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History of pre-emption laws can be traced back to the period of Greeks and Roman Empire; even these concepts were prevalent in Arabia before the advent of Islam. However, Islam adopted these laws with some modifications and refinements. It is pertinent to mention that same sort of rules were also implemented in Sub-Continent before the coming into being of Pakistan and can be traced back to the old Hindu scriptures. The pre-emption laws as applicable in Pakistan are applied in certain areas, governed under Muslim Personal Law with the name of 'shuffa', since the Constitution imposes an obligation upon government as well as legislature to adopt and modify all laws in accordance with the injunctions of Islam.

Right of pre-emption means the right possessed by a person to acquire a property sold to another in preference to that other by paying a price equal to that settled, or paid by the later; and in the Mohamman system owes its origin to motives of expediency and a desire to prevent the introduction of a stranger among co-sharers and neighbors likely to cause in-convenience or vexation.^[2]

The term pre-emption is composed of two words: prae--- means before, and emptio-- means buying or purchasing. Literally, 'shuffa' means amalgamation or conjunction of a property with other property as the property of pre-emptor is co-joined with the property sold. Legally it signifies the becoming of proprietor of property sold on payment of price paid by the vendee although he may not be consenting there to.^[3] Hence right of pre-emption means a right to acquire by purchase an immovable property in preference to other person by reason of such right.^[4]

As a part of Islamic legal system, pre-emption laws are directly derived from one of the primary sources of Islamic law, i.e. Sunnah. It was introduced in Sub-Continent during the Muslim rule through judicial decisions. Under Muslim administration, these were applied universally irrespective of religion, creed

and race. Now even in Pakistan, the same is equally applied to Muslims and non Muslims without any discrimination.

As a special right, pre-emption is an exception to the general law regarding sale and purchase, because through this right pre-emptor can seek revocation of a valid contract of sale of an immovable property. If pre-emptor is successful in his claim, the vendee of sold immovable property is bound to handover the property to him, after receiving the sale price, whether he assents to do it with free will or not.

This can lead to a supposition (though wrong) that Islamic shuffa is a piratic right, but, it is not so because of the principles on which it is based and more importantly due to the limitation it imposes on pre-emptor with minimum possibility of any loss, to the party to original transaction which can be avoided. Thus spirit-wise though it creates an exception to the general law of contract, at the same time it is loaded in favour of vendee; the doubts of interpretation are also, for the reason, to be resolved in vendee's favour.^[5]

The objects of pre-emption laws are many folds, including but not limited to:

- Exclude the stranger from a particular vicinity;
- Preserve the honor and homogeneity of a particular community;
- Promote familial comfort;
- Protect the native feelings as regard to elitism and privacy of private life; and
- Avoid disintegration of holdings.

Right of pre-emption is termed as an exceptional right and according to one of the rules of interpretation, exceptions are always very restricted and limited in nature and these are to be strictly followed. Hence, in exercising this right of pre-emption, pre-emptor has to abide by very strict conditions, imposed by law in case of non-compliance of which his right is relinquished. These are two fold, (i) regarding persons who can claim shuffa and (ii) the process to be followed by such person in order to succeeded in his claim. Generally, right of pre-emption can not be exercised by everyone, as only following three classes of persons are entitled to claim this right:

- *Shafi-e-Sharik* (co-owner of the property sold)
- *Shafi-e-Khalit* (participator in easement rights over the property sold)
- *Shafi-e-Jar* (neighbor, owner of immovable property adjacent to the sold property)^[6]

A partner in the sold property has a superior right to one who is only a partner in its easement rights; and a partner in the easement rights of a property has precedence over the neighbor. In other words, it can be said that shafi-e-

sharik has superior right over shafi-e-khalit and shafi-e- khalit has superiority over shafi-e-jar.

Right of pre-emption is exercisable in case of sale of immovable property only, thus excluding sales of movables. Hiba biliwaz and Hiba bil shara tul iwaz are treated as sale for the purpose of pre-emption. Where the property is transferred through dower, charity, inheritance, gift, exchange or compensation for a claim, the right of pre-emption does not arise. It must also be remembered that, the shafi may take a share from one of several purchasers; but in case of several sellers, and only one purchaser, he must take or relinquish the whole. In other words, if five persons purchase a house from one man, the shafi may take the proportion of anyone of them. If, on the contrary, one man purchases a house from five persons, the shafi may either take or relinquish the whole.^[7] Further, right of pre-emption must subsist at the time of sale, subsequent acquisition of right does not entitle holder, to get the sold property pre-empted.

In order to claim pre-emption, pre-emptor has to follow below mentioned procedure, i.e.

- *Talab-e-Mawathibat*
- *Talab-e-Ishhad*
- *Talab-e-Khusumat*

“Talab-e Mawathibat literally means a ‘jumping demand’ or immediate demand, where the pre-emptor has to declare his intention to assert his right immediately on receiving information of sale.

In Talab-e-Ishhad, pre-emptor after declaration of Talab-e-Mawathibat with the least practicable delay must affirm his intention; referring expressly to the fact that Talab-e-Mawathibat has already been made:

- a. *either in presence of buyer or seller, or on the premises which is subject of sale; and*
- b. *in the presence of two witnesses.”^[8]*

Talab-e-Khusumat is the third demand which means claim by litigation. This is done by the pre-emptor through filing suit for pre-emption in a court of competent jurisdiction to enforce his right of pre-emption.^[9] The limitation for Talab-e-Khusumat is four months from the date:

- a. *of registration of sale deed;*
- b. *of attestation of mutation, if the sale is made otherwise than through a registered sale deed;*
- c. *on which the vended takes physical possession of property, if sale is made otherwise than through a registered sale deed or a mutation; or*

d. *on which pre-emptor came to know about the sale, if sale is not covered by above mentioned rules.*^[10]

Further, for Talab-e-Mawathibat, words used are immaterial, it is sufficient that they imply a claim. Thus, if a person says 'I have claimed my shuffa' or 'I shall claim my shuffa, or 'I do claim my shuffa' all these are good; for it is the meaning, and not the style or mode of expression, which is considered.^[11] *It must be kept in mind that the requirement of talabsis not the qualification on which right of pre-emption is vested. These are substantive part of pre-emption right only for purpose of its enforcement.*^[12]

Pre-emptor must offer to pay the same price upon which original sale was made and where he considers the alleged price as non-real, he must express his willingness to take the property for actual price paid for it.^[13] *Where parties do not agree to the price at which the pre-emptor shall exercise his right of pre-emption, the court determines whether the price at which sale purports to have taken place was fixed in good faith or actually paid, and if it finds that the price was not so fixed or paid, it determines the market value of property as the price to be paid by pre-emptor.*^[14] *In determining market value of property, court may consider certain predetermined guidelines.*^[15]

Pre-emption is merely a right of substitution, in which pre-emptor does not get anything more than the right of owner, if the right of seller is defective; the pre-emptor takes over only defective title.^[16] *it is not a right of 're purchase' either from the vendor or vendee involving any new contract of sale; but it is simply a right of substitution entitling the pre-emptor by reason of a legal incidence to which the sale itself was subject to stand in the shoes of vendee in respect of all the rights and obligations arising from sale under which he has derived his title.*^[17]

Ownership is considered to be a pre-condition to exercise pre-emption and where vendee denies ownership of property, pre-emptor can not claim his right unless he has proved his title.^[18] *In other words, it can be safely said that right of pre-emption can only be asserted by owner of certain property. If a person is merely a tenant, he can not claim pre-emption on a property situated next to the property upon which he is a tenant.*

Right of pre-emption is heritable and transfers to the heirs of pre-emptor provided he dies after making demands. However, if pre-emptor dies without making any of the demands; the right of pre-emption extinguishes and can not be claimed by his legal heirs.^[19] *On the other hand, under Hanfi law, right of pre-emption is a personal right and dies with the plaintiff. If the plaintiff dies during the pendency of suit the same shall be dismissed and shall not survive to the successors of plaintiff.*^[20] *This is a point of difference between enacted laws (in Punjab and NWFP now, Khaiberpakhtoonkhawa) and Muslim*

personal law (applicable in Sindh and Baluchistan). Where pre-emptor and vendee belong to same class of pre-emptor, having equal right of pre-emption, the property shall be shared by them equally.

In every suit for pre-emption, plaintiff is required to deposit in the court 1/3 of sale price^[21] in cash to show his willingness and bonafides to satisfy his claim for pre-emption. It is imperative for court to fix a particular date by which the deposit is to be made. The date so fixed should fall within the period of 30 days from the date of institution of suit.^[22]

Right of pre-emption can be relinquished by the pre-emptor either expressly or impliedly. Implied relinquishment depends upon inferences deducible from his conduct. Where he omits without any sufficient cause to perform the demands after knowledge of sale, it is inferred that he has abandoned his right; and the law, therefore, holds that such omission amounts to relinquishment.^[23]

Following are some instances of relinquishment:

- (a) Acquiescence in sale either by offering to purchase the property sold or by asking the buyer to give it up, or by taking it from him on lease;^[24]*
- (b) Where pre-emptor agrees to compound his privilege of pre-emption for compensation;^[25]*
- (c) Where pre-emptor sells his property whence he derived his right;^[26]*
- (d) Where pre-emptor acted as an agent for seller.^[27]etc*

The right once relinquished can not afterwards be resumed provided; pre-emptor was misinformed about the price, name of purchaser or article sold, secondly, unavoidable delay was due to absence, illness or incarceration.

Following defences may be taken in pre-emption suit by vendee defendant:

- a. Non-observance of formalities of talabs.^[28]*
- b. Device to deceive law of pre-emption is not illegal; parties may transfer property legally so as to avoid pre-emption.^[29]*
- c. Partial pre-emption can be taken as a ground for dismissal of suit.^[30]*
- d. Pre-emptor purchasing property and joining stranger with him, pre-emptor loses his right of pre-emption.^[31]*
- e. Benami person has no right of pre-emption.^[32]*
- f. Property purchased for trust or waqf.^[33]*
- g. Waiver is a defence in pre-emption suit.^[34]*
- h. Collusiveness is a ground for dismissal of suit.^[35]*
- i. Mala-fide is ground for dismissal of suit.^[36]*

In Pakistan, law of pre-emption is dealt according to provincial statutes and is not applicable throughout the state. In KhaiberPakhtoonkhawa, it is enacted in the shape of N.W.F.P Pre-emption Act, 1987. In Punjab, it is enacted in Punjab Pre-emption Act, 1991 with minor changes. There is no codified law of pre-emption in Sind and Baluchistan and in these provinces this subject is administered according to personal law of the parties.

As far as Islamic personal law is concerned, Sunni and Shia laws are to some extent different in this regard, as Shias recognize this right in case of co-sharers only and that too if their number does not exceed two, they do not recognize right of pre-emption on the ground of easement/ participation in immunities and neighbor,^[37] which is not the case in Sunni law. Where parties to the suit for pre-emption belong to different sects, the same is to be decided according to following rules;

- (1) Where vendor and pre-emptor both belong to same sect (either Sunni or Shia) the law of their sect applies;*
- (2) In all other cases the sect of vendor applies.^[38]*

The controversy regarding as to non conformity of pre-emption laws with Islamic injunctions has a disappointing history not only in Sub-Continent but also in Pakistan, as before 1947, four laws were enacted for this purpose.^[39] After 1947, one by one, ten laws^[40] were enacted for enforcing right of pre-emption but none of these laws was in total conformity with Islamic injunctions. Finally, Punjab Pre-emption Act, 1991 and NWFP Pre-emption Act, 1987 were enacted to bring these laws in accordance with the injunctions of Islam. However, in 1991, Federal Sahriat Court declared some provisions of Punjab Pre-emption Act, 1991 void,^[41] and in 1994, Supreme Court affirmed the decision of Federal Shariat Court.^[42] Thus, the Punjab Pre-emption Act, 1991 and the N.W.F.P Pre-emption Act, 1987, having most provisions in common, still need to be amended, so as to bring them in conformity with the injunctions of Islam.

Nevertheless, law of pre-emption as stated earlier, is as old as the history of mankind. In Pakistan, it is applicable in certain areas, through specific codifications and notifications. This short essay has provided a brief introduction to these laws for a person who is not acquainted with the concept. The critics of pre-emption laws take the instance that these laws are obsolete and have lost their utility and benefits due to drastic changes in lifestyle and modern concept of multi dimensional and multi cultural cities and societies, therefore there is no need to stick to these rules which once were made for preservation of specific culture etc, as these are against the modern spirit of society as well as very nature of the right to disposal and transfer of property.

These arguments seem strong, however, it should be memorized that the same laws are not universally applicable throughout the state and one has to look into different notifications and orders for enforcement of this right in a particular locality, even though it is against the injunctions of Islam to give government the absolute powers of excluding any area from the scope of an Islamic law which was intended for all areas.

Keeping in view the following mentioned facts, one can not deny the application of law of pre-emption. Firstly, it is not equitable in an Islamic state to invalidate a law which has seal of express approval of Holy Prophet (PBUH); secondly, though the pre-emption right is not exercised in modern cities effectively, but its importance in rural areas can not be entirely rebutted as applicability of pre-emption law is still very strong in rural areas because of its utility of preserving integrity, peace, tranquility and domestic comfort of village communities so as to avoid the possibility of any trouble by any stranger's interference, and lastly, high ratio of pre-emption suits in rural areas are an excellent example of showing that villagers still pay maximum heed to getting immovable property through ex