loves that when anyone of you does a job, he does it perfectly. Besides

³⁷ p.379

³⁸ Al-Jaami Attirmazi, Hadith: 487

³⁹ Saeed Abul Futooh Muhammad Basyooni , *Al-Hurriyyah Al-Iqtisadiyyah fil Islam wa Asaruha fi Attanmiya*, p.374

⁴⁰ Yosuf Kamal Muhammad , *Fiqho Iqtisaad Assawq, Annashaat Al-khaas*, Dar-un-Nashr Lil-Jamiaat-Egypt,p.134

this, an employee who excels in his devotion to God and renders to his master also what is due to him regarding duty, sincerity and obedience, there is double reward for him."⁴¹

the prophet (SAW) has also motivated on handing over Amana to whom it belongs or who is deserve it has mentioned in a tradition of the prophet:" you should give Amana to whom it is due and do not betray the who betrayed you".⁴² And Amana in work means performance of one's duty without cheating, dishonesty and deceit as there is it has been indicated that" who cheated us is not from us (Muslims' community).⁴³

Proper Training and Skill:

It is also required from a workman to be skilled, properly trained, experienced and have expertise in the field he is working. And to this a Hadith is indicating which says: "good earnings of a workman are those which were earned when (he) was advised".⁴⁴ In another tradition of the prophet says that Allah Almighty loves a person when perform his duty with perfection. Therefore, a workman should be equipped with proper contemporary training, skill and tools which are pre-requisites of a workman to be called perfect

2.5.2. RIGHTS OF WORKMAN IN ISLAM

The rights of a workman and duties of an employer are based on the principles of Al-Adl wa Al-Ihsaan are as under:

Brotherhood: it is the very first series of the employer-employee relations chain as the prophet's (SAW) tradition says: "Your brethren whom Allah has placed in your custody;

⁴¹ Shukri Ahmad, *The Concept of Islamic Work Ethic: An Analysis of Some Salient Points in the Prophetic Tradition*, p.123

⁴² Muhammad Ibn Ismaeel Al-Sanani, *Subulassalam Sharh Buloogul Maraam*, vol. 3, p.68

⁴³ *Saheeh Al-Muslim*, Ch: Eeman, p.56, Hadith. 102

⁴⁴ Yousuf Kamal Muhammad , *Fiqho Iqtisaad Assawq, Annashaat Al-khaas*, Dar-un-Nashr Lil-Jamiaat-Egypt, p.135

Let him who has made custodian of his brother by Allah feed him from what he himself eats, clothe him out of what he clothes himself, and impose not on him work that will overcome him".⁴⁵

Fair Human Treatment: the employee is to be considered and treated as human being and should be given respect, and should not be given too heavy or difficult task which is beyond his capacity, or is likely to put him to great hardship in doing it, and that he should not be made to work for long hours that might tell upon his health.⁴⁶ as it is mentioned in the Hadith: "Every one of you is a guardian, and is responsible for what is in his custody."⁴⁷

Payment of proper and reasonable wages:

Wages is defined as the cash a workman gets after he completes his duty and thus contributes towards the final production. This time period may be an hour, a day, a week, a month or a year. And sometimes the workman gets-in addition to it- other allowances.⁴⁸ The workman should be paid before his sweat dries out, i.e. immediately.⁴⁹

It is necessary that the workman who is working in either capacity of a private employee (Ajeer-i-Khaas) or common employee (Ajeer-i-Mushtarak) is entitled to pre-determined wages as per the terms of contract of hire (Ijarah). Therefore Islam focuses on the fixation of wages before commencing work. It is clear that in the Islamic economy the flexible

⁴⁵ Saheeh Al-Bukhari, Ch:*Adaab* Hadith: 44, Darul Fikr, Beroot.

⁴⁶ Afzal-ur-Rahman , *Economic Doctrine of Islam*, Ch:15, p.242

⁴⁷ Saheeh Al-Bukhari, Kitabul Jumua 1/304, Hadith:583, Darul Fikr, Beroot.

⁴⁸ Hamza Al-Jamee Addamohi, *Aw'amil Al-Intaj fi Al-Iqtis'ad Al-Islami*, p. 217

⁴⁹ Toseef Azid, *Appraisal of the Status on Research on Labor Economics in the Islamic Framework*, p.214

wage system (where the market mechanism is working) is not prevalent⁵⁰. The work, wage and duration of work must be pre-determined and the nature of the work must be legal (Majalla-i-Ahkam-Adliya, art. 459).⁵¹

In Islamic society determination of wages is not based on supply and demand as it is conventional economics but the criteria is based on fulfillment of basic needs and necessities of life i.e. for the protection and safeguard of family, intellect, wealth, body and honor.⁵²

When a workman has performed his duty and work, assigned to him, he is entitled to complete and agreed upon wages in accordance with his efforts and nature of work.⁵³

That is the reason Islam has stressed upon the payment of due wages as in a tradition "I will be against three persons on the day of Resurrection... (one of them is) who employs a laborer and gets the full work done by him but does not pay him his wages."⁵⁴

Moreover, a tradition of the prophet says "Give to the worker his wages before his sweat dries".⁵⁵

⁵⁰ Ibid., p.209

⁵¹ Ibid.

⁵² Hussain Hussain Shahatah, *Treatment of the problem of the imbalance between wages and prices in Islamic economics*, p.2

⁵³ Ibrahim Dasooqi Abadha, *Al Iqtisaad Al-Islami*, p. 89

⁵⁴ *Saheeh-ul-Bukhari*, Volume: 3, Book: 34, Hadith :430

⁵⁵ Ibn-i-Majah, *Al-Sunan* Kitab Arruhoon, Chapter : Ajrul Ajraa 2/817, Hadith No. 2443 Darul Fikr, Beeroot.

2.6. ISLAMIC STATE'S INTERFERENCE AND ENFORCEMENT OF MINIMUM WAGES

LAW (MWL)

Islamic state is care taker and custodian of its subjects⁵⁶ and its primary duty is preservation of objectives of Shari'ah (مقاصد الشريعة⁵⁷) which guarantee wellbeing of individual as well as of society along with protection and upholding of Islamic system and culture⁵⁸. The essence of intervention of the state is mainly based on upholding of *Al-Adl wal Maslaha* of the people whenever their protection is seen convenient for the public interest⁵⁹.

The issue has to be further explained under the following headings:

2.6.1. OBJECTIVES OF SHARI'AH AND STATE'S INTERFERENCE IN ITS SUBJECTS

AFFAIRS

Islamic state, under special circumstances, is allowed to intervene in the market to regulate its affairs in order to ensure and protect public interest⁶⁰ (المصلحة العامة) as the main focus of *Shari'ah* rules is upholding interest of the people. Thus the rules themselves are not goal of the law giver but the objectives are behind the rules i.e., preservation of peoples' interests for which these rules got obligatory nature⁶¹.

⁵⁶ Saheeh Al-Bukhari, (... كلكم راع وكلكم مسئول عن رعيته والأمير راع) Kitab Annikah Ba'b: Al-Marato R'aiyatun fi Baiti Zawjih'a, Haidh: 4826

⁵⁷ مقاصد الشريعة are ascertained through *Mas'aleh* which include: Necessities, comforts and luxuries (الحاجيات والتحسينيات الضروريات و). Necessities are further to protection of religion, life, intellect, family and wealth. (Azzuhaili, *Al-fiqhul Islami Wa Adillatohoo*, vol.9, p.412)

⁵⁸ Ibid., p.413

⁵⁹ Fathi-i-uduraini, *Al-Haq wa Mada' Sultanu-d-dawlah fi Taqyidihi*, p.110

⁶⁰ Ibid.

⁶¹ Ibid., p.214

Islam gives freedom to individual in economic activities with the condition that this freedom should not violate basic rights and interests of people guaranteed to them by the law giver on the basis of *Al-Adl wa Al-Ihsan* and *Mas'aleh*. In a situation the mentioned basis are made subject to violation through monopoly, fraud, ambiguity in transactions and gambling. When one of the above mentioned situation occurs then there is no other way for improvement except intervention, for example, a State may intervene in cases of monopoly, fraud and ambiguity or cause harm to others in general.⁶²

The state has a prerogative of interference in individual affairs of the subjects to restrict their freedom of rights as well as to declare something unlawful which is otherwise permissible (مباح) as in the case of prevention from hoarding (الإحتكار) and forceful fixation of prices of commodities (التسعير).⁶³

In the mentioned cases there is expected harm and violation of rules of justice and compulsion on the Muslims, prevention of which is the primary duty of the Islamic state till the situation becomes normal because an Islamic Maxim allows it which indicates that it is mandatory to adopt that without which an obligation cannot be fulfilled (يتم الواجب إلا) (ما لا به فهو واجب).⁶⁴

In this regard, see Ibn Taymiyyah is of the opinion that intervention of State must be there in order to prevent monopoly and injustice, he says: (The monopolist is the one who goes to buy those food items, what people need, then hoard them, and wants raise in the price, he is committing injustice to the consumers. Therefore, the ruler has the authority

⁶² Hussain Hussain Shahatah, *The issue of keeping balance between prices and wages from Shariah view point*, (translated from Arabic version) <http://www.darelmashora.com/Default.aspx?DepartmentID=10>, (last visited July 05, 2014)

⁶³ Fathi-i-uduraini, *Al-Haq wa Mada' Sultanu-d-dawlah fi Taqyidihi*, p.113

⁶⁴ Ibid.

to prevent people, in hard times, from hoarding (food items) and to compel them on selling that to those who need them.⁶⁵

2.6.2. STATE'S INTERFERENCE FOR FIXATION MINIMUM RATES OF WAGES

The fixation of minimum wages laws (MWL) by states is an innovative concept, introduced in 1890s in New Zealand and Australia to eliminate "sweat shops"⁶⁶ employment⁶⁷ and to prevent exploitation of workmen in the hands of greedy employers. There is no precedent in the classical manuscripts of *Fuqaha* (Islamic scholars) which indicates that the system of fixation of minimum rates of wages (FMRW) ever existed or enforced by Islamic rulers throughout Islamic history. No doubt that the system of wages in an Islamic economy is the fixed wage system⁶⁸ in accordance with prevailing customs but that is in the context that there should not be uncertainty in terms of specification of the amount of wages in the contact of *Ijarat-ul-'Am'al* and the wages should be known to the workman⁶⁹.

Islamic state is entitled to enact new laws for the FMRW for the preservation of public interest (المصلحة العامة). But the question is that on what grounds the state is allowed to carry on this heavy task. In the following lines those principles, on basis of which an

⁶⁵ Hussai Hussain Shahatah, *The issue of keeping balance between prices and wages from Shariah view point*, p.2-3, translated from Arabic version) <http://www.darelmashora.com/Default.aspx?DepartmentID=10>, (last visited July 05, 2014)

⁶⁶ Sweatshop is defined: A workplace that has socially unacceptable working conditions. The work may be difficult, dangerous or be paid a wage that is not commensurate. Workers in 'sweatshops' may work long hours for low pay, regardless of laws mandating overtime pay or a minimum wage; child labor laws may also be violated. <http://en.wikipedia.org/wiki/Sweatshop>, (Last visited on May-08-2014).

⁶⁷ Article on : Minimum wage law and List of minimum wages by country http://en.wikipedia.org/wiki/Minimum_wage (last visited on May-08-2014).

⁶⁸ Toseef Azid "Appraisal of the Status on Research on Labor Economics in the Islamic Framework", p.209

⁶⁹ Hussai Hussain Shahatah "the Problem of Balance between Wages and Prices, from Islamic View-point" p.2

Islamic state is authorized to interfere in the market by introducing reforms to the existing system, are to be discussed.

2.7. ENACTMENT OF NEW LAWS WHERE SHARI'AH HAS NO PRECEDENT

There seems to be just one example in the classical books of Fuqaha quoted by Imam Abo Yousuf that in the era of Umar (RA) fixed salaries had been awarded to the Army's commanders⁷⁰ which indicates that the system of awarding wages was up to the mark. Therefore, no room was left for the state's intervention in the market. According to Fuqaha the state, under the doctrine of *Siyasah Shariyah* is allowed, whenever it thinks fit, that by not intervening the public interest will be put in danger as in the cases of hoarding, fixation of prices of the commodities and imposition of tax on rich for state's defense.⁷¹

The doctrine of *Siyasah Shariah* has an important place in the enactment of new laws when there is no explicit text from Qur'an, Sunnah and Ijma. Therefore, this doctrine has to be discussed and will be applied to our case i.e., minimum wages fixation in the light of Islamic principles.

2.7.1. SIYASAH SHARI'AH AND ITS FUNCTIONS IN THE NEW CIRCUMSTANCES:

Siyasah Shari'ah is the administration of justice by the state beyond the explicit law of *Shariah*⁷² which denotes that it is the search for derivation of new rules from the *Shariah*-recognized basis by the ruler (*Imam*, the care taker of the affairs and interests of his subjects i.e. the *Ummah*) such as *Maslaha Mursalah*, *Saduz-z-ar'ai* and *Al-Urf*⁷³.

⁷⁰ Abo Yousuf *Kitaul Kharaj*, p.46

⁷¹ Fathi-i-uduraini, *Al-Haq wa Mada' Sultanu-d-dawlah fi Taqyidihi*, p.110

⁷² Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, p.328

⁷³ Abdul A'Il Utwah, *Al-Madkhal Il'a Assiyasah Asharia'ah*, p.43

Before going into details of the application of *Siyasah Shari'ah* to the MWL it seems appropriate to discuss the three principles which come under the doctrine of *Siyasah Shari'ah* and are related in one or the other way our case. The principles to be discussed are; *Maslaha Mursalah*, *Saduz-z-ar'ai wa Al-Urf*.

2.7.1.1.MASLAHA MURSALAH(المصلحة المرسله):

An interest which is not supported by an individual text, but is upheld by the texts considered collectively is called *Maslaha Mursalah*⁷⁴. As *Shari'ah* is a complete code of life, requires that it shall be applicable to the diverse situations and interests of all men in all times to come as *Shari'ah* has the best system to guarantee and protect man's rights and interests⁷⁵.

Therefore, it is agreed upon, unanimously⁷⁶, by the classical *Shariah* scholars as well as by the modern day scholars⁷⁷ (Al-ulama) that *Maslaha Mursalah* can be used as the base for enactment of new laws related to transactions and customs⁷⁸ on the following grounds:

1. Achievement of interest or prevention of evil (جلب المصلحة ودرء المفسدة) as in the cases of hoarding and forceful enforcement of fixation of prices of the commodities to preserve the interest of people from expected harm and injustice.
2. The new rule shall be based on an interest of the majority of the population⁷⁹.

⁷⁴ Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, p.328

⁷⁵ Abdul Hameed Ali Hamad Mahmood, *Al-Maslaha Al-Mursalah wa Tatbeeqatoha Al-Mu'asirah fil Hukmi wa Anniz'am Assiyasi*, p.101

⁷⁶ Ibid, p.99

⁷⁷ Ibid, p.75, Al-Qarzawi says that there is none of the our days scholars who is not accepting Al-Maslaha Al-Mursalah as an Evidence (دليل شرعي) for derivation of laws (استنباط الاحكام) based on public interests (المصلحة العامة)

⁷⁹ Abdul A'li Utwah, *Al-Madkhal Il'a Assiyasah Asharia'ah*, p.150

3. The interest shall not be in contravention of the *Shari'ah* rules which are based on absolute text of Quran, Sunnah and Ijma as a verdict (*Fatwah*) in the case of a rich person, who breaks fast in *Ramadhan* without any valid reason, to fast two months consecutively will be void as the law giver has indicated that he (who breaks his fast) should make free a slave (if not found) then feeding of poor (if it is not affordable) then holding fast⁸⁰.
 4. The achievement of *Maslaha* is recognized if there is no *Shari'ah* rules neither in favor nor in against of it.⁸¹
- It is clear from the above lines that restricting one's right in order to protect rights of majority is a valid ground for interference of state in the affairs of the people's rights under the *Shariah* principle of Achieving interest is better than prevention of evil (جلب (المصلحة اولى من درء المفسدة).

2.7.1.2.SADDUZ-ZA-R'AI (سد الذرائع):

It is declaration of nullity of a permitted rule which leads to a harm in that particular situation to which is applied⁸² or it is the plugging of lawful means to an unlawful end⁸³.

IMPORTANCE OF THE PRINCIPLE OF SADDUZ-ZA-R'AI

It is very important principle of Islamic law which authorizes the ruler to take cognizance of those permitted (مباح) means which are, sometimes, used by the guilty-minded to satisfy their individual interest irrespective of the expected harm to the

⁸⁰ Ibid.

⁸¹ Abdul Hameed Ali Hamad Mahmood , *Al-Maslaha Al-Mursalah wa Tatbeeqatoha Al-Mu'asirah fil Hukmi wa Anniz'am Assiyasi* , p.72

⁸² Hussain Hamid Hass'an , *Fiqhul Maslaha wa Tatbeeqatoho Al-Mu'asirah* , p.33

⁸³ Imran Ahsan Khan Nyazee , *Theories of Islamic Law* , p.327

society at large because there is no direct text in *Shari'ah* declaring it unlawful. The ruler is authorized to declare something illegal on the basis of this maxim to prevent expected harm for instance ban on the cultivation of opium which basically permitted but it presumed that will do great harm than its usefulness⁸⁴.

According to jurists means (ذرائع) are four types:

1. A means which leads towards harm for instance having (unlawful) sexual intercourse (*zin'a*) as it leads to disturbance in family system (اختلاط الانساب). Therefore, *Zina* has been declared unlawful for the preservation of family system.
2. A lawful means which leads to an unlawful harm like a sale transaction which is leading to receive interest (*Rib'a*).
3. A Permitted means which was not validated to cause harm but in fact it does so under certain circumstances such as insulting gods of infidels.
4. A means which, sometimes, causes harm but it is still considered lawful for example looking of a (male) doctor to his female patient⁸⁵

2.7.1.3. AL-URF (العرف):

Al-Urf (custom) is a usage with which people get familiar in their day-to-day life in such a satisfied way that subsequently it becomes a part of their nature. Acceptance of the custom by people means majority of them and not all of them. Majority means those who have ordinary prudence and normally accepted level of wisdom⁸⁶.

⁸⁴ Abdul A'Il Utwah *Al-Madkhal Il'a Assiyasah Asharia'ah*, pp.158-159

⁸⁵ Ibid.

⁸⁶ Ibid, pp.164-165

Most *Fuqaha*, of various schools of thoughts, consider and recognize *Al-Urf* as one of the base from which new laws could be derived. The *Fuqaha* have a great deal of principles under the shadow of this maxim for instance “recognized by customs is (as) recognized by text”⁸⁷ (الثابت بالعرف كالثابت بالنص).

2.7.1.3.1. TYPES OF AL-URF

On the basis of recognition as lawful and unlawful there are types of Urf:

1. Recognized Custom (العرف الصحيح) is that which is recognized by the text for instance payment of *Diyyah* (blood money) on the murder's relatives.
2. Irregular custom (العرف الفاسد) which against the text like dealing in *Riba* transactions in most of the world's countries.
3. The untold custom (العرف المسكوت عنه) is a custom about which there is nothing in favor or in against it. It is the only accepted custom and area for enactment of new laws but in the above two types of customs none is entitled to legislation of new laws.⁸⁸

It is clear from the above discussion that the state entitled to intervene in the affairs of individuals on the basis of *Siyasah Shariyy'ah* on the grounds mentioned below:

1. Achievement of a greater objective by preventing evil:

In certain circumstances it becomes necessary for the state to restrict individuals' rights, when it thinks fit that doing so will serve greater purpose i.e., objectives of *Shari'ah* (protection of religion, life (body and soul), intellect, family and wealth).

The state is entitled to use this authority under the principle of (جلب المصلحة ودرء)

⁸⁷ Ibid, p.166

⁸⁸ Ibid, pp.165-166

(المفسدة) as in the case of hoarding and forceful fixation of prices of certain commodities.

2. Declaring permitted thing unlawful to prevent greater harm under the maxim

(سد الذرائع):

Shariah takes into consideration every situation which could expectedly harm man's interests. Therefore, sometimes, it is mandatory for the state to declare something unlawful which otherwise is permitted (مباح) like prevention from insulting idols of disbelievers because in return they will try to insult our lord which is *Har'm* (unlawful).

3. Recognition of a custom as a law:

It shows that *Shari'ah* is very flexible and tolerant while considering preservation of peoples' interests as it recognizes a usage followed by the majority of the population and they satisfied with it. There is a condition that custom shall not be against the explicit texts.

2.8. APPLICATION OF THE DOCTRINE OF *SIYASAH SHARIYY'AH* TO THE CASE OF FIXATION OF MINIMUM WAGES LAWS

Minimum wages legislation is a universal practice, used as a policy instrument in almost 90% of the world's countries⁸⁹. The system was introduced to prevent exploitation of workmen in the hands of greedy employers. The enforcement of MWL is a new phenomenon in *Shari'ah* as there is no precedent in the books of *Fuqaha* which indicates the existence of such a system in the past. In such a new situation *Shari'ah* requires the prerequisites for applying principle mentioned under the Doctrine of *Siyasah Shariyy'ah* are achievement and protection of interests of the people, prevention from expected harm

⁸⁹ Hansjorg Herr and others, *the theoretical debate about minimum wages*, paper no.6, Feb 2009, p.1

in a new situation keeping in mind the dire need for the preservation and protection of people's economic rights⁹⁰.

By observing the objective behind the state's intervention, in restricting peoples' rights or declaring a permitted thing unlawful, is preservation of the interest of people. The case of MWL has the same characteristics which are required in a new situation for the enactment of laws on the basis of *Siyasah Shariyy'ah*. The principles of المصلحة المرسله, سد الذرائع and العرف المسكوت عنه are the tools which are applied to enact new laws for the public interest.

2.8.1. SIMILARITIES OF GROUNDS FOR ENACTMENT OF NEW LAWS IN SHARIAH AND THE CASE OF FIXATION OF MINIMUM WAGES LAWS

The case of enforcement of MWL is not much different from the situation in which the principles of المصلحة المرسله, سد الذرائع and العرف المسكوت عنه are applied to enact new laws. While making draft for the MWL by the jurists or by the ruler these similar grounds have to be observed by them as mentioned below:

1. Absence of direct and explicit text in favor or against:

As there is no direct and explicit text in favor or against the promulgation of the MWL on state level in obligatory nature i.e. that the violation is liable to punishment. The employers are bound to show obedience towards the new laws as their obedience to the divine rules as it has been commanded by the law giver by the explicit text يا ايها الذين امنوا اطيعوا الله والرسول واولي الامر منكم⁹¹. Therefore, the scholars and the rulers have the opportunity to intervene in the economic affairs of the market for the preservation of *Al-*

⁹⁰ Abdullah Muhammad Saleh , *Al-Maslahah Al-Mursalah Wa Tatbeeqatuha Al-Mua'sirah* , pp.357-358

⁹¹ Quran: 4:59

Adl wa Al-Ihs'an wal Mas'aleh and to introduce a comprehensive code for the enforcement of MWL on the basis of *Siyasah Shariyy'ah*.

2. Prevention of exploitation of workmen:

The motivating force behind the implementation of MWL by the states is abstaining employers from exploitation of workmen. From *Shari'ah* perspective it is the core value and objective considered behind the rules i.e. preservation of the interests of people by preventing an expected harm based on the principle of *Sadduz-za-R'ai*. That is the reason inviting scholars and rulers to play their due role in prevention of the injustice normally faced by a workman due to payment of fewer wage than that is prevailing in the market for the same nature of work. The workmen shall be paid due wages as Islam requires that everyone should see fruit of his deed, good or bad⁹². As personal gains of the employers is the main cause behind injustice caused to the workmen therefore the by implementing MWL on national level may redress the grievances of the workmen.

3. MWL as an accepted custom around the globe:

Another characteristic of the MWL is that is used as an acceptable custom around the world satisfactorily. It is obvious from the states' practice in the shape of ratifying MWL Conventions of the ILO and its implementation in almost 90% of the states. It is an indication that under *Shari'ah* it can be considered as a qualified custom and the principle of *العرف المسكوت عنه* which is a recognized area for enactment of new laws as recognized by the text... *خذ العفو وامر بالعرف*⁹³.

⁹² Quran: 99: 7-8

⁹³ Quran: 7: 199

Indeed enforcement of MWL on state level is one of the today's debatable issues. Various arguments are given on pros and cons of the FMRW depending on variety of approaches. Therefore, it appears that there is safeguard of public interest in FMRW as employer is bound to pay wages not less than the required and uses the labor force carefully and efficiently. On the other hand workman is satisfied from FMRW is conducted by economic experts who consider various factors in determining of minimum rates of wages.

It is clear from the above discussion that MWL and its enforcement as a binding nature law is qualified area inviting Islamic scholar and rulers to intervene in the market and play their due role.

2.9. CONCLUSION

Man has been created to work. Islam is against wasting of time and setting idol and doing nothing as it considers this mortal life an examination and preparation place for the next world to come. Labour has been given a pivotal importance in Islam as he is one of the factors of production. Islam accepts the dignity of labour and importance of wages as well. It attaches great stress on putting these things to practice rather than merely a faith, as labour is the origin of everything. Islam considers earning *Halal* from permitted source as a form of worship therefore every Muslim is required to perform his duties honestly, efficiently and with commitment, then he will be entitled to reasonable and proper wages. He should work in accordance with his capacity and ability, accompanied with required Islamic knowledge of his respective field. He has rights over his employer, while employer has some rights over him. The criterion for determination of wages, in Islam, is not based on supply and demand rules as it is in conventional economics but it is based on the shining rules of *Al-Adl*, *Al-Maslaha*, justice, fairness, reasonability, brotherhood

and pleasure and fear of Allah (SWT). For the smooth running of economic activities the state is required to keep an eye on the market and interfere when it thinks fit. Basically, Islam believes in free-market trade with the condition that Allah's and people basic rights must not be affected by situation like monopoly, fraud, hoarding and other unfair practices. Otherwise, interference in the market is to be appreciated. State has the same right to determine minimum reasonable wages, with the hike in prices of the commodities, while keeping interests of both, employer and workman. The minimum criterion for fixation of wages shall be that which ensures fulfillment of basic needs of life of the workman himself and his family and interests of employer shall also be given room for consideration as Islamic Economic System is ensuring the interests of all irrespective of his status in the market.

CHAPTER THREE: EVOLUTION OF THE CONCEPT OF WAGE FIXING AND SUBSEQUENT INTERNATIONAL STANDARDS

3.1. INTRODUCTION

The enforcement of minimum wages on state level was introduced, for the first time, in New Zealand and then Australia in 1890s. The effectiveness of the MWL was realized by the United Kingdom in 1909 and to the United States in 1938 which was a cause for the implementation of MWL. The primary purpose of fixing minimum wage level was preservation of workmen due wages and prevention of the employers to exploit their employees. The minimum wage legislation is a very important criterion in the payment of wages used as is a universal practice. According to economists and scholars there are pros and cons for the determination of minimum wage fixing based on different approaches. There is another concept of living wages as well, which is considered a basic human right, which has lost its value after the MWL were introduced. The International Labour Organization (ILO) confirms that presently, there is legislation regarding minimum wage in more than 90% of countries of the world. Most of the states are following the ILO guidelines given in the conventions they have ratified. It is observed in 2009 that the impact and usefulness of a minimum wage policy (MWP) depends on some ground i.e., enforcement mechanism, payment of minimum wages, penalties in case of violation and satisfactory compensation and redress of those whose right of minimum wages have been violated. The active role of social partners in both the design and implementation of minimum wage policy is an essential to enhance its impact.

3.2. THE CONCEPT OF SALARY, ORIGIN AND POPULARITY

The development of organized governments and officials has contributed towards the idea of controlling their economics. Since long time, the governments all over the world have tried to fix wages and prices from time to time. When their efforts failed, as they usually did, governments then put the blame on the wickedness and dishonesty of their subjects, rather than upon the ineffectiveness of the official policy. The same tendencies remain today.⁹⁴ One of the methods they used was to allocate a specific share of the profit. The same situation was prevailing in the Roman Empire where salaried workmen were rendering their services, to the government as it is said that Roman Empire were consisting of slaves.

The origin of the word salary got its roots from the Latin word *salarium*, which also means "salary" and has been derived from "salt." In ancient Rome, it specifically meant the amount of money allotted to a Roman soldier to buy salt, which was an expensive but essential commodity.⁹⁵ It is also said that Roman soldiers were paid partly in salt rations which was known by "*salarium argentums*".⁹⁶ The latest common theory is that the word soldier itself comes from the Latin *sal dare* (to give salt).⁹⁷ Salt was highly valued and its production was legally restricted in ancient times, so it was historically used as a method of trade and currency. The word "salad" also originated from "salt," and began with the early Romans salting their leafy greens and vegetables.⁹⁸

⁹⁴ Robert L.Schuettinger Eamonn F. Buder, *Forty Centuries of Wage and Price Controls: How Not To Fight Inflation*. p. 9

⁹⁵ *Salary* <http://www.vocabulary.com/dictionary/salary>(last visited May 08, 2014)

⁹⁶ Kristin Wartman, *Change in Season: Why Salt Doesn't Deserve Its Bad Rap*, <https://www.wordnik.com/words/salarium> (last visited on May 08, 2014)

⁹⁷ *Salary*, <http://en.wikipedia.org/wiki/Salary>, (last visited on May 08,2014)

⁹⁸ *History of salt* http://www.saltworks.us/salt_info/si_HistoryOfSalt.asp, (last visited on April 02, 2014)

3.2.1. WAGES AND SALARIES IN THE ROMAN EMPIRE, MEDIEVAL AND PRE-INDUSTRIAL EUROPE

The basic data regarding Roman Empire economics is completely lacking. However, through research, the scholars are of the opinion that the bases of the Roman economic system were not different from today's economic systems.⁹⁹ Basically, Ancient Rome was a slave society.¹⁰⁰ In case their masters were not able to support them they would preferably free them so that they could be supported by the state. In 45 B.C. Julius Caesar discovered that almost one citizen in three was receiving his wheat at government expense.¹⁰¹ "Some of the work in the early Roman Empire was done for wages and some under the force compulsion of slavery".¹⁰²

The salarium paid to Roman soldiers has defined a form of work-for-hire ever since in the Western world, and gave rise to such expressions as "being worth one's salt".¹⁰³

Within the Roman Empire or (later) medieval and pre-industrial Europe and its mercantile colonies, salaried employment appears to have been relatively rare and mostly limited to servants and higher status roles, especially in government service. Such roles were largely remunerated by the provision of lodging, food, and livery clothes (i.e., "food, clothing, and shelter" in modern idiom), but cash was also paid.¹⁰⁴

⁹⁹ Peter Temin *Journal of Interdisciplinary History*, xxxiv: 4 (spring, 2004), p.517

¹⁰⁰ Ibid., *The Labour supply of the Early Roman Empire*, 07 Dec-2001, p.1

¹⁰¹ Robert L.Schuettinger Eamonn F. Buder, *Forty Centuries of Wage and Price Controls: How Not To Fight Inflation*. p.19

¹⁰² Peter Temin *Journal of Interdisciplinary History*, xxxiv: 4 (spring, 2004), p.518

¹⁰³ Salary, <http://en.wikipedia.org/wiki/Salary>, (last visited May 08, 2014)

¹⁰⁴ Ibid.

3.2.2. SALARIES DURING THE COMMERCIAL REVOLUTION AND INDUSTRIAL/ TECHNOLOGICAL REVOLUTION

The Industrial Revolution was a basic change in the way goods were produced, from human labour to machinery, they used for production. Different machines were invented which took the place of human labour and various energy sources got developed with the passage of time like water-steam, kerosene, gas and electricity. The primary reason of this all development was to speed up the production faster and faster, day by day, with the upgraded and new technology. Many of the jobs primarily created by the Commercial Revolution in the years from 1520 to 1650 and later during Industrialization in the 18th and 19th centuries would not have been salaried, but, to the extent they were paid as employees, probably paid an hourly or daily wage or paid per unit produced (also called piece work).¹⁰⁵

England's Industrial Revolution occurred between the years 1760 and 1850. During this time, entire families could be found working in factories just to make ends meet.¹⁰⁶ It was the practice that the corporations and companies of this time, such as of the example is the East India Companies where many managers and staff would have been given remunerations as owner-shareholders.¹⁰⁷

The human efforts were incredible in contributing to the Second Industrial Revolution which is also known as the Technological Revolution. This period of time, it was an era of the larger Industrial Revolution corresponding to the latter half of the 19th century

¹⁰⁵ Ibid.

¹⁰⁶ Samantha Herman,, *Minimum Wages for the Poor Class of the Industrial Revolution*, http://www.ehow.com/facts_7331176_minimum-poor-class-industrial-revolution.html#ixzz31CNpovXQ, (last visited on May 09, 2014)

¹⁰⁷ *Salary*, <http://en.wikipedia.org/wiki/Salary>, (last visited May 08, 2014)

until World War I.¹⁰⁸ England was the place where this revolution took place. The revolution gave rise to the modern business corporation powered by railroads, electricity and the telegraph and telephone from 1870 to 1930. This time period saw the common emergence of a class of salaried executives, officials and administrators who served the new, large-scale enterprises being created.¹⁰⁹

3.2.3. SALARIED EMPLOYMENT IN THE 20TH CENTURY

In the 20th century, the rise of the service economy made salaried employment even more common in developed countries, where the relative share of industrial production jobs declined, and the share of executive, administrative, computer, marketing, and creative jobs—all of which tended to be salaried—increased.¹¹⁰

This was a time when most of the countries started thinking of various related issues to labour. As a result they enacted laws and policies regarding labour, minimum wages, feasibility of workplace, industrial relations, compensation to the aggrieved and participation of workmen in the affairs of workplace etc. The situation of salaries and wages was changing from place to place, profession to profession and country to country. Like, in America the most workforces shifted from industries and those places where

¹⁰⁸ *Second Industrial Revolution*, http://en.wikipedia.org/wiki/Second_Industrial_Revolution, (last visited May 09, 2014)

¹⁰⁹ *Salary*, <http://en.wikipedia.org/wiki/Salary>,(last visited on May 08, 2014)

¹¹⁰ *Ibid.*

products were manufactured to those fields, dominated by technical, professional and providing services.¹¹¹

Most of the world's countries started fixing wages for working force in different professions, from an unskilled workman to a skilled and professional one. The practice got popularity to the extent that even the salary of the head of a state was to be fixed by the members of the legislative body. One of the examples in this regard is of the American Congress which got the entitlement to legislate in this field.¹¹²

3.3. EXPLANATION OF IDENTICAL TERMS WITH WAGES

While conducting research work I found that there are some confusing terms regarding the research which need to be understood. In the following lines an attempt is made so that these important terms are to be clarified.

3.3.1. Remuneration, Compensation, Wage and Salary:

The above mentioned words are, most of the time, used interchangeably. Anyhow, their exact meanings are to be kept in mind. The oxford dictionary states that the word “**Remuneration**” has been derived from remunerate which means to “pay for services rendered”.¹¹³ Remuneration is the act of paying for goods or services or repaying for losses. It is usually monetary payment for services rendered, as in an employment.¹¹⁴

¹¹¹ Donald M. Fisk *American Labor in the 20th Century Bureau of Labor Statistics*, p.1

¹¹² *Oxford Guide to the US Government: salaries* <http://www.answers.com/topic/salary>, (last visited May 09, 2014)

¹¹³ Ram Kumar Kakani and Pranabesh Ray “ *Menegerial Remuneration in India...* ”, p. 7

¹¹⁴ *What Does Remuneration Means?* <http://www.ask.com/question/what-does-remuneration-means> , (last visited April 26, 2014)

Compensation means to redress and repair a workman for something he has lost or an injury is caused to him, i.e. his hand was severely scratched while working in a company or one of his body parts is not more able to work. So he has been paid compensation to redress his suffering at least to the minimum level of satisfaction. Compensation also means to give something to try and make up for something that was lost. If you lose something valuable, you may be compensated by something similar or the cash value of what was lost.¹¹⁵

Wages is the most common word, used for monetary payment to a workman as a return for his work done or services rendered. It has been defined under Pakistani law as "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behavior of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment.¹¹⁶

The term **salary** means a fixed regular payment made by an employer, often monthly, for professional or office work as opposed to manual work.¹¹⁷ Another meaning of salary is that it is a fixed regular payment, typically paid on a monthly basis but often expressed as an annual sum, made by an employer to an employee, especially a professional or white-

¹¹⁵ *What does it mean by compensate?*, http://wiki.answers.com/Q/What_it_mean_by_compensate?#slide=2-4, (last visited on April 26, 2014)

¹¹⁶ S.2 (vi), " *The Payment of Wages Act, 1936*".

¹¹⁷ sal-a-ry, <http://www.thefreedictionary.com/salary>, (last visited on May-03-2014)

collar worker.¹¹⁸ Some defines it as a fixed amount of money agreed every year as pay for an employee, usually paid directly into his or her bank account every month.¹¹⁹

In nutshell, it is the a fixed, agreed-upon and regular compensation for employment that may be paid in any frequency but, in common practice, is paid on monthly or twice a month and not on hourly, daily, weekly, or piece-work basis.¹²⁰

3.4. MINIMUM WAGE AND ILO GUIDELINES

There is no agreed upon definition of minimum wages because of the variety of opinions of the scholars on the basis of different approaches. As a matter of fact, most of the World's countries are following ILO's guidelines, therefore it is appropriate that the definition of ILO has to be given preference, which says " the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions".¹²¹

Minimum wage may be understood to mean the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover

¹¹⁸ *English Definition of Salary: Salary*, <http://www.oxforddictionaries.com/definition/english/salary>(last visited on May 02, 2014)

¹¹⁹ *Ibid.*, <http://dictionary.cambridge.org/dictionary/british/salary> (last visited on May 09, 2014),

¹²⁰ *Salary Definition*, <http://www.businessdictionary.com/definition/salary.html> , (last visited on May 07, 2014)

¹²¹ ILO: *General Survey of 1992*, para.42

the minimum needs of the worker and his or her family, in the light of national economic and social conditions.¹²²

The objective of minimum wage fixing, as set out in ILO Minimum Wage Fixing Convention, 1970 (No.131) and its accompanying Recommendation No. 135, is to give wage-earners the necessary social protection in terms of minimum permissible levels of wages. This objective was already implicitly or explicitly contained in previous ILO Convention No.26 and Recommendation No. 30 (applicable to trades) and Convention No. 99 and Recommendation No. 89 (applicable to agriculture), which stipulated that the minimum wage should not be fixed at a lower rate than one which would ensure the subsistence of the worker and his/her family.¹²³

3.4.1. ILO INSTRUMENTS AND MINIMUM WAGES

ILO, since its inception in 1919, has developed and maintained a system of international labour standards which aims the promotion of opportunities of decent and honorable work for both men and women.¹²⁴ It is very much necessary, for the productive work that the workmen's security should be kept in mind by the employers as it is an important factor of production. The ILO lays down that as every man is working in order to get an appropriate wage in order to make both ends meet i.e. to promote his own life as well as of his family.

¹²² *Resource guide on minimum wages*,

<http://www.ilo.org/public/english/support/lib/resource/subject/salary.htm>, (last visited April 06, 2014)

¹²³ European Scientific Journal April edition vol. 8, No.7, *Minimum Wage Implementation and Management in a Post-Recession Economy*, p.26

¹²⁴ *Introduction to International Labour Standards*, <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>, (last visited May 06, 2014)

In the following line the ILO's minimum wage instruments are to be discussed:

3.4.2. C094 - Labour Clauses (Public Contracts) Convention, 1949

The primary concern of this ILO Convention is inclusion of clauses regarding labour in the public contracts. The contracts to which this convention extends are those where at least one of the parties is public authority (government) and the contract is for the purpose of construction, alteration, repair or demolition of public works¹²⁵ or for the production of an item.

Regarding wages of the labourers the convention lays down in the Article.2, sub article.1 and 2, that the contract shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on,¹²⁶ through agreement between employer and employee or through laws of the country concerned.

The convention is not extended a situation where the "conditions of labour referred to in the preceding paragraph are not regulated in a manner referred to therein in the district where the work is carried on, the clauses to be included in contracts shall ensure to the workers concerned wages (including allowances), hours of work and other conditions of

¹²⁵ C094 - *Labour Clauses (Public Contracts) Convention, 1949* (No. 94)
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C094, (last visited May 06, 2014)

¹²⁶ Ibid.

labour which are not less favourable"¹²⁷ then by collective agreement, by arbitration or by national laws and where the trade or business is on the same footing.

3.4.3. C095 - Protection of Wages Convention, 1949

The convention is regarding the manner of wages payment. It is applicable to all persons to whom wages are paid or payable and who are engaged in manual work.

Under Art.2 sub Art.2 the competent authority, after consultation with the concern employer and employees, may exclude a particular class of workers like those who are engaged or employed for household work or those who employed for manual work.

Under Art.1 of the convention defines wages as "the term **wages** means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered".¹²⁸

Under Art.3, sub Art.1 and 2 lay down the manner in which the wages shall be paid. It says that wages are to be paid in the light of prevailing usage in the country but shall not be paid in the form of promissory notes, vouchers or coupons, or in any other form

¹²⁷ Ibid.

¹²⁸ *C095 - Protection of Wages Convention, 1949*
(No. 95)http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312240, (last visited May 06, 2014)

alleged to represent legal tender, shall be prohibited¹²⁹. Art.5 of the Convention lays down that “wages shall be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary”.¹³⁰

Under Art.13 of the convention says that “the payment of wages where made in cash shall be made on working days only and at or near the workplace, except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award, or where other arrangements known to the workers concerned re considered more appropriate”.¹³¹

. 3.4.4. C131 - Minimum Wage Fixing Convention, 1970

The main purpose of this ILO Convention is the protection of minimum wage fixing. The matters such as determination of minimum level of wages, basic needs of the workman while determining minimum level of wages and ensuring applicability of minimum wage laws are the primary concern of this convention.

According to the Convention's Art.2, minimum wage law shall be considered to have the force of law, like other domestic laws, and thus shall not be subject of abatement. In case of violation of these laws the employer shall liable to punishment under penal or other

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

law. Moreover, the freedom of collective bargaining, for the minimum wages level, should be given respect.¹³²

Under Art.3 of the Convention, the elements such as the (basic) needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups, economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.¹³³

Art.5 of the Convention stresses upon taking appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.¹³⁴

3.4.5. C173 - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 :

The Convention's stress is mostly on the workmen's wages protection in case of insolvency of their employer, because of various factors such as economic and social conditions. another important point which has been discussed in the Convention is that how the workmen's claims will be dealt with. Moreover, the competent authority in every country has been assigned the task to legislate laws in accordance with the social and

¹³² C131 - Minimum Wage Fixing Convention, 1970 (No. 131)
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312276 , (last visited May 06, 2014)

¹³³ Ibid.

¹³⁴ Ibid.

economic situation of their respective countries with the condition that these laws should not be below the socially acceptable level.

The Convention's Art.1 defines and explains "the term insolvency that for the purposes of this Convention, the term **insolvency** refers to situations in which, in accordance with national law and practice, proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of its creditors. For the purposes of this Convention, a Member may extend the term "insolvency" to other situations in which workers' claims cannot be paid by reason of the financial situation of the employer, for example where the amount of the employer's assets is recognised as being insufficient to justify the opening of insolvency proceedings".¹³⁵

Art.5 of the Convention lays down that the workers' claims, on behalf of their employment, shall be given protection through special right i.e. privilege. It means that in case of the employer's insolvency, the workers shall be paid out first from the assets of the insolvent employer before non-privileged creditors can be paid their share.¹³⁶

According to Art. 6 the privilege, thus given to the workmen, shall cover at least:

(a) "The workers' claims for wages relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment,

¹³⁵ C173 - *Protection of Workers' Claims (Employer's Insolvency) Convention, 1992* (No. 173) http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312318, (last visited May 05, 2014)

¹³⁶ Ibid.

(b) The workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding year,

(c) The workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment".¹³⁷

In case the employer's assets are not able to meet the workmen's claims, arising out of their employment, the payment shall be guaranteed through a guarantee institution.¹³⁸

In nut shell, the ILO's standards for minimum level of wage fixing is based on four basic criteria which should be taken into account: (a) the needs of the worker; (b) the employers' capacity to pay, in relation to the national economy as a whole; (c) a comparison of the standard of living of various social groups; and (d) the requirements of economic development.¹³⁹

3.5. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

The Covenant was adopted by the General Assembly of the United Nations. It stresses on and realizing the economic, social and cultural rights of mankind, discussed under this Covenant, by the General Assembly of the UN, shall be protected and guaranteed by the

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ ILO: *Meeting of Experts of 1967*, paras: 105 -110, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312276 , (last visited May 06, 2014)

member states to their respective subjects. Among other rights, guaranteed to a workman, the right of work and appropriate opportunity to obtain his living decently. The signatory states are required to legislate necessary laws and policies and to arrange different training programs for the above mentioned purpose.

In Part-III, Art. 6, puts emphasis on that State Parties to the Covenant, UN members, recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.¹⁴⁰

Art. 6 and 7 of the Covenant which says that the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

¹⁴⁰*International Covenant on Economic, Social and Cultural Rights*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> , (last visited May 05, 2014)

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

3.6. COMPARISON BETWEEN MINIMUM WAGES AND LIVING WAGES

The terms "minimum wage" and "living wage" are both used by the economists and policy makers to indicate particular areas of salaries and wages for the purpose of extending benefits to employees".¹⁴¹ Comparison between the two concepts is drawn in the below:

1. Nature of both concepts:

"Living Wage is the lowest wage at which subsistence needs can be met by an employee because the needs of each employee differ based on marital status, number of children, debt, and other cost-of-living considerations, the term living wage often pushes many hot-button political issues. Living wage can include general benefits such as health and dental care, and overtime pay".¹⁴²

2. Origin of both concepts:

¹⁴¹ *What Is the Difference Between Minimum Wage and Living Wage?* <http://www.wisegeek.com/what-is-the-difference-between-minimum-wage-and-living-wage.htm> , (last visited May 09, 2014)

¹⁴² *What's the Difference Between Minimum Wage, Prevailing Wage, and Living Wage?* <http://www.govdocs.com/minimum-wage-and-its-counterparts/> (last visited May 08, 2014)

The concept of Minimum wage is widely recognized term used to compensate workmen in industries etc which describes “the lowest allowable rate of pay at which an employee may sell their work”.¹⁴³ The living wage is variable from place to place but minimum wage is mostly state policy and therefore it is fixed. For example, a national government may set the minimum wage that applies to all employees covered by the applicable wage laws, and employers in all parts of the nation must comply by paying qualified employees at least that minimum wage. With a living wage, the amount required to enjoy a decent standard of living may be higher in some areas, such as metropolitan areas, while a lower wage would allow that same level or standard of living in a different area like a rural location.¹⁴⁴

3. Wages as a fundamental right:

The ILO also considers a living wage as a human right in the sense that **living wage** is included in ILO major Declarations,¹⁴⁵ such as the ILO conventions and recommendations to the Universal Declaration of Human Rights Article 23. (ILO Conventions 95 and 131, ILO Recommendations 131 and 135).¹⁴⁶ A living wage is an independently set hourly rate calculated on the cost of living and it is not compulsory for employers to pay this.¹⁴⁷

4. Characteristics of the living wages and minimum wages:

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ *Conditions of Work and Employment Programme, Series No. 29*, p. 4

¹⁴⁶ *A Wage you can live on*: <http://www.cleanclothes.org/livingwage/a-wage-you-can-live-on>, (last visited May 10, 2014)

¹⁴⁷ *Living Wage vs Minimum Wage – What's the Difference?* http://www.cleardebt.co.uk/blog/living-wage-vs-minimum-wage-whats-the-difference__54312, (last visited on May 10, 2014)

The basic characteristic of a living wage is that the workmen should be made able to afford a basic life needs by doing decent work along with the life style that is deemed acceptable by society.¹⁴⁸ Living wage also means that the wage a worker earns in a standard working week (never exceeding 48 hours) is enough to provide for them and their family's basic needs - including housing, education and healthcare as well as some discretionary income for when the unexpected happens.¹⁴⁹

The **minimum wages**, on the other hand, is considered to be different from living wages. The minimum wage is the hourly rate that almost all workers are entitled to as dictated by law and takes into account lots of different factors including the state of the economy, unemployment levels, pensions' reforms and other government reforms.¹⁵⁰

It is interesting that whereas the ILO Constitution, 1919 refers to the need for a sufficient living wage. Therefore major ILO Declarations in 1944 and 2008 indicate that the basis required wages are minimum living wages.¹⁵¹

3.7. CONCLUSION:

The prevailing practice of minimum wages across the world, in almost 90% of the countries, has taken its origin from the Roman Empire in the shape of gradual development of the word *salarium*. With the passage of time with the employers'

¹⁴⁸ *Conditions of Work and Employment Programme, Series No. 29*, p. 5

¹⁴⁹ *A wage you can live on*: <http://www.cleanclothes.org/livingwage/a-wage-you-can-live-on>, (last visited May 07, 2014)

¹⁵⁰ *Living Wage vs Minimum Wage – What's the Difference?*http://www.cleardebt.co.uk/blog/living-wage-vs-minimum-wage-whats-the-difference_54312.

¹⁵¹ *Conditions of Work and Employment Programme, Series No. 29*, p.4.

exploitation of the working class, the concept of minimum wages got popularity. The primary concern of living wages (which is considered one of the inherent rights of man) and the objective of minimum wage fixing is considered to be in the interest of both employer and employee. The concept of minimum wages is based on various theories of the economists, among which the most suitable theory is considered to be of the supply and demand theory. The ILO since its inception in 1919, through its conventions, has made various laws for the protection of workman regarding different aspects of workman's work, work place, participation in the work place affairs and payment of wages etc. The ILO, through its Conventions, advises those states that ratify its convention to ensure minimum safety and protection of workman. The UN, through its Covenant of 1966, stresses upon the member states to provide employment opportunities, give proper vocational training and awareness through different means, so that the workmen's fundamental right of decent work gets ensured. The terms wages, salary, remuneration are, sometimes, used interchangeably which connote the reward returned to the workmen for their work and services rendered.

CHAPTER FOUR: MINIMUM WAGES AND PAKISTANI LAWS**4.1. INTRODUCTION**

Pakistan, since its inception, inherited various legislations from British. Among other Laws the Payment of Wages Act, 1936 was promulgated to regulate payment of wages by an employer in an establishment. As a matter of fact, the minimum wage laws were not as popular as they are now but were developing gradually in different corners of the world. In late 60s there were crises-like situation in Pakistan in which the employer used to exploit the workmen employed in the industries and establishments. Therefore, primary legislation was conducted in order to regulate employer-employee affairs. Subsequently, minimum wage legislation was introduced in 1961.

Keeping in view the welfare of workmen, the government has introduced various Labour Policies since 1955 till 2010. The most effective and labour-oriented policy is considered the one which was introduced after the 1971 crises in 1972. Till 18th Amendment 2010, labour legislation was a subject of the concurrent list. After the 18th Amendment, 2010 was incorporated to the Constitution of Pakistan the labour legislation, including rules for the determination and fixation of minimum wages is purely provincial matter. Therefore, the provinces, now, are trying to heal the grievances of the low-wage workmen through taking necessary measures and steps in accordance with the situation prevailing in their respective provinces.

of fine is envisaged under this Act.¹⁵⁷ Likewise, the deductions are explained in details.¹⁵⁸

For ensuring the implementation of this Act, some provisions are incorporated under which inspectors are appointed to keep surveillance over the commercial establishments.¹⁵⁹ The Act favors not only the labourers but it has also given a legal cover to the employer in case a false, frivolous or vexatious claim was initiated by the workmen against him.

A statutory right of appeal is provided to the labour court in the event of not paying wages in spite of submitting an application to the employer.¹⁶⁰ A special legal forum is provided for initiating claims of employed persons, to which certain powers of a civil court are extended as envisaged in the Civil Procedure Code (CPC) (v.1908).¹⁶¹ In addition to this, some penal provisions against the employer are also incorporated in this Act.¹⁶²

Since a special forum is created under this Act, therefore, the jurisdiction of civil court is barred hereby under the provisions of this Act.¹⁶³ To protect the rights of the laborers a contracting out provisions are provided which envisages that all such contracts and agreements with the employer by the employed are null and void which depress or

¹⁵⁷ Ibid. S.8.

¹⁵⁸ Ibid. Ss.9-13.

¹⁵⁹ Ibid. S.14.

¹⁶⁰ Ibid. S.17.

¹⁶¹ Ibid. S.18.

¹⁶² Ibid. S.20.

¹⁶³ Ibid. S.22.

depriving rights of the laborers.¹⁶⁴ For the purpose of avoiding difficulties the government is given the authority to make rules for the implementation of this Act.¹⁶⁵

4.2.2. Coal Mines (Fixation of Rates of Wages) Ordinance, 1960

As a matter of fact, the workmen working in coal mines are so vulnerable that it drew the attention of the legislators to promulgate a special legislation in this regard. Therefore, this Act was promulgated in 1960. The primary concern of the ordinance is to refrain coal mine owners from exploitation and to provide for the procedure fixing and revising the minimum rate of the wages of those engaged in coal mines.¹⁶⁶

Under this Act "Coal Mine" is defined.¹⁶⁷ The Provincial government is extended the authority to determine minimum wages of the workers from time to time and the workmen are entitled to that minimum rate of wages.¹⁶⁸ The provisions of this ordinance are not to be considered to work independently but actually they are an addition to other existing laws.¹⁶⁹ These laws are the Payment of Minimum Wages Act 1936, West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, and the Industrial Relations Ordinance, 1969.

¹⁶⁴ Ibid. S.23.

¹⁶⁵ Ibid., S.26.

¹⁶⁶ Coal Mines Ord.1960, S.3.

¹⁶⁷ Ibid. S.2 (a) "coal mine" means any excavation where any operation for the purpose of searching for or obtaining coal or coke has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to, or belonging ...

¹⁶⁸ Ibid. Ss.3-4.

¹⁶⁹ Ibid. S.6.

4.2.3. The Minimum Wages Ordinance 1961

Keeping in view the importance of workmen rights, the minimum wage legislation was introduced in 1960s.¹⁷⁰ The term "Worker" has been defined under this Ordinance, wherein some workers are excluded by the said definition. A worker employed by the federal or provincial governments, any worker comes under the Coal Mines Ordinance 1960 or a person employed in agriculture.¹⁷¹ The Minimum Wages Boards are constituted under section 3 of this ordinance wherein ten members including a chairman are appointed for determining minimum wages of labors. This board has got a significant importance in the determination of wages of labors as this board has its members from workers, industry and general public. This ordinance has also covered unskilled and juvenile workers under section 4, as the board is vested with the powers to determine wages for unskilled and juvenile workers. This ordinance has provided a complete mechanism of determining minimum wages for all or a specific industry as the Minimum Wages Board has the power to make rules for minimum wages of workers.¹⁷² The employers are restrained from reducing or deducting the specified minimum wages of the

¹⁷⁰ Muin-ud-din Ahmad Khan , *Labour Administration: Profile on Pakistan*, p.4.

¹⁷¹ Minimum Wage Ord.1961, S. 2 (9) defines worker: "worker" means any person including an apprentice employed in any industry to do any skilled or un-skilled, intellectual, technical, clerical, manual or other work, including domestic work.

¹⁷² Coal Mines Ord.1960, Ss.5-7.

workers save as provided under the law.¹⁷³ Moreover, it is an offence to violate these provisions and punishable with six months' imprisonment and fine.¹⁷⁴ And if the said minimum wages are withheld or delayed a forum for initiating complaints is provided under section 9-A to recover wages from the employer.¹⁷⁵ A Magistrate of the first class is a competent authority to take cognizance of the complaints if the provisions of this ordinance are contravened.¹⁷⁶ The proceedings and acts of the minimum wages board or its chairman are protected in all circumstances.¹⁷⁷ The board and chairman of the board are given extensive powers for the collection of information or enquiry.¹⁷⁸ And most of the powers of a civil court as provided under the Code of Civil Procedure (Act v of 1908) are given to the board for the collection of information, hearing of complaints and collection of evidence.¹⁷⁹ Legal immunity is also given to the board or its functionaries subject to exercising their powers in good faith.¹⁸⁰ For implementation of this ordinance and removing any difficulties the provincial government is given the authority to make rules.¹⁸¹

¹⁷³ Ibid. S.9 (1).

¹⁷⁴ Ibid. S.9.

¹⁷⁵ Ibid. S.9 (A).

¹⁷⁶ Ibid. S.10.

¹⁷⁷ Ibid. S.11.

¹⁷⁸ Ibid. S.12.

¹⁷⁹ Ibid. S.13.

¹⁸⁰ Ibid. S.15.

¹⁸¹ Ibid. S.17.

4.2.4. The Newspaper Employees (Conditions of Service) Act 1973

The Newspaper employees (Conditions of Service) Act 1973, has been enacted to protect the workers working in any newspaper establishments. A comprehensive definition of newspaper, newspaper employee and newspaper establishment are provided under this Act.¹⁸² A newspaper employee shall be shown terms and conditions of his service at the time of his appointment.¹⁸³ Moreover, no employee of a newspaper shall be sacked unless a one month or so written notice is given of such termination and a good cause is shown therein.¹⁸⁴ For the future benefits of the employees a Provident fund shall be established for the employees.¹⁸⁵ A comprehensive framework and policy is given for the holidays of employees.¹⁸⁶ The medical care of the employee and that of his dependants shall be the responsibility of the newspaper establishment in which he works.¹⁸⁷ Under section nine the federal government is empowered to establish a board for the determination of minimum wages and the standards of determining wages are provided under section ten.¹⁸⁸ For the implementation of the decision of the board, the federal government is empowered to establish a Tribunal which shall implement the decisions of the board.¹⁸⁹

The federal government has the authority to appoint inspectors to ensure the

¹⁸² *The Newspapers Employees Act, 1973, S.2*

¹⁸³ *Ibid. S.3*

¹⁸⁴ *Ibid. S.4*

¹⁸⁵ *Ibid. S.5*

¹⁸⁶ *Ibid. S.7*

¹⁸⁷ *Ibid. S.8*

¹⁸⁸ *Ibid. Ss.9-12*

¹⁸⁹ *Ibid. S.12A*

implementation of this Act.¹⁹⁰ Penal provisions are provided under section twenty-one.¹⁹¹

The federal government is empowered to make rules for removing any difficulties and for the implementation of this Act.¹⁹²

4.3. LABOUR POLICIES AND FIXATION OF MINIMUM WAGES

It is a crucial question that what shall be the yardstick to determine minimum wages of workers as the requirements of every society and environment, cost of living and concept of family varies from country to country and from time to time. Keeping in mind the above view, the International Labor Organization (ILO) is even not able to have defined a specific and exact yardstick by which minimum rate of wages could be fixed. However, it has made some recommendations that the minimum wages rate shall be set at a "decent" level of living.

The ILO Convention number 131 of 1970 states: "The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social

¹⁹⁰Ibid. S.20

¹⁹¹ Ibid. S.21

¹⁹² Ibid. S.23

groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.”¹⁹³

4.3.1. GOVERNMENT POLICIES AND MAINTENANCE OF MINIMUM RATES OF WAGES IN THE LIGHT OF THE ILO CONVENTIONS

INTRODUCTION

As a part of International Community and in compliance with the UNO Covenants and the ILO Conventions, Pakistan has legislated workman-friendly laws. Many amendments have been incorporated to the workmen's related provisions of the Constitution as well as to the relevant Acts. In the light of these laws the government of Pakistan is introducing Labour Policies, in order to improve just and human working conditions for work and other related issue with the working class like payment of fair and adequate remuneration and wages.

From time to time, Pakistan has introduced labour policies for the wellbeing of the workmen. After the 18th Amendment was passed and the concurrent list no more existed. As a result the legislation regarding labour was made a provincial subject. Pakistan has made six labour policies in the year 1955, 1959, 1969, 1972, 2002¹⁹⁴ and 2010. One of the areas, discussed under labour policies, is minimum wage and its fixation in both public and private fields.

¹⁹³Hansjorg Herr and MilkaKazandziska, Principles of Minimum Wage policy – Economics, Institutions and Recommendations. International Labor Office, Geneva:ILO, 2011, 13
(www.ilo.org/.../Principles%20of%20Minimum%20Wage%20Policy%20-)

¹⁹⁴ Mohammad Irfan Pakistan's Wage Structure During 1990/91 – 2006/07, p.26

The minimum wage rules or, for industrial workmen in private sector and basic pay scales in public sector are generally revised periodically often after five years though depending upon the fiscal position of the state.¹⁹⁵

In the following lines Pakistan's all labour policies, before 18th Amendment and after, are to be discussed, in the light of Constitutional provisions and labour laws in Pakistan.

4.3.1.1.Labour Policies of 1955, 1959, 1969, 2002, 2010

Since the inception of Pakistan, efforts were made, from time to time, for the determination of workmen's reasonable and fair minimum wages level, three ordinances are prevailing in the country for the determination of wages. These are: the Fixation of Rates of Wages Ordinance, 1960, the Minimum Wage Ordinance, 1961 and Minimum Wages for Unskilled Workers Ordinance, 1969.¹⁹⁶

The primarily focus of the government during 1950-70 was on wages in large-scale manufacturing and government employment. However, the real wages of the industrial workers improved somewhat during sixties in the manufacturing sector.¹⁹⁷

In Pakistan's first Labour Policy 1955 was mostly concerned with the maintaining industrial peace and harmony and speedy dispensation of justice in disputes between

¹⁹⁵ Ibid, p. 22

¹⁹⁶ Shafeeq Ghawri, "*Wages of Today's Workmen, a tragedy or Abuse*", (original article is in Urdu) http://www.labournews.net/lnv2/index.php?option=com_content&view=article&id=11621:2014-01-07-08-23-33&catid=60:2010-04-29-14-48-06&Itemid=133 ,(last visited on 17-05-2014)

¹⁹⁷ Mohammad Irfan *Pakistan's Wage Structure During 1990/91 – 2006/07*, p.6

employers and employees through legal procedures, such as: a) joint consultations; b) mediation; c) conciliation; and d) arbitration.¹⁹⁸

The second Labour Policy of 1959 was framed in the light of the ILO Conventions ratified by the government. As a result labour legislation was done, the Minimum Wages Ordinance of 1961 was among other laws passed in that period.¹⁹⁹ The Provincial Governments constitute Minimum Wages Boards under Section (3) of Minimum Wages Ordinance, 1961 to decide the wage rates. Minimum Wages Board is a tripartite body comprising the representative of Government, Employers and Employees.²⁰⁰

In the 3rd Labour Policy, the government had introduced many reforms. The main focus of this policy was on creating environment in which both the employers and workers could work together to achieve greater productivity.²⁰¹ Among other laws passed for the labour wellbeing, the West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969, is worth mentioning. According to the policy, the government ensured Minimum Wages Board (MWB) on provincial level. Therefore, the fixation of minimum wages for workers in different areas of the country was introduced as well as institutional arrangement for minimum wages board.

The main purpose of the forth Labour Policy was to increase labour reforms. Therefore, the scope of labour laws was enhanced and benefits like increased profit sharing,

¹⁹⁸ Brief on Labour Policy-1955, <http://labourwatchpakistan.com/?cat=133> (last visited on May-12-2014)

¹⁹⁹ Sabur Ghayur, "Evolution of Industrial Relations System in Pakistan", http://clad.org.pk/working_paper_4.htm, (last visited on May-08-2014)

²⁰⁰ Iftikhar Ahmad's Article: "Labour and Employment Law: A Profile on Pakistan",

²⁰¹ Sabur Ghayur, "Evolution of Industrial Relations System in Pakistan", http://clad.org.pk/working_paper_4.htm, (last visited on May-11-2014)

statutory bonus, group insurance scheme, group incentive scheme, etc. were granted.²⁰² Thus, the policy was in favour of an immediate increase in the wages of workmen. Moreover, the Payment of Wages Act, 1936 was made applicable to all contractors²⁰³ under this policy.

In Pakistan's fifth Labour Policy of 2002, the primary concern was to simplify the existing labour laws which were more than 50²⁰⁴ in that time. And the existing laws were to be made simple based on logic and reasoning and were to be merged into six basic laws relating to: a) industrial relations; b) conditions of employment; c) payment of wages; d) human resource development (HRD); e) occupational safety and health; and f) labour welfare and social protection.²⁰⁵ The Labour Policy 2002 was aimed to provide a strong base for the employer-employee relationship so that to build an environment for mutual trust.²⁰⁶

In the last Labour Policy of 2010, mainly stressed upon the labour Policy 2010 promises to consolidate and rationalize labour laws in to five core laws.²⁰⁷ It was decided by the government that an independent National Wage Commission will be set up. Moreover, the government will establish a Working Group to make detailed recommendations for the purpose of specific functions and operational arrangements for such a Commission,

²⁰² First Labour Policy-1955, http://www.labournews.net/lnv2/index.php?option=com_content&view=category&layout=blog&id=4&Itemid=37 (last visited on May-07-2014)

²⁰³ Brief on Labour Policy, 1972, <http://labourwatchpakistan.com/?cat=133>, (last visited on May-08-2014)

²⁰⁴ v3.elbpc.com/index.php/component/attachments/download/259 (last visited on May-08-2014)

²⁰⁵ Brief on Labour Policy-2002, <http://labourwatchpakistan.com/?p=444> (last visited on May-06-2014)

²⁰⁶ Labour Policy- 2010, http://www.labournews.net/lnv2/index.php?option=com_content&view=category&layout=blog&id=4&Itemid=37 (last visited on May-08-2014)

²⁰⁷ An Analysis of Labour Policy-2010, <http://labourwatchpakistan.com/?p=456> (last visited on May-08-2014)

including its technical and secretarial support requirements and its relations with provincial wage fixing authorities.²⁰⁸

One of the main features of the policy, therefore, was that the government will implement the system of minimum wage as a fundamental element of labour protection, and proposes to continue with the existing tripartite minimum wage determination arrangements.²⁰⁹ It was declared by the government that Monitoring Committees will be set up at District, Province and Federal level to monitor implementation of Labour Laws, particularly with reference to payment of wages, working environment and working time.²¹⁰

In nut shell, it can be said that the reforms in labour laws regarding minimum wages were influenced by the political parties' manifestoes. And most of the policies were made for the time being and the real needs of the workmen have not been taken into consideration. As a result, all the policies met its fat i.e. failure due lacunas or implementation mechanism. Now, after the 18th Amendment, it is a chance for the provinces to frame laws for the determination of minimum wages and for the prosperity of both employer and employee, so that the rapid and fast growth of the production is ensured.

²⁰⁸ Labour Policy- 2010,
http://www.labournews.net/lnv2/index.php?option=com_content&view=category&layout=blog&id=4&Itemid=37(last visited on May-09-2014)

²⁰⁹ Ibid.

²¹⁰ Syed Khursheed Shah, Federeral Minister for Labour and Manpower, Government of Pakistan Labour Policy-2010, www.eobi.gov.pk/announcement/labour+poilcy+2010.pdf , (last visited on May-02-2014)

4.3.2. PROVINCIAL LEGISLATION AFTER THE 18TH AMENDMENT

The 18th amendment was landmark legislation with regard to provincialism and delegation of powers to the provinces. As a result of the 18th amendment the Federal Ministry of Labor and Manpower was formally dissolved in 2011. Thereafter, the four provinces has taken interest in legislation of their own labour laws. Therefore, the four provinces enacted separate Industrial Relation Acts. The Punjab Industrial Relations Act (PIRA) of 2010 was promulgated in 2010. But it has adopted lower yardsticks than the IRA of the federal government of 2008.²¹¹ It has provided no replacement for National Industrial Relations Court (NIRC) and has transferred all the cases pending before the NIRC.²¹² It has provided no mechanism to ensure inspection of the work places and implement minimum wages, moreover, it excluded the workers of educational institutions and which provides emergency services.²¹³

The province of Sindh has promulgated the Sindh Industrial relations Act (SIRA) of 2011. Like the PIRA of 2010 the SIRA of 2011 has also banned the inspection of work places and has been diverging from the IRA 2008 of the federal government.²¹⁴

The Khyber Pakhtunkhwa Industrial Relations Act (KIRA) of 2010 has also kept lower standards as it has provided no replacement of the National Industrial Relations

²¹¹ S.3(i) Punjab Industrial Relations Act, 2010

²¹² Furqan Muhammad, Protecting Pakistani Laborers Post-Eighteen Amendment: Recognizing Rights after the Devolution of Power, vol.9, Loyola University Chicago International Law Review, 2012. p.283

²¹³ Ibid.

²¹⁴ Ibid.

Commission (NIRC)²¹⁵ and provided no provisions for the inspection of employer establishments.

The province of Balochistan has promulgated almost a similar labor law as IRA 2008 of the federal government. It has enacted the Balochistan Industrial Relations Act (BIRA) of 2010.

The provincial workmen legislations seem to be unfriendly as they have given no extra relief or benefits to the labors in the post-18th amendment era. It is thought that now the Federal government has no jurisdiction to legislate in the area of labor rights, especially in the post-18th amendment era as this article/item has been devolved to the provinces, but it is a wrong perception. The Federal government still has the domain for legislation and protecting rights of the labors as it has been a signatory to almost thirty four Conventions of the International Labor Organization (ILO) including some core Conventions. It is the Federal government to honor these Conventions so it still has the jurisdiction to protect rights of the labors.²¹⁶

²¹⁵ See. Sec. 25 of IRA-2008 (which was applicable to the whole of Pakistan prior to the 18th Amendment to the Constitution of Pakistan, 1973)

²¹⁶ Furqan Muhammad, Protecting Pakistani Laborers Post-Eighteen Amendment: Recognizing Rights after the Devolution of Power, vol.9, Loyola University Chicago International Law Review, 2012. p.293

4.4. BRIEF SKETCH OF MINIMUM WAGES FROM 1992 TILL DATE

Since the government has taken up the issue of minimum wages as one of the key labour issues, existing in Pakistan. Different laws were legislated from time to time for this purpose. For public sector employees, the government is revising basic pay scales and allowances from time to time, keeping in view the well-being of the working class and its efficiency.

Monthly minimum wages in Pakistan are recommended by the Federal Government under nationally-applicable Labour Policies and set by Provincial Minimum Wages Boards under the Minimum Wages Ordinance, 1961.

Pakistan's first minimum wage was introduced in 1992 when it was set at PKR 1,500 per month.

It was, subsequently, raised as under:

S.No	Wages/M with Year	S.No	Wages with Year	S.No	Wages with Year
1	PKR 1,650 (1996)	4	PKR 4,600(2007)	7	PKR 8,000(2012- 2013)
2	PKR 1,950(1998)	5	PKR 6,000(2008)	8	PKR 10,000(2013) ²¹⁷
3	PKR 4,000(2006)	6	PKR 7,000 (2010)	9	PKR 12,000(2014) ²¹⁸

The above table shows that, since the minimum wage system was introduced in the country, the idea of minimum wages was developed gradually in the minds of policy

²¹⁷ Minimum Wage Law by Country, (Pakistan)

http://en.wikipedia.org/wiki/Minimum_wage_law#Pakistan

²¹⁸ Finance Minister's Presentation of Federal Budget 2014-2015 (04-June-2014)

<http://dunyanews.tv/index.php/en/Pakistan/224144-Rs-3936-billion-Budget-201415-presented-in-NA>

makers on one hand, and on the other hand, the concerned governments were not wholeheartedly dedicated towards this important matter. Luckily, in the last three years, the minimum wages level of workmen was frequently revised.

4.5. WORKMAN AND DECENT WORK

The initiative of decent work was, originally, formulated by the ILO. According to this agenda, "Work is central to people's well-being. In addition to providing income, work can pave the way for broader social and economic advancement, strengthening individuals, their families and communities. Such progress, however, hinges on work that is decent. Decent work sums up the aspirations of people in their working lives".²¹⁹

The ILO is committed to achieve the following four objectives from decent work agenda:

1. Creating Jobs: through opportunities investment, encouragement of self-employment, skills development.
2. Guaranteeing rights at work place: through introduction participation and representation of workmen in the affairs of work place in order to protect their interests.
3. Extending social protection: through making laws to protect and promote workmen interests related to conditions of work, adequate rest, family and social values and receiving of adequate compensation in case of lost or reduced income and permit access to adequate healthcare.

²¹⁹ Decent work agenda "Promoting Decent work for all", www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm, (last visited on June 8-2014)

4. Promoting social dialogue: by involvement of workmen's' and employers' organizations to encourage increase in productivity, avoiding disputes between employer and workmen.²²⁰

4.5.1. DECENT WORK COUNTRY PROGRAM

The ILO member states are required, by its conventions, to take measure in order to enable everyone to earn decent living for himself as well as for his family respectively.²²¹

Pakistan, like other ILO members, has initiated Decent Work Country Program (DWCP) for the well-being and protection of working class of the society. The DWCP was first introduced for the period 2006-2009 to improve the labour and employment environment in the country.²²² The current DWCP has been planned for the period of 2010-2015, with the following objectives to be achieved:

- Labour law reforms,
- Employment generation through human resource development, with a focus on employable skills,
- Social protection expansion, including in the informal economy and
- Tripartism and social dialogue promotion.²²³

After the incorporation of the 18th Amendment to the Constitution in April-2010, the document of DWCP is finalized by mutual consultation of the Federal and the Provinces, taking in consideration priorities of the respective provinces. Along with other issues, to

²²⁰ Ibid.

²²¹ Art.7 (a, ii) of the International Covenant on Economic, Social and Cultural Rights

²²² Decent work country programme, 2010-2015, p.12

²²³ Ibid., p.13

be included in the DWCP is generating employment opportunities for unemployed as around 40% of Pakistani nation is living below poverty line.²²⁴

The Labour Policy, 2010 on decent work describes the strategy to serve the four elements i.e creation for opportunities for productive, remunerative and safe work; social protection; respect for workers' basic rights and interests; and Social dialogue.

The plan for the DWCP is implemented, managed and guided by a Decent Work Task Force (DWTF), chaired by the Secretary of Human Resource Development (HRD) with provincial Secretaries of Labour from Punjab, Sindh, Balochistan and KPK, the Employers' Federation of Pakistan (EFP) and the Pakistan Workers' Federation (PWF).

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4.6. MISCELLANEOUS

There are some important areas of wage laws to be discussed so that the system of minimum wages is understood clearly. These issues are to be mentioned below:

4.6.1. Deductions from wages according to the ILO Instruments

The workmen, normally, do not receive the full amount of wages and remuneration to which they are entitled. Their wages are subject to various deductions under different headings in accordance with municipal laws. In order to protect workmen from

²²⁴ Sadia Shaheen's Article on Impact of Government Debt and Basic Needs on Economic Growth in Pakistan, *Developing Country Studies* ISSN 2224-607X (Paper) ISSN 2225-0565 (Online on www.iiste.org) Vol.4, No.3, 2014, p.104

²²⁵ Decent work country programme, 2010-2015, p.21-22

exploitation, the ILO has adopted Convention.²²⁶ Article eight of the convention stipulates that deductions from wages may be allowed according to the prescribed limits of national law of a given country. Moreover, the deduction made as a result of award, arbitration or by collective agreement is permitted. It is the right of the employed worker and labor to be informed of such deductions at the beginning of his employment.²²⁷ The workman must be kept informed regarding the extent to which the deductions will be made from his wages.²²⁸

In Pakistan the provisions of deductions from wages are provided under the Payment of Wages Act, 1936. It has contained a comprehensive policy and standards for the deduction of wages from workers.²²⁹ It is therefore, Not allowed for the employer to make deductions from a workman's wages except as specified in the Payment of Wages Act, 1936, such as for fines, breach of contract and the cost of damage or loss incurred to the factory in any way other than an accident.²³⁰

²²⁶C095 - Protection of Wages Convention, 1949

²²⁷ ILO Report No.iii(1B)-2003-chapter iv-EN.Doc.p.115

²²⁸ Art.8 (2) Protection of Wages Convention, 1949

²²⁹ Ss.7-13

²³⁰ S.7(2)

4.6.2. Effects of Inflation, Changing Life Style and Workman's Wages

Inflation is defined as a rise in prices and wages caused by an increase in the money supply and demand for goods, and resulting in a fall in the value of money.²³¹ In economic terms, "Inflation is a situation whereby there is a continuous and persistent rise in the general price level."²³² There are various causes of inflation, for example states borrow interest-based debts from financial institutions. In order to return the loans that states impose taxes which cause hike in prices of the commodities and becomes a reason for inflation²³³. Another cause is that the government is required to spend large portion of its money on non-productive expenditures like defense which leads to the wastage of economy's precious resources and also lead to inflation.²³⁴ Economists also describe government taxes, on particular commodities, as one of the main causes of inflation, because it increases the price of that commodity.²³⁵ Subsequently it is out of the purchasing power of the poor.

Poverty and low-income and unemployment²³⁶ are considered to be at large scale in Pakistan's rural areas.²³⁷ One of the most important factors influencing poverty in the

²³¹ Oxford Advanced Learner's Dictionary

²³² Ahsan Khan's Article "*Inflation in Pakistan. Its Types, causes, measures and effects*"

²³³ Parveen Zaiby's article on "*Inflation and its impact on the Pakistan economy*"
<http://www.opfblog.com/8447/inflation-and-its-impact-on-the-pakistan-economy/> (last visited on April 22-2014)

²³⁴ Ahsan Khan," *Inflation in Pakistan. Its Types, causes, measures and effects*",
<http://ahsankhaneco.blogspot.com/2012/04/inflation-in-pakistan-its-types-causes.html> , (last visited on April 23-2014)

²³⁵ Ibid.

²³⁶ Unemployment is a situation when someone is seriously seeking a job but unable to find even at the prevailing market wage rate. Muhammad Afzal and Samia Awais "*Inflation-Unemployment Trade Off: Evidence from Pakistan*", *Journal of Global Economy* (ISSN 0975-3931), Vol.8 No.1, January-March, 2012, p.19

country is inflation.²³⁸ Most people would prefer to improve themselves financially. To achieve the said goal, people are migrating from rural areas to urban areas and thus, with the passage of time, their life style gets diversion.

No doubt, employment opportunities are much in urban areas as compare to rural areas and those migrate from villages find themselves in a place where the life style is not as simple as it is in rural areas. Defiantly, they find jobs/work and spend on those commodities that were far away from their purchasing power in the villages. So, changing life style has impact on the employment as well as on the wages of a workman. Inflation affects the haves and have nots in like manner. However, workmen of all classes are affected generally and mostly those workmen earning livelihood on daily basis and those getting fixed salaries are subject to the worst effects of inflation.

4.6.3. Islamic Solution of Controlling Inflation

One of the current day economic problems, since 1960s, is the issue of controlling inflation independently without unemployment.²³⁹ It has worse effects in developing countries as compare to the developed one. The unique nature of Islamic economics which is based on the principles of justice, fear from Allah (SWT), preference of collective interest over personal interest and assisting each other in good to achieve the greater goal of a welfare society. Therefore, it is not just Islamic State which will contribute towards the welfare of the citizens but every Muslim, individually and

²³⁷ Arif and Shahnaz Hamid "*Urbanization, City Growth and Quality of Life in Pakistan*", European Journal of Social Sciences – Volume 10, Number 2 (2009)

²³⁸ Faizan Bhatti, "Causes of Inflation", <http://notesforpakistan.blogspot.com/2009/08/causes-of-inflation.html> (last visited on June 8-2014)

²³⁹ Muhammad Akram Khan, *An Introduction to Islamic Economics*, p.86

collectively, is required to participate actively in the economic activities to make the Muslim *Ummah* prosperous, glorious, developed and strong as Allah wants Muslims to be so as it is indicated to by the Quranic verse.²⁴⁰

Islamic economics provides a logical and human welfare-based solution to the problem of inflation, shifting responsibility to the shoulders of both rulers and ruled, as under:

1. Abolition of interest as described by the Holy Quran:²⁴¹

Islam does not only prohibit *Riba* (interest) but also prohibit obtaining loan on the basis of *Riba*. Most of the today's corporations and companies take interest-based loans from conventional banks, in order to flourish their business. Then the interest is added to the cost of products and as a result the prices go higher and higher²⁴².

2. Use of natural resources for the well-being of the Islamic society:

Islam recognizes State ownership on natural resources, generally and of oil and natural gas particularly, on the basis of no profit and not tax on the product rising out of the natural resources. When the prices of petroleum products go high the cost of transportation is also raised. Ultimately, the cost of transportation is added to the prices of the commodities and thus inflation occurs in the market.²⁴³ thus poor workmen and those under special circumstances as old aged and disabled persons and orphans who,

²⁴⁰ Quran:63: 8

²⁴¹ Quran:2:276

²⁴² Muhammad Akram Khan " *An Introduction to Islamic Economics*" p.88

²⁴³ Discussion in 'Economy & Development' Aug 3, 2008, "How ISLAMIC Economic System can help Control INFLATION" <http://defence.pk/threads/how-islamic-economic-system-can-help-control-inflation.13194/> last visited on 10-06-2014

normally, have no source of income or getting little wages due to disabilities or weakness or being a minor. Their cost of living when increases, simultaneously the purchasing power of the above mentioned persons goes down bit by bit and thus they are deprived from most of the commodities of daily usage.

3. Islamic State Intervention for Fixation of Prices of the Commodities:

Indeed fixation of prices by a Muslim State is one of the measures to restrict freedom of an owner to dispose of his ownership rights as he wishes.²⁴⁴ Basically, Islam is in favour of free-market economy where every Muslim is observing Islamic principles of justice, satisfaction on what has been granted by Allah and holding up of Islamic principles of permissible profit.²⁴⁵ Therefore, the main idea of Islam is noninterference of the Islamic State and all the Islamic Scholars are unanimous on this point.

In case, the interest of the buyer is affected in a situation when supply of the commodity is normal but the market rate goes high. Here the Islamic State is required to step into the market and to prevent traders from the exploitation of poor, acting upon the Islamic maxims "Not harm and do not be harmed" and "(something which is causing) harm must be eliminated"²⁴⁶.

4. Prohibition of Hoarding:

One of the causes of inflation, in the capitalist economies, is hoarding for the reason to make and maintain the prices high. Islamic scholars are unanimous on the point that it is

²⁴⁴ Adnan Khalid Al-Turkamani, "Zawabit-ul-Milkiyya fil Fiqh Al-Islami", series, 1, p.168

²⁴⁵ Waba Azzuhaili, "Al-Fiqhul Islami Wa Adillatuhoo" Darul Fikr, vol..3, p.590

²⁴⁶ Ibid., p.591

prohibited to conceal food items of daily usage for humans and animals.²⁴⁷ The Islamic State is required to take action against those culprits who are involved in hoarding because it is affecting the prices which is injustice to those whose purchasing power is cannot afford such type of situation.

5. Freedom from International Organizations and Institutions:

It one of the problems of most of the less developed countries that their monetary policies are drawn under dictates from those International financial organizations like IMF and World Bank, from which they normally take interest-based loans for development projects and programs. For payment of loans states issue huge quantity of money to cope with the payment of loans which affects the prices.²⁴⁸ Therefore, an Islamic State is required not to borrow interest based loans but to make arrangements for the development programs keeping in view its capability and resources.

Islam is committed to building of an economic power of the Muslim *Ummah* by uniting them together and does not want the *Ummah* to be in need of non-Muslims world. The ultimate aim is that the atmosphere of self-sufficiency and self-reliance might be created among Muslim *Ummah*²⁴⁹.

²⁴⁷ Ibid., p. 588

²⁴⁸ Islamic Fiqh Academy "Ruling on Inflation and Change of Currency Value", Fatwa no.119 <http://islamicstudies.islammessage.com/Fatwa.aspx?fid=119>

²⁴⁹ Mehr Muhammad Nawaz Khan "Islamic and Other Economic Systems", p.354

6. Payment of *Zakah* and avoidance from Extravagance and profligacy: Islam stresses upon leading simple life and prohibits from extravagance²⁵⁰ and motivates Muslims to feel satisfied with what they have been granted.

Nonpayment of *Zakah* by rich is also a cause of inflation because the poor has share in the wealth of rich through *Zakah*. To take *Zakah* have and to be given to have nots also increases the purchasing power of the poor and thus he will not be affected by the little rise in the prices.

4.7. CONCLUSION

Pakistan, like other countries of sub-continent, derived its labour legislation from the colonial power and implemented it with minor modifications. It was felt, after more than a decade of independence, that workmen's exploitation is rule of the day. The Minimum Wage Ordinance of 1961 was the first major legislation of its type that introduced Provincial Minimum Wage Boards to be jointly represented by the workmen and their employers. Initially, the Ordinance was not extended to enterprises with 20 or more workers and subsequently its scope covered establishments employing 10 or more workers. In 1969, as a part of the new labour policy, the West Pakistan Minimum Wage Ordinance for unskilled workers was promulgated and made applicable to enterprises with 50 or more workers. For smaller size establishments the provincial governments had to constitute Minimum Wage Boards under the 1961 Ordinance.

²⁵⁰ Quran: 7: 31

One of the important steps taken for the reforms in labor laws was introduction of labour policies in various times to heal the grievances of the workmen but there were/are flaws as according to its extent, nominal penalty provisions and implementation mechanism. The minimum wage legislation is ineffective as large part of the workers is outside the ambit of these laws. As a matter of fact the minimum wage system was introduced, very late, in 1992 and the wages were revised from time to time but it did not bear any fruit as the increase in wages is minor and the rise in prices is much more.

Luckily, after the 18th Amendment 2010, the concurrent list was abolished and now labour legislation is purely provincial subject. The extent of minimum wage laws shall be extended to all workmen, including domestic workers and an effective monitoring system shall be introduced in provinces. The issue of minimum wages may be attached to the minimum standard of consumer basket in the market. Moreover, the allowances and income tax and deductions shall be evaluated fairly and the workmen shall be considered as a partner in profit-sharing so that the workmen shall participate actively for the achievement of the ultimate goal i.e, quality and increase in productivity. Workman shall be deemed to be the central part and essence of all economic activities as for the work he is doing and services he is rendering without which the finality of productivity was hard to be achieved.

**CHAPTER FIVE: COMPARISON BETWEEN SHARIAH AND PAKISTANI MINIMUM WAGE
LEGISLATION (CONCLUSION AND RECOMMENDATIONS)**

5.1. INTRODUCTION

The main portion of this research work is based on the evaluation of existing minimum wage laws in Pakistan in the light of Shariah. The laws promulgated for the purpose of payment and fixation of wages of the workmen namely, The Payment of Wages Act 1936, Coal Mines Fixation of Rates of Wages Ordinance 1961, Pakistan Minimum Wages for Unskilled Workers Ordinance 1969 and The Newspaper employees (Conditions of Service) Act 1973, are to be compared here with Islamic Law.

The above pieces of legislation are to be analyzed in accordance with the original sources of Shariah. Moreover, the opinions of the Shariah Scholars and experts in the field of Islamic Economics are to be considered of a great value. It is noteworthy that hiring workman's services and skills have been discussed by the Fuqaha in their respective books under the concept of Ijarat-ul-Amal wa Al-Mehn (hiring services and skills) which has been discussed under the chapter allocated and titled as "Baab-ul-Ijara".

This Chapter is to cover four issues i.e., comparison between Shariah and Pakistan's minimum wage laws, the recommendations for the Islamization of contrary provisions of minimum wage legislation, Shariah Model of workmen minimum wages is to be presented and the conclusion.

5.1.1. COMPARATIVE ANALYSIS OF SHARIAH AND PAKISTANI MINIMUM WAGE LAWS

The analysis will be done, point by point, in the following lines:

5.1.1.1. DEFINITION OF WORKMAN IN PAKISTANI LAWS AND SHARIAH

The term "workman" is not defined exclusively by the laws related to minimum wages. However, it has been defined by other laws, related to industrial establishments, as in the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968²⁵¹ and the Workmen's Compensation Act, 1923²⁵². Both pieces of legislation have defined workman differently. Moreover, the Industrial and Commercial Employment Ordinance, under Section.2 (g), classified the workmen into six classes i.e., permanent, probationer, badlis²⁵³, temporary, apprentices and contract worker. Every class of workmen has to be dealt with differently²⁵⁴ as regard to their contract of hiring, payment of wages, termination from employment and punishments for misconduct and other wrongs²⁵⁵.

It is worth mentioning that most of the workmen, actually engaged in various types of work, are out of the ambit of the definition of workmen such as those engaged in domestic work or attached with agriculture in one or the other way as well as those working under the Thekedari system (working with the private or government contractors). There other lots of other categories of workmen who neither come under the definition of workmen nor the minimum wage laws are extended to them like

²⁵¹ See Standing Order (S.O) 2-(i)

²⁵² See Sec.2 (n)

²⁵³ Badli, (under the above mentioned ordinance) is a workman who is appointed in the post of a permanent workman or probationer, who is temporarily absent.

²⁵⁴ See Standing Order. 12 (3)

²⁵⁵ See Standing Orders. 12-15

those attached to small business and those employed for teaching and other professions by the private institutions, schools, colleges and universities.

To compare the above point from the Shariah view point in the light of the classical manuscripts of Islamic scholars, it is revealed that they have divided workmen just to two basic categories i.e., Ajeer-i-Khaas (private employee/ workman) and Ajeer-i-Mushtarak (common workman).²⁵⁶ Ajeer-i-Khaas is a workman who undertakes some specific work for his employer and Ajeer-i-Mushtarak is the one who work for everyone seeking his expertise, for example, blacksmith, carpenter and mason,²⁵⁷ doctor and porter.²⁵⁸

Ajeer-i-Khaas is defined that, who is hired for specific time period to perform a specific task for his employer or employers, and he is, thus, bound to do the work done by him. For example a government servant or a private company's employee, who are employed on wages or a driver when hired for driving a car etc.²⁵⁹ Ajeer-i-Mushtarak is a workman who is allowed to accept doing work for more than one person at a time for example, hiring services of a lawyer, engineer and doctor.²⁶⁰

It is clear from the above Islamic view point that the ambit of the definition of a workman is very vast, covering everyone employed to undertake some work, he may be either

²⁵⁶ Waba Azzuhaili, "Al-Fiqhul Islami Wa Adillatuhoo", Darul Fikr, Vol.4, p.561

²⁵⁷ Al-Badai Wa Al-Sanai, Vol.4, p.174

²⁵⁸ Ali Al-Khafeef " Ahkaam Al-Muaamilaat Al-Shariyah", Darul Fikr Al-Arabi, Edition. 2nd, p.408

²⁵⁹ Ibid., p.409

²⁶⁰ Ibid., p.408

private employee or common employee. In nutshell, workman is a person who does any exertion of body or mind undertaken for some monetary reward.²⁶¹

5.1.1.2. DEFINITION OF WAGES UNDER PAKISTANI LAW AND SHARIAH

The term "wages" is not defined exhaustively by any of the laws related with workmen rather its definitions in the relevant legislation is of a complex nature. The laws which defined the wages are Payment of Wages Act 1936,²⁶² the Minimum Wages Ordinance 1961,²⁶³ the Workmen's Compensation Act 1923²⁶⁴ and Minimum Wages for Unskilled Workers Ordinance 1969. The most suitable and clearly understandable definition is given by the Minimum Wages for Unskilled Workers Ordinance 1969 under Section.2 (g) which says that "wages" means all cash remuneration payable to a workman, and includes dearness allowance, house-rent, conveyance allowance, [cost of living allowance, special allowances] and any other fixed allowance, but does not include travelling allowance, gratuity or bonus.

The definitions given by the above wage laws are not inclusive as they do not cover all the wages paid by employer or government as there are other types of wages i.e, monthly-rated, weekly-rated, daily-rated and piece-rated as mentioned under the Industrial and Commercial Employment Ordinance, 1968.²⁶⁵ And the wages must be paid in current coin or currency.²⁶⁶

²⁶¹ Afzalurrahman " *Economic Doctrines of Islam*", p.189

²⁶² S.2 (vi)

²⁶³ S.2 (8)

²⁶⁴ S.2 (m)

²⁶⁵ Standing Order. 12 (3)

²⁶⁶ S.6 of " *Payment of Wages Act, 1936*".

It is noteworthy to say that even though the multiple definitions have tried to cover most of the area of wages of workmen. But still there are flaws in the definitions as to its limited scope of applicability and non-inclusion of important aspects of a workman's extraordinary qualities and special circumstances which shall have impact on the amount of wages such as intelligence, talent, higher qualification, skills, childhood and huge family etc.

From Shariah view point; there is no exact definition of wages though some scholars have defined it as "it is (agreed upon) payments to a workman in cash by his employer by virtue of his efforts in the production process for a specific period which may last for an hour, day, week, month or year"²⁶⁷. According to Shariah scholars the wages shall be paid as agreed upon by employer and workman in the time of conclusion of the contract. Islam motivates Muslims to make efforts in performance and completion of the assigned task because everyone will get to the extent of the efforts and struggle he made. The Quranic A'yah referred to in this regard says "for a man is nothing but for what he strives"²⁶⁸. Moreover, the sum paid to the workman shall be permissible, (Mal Mutaqawim) in Islam to make deal with and it shall be specific amount (type, quantity and quality) to be known to the workman.²⁶⁹ The tradition of the prophet is evident of this which says "whoever hires a workman shall make his wages known to him".²⁷⁰

It is clear from the above Islamic teachings that Shariah has not defined wages of a workman but it has indicated to some general and specific principle, for the insurance and

²⁶⁷ Hamza Al-Jamiee Al-Damohi, "*Awaamil-ul-Intaaj fil Iqtisaad Al-Islami*", p.217

²⁶⁸ Al-Najam: 39

²⁶⁹ Waba Azzuhaili, "Al-Fiqhul Islami Wa Adillatuhoo", Darul Fikr, Vol.4, p. 69

²⁷⁰ Imam Burhan-ud-Deen, in "*Al-Hidaya, Sharh Bidayat-ul-Mubtadi*", Vol.6, p.267 from Abdurrazzaq fi "*Musannafih*", 235/8

protection of wages, which shall be observed while considering wages of workman such as principles of willingness, fairness, justice, expertise, skills and customary usage.²⁷¹ It is also obvious that in Shariah the wages, paid to a workman, may be in cash as well as in kind and it may also be paid in both or out of something on which making a transaction is permissible in Islam or something which is considered as Maal (wealth) in Islam.

5.1.1.3. YARDSTICK FOR THE FIXATION OF MINIMUM RATES OF WAGES IN PAKISTANI LAWS AND SHARIAH

There is no exact definition of minimum wages under any law in Pakistan. Anyhow, the Provincial government announces, from time to time, minimum rates of wages are recommended by the Minimum Wages Boards (MWBs)²⁷² by the reference made to it in this regard. The rates are reviewed with the changes in the economic conditions cost of living and other relevant factors.²⁷³ A bar is put on the employers not to pay wages at a rate below the minimum rate of wages.²⁷⁴

Though, the minimum wage system and determining the minimum rates for wages, was introduced by Pakistan in 1992²⁷⁵ but it could not healed the grievances and sufferings of the working class. Because the main problem in the determining and fixing of minimum rates is that what should be the yardstick, criteria and factors to be considered in this regard. As it is mentioned above that various factors like changes in the economic conditions and cost of living are considered by the MWBs but it seems that it is not

²⁷¹ Waba Azzuhaili," Al-Fiqhul Islami Wa Adillatuhoo", Darul Fikr, Vol.4, p. 68

²⁷² S.3 of the Minimum Wages Ord.1961 (Establishment of Minimum Wages Boards)

²⁷³ Ibid., S.7 (1)

²⁷⁴ Ibid.,S.9

²⁷⁵ Minimum wage law by Country (Pakistan), http://en.wikipedia.org/wiki/Minimum_wage_law#Pakistan

servicing the purpose and objectives for which the minimum rate of wages system was introduced in the country i.e, exploitation of workmen by the employers.

It is therefore order of the day among the low-wages workmen, due to dissatisfaction from their wages, that they adopt different measures to redress their grievances through improper acts and behavior such as strikes, stoppage of work, illegal unionism and hatred for their employers which is affecting the ultimate goal of active participation in the production process in the industries and factories as well as performance of the concerned government departments.

To compare the above point with Shariah, it is revealed that Islam has not defined that amount of wages but left it to be decided by the contemporary customs and usages, type of work and efforts made and the time spent in the work.²⁷⁶ Islamic Economics has a great deal of the principles for this important aspect of the workmen as a center of all economic activities. The prerequisite for the determination of wages is to be done on the basis of humanity. It means that that humanity of a workman shall be given preference over other elements. Thus his individual circumstances are to be kept in mind so that he may not be deprived of basic necessities of respectable and decent living.²⁷⁷

The wages as a cost paid in return for work,²⁷⁸ done and services rendered is to be determined and fixed keeping in view the following aspects of a workman and his surroundings:

²⁷⁶ Saeed Abo Al-Fotooh Muhammad Basyooni, " *Al-Hurriyyah Al-Iqtisadiyyah fi Al-Islam Wa Asaruhaa fi Attanmiyah* ", Dar-ul-Wafa Al-Mansoorah, p.380

²⁷⁷ Hamza Al-Jamiee, " *Awamil Al-Intaaj fi Al-Iqtisad Al-Islamii* " p.218

²⁷⁸ *Ibid.*, p.217

1. Circumstances (in which the work is undertaken), magnitude of responsibility and arising out of the consequences thereto.
2. Level of qualification and other related conditions required for the performance of a particular type of work.
3. Required skills, expertise and efficiency of the workman to be used in the process of productivity.
4. Level of cost of living in work place and accommodation (cost of lodge and board).
5. Availability of the amount and level of the natural resources.
6. Level of social and economic structure of the society.
7. Taking into consideration the required level of knowledge, skills and psychology.
8. Keeping in view timings of rest, holidays, bonuses, allowances and other incentives.²⁷⁹

5.1.1.4. LIABILITY OF WORKMAN FOR LOSS OR DAMAGE IN PAKISTANI LAWS AND SHARIAH

One of the issues, related to the minimum wage laws is the deductions made by the employer from the wages of a workman on various grounds.²⁸⁰ One of the grounds for the deduction is loss or damage to the goods or loss of money entrusted to him for custody and the loss or damage occurred due his negligence or default.²⁸¹

It seems from the above provisions that the deductions could not be made in respect of tools etc supplied to a workman to be used by him during the course of performance his duties because they are not to be considered to be in his custody. Perhaps, the intention of

²⁷⁹ Ibid., pp. 217-218

²⁸⁰ S. 7 of the Payment of Wages Act, 1936.

²⁸¹ Ibid., S. 2 (c)

the legislature was to make liable those to whom some goods or money is entrusted in their custody.

From *Shariah* view point, it is popular according to Islamic scholars that deductions are allowed from the wages in case of workman's neglect and default but the deductions shall be in accordance with the terms and conditions of the contract of employment and customs and usage²⁸² as every Muslim is required to keep and fulfill his promises.²⁸³

All *Fuqaha* are unanimous on the point that *Ajeer-i-Khaas* is not liable for any loss or damage to goods etc given in his custody because it is considered to be *Amana* (trust) in his hand. But if the loss or damage happened due to his negligence or default then he is liable to compensate it.²⁸⁴

5.1.1.5. FINE AND PUNISHMENT IN CASE OF NON-COMPLIANCE OF THE MINIMUM WAGE LAWS

The competent authority to try claims, arising out in case, the wages have not been paid in due time²⁸⁵ prescribed by the Act* or if deductions from wages were made unjustly by the employer²⁸⁶ is to be appointed by the provincial government.²⁸⁷ The employer may be punished with fine to the extent of rupees five hundred in the above mentioned cases. And whoever has violated the provisions regarding fixation of wages period which shall not exceed one month²⁸⁸ or did not pay wages in cash²⁸⁹ or failed to display the provisions of law related, on the notice board, to the workmen in the language they understand.²⁹⁰

²⁸² Waba Azzuhaili," Al-Fiqhul Islami Wa Adillatuhoo", Darul Fikr, Vol.4, p. 563

²⁸³ Al-Isra. 34

²⁸⁴ Waba Azzuhaili," Al-Fiqhul Islami Wa Adillatuhoo", Darul Fikr, Vol.4, p. 563

²⁸⁵ S.5 of the Payment of Wages Act, 1936

²⁸⁶ Ibid., Ss.7-13

²⁸⁷ Ibid., S.15

²⁸⁸ Ibid., S.4

²⁸⁹ Ibid., S.6

²⁹⁰ Ibid.,S.25

In the above mentioned situations the violator shall be fined which may be extended to two hundred rupees.²⁹¹

Islam is very much concerned with the protection of interests of both employer and workman and thus motivates the workman to perform his duty perfectly. And by doing so the employer is required to pay the agreed upon wages promptly.²⁹² Islam has prohibited taking someone's wealth unjustly or without his willingness.²⁹³ There is a *Hadis-i-Qudsi* in which Allah (SWA) says that He will be standing against those who do not pay wages to one who has got some work done for him.²⁹⁴ The wages and profit shall be known to the workman in the transaction of *Ijarah*.²⁹⁵

In nutshell, it can be said that Islam is not in favour of the State's intervention in the economic market unless and until both, employer and workman, observe Islamic teachings. The employer, who is found guilty for exploitation of workmen, shall be dealt with iron hands by the Islamic state as the Caliph Ali (RA) did in his regime when he used to make *Al-Sabbagh* (laundry-man) *wa Al-Sawwagh* (jeweler) liable for something lost or damaged in their custody and told "people cannot be improved except by this". And Umar (RA) also deemed *Ajeer-i-Mushtarak* liable in order to protect peoples' commodities entrusted to them in custody.²⁹⁶

²⁹¹ Ibid.,S.20 (2)

²⁹² Imam Burhan-ud-Deen Abi Al-Hasan "Al-Hidaya, Sharh Bidayat-ul-Mubtadi", Vol.6, p.266

²⁹³ Quran:2:188

²⁹⁴ Saheeh Al-Bukhari and Ibn Maja, See. "*Al-Targheeb Wa Attarheeb*", Vol.3, pp.57-58

²⁹⁵ Ibid., p.267

* The Payment of Wages Act, 1936 says that wages are to be paid within 7 days after the last day of the wage period except in establishments where 1000 or more workmen are engaged. In that case the wages may be paid within 10 days.

²⁹⁶ As reported by Dr. Waba Azzuhaili, "Al-Fiqhul Islami Wa Adillatuhoo", Darul Fikr, vol.4, p.565

5.1.1.6. The Allocation of Monthly-period for fixation of Wages under Pakistani Law and Shariah:

The minimum wages are calculated for work of 48 hours per week and 26 working days per month. Thus aggregate of monthly wages are considered to be actually of 26 days.²⁹⁷ It seems strange because when a person has dedicated himself to a particular industrial establishment where his work is considered and not his right of taking rest. In the above case taking rest of a workman in holidays is on his own cost. It is injustice and against the terms of the employment contract where month is considered to be equal to 26 days. The workmen are normally unaware of this fact that their holidays go unpaid. Indeed, taking rest is a disintegrated part of the workmen's life and recognized around the globe.

Under Shariah, *Ijarat-ul-Amil* (contract of hiring labour) specification of time period is necessary otherwise the contract is *Fasid*²⁹⁸ (irregular). Therefore, *Ajee-i-Khaas* (private employee) is entitled to complete wages from the time he is hired for furnishing some work (whether he is engaged in work or otherwise)²⁹⁹ because he is not allowed or not able to work for others in that particular period. The workman is entitled to have rest and time for his family and worship as it is evident from several traditions of the Prophet as reported by Al-Bukhari "indeed you owe rights towards your Lord, your body (including spirit) and your wife, so give everyone his due right".³⁰⁰

²⁹⁷ Explanation (i) under Sec.3 of the Minimum Wages for Unskilled Workers Ord. 1969

²⁹⁸ Ali Al-Khateef, " *Ahkaam-ul-M'amilat Ashariyah*", Dar-ul-Fikr Al-Arabi, Edi. 3rd, p. 411

²⁹⁹ Waba Azzuhaili, " *Al-Fiqhul Islami Wa Adillatuhoo*", Darul Fikr, vol.4, p.563

³⁰⁰ Reported by Dr.Abo Al-Fotooh Muhammad Basyooni , *Al-Hurriyah Al-Iqtisadiyyah fi Al-Islam and its Effect in Economic Growth*, Dar-ul-Wafa Al-Mansoorah, p. 384

Ali (RA) is reported to have said that a Muslim has to divide his time into three categories; for worship, earning livelihood and entertainment.³⁰¹

Therefore, taking rest by a workman is not something separated from his work but a part of it as no man however he is strong and active cannot work continuously. On the other hand earning livelihood is not the only thing a workman has to do as he needs some spare time for other activities as a social being such as performance of his duties of being a son, father and husband.³⁰²

5.2. CONCLUSIONS

The scrutiny of the minimum wage legislation reveals that first attempt to regulate the minimum rates of wages on national level was seen in New Zealand in 1894 and in Australia in 1896 to eliminate sweatshop employment. With passage of time, the idea got popularity among the developed states. As a result, the Britain in 1909 and the United States in 1938 enacted laws on the subject. The International Labour Organization in 1970 adopted the Minimum Wage Fixing Convention in 1970. Today, minimum rates of wages are a policy instrument in almost 90 % of the world's countries.

As a part of the World Community, Pakistan has inherited its first piece of legislation in the shape of Payment of Wages Act, 1936. The origin of enactment for the minimum rates of wages started by adoption of Coal Mines (Fixation of Rates of Wages) Ordinance, 1960 followed by the Minimum Wage Ordinance 1961 The Newspaper employees (Conditions of Service) Act 1973. The intention of the legislature was to

³⁰¹ Nahj-ul-Balagha, vol.4, p.93

³⁰² Dr.Abo Al-Fotooh Muhammad Basyooni, *Al-Hurriyah Al-Iqtisadiyyah fi Al-Islam and its Effect in Economic Growth*, Dar-ul-Wafa Al-Mansoorah, p. 384

protect the low-wage workmen engaged in certain industries, coal mines and newspapers. Pakistan for the first time, introduced minimum rates of wages 1992. Since then, it is revised every year or every alternate year and announced on the occasion of presenting budget. After the 18th Amendment, 2010 labour legislation including fixation of minimum rates of wages is purely provincial matter though the Federal government still has to play its role as it is a signatory to the labor-related ILO's Conventions.

The existing legislation of minimum rate of wages, applicable to certain categories of workmen engaged in industrial establishments, coal mines and newspapers, is not implemented in word and spirit. Therefore, it does not bear fruits for they have numerous flaws as regard to its extension, applicability, defective procedure for fixation of wages, trial of complaints and imposition of fines. Moreover, lack of awareness among workmen regarding what is on them and for them has added to ineffectiveness of the current legislation. Another cause for ineffectiveness is its amount of workmen benefited by the minimum rates of wages which is almost 2 to 3 % of the current working force in the country.

Islamic Economic System has guaranteed safeguard for both employer and employee interests by giving them their due place in the economic activities they are engaged in. Islamic work ethics create an energetic environment based on brotherhood, equality, equity, fear of accountability before Allah (SWT) and hope for greater reward in

this world as well as in the hereafter. Islam is in favour of free market economy and the state is considered to be a supervisory body unless and until there the evil enters into the market in the shape of greediness, obtaining wealth through unfair means, fraud, misrepresentation, coercion and artificial hike in prices. In the mentioned cases an Islamic States steps down to the market and play its due role till the situation is improved.

Some of the provisions of existing Pakistani Minimum wage laws have lacunas particularly those related to the definitions of a workman and wages, the ambit of these laws, MWBs and fixation of minimum rates of wages, payment of wages in coin and currency, mechanism of implementation and imposition of fines on culprits. The definition of workman is not comprehensive as he is defined in almost all the laws differently, though conveying the same and similar meaning. The minimum wage laws are not extended to employees engaged in domestic work, local enterprises whether of permanent or seasonal nature, those employed in auto-workshops, public transport conductors, super stores and shopping malls employees, self-employed, those working under *Thekedari* system, skilled and unskilled workmen rendering their services in private capacity, professional and educated persons employed in private institutions such as schools, colleges, universities and IT companies and so on.

The intention of the legislature appears to have been taken the matter lightly as most of the wages paid to the workmen are based on customary rules and usages. It is an

undeniable fact but it has left the workmen in the hands of greedy employers to exploit and discriminate by payment of fewer wages than usual, late and delayed payment and sometimes non-payment of the wages. There is a dire need for revising the current ambit of the minimum rates of wages so that the above mentioned categories of persons may be brought under the umbrella of the existing laws because the prevailing legislation is based on discrimination and injustice.

The yard stick for the determination of minimum rates, suggested under the relevant laws, is change in the economic conditions, cost of living and other related factors which may be considered by the MWBs while recommending minimum rates of wages to the Federal and Provincial governments. The minimum rates shall be determined and fixed in one of ways i.e. that the government shall leave the matter to the mutual agreement between the employer and employee and the government's role shall be of supervisory body. In case the interests of both or one of them are in danger the government shall step in to the market. Secondly, the wages minimum rates shall be determined while considering these factors namely, extra ordinary qualities of body and mind, higher qualification, special natural circumstances (such as old age, family size and juvenile workmen's future career) and other factors the government thinks fit to affect performance of work and productivity in a particular work place.

In nutshell, the above mentioned provisions of the minimum wage laws in Pakistan are not *Shariah*-compliant. However, the remaining provisions of the laws in conformity with *Shariah*. The governments shall take up the matter and revise the repugnant provisions into *Shariah*-compliant in the light of general Islamic Economic Principles so

that the interests and well-being of both employer and workman is protected and promoted.

The primary aim of the thesis focused on the comparative analysis of Pakistan's minimum wage legislation with *Shariah*. I have tried my best to present the issue in a way it deserved. Anyhow, it is suggested humbly that the issue shall be opened for further research from the Islamic View point so that we may be able to prove that *Shariah* is a complete code of life as it is applicable and suitable for every place and time to come. The Muslims scholars shall prove the above mentioned point and present a comprehensive minimum wage law to be made part of the ILO Conventions in this regard as *Shariah* is the only system which has always answered to the call of those sufferer from the injustices and discrimination of the culprits in every time period.

5.3. RECOMMENDATIONS:

As no man can claim perfection, the same is case with the man-made laws as they are always subject to reforms and improvements. Keeping in view the above point there are several flaws and loopholes in the existing pieces of legislations related to workmen's minimum wage fixation. Due to the existing flaws and lacunas the fruits of MWLs are out of the reach of most of the workmen in the country. Therefore, some recommendations will be forwarded to bridge these lacunas. Majority of the recommendations are related to the definition of workman, factors affecting wages, determining minimum rate of wages and implementation mechanism.

The study of the existing minimum wage legislation in Pakistan, which is mostly based on the English concept, has persuaded me to forward some recommendations and suggestion as to make the contemporary laws *Shariah*-compliant. The idea of wages and salaries got its roots from the Roman Empire in Europe where most of the workmen were considered to be slaves and therefore most of their rights were violated. By the time Industrial Revolution took place the working class of the society was counted as one of the factors of production and therefore dealt with as a commodity.

On the other hand, from the day first, Islam considers the employer-employee relationship to be based on brotherhood and not of master and servant. Islam considers work as personal obligation (*Fardh Aiyn*) on every Muslim. All the prophets acted upon the commandments of Allah (SWT) and adopted one or the other profession and they were proud of that. In the Holy Quran doing *Halal* work was called *Fazlullah* (the blessing of Allah) and Muslim has motivated to ascertain it in the permissible manner. The concept of *Ajeer-i-Khaas* and *Ajeer-i-Mushtak* (private employee and common employee) if really applied with its body and spirit to the minimum wage legislation along with Islamic Work Ethics then it will bear fruits and will heal low-wage workmen's sufferings.

Here are the recommendations on the important aspects of the subject:

1. The definition of workman under the minimum wage legislation is incompatible in all relevant laws as the Payment of wages Act, 1936 calls him "employed person" , the Coal Mines (Fixation of Rates of Wages) Ordinance,1960 as "labour employed", the Minimum Wages Ordinance, 1961 as " worker" and the Minimum Wages for Unskilled Workers Ordinance,1969 as " worker or unskilled

worker". The only piece of legislation which names an employee as "workman" is the Workmen's Compensation Act, 1923. Therefore, a common definition shall be given for all employed persons irrespective of industrial establishment/ company/ factory and office they are working in as *Shariah* has assigned workman a simple name i.e. *Ajeer-i-Khaas* (private employee).

2. The term "wages" has been assigned multiple definitions in almost all relevant laws due to which it seems to be of complex nature because most of the important allowances and bonuses, a workman is entitled to, are excluded to be part of the wages such as; the value of house accommodation, supply of light, water, medical attendance and travelling allowance. Therefore, a simple and definition shall be inserted to the relevant laws and all the above allowances shall be made part of the wages as they are necessary for an employee in the performance of his duties smoothly.

In *Shariah* the term *Ajr* and *Ujrah* (wages) are used to refer to all that what a workman gets in return of his work or services by completion of the mutually agreed upon work.

3. The minimum wage laws made it compulsory that the wages must be paid to the workman in current coin and currency and in case of violation he may be punished with fine. It seems inappropriate as a workman, being a human, needs both cash and kind and sometimes payment in kind is more satisfactory than cash for both workman and employer as in the case of agricultural employment in villages. So, this condition shall be omitted and the payment of wages shall be made open to the mutual agreement of both employer and employee as it is the

case with Islamic Law. Under *Shariah* the *Ujrah* may be in cash or kind or in both or as agreed upon by the *Sahib-ul-Amal* and *Ajeer* (employer and employee).

4. The minimum rates of wages, under the current minimum wage laws, are applicable and extended to the unskilled, juvenile and coal mines workers and other workmen are out of its ambit. Although, the provincial governments have the authority to extend the minimum rates of wages to other industrial establishment or class of workmen. It is observed by the experts that almost 2.4% of the total working force in the country is getting benefit of these laws and the remaining workmen who are engaged under *Thekedari* system, workmen in auto-workshops and home-based domestic workers who are estimated to more than 12 millions are not entitled to minimum rates of wages, announced by the provincial governments for time to time. Moreover, highly qualified educated persons employed by private schools, colleges and universities, on very little and exploitative wages are not subject of the minimum rates of wages. It means that actually these laws are not serving its purpose i.e. protection of low-wage workmen.

Therefore, the provincial governments shall look into the matter and do applicable these laws to each and every employee, irrespective of industry, company, factory, office, mine, skill and profession he is engaged in for providing his work, skills or services.

Islam does not allow any discrimination between workmen. They all are entitled to fair and reasonable wages based on the general principles of *Shariah* of *Al-Adal*

wa Al-Ihsaan and in accordance with the contemporary customs and usages and agreed upon by the employer and employee. The educated and skilled persons are to be given due place in the society and there shall be special provision under which their minimum rates of wages shall be specified so that they live an honorable and respectable life. Otherwise, the *brain drain* system is prevailing at large in the developing countries and most of the educated will opt for it because they feel themselves being exploited by the above mentioned private institutions.

5. The minimum wages legislation is inconsistent in respect of imposition fines on those violate the provision regarding non-payment of wages, delay in wages, and payment below the level of minimum rates announced by the government and in case of deductions when made unjustly. In all the above situations the employer may be punished with fine up to five hundred rupees. It is surprising that how some of the guilty-minded employer will comply with the laws' provisions as they will consider it a fun to violate them.

It is felt, therefore that the provincial governments shall extend applicability of the relevant provisions of the Civil Procedure Code 1908, the Pakistan Penal Code 1860 and Criminal Procedure Code 1898 so that no one could dare or even think of violation of the workmen's right to full rates of wages as it is violation of one of his fundamental rights.

6. Under the existing minimum wage laws the competent authority, to try claims of workmen in case of violation of certain provisions by employers, is a Commissioner for the purpose of workmen's compensation. For trying other claims such as unjust deductions, non-payment or delay in payment of wages, the

provincial government is authorized to appoint a civil judge or magistrate. It is undeniable fact that the Commissioners, civil judges and magistrates are already under the bulk of cases and therefore it is taking long time to wait for the decision of a court to come. That is why the culprits are encouraged to violate the laws and workmen hesitate to file suites for their complaints.

Therefore, the government shall appoint a separate civil judge or magistrate in every district to try cases regarding employer and employees matters as access to justice is fundamental right of every citizen which is safeguarded by the constitution of the land.

7. The Minimum Wages Boards in the provinces are just nominal and thus failed to redress the grievances of the workmen in various industrial establishments and coal mines. The purpose of the MWBs was to give recommendations by the reference of the provincial government as regard to the determination of minimum rates of wages. The Boards are required to keep in view the economic conditions, cost of living and other related factors which are affecting minimum rates of wages and to make recommendations to the provincial government. The recommendations, so given, shall not be earlier than one year and not later than three years.

The fact is that economic conditions and cost of living keep on changing so frequently in developing countries like Pakistan which requires that the functions of the MWBs shall be sped up to ensure its effectiveness. As for the appointment of the chairman of the Board, he shall be an expert in comparative economist I mean a scholar of both Islamic and conventional economics having adequate

knowledge and experience regarding industrial labour. The remaining set up shall be intact as per the laws regarding MWBs.

8. The factors in determining minimum rates by the MWBs are limited to the change in economic conditions and cost of living under the existing minimum wage laws. For Setting up minimum rates of wages by the MWBs on the basis of change in economic conditions and cost of living are not the sufficient grounds to be taken into consideration. There are other factors, related to workmen, which need to be considered while the minimum rates of wages are decided such as exceptional qualities of a workman related to activeness, punctuality, hard work and creativity and higher qualification as well as skills a workman is having, shall be made a part of the factors affecting minimum rates of wages for employees irrespective of job/work and employment they are engaged in.
9. Pakistan has ratified almost all basic Conventions of the International Labour Organization's (ILO) Conventions. Among others, the Convention on Decent Work for all workmen requires the member states to introduce the Decent Work Country Programme (DWCP) for the well-being and protection of the working class in their respective work places. Pakistan introduced DWCP for the years 2006-2009, for the first time, to improve employment conditions for workmen. The second DWCP was planned for the period 2010-2015 for the achievement of certain objectives for example labour law reforms and employment generation. The provincial governments, after the 18th Amendment, in consultation with the Federal government prepare draft of the DWCP. So, it is suggested that the government, along with focus on employment generation, shall concentrate on the

reforms in the area of minimum rates wages as it is a means through which the existing working force will feel satisfied. And when the workmen lead satisfied life they will take keen interest in the productivity and thus the economy will flourish and employment opportunities will automatically be generated in the country.

10. Enforcement mechanism under the existing minimum wage laws is very poor.

One of the reasons is lack of awareness among the workmen about their right to minimum rates of wages. The government shall make special arrangements to make aware the workmen and for this purpose publish pamphlets regarding what is on them and what is for them.

11. The Federal and provincial governments, in the recent years, kept on revising the minimum rates of wages on the occasion of presenting budget. It is encouraging but it is not healing the grievances of the working class for the reasons such as limited extension and applicability of the minimum wage laws, the rise in the cost of living is more than the increase in the minimum rates of wages due to inflation and the rapid raise in ratio of unemployment in the country. Therefore, the Federal and Provincial governments shall concentrate on controlling along with increase in the minimum rates of wages as just 2 % percent of the workmen are benefitted by the increase in minimum rates but by controlling inflation almost all Pakistanis will get the fruit of decrease in the cost of living.

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