بسم اللہ الرحمٰن الرحیم

Thesis
Contracts
Commercial Law
Contract Law

FINAL APPROVAL

It is certified that we have gone through and evaluated the dissertation submitted by Muhammad Ijaz, a student of LL.M. International Trade Law having University Registration No. 102-FSL/LLMITL/F15 titled **"Jurisprudence of Sanctity of Contract: A Critical Appraisal in Pakistan"** in partial fulfillment for the award of degree of LL.M. International Trade Law. We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of degree.

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DEDICATION

"Man gets whatever he strives for" (Al-Quran 53:39)

This thesis is dedicated in loving memory of my father, the late CH.SIRAJ DIN, Head teacher and chairman (usher-o-zakat committee) of our union council, who died tragically before initiation of successful and [illegible] envisaged life. This work is in recognition of their dedication and devotion to the advancement of their children's education as a means of empowering them to be independent agents of change. It is my wish to use his investment in me (a learning period from two wheels to four wheels with him) to contribute my more learning, skills and knowledge to a better of this world.

May his soul rest in peace.

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Thirdly, I love to dedicate my research work to my sister who continuously praying for me and brothers, who have heartedly and financially supported me.

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ACRONYMS

SGS:	Société Générale de Surveillance
ICSID:	International Centre for Settlement of Investment Disputes
BIT:	Bilateral Investment Treaty
WAPDA:	Water and Power Development Authority
IPP:	Independent Power Producer
PML:	Pakistan Muslim League
FDI:	Foreign Direct Investment
SWF:	sovereign wealth fund
ICC:	Chamber of Commerce
MIGA:	Multilateral Investment Guarantee Agency
UNCTAD:	United Nations Conference on Trade and Development
PRC:	People Republic of China
UCL:	Uniform Contract Law
WTO:	World Trade Organization
ECL:	Economic Contract Law
NPC:	National Congress Party
FECL:	Foreign Economic Contract Law

TCL:	Technology Contract Law
GPCL:	General Principles of Civil Law
CISG:	Contracts for the International Sale of Goods
FDIUS:	Foreign direct investment in United States
PPA:	power purchasing agreement
FIR:	first information report

ABSTRACT

Doctrine of sanctity of contract has been weaken during the present era which is causing negative impacts on international trade and foreign direct investment in Pakistan and it required to be strengthen by statutory instruments. This doctrine exists as a place of spinal column in the economic relations and best economic body of any country as it enhance the trust of foreign investors about protection of their property and other rights in host countries. Moreover, this principle is binding in nature, as it has been acknowledged by Islam and as well as well as certain developed legal systems like, France, U.S.A and China. Similarly, it has been clearly expressed in different treaties, conventions, International and national laws in this world. In order to compete different challenges of the Globalized trade world, they have liberalized their economic policies according to the modern trade's requirements, to attract the foreign investors and stable their economy through foreign capital. Unfortunately, in Pakistan the situation of foregoing principle is wretched due to certain factors like mix governance, strict economic policies and political and court's intervention in expressed contract's terms. As repercussions, foreign direct investment has been slow down and foreigners are shy to invest in Pakistan. There is a huge essence to modify the existing laws and policies particularly under the modern trade umbrella. This research work consist of five parts at all. First part shortly tells about the whole topic and its importance as well as critical analysis in Pakistan and second consists of Universal acknowledgment of sanctity of contract principle and instances of certain developed countries with their best economic policies. Third chapter deals with importance of foregoing principles in Islam and other religions. Furthermore, a fourth part of this thesis enlighten the despondent situation of contract's compliance in Pakistan, its certain factors

and critical analysis of jurisprudence of aforementioned principle and policies in Pakistan with neighbor countries; china and India. Conclusion and recommendations have been mentioned in last or fifth part of thesis.

INTRODUCTION

Doctrine of sanctity of contract has been weaken during present era which is causing negative impacts on international trade and foreign direct investment in Pakistan and it required to be strength by statutory instruments. The nature of sanctity of contract is binding as it is determined by Islam and it is one main source of general principal of contract law.[1] Further, the concept of sanctity of contract has been always important in any society where commercial activities play significant role in lives of people. In addition to this, every nation in order to provide or survive their people shall make a mode of development and a legal development form integral part in that sense. As Amartly Sen perceptively pointed out, "The notion of development can't be conceptually de-linked for legal and judicial arrangements''.[2] This doctrine has also been acknowledged by Islam and sharia law. Despite of its much importance many laws and this doctrine has been weaken in Pakistan due to practice of discretionary power of court and public policy particularly in many foreign investment contract and arbitral agreements. Thus, there is a requirement to make strong law and some reforms in the power of court in order to reinstate the sanctity of contract in Pakistan. As a supreme court of India observe in an expert manners,

"The basic duty of court of law is to enforce a promise which the party have made and to uphold the sanctity of contract which forms basic of society.''[3]

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[1] Larry A. Dimatteo, International Business Law: A Transactional Approach (United States of America: Rob Dewey, 2006), 407-415.

[2] A. Sen. '' what is the role of legal and judicial reform in the development process?'' paper read at the world bank legal conference .Washington D.C , JUNE 5 (2000)

[3] Justice K.K Mathew, law commission of India, 97th report. Section 28 Indian contract act 1872(new Delhi; ministry of law , justice and company affairs ,1984)p.6

The nature of principal of sanctity of contract is binding, it directly deals with performance of contract and due to globalization [4] in the trade world many developing country including Pakistan has made law for survival for such situation. Vienna convention[5] and also many general laws in Pakistan like contract act and constitution of Pakistan impose sanctity of contract. Along with aforesaid significance of such principal there are some exceptions like frustration of contract, force majeure clause and public policy but the exception also must be account in such situation when it has been wasted real object of contract.[6] It has a great impact on economy and foreign direct investment of any country as it boost the trust of foreigners about the safety and protection of property rights in host and developing country because the natural response of the commercial man depends upon the seriousness of the contract.[7]Religiously speaking, Islamic law or sharia stressed on sanctity or performance of contractual liabilities that in any case contract should be performed, it also condemned and criticized the nonperformance of contracts for this claim we have a lot of evidences from Holy Quran[8] and hadith.[9] So, without seriousness and positive behavior towards contract compliance a country can't achieve its goal of strong economy through foreign investment in globalized world. To gain better position host countries makes public policies to attract foreigners to invest in host or developing countries. Unfortunately, in Pakistan the doctrine of sanctity of contract has been weaken due to some factors and forcible public policies in which courts merely see the doctrinal approach rather than impacts on economy and ordered against the written clauses of

[4] Definition; World Bank group, Globalization, growth and poverty, 2000.
[5] Article 26 of Vienna convention 1969.
[6] Carole Murry, M.A. (cantab.), Schmitthoff's Export Trade: The Law and Practice of International Trade (London: Sweet and Maxwell Limited, 2007), 120-138.
[7] J.W Carter, Breach of Contract (Sydney; the law book company limited. 1984) 83.
[8] Al amr:34 and Al baqarah:40
[9] Sahi Al Bukhari, hadith no:33

agreements particularly in transnational contracts. There are many factors and certain public policies which common challenges to sanctity of contract in Pakistan resulting in deviations from sanctity of contract like, structural weakness of system, delay in disposal of cases, nationalism ,Contracts made by previous regime, onerous contracts, and particularly public policies about choice of law, choice of forum, plea of forum non-convenience and prevalent judicial thinking in respect of foreign jurisdiction particularly arbitrarily of international commercial disputes.[10] There are many precedents by which the name of Pakistan has been tarnished in the trade world and loss the trust of foreign investors, like SGS v Pakistan case.[11]In this case Supreme Court of Pakistan has granted stay about ICSID[12] jurisdiction against the rules of BIT treaty between Pakistan and Swiss confederation. Similarly the issue of jurisdictional clause in which the supreme court re-invent the public policy itself in well-known case of HUB power company(HUBCO) vs. WAPDA case.[13]In addition to this, there are certain other instances which shows the weakness of sanctity of contract doctrine in Pakistan such as ECKHARDT and co., Marine vs. Muhammad Hanif.[14]Similarly, Pakistan has not a good record in public private cases like case of IPPs.[15]The Benazir Bhutto signed a no. of IPPs contracts under the 1994 power policy but in 1998 the government of PML (N) started investigation of IPPs. The judgment of HUBCO was further aggravated the situation.[16]This attitude has fade the image of

[10] Inaamul Haque and Naeem Ullah Khan, "JURISPRUDENCE OF SANCTITY OF CONTRACTS IN PAKISTAN-A CONTEXTUAL perspective "Pakistan law journal (2009), 387-415.

[11] SGS Societe General De Surveillance S.A v Islamic Republic of Pakistan, Washington, DC case No.ARB/01/13.

[12] The International Center for Settlement of Investment Disputes is and international arbitration institution established in 1965 for legal dispute resolution and conciliation between foreign investors.

[13] HUBCO vs. WAPDA,PLD 2000,sc 841

[14] PLD 1993 SC42.

[15] An IPPs is "an entity which is not a public utility, but which owns facilities to generate electric power for sale to utilities and end users"

[16] A. Siddiqui, "IPPs: The Real Issues", the Pakistan Development Review 37:4(1998), 812.

Pakistan in the eyes of foreign investors, in order to highlight that situation Mr. Justice Ajmal Mian gave his remarks, "We should not overlook the fact that any breach of a term of such a contract to which a foreign company or person is a party will tarnish the image of Pakistan in the comity of nations."[17]

As a consequence there occurred a drought in the IPP Investments with calamitous impact on the national economy of Pakistan, after that the status of IPPs investments was entered into very crucial condition as no IPP was established in the era of 2002-2007, which were 15 in 1997-2001.[18]The repercussions of such situation were that japan has changed their investment policies with Pakistan. Japanese investments in Pakistan remained limited and their investors are still shy to invest in Pakistan.[19]Presently, is losing the Friendly-business status in the world as it has 138th rank in the World for friendly-business environment.[20]

All these circumstances show that there are some factors which are intervening in the compliance of doctrine sanctity of contract. Although it has a great importance through international and general laws of Pakistan like Article,2 of constitution of Islamic Republic of Pakistan and section,23 of contract act 1872 but it has been weaken due to enforceable powers of courts with the munitions of public policies and breach of contractual obligatory clauses. Conclusively, courts in Pakistan performing their duties but they are intervening in the compliance of contracts particularly for granting reliefs to the government and overcome their loss in contracts with foreign investors. It is tarnishing the image of

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[17] PLD1993 SC 42.

[18] Source: private power and infrastructure Board, available at: http://ppib.gov.pk./commissionedIPPs.htm

[19] M.Aslam Chaudhary and Kiyoshi ABE, "Pakistan, japan and ASEAN trade Relations and Economic development" Pakistan economic and social review xxxviii: 2(2000), 193-214.

[20] World Bank Report, 2016.13th edition, p.5.

Pakistan with developed trade countries and leaving the bad impacts on economy. So, there is hardly need to mode such policies and factors in the favor of economy by strengthening the constitutional instruments in order to survive in globalized world.

Thesis statement

Doctrine of sanctity of contract has been weaken during present era which is causing negative impacts on international trade and 'foreign direct investment' in Pakistan that may be strengthen by statutory laws.

Literature Review

Larry A.Dimatteo in his, "International Business Law: A Transactional Approach"[21], chapter No. 3, discussed different sources of general principles of contract law and discussed the Pact Sunt Servanda in detail with its importance. He also touched the other factors which can enhance the economy of any country. But he has not been discussed the other side or bad impacts of noncompliance of aforesaid doctrine.

Carole Murray in his, "Export Trade: The Law And Practice Of International Trade"[22]chapter No:6 has elaborated the different exceptions of Doctrine Sanctity of contract and trade modes at international forum but overlooked the public policy as an exception and its best usage for, the betterment of international trade.

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[21]Larry A.Dimatteo, International Business Law: A Transactional Approach (United States of America: Rob Dewey, 2006), 407-415.

[22] Carole Murry, M.A.(Cantab.),Schmitthoff's Export Trade: The Law And Practice Of International Trade(London: Sweet and Maxwell Limited,2007)

Further, Theodore Frank Thomas Plucknett in his, "A Concise History of Common Law"[23] described all the history of common Law courts and before the era of aforementioned courts like Ecclesiastical courts and courts of chancery. He also cited the growth of sanctity of contract but he didn't deliberated the method which adopted by English counties and their procedures to perform contractual obligations. Religiously speaking, I have read some books of Ahadith,[24] sharia law and recitations of Quran,[25] in this importance of doctrine of sanctity of contract has been stated.

And Dr. Ahmad Azam Othman in his, "sanctity of contract under Islamic law with special reference to the Malaysian Banking Cases" analyzed the concept of sanctity of contract together with the freedom of contracting parties to agree and stipulate under Islamic law but he didn't mentioned penalties and remedies after the breach of contract.

Furthermore, Inamul Haque and Naeem Ullah Khan in his, "jurisprudence of sanctity of contract in Pakistan-A contextual perspective"[26] emphasized upon the practices usually followed in Pakistan. He has also clearly mentioned that the courts are intervening particularly in the arbitration and jurisdiction matters with special references of national and international cases. But he has not been mentioned that whether a court can invent a new public policy or not. I shall work on such aspect of court powers.

Similarly, Sir David Hughes Parry in his, "The sanctity of contracts in English Law",[27]in chapter no.2,3 elaborated the growth of sanctity of contracts, its encroachments

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[23] Theodore Frank Thomas Plucknett, A Concise History Of The Common Law(Boston: Little Brown and company,1956)

[24] Sahi Al Bukhari, hadith no:33

[25] Al amr:34 and Al baqarah:40

[26] Inaamul Haque and Naeem Ullah Khan, "Jurisprudence Of Sanctity Of Contract In Pakistan-A Contextual Perspective", Pakistan law journal(2009),387-415

[27] Sir David Hughes Parry, the Sanctity of Contract in English Law (London: Stevens And Sons Limited, 1959), 1-38.

and curtailment of freedom of contract by the common law but he has overlooked the concept of breach of contract through public policies.

Naeem Ullah Khan in his, "International Economic Law: Theory and Practice in Pakistan"[28] he introduced economic laws with international commercial arbitration and practice in Pakistan and tools of international trade. But in this book I haven't read any tool to enhance the investment and economy of trade in any developing country by public policies.

Anthony Bende-Nabende in his, "Globalization, FDI, Regional Integration and Sustainable Development"[29]in chapter 7 described merits an de merits of globalization, effects of political and corruption culture , liberalization and other factors but overlooked the fact by which we can overcome on any de merits of globalization and public policy.

Gulia Carbon in his, "The interference of court of the seat with international Arbitration"[30], dwell on the importance of courts system in the arbitration system, as no arbitration can achieve its aims without the assistance of the domestic judicial system. But he produced not that what circumstances in which courts can breach contracts and arbitration agreements.

The World Bank in his "World Bank Repot"[31] at page no.5 disclosed that Pakistan is losing the status in world towards Friendly-Business environment and presently it has 138th rank in the world towards friendly business environment but they didn't mentioned the catalyst of such situation.

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[28] Naeem Ullah Khan, International Economic Law Theory And Practice(Lahore: Mushtaqi Printers,2015)

[29] Anthony Bende-Nabende, "Globalization, FDI, Regional Integration and Sustainable Development (Burlington: Ash Gate Publishing Limited"2002), 216-290.

[30] Giulia Carbon, "The Interference Of The Court Of The Seat With International Arbitration" J.Disp,Rosol.(2012),217

[31] The World Bank Report 2016, 13th edition, 5.

Fabio Bason, in his edited work, "Research Hand Book on Sovereign Wealth Funds and International Investment Law"[32] prescribed the European and SWF, National security related concerns, its multilateral invitations and freedom for capital circulation with restrictions on foreign investment. Analytically, there is no method for the capital circulations in Asia and particularly in South Asian countries.

WILL and EMERCY in his, "A Legal Guide to Investigating in France for Foreign Investment 2015" mentioned about different public policies and administrative arrangements for the protection of foreign investment in France. But he has overlooked the continuing reality of doctrine of public policy under which courts may violate the universal principle, "sanctity of contract".

Ren David in his creation, "Frustration of Contract in French Law" explained the exceptions to general principle pacta sunt servanda and its strict observations at the time of hearing about Frustration of contract, but he has missed to disclose the tool by which French courts could scrutinized the facts for of justice.

William C. Kirby in his, "China Unincorporated: Company Law and Business Enterprises in Twentieth Century in China "elaborated the Chinese legislation system and its laws particular economic laws. Further, he provided the factors which can hinder the contract's compliance but he missed the method by which foreign investors are willing to invest in china.

Johnn H. Matheson in his, "Convergence, Culture and Contract Law in China"[33] stated different factors for the development in Chinese economy, their good faith dealings

[32] Fabio Bassan, eds, Research Handbook on Sovereign Wealth Funds and International Investment Law(Cheltenham: Edward Elgar Publishing Limited, 2015)

[33] John H. Matheson, "Convergence, Culture and Contract Law in China" 15 Minn. J. Int'l L. (2006), 329.

and molding of laws according to the liberal approaches of Globalized trade world towards public policy doctrine. Moreover, he provides the criteria for performance and termination of contracts in laws of china and different remedies as well. Similarly, he encompasses political and social problems for getting more foreign capital in china but he did not provided method to overcome these problems.

G.R Delaume in his, "What Is An International Contract? An American and Gallic Dilemma"[34] define an international contract and its importance for friendly relationship in the Globalized world of trade. He has also mentioned the positive approach of U.S courts, to enhance the economy, through friendly relations with developed countries. But his research is not encompassing all the present and future targets of high pace trade.

Nabil Saleh in his, "Origins of the Sanctity of Contract in Islamic Law" [35]provides the evolution of contracts and historically importance of this principle in Islamic law. He has also mentioned here other religions which have the much important concept of contract's compliance laws like Islam.

Sir George Paton in his creation, "Jurisprudence"[36] describes the historically concepts of remedies and recovery of damages against the breach of contract.

Noor Muhammad in his, "Principles of the Islamic Contract Law" [37]provides the modern approaches of sharia law about contracts and remedies for its breach under the

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[34] G.R Delume, "What Is an International Contract? An American and Gallic Dilemma", the International and Comparative Law Quarterly28:2 (1979), 258-279.

[35] Nabil Saleh, "Origins of the Sanctity of Contract in Islamic Law", Arab Law Quarterly 13:3(1998), 252-264.
URL: http://www.jstor.org/stable/3382010
Accessed: : 20-03-2017

[36] Sir George Paton, "Jurisprudence", ed. 2nd, (1954) at.p.350.

[37] Noor Muhammad, "Principles of Islamic Contract Law", Journal of Law and religion6:1(1988), 115-130.

divine principles. But he doesn't mentioned any suggestion, particularly for Islamic concepts, by which Islamic and other countries can enhance their modern views to legislate the economic laws under Islamic principles.

Harold H. Punke in his, "Honesty as The Best Policy" [38]disclosed the reality of the public policy doctrine and prescribed the importance of sanctity of contract for the establishment of a civilized society.

Aymo Brunett, Grogory Kisunko and Beatrice Weder in their mutual creation of, "Credibility of Rules and Economic Growth: Evidence from a World Wide Survey of the Private Sector"[39], has discussed economic growth and its policies but he didn't mentioned uncertainty which had created hurdles in the way of economic growth, on the other hsand.

Jun Wu, Shomin Li and David D. Selover in their mutual writing, "Foreign Direct Investment v. Foreign Portfolio Investment: The Effect Of The Governance Environment"[40] examine the governance environment of any host country, its role to attract the foreign investors, different types of governances and their impacts on economy of forty five countries. But they didn't wrote about bad impacts of mixed ruled based Governance and suggestion to overcome those bad factors.

Hoon Lee, Glen Biglaiser and Joseph L.Staats in their co-writing, "The Effect of Political Risk on different Entry Modes of Foreign Direct Investment",[41] incorporates the particular mode of political institutions which can effect on the entries of capital in the host

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[38] Harold H. Punke, "Honesty as the Best Policy", the Journal of Philosphy41:6(1944), 141-147.

[39] Aymo Brunetti, Gregory Kisunko and Beatric Weder, "Credibility of Rules and Economic Growth:Evidence from a Worldwide Survey of the Private Sector" World Bank Econ Rev12:3(1998),353-384.

[40] Jun Wu, Shomin Li and David D. Selover, "Foreign Direct Investment vs. Foreign Portfolio Investment: the effect of the Governance Enviornment", Management International Review42:5(2012), 643-670.

[41]Hoon Lee, Glen Biglaiser and Joseph L.Staats, "The Effect of Political Risk on different Entry Modes of Foreign Direct Investment", International interactions40:5(2014), 683-710.

countries .They have not provided different factors which could be disturbed the foreign investment in the host country and not suggest to overcome these situations.

Hans Wehberg in his, "Pacta Sunt Servanda" [42]expounds the evolutionary history of universal principle Sanctity of contract and its importance to gain the development economic field but he didn't mentioned its exceptions and tools to avoids the contracts breaching.

Abd. El- Wahab Ahmed El Hassan in his, "Freedom of contract, the doctrine of Frustration and Sanctity of contract in Sudan Law and Islamic Law"[43] covers the concepts of Holiness of contracts in Islamic history, Sudan law and Sharia laws as well. But he did not touched the recommendation and gears by which any Muslim and other country can mold their laws according to modern trades under Islamic principles.

Significance of Research

This study is comprising on a very core subject of international trade law dealing with low economic flow of state, and investments with regard to the noncompliance of private and international contracts. Doctrine Sanctity of contract has always been important in a commercial lives of any society, which is impossible without positive attitude of courts towards contract compliance. My study will be emphasized on the courts that they must be observed the impacts of contract's breaching on economy rather than merely doctrinal approach. Further, it will provide solid parameters for public policy especially in the economic matters of any country. Furthermore, the area of my research is such that by

[42] Hans Wehberg, "Pact Sunt Servanda", the American Journal of International Law53:4(1959), 775-786.

[43] 'Abd El-Wahab Ahmed El-Hassen, "Freedom of contract, the doctrine of Frustration and Sanctity of Contract in Sudan Law and Islamic Law", Arab Law Quarterly1:1(1985), 51-59.

which researchers will get new ambitions in Pakistan and it will be tried to draw a new map for Pakistan towards development in globalized world. Objective of research work is to emphasize the government and Courts that they must be honored the contract for economic prosperity in Pakistan. Similarly, it will provide the new opportunities to main stake holders, particularly people of chamber of commerce and lawyers for getting training according to the modern trade's parameters. In addition to this my study will be helpful to strengthen the constitutional instruments for economically better policies and enhance the trusts of foreign investors for investment in Pakistan for globalized world's competition.

Framing of Legal Issues

1. Whether the nature of sanctity of contract is binding or not?

2. Whether Islamic law acknowledge the doctrine of, "Pacta Sunt Servanda"?

3. Whether Sanctity of contract doctrine has been weaken or strengthen during present era in Pakistan?

4. To which extent judiciary playing its role to honored the contracts in Pakistan?

5. Can a noncompliance of contract deteriorate the economy and foreign direct investments in Pakistan?

6. Can a court invent any public policy itself?

7. How can we overcome such current situation in Pakistan?

Hypothesis

Contract must be honored is a Doctrine of sanctity of contract. It has been weekend during present era in Pakistan due to some factors, public policies and extra powers to courts towards foreign direct investment's contracts. It may prove through some

relevant case laws and economically effected history in Pakistan under such conditions. It may also be proved that noncompliance of contract propelling bad impacts on foreign direct investment in Pakistan by analyzing the model laws of different developed countries and laws in Pakistan.

Objectives of Research

1. To provide awareness about binding nature and importance of Sanctity of Contract doctrine through analysis of different country's laws.

2. To disclose the significance of Foreign Direct investments in Pakistan and bad impacts on it due to noncompliance of contracts, through relevant case laws.

3. To outfit the solid parameters, economically strong public policies and strengthen the constitutional instruments to enhance the trust of foreign investors.

4 .To emphasize the courts of Pakistan that they must be observed the impacts of contract's breach on economy rather than doctrinal approach.

5. To raise up a new desire among researchers and trained the main stake holders, people of chamber of commerce and lawyers according to the modern trade's parameters.

6. To realize the importance of Sanctity of Contract and its aspects according to Islam.

7. To provide better solution for overcome such current situation in Pakistan by analyzing the model laws and public policies of developed countries during such conditions.

Limitation or Delimitation

My research topic is a very vast subject of international trade laws about strictly compliance of contracts but I shall lemmatize it with research about weaken conditions of sanctity of contract doctrine and how it can strengthen for a strong foreign direct investment and stable economy in Pakistan.

Research Methodology

In this work, critical, analytical, and comparative methodology of research will be adopted. Main source of material will be theory based on academic books and articles along with ruling, decision of international center for settlement of investment disputes and public policies of different common law countries. Online sources will also be used in order to follow progress in recent case law.

CHAPTER I

NATURE AND IMPORTANCE OF SANCTITY OF CONTRACT

Although, sanctity of contract principle having been a great importance of every past era and a noticeable need for present globalized world. But there are also some exceptions to enforcing the contract.[1] Religiously, it has a countless importance, gives a spiritual satisfaction to humans and blessings of Allah or particular Gods according to their religions. Without giving importance to such principle neither a Holy society can exist nor can it be run fast with the passage of modern time for development. Now these days, this world is facing a great challenging factors and the one catalyst factor is that which is called economic war .Accordingly various countries like France, China and England by utilizing the importance of strict contract's compliance has achieved various economic wins in the modern world and proved themselves as a bridge in the international trade. Thus, before disclose the importance, various features, nature and scope of sanctity of contract, I shall prefer to follow the path of contract's importance and basis of contract in the economic development of any country.

[1] Carole Murray, David Holloway and Aren Timson- Hunt, the Law and Practice of International Trade (London: Sweet and Maxwell Limited, 2007), 119.

Meanings of Contract and Sanctity of Contract

Definition of contract.

The word "contract" is well-defined in section, 2(h) of the Indian's contract Act, 1872, in this way; an agreement enforceable by law is a contract."[2]Thus, for the construction of contract here must be a promise or agreement and it must be enforceable by rules and laws. So, an agreement is considered as a contract while it is enforceable by laws.[3]In other arguments, an agreement of which the law will impose is a contract. The circumstances of enforceability are specified in section (10). As per aforementioned section a promise must be a contract once it is completed for a consideration, and with unrestricted consent of both parties who are capable for lawful object.[4]

Thus, to understand the importance of principle sanctity of contract, firstly we will discuss about the essentials and basis of a contract .As per every definition of a contract one party must give his consent to comply with all terms and conditions of written or oral contract for the sake of future prosperity. If one party denied from an agreement or breach the contract without mutual consent, he must be sued and he must loss the trust in future as well.

The basis of contract

Although contract is a base of smooth and educated society of any country but there are also certain basis of a good contract in society. As we have discussed about the contracts evolution with its importance, it has also affirmed social roots and enforceability in a

[2] Section2 (h), Indian Contract Act, 1872.
[3] Ibide.
[4] Section 10, Indian Contract Act, 1872.

grooming society. The aim of a contract's formation is vanish when its enforceability is on risk. Thus, its related achievements can be possible with the help of good faith intentions and the sanctity of contracts. So, there are certain basis by which we can disclose the historical as well future importance of principle "sanctity of contract".

The Social Roots of Contract

One of the utmost influential of contemporary maxims is Maine's famous maxim that "the growth of the law has been from a status to contract". Generally, it has usually been expected as stating not merely a historical generality but also a result of sound policy that a legal scheme wherein rights and obligations are determined by promise of parties is preferable to system in which they are determined by way of "way of status" This easy guess that whatever occurs to be the effect of history is essentially for the finest and cannot or should not to be responded by any human struggle, is usual not only of historical[5]School of a jurisprudence since Savigny,[6] however also of the general progressive or evolutionary philosophy of Maine's generation and largely of our own. Accordingly, request that under present situations we need certain restrictions on the contract's freedom have faced the complaints that we need not go contrary to history and thus revert to barbarism brutality.

A contract in History

Before considering the rationality of the previous argument let us concisely consider Maine's maxim from the view point of the current state of historic learning. For

[5] Second section, ch.23, qu.1, C.3.

[6] Savigny died at Berlin. His son, Karl Friedrich von Savigny (1814–1875), was Prussian minister of foreign affairs in 1849. He represented Prussia in important diplomatic transactions, especially in 1866.

while study of the ancient in that one is not enough to determine desired policies nowadays, it is essential to view the ruling ideas in their perception and past professions if we are near to detached them from their outdated elements.[7]Generally, the rights plus duties of supreme and subject, of honorable and protecting lordship were promised or contractual in the early mid ages, and steadily ceased to be they became habitual and thereafter replaced by the legislatures of the new national states. It is true as, Dicey, Pound, Brown, Headmenn, Duguit, Charmant and Jelthro have shown that the contemporary state has, in total educated countries, been gradually increasing the range of its functions, so as to men now ensure things by virtue of their status as citizens and taxpayers which formerly they did by voluntary agreement.[8]

Thus, policies could be changed according to the latest demands, public prosperity and particular gaining trust for better economy of any country. After the change, this is particularly cleared in Anthens that ther was rapid expansion of commerce under Cleisthenes, which has been followed in fifteenth century B.c, change from the rigid and rules of jus civille to jus gentium and prretor's disclosed the commerce's effect on the roman law of contract. When, as a consequences of Crusades and other inspirations, European trade initiated to grow and the contract law was liberalized by wide use of an oath to bind verbal promises.[9]

[7] Sir, Main Henry Sumer, Ancient Law (London. Murray, 1876), 12-20.
[8] Hans Wehberg, " Pacta Sunt Servanda", American journal of International Law59(1959), 775.
[9] Esmein, the Promisory Oath in Canonic Law, n.p. (1888), 37.

The Justification of Contract Law

In order to change the violence from the society, there should be some basic reasons for contract and the implementations of contract laws. Following paragraphs will disclose the base and logic of contract laws in the society.

The sanctity of contract

It is usually think that contract law is to enforce the contract or promises. But there is a question that why promises would be enforced? The humblest answer is that by the intuitionists, explicitly, that promises are holy per se there is inherently something shameful about not caring an undertaking, and that an appropriately ordered society should not bear this. This may also be called as common man theory but intuitionists has well defined that by which method we can judge the goodness of an act by its consequence. For instance, if the words: "good and the bad" have any meanings, there must be certain eventual character of action that creates them so, impartial as there certain eventual or ultimate character objects that marks them blue and beautiful. To say that blueness or prettiness of a thing based upon "the observer" means that there is another character involved called as observer. It is clear that common sense finds something horrible about breaking of promise. similarly, we cannot ignore the reality that jurists and judges, like other persons, do commonly express this in their sentiments that it would be arranged an outrage to let one who has broken his guarantee escape totally. There are some exceptions to this answer but it should be reasonable to disclose that, if we feel our presence in the state of people in which mankind are, in point of fact, fight back by the violation of promises. Further, the sensation that such training should be minimized or

discouraged, it is a major and primary fact which the commandment must not overlook.[10]

Views of Kantians like Reinach

The opinion of Kantians similar to Reinach [11]that the responsibility to keep one's undertaking without a sensible society is difficult. Here can be no uncertainty that from a realistic or historical approach, the capability to trust on promises of others enhances to the confidence essential for social contact and Creativity.

So, under these historical views, there is a great essence to build up a society in which every person has positive expectations from one another. A civilized society upon which every outsider can make a trust about their contract's compliance and enhance mutual cooperation.

Religiously, there are also many instances of sanctity of promises under which law of contract has been developed. All biblical mentions to binding undertakings are whichever to those concerning an oath or undertaking and promise to God or other. They accept, as a matter of course, some formality such as striking of hands and pledge or security.[12] Further, contracts or agreements by Greeks had to be in writing, recorded and those were not open from else formalities.[13]Furthermore, if we talk about German norms about sanctity of contract then, authority of Gierke, following the Grotius and Tacitus is

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[10] Morris R. Cohen, "The Basis of Contract" Harvard Law Review46:4(1993), 553-592.

URL: http://www.jstor.org/stable/1331491
Accessed: 17-03-2017 11:37 UTC

[11] Reinach, the Apriorical Basics of Burger Law, (1922), 2-4.

[12] Proverbs 6:1-5, 17:18, 22:26; Psalms 15:4; Job 17:33; Encyclopedia Biblica JI NoWACK, The Archaelogy, S.v. " Covenant" , (1894),341.

[13] Mitteis, Reichsrecht and Peopl's Right, n.p (1891), 479.

noticeable. According to their views the early Germans committed with great essence to keeping one's words.[14]In addition to this, the evidences composed by Brunner demonstrates that Germans, as like others, believed promise as an obligatory only if some real object delivered hands or some proper ceremonial took place.Otherwise, security or pledge was required.[15]

Exceptions to enforcement of contract

There are certain exceptions to this principles for the sake of smooth running of society and evasion of any contradiction. There is no world in which any one can draw his wish for a rigid law system solely for flat running of a life. In order to this there are some exceptions of sanctity of contracts but with strict inspections and conditions. A contract can be exempted to enforce on the base of its frustration, import and export prohibition, destruction of subject matter and other force majeure clauses. But these all exceptions are strictly stipulated with condition that all acts should be happened after the finality of a contract and contractor has been done reasonable jobs to overcome such unforeseen acts.[16]

Historical evolution of "pacta sunt-servanda"

Few rules for organization of society and better economic conditions have such a profound moral and religious as like the principle, "sanctity of contract". In ancient days, sanctity of

[14] Grotius, the Jurisprudence of Holand, Lee ed. (1926), 52.

[15] Bruneer, "The debt Contract requires a certain Horbar and visible form", HOLTZENDORF-KOHLER, Encyclopedia (edition 7th 1915), 37; Heuslar, Institutions German private Law (1885), 225.

[16] Carole Murray, David Holloway and Aren Timson- Hunt, the Law and Practice of International Trade (London: Sweet and Maxwell Limited, 2007), 119.

contract was established in the east Chaldeans, the Chinese and Egyptian in a notable way. According to the opinion of these people, the national Gods for each party took share in the construction of the contract. The Gods were the guarantors of contracts and endangered to interfere against the party accused of contract's breach. Thus, come to know that creation of a contract was bound up in serious religious principles and that cult of agreements actually developed.[17]For Muslims, the above-mentioned principle has also a religious basis "they (Muslims) necessarily abide by their conditions". This is clearly stated in Quran in many places, where expressed, "Be you true to the obligations which you have undertaken....your obligations which you have taken in the sight of Allah....for Allah is your witness".[18]With the natives of Mediterranean zones, the common attention in a planned commerce was entered into the religious motives. The juridical sense of the Romans acknowledged that a well-established trade was probable only if, contracts were kept. In ancient days contracts were measured as being under the divine safety. But their mental roots were, about, the all obligations of a legal rules of international contractual dealings.

The basic idea in Christianity was also based on the principle of sanctity of contract. It demanded that one's must be kept their words as is openly stated by St. Mathew is Gospel, at Chapter 5, Verses 33 to 37, at the end : "But let your communication be, Yea, Yea; Nay, Nay: for whatever is more than these commits evil". After that the church's

[17] Robert Redsloli, History of the Great Principles of the Law of the People(Paris, 1923), 107.
[18] C.Wilfred Jenks, The common law of mankind (London, 1998), 144.

Father also forward in detail the idea of Sanctity of contract. Thus they has been need same idea against the enemies as like found in Decretum Gratia.[19]

In the middle ages, the unity of the "will of state" was broken with the death of Charles the great the feudal system contained a chain of contracts, happily entered into by Lords and vassals. The moral basis of feudalism may be found in the old Christians. The Christian cavalier was required all above mentioned to his give words. On the other hand the study of Roman law was consolidating the concept of an obligated to execute contracts. The basic idea of the medieval theories was the "Reason of State". It is correct that he followed completely "general value Morality, Religion and Law".[20] But still, he thought that "idea of necessity is good for state and it must be about Law and Justice to protect the interest of state Machiavelli explant that the king must ready, to act, against loyalty charity religion.

Jellinek's view in favor of Sanctity of Contract

According to the opinion of Jellinek, the political theories of 16th, 17th and 18th centuries including Bodin's theory of Sovereignty is illegal. Jellinek has desired to restrict, in conformity with the spirit of times, "The Pacta Sunt Servanda for states according to Bodin's concept of sovereignty, to such contract, "which established a lasting situation (e.g, treaties of peace or of cession) or which provided for a short period of performance

[19] John Calvin, Institutes of the Christians Religion (Basal: Christian Classics Ethernal Library, 2002), 553.
URL: http://www.ccel.org/ccel/calvin/institutes.html
Accessed: August 8, 2017.
[20] Friendrich Meineck, The idea of states reason (Munich-Berlin, 1924), 126.

by the state with the means at its disposal."[21]It is realized that Bodin's exception to the general Rule for example, "in case where which have agreed is naturally unfair or cannot be performed. Such exceptions furnished the supporter of power politics to exclude the interpretations. Grotious was argued against Bodin's views that the king himself cannot reverse a position previously established, in the civil Law or annul a contract or release himself from his Oath", if he was prepared it as leader of a state.[22]

In 17th and 18th centuries the supporters of Grotious were solidly in favour of the principle Pacta Sunt Servanda. The opinions of Samuel pufen dorf (1632-94) and of Cornelia's Van Bynkershok (1637-1743) are particularly noteworthy in this association. In his book "De Jure Naturae at gentium (1672)", the former one described as one of the Unbreakable, rules of natural Law that "every man need to keep his announcement without breaking it". The latter stated the opinion that, "without the principle of good faith and that of the binding force of contract, international Law would the entirely destroyed."[23]

Vattel's views towards affirmation of commerce

The sanctity of contracts principle was taken out in strong release by Emer de valtel (1714-1767) in his well- known Droit des Gens (1757). He dedicated to this query a special piece of his book, under the heading "Obligation to keep Contracts".[24]

Vattel pointed out that people and their leaders according hold to their promises and their contracts, otherwise no security and non-commerce would be probable between nations. In

[21] Hans Wehberg, "Pacta Sunt Servanda", American journal of International Law59 (1959), 778.
[22] Hugo Grotius, the Law of War and Peace (Paris: Lonage Institute, 1925), 61-72.

[23] Cornelive van Bykershoek, Ovaestionum Juris Public Libri Duo (1737), II, cap. 10
[24] Emer de Vattel, the law of the nations, (Switzerland, 1758), Chap.12.

addition to this, taking about the use of "Clausula rebus Sic Stantibus, Vattel, forced the greatest attitude. Explanatory, he expensed that it would be a disgraceful to use that clause, if contracting parties took advantage of some charge in situation to discharge himself from his duties. Anything would not be left-hand upon which anyone could rely. When we discussed about the era of 18th century, the name of John Jacob Moser (1701-1785), comes as the founder of positive school of International law. He wrote his, "Grundsiitzides" in 1763 and explained that contracts called only be regated "with the concern of all interested parties". (1762-1837).[25]

Worldwide Importance of Sanctity of Contract

Instances of Developed Economic Countries

There are certain following countries which are developed in their economies and strong public policies like France, China and India.

French legal system for contract compliance

There are two strong legal systems in the world which are called as common law system and second one is civil law system. France is a well-developed country and the noticeable instance of civilized law system countries in which they strongly following their mentioned rules for good faith of a contract compliance and to avoid the repercussions of its rejections.

[25] Ibid.

Legal provisions and principles for contracts enforceability

There are many worldwide principles and rules which has been adopted by French's courts and tribunals. These following principles has been used many times in different awards and decisions by tribunals and courts in France respectively.

Pacta sunt servanda

The "sanctity of contract" is one of the main principles under which French government and judiciary are unite together. Government's policy towards contract's compliance is quite clear in front of their people and the whole world as well. They have been embodied it in their codifications for the public prosperity and clarification for the trust of foreign investors. This principle has been expressed by legislatures in the following way that a valid contract is binding upon the parties. It can only be modified or terminated by consent of the parties or if provided for by the law. The parties to a contract must, unless legally excused from performance, perform their respective duties under the contract ("pacta sunt servanda").A valid unilateral promise or undertaking is binding on the party giving it.[26]

Manifestation in municipal legal system

For sure, Pacta sunt servanda is additionally a prevailing guideline in French and numerous other metropolitan legitimate frameworks also. As a referee held that:

[26] Trans-Lax Principle No. IV.1.2. URL:https://www.trans-lex.org/919000

> The principle of the sanctity of contracts ... has always constituted an integral Part of most legal systems. These include those systems that are based on Roman law, the Napoleonic Code (e.g. article 1134) and other European civil codes, as well as Anglo-Saxon Common Law and Islamic Jurisprudence "sharia".[27]

The aforementioned principle is exemplified in civil law schemes; it has its classical manifestation in the French Law civil code's article 1134 as "Agreements lawfully made take place of the law for those who have made them. They cannot be revoked except by mutual consent or on grounds allowed by law. They must be performed in good faith".

Case law reference

French courts and particularly arbitrators relied upon the universal principle Pacta Sunt Servanda in the case of Liamco v. Libya award, arbitrators stressing that, "that a freely and validly concluded contract is binding upon the parties in their mutual relationship".[28] Mostly, they use certain national systems as well, which has expression of following principle, to decide the awards in disputes.[29]

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[27] Ad hoc Award Liamco v. Libya, April 12, 1977, Yb. Comm. Arb.89 (1981), 89.

[28] Ibid.

[29] Spanish law: I.C.C. award No. 5485 (1987), yb. Comm. Arb., 1989, 156 at 168.

Good faith and fair dealings in international trade

With upholding of sanctity of contract the French people are also use the general principle of good faith for deliberations in trade developments. Indeed, without such principle one cannot comply with rules and responsibilities of contract. Further, the meaning of good faith is, "bona fide intention" shows the will of parties towards contract's compliance. Thus, the general principle of Good faith also has great importance in French legal system as well as in the life of commercial world. Factually, in nineteenth century certain information about the concept of Good faith has been found during the era of Napoli codification. However, few points which disclosed the facts that this faith originates from the belief of, "Natural law". In addition to this all the civil laws, for instance, civil code of French having their strict provisions about the Good faith principle as well as contract's compliance. For the sake of economic development, they first developed their rules for the commercial and international trade's contracts because Good faith could be proved as the reflection of contract's compliance. They have realized that there should be no tolerance for the violation and rejection of (free willing) contract. As its importance has been mentioned in the following arbitral award. Moreover, the general rule of Good faith has a great essence to make a good agreement and its sanctity not only in French but also in other country's national laws. For instance, the civil code of Switzerland and Quebec can similarly be quoted as certain introductory paragraphs stated that right of every person's will as per the standards of Good faith.[30]

[30] Article 6 of the Quebec Civil Code; Article 2 of the Swiss Civil Code.

Economy of France and development policies

With the strict implementations of above-mentioned principles and rules France has been achieved many goals in the globalized trade world. As per the, World Investment report 2016. France has climbed in the classification of the world's best FDI-attractive states, stirring from 20th to the 11th place. After 2 to 3 years of declining, the inflow of FDI to France doubled from 2014 to 2015. Further, it has been counted from USD 15 billion to 44 billion of USD. Furthermore, in 2016 the influx of FDI is assessed at 46 billion of USD. [31]

Due to its strict rules about contract's compliance and strong public policies towards economic development Paris is competing the world trade in the race of getting more trust of investors. So that's why, after Tokyo, it is the second biggest host to transnational headquarters in the world. Presently, 500 international companies have their home headquarters in Paris. The country graded 29th out of 190 states.[32]

Efficaciously, France also won foreign investment of the year trophy 2017, organized for the fifth year in row.[33]In addition to this, according to another report about foreign investment in France, three new foreign investments were established on an average each day, in 2016.Similarly, France fascinated 1,117 latest job-creating foreign investment

[31] UNCTAD, World Investment Report 2016 (New York: United Nations, 2017).
[32] 2017 Doing Business Report (World Bank, 2017).
[33] Flanders Investments and Trade, Organized the Foreign Investment Trophy for the 5th year (in Row, February 21, 2017)
URL: https://www.flandersinvestmentandtrade.com/en
Accessed: 23 June, 2017.

resolutions in 2016.It was more than 16% from the preceding year, which produced or secure 30,108 jobs.[34]

Why you should choose to Invest in France

There are so many reasons which helps the France to become a heart favorite host country by the foreign investors. It is one of the world's 10 highest economic powers and tactically located in the central point of Europe. France is an innovative state with a highly advanced tertiary sector. It has considerable agricultural resources, excellence infrastructure, and a huge industrialized base. The labor force is qualified and creative (the second in Europe in terms of hourly productivity). The business atmosphere is favorable to investment and the legal atmosphere is comparatively apparent and stable. They have many strong policies, which are favorable to the nourishment of economy in the country and foreign investment as well. In addition to this, France has good governance systems and protective atmosphere which ever attract the foreign investors.

Friendly Policies to enhance economy

Some different strong policies which frequently has been used by French Government to attract foreign Investors and boost up their economy.

[34] Business France today published its "2016 Annual Report: Foreign investment in France. The international development of the French economy" (France, 2016).

Forms of Aid

French government use the way of Subsidies, reductions of costs, discounts and tax exemptions, loan assurances etc. By these simple and easiest way and policies they enhance their local economy and also attract the foreigners.

Protection of Foreign Investment

For the protection of investors and to build up their confidence about investment in France they have made different laws and signed treaties also. They have signed many bilateral investment treaties to provide the rights and justice to their transnational investors. For instance, France has been signed many bilateral investment conventions. In addition to this, it has bilateral investment agreement with more than 90 countries, signatory and having membership of the "Multilateral Investment Guarantee Agency" MIGA. Since many decades, there is only one case of controversies registered by UNCTAD, which was of Eurotunnel vs. France and the United Kingdom. Organizations proposing their support in case of deviations because France has also made obvious to International court of arbitration, International chamber of commerce and international center for settlement of disputes (ICSID). [35]

[35] Mc. Dermott Will and Emercy, a Legal guide to Investigate in France for Foreign Investment, 2015. URL: https://www.mwe.com/en/. Accessed: August 24,2017.

Strict dealings in law for exceptions of mentioned principle

Exception of the principle, "sanctity of contract" is also called as doctrine of frustration. Although it sounds similar to a French word but the word "frustration" does not occur in French. Frustration is only an English word and legal doctrine of frustration.[36]

Circumstances which make the performance of contract onerous but not impossible, French contract law does not provide remedy for those changed circumstance. Similarly, they are stricter towards sanctity of commercial contracts for the betterment of their economy. In the commercial agreements or contracts, the decided contract price is not changed by increased costs[37] and currency devaluation.[38]

International law signing policies

They know the need of international legislation in the Globalized world and continuously making the laws suitable for the foreign trade and friendly relations with developed countries. They have a policy to give primary respect to all foreign treaties and agreements, signed with other country. Their positive attitude towards sanctity of treaties is enhancing the pace of economic inflow and friendly relationship of World towards France. In order to this, France has signed more than 90 bilateral investment treaties with different countries as aforementioned like, UNCTAD, MIGA, ICSID etc.

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[36] Rene David, "Frustration of Contract in French Law", Journal of Comparative Legislation and International Law28:3(1946), 11-14, Accessed: 25-04-2017 URL: http://www.jstor.org/stable/754645.

[37] Cass. January 18, 1950, Dalloz, 1950, 227; I.C.C. award No. 2708, (1976), J.D.I., 1977, 943.

[38] Cass. December 31, 1924, Gaz. Pal., 1925, I, 284; Cass. February 25, 1929, J.D.I., 1929.

Case law examples

French contract law doesn't permit to provide only due to changed circumstances. It expressed strict provisions and rules to scrutinize the circumstances by which contract became onerous. The language of Article 62 determines the extraordinary character of Rebus Sic Standibus. It is subsidiary to the more universal principle Pacta sunt servanda as set off in 26th Article of Vienna Convention. The alteration in conditions has to be essential. It has to threaten the survival of the State.[39]

Only damages to economic gain or currency alterations are insufficient.[40] As in the Fisheries Jurisdiction case the International court said that changes conditions must be vital. They have to "endanger the actuality or vital growth of one party of both".[41]They gave preference to the enforcement of international commercial contracts ever. Generally, the French hypothesis depended on monetary contemplations. The underlying cases held that an agreement would be considered as international in character in the event that it inferred a shared exchange (flux et reflux) of financial esteems whether as an exchange of cash or of products, crosswise over national fringes, one of which was French. At the point when this was the situation, the courts have had no dithering in holding that the agreement should be authorized despite the fact that requirement was illegal under the best possible law of the agreement.

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[39] (Permanent Court of International Arbitration: The Russian Indemnity case, A.J.I.L., 1913, 178; International Court of Justice: The Fisheries Jurisdiction case, ICJ Reports, 1973, 4 at 20 and 64: Helenic Electric Railwavs v. Greece (1933), Brit. Yb. I.L. (1964), 206-207.)

[40] Bremen (Free Hansa) v. Prussia (1925), Annual Digest, 1925-1926, No.266.

[41] (International Court of Justice: The Fisheries Jurisdiction case, ICJ Reports, 1973, 4 at 20 and 64)

China in its policies towards Sanctity of Contract.

China has achieved many goals in not only Trade but also in the technology due its strong economic policies and liberal approach towards foreign investment contracts. They have modified their laws according to the modern requirements of Globalized trade World. Chines courts have positive attitude towards commercial enhancement and sanctity of contract particularly in international matters.

Economic achievements

At the elevation of the industrialized revolution, British was called "the workshop of the world."[42] That title assuredly fits to the "people's Republic of China" (PRC)[43] today. For instance, china previously is the world's fastest rising large economy and a second biggest holder of foreign-exchange capitals.[44]Currently, China is the world's major producer of steel, cement and coal.[45]Further, it is the 2nd largest user of energy and the 3rd biggest importer of oil. [46]Exporters by china to U.S have grown up by 1600% over previous fifteen years and U.S transfer to china have grown-up by 415%. In addition to this, China is an enormous constructor and exporter of customer goods, constructing two thirds of the whole world's copiers, DVD player's microwave ovens, toys and shoes.[47] Unlike extra developing states, China has effectively unlimited

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[42] Steven Kreise, "lecture 17: The Origing of the Industrial Revolution in England" The History Guide (May 13, 2014).

[43] Through this thesis "PRC" or "China" refers to the People's Republic of china, which for the purposes of this paper does not include Hong Kong, Macau, or Taiwan.

[44] Fareed Zakaria, "Does the Future Belong to China?" NEWSWEEK, May 9, 2005, 28.

[45] Ibid. at 29

[46] Ibid. 28.

[47] Ibid.

capital to devote in technology and now it is the chief investor in research and progress in developing world.[48] The amount of its domestic exploration and development conveniences, the magnitude of its home marketplace, and the availability to other marketplaces in Asia mark China as a rational place for venture by United States' businesses.[49]

China in all above-mentioned achievements has been successful due to its strong law making, infrastructure and public policy towards national as well as transnational contracts. China has also mold its many laws and policies according to international trade's parameters. Further paragraphs will expound the better changes and novelty in laws for modern economic challenges.

Reality behind Progress in economy

China's high gross household generation joined with an extensive customer showcase has driven numerous multinational enterprises to consider working together in China. While there are various elements that drove multinational enterprises to enter in its new markets, one of the variables that ought to be analyzed is the lawful framework and legitimate administrations that will influence the exchange itself. So, mostly foreign investors are dependent on the legal structure and satisfied judiciary fairness of the host country. Thus, China is providing all the progressive and tactical measurements for the ends of justice in its homeland, for all foreign Investors.

[48] Mikhaelle Schiappacasee, "Intellectual Property Rights in China: Technology Transfers and Economic Development" BUFF.INTELL.PROP.L.J2:164(2004), 183.

[49] Ibid.

Strict Laws and principles for contract's compliance

Uniform Contract Law (UCL)

Indeed, legal system of any country take a significant role to enhance its fiscal assets and foreign investments. As the legal system of PRC's is based in civil law traditions so, that's why, it's strictly comply with expressed legislations. Furthermore, government of china has built up many laws, particularly special laws of contract and economics to deal with financial matters separately and to protect the rights of contractors. By stepping up, PRC enacted the Uniform contract Law (UCL) [50]in 1999. The purpose of enactment was to protect the legitimate rights, legal interests of contractual parties, indorsing socialized modernization and upholding the socio-economic order in the society.[51] This endorsement of the Uniform contract law was especially essential to Republic of China because of China's formerly wish to join the "World Trade Organization" (WT0).[52]

Presently, all contract laws deals the fiscal and contractual matters under the USL because it deals equally to the national and international contract. We shall discuss in detail the special provisions of UCL in further paragraphs which

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[50] Uniform Contract Law (promulgated by Nat'l people's cong., Mar.15, 1999, effective Oct.1st 1999), translated in Chinese Civil Law Forum CCLAW.NET, Accessed, December 25, 2016.

URL: http://www.cclaw.net/download/contractlawprc.asp

[51] UCL, art.1 (P.R.C).

[52] Feng Chen, "The New Era of Chinese Conract Law: History, Development and a Comparative Analysis", Brook.J'. INT'l.L.27:153(2001), 153-154.

deals the contracts and interest's protection of contractual parties. Thus, china is providing all the progressive and tactical measurement for the ends of justice in its homeland, to all those foreign investors.

ECONOMIC CONTRACT LAW (ECL)

Prior to the commercial transformation in 1978, law of contracts efficiently did not exist in the china.[53]But there are vast bundle of reforms and evolution in the contract laws codification nowadays, as per the requirements of Globalized world and economic powers. They have not only enacted the Uniform contract law but also defeated the economic crises in Asian region with their bright vision of defense. In 1978, china began start of opening towards outside the world and Chairman Deng Xiaoping required to establish a strong legal system to get the trust of foreign investors, about safety in host country. In order to this, the National Congress party (NPC), the chief law making body in china, decided its first major contract law, called as Economic contract law (ECL).[54] The ECL was the most essential step towards decentralized economy in the country. They have mold their laws and policies according to the need of economic era.

[53] Ibid. at 155.

[54] Feng Chen, "The New Era of Chinese Contract Law: History, Development and a comparative Analysis", Brook. J. Int'l. (2001). URL: http://brooklynworks.brooklaw.edu/bjil/vol27/iss1/5. Accessed: 23 August, 2017

International enactments and economic policies

With the passage of time, PRC's realized the essence of international capital and foreign investments in their state. Firstly, they developed their laws and strengthen the international economic policies. As the desire of contract law raised, then in 1985, the foreign economic contract law (FECL) enacted by the NPC.[55]Furthermore, the standing committee of NPC also enacted Technology contract law (TCL)[56] in 1987. For the additional achievements in laws of contracts, in 1986, they took a further step to make a widespread legal system and enacted "General principles of Civil Laws" (GPCL). These civil law principles had a significance on the rudimentary principles of contract law.[57]

Essential amendments in Law to meet WTO'S Requirements

Since many decades, certain developing countries like china and Pakistan have also indulge in disturbing issues of political interventions into judiciary matters. There is great need to overcome this situation by enacting or amended different laws and economically strong policies in Pakistan. In this regard, china made substantial amendments in ECL which absolutely decreased the governmental powers to intercede into the contract formation and its performance issues. After that, government start working on the UCL and received many feedback from

[55] Ibid.

[56] Feng Chen, the New Era of Chinese Contract Law: History, Development and a Comparative Analysis, Brook. J. INT'L. L.27 (2001), 153-154.

[57]Bing Ling, Contract Law in China (2002), 16.

public.[58]Then in October1999, the UCL in china, finally came into effect. Although, PRC simultaneously repealed the ECL, FECL and TCL but they did not dropped the rope of competition in Globalized world. By drafting new regulations, Chinese legislators denoted extensively to the international principles about international commercial contracts recruited by the international institute for the amalgamation of private laws (UNIDROIT principles).The "United Nations conventions for the International sale of goods" (CISG) and certain other foreign legal standards.

Rules and Policies about "Sanctity of Contract"

Any developing country should change its rules or laws according to the stood situation in front of it. Although every country take these steps for the prosperity of its people and national level solutions but its legislation must be according to the international standards to fight Globalized world's challenges. SO as to this, the main principles which implemented by UCL are, honesty, faithfulness, limited freedom of contract, equality and fairness.[59] It has lent all those aforementioned principles from U.C.C and CISG.[60] As per these rules, all parties must be in an equal position.[61] And some parties may require sanctions by the governments before their contracts are measured valid.[62]The RPC'S have standard form very basic as afore-stated to grow up the universal principle of "sanctity of

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[58] Ibid. (Citing CISG as one source exmined in drafting the UCL). Compare UCL and Convention on Contracts for the International Sale of Goods, art. 1(a), Apr. 11, 1980, U.N. Doc. NCONF.97/18.)

[59] The major principle terms adopted by the UCL are equality (Art. 3), fair- ness (Art. 5), honesty and faithfulness (Art. 6), and limited freedom of contract (Art. 4).

[60]Wei Luo, supra note 20, at 12-13. China borrowed these principles from the CISG and from the U.C.C

[61] Ibid.

[62] Ibid. at 13

contract". Although, UCL also allowing the oral contracts. In addition to this, UCL delivers that every contract administered by it, "imposes an obligation of good faith in its performance."[63] For the sake of sanctity of contracts, the UCL provides certain performance standards. Similarly, upon the termination parties still owe to one another such duties of good faith and loyalty.[64]

Performance and non-performance

The UCL also approves "pacta sunt servanda" as one of its central principles. Factually, the provisions covering contract's performance largely resonance many of "the conforming rules in UNIDROIT principles." [65]Article, 107 of UCL declared the common rule on charge for breaches, declaring that

> If a party fails to perform its obligations under a contract, or rendered non-conforming performance, it shall bear the liabilities for breach of contract by specific performance, cure of the non-conforming performance or payment of damages.[66]

Remedies for breach of contract

Like U.S. laws, obligation for breach of agreement under the UCL helps to enforce the predetermined rights of the distressed contractual party, and also to secure its prospect interests. Article 107 make available that when a contractual

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[63] UCL, art. 10(P.R.C).

[64] UCL, art. 92 (P.R.C.) ("After the termination of rights and obligations under a contract, the parties shall perform the duties of notification, assistance and confidentiality in light of the principle of good faith and in accordance with trade practices."

[65] UCL, art. 8 (P.R.C.).

[66] UCL, art. 107 (P.R.C.).

party breaks contract, such party in breaking is liable to execute its commitments and to takings remedial actions or to recompense other party for damages. Article 109 through 111 deal of UCL deal with specific performance of a contract. Article no 110 is the main article about specific performance. According to which upon a nonperformance a party request to other party for performance of legal obligations and court may also be enforce upon request of aggrieved party.[67] The language of article 111 is more favorable to the contractual parties because of it an aggrieved party may compel to perform and remedies also. In order to this, UCL provides two core remedies for contract breaching as, compensatory damages and specific performance.

Full performance of a contract

In current situation, UCL recognizes a best standard of good faith and emphasizing on full performance of established contract. Under UCL, the contract's compliance may be the major area where "good faith" comes into play. The UCL not only established order but also provides standards for full performance and duties. According to this, Article 60 of UCL deal with all these aforesaid matters.[68]

American policies and sanctity of contracts

Americans have strong policies and laws towards sanctity of contracts and development of economy. They have many provisions in their laws about good

[67] (UCL, art.110 (P.R.C))

[68] Art. 60; Yu Cunku v. Dong Chengbin & Dong Chengzhen (CHINALAWINFO ID: CNLCAS 138, Deyang Interm. People's Ct., Aug. 30, 2001) (noting that parties have a good faith duty to notify each other of changes to critical information during the performance of a contract) URL:http://chinalawinfo.com

faith and positive approach in courts towards economic matters. Presently, we shall enlighten some policies and cases in their history to disclose the importance of economy and principle of sanctity of contract in present Globalized era.

Definition of Good Faith

According to the Black's Law dictionary,[69] "Good faith is an intangible and abstract quality with no technical meaning or statutory definition. . . ."

Historically, concept of Good Faith has been existed for thousands of years in western civilization.[70] Indeed it has been asserted that the concept is one of the bases of our civilized society. The ancient Greeks recognized something similar to the notion of bona fides as a universal social norm governing the relationships of its citizens.[71]

Definition in American code

As initially embraced in 1952, the Code "general definition of good faith required only "honesty in fact." In a case, in 2003 that definition was changed to command "the observance of reasonable commercial standards of fair dealing" and additionally trustworthiness truth be told.[72]

The idea has likewise discovered its way into American business law. A dominant part of our locales perceive the idea has an issue of case laws[73] and has a conspicuous part

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[69] Joseph R. Nolan & Joseph M. Nolan-Haley, Black's Law Dictionary 693 (6, ed.)

[70] Russell A. Eisenberg, "Good Faith under the Uniform Commercial Code–A New Look at an Old Problem", Marq.L.Rev.1:54(1971), 17.

[71] Ibid.

[72] U.C.C. § 1-201(20); E. Allan Farnsworth, Contracts § 7.17 (ed.4th 2004), 491-492.

[73] Steven J. Burton, "Breach of Contracts and the Common Law Duty to Perform in Good Faith", 94 Harv. L. Rev. (1980), 369.

in the Uniform Commercial Code. Fifty of the 400 Code arrangements explicitly say good faith. Article 2 of the Code, gave to deals, and incorporates 13 segments unequivocally utilizing great confidence standards. The Code's general great confidence arrangement, § 1-304, declares: "Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement."[74] In addition, on the off chance that one can take the wide dialect in a portion of the legal suppositions at confront esteem, the commitment has significant substantive substance; numerous sentiments contain clearing dialect such that the commitment blocks a contracting party from making any move that would wreck or debilitate the other party's authoritative rights or advantages.[75]

Good Faith development for commerce

American legislators enact the laws because of certain reservation about growing commerce in their minds. The main variant of the Official Text of the Uniform Commercial Code was affirmed in 1962.[76]They had liked to mix present day contract law with a feeling of "business conventionality." The recognition of these general laws and obligations would evidently enable the American jurists to do justice in the commercial disputes.[77]

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[74] J. R. Simplot v. Chevron Pipeline Co., 563 F.3d 1102, 1113 (10th Cir. 2009)

[75] Paolini v. Albertson"s Inc., Plan Administrator, 482 F.3d 1149 (9th Cir. 2007

[76] Carol L. Chomsky, Christina L. Kunz, Linda J. Rusch and Elizabeth R. Schlitz, Selected Commercial Statutes 2008, Edition 15 (2008).

[77] Summers, Virginia, supra note 9, at 198.

Dealings of Sanctity of contract in U.S

Although, united States contract law has additionally by and large perceived the tenet of good faith as a "fundamental concept of modern contract jurisprudence."[78] But currently, the concept of sanctity of contract is continuously growing in the American notions and decision making of its courts. They have realized the significance of such principle in the growing speed of trade in the world. To make the friendly relationships in the Globalized trade world with their neighbor countries, the strict compliance of expressed rules and clear trust of protections to the foreign investors are much important. As their approach could be shown by landmark views of judges in the case of Zapata[79] and scherk[80] in 1972 and 1974 respectively. In these, Supreme Court held, "in an era of expanding world trade and commerce," the parties to an "international contract" could legitimately stipulate arrangements which, in a household setting, would be denied. With the help of discourse analysis of such decision we can extract the idea of wise approach by American courts towards commerce and good foreign relations through the sanctity of international contracts. Specifically, the court stated in the same that

> We could not go back from the commitments which we have been freely undertaken with foreign investors by seeking a shelter in American forum. Court expressed in its own words, "We cannot have trade and commerce in world markets and international waters exclusively on our terms,

[78] Harold Dubroff, "The Implied Covenant of Good Faith in Contract Interpretation and Gap-Filling: Reviling a Revered Relic", St. John's L. Rev. 80 (2006), 559.

[79] M/S Bremen and Unterweser Reederei GmbH v. Zapata Off-Shore Co., 407 U.S. 1, 92 S.Ct. 1907, 32 L.ED.2d 513 (1972).

[80] Scherk v. Alberto-Culver Co., 417 U.S. 506, 94 S.Ct. 2449, 41 L.Ed. 2d 270 (1974).

governed by our laws and resolved in our courts."[81]

In so holding, the Supreme Court has made a most huge commitment to the agreeable improvement of a systematic direction of worldwide exchanges. It hosts liberated the gatherings from the requirements of local law in a field in which dependence on domestic guidelines may impede as opposed to cultivate global relations. It has additionally reaffirmed the coupling character of legally binding duties intentionally and uninhibitedly went into by ready and experienced business people.

Policies for economy and its Application to contract enforcement

Indeed, American courts follow the doctrine of good faith but additionally they strictly compliance the expressed obligations of the written contract also. US courts have also refused to rely on the doctrine of good faith to relieve a party from an express contract term. For example, the Oregon Court of Appeals refused to find a defendant liable for breach of contract when it terminated an agreement provided under the contract. [82]US courts for the most part have depended on teachings, for example, difficulty, impracticability, or change of conditions to pardon parties from contract execution. They strictly observed the circumstances by which contract became onerous to grant the pardon from contracts performance.[83] US courts have commonly understood those fundamentals scarcely and declined to end contracts in light of straightforward market changes. For example, in Karl Wendt Farm Equipment Co. v. General Harvester Co. the court

[81] Zapata, 92 S.Ct. 1912; Sherk, 94 S.Ct. 2457.

[82] Morton & Assoc., LLC v. McCain Foods USA, Inc., 204 P.3d 167, 173 (2009).

[83] Karl Wendt Farm Equipment Co. v. Int'l Harvester Co., 931 F.2d 1112, 1113 (6th Cir. 1991).

commented that, "to hold by and large would not fulfill the possible appreciation of the social occasions concerning the portion of danger under the contract"[84]

Popular Case law about sanctity of contract

Fletcher v. Peck (1810), is a historic point United States Supreme Court's choice in which the Supreme Court initially expressed a state law illegal. The choice additionally made a developing point of reference for the holiness of legitimate contracts and indicated that Native Americans did not hold title to their own territories.[85] Fletcher set out to win the case. The Supreme Court collectively decided that the "governing body's cancelation of the law was unlawful." John Marshall composed that "the deal was a joint contract, which Article I, Section 10, Clause I (the Contract Clause) of the Constitution, can't be discredited regardless of the possibility that is illegally secured." The decision loaned advance assurance to property rights against well-known weights and is the soonest instance of the Court declaring its entitlement to nullify state laws which are in strife with or are generally in opposition to the Constitution. William H. Rehnquist composed that Fletcher v. Peck, "spoke to an endeavor by Chief Justice Marshall to expand the security of the agreement proviso to newborn child business."[86]

An Excellent approach for the sanctity of arbitration clauses

American supreme court having an excellent approach towards compliance of expressed arbitration clauses or written obligations for the economic betterment and FDI

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[84] Ibid; see also Harriscom Svenska, AB v. Harris Corp., 3 F.3d 576 (2d Cir. 1993)

[85] Robert Fletcher v. John Peck, 10 U.S. (6 Cranch) 87; 3L. Ed. 162; (1810) U.S. LEXIS 322.

[86] Stuart Banner, How the Indians Lost Their Land: Law and Power on the Frontier (Cambridge: Harvard, 2005), 171-171

inflow in the country. As in the case of Scherk the court Underlining the global character of the exchange and the closeness between a discretion and a gathering choice condition as variables of legally binding predictability, the Supreme Court held that the nullification of the provision would endorse a repudiation by Alberto-Culver of its serious guarantee and, in the expressions of Zapata, mirror a parochial idea. Their approaches towards remote exchange relations are exceptionally liberal and strict to ensure the worldwide financial specialists. As the foreign national trade convention was right in expressing that:

> "The Convention holds that maintenance of the principle of sanctity of contract is fundamental to the whole process of inter-national trade and investment. Without sanctity of contract there can be no respect for private property rights, and no reliance upon agreements made between nation and nation, or between nations and private parties, or between private parties themselves."[87]

Furthermore, they are strictly obstructing the political interventions, in the court's decision making, by making strict rules and policies. These policies working as a catalysts to enhance its economy and because of it. America is at its third position of the most favorite countries for investment. As, the Chamber of Commerce of the United States, in its Policy Declaration on World Affairs in 1956 expressed:

> "There is need for world-wide recognition of the sanctity of contract. Agreements made within the general legal framework or in the form of

[87] . See 103 CoNG. RI>c. 1297 (daily ed. Feb. 4, 1957).

specific contracts should be honored fully in letter and spirit. Modifications should be by mutual consent. This is of special importance when governments are parties to agreements or partners in enterprises."[88]

These policies working as a catalysts to enhance its economy and because of it America is at its third position of the most favorite countries for investment.[89]

Foreign direct investment in the United States

Foreign direct investment in the United States known as FDIUS, totaled $2.9 trillion through 2014 on a recorded cost premise. Every year remote firms make new interests in the United States, which advantage the American economy from various perspectives. They fabricate new industrial facilities, develop their settled U.S. operations, finance innovative work, and utilize a large number of Americans in well-paying occupations. Yearly remote direct speculation inflows throughout the most recent couple of years have driven aggregate outside venture to $2.9 trillion through 2014 measured on an authentic cost premise. Remote organizations had put more in the United States than whatever other nation on the planet through 2014. Notwithstanding, remote venture streams in 2014 into China and Hong Kong obscured inflows to the United States, as per the World Investment Report 2015. Regardless of this, foreign financial specialists are as yet attracted to the American economy since it offers many focal points. To begin with,

[88] International Chamber of Commerce Resolution of Oct. 22, 1956, Doc. No. 100/72.
[89] UNCTAD, World Investment Report 2015 (United Nation Organization, 2016).

and maybe most vital, the United States has a standout amongst the most open markets and speculation atmospheres in the World.[90]

Thus, the most huge commitment that the idea of international contract, as created and connected by the courts in the United States, has made to the improvement of guidelines material to transnational contracts. It is the acknowledgment that the precept of public arrangement, as planned in a local setting, should, in a transnational situation, be casual to the point of noting the requirements of worldwide business. Further, they have improved their economy and foreign friendly relations through the strict compliance of sanctity of contracts specifically in transnational agreements.

Conclusion

Conclusively, the sanctity of contract principle has a great essence to form a strong civilized society or a state. Certain strong policies towards economic matters by America, France and China showed that economy act as a back bone in the healthy democratic body. In order to this, they made many laws and policies about contract enforceability for getting more trust of foreign investors. Courts in afore mentioned countries having liberal approaches towards sanctity of contracts particularly in international commercial matters. For the sake of economic improvements China has continuously molding their laws and economic polices according to the modern trade requirements. They have specially enacted economic laws which expressed strict compliance of contract. Hence forth, principle Sanctity of contract has a huge importance in every era of life.

[90] Organization for International Investment, "Foreign direct Investment in Unites States report" (2016).

CHAPTER II

ACKNOWLEDGMENT OF SANCTITY OF CONTRACT IN ISLAMIC LAW

The principle "sanctity of contract" or "pacta sunt servanda" has always been considered as a sacred tool in the teachings of Islam and its expressed provisions. As in the history, it has become a need of modern trade world. Declaration of its Holiness, proved not only by Quran but also through the sayings and deeds of Prophet (s.a.w). Moreover, the importance of aforesaid rule also find out, abundantly, in pre-Islamic religions. In order to compete the growing commerce in the world, sharia handled these challenges very sharply and mold their laws, punishments and remedies according to the basic principles of Islam.

In perspective of the momentous development of exchange between the Western and the Muslim universes and anticipated increment in the coming century, the subject should keep on being specifically noteworthy. Henceforth, "sanctity of contract" rule having an extraordinary substance in present day Islam and in different religions too.

Religiously importance of sanctity of contract other than Islam

There are many religiously instances by which the importance of aforesaid principle should be realized. In the very ancient days ,when the Hammurabi code had declared for the contract compliance in which it is clearly expressed that the enforcement of law likewise made possible ,by divine command.[1]

Mosaic Law

The revelation record on Moses by God contains 613 commandments which briefly in the 10 commandments. These records shows that mostly commandments ware included different contracts like loan of animals, silver or goods deposit contracts and pledge etc. There is no suspicion that according to the Jewish law contract was strictly enforceable, not only God does permit creditor to ask for payment of debt, he also orders that when any dispute arise between men they are to take courts views and judge will decide and announce penalty. [2]

[1]Most ancient laws were passed on to us in a truncated form and we do not know for sure, except in the Hammurabi Code, whether each time divine authority was claimed by their authors.

[2] Nabil Saleh, "Origins of the Sanctity of the Contracts in Islamic Law"Arab Law Quarterly13:3(1998), 252-264.

Greece Law

Views of St. Augustine (353-430 AD)

St. Augustine's entire teachings focuses on God as that on which all else depends. According to him, "the eternal law is the law of God and moral law in the heart of man by the God, which implanted by God".[3]

St. Thomas's Aquinas's views

After the Augustine expression about contract's obligations in natural law, St. Thomas revived the traditional thought of just, incorporated it into a Christian philosophy and related it to different components of the normal requests as this had been without a doubt appointed by God.[4]

Teachings in Christianity and natural law

Christianity practiced an endless impact on the holiness of agreements. Its essential thought requested that one's assertion be kept, as is obviously communicated in the Gospel as indicated by St. Matthew, specifically, where it is stated, at Chapter 5, Verses 33 to 37, toward the end : "Yet let your correspondence be, Yea, yea ; Nay, nay: for at all is more than these cometh of wickedness." Later, the Fathers of the Church put forward in detail the thought of the sacredness of con- tracts. Thus, St. Augustine (354-430), for instance, showed that one keep one's pledge even with one's adversaries. A similar thought is to be found in the Decretum Gratian.There has been great influence of natural notions in Christians and Greek laws. The law of nature

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[3] Veron J. Bourke, The Essential Augustin selected by Vernon J.Bourke (USA: penguin books, 1974), 61-150.

[4] Michel Villey, "Bible et philoshie Greco-Romaine de saint Thomas au Droit Moderne", Archives de philosophie du Droit, tome: 18, Sirey (1973), 35-37

created by Dt. Paul has been same effects on Jews, Christians and others without any discriminations.[5]

Importance of contract law in ancient English

In England, they have to use principle of equity and fairness through natural laws, for the ends of justice in contracts. Characteristic law thoughts were used in Britain from the mid seventeenth century, in a few settings. Likely the most essential setting in which characteristic law thoughts have been instrumental is in the advancement of value, which has had a tendency to maintain compensation for the shirking of shameful advantage. At a considerably prior time the bother of there being no solution for the rupture of an executory contract, unless it had been made under seal, was starting to impact the courts.

Example of case law

Inevitably, with Slade's case in 1602, it was settled that "each agreement executory imports in itself an assumpsit, for when one consents to pay cash or convey anything in this manner he accept or guarantees to pay or convey it.[6]

Natural law about contract's sanctity in American people

Two major events of the eighteenth century, the American and French Revolutions, paid tribute to Natural Law. The Constitution of the United States (1787) was drafted under the influence of natural law and natural rights concepts. Article 1, section 10.1 precluded the States from passing any law impairing the obligation of contracts.

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[5] Roman 2:14 and 15.
[6] A.G Guest, ed, Anson's Law of contract (London: Oxford, 1979)

Religiously importance in French people

It has been widely discussed in the previous chapter that French people accept the universal maxim, "sanctity of contract" as a sacred principle for the establishment of a civilized society. So, the "natural, sacred and unalienable rights of man" were the roots of law for French revolutionaries. In addition to this, the French civil code which was exposed in 1804 after the Revolution's abundances, declares that "understandings legitimately shaped remain for the law of the gatherings who have finished up them"; despite the fact that widely inclusive equation does not guarantee a given paternity of establishment. In the nineteenth and twentieth century of years, there was a response against regular law hypotheses and against the reason of the French revolution as a reason for law. Be that as it may, with the twentieth century came a disappointment with state control which empowered a restoration of enthusiasm for normal law.[7]

Sanctity of Contract in Islam and historical perspective

For the Islamic people groups, "the rule pacta sunt servanda" has likewise a religious premise, "Muslims must abide by their stipulations" This is clearly expressed by the Quran in many places, for example, where it is said: "Be you true to the obligations which you have undertaken…your obligations which you have taken in the sight of Allah… for Allah is your witness".[8]For the application and administration, Muslim people have also codified their laws and principles under which Islamic rules and regulations can be run. These rules are called as sharia laws. With a specific end goal to value the profundity and exhaustiveness of Sharia, it is important to comprehend Islamic law's different

[7] Para 1, article 1134 of civil code of France.
[8] C.Wilfred Jenks, The common law of mankind (London, 1998), 144.

sources and instruments for development and in addition the history and advancement of Islamic idea. As Asaf Fyzee renowned:

> Islamic law is not a systematic code, but a living and growing organism; nevertheless there is amongst its different schools a large measure of agreement, because the starting point and the basic principles are identical. The differences that exist are due to historical, political, economic and cultural reasons, and it is, therefore, obvious that this system cannot be studied without a proper regard to its historical development.[9]

Origins of the Law in general

Islamic Law is a combination of what Muslims believe to be divinely revealed (principles) precepts (the Shari'a) and substantive legal rules identified on account of a science known as fiqh. The precepts are those expressed by the Qur'an and the Sunna.[10]

Analogical deduction

Analogical conclusion, a methodized thinking which fundamentally needed to identify with a decision from the Qur'an or the Sunna.[11]

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[9] A.A.A.Fyzee, Outlines of Muhammadan Law (London: Oxford University Press, 1949), 3rd edition.

[10] Paragraph 22 of Article 2 of Jordan's Civil Code (1977) urges judges, when passing judgment, to rely on the provisions of Islamic fiqh if no statutory provisions are available, and failing that on the provisions of Islamic sharia. The Explanatory memorandum of the Code (p.36) emphasis the distinction between sharia and fiqh.

[11] H.J.Mughniyya, "Fiqh al-Imam Ja'far al-sadiq", Beirut 6(1977), 380.

Ijma

Agreement supposition (ijma') was another method for determining Godly law and was given authenticity by an understanding of certain Quranic verses and by expressions of the Prophet such that: 'There can be no consensus of error or misguided behavior among my people".[12]In addition to this, Shia ja'faris accept the consensus only when it is consensus by ah-al-bait.

Origins of the sanctity of contracts

Contracting was natural to the Prophet, as outlined by his part in an assortment of agreements, for example, buy, vow, contract, advance and salam (a deal where the merchant is not possessing the deal protest but rather attempts to make it accessible).Mohammad (s.a.w) was a representative, who had no motivation to hate authentic profit; in the meantime he actualized to the letter the Qur'anic medicines with respect to what is unlawful and what is allowed in trade. The Qur'anic forbiddance of managing in given things, in riba (unlawful preferred standpoint), and in exchanges debased by gharar (vulnerability, chance, theory) were circumspectly taken after; similar to the Qur'anic urgings to reasonableness and genuineness.

The main object of the Quran and prophet (s.a.w) is to establish a society in which rules like equity and fairness can exist. According to Quran and Sunhat there is no tolerance about the extra profit through illegal means like Riba, Gharar and breach of contracts. Although, these intolerance means were used in the commerce and trade matters, Prophet (s.a.w) himself brought into training various mandates and guidelines with the point of

[12] S.Mahmassani, al-Awda al-tashn'iyya ji al-bi/ad al-Arabiyya (Beirut, 1957), 131.

directing business.On the other hand, many trades and way of contracts had been disallowed by the Prophet (s.a.w). Generally, the trade and contracts in trade were regulated in Mecca according to the principles of Islam and Sunnah.[13]

Quranic revelation about sanctity of contract

Allah expressed at certain places, Muslims essentially be abide by their obligations about the determined contracts. As in Quranic verses there is clearly stated that, "Be you true to the obligations which you have undertaken. . . . Your obligations which you have taken in the sight of Allah. . . . For Allah is your witness". Human instability, if not perniciousness, was managed in a progression of Quranic disclosures (s.II, 177; s.III, 76; s.V, 1; ss. XXIII, 8 and LXX, 32) best exemplified in s.V, 1, which says, "Ye who believe fulfil (all) contracts" and, which was translated as identifying with humankind's commitments towards the Creator and to every single other commitment getting from social and business contracts.[14]

Modern approaches of sharia about contracts compliance

It was left to authorities in substantive law (juqaha), at the end of the day to natural law specialists, to supplement what was not uncovered, and all the more especially, to tell whether contracts other than those said in the Quran and in the tradition could be conceived by the contracting parties and furthermore, "how far, if by any stretch of the imagination, may the gathering fluctuate this unbending plane by presenting concurred uncommon

[13] According to one tradition Mohammad said, "There is no harm in selling for eleven what you buy for ten and you are allowed to take a profit for expenses"

[14] Translation and commentary by A.Yusuf Ali, "Holy Qur'an'' (Great britain, 1975), 682; Tafsir al-Baydawi, Beirut (1988), 253.

terms as extremities to the specific assign contracts they are indicating to conclude" The Dhahiri school showed that no agreements and no uncommon terms other than those found in the text (i.e., Quran and traditions), or those endorsed by accord, are to be announced valid.[15] The Hanbali School, given particular conditions, approve most innominate contracts and extraordinary conditions, while the Hanafis remain on that issue between the Dhahiri and the Hanbali teachings.[16] That was the first step to the stairs of modern legislation under the umbrella of sharia schools of law are divided on that issue.

Importance of sharia in modern world

Given the developing requires an arrival to the Shari'a and expanding worldwide association, the western lawful group can never again be fulfilled to leave Islamic law or the Shari' a as a preserve of Middle East specialist , Arabists and near law specialists. As Professor M. Ballantyne notes:

> Even where the sharia is not applied in current practice, there could be a reversion to it in any particular case…Without doubt, a knowledge of the sharia will become increasingly important for practitioner, not only in Saudi Arabia, but in the other Muslim jurisdictions.[17]

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[15] Abdel Karim Zeidan, al-Madkhal li dirasat al-islamiyya (Baghdad, 1966), 393.
[16] N. Saleh, Unlawful Gain and Legitimate profit in Islamic Law (London, 1992), 56-60.

[17] M. Ballantyne, "Book Review of Commercial Arbitration in the Arab Middle East (A Study in Shari' a and Statute Law", arbitration International4:3(1989), 269

International Commercial Arbitration

At its most fundamental, business discretion is a private debate determination framework which enables gatherings to determine their question quicker, less expensive and inside an unbiased and classified setting.[18] It is picked in light of the fact that it gives parties greater adaptability and control over the procedures and dispenses with the vulnerabilities in decision of chief, discussion and relevant law.[19] Moreover, intervention tribunals can keep up ward over parties[20] who have submitted to it according to an assertion or assertion provision, and maybe in particular business mediation gives the instrument to universally uphold arbitral honors, at any rate inside the countries that are signatories to the important traditions and treaties.[21]

Worldwide business mediation is basically discretion between or among transnational performing artists be it between states or private gatherings. Intervention has turned into the favored component to determine global business debate:

> In the realm of international commercial transactions, arbitration has become the preferred method of dispute resolution. Arbitration is prefer- red over judicial methods of dispute resolution because the parties have considerable freedom and flexibility with regard to choice of arbitrators, location of the arbitration, procedural rules for the arbitration, and the substantive law that will govern the relationship and rights of the parties.[22]

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[18] . A. Redfern & M. Hunter, Law and practice of International Commercial Arbitration, (1991), 3.

[19] Richard H. McLaren and John P. Sanderson, Innovative Dispute Resolution: The Alternative (Carswell: Thomson, 2004), 8-1.

[20] J. Sorton Jones, International Arbitration (8 Hasting Int'l and comp.L.Rev. 1985), 213.

[21] Supra, note 15.

[22] Nili Cohen and Ewan Mc. Kerdrick, eds. comparative Remedies for Breach of Contract (North America: Hart Publishing, 2005), 326.

Although, in Islam sanctity of contract has always been considered as a sacred principle, declared by Allah almighty and his prophet (s.a.w). Public prosperity, is the main policy in all the law making and its implications. Accordingly, for the growth and strengthen of such mentioned policy, civil and common as well as Islamic law system has developed their laws and public policies. Currently sharia has developed its rules according to the requirements of modern commerce, but under the shadow of Quranic principles about permissions and prohibitions. Before embarking upon the commercial arbitration on Islam, we shall enlighten the Islamic system in precise manners.

Islam and its basic Legal System

Arbitration has become a basic tool, to solve disputes in the cheap and easiest way, of the commercial world. Although, there are bundles of instances in the modern commercial laws of different developed countries but it has also been expressed in sharia laws. It has always been upheld by Islam for the quick settlement of disputes for the sake of justice to everywhere. The core objective of the Islamic teachings is to establish a civilized society for the better future of human beings and it can only be find out by the promulgation of laws and its implications. The saying "ubi societas ubi jus" concisely communicates a trite perception, to be specific that to have a general public, one must have rules. A general public is characterized as "a group, country, or general gathering of individuals having normal customs, organizations, and aggregate exercises, and interests".[23]

[23] Webster's Ninth New Collegiate Dictionary (Springfield, Mass.: Merriam-Webster Inc., 1990).

The word Islam implies accommodation to God.[24] It is gotten from the word salaam, which implies peace. The sharia is the way to accomplish this submission.[25]

All together for the human progress to persevere through, the normal factors that characterize it must be ensured. This must be proficient through the affirmation of laws and directions that save the very idea of the general public, its esteems and establishments. To be sure, as the late researcher Ismail Faruqi stated "Islamic law made Islamic human advancement, not bad habit versa."[26]The substance of the conviction framework is the total expert of God: "There can be almost certainly that the pith of Islamic human advancement is Islam; or that the quintessence of Islam is law-concealed, the demonstration of confirming God to be the one, outright, otherworldly Creator, Lord and Master of all that is".[27]

Arbitration under the Shari'a

Although, arbitration becomes a vital part of international world trade but it's not a now object in the history of Islam and sharia. According to the different written knowledge there were many roots of arbitration in Islam and it has also been constantly used by the pre-Islamic Arab tribes for the solutions of conflicts. As Abdul Hamid mentioned that Intervention, tahkim as it is known, has a long history in the Middle East extending back to the pre-Islamic period.[28]The pre-Islamic Arabs did not have a formal lawful framework set up, but rather they had a type of tribal equity regulated by the head

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[24] C.L.G. Eaton, Islam and the Destiny of Man (Albany: State University of New York Press, 1985); F. Rahman, Islam (Garden City, NY: Doubleday & Company, Inc. 1968).

[25] J. L. Esposito, Islam the Straight Path (New York: Oxford University Press, 1988).

[26] Ismail Faruqi and Lamya Faruqi, the Cultural Atlas of Islam (New York: MacMillan Publishing Co., 1986), 279.

[27] . E. D. Adelowo, "The Concept of Tauhid in Islam: A Theological Review"35 Islamic Quarterly23.

[28] Abdul Hamid El-Ahdab, Arbitration with the Arab Countries (2nd ed., 1999), 11.

of the tribe and they likewise utilized assertion extensively.[29]The accompanying portion from Abdul Hamid El-Ahdab's work gives a fantastic look at intervention as it existed among pre Islamic Arabs:

> The Arabs of Jahiliya (pre-Islamic period) knew arbitration because adversaries (be they individuals or tribes) usually resorted to arbitration in order to settle their disputes....Arbitration was optional and was left to the free choice of the parties. Arbitral awards were not legally binding their enforcement depended solely on the moral authority of the arbitrator".[30]

Quran and sunhat about arbitration

This previously mentioned routine with regards to intervention was affirmed of in the Qur'an, especially in the marital setting:

> If ye fear a breach between them twain (i.e. husband and wife), then appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, God will cause their conciliation; for God hath full knowledge, and is acquainted with all things.[31]

Islamic history additionally uncovers that the Prophet acknowledged the choice of an authority; he prompted others to mediate and actually, his nearest partners utilized it to determine question as well.[32]Truth be told, even the principal arrangement entered by the

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[29] . Sobhi Mahmassani, The Legislative Situation in the Arab Countries: it's past and present, (Dar El-Elm Lil Malain: 2nd ed.), 31-33.

[30] Supra, note 118, at 11; Abdul Hamid El-Ahdab, Arbitration with the Arab Countries (2nd ed., 1999)

[31] Al-*Qur'an* 4:35.

[32]Supra, note 118, at 12; Abdul Hamid El-Ahdab, Arbitration with the Arab Countries (2nd ed., 1999)

Muslim people group, the Treaty of Medina marked in 622 A.D. between Muslims, Non-Muslim Arabs and Jews, called for debate to be settled through arbitration.[33]Moreover, the Prophet additionally turned to tahkim in his question with the Banu Qurayza tribe.[34]Not just is tahkim endorsed of by the Qur'an and apparent in the Sunna of the Prophet, the two principle wellsprings of Islamic law, yet the ijma or agreement has likewise affirmed its utilization as an Islamic question determination tool.Hence, the sharia has a clear and smooth system for the use of commercial arbitration in the globalized world. Many developing countries including Pakistan can legislate their laws according to the teaching of Islam: Quran and Sunnah.

Public policy

Public policy is the main factor which enhance the power of law makers to legislate the laws for the prosperity of public. Although, it is the ancient Doctrine which is using in the modern law making. Certain developed countries have been achieved their goals by making of strong foreign policies particularly towards economy. Expressed rules for the strict compliance of contracts is one of those economic policies for the prosperity and creation of a civilized society as an essential goal of the Shari'a is to enable humankind to achieve the advantages "both in this world and the next.".[35] Maslahah or open intrigue (referred to then again as the benefit of all of mankind) is a critical factor in the improvement

[33] Ibid.

[34] Libyan Am. Oil Co. (LIAMCO) v. Libyan Arab Republic (1977), 20 I.L.M.,(1981), 41.

[35] Faisal Kutty, "The Sharia Factor in International Commercial Arbitration", L.A. Int'L and comp. L.Rev. (2006).

of the sharia.[36] One of the colossal researchers al Shatibi marked out maslaha just like the main superseding target of the Sharia which incorporates all measures valuable to people.[37] The subject of what is in the general population intrigue will produce diverse answers relying upon the perspective. To be sure, as per the Islamic logician, al-Ghazali, just the certified open intrigue which basically rotate around securing the five maqasid al-Sharia.[38] Public request in Saudi Arabia is dictated by reference to the Shari' an, including its measure of the benefit of all of humankind not only the gatherings associated with a dispute.[39]Moreover, Article 2 of the UAE Civil Code gives that "one should turn to the standards and standards of the Muslim Fiqh in the development of the laws".[40] It additionally states in Article 27 that those laws which are in opposition to the "Shari' an, open request or great ethics of the State of the United Arab Emirates might not be applied".[41]

Pacta sunt servanda or Sanctity of Contract.

A valid contract is binding upon the parties. It can only be modified or terminated by consent of the parties or if provided for by the law. The parties to a contract must, unless legally excused from performance, perform their respective duties under the contract ("pacta sunt servanda"). A valid unilateral promise or undertaking is binding on the party giving it if that promise or undertaking is intended to be legally binding without acceptance.

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[36]M.Cherrif Bassiouni and Gamal M.Bada, Supra, note 76, at 158: "when a new rule is needed to regulate a novel situation and cannot derived from Qiyas, Ijma or Urf, resort to masalah is permissible. It is, in some respects, equivalent to the common laws's equity, though it is much broader because it extends beyond the parties to a given conflict".

[37] Supra note, 65 at 228; Faisal Kutty, "The Sharia Factor in International Commercial Arbitration", L.A. Int'L and comp. L.Rev. (2006), 228.

[38] Ibid. at, 229.

[39] Kristin T. Roy, "The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards?" Fordham Int'l L.J.18:920.

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Sanctity of contract under sharia in modern perspectives of Shari'a

In ancient norms as well as modern approaches of shri'a the principle "pacta sunt servanda" has a significant place to smoothly drive the nation or society. This aforementioned principle, because of the importance it has always been considered a basic tool to create a civilized society also in modern legislation of sharia. In Islamic culture, an agreement is altogether different from what we know in the West.[42]Under the sharia standards, an agreement is divine in nature, and there is a holy obligation to maintain one's assertions, "O you who believe fulfill any contracts [that you make]...Fulfill God's agreement once you have pledged to do so, and do not break any oaths once they have been sworn to. You have set God up as a Surety for yourselves".[43]

Shaikh Ismail al Jazaeri, remarking with current perspectives on the above verse infers this would apply to all assertions came to by parties aside from on issues that the Qur'an has esteemed void or unenforceable.[44] This exceptional position of agreements is best summed up by the Islamic saying Al Aqd Shari'at al muta'aqqidin which basically expresses, "the agreement is the Shari'a or sacrosanct law of the parties."[45] This makes it Liberally obvious that the legally binding relationship is seen considerably more entirely under the Shari'a and unmistakably would dislike the "productive break" theory.[46]Indeed,

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[42] Nabil Saleh, The Law Governing Contracts in Arabia (38 Int'l and comp.L.Q. (1989), 761.

[43] Al- Quran 5:1; Al- Quran 16:91.

[44] Shaikh Ismail al Jazaeri, Ayat-al- Ahkam (Arabic text), 124.

[45] M. Cherif Bassiouni, The Islamic Criminal Justice System 10, xiii (M. Cherif Bassiouni, ed., 1982).

[46] Marvin A. Chirelstein, Concepts and Case Analysis in the Law of Contracts (3d ed. Foundation Press, 1998), 149-150.

all authoritative commitments must be particularly performed, unless it would contradict the Shari'a or some authentic open strategy formulated in congruity with the Sharia.[47]

This approach is showed in current enactment in a significant part of the Muslim world.[48]The down to earth impact is that insofar as it was not in opposition to Islamic norms, all understandings are enforceable. The position in Saudi Arabia is gotten from the Hanbali legal adviser Ibn Taymiya, who composed. "The lead in contracts and arrangements is that anything is allowed which is legitimate and that exclusive that which is illegal or put aside by one of the content or the `Qiyas' (thinking by relationship) is forbidden."[49]The obligation to act in compliance with common decency is the substance of Islamic contract law yet far beyond this there is broad lawful grant, which have explained clear standards of Islamic contract law.[50] Actually, pundits have highlighted the natural adaptability in Islamic contracts law to think about present day transactions.[51]Therefore, as opposed to the view communicated by referees in the Abu Dhabi and Qatar interventions, Islamic law has the ability to determine current legally binding question.

Importance of international treaties in shari'a

Legally binding arrangements in the Qur'an have likewise been translated to stretch out to worldwide treaties.[52] Actually, the Sharia does not recognize a settlement and contract

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[47] Sayed Hassan Amin, Commercial Law of Iran (Vahid Publications, 1986), 64.

[48] Article 89 of the Egyptian Civil Code of 1949 which provides: Nudrat Majeed, "Good Faith and Due Process: Lessons from the Shari'a,"Arbitration, 20:1 (2004).

[49] The Fatawa of Ibn Taymiya, III, p. 326.

[50] William Ballantyne, "The Shari'a and its Relevance to Modern Transactional Transactions in Arab Comparative and Commercial Law: The International Approach" Graham & Trotman, vol.1, (1987), 12.

[51] Haim Gerber, State Society and Law in Islam: Ottoman Law in Comparative Perspective (New York: State University of New York Press, 1994), 44.

[52] Gamal M. Badr, a Survey of Islamic International Law, (76 Am. Soc'y Int'l Proc. (1982), 56-59.

law.[53] Indeed, "the rule of pacta sunt servanda is perceived by all Muslim legal scholar theologians."[54] The acknowledgment of this standard may fill in as a critical component in urging Islamic countries to apply their earnest attempts to conform to global traditions and bargains. Once more, this can just work if there is common regard between the defenders of western global business assertion and promoters of the Sharia.

Remedies in Islam against the breach of contract

It has been recorded that in the prompt pre-Islamic time life in Mecca was wanton and this debauchery was reflected in exchange practices also. To review the unconscionable and harsh business routine with regards to pre-Islamic circumstances, Messenger of God (Allah) demanded that exchanges be required to consent to the developing standards of Sharia.[55]

There could be some strict rules, punishment against the violations of these rules and remedies also for the aggrieved or injured party. In order to this, Islamic contract law was promulgated. Islamic contract law, by differentiate, and began taking its shape in the seventh century. It is reasonable for expect that as of now in mankind's history trade was restricted to showcase obvious and that merchandise comprised of surplus ranch items or handiworks. The Islamic law of agreements reflects and addresses the value-based reality of this period.[56]

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[53] James Norman Anderson, Law Reform in the Muslim World (The Athlone Press ed., 1976), 16.
[54] Majid Khadduri, War and Peace in the Law of Islam (AMS Press, 1979), 204.

[55] P.S Atiyah, The law of Contract (1961),1-19.
[56] Otto, Jan Michiel, "Sharia Incorporated: A comparative Overview of the Legal Systems of Twelve Muslims Countries in Past and Present",ISBN(2010),167.

Muhammadan legal system

An agreement was not another marvel to the Islamic personalities. There was basically no compelling reason to apply the saying that need is the parenthood of all creation. Every one of the issues identified with contract, amid the Mohammedan control, were represented by the Mohammedan Law of Contract. The word "contract" in Arabic is "Aqd" which signifies, "Blend". It signifies "blend of proposition (Ijab) and acknowledgment (Qubul)". To put it plainly, an agreement requires that there ought to be two gatherings to it, that one gathering should make a proposition and other acknowledge it, that the brains of both must concur i.e. their assertion must identify with similar issue and the protest of the agreement must be create a legitimate impact. Mohammedan legal framework has likewise experiences nearly similar places of improvement and adult in an indistinguishable way from whatever other legitimate frameworks.[57] The two schools of Mohammedan Law appeared known as Sunni and Shia after the passing of Prophet Mohammed. Essentially the wellsprings of Law have been set out in article 1 of the Civil Code of Muslim Law. These are: the civil code, Islamic sharia according to imam Shafi and imam Abu Hanifa, Islamic sharia in accordance with the views of imam Malik and Ahmad bin Hanbal, Local custom not inconsistent with public order and ethics, General custom consistent with public morals or order.

[57] . Kourides, P. Nicholas, "Influence on Islamic Law on Contemporary Middle Eastern Legal System: The Formation and Binding Force of Contracts", Columbia Journal of Transnational Law9: 429(1970).

Remedies in the Mohammedan Legal System

Historically, the honor of harms was normal in early lawful frameworks, and was specified in religious law as ahead of schedule as the Book of Exodus. Mohammedan legal advisers additionally discussed harms in their works in one way or the other. They partitioned rights under various heads like Hindu legal scholars. Mohammedan legal advisers partition rights into two classes: - 1) Public Rights, 2) Private Rights. Public rights were unmistakably known as right of God, which were very surprising from private right, which was known as right of man. Public rights were authorized by the state as it was a privilege gave by the God. While a private right was upheld by the individual influenced. These rights have been additionally ordered into four sub divisions. Most vital of them were harms or pay for rupture of agreement.

Matters in which just the privileges of people are concerned absolutely and basically are private rights, e.g. implementation of agreements, ideal to ensure one's individual and property. The requirement of such rights was absolutely reliant upon the person who had been harmed and he was the main individual who could be allowed to support or aggravate the damage.[58]

In Islamic law, solution for break of an agreement are confined to immediate and real damages[59] under uncommon conditions cure of rescission is likewise permitted, such as:[60] when the dealer neglects to play out, the stock is inadequate or the inaccurate amount, the

[58] Supra, note 26, at 4.

[59] Gayle E. Hanlon. "International Business Negotiations in Saudi Arabia."in The ABA Guide to International Negotiations,ed.James R Silkenat, Jeffrey M. Aresty and Jacqueline Klosek (Chicago, Illinois: American Bar Association,2009),229-851.

[60] N. Coulson, "Commercial Law in the Gulf States", 9 (1984), 65-69.

second rate nature of administration or when unanticipated conditions keep the culmination of the agreement. The courts shouldn't perceive financial loss of shot, intriguer, potential benefits and other theoretical honors that could be given ordinarily in Mohammedan legitimate framework. Significant harms in view of expected benefits are additionally blocked from the domain of Saudi courts.[61] Where the agreements include connections after some time, for example, constant of merchandise, and on the off chance that it is wrongfully ended, the gatherings are not held subject for entire obligation, rather the courts would just honor reparations for quick damages.[62] The legal arrangements of Muhammadans settles the relationship of contracting gatherings to any question engaged with the agreement as to obligation for misfortune or harm. A gathering to contact holds the protest either as a "trustee" (anib) or as a .guarantor" (damin). Unless there is a rupture of trust, the trustee is not at risk at all for damage to the question. Nonetheless, an underwriter bears an indistinguishable danger of misfortune from a proprietor. In an event that by the demonstration of God or drive majeure a questions is pulverized, the underwriter has no plane of action.[63]

Conditions for claiming damages

As the lawful arrangement of Mohammedans had its birthplace in Arabia, along these lines, in this framework additionally, fundamentally, there are two conditions which the gathering guaranteeing harms needs to fulfill: First one is the casualty of a rupture of

[61] David J. Carl, "Islamic Law in Saudi Arabia: What Foreign Attorneys Should Know", Washington Journal of International Law and Economics (1992), 102-110.

[62] Ibid.

[63] Frank Vogel and Samuel Hayes, "Islamic Law and Finance: religion, Risk, and Return" Kluwer Law International (1998), 102-110.

agreement can just case authoritative harms that they brought about directly from the break of agreement and also, the legally binding harms ought to host been predicted by the contracting gatherings. It implies the casualty of a rupture of agreement can just claim authoritative harms that they brought about straightforwardly from the break of agreement. Also, the second condition that gatherings at the season of contracting ought to have expected the harms, can be considered as the immediate consequences of the pacta sunt servanda standard. The gatherings have contracted on what was predictable (measurable) to them and the account holder must be obliged for what they would have Expected, anticipated or anticipated (the word tawaka in Arabic can be meant these three verbs) as damages.[64] Moreover, harms ought to be anticipated in both the reason and respect. This is the motivation behind why important harms in view of expected benefits are outside the domain of Saudi Courts. In conclusion, the predictability at the season of contracting, ought to have been such, which can be surveyed in abstracto and dispassionately (which means in this manner which a man of common judiciousness can foresee).

The harms expected ought to be anticipated by considering the likelihood of guaranteeing for different classes of legally binding harms, for example, loss of benefits, loss of chance and good harms. Mohammedans lawful framework owes it source to divine power "Allah" Islamic law includes the profound and additionally the common exercises of Muslims. Mohammedan law interplayed with precedent-based law and common law frameworks in 19th and 20th century. As in Quran 59:7 what Allah has bestowed on His Messenger(and taken away) from the people of the township, belongs to Allah, to His Messenger and to kindred and orphans, the needy and the wayfarer; in order that may

[64] Ibid.

not(merely) make a circuit between wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah, because Allah is strict in punishment.[65]

Exceptions to contracts compliance in Islam

Islamic law has clearly expressed the dignity of determined contract and its obligations. It declared the, "pacta sunt servanda" as a sacred principle for the smooth and fair dealings of people in their life. Although, the aforementioned principle has a great essence in the contracts dealings under Islam but there are some clear exceptions to this principle. There are certain following examples with illustrations, expressed by sharia. The Muhammadan legal system fixes the connection of both contracting parties with object and it is the core point of contract as to the liability of damages or loss. For instance, a contracting party holds and article or object either as a guarantor or as a trustee. The trustee will not responsible for all loss or injury to object, unless there is a breach of trust. However damin or guarantor tolerates the same risk of injury as an owner of the object. But, if it has been where the agreements include connections after some time, for example, consistent supply of merchandise, and in the event that it is wrongfully ended, the gatherings are not held subject for entire obligation, rather the Courts would just honor reparations for quick harms. Happened by the act of God or force majeure or an object was destroyed, the guarantor has no recourse for it. The

[65] Kuran, Timur, "The Islamic Commercial Crises: Institutional Roots of Economic Underdevelopment in the Middle East", the Journal of Economic History 63:2 (2003), 414-446.

gatherings are not held subject for entire obligations, rather the courts would just honor reparations for quick harms.[66]

Conclusion

Conclusively, the principle sanctity of contract has been flourished under the umbrella of sharia. It has always been considered Holy principle in the divine laws of all religions, particularly Islam. Currently, western countries feeling a need of sharia principles for the contracts compliance in high pace commerce with Islamic trade world. In order to this, sharia has mold their laws according to modern trades but according to the provisions of Quran and Sunnah. Besides of this, sharia has expressed certain rules for contracts and modern ways of remedies and punishment against the breach of undertakings. Thus, Islam has been continuously acknowledging the contracts compliance principle, "sanctity of contract" for the welfare of human being in and after that world.

[66] David J. Carl, "Islamic Law in Saudi Arabia: What Foreign Attorneys Should Know", Washington Journal of International Law and Economics (1992), 162.

CHAPTER III

CRITICAL EVALUATION OF SANCTITY OF CONTRACT IN PAKISTAN

Overview of sanctity of contract in Pakistan

Concept of sanctity of contract has always been important in any country where commercial activities play a significant role in the life of people. Further, a strong policies in an economic related matters become a great need of any developing country in such globalized situation of the trade world. Thus foreign investment plays a vital role in the internalization of economic activities of any country. For such an achievement foreign direct investment is an important vehicle for the transfer of technology capital of investor country, contributing relatively move to growth there domestic investment.[1] However the higher productivity of FDI holds only where the host country has a minimum stock of irregularities in Governance. Similarly it contribute to economic growth only where a sufficient capability of counts to enforce the contractual liabilities are available in the host economy. The contract compliance concept is called as sanctity of contract which is binding in nature as determined by Islam and main source of general principle of contract

[1] J.W Carter, Breach of Contract (Sydney; the law book company limited. 1984) 83.

Law.[2] To gain better positions host countries make public Policies to attract foreigners to invest in host or developing countries. Unfortunately, in Pakistan the doctrine of sanctity of contract has been weaken due to some factors and forcible public policies in which courts merely sees the doctrinal approach rather than impacts on economy and ordered against the written clauses of agreement, particularly in transnational contracts.

Like the other developed and developing countries, in Pakistan sanctity of contract has a great significance in its existing Laws, e.g. contract act 1872, Constitution Islamic Republic of Pakistan, arbitration Act 1940, Recognition and enforcement of Foreign Awards Ordinance 2015. But there is a great need of Rule of law and limited the Judicial Powers as well as standardize the aforementioned Laws according to the interactive standards.

There are many failures and certain public policies which are commons challenges to principle of sanctity of contract in Pakistan resulting deviations from contracts compliance policy like, structural weakness of system delay in disposal of cases, contracts made by previous regimes ,onerous of contract, particularly public policies about choices of Law, choices of foreign law, law of forum non-connivance and prevailed judicial thinking in respect of foreign jurisdiction particularly arbitrary of interactive commercials disputes.[3] Contrarily, in the neighbor countries china and India (1st and 2nd fast economy growing countries respectively) has mold their laws and approaches about decision making, particularly in economic transnational contracts.

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[2] Larry A. Dimatteo, International Business Law: A Transactional Approach (United States of America: Rob Dewey, 2006), 407-415.

[3] Inaamul Haque and Naeem Ullah Khan, "Jurisprudence of Sanctity of Contracts in Pakistan-A Contextual perspective "Pakistan law journal (2009), 387-415.

Thus, there is an immediate essence to strengthen the laws and legislation criteria, as well as public policies in Pakistan, for getting good place of future in Globalized trade world.

Weather existing arrangements are sufficient?

The concept of sanctity of contract has been captured a great importance in the economic body of any country. In the economic improvements governance environment and judiciary play a vital role. Their smoothly working provide a boosting material in the flows of FDI in host country. Infrastructure of Law and its sincere implementations provides a trust to the foreign investors to invest in the host country. Governance of Law as well as public policies are the catalysts in future economic productions but in Pakistan existing arrangements for such development are not much reliable like other neighbors countries. Since the past decades, there were less strong policies about the economic purposes in the Pakistan. Courts only observe the doctrinal approach of the cases of economic matter. Contrarily, Supreme Court of India has been observed, "The basic duty of the court of Law is to enforce a promise which the parties have made and to uphold the Sanctity of contracts which forms the basis of society".[4] There is a noticeable loophole in the judicial infrastructure that overlooking the main principle of Sanctity of contract which directly deal with the nation's prosperity. In this context R.Cooter said for the economic prosperity of the nations that

> Contract Law and courts help peoples to cooperate by enforcing interpreting, and regulating promises. By enforcing promises, the courts enable people to make

[4] Suka Rao (J), in Gherulal vs. Mahcdesdas Atr 1959 S.c 781, (1959) 2 S.C A 342.

> credible commitments to cooperate with each other. By enforcing promises optimally, the courts crate invectives for official cooperation.[5]

In the following paragraphs we shall discussed the weaken arrangements in detail and different factors or variables which restraints the foreign capital inflows to Pakistan.

Weaken Situations of Sanctity of Contract in Pakistan

Doctrine of sanctity of contract has been weaken in the existing arrangement in Pakistan and deteriorating its economy because it has a great impact on the economic enhancement of the developing country as, the natural response of a commercial man depends upon the seriousness of contractor.[6] Similarly, the situations to make the public policies for the courts or settlement of disputes in the economic related matter, in Pakistan. In Pakistan, the doctrine of Sanctity of contract has been weaken due to some factors and present public policies which can be changeable easily with the simple desire of existing Governments or dictators. In additions to those structural weakness of system, delay in disposal of cases, extra power to courts on need base, contracts of previous regimes of Government and dictatorship. Generally, there are many precedents which tarnishing the name of Pakistan in the Global world of trade due to the overlooking of sanctity of contracts and obligations mentioned in contracts. These instances, will also be discussed in the detailed in this chapter.

Various Factors Liable to such Ailment

There are some following factors which deviate the courts from strictly adopt the sanctity of contract and to meet the ends of justice.

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[5] R Cooter and T. Ulem, Law and Economics (2000), 222.
[6] J.W Carter, Breach of Contract (Sydney: The Law Book Company Limited, 1984), 83.

Rule of law or Governance Environment

Foreign direct investment became an engine to accelerate the economy of any developing country in this globalized trade world. With the following of sanctity of contract, we achieve the trust of foreigners which provides the assistance to enhance the foreign capital flow in the host country. Unfortunately, in Pakistan the existing situation of rule of Law is miserable. Further, the existence of mix government environment causing a long term gab in the judiciary working. Judiciary couldn't be free from the political influence due to the over influence of dictatorship or other parties in democracy. Infringement of property rights of the foreign investors tarnishing the name of Pakistan in the trade world.

Like alternate nations, outside direct speculation has a huge part in Pakistan's economy. At the point when the extent of FDI as a level of the aggregate remote speculation into a nation versus the level of the manager of the Law of getting nation is plotted, it is clear level of the control of Law have a higher extent of FOi. Commendable, since check and equalizations are missing and the press needs flexibility a capable tyrant may control the political arrangement of a general public with a poor open requesting, and the tyrant may tend to see the nation as his private property (oison 1993).He may make state approaches to support industry pioneers and business with whom he has solid relationship.

Structural weakness of system

Experienced world over has uncovered that a huge number of variables have an orientation on the sacredness of value-based contracts. These tend to bring about deviations or grade gatherings to gsindh higho amiss from the authoritative terms and conditions in spite of the way that these were concurred intentionally and gravely. Difficulties to the

sacredness of court radiate from different sources including business rehearses, standard of business morals, political framework, lawmaking body, administrative experts and legal organizations. Other than of the above variables, exceptional issue emerge in cases including issues of decision of law, decision of discussion, supplication of gathering non-accommodation, open strategy and the predominant Judicial speculation in regard of outside ward, especially arbitrability of universal business debate.[7]

Delay in Disposal of cases

As the old dictum goes, "Justice delayed is justice denied". Delay in the management of justice exactly gives ineffective enforcement of contracts. This problem is not a new one, as most strong and developed countries' legal system also suffer from such difficulty. On the off chance that securing redresses of one's authoritative grievances is to a great degree troublesome by and by, the reason, of putting any arrangement to protect one's enthusiasm for an authoritative report is without a doubt crushed.

In the context of above mentioned dictum, "Justice delayed is justice denies" The sanctity of contracts, needless to emphasize, in such a situation does not really exist. There are also noticeable views by a learned judge of Sindh High Court in a case[8] that, if Pakistan is to attain same respect in the commercial world, it is necessary that transactional commercial agreements must be honored and judicial process must not be merely to delay the implementation of such agreement or judicial or quasi-judicial decision passed in disputes arising from same agreements. In additions to this, poor administration system reflects the infringements of rights by the form of overlooking the sanctity of contracts. Consequently,

[7] Terence C.halliday, Lucien Karpik and Maledm M.Feeley, eds. Facts of Political Liberalism in the British post-colony: the politics of the legal complex.(Cambridge university press:Law,2012).

[8] Meredith Jane co. Ltd. vs. Cresent Board Ltd. (1999) CLC 437,441.

economy is decreasing with declining of inflowing capital of foreign investments. In developing countries expert's opinions on law and economics are valuable here:

> The belief is growing that the judicial sector in developing countries is ill-preponed to faster private sector development within a market system. Research has revealed that in several developing countries a large number of court users are not much inclined to bring commercial disputes to counts. The enhancement of the capability of the courts to satisfy the people's demands for justice particularly in such cases a challenging and important aspect of judicial reform in developing countries.[9]

There is a clear relation between good inflow of foreign investment and good class of judicial system. Similarly, good governance and rule of law is directly proportional to the inflow of good economy or foreign investment. Chief justice Iftikhar Chaudhary disclosed this reality in 2005, "existence of courts and their independent functioning not only gives a sense of security to citizens but also provides protection to foreign investor."[10] Progressively talking, the government of Pakistan has made a little effort to strengthen the judicial system of Pakistan, which has not been implemented yet. This step by apex court in 2009 shows a bright importance of the strong judicial system in future economic nations and transnational contract. It has been declared in the policy document of national judicial policy of 2009 that, "The policy is an attempt to streamline the judicial system in the country and make it responsive to the present day requirement of society. The objective is to clear the huge backlog that has accumulated over the years at all level of judicial hierarchy...."[11] The trust of the policy is to consolidate and strength the independence of

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[9] E Buscaglia and W Ratliff, "Law and economics in developing countries" (2000), 55.
[10] Foreign Investment and rule of law, Business Recorder, September 21, 2005.
[11] National judicial policy (2009), 79.;
URL: http://www.google.com.pk

judiciary, early enabling the judicial organ to exercise institutional and judges to have decisional independence to decide cases fairly and impartially.

Political instability and contracts of previous regimes

Danger to sanctity of contract also comes widely when it faced the unstable Government. This following problem has been increasing in the developing countries. Predominant of political issues of Pakistan has continually been fluctuating as far back as it appeared. Seventy years of Pakistan's history is damaged with interests, ill-conceived utilization of energy and steady obstruction in legislative issues by both common and military foundation.[12] With the change of existing era, the incoming government may want to change the previous contracts with the foreign investors. This for the most part happens when claims of defilement leveled on the development of agreement or where the authenticity of past government was had been in questioned by approaching Government. The good is that a remote speculator making an instrument under an agreement with an unrepresentative administration does as such as its own particular risk on the grounds that the new government may assert a privilege to revoke such contracts.[13]Similarly, contracts made with military administrations are additionally suffused with dangers as the approaching popularity based administration may pronounced that it is not uproarious by them:

Accessed: July 30, 2017.

[12] Muhammad Iqbal Malik, "Political transactions and Instability in Pakistan: let's start thinking" Accused (2013).

http://www.letsstartthinking.org/history/political-transitions-and-instabil'ity.osp

Accessed: 28th June, 2017.

[13] R.H Folsom et al, Supra note 29, at 78.

> The extent to which democracy and self-determination are normative factors affecting over the exercise of powers of governments in the conclusion of contracts is yet to be worked out in international law...., But, as for as for as risk analysis is concerned, the entry of foreign investment on the basis of contract made with unrepresentative Governments or through corruption increases the risk, to the foreign investment.... The foreign investor who deals with unrepresentative governments increases the risk to his instruments considerably.[14]

Onerous contracts

Onerous contract is one of the noticeable challenges to contracts compliance, in which performance may become onerous due to conclusive changes. In these changes or circumstances, host government may get relief by changing their laws very sharply. The host government may use the method of interference by changes policies or by legislation provisions. Following case laws is the clear illustration of aforementioned statement. A case, Settebello Ltd V Banco Totta Aeores in which state has owned the shipyard and had contract to build the tanker of oil in Portugal. In such contract penalty provisions on late performance were mentioned. Being a defaulter it was in risk of having to make a huge payments for its evasion. The government of Portugal invested through provisions legislation and change the penalty provisions mentioned in the contract. The opposite party found no remedy against this charge both inside and outside the Portugal. Thus, the sanctity of contract was violated with sharp changes and saved the shipyard from huge penalty but

[14] Ibid.

it effected the personality and credibility of the Portuguese Government in the eyes of foreigners.[15]

Nationalism

Nationalistic sentiment is another problem for foreign instrument in a host country. This happened regularly, when the economy of host country experiencing economically and political stress. Repatriation of benefits authoritatively concurred, can turn out to be simple focuses of xenophobia patriotism[16] as mentioned by the respectable scholar of international trade law:

> Foreign investors become ready targets for opportunistic politicians who may see advantage in such a situation to bring about a change of government. It is also easy to deliver the promise of talking over the ownership of established foreign owned plants. It is a popular measure which would cause immediate operate nationalistic forces.[17]

Public policy

We have discussed that all those aforesaid challenges or trials are creating hurdles for the contracts compliance and influence of foreign direct investment but public policy is a common source of these challenges to sanctity of contracts. Generally, courts in all over the world in some cases have been letting parties to escape from the contractual obligations on the grounds that the agreements made by them (through freely and willingly) were unlawful being opposed to public policy. The implication of the concept in its

[15] Rohflsom et al, Supra note 29, at 908-909.
[16] Roh Folson et al "International business transaction" (1999), 906-907.
[17] The Pyramid Arbitration Case of Egypt.

broadest sense is that considerations of public interest may require the courts to depart from their primary functions and refuse to enforce a contract.[18]

Policy Making in Pakistan

Section 23 of the Contract Act 1872 enshrined the provision to make the law for public policy in Pakistan. Sec. 23, inter alia provided that, the consideration or object of an agreement is lawful, unless it is forbidden by law; the court regards it as immoral or opposed to public policy. Pakistani courts also follow the English Courts to interpretate the doctrine "public policy." In past, Supreme court observed in Manzoor Hussain and others vs. Wali Muhammad and Abdul Shakur, [19]"It is new well-settled that the provisions of sec 23 of the contract act have to be construed strictly and the courts should not invent new categories or new heads of public policy in order to invalidate a contract." In Pakistan law scholars and judges have a strict mind-set about public policy in economic matters. They don't like to expand the public policy rather than expound. In the case of Lioyds Bank Ltd. Karachi[20], the Apex court observed that the duty of the courts is only to exposed not to appeal the public policy and it should only be invoked in clear cases. It should invoked only in those case in which harm to public property is substantial. The English's court's point of view about public policy will be discussed in next paragraphs as well as judiciary's power to invent a new head of policies.

[18] Lord Wright, Legal essay and addresses; Winfield public policy in the English common non law, 42 har LR 76-102 (1928).

[19] Manzoor Hussain and others vs. Wali Muhammad and Abdul Shakur, PLD 1965 SC 425.

[20] PLD 1969 SC 301.

Public policies to economy co-related matters.

Presently, Globalized trade world demanding the liberalized policies towards economic related matters for the sake of success in high paced commercial world. In order to this, there are many developed and developing countries as well, which have mold their policies for the economic benefits of their natives. They are preferring the foreign investors to invest in their countries by getting their trust through strict compliance of contracted obligations. So, now we shall discuss in details those policies and laws which have been made by them for the economic development.

Definition of Policy

"The policies that have been declared by the state that covered the state's citizens. These laws and policies allow the governmental to stop any action that is against the public interest."[21]

Importance of decent economic policy

Public policies towards economic correlated matters should be dynamic and liberalized. As we discussed about the significance of economic growth and FDI in such a globalized world in previous parts of this research work, there is a need to highlight the different polices which has been adopted by developed and fastest developing countries to increase the pace of their economy. They have modernized their views about the doctrine of "public policy" and principle of "sanctity of contract". With the discussion about U.S policies we shall also use the instances of china and India because these both are major developing countries in the world. They also have been adoring wild economic progress since the

[21] Dr. Muhammad Kaleem, Governance and public policies (Lahore:Jahangir's world times publications,2016),185.

1990s, in which China looks to be acting better. Public policies to the economical fully matters must be flexible to get the trust of foreign investors and to increase the inflows of foreign direct investment. Public policy of any country play a vital role to strengthen such country in different aspects and economy is a main pillar of these aspects. Many jurists has been analyzed that "public policy "doctrine must be used at highly alarming situation to the Public prosperity. As Lord Atkin said that "public policy" should be invoked in highly matter which substantial in nature.[22]

There are many developed countries, in which courts have flexible views towards economically linked matters because they know the importance of strong economy in such a globalized world, which I shall discuss here. Thus, there should be economic supporting Laws and policies, by which a developing country got stand in the stride of globalized world. As Iftikhar Chaudhary chief justice of Pakistan in 2008, has addressed to the Harvard Law School:

> In Pakistan, both civilian as well as uniformed autocrats have been influencing judicial decision make for the past six decades... Remember, almost all the fortune 500 companies are a product of economics where the law rules Supreme. At the same time, the poorest of the poor continue to dwell in countries where men governed as opposed to law. A government of laws stimulates economic growth.[23]

Before explanation the repercussions of breaching obligations under the public policy, we shall discuss the importance of foreign direct investment in Pakistan. Although, policies of

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[22]Dr. Avatar Singh, Law of Contract (Lahore: Eastern Law Book House, 1996), 214.
[23] Chief Justice Iftikhar Chaudhary's speech at Harvard Law School November 19th, 2008.

any state towards its natives, creates rules and consequences for the public prosperity but there should be strong public policies towards economy related matters. Thus, developing states should have their good and dynamic economic policies to achieve the goal of Globalized trade world. As aforementioned developing countries, there is also a great essence to strengthen the economic policies in Pakistan, particularly in transnational commercial matters. Further, there is a huge significance to recall the existing law for contract's enforceability and arbitration laws as well.

Role of judiciary to honor the contracts in Pakistan

Generally, Judiciary in any country play a significant role to the ends of justice for the national as well as foreigners. A clean role of judiciary helps to meet the friendly relations with different developed countries by brightening the good faith towards sanctity of contract and different economic matters. It could be possible with the enforcement of good governance. In addition to this, rule of Law is a protecting cap of judiciary under which they can doing their job with smooth and clean way but in Pakistan due to the mix type of Governance, Judiciary is forcing many restrictions and hurdles to provide justice. In Pakistan, political influence and dictatorship doing intervene in the judiciary matters by setting the public policies according to their own choices. There are different instances, in which Pakistani courts decided against the well settled and expressed obligations in contract which has created a huge discussion in the classes of world honorable jurists. It is tarnishing the name of Pakistan in the trade world and foreign investors are shy to invest in Pakistan. Thus, the views about the economy related matters should be dynamic. These should flexible to enhance the economy by proving itself a contract compliance and

foreigner's supportive country in the Globalized world. These views reflected by the concurring opinion of Justice Ajmal khan in 1993, in a decision of Supreme Court:[24]

> I may observe that while dealing with.... Foreign arbitration clause like the one in issue, the courts appeal should be dynamic and it should bear in mind that unless there are some compelling means, such an arbitration deals should be honored as generally the other party to such an arbitration clause is a foreign party with the development and growth of International trade and economy..... we should not overlook the fact that any breach of a term of such a contract to which a foreign company or person is a party, will tarnish the image of Pakistan in the community of nations.

Core Analysis of Relevant case Laws

There are following landmark cases in the history of Pakistan by which foreign direct investment has been decrease in previous years.

HUBCO Case

Aclear issue of public policy came up in the well-known case of hub power Company (HUBCO) V. WAPDA,[25] the HUB power company was providing electrical forces to WAPDA, the general population part utility, under a power purchasing agreement (PPA), executed on 23rd August, 1992.Calendar VI to the PPA contained the arrangements about the monetary model for duty estimations and installments to be made by WAPDA to HUBCO amid the thirty years life of the venture.

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[24] Echardt & Co. Gmb h vs. Muhammad Hanif,PLD1993 SC42, 52.
[25] HUBCO vs. WAPDA, PLD 2000, SC 841

EXPRESSED CLAUSE

In the agreement arbitration clause was expressed that, the case should be heard by ICC arbitration London in the form of any conflict.

Allegations by WAPDA

WAPDA assertion that schedule VI to the PPA had been overhauled by HUBCO through arrangement and wrongdoing without legitimate assertion by WAPDA to join terms that incomprehensibly expanded the duty installment due from WAPDA. On the eleventh October 1998; through an end letter, WAPDA renounced three correcting legally binding archives on grounds of these being illicit, false and tricky, without thought, malafide and intended to make wrongful misfortune to WAPDA.

Preceding the issuance of that end letter, WAPDA documented a FIR against various people claiming the commission of different offenses in the acquirement of corrupted changes from that point WAPDA recorded a suit in Lahore for recuperation of overpaid tax adding up to Rs. 16.0 billion.

Submission by HUBCO

HUBCO recorded its suit in Karachi testing the previously mentioned end letter by WAPDA, looking for its suspension and a directive controlling WAPDA from receiving any legal cure in opposition to the aforementioned ICC assertion proviso in the PPA. As an extra measures HUBCO additionally initiated ICC assertion claiming procedures authoritative break by WAPDA.[26]In the wake of hearing the case by five part's seat of Supreme Court, the Supreme Court gave a divided judgment.

[26] Justice Umer Ata Bandial "Limitations on Arbitratrality of international commercial dispute under Pakistan Law" addressing the fiftieth year of establishment of Supreme Court of Pakistan. http//www.supremecourt.govt.pk/Uc/articles/8/1.pdf

Majority decision

By large part, the supreme court held that in perspective of the way that the charged of defilements leveled by WAPDA, upheld by situation, gave by all appearances premise to additionally test into the issue judicially , the case was not alluded to arbitration on the bases of criminal(corruption) matter.

Minority Opinion

Then again the minority sentiment given by two, learned judges took the view that the affirmations by WAPDA were fit for being resolved in mediations procedures. This view depended on the ground that the Arbitration proviso in the PPA was severable and survived the affirmations of wrongdoing made by WAPDA. Dependence was put on the English instance of "Harbor Assurance versus Kansa."[27] Matter of public prosperity the minority's view alluded the English instance of "Westacre Investment vs. Jugo import."[28]

Holding

Such matters the court held according to the public policy required judicial findings about the alleged criminality. It thus, arrived at the findings that the disputes between the parties were not commercial disputes, arising from an undisputed legally valid contract. On account of the alleged criminal acts, there did not appear any lawfully tending contract between the parties. The debate essentially related with the valid contract and not a question under such an agreement.

Hence, the Supreme Court maintained the directive allowed by High Court of Sindh against continuing proceeding with arbitrational international chamber of commerce.

Last accessed: 13 December, 2016.

[27] (1993) 1 Lloyd's Rep.455

[28] (1998) 4 All ER 570.

Criticism on Decision of Supreme Court

The previously mentioned choice of Supreme Court of Pakistan was reprimanded by the International discussions on the especially following grounds. Right off the bat, it was viewed as a misapplication of the "teaching of separability". Secondly, it was a mediation in conditions in which it was acknowledged by all gatherings that the assertion understanding being referred to was contained in a different assertion that was not itself the subject of any claims of bribery, debasement or weakness. Thirdly, the minority view was that the power purchasing producing agreement (PPP) was valid (substantial) and the assertion contained in it is positively not in opposition to the public. Further, a subsequent amendment in which allegation was that it had been procured by fraud, cannot on any stage taint the PPA contract itself. The last feedback upon this choice was that, the correct time for the courts of Pakistan to meddle could just have been if and when an award was conveyed to Pakistan for acknowledgments or enforcements.

After the HUBCO decision, it was contended that the Judiciary has apparently set its face against international commercial arbitration by invoking public policy and the development of the law has been diverted into barren lands where it can only wither away.[29] The Asian Development Bank took the view that "the Supreme Court essentially restricted the freedom of investors to choose how to resolve disputes".[30]

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[29]Kairas N Kabraji, HUBCO vs. WAPDA: Allegations of Corruption Vitiate International Commercial Arbitration: The Pakistan Experience prepared for the 17th Law ASIA Biennial conference at Christchurch, New Zealand.URL: http://www.lawyers.org.nz/conference pdf%20files/KabrijiSal7and25.pdf Accessed: 15 May, 2017.

[30]Judicial Independence Over view and Country-level Summaries', Asian Development Bank Judicial Independence Project RETA No. 5987, submitted by The Asia Foundation, October 2003, as cited in Justice Saqib Nisar,' International Arbitration in the context of Globalization: A Pakistani Perspective' (n 38).

SGS case

There is another case in the Pakistan history which has been widely discussed with criticism. In this Surveillance S.A, v. Islamic Republic Pakistan,[31] SGS filed a claim against Pakistan on breach of a contract dated 29 September, 1994. As per contract, the SGS was to provide a preshipment inspection of goods, exported from different country's area to Pakistan. (PS'I contract) and, a related rupture of Pakistan – Switzerland BIT on 11 July, 1995.

At first in January, 1998 SGS recorded a business assert in Swiss court. After the dismissals this recording, its last appeal in November 2000 was likewise dismissed by the government tribunal. Before choice of such previously mentioned interest, Pakistan has an application under area 20 of Arbitration Act 1940, in the trial court of Pakistan for the exchange of debate to the mediation in Islamabad according to contract.

At that point SGS started ICSID intervention procedures, on 12 October, 2001, while application by Pakistan was pending. Further, SGS was documented an application to the trial court in Pakistan for stay and begin the procedure in ICSID. From that point, trial court rejected application and High Court expelled advance too. Moreover, Pakistan recorded its own particular interest in Supreme Court searching for limiting SGS from following the Arbitration of ICSID. Then again, SGS made demand to ICSID trying to restriction the procedure of Local discretion in Pakistan and required, that Pakistan to expel its accommodation from Supreme Court for remain of continuing in ICSID.

[31] Makhdoom Ali khan, "National Report for Pakistan (2012) in January," International Handbook on commercial Arbitration, ed. Paulson (Klurer Law international, 2012), 1-46.

Holding

Initially, Supreme Court issued an interim order staying both arbitration to precede further hearing. Thereafter, the Supreme Court rejected the Appeal by SGS and restrained from participating in ICSID proceeding by saying that Washington conventions was not a portion of Pakistan's Municipal Laws so no dependence, could be placed on it to reverse the expressed contract. Contrarily, tribunal delivered a procedural order No.2 for the provisional measure on SGS's Application.

As per such an order, the Pakistan not to seek after the contempt application against SGS under the watchful eye of Supreme Court for any infringement of its judgment and prescribed a stay of the local arbitration until the tribunal issued its choice on jurisdiction. Pakistan from that point pulled back its contempt Application against SGS.

On August, 2003. The tribunal issued its decision on the matter or objection of jurisdiction, holding that while it had jurisdiction to hear claims emerging under the Pakistan-Switzerland BIT, it didn't have purview to hear claims emerging from the agreement. After the tribunal choice, on jurisdiction, the issue settled by parties. On 23 May, 2004, the tribunal declared and order for discontinuance of the procedure.

ECKH ARDT's Case

ECHARDT's & Co, Marine V. Muhammad Hanif,[32] is another important case in which petition for the stay of a suit as stated under section 34 of Arbitration Act 1940 was dismissed by the inferior courts. Thereafter, the Supreme Court also unanimously

[32] PLD 1993 SC 42

dismissed appeal on the ground that the exercise of freedom of choice by the inferior court could not believe to be reserve, arbitrary or changeable.

Holding

Furthermore, it was held that under the following circumstances of a case, the procedure for taking of Evidences to London would be inconvenience and expensive. While agreeing with the conclusion of other decision makers, Mr. Justice. Ajmal Mian arguing following which are indeed very perceptive[33]:

> Section 34 of the arbitration while dealing with an application in relation to a foreign arbitration clause, the courts approach should be dynamic. With the development and growth of International Trade and commerce and due to Modernization of communication Transport system in the world, the contracts containing such an arbitration clause are very common now a days. The Rule that the court should not lightly release the parties from their bargains that follow from the sanctity which the court attaches to contracts must be applied with more vigor to the contract containing a foreign arbitration clause. We should not overlook the fact that any breach of a term of such a contract to which a foreign company or person is a party, will tarnish the image of Pakistan in the community of nations.

The rule of law which has been explained equity by Mr. Ajmal Mian that merit following world where sanctity of contract has come to accept another significance. It is deferentially presented that a judgment on these lines rather than in light of the specialized contemplations as to exercise of prudence by subordinate courts and (successfully affected by) the teaching of doctrine non-convenience, would have been more suitable in the biggest

[33] PLD 1993 SC 42

enthusiasm of the nation. One would likewise deferentially present that maybe. Mr. Ajmal Mian could have obviously disserted from the judgment as opposed to maintaining the choice of Inferior court.

Public Private Partnership's Contracts in Pakistan

While discussing the subject of principle, "sanctity of contract" it would be helpful to discuss about the problems to the contract's compliance in Pakistan. These contracts are fall in the category of public private contracts especially includes Independent power producers (IPP.) contracts. The concepts about the sanctity of contract under the (PPP.) Contract's arrangements, has acquired a special significance because of these having a long-term tenure and huge chances of changes during such term.

There would be minimal shot of pulling in private segment to go into PPP game plans unless there is a sureness about respecting of authoritative responsibilities by parties (especially by people in general segment accomplices). Public private partnership contracts can work out just if contracts are powerfully and creatively concerned and are protected discussion challenges emerging every now and then their sacredness or sanctity.

In Pakistan the track records of these agreements has not been fortunate. Numerous issues have been confronted by remote accomplices as to legally binding commitments especially by IPPs.

Case of Highway

There is another case from the category of PPP, contracts which deals numerous problems faced by the private partners of these contracts: a news heading has been appeared in the national daily, "Bad contract challenging assembly write."[34] The matter,

[34] "Bad contract challenging Assembly "Dawn Newspaper, Saturday February 07, 2009.

came under a powerful criticism by the legislative Assembly of Punjab, relating with the construction contract of Lahore, Faisalabad Express Highway. The agreement was finished up between Punjab government on one and private sector and Frontier works organization (FWO) on other hand in 2003 for building that first since forever PPP highway in the nation on BOT (built, operate, transfer) premise. A benefit movement was tabled in the Assembly, scrutinizing the "sacred status" of the agreement. The culpable statement in the agreement gave that Punjab Government embraces not to make any move, regularly or enactment, influencing terms of the agreement.[35]The mover scrutinized the sacred status of the statement. In his view, a large number of clients of Highway were being over charged for utilization of the Highway and he informed that a House board had effectively brought up loopholes in the agreement which enabled the private accomplices to ascend for impose every year and exchange the upkeep cost of the maintenance to common Government.

The ouster of powers of the Assembly was not correct. However actions leading to re-fixing toll rates any authority would damage the contract. Helpfully the state authorities will resolve the matters. The matter is still pending before the privilege committee of Punjab Assembly and consequential uncertainty is proving discouraging to new investment under PPP made.

Repercussions

According to instant research, many bad effects of these factors has been disclosed in Pakistan. Although, foreign direct investment is considered as a backbone in the stability of any country as, it provides not only international capital but also jobs opportunities and

[35] "Bad contract challenging Assembly "Dawn Newspaper, Saturday February 07, 2009..

new knowledge of development. Unfortunately, foreign Investors are shy to invest in Pakistan due to aforementioned factors. In the following paragraphs we shall enlighten the importance of FDI and its shedding in Pakistan.

Foreign direct investment as repercussions in Pakistan

Before disclose the reality of impacts on economy of Pakistan by previous stated factors and cases, we shall discuss the importance of foreign direct investment for healthy life of any country in Globalized trade world.

FDI Supports Growth generally

All the states in this world are continuously struggling for rapid fiscal growth and as an outcome they are fascinating more investments by permitting foreign investors to spend in their land. There are several causes that help or obstruct the economic development of a country and the factors which are often recognized as stimulants[36]for a country's progress are: huge volumes of investment capital, Advanced Technologies, Vastly skilled labor, Strong carrying and communication infrastructure, Stable and sympathetic political and societal institutions, Small tax rates and Encouraging regulatory environment. Changes in the development rates of countries are described by the changes in the donations or stages of these factors.[37] Foreign direct investment has long been accepted as a major cause of skill and savoir-faire to developing states. Actually, it is the capability of FDI to transmission not only manufacture know- how but also executive skills that differentiates it from entirely other methods of investment, together with portfolio investment and aids also. While imported portfolio asset may, in certain cases,

[36] UNCTAD, World Investment Report (New York: United Nations, 1994)

[37] Mohanty and Dondeti, "Impact of Foreign Direct Investment on the Gross Domestic Product,Exports and Imports of Four Asian Countries", Delhi Business Review8 (2007), 3-23.

give to the capital foundation in a developing state, frequently, capital flows through this route are narrow and especially they do not deliver advanced technologies wanted to participate in the world marketplaces. FDI can hasten growth in the means of generating occupation in the host states, fulfilling saving g a p e and huge investment ultimatum and sharing awareness and management skills via backward and forward connection in following host countries. Furthermore, the very existence of foreign owned companies in the economies, with their higher donations of technology, can compel locally retained firms to spend in learning if merely to keep up-to-date of the competition. In turn, enlarged competition from nearby owned firms via their investments in novelty may compel foreign companies to bring in higher quality technology and expertise. FDI generates production spillovers for host economy.[38]One indication is that multinational initiatives possess superior creation technology and managing techniques, certain of which are caught by local companies when multinationals localize in a specific economy. In total, imported skills improve the minimal productivity of capital stock in host countries and by this means promote growth.[39] A connected source of spillovers is a forward and backward connections between transnationals and host-economy corporations,[40] which may outcome from transnationals providing inputs at minor cost to native downstream purchasers or by their growing demand for inputs created by local upstream sellers. Similarly, Ram and Zhang deliberated some ideas which supports the concept that FDI encourages growth that

[38]M. Blomstrom and A. Kokko, "Multinational Corporations and Spillovers", Journal of economic surveys12 (1998), 247-277.

[39] J.Wang and M.Blomstrom, "Foreign investment and technology transfer: a simple model", European Economic Review36 (1992), 137-55.
URL: http://dx.doi.org/10.1016/0014-2921 (92)90021-N

[40] A.Rodriguez-Clare, "Multinational, Linkages and Economic Development", American Economic Review86 (1996), 852-873.

FDI provides the economic resources required by the host country, FDI perform as vehicle for the transmission of advanced manufacturing skills from the Developed countries(DCs) to the less Developed countries (LDCs),FDI increases struggle or competition in the host state's markets, FDI helps host countries increase their foreign exchange assets by enhancing exports ,FDI brings alongside the management experience desired to run the facilities, FDI enhances the teaching and employment chances for the public of host country, FDI reduces the load of imports on host countries via import substitution, FDI acts as facilitator for increasing domestic reserves and investment.[41]

In general, foreign direct investment provides ready entrance to the world marketplaces and perform as a channel for the host state to participate in globalization progression.[42] However, FDI is realized as a vigorous factor in inducing progress rate, nevertheless, it will merely lead to development if its influxes are properly accomplished.

IPP's contracts as repercussions

This decision has greatly damaged the trust of investor. There is another sector in which PPP contracts have become popular, which is called as energy sector. In such an area PPP has accepted the discussion and terminology of the independent power producers (IPP's). An independent power producer is "a substance which is not a public utility, but rather which possess facilities to create electric power available to be purchased to utilities

[41] Zhang and Ram, "Foreign Direct Investment and Economic Growth: Evidence form Cross-Country Data for the 1990s" Economic Development and Cultural Change51 (2002), 205-215.

[42] Mohanty and Dondeti, "Impact of Foreign Direct Investment on the Gross Domestic Product, Exports and Imports of Four Asian Countries" Delhi Business Review8 (2007), 3-23.

and need of clients."[43]In Pakistan, IPP's records for around 30% of the aggregate era limit .In Pakistan, the energy market has been opened since 1990. In 1994, Benazir Bhutto Shaheed made many IPP's contract for the public prosperity and 1996 the First PPP contract of Pakistan was created, called as Hub power Company (Hubco). Consequently, there were more fifteen IPP's contract has been a core liked with Pakistani commercial circumstances.

After 1997, the elected Government of (N) league started to investigation in previous regimes contracts. There were so, many repercussions of such an investigation, particularly in energy production sector. In addition to this the decision in HUBCO case more aggravated the circumstances.[44]This decision has been seriously damaged the trust of investor.

As a consequence there occurred a drought in the IPP Investments with calamitous impact on the national economy of Pakistan, after that the status of IPPs investments was entered into very crucial condition as no IPP was established in the era of 2002-2007, which were 15 in 1997-2001.[45] The repercussions of such situation were that japan has changed their investment policies with Pakistan. Japanese investments in Pakistan remained limited and their investors are still shy to invest in Pakistan.[46] Presently, is losing the Friendly-business status in the world as it has 138th rank in the World for friendly-business environment.[47]

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[43] Independent power producers (IPP) Rating methodology, at 1 January, 2009. URL: http//www.pacra.com. Last accessed: 08 august, 2017.

[44] A.Siddiqui, "IPPs: the Real issue", the Pakistan Development Review 37:4 Part II (1998), pp.34, at 812.

[45] Source: private power and infrastructure Board, available at: http://ppib.gov.pk./commissionedIPPs.htm

[46] M.Aslam Chaudhary and Kiyoshi ABE, "Pakistan, japan and ASEAN trade Relations and Economic development" Pakistan economic and social review xxxviii: 2(2000), 193-214.

[47] World Bank Report, 2016.13th edition, p.5.

Economically solid views and public policies

As we have discussed in the previous paragraphs of this chapter that the public policy is a common source of many factors which are creating hurdles in the way of sanctity of contract. Courts in all over the world in some cases have been letting the parties to escape from the contractual obligations on the ground that the agreement made by them (through freely and willingly) were unlawfully being opposed to public policy. The implications of the concept in its broadest sense is that considerations of public interest may require the courts to depart from their primary function and refuse to enforce a contract.[48]

There are different courts of developed as well as developing countries, which have opposite and noticeable views, with great determination to enhance the economy and trust of contractors. They accepted the Heads of public policies but deny the extra power conferred to the court as well. Thus, different European and Indian courts having solid views about public policy in such case.

Views by English Courts of Public Policies

According to the English laws a contract is struck down if court realized that it is opposite to the public policy. However, incidentally, there are certain parameters fairly well established by the Government. For instance a contract to trade restraining, marriage brokerage contract, formation of perpetuity, wagering, or assisting of enemies are totally unlawful on the base of well-established public policy.[49]

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[48] Lord Wright, LEGAL ESSAYS AND ADDRESSES: Winfield public policy in the English common Law, 42 Har LR (1928), 76 -102.

[49] Lord Wright in Fender vs. St John mildmay, ACL (1938), 38.

Can a Court Invent New head of Public policy?

Courts are required to rely on the well settled heads of public policy and to apply those to varying situations.[50] If a contract fit into one or the other of these pigeon- holes, it may be declared void.[51]

The aforementioned arguments by different scholars in their writing and Judgments, declared the frame for the courts to evaluate the public policy. Further, in a case it has been decided that, "the court is however, allowed to mold the well-settled categories of public policy to suit new conditions of changing world".[52] But a court can invent a new category or head of a public policy? It is a core question in this alarming situation of contract's non-compliance. In this regard Lord Hals bury said that "Category of public policy are closed"[53] "I deny, "he said, "that any court can invent a new public policy":

> For time to time judges of the highest reputation have uttered warning not as to the danger of permitting judicial. Tribunals to roam unchecked in this field.[54]A judge criticizing public policy in an early case said, it is a very unruly horse and once you get astride it you never known where it will carry you.[55]

Another decision in a similar disposition may be quoted that, "public policy is a vague and unsatisfactory term".[56] Similarly, in the case of Egerton vs. Brownlow, the comment of parker I. are also noticeable, "Certain contracts have been held void at common law on this

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[50] . Earl of Halsbury LC in Jason vs. Driefentein consolidated mines Ltd (1902) AC 848.
[51] Subha Rao J (as than was in Gherulal vs. Mahadeodas; (1959) 2SCA 369.
[52] Ashquith J views in Monkland vs. Jack Barclay Ltd. (1951) All BR 714, 723
[53] Lord Wright views in ferder vs. john Miladmay, (1938) AC 1723
[54] Park B views in Egerton vs. Brown low, (1853) 4 # LC 1/23:10 ER 359,408
[55] Lord Atkin views in frnder vs. John Mildmay, (1938) AC 1
[56] Borrough I. views in Richard-son vs. mellish, (1824)2 Bing 229, 252

ground.... A branch of the law however which certainly should not be extended, as judges are more to be trusted as interpreters of the law than as expounders of what is called public policy".[57]

Another justice perceived that, "public policy is always an unsafe and treacherous ground for legal decisions, and in the present case it would not easy to say on which side the balance of convenience".[58]There are different views and judgments which provide a framework to the courts and proved that it is not a duty or power of a court to invent a new head of a public policy. Further, they can mold the categories according to situations. Thus, the aforementioned doctrine of public policy should be involved only in clear alarming situation against the public prosperity. As Lord ATKIN has deeply observed that, "The doctrine should only be invoked in clear cases in which the harm to the public is substantially incontestable and does not depend upon the idiosyncratic inference of a few judicial minds".[59]

U.S Court's view to Enforce contracts

Nowadays, U.S has strong public policies towards sanctity of contract, in economically correlated matters. They have realized the essence of developing trade and economic in Globalized world. For the sake of development and getting the trust of foreign investors, they know that there should be a positive attitude towards foreign arbitration clause and sanctity of contract as well. In this regard the attitude of U.S courts was unfavorable according to which choice of forum in favor of foreign jurisdiction was not

[57] Parke B. views in Egerten vs. Brownlow (1853) 4 HLC 1, 123.
[58] Lord Davy views in janson vs. Driefontein consledated Mines, (1902) AC 484,500.
[59] In Fender v. St. John Mildmay, (1938) AC 1.

commonly obvious.[60]This perception go through a qualitative change when the Supreme court of U.S honored the forum selection clause in Bremen vs. Zapata off-shore Company's case.[61]In this case the written clause and principle of "Sanctity of contract" has been prevailed. The court choose that the appellate courts hasd given too little weight to the choice of forum clause (in this case, the courts of England:

> The Supreme Court took note of the fact that overseas commercial activities by the American enterprises had greatly expended. The barrier of distance that once tended to confine a business concern to a modest territory no longer does so... the expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contract, we insists on the parochial concept that all disputes must be resolved under our Laws and in our courts..... We cannot have trade and commerce in the world market and international water exclusively on our terms, governed by our laws and resolved in our courts..... The argument that such clauses and improper because they tend to "oust" a court of jurisdiction is hardly more than a vestigial fiction. It appears to a rest at core on historical judicial resistance to any attempt to reduce the power and business of a particular court.... When businesses once essentially local now operate in world market, it reflects something of a provincial attitude regarding fairness of other tribunals. The threshold question [in regard to issue of ouster of jurisdiction] is whether that the court should have exercised its jurisdiction to do more than give effect to the legitimate expectations of the parties manifested in there freely negotiated agreements, by specifically enforcing the forum clause. There are compelling reasons why a freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power, such as that involved here, should be given full effect.[62]

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[60] Carbon black export Inc. vs. the Monrasa 254 F2d 297 (CAS 1958); Court dismissed 359 U.S 180; 79 SCt 710; 3L Ed 2d 723 (1959)

[61] 407 U.S.1 (1972) M/S Bremen vs. Zapata off-shore Company

[62] Co Hotch kiss, international law for business (1994), 153-154.

What Indians do in same situations like Pakistan?

China and India have experienced fast economic growth in fresh years. The progress, partly, is credited to the approval of the liberal trade policies through each country in 1990, and the consequential surge in the movements of foreign assets to both these states. India and China, such as two largest developing states in the whole world, have been mutually enjoying fast economic development since 1990s.

Views of Indian courts on public policy

Indian courts described the word public policy as an erroneous concept which can divert the intention of judiciary to provide the ends of justice. The primary responsibility of judiciary is to enforcement of contract which provides a civilized society. Public policy is constantly an unsafe and unfaithful ground for legal decisions and "in the current case it wouldn't be inferred to say on which side's balance of convenience would incline".[63] Mostly Indian courts adopted English views about public policy as Lord Atkin said that, "the doctrine should only be invoked in clear cases in which the harm to the public is substantially incontestable, and does not depend upon the idiosyncratic inference of a few judicial minds."[64]

There are many cases in which Indian courts adopted the aforementioned views of English jurists.[65] The golden words by Subba Rao J. in the case of Gherulal v.

[63] Lord Davy in Janson v. Driefontein Consolidated Mines, (1902) AC 484,500.
[64] In Fender v. St.John Mildmay, (1993) AC1.
[65] Dr. Avatar Singh, Law of Contract (Lahore:Eastern Law Book House,1996),214.

Mahadeodas[66]high light the current position of doctrine public policy in India that, "public policy or the policy of law is an elusive concept. It has been described as an "untrustworthy guide" of "variable quality" and an "untruly horse". The doctrine of public policy embraces not only harmful cases but also harmful tendencies". Further, he stated that "the primary duty of court of law is to enforce a promise which the parties have made and to uphold the sanctity of contract which form the basis of society. Although, in certain cases courts may grant relieve on rules founded which is called public policy."[67]

Lord ATKIN said again in Fender v. st. John that, "something done contrary to the public policy is a harmful thing. But the doctrine is extended not only to harmful cases but also to harmful tendencies. These same views has also been expressed by Indian judges in afore stated case named Gherula v. mahadeodas. Moreover, in another case an Indian court remind us that:

> The twin touchstones of public policy are advancement of the public good and prevention of public mischief and these questions have to be decided by judges not as men of legal learning but as experiences and enlightened members of community representing the highest common factor of public sentiment and intelligence.[68]

Arbitrational views

Under the decided embodiment of sanctity of contract Indian courts have liberal perspectives towards financial contract and discretion provisos in it. The Apex court of India held that the parties may by declarations select one of the two parts court's for the

[66] AIR 1959 SC 781: (1959) 2 SCA 342,370.
[67] Ibid.
[68] Ratanchand and Hirachand vs. Askar Nawaz Jung, AIR 1976 AP 112.

transfer of their debate.[69]Contractual parties can choose among one of several court of law having concurrent authority.[70]

Conclusion

Conclusively, the principle sanctity of contract has a significant role in the smooth running of a civilized society and fiscal development's matters. In addition to this, law and governance environment play a role of catalyst to grow up the economy of any developing country by enhancing the trust of foreign investors towards host country. In order to this, India and china has gained noticeable achievements for economic betterment by molding and affirming their economic laws and foreign policies. Unlikely, in Pakistan the system of contracts enforcement has been weaken due to mix governance environment and ancient laws and public policies as well. So, foreign investors are shy to invest in Pakistan because of which the capital and fiscal position of Pakistan is going to decrease. Thus, there is a great need of strong laws and implementations on international policies in such a formidable economic situations.

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[69] Shree Subhalaxmi Fabrics (P) Ltd.vs.Chand Mal Baradia,(2005)10 SCC 704;Continental Drug Co.Ltd, vs.Chemolds and Industries Ltd. AIR 1955 Cal 161 (DB); Ram Bahadur Thakur and Co. vs. Devidayal (sales)Ltd,AIR 1954 Bom176 (DB); Hoosen Kasam Dada (India) Ltd. Vs. Motilal Padampat Sugar Mills Co. Ltd, AIR 1954 Mad 845 (DB);National Petroleum Co. vs. F.X. Ram Rebello, AIR 1935 Nag48; Kidri Prasad vs. K.R Khosala,AIR 1923 Lah 425:75 IC 590;Jagan Nath vs. Burma Oil Co.,AIR 1929Lah 605:0119 IC 481.

[70] Patel Roadways pvt. Ltd. Vs.Bada India Ltd., AIR 1982 Cal 575: (1982) 86 Cal WN 992 (DB); Bajrang Electric Steel, Co. pvt. Ltd. vs. Commissioner for the Port of Calcutta, AIR 1957 Cal 240. Nag48; Kidri Prasad vs.K.R. Khosala,

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

In the light of the moment look into, it is hence inferred that Doctrine of sanctity of contract has been debilitate amid show time which is causing terrible effects on global exchange and Foreign direct investment in Pakistan. The idea of sacredness of agreement has been demonstrated restricting by divine as well as in earthly made laws and lessons. It has dependably been considered as a hallowed device in the instructing of Islam and its communicated arrangements. Assertion of its Holiness demonstrated by Holy Quran as well as through the truisms and deeds of Holy prophet (s.a.w).Moreover, there are many examples incorporated into such research work, demonstrating the significance of this consecrated standard in Pre-Islamic religions like Mosaic, Greek and Christian laws.[1]

So as to contend the developing business on the world, sharia took care of these difficulties forcefully and shape their laws, disciplines, and cures as per the essential standards of Islam. Likewise, the widespread standard holiness of agreement has a perceptible significance in natural or enactments of numerous nations. It has been

[1] Nabil Saleh, "Origins of the Sanctity of Contract in Islamic Law" Arab Law Quarterly13:3(1998), 252-264.

prospered as an impetuses in monetary laws of many created nations for the financial enhancements. For occasions, France, China India and America have been shape their laws and arrangements as indicated by the present day prerequisites for the improvement of foreign direct investment inflow to the host country. According to moment look into, previously mentioned developed states have picked up the trust of foreign speculators about insurance of their rights, by affirming the holiness of agreements in have nations or states.

Henceforth, the concept of sanctity of contract has always been important in any country or nation where commercial activities play a significant role in the life of people. In fact, this principle play a role of bridge to inflow the foreign capital in the host country, because it deteriorate the reservations of foreign investors about the protection of their property rights. Unfortunately, in Pakistan the principle of pacta sunt servanda has been debilitate because of a few components and persuasive public arrangements in which courts just consider doctrinal approach as opposed to its effect on economy of the nation. In the research, it has been proved that Pakistan courts often ordered against written clauses of agreement, particularly in transnational contracts. Truly, Government of Pakistan is facing many challenges to gain the trust of foreign investors because of mixed governance environment and many factors like public policy, structural weakness, delay in disposal of cases, contracts made by previous regimes, political interventions in the decision makings and prevailed ancient thinking in judiciary in respect of foreign jurisdiction and sanctity of contracts in commercial disputes. Thus, there is a countless requirement of strong laws, liberal economic policies and their strict implementations for the public and economic prosperity of Pakistan. Thus, the system for contracts enforcements has been weaken due

to mixed governments, ancient laws and public policies as well. Ramification is that, foreign investors are shy to invest in Pakistan and natives of Pakistan are away from getting job opportunities and technical teachings. So, there is an immediate essence of strong legislations and expressing new economic laws to compete the Globalized world, in such a formidable FDI situation in Pakistan.

Recommendations

The primary responsibility of court of law should be to enforce a promise which the parties have made and uphold the sanctity of contract which provide the basis of a civilized society.

Due to the leap movement of Globalized trade world, a country should be firmed in its economy to live in present world. Therefore, it should adopt "economic and law" analysis policy during legislation and decision making process particularly in transnational commercial contracts. Courts should observe the economic importance rather than doctrinal approach in commercial contracts matters.

Hence, foreign direct Investment provides foreign capital, more taxes and job opportunities. In the nut shell, it has strengthened the economy of any host country. So, there should Friendly Policy of the democratic government of any country and particularly of Pakistan.

Further, there is a great need to change the decision-making approach of judiciary in Pakistan like India. Present condition in Pakistan demanding, that courts should adopt the liberalized approach toward sanctity, particularly in economic transnational contracts to gain the trust of foreign Investors.

Furthermore, we can change the current formidable environment by establishing teaching and training institutions for the researchers, lawyers, stake holders and judiciary to provide them awareness about the importance of economy and positive approaches towards sanctity of contracts.

By limiting the powers, Government of Pakistan should declare that a court cannot create new heads of public policy so recklessly and casually, all aiming to nullify the contracts. Rather than its modification according to the need of changes (as like sanctity of contracts for the decent economic achievements) in the world.

In order, to invalidate a contract the courts must have differentiated between the public policy rules of Pakistan and mandatory rules or procedure of Pakistan.

In previous mentioned cases under section 23 of contract act, 1872, if a contract violates any provision of law, that violation has been declared by courts as violation of public policy, which is wrong. Pakistani courts should explore their approaches toward such facts that violation of every law is not the violation of public policy.

Pakistani courts have ignored the difference between the Contract involving fraudulent consideration (First Instance) and Contract induced through fraud (Second Instance). The First Instance attracting section 19 of contract act, 1872 makes contract only voidable, while it is only the Second Instance which makes the contract void due to violation.

Consequently, the expressed terms and conditions (with free will) of a contract are universally respectable. So, there should be final signing policy that "the contracts finality must be stipulated with the sanction of democratic government."

There should be an expressed rule by Government of Pakistan that the doctrine of public policy should only be invoked in clear cases in which harm to the public is substantial, unarguable and does not depend upon the personal inference of a few judicial minds.

Although, the principle statute of law governing domestic Arbitration in Pakistan is the Arbitration Act, 1940. This pre-partition enactment based on the early English Arbitration act (modified many times till arbitration act 1996) which is not modelled on the UNICTRAL model laws. Therefore, there should be a complete code for conducting arbitration in Pakistan according to the modern trade rules.

Religiously, Islam has a great historical essence of sanctity of contracts in its teachings and principles. Presently, it has also molded their rules according to the modern requirements of Trade but, under the umbrella of basic Islamic principles. So, every country and particularly Pakistan, should adopt those rules which would not be inconsistent with modern universal laws, to boost up their economy.

Along with these, there is a great need of new legislation of laws for contracts compliances and specific performance to enhance the trust of foreigners to invest in Pakistan. In order, to this, Government of Pakistan should enact certain special laws (as in china, UCL, ECL) particularly, about International economic and investment laws.

Apart from these, government of Pakistan should take different steps to made further BIT with developed countries and enact municipal laws for honor to those treaties and their terms.

In Pakistan, there should be significant implementations on the constitutional provisions about separation of powers. Government should be avoided to interfere in the decision-making matters of courts.

Along with these, Government should take a step to re- Introduce prevention of corruption acts in the society, which also hinders the decision making powers of bureaucracy and judiciary.

More talking about public policy, risks and uncertainty hinder the Investments. So, we should put the Investment regime in place, which is credible and favorable for economic activities. There should be no frequent changes in regulations to attract the foreigners.

In addition to this, Inter and intra agency coordination (those agencies that get involved in FDI processing) needed to be strong and cohesive. Presently, they are not and their investment Orientation is also very inadequate.

BIBLIOGRAPHY

ARTICLES AND JOURNALS

Matheson, John H. "Convergence, Culture and Contract Law in China". 15 Minn. J. Int'l L. (2006), 329.

R Delume, G. "What Is an International Contract? An American and Gallic Dilemma". The International and Comparative Law Quarterly28:2 (1979), 258-279.

Saleh, Nabil. "Origins of the Sanctity of Contract in Islamic Law". Arab Law Quarterly 13:3(1998), 252-264.

Muhammad, Noor. "Principles of Islamic Contract Law". Journal of Law and religion6:1(1988), 115-130.

H.Punke, Harold. "Honesty as the Best Policy". The Journal of Philosphy41:6(1944), 141-147.

Brunetti Aymo, Kisunko Gregory and Weder Beatric. "Credibility of Rules and Economic Growth: Evidence from a Worldwide Survey of the Private Sector". World Bank Econ Rev12:3(1998), 353-384.

Shomin Li, Ju Wu and D. Selover, David. "Foreign Direct Investment vs. Foreign Portfolio Investment: the effect of the Governance Enviornment".Management International Review42:5(2012), 643-670.

Wehberg, Hans. "Pacta Sunt Servanda".American journal of International Law59. (1959), 775.

[illegible] Beirut 6(1977), 380.

Ballantyne, M. "Book Review of Commercial Arbitration in the Arab Middle East (A Study in Sharia and Statute Law". arbitration International4:3(1989), 269.

Adelowo, E. D. "The Concept of Tauhid in Islam: A Theological Review". 35 Islamic Quarterly23.

Kutty, Faisal. "The Sharia Factor in International Commercial Arbitration". L.A. Int'L and comp. L.Rev. (2006), 228.

T.Roy, Kristin. "The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards?". Fordham Int'l L.J.18:920.

Ballantyne, William. "The Shari'a and its Relevance to Modern Transactional Transactions in Arab Comparative and Commercial Law: The International Approach". Graham & Trotman, vol.1, (1987), 12.

Jan Michiel, Otto. "Sharia Incorporated: A comparative Overview of the Legal Systems of Twelve Muslims Countries in Past and Present". ISBN (2010), 167.

P. Nicholas, Kourides. "Influence on Islamic Law on Contemporary Middle Eastern Legal System: The Formation and Binding Force of Contracts". Columbia Journal of Transnational Law9: 429(1970).

Gayle E. Hanlon. "International Business Negotiations in Saudi Arabia". In the ABA Guide to International Negotiations, ed., James R Silkenat, Jeffrey M. Aresty and Jacqueline Klosek (Chicago, Illinois: American Bar Association, 2009), 229-85.

Coulson, N. "Commercial Law in the Gulf States". 9 (1984), 65-69.

Carl, David J. "Islamic Law in Saudi Arabia: What Foreign Attorneys Should Know". Washington Journal of International Law and Economics (1992), 102-110.

Vogel, Frank and Hayes, Samuel. "Islamic Law and Finance: religion, Risk, and Return". Kluwer Law International (1998), 102-110.

Timur, Kuran. "The Islamic Commercial Crises: Institutional Roots of Economic Underdevelopment in the Middle East". The Journal of Economic History 63:2 (2003), 414-446.

Haque, Inaamul and Khan, Naeem Ullah. "Jurisprudence of Sanctity of Contract in Pakistan-A Contextual perspective". Pakistan law journal (2009), 387-415.

Li, Jun Wu Shaomin and D. Selvor, David. "Foreign Direct Investment vs. Foreign Portfolio Investment: the effect of the governance environment". Management International Review52:5(2012), 620-643.

Buscaglia, E and Ratliff, W. "Law and economics in developing countries". (2000), 55.

Malik, Muhammad Iqbal. "Political transactions and Instability in Pakistan: let's start thinking" .Accused (2013).

Folson, Roh. et al. "International business transaction". (1999), 906-907.

Khan, Makhdoom Ali. "National Report for Pakistan (2012) in January". International Handbook on commercial Arbitration, ed. Paulson (Klurer Law international, 2012), 1-46.

Dondeti and Mohanty. "Impact of Foreign Direct Investment on the Gross Domestic Product,Exports and Imports of Four Asian Countries". Delhi Business Review8 (2007). Blomstrom, M Kokko, A. "Multinational Corporations and Spillovers". Journal of economic surveys12 (1998), 247-277.

Wang, J and Blomstrom, M. "Foreign investment and technology transfer: a simple model". European Economic Review36 (1992), 137-55.

Rodriguez-Clare, A. "Multinational, Linkages and Economic Development". American Economic Review86 (1996), 852-873.

Ram and Zhang. "Foreign Direct Investment and Economic Growth: Evidence form Cross-Country Data for the 1990s". Economic Development and Cultural Change51 (2002), 205-215.

Dondeti and Mohanty. "Impact of Foreign Direct Investment on the Gross Domestic Product, Exports and Imports of Four Asian Countries". Delhi Business Review8 (2007), 3-23.

Siddiqui, A. "IPPs: the Real issue". The Pakistan Development Review 37:4 Part II (1998), pp.34, at 812.

BOOKS

Atiyah, P.S. The law of Contract.1961.

Bassan, Fabio, eds. Research Handbook on Sovereign Wealth Funds and International Investment Law. Cheltenham: Edward Elgar Publishing Limited, 2015.

George Paton, Sir. Jurisprudence. Edition 2nd 1954.

J. Bourke, Veron. The Essential Augustin selected by Vernon J. Bourke. USA: penguin books, 1974.

Guest. A.G, ed. Anson's Law of contract. London: Oxford, 1979.

Jenks, C.Wilfred. The common law of mankind. London, 1998.

Banner, Stuart. How the Indians Lost Their Land: Law and Power on the Frontier. Cambridge: Harvard, 2005.

Murray Carole, Holloway David and Timson- Hunt, Aren. The Law and Practice of International Trade .London: Sweet and Maxwell Limited, 2007.

Reinach. The Apriorical Basics of Burger Law.1922.

Grotius. The Jurisprudence of Holand. Lee ed. 1926.

Jenks, C.Wilfred. The common law of mankind. London, 1998.

Meineck, Friendrich. The idea of states reason. Munich-Berlin, 1924.

Hugo Grotius, the Law of War and Peace (Paris: Lonage Institute, 1925), 61-72.

Fyzee, A.A.A. Outlines of Muhammadan Law. London: Oxford University Press, 1949.

Mahmassani, S. Al-Awda al-tashn'iyya ji al-bi/ad al-Arabiyya. Beirut, 1957.

Zeidan, Abdel Karim. Al-Madkhal li dirasat al-islamiyya. Baghdad, 1966).

Saleh, N. Unlawful Gain and Legitimate profit in Islamic Law. London, 1992.

Redfern, A and Hunter, M. Law and practice of International Commercial Arbitration.1991.

H. McLaren, Richard and P. Sanderson, John. Innovative Dispute Resolution: The Alternative. Carswell: Thomson, 2004.

Cohen, Nili and Ewan Mc. Kerdrick, eds. comparative Remedies for Breach of Contract. North America: Hart Publishing, 2005.

Eaton, C.L.G. Islam and the Destiny of Man. Albany: State University of New York Press, 1985.

Rahman, F. Islam. Garden City, NY: Doubleday & Company, Inc. 1968.

Esposito, J. L. Islam the Straight Path. New York: Oxford University Press, 1988.

Faruqi, Ismail and Faruqi, Lamya. The Cultural Atlas of Islam. New York: MacMillan Publishing Co., 1986.

El-Ahdab, Abdul Hamid. Arbitration with the Arab Countries. 2nd ed., 1999.

Mahmassani, Sobhi. The Legislative Situation in the Arab Countries: it's past and present. Dar El-Elm Lil Malain: 2nd ed. 1997.

Mansoori, Dr. Muhammad Tahir. Islamic Law of Contract and Business Transaction (Islamabad: Sharia academy, 2003).

Chirelstein, Marvin A. Concepts and Case Analysis in the Law of Contracts. 3d ed. Foundation Press, 1998.

Hassan Amin, Sayed. Commercial Law of Iran. Vahid Publications, 1986.

Gerber, Haim. State Society and Law in Islam: Ottoman Law in Comparative Perspective. New York: State University of New York Press, 1994.

M. Badr, Gamal. A Survey of Islamic International Law. 76 Am. Soc'y Int'l Proc. 1982.

Norman Anderson, James. Law Reform in the Muslim World. The Athlone Press ed., 1976.

Khadduri, Majid. War and Peace in the Law of Islam. AMS Press, 1979.

Carter, J.W. Breach of Contract. Sydney; the law book company limited. 1984.

Dimatteo, Larry. International Business Law: A Transactional Approach. United States of America: Rob Dewey, 2006.

Cooter, R and Ulem,T . Law and Economics.2000.

Carter, J.W. Breach of Contract. Sydney: The Law Book Company Limited, 1984.

C.halliday, Terence, Karpik, Lucien and M.Feeley, Maledm. Eds. Facts of Political Liberalism in the British post-colony: the politics of the legal complex.Cambridge university press: Law, 2012.

Dr.Kaleem, Muhammad. Governance and public policies. Lahore: Jahangir's world times publications, 2016.

Dr. Singh, Avatar. Law of Contract. Lahore: Eastern Law Book House, 1996.

CASE LAW REFERENCES

Gherulal vs. Mahcdesdas Atr 1959 S.c 781, (1959) 2 S.C A 342.

Meredith Jane co. Ltd. vs. Cresent Board Ltd. (1999) CLC 437,441.

The Pyramid Arbitration Case of Egypt.

Manzoor Hussain and others vs. Wali Muhammad and Abdul Shakur, PLD 1965 SC 425.

PLD 1969 SC 301.

Echavdt & Co. Gmb h vs. Muhammad Hanif (1993) PLD SC42, 52.

HUBCO vs. WAPDA, PLD 2000, SC 84

(1998) 4 All ER 570.

Fender vs. St John mildmay, ACL (1938), 38.

J. R. Simplot v. Chevron Pipeline Co., 563 F.3d 1102, 1113 (10th Cir. 2009)

Earl of Halsbury LC in Jason vs. Driefentein consolidated mines Ltd (1902) AC 848.

Monkland vs. Jack Barclay Ltd. (1951) All BR 714, 723

Robert Fletcher v. John Peck, 10 U.S. (6 Cranch) 87; 3L. Ed. 162; (1810) U.S. LEXIS 322

Ferder vs. john Miladmay, (1938) AC 1723

Egerton vs. Brown low, (1853) 4 # LC 1/23:10 ER 359,408.

Richard-son vs. mellish, (1824)2 Bing 229, 252

Egerten vs. Brownlow (1853) 4 HLC 1, 123.

Janson vs. Driefontein consledated Mines, (1902) AC 484,500.

Carbon black export Inc. vs. the Monrasa 254 F2d 297 (CAS 1958); Court dismissed 359 U.S 180; 79 SCt 710; 3L Ed 2d 723 (1959)

407 U.S.1 (1972) M/S Bremen vs. Zapata off-shore Company

AIR 1959 SC 781: (1959) 2 SCA 342,370.

Ratanchand and Hirachand vs. Askar Nawaz Jung, AIR 1976 AP 112.

Shree Subhalaxmi Fabrics (P) Ltd.vs.Chand Mal Baradia, (2005)10 SCC 704

Patel Roadways pvt. Ltd. Vs.Bada India Ltd., AIR 1982 Cal 575: (1982) 86 Cal WN 992 (DB)

LAWS AND ACTS

Contract Act, 1872.

The Companies Profits (worker's Participation) Act, 1968.

Arbitration Act, 1940.

The Companies Ordinance 2016.

Foreign Private Investment (Promotion and Protection) Act, 1976.

Investment Policy 2016.

The Trade Development Authority of Pakistan Act, 2013.

The Protection of Economic Reforms Act, 1992.

United Nation Conventions on Contract for the International Sale of Goods, 1988.

The Recognition and enforcement (Arbitration agreement and Foreign Arbitral Awards) Act, 2011.

UNICTRAL Convention on the Recognition and enforcement on Foreign Arbitral Awards New York Convention.

The Constitution Islamic Republic of Pakistan, 1973.

MULTIMEDIA SOURCES

https://www.jstor.org/

https://scholar.google.com/

https://www.academia.edu/

https://www.ssrn.com/en/

http://www.google.com.pk

http://www.letsstartthinking.org/history/political-transitions-and-instability.osp

http//www.supremecourt.govt.pk/Uc/articles/8/1.pdf.

http://dx.doi.org/10.1016/0014-2921 (92)90021-N.

http//www.pacra.com.

http://www.jstor.org/stable/3382010

http://www.un.org/en/sections/documents/journal-united-nations/

www.law.qmul.ac.uk/undergraduate/student-societies/qm-law-society/law-journal/

https://www.pakistanlawsite.com/Login/MainPage

https://www.justia.com/

https://www.law.gmu.edu/library/freelegalresearch

http://www.findlaw.com/

https://lawyerist.com/best-law-firm-websites/

http://www.worldlii.org/

http://www.vakilno1.com/

https://www.yahoo.com/

http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html

http://www.jstor.org/stable/1331491

http://www.ccel.org/ccel/calvin/institutes.html

https://www.trans-lex.org/919000

http://brooklynworks.brooklaw.edu/bjil/vol27/iss1/5.