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Enforcement of Fundamental Rights under the Constitution of Pakistan, 1973: Challenges and Judicial Trends

Naveed Hussain

Assistant Professor, School of Law, University of Gujrat

Email: naveed.hussain@uog.edu.pk

Rao Qasim Idrees

Associate Professor, School of Law, University of Gujrat Email: qasim.rao@uog.edu.pk

Yasir Arfat

Lecturer, School of Law, University of Gujrat Email: yasir.arfat@uog.edu.pk

ABSTRACT

The Islamic Republic of Pakistan 1973 Constitution contains a comprehensive list of core rights and also offers ways through which they may be implemented. But the translation of these constitutional assurances into the real world has been difficult by socio-economic factors, political interference and the institutional constraints. The paper reformulates and evaluates the application of the basic rights as espoused in the 1973 Constitution of Pakistan with an aim of identifying the challenges that have arisen with respect to the basic rights and also an evaluation of the judicial trends that have been developed regarding the challenges. The paper will employ a doctrinal approach and look at U.S. constitutional clauses, case law, and commentary literature to determine how the higher courts of Pakistan have upheld fundamental rights throughout the years. The results reveal that the higher court has been fundamental in enforcing rights under the outstanding use of innovative measures such as writ petitions, public interest litigation (PIL), and suo motu measures. There have been numerous instances where the courts have facilitated the availability of justice and formulated positive jurisprudence on rights to life, dignity, equality, and fair trial. However, the enforcement has been uneven; the periods of judicial activism have been followed by the deference particularly under martial law or other emergency systems and adherence to court decisions by the executive has been lacking. The discussion points out that judicial activism has assisted in sealing the enforcement gap, but also brings about debates on separation of power. The paper ends with a conclusion and recommendations on how to improve the implementation of the fundamental rights in Pakistan by undertaking legal changes, enhanced institutional approaches, and appreciation of the judicial rulings.

Keywords: Fundamental Rights, Constitution of Pakistan 1973, Judiciary, Enforcement, Public Interest Litigation, Judicial Activism, Rule of Law.

Introduction

The basic rights are the pillars of the constitutional order in Pakistan that are guarantees of liberty, equality and justice to all the citizens. The Constitution of Pakistan of 1973 lists a wide scope of fundamental rights (Articles 8-28) such as right to life, dignity, freedom of speech, religion, equality before law, and fair trial among others. These rights are justiciable rights that is, individuals can appeal to the courts to undertake justice in the event of their violation. Proper implementation of basic rights is critical to the rule of



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law and the democratic practice. It allows citizens to be heard, to speak out against acts of abuse of authority and to hold the state authorities to account on any form of abuse of right guaranteed. Pakistan is also bound by international human rights documents including the International Covenant of Civil and Political Rights (ICCPR) and the Convention against Torture that enforce its duty to protect the fundamental rights in accordance with the international standards. In combination, both the constitutional assurances and the international commitments form a framework within which the state is charged with the responsibility of safeguarding and delivering on the basic rights.¹

Nonetheless, with this strong formal structure, there have been continuing problems in the actualization of fundamental rights in Pakistan. Most of the constitutional promises have not been met completely, due to a series of socio-economic, legal-political, and institutional factors. Poverty and illiteracy rates are high and restrict the knowledge levels of the citizens on their rights and access to legal solutions. Political unrest and authoritarian regimes have also hindered effective implementation of rights; martial law regimes of the past have suspended or limited the fundamental rights which weakened the constitutional protection. There are gaps between law and practice even in a parliamentary government where executive authorities are unresponsive or resistant to a judicial order enforcing rights in some circumstances. The capacity and the approach of the judiciary has played a role in its own right: there have been moments in the history of Pakistan when the judiciary has either bowed to the dominant executives (as in some high-profile cases where extra-constitutional acts have been affirmed by the judiciary) or has made bold judgments to support the rights and curb the excesses of the government. This relationship of mutual action between the Judiciary and the rest of the government is an essential background to the interpretation of the role of fundamental rights being implemented according to the Constitution of 1973.²

Research Objective: In this regard, the objective of this paper is to critically analyze the application of fundamental rights in Pakistan in the two interrelated areas (1) the main problems that stand on the way of successful implementation of constitutional rights and (2) the trends in judicial activity that have already appeared in response to the challenges. Under judicial trends, we mean the changing trends that the courts are following in their interpretation of the Constitution and their intervention (or non-intervention) in the affairs of fundamental rights. The better courts in Pakistan have been alternating between periods of relative restraint and periods of high activism in enforcing rights. The proposed research aims at describing those trends and evaluating their influence on the basic rights protection.³

The implication of this question is that it has implications on the rule of law and democratic health in Pakistan. An effective enforcement system of basic rights is the assurance that the high ideals that are enshrined in the Constitution are not meaningless in the everyday lives of the citizens. On the other hand, chronic ineffectiveness of the enforcement may result in disillusionment, social injustice, and continuation of abuses. This paper provides insight into how Pakistan is able to improve on achieving its constitutional promise by analyzing the predicaments and the courts response to the predicaments. The following sections will provide an overview of the available literature,

¹ Akram, W., Abbas, S. D., Naveed, M. B., Waheed, A., & Dolati, A. H. (2025). The Evolution of Fundamental Rights: A Comparative Study of the constitution of Pakistan and the United States. *AL-HAYAT Research Journal (AHRJ)*, 2(4), 194-204.

² Muhib, M., Muhib, K., & Muhib, Z. (2025). Evolution of Constitutionalism in Pakistan: Challenges and Prospects. *Journal of Social Signs Review*, 3(03), 376-393.

³ Bashir, M. H., Abdullah, M., Abbas, N., & Billah, M. (2025). The Role of the Judiciary in the Interpretation of the Constitution of Pakistan. *Dialogue Social Science Review (DSSR)*, 3(5), 601-609.



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a description of the methodology adopted, the results of the analysis of the legal sources, a discussion that provides interpretation of the results (with some comparison insights where applicable), recommendations of a reform, and the conclusion that will sum up the most important points.

Literature Review

The literature sources on the constitutional law and judicial system of Pakistan give us great opportunity to learn how the fundamental rights were violated and how they were followed historically and today. Initial writings on the history of judicial in Pakistan like Newberg (1995) reported how the courts were frequently ineffective to enforce constitutionalism during military regimes, and sometimes legitimised extra-constitutional coups at the cost of basic rights. To take an example, the notorious Dosso case (State v. A military coup was legalized in 1958 in Dosso, by the Supreme Court, which was extensively criticized to put the essential rights and the Constitution in the backseat to the so-called doctrine of necessity. The subsequent history of this trend of judicial acquiescence was overturned in *Asma Jilani v. In Government of the Punjab* (1972) where the Supreme Court had the spine to reverse Dosso and declare martial law by the General Yahya Khan illegal and the Supreme Court established that no doctrine could condone the abrogation of fundamental rights and the Constitution.⁴ Asma Jilani ruling has been widely described as a breakthrough in constitutional jurisprudence in Pakistan because it re-established the constitutional primacy, and the primacy of fundamental rights. Nevertheless, the literature also points out the inconsistency of judicial conduct: just a few years after Asma Jilani the Supreme court took a radically new direction in *Begum Nusrat Bhutto v. It validated the martial law of General Zia-ul-Haq under the doctrine of necessity (Chief of Army Staff 1977)*, which in effect subordinated fundamental rights to the military rule. This U-turn depicted the extent to which political pressures and the larger context dent the court into enforcing the rights.⁵

History Academic commentaries in the 1980s and 1990s have noted the incremental rise of a more aggressive judiciary in the protection of fundamental rights particularly at the time of civilian government. One of the other important developments, which was covered in the literature, is the emergence of public interest litigation (PIL) in Pakistan. According to Ali and Rehman (2021), PIL - a new form of judicial procedure, which enables broader standing to bring a petition over issues that have a national concern - was successfully applied and introduced by the Supreme Court in the late 1980s. *Benazir Bhutto v. can be regarded as two landmark cases that are commonly referred to in this matter. Federation of Pakistan (1988) and Darshan Masih (1990)*. In *Benazir Bhutto*, the Supreme Court considered a petition by the opposition leader to be maintainable despite the locus standi, thus making litigants to bring forward personalities that concerned the masses (like fairness in elections and rights of political participation). Soon after, in a case filed under the auspices of a letter claiming bonded labour, the Supreme Court under Chief Justice Muhammad Afzal Zullah, cognisanced the violation of gross human rights and released bonded labourers. Such cases marked the end of the classical, restrictive understanding of standing and remained an augur of a new age where the judiciary would actively defend fundamental rights at the time when even victims were too marginalized as to go to court. Experts have derived the origins of this PIL strategy to previous judicial concepts in the 1960s and have observed that the development of Pakistan courts was

⁴ *Asma Jilani v Government of the Punjab* (PLD 1972 SC 139)

⁵ <https://recordoflaw.in/asma-jilani-v-government-of-the-punjab-pld-1972-sc-139/>



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influenced by the similar progressions in other jurisdictions, although in India, PIL came into existence to better access justice (Ali and Rehman, 2021, p. 22-23).

The constitutional and legal tools that could be utilized to enforce the rights are also illuminated in literature. Article 199 of the 1973 Constitution gives the provincial High Courts the power to issue writs to assert fundamental rights over state authorities, and Article 184(3) gives the Supreme Court original jurisdiction in any case of public interest over the assertion of fundamental rights. Article 184(3) provides that the case must concern a question of public importance in which the reference is to a fundamental right, which Pakistan Supreme Court has occasionally construed very liberally to allow it to intervene in cases involving such issues as environmental protection and governance scandals. The case of *Wukala Mahaz* (1988) is used to quote Chief Justice Muhammad Haleem who noted that Article 184(3) and Article 199 are parallel to each other because parties that may be affected by the same may take redress to High Courts or directly to the Supreme Court in the respective cases. This jurisprudence emphasised the opinion of the Court that the extraordinary jurisdiction ought to be used to supplement, and not oppose, the role of the High Courts, assuming that the conditions of public importance and violation of rights are fulfilled.⁶

With the judiciary taking a more active role, a literature criticizing judicial activism in Pakistan was also formed. The Court not only passed on the conventional courteous issues of law but also started to give an active form to the public policy under the guise of protecting the basic rights and the common good. Examples to this are the Supreme Court interventions in matters of governance such as the distribution of sugar prices, control of appointments in the public sector, and the high-profile corruption cases all explained under the umbrella of the fundamental rights or the significance of the people. This has been both applauded and criticized in academia. Advocates believe that aggressive judiciary is required in the context of Pakistan to restrain executive extremes and corruption and guarantee that rights of citizens are not violated by a non-responsive bureaucracy. In fact, the actions of the judiciary have resulted in major precedents in the promotion of rights such as the acknowledgement of environmental rights as being part of constitutional right to life in *Shehla Zia v. WAPDA* (PLD 1994 SC 693), or the attempts of the Court to prosecute enforced disappearances (missing persons cases) as the offense against the right to life and liberty. Law law In legal academia, such cases are often pointed to to show that the Supreme Court is playing a progressive role in widening the range of fundamental rights protection.⁷

Conversely, the critics warn that uncontrolled judicial activism can weaken democratic governance and separation of power. They note that the over this hand method of the judiciary in certain cases had moved the boundary between adjudication and administration and therefore the court may even be overstepping in areas that are not mandated by the constitution. A case in point that is frequently referenced is the 2012 decision by the Supreme Court to disqualify an elected Prime Minister (Yousaf Raza Gilani) due to contempt of court which some analysts have claimed constituted an excessive judicial exercise of power into politics. Furthermore, scholars have also observed that the effectiveness of judicial decrees on rights are usually dependent on the alliance of the executive branch. Sometimes the wisest judgments would sound empty

⁶ Ali, B., & Aziz-ur-Rehman, H. (2021). Protection of Fundamental Rights in Pakistan: A Study of the Development of Public Interest Litigation. *Al-Qamar*, 4(1), 19-30.

⁷ Munir, B. A. K. H. T. (2018). Constitutionalism And the Dilemma of Judicial Autonomy in Pakistan: A Critical Analysis. *Constitutionalism And the Dilemma of Judicial Autonomy in Pakistan: A Critical Analysis*.



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even when governments do not have the will or ability to carry out the orders of the courts. Recent empirical research has also shown that there is a discrepancy between what the judiciary says and how things really work as far as the safeguarding of fundamental rights is concerned. They claim that obedience to the instructions given by the Supreme Court on such matters as environmental purification or welfare is very low and the executive agencies take long to carry out the necessary measures. This branch of literature indicates that the judicial decision is not sufficient but has to be reinforced over time that there has to be a follow-up mechanism and political support which will be discussed in the findings and discussion of this paper.⁸

Overall, the literature demonstrates a deep debate of the enforcement of the fundamental rights in Pakistan, alternating between a glorification of judicial protection of rights and worrying about the boundaries. Themes like the potential of transformative power of PIL and suo motu jurisdiction, conflict between judicial independence and politics, and the constant problem of ensuring that the success of a court case is translated into meaningful change in the lives of citizens are also highlighted. It is these themes that are analysed in the current context of Pakistan, as discussed in the following sections, which have been set in this review.

Methodology

The study uses a doctrinal and qualitative approach that suits a legal analysis of an academic work. The main area of attention is the analysis of the provisions of Constitution and the judiciary rulings of fundamental rights in Pakistan and the interpretation of how these legal sources go to tackle the problems of enforcement. The paper has commenced by closely reading the text of the Constitution of Pakistan (1973) especially Chapter 1 of Part II (which has listed Fundamental Rights and Principles of Policy) and the clauses (Articles 184(3) and 199) that grant jurisdiction to the courts to enforce the rights. It is important to understand the constitutional structure to define the law behind the enforcement of rights.

The review of landmark case law over several decades was in sync with the constitutional text. The most important decisions of the Supreme Court and High Courts, which were located with the help of legal databases and other secondary sources, were examined in order to identify the jurisprudential trends. These can be foundational cases including *Asma Jilani* (1972) and *Nusrat Bhutto* (1977) and cases of the period of reform and beyond including *Benazir Bhutto* (1988), *Darshan Masih* (1990), *Shehla Zia* (1994), *Al-Jehad Trust* (1996), *Zafar Ali Shah* (2000) and significant suo motu actions during the years 2005-2015. As part of this doctrinal analysis, some 150 cases were surveyed and they spanned a large range of rights issues (e.g., due process, freedom of expression, minority rights, women rights and socio-economic rights) according to the strategy adopted by Umar et al. (2025). The case was analyzed in terms of the interpretation of the applicable fundamental right as it was provided by the court, as well as the types of remedies it offered and whether it resolved the conflict with the legislative or executive acts.

Also, the methodology will entail a literature review (provided above) to integrate the views of academic commentators and human rights reports. This gave background to the socio-political environment that shapes judicial action and assisted in establishing recurring issues reported by scholars (the delays in justice or the political pressure on the

⁸ Muhammad, A., Nadeem, M. S. A., & Khakwani, M. A. K. (2024). Executive Influence on Judicial Independence in Pakistan: A Critical Analysis With Reference to Constitutional and Legal Framework. *Tanazur*, 5(4), 194-227.



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courts). The content analysis technique was qualitative and was deployed to both the judicial opinions and the academic sources in the quest to identify themes like judicial activism, enforcement gap, executive-judiciary tension, and issues of compliance. Selective application of comparative perspectives is also present in the research, e.g. the development of the public interest litigation in other common law jurisdictions (especially India) is briefly mentioned as a background to the experience of Pakistan, and global best practice in the context of enforcing the judgement of the court in human rights litigation is also used.

This research did not involve any human subjects or statistical information because it was a legal and theoretical analysis. The results are obtained based on a textual study of the laws and the judgments and this is a way to guarantee that there is a preoccupation with reasoning of the law and the consistency of doctrines. The methodology offers a holistic perspective of what the law and judgments claim to state normatively (the normative framework) and what the laws and judgments have actually shown in practice (which is how they have been applied in practice). The strategy is appropriate to discover not only what the actual situation in the implementation of the basic rights is, but why the problems continue despite the apparent robust constitutional plan.

Research Findings

Constitutional Framework and Enforcement Mechanisms

The 1973 constitution is clear on the obligation to basic rights and provides mechanisms of enforcing the same. Articles 8 to 28 list a constellation of rights, both civil and political, and a few socio-economic rights; most importantly, Article 8 specifically annuls any laws that are inconsiderable with these basic rights. These rights are constitutionally endowed to be enforced by the superior courts: under Article 199, High Courts have the power to grant writs (orders, including habeas corpus, mandamus, prohibition, certiorari and quo warranto) to any individual or entity, including the government, upon the enforcement of fundamental rights.⁹ At the same time, the Supreme Court by the Article 184(3) has the original jurisdiction to directly hear the cases of high societal importance on the basis of the basic rights. This two-level system of enforcement implies that a person, who suffers a wrongful act or omission, can often seek immediate redress at an High Court, but in those cases when the conduct of the Court is more than a personal grievance, and the interests of the whole people are at stake, the Supreme Court is capable of being pressed (or can of itself take the initiative) without referring to the High Court procedure. These clauses mirror the will of the framers to ensure that the higher court of justice becomes the protector of the basic rights.¹⁰

The study confirms the fact that in actual sense, the higher judiciary has been a major venue where constitutional rights could be sought to be enforced. Thousands of petitions have been submitted since 1973 in High Courts under Article 199 challenging executive detentions, censorship orders and any other discriminatory practices and willful infringements of rights. The High Courts have tended to grant the remedies in the form of sufficient writs - such as the order to release those who were wrongfully detained, or to quash government notifications which were determined to contravene equality or due process. Nevertheless, a significant discovery is that the effectiveness of High Court orders in many cases relies on a greater judicial affirmation; most cases will inevitably be

⁹ Munir, A. I. (2024). The Prerogative Writs of Habeas Corpus and Quo Warranto under the Pakistani Legal System: A Critical Overview. *Available at SSRN 4706608*.

¹⁰ Iqbal, K. (2015). The rule of law reform and judicial education in Pakistan. *Eur. JL Reform*, 17, 47.



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appealed to the Supreme Court on a case-by-case basis and on the matters of general significance.¹¹

Application of Article 184(3) by the Supreme Court was a slow development. The results indicate that up until the late 1980s, the Supreme Court utilized its original jurisdiction in rights cases sparingly first favouring that litigants seek redress at the High Courts. This evolved following the emergence of the public interest litigation and a broader interpretation of what is meant by a question of, what we call, public importance in the late 1980s. The Supreme Court has since explicitly assumed a host of cases that have involved the implication of the fundamental rights in the absence of an individual petitioner, a tendency that has only grown faster in the 2000s. The data shows that the Supreme Court, and in particular the Chief Justices of the post 2005 era have significantly expanded their Article 184(3) docket by making judgments in areas such as environmental degradation (e.g. industrial pollution to the right of the population to a healthy life), corruption in state enterprises (considered to be a violation of the economic rights of the population and equality), and even cases of gross human rights abuse (e.g. forced disappearance of citizens). Therefore, the flexibility that the constitutional structure provides i.e. both private and suo motu petitions has been tapped by the judiciary to expand the access to justice.¹²

Progressive Jurisprudence and Expansion of Rights

The other important discovery is the creation of progressive judicial jurisprudence that enhanced the range of fundamental rights. In other landmark decisions, the Supreme Court has given the textual guarantees in the Constitution an evolutionary meaning to meet a modern day problem. As a case in point, Article 9 of the Constitution provides the security of person (right to life and liberty); in the mid 1990s, this was famously construed by the Supreme Court to refer to the right to a clean and healthy environment in *Shehla Zia v. WAPDA* (1994). In that instance, the residents protested against the building of high-voltage grid station in their residential neighborhood in fear of incurring health risks. The Court considered the petition as binding on the grounds of fundamental rights and stated that the right to life was inclusive of the rights to a healthy environment and against exposure to hazards. This case greatly extended the rights which were enforceable and the case essentially interpreted the rights of the environment into the basic rights section of the Constitution although it is not explicitly mentioned.¹³

On the same note, the judiciary has been strong in its approach to Article 14 (right to dignity) and Article 10A (right to fair trial, added by a 2010 amendment). Actions that violate human dignity as determined by the courts have included degrading treatment of prisoners or suspect confessions seen to have been made through torture have been found to be unconstitutional as they violate human dignity and also denying the subject of due process.¹⁴ Article 10A right to fair trial has been applied to question special tribunals and the proceedings by the military courts in order to achieve minimum qualifications of justice. As our evaluation of the case-law (including the Supreme Court 2015 ruling on

¹¹ Khan, S. H., & Zubair, M. (2023). Constitutionalism And Judicial Activism: Transforming Authority In Pakistan. *Russian Law Journal*, 11(4), 659-677.

¹² Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. Available at SSRN 4706237.

¹³ Munir, A. I. (2024). The Prerogative Writs of Prohibition, Certiorari and Mandamus under the Pakistani Legal System: A Critical Appraisal. *Certiorari and Mandamus under the Pakistani Legal System: A Critical Appraisal* (January 25, 2024).

¹⁴ Shaikh, K. (2022). The Right to Fair Trial in Pakistan: An Analysis of its Implementation and International Recognition. Available at SSRN 4526164.



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the legality of military courts in cases of terrorism) reveals, it is true that the Court occasionally endorsed such laws as necessary, but it also made some conditions to protect the rights of the fair trial, therefore, admitting the preeminence of Article 10A.¹⁵

In addition, the higher courts in Pakistan have moved towards identifying some of the socio-economic rights indirectly by creative interpretation. Even though socio-economic rights (such as right to education, right to health, or right to shelter) are not explicitly proclaimed as fundamental rights but rather as listed in the section of the Constitution called the Principles of Policy, the Supreme Court has sometimes interpreted them to be justiciable when associated with fundamental rights. Citizens have a right to education as an example, although the right was formally established a fundamental right by a constitutional amendment (Article 25A) in 2010, it was being tentatively exercised even earlier in the guise of the right to life and dignity. This is an indication of a tendency in which the judiciary moves towards a system in which the constitutional practice in Pakistan is gradually brought in line with the international human rights standards, and where the text is filled by implication. These developments in jurisprudence are consistent with world tendencies in constitutional law, whereby courts are seen as drivers of social change by extending the concept of rights (which, as we will see, is similarly reflected in the extension of rights in the Indian Supreme Court in the 1980s, of which Pakistani jurists were not unaware).¹⁶

Increased judicial involvement in matters dealing with the marginalized groups has also been brought about by the adoption of suo motu powers and PIL. The case studies of research findings show that the Supreme Court has intervened in instances of injustices that otherwise would not have been addressed: such as when the Court intervened to end extrajudicial killings by the police, the conditions in prisons, or ensuring that women in feudal regions were able to inherit properties. Such activities were not necessarily based on a conventional court case, but rather on news, or correspondence, in the humanitarian judicial strategy of ensuring that rights could become meaningful to those who had no voice and no resources. Due to this tendency, the role of the higher judiciary as the guarantor of rights has sometimes been strengthened in the public mind the Court is perceived to be not simply as a court of reason that decides on technical legal disputes only but as the place where one may appeal a severe injustice on the part of other state organs.¹⁷

Challenges and Inconsistencies in Enforcement

Although there have been the positive trends mentioned above, implementation of the basic rights in Pakistan is surrounded with conflicts and discrepancies. One of the issues that have been noted clearly is the inconsistent adherence to the court ruling by the executive and other institutions of the state. Courts have made daring verdicts but putting them into action proves a time lagger. According to empirical observations, the distance between pronouncement by the judges and their practice in securing fundamental rights is often large, and the compliance with the ruling is particularly poor in cases that will have to rely on the substantial administrative follow-up. As a case in point, when the Supreme Court orders the environmental clean-up or the restoration of the communities that are displaced, there are those orders that require a coordinated bureaucracy, finance,

¹⁵ Nadeem, M., Qasim, M., & Ibrahim, S. (2023). Original Jurisdiction of the Supreme Court of Pakistan Article 184 (3) of the Constitution of Pakistan, 1973. *Journal of Social Sciences Review*, 3(2), 1054-1064.

¹⁶ Bibi, T. (2018). Article 25th A: Implications of free and compulsory secondary education. *VFAST Transactions on Education and Social Sciences*, 6(1), 57-63.

¹⁷ Khan, M. S. (2014). Genesis and evolution of public interest litigation in the supreme court of Pakistan: toward a dynamic theory of judicialization. *Temp. Int'l & Comp. LJ*, 28, 285.



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and supervision. The results show that even these orders have not been fully implemented a few years after, owing to bureaucratic inertia, lack of resources or political unwillingness. The courts have sought to fill this gap by retaining jurisdiction over cases until compliance is obtained - e.g. by ongoing mandamus or by monitoring commissioners, or progress reports. Although these strategies have been partially effective in isolated cases (as in the case of a polluted source of water being eventually cleaned or hefty fines being paid to the victims of a rights abuse), the overall image is that of partial enforcement. Much of social and economic rights in particular can be pronounced in a court ruling and a directive given but long-term achievement of social and economic rights (education, environmental protection, health, etc) depends on executive dedication and commitment outside the courtroom.¹⁸

The second major challenge is a backlog and a delay in the judicial system which indirectly compromises timely observance of rights. The sheer amount of cases in Pakistan with outstanding cases in the millions of cases in all levels of the judiciary the very simplest cases can take years to decide in Pakistan. The importance of the courts of higher instances in the issues related to human rights is evident, however, the slow rate of the litigation process may make the intervention irrelevant or even too late. In addition, the courts are faced with resource limitations (the number of judges is limited, and the infrastructure is insufficient) that discourage the speed of processing immediate rights applications. The study traced mentions of the acceptance of this problem even by the Supreme Court itself, in the discourses on judicial reforms. As an example, special benches or resorting to alternative dispute resolution in some human rights-related issues were floated as a solution, but these are still in infancy.¹⁹

The political environment has been the cause of discrepancies in the practice of rights by the judicial system. Judges have been alternating in their direction during the fits and starts of executive judiciary tensions. When forces like martial law or states of emergency are involved, the history of the superior judiciary has been to withdraw in to a more rights-protective position. The most obvious ones are justification of military coup or state of emergency decree that suppress rights. Although confronting strong governments even during constitutional times, the eagerness of the judiciary to protect rights may hinge on the judicial institutional autonomy during that period. Following the Lawyers Movement (2007-2009) which reinstated an overthrown Chief Justice, the Supreme Court acquired a new aura of independence and famously vetoed acts of the then-government that were perceived to violate rights or the rule of law (e.g. canceling a constitutional amnesty ordinance in the NRO case 2010 because it was against the basic rights and the interest of people).²⁰ But a conflict arises in more recent times, where on the one hand the judiciary has insisted on its rights cases; and conversely, the political establishment has occasionally reacted by feeling that the judiciary has overstepped. Such backlash is manifested in the legislative options aimed to restrict or control judicial action. Those in favor of this change said it would clear the adjudication process and shorten the Supreme Court backlog, but those against it believe it is an attempt to strip the judicial system of independence and to restrict the judiciary in enforcing fundamental rights. The forced retirement of a number of senior judges over that amendment highlighted fears that the transfer of the enforcement powers to an open forum that is not

¹⁸ Khan, F. M. (2026). MAPPING JUDICIAL AND LEGAL REFORM LITERATURE IN PAKISTAN (1947–2025): A THEMATIC REVIEW. *Journal for Current Sign*, 4(1), 272-322.

¹⁹ Hussain, F. (2011). *The judicial system of Pakistan* (p. 19). Pakistan: Supreme Court of Pakistan.

²⁰ Amin, H., & Rehmat, S. (2016). Lawyers' movement and social movement theory: A critical Analysis. *Pakistan Journal of Criminology*, 8(1), 41.



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necessarily independent like an independent Supreme Court would reduce the safeguarding of the rights. The case is an illustration of how implementation of fundamental rights is not only a legal issue but it is also highly involved in the political dynamics between government arms.²¹

Finally, there are socio-economic and cultural barriers that still undermine the application of rights in the grassroots. As identified in the research, marginalized groups in Pakistan including poor rural communities, religious minorities and women who are beset by traditional patriarchal borders are facing challenges of accessing the formal justice system. Most of them do not know their constitutional rights or do not have means to initiate legal action. Although superior courts have tried to close this loophole by using PIL and suo motu action to be cognizant of the problems that such groups face, this is not a systematic alternative to greater access to justice. This has been called in the literature as the gap between legal access and real access to rights. Practically, the implementation of fundamental rights is mostly reactive (addressing the breaches presented before the courts) instead of proactive or preventive. Such systemic problems as police misconduct, discrimination, or services denial are usually common, and a only a small percentage lead to a court proceeding. Therefore, although the judiciary in Pakistan has established significant precedents of rights affirmation, there is still a challenge of practical implementation of these rights by every citizen.²²

Discussion

The results of this research provoke a subtle discussion of what they imply to the constitutional order in Pakistan and how they correlate to the general tendencies. Another phenomenon that is an example of a paradox is the implementation of fundamental rights in Pakistan: on the one hand, the constitutional guarantees and the judicial system developed there is strong and healthy, and in this or that single case the courts show an impressive adherence to the rights; on the other hand, the general situation is such that there are blank areas between the promise and the reality. This paradox is not necessarily peculiar to Pakistan a large number of developing democracies face a similar problem, however, the Pakistani experience contains its own peculiarities because of the history and power system.²³

The other is the importance of the judiciary as a rights protector in an environment where other institutions are likely to fail. Elected government and legislature in Pakistan have not historically been the force behind the promotion of human rights, in fact, in some cases they have become the objects of rights violation (e.g. the censorship law, discriminatory laws or being tolerant of police misconduct). This has put the higher judiciary in a situation whereby it may be compelled to intervene and ensure justice is served, this is what scholars refer to as judicialization of politics. Such judicial intervention must be noted to have been two sided in the discussion. On the one hand, it has brought solutions and hope in cases where the political process had failed to do anything about the situation such as the interventions made by the Supreme Court to recover the missing persons in cases where the security agencies were involved or to provide remedies to see the right as of inheritance that women had adopted against

²¹ Khan, U. M., Ijaz, R. H., & Saadat, S. (2021). *Extending Constitutional Rights to Pakistan's Tribal Areas*. United States Institute of Peace.

²² Chandio, J. (2014). Crisis of federalism in Pakistan: Issues and challenges. *Federalism in Asia and beyond The Wildbad Kreuth Federalism Days 2012*, 119.

²³ Korai, A. G., Ghaffar, A., & Samad, A. (2022). Human Rights in Pakistan and the Reasons for Prosecution Failure. *Journal of Law & Social Studies (JLSS)*, 5(3), 450-467.



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formidable feudal interests.²⁴ These measures are in line with the constitutional mandate of the judiciary to enforce the fundamental rights and could be interpreted to be upholding the social contract in which the other arms fail. Conversely, the judiciary exposes itself to accusations of being over-reaching by delving into the affairs of governance. The courts of Pakistan in the past 20 years have occasionally taken a tutelary role, and tried to correct or advise the policies of the elected officials. Although this may be commendable where it corrects the infringement of rights, it will subject the judiciary to political scandals and might lead to institutional repercussions. Judicial activism or even judicial populism has come to be applied to cases where courts are seen to be influenced by popular feeling or exceeding the conventional limits of adjudication, including by micromanaging administrative ruling. The key question to discuss is how the balancing act can be done so as to keep the judiciary an effective check against rights violations and at the same time not to meddle with the functioning area of the legislature and executive.²⁵

Comparative point of view is educative here though only temporarily. The case of Pakistan is similar to that of their neighboring country India where the Supreme Court in the late 20th century also adopted PIL and grew the rights jurisprudence to become a proactive agent of social transformation. This in both nations was to some extent motivated by inefficiency of government in curbing such issues as environmental degradation, corruption or social injustices. Just as in the history of Pakistan, so too in the Indian history did the spectacular creations of the judiciary (e.g. the right to privacy, the right to livelihood) as well as the denunciation of judicial aggrandizement. The comparison points out that courts in South Asia have been creative in enforcing rights because they must, but it also reminds the necessity of restraining oneself and acting on principles to remain legitimate.²⁶ The courts have to base their interventions on a sound constitutional doctrine such as not deviating too much on the actual text of the fundamental rights and necessary constitutional principles, as it may bring the perception that they are merely imposing their preferences on policy decisions. The Supreme Court in Pakistan generally attempted to base its aggressive rulings on the terms of rights and intentions of the Constitution. Nevertheless, it has had contentious episodes (such as the above-mentioned 2012 disqualification of Prime Minister) where even the vast majority of jurists themselves had to debate whether the court was indeed serving a primary right or was overstepping its mandate. It is indicated in this discussion that future cooperation will involve transparency in jurisprudential norms (i.e. what constitutes public importance to Article 184(3) or where Article 184(3) starts and 184(4) begins to encroach on policy formulation), whereas a lack of clarity in jurisprudence will cause more problems than solution.²⁷

The other point to discuss is the reforms that should be carried out systemically to enhance enforcement. The results reveal that the court verdicts are not enough to enforce rights in the case of the weak or recalcitrant implementing institutions. This has been realized in the international human rights rhetoric too, the efficacy of rights protection is often subject to follow-through by administrative agencies, access to resources, and public awareness. Within the Pakistani context, the formation of some auxiliary

²⁴ Jilani, H. (1998). *Human rights and democratic development in Pakistan* (p. 72). Lahore: Human Rights Commission of Pakistan.

²⁵ Jahangir, A. (2000). Human rights in Pakistan: A system in the making. In *Realizing human rights: Moving from inspiration to impact* (pp. 167-193). New York: Palgrave Macmillan US.

²⁶ Raza, S. (2018). *The Security State in Pakistan: Legal Foundations*. Routledge.

²⁷ Nadeem, M., Qasim, M., & Ibrahim, S. (2023). Original Jurisdiction of the Supreme Court of Pakistan Article 184 (3) of the Constitution of Pakistan, 1973. *Journal of Social Sciences Review*, 3(2), 1054-1064.



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organizations has proved to be a good move such as the formation of provincial and federal human rights ombudsmen (Mohtasib) and a National Commission on Human Rights. These institutions can supplement the courts by probing on violations of rights, and coercing the government departments to adhere to the law. Their effectiveness has however been constrained by the political influence and the absence of powers to enforce them. Empowering them and connecting them with the work of the judiciary (such as courts might make a systematic referral to commissions or ombudsmen as part of compliance monitoring) might ease the burden on judges and result in greater uniformity in practice.²⁸

The amendment hopes to hasten and specialise adjudication by transferring constitutional and basic rights cases to a new Federal Constitutional Court (FCC) which is arguably to be expedited by the amendment. However, critics say, it can also diminish the historically dominant position of the Supreme Court in the protection of rights and may place constitutional adjudication more under the control of the executive (the way the initial appointments of the FCC are to be made). Should the FCC be operational, one will be left to observe whether it will reinforce enforcement (by making decisions faster, by being more knowledgeable, etc.) or weaken it (assuming it does not possess the independence or authority that the Supreme Court enjoyed). This transformation highlights the importance of the fact that the implementation of fundamental rights is an area of development; the structural change of the judiciary can greatly influence the way in which the fundamental rights can be fulfilled. This debate assumes that any reforms in this regard must be evaluated on the basis of fundamental principles: judicial independence, openness to petitioners, and confidence in the adjudicator. An efficiency-enhancing reform at the expense of independence would be a pyrrhic triumph in purveying rights.²⁹

Lastly, one should place the implementation of the basic rights in the context of the wider culture of constitutionalism in Pakistan. Other than the law and courts, the social attitudes towards rights are important. The discussion observes that the culture of respect about fundamental rights, both in the bureaucracy, police and general population is yet to evolve. Even the educational programs, the media and the activism of civil societies contribute to the deep-seated idea of a sacredness of fundamental rights and the necessity of state authorities to take action within constitutional limits. The rulings of the courts have occasionally been used as an educative tool to the citizens, teaching both the officials and the citizens of the constitutional principles. In the example of the Supreme Court citing the Quranic injunction of justice or the words of the founders of Pakistan when adjudicating on the case on the right, it is actively supporting a discourse that fundamental rights are part of the national identity and ethos. It is a tender element of enforcement: the cultivation of a devotion to rights beyond the threat of judicial fiats and the establishment of an institutional culture. The long-standing problem is to make sure this cultural change is established to the extent that it is not just enforced top-down (courts demanding compliance) but also bottom-up (society demanding rights).³⁰

To sum up this discussion, active courts in a turbulent political sea have been the tale of the implementation of fundamental rights under the Constitution of Pakistan in 1973. The

²⁸ Baig, K., Laghari, A., Akhtar, R., & Ahmad, W. (2023). The analysis of Article 184 (3) of the Constitution of the Islamic Republic of Pakistan regarding cases pending or decided by high courts. *CTLS*, 3(1), 111-121.

²⁹ Wahab, A. (2025). The Constitution as a Living Document: Challenges of Implementation in Contemporary Pakistan. *ASSAJ*, 4(02), 1112-1126.

³⁰ Jabeen, S., & Shehzad, W. (2022). The Constitution of Pakistan: A Textual Perspective Analysis. *Linguistics and Literature Review*, 8(1), 47-84.



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judicial fashions have been alternating between prudence and daring, according to the demands and the needs of the day. The active approach of the superior judiciary has helped in ensuring that most of the rights are not just dry words in the Constitution but the entire potential of such rights is yet to be realised. Such a complicated interplay of the judicial initiative, executive cooperation, and values of the society will persist in influencing the way the rights will be fulfilled in Pakistan. The following section provides specific suggestions based on these findings, with an aim of strengthening the rights enforcement mechanisms and at the same time safeguarding the constitutional separation of powers.

Recommendations

Based on the analysis carried out above, the enforcement of fundamental rights in Pakistan requires a multifaceted strategy to enhance it. The following recommendations are provided, and they are aimed at different stakeholders and system aspects:

Enhance Judicial Independence and Competency:

A robust and autonomous judicial system is the key to the enforcement of the basic rights. Reforms to the judicial system (the establishment of new courts or reforms in the processes of appointments etc.) should be carried out with wide consensus and precautions in order to achieve judicial impartiality. As an example, should the Federal Constitutional Court (created by the 27 th Amendment) come into existence, the judges would have to be appointed by an open and transparent procedure that cannot be based on partisan considerations. Also, the capacity of a court can be boosted through increasing the number of judges and improving of court infrastructure, which in turn will help to reduce the backlogs and reach faster processing of rights cases. Continuous training of judges in human rights law, comparative case law and international standards should be put in place, so that judges at all levels are kept in touch with the changing standards of the protection of human rights.

Suo Motu Jurisdiction and PIL:

To preserve the plausibility of judicial activism in the enforcement of rights, the Supreme Court (and the new FCC, should there be one) should contemplate coming up with guidelines in the exercise of sua motu jurisdiction and the admissibility of public interest petitions. These principles may establish standards of what may be considered as public importance and make sure that these instances are aimed at the practical implementation of the key rights and not at answering merely political issues. This way, the courts will be able to ward off the accusations of arbitrariness and self-control. Other measures have already been indicated in the lawyers world, such as the creation of larger benches or benches of judges to authorise sans cause notices, as opposed to having but one person to authorise this power (the Chief Justice), to prevent any perception of personal or agenda-driven exercise of such power. The judicial time would also be wasted on real grievance of the masses since a structured PIL process (which might have preliminary filtered frivolous petitions) would have been employed.

Strengthen Compliance Remedies:

There is a need to increase the application of the court judgment of core rights. One of the recommendations is to have special compliance departments in major ministries and government departments that will be linked to the judiciary. These units would monitor the process of implementing court orders on rights (e.g., orders to release prisoners,



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reclaim property, remedial of environmental risks) and report on the progress. Follow-up hearings might become institutional (and have been put into practice by the Supreme Court or High Courts in a few cases) and the responsible officials might be required to show up in person and explain non-compliance. Besides this, the establishment of bodies such as the National Commission on Human Rights to monitor the implementation of court directives on rights matters would act as a check. As a case in point, in case the order issued by the court is to reform police to reduce torture, the Commission might periodically review and release reports on actions taken, thus reminding the people of the matter.

Legal Intervention to promote Rights:

Parliament plays a role in enhancing the implementation of the basic rights. It ought to examine the current legislation and repeal or revise those that are incompatible with the core rights (such as laws on sedition and blasphemy which tend to be exploited to suppress free speech). Passing enabling laws, like anti-custodial-torture legislation (to enforce Article 14 with its dignity provision and the rights of Pakistan under the Convention Against Torture) or more effective anti-discrimination legislation, would provide the courts with more effective means of enforcing rights. Additionally, some guarantees in the procedure can be enshrined in legislation, such as the guarantee that an individual claiming a violation of fundamental rights will have access to the court pro bono at the time of necessity. Today, the legal aid system in Pakistan is not strong; by enshrining a statutory right to legal aid in right cases, which are serious, the litigants who are not able to afford litigation will at least get access to justice. Simply put, instead of leaving the whole process of development of rights law to judicial interpretation, the legislature ought to actively supplement constitutional rights by elaborate statutes that would support enforcement.

Public Awareness and Civil Society Engagement:

A long term suggestion would be to invest into the education of the population on the basic rights and the channels by which their implementation can be done. This can be done through the inclusion of constitutional rights education in school and university curriculum, and also through the media campaigns by the state or non-governmental organizations. Citizens also tend to take action when they know their rights and how to claim them (e.g. petition the High Court under writ or use a complaints desk like the human rights cell of the Supreme Court) and thus are more likely to have remedies and make officials accountable. The civil society groups such as the bar associations and the human rights Non-Governmental Organisations should be encouraged (and sufficiently guarded) to act as their watchdogs- checking on wrongs of rights, helping the victims in presenting their petitions and making follow ups on execution of court orders. The Lawyers Movement showed how effective collective action was in protection of rule of law; another group of civil society that targeted basic rights protection did have the capacity to increase pressure to state to adhere to constitutional requirements. Promotion of community-based paralegal programs may also involve the expansion of the lines of law help further into remote regions where knowledge levels are low.

Respond to Systemic Problems in the Justice System:

Lastly, it will improve enforcement over time by addressing the underlying causes of most of the rights violations. The symptoms are habitually addressed through judicial intervention, e.g. by directing the release of an unlawfully held individual, but the causes



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(abuse of police procedure or absence of due process in security activities) are to be addressed through reforming the system. The government amid consultation with the judiciary and legal gurus should also carry out the reforms which include police training on human rights, prison reforms aimed at humane conditions and enhanced accountability institutions (such as police complaint authorities or anti-corruption bodies) to mitigate the rate of infringing on the rights. When the number of violations is reduced through improved governance and training, the court need not keep addressing cases when considered to have violated rights, and the executing of the rights will no longer be an emergency situation, but rather a routine one.

Overall, these proposals are to be used with a holistic effect: to empower the judiciary accordingly, to tie up the executive and the legislature with the constitutional duties and to involve the society in a joint venture of supporting the basic rights. This is aimed at making the vision of fundamental rights provided in the Constitution converted to lived reality of people of Pakistan, through a collaborative action at all the pillars of state.

Conclusion

The implementation of basic rights enshrined in the Constitution of Pakistan (1973) is a very urgent, albeit a complicated exercise that the country is facing in its endeavor to uphold the rule of law and democratic ideals in the country. It is based on this updated analysis that the constitutional system of Pakistan offers the promise of strong protection of rights in addition to the means, especially the superior courts, to actually deliver on the promise. The judiciary in Pakistan has become a main actor in this game over the decades: sometimes it has become the fortress of rights against oppression and injustice, pushing boundaries of rights with a bold decision; sometimes it has been a weakness, or restrained by other influences, showing weakness of rights in the times of political violence. These obstacles identified such as lack of adherence to court orders, delays in the process, politics and socio-economic issues likely justify why a disparity still exists between the ideals of the Constitution and the realities of many citizens. However, those trends in the judiciary that can be identified include the development of public interest litigation, the imaginative application of rights, and stages of aggressive judicial review, which themselves show a strong desire among the legal system in Pakistan to render those rights meaningful.

The higher courts have acquired and developed in balancing the action with the inaction of activism. The present point, recent reforms and the ongoing discussion of the role of the judiciary will play a decisive role in the trend of the rights enforcement in the future. To make sure that the basic rights are not just listed but are enjoyed by the citizens, the judiciary must be on high alert, the executive genuine, the parliament obliging through sound legislation, and the citizenry must be empowered, informed, and assertive of its rights. The suggestions made - including institutional changes, and even awareness campaigns - follow the course towards bridging the enforcement gap. These will not only reinforce the fundamental rights in Pakistan but will also make people stronger in their faith in the Constitution as a living document protecting their freedoms and dignity.

To sum up, the Pakistani experience is reminiscent of the fact that a constitution is the real test of its own, its implementation. A promise that is not followed by action is a sham; on the other hand, a properly applied right is a potent instrument of justice and civil development. The process of Pakistan in this respect is still in progress. By dealing with new and old challenges (not only the longstanding civil liberties issues but also more recent ones, such as digital rights), the courts will keep on shaping the perception and reality of the basic rights. In this paper, the author will affirm that even though the



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barriers exist, it is possible to make improvements. Through ongoing judicial vigilance, institutional support, and civic participation, the main rights provided in the 1973 Constitution can be better achieved so that the spirit of the Constitution protection of human dignity, freedom and equality would be transferred to the lived experience of every citizen. The long term hope is that the constitutional promise of fundamental rights in Pakistan becomes less a dream in writing but a daily reality which is symptomatic of a mature constitutional democracy.

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