



**Nexus between Human Rights and Judiciary:
A Historical Perspective and Contemporary Challenges in Pakistan**

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Abstract:

A person cannot live in any nation or state with dignity, freedom, color, race, birth and justice without human rights. These rights are natural and protected by the state without any discrimination. If a person is deprived of his rights, it is a violation of human rights. Human rights are necessary for the protection and maintenance of the self-respect of individuals. When every human being can build up his personality to the fullest extent, it may be termed as human rights. In Pakistan, many factors influence the protection and promotion of human rights, such as political, social, cultural, economic, legal, and religious. This article aims to analyze the human rights situation in Pakistan. This research also analyses the role of the Judiciary in the protection and promotion of human rights in Pakistan. The study concludes that there are some challenges faced by the citizens that hamper the smooth provision and protection of human rights in Pakistan.

Keywords: Pakistan, constitution, judiciary, human rights, justice, nexus, law, self-respect

INTRODUCTION

Life without dignity is like a sound that is not heard. Every human being is entitled to have basic human rights and these rights are not granted by any ruler, constitution, or statute. The right to live as guaranteed is not merely confined to physical existence but is more about human dignity to live with. The right to 'live' is not confined to physical survival but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with the fellow human beings. Dignity is a

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combination of thought and feeling and it deserves respect even when the person is dead and described as a 'body'. Anything that hampers the right to live with dignity and decency is a violation of human rights. Quality of life ensures the dignity of living. Human lives must have significance in terms of how well we live.

The greatest blessing for human beings can be recognized as having fundamental rights and being able to exercise them to the extent that preserves their humanity and respects their dignity. These basic rights belong to every person regardless of any individual specifications. Human Rights are moral and legal rights that cannot be granted by people or taken away by them. These rights have been recognized and adopted as Fundamental Rights in Part II of the Constitution of Pakistan (Pakistan, 1973, pp. 6-16). The Constitution of Pakistan ensures essential human rights in the form of fundamental rights and also directive principles policy in chapter 2 of Part II, which are vital in governing the state. The rights of individuals would be of no value if there is no comprehensive mechanism available to play an active role in their protection (Venkataramiah, 1988). Such a legal system or mechanism exists at state, regional and international levels, which offers protection to human rights and those working to protect and promote human rights. In this regard, the authority of the state can be categorized into legislative or lawmaking authority, execution or enforcement of laws, and judicial authority.

IMPORTANCE OF JUDICIARY IN PROTECTION OF HUMAN RIGHTS

There is no denying that the role of the judiciary transforms the conventional role into a more active participatory role to cope with the changing society; hence, the power of the judiciary should prevail and it should be straightforward. The judiciary should institute and restrain the powers of other authorities of the state in their domains so that the action taken by the government may remain as lawful as possible. Essentially, there should be some laws to outline the rights of the people and the duties of the State. Therefore, legislators deliberately draft rules of civil and criminal procedure with utmost care so that a particular State could avoid as many legal difficulties as possible. These rules should ideally include clear limitations so that the State does not abuse its powers or exceed its authority that negatively affects the essence of human rights laws (Abul-Ethem, 2002).

Judiciary plays an important role in protecting and promoting human rights. The vital role of the Judiciary is much influential in pursuing justice for the protection of rights. It also helps to achieve set standards for Government policy and retains human dignity (Abul-Ethem, 2002). The foremost function of the judiciary is to maintain the rule of law by protecting vulnerable people while using the power of courts conferred to them by the constitution. The courts have this basic responsibility to interpret and endorse the national law while preserving their independence and neutrality in the administration of justice.

Human rights will be of no value if there is no legal system to protect such rights. Unbiased judicial systems put forth human values and give meaning to humanity. Judiciary ensures the limitations to every institution that does not refer to any human right or not to violate human rights (Bahmueller, 2003). The Constitution of Pakistan not only recognizes major international human rights, but it also conferred a particularly comprehensive legal framework for the protection of these declared rights for its citizens. The Constitution specifically empowers the judiciary to protect and restore

human rights in case of any violation of these rights of any citizen of the country enumerated in Part II of the Constitution in the form of fundamental rights (Pakistan, 1973).

Human rights violations arise when arbitrary arrest, torture, murder, enforced disappearances, discrimination, honor killing, and domestic violence are increased by the state or non-state actors. The government of Pakistan has taken many steps to control human rights violations such as a national action plan for human rights, a national commission for human rights, a national commission on the status of women, a center for human rights education, and a national commission for child welfare and development (Ministry of Human Rights Pakistan, 2020).

This article analyzes the human rights situation in Pakistan and tries to find out the answers to some questions: What are the factors involved in instigation of the violation of human rights? What are the challenges faced by the victims to persecute justice? How does the judiciary play its due role in persecuting justice for victims?

This research is quite interesting to understand the role of the Judiciary in the protection and promotion of human rights in Pakistan. Judicial stability is the baseline to achieve sustainability in human rights and development in any society. Hence, it is important to discover whether an event or decision made by the judiciary is helping in protecting the basic fundamental rights of common citizens of the state or it is having a destructive impact on the credibility of courts. The researcher is determined to explore the role of the judiciary in protecting the rights and dignity of a vulnerable group of people and advocating the human rights laws in Pakistan. It is also imperative to explore the existing situation of human rights in Pakistan and factors hindering implementation of human rights laws. The purpose of the article is not to make predictions but to explore the probabilities that how the successfulness and impartiality of the judiciary can bring systematic changes in the society and social culture of Pakistan. Section two of the article explains the philosophical foundations of human rights. Section three takes into account the role of the judiciary in the interpretation of human rights. This section also portrays the human rights situation and Institutional set-up in Pakistan for the Protection of Human Rights. This section describes the role of the Independent Judiciary in providing and promoting human rights in Pakistan. Section four discusses challenges faced by victims in pursuit of justice and steps taken by the Pakistan government to protect and promote human rights in Pakistan. Last section concludes the study.

PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS

The concept of human rights is not new and its foundation can be linked back to the natural law. One way or another, Jeremy Bentham, Rousseau, John Lock's, and Thomas Reynolds almost every political scholar discussed the importance and existence of human rights, even if they are called "nonsense" by Jeremy Bentham yet they remain a point of discussion (Waldron, 2014).

Plato initially defended the universal ethical standards by separating good and evil, truth and untruth, as just and unjust. Plato proclaimed that a just community can be formed by linking human rationality and the goodness of nature found in the soul. Plato's views were quite contradictory to the customs and traditional views of his era, which maintains that justice is always in the interest of the stronger party (Hayden, 2001). The natural law tradition was further influenced by Aristotle, who examined the value of virtue and justice in the political community.

According to Hobbes, pre-social man lives in a "state of nature", where man is free to do what he wants, even to harm others, since there are no laws and no "notions of right and wrong, justice and injustice." Hobbes and Locke proclaimed that anarchy is dangerous, yet it is the ultimate freedom; therefore, the presence of some form of law or sovereign is necessary. Therefore, any type of non-anarchical system would certainly contain definite elements of oppression, for people must accept laws and the government above them. The ideas of Hobbes and Locke were philosophical, hence, never formalized into law (Schaffer, 2017).

In the following years during the 17th and 18th centuries, the interest in natural rights declined profoundly. Their use was refrained from political discussions, specifically after the revolution in the eighteenth century, the great European monarchies and newly emerged political and social forces in France and America were apprehensive of the provocative potential of rights. Thinkers like Hegel, Marx, Weber, and Freud, became more interested in social processes and structures, rather than individual rights. Instead of emphasizing individual rights or human rights, the focus of the world powers remained on nationhood as a result of increased nationalism (Douzinas, 2000).

Human Rights being an eternal part of the nature of human beings are essential for individuals to develop their personality, their human qualities, intelligence, talent, and conscience and to satisfy their spiritual and other higher needs. Further, it is described that the rights, which are natural and inherent for the life and happiness of every individual are called human rights. These rights are indispensable for the maintenance of human dignity and the individual enjoys these rights from birth to death (Douzinas, 2000). The idea of human rights was revived in the 19th century after the terrible experiences of two World Wars. The Second World War was followed by the creation of the United Nations, and the adoption of the Universal Declaration of Human Rights.

Human rights have become a widely accepted global norm since the proclamation of the Universal Declaration of Human Rights in 1948, however, human rights violations continue across the countries because unfortunately world still fails to fully abide by the provisions in the Declaration. The terminology "human rights" is used frequently but neither implemented nor understood completely. While international politics remain ultimately dominated by power relations, as the world has become more hypocritical (Brown & Ainley, 2004).

ROLE OF JUDICIARY IN THE INTERPRETATION OF HUMAN RIGHTS

The Judiciary is one of the key pillars of the state with a significant role in regulating, interpreting, protecting, and enforcing the law and constitution. The key task of provision of justice is exclusively assigned to the judicial organ of the State. An operational, well-functioning, and independent judiciary is indeed the backbone of any state, which improves a nation's sovereignty and promotes justice. The Judiciary can protect and uphold human rights. The independence and efficient functioning of the judiciary is reliant on strong legislation and competent executive branches of the state. In the contemporary world, justice cannot exist without an independent judiciary. In every learned society, the Judiciary is the final authority to settle disputes between individuals and between the state and an individual (Santow & McEwin, 2018). The Universal Declaration of Human Rights enshrines the principle of the independence of the Judiciary.

HUMAN RIGHTS IN PAKISTAN

In Pakistan, human rights are written in the Constitution of Pakistan 1973, including freedom of speech, freedom of thought, freedom of information, freedom of religion, freedom of association, freedom of the press, and freedom of assembly. Therefore, the Constitution makes it obligatory for the government of Pakistan to ratify the core international human rights conventions and treaties to protect and promote human rights. It compels the Executive, Legislative, and Judiciary of the state to respect and ensure the rights it states and also to translate international agreements into domestic law. In the contemporary world of constitutionalism, the human rights aspect is one of the most essential components that need to be incorporated into the legal framework for the elaboration of a new constitution or new constitutional provisions (UNHCR, 2018).

Common people do not perceive Pakistan's legal system to be a fair protector of their rights. Besides, they are unsure about the role of the law as a protector of their rights and are always critical of the fairness of the legal system of Pakistan. Taking a concrete example, hundreds of amendments have already been made in Pakistan's Constitution yet; hardly one or two amendments have been made for advancing the cause or rights of a common person. As stated earlier, the courts have to impart justice by following the law without any biases or perplexity otherwise; it may not be possible for the judiciary to protect the rights of the people. (For more details on civil and political right situation in Pakistan please see, Naazer, Mahmood & Shehzad, 2019). Thus, legislation or law-making is a very crucial component of the state in safeguarding human rights and providing justice to people (Munir, Ahmed & Khan, 2021). The main purpose of the constitution is to ensure that the government does not own the state: it simply manages the state, under the authority of higher laws, on behalf of citizens (IDEA, 2014).

The Constitution of Pakistan particularly grants authority to the Superior Courts of Pakistan to protect the lives and freedom of the citizen from arbitrary and discrimination. However, based on any extraordinary circumstances where the sovereignty of a state is in danger Article 8(5) of the Constitution allows the suspension of fundamental rights only by expressing provisions, not by implication. Additionally, the provision for the suspension of the rights must be from the Constitution only and not from any other laws. Article 233 is about the suspension of fundamental rights while only considering the conditions and circumstances for the suspension (Khan, 2006).

Institutional Set-Up for the Protection of Human Rights in Pakistan

The relationship between Federal Government and the provinces is regulated under chapter V (Article 141-159) of the Constitution. The Constitution has reinforced a multi-level governance system by extending greater autonomy to the provinces. Furthermore, redistribution of functions at the district level, tehsil and union council level has been vested with the provincial governments.

The Federal Ministry of Human Rights coordinates with provincial Ministries and divisions to strengthen efforts to coordinate between federal and provincial governments, particularly for the close collaboration between the Ministry's regional offices and the provincial human rights departments and directorates. Under the 18th amendment to the Constitution (2010), The Ministry of Human Rights will guide the provincial governments by setting standards and establishing an effective mechanism aimed at ensuring a transparent, coherent and consistent implementation of Pakistan's international treaty obligations throughout its territory, and to ensure a smooth

implementation of the human rights laws. The Ministry of Human Rights will take necessary measures to improve rights-based data collection to collect comprehensive and comparative data, particularly including the disadvantaged and marginalized individuals and groups. The Ministry of Human Rights is in charge to administer the National Commission for Human Rights Act (2012) and is determined to respect and promote it (Ministry of Human Rights).

Pakistan has also established a National Commission for Human Rights (NCHR) through Act XVI of 2012 in fulfillment of its international obligations. The National Commission for Human Rights Act, 2012 specifies a comprehensive mandate for the promotion and protection of human rights, as provided in the national Constitution and international treaties. The NCHR is directly accountable to the Parliament of Pakistan and its financial and performance reports are directly presented to the Parliament annually for approval. The primary functions of the NCHR include, among others, conducting investigations into allegations of human rights violations, reviewing existing and proposed legislation relating to human rights principles and carrying out research and advice on policy matters relating to human rights (National Commission for Human Rights, 2012).

Independent Judiciary and Accessible Justice

The judiciary has an important role in safeguarding and protecting the Constitution and its values and in contributing toward the consolidation of fundamental rights and a better life for all. It does this through its embedded judicial authority. The Constitution of Pakistan deals with the superior judiciary in a fairly comprehensive manner and contains elaborate provisions on the composition, jurisdiction, powers, and functions of the courts (Hussain, 2015). Nevertheless, the judiciary holds this primary responsibility for providing justice to the people, and protecting and defending the constitution; however, without the unconditional support of the legislature and executive, the judiciary alone cannot discharge its responsibilities (for more details see, Naazer, Kundi & Farooq, 2019).

Judicial independence makes the judiciary able to take independent decisions with ordinary citizens being the main beneficiary of these decisions. Judiciary as an institution and judges on an individual level should be free from any kind of uncalled influence, pressure of interference from executives, legislature, local bodies, political parties, military forces, political and bureaucracy, or judicial hierarchy itself. While utilizing this independence, the courts should strictly follow the country's constitution and the law even if it means to take a decision contradictory to the interests of the ruling party or any other powerful entity (Farooq, Rafique & Qumber, 2016).

Judicial independence is crucial for the protection of individuals and the community. Contrary to the common belief, judicial independence is not a benefit granted to the judge or court, instead, it is the surety given in favor of the people/right-holder that a judge will be impartial and fair in the trial without taking any pressure from outside or either of the parties involved. To be efficient and meet its objective, judicial independence must also protect judges because only an insulated judge -who is bound only by his or her oath of office-, will ultimately concentrate on the provision of justice according to law. Judges have a responsibility to protect their independence and impartiality. The judges take this decision-making power rendered to them by the law as an obligation to the public and they ultimately feel accountable to maintain the public's confidence in the justice system (Canadian Judicial Council, 2016).

How justice is administered? is one of the basic indicators to determine the well-being of society. The Independent judiciary plays a fundamental role in guaranteeing and enforcing domestic and international human rights. Judiciary is obliged to make sure those victims of human rights violations will get timely and effective remedies. To perform this duty, courts including judges, prosecutors and lawyers need to have access to complete information on the human rights laws and standards followed at national, regional and international levels (Office of the High Commissioner for Human Rights, 2003).

Access to justice is a basic human right as well as an indispensable means to combat poverty and prevent and resolve conflicts. It is vital in achieving the Sustainable Development Goals (SDGs) and reducing poverty to strengthen democratic governance. Informal and traditional structures of justice are often more reachable for vulnerable human being/s; moreover, they may have the potential to provide a speedy, affordable and meaningful solution, but they are not always effective and do not necessarily result in justice. It is, therefore in United Nations' specific niche to support justice and related systems so that they work for the poor and disadvantaged individuals. UNDP recognizes the need for traditional systems to progress and move forward in the field of human rights with full consideration of international human rights standards, such as gender equality, non-discrimination for reasons of age or social status, respect for life, etc. (UNDP, 2004).

According to an estimate almost four billion people around the world are living without the protection of the law, mainly because their societies have downgraded due to poverty or other societal standards. They can easily be thrown out of their own land/house, be intimidated by violence, victimized at the hands of influential, and still have no hopes of being heard or getting justice. Generally, more vulnerable people tend to report more problems related to the unavailability of justice than other groups. Furthermore, these same groups of people suffer more victimization as a result of increased rate of non-legal challenges (OECD, 2016).

An independent judiciary plays a crucial role not only in the functioning of a legal system but also in the implementation of human rights legislation. Independent judiciary and human rights violations have an opposite relationship between them. States, where human rights are protected religiously, are generally found to be having an independent system, and countries with the most dependent courts system usually have a higher ratio of human rights violations.

Measuring the independence of the judiciary can be complicated. Rules are necessary for the continuation of the rule of law. They are purposefully designed to keep them free from any kind of inappropriate or unsolicited influence and help them in performing independently of all authority. The concept of judicial independence can be understood as *de jure* independence or *de facto* independence (Raz, 1979)

Challenges Faced by Victims in Pursuit of Justice

The victim can be anyone, regardless of race, color, age, religion, language, nationality, disability, birth, or family status. Unfortunately, the victims' right to justice is usually neglected within the context of judicial proceedings that prioritize bringing criminals to justice. The victim has the right to access the justice procedure provided by the legislation; therefore, he/she should be treated with empathy and dignity. There are many reasons for victimization including being less educated, unemployment, control over the relationship of one partner, poverty and associated factors, alcohol

and drug use and the uneven distribution of power and capital between two parties. A person is a victim regardless of the facts whether the crime is reported to the police or not, an offender is identified or not, detained, impeached or convicted and regardless of the familial relationship between the perpetrator and the victim (United Nations Office on Drugs and Crimes). Therefore, it is equally important to understand the issues and obstacles one whose rights have been abused has to encounter while struggling to get justice.

There is no single, universally agreed definition of the term 'victim'. There are, however, several important international declarations and covenants that identify the essential elements of being a 'victim' that are commonly referred to by the international community.

Human rights are enshrined in the constitution of Pakistan 1973, and the provision of fundamental rights in detail is contained in articles 8 to 28, which include freedom of religion, freedom of movement, freedom of assembly, freedom of association, rights to education, equality of citizens and security of person. It obliges all branches of the Executive, Legislature, and Judiciary to respect and ensure the rights it enunciates. The government has taken some steps to protect and promote human rights in Pakistan, like a national action plan on human rights, a national commission for human rights, Pakistan law on human rights, providing education on human rights, and signing national and international treaties to protect and promote human rights (The Constitution of Pakistan, 1973).

The government of Pakistan has set up these institutions / organizations for protection of human rights; National Action Plan for Human Rights; National Commission for Human Rights; National Commission on the Status of Women; National Commission for Child Welfare and Development; Centers for Human Rights Education.

CONCLUSION

Effective protection of human rights promotes peace and stability at the national level not only by allowing people to enjoy their basic rights and freedoms but also by providing a basic democratic, cultural, economic, political and social framework within which conflicts can be peacefully resolved both at the national and international level. This article finds that some of the institutional flaws led to the failure of protection of human rights in Pakistan. Moreover, the victims' right to justice is usually neglected within the context of judicial proceedings that prioritize bringing criminals to justice. Pakistan's government has taken some steps to protect human rights, yet violation of human rights is frequently observed in Pakistani society. To protect and promote human rights in Pakistan, judicial reforms must be introduced and awareness should be created among the masses for the protection of their rights.

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Date of Publication	September 06, 2022
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