

Employer and Employee Obligations in Islam: A Comparative Study with Constitutional Provisions of Pakistan

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Abstract

Labour market of Muslim world including Pakistan is characterized with lower level of productivity resulting from job dissatisfaction, and undisciplined work environment. This study explores the solution to these problems from Islamic knowledge base, by identifying the gap between the Islamic provisions of employer and employee obligations, and the Constitutional provisions of Pakistan. The article compares Islamic perspective of employer and employee obligations with constitutional provisions of Pakistan. The Islamic perspective has been extracted from a deep and thorough review of *Qur'an* and *Hadith*. The Constitutional provisions have been sorted out from the Constitution of Pakistan 1973, and from important labour laws. The paper concludes that there are sufficient ways to improve the Constitutional provisions of Pakistan in light of Islamic perspective which will improve the employer and employee obligations; ultimately there will be improvement in the productivity of labour market. The paper offers some suggestions for improvement of constitutional provisions.

Keywords: Employee, Employer, Obligations, Islamic Perspective, Constitutional Provisions

Introduction:

The teachings of Islam envisage a balanced society achieved through the functioning of Islamic institutions. Islam emphasizes the importance of meeting one's obligations. If a person meets his/her obligation in a society, it leads to fulfillment of others rights. This never meant that Islam forbid one from demanding his/her rights. Even though this demand does pose a problem associated to human nature that individual very often wants his/her rights along with some parts in the right of other persons too. Therefore, one group demands for their rights and tends to encroach upon the rights of other group, which cause social fraction and disorder.¹

Islam provides comprehensive laws to address the multidimensional concerns of workers. These laws solve various problems of workers in a balanced manner. For example, law relating to wages require the rates to be determined by mutual bargaining between workers and employers. The parties draw up a wage contract, which spell out all necessary details, and neither party can abrogate it unilaterally.²

Islamic economy protects the worker's interests by comprehensive legal and moral institutions. The workers enjoy kind treatment, a good structure, and more job

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¹ M. Ramzan Akhtar (1992). "An Islamic Framework for Employer-Employee Relationships". *The American Journal of Islamic Social Science*, Vol.9, No.2, 202-218.

² Ibid.

opportunities. These factors promote industrial peace and social harmony by eliminating the major causes of industrial conflicts.³

Islam as a religion believes in freedom, justice and equality, it is against discrimination, intolerance and support justice in the workplace. Regardless of creed, class or colour, Islam required work to be performed on the basis of contract which reflects justice and responsibility on the part of both the employer as well as the employee.⁴

Since the rights of the workers and of employees have been provided in Islam, there is no need of strikes etc in the system of Islamic State.⁵

In common understanding, employer is one who employs others or hires services of others in a permanent or temporary nature of work for the payment of wages or any reward. Employee is one who works for an employer for receipt of wage or any reward. Obligation referred to the binding to perform a duty imposed by law, contract, promise etc.

The labour market in Islam is run by the Islamic rules. Islamic rules are fair, transparent, and based on justice. The Islamic system is a value based system. Several verses of *Qur'an* and sayings of Prophet (PBUH) explicitly explain the importance of this factor of production.⁶

Labour market of Muslim world including Pakistan is characterized with lower level of productivity resulting from job dissatisfaction, and undisciplined work environment. The economy of Pakistan is facing problems productivity of labor force, and this situation is estimated to be worsened in the future. One of the main reasons of low productivity is poor working conditions. A significant proportion of employed labor force is confronting with poor working conditions at times carrying occupational health and safety hazards⁷.

The existing labour laws are not being implemented adequately. The employers use tactics to deny the legal rights of workers, and increase their profits at the cost of their workers' welfare. Even government sector of Pakistan also use such tactics. They particularly deny about worker's fundamental rights to form association and about the collective bargaining. The labour market conditions are estimated to get worse in future because of upcoming free trade regime and implementation of the programmes of structural adjustments being undertaken at the behest of donors.⁸

In this scenario, need emerges for the participatory work environment provided by the Industrial Relations System. Indeed, a participative and mutual respect based

³ Ibid.

⁴ Rozanah Ab Rahman (2006). "Protection of Safety, Health and Welfare of Employees at Workplace under Islamic Law". *IIUM Law Journal*, Vol.14, No.1, 51-66.

⁵ Toseef Azid (2005). "The Concept and Nature of Labour in Islam: A Survey". *Review of Islamic Economics*, Vol.9, No.2, 93-124.

⁶ Ibid.

⁷ Sabur Ghayur (1996). "Labour Market Issues in Pakistan: Unemployment, Working Conditions, and Child Labour". *The Pakistan Development Review*, Vol.35, No.4 Part II (Winter 1996), 789-803.

⁸ Ibid.

industrial relations help to increase cooperation, trust and ultimately productivity, by decreasing exploitation and antagonism.⁹

Need For Study:

The discipline at workplace is a major challenge of every organization. It is a pre-requisite for organizational productivity. Every organization has some set of rules and acceptable standards of behaviour which every employee has to follow during the course of employment. But, if we study the current working environment of the industry we found that mostly employees are protesting for their legitimate rights. They do so in trying to get these through union pressure, strikes and even some time lock out situation arises. While, on the other hand employers are not ready for fulfilment of their legal and moral obligations. This is a major cause of job dissatisfaction, lower productivity and undisciplined work environment.

The purpose of this study is to identify the gaps between the Islamic provisions of employer and employee obligations, and the Constitutional provisions of Pakistan. After the gap identification, the study offers suggestions to improve the Constitutional provisions of Pakistan in light of Islamic perspective which will improve the employer and employee obligations; ultimately there will be improvement in the productivity of labour market.

Research Methodology:

Islamic provisions related to the employer and employee obligations have been searched out using *Qur'an* Wa Hadees Software. These softwares and applications have complete *Qur'an* and *Hadith* English Translation.¹⁰ Data related to the Islamic provision of employer and employee obligations has been searched, collected and analysed. First a summary table of *Qur'anic* verses and *Hadith* has been developed after a thorough review. *Qur'anic* verses and most relevant *Hadith* has been chosen and referred for the each constitutional provisions related to the matter of subject.

Constitutional provisions i.e. the Constitution of Pakistan, 1973 and important labour laws have been downloaded from the official legal website of Government of Pakistan.¹¹ The constitutional provisions related to the employer and employee obligations have been selected from the Constitution of Pakistan, 1973 and from the important labour laws.

After a thorough review, a comparative study has made on Islamic and Constitutional provisions related to the employer and employee obligations.

Islamic Perspective of Employer and Employee Obligations:

Islam, being a complete set of life, offers code of conduct for both employer and employee to manage their day to day affairs. Prophet Muhammad (peace be upon him) himself run the business and practiced the Islamic injunctions and taught followers how business affairs and employment matters will be governed, so that everyone will fulfill their obligations as per the spirit of the Islamic injunctions.

Making a living is a prerequisite for fulfillment of basic human needs. It is therefore considered by Islam as a personal obligation (*fardh-i-aiyn*). Islam is very much

⁹ Briefing Paper No.49, June 2014. "Employment and Labour Market Issues in Punjab: Current Situation and Way Forward" Pakistan Institute of Legislative Development and Transparency.

¹⁰ www.compsi.com/aqfs

¹¹ <http://pakistancode.gov.pk> and <http://punjabcode.punjab.gov.pk>

concerned with the protection and security of every man in the society including workman, an important factor of production and center of all economic activities.¹²

In Islamic perspective, the relationship between the employer and employee is based on ukhuwah (brotherhood), adl (justice) and ihsan (benevolence) and its start from the job offer by the employer and acceptance by the employee. This engagement of work must be on some meaningful and lawful subject, and the terms of engagement must be agreed between the both before start of work. Islam urges that terms of employment must be written down and contract of employment must be agreed before the commencement of work, wages and other remuneration and time of payment must be agreed so, that at later stage no conflict may rise.

Islamic perspective has taken from detailed analysis of Holy *Qur'ān* and *Ḥadīth*.

Provisions in *Qur'ān* related to Employer and Employee Obligations:

The provisions in Holy *Qur'ān* related to the employer and employee obligations are revealed hereunder:

Every human has right of earning but this right has been confined with only lawful earnings. *Allāh* (SWT) addressed the humans as:

*“O you who believe! Eat of the lawful things that we have provided you with, and be grateful to Allāh, if it is indeed He Whom you worship”*¹³.

In view of this verse the employers are restricted to do only lawful business which is permitted under the Islamic ideology and employees are also bound to earn the livelihood through lawful means.

Allāh (SWT) provides a guiding principle for writing agreements made between the peoples, so that everything should be clear, agreed and binding on both parties. *Qur'ān* says:

“O you who believe! When you contract a debt for a fixed period, write it down”.¹⁴

This verse opens on us the importance of written agreement, whether it was for sale or purchase of good or employment of peoples for any work but this engagement shall be lawful.

Qur'ān says:

“And eat up not one another's property unjustly, nor give bribery to the rulers that you may knowingly eat up a part of the property of others sinfully”.¹⁵

Qur'ān teaches us not to steal, robbing and deceiving the property of others in any illegal way. The employer is responsible for the safety of employee's belongings and employee is responsible for the safety of employer's property. If any dispute arises between the parties and this shall be presented to the court. The judges are responsible to take the decision on merit and parties are restricted to give bribery or to use any influence in the matter pending before the court.

The safety and security during the working hours is a major part of accomplishment of jobs done and *Qur'ān* address the peoples as:

“And do not throw yourselves into destruction”.¹⁶

¹² Afzal-ur-Rahman, *Economic Doctrines of Islam*, Islamic Publications, Lahore, Pakistan, 189.

¹³ Al-*Qur'ān*, Al-Baqarah:172

¹⁴ Al-*Qur'ān*, Al-Baqarah:282

¹⁵ Al-*Qur'ān*, Al-Baqarah:188

The employers are responsible for providing safe and secure workplace and the employees are responsible to working diligently, sensibly and using personal protective and safety equipment's during the working.

Muslims are addressed as best people for mankind who are responsible to establish does and don'ts in the society as:

"You are the best of peoples ever raised up for mankind; you enjoin Al-Ma'rf and forbid Al-Munkar, and you believe in Allāh".¹⁷

Dutifulness is a compulsory part of everyone job; following verse support this contended statement:

"So their Lord accepted of them (their supplication and answered them), Never will I allow to be lost the work of any of you, be he male or female, you are (members) one of another".¹⁸

Equality addressed in following verses:

"O mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him (Adam) He created his wife [Hawwa (Eve)], and from them both He created many men and women and fear Allāh through Whom you demand your mutual (rights), and (do not cut the relations of) the wombs (kinship)".¹⁹

Equal employment opportunity is every ones right. In the course of employment every employee is treated equally without any discrimination.

Right of workers and slaves can be seen as:

"Worship Allāh and join none with Him in worship, and do good to parents, kinsfolk, orphans, Al-Maskin (the poor), the neighbour who is near of kin, the neighbour who is a stranger, the companion by your side, the wayfarer (you meet), and those (slaves) whom your right hands possess. Verily, Allāh does not like such as are proud and boastful".²⁰

Moral and work place ethics can be found in following excerpts of *Qur'ān*:

"And whoever does righteous good deeds, male or female, and is a true believer in the Oneness of Allāh (Muslim), such will enter".²¹

Justice and fulfilling of obligation can be seen in following verses of *Qur'ān*:

"O you who believe! Stand out firmly for justice"²² and "O you who believe! Fulfill (your) obligations".²³

"And eat of the things which Allāh has provided for you, lawful and good, and fear Allāh in whom you believe".²⁴

Employer and employee both are bound to earn the money through lawful and good means.

¹⁶ Al-*Qur'ān*, Al-Baqarah:195

¹⁷ Al-*Qur'ān*, Al-Imrān:110

¹⁸ Al-*Qur'ān*, Al-Imrān:195

¹⁹ Al-*Qur'ān*, An-Nisa:1

²⁰ Al-*Qur'ān*, An-Nisa:36

²¹ Al-*Qur'ān*, An-Nisa:124

²² Al-*Qur'ān*, An-Nisa:135

²³ Al-*Qur'ān*, Al-Maidah:1

²⁴ Al-*Qur'ān*, Al-Maidah:88

The payment of wages shall be given in full without any unlawful deduction, following verse of *Qur'ān* provide clear instructions:

"Verily, a clear proof (sign) from your Lord has come unto you; so give full measure and full weight and wrong not men in their things".²⁵

The employees are responsible for performing their duties diligently and honestly as:

"O you who believe! Betray not Allāh and His Messenger, nor betray knowingly your Amt (things entrusted to you, and all the duties which Allāh has ordained for you)"²⁶.

Agreements and covenants abiding guide source as:

"And fulfil (every) covenant. Verily! the covenant, will be questioned about".²⁷

Following piece of *Qur'ānic* knowledge lead us to avoid fraud, corruption and other unfair means:

"And defraud not people by reducing their things, nor do evil, making corruption and mischief in the land".²⁸

In following verse *Allāh* (SWT) provided the characteristics of a good employee who shall be hired:

"Verily, the best of men for you to hire is the strong, the trustworthy".²⁹

Terms and conditions of employment should be followed as agreed between the employer and employee.

"He said: I intend to wed one of these two daughters of mine to you, on condition that you serve me for eight years, but if you complete ten years, it will be (a favour) from you. But I intend not to place you under a difficulty. If Allāh will, you will find me one of the righteous".³⁰

In following verse *Allāh* (SWT) provided a golden role of conducting business without any disturbance "Consultation". If both the employer and employee manage their day to day affairs with mutual consultation, there is no any other statement that business will surely grow.

"And who (conduct) their affairs by mutual consultation".³¹

In case of any dispute or conflict arises between the parties it can be settled with mutual consultation or arbitration.

"And if two parties or groups among the believers fall to fighting, then make peace between them both".³²

How could create congenial relations in work environment, these guidelines can better cope with this problem:

²⁵ Al-*Qur'ān*, Al-Araf:85

²⁶ Al-*Qur'ān*, Al-Anfal:27

²⁷ Al-*Quran*, Bani-*Isrā'il*:34

²⁸ Al-*Qur'ān*, Ash-Shurā:127

²⁹ Al-*Qur'ān*, Al-Qasas:26

³⁰ Al-*Qur'ān*, Al-Qasas:27

³¹ Al-*Qur'ān*, Ash-Shura:38

³² Al-*Qur'ān*, Al-Hujrāt:9

*“The believers are nothing else than brothers, So make reconciliation between your brothers”.*³³

Motivation to earn more and more along with spiritual learning could be followed as:

*“Then when the (Jumu'ah) Salt (prayer) is finished, you may disperse through the land, and seek the Bounty of Allāh (by working, etc.), and remember Allāh much, that you may be successful”.*³⁴

There is a concept developed between the Muslims that Juma is a Holiday, this verse proof that earning livelihood on Juma day is permitted, allowed by the *Qur'ān* and there is no restriction on humans to work on that day. It the matter of Government weekly rest policy whether it should be on Juma or Sunday.

Allāh (SWT) is the creator of the mankind, arranged food for them and protected fare peoples from fear. This concept has been given as:

*“Who has fed them against hunger, and has made them safe from fear”.*³⁵

Now this is the responsibility of everyone to look after their subordinate's livelihood and provide them protection against any harm, physical or social.

Qur'ān is complete code of life and provide guidelines in every aspect of life, specifically if we examine employment related issues which shall affect the organizational productivity and create disciplinary issues and unrest among the employees and also cause of employer anxiety can be easily resolved by following the obligations imposed and required to be fulfilled by both the employer and employee. After a thorough review of verses of *Qur'ān*, it seems appropriate to say that every aspect i.e. negotiation, writing terms and conditions before engaging in work, payment of due wages on time without any unlawful deduction, just and fair treatment, honestly performance of duty, consultation and arbitration and other obligations are covered. The characteristic of a good worker, importance of halal earning, work ethics are also provided in the *Qur'ān*. In case of any grievance arise between the employer and employee shall be resolved with mutual consultation and arbitration. The employer is advised to be kind and brother treatment with the employee and take care of him basic necessities i.e. food and cloth and on the other hand employee is advised to be trusty worthy and loyal with their employer so that a good a conducive working environment shall be developed which shall support in enhancement of organizational productivity and improve discipline at workplace.

Provisions in *Hadīth* related to the Employer and Employee Obligations:

The provisions in *Hadīth* related to the employer and employee obligations are revealed hereunder:

“Your slaves are your brothers and Allāh has put them under your command. So whoever has a brother under his command, should feed him of that which he eats and dress him of that which he wears. Do not ask them (slaves) to do things beyond their capacity (power) and if you do so, then help them.”

³³ Al-*Qur'ān*, Al-*Hujrāt*:10

³⁴ Al-*Qur'ān*, Al-*Şaff*: 10

³⁵ Al-*Qur'ān*, Al-*Humazah*:4

In this *Hadīth* Prophet (PBUH) teaches us how to deal with workers and helping him in doing the given jobs.

“The people before you were destroyed because they used to inflict the legal punishment on the poor and forgive the rich.”

If nations destroyed by ignoring the justice implementation than what happens to organizations who fail to administer justice on equality bases.

The manual labor and hygienic conditions are necessary for all workers.

“The companions of Allāh’s Apostle used to practice manual labour, so their sweat used to smell, and they were advised to take a bath.”

Prophet Muhammad (PBUH) showed his hate to the employers who don’t pay wages in rightful manner as

“I am the adversary of a man who employs a worker but does not pay him rightful wages.”

Employee’s safety, protection and healthy work environment maintenance is necessary to the employers who follow the prophetic teachings and want to enter in heaven after life.

“Those who expose their servants to ill-treatment will find the Paradise gates shut to their faces” and

“One who mistreat those under him will not enter Paradise.”

The reward to a good business man who shall comply all the requirements related to their employees or society is addressed as:

“A true and honest businessman will be with the prophets, the truthful and the martyrs on the Day of Judgment.”

Importance to stick on agreement can be seen as:

“Muslim must abide by their agreement.”

Misuse of authority and unjust doing in corporate organizational environment also banned if one wants to attain better life after life.

“One who exercise his authority and power unjust way will not enter Paradise.”

Congenial relation with peers, colleagues, subordinates, superiors and with coworkers in organizational environment is encouraged if one read this *Hadīth*:

“One of the actions that will be beneficial in your life after death is your good behavior with people working under you.”

Timely payment of wages is a binding on the employer and highly appreciated as:

“Give the wages of employee before his sweat dry.”

Training and development in contemporary organization is characterized with learning and willingness of employees to involve in learning new knowledge and skills demanded by market can be attain easily with the help of this *Hadīth* as:

“Seeking knowledge is obligatory for all Muslim men and women.”

The welfare of employer is meant that employee will work honestly and protect the employer’s property and wellbeing of the employer.

“When an employee looks to the welfare of his employer and worship Allāh, he has two rewards for him.”

The fulfillment of obligations diligently and submissiveness in fair manner is useful for both lives.

“When an employee fulfills obligations of Allāh and obligations of his employer he has two rewards for him.”

To keep the workplace neat and clean is every ones responsibility as Prophet (PBUH) said:

“Cleanliness is half of the faith.”

Welfare and maintenance of employees is compulsory if one study these:

“Verily Allāh, the exalted and Glorious would on the day of resurrection ask: O son of Adam, I was sick but you did not take care of me. He would say: O my lord, how could I take care thee whereas thou art of the worlds? There up he would say: did not you know that such and such servant of mine was sick but did you not take care of him (pray for his cure, show kindness and help him) and were you not aware of this that if you had cared him, you would have found me by him.”

“He who earns his livelihood through halal (permissible) means to avoid dependence on others and to spend on his family and to do good with his neighbors, will meet Allāh on the day of judgment in such a condition that his face will be shining like the moon of fourteenth night. And he who earns money through halal means to collect more money than others, and to show off his money, will meet Allāh in such a condition that Allāh will be angry on him.”

The determination of minimum wage left on the mutual agreement of the employer and employee.

“The people said to the messenger of Allāh, prices have become too high; fix the prices for us. The Messenger of Allāh said: ‘Allāh is the One Who decrees prices, Who takes and gives, and He is the Provider. I hope that I will meet Allāh with no one among you making any claim against me concerning issues of blood or wealth’.”

Honestly performing the duties is a binding on both the employer and employee, cheating in any manner is prohibited strictly as:

“Whoever cheats us is not of us.”

After the review of above cited *Ḥadīth* unveil the fact that the Prophet Mohammed (PBUH) provided in-depth guidelines for a good working relationship between employer and employee. The solution of labour market issues provided in *Ḥadīth* e.g., employee will be treated well, both employer and employee must abide their agreement, the employer will exercise his authority in justly and give the wages to employee on due time and without any undue deductions, take work between the agreed hours of work, consult in business problems and for employee welfare. If we follow the *Ḥadīth* the issues of labour market can be removed and a friendly working environment can be created which will help both parties in achieving their goals.

Employer and Employee Obligations under Constitutional Provisions of Pakistan:

The Constitution of Pakistan, 1973 and various labour laws provide comprehensive provisions related to employers and employees obligations. In this paper constitutional provisions specifically related to the employer and employee obligations are described hereunder.

The Constitution of Pakistan, 1973:³⁶

The following provisions of the Constitution of Pakistan, 1973 provide a general framework for employer and employee obligations:

- a. No person shall be deprived of life of liberty, save in accordance with the law. This is fundamental right of every person living in Pakistan and cannot be denied.
- b. Any kind of slavery, forced labour and child labour is forbidden. Bonded labour system abolition and child protection enactments are enforced in conjunction with these rights.
- c. All citizens shall have right of freedom of associations and unionism in prescribed manner permitted by the law. The employer and employee both can form association or trade union but there are certain limits are imposed by the law.
- d. All citizens shall have equal rights and protection under the law and there shall be no discrimination on the basis of male and female. Equal job opportunity will be given to females in private and government sector.
- e. The women's shall be encouraged to participate in all domains of professional life.
- f. Conducive and safe working conditions will be provided and it will be ensured that women and children are not employed on positions that are not suitable to them and maternity leaves and other benefits are paid to the working women's.
- g. The social security system will be realized to ensure the wellbeing of the people.

Workmen Compensation Act, 1934:³⁷

The said Act provides protection to workers for compensation in case of injury caused by accident during working hours. Under this Act:

- a. The employer is liable to provide compensation if personal injury is caused to a workman by accident in the course of his employment. The rate of compensation depends upon the nature and apportion of disability.
- b. In case the employer denial the payment of compensation amount, the worker can claim compensation within three year of the date of incident in the court of commissioner workmen compensation.

Factories Act, 1934:³⁸

This Act provides detailed requirements for health & safety, working hours and other obligations which an employer is responsible to comply. Under this Act:

- a. Under section 2 of this Act worker means a person employed, directly or through an agency whether for wages or not, in any manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on.

³⁶ <http://pakistancode.gov.pk>; (accessed 27th February, 2017).

³⁷ Ibid.

³⁸ Ibid.

- b. The employer will be accountable for the proper arrangement of Occupational Health and Safety requirement i.e. Fire Fighting, First Aid, providing Personal Protective Equipment's to workers and other workplace health and safety requirements related to the workers, assets, machinery, material, process and working environment.
- c. Under this Act working hours has been fixed to 48 hours per week and 208 hours per month. No employer can take work beyond these working hours and also workers are not liable to work after completion of duty, however in case of production load, an employer can stop or ask workers to work on overtime and workers are bound to work on the overtime, but there is a limit of 12 hours per week and 52 hours per month. The payment of overtime shall be made double of normal working hours.
- d. The worker is entitled weekly rest, annual holidays, causal leaves, sick leaves, compensatory leaves and festival holidays with pay.
- e. The employment of children below the age of 14 years is prohibited in any manufacturing industry.

Payment of Wages Act, 1936:³⁹

This Act provides requirements related to the payment of wages, time limitation for payment of wages, payment of final dues in case of separation and how a worker can get his wages if employer deny and delay the payment.

- a. Under this Act, the employer shall be accountable for the payment of wages to all the persons hired on permanent, contractual or daily wage basis on the agreed rate of wage and on agreed date.
- b. The employer shall be responsible for the payment of wages i.e. in any industry where less than 1000 persons are working before the 7th of each month and where more than 1000 persons are working before the 10th of each month.
- c. The employer cannot deduct any illegal deduction from his earned wages and is bound to make the full payment of wage.
- d. In case of separation from service the final settlement payment whatsoever of the employee shall be paid including unearned wages, overtime and payment of un-availed leaves within 2 working days from the date of termination of service.
- e. The final settlement will be paid without any illegal deductions.
- f. In case of delay in payment or denial of payment, a workman can claim his wages within three years of default by an application to commissioner workmen compensation appointed as authority under the payment of wages act.

Minimum Wage Ordinance, 1961:⁴⁰

Minimum wage rate is another bone of contention in organizational field. If it is not determined and monitored by the Government, exploitation of employees will be at its height. In order to avoid such undesired circumstances it is quite necessary to draw fine line to ensure minimum wage rate according to skills and working conditions.

- a. The minimum wage for unskilled, semi-skilled and skilled worker has been fixed under the Ordinance and every employer is accountable for the payment of minimum wage as determined by the Government.

³⁹ Ibid.

⁴⁰ Ibid.

- b. Currently for the year 2016-2017 minimum wage for unskilled worker is Rs.14,000/ per month without any deduction and for the year 2017-2018 proposed rate of minimum wage is Rs.15,000/-.
- c. In case of payment at lower rate by the employer, a workman can claim his wages arrears within three years of default by an application to commissioner workmen compensation appointed as authority under the payment of wages act.

Provincial Employees Social Security Ordinance, 1965:⁴¹

Employee's social security and medical facilities are necessary part to ensure their welfare and wellbeing. This is fundamental right of every person and is granted under the Constitution of Pakistan, 1973. Islamic teachings emphasize to ensure welfare of employees and secure them in possibly upcoming incidents.

Provincial employee's social security ordinance was made in 1965 to maintain such standards in organizations. Under this ordinance, the employer shall pay contribution of each employee every month at the prescribed rate determined the Government to Provincial Employee Social Security Institution (PESSI). The PESSI in this respect shall provide medical treatment facility and financial benefits to all the secured employees and their dependent family members.

Industrial and Commercial Employment (Standing Orders) Ordinance, 1968:⁴²

This ordinance describes all the requirements from appointment to termination of service and this shall include pre-employment, employment and post-employment obligations imposed on the employer and employee. Following are the main requirements of which an employer and employee both shall be accountable for the adherence.

- a. The employer is responsible to issue appointment letter in writing to the employee, which shall contain terms and conditions of employment.
- b. The workmen shall be responsible to reach duty on time fixed if any workmen reach late on duty; his wages of the entire period of absent will be deducted from the monthly wages.
- c. The employer shall be liable for compulsory group life insurance against natural death and disability of all the permanent workmen employed by him.
- d. The employer making profit in the year shall pay bonus in addition to the monthly wages to each workman having three months service in that particular year of profit with the three months of closure of accounts.
- e. If any party want to discontinue, both the employer and workman shall give one month prior notice before terminating contract of employment.
- f. The employment of a workman shall be terminated in writing by giving termination order which shall clearly describe the reason for the termination.
- g. If a workman resigns or his services are terminated by the employer other than misconduct, he shall be paid gratuity or provident fund which is applicable.
- h. Termination of service in case of misconduct the order of dismissal shall be made in writing. The workman concerned must be informed about he alleged misconduct and shall be given an opportunity to explain his version. The employer shall conduct independent inquiry before taking any action against a workman.

⁴¹ <http://www.punjabcode.punjab.gov.pk>; (accessed 27th February, 2017).

⁴² Ibid.

- i. If a workman is living in the residential accommodation of the Company, the workman shall leave such accommodation within a period of two months from the date of his termination of services.
- j. After the successful completion of service on the agreed terms and conditions, an employer is required to issue service certificate to every permanent workman.

Companies Profit Workers Participation Act, 1968:⁴³

This Act provides guidelines for workers participation in the profits of companies.

- a. All permanent workers having more than six month service with the Company shall be eligible for benefits under this Act.
- b. Every Company shall be bound under this act to pay five percent of its profit share to workers within the nine months of close of accounts.

Worker Welfare Fund Ordinance, 1971:⁴⁴

Under this Ordinance every employer is responsible to make the statutory contributions at prescribed rate determined and imposed by the Government. The Government shall establishment a Workers' Welfare Fund for providing suitable and low-priced residential accommodation and other facilities to workers.

Workers Children (Education) Act, 1972:⁴⁵

The purpose of this Act is to ensure education of workers' children and under this Act:

- a. Every establishment where ten or more workers are employed shall pay Education Cess at prescribed rate determined by the Government.
- b. The Worker Welfare Education Department shall provide free of cost education up to Matric including text books, admission fee, tuition fee, examination fee etc. to the children's of workers.

Employees Old-Age Benefits Act, 1976:⁴⁶

The purpose of this Act is to provide a framework for old-age pension benefit to private sector employees. Under this Act, every employer shall be liable to pay contribution to Employees Old-age Benefits Institution (EOBI) every month at the prescribed rate determined the Government. The EOBI department shall provide Old-age Pension, Survivors Pension, Disability Pension and Old-age Grant to all the secured employees.

Bonded Labour System (Abolition) Act, 1992:⁴⁷

The forced and bonded labour and all types similar to that bonded and forced labour arrangements shall be strictly banned eliminated. The employers are restricted for any bondage on employees.

⁴³ <http://pakistancode.gov.pk>; (accessed 27th February, 2017).

⁴⁴ <http://pakistancode.gov.pk>; (accessed 27th February, 2017).

⁴⁵ <http://pakistancode.gov.pk>; (accessed 27th February, 2017).

⁴⁶ <http://pakistancode.gov.pk>; (accessed 27th February, 2017).

⁴⁷ Ibid.

Industrial Relations Act, 2012:⁴⁸

The purpose of this Act is to provide a framework for regulating the matters related to the formation of trade unions and relationship between the employers and employee.

- a. Every worker in the organization is free to form or join any trade union or association which he may like; the employer cannot enforce them or refrain them to join trade union or association.
- b. The employer is free to form or join any trade unions or association of his choice, the workers or union of workers cannot enforce them in any manner.
- c. If any dispute arises between the employer and employee shall be settled with mutual consultation if not settled than employee has right to invoke the jurisdiction of court of law competent to hear the matter concerned. Before presenting the case in court an employer is required to give written notice to employer and employer is bound to answer the notice within 15 days. If employer did not give the reply to the notice or the employee is dissatisfied with the answer than he can bring his case to his Collective Bargaining Agent (CBA) first, if not solved than initiate legal proceeding in the court of law having jurisdiction.

The constitutional provisions describe the fundamental requirements which an employer and employee both are liable to be comply. The rights of the workers are secured by imposing certain bindings on the employers. The employers are also granted rights to the run the business independently and without any interference by the labour unions. Certain disciplinary actions are allowed in the labour laws which an employer can take against the workers in case of misconduct. The productivity of the organization and the discipline at workplace is mainly underlines in the compliance of constitutional provisions.

Comparative Analysis between Islamic and Constitutional Provisions:

Islamic provisions i.e. *Qur'ānic* verses and *Hadīth* related to the employer and employee obligations sorted out topic wise so that they can be compared easily. The data analysis given in Table 1 shows number of *Qur'ānic* verses found against each topic and reference to the Surah/Ayat also given against each topic listed hereunder:

Table 1: *Qur'ānic* Verses Related to Employer and Employee Obligations

Sr.	Topic	No. of <i>Qur'ānic</i> Verses	Reference
1.	Definition of Employee	1	28:26
2.	Slavery, Forced Labour, Child Labour and Freedom of Association	2	3:110, 4:135
3.	Equality & Fair Treatment	3	3:195, 4:1, 4:124
4.	Employment Agreement	3	2:282, 17:34, 28:27,
5.	Earnings and Payment of Wages	5	2:172, 2:188, 5:88, 7:85, 26:183
6.	Performance of Duty	2	5:1, 8:27
7.	Health and Safety	1	2:195
8.	Consultation	2	42:38, 49:10

⁴⁸ Ibid.

9.	Arbitration	1	49:9
10.	Employees Welfare	3	4:36, 62:10, 106:4
	Total	23	

Source: Authors calculation from Easy *Qur'ān* Wa Hadees Software.

The data analysis given in Table 2 shows number of *Hadīth*'s found against each topic and reference to the Book also given against each topic listed hereunder:

Table 2: *Hadīth* Related to Employer and Employee Obligations

Sr.	Topic	No. of <i>Hadīth</i>	Reference
1.	Definition of Employee	0	N/A
2.	Slavery, Forced Labour, Child Labour and Freedom of Association	2	Bukhari
3.	Equality & Fair Treatment	3	Tirmidi, Ibn Majah
4.	Employment Agreement	1	Tirmidi
5.	Earnings and Payment of Wages	4	Mishkat, Bukhari, Ibn Majah, Sunan Abu Dawud
6.	Performance of Duty	2	Ibn Majah, Muslim
7.	Health and Safety	2	Bukhari, Muslim
8.	Consultation	1	Tirmidi
9.	Arbitration	1	Bukhari
10.	Employees Welfare	3	Tirmidi, Ibn Majah, Muslim
	Total	19	

Source: Authors calculation from Easy *Qur'ān* Wa Hadees Software

The comparative analysis will be done, point by point, on topics (requirements) derived from the Constitutional provisions. The Constitutional provisions address the requirements related to the different aspects of the employer and employee obligations whereas the Islamic provisions provide general guidelines or framework to be followed by both the employer and employee. Therefore requirements of constitutional provisions are compared with the Islamic provision keeping in view the assent of the *Qur'ānic* Verses and *Hadīth*.

Definition of Worker:

The general definition of the worker given in the various labour laws is “*Worker means any person employed by the employer on permanent, contractual or daily wages job to do any skilled or unskilled, manual or clerical work for wages or any reward*”.

In verse 28:26 characteristics of the employee is given as “*strong and trustworthy*”. According to the Fiqh literature the term “worker” delves into two concepts of workers i.e., *ajir al mushtarak* and *ajir al khass*. The former includes workers who get a certain wage in return for a particular service, such as tailoring, hair-cutting, and so on. The latter concept includes workers who work for a person or an institution, in other words those who are paid according to how long they have worked.⁴⁹

If we comparatively review the definitions given in the labour laws cited above, we found that division is made on cadre or class and even the definition is not coherent

⁴⁹ M. Ramzan Akhtar (1992). “An Islamic Framework for Employer-Employee Relationships”. *The American Journal of Islamic Social Science*, Vol.9, No.2, 202-218.

between the laws himself. Under the Islamic provisions worker is classified based on service rendered and working hours and protect the rights of employees irrespective of the cadre. The most appropriate definition which is matched with Islamic provision is given in the Industrial Relations Act.

Slavery, Forced Labour, Child Labour and Freedom of Association:

The Constitutional provisions prohibit slavery, forced labour, child labour, abolish bonded labour system, and both employer and employee are free to form or become part of any association or union fulfill the requirement of Verses 3:110, 4:135 and *Ḥadīth* “*Your slaves are your brothers and Allāh (SWT) has put them under your command*”.

Equality & Fair Treatment:

The Constitutional provisions provide requirements for equality and fair treatment with the employee irrespective of gender, caste, religion, sect, demographic. Islamic provisions also prohibit discrimination and mistreatment i.e. Verses 3:195, 4:1, 4:124 and *Ḥadīth* “*One who mistreat those under him will not enter Paradise*”.

Every employee has right to be treated equally without any discrimination on the basis of religion, sect, caste, language, sex and etc. at the time of offering and during the rest of employment. The employer is responsible to ensure that employees are treated well at all levels within the organization without any discrimination irrespective of the position.

Employment Agreement:

The Constitutional provision for employment agreement shall be in writing is in compliance of *Qur’ānic* verses 2:282, 17:34, 28:27 and *Ḥadīth* “*Muslim must abide by their agreement*”.

Employment agreement shall be in writing and clearly explain the terms and condition of engagement e.g. salary, working hours and detail of job to be done or duties to be performed etc. so that after signing the agreement by the employer and employee, there will be conflict of any sort comes at later stage during the course of employment.

Earnings and Payment of Wages:

The employee is bound to perform the job as per the requirement of the employer and not to earn any unlawful gain during the course of employment by using any resource of any means of employer business or property.

The employer is liable to pay agreed wages without any unlawful deduction. The employer is liable to pay wages at the agreed time or any timeline fixed by the Government. The wage rate is left open on mutual consent and agreement of the Employer and Employee. Employer is liable to pay the agreed wage at the time fixed or agreed.

Islamic provisions also bound employer for timely payment of wages with any deduction in Verses 2:172, 2:188, 5:88, 7:85, 26:183 and famous *Ḥadīth* “*Give the wages of employee before his sweat dry*”.

Performance of Duty:

The employer and employee both are bound to fulfill their moral and legal obligations. The employee is responsible to perform their duties justly and honestly and to complete the given job within the specified time. Both the employer and employee are countable for their acts and omissions towards each other.

In verse 5:1 *Allāh* (SWT) said, “*O you who believe! Fulfill (your) obligations*” and according to *Hadīth*, “*Whoever cheats us is not of us*”; “*When an employee fulfills obligations of Allāh (SWT) and obligations of his employer he has two rewards for him*”; “*A true and honest businessman will be with the prophets, the truthful and the martyrs on the Day of Judgment*”.⁵⁰

Health and Safety:

In Factories Act a full Chapter (III) entails the occupational health and safety requirement to be fulfilled by the employer. In verse 2:195 *Allāh* (SWT) said “*And do not throw yourselves into destruction*”.⁵¹ The employer is responsible to provide safe and secure working environment including personal protective equipment’s required to perform the job or personal safety of the employee and the employee is responsible to keep him safe from any dangerous situation and not to engage himself in any danger work. The safety and security of the employees, buildings, material and products are the primary responsibility of the employer.

Consultation:

The Industrial Relations Act (IRA) emphasize on resolution of issues by mutual consultation. In verse 42:38 *Allāh* (SWT) said, “*And who (conduct) their affairs by mutual consultation*”.⁵² The Constitutional provisions of IRA provide guidelines how employer and employee will manage their affairs and run business smoothly. Joint Works Council is one example of the relationship building between the employer and employee to focus on the business development which will be beneficial for both the employer and employee.

Arbitration:

The Constitutional provisions of IRA provide a framework for the resolution of conflicts between the employer and employee through the arbitrator. *Allāh* (SWT) said “*And if two parties or groups among the believers fall to fighting, then make peace between them both*”.⁵³ Prophet Muhammad (PBUH) in many *Hadīth* told that peoples make sullah (peace) between the peoples this is a great job and *Allāh* (SWT) like this.

The most likely acts is that both employer and employee resolve their issues by sitting together without involving any third party. In case the grievance is not resolved then there are lots of forums e.g. Labour Court, Commissioner Workmen Compensation, Labour Appellate Tribunal and NIRC to readdress the grievances of both the employer and employee.

Employees Welfare:

The welfare of employee is legal obligation and also a moral responsibility of employer. All the benefits offered by the Government through the contributory schemes, employer shall be liable to pay all the statutory contributions so that employee shall get the welfare benefit from the government. Employer himself shall arrange social welfare benefits. Education and health care are most important, and must be taken care.

The comparative analysis is made very carefully, however if anything missed or overlooked can be acknowledged without any reluctances.

⁵⁰ Al-*Qur’ān*, Al-Maidah:1

⁵¹ Al-*Qur’ān*, Al-Baqarah:195

⁵² Al-*Qur’ān*, Ash-Shura:38

⁵³ Al-*Qur’ān*, Al-Hujurat:9

Conclusion & Suggestions:

After a thorough review and comparison of Constitutional provisions (the Constitution of Pakistan, 1973 and important Labour Laws) with Islamic Provisions (the *Qur'ān* and *Hadīth*). We have found that the constitutional provisions addressing the requirements focusing on the ground issues of labour market which can impact the discipline at workplace and affect organizational productivity. Whereas the Islamic provisions act as general guidelines and offer complete framework for the regulations regarding conduct of employer and employee, during the course of employment.

In a nut shell we can say that constitutional provisions are not in oppose of Islamic provisions but not practiced in true letter and spirit by both the employer and employee. The only difference is evident from the comparative study is that the definition of the employee or worker is not clear. Under the Islamic provisions worker is classified based on service rendered and working hours and protect the rights of employees irrespective of the cadre whereas in Constitutional provisions employee or worker defined in different meaning create confusion who fall within the ambit of worker. All the labour laws protect the right of workers. The employees working in the clerical, administrative, services and management cadre has no forum if in case of any grievance with the employer rise.

The Islamic provisions left the determination of wage on mutual agreement by the employer and employee, but encouraged the employer to take care of their employee and give handsome wage that can be enough to buy basic necessities of life. The minimum wage fixed by the Govt. is not in oppose of Islamic provisions but not enough to meet the basic life necessities, so Govt. should revisit the minimum wage determination system. The payment of due wages on time is also an issue; most of private industries is not paying full (minimum) wages on fixed time.

The job dissatisfaction, undisciplined work environment is a major cause of lower level productivity and this is due to the nonfulfillment of legal and moral obligations by both the employer and employee. The most of the labour market issues can be resolved if the existing labour laws shall be implemented effectively.

We suggest that a) Government shall take steps by monitoring performance of the enforcement agencies through independent auditors, so that results of the implementation shall be measured and gaps shall be identified. b) The definition of the worker and employee should be made crystal clear and c) procedure to address the grievances of the clerical, administrative, services and management cadre employees should be clearly defined d) the payment of wages (timely and full) shall be ensured by the regular monitoring and visits of the Labour Officer in Factories.

Further to reduce the gap in practice or to make the law applicable Government shall create awareness through education (for student's future employment perspective) and trainings session (for current employees and employer) so that everybody know their rights and duties (obligations). The results of this paper focus on a study of the implementation gaps or practice will be carried out by the scholars so that the issues faced by the employer, employee or the enforcement agencies may address and which shall help in improvement of constitutional provisions to make them practicable.