

**AL-JAMEI Research Journal**

ISSN (Print) 3006-4775 (Online) 3006-4783

<https://aljamei.com/index.php/ajrj>

## Reviving Islamic Arbitration (*Tahkīm*) as a Practical Model for Labor Dispute Resolution in Pakistan

*Hafiz Abdullah Mansoor Suleman*

PhD Scholar Department of Usool-ud-Deen, Univesity of Karachi,  
abdullahmansoor313@gmail.com

*Dr. Hafiz Muhammad Ismail Arifi*

Associate Professor Department of Usool-ud-Deen, Univesity of Karachi,  
drismaailarifi@uok.edu.pk

### **Abstract**

*This article explores the revival of Islamic arbitration (Tahkīm) as a viable and practical mechanism for resolving labour disputes in Pakistan within the framework of Islamic jurisprudence and contemporary legal systems. It examines the conceptual foundations and juristic principles of Tahkīm in Islamic law, highlighting its emphasis on justice, fairness, mutual consent, and expeditious dispute resolution. The study critically analyzes the existing labour dispute resolution mechanisms in Pakistan, identifying procedural delays, adversarial rigidity, and limited accessibility as key challenges. In response, it proposes the integration of Tahkīm as an alternative or complementary model that aligns with Pakistan's constitutional commitment to Islamic principles and social justice. By assessing relevant statutory provisions, judicial precedents, and comparative practices, the article demonstrates how Islamic arbitration can offer a cost-effective, flexible, and culturally resonant framework for resolving labour conflicts. The study concludes that institutionalizing Tahkīm in labour relations can contribute to industrial harmony, protect the rights of both employers and workers, and strengthen the overall efficacy of Pakistan's labour justice system.*

**Keywords:** *Islamic labour law, , tahkīm, Islamic arbitration, labour disputes, Pakistan labour system, hybrid economy, labour justice, Islamic jurisprudence.*

## Introduction

Economic forces have always played a decisive role in shaping human societies, influencing religious, political, intellectual, and social structures. An examination of dominant economic systems over the past four centuries reveals recurring patterns: the marginalization of divine authority and moral accountability, the unjust concentration of wealth in the hands of elites or centralized powers, and an exclusive focus on material gain at the expense of holistic human well-being. These systems prioritize worldly profit as the ultimate objective of economic activity, neglecting ethical balance and the broader moral purposes of human life.

Despite its identity as an Islamic state, Pakistan remains deeply influenced by this global economic order. Its labor structure is shaped by international institutions such as the International Labour Organization, while the practical enforcement of workers' rights depends on a judicial system often perceived as inefficient and inaccessible. As a result, workers are treated as market commodities, trade unions frequently fail to deliver justice, and legal remedies are delayed or ineffective. In response to these challenges, this study proposes the revival of Islamic arbitration (Tahkīm) as a practical and balanced mechanism for labor dispute resolution. Grounded in Shariah principles and classical juristic thought, Tahkīm offers a framework that recognizes contractual equality between employer and employee and provides a morally grounded, efficient alternative to modern capitalist and historically exploitative labor models.

Even in today's global economic system, labor continues to be treated merely as a commodity. Capitalists are often preoccupied with finding ways to exploit workers while staying within legal boundaries. In fact, they frequently hire legal experts to devise intricate methods of maximizing profit through exploitation—without triggering legal repercussions.<sup>1</sup>

The significance of employment and labor in Islam can also be understood from the fact that the Prophet Muhammad ﷺ himself engaged in work as a means of earning a livelihood. He says: "Allah Almighty did not send any prophet who did not tend sheep. Upon hearing this, the companions of the Prophet asked, "Did you also herd sheep, O Messenger of Allah?" He replied, "Yes, I used to herd the sheep of the people of Makkah for a few qirats as wages."<sup>2</sup>

Similarly, when the Prophet ﷺ traveled to Syria on behalf of Lady Khadijah (RA), most scholars consider this arrangement to have been based on *Mudarabah* (a profit-sharing partnership). However, Imam Al-Hakim, in his *Al-Mustadrak*,<sup>3</sup> and Imam Al-Bayhaqi, in his *Sunan*,<sup>4</sup> have narrated a report suggesting that it was in fact an *Ijārah* (wage-based employment) contract. Imam Al-Hakim even classified this narration as authentic (*sahih*).

### Duties of Workers

One of the remarkable features of Islam is its comprehensive and balanced system of rights and responsibilities. While the Qur'an and Sunnah provide clear guidance regarding the rights of individuals and groups, they also lay out corresponding duties in a thorough and structured manner. Muslims are repeatedly reminded that demanding rights in a one-sided manner—without fulfilling obligations—is not acceptable. In this regard, Allah says in Surah Al-Baqarah:

وَلَهُنَّ مِثْلُ الَّذِي عَلَمَهُنَّ بِالْمَعْرُوفِ

“And women have rights similar to those of men in a just manner.”<sup>5</sup>

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This verse makes it clear that just as men have certain rights over women, women are equally entitled to corresponding rights over men. Both parties are obligated to fulfill their duties, and they are also entitled to claim their rights. Islam, therefore, promotes a balanced and reciprocal framework of rights and responsibilities.

Similarly, in many hadiths, the Prophet Muhammad ﷺ clarified the obligations of various segments of society—such as parents and children, husbands and wives—always highlighting duties alongside rights. One of the most profound examples is found in the Farewell Sermon<sup>6</sup> (*Khutba Hajjatul Wada'*), where the Prophet ﷺ emphasized not only the rights of individuals but also the importance of fulfilling one's responsibilities.

A close study of these traditions makes it evident that Islam discourages one-sided demands for rights without regard for one's duties. For this reason, it is essential that workers and laborers first understand their own responsibilities before seeking their entitlements.

Outlined below are some of the key responsibilities that Islam places upon laborers:

### 1. Earning Livelihood and Seeking the Bounty of Allah

The foremost duty of a worker is to strive to earn a lawful livelihood through their own efforts. Actively searching for work, being willing to endure hardship, and committing to honest labor are among the primary responsibilities of a laborer. The Qur'an refers to this effort using the phrase "*ibtighā' fadlillāh*"—seeking the bounty of Allah—whether it is through business or employment.

Therefore, no laborer or employee should shy away from the pursuit of *halal* earnings, nor should they consider any profession beneath their dignity. Rather, they should view the act of seeking sustenance as their personal duty and pursue it with sincerity and determination.

Unfortunately, it is often observed that some individuals are not truly committed to finding work. They do not take the initiative to actively search for jobs, instead frequently complaining that "there's no work in the market." And when someone, out of compassion, helps such a person find a job, they often fail to appreciate the opportunity. Due to laziness or indifference, they end up squandering it.

### 2. Fulfilling Assigned Duties with Integrity

It is a fundamental responsibility of an employee to carry out the tasks assigned to them with diligence and care, avoiding negligence to the best of their ability. In the Qur'an, when describing Prophet Musa (Moses) عليه السلام, the statement of Prophet Shu'ayb's daughter is quoted:

إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

"Indeed, the best person you can hire is the one who is strong and trustworthy." (Surah Al-Qasas, 28:26)

This verse highlights two essential qualities of a good worker: strength (competence) and trustworthiness. It implies that a worker is entrusted with responsibilities and must fulfill them honestly and faithfully.

Imam Al-Jassas,<sup>7</sup> while explaining Surah An-Nisa (4:58), where Allah says, إِنَّ اللَّهَ

يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا

Indeed, Allah commands you to render trusts to whom they are due,” writes that this is a general command addressing all those who are morally accountable (*mukallaḥīn*), and it includes employees. They, too, are obligated to carry out their work as a trust that must be honored.

The Prophet Muhammad ﷺ emphasized this principle even further, saying that anyone who performs their job with honesty and sincerity will be rewarded as though they had given in charity, even though they are merely doing what is expected of them.<sup>8</sup>

Now, if a person either refuses to work or performs the task in a careless and sloppy manner, it is clear that they have committed a serious breach of trust and contract. The renowned jurist ‘Ali Afandi, in his work *Durar al-Hukkām*, states that a *hired worker in a shared service* (*ajīr mushtarak*) is not entitled to any wages if they fail to complete the assigned task. As for a *dedicated or exclusive employee* (*ajīr khāṣṣ*), if they report to duty and remain available and prepared to work, they are entitled to their wages. However, if they intentionally abstain from performing the work, then they too forfeit their right to payment.<sup>9</sup>

### 3. Personally Performing the Task

It is also essential for an employee to personally perform the task for which they have been hired, rather than delegating it to someone else. This is especially important in modern times, where companies and institutions often follow a rigorous selection process to recruit employees. After such careful evaluation, if the person hired fails to do the job themselves and instead assigns it to someone else, it is clearly inappropriate and ethically questionable.

It is well understood that people vary greatly in skill, trustworthiness, and work ethic. For this reason, the person appointed for a task should fulfill it personally, ensuring the standards expected by the employer are maintained. A hadith states: “Muslims are bound by their conditions, except a condition that makes lawful what is unlawful or unlawful what is lawful.”<sup>10</sup> Based on this, if the employer has made it a condition that the employee must personally carry out the assigned task, then it is not permissible for the employee to delegate that responsibility to someone else. Imam al-Sarakhsī (رحمه الله) states: “It is not permissible for a specific (exclusive) employee (*ajīr khāṣṣ*) to subcontract the work to another person.”<sup>11</sup>

Even in the case of an unrestricted contract where the employer has not explicitly required that the work be done personally the *ajīr khāṣṣ* is still not permitted to have someone else do the job. This is because the contractual object (*ma‘qūd ‘alayh*) in such a case is the worker's own person, and it is by offering his personal service that he becomes entitled to wages. However, a *shared worker* (*ajīr mushtarak*) may have some leeway in subcontracting, since his contract does not bind his personal presence in the same way.<sup>12</sup>

### 4. Honoring the Agreed Working Hours

One of the essential duties of an employee is to dedicate the full amount of time agreed upon in the employment contract. The worker is expected to fulfill this commitment faithfully. Leaving early without permission, arriving late, attending to personal tasks during work hours, or performing work for someone else in exchange for payment during the employer's time—all of these actions are impermissible and violate the terms of the agreement. Allah says in *Surah Al-Ma'idah*, 5:1:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

O you who believe, fulfill your contracts.

In his *Tafsir*, Imam Al-Qurtubi quotes Imam Hasan (رحمه الله) who explained that the term ‘contracts’ (‘uqūd) in this verse refers to all formal agreements between individuals—whether they relate to sales, rentals, or employment.<sup>13</sup>

The Prophet Muhammad ﷺ said, as recorded in *Musnad Ahmad*: "**He who is not trustworthy has no faith, and he who does not honor his promises has no religion.**"<sup>14</sup> However, during working hours, it is permitted for the employee to fulfill essential personal needs and obligatory religious duties. As stated by ‘Allāmah Al-Shāmī, time should be allotted for performing *fard* (obligatory) and *sunnah mu’akkadah* (emphasized) prayers, but not for voluntary acts such as *nafl* prayers or extended recitation of the Qur’an.<sup>15</sup>

### 5. Following the Employer’s Instructions

An essential responsibility of an employee is to carry out the tasks assigned by the employer with diligence and sincerity. This includes not only the primary duties at the time of hiring but also any instructions or directives given from time to time throughout the course of employment. If an employer requests that a task be performed in a specific manner, it is incumbent upon the employee to comply accordingly, rather than acting on personal whims or preferences.

In the workplace, the employer holds a position akin to that of a leader or guardian—entrusted with authority and responsibility—since they are the one who has appointed the employee and entrusted them with specific duties. Therefore, the employee is religiously and morally bound to follow these instructions within the bounds of what is fair and reasonable.

The Qur'an emphasizes the importance of obedience to legitimate authority. In Surah An-Nisa (4:59), Allah commands:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

"O you who believe! Obey Allah and obey the Messenger and those in authority among you."

Commenting on this verse, the renowned Andalusian scholar Abu Hayyan al-Andalusi<sup>16</sup> explains that “those in authority” (Ulul-Amr) refers to any individual who has been rightfully granted authority over others. This could include a husband in relation to his wife, a master over a servant, or, by extension, an employer over an employee.

This perspective highlights the Islamic principle that in any legitimate power dynamic, compliance is a form of discipline and trust—not submission to oppression, but a structured way to maintain order, productivity, and fairness in society.

According to a narration found in **Sahih Muslim**, the Prophet Muhammad (peace be upon him) said: "Whoever obeys me has obeyed Allah, and whoever disobeys me has disobeyed Allah. Whoever obeys the leader (appointed over them) has obeyed me, and

whoever disobeys the leader has disobeyed me." <sup>17</sup>This profound statement underscores the sacred link between obedience to leadership and obedience to divine command. The Prophet ﷺ establishes a clear chain of authority: submission to a rightful leader—so long as it aligns with Islamic principles—is not merely a matter of social order, but an extension of one's obedience to the Prophet himself, and by extension, to Allah.

However, when it comes to obeying an employer, there are a few important considerations to keep in mind:

Obedience must be in lawful matters not in anything prohibited. The Prophet (peace be upon him) said: "What will you do, O Abu Abdur Rahman, when rulers are appointed over you who extinguish the Sunnah and delay prayer from its proper time?" I (Abdullah ibn Mas'ud) asked, "What do you command me to do, O Messenger of Allah?" The Messenger of Allah (peace be upon him) replied: "O son of Umm 'Abd, you're asking me what to do? There is no obedience to any created being when it involves disobedience to Allah." <sup>18</sup>Therefore, if an employer tells an employee to deceive customers about a product or to sell goods by lying, the employee is not permitted to obey—such obedience is not lawful.

Obedience is only required in matters that align with the terms of the employment contract and are customary duties for such employees. For instance, if someone is hired to teach and the employer asks them to also conduct student exams, then they must do so—because it is commonly understood that teachers conduct exams as part of their role. However, if the employer asks the teacher to sweep the floor, compliance is not required. It is stated in *Asna al-Matalib*: <sup>19</sup>"(He may employ him) i.e., the employee, (in work of a similar burden) i.e., similar to what he was hired for. "This indicates that the employer is only permitted to assign tasks of similar nature and difficulty as originally agreed upon—not beyond that. However, if an emergency arises and some additional work needs to be done, it is the employee's moral responsibility to help, and the employer should compensate them fairly for it.

C. If an employer orders a task to be done outside of official working hours, the employee is not obligated to comply, since the worker is only bound to follow instructions during their agreed working hours. However, if the employee is willing to do extra work voluntarily, they may do so. Otherwise, it is incumbent upon the employer to compensate the employee with overtime pay for any work performed beyond regular hours.

D. If the employer instructs the employee to perform a task—outside the agreed duties—that poses a threat to their life or could cause harm, the employee is not required to obey. As stated in a hadith from *Sunan Ibn Majah*: "Causing harm or returning harm is not permissible." <sup>20</sup>

## 6. Care of Work Equipment

It is the responsibility of a designated employee (*ajīr-e-khāṣ*) to handle machinery and tools properly and avoid causing them any damage. All items provided during employment for official tasks are considered a trust (*amānah*) with the employee. These items cannot be used for personal purposes without the employer's permission, nor may they be used in a manner contrary to the employer's instructions.

As mentioned in Ṣaḥīḥ al-Bukhārī: <sup>21</sup>"All of you are shepherds, and each of you is responsible for his flock... and a servant is a shepherd over his master's wealth and is accountable for it." This hadith emphasizes that a servant is responsible for his master's property. Hence, employees must use company assets with a sense of responsibility. It is often observed that some employees neglect office belongings, misplace items, and request replacements from the store. Some misuse office electricity for unnecessary purposes, or at times use the office phone for personal conversations without permission. All such actions fall under transgression (*ta'addī*).

## Rights of Workers

Islam not only obligates workers to fulfill their duties with utmost honesty and integrity, but it also instructs those in authority—employers—to fully uphold and respect the rights of workers. Despite the presence of numerous national and international labor organizations in the modern world, workers are often deprived of their rightful entitlements. In many institutions, trade unions merely function as extensions of the employer's authority, and individuals who are simple or unaware are easily stripped of their legitimate rights.

This situation cannot be resolved merely by forming more associations or unions. The real solution lies in sincere ethical reform: employers must conscientiously discharge workers' rights with a sense of accountability before God, and workers must also remain committed to their responsibilities without negligence. Outlined below are some essential rights of workers:

### 1. Provision of Employment Opportunities by the Government

Foremost, it is the duty of the government to create employment opportunities for the people and to utilize their capabilities effectively. As previously discussed under the merits of employment, Islam regards labor and productivity as virtuous acts. It is thus a fundamental responsibility of an Islamic government to provide means for such virtuous endeavors. The Prophet Muhammad (peace be upon him) set a profound precedent in this regard. A well-known tradition referred to as *Hadith al-Ihtitāb* (the Hadith of Firewood Gathering) illustrates this principle clearly. The translated portion of this hadith is presented below for reference:

It is narrated by Sayyiduna Anas ibn Malik (may Allah be pleased with him) that an Ansari man once came to the Prophet Muhammad ﷺ and asked him for financial assistance. The Prophet ﷺ asked, "Do you not possess anything in your home?" The man replied, "Yes, I do. I have a cloth, part of which we use as a covering and the rest we lay on the floor, and a bowl from which we drink water." The Prophet ﷺ said, "Bring both of these items to me." The man complied, and the Prophet ﷺ took them in his blessed hands and called out, "Who will buy these items?" One man offered one silver coin. The Prophet ﷺ asked, "Will anyone offer more than one coin?" He repeated this two or three times until another man offered two silver coins. The Prophet ﷺ accepted the offer, gave the money to the Ansari and instructed him, "Buy food with one coin and provide for your family. With the other, purchase an axe

and bring it to me." The man did so. The Prophet ﷺ affixed a handle to the axe with his own hands and said, "Go, gather firewood and sell it, and do not return to me for fifteen days."

The man went away, collected and sold firewood, and after fifteen days he returned, having earned ten silver coins. He bought clothing with some of it and food with the rest. Upon seeing this, the Prophet ﷺ said, "This is better for you than begging, which will appear as a mark of shame on your face on the Day of Judgment. Asking is only permissible in three cases: a person who is extremely poor and destitute, one burdened by a crushing debt, or someone liable to pay blood money."<sup>22</sup>

This account demonstrates the Prophet's ﷺ immediate discouragement of unnecessary dependence on others. Rather than simply fulfilling the man's request, the Prophet ﷺ established a means for the man to become self-sufficient and restore his dignity through honest labor. This prophetic model emphasizes the Islamic principle of earning one's livelihood with integrity and self-respect.

Similarly, a related account from Sayyiduna Umar ibn al-Khattab (may Allah be pleased with him), found in *Kanz al-'Ummal*, recounts how he refused to support a man seeking funds for jihad and instead arranged employment for him on an Ansari's land. After some time, he followed up with the man and found that he had accumulated sufficient wealth. Umar then said to him, "Now, if you wish to participate in jihad, you may, and if you wish to stay at home, you are free to do so."<sup>23</sup> These examples highlight the emphasis Islamic teachings place on work, dignity, and mutual responsibility in society — not merely through charity, but by enabling people to stand on their own feet.

## 2. Payment of Full Wages

Paying full wages to an employee is among the foremost responsibilities of an employer. It is impermissible to withhold or reduce a worker's salary without just cause. This obligation has been strongly emphasized in several Prophetic traditions. In a narration from *Sahih al-Bukhari*, the Prophet Muhammad (peace be upon him) reported that Allah said: "There are three individuals against whom I shall be a plaintiff on the Day of Resurrection: a man who pledged in My Name and then broke his promise, a man who sold a free person and consumed his price, and a man who hired a laborer, took full work from him, but did not pay his wages."<sup>24</sup> This narration underscores the gravity of denying a worker their rightful compensation. The transgression is so severe that God Himself declares He will stand against the wrongdoer on the Day of Judgment.

## 3. Timely Payment of Wages

In addition to paying wages in full, it is equally essential to ensure that workers receive their compensation without undue delay. The Prophet Muhammad (peace be upon him) instructed in *Sunan Ibn Majah*: "Pay the laborer his wages before his sweat dries."<sup>25</sup> The imperative form of the verb in this Hadith signifies a binding obligation, indicating that prompt payment is a religious duty. Unfortunately, in many cases, employees are not paid on time and are told to collect their wages later, often under the pretext that the business is currently running at a loss. In reality, this is sometimes a false excuse. Capitalist and interest-driven mindsets may use employees' withheld wages to earn profits through banking or lending, which amounts to exploitation. Such delay is condemned in Islamic teachings as

injustice, as evident in the Hadith: "Delaying payment by a wealthy person is an act of oppression."<sup>26</sup>

#### 4. Establishing a Clear Agreement with the Employee

It is among the rights of an employee that the terms of their employment are made explicitly clear. The nature of the job should be properly explained, including what tasks will be expected from the employee and what compensation will be provided. Unfortunately, some employers fail to clarify either the scope of the work or the salary. This ambiguity often leads to disputes and eventually results in tension or termination of the working relationship.

Imam Malik records in *Al-Muwatta'*: "The worker should not be hired except for a known wage."<sup>27</sup> Similarly, *Musannaf Ibn Abi Shaybah* states: "Whoever hires a laborer must inform him of his wage."<sup>28</sup> These narrations emphasize the importance of transparency in contracts. Vague or verbal understandings without clear terms are a source of injustice and conflict, and are therefore discouraged in Islamic ethics.

#### 5. Respecting the Employee's Religious and Natural Needs

An employee has the right to have their religious and physical needs accommodated during working hours. This includes allowing sufficient time for essential acts such as eating and performing obligatory prayers. It is not permissible to overburden a worker by denying them time for such basic necessities, as this constitutes undue hardship (*taklīf mā lā yutāq*), which is explicitly forbidden in Islamic law. In Surah Al-Baqarah, verse 233, Allah says:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

"No soul shall be burdened beyond its capacity."

Though this verse primarily discusses breastfeeding, the phrasing expresses a general principle. Imam Ibn Ashur<sup>29</sup> refers to this as a foundational legal maxim: no person should be held responsible for more than they are capable of bearing.

Similarly, scholars such as Imam Ibn Abidin (Shami) have clarified that while time must be allowed for obligatory acts (like the five daily prayers), it is not required to give time for voluntary acts of worship.

This principle highlights the importance of treating employees with dignity, ensuring they can fulfill both their duties to their employer and their duties to their Creator.

#### 6. Assigning Work According to the Worker's Capacity

From the verse of Surah Al-Baqarah (2:233) mentioned earlier, it becomes clear that placing unbearable burdens on anyone is not permissible. Therefore, just as it is necessary to take care of a worker's natural and religious needs, it is equally important to ensure that the tasks assigned to him do not exceed his capacity.

At times, this cannot be judged by assigning work once or twice; rather, continuous observation is required to assess how demanding the work is for the worker. Through repeated experience, it becomes easier to determine how much time and how many people are needed to complete a particular task.

Imam Jassas (رحمه الله) in *Ahkam al-Qur'an* explains that the measure of one's capacity should be based on common practice and social norms. Hence, when assigning duties, both the worker's physical health and customary standards must be considered. If there is a risk of harming his health, or if the task is generally regarded as beyond human capacity, then such work should not be imposed. In an authentic narration of *Sahih al-Bukhari*, the Prophet ﷺ explicitly instructed not to overburden servants beyond their strength. He said: "Do not burden them with work that overpowers them; and if you do assign them a difficult task, then assist them yourselves."<sup>30</sup>

Imam Nawawi (رحمه الله), in his commentary, states that scholars are unanimous on the ruling that it is impermissible to demand from one's servant or worker a task that exceeds his capacity.<sup>31</sup> In this context, the principle also extends to allowing workers sufficient rest, including a weekly break for their personal needs. This aligns with contemporary customs and practical necessities. An example of this practice is found in *Muwatta Imam Malik*, where the action of Sayyiduna Umar ibn al-Khattab (رضي الله عنه) is recorded: "Umar ibn al-Khattab used to go to the area of al-'Awali every Saturday. If he found a slave engaged in work beyond his strength, he would reduce his workload."<sup>32</sup> This demonstrates that even in early Islamic practice, care was taken to ensure that workers were not overburdened and were treated with fairness and compassion.

## 7. Preserving Dignity and Mental Well-Being

Treating employees with respect, even to the extent of regarding them as equals, may not be legally obligatory,<sup>33</sup> but it undoubtedly reflects the noble character that Islam promotes. The *Qur'an* emphasizes this principle clearly, teaching Muslims to honor the dignity of even slaves, let alone free workers. In *Surah al-Nisa*, verse 36, Allah commands:

وَأَعْبُدُوا اللَّهَ وَلَا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَالْجَارِ ذِي الْقُرْبَىٰ وَالْجَارِ الْجُنُبِ  
وَالصَّاحِبِ بِالْجَنبِ وَابْنِ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ إِنَّ اللَّهَ لَا يُحِبُّ مَنْ كَانَ مُخْتَالًا فَخُورًا

"Worship Allah and do not associate anything with Him. Be good to parents, to relatives, to orphans, to the needy, to the near neighbor and the distant neighbor, to the companion by your side, to the traveler, and also to those whom your right hands possess. Indeed, Allah does not love those who are arrogant and boastful."

Sadly, in our societies it is often claimed that workers cannot be managed without verbal abuse. This misconception is used to justify insulting and belittling laborers. Yet, when we examine the teachings of the Prophet ﷺ, we find a starkly different approach. Consider the incident of Abu Dharr (رضي الله عنه), recorded in *Sahih al-Bukhari*: Al-Ma'rur ibn Suwayd reported: "I met Abu Dharr in al-Rabadha, and he was wearing a garment while his servant

also wore a garment. I asked him about this, and he said: I once insulted a man by ridiculing his mother. When the Prophet ﷺ came to know of it, he said to me: ‘O Abu Dharr, did you insult him by his mother? Indeed, you are a man who still carries traces of ignorance. Your servants are your brothers. Allah has placed them under your authority. So, whoever has a brother under his charge should feed him from what he eats and clothe him from what he wears. Do not burden them with tasks beyond their ability, and if you do assign them difficult work, then help them.’<sup>34</sup>

## 8. Providing a Safe Working Environment

From the words of the above-mentioned hadith — “Do not burden them with tasks beyond their ability, and if you do assign them difficult work, then help them” — it is also understood that it is the employer’s duty to ensure a safe and suitable working environment. This means that the life, dignity, and well-being of the employee should never be put at risk.

If the work requires specific tools or equipment, it becomes the employer’s responsibility to provide them. Likewise, in workplaces where there is a risk of fire or similar hazards, necessary safety measures such as fire-control equipment must be arranged.

In the same way, an employee cannot be forced to carry out tasks that would endanger their life. For women employees in particular, it is the employer’s responsibility to ensure that factories, offices, or other places of work are made safe and secure.

## 9. The Right to Lodge a Complaint

An employee also has the right to raise a complaint if they suffer harm or mistreatment from their employer. To address this, it is preferable that the employer himself establishes a proper system within the workplace through which employees can easily submit their grievances and have them resolved. At the same time, it is permissible for the worker to approach a judge or governing authority to seek redress for any injustice done to them. Just as this is valid on an individual basis, it is also permissible, within the bounds of Shariah, to form trade unions or similar collective bodies in order to raise concerns jointly.

A narration in Sahih Muslim illustrates this principle through the story of a Companion, ‘Umair (RA), who himself relates: “My master once ordered me to cut meat into strips and dry it. While I was doing so, a needy person came by, so I gave him some. When my master found out, he struck me. I went to the Messenger of Allah ﷺ and told him what had happened. The Prophet ﷺ summoned my master and asked: ‘Why did you strike him?’ He replied: ‘Because he gave away my food without my permission.’ The Prophet ﷺ then said: ‘The reward will be shared between the two of you.’<sup>35</sup>

This hadith shows that when the servant lodged a complaint, the Prophet ﷺ immediately called for the master and inquired about the reason for striking him. When the master explained, the Prophet ﷺ did not justify the act of beating; rather, he showed compassion towards the servant while at the same time honoring the master by encouraging him to forgive, assuring that the act of charity would earn reward for both.<sup>36</sup> This balance

reflects Islam’s just and merciful approach: protecting the dignity of the worker while also acknowledging the rights of the employer.

### 10. Ending a Contract with Fairness and Dignity

It is also the right of an employee that when their service comes to an end, it should be concluded in a just and dignified manner. Their due wages and entitlements must be paid in full and without delay, and steps should be taken to ensure ease for them as they move forward in life.

Unfortunately, in many of our societies, employees are often dismissed abruptly and emotionally, sometimes even deprived of their rightful salaries or benefits. If pensions or other post-service dues are involved, they are frequently delayed for months, causing unnecessary hardship.

The Qur’ān provides a guiding principle in Surah al-Baqarah (2:229):

فَأَمْسَاكُ بِمَعْرُوفٍ أَوْ تَسْرِيحُ بِإِحْسَانٍ

“Either retain [the relationship] in a fair manner or release [it] with kindness.”

Though revealed in the context of divorce, this verse highlights a broader principle of conduct: in any contract or agreement, if one chooses to continue it, it should be done with fairness, and if it must end, it should be concluded with dignity, clarity, and kindness. Delaying matters unnecessarily or causing distress to the other party is against the spirit of justice.

Imam Ibn ‘Āshūr (رحمه الله) explains in al-Tahrīr wa al-Tanwīr that whether a contract is upheld or terminated, it must be done in a manner that respects both the divine injunctions and accepted lawful practices, ensuring fairness and good treatment.<sup>37</sup>

The Prophet ﷺ also laid down a principle in his saying:

“If one of your servants pleases you, feed him from what you eat and clothe him with what you wear. But if he does not suit you, then sell him, and do not torment the creation of Allah.”<sup>38</sup>

This hadith makes it clear that if compatibility between employer and employee is lacking and the relationship becomes strained, then it is better to part ways with grace and respect, rather than subjecting the worker to mistreatment or humiliation.

#### Problems of Workers in Pakistan

Pakistan, despite being a formal member of the International Labour Organization (ILO) — the world’s largest body working for labor rights — and framing its labor policies in line with ILO guidelines, has not been able to enact comprehensive legislation to safeguard

its workers. Although a number of labor policies and laws exist in the country and have provided some benefits, they remain partial in scope. Many rights are restricted only to permanent employees, or their applicability depends on the size and nature of the institution. For instance, certain laws apply only if the workforce exceeds fifty<sup>39</sup> employees; otherwise, they do not. In many cases, courts also favor corporations, justifying decisions under the pretext of “economic constraints.”

Currently, around 52 million people in Pakistan are engaged in wage-based work, and more than 70 laws exist that directly relate to labor issues.<sup>40</sup> Yet, despite this legal framework, over 75% of workers remain unprotected. The reason is that most are employed in the informal sector, where there is no written agreement or record of their employment. Companies often avoid hiring workers directly, instead engaging them through contractors or third parties who impose conditions at their own discretion.<sup>41</sup>

At the national level, the major challenges faced by Pakistani workers include:

1. Wages far below the value of their labor
2. Unsafe and hazardous working environments
3. Insecure and unstable employment
4. Absence of social security and welfare protections
5. Forced labor and exploitation<sup>42</sup>

Tragically, even those who claim to champion labor rights often end up exploiting the workforce to serve their own political or organizational interests, rather than genuinely working for their welfare.

### **Resolving Workers’ Problems in the Light of Islamic Arbitration**

As discussed earlier, the existing labor laws in Pakistan are unable to fully address the challenges faced by workers. The framework of labor legislation is complicated, fragmented, and not comprehensive enough to cover all social classes. On top of this, the corruption of officials creates further hurdles. Workers themselves are often unaware of their legal rights, or even which authorities and institutions they should approach to lodge their complaints. Though labor inspectors are appointed in every province, they rarely demonstrate any real effectiveness. Departments dealing with labor frequently complain about shortages in manpower, and even when cases are filed in courts, employers manage to exploit their influence and secure relief.

A recent BBC Urdu report highlights this weakness: “The greatest need for reform lies in the federal capital, Islamabad, where enforcement of labor laws is the weakest, and the government pays little attention to the issue.”<sup>43</sup>

Under such conditions, it is difficult to argue that labor laws alone can ensure that workers receive their rightful entitlements. In the view of this writer, legislation by itself is insufficient to resolve these deep-rooted problems. For meaningful solutions, guidance must

be sought from Islamic teachings and the Seerah of the Prophet Muhammad ﷺ, which offer a comprehensive moral framework.

On an individual level, the most essential principle is balance of rights and responsibilities: workers should not only demand their due rights but must also fulfill their duties honestly, while employers are bound to discharge their obligations with integrity and fairness. If disagreements arise between the two sides, rather than becoming entangled in lengthy legal procedures, both parties should consult a pious and trustworthy Islamic Jurist-Arbitrator to resolve the issue on ethical grounds. Where resources permit, legal avenues may be pursued; otherwise, patience and reliance upon Allah’s judgment remains the best course.

In the following lines, we will see that, if Islamic arbitration law is applied on sound principles in matters of industrial relations and workers’ rights, it can serve as an effective tool for resolving many labour-related disputes. Some introductory points about arbitration are as follows:

Majalla al-Ahkam al-‘Adliyyah defines Tahkīm (arbitration) as follows: “Arbitration is when two disputing parties mutually appoint a third party to decide between them and settle their claims.”<sup>44</sup>

After defining arbitration, it becomes necessary to examine whether it is unanimously accepted by jurists or if differences exist. The article in al-Mawsū‘ah al-Fiqhiyyah al-Kuwaitiyyah states:

“Arbitration is sanctioned, and this is supported by the Qur’an, the Sunnah and consensus. The jurists have generally permitted arbitration.”<sup>45</sup> However, within the Hanafi School some scholars refrained from issuing fatwas in its favour. Their reasoning was that, in the early generations, only a learned, upright and devout person would be chosen to decide disputes, ruling on the basis of his knowledge of the Shariah or the results of independent juristic reasoning. Recognising arbitration in the present day, they argue, may lead the general public to appoint unqualified people, who would then rule in ignorance and contrary to divine law, which is a grave harm. For this reason they issued opinions against it.

Among the Malikis, Imam Asbagh said, “I do not like it; but if it occurs, it is valid.” Some did not permit it at all in the first instance. Within the Shafi‘i school, some declared it impermissible, others allowed it only when no judge existed in the area, and yet others permitted it only in financial matters. Nevertheless, despite such nuances, the dominant view in every legal school is that arbitration is valid, and consensus exists on its permissibility. It is the apparent and stronger position of the Hanafis, the more reliable opinion among the Shafi‘is, and the established position of the Hanbalis.

As for the parties involved in arbitration, they are the two disputants who agree to settle their disagreement through it. Each of them is called al-muḥakkim. The condition for both parties to arbitration is legal competence to contract—essentially, sound reason—because without it no agreement is valid.

After setting out the above details, it is necessary to reflect on whether our topic — namely the rights and duties of workers and industrial relations — can legitimately fall within the scope of arbitration. In other words, what are the conditions for a matter to qualify as one in which arbitration may be used?

Classical jurists differed over which disputes may be validly referred to arbitration. According to the Ḥanafī school<sup>46</sup>, arbitration is not permitted in cases involving ḥadd-punishments or other obligations regarded as the exclusive right of God, and this is reported consistently across their narrations.

The Mālikīs, by contrast, accept arbitration generally but exclude thirteen specific areas: issues of legal competence and its opposite, bequests, endowments (waqf), the affairs of absentees, lineage, patronage, ḥadd penalties, retaliation (qiṣās), orphan property, divorce, manumission, and cases of mutual imprecation (li‘ān). These are considered matters reserved for the formal judiciary.<sup>47</sup>

For the Shāfi‘ī school, arbitration is likewise impermissible in cases concerning the rights of God since no identifiable claimant exists; however, if two parties voluntarily appoint an arbitrator for a dispute other than a ḥadd offence, it is valid provided the arbitrator is legally competent to judge.<sup>48</sup>

The Ḥanbalī jurists record a variety of views, though the apparent statement of Aḥmad ibn Ḥanbal allows arbitration in any dispute that could otherwise be brought before a judge.<sup>49</sup>

From these positions it becomes evident that, as far as employment-related issues are concerned, all of the schools of law recognise the permissibility of arbitration.

In the following discussion, attention will be given to the qualities required in a person appointed as an arbitrator. The suitability of the arbitrator is crucial; only someone capable of sound judgment should be entrusted with this role. If such authority were conferred indiscriminately, the rights of the parties would inevitably be jeopardised.

### **Conditions for the Arbitrator**

(a) The individual must be clearly identified. If the parties simply state, for example, “the first person to enter the mosque shall decide,” such an appointment is invalid by unanimous agreement because of the uncertainty involved. However, if, once the person is known, the parties accept him, then the appointment becomes valid.

(b) The arbitrator must be eligible for judicial office. All four schools of Islamic law agree on this principle,<sup>50</sup> although they differ in defining the precise elements of eligibility. Here, “eligibility for judicial office” refers to general fitness for adjudication, not merely suitability for the particular dispute at hand.

The Shāfi‘ī school records an opinion that this requirement may be relaxed when no fully qualified person can be found. Other jurists hold that the requirement need not apply at all, while some limit arbitration to situations where no official judge is available. Another view confines the scope to financial matters, excluding retributive penalties or the establishment of a marriage contract. According to one Hanbalī opinion, an arbitrator does not need to possess every attribute of a formal judge. Detailed rulings on these points are found in the sections on claims and judicial procedure.

Hanafi jurists maintain that the arbitrator’s judicial qualifications must be intact from the time of appointment until the time of decision. For example, when arbitrating between two Muslims, the arbitrator must himself be Muslim. If the dispute involves two non-Muslims, Islam is not a requirement, because a non-Muslim may validly act as a witness between non-Muslims. Thus the consent of both parties to a non-Muslim arbitrator is treated as though a ruler had delegated authority to him. It is therefore accepted that a non-Muslim can adjudicate between non-Muslims, and the same applies to arbitration.

(c) The arbitrator must have no close relationship with either party that would invalidate his testimony. If the arbitrator, his son, or anyone whose testimony would be legally inadmissible acquires the very property in dispute, he ceases to be qualified to decide the case.

### **Conditions of Arbitration**

The following conditions must be met for arbitration to be valid:

(a) Existence of a dispute.

There must be an actual disagreement between the parties over a recognised right.

(b) Mutual consent.

Both sides must agree to accept the arbitrator’s ruling. According to the Hanafi school, prior consent is not a prerequisite: if the parties later approve the decision after it is issued, it is still valid. By contrast, the Shāfi‘ī school requires advance consent before arbitration begins.

(c) Agreement on the arbitrator’s role and qualifications.

The disputants and the arbitrator must all agree to the assignment. The parties may not appoint someone legally unqualified to arbitrate. A non-Muslim may not rule between two Muslims even if they approve his decision. This agreement must continue in force until the decision is delivered; if either party withdraws before judgment, the arbitration is void.

(d) Witnessing of the judgment.

While not a condition for the validity of arbitration itself, testimony is needed for the ruling to be enforceable if one party later disputes it. The witnessing should occur in the sitting where the decision is given.

### **Procedure for Issuing a Decision**

The arbitrator must determine the disputed right by the same evidentiary means as a judge: testimony, confession, or refusal to take an oath. If the decision rests on such proof it is valid in Sharī'ah; otherwise it is void.

Once the arbitrator pronounces a ruling, it becomes binding on the disputing parties and must be carried out without needing their further approval—this is agreed by the jurists. The decision of the arbitrator in this respect is like that of a judge, but its binding force applies only to the two parties involved and does not extend to others, since the authority derives from their mutual agreement.

### **Review of the Arbitrator's Ruling**

The Shāfi'ī and Ḥanbalī schools hold that if the arbitrator's decision is presented to a judge, the judge may not annul it except on the same grounds he would annul the judgment of another judge.

The Mālikī school maintains that a judge cannot overturn the arbitrator's decision unless there is clear injustice, regardless of whether the decision agrees with or differs from his own view.

The Ḥanafīs hold that if the ruling is referred to a judge, he examines it; if it conforms to his school he adopts and enforces it.

### **Situations that End the Arbitrator's Authority**

An arbitrator's mandate ends in any of the following cases:

1. Dismissal. Either party may remove the arbitrator before a decision is issued, unless a judge has already approved his appointment—in which case the parties may not dismiss him, as he then acts under judicial authority.
2. Expiry of the agreed time. If the time fixed for arbitration runs out before a ruling is issued, the appointment lapses.
3. Loss of qualifications. If the arbitrator ceases to meet the necessary conditions, his authority ends.
4. Issuance of the ruling itself. Once the decision is pronounced, the arbitrator's role concludes automatically.<sup>51</sup>

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## Arbitration Framework in Industrial Relations under Islamic Law of Tahkeem

From the foregoing discussion, it becomes clear what the Islamic law of Tahkeem entails and how classical jurists have elaborated its principles. Building on these foundations, the following step-by-step framework outlines how disputes in contemporary industrial relations may be resolved in light of Islamic arbitration:

### **1. Establishing the Dispute and the Basis of Arbitration**

The first step is to clearly identify the actual subject of dispute between employer and employee. Both parties must then submit a written declaration stating that they wish to resolve the matter through arbitration under Islamic law rather than through formal litigation. Ideally, this declaration should take the form of a binding agreement that specifies the name of the arbitrator, the subject of dispute, procedural details (such as the sharing of costs or fees), and should also be attested by witnesses to prevent later objections.

### **2. Appointment and Selection of Arbitrator**

At the second stage, both parties jointly select their arbitrator (Hakam). According to juristic criteria, the arbitrator must be a Muslim, just (Aadil), knowledgeable, and publicly recognized. He should not be a relative of either party and must willingly accept the role; compulsion is not allowed. Furthermore, in modern contexts the state should not leave the process entirely unregulated. Instead, it should establish specialized institutions that provide professional training, certification, and oversight for arbitrators in labor disputes, ensuring that only qualified and trustworthy individuals discharge this responsibility.

### **3. Presentation and Admissibility of the Case**

Once appointed, the case is formally presented before the arbitrator. He will assess whether the matter falls within the scope of arbitration (e.g., excluding Hhudood or qisas cases which belong strictly to the judiciary). If ambiguities exist, the arbitrator must seek clarification and verification. Even during the proceedings, if new uncertainties arise, further inquiry is permissible.

### **4. Hearing Oral Statements**

The next step is to hear and record the oral statements of both parties. The arbitrator must carefully compare these statements with the earlier written submissions to identify and resolve any contradictions, ensuring consistency and clarity in the claims.

### **5. Issuance of the Decision**

On the basis of Sharī'ah principles, the arbitrator then issues a written ruling. This judgment should include a clear statement of the dispute, the evidences considered, the juristic and legal reasoning, and the specific ruling with its mode of enforcement. If

necessary, the arbitrator may apply classical evidentiary methods such as Bayyinah (proof through evidence), Yamin (oath), or Nukul (refusal to take oath).

## 6. Pronouncement of the Decision

The arbitrator delivers the verdict in the presence of both parties and provides them with a written copy of the ruling.

## 7. Binding Nature of the Decision

Both parties are ethically and religiously bound to accept the decision. For stability and enforceability, it is preferable that the government establish authorities at the federal and provincial levels to ensure implementation of arbitral awards in labor disputes. This would strengthen the credibility of the entire process.

## 8. Recourse to the Courts

If disagreement still persists, and one or both parties reject the arbitral decision, they retain the right to bring the matter before the formal courts for further adjudication.

## Conclusion

The findings of this study indicate that Pakistan's economic and legal frameworks operate within a hybrid model that combines elements of capitalism, socialism, and limited Islamic economic principles, a pattern clearly reflected in its labour laws, which have evolved inconsistently under varying political regimes and international influences such as the United Nations and the International Labour Organization. Despite their theoretical capacity to address labour issues, these laws have largely failed in practice due to economic fragility, judicial complexity, corruption, and institutional inefficiency, leaving workers deprived of timely and affordable justice. Labour unions often exacerbate the problem by exploiting workers for personal or political interests, while legal remedies remain inaccessible or endlessly delayed. In response, this study advocates a practical and immediate approach grounded in Islamic principles by promoting awareness of the mutual rights and obligations of employers and employees as articulated in the teachings of the Prophet Muhammad (peace be upon him). It proposes the institutionalization of Islamic arbitration (*tahkīm*) as a primary dispute resolution mechanism, supported by trained and certified arbitrators operating under state supervision. Furthermore, aligning labour laws with Sharia principles, strengthening labour courts, enforcing written employment contracts, ensuring compliance through human resource departments, and encouraging ethically guided labour unions are presented as essential steps toward achieving social justice, protecting workers' rights, and fostering sustainable industrial harmony in Pakistan.

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<sup>47</sup> Muḥammad ibn Aḥmad ibn ‘Arafāh al-Dusūqī al-Mālikī, *Ḥāshiyat al-Dusūqī ‘alā al-Sharḥ al-Kabīr* (Beirut: Dār al-Fikr), 4:136.

<sup>48</sup> Shams al-Dīn Muḥammad ibn Abī al-‘Abbās Aḥmad ibn Ḥamzah Shihāb al-Dīn al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj* (Beirut: Dār al-Fikr), 8:242.

<sup>49</sup> Muwafaq al-Dīn ‘Abd Allāh ibn Aḥmad ibn Qudāmāh al-Maqdisī, *Al-Kāfi fī Fiqh al-Imām Aḥmad* (Beirut: Dār al-Kutub al-‘Ilmiyyah), 4:224.

<sup>50</sup> Wizārat al-Awqāf wa-l-Shu’ūn al-Islāmiyyah, *\*Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah\** (Kuwait: Dār al-Salāsīl), 10:234.

<sup>51</sup> Ibid.