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# System of Zakāt and Ushr – A Paradigm Shift After Eighteenth Amendment to The Constitution of Pakistan

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## Abstract

Zakāt and Ushr are the important instruments of the Islamic fiscal system. It is an obligatory practice of Islam aiming at helping the society and providing the deprived ones with a better life and opportunities. The fundamentals of the Zakāt and Ushr system have clearly been defined by Shariah. However, its collection and distribution is the responsibility of the state. In this regard, Zakāt and Ushr Ordinance 1980 was enforced in Pakistan. The 18th Constitutional Amendment was notified in the Gazette of Pakistan on April 20, 2010. This amendment has redefined the structural contours of the state through a paradigm shift from a heavily centralized to a predominantly decentralized federation. In this regard the powers of the Ministry of Zakāt and Ushr were devolved from the federal level to the provincial level and thus the powers were given to provinces to make legislations regarding the subject. After this change the provinces made the respective legislations for Zakāt and Ushr. In this article, this provincial legislation is reviewed to find out their harmony with the Income Tax Law and practical steps are suggested to achieve the very purpose of these legislations. These steps will increase the collection of Zakāt and Ushr that would be helpful to alleviate the poverty and overcome the financial problems of our masses predominantly from agricultural areas of Pakistan. This paper aims to discuss the role of Zakāt and Ushr as a mechanism for poverty eradication. For this article, qualitative research methodology is used. The content analysis method is adopted for comparing, quantifying and analyzing the data. Available data on the subject, both in Shariah and conventional law, has been analyzed in detail.

**Keywords:** Zakāt; Ushr; poverty; agricultural areas; constitution; decentralized federation; Income tax Law

## Introduction

Zakāt is an important pillar of Islam and is defined as 'purification' or 'growth'. The giving of the Zakāt is considered a means of purifying one's wealth and one's soul. It is a way to redistribute the wealth, thus increasing the flow of cash in the economy with a particular

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interest in the poor and the dispossessed Muslims. Zakāt enables the wealthy or rich people to purify their hearts from self-indulgence by giving a part of their wealth to the needy. The people who receive the Zakāt are then able to fulfil their needs and by this way the economic wealth bestowed by Allah SWT is spread to all the people and real economic growth is achieved. Neglecting to give Zakāt can result in damnation in the afterlife, while those who give Zakāt can expect reward from God in the afterlife. Therefore, the Holy Qur'ān talks about the Zakāt in more than 30 different verses. Zakāt paid on the agricultural produce which has been grown for the purpose of obtaining benefit from land is called Ushr because one-tenth part of the agricultural produce of the land irrigated by rainfall is given as Zakāt. The system of Zakāt and Ushr, if managed effectively and efficiently, results in the reduction of the gap between the rich and the poor.

This is an important question why Zakāt and Ushr collection is not contributing to the alleviation of poverty in Pakistan. It is hoped that the outcome of this paper will contribute to a better understanding of the Zakāt management system in Pakistan.

First time in Pakistan legislation was introduced for the collection and distribution of Zakāt and Ushr through the Zakāt and Ushr Ordinance 1979. Later, this ordinance was repealed by the Zakāt and Ushr Ordinance in 1980. In 2010, through the eighteenth amendment of the constitution of Pakistan major changes were made to the Constitution of the Islamic Republic of Pakistan that included abolishing the Federal Ministry of Zakāt and Ushr and authorizing provinces to make provincial legislation regarding it. Following this major change in the constitution the Provinces of Sindh, Baluchistan, Khyber Pakhtunkhwa and the Punjab enacted their legislation regarding Zakāt and ushr in January 2011, April 2011, October 2011 and February 2018 respectively. This research article explores the major changes, made by the provinces, in Zakāt and Ushr law and impact of those on the efficiency and effectiveness of the system of Zakāt and ushr in post eighteenth amendment period and newly evolved provincial challenges to these systems. It will also provide a guideline for improving this provincial system further and for changing the prevailing laws of Zakāt and Ushr in different parts of Pakistan. Resultantly an organized system of Zakāt and Ushr would evolve that will help the people living in poverty mostly belonging to agricultural areas of Pakistan.

## 2. Importance of Zakāt and Ushr in Shariah

The system of Zakāt and Ushr is based on Islamic social aspects of love, peace and harmony in the society. This system is equally capable of designing a model society of care and affection based on sacrifice and brotherhood. Basically, Islam is a religion that does not encourage any system of exploitation in the society so it disregards the interest (usury) and likes to promote public finance or social welfare programs among the people of society. These programs are connected to the economic well-being of the society. The Zakāt and Ushr system is a prominent feature of Islamic social finance. To give Zakāt and Ushr is mandatory for the Muslims. It is one of the five basic tenets of Islam and an

obligatory act of worship. The obligation of Zakāt is described in Qur’ān as “And perform As-Salat (the prayers), and give Zakāt (obligatory charity).”<sup>1</sup>

And describe as a mean of growth in income by way of:

وَمَا آتَيْتُمْ مِنْ رَبًّا لِيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُو عِنْدَ اللَّهِ وَمَا آتَيْتُمْ مِنْ زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَئِكَ هُمُ الْمُضْمَعُونَ<sup>2</sup>

“And that which you give in gift (to others), in order that it may increase (your wealth by expecting to get a better one in return) from other people’s property, has no increase with Allah; but that which you give in *Zakāt* (*Sadaqah*, charity etc.) seeking Allah’s Countenance, then those they shall have manifold increase.”

And also describe as a way of purification: “Take *Sadaqah* (alms) from their wealth in order to purify them with it.”<sup>3</sup>

The significance of collection and distribution of Zakāt and Ushr for Islamic state is as important and mandatory as we can see in the history of Islamic Caliphates. In 11 A.H after the death of Prophet Muhammad (SAW) some tribes refused to give Zakāt so Abu Bakr (RA) took very strong action against them.<sup>4</sup>“Abu Huraira said that when Abu Bakr was made the Prophet’s successor after his death and infidelity arose among certain Arabs, ‘Umar b. al-Khattab asked Abu Bakr how he could fight with the people when God’s messenger had said, “I have been commanded to fight with the people till they say there is no god but God, so whoever says so has protected his property and his person from me except for what is due from him, and his reckoning is left to God.” Abu Bakr replied, “I swear by God that I will certainly fight with those who make a distinction between prayer and *Zakāt*, for the *Zakāt* is what is due from property. I swear by God that if they were to refuse me a female kid which they used to pay to God’s messenger I would fight with them over the refusal of it.” ‘Umar then said, “I swear by God that I clearly saw God had made Abu Bakr feel justified in fighting, and I recognized that it was right.” After this decision he sent armed forces against those tribes.

Zakāt is mentioned in the holy Qur’ān repeatedly that shows its importance and impact on society. The people to be given, rate of Zakāt and principles of distribution of Zakāt are clearly defined in Islam. Therefore it is not possible to manage Zakāt fund similar to other funds due to the multicity of factors. The basic reason is strict confinement of Zakāt expenditures. Following are the people consumers who have been mentioned in Qur’ān-e-Kareem to whom Zakāt can be given:“*As-Sadaqat* (here it means obligatory charity – *Zakāt*) are only for the *Fuqara* (needy), and *Al-Masakin* (the poor) and those who employed to collect (the funds); and to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allah’s Cause (i.e. for

<sup>1</sup>Al-Baqarah 2:43.

<sup>2</sup>Al-Room 30:39.

<sup>3</sup>At-Taubah 9:103.

<sup>4</sup>Mishkat al-Masabih, Book 6 “Zakat”, no.1790.

*Mujahidūn*- those fighting in a holy battle), and for the wayfarer (a traveler who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All Wise.”<sup>5</sup>

Now it is easy to understand the doctrine of Islam that is to spread money in the society from the rich to the poor so Zakāt benefits humanity. For economic welfare of society, Islam always emboldens the flow of money among the people to expend it so that it would not be stuck in the hands of the rich even when it is received in a battle. And its philosophy is based on this verse of Qur’ān e Kareem:

كَيْ لَا يَكُونَ دُولَةً لِّلْأَغْنِيَاءِ مِنْكُمْ<sup>6</sup>

“In order that it may not become a fortune used by the rich among you.”

A good economy implies to have almost equal opportunities of health, education, earnings and living for all individuals of a society. The system of Zakāt and Ushr accomplishes this aim by establishing a self-supporting society in which everyone gets a chance to fulfill their basic needs and to live a respectable life. To make a change in a society this system should be implemented with all its features and principles so that required benefits can be taken.

Poverty has become an economic, social, and political issue all over the world particularly in the developing and third-world nations including many of the Muslim countries. Pakistan is also facing many challenges including poverty. As per the latest poverty estimates, 24% of Pakistan’s population lives below the national poverty line; which includes 31% in rural areas and 13% in urban areas. Further, 38.8% of the national population is poor based on the multidimensional poverty index (MPI) from which 54.6% are in the rural areas and 9.4% in the urban areas<sup>7</sup>.

The system of Zakāt and Ushr can help Pakistan to overcome this issue. Unlike conventional tax, Zakāt is viewed by the Muslims as a means of ‘purifications’ and not just an obligation. So the collection of it can be easy as compared to tax collection and can play a significant role for the betterment of economy. The condition is to make the system of its collection better and stronger by the state of Pakistan.

### 3. Law of Zakāt and Ushr in Pakistan after 18th Amendment to the Constitution of Islamic Republic of Pakistan, 1973

Legislation regarding collection and distribution of Zakāt was made first time in Pakistan through The Zakāt and Ushr (Organization) Ordinance 1979. This law was repealed through another law titled “Zakāt and Ushr Ordinance 1980.” This law provides legal framework for the establishment of Zakāt Funds, collection of Zakāt/Ushr and

<sup>5</sup>At-Taubah 9:60.

<sup>6</sup>Al-Hashr 59:7.

<sup>7</sup>Blochistan Drought Needs Assessment Report, published on Feb 2019, 5, assessed May 9, 2021, <https://www.humanitarianresponse.info/en/operations/pakistan/document/balochistan-rought-needsassessment-bdna-report-february-2019>

disbursement of money to deserving people from Zakāt Funds. This ordinance, being a central law remained applicable to the whole of the Pakistan till April 19, 2010, the time of enactment of The Constitution (Eighteenth Amendment) Act 2010. With this amendment to the Constitution of Pakistan the subject of collection and disbursement of Zakāt was devolved to the provinces of Pakistan. Thereafter the provinces of Sindh, Khyber Pakhtunkhwa and Baluchistan enacted the Sindh Zakāt and Ushr Act, 2011, the Khyber Pakhtunkhwa Zakāt and Ushr Act, 2011 and the Balochistan Zakāt and Ushr Ordinance, 2011 respectively and in the province of Punjab the Zakāt and Usher Ordinance 1980 continued to apply as fractured law of Punjab till the 15th February, 2018, the date of enactment of the Punjab Zakāt and Ushr Act 2018.

After a careful study of these five legislations this becomes evident that major context of these five laws of Zakāt and Ushr is rightly common that includes meanings of Nisāb, deduction of Zakāt from the bank deposits and related provisions.

#### 4. Income Tax Incentive for Zakāt and Ushr Payment

After the provincials legislations on the Zakāt and Ushr the matter of income tax incentive on Zakāt payment needs to be addressed at priority. The section 25 of The Zakāt and Ushr Ordinance 1980 states that:

“Certain Tax Concessions.—(1) Notwithstanding anything contained in any other law for the time being in force

(a) in determining the tax liability of an assessee for an assessment year,

Under the income Tax Ordinance, 1979 (XXXI of 1979), his total income shall be reduced by the amount paid by him to a Zakāt Fund, during the income year relevant to that assessment year.

Provided that the Zakāt deducted at source in respect of the savings Bank Accounts on the 4th July, 1981 shall be deemed to have been deducted during the income year 1980-81; and

- (i) Under the Wealth Tax Act, 1963 (XV of 1963), his assets in respect of which Zakāt or contribution in lieu thereof, has been deducted at source during the year relevant to that assessment year shall be excluded from his taxable wealth; and
- (b) Land revenue and development shall not be levied on land on the produce of which Ushr or contribution in lieu thereof, has been charged on compulsory basis.”

The above mentioned incentive was very important as with the Zakāt payment tax burden of taxpayers are reduced by up to 35% of Zakāt amount.<sup>8</sup> After the 18th Amendment

<sup>8</sup>Income Tax Ordinance, 2001, 1<sup>st</sup> schedule, 409, assessed on May 9, 202. [https://download1.fbr.gov.pk/Docs/2020114141139158611.T.OrdinanceAmendedupto\(30-06-2020\).pdf](https://download1.fbr.gov.pk/Docs/2020114141139158611.T.OrdinanceAmendedupto(30-06-2020).pdf)

corresponding provisions of Section 25 of the Balochistan Zakāt and Ushr Ordinance, 2011 and Section 24 of the Khyber Pakhtunkhwa Zakāt and Ushr Act, 2011 have incorporated provisions for tax incentive similar to the above mentioned Section 25 of the Zakāt and Usher Ordinance 1980.

Here this is pertinent to mention that the tax incentive provided in above referred Section 25 of the Balochistan Zakāt and Ushr Ordinance, 2011 and Section 24 of the Khyber Pakhtunkhwa Zakāt and Ushr Act, 2011 are also invalid and unconstitutional on the ground that Income tax Laws are the Federal Authority and no Provincial Law makers can override the Federal Law. This point of law has been clearly ruled by the Honorable High court of Sind in a Judgment by Honorable Justice Munib Akhatr and Justice Omar Sial that Provisional legislations exempting Income tax is ultra vires the Constitution.<sup>9</sup>

If we look at the Sindh Zakāt and Ushr Act, 2011, the Punjab Zakāt and Ushr Act 2018 we do not find any provision relating to the income tax incentive in these laws. In view of all of the above this is clear that Zakāt paid at present in any of the province except the Islamabad Capital Territory is not eligible for income tax incentive. This mistake needs to be rectified by the Federal Government by making appropriate changes in the laws of Pakistan.

Accordingly this is recommended to amend the sub section 1 of the section 60 of the Income Tax Ordinance 2001 so as to include the Zakāt paid under the Sindh Zakāt and Ushr Act, 2011, the Khyber Pakhtunkhwa Zakāt and Ushr Act, 2011, the Balochistan Zakāt and Ushr Ordinance, 2011 and the Punjab Zakāt and Ushr Act 2018 as a deductible amount from total Income under the provisions of Income Tax Law.

### **5. Measures to Increase the Collection of Zakāt from the Corporate Sector**

The procedure for Zakāt regarding companies needs be completely overhauled in the light of *Sharī'ah* and modern business practices.

At present corporate sector owns huge amount of assets on which Zakāt is applicable and that are indirectly owned by their shareholders/unit holders/certificate holders. These corporate entities, since 1980, have not deducted Zakāt on these assets, rather, if a corporate entity pays return on these units, shares or certificate, Zakāt is deducted from that payment of return. Because of this very vague arrangement that is in many cases contrary to the Islamic Provisions of Zakāt there is a very negligible collection of Zakāt from this sector. No concrete steps have been taken by the Government to get due share of Zakāt from this corporate sector.

All the four provincial and federal legislations of Zakāt provides certain exemptions from the application of the Zakāt law. Now this is time to review these exemptions. This is strongly recommended that since the Zakāt is mandatory act obligated by Allah SWT granting exemptions from applicability of Zakāt should not be used as leverage tool for

<sup>9</sup>Judgment of Sindh High Court (Constitutional Petition No. 1313, 2013) assessed on June 9, 2021. [http://www.srb.gos.pk/contents/Circulars/20180213001\\_WPPF\\_JUDGMENT.pdf](http://www.srb.gos.pk/contents/Circulars/20180213001_WPPF_JUDGMENT.pdf)



different investment or economic goals. These exemptions are granted to the National Investment (Unit) Trust, the Investment Corporation of Pakistan and its Mutual Funds, recognized Provident Fund, any Unit Fund maintained by the Defense Services including the Civil Armed Forces. Therefore these exemptions provided in Section 2 (y) of the Punjab Zakāt and Ushr Act 2018, Section 2 ((xxiv) of the Sindh Zakāt and Ushr Act, 2011, Section 2(z) of the Balochistan Zakāt and Ushr Ordinance, 2011, section 2(xxvi) of the Khyber Pakhtunkhwa Zakāt and Ushr Act, 2011 and Section 2 (xxiii) of the Zakāt and Ushr Ordinance, 1980, be withdrawn immediately.

The suggested format of the proposed statement of Zakāt is given as under:

### Statement of Zakāt

Company Name: XXXXX  
 Registration No: XXXXX  
 Zakāt Year: XXXXX

**Table 1.** Proposed Format of Zakāt Statement for Companies

Zakāt-able Assets	
Stocks in Trade	750,000,000
Other receivables	650,000,000
Cash & Bank Balance	930,000,000
	(2,400,000,000)
Less Liabilities – current	
Trade Creditors	650,000,000
Borrowings/loans	1,000,000,000
Other current liabilities	70,000,000
	(1,720,000,000)
Other Net Liabilities	
	(65,000,000)
Net Zakātable Assets	615,000,000
Total Paid up capital	8,000,000,000
Paid up capital belongs to exempt shareholders	3,500,000
Percentage of Assets to Zakāt	56.25%
Zakāt Liability	8,648,437
Less Zakāt already deducted by bank	(1,250,000)
Balance Zakāt payable with Return	7,398,437*

\* All these figures are estimated only to clarify the calculations

All Companies and other business houses have accurate information about their current assets that are trading goods receivables and cash. This is recommended that all Central and Provincial Zakāt Laws be amended and mandatory statement of Zakāt be introduced



for companies and these companies shall deposit their Zakāt in Zakāt funds of Center or provinces based on the location of their head office or area of operations. This Zakāt shall be applicable to assets that are in proportionate to the Muslim shareholders of the companies and that shareholders be provided certificates of Zakāt deduction that shall be available for income tax incentive.

After the introduction of the above statement of Zakāt, existing provision of Zakāt laws of provinces and central laws of Zakāt be appropriately modified to avoid duplication of Zakāt deduction at the time of payment of dividend/return as provided in federal and provincial laws of Zakāt.

### 6. Reactivation of System of Usher Collection

There are provisions of usher collection in Zakāt and Usher laws of all provinces of Pakistan but unfortunately its practical implementation is completely missing except some contributions by some voluntary farmers. We cannot find any system in place under these Acts and Ordinances that work to collect the Usher as per the provisions of Islam. This is strongly recommended that legal provisions relating to the collections of Ushr be enforced in their true spirit so that masses of our society living in our villages may get benefits of this system to come out of the vicious circle of debt and poverty.

### 7. Confidence Building Measures

Following confidence building measures shall increase public trust and resultant increase in voluntary contributions to Zakāt fund:

- Some moderate level of media campaign is also required now a days to project the positive efforts by Zakāt and Ushr system.
- Top contributors of Zakāt should be made a part of Zakāt Administration Committee to give public sense of ownership.
- Use of Islamic Fintech may facilitate in multiple ways to add transparency in the collection and distribution of Zakāt.
- Inter-provincial mechanisms need to be developed on devolved subjects by creating interface between the provinces for experience sharing and mutual learning on effective management of devolved subjects with special reference to social sector.

### 8. Conclusion

The system of Zakāt and Ushr will be beneficial for the people of Pakistan if implemented in its real form as prescribed by *Shari'ah*. The Government of Pakistan needs to enforce the laws relating to the collection and distribution of Zakāt and Ushr from wealthy citizens. Transparent utilization of funds collected as Zakāt and Usher on Sharia compliant modes is vitally important to build public confidence so that people should contribute to Zakāt and Usher Funds voluntarily. This utilization of collected funds among poor people shall help in bringing them into the mainstream economy. The 18<sup>th</sup> amendment to the constitution followed by the provincial legislations on Zakāt and Usher needs to harmonize with income tax incentives. For this purpose corresponding amendments the sub section 1 of the section 60 of the Income Tax Ordinance 2001 are required. Innovative

ways should be explored to upgrade the procedures of Zakāt and Ushr collection especially relating to corporate sectors. This is strongly suggested that exemptions from applicability of Zakāt and Ushr should not be used as leverage tool for different investment or economic goals. For this purpose various exemptions provided in Provisional Zakāt Laws should be withdrawn because these exemptions have reduced the ushr collection to a very negligible amount. The use of Islamic Fintech may also support the system of Zakāt and Ushr. By combination of all these efforts we can generate handsome funds for our needy countrymen and bring them in country's cycle of economic activities. In Pakistan, agriculture sector is facing one of the immense problem of shortage of funds. The availability of formal institutional credit to agriculture sector is also limited resultantly the share of informal credit is increasing. That is exploitative in nature to some extent. The effective system of Zakāt and Ushr may help to provide funds to needy farmers for improvement in their farming and livelihood. The Zakāt and Ushr system must be revitalized to take a leading role in the process of poverty eradication. Particularly this will be very helpful to solve the problems of rural areas of Pakistan where poor farmers are badly entangled in informal lending.

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