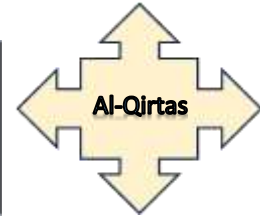


**The Protection of Human Rights in Pakistan: A Critical  
Examination of The Role of the Courts**



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**Abstract**

Pakistan, a country desperately seeking to become a model democracy of the world, continues to experience serious human rights abuses. The constitution of the country ensures basic human rights are protected; however, the daily happenings are another story all together. The focus of this paper is to analyse the judiciary of Pakistan concerning the protection of human rights in the country. Without doubt, Pakistani judiciary indeed has a pivotal role in the protection or human rights. The legal victories have involved fighting prejudice, demanding fundamental rights such as the rights to freedom of speech and assembly, the recognition of individual rights against the state and state apparatus and violations of human rights. The courts have also played a role in a safeguard of the weaker sections of the society such as; women, religious groups, and the poor. These interventions have created hope of a better world for everyone to live in a manner that is not prejudice by their status in life. Yet, there are certain factors that actually undermine the practical efficiency of courts. Classic example is when justice is delayed or when justice is expensive, poor and vulnerable persons are denied access to justice. Further, there is political control which lowers the independence of the judiciary, and therefore, the court may deliver political decisions. Moreover, prejudices of the society and concrete or ingrained male dominance can negatively affect the judicial decisions and for this reason it is not always that a rights-based society can be achieved. Consequently, it is evident that the protection of human rights in Pakistan is a complex process and the subject must be treated from different angles. Some of the significant changes include the enhancement of judicial independence, legal process simplification to enhance the rule of law for everyone who requires legal help, and the promotion of human rights. To ensure that principle dominates practice then the judiciary, civil society, and the government must work together to close the gap between the court and society. The effective promotion and protection of human rights for all the citizens within the region can only be felt adequately by Pakistan courts if people come together and work towards the realization of this.

**Keywords:** Human Rights, Judiciary, Rule of Law, Access to Justice, Institutional Reform.

## Introduction

Like many countries, human rights protection remains a complex issue for Pakistan; it has to balance the protection of rights while operating within the context of social and political environment and institutional realities (Malik, 2018). However, at the heart of this complex task lies the judiciary; it is on this foundation that the defense and advancement of the rights and freedoms stated in the Constitution is based on (Khan, 2020). However, the ability of the courts in achieving this function has remained a subject of significant analysis, criticism in contemporary legal and academic literature (Ahmed, 2019). In this article, the present author undertakes the task of presenting an analysis of the courts' contribution to human rights protection in Pakistan, providing preliminary thoughts on successes and failures in this important area.

It clearly indicates that the Constitution of Pakistan has a comprehensive structure protecting the human rights of people that include civil, political, economic, social as well as cultural rights (Hussain, 2017). Amendments include specificities such as guarantees in the Fundamental Rights chapter including, equal before the law, or Freedom of speech, every person's right to a fair trial and protection from discrimination among others, (Jamil, 2021). In addition, there is another reason proving that the Pakistani state is obliged to guarantee the observance of human rights standards: the country has joined international conventions and treaties (Rizvi, 2018). However, this all-encompassing legal framework is effective in Pakistan to half fill the practical implementation of human rights is very challenging and contains numerous challenges and constraints (Khalid, 2019).

Regarding Pakistan, scholars suggest that the judiciary plays the most significant part in interpreting and implementing the constitution regarding human rights (Saleem, 2022). The court from the civil libertarian perspective characterize over the years judicial activism and willingness to intervene in case concerning human rights violation such cases are normally a landmark decision setting pretty precedents. For instance, on enforced disappearances, freedom of speech, and minority rights, the Supreme Court of Pakistan has ceased *Suo Motu* actions and public interest litigation (PIL) (Nawaz, 2019). Nevertheless, while appreciating such noble efforts, it is crucial to recognize that the Pakistan HR situation remains transformative with considerable challenges and constraints that require reflective analyses and intervention (Butt, 2018).

### **Constitutional Framework and Legal Protections:**

The Constitution of Pakistan is adhesive which was implemented in the year 1973 and it forms the basis to safeguard all human rights with a broad range of. Civil and political liberties; economic, social, and cultural rights are among the well-defined domains of this framework (Khalid, 2017). This commitment is clearly reflected in provisions of the document in order to protect the inherent respect and freedom of all the Pakistani citizens. One can highlight the chapter named 'Fundamental Rights' as the most significant one that is demonstrated in a very work-oriented and strict manner to define the principal freedoms and safeguards. Some of these include the right to vote and be voted for, freedom of speech and association and freedom of speech

and the media, right to accessing justice, and protection from discriminations in work place or in any other areas based on their color, belief, gender or ethnic origin (Malik, 2019). It is concerning, however, that these legal statements remain distant from the realities of many Pakistanis; hence the need to continue this work. It is for these reasons that, given my background in regional studies, it becomes my responsibility to narrow that gap, that canyon, by promoting critical thinking and discussion. In this way, one could do research towards realizing these constitutional provisions into concrete facts in the lives of all citizens. This can be facilitated through intervention projects that enhance community capacity in the areas of governance, voter education, and provision of mechanisms for enforcing these fundamental human rights.

However, it is also important to acknowledge that international human rights standards are not the only yardstick for measuring human rights compliance in Pakistan as the country remains a member of the United Nations and hence has signed various conventions and treaties (Ahmed, 2021). These are key international instruments which embrace the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment among others. The acceptance of these international instruments also manifests how Pakistan is also ready to commit to the internationally accepted standards and principles for the promotion and protection of human rights (Raza, 2018). Respect to such international engagement also reaffirms the establishment's commitment towards the protection of human rights and acknowledges the fact that the Pakistan government also acknowledges the link between human rights and other issues of international concern and responsibility (Saeed, 2020).

#### **Role of the Courts in Human Rights Protection:**

In Pakistan, the judiciary plays a vital role in guarding and implementing human rights, preventing any human rights abuses and acting as a barrier to any constitutional provision (Khan, 2019). As the final protector of the Constitution empowered with the interpretative and applicative jurisdiction of the law, the courts have a crucial responsibility in the enforcement of fundamental rights guaranteed under the Constitution (Rana, 2021). Years back, the judiciary of Pakistan has shown cases of judicial activism in terms of the demonstration of the active role to respond to human rights issues and entities and ensure the state officials are answerable to their conduct.

Another aspect of judicial activism in human rights issues relates to the capacity of the courts to take up cases through their own volition and as a matter of Public Interest Litigation (PIL). This would mean that the judiciary is always prepared and ready to address cases of human rights violations thus avoiding situations whereby justice, to the aggrieved parties, is delayed or even denied (Zaman 2019). The supreme courts of all the countries have played a major role in hearing the number of cases on the violation of human rights where particularly Pakistan's supreme court has heard cases of enforced disappearance to protection of freedom of speech and rights of the vulnerable groups (Gul, 2017). Charter and legal decisions have established broader

milestones that have hallmark the turf of human rights protection in the country through landmark judgments and legal decisions (Ahmad, 2022).

Thus, the judiciary in Pakistan can be regarded as a powerful defender of human rights, as it applies its decision-making power whereas interpreting and applying the constitutional provisions in a manner that would correspond to the fundamental recognition of Human Dignity and Human Rights of every citizen within the nation (Siddiqi, 2018). Judicial activism and proactive approach has helped the courts immensely in calling out violation of human rights and setting a precedence of an accountable system (Malik, 2021). However, challenges are still present, where integrated institutional capacity, policy openness, and compliance with the legally required processes and procedures to safeguard the mentioned human rights remain an issue in Pakistan (Iqbal, 2019).

#### **Challenges and Limitations:**

Nevertheless, the Pakistani judiciary has commendably tried to defend the human rights of the people still, the protection of human rights in Pakistan faces certain challenges and restrictions (Khan, 2021). The first major barrier is the problem of institutionalization, which in essence is a combination of problems like the delay in resolving cases, lack of resources, and the menace of corruption in the justice system in regards to the case at hand (Ahmed, 2020). There is usually congestion of cases in the system that hinders efficiency among courts to offer justice on time for victims of human rights abuses (Riaz, 2019). Also, a shortage of human, technological, and other resources as well as inadequate logistical support compounds the difficulties the judiciary experiences in responding to human rights issues (Malik, 2022). Furthermore, cases of corruption within the legal processes also deteriorate the public confidence and confidence in the judiciary and thus the judiciary cannot be able to effectively guard human rights (Siddiqui, 2018).

Additionally, there is high disparity between judicial rulings in the superior courts and their application and enforcement in the grassroots (Hussain, 2021). However, often even when landmark judgements are made by higher courts, implementation of these decisions on the ground level is a herculean task (Khalid, 2020). Lack of notice enforcement weakens the effectiveness of judicial actions and promotes a culture of immunity among human rights offenders (Nawaz, 2022). Furthermore, socio-cultural factors such as culture of male domination, terrorism or radicalism in some religions and even social prejudices seriously act as barriers in achieving human rights for vulnerable groups (Farooq, 2017). Stereotypes and prejudices clearly present in the community act as norms that ensure that these oppressed groups remain oppressed and also continue to be abused economically, sexually and in other ways through violation of their human rights.

The situation as far as the protection of human rights in Pakistan is concerned, a number of problems exist which need to be addressed immediately at both structural and popular levels (Iqbal, 2021). It is essential to note that overcoming these challenges can only happen with significant and systemic changes in the justice system capacity, increased authority of institutions as well as improving people's respect to human rights (Yousaf, 2018). These challenges cannot be

overcome by efforts of a single person or single party; it is through a conscious and cohesive approach that the determination to pursue the goal of making Pakistan a society that values dignity and rights of all citizens can be met (Zia, 2020).

### **Conclusion**

Summing up, the struggle for human rights protection in Pakistan is enormous and continuous, and should be addressed from different aspects at once. Though it has not come out of the clutter of remodeling it as a worthy champion of human rights through its intervention and progressive judgments, the journey towards full realization is/has not been without a considerable number of challenges. The nature of political system in Pakistan, various constraints in institutions, and societal culture prove the fact that the problem lies deeper than simple intervention and demands a multifaceted change process at individual, community, and policy levels. Despite of the key significance to the society the judiciary is incorporated into the overall problematic system affecting the country's legislation. Some of the problems that were identified include but not limited to the following; back log of cases, lack of resources, and corrupt practices all of which offer formidable barriers to human rights protection.

Furthermore, the lack of a coherent mechanism for implementing court decisions in rural and urban areas, respectively, weakens the transformative effect of judicial actions, leading to renewed masculine violence over women and others. To tackle these issues, both judicial reforms and other institutional and societal reforms need to be made that ensure checking and balancing, transparency, and the supremacy of law developments. Importantly, beyond long-standing institutional changes, striving for the protection and promotion of human rights calls for active societal involvement and enhanced awareness. It is high time to specially emphasize that fighting prejudice and discrimination at the subconscious level implies the need for an organized society that is actively working to change the existing paradigm throughout the promotion of tolerance, diversity, and equality. As the focus of Pakistan's development strategy, human rights can serve as one of the key drivers of change, allowing the country to strive for a fairer and equal society where people's rights can be realized and respected. It is, therefore, only through persistent endeavors and collaboration that Pakistan may approach the attainment of its declared vision of a state that provides justice, equality, and human dignity to all its inhabitants.

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