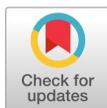


## Law and Policy Review (LPR)

Volume 4 Issue 2, Fall 2025

ISSN(P): 2076-5614, ISSN(E): 3007-4290

Homepage: <https://journals.umt.edu.pk/index.php/lpr>



- Title:** Differences Related to Zakat Between the Islamic System and The Pakistani Legal System
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- DOI:** <https://doi.org/10.32350/lpr.42.04>
- History:** Received: December 04, 2023, Revised: September 25, 2025, Accepted: October 27, 2025, Published: November 12, 2025
- Citation:** Saikhu, R. A. (2025). Differences related to Zakat between the Islamic system and the Pakistani legal system. *Law and Policy Review*, 4(2), 68-87. <https://doi.org/10.32350/lpr.42.04>
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- Conflict of Interest:** Author(s) declared no conflict of interest



A publication of  
School of Law and Policy  
University of Management and Technology, Lahore, Pakistan

# Differences Related to Zakat Between the Islamic System and the Pakistani Legal System

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## Abstract

This research deals with the study of Zakat in the Islamic system and in the Pakistani legal system. It comparatively analyses both these systems to highlight the main differences between them. In doing so, initially, it discusses the basic principles of Zakat in Islam, such as nisab (minimum wealth) and the rate of Zakat on different items, its religious and economic importance, as well as its exemptions. Later on, its legal development in the Pakistani legal system will be discussed. That legal development is related to the period before and after the formation of the Zakat and Ushr Ordinance 1980. Finally, the differences between these systems are being discussed to amend the Pakistani laws to make them consistent with Islamic law.

**Keywords:** differences, Islamic zakat system, Pakistani legal system, zakat ordinance

## Introduction

Zakat is an important subject that is mainly used for the economic welfare of the Islamic state. It is a compulsory financial obligation for all Sahib-e-Nisab (Muslims who possess wealth equal to or more than the nisab) Muslims without discrimination against males and females. Pakistan is an Islamic state, and Zakat is an essential pillar of Islam. Islam has ordered all Sahib-e-Nisab Muslims to pay Zakat at the prescribed rate. Islam has provided a complete system of Zakat with all details relating to the collection and disbursement of Zakat. Muslims are divided into different sects (fiqh) based on the jurisprudence of different jurists such as Imam Abu-Hanifa, Imam Malik, Imam Shafai, and Imam Ahmad bin Hanbal. The jurisprudence of these Imams can vary from one to another. Most Pakistani Muslims are Hanafi, and they follow the jurisprudence of Imam Abu Hanifa.

In 1980, General Zai-ul-Haq first introduced a proper Zakat collection program on a compulsory basis with deduction at source through the

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Ordinance called ‘Zakat and Usher Ordinance (ZUO or Zakat Ordinance) 1980’ (Powell, 2010). However, before this Ordinance, one attempt was made in the 1950s to institutionalise the Zakat payment (Powell, 2010). The government of Pakistan formed a commission for the benefit of the public at large, which was called the ‘Zakat Commission’ (Mirza, 1960). Khalifa Abdul Hakim was appointed as the first president of this commission (Mirza, 1960). The idea of collecting Zakat through ‘Zakat Tickets’ at post offices was introduced in this commission, but it failed due to the non-participation of people in this program (Mirza, 1960).

Initially, this Zakat system was under the control of the federal government. Later on, in 2010, it came under the control of provinces through the 18th Amendment in the Constitution of Pakistan, 1973. Now, it is no longer present in the concurrent legislative list. Now all provinces have their own Zakat Acts; Punjab has ‘Punjab Zakat and Usher Act (PZUA) 2018’, Sindh has ‘Sindh Zakat and Usher (Amendment) Act (SZUAA) 2018’, Khyber has ‘Khyber Pakhtunkhwa Zakat and Usher Act (KPZUA) 2011’, and Balochistan has ‘Balochistan Zakat and Usher Bill (BZUB) 2012’. Article 31(c) of the Pakistani Constitution orders the state to ensure the proper administration of Zakat.

Although in the Pakistani legal system, a codified law of Zakat is present but it is not an ideal or comprehensive law. The reason is that it has some dissimilarities with the traditional Islamic Zakat system (IZS), which cannot be ignored.

It is a need of time to study and compare these systems and to find out the dissimilarities between them. It is because Zakat cannot be ignored as it is an essential economic tool in Islam, and Islam is the state religion of Pakistan. For the sake of this study, this research is divided into three sections. The first section aims to explain how and when Zakat became obligatory for Muslims in light of the Quran and Sunnah. It will then outline the nisab and the rate of Zakat on different items and its effects on society as well as on the Zakat payer itself. Thereafter, this work will highlight the beneficiaries of Zakat and those who may be exempted from the payment of Zakat. It will further discuss how the nature of Zakat is different from Interest.

The second section aims to discuss the legislative framework of Zakat in the Pakistani legal system. It will outline the Zakat system inherited by

Pakistan at the time of its independence. It will then explain the main principles of the first legislation on the subject. Thereafter, the paper will highlight the changes introduced by the 18<sup>th</sup> Amendment in the Constitution of Pakistan 1973 with respect to the Zakat's legal framework. Lastly, the third section leads towards the big contribution of this work in exploring the differences between the Zakat system of Islam and that of Pakistan. The aim is to find a common core between the two and give recommendations to make the Pakistani Zakat system (PZS) consistent with the IZS.

### **Zakat in the Islamic System**

According to the majority of Muslim scholars, Zakat is a religious obligation that is imposed by Allah almighty for the economic and social welfare of human beings as it purifies them spiritually and economically (Allami, [2015](#)). Zakat is the most important pillar of Islam after the prayer. The building of Islam stands upon two pillars, of which one is *prayer* and the other is *Zakat*; without these two pillars, the building would collapse (Maudoodi, [1970](#)). A Hadith which was narrated by Ibn e Umar (R.A) also shows the importance of Zakat in Islam as 'There are five pillars of Islam: the first is to say there is no God but Allah and Muhammad is the messenger of Allah, establishing prayer, practicing Zakah, fasting in Ramadan, and pilgrimage to the House of Allah for whoever can reach it' (Qaradawi, [2002](#)).

### **Historical Background**

In Mecca, before the migration of Muslims to Medina, the poor people were really in a bad condition; they were slaves of the rich people of society, and they were not allowed to live freely. Their financial condition was miserable. There was no system of charity, it is because charity was not profitable for the rich, but interest was in common practice due to its profitable nature (Allami, [2015](#)). Only Jews and Christians were in the practise of alms giving (Allami, [2015](#)). At that time, Prophet Muhammad (peace be upon him) motivated his followers to give charity in the form of Zakat (Allami, [2015](#)). As the Qur'an mentions 'So give what is due to kindred, the needy, And the wayfarer. That is best for those who seek the Countenance of God, and it is they who will prosper' (30:38).

The first obligatory Zakat was imposed in Medina after migration from Mecca to Medina (Qaradawi, [2002](#)). The nature of Zakat of the ninth Hijri was different from the Zakat of the initial years of Islam (Qaradawi, [2002](#)).

In the initial years, Zakat's payment was a matter just above and beyond the duty (Qaradawi, [2002](#)). It was compulsorily imposed in Medina, where Zakat administration was in the hands of the Prophet (peace be upon him) and his companions (Qaradawi, [2002](#)).

During the Caliphate of the first Caliph Abu Bakar (R.A), many insurgents of different Arab tribes, especially from Banu Tamim and Banu Hanifa, stopped paying their Zakat to the Caliph, and they started to demotivate other people not to pay Zakat (Allami, [2015](#)). It was a very alarming situation against the enforcement of Zakat, which was one of the most important pillars of Islam. The first Caliph stood up against those rebels, and he fought a war with them, and he said: 'I swear to God, I will fight those who distinguish between praying and Zakat, while Zakat is financial worship...' (Allami, [2015](#)).

### **Support from the Quran and Sunnah**

The Quran is the first source of Islamic teachings. The payment of Zakat is stated many times in the Quran, and it is mentioned after prayer. As the Qur'an mentions:

'And be steadfast in prayer; practice Regular charity; and bow down your heads with those who bow down (in worship)' (2:43).

'Your (real) friends are (no less than) God His Apostle and the (fellowship of) believers those who establish regular prayers and regular charity and they bow down humbly (in worship)' (5:55).

'But (even so), if they repent, Establish regular prayers, and practice regular charity, They are your brethren in Faith: (Thus) do We explain the Signs In detail, for those who understand' (9:11).

The Sunnah is the second most important source to trace the importance of Zakat. There are three types of Sunnah such as oral, actions, and tacit approval (Zahra, [2004](#)). The Holy Prophet (peace be upon him) has emphasised a lot on the payment of Zakat as well. All these three forms are very helpful to understand any matter mentioned in the Quran that is not clear, and there is a need to interpret it. As the Qur'an says, 'Nor does he say (aught) of (his own) desire. It is no less than an inspiration sent down to him.' (53:3-4).

## Nisab and Rate of Zakat

This section discusses the nisab and the rate of Zakat on Zakatable items, which is fixed but varies from one item to another. Nisab of Zakat is as under (Iqbal, [2015](#)):

Gold = 7.5 tolas [almost 84 g]

Silver = 52.5 tolas [almost 612 g]

Agricultural Produce = 5 wasaq [almost 948 kg]

Cattle = It depends upon the type of cattle, such as there shall be 5 camels, or 30 cows and buffaloes, or 40 sheep and goats for payment of Zakat, and there is no Zakat for less than this nisab.

Cash and Bank Deposits = depends upon a value of 52.5 tolas of silver or 7.5 tolas of gold, whichever is less.

The rate of above mentioned items is as under (Iqbal, [2015](#)):

Silver = 2.5%

Gold = 2.5%

Treasure = 20%

Cattle = 1 to 2.5%

Cash and Bank Deposit = 2.5%

Irrigated land = 5%

Non irrigated land = 10%

The difference in the rate of Zakat on irrigated land and non-irrigated land may be due to the difference in expenditures of farmers on both types of land, as expenditures of the farmers are higher on irrigated land than on non-irrigated land (Allami, [2015](#)). Those items on which the payment of Zakat is necessary may be noticeable and non-noticeable (Iqbal, [2015](#)). According to many Muslim scholars, Zakat on the noticeable items, such as agricultural produce and cattle, shall be collected by the state, and Zakat on the non-noticeable items like cash, gold, and silver shall be left on payers (Iqbal, [2015](#)). Muslim scholars also recommend that, when it is necessary, the state may use force against non-payers to ensure the payment of Zakat on noticeable items (Iqbal, [2015](#)). If jewelry is of gold or silver, then Zakat will also be deducted from it with the same nisab and the rate, otherwise,

there is no Zakat on jewelry which is made from any other metal, even platinum or diamond, because there is no Zakat on the gems and precious metals which are under personal use and they are not for trading purposes (Usmani, [2013](#)).

### **Effects of Zakat**

There are many positive effects of Zakat on society and on Zakat payers as well. It is a source to get the mercy of Allah almighty, as the Qur'an says, 'The Believers, men and women, are protectors, One of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey God and His Apostle. On them will God pour His mercy: for God Is Exalted in power, Wise' (9:71). It is helpful in the financial uplifting of the society as a whole. The poor and needy people of the society get economic support through Zakat and it is a source of purification of wealth and the spirit of Zakat payers, as the Qur'an says, 'Of their goods take alms, that so thou mightest purify and sanctify them; and pray on their behalf. Verily thy prayers are a source of security for them. And God is one who heareth and knoweth' (9:103). In addition, Zakat helps to decrease the greed for wealth from the hearts of the wealthy people and to increase their morality. Zakat ensures the movement of wealth from one hand to the other and decentralises it.

### **Zakat and Tax**

Zakat is imposed by Allah Almighty, while taxes are imposed by the state. The purpose behind the imposition of Zakat is clear, as it is for the social welfare of the people, but the purpose of taxes can be different. It may or may not be for the benefit of society. Only those taxes are allowed to be imposed by the state which have the purpose of general welfare of the public, while all those taxes which are not for the public benefit cannot be imposed by the state (Shaikh, [2015](#)). Zakat is religiously imposed on every Sahib-e-Nisab Muslim as a compulsory duty, and it is not a substitute for tax (Shaikh, [2015](#)).

### **Exemptions of Zakat**

This subtitle deals with all those persons who may be exempted from the payment of Zakat.

#### ***Minor or Insane***

According to Hanafis, there is no Zakat on minors or the insane due to

their weaknesses, as a minor is not physically strong and cannot handle his affairs, while the insane is mentally unfit and cannot understand his duties (Zahra, [2004](#)). This opinion is based on this Hadith as ‘Three persons such as asleep until wakes, a child until puberty, an insane until sanity, are not liable for their commitments’ (Abaadi, [2005](#)). Many other scholars do not accept this opinion of Abu Hanifa regarding the exemption of incapacitated persons by relying on Qur’anic verse (9:103), which, according to them, has general application for all Muslims (Qaradawi, [2002](#)).

### ***Debts***

This is an ambiguous matter: Is Zakat payable on debts? If it is, then who will pay for it? Either the creditor liable to pay Zakat or the debtor? This is because there are two parties involved in this agreement, in which one is the debtor and the other is the creditor. A loan is transferred from the creditor to the debtor for a fixed period of time with the condition of return (Hudson, [2009](#)). The creditor is the owner of this loan, but he does not have possession of it, while the debtor has possession of the loan, but he is not the true owner of it. The loan should not be paid by the debtor because he is a needy person at that time (Qaradawi, [2002](#)). The creditor is not liable to pay Zakat on the loan until he receives the money, but once he receives it back, he should pay Zakat on this amount of the loan even on the back dates (Usmani, [2013](#)).

Example: There is a contract of loan for three years between the two parties, namely A and B. A is the creditor and B is the debtor. The amount of loan is fifty thousand rupees. There is no Zakat on the creditor on his loan money during these three years when it is not under his possession, but after these three years, when the creditor gets his possession again, then he is liable to pay Zakat even for those last three years (Usmani, [2013](#)).

### ***State Institutions***

The institutions of the state are not under the ownership of any private person (who is liable to pay Zakat) but under the control of the state. The administration of Zakat is also a duty of the state. The state is responsible for the welfare of the public in general. All funds of these state institutions are used for this purpose. So, there is no Zakat on these institutions because the purpose of Zakat is public well-being, and the purpose of these institutions is also the same (Qaradawi, [2002](#)).

### ***Non Muslims***

‘But (even so), if they repent, Establish regular prayers, And practice regular charity,— They are your brethren in Faith: (Thus) do We explain the Signs In detail, for those who understand’ (9:11).

‘The Believers, men And women, are protectors, One of another: they enjoin What is just, and forbid What is evil: they observe Regular prayers, practice Regular charity, and obey God and His Apostle. On them will God pour His mercy: for God Is Exalted in power, Wise’ (9:71).

The above verses of the Qur’an show that Zakat is compulsory for Muslims as a religious duty. *Dhimmi* (Non-Muslim) who do not follow the religion of Islam, but they get the benefit of the Islamic State, as residents of this State are not duty-bound to pay Zakat (Qaradawi, [2002](#)). Non-Muslims can pay Zakat as a tax if they want to pay it of their own free will, and an example of the authenticity of this matter can be traced from the period of the second Caliph Umar (R.A) when he allowed the non-Muslims of the Taglab tribe to pay Zakat when they requested him not to distinguish them from the Muslims (Qaradawi, [2002](#)).

### ***Zakat and Interest***

Zakat and Interest are based on two economic principles that work in opposite directions. Allah Almighty and His Prophet (peace be upon him) have allowed Zakat and disallowed Interest. There is a reward for payment of Zakat and a punishment for taking Interest. As the Quran mentions:

‘God will deprive usury of all blessing but will give increase for deeds of charity: for He loveth not creatures ungrateful and wicked (2:276).

‘O ye who believe! fear God and give up what remains of your demand for usury if ye are indeed believers (2:278).

Zakat helps in social development, while interest destroys society. Zakat purifies wealth and decreases greed, while interest makes the wealth dirty by increasing the greed for money and selfishness, and also decreases faith in Allah (Samiullah, [1982](#)). Zakat and interest are both movements of money, but on opposite sides, because Zakat moves money from the rich to the poor and interest moves it back from the poor to the rich (Samiullah, [1982](#)). The Prophet Muhammad (peace be upon him) suspended all the remaining interests of his uncle Abbas during his last pilgrimage, which

represented non-acceptance of Interest in Islam (Samiullah, [1982](#)).

## **Legal Development & Structure of Zakat in Pakistan**

### **Before the First Legislation on Zakat**

After the Independence of Pakistan in 1947, there was no formal legal system for Zakat collection and distribution. An informal system was prevalent without any state intervention and monitoring, in which wealthy people paid Zakat directly to the needy people on a self-assessment basis (Mohammad & Anwar, [1991](#)). This informal system of Zakat payment was continued till the enactment of the Zakat and Ushr Ordinance of 1980 (Mohammad & Anwar, [1991](#)).

In the 1950s, the state constituted a ‘Zakat Commission’ as a first attempt for the regularisation of the system before the promulgation of the Ordinance of 1980 (Mirza, [1960](#)). The main purpose of this Commission was to give recommendations to state how Islamic laws of Zakat can be modified according to the needs of the modern age (Mirza, [1960](#)). This Commission recommended that the state should collect Zakat from Muslims of Pakistan, and it may be done through ‘Zakat Tickets’ at post offices (Powell, [2010](#)). The Commission’s proposal regarding the Zakat Tickets failed due to the non-participation of people in this program (Powell, [2010](#)) as well as the differences of opinion of Muslim scholars on the interpretation of the word ‘Ibn-e Sabil’ (Wayfarer) (Mirza, [1960](#)). It is pertinent to mention here that the recipients of Zakat have been enumerated in the Quran, and one of them is termed as Ibn-e Sabil. Some Muslim scholars recommended utilising the Zakat funds for aeroplanes, ships, railways, post offices, and construction of roads under the definition of ‘Ibn-e Sabil’, but some other scholars were not in agreement with this opinion (Mirza, [1960](#)).

The provisions of various Pakistani constitutions such as Article 25 (2) (d) of the constitution of 1956 and Article 8 (2) (4) of the constitution of 1962 as well as Article 31 (2) (c) of the constitution of 1973, dealt with the proper organization of Zakat by the state, even before the enactment of the Ordinance of 1980. Its implementation was encouraged as a constitutional mandate. Furthermore, our constitutions are the basic ingredients of all legal frameworks.

## **An Introduction to “Zakat And Ushr Ordinance 1980”**

The Ordinance was introduced by General Zia-ul-Haq as the first codified law on the collection and distribution of Zakat and Ushr by the state on the basis of compulsory deduction at source, as a part of his Islamization program in Pakistan (Powell, [2010](#)). Some important provisions of this Ordinance are as under:

The First Schedule of the Zakat Ordinance has described eleven categories for Zakat collection on a compulsory basis, such as:

- Savings Bank Accounts and similar Accounts
- NDR (Notice Deposit Receipts) and account
- Savings or Deposit Certificates, including Certificates of Defense and National Deposits
- Government Securities (with some exceptions)
- National Investment Trust’s Units (UNIT)
- FDR (Fixed Deposit Receipts), Accounts, Certificates, including KDC (Khas Deposit Certificates)
- Debentures and Shares of Statutory Corporations and Companies
- MFC (Mutual Fund Certificates) of ICP
- LIP (Life Insurance Policies)
- Annuities
- PF (Provident Funds)

The rate of Zakat on all above mentioned items is 2.5%. Zakat shall be deducted on the first Ramadan by the deducting agencies such as Banks, Offices, Institutions, Companies, and Corporations that deal with all the above categories. This deduction may be on paid-up value, face value, or surrender value, as it is mentioned in the First Schedule of the Ordinance.

All those items that are not mentioned in the First Schedule come under the heading of Zakat collection on a non-compulsory basis in the Second Schedule, such as:

- Gold and Silver
- Prize Bonds

- Receivable debts
- Cash amount
- Stock Trade, including metals of high worth and valuable stones
- Securities
- Current and Foreign Currency Accounts
- Grazing Animals
- Agricultural produce
- Wealth other than that listed above

The rate of Zakat on the above-mentioned first seven categories is 2.5% while on animals it varies from one kind to another, depending on the number of animals. Further, the rate on the agricultural produce is 5% with respect to irrigated land and 10% on non-irrigated land as per the Second Schedule of the Ordinance.

### **Zakat System after “18<sup>th</sup> Amendment in the Constitution of Pakistan 1973”**

After the 18<sup>th</sup> Amendment in 2010, the subject of Zakat was transferred from federal control to provincial control as the amendment removed the Concurrent Legislative List, which happened to be under the original Constitution of 1973 (Samra & Saddiqui, [2021](#)). Consequently, the provinces were empowered to introduce their own legislative instruments (Samra & Saddiqui, [2021](#)). The provinces, thenceforth, legislated their own laws, such as the Sindh Zakat and Ushr Act (SZUA) 2011, Khyber Pakhtunkhwa Zakat and Ushr Act (KPZUA) 2011, Balochistan Zakat and Ushr Act (BZUA) 2012, and Punjab Zakat and Ushr Act (PZUA) 2018 (Samra & Saddiqui, [2021](#)). It is pertinent to state that till the enactment of the law about Zakat in Punjab 2018, the Ordinance of 1980 remained operative as a fractured law (Samra & Saddiqui, [2021](#)).

The major framework with respect to Zakat and Ushr laws is similar in the Ordinance of 1980 and Provincial Acts (Samra & Saddiqui, [2021](#)). However, a big difference regarding ‘Tax Concession’ exists between provincial acts and the Ordinance of 1980. In Section 24 of KPZUA 2011 and in Section 25 of BZUA 2012, there are similar tax concessions as in Section 25 of Ordinance 1980 however, these concessions are absent from

SZUA 2011 and PZUA 2018 (Samra & Saddiqui, [2021](#)).

According to section 24 of KPZUA 2011 and section 25 of BZUA 2012, wealth tax, which is levied under the Wealth Tax Act 1963, Income Tax Ordinance 1979, and Land Revenue, is exempted from all those assets and wealth on which Zakat is deducted at source on a compulsory basis by state agencies. This concession is provided to Zakat payers just to lessen the burden of taxes (Samra & Saddiqui, [2021](#)). The above-mentioned provisions of both provinces are similar to section 25 of the Ordinance of 1980 (Samra & Saddiqui, [2021](#)). However, these concessions are not available under the Zakat and Ushr Acts of Punjab and Sindh. It means both these provinces are deducting double taxes (Samra & Saddiqui, [2021](#)).

### **Differences and Anomalies**

This section will discuss the differences between the Zakat laws of Islam and the Zakat laws of Pakistan. It will highlight the differences, especially with respect to the deduction of Zakat and utilisation of Zakat, along with other anomalies in the PZS.

#### **Zakat on Interest**

‘Trade is like usury but God hath permitted trade and forbidden usury’ (2:275).

‘God will deprive usury of all blessing but will give increase for deeds of charity: for He loveth not creatures ungrateful and wicked’ (2:276).

‘And be steadfast in prayer; practice Regular charity; and bow down your heads with those who bow down (in worship)’ (2:43).

The above-mentioned verses of the Quran and the Hadith of the Holy Prophet (peace be upon him) in which ‘He cursed those who accept, who pay, who record and are witnesses to Interest’ (Muslim, 4093) clearly show the disallowance of interest in Islam and the obligation to pay Zakat.

In Pakistan, rules 1, 3, 4, and 11 respectively of the first schedule of the Zakat Ordinance allow compulsory deduction of Zakat on the following such as:

- Savings Bank Accounts
- Khas Deposit Certificates
- Provident Funds

- National Savings Schemes

All the above-mentioned are Interest-based. It is a strange amalgamation of Zakat and Interest. Islam does not allow Interest as it is clearly mentioned in the above Quranic verses. The superior judiciary of Pakistan has also declared banking Interest as prohibited in the *Farooq Brothers v UBL (2023)* case. In this case, the Federal Shariat Court held that paying Interest on Loans from customers to the Bank, and paying Interest on deposits from the Bank to its depositors, both Interests are Riba and prohibited in Islam.

The purpose of Zakat is to purify the wealth, while Interest works against that goal and hence is prohibited in Islam. Therefore, the deduction of Zakat on Interest is an irrational act.

### **No Zakat on Current Accounts**

In Pakistan, the Zakat Ordinance allows the deduction of Zakat only on savings accounts and other similar accounts, but not on Current Accounts. If Current Accounts have savings in them, still, there is no compulsory deduction of Zakat on these accounts. This distinction is strange.

### **Penalty on Non-Payment of Zakat**

In case of non-payment of Zakat, there is punishment in Islam as the Holy Prophet (peace be upon him) said, ‘He who pays it seeking the reward from God will be rewarded, and he who refuses to pay it, we shall take it from him, along with half of his wealth, and by authority given to us by our Lord. The clans of Muhammad are not allowed to take anything of their proceeds’ (Qaradawi, [2002](#)). The first Caliph Abu Bakar (R.A) also fought with rebels of Banu Hanifa and Banu Tamim during his Caliphate (Allami, [2015](#)). When they refused to pay Zakat, he swore by God to fight with those who make a distinction between praying and Zakat (Allami, [2015](#)). According to him, Zakat is a financial worship (Allami, [2015](#)).

Whereas, in Pakistani law, there is no penalty for non-payment of Zakat. It is understood that it becomes difficult to enforce any law without the use of a reasonable penalty for its violation.

### **Bank Accounts of Minors and Insane Persons**

There are no exemptions for the accounts of minors and accounts of insane persons from compulsory payment of Zakat. In Pakistan, Hanafi Fiqh is the dominant school of thought, and the deduction of Zakat on these

accounts conflicts with the principles of this fiqh (Powell, [2010](#)).

### **Zakat on Corporations**

According to Rule 8 of the Zakat Ordinance, Zakat is compulsorily deducted from companies and corporations in Pakistan. It is deducted at the rate of 2.5% of the paid-up value, or the market- value. This market value depends upon the closing rate on the Karachi Stock Exchange. The objection is raised on the collection of Zakat on corporations, as there is no precedent in Islamic fiqh regarding this deduction (Powell, [2010](#)).

### **Exemptions Based on Fiqh and Faith**

The Zakat Ordinance of Pakistan was made to enforce it on all Muslims of Pakistan. But the Shia community objected to its enforcement and contended that it is not consistent with the principles of Shia Fiqh (Powell, [2010](#)).

Later on, in Miss Farzana Asar v NIT ([1991](#)) case, the exemption was granted to this fiqh under section 1(3) of the Zakat Ordinance through special directions issued by higher authorities. Karachi High Court, in its decision, has also granted exemption under the same section to all other recognised fiqhas in Pakistan. This exemption was granted based on Articles 4 and 25 of the Constitution of Pakistan in the same case. These exemptions have badly affected the enforcement of the law of Zakat in Pakistan. They have weakened its enforcement.

### **Use of Zakat in Community Programs**

There is also an objection to the use of Zakat funds in Pakistan, as it is used in community programs (Powell, [2010](#)). There is the possibility that Zakat donors may become beneficiaries of their own donations (Powell, [2010](#)). In this way, they may decrease the benefit of real beneficiaries, which is not consistent with Islamic principles (Powell, [2010](#)). It is also necessary to transfer the ownership of the Zakat fund to its beneficiaries (Usmani, [2013](#)). It cannot be used in any program without the free consent of its beneficiaries (Usmani, [2013](#)).

### **Exemption to Foreign Currency**

There is an exemption provided from compulsory deduction of Zakat under section 3(1) of the Zakat Ordinance to all those items mentioned in the First Schedule which have been acquired or maintained in foreign

currency. The court declared in *Dr Mahmood-ur Rehman Faisal v Government* (2013) case, that the foreign currency is not a local legal tender, while Zakat applies only to local legal tender. The court also accepted the fact that the Zakat ordinance covers only a limited portion of the banking system by using its local legal tender.

It means that the law is providing itself a way to escape from its enforcement. People may do business in foreign currency just to avoid the deduction of Zakat.

### **Zakat on Precious Metals**

In Islam, according to Mufti Taqi Usmani (2013), Zakat is obligatory to pay only for gold and silver in any form, such as coins or even jewellery. There is no Zakat on any other precious metals, such as platinum and diamond, as long as these are for personal use and not used for the purpose of trading.

In Pakistan, under Rule 7 (c) of the second schedule of the Zakat Ordinance, Zakat applies to all precious metals and stones at the rate of 2.5 per cent of the market value. It does not make any distinction between the gems for personal use and the gems used for trading.

### **Liabilities and Debts**

In Islam, Mufti Taqi Usmani (2013) has further mentioned that if there is a debt on the Zakat donor, then during the assessment of his assets for the deduction of Zakat, the amount to the extent of this debt will not be included in Zakatable assets. After the deduction of this amount to the extent of the amount of pending debt, Zakat will be applicable at the rate of 2.5 per cent only on the remaining assets.

In Pakistan, according to him, during the deduction of Zakat on savings accounts or other relevant accounts, no exemption is provided to the extent of any debt. In this way, more Zakat may be deducted than the liability to pay it.

### **Date of Payment**

In Islam, every Sahib-e-Nisab is liable to pay Zakat on the date when he becomes a Sahib-e-Nisab in the previous year (Usmani, 2013). Therefore, the date to pay Zakat may vary from one Sahib-e-Nisab to another Sahib-e-Nisab (Usmani, 2013). For example, if a person becomes a Sahib-e-Nisab

on the first day of Muharam-ul Haram, then he will pay Zakat every year on 1st Muharam-ul-Haram (Usmani, [2013](#)).

In Pakistan, on the first day of Ramadan, Zakat is deducted compulsorily on all relevant accounts. There is no exemption for those account holders who became Sahib-e-Nisab only a short period before the deduction of Zakat, and even if one year has not passed over their wealth in accounts. Exemption is also not provided to that person whose date to pay Zakat is different from the 1st Ramadan.

### **Deduction at Source**

The first Schedule of the Zakat Ordinance lists those assets on which Zakat is deducted at source. However, this deduction is being objected to by Muslim scholar Taqi Usmani while giving his opinion in the Suo Motu Action Regarding COVID-19 ([2020](#)) case, as it is not allowed in Islam. He criticised the present system of Zakat in Pakistan. According to him, deduction of Zakat at source is not permissible in Islam, and by this deduction, the obligation of Zakat is not so discharged.

### **Corruption**

The above Muslim scholar further opined that the public has lost its confidence in Zakat deducting authorities due to their corruption and misuse of Zakat funds. Therefore, they try to avoid its payment either by withdrawing their money from their accounts before the 1st of Ramadan or by getting an exemption by declaring that they are not obliged to pay Zakat in a manner prescribed by the Zakat ordinance.

### **Authority to Make Law**

Section 25 of the Zakat Ordinance provides ‘certain tax concessions’. These concessions are also provided by the Zakat laws of Balochistan and Khyber-Pakhtunkhwa by sections 25 and 24, respectively. These latter two sections are unconstitutional because provincial legislatures have no authority over the Income Tax Law (Samra & Saddiqui, [2021](#)). Sindh High Court (2013 the Constitution Petition No. 1313), also declared that the ‘provincial legislation for exemption on Income Tax is ultra vires.

However, the following recommendations aim to align the Pakistani Zakat system with the Islamic Zakat principles. Zakat laws should be amended to reflect the true spirit of Zakat in Islam. Zakat should not be deducted from any form of interest, as interest is prohibited in Islam. It

should only be deducted from the principal amount in savings accounts, not from the interest earned. Current accounts should not be exempt from the compulsory Zakat deduction. There is a need to introduce penalties into Pakistan's Zakat laws to enhance their enforcement. No exemption should be granted for foreign currency from the mandatory deduction of Zakat.

Moreover, bank accounts of minors must be exempted from Zakat according to the rules of Fiqh Hanafi. Zakat law needs to be enforced as strictly as other laws relating to income tax and wealth tax that are under enforcement. Exemption to the extent of debts should also be given to account holders. There is a need to amend the law of Zakat in such a way that no follower of any recognised fiqh can object to its manner of payment.

Additionally, the matter of deduction and distribution of Zakat may be handed over to those renowned people who are famous for their honesty. They may be from government employees of any department and even renowned Muslim scholars, whom people may trust. There is also a need to keep a strict watch on Zakat administrative authorities and to make audits of their personal wealth on an annual basis. Zakat collected from Sahib-e-Nisab people of any area must be spent on Zakat beneficiaries of the same area. In this way, Zakat donors will be satisfied with the use of their donations.

### **Conclusion**

This research work discussed the two legal systems of Zakat: one was the Islamic system as per the rules of Hanafi Jurisprudence (mostly), while the other was the Pakistani legal system. The Islamic Zakat system was discussed in relation to its fundamental principles of Zakat. These principles were related to the definition of Zakat, which describes that it is the third pillar of Islam, and every Sahib-e-Nisab Muslim is duty-bound to pay it every year. It is necessary to pay on every Zakatable item with the same nisab and the rates fixed by the Quran and Sunnah. It is concluded that there are eight categories of beneficiaries, which are decided in the Quran. The Muslim scholars agreed upon the preference of the poor to benefit from Zakat and to refuse the further payment of Zakat to non Muslims. It is also concluded that beneficiaries of Zakat are entitled to the complete ownership of Zakat wealth.

It is concluded that according to Hanafi's opinion, minors, insane persons, non Muslims, loans (until it is returned), and public bodies are

exempted from payment of Zakat. This article has clarified that the nature of Interest is highly different from Zakat. According to the Quran and Sunnah, Interest is not allowed, while Zakat is allowed, and it is very beneficial for society.

This article highlighted some important differences between the Zakat systems of Pakistan and the Zakat system of Islam. These differences are especially with respect to the collection of Zakat and exemptions from it. At last, some recommendations are also given with the intent to provide a solution to the above-mentioned conflicts just to bring consistency between the Zakat System of Islam and Zakat in the Pakistani Legal System.

#### **Author Contribution**

**Rasham Armab Saikhu:** sole author

#### **Conflict of Interest**

The authors of the manuscript have no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

#### **Data Availability Statement**

Data supporting the findings of this study will be made available by the corresponding author upon request.

#### **Funding Details**

No funding has been received for this research.

#### **Generative AI Disclosure Statement**

The authors did not use any type of generative artificial intelligence software for this research.

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