

## ***Conventional Tourism Laws in Pakistan and their Appraisal in the Light of Islamic Law(A Lego-Historical Perspective)***

**Dr. Lutfullah Saqib**

Associate Professor, Law and Shari'ah, University of Swat, KP, Pakistan

**Mr Farhad Nazir**

Lecturer Institute of Cultural Heritage, Tourism and Hospitality Management,  
University of Swat Pakistan, KP, Pakistan

### **Abstract**

*Managing tourism and its ancillary matters always remained a challenging issue, primarily, for less developed countries. Owing to this fact, tourism laws were developed. The case of Pakistan was not different where Pakistan Tourist Guide Act 1976 and Pakistan Tourist Guide Rules 1996, had developed for managing the affairs of tourism. The religion of Islam was not different in this regard, and, therefore, on several written and verbal attempts motivated the believers to perform travel in search of knowledge, wisdom, exposure and etc. Moreover, an effective legislation had been developed for the elaboration and safeguard of tourists' rights and duties respectively. Such legal spectrum could be found in the Holy Qurān, hadith and work of Fuqahā (classical Muslim jurists). The present work tried to investigate whether Pakistan Tourist Guide Act 1976 and Pakistan Tourist Guide Rules 1996 were in conformity with the basic principles, envisaged by Shari'ah for tourism or not Findings showed that majority of such rules were not in line with the basic tourism laws in Islam. Additionally, it was also found that Islamic guidelines and legislation, about traveling and touring, were more comprehensive and versatile in nature comparatively Tourist Guide Rules, prevailing in Pakistan.*

**Keywords:** *Tourism Law, Law, Legal System, Travel, Tourist, Islamic Law, Shari'ah*

### **Introduction:**

Of course, with the development of social, technological and economic facets, there had been a prevailing tendency of mankind to achieve excellence. Academic discourse, since long, centered through multiple lenses, was debating on this progression. Wheel invention, being one of these developmental aspects, facilitated travel and tour; catalyzing the past barriers



of communication. Different religions, too, urge their followers for visiting and participating in respective ceremonials. The religion of Islam was also not inaudible in this regard. The Holy *Qurān*, therefore, stated "*Travel through the earth and see how Allah did originate creation*".<sup>1</sup> Another verse of Holy *Qurān* revealed the same fact by stating, "*Travel through the earth and see what was the end of those who rejected Truth*".<sup>2</sup> The teachings of *Hadīth* offered, too, the same narration for travelling and touring. Abu Umamah narrated as, "*A man said: Messenger of ALLAH, allow tourism for me. The Holy Prophet (SAW) said: The tourism of my people is striving in the path of ALLAH, the exalted*".<sup>3</sup> Moreover, such theological directions later on had become permanent part of legislative archives. In course of traveling and touring, such legislation is labeled, without any known reason, as 'Islamic Tourism Laws'.<sup>4</sup> While explaining and interpreting these laws, unanimity, consolidation and harmony had been a prime objective of the Muslim jurists. They minutely described the do's and don'ts for demand side of tourism - incoming tourists and hosting community. Such profound legal data base could be found in various concepts i.e. *Dimmī*, *Mustāmen* and etc. On support service side (hospitality<sup>5</sup>), these laws assisted, too, the Islamic governments to have a legal spectrum that control the tourism business. Pakistan, being a typical Islamic country,<sup>6</sup> also inculcated these kinds of laws in its legal spectrum related to tourism - though to a very minor extent. However, courtesy of British laws had also resorted while legislating such laws.

In Pakistan, required attention had not given to the development of tourism laws. Tourists Guide Rules 1996 was the single available document dealing with tourism and other related issues. Previous to this legal document, 'Tourists Guide Act 1976' was legislated which badly failed in fulfilling the intended objectives. Instead of having a lot of potentials for tourism, an effective legislation was not made at all. This fact put the tourism and its development at the back foot and, as a result, paved a way for meager economic condition. In addition, Islamic tourism and travel teachings, having universal acceptances and importance, were also not inculcated, leaving behind an unaddressed avenue. In past, a variety of research endeavors had been made for debating the association of tourism, Islam and law. The work of Joan C Henderson<sup>7</sup>, for instance, had a worth to be cited here; bridging the religion, tourism and law i.e. 'Islamic Tourism'<sup>8</sup>. His findings revealed that Islamic Tourism had justified the religion of Islam as being a complete code of life. <sup>9</sup> Kadir H. Din, a renowned scholar, offered the same work where he asserted the teachings of Islam in favor of travelling and touring<sup>10</sup> in his view Islamic law had facilitated religious tourism, facilitated the travelers and tourists. <sup>11</sup> In the view of Ala Al Hamarneh & Christian Steiner Islamic Tourism has been conversed and designated as savior of the national economies, mainly in Muslim countries.<sup>12</sup> While Yuengn Xu & Nancy Gard McGehee argued that tourism law in perspective of tour guiding, has remained a shield against potential fraudulent sufferings for incoming

tourists.<sup>13</sup> Comparative to this, in the country of Pakistan, such legal spot of tourism is missing and the solitary document in this regard i.e. 'Tourist Guide Act 1976', also seem to be legislated overlooking the legal and social compulsions of Islam.

This study is related, predominantly, to the history of tourism law in Pakistan, its historical evolution in a comparative manner with the historical development of tourism law in Islamic law. Following this, shared aspects among both, are discussed minutely. Moreover, novel avenues, above all, of tourism law in Pakistan to be launched at academic and legal levels. In addition, suggestions are made, at various places, for inculcating Islamic tourism guidelines in the existing tourism laws in Pakistan. Moreover, few suggestions are also offered for legislators to legislate effective tourism laws in future – the laws which can guide both host and tourists in a best possible way.

### **Methodology:**

Dealing with any discipline of social sciences, primarily, where historical, chronological and comparative aspects are intended to be investigated, discourse analysis, indeed, is always considered more viable and appropriate by the academic circles. Considering the same, the current study does adopt this methodology to construe the verbal and contextual meanings of the issue under investigation. Moreover, for in-depth elaboration of tourism law's history in Islamic law and Pakistan, being prime focus of this study, this methodology is more relevant to be utilized. Since long, discourse analysis is being used to unveil the contexts, generality and unanimity of the texts. Kevin Hennim & Den Know have critically contended in favor of using discourse analysis in the emerging tourism research.<sup>14</sup> The current study, in addition to this, aims to unravel the meanings of the legal and religious texts; being used in the conventional and Islamic tourism laws Moreover, in tourism studies, principally, in tourism laws, discourse analysis has remained a practiced trend for exploring the texts and verbal pieces. Some scholars have the same opinion, especially, for tourism development plan and frameworks including Peter Burns who have argued over the critical discourse analysis and its viability of adaptation in the planning and developmental stages.<sup>15</sup>

The study has made a substantial use of secondary data, available in both legal archives of Islamic and conventional law, to have a balanced investigation. To this end, the required material has been collected from printed and online books, reputed journals (predominantly those related to the issue under investigation), relevant and updated websites, pertinent magazines, newspapers, critical essays etc. Various authentic websites, particularly those containing relevant data, have also been utilized in order to obtain the updated and authentic information on the issue under probe. In case of Islamic jurisprudence, the works classical Muslim jurists, such as, Abū al-Walīd Muhammad ibn Ahmad ibn Rushd<sup>16</sup>, Imām Muhammad ibn Ahmad

ibn Abī Sahal al-Sarkhasī<sup>17</sup>, Imām al-Shawkānī<sup>18</sup>, Imām al-Kāsānī<sup>19</sup>, Ibn Qudāmāh al-Maqdisī<sup>20</sup> and Ibn 'Ābidīn<sup>21</sup>. have been resorted to have understandings of tourism's laws in Islamic legal spectrum. The work of contemporary Muslim and Non-Muslim jurists is also followed for the same reason. However, priority is given to the work of classical Muslim jurists; being more reliable and authentic.

### **History of Tourism Law in Pakistan:**

Geographically and topographically, the country of Pakistan has been privileged with the opulent resources of tourism – by one way or another. Soon after getting independence from the British Empire, influx of tourist's arrival had been observed on the several tourists' destinations, for the most part, in its northern areas. Moreover, advancement in communication and cross-border entry system further smoothed the tourism in this country. As a result, a double-mirror situation had been aroused on the spot; disturbed the host populace and incoming tourists. To balance these, primarily, the social issues, dire need of legal legislation had been felt – both at private and government avenues.

Since independence from the British Rule in 1947, Pakistan had adopted numerous legal assistances from various legal documents ( existed at that time in the shape of Acts and Rules) originated in UK. Despite of having beneficial nature, these Acts and Rules created some barriers for development in tourism laws – as these legal documents were against the basic norms and culture of the country. In addition, these legal documents were inconsistent with the basic principles of tourism laws envisaged by Islamic jurisprudence.

Legal pace, towards formulating the tourism law here in Pakistan, was also quite deliberate, contrary to its geographical, political and geopolitical feasible location. This approach was not appropriate for a country having a prime tourist destination in South Asia<sup>22</sup>. Moreover, the overall legal position of tourism laws was also not of worth claim, as no single legislation had been made by the parliament for tourism and other related issues. The formation of official body of tourism i.e. Pakistan Tourism Development Corporation ( hereafter PTDC) in 1970 by the government of Pakistan, addressing the issues and challenges of emerging tourism industry<sup>23</sup>, could be considered the only development since 1947. Comparatively to this, the decade of (1970-1980) attracted the government and private sector consideration towards the development of tourism laws in the country. The Tourist Guide Act 1976<sup>24</sup> for instance, could be offered as the examples of such development. In the same era, Hotel and Restaurant Act 1976<sup>25</sup> and Hotel and Restaurant Rules 1977<sup>26</sup> were also legislated to legally assist the demand and supply side of hospitality industry here. However, after Tourists Guide Acts 1976, it took twenty years for the stakeholders of law to formulate Tourists Guide Rules 1996<sup>27</sup>; showing negligence and delay from the

government side.

The National Tourism Policy in Pakistan, in addition to the above, also faced some serious delay and there was no approved tourism policy till 2010. In 2010, the National Tourism Policy 2010 was drafted. This draft, ironically, did not approve yet. This really effected the demand and supply side of tourism<sup>28</sup> - might be to an extent that could not be recovered. The situation was made further worst by inculcating the 18<sup>th</sup> Amendment on April 08,2010; as this amendment had transferred federal rights to provinces. The PTDC, as a federal entity, was dissolved along with its physical resources in the provinces and separate provincial tourism entities, consequent upon that, had formulated. Of course, it was a positive attempt owing to many facts, but improper pre-planning left behind a tug of war, at the same time, between the federal and provincial bodies for financial and physical resources – and this situation is still in vogue<sup>29</sup>. After notification of the 18<sup>th</sup> Amendment on April 20, 2010 in the official Gazette of Pakistan, the federal entity i.e. Department of Tourism Services (DTS) was dissolved. In addition, individual provincial tourism entities had given the task to operate the regional offices of DTS in their respective provinces. Besides the unjust allocation of physical sources mentioned earlier, there remained some policy level flaws and non-compliance of some regional/international agreements and charters signed by PTDC and DTS. However, instead of these flaws, there are some merits of this devolution; explained by experts of the field.<sup>30</sup> Council of Common Interests (CCI)<sup>31</sup>, for instance, was a very good platform to address the legal issues through joint provincial-federal coordination. On the same way, formation of separate provincial tourism entities i.e. Tourism Development Corporation Punjab(TDCP), Tourism Corporation Khyber Pakhtunkhwa(TCKP) and Sindh Tourism Development Corporation(STDC) could be considered as a good example of that tenure. However, the province of Baluchistan was entirely deprived in this regard. This fact and many others show the unserious attitude of provincial and federal governments towards a province, bestowed with opulent resources of tourism.

Pertinent to mention the case of Khyber Pakhtunkhwa province, Tourism Corporation Khyber Pakhtunkhwa (TCKP), soon after its formation as result of 18<sup>th</sup> amendment, formulated a distinct Tourism Policy Khyber Pakhtunkhwa<sup>32</sup> in 2015; addressing the issues and challenges of tourism. However, this policy had, too, some grass root level flaws; still waiting for their solution. Although, 18<sup>th</sup> Amendment facilitated all the provinces with the autonomy on tourism sector and legislation, however, negligence could be observed on provincial government level in formulating such vital credentials. This quite slow legal pace, enriched with inattention, on this global emerging trend-tourism- had left this country in an unwanted economic circumstance. Justifications to this argument may be the agrarian economy; however, opulent tourism resources could be utilized as a

sustainable economic alternate. Moreover, being an Islamic Republic<sup>33</sup>, there were compulsions on the state level to formulate the tourism laws in accordance with the principles of Islamic law. However, no development had been made in this regard instead of the fact that such legal spectrum was beneficial for all without any sort of discrimination on the basis of color, creed, religion, sect and etc.

### **Tourism and Historical Islamic Jurisprudence:**

Travelling and touring in Islam has been appreciated in the Holy *Qurān* and *Hadīth* to a great extent. Seeking knowledge, having exposure and enriching experience, through travelling has been made obligatory for the Muslims. However, some prerequisite conditions and legal responsibilities both on travelers and tourists, either Muslims or non- Muslims, have been imposed. These legal responsibilities include, predominantly, avoiding of gambling, travelling of unmarried couples and their stay in the same hotels, inappropriate dressing, sale and purchase of alcohol, drugs and etc.<sup>34</sup> 'Halal Hotels', 'Muslim Friendly Hospitality Services'<sup>35</sup> are the most notable concepts in the contemporary industrial discourse of tourism. The World Travel Market describes the 'Halal Tourism' as "Tourism activities permissible under Islamic law (*Sharī'ah*) in terms of behavior, dress, conduct and diet"<sup>36</sup>.

Even the non-Muslim scholars have argued, ironically, the keen role of Islamic legislation, about the tourism and leisure.<sup>37</sup> In addition, both the Holy *Qurān* and *Hadīth*, on various occasions, have stressed for roaming in the length and breadth of earth to seek knowledge and exposure. Even some fundamental religious duties, including *Namāz* (Prayers) and *Siyām* (Fasting) have been relieved for travelers. The basic purpose behind such relaxation is to keep a traveler physically and mentally strong – an indispensable level of health for enjoying a travel. In response to this un-matchable importance for tourism, the renowned travelers like *Massoudi*<sup>38</sup> and *Ibn-e- Battuta*<sup>39</sup>, and many others, have performed number visits around the world for quenching the educational, social and spiritual thirsts; and possibly such travelling has become the main reason for their extra ordinary knowledge. It seems, after a profound study of Islamic legal system, that *Sharī'ah* has been quite ahead of time in formatting the legal stances for travel and touring; justifying this religion a complete code of life<sup>40</sup>.

Having richness in terms of golden universal principle, many codes of tourism laws have followed Islamic tourism laws for attaining effectiveness. Owing to this fact, the global code of ethics of UNWTO (United Nations World Tourism Organization) has resemblance with Qurānic verses. Article # 07 and 08 of code of ethics, for instance, offers, "Right to Tourism" and "Liberty of Tourists movements". The same principles have been described by the Holy *Qurān* very prior as, "Go you, then, for four months, backwards and forwards, (as you will), throughout the land, but know you that you cannot frustrate Allah (by your

*falsehood) but that Allah will cover with shame those who reject Him*<sup>41</sup>. Another verse of Holy *Qurān* provides the same by stating, *“Travel through the earth and see how Allah did originate creation; so will Allah produce a later creation; for Allah has power over all things*<sup>42</sup>. On the same way, Article No.1 of UNWTO global code of ethics states, *“Tourism’s contribution to mutual understanding and respect between peoples and societies*<sup>43</sup>. Article No.4 of the same code has the same objectives by stating, *“Tourism a user of the cultural heritage of mankind and contributor to its enhancement*<sup>44</sup>. These articles show that the basic purpose of tourism is to understand other culture and societies. The same idea has been elaborated by the of Holy *Qurān* as, *“Travel through the earth and see what was the end of those who rejected truth*<sup>45</sup>.

Of course, the said socio-legal position of tourism in Islamic law is quite ahead of contemporary academic debates. Embarking on the same, the Muslim Jurists have devoted a substantive portion of their classical work to tourism and tourists. Such discussion can be found, predominantly, as ancillary to the concepts of *Dār-ul-Kufr* ( non-Muslim state) and *Dār-ul-Islam* (Muslim state). The work of Shaybānī<sup>46</sup> and Sarakhsī<sup>47</sup>, the classical Muslim jurists of the Hanafī School, is worthy to mention herein.. Shaybānī’s explanation of non-Muslim travelers in Muslim countries, their privileges during their stay for a maximum duration of one year, seems to be a baseline for the general definition of tourist and statistical time period of almost one year, elaborated by UNWTO. Shaybānī, while discussing the same issue, states

*“ He [the non-Muslim traveler] could attain a state of temporary peace by means of an ‘amān*<sup>48</sup>, *which he could obtain from an official or from a private person before entering Islamic lands and becoming a ‘musta`mīn*<sup>49</sup>. *The musta`mīn enjoys a status of temporary peace for a period not exceeding one year, while in the Dār-al-Islam*<sup>50</sup>.<sup>51</sup>

The UNWTO defines the tourist in its short elaboration of tourism as, *“ Tourism comprises the activities of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes”*.<sup>52</sup>

It is evident from above mentioned example that Muslim jurists, owing to the teaching of the Holy *Qurān* and *Hadīth*, have extensively elaborated the rights of travelers in and out Islamic countries. Such evidence also supports the notion that the teachings of Islam, particularly, in the Holy *Qurān*, are not just stories of war and power games between different groups; but the purpose of describing them in Holy *Qurān* and *Hadīth* is to establish social and legal backs for the coming generations even till the Day of Judgment. Only condition for understanding these embedded meanings and interpretations is to broadly consider them with the contextual and geographical settings at those early times, medieval and contemporary era. Even some Muslim scholars have overlooked the teachings of Islam and

confined them to warfare and tactical fields, and the word of 'Mustamin' and 'Dimmi'<sup>53</sup> has also been solely categorized as a term of war only. Having a closer look of the work of classical Muslim jurists, it can be concluded that their work firmly argued about the tourists as *Mustamin* on Islamic lands and, therefore, have rights to be accorded sanctuary on temporary basis while his stay.<sup>54</sup> They should be treated like common permanent residents of the Islamic state; meaning thereby they have equal rights and duties as a common citizen. Such safe-conduct may be rendered to them not only by the Islamic state but by the individuals (Muslim citizen) too. The Holy *Qurān* confirms the same conduct by stating as,

*"If one amongst the pagans ask thee for asylum grant it to him so that he may hear the word of God and then escort him to where he can be secure: that is because they are men without knowledge".*<sup>55</sup>

However, the above-mentioned clarifications and their comparison with modern times, speaks of the fact that Islam, in its very early stages described the rule of law, above all, on the subject under consideration.

*Qurān* and *Hadīth*, in addition to the above, bring the concept of "*Ibn al-Sabīl*"<sup>56</sup>; a concept that is closely related to the concept of tourism. On various junctures the term "wayfarer" or "*Ibn al-Sabīl*" has been debated to encompass the rights and responsibilities of travelers and visitors. Moreover, such terms and their textual discourse, indeed, exhibit the fact that *Shari'ah* appreciates movement of people in search of knowledge, exposure and leisure. In addition to these, obligations on the host communities, in respect of travelers, have been made compulsory. The verse of Holy *Qurān* states as:

*"Alms are for the poor and the needy and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to truth); for those in bondage and in debt; in the cause of God; and for the wayfarer; (thus is it) ordained by God and God is full of knowledge and wisdom".*<sup>57</sup>

On another occasion, the reward for serving the 'wayfarer' has been described by the Holy *Qurān* as:

*"And know that out of all the booty that ye may acquire (in war) a fifth share is assigned to God and to apostle and to near relatives, orphans, the needy and the wayfarer if ye do believe in God and in the revelation We sent down to Our servant on the day of testing the day of the meeting of the two forces. For God has power over all things".*<sup>58</sup>

In *Hadīth*, similar teachings about wayfarers and reward for their journeys, has been elaborated on several occasions.. , The following *Hadīth* can be offered as a solid evidence in this connection

*"I heard the Messenger of Allah say: If anyone travels on a road in search of knowledge, Allah will cause him to travel on one of the roads of Paradise. The angels will lower their wings in their great pleasure with one who seeks knowledge, the inhabitants of the heavens and the Earth and the fish in the deep waters will ask forgiveness for the learned man. The superiority of the learned man over the devout is like that of the*

*moon, on the night when it is full, over the rest of the stars. The learned are the heirs of the Prophets, and the Prophets leave neither dinar nor dirham, leaving only knowledge, and he who takes it takes an abundant portion".<sup>59</sup>*

Renowned Muslim jurists Imām Sarakhsī, a prominent jurist, have discussed some of the fundamental rights of tourists and host Muslim countries' obligations in regard of these travelers and visitors. According to his legal verdicts, particularly in respect of non-Muslim travellers, an ultimate sanctuary has been the fundamental right of these incoming visitors. The provision of this safe-conduct has been contended as the utmost responsibility of the Muslim state.<sup>60</sup> The legal status of non-believers on Muslim lands has been argued by Majid Khaddurii while commenting the work of Imām Shaybani as: "If one of them entered the territory of Islam as a merchant without an 'aman' except the peace agreement they had made[what would be the rulling]? He replied: He would enjoy 'aman' by virtue of that agreement"<sup>61</sup> His scholarly discussion has become a permanent feature of legislative archives of many Muslim countries.

#### **Tourism Law of Pakistan and Islam's Tourism Perspective: A Comparative Analysis:**

The tourism law of Pakistan i.e. Pakistan Tourist Guide Rules 1996<sup>62</sup> has been formulated on 18<sup>th</sup> November 1996; aiming to address and resolve the official matters of tourism. However, detailed analysis of the seventeen rules, elaborated in the same Guide, validates of the fact that Islamic perspective of tourism has been overlooked therein.. Though under the domain of Rule No. 15<sup>63</sup>, there are some generic ethical considerations and code of conduct, set for both hosts and tourists. These ethical considerations and code of conducts have been oriented, ironically, towards the industrialist approach of tourism. The Islamic legal ethics, however, is entirely ignored – for one reason or another. These legal ethical rules have humanistic and sympathetic comprehension about dealing and assisting the tourists in and around the Islamic states. Moreover, they guide, both the tourist and the host, how to smooth their relations. Furthermore, being an Islamic Republic, absentia of such legal ethical teachings in a central legal feature of tourism, verifies that on state level the prime focus on tourism law has been unheeded. Justifications may be posed for such negligence; saying that inclusion of such teachings in legal spot can be a radical religious approach. However, the element of care, facilitation, universal receptions and un-biasedness in Islamic perspective of tourism, can be a compact counter argument for such justification.

#### **Social and Institutional Implications of Research:**

Legal rules and their interpretations, of course, are always quite efficacious in normalizing the societal matters. In case of tourism, such rulings

and elucidations are even keener due to exposure of peoples having different geographical and cultural backgrounds. *Shari'ah*, through its divine approach also formulated some basic legislative stances on the same subject – can be rightly called the best guidelines for tourism. Current study addresses the approach of common law and Islamic law with respect to tourism and tourists. Moreover, historical background of the both has been extensively debated herein too. While having these merits, social consolidation and congruence can be achieved through this humble endeavor. Regarding the tourism law, for instance, sense of awareness among the public at large can be created. Such awareness may further facilitate in forming the social unity and camaraderie; independent from the barriers of creed, color, sect and religion. Such studies and similar attempts in future may be novel slant on the subject and equal benefits can be taken at ground level. On institutional frontages, such in-depth study may be very helpful, principally, in the prospective of policies and laws of tourism; at district, national and international level. Inculcations can be made in the existing laws and policies of tourism on the basis of principles elaborated in the Holy *Qurān*, *Hadīth* and works of the classical Muslim jurists. Legislative bodies, as major stakeholders of tourism, can take guidance from this study by incorporating the Islamic jurisprudence in the existing tourism laws. Moreover, work of the classical Muslim jurists may be utilized effectively for formulating new or amend the existing legal documents. Such study may be beneficial for private sector, including tour operators, travel agents and tourism consultants while formatting the tour packages - inclusive and exclusive tour itineraries. Additionally, this study may also be advantageous for independent free lancers, including, tour guides, porters, escorting represents and tourists' facilitators while making the necessary arrangements in service of the tourists.

### **Conclusion:**

Since long, legal restrictions have been quite prolific in optimizing the humans, residing on the earth. Tourism laws, being one of these common laws, justify their place in a contemporary arena; offering legal rules and limiting the tourist and host in a more mediator fashion. On the other hand, Islam, being second largest religion in the world, has elaborated certain legal norms for tourists and hosts. In Pakistan, the legal aspect of tourism is dealt by a document called *Pakistan Tourist Guide Rules 1996*. In-depth analysis of endeavors for tourism legislation reveals that serious negligence has been observed by the private and government legal stakeholders. Moreover, it is also noted that such laws are also in conformity with the basic principles of Islamic law, envisaged for tourism – both at tourist and host levels. There are many reasons owing to which such laws are not put in line with those of Islamic law. However, the main among these is the unawareness of the legislators regarding Islamic tourism laws. After having a profound study of such laws confirms that these are quite ahead of time in regard of travelers,

tourists and hosts, irrespective of color, creed, religion and etc. Moreover, such brilliant legal rules and their interpretations can be presented as solid evidences as counter arguments against the wrong perception in respect of this religion i.e. Islam is against the tourism or its ancillary services. However, some prohibitions have been posed by Islamic law to keep the social system in an optimal mode. The Holy *Qurān* urges the believers to roam around the world in pursual of knowledge, wisdom and exposure. Through this research, an attempt has been made to elaborate the celebrated history of tourism i.e. the legal and Islamic approach. Embarking on the same, tourism law of Pakistan and its historical progress has been discussed critically. Moreover, comparative analysis of the same with Islamic jurisprudence has also been carried out. The Present work, primarily, deals with the concept of tourism in Islamic law . However, in course of academia, this approach is overlooked - for one reason or another. The approach of Islam about tourism, discussed herein, may be offered in the curriculum of tourism management degrees - both at undergraduate graduate levels.. Additionally, such inculcation may be made, too, in associate degrees, diploma programs, short-skilled certifications and crash courses of tourism. It can produce well-accustomed manpower having conceptual understanding of religious approach of tourism. Moreover, on schools and colleges levels inclusion of these subjects can be, indeed, an innovative attempt for clasping the graduates with Islamic perspective of tourism. Moreover, such approach can be adopted in case of typical religious institutions.



This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

### References

- <sup>1</sup> *Qurān*, 29:20 The English translation of the Holy *Qurān* is adopted from Abdullah Yousaf Ali... See for further details Abdullah Yousaf Ali... *The Holy Qurān* (King Fahd Holy *Qurān* Printing Complex) 1987.
- <sup>2</sup> *Qurān*, 06:11.
- <sup>3</sup> *Sunnan Abi Dawood*, Vol III, *Hadith* No 2480.
- <sup>4</sup> Wan-Fei Wang, Yao Chang & Philip L. Pearce" China's first Tourism Law: representations of stakeholders' responses", *Journal of Tourism and Cultural Change*,16(3), 2017, 309-327.
- <sup>5</sup> Hospitality generally categorized into traditional and conventional hospitality, having difference of monetary factor. Traditional hospitality is offered in homes, Hujras and Inns without any cost or financial liabilities on the guest, while conventional hospitality or industrial hospitality, on the other hand, is offered in hotels, restaurants and guest houses with the inclusion of financial charges on the guest.

- <sup>6</sup> The original text goes as, “Islam shall be state religion of Pakistan” ..... *The Constitution of Pakistan, 1973, Article 2.*
- <sup>7</sup> See for example his work ...Joan C. Henderson Islamic Tourism Reviewed, *Tourism Recreation Research*, 34(2), 2009, 207-211.
- <sup>8</sup> ‘Islamic Tourism’ in the recent times has been emerged as new concept which bridges the teachings of Islam with the modern tourism practices. This concept includes the ‘Halal Food’ to urge on the importance of providing food and beverages items to the Muslims tourists round the world, that are legal to eat in the religion of Islam and prohibition of ‘Haram’ food and beverages items like ‘Pork’ and ‘Alcohol’. The ‘Islamic Tourism’ has surfaced on the academic and policy making forums due to increasing number of Muslims tourist’s arrival to non-Muslims countries and demand for ‘Halal’ food and beverages.
- <sup>9</sup> *Qurān*, 05:03
- <sup>10</sup> Kadir H. Din, Islam and Tourism: Patterns, Issues and Options, *Annals of Tourism Research* 16, 1989, 542-563.
- <sup>11</sup> *Ibid*,542
- <sup>12</sup> Ala Al Hamarneh & Christian Steiner, *Comparative Studies of South Asia Africa and the Middle East*,24(1),2004,173-182.
- <sup>13</sup> Yueying Xu and Nancy Gard McGehee, Tour guides under zero fare mode: evidence from China, *Current Issues in Tourism*, 2016.
- <sup>14</sup> Kevin Hannam & Dan Know, Discourse Analysis in Tourism Research A Critical Perspective, *Tourism Recreation Research*, 30(2), (2005).
- <sup>15</sup> Peter Burns, The 1990 Solomon Islands tourism plan: a critical discourse analysis, *Tourism and Hospitality Planning & Development*, 1, 1(2004), 57-78.
- <sup>16</sup> Abū al-Walīd Muhammad ibn Ahmad ibn Rushd, *Bidāyt al-Mujtahid wa Nihāyat al-Muqtasid*, Vol. 2, 1st Edition. (Beirut: Dār al-Fikr Labnan, 2003).
- <sup>17</sup> Abū Bakar Muhammad ibn Abī Sahal Sarakhsī, *Al-Mabsūt*, (Beirut: Dar-Ehyā al-Turāth al-Arabi, Edition.2002).
- <sup>18</sup> Shawkānī, *Nayl al-Awtār*, (Dār Ehiā al-Tourath al-‘Arabī, 1<sup>st</sup> Edition.2001).
- <sup>19</sup> Abū Bakr ibn Mas‘ūd al-Kāsānī, *Bādā’i‘al-Sanā‘i‘*,1<sup>st</sup> Edition, (Beirut: Dār al-Fikr Labnan, 1996), Kitāb-al Sharikah.
- <sup>20</sup> Ibn Qudāmah al-Maqdisī, *Al-Kaḥfi*, 5<sup>th</sup> Edition, (Beirut: Al-Maktab al-Islāmī, 1988).
- <sup>21</sup> Ibn ‘Ābidīn, *Radd al-Muhtār*, vol. 6, (Beirut: Dār al-Fikr, 2005).
- <sup>22</sup> The country of Pakistan, having opulent tourism resources, has been ranked among prime tourists destinations in South Asia...For details please visit, <https://www.dawn.com/news/1228738>. (accessed March 15, 2019).
- <sup>23</sup> Pakistan Tourism Development Corporation, hereafter PTDC, was incorporated on 30<sup>th</sup> March 1970, under the repealed Act of Companies 1913.... The text retrieved from official website of Pakistan Tourism Development Corporation ...Please see for further details [http:// www.tourism.gov.pk](http://www.tourism.gov.pk) (accessed 15 March 2019).
- <sup>24</sup> Act No. XXVI, *The PAKISTAN TOURIST GUIDES ACT, 1976*
- <sup>25</sup> “Act No. LXXXI of 1976 Pakistan” is also termed as “*The Pakistan Hotels and Restaurant Act, 1976.*”
- <sup>27</sup> S R O.134 (KE) 96: In exercise of the powers conferred by section 12 the Tourist Guides Act, 1976(XXVI of 1976).
- <sup>28</sup> Stephen L.J. Smith ,Defining Tourism a supply – side view, *Annals of Tourism Research*,15(2),1988,179-190.

- <sup>29</sup> The issue of handing over and taking over the federal assets of PTDC in the provinces has been debated in leading dailies of Pakistan. For details please visit...<http://www.tribune.com.pk/story/58441>. (accessed 25<sup>th</sup> March 2019).
- <sup>30</sup> Aisha Ghaus- Pasha 'Making Devolution Work in Pakistan' *The Lahore Journal of Economics* (September 2012): pp. 339-357.
- <sup>31</sup> The 18<sup>th</sup> Constitutional Amendment was unanimously passed with the consent of all political parties. The Constitution Act 2010, of this amendment received the acquiescence of the President on April 19, 2010. This also reformed the functional responsibilities of numerous levels of government. This amendment has also eradicated the constitution's Concurrent Legislative List and amended the Federal Legislative List (Parts I &II). The previous concurrent list's functions have been devolved to the provinces and no less than 17 federal ministries have been devolved. As a result of 18<sup>th</sup> amendment, several subjects from Part I of the federal legislative list consisting of functions allocated solely to federal government to Part II, assigning them a joint provincial-federal obligation under the Council of Common Interests. Accordingly, under the 18<sup>th</sup> Amendment a balanced is created among the provincial and federal governments...For details please see: Farhanaz Khan, Position Paper on Devolution of Tourism in Pakistan, *Pakistan Institute of Parliamentary Services*(Islamabad, Friedrich-Ebert-Stiftung),2.
- <sup>32</sup> The Khyber Pakhtunkhwa Tourism Policy 2015, was launched on March, 17,2016... For details please visit <http://tourism.kp.gov.pk>. (accessed 20 March 2019).
- <sup>33</sup> The original text goes as..., "Islam shall be state religion of Pakistan"... *The Constitution of Pakistan, 1973, Article 2*.
- <sup>34</sup> Hamira Zamani-Farahani and Joan C Henderson, Islamic Tourism and Managing Tourism Development in Islamic Societies: The Case of Iran and Saudi Arabia, *International Journal of Tourism Research*,12,(2010),79-89.
- <sup>35</sup> 'Muslim Friendly Hospitality Services (MFHS)' is a recent term in the hospitality and tourism arena, used to signify those lodging properties having 'halal' food items and other facilities for the Muslim guests. Even in some leading tourists' destinations of the world, this concept is being applied to address and capture the tourism market, particularly of the Muslim tourists... Joan C. Henderson Sharia-Compliant Hotels , *Tourism and Hospitality Research*, 10(3),2010, 246-254.
- <sup>36</sup> Halal tourism falls under religious tourism but differs from Islamic tourism where non-Muslims visit Muslim countries to find out more about Islamic culture. Even though Islam encourages its followers to acquire knowledge by exploring the world, domestic and inbound tourism is still a relatively new concept for the Muslim countries, particularly for Middle East countries...For details please see: World Travel Market Global Trends Report 2007.
- <sup>37</sup> Hasan Saad Sanad, Ayman Mounier Kassem and Noel Scott, Tourism and Islamic Law, *Tourism in the Muslim World ,Bridging Tourism Theory and Practice*,2, (2010), 17-30.
- <sup>38</sup> Al- Mas'udi, *Abu al-Ḥasan 'Alī ibn al-Ḥusayn ibn 'Alī al-Mas'ūdī*; c. 896-956) was an Arab historian, geographer and traveler. He is sometimes also called as 'Herodotus of the Arabs'. He has written several books on history, geography, natural sciences and philosophy. Throughout the world , he is being recognized as prominent historian and travel enthusiast.
- <sup>39</sup> Ibn Battuta, *Abū 'Abd al-Lāh Muḥammad ibn 'Abd al-Lāh l-Lawātī ṭ-Ṭanḡī ibn Baṭūṭah*;

(February 25, 1304 – 1368 or 1369) was a Muslim Berber Moroccan scholar and explorer who travelled the medieval world. During his travelling period of more than thirty years, he visited many non-Muslim states of Southeast Asia, Central Asia, China and South Asia. His famous book '*A Gift to those who contemplate the wonders of cities and marvels of traveling*' contains records of his trips and tours throughout his life.

<sup>40</sup> *Qurān*, 05:03 The English translation of the Holy *Qurān* is adopted from Abdullah Yousaf Ali... See for further details: Abdullah Yousaf Ali, *The Holy Qurān* (King Fahd Holy *Qurān* Printing Complex) 1987.

<sup>41</sup> *Qurān*, 09:02

<sup>42</sup> *Qurān*, 29:20.

<sup>43</sup> Article.1 of UNWTO's Global Code of Ethics defines the very basic function of tourism activity and extends that the tourism brings together the tourists and hosts and a reason of exposure among these. The activities of tourism results in the mutual understanding between the hosts and tourists about their culture, religion, and geography. In sum, the tourism through its activities involved on both ends of hosts and tourists has been quite productive to bring together the people of distant regions. For details please see: <http://www.tourism4sdgs.org>. (accessed April 20, 2019).

<sup>44</sup> Article. 4, of UNWTO's Global Code of Ethics is particularly arguing the Cultural Tourism and it has been debated that tourism in its Cultural Tourism type, is acting as user of cultural heritage round the globe and contributes in its sustainability and enhancement. Goal # 11 of Tourism and Sustainable Development Goals, is also in accordance with the Article # 4, stating "A city that is not good for its citizens is not good for tourists. Sustainable tourism has the potential to advance urban infrastructure and universal accessibility, promote regeneration of areas in decay and preserve cultural and natural heritage, assets on which tourism depends. Greater investment in green infrastructure (more efficient transport facilities, reduced air pollution, conservation of heritage sites and open spaces, etc.) should result in smarter greener cities from which not only residents, but also, tourists can benefit... For details please see: <http://www.tourism4sdgs.org>. (accessed April 20, 2019).

<sup>45</sup> *Qurān*, 05:03... This verse addresses the ancestor communities who have vanished from the surface of earth and urge the followers to visit and have lessons from their deeds and lifestyle visible in the remains of their civilization. Same heritage in preview of culture and archaeology has been debated by UNWTO in their Article # 01.

<sup>46</sup> Abu 'Abdullah Muḥammad ibnu-l-Ḥasan Ibn Farqad ash-Shaybānī, the father of Muslim International law, was an Islamic jurist and a disciple of Imam Abu Hanifa. His works, known collectively as *zahir al-riwaya*, were considered authoritative by later Hanafis; they are *al-Mabsut*, *al-Jami al-Kabir*, *al-Jami al-Saghir*, *al-Siyar al-Kabir*, *al-Siyar al-Saghir*, and *al-Ziyadat*.

<sup>47</sup> Imām Abū Bakar Muhammad ibn Abī Sahal Sarakhsī was a prominent jurist of the Hanafi School in the 11th century. He was also known as "*Shams ul al-A'imma*" ("the sun of the leaders"). He was in prison for more than 15 years due to his juristic opinion against the ruler of the time. The mentioned book is a collection of his lectures delivered by him to his disciples while he was in prison. It is a very comprehensive book, spread over 30 volumes, contains detailed discussion

of *ibādah* and *mu'amalah*. He discusses all their related issues in very details and tries to elaborate each and every single issue with practical examples from daily life. His work can be affectively used for introducing new methodology in the field of research related Islamic jurisprudence. He also has a book on the principle of Islamic jurisprudence which is an evidence of his intellectual capacity both in Islamic Law and its jurisprudence. He is considered an authority by the classical and contemporary jurists and weightage is always given to his jurisprudential verdicts.

<sup>48</sup> *Aman'* is a term used to denote the short-term safe conduct provided to non-Muslims during their temporary stay in Islamic lands.

<sup>49</sup> *Musta'min* is a historical classification for a non-Muslim foreigner, who only temporary resides in Muslim lands via a short-term safe conduct or '*aman'*', which affords the '*musta'min*' the protected status of '*dhimmis*(non-Muslims subjects permanently living in a Muslim-rules land) without having to pay '*jizya*'. The *Musta'min* includes merchants, messengers and knowledge seekers and other group of people as well.

<sup>50</sup> The territory of Muslims where Islamic Law applies.

<sup>51</sup> Majid Khadduri, *The Islamic Law of Nations-Shaybani's Siyar* (Baltimore, John Hopkins University Press,2002).

<sup>52</sup> United Nations World Tourism Organization(UNWTO), Definition of tourism.... for details and other statistical information, please see: <https://www.publications.unwto.org>. (Accessed 20<sup>th</sup> May 2019).

<sup>53</sup> A *dhimmi* or *dhimmis* are the people referred to as non-Muslims living in an Islamic state with legal protection. This word means '*protected person*' and it is the obligation on state to provide protection to their life, property and freedom of religion. And they (*dhimmis*) are supposed to be loyal to state in return to state's protection and privileges.

<sup>54</sup> Muddathir Abdul Rahim, *Asylum and Sanctuary in Islam, Dirasat Ifriqiyya*,2,1986,169-174,172.

<sup>55</sup> *Qurān*, 09:06.

<sup>56</sup> Ibn as-Sabeel or wayfarer is also defined as a traveler away from home... See for further details: Ar-Raghib al Asfahani: *al-Mufradat fi Ghareeb al-Qur'an*, Mustafa al-Babi al-Halabi Bookshop, Cairo, p. 223.

<sup>57</sup> *Qurān* 09: 60.

<sup>58</sup> *Qurān* 08:41.

<sup>59</sup> *Sunnan Abi Dawood*, Vol IV, Hadith No . 3634.

<sup>60</sup> And if he was in an inaccessible place where the Muslims did not hear him talking and didn't see him, and he came down from that place without anybody and without weapon in order to come to the Muslims, and he called for protection (*'amān*) when he was where they could hear him and he is in that place not constrained by the Muslims, then he is under protection (*'āmin*);because he did all in his power to depart from that inaccessible place and call for protection (*'amān*) when he was where the Muslims could hear him, and threw his weapon, and it is clear that he came to demand protection (*'amān*), then he is protected (*'āmin*), whether they granted protection (*'ammanū*) or not (*lam yu'amminū*), because the divine law grants protection to those like him... for further details, please see: Muhammad Al-Sarakhsī, *Sarh Kitab al-siyar al-kabir li Muhammad bin*

*al-hassan al-saybani*(Beirut, Dar al-kotob al Ilmiyah, 1997),205.

- <sup>61</sup> Majid Khadduri, *The Islamic Law of Nations-Shaybani's Siyar* (Baltimore, John Hopkins University Press,2002),157.
- <sup>62</sup> The original text flows as "Short title a Commencement\_\_\_\_(1) These rules may be called the Pakistan Tourist Guides Rules 1996"...*Pakistan Tourist Guide Rules 1996, Rule.01.*
- <sup>63</sup> The subsection. 01 of Rule. 15 flows as "The licensee shall adhere to ethical practices and shall refrain from objectionable activities such as overcharging and misleading tourist clients or principals and failing to fulfill his commitments", while sub-section # 02 of the same rule states "The following shall be regarded unethical practices namely: (a) Misleading public, any client or tourist. (b) Damaging the reputation of client or tourist. (c) Claiming to provide a better service than is fact he does; (d) Unjustly delaying the discharge of debits accruing from his business transaction; (e) Failing to afford necessary facilities to the Federal Government or an office premises and records'; (f) Failing to maintain a high standard of reputation or doing anything which is against the prestige or security of Pakistan;
- (g) Failing to have good relations with the public tourists and clients".... *Pakistan Tourist Guide Rules 1996, Rule. 15.*