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**LIABILITY OF THE STATE TO RIGHT TO FOOD: IN ISLAMIC & PAKISTAN LAW
PERSPECTIVE**

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ABSTRACT

“There is no better right than that he would have a house wherein he may live, a piece of clothing whereby he may hide his nakedness and a piece of bread and some water” (Tirmidhi, *hadith*, 2341). Considering this important *hadith*, this research is undertaken to discuss a hot, emerging and critical issue of food in Pakistan. It evaluates the food laws of Pakistan focusing on provisions related to liability of the state to give adequate food to its poor citizens. It highlights the problems arising due to non-availability of food as well as shortcomings in related laws. It finds that field of food is neglected by the state, resultantly; this situation leads to cause deaths and suicides in some cases for which state liability law is silent, which has no conformity with Islamic legal principle of liability. It concludes that there is sever need to incorporate the principle of liability of Islam as well as international human rights instruments in food laws of Pakistan for the protection and promotion of right to adequate food.

Keywords: State Liability, Right to food, Citizens, Availability of food, Islam, Pakistan.

INTRODUCTION

Adequate food is a fundamental requirement of every human to live a dignified life. It is significant not only for survival but also for the realization of social, political and cultural rights [1]. In Pakistan, there are critical issues in the field of food connected with security [2], safety and availability of food. These are due to poor law, mismanagement, bad governance and negligence by the state authorities in the field. It ultimately leads to the hunger [3]. It is very alarming situation in the country. According to “Global Hunger Index, 2016” [4], “Pakistan is a state with serious situation of hunger”. It has, resultantly, killed many people in certain areas and the lives of, especially; children have been affected in Pakistan. Recently certain cases of death and suicides happened due to non availability and accessibility to food. The situation becomes miserable when mothers kill their children first then commit suicide themselves. In Islam, there is no better right than adequate food. Islam gives emphasis on the doctrine of liability including liability to provide adequate food. In addition, right to adequate food has also been acknowledged in certain international human rights instruments such as “Universal Declaration of Human Rights (UDHR), 1948”, Art 25(1): Art 25, “International

Covenant on Economic, Social & Cultural Rights (ICESCR), 1966”, Art 11). Under these instruments, there is obligation for the state parties to make sure the right to food to its people. Pakistan is also a party of these instruments [5], but it has not performed much as existing state of affairs of right to food requires, performance in the sense of, i) management of food and, ii) making liability laws for violation for the same. In this way, on the one hand area of food is neglected; state escapes itself from the liability and accountability due to the immunity clauses incorporated in Pakistan laws on the subject on the other hand. This study focuses on the question that, being an Islamic state and a party of international human rights instruments, to what extent Pakistan is being liable to provide and promote the adequate food to its citizens. The principle of liability, one of foundational principles of Islam, is applied in this paper to see to what extent Pakistan being an Islamic state complied with its laws on the subject.

LIABILITY OF THE STATE: A GENERAL CONCEPT

The meaning of ‘liability’ is “the state of being bound [6] or obliged in law or justice to do, pay, or make good something; legal responsibility’[7], ‘the state of being

liable'[8], and 'the state of being legally responsible for something'"[9]. Salmond says, liability is "the bond of necessity that occurs between the wrong doer and the remedy for the wrong" [10]. It can be inflicted as a legal effect for "action" or "omission" of any person who is under obligation to perform [11]. Every human is duty bound to do his part in line with his competency and obligation. Such as, a teacher and male & female have their capacity and liability to perform. In the same way, state has its own capacity and liability with regard to its subject.

There is relationship between state and citizens [12] therefore, state is under obligation for the protection of rights of its people/ citizens including right to food. Security from infringement of rights becomes crucial to insure a human for realization of rights which provides the concept of protection of rights [13] and further can be achieved by the society [14]. According to the "Social Contract Theory"[15], "the source of the state is attributed to the need for security of these rights" [16]. In a model state, the rights of the citizens, as well as food right, have to be given protection through law and concurrently give limited power to the state against the citizens. Because of idea of the "Natural law", a

model power of the state moved toward to be limited by law and a diversity of strategies of the constitution and assertions on rights were appeared. So, it is the obligation of every state to incorporate the group of fundamental rights in its constitution for which state is bond to protect and promote them. In case it fails, the citizens can demand these rights counting right to food. This kind of duty also has been described by the Article 27 of the "Vienna Declaration, 1993" [17].

LIABILITY OF THE STATE: IN AN ISLAMIC PERSPECTIVE

Everyone is liable and accountable under Islam and he has to perform his duty in this World accordingly. 'Accountability' [18] is "the process via which a person or group can be held to account for their conducts" [19]. Under this definition, everyone is accountable for his performing obligations. This idea has been inferred from the *hadith* for example, "every one of you is a shepherd and is responsible for his flock" [20]. Accountability, in Islam, is dual in character for example; they are "liable in this World" as well as "in the life hereafter" [21]. In this World, he is made accountable by court of law wherein he is punished according to the intensity of crime committed [22]. The idea behind this penalty is for his safety from the penalty on

the “Day of Judgment”, which will be more and unbearable. Similarly, anybody can ask to “authority-holders” for giving accountability if there is violation of public right, wherein “authority-holder” is answerable to him.

The principle, “to be accountable”, is deduced from the practice of *Umar* (R.A) Who was made inquiry by *sahabi* “to give account” for additional cloth, for which He (RA) had given proper “account” in the community [23]. How it was the beautiful and unique example established by *Umar* (RA) which highly recommend that *Allah* has been granted the trust to humans for transmitting His guidance through equality and justice. Every person, as a trustee, has to give account to public for which he will be obligatory to perform his obligation. This idea has been stated in the holy *Qur’an* [24]. The mark able application of accountability is evident, especially, in the era of *Abu Bakr* (RA) [25], *Umar* (RA) and *Ali* (RA) [26].

In addition to liability/accountability, other foundational principle is *amanah* which means security, peace protection and shelter [27]. Under *amn*, things provided to *amanah*-holder as “*amanah*” shall remain secure and; breach of trust will not be made by him. On the basis of these *ahadith*, it is stated, the power provided to the state is

also “*amanah*”. State has to do the *amanah* carefully and not to abuse its authority, if it violates its duty, it will be liable. The idea of liability discussed in the texts of *Quran*, *ahadith* and common law discloses that liability is necessary for the good governance in any state, including for the security of right to food. In the lack of this principle, it possible, it destroys governance of the state.

IMMUNITY OF THE STATE

The term immunity is antonyms of liability and accountability. “The Doctrine of Sovereign Immunity” is “based on the Common Law principle borrowed from the British Jurisprudence that the King commits no wrong and that he cannot be guilty of personal negligence or misconduct, and as such cannot be responsible for the negligence or misconduct of his servants. Another aspect of this doctrine was that it was an attribute of sovereignty that a State cannot be sued in its own courts without its consent.” The philosophy of provision concerning immunity is to permit the state to exercise their obligations with confidence and without any fears. Though, at the same time it provides the chance to the state to infringe the rights of the citizens, if obligation is exercised negligently.

The methodology used for immunity clause in Pakistan' law is such as, "no suit, prosecution or other legal proceeding shall lie for anything in good faith done or intended to be done under this Act". Additionally, "a thing is deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not" [28]. These immunity clauses are incorporated in a different way concerning the area of immunity such as some statutes grant immunity to all individuals, to the state & its servants and some only to its officials. Where a person has caused damage because of failure of the state to perform "proper care and attention", it is presumed that it has been performed the constituent "good faith" where it is exercised honestly regardless of whether it is performed negligently. It appears so as to providing actions are performed honestly, person cannot file the suit on the base of negligence, which denies his lawful remedy. Moreover, the shelter of "good faith" is constantly incorporated into Acts to grant immunities to public bodies for protection from liabilities.

LIABILITY OF THE STATE TO FOOD

Right to food is most important than any other right. Being a fundamental right, every state is under an obligation for the protection of its citizens.

LIABILITY OF THE STATE TO FOOD IN INTERNATIONAL LAW

Right to food is defined under the UDHR, 1948 [29] which is vital to survive [30]. It has been acknowledged in Art 25 of the "UDHR, 1948" & Art 11 of "ICESCR, 1966". State parties, under Art 2 of the Covenant, are duty bound to take suitable measures to give assurance to this right. For this purpose, "the United Nation Committee" has provided comprehensive guidelines to the states related to their duties to protect, respect & fulfillment of the right to adequate food. There are four interrelated and essential features which have been mentioned by the Committee as "General Comments" [31] such as: i) adequacy; [32] ii) availability [33]; iii) accessibility [34] and; iv) sustainability [35]. In recognition of this basic responsibility, under "Covenant" and "the World Food Summit Plan of Action, 1996" several states has included right to adequate food in their national constitutions.

LIABILITY OF THE STATE TO FOOD IN ISLAMIC PERSPECTIVE

Allah is the only Creator of whole universe. He created human beings and the resources and means, for instance plants, animals, crops and so on, to satisfy their basic needs including hunger. So, Allah is capable to devise a scheme making certain the safety of

food for humankind. Allah has prescribed many *ahkam* (laws) in *Quran* and *Sunnah* for this purpose. Which indicate certain responsibilities of: i) the state; ii) community and; iii) individuals respectively, these need some explanations.

LIABILITY TO FOOD ON STATE LEVEL

The ruler is, generally, responsible for all those who are under his guardianship. This rule has been prescribed in the following *hadith*, the Prophet (PBUH) states that, “each of you is a shepherd, and all of you are responsible for your flocks” [36]. The *khaleefah* is also responsible to ensure basic needs for every single citizen on the basis of the *hadith* as, “the Son of Adam has no better right than that he would have a house wherein he may live, a piece of clothing whereby he may hide his nakedness and a piece of bread and some water” [37]. As a result, the ruler will be diligent for application of these *ahkam* related to economy in concerned state, because this will be his best defence in the world herein after.

The practice, to address this issue, can be quoted as well from the companions’ period. Once, *Madina* experienced a famine during the era of Umar (RA). He used only oil and dry bread to eat until He was certain that everybody in His vicinity was full fed.

Very famous and golden words by Umar (RA) are mentionable here in which he stated, “if a sheep dies on the bank of the Euphrates, I would expect that Almighty Allah will ask me question about it on the Day of Judgment” [38]. In another place the same was quoted by Umar (RA) with some difference, “if a camel dies on the bank of the Euphrates, I would fear that Almighty Allah will ask me question about it on the Day of Judgment” [39]. These words reveal the example of self accountability which is more effective than to give accounts to citizens or court of law. Another important practical example by Umar (RA) is also mentionable here. Once Umar (RA) was going to “*Harrah*” [40] on his usual round along with his servant Aslam, where he observed fire and small kids were crying close to it. The lady had been pretending to cook something over the fire... Umar (RA) returned to the *Baitul-Mal* to fill a bag with flour and fat. He (RA) stated to Aslam, “now put this sack on my back”, Aslam replied, “I shall carry this sack”. Umar (RA) remarked golden words as, “What! Will you carry my load on the Day of Judgment” [41].

One can imagine the beauty of practical examples by Umar (RA), therefore he deserved to rule on 22 lac square feet. The above mentioned examples reveal that: i)

everyone is accountable/ liable even the ruler; ii) self accountability is more effective; iii) any state can grow and prosperous within days if the doctrine of accountability/liability is applied in letter and spirit to run the activities of the state.

LABIALITY TO FOOD ON SOCIETY LEVEL

Along with ruler, the Muslim community is also responsible to make certain whether all citizens within the community are fed. This rule has been prescribed in the *hadith*, “any community, whosoever they are, if a person among them became hungry; they will be removed from the protection of Allah the Blessed, the Supreme” [42]. Under this *hadith*, the implication is that there is no remedy (in the World herein after) for community when one hungry man steals from their property of community.

LABIALITY TO FOOD ON INDIVIDUAL LEVEL

Further, each Muslim, as an individual is also responsible for ensuring food such as his neighbour is fed. This rule has been prescribed in the following *hadith* such as: “the one, who slept (satisfied) while his close neighbour was hungry, and he was aware of that, would not have believed in me truly” [43]. This *hadith* discussed the perspective of responsibility to the community, but beyond

the responsibility to make certain the community is fed. Islam encourages a way of life wherein people eat less. This principle can be inferred from the following *hadith*, “no man fills a container worse than his stomach. A few morsels that keep his back upright are sufficient for him. If he has to, then he should keep one-third for food, one-third for drink and one-third for his breathing”[44].

This *hadith* makes certain a broader sharing of food and encourages for eating what is necessary. This concept, whereas, is opposite to the Capitalist lifestyle that promotes over consumption [45]. As Islam emphasis on to fulfill the basic needs of human and not luxuries. To meet the basic needs like food, clothing, shelter etc., there are enough resources existing on the earth. It is Islam which gives the resolution of this severe issue by obliging the Islamic state under *ahkam* of *Allah* to provide the basic requirements to its people and further to become independent in food and housings. The beauty of “the Islamic Economic System” is that it gives solution to fulfill the fundamental requirements in spite of market conditions for such products. This is because the Prophet (PBUH) has given great importance to fulfill the basic needs [46].

By inferring the principle from this *hadith*, the Islamic state must ensure a security to its citizens which Capitalism [47] cannot attain in the callous inflexibility of the use of its “free market”. Under this ground, in the 1300 years of rule in Islamic history/state, we never found any news of committing suicide by a lady with her children because of poverty. This is because people, at that time, were living a content and flourishing life under the *ahkam* of Allah [48].

LIABILITY OF THE STATE TO FOOD RIGHTS IN PAKISTANI LAW

Availability and accessibility of food remains major problem in Pakistan. To realize the right to food, there are, according to the Oxfam study (2014), definite challenges which appear, especially concerning its scope [49] and governance issues [50]. This issue, resultantly, leads to hunger which causes deaths of poor and sometimes suicides.

SUICIDES AND DEATHS DUE TO NON-AVAILABILITY OF FOOD IN PAKISTAN

Pakistan, on “Global Hunger Index, 2016” (IFPRI) [51], is at grave level of hunger with 22% of its inhabitants malnourished [52] and to be found 107 in a position of 118 developing states. Pakistan performed, in eliminating hunger, worse than most of its

South Asian neighboring countries [53, 54]. Resultantly, hunger is killing and affecting the poor citizens especially the children in certain areas of Pakistan. These events are mixed in nature such as an everyday of life or because of natural calamity. There are several incidents, under media reports, which make clear the picture. For instance, because of poverty two children were killed by their mother in Johar-Town Lahore [55]. Similarly on another place, three children were killed by their mother because of hunger [56]. Likewise, two daughters were killed by poisoning by a deprived mother and then she attempted to commit suicide however was saved. She told, “I took the extreme step as I could not have seen my children in misery” [57].

Similarly, after a drought hit the Tharparkar District (Southern Sindh Province), at least 132 young children died, many as due to malnutrition [58]. In Tharparkar’s Chachro [59], two children died due to the food shortage taking death toll to 34 in 2018 [60]. Due to malnutrition, 7 children died in Mithi and the number of deaths reached 12 by food scarcity [61]. Before the Sindh High Court, it was admitted by the provincial health authorities that 1,340 children have died since 2014 in drought-hit in the areas of Tharparkar [62]. Similarly, in

2018, almost 454 children have died in the same area [63]. It is mentionable here that 10 children died within 24 hours in Tharparkar [64]. Further, 486 children lost their lives in Thar in 2018[65]. On this situation, proceedings in a recent case is mentionable here in which “the Chief Justice of Pakistan” (CJP) made a question that, “who was responsible to make a policy to combat famine and make available food to the citizens?” in this regard, Sindh government took responsibility for the death of 60 children in the drought-wrecked Tharparkar.

It was affirmed by “Advocate General Sindh” (AGS) before the Supreme Court that, “I agree that the responsible persons should be held accountable” [66]. Although the responsibility has been taken by the state representative for the deaths but it is not enough only to admit the negligence. To take the responsibility, anyhow, is a good step by the state. Further immediate remedial steps should also be taken. According to “the United Nations International Children’s Emergency Funds” (UNICEF), due to floods, over 100,000 children left homeless. Due to sufficient food to eat, they are possibilities to die [67]. These incidents are yet another addition to the many deaths across the country happening because of poverty driven suicide, hunger or murder. In Pakistan,

mother kills their children and ultimately herself, as she doesn’t have adequate food to feed. Laws play role to eradicate these kinds of problems.

CRITICAL ANALYSIS OF FOOD LAWS IN PAKISTAN

There is lack of an integrated legal system of food laws in Pakistan. However, there are certain laws dealing with different corners of security of food. These are able to achieve security of food, in spite of the truth that these are very old; however implementation was/ is very poor. In Pakistan, four laws specifically cope with security of food. Wherein, one is indirectly [68] while other three laws are directly about security of food.

All provinces of Pakistan adopted “The Pure Food Ordinance, 1960”. The main objective of the Act is to make sure food purity regarding supply in the marketplace. It does not apply to the vicinity of cantonment whereas “the Cantonment Pure Food Act, 1966” is applied for the same. Both Acts are vastly alike to each other.

There is another law dealing with hotels and restaurants with the titled, “Pakistan Hotels and Restaurant Act, 1976”. The rates regarding hotels and restaurants are controlled and regulated as well as standard of services are provided under this Act. Express provisions for consumer complaints

have not been incorporated in this Act as well as in “the Pakistan Penal Code, 1860” and “Pakistan Standards and Quality Control Authority Act, 1996”. Though, citizens can file complaints with related government officials in which officials use discretion to deal with the complaints.

The federal government controls the import of food while standards of security of food are regulated by the provinces. However, most of the functions were devolved to the provinces under the 18th amendment in the constitution. Consequently, the provinces are making their own different laws which are creating variations in instant laws across Pakistan. So, trade of goods is not impacting by instant amendments between borders of provinces so far because of weak enforcements. The Federal Government has realized this issue therefore is in process to review their options under the 18th Amendment.

Quality and security lawmaking system in food trading is very important factor which has been incorporated in “Pakistan Pure Food Laws, 2011”. This Act deals with 104 food stuffs which fall in 9 extensive groups. Further, the important law in the field is “Punjab Food Authority Act 2011”. For the purpose to make available of safe and nutritious food, “Punjab Food

Authority” has been founded under this Act. The main objective is to explain & devise standards of supply, labeling, preservation of food and adequate implementation mechanism. In this Act, various enforcement mechanisms have been discussed such as trial in the courts of law, to impose fine etc. It has operational jurisdiction whole of the Punjab.

Along with these Acts, there are certain regulations such as “Food Safety Standards” which deals with issues related to purity in raw food stuffs etc. Pakistan is/has been trying to comply with International standards, being a member of “International Organization for Standardization (ISO)”. At national level, on the other hand, “Pakistan’ National Standards” cover such as farming, food stuffs, fabrics etc. [69]. Though, there is lack of implementation because of limited funds for scrutiny.

Above discussed food laws are general in nature which deals with the issues related to food safety, pure food, control rates, safety standards etc., but these are silent on the subject of instant research. Further, it is also mentionable here that list of socio-economic rights have not been included expressly in the Constitution of Pakistan in its chapter “Fundamental Right” [70]. However, Art 38 (d) in its chapter

“Principles of Policy” assures to give basic necessities of life wherein there is deficient obligatory method in Pakistan by which citizens can demand right to adequate food [7172], for this purpose, the higher courts, under Art 9, have construed right to “life” to incorporate several natural and legal rights [73]. On the other hand, right to food as a part of its fundamental rights has been introduced by the Supreme Court of India, in the case of “*People’s Union for Civil Liberties vs. Union of India & Others*” [74]. Further, India has passed “National Food Security Act, 2013” [75]. Similarly, in Pakistan, “Punjab food Authority Act 2011” is a good lawmaking shift by Punjab government for over sighting the quality as well as standard for food. Likewise Sindh government is also taking step in this regard, however to make available the provisions on the state liability is for away.

We, whereas, found state liability provision in the Constitution of Pakistan. Its Art 174, in general, is the base of liability of the State. According to it, “the Federation may sue or may be sued by the name of Pakistan and a province may sue or may be sued by the name of the province” [76]. But, this Art “practically, takes us back to the Act of 1858 which, in its turn, leads us to a consideration of the nature and extent of

liability of the East India Company” [77]. The important rule appeared here is immunity of the State. Further, these laws are on the bases of outdated sections [78]. Herein, Art 174 has evicted to be a feeble base on which to develop a structure of the law on state liability [79].

Further, the language of this Art is broad in character and not definite. The “term of limitation” has not been incorporated in this Art like Art 176 of “the Government of India Act, 1935 & 1858”. In a result, status of constitution is that the extent of State liability is narrated under S. 65 of “the Government of India Act, 1858” [80]. It says, “the scope of liability of the Secretary of State for India would be the same as that of the East India Company” [81]. This Art, nevertheless, initiates any claim or case it just stats, “the state can sue or be sued, as a juristic personality, in matters where a suit would lie against the Government”. Further, substantive rules have not been provided under this Article for the scope of State liability, whereas the scope has been recognized under certain pertinent judgments of higher courts.

It reveals that although Article of the Constitution gives opportunity to citizens to file a case against the State but simultaneously State escapes itself because

of the immunity clauses. Such as, immunity to President, Governor or Ministers etc., has been granted under Art 248 and further they cannot be summoned in any court of law [82]. Under this Art, we can create two groups. In group one there are the President and Governor to whom immunity has been provided in civil and criminal cases. In group two, the Prime Minister, Federal, State, Chief and a Provincial Minister have been provided immunity only in civil cases. The immunity has been provided to the officials stated in sub-clause 1 of Art 248 and “*shall not be answerable to any Court for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions.*” And “*No criminal proceedings whatsoever shall be instituted or continued against the President or a Governor in any Court during his term of office*” but it doesn’t mean that if these officials “abrogates or attempts or conspires to abrogate, aiding or abetting or subverts or attempts or conspires to subvert the Constitution by use of force or show of force or by other unconstitutional means,” or “*do a massive corruption*” or “*involved in a criminal cases of a heinous crimes*” or “*involving a criminal case involving moral*

turpitude” even than officials are provided immunity in Art 248. If this construal, that Art 248 provides immunity, is acknowledged, various constitutional provisions and teachings of the Holy *Quran* and *Sunnah* then become outmoded and trifling in “the Constitution of Islamic Republic of Pakistan, 1973” which is against the central idea of the constitution.

Every constitutional provision indicates its objective. The main objective of Art 248 is to provide immunity to the “bona fide acts” done of those public officials but it doesn’t mean in any way that they are not liable or accountable to any court of law, if they commit any crime, High Treason under Art 6, do corruption or abrogate or undermine the constitution and the same like.

The protection provided to President and Governor for criminal cases under sub-clause (2) of Art 248 is connected and reliant “*for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions.*” and for this purpose both “*shall not be answerable to any Court*” but merely for “bona fide acts” done and wider sense that they have free license in shape of immunity for all his illegal activities throughout the entire term is indeed the

denial of the general rule i.e. “no one is above the law” and central idea of “the Constitution of the Islamic Republic of Pakistan, 1973” regarding the Preamble, Articles 2A, 3, 5(2), 17, 25, 41(1), 41(2), 62(d), 62(e), 62(f), 101(1), 101(2), 227 and 260(3)(a) of the constitution and teachings of the Holy *Quran* and *Sunnah* which state; “if Ye Judge between mankind, that Ye Judge justly” [83] and “people are all equal as the teeth of a comb” [84].

Interpretation of Art 248 is difficult task for higher courts; however it was brought for its elucidation in the case of *Ch. Zahur Ilahi* [85]. The court observed its extent and the area of operation as, “...the immunity provisions must, in accordance with the accepted principles of interpretation, be construed strictly and unless persons claiming the immunity come strictly within the terms of the provisions granting the immunity, the immunity cannot be extended. The immunity is in the nature of an exception to the general rule that no one is above the law.” It was added, “hence, since neither the constitution nor any law can possibly authorize him to commit a criminal act or does anything which is contrary to law, the immunity can not extend to illegal or unconstitutional acts” [86].

By comparing Art 248 with Art 41 of the Constitution of China, it appears that constitutional provision of China is compatible with the teachings of Holy *Quran* and *Sunnah*, notwithstanding this truth that Pakistan is Islamic State and China is a Secular and a Communist State. Discussed state of affairs leads to violate the rights of the people including right to food which creates frustration and violence in the society.

Conversely, for the State, “General Clauses Act, 1956” provides that, “a thing shall be deemed to be in good faith where it is in fact done honestly, whether it is done negligently or not” [87]. Nonetheless, during British era, a person, charging with be deficient in of good faith, was needed to prove that he did not act negligently. On the other hand, lack of malice & ignoring negligence had merely to give proof by the officials of the Crown. Principles of ‘good faith’, which persuade the construal of several laws, are dissimilar to people and the State. These create an imbalance between the both subjects and ultimately protect the bureaucrats from liability [88]. It is obvious, different from the people, that State is not needed to act with “due care and attention”. Providing, actions performed honestly is considered to be in “good faith”, which is not enough for the

people [89]. This efficiently weakens the base of “negligence-based torts” by eliminating the constituent of negligence. Thus, just intentional torts can be followed against the State. The State is secured efficiently for torts involving “negligence-based torts” [90].

To address this issue, there was an important initiative by “the Law Commission of India, 1956” by preparing a notable report [91]. This was suggested under it that, “under the General Clauses Act, a thing is deemed to be done in good faith, even if it is done negligently. Therefore, by suitable legislation, the protection should be made not to extend to negligent acts, however honestly done and, for this purpose; the relevant clauses in such enactments should be examined” [92]. It was also upheld in another paper by “the National Commission to Review the Working of the Constitution, 2001”. On the other hand, same kind of steps has not been taken in Pakistan. Such as, S. 2 (27) of “the General Clauses Act” is survived yet & there is no any note bale step taken by the Supreme Court of Pakistan to declare null & void and alike laws protecting the State from its actions done negligently [93]. Whereas, India being a Secular State, has given the importance to this issue, Pakistan,

being an Islamic State, also needs to take steps in this regard.

Under the above discussion, it reveals that neglected area of food/food right is connected with the deprived people of Pakistan. It looks that State is not interested to make such law in which it becomes liable. For instance, Pakistan has made 25 amendments in its constitution so far [94]. These all amendments are concerning powers of government & their stake holders. Even, the single amendment cannot be found about the subject of the study in hand. Nonetheless, it had vowed by the government to make legislation in its “Action Plan for Human Rights, 2016”. But, just five pieces of law were presented in parliament by the government classifying as human rights issues. It was concerning rights of child, marriages of Hindus, improving justice system in the country, censuring sectarian and religious hate-speech. Though, child protection was merely one proposal which was passed so for [95].

In addition, the government of Pakistan inclines towards Capitalism System rather than Islamic teachings which emphasizes on fulfillment of basic needs of the people. The examples can be seen from recently developmental big projects such as “Metro Bus Service” (MBS) [96], “Orange

Line Train Service” (OLTS) [97], “China-Pak Economic Corridor” [98] (CPEC) etc. It shows that the government invests on developmental projects and neglects its obligation to make available sufficient food to its people. Resultantly, this situation creates frustration and extremism in the country and poor people, ultimately, take their lives.

CONCLUSION

In Pakistan, the violation of right to adequate food leads to cause deaths and suicides in certain areas of Pakistan, wherein nobody is liable and responsible for these incidents. It is not only non conformity with Islamic legal principle of liability and accountability but also commitments made under international human right instruments. The failure of the State in this regard is due to negligence by it which happens in two aspects: i) in the management of food and; ii) making liability laws. It finds on the one hand there is no such law governing the State liability which occurs due to their negligence; there are immunity clauses which protect the State making liable for the same on the other hand. It also found that Pakistan, being a party to international human rights instruments, fails to comply with and to insure the right to food to its citizens.

Therefore, it is crucial that: i) Pakistan incorporate the principle of liability/accountability of Islam in food laws of Pakistan to protect & promote the right to adequate food; ii) immunity clauses existed should be regularized; iii) Pakistan should insure the right to adequate food to its citizens to full fill its commitments made under international human right instruments and; iv) by amendment in the constitution, the provision may be incorporated as fundamental right such as: Article 8-A: “Right to Adequate Food; every person has right to adequate food to survive his dignified life”.

LIMITATIONS & DIRECTIONS FOR FUTURE RESEARCH

This research has limitation in its methodological foundation. The primary data on the subject was scarce, especially suicides committed & deaths due to non-availability of food. This research is based on secondary data and media reports (partially) therefore it has to be conducted as a desktop research. The future researchers could conduct an independent research to collect primary data on suicides committed & deaths from whole of Pakistan. The collection of statistical data will be a foundation for further steps and helpful for policy & law making process in Pakistan.

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- [2] Food Security’ is “the people’s right to define their own policies and strategies for the sustainable production, distribution and consumption of food that guarantees the right to food for the entire population, on the basis of small and medium-sized production, respecting their own cultures and the diversity of peasant, fishing and indigenous forms of agricultural production, marketing and management of rural areas, in which women play a fundamental role.” “Final Declaration of World Forum on Food Sovereignty, 2001”.
- [3] In this paper, “Food Security” is defined “the state in which food (sustenance) is available to all members of society, in reasonable quantities allowing enough sustenance and natural growth, and of a safe/acceptable quality that will not cause diseases or toxicity, all year round and at an affordable price/cost”.
- [4] See www.ifpri.org/topic/Global-hunger-index accessed Oct-9-2017.
- [5] See <https://treaties.un.org/>. Pakistan have signed and ratified several conventions such as: “signatory of the UDHR, 1948, the ratification of the Convention on the Rights of the Child, 1990, ICCPR, 1966, ICESCR, 1966, the Convention on the Elimination of all Discrimination against Women, 1981. It is also participant of Millennium Development Goals (MDGs). Pakistan ratified it in April 2008. Pakistan ratified the Covenant with a general reservation that it will with a view to achieving progressively the full realization of the rights recognized in the present Covenant, shall use all appropriate means to the maximum of its available resources.”
- [6] Legal Dictionary, s.v. “Liability,”. Retrieved from <http://legal-dictionary.thefreedictionary.com/liability> on November 11, 2016.
- [7] Black’s Law Dictionary, s.v. “Liability,”. Retrieved from <http://thelawdictionary.org/liability/> on November 12, 2016.”
- [8] Collins Dictionary, s.v. “Liability,”. Retrieved from <https://www.collinsdictionary.com/dictionary/english/liability> on November 12, 2016.”
- [9] Oxford Dictionary, s.v. “Liability,”. Retrieved from <https://en.oxforddictionaries.com/definition/liability> on November 12, 2018.”
- [10] P.J. Fitzgerald, *Salmond on Jurisprudence* 12th ed. (London, UK: Sweet & Maxwell, 1966), p. 349.
- [11] *Ibid.*, p. 349.
- [12] *Ibid.*, p. 350.

- [13] Roscoe Pound, *History of Jurisprudence*. (St. Paul, Minn: West Publishing Co., 1959), p. 29.
- [14] Dr Raj Kishan Pathak. The Concept of Historical and Judicial Development. *CIQ*, xii (April-June 2000): (11).
- [15] Social contract theory, nearly as old as philosophy itself, is the view that persons' moral and/or political obligations are dependent upon a contract or agreement among them to form the society in which they live." "See further <https://www.iep.utm.edu/soc-cont/>.
- [16] Dr. B.N. Mani, *Jurisprudence, Legal Theory*. (Faridabad: Allahabad Law Agency, 1999), p. 280.
- [17] According to it "the administration of justice, including law enforcement agencies, in full conformity with the applicable standards contained in international human rights instruments, is essential to the full and non-discriminatory realization of human rights; and is indispensable to the processes of democracy and sustainable development".
- [18] Accountability is synonymous of liability. This term will also be used in this paper in the place of liability.
- [19] Muhammad Ali. Governance and Good Governance: A Conceptual Perspective. *Dialogue* 10(1) (2015): 65-77.
- [20] I. Bukhari, *Sahih Bukhari*, Chapter, Qaw-l-Allah-o-ta'ala atiullah wa ati-ul-rasul. Vol.9, *hadith* 7138. p. 62. In Muhammad Zuhair bn Nasir (Eds.). (Beruit: Dar tawq-u-nnijah, 1st ed. 2001). I. Muslim, *Sahih Muslim*, Chapter Tehrim hadayah al ammal, Vol.3, Book 4, p.1465, *Hadith*1833. In Fawwad Abdul Baqi (Eds.). (Beruit, Lebanon: Dar-e-ahya-ul-Qirat-ul-arabi).
- [21] These verses are related to accountability of humans in the life hereinafter. *Al-Quran*, (2: 284-281); (3: 30); (102:8); (36:17); (99:7-8); (101: 1-11).
- [22] Such as in "the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979"; "The Offence of Zina (Enforcement of *Hudood*) Ordinance, 1979".
- [23] See Mohammad Ali Taba. *Al Fakhri*, trans. C.E.J. Whitting. (London: Luizac & Co., 1947).
- [24] Verse (3:104).
- [25] He said: "I have been given authority over you but I am not the best of you. If I do well, help me, and if I do ill, then put me right.....the weak among you shall be strong in my eyes until I secure his right if God will; and the strong among you shall be weak in my eyes until I wrest the right from him...Obey me as long as I obey God and His apostle, and if I disobey them you owe

me no obedience.” (A. Guillaume, *the Life of Muhammad* (London: Oxford University Press, 2006), 687.

- [26] He sent a letter saying: “Out of your hours of work, fix a time for the complainants and for those who want to approach you with their grievances. During this time, you should do no other work but hear them and pay attention to their complaints and grievances. For this purpose, you must arrange public audience for them. During this audience, for the sake of Allah, treat them with kindness, courtesy and respect. Do not let your army and police should be in the audience hall at such times so that those who have grievances against your regime may speak to you freely, unreservedly and without fear.” Ibid.
- [27] Sofia Bt. Samsudin & Md. Sirajul Islam, Value of Al-Amanah in Human Life, *International Journal of Scientific and Research Publications*, Volume 5, Issue 4: (April 2015), p. 1.
- [28] Good faith” has been incorporated in “General Clauses Act, 1956, S. 2 (27).
- [29] UDHR, 1948. Art. 25 (1).
- [30] International Network for Economic, Social & Cultural Rights. *The Right to Food*, “n.d.”. Retrieved from <https://www.escr-net.org/rights/food> on 11-9-2107.
- [31] [General Comments](#) by the UN Committee on Economic, Social and Cultural Rights. See <http://tbinternet.ohchr.org>.
- [32] It means that “available food to consume must be adequate in the prevailing environmental, economic, cultural and social perspective.” Ibid.
- [33] “Quality food should be available either through market or directly from land and other natural resources. It should be culturally suitable and free from harmful substance.” Ibid.
- [34] “It must be without discrimination on the basis of any prohibited ground. The price of food should not be so high that individual has to compromise for other basic needs of life. The meaning of physical accessibility is that every person should have access to food, especially vulnerable groups like persons with disabilities, children, the elderly, and those affected by conflict or natural disasters.” Ibid.
- [35] “States are duty bound to ensure that practices impacting on food, land or natural resources do not put at risk the long-term availability and accessibility of food. This guarantee should be given through the development of suitable measures and regulation of private actors.” Ibid.
- [36] I. Bukhari, *Sahi Bukhari*, Chapter Jum’ah wa khutbah fil qaryah wa

- madyan, Vol. 2, Book 3, p. 5, *hadith* 895. (Beirut, Lebanon: Dar tawq-umnijah).
- [37] I. Tirmidhi, at-*Tirmidhi*, Vol. iv. Book 36, *hadith*, 2341.
- [38] Asbahani, Abu Noaim. *Al - Hilyat al-Awliyā*, Vol. I. (Beirut: Dar ul kitab al-arabi, 1974), p. 53.
- [39] Ibn-e-Sa'ad. *Tabaqat-ul-kubra*. Chapter Zikar istikhlaf-e-umar, Vol. III. In Muhammad Abdul Qadir (Eds.). (Beirut: Dar-ul-kutobul ilmiyah, 1990), p. 232.
- [40] "A suburb of Madinah".
- [41] Ibn-e-kathir. *Al-Bidaya wa'l-Nihaya*. Vol. IIV. (Beirut: Dar ihya al-turath al-arabi, 1988), p.154.
- [42] Ahmed bin Hunbul, *Musnad Ahmed*, Vol. IIV (Beirut: Musasat ul-Risalah, 1st (Eds)2001).
- [43] Abu-l-qasim Al tibrani, *Al-Mu'jam al-kabir*. Vol. 12, *hadith* 12741. In Hamdi bin Abdul Majid, (Eds.), (Qahira: Maktabah Ibn-e-Taymiyyah, ed., II, 1994), p. 154.
- [44] Maja, Ibne. *Sunan ibn-e-maja*. Vol 4. *hadith* 3349. (Beirut: Dar eha-ul-kutobul arbiya, 2009), p. 448.
- [45] *The Khilafah* (2014). "Poverty drives women of South-Asia to suicide under the ugly rule of Capitalism". "Retrieved from <http://www.khilafah.com/poverty-drives-women-of-south-asia-to-suicide-under-the-ugly-rule-of-capitalism/> on 11-9-2017."
- [46] I. Tirmidhi, at-*Tirmidhi*, Vol. iv. Book 36, *hadith*, 2341.
- [47] Under this system, "the state is not obliged to fulfill the basic needs of each citizen, rather it satisfies itself to increasing GDPs and stock exchange indicators".
<https://www.thefreedictionary.com/Capitalist+System>
- [48] As supra note 43.
- [49] The scope of issues are for example: "1) whilst the guidelines concerning right to food promotes a comprehensive rights based approach, there is a great challenge in operationalizing this at the local and country level; and, 2) the challenge is one of formulating policy frameworks that incorporate the seven PANTHER principles into the right to food frameworks, as mentioned by the FAO as: participation, accountability, non-discrimination, transparency, human dignity, empowerment and rule of law." See <http://www.fao.org/righttofood/about-right-to-food/human-right-principles-panther/en/>.
- [50] Enforcement & management challenges are there for example: "1) The first challenge is to formulation of enforcing methods to operationalize the right to food; 2) It refers to management

challenge to the non-integrated and practical approaches to address issues concerning food safety; 3) A third challenge is concerning capacities of both the state and its constituents in bringing to fruition the right to food.”

- [51] See further www.ifpri.org/topic/Global-hunger-index.
- [52] The Dawn News. (Dec, 2016). Pakistan has been ranked as a country with serious hunger level with 22% of its population undernourished.
- [53] FAO (2014). “*State of Food Insecurity in the World*”. Annex. 1. Retrieved from <http://www.fao.org/home/en/> on 8-9-2017.
- [54] “For example, 61% percent (84 of 137) of the different Districts of Pakistan are considered food insecure whereas 42% rate extremely low in food access. There are large inequalities between provinces as well as their component urban and rural populations with the rural communities generally more food insecure. In child stunting, there are also huge disparities between rich and poor. The stunting rate is two and half times higher among the children of the bottom 20% of the population than the top 20%. According to the NNS 2011, in Pakistan the overall stunting rate is 43.7%”. See <https://www.wfp.org/content/food->

[insecurity-pakistan-rises-58-national-nutritional-survey](https://www.wfp.org/content/food-insecurity-pakistan-rises-58-national-nutritional-survey).

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- [59] “Chachro is a taluka in the Tharparkar District of Sindh, Pakistan. It is located in the southeast corner of Pakistan, in the Thar Desert, along the Pakistan-India border. It has a population of 351,263.”
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- [69] “It is a body of national standardization under the Ministry of Science and Technology. It has responsibilities for enforcement of standards, inspection, test products and services, including food stuffs, for their quality, specification and characteristics during use, and for import and export objectives.” See further its functions at: <http://www.psqca.com.pk>
- [70] Adnan Abdul Sattar. *Social & Economic Rights*, (2010), p.2
- [71] AFSN. “Right to Food Assessment” (“n.d.”). Dhaka, Bangladesh. p. 9.
- [72] “Promotion of social and economic well-being of the people: - The State shall- (a) secure the well-being of the people, irrespective of sex, caste, creed or race..., (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment....”.
- [73] Such as *Shehla Zia vs. WAPDA*: (PLD 1994 SC 693)
- [74] *People’s Union for Civil Liberties vs. Union of India & Others*: (2001 SC 196).
- [75] “This law has to make certain the provision of adequate food at affordable prices to the people. Some of its provisions include provision of subsidized food grain, a Midday Meal Scheme to schoolchildren and wheat

grain of 5 Kg per person per month, in rural & urban areas.”

- [76] The Constitution of the Islamic Republic of Pakistan, 1973. Article 174.
- [77] Hafiz Aziz-ur-Rehman, *Citizens versus State: Public Servant Liability and Tort Reforms in Pakistan* (Islamabad: the Network for Consumer Protection, 2005), 2.
- [78] “Liability of the State in Tort” Vigyan Bhavan Annex, New Delhi, 2001, 24.
- [79] As supra note 77. p. 22.
- [80] Section 176(1) of Government of India Act, 1935 “refers to the legal position contained in section 32, Government of India Act, 1935 thus: The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this Chapter, may, subject to any provisions which may be made by an Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.” S 32, Government of India Act, 1915 “refers to the position contained in Section 65, Government of India, 1858.” As supra note 77. p. 22.

- [81] According to it, “the Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council of India, as they could have done against the said Company; and the property and effects hereby vested in Her Majesty for the purposes of to Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments and executions as they would, while vested in the said Company, have been liable, to in respect of debts and liabilities lawfully contracted and incurred by the said Company.”(Government of India Act, 1858. S. 65).
- [82] “Protection to President, Governor, Minister, etc: - (1) The President, a Governor, the Prime Minister, a Federal Minister, a Minister of State, the Chief Minister and a Provincial Minister shall not be answerable to any court for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions...”.
- [83] Verse (4:58)

- [84] Abu Khuzaimah, *Al-kna wal asma liddaulla abi*, Hadith No 949, 2/523
- [85] *Ch. Zahur Ilahi's Case*: (PLD 1975 SC 383)
- [86] [86] *Aman Ullah Khan's Case*: (PLD 1990 SC 1092); *Nawabzada Muhammad Umar Khan's Case* (1992 SCMR 2450); (PLD 1990 SC 1092).
- [87] General Clauses Act, 1956. S. 27.
- [88] Such as in: "*Shariat Suo Motu No.120 OF 1987 2010 PCrLJ 206 FSC; Khan Gul Government Contractor Federation of Pakistan through Secretary/Chairman vs. Federal Board of Revenue, Islamabad 2018 PTD 415 QHC; Nimra Sohail v. Chairman Board of Intermediate and Secondary Education 2018 CLCN 31 LHC*".
- [89] Several cases lay down the principles about "Good Faith" as: "*Mehra Ginning Industries vs. Sajid Shafique*: (2017 CLD 1165 LHC); *Muhammad Younas vs. Abdul Rehman*:(2017 CLC 198 LHC); *Muhammad Afzal vs. Fida Hussain*:(2017 CLC 51 LHC); *Loretta Iqbal vs. Province of Sind*: (2017 PLC (CS) 1033 KHC); *Syed Muhammad Sohaib (Shoaib) vs. Federation of Pakistan*: (2017 PLC (CS) 1020 KHC); *Ayaz Ahmed Memon vs. Pakistan Railways through Chairman* :(2017 PLC (CS) 226 KHC)".
- [90] As supra note 77.p.2.
- [91] See further "*Liability of the State in Torts*" (Delhi: the Law Commission of India, 1956).
- [92] *Ibid.*, p 89, Para II, (IV), Note under "N. B".
- [93] As supra note 74. p.2.
- [94] Visit: www.pakistani.org
- [95] Same like, "legislative proposals submitted by the Private Members on rape and honor-killing have been passed by the joint sitting of the Parliament. These proposals were initiated in the Senate by previous government but still are pending. Parliamentarians introduced 23 bills in the Senate and 30 in the National Assembly related to the protection and welfare of children, women, minorities, disabled citizens and fundamental rights of citizens but unfortunately any of these Private Member bills has not been passed by the National Assembly so far. It is also mentionable here that besides legislation, the Parliament has passed 53 Resolutions, held 19 discussions, asked 373 Questions and took up 15 Calling Attention Notices on the issue of human rights." Free and Fair Election Network (2013). "*Human Rights' Issues in Parliament, Islamabad*". p. 2-3.
- [96] The Islamabad Metro cost Rs. 45 billion. [http:// dunyanews. tv/en/ Pakistan/371872-PM-inaugurates-](http://dunyanews.tv/en/Pakistan/371872-PM-inaugurates-)

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[98] For CPEC, the actual estimated cost of the project is expected to be US\$75 billion. In which, Energy 33793, transport, 9784 and, Gawader 7.9262 is Ml \$. See <http://boi.gov.pk/InfoCenter/CPEC.asp>
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