

From Constitutional Promise to Practical Failure: The Enforcement Gap in Pakistan's Bill of Rights, A Comparative Constitutional Analysis

Dr. Nadia Zafar

nadiazafar.law@tuf.edu.pk

Assistant Professor, Department of Law, The University of Faisalabad

Atuba Shahid

atubashahid33@yahoo.com

LLM Scholar, Department of Law, The University of Faisalabad

Muhammad Aftab

Muhammadaftab589@gmail.com

LLM Scholar, Department of Law, The University of Faisalabad

Corresponding Author: Dr. Nadia Zafar nadiazafar.law@tuf.edu.pk

Received: 30-01-2026

Revised: 13-02-2026

Accepted: 01-03-2026

Published: 15-03-2026

ABSTRACT

This article critically examines the disjunction between the constitutional promise and practical realization of fundamental rights in Pakistan. While the Constitution of Pakistan 1973 enshrines an extensive and ostensibly robust Bill of Rights, its effective enforcement remains deeply constrained by institutional, procedural, and socio-political limitations. Drawing upon comparative insights from jurisdictions such as India, the United Kingdom, and the United States, the article interrogates whether the failure lies in constitutional design or in the mechanisms of implementation. Adopting a “law in books versus law in action” framework, the study evaluates the role of the Supreme Court of Pakistan and the broader judiciary in shaping rights jurisprudence, with particular attention to the phenomenon of selective judicial activism. Through doctrinal analysis, case law examination, and engagement with leading scholarship, the article identifies a persistent enforcement gap characterized by limited access to justice, weak institutional capacity, and inconsistent state compliance with judicial directives. The paper argues that Pakistan’s constitutional framework is normatively sound but operationally deficient. It highlights how existing literature has largely remained confined to doctrinal exposition or descriptive accounts of rights violations, without adequately addressing the structural barriers that impede effective enforcement. By bridging this gap, the article contributes to comparative constitutional discourse and advances a more grounded understanding of why fundamental rights often fail to translate into lived realities. The article concludes by proposing targeted reforms aimed at strengthening judicial capacity, enhancing institutional accountability, and improving access to justice, thereby moving Pakistan closer to a functional and enforceable Bill of Rights regime.

Keywords: Bill of Rights, Fundamental Rights Enforcement, Constitutionalism in Pakistan, Judicial Activism, Access to Justice.

INTRODUCTION

The concept of a Bill of Rights is a fundamental aspect of contemporary constitutionalism, as an official proclamation of fundamental liberties, which is oriented at protection against the abuse of state power. A historically grounded system of tools such as the United States Bill of Rights and later enriched by international human rights systems, a Bill of Rights is a normative pledge and a legally binding guarantee of the core freedoms, such as equality, liberty and due process. Its place in constitutional systems is not that

the rights are enumerated, but that it provides structures through which such rights can be effectively claimed and fulfilled. The presence of a Bill of Rights can therefore be seen as a indication of the transition to parliamentary or executive dominance to rights based legal order whereby legitimacy of state action is judged against predetermined constitutional norms. However, the actual measure of such a framework is not its textual articulation but its realisation through practice in specific, how much such guarantees should be put to actualities in which citizens inhabit (Afzal & Khan, 2025).

The concept of a Bill of Rights occupies a central position in modern constitutional democracies, embodying the normative commitment of the state to protect individual liberties against arbitrary exercise of power. In Pakistan, this commitment is formally articulated in Part II, Chapter 1 of the Constitution of Pakistan 1973, which guarantees a wide spectrum of civil, political, and procedural rights, including equality before law, freedom of expression, religious liberty, and the right to a fair trial. These rights are not merely declaratory; they are expressly made justiciable, supported by constitutional remedies and an empowered judiciary tasked with their enforcement (Tabassum, 2025).

Despite this robust constitutional architecture, a persistent and troubling disjunction exists between the promise of fundamental rights and their realization in practice. While the higher judiciary particularly the Supreme Court of Pakistan has, at various points, adopted an expansive interpretive approach and actively intervened in matters of public importance, such interventions have not consistently translated into systemic or sustainable protection of rights. Instead, the enforcement of fundamental rights often remains uneven, selective, and inaccessible to large segments of the population, especially those situated outside urban and socio-economically privileged contexts (Anjum et al., n.d.).

This paradox raises a critical question at the heart of constitutional governance: if the textual framework of rights in Pakistan is comprehensive and judicially enforceable, why do these rights fail to manifest effectively in the lived experiences of citizens? Existing scholarship offers partial answers. Doctrinal analyses tend to emphasize constitutional design and judicial interpretation, while human rights reports document widespread violations across various sectors. However, there remains a notable gap in bridging these perspectives specifically, in examining the structural, procedural, and institutional factors that impede the translation of constitutional guarantees into practical outcomes.

This article addresses that gap by adopting a “law in books versus law in action” framework to critically evaluate the enforcement of the Bill of Rights in Pakistan. It argues that the core problem does not lie in the inadequacy of constitutional provisions, but rather in systemic enforcement deficits shaped by institutional weakness, procedural barriers, and selective judicial engagement. By situating Pakistan within a comparative constitutional context drawing insights from jurisdictions such as India, the United Kingdom, and the United States the article seeks to illuminate why similarly structured rights regimes yield markedly different outcomes (Bozdar et al., n.d.).

In doing so, the study moves beyond purely doctrinal inquiry and contributes to a more grounded understanding of constitutionalism in practice. It ultimately contends that without meaningful reforms aimed at strengthening enforcement mechanisms, enhancing access to justice, and ensuring institutional accountability, the Bill of Rights in Pakistan risks remaining a formal ideal rather than a functional reality.

Conceptual Framework: Bill of Rights and Its Practical Application

The Bill of Rights, as a constitutional construct, represents a formalized guarantee of fundamental liberties designed to protect individuals against arbitrary state action. In its classical formulation, it serves both as a limitation on governmental power and as a source of enforceable entitlements for citizens. However, the mere constitutional entrenchment of rights does not, in itself, ensure their effective realization. A meaningful

analysis of rights protection therefore requires a distinction between normative commitment and institutional enforcement.

At a theoretical level, constitutional rights can be understood through competing jurisprudential approaches. One influential perspective is that of transformative constitutionalism, most prominently articulated by Upendra Baxi, which conceives of the constitution as an instrument for social change. Under this approach, courts are expected to play an active role in expanding the scope of rights and addressing structural inequalities, particularly in post-colonial societies. This model has significantly influenced South Asian constitutional practice, especially in India, where judicial innovation has extended fundamental rights into socio-economic domains (Mehndi, 2025).

In contrast, the theory of judicial minimalism, associated with Cass Sunstein, advocates a restrained judicial role. Minimalism emphasizes incremental decision-making, institutional competence, and deference to democratic processes. From this perspective, courts should avoid broad or abstract rulings and instead resolve disputes narrowly, thereby preserving legitimacy and institutional balance. While this model is often associated with stable constitutional systems, its applicability to developing democracies where political and administrative institutions may be weak remains contested.

These competing frameworks highlight a central tension in constitutional design: whether the judiciary should act as a proactive guardian of rights or exercise restraint in deference to other branches of government. In practice, many jurisdictions including Pakistan exhibit a hybrid approach, where periods of judicial activism coexist with phases of institutional caution. However, neither model, in isolation, adequately explains the persistent gap between constitutional guarantees and their practical enforcement (Chowdhury, 2025).

To address this gap, this article adopts the analytical distinction between “law in books” and “law in action,” a concept rooted in legal realism. “Law in books” refers to the formal articulation of rights within constitutional texts, while “law in action” captures the extent to which these rights are actually experienced and enforced in everyday life. This distinction is particularly significant in contexts where legal institutions are characterized by inefficiency, limited accessibility, and uneven accountability.

Within this framework, the effectiveness of a Bill of Rights depends not only on its textual content but also on a range of external factors, including judicial capacity, procedural accessibility, administrative compliance, and broader socio-political conditions. As noted by comparative constitutional scholars such as Tom Ginsburg, the success of judicial review in new democracies is closely tied to institutional strength and political context. However, existing theoretical models often understate the role of informal barriers such as cost of litigation, legal illiteracy, and cultural constraints that significantly shape access to constitutional remedies (Iqbal et al., 2025).

Accordingly, this article conceptualizes the enforcement of fundamental rights as a multi-layered process, involving not only constitutional courts but also subordinate judiciary, executive agencies, and civil society actors. The failure of rights enforcement, therefore, cannot be attributed solely to deficiencies in constitutional design; rather, it reflects a broader systemic breakdown across these interconnected layers.

By situating the Bill of Rights within this broader institutional and theoretical context, the article establishes a foundation for examining why, despite the presence of a robust constitutional framework, fundamental rights in Pakistan frequently fail to translate into tangible protections. This conceptual approach enables a shift from purely doctrinal analysis toward a more nuanced and practice-oriented understanding of constitutionalism (Sohail et al., 2025a).

Constitutional Framework of Fundamental Rights in Pakistan

The constitutional protection of fundamental rights in Pakistan is primarily enshrined in Part II, Chapter 1 of the Constitution of Pakistan 1973. This framework reflects a formal commitment to liberal constitutionalism by guaranteeing a comprehensive catalogue of civil, political, and procedural rights. Unlike purely aspirational provisions, these rights are expressly made justiciable and are accompanied by enforceable remedies, thereby positioning the Constitution as the supreme legal instrument for the protection of individual liberties.

Scope and Nature of Fundamental Rights

The Constitution guarantees a broad range of rights that are foundational to democratic governance. These include, inter alia, the right to equality before law and equal protection (Article 25), freedom of speech and expression (Article 19), freedom of religion (Article 20), safeguards as to arrest and detention (Article 10), and the right to a fair trial and due process (Article 10A). Collectively, these provisions establish a rights-based framework aimed at protecting individuals from arbitrary state action while promoting participatory governance.

A defining feature of this framework is its negative orientation, whereby most rights operate as limitations on state authority rather than as positive obligations requiring proactive state intervention. However, judicial interpretation particularly by the Supreme Court of Pakistan has, at times, expanded the scope of these rights, most notably by reading socio-economic dimensions into the right to life under Article 9. This interpretive approach has blurred the traditional distinction between civil-political and socio-economic rights, thereby enhancing the normative breadth of constitutional protections (Wahab, 2025a).

Constitutional Supremacy and Limitations

The supremacy of fundamental rights is reinforced through Article 8, which declares that any law inconsistent with or in derogation of fundamental rights shall, to the extent of such inconsistency, be void. This provision establishes a clear hierarchy in which constitutional rights prevail over ordinary legislation, thereby empowering courts to invalidate laws that infringe protected freedoms.

However, this supremacy is not absolute. Many rights are subject to reasonable restrictions, often framed in broad and flexible terms such as “public order,” “security of Pakistan,” or “morality.” For instance, freedom of expression under Article 19 is explicitly limited on multiple grounds, which grants the state considerable discretion in regulating speech. While such limitations are common in constitutional systems, their expansive phrasing in the Pakistani context raises concerns regarding potential misuse and overreach (Rafiq & Riaz, 2025).

Enforcement Mechanisms

The enforceability of fundamental rights is a central feature of the constitutional framework. Individuals may seek remedies through the writ jurisdiction of High Courts under Article 199, which empowers courts to issue orders for the enforcement of rights against state authorities. Additionally, the Supreme Court of Pakistan exercises original jurisdiction under Article 184(3) in matters of public importance involving the enforcement of fundamental rights.

This latter provision has facilitated the development of public interest litigation (PIL) in Pakistan, allowing the Court to relax traditional rules of locus standi and intervene suo motu in cases of widespread rights violations. Such judicial innovation has, in principle, strengthened access to constitutional remedies and

expanded the protective scope of fundamental rights (Zahra et al., 2025).

Strengths of the Constitutional Framework

From a doctrinal perspective, the constitutional framework of fundamental rights in Pakistan is both comprehensive and robust. It combines an extensive catalogue of rights with enforceable remedies and an empowered judiciary capable of constitutional review. The inclusion of Article 10A through the 18th Amendment further strengthens procedural protections by explicitly recognizing the right to a fair trial, aligning Pakistan's constitutional guarantees with international human rights standards (Shahzad et al., 2025).

Moreover, the adaptability of the framework evident in judicial interpretation demonstrates its capacity to respond to evolving societal needs. The courts' willingness to expand the scope of rights indicates that the Constitution is not static but capable of progressive development.

The Enforcement Gap in Pakistan

Despite the comprehensive and justiciable framework of fundamental rights under the Constitution of Pakistan 1973, a persistent and systemic gap exists between constitutional guarantees and their realization in practice. This "enforcement gap" reflects the divergence between law in books and law in action, where rights that are normatively robust fail to translate into effective protections for citizens. The causes of this gap are neither singular nor superficial; rather, they are rooted in institutional, procedural, and structural deficiencies that collectively undermine the efficacy of the constitutional rights regime.

Institutional Weakness and Judicial Inefficiency

A primary factor contributing to the enforcement gap is the limited institutional capacity of the judicial system. While the Supreme Court of Pakistan and High Courts have demonstrated an ability to develop progressive rights jurisprudence, the broader judicial structure particularly the subordinate judiciary remains burdened by delays, backlog, and administrative inefficiency.

As highlighted in the work of Osama Siddique, Pakistan's formal legal system often fails to deliver timely and effective remedies, thereby eroding public confidence. Fundamental rights litigation, in particular, suffers from prolonged adjudication, which diminishes the practical value of rights such as fair trial and due process. Justice delayed, in this context, effectively becomes justice denied, rendering constitutional protections largely symbolic for ordinary litigants (Wahab, 2025b).

Selective Judicial Activism

Another critical dimension of the enforcement gap lies in the phenomenon of selective judicial activism. The superior judiciary, especially the Supreme Court of Pakistan, has exercised its suo motu jurisdiction under Article 184(3) to intervene in matters of public importance. While such interventions have, at times, expanded the scope of fundamental rights, they have not been applied consistently across all domains.

Judicial attention tends to be concentrated on high-visibility issues such as governance failures or environmental concerns while other areas, including labour rights, minority protections, and criminal justice abuses, receive comparatively limited scrutiny. This selective engagement creates an uneven rights landscape, where enforcement is contingent not on legal merit but on judicial prioritization. Consequently, the promise of equal protection under the Constitution is undermined by inconsistency in its application (Sohail et al., 2025b).

Procedural and Economic Barriers to Accessing Justice

Even where legal remedies are available, access to justice remains a significant challenge. The enforcement of fundamental rights often requires navigating complex procedural frameworks, engaging legal counsel, and bearing substantial financial costs. For large segments of the population particularly those in rural or economically disadvantaged settings these barriers are prohibitive.

The absence of a sufficiently developed legal aid system further exacerbates this issue. As a result, constitutional remedies are disproportionately accessible to urban, educated, and financially secure individuals, thereby reinforcing existing socio-economic inequalities. In this sense, the enforcement gap is not merely institutional but also deeply social, reflecting disparities in legal awareness and resource distribution.

Executive Non-Compliance and Weak Accountability

A critical yet frequently overlooked aspect of the enforcement gap is the issue of executive non-compliance with judicial decisions. Even where courts issue clear directives for the enforcement of fundamental rights, implementation by administrative authorities is often inconsistent or delayed. This weakens the authority of judicial pronouncements and undermines the practical efficacy of constitutional remedies.

The absence of robust accountability mechanisms further compounds this problem. Without effective oversight or consequences for non-compliance, state institutions may disregard or selectively implement court orders. This creates a structural imbalance in which rights exist in theory but lack enforceability in practice.

Socio-Political Constraints

Beyond institutional and procedural limitations, broader socio-political dynamics also play a significant role in shaping the enforcement of fundamental rights. Historical patterns of centralized authority, periods of constitutional suspension, and entrenched power structures have contributed to a governance culture in which rights are not consistently prioritized.

As noted by scholars such as Ayesha Jalal, the legacy of authoritarian governance continues to influence state institutions, often at the expense of constitutionalism. In such an environment, the protection of fundamental rights may be subordinated to political considerations, further widening the gap between constitutional ideals and lived realities (Akram et al., 2025).

Informal and Cultural Barriers

In addition to formal legal constraints, informal factors including social norms, cultural attitudes, and legal illiteracy significantly affect the enforcement of rights. Many individuals remain unaware of their constitutional entitlements or lack the means to assert them effectively. In certain contexts, social pressures and power hierarchies discourage the pursuit of legal remedies, particularly in cases involving gender, religion, or local authority structures.

These informal barriers are rarely addressed in doctrinal analyses but are central to understanding why rights fail in practice. They illustrate that the enforcement gap is not solely a legal issue but a multidimensional problem requiring broader societal engagement.

In sum, the enforcement gap in Pakistan arises from a complex interplay of institutional inefficiencies,

selective judicial practices, procedural barriers, executive inaction, and socio-political constraints. While the constitutional framework provides a strong foundation for the protection of fundamental rights, its effectiveness is significantly undermined by these systemic deficiencies. This analysis underscores the need to move beyond formal constitutional guarantees and engage with the practical realities that shape the lived experience of rights (Khan, n.d.).

Case Law Analysis: Judicial Expansion and Practical Limitations

The development of fundamental rights jurisprudence in Pakistan has been significantly influenced by landmark decisions of the superior judiciary, particularly the Supreme Court of Pakistan. Through an expansive and often purposive interpretive approach, the Court has sought to transform constitutional guarantees into meaningful protections. However, a closer examination of leading cases reveals a recurring tension between doctrinal advancement and practical enforcement. While judicial pronouncements have articulated progressive and far-reaching principles, their translation into sustained and systemic protection of rights remains limited. This section critically evaluates key decisions to assess whether judicial intervention has effectively bridged the enforcement gap or merely reinforced the symbolic strength of the Bill of Rights (Awais et al., 2024).

The decision in *Benazir Bhutto v Federation of Pakistan* (1988) represents a pivotal moment in Pakistan's constitutional jurisprudence, particularly in relation to access to justice. In this case, the Court liberalized the doctrine of locus standi, holding that procedural technicalities should not bar the enforcement of fundamental rights in matters of public importance. This marked the emergence of public interest litigation as a significant feature of constitutional practice, enabling the judiciary to address collective grievances and expand the reach of constitutional remedies. Notwithstanding its doctrinal significance, the practical impact of this development has been uneven. The expansion of standing primarily benefited cases that attracted judicial attention at the level of the superior courts, while structural barriers such as litigation costs, procedural complexity, and limited legal awareness continued to restrict access for ordinary citizens. As a result, the case enhanced formal accessibility but did not fundamentally alter the broader conditions under which rights are enforced.

A similarly illustrative example is found in *Shehla Zia v WAPDA* (1994), where the Supreme Court of Pakistan adopted a purposive interpretation of Article 9 to include environmental protection within the ambit of the right to life. This decision is widely regarded as a milestone in the evolution of rights jurisprudence, demonstrating the Court's willingness to extend constitutional protections into new domains. However, the practical implications of this expansion remain constrained. Environmental governance in Pakistan continues to be undermined by weak regulatory frameworks and ineffective administrative enforcement. Although the judgment established an important constitutional principle, it did not generate the institutional mechanisms necessary to ensure its consistent implementation. This reflects a broader pattern in which rights are judicially recognized but not adequately operationalized, thereby limiting their real-world impact (Ziaullah et al., n.d.).

The case of *Asma Jilani v Government of Punjab* (1972) further underscores the distinction between judicial articulation and practical enforcement. In declaring martial law illegal and affirming the supremacy of the Constitution, the Court sought to reassert the primacy of constitutional governance and reject the doctrine of necessity. This decision is often celebrated as a foundational moment in the assertion of the rule of law in Pakistan. However, its long-term effectiveness has been tempered by subsequent political developments, including repeated interruptions of constitutional order. The principles articulated in *Asma Jilani* have not consistently prevented extra-constitutional interventions, raising important questions about the capacity of judicial decisions to shape political realities in the absence of broader institutional and political alignment.

Taken together, these cases demonstrate that while the judiciary has played a central role in expanding and defining the scope of fundamental rights, its interventions have not always resulted in systemic or enduring change. A discernible pattern emerges in which rights are progressively interpreted, access to courts is formally broadened, and landmark principles are articulated, yet the practical enforcement of these rights remains inconsistent and uneven. This divergence highlights the limitations of judicial activism as a standalone mechanism for rights protection.

The analysis of case law therefore reinforces the central argument of this article: that the primary challenge facing the Bill of Rights in Pakistan is not the absence of constitutional recognition, but the failure of enforcement. Judicial innovation, while essential in shaping the normative content of rights, cannot by itself overcome the structural, procedural, and institutional barriers that impede their realization. The effectiveness of fundamental rights ultimately depends on a broader ecosystem that includes administrative compliance, institutional capacity, and societal engagement. Without these supporting structures, even the most progressive judicial pronouncements risk remaining symbolic rather than transformative (Nisar, 2023).

Comparative Analysis: Pakistan and Other Constitutional Systems

A meaningful evaluation of the enforcement of fundamental rights in Pakistan requires situating its constitutional framework within a comparative context. While the Constitution of Pakistan 1973 provides a comprehensive and justiciable Bill of Rights, similar guarantees exist in other jurisdictions that demonstrate varying degrees of effectiveness in practice. A comparative analysis with India, the United Kingdom, and the United States reveals that the divergence in outcomes is not primarily attributable to constitutional design, but rather to differences in institutional capacity, judicial culture, and enforcement mechanisms.

The comparison with India is particularly instructive, given the shared colonial legacy and structural similarities between the Constitution of Pakistan 1973 and the Constitution of India. Both constitutions provide an extensive catalogue of fundamental rights and empower the judiciary to enforce them through constitutional remedies. However, the practical realization of these rights has been markedly more effective in India. One of the defining features of Indian constitutional practice is the robust development of public interest litigation, which has enabled courts to address issues affecting marginalized communities, including bonded labor, environmental degradation, and custodial violence. Unlike Pakistan, where judicial activism has often been selective and episodic, the Indian judiciary has demonstrated greater consistency in sustaining rights-based interventions and ensuring follow-through through continuing mandamus and structural remedies (Rizwan, 2023).

This divergence can be attributed, in part, to differences in judicial approach and institutional support. Indian courts have not only expanded the scope of fundamental rights but have also developed mechanisms to monitor compliance and implementation. In contrast, while the Supreme Court of Pakistan has adopted an expansive interpretive approach in certain cases, it has not consistently institutionalized mechanisms to ensure that its directives are effectively implemented. As a result, judicial pronouncements in Pakistan often remain confined to the realm of principle, without generating sustained structural change.

The United Kingdom presents a contrasting model, where the protection of rights operates within the framework of parliamentary sovereignty. The enactment of the Human Rights Act 1998 incorporates the rights contained in the European Convention on Human Rights into domestic law, enabling courts to review legislation for compatibility. However, unlike constitutional systems with entrenched Bills of Rights, UK courts cannot invalidate primary legislation; instead, they may issue declarations of incompatibility. Despite this apparent limitation, the effectiveness of rights protection in the UK is significantly enhanced by a strong culture of institutional compliance and respect for the rule of law. Government authorities typically respond

to judicial findings, and there exists a well-developed administrative framework to implement rights-based obligations (Hyder et al., 2024).

This highlights an important insight for the Pakistani context: the strength of a Bill of Rights depends not only on judicial power but also on the willingness and capacity of other state institutions to comply with and enforce rights. In Pakistan, the absence of a comparable compliance culture and the weakness of administrative institutions contribute significantly to the enforcement gap, even in the presence of stronger formal judicial powers.

The United States offers yet another model, characterized by a deeply entrenched Bill of Rights and a strong tradition of judicial enforcement. The First Amendment to the United States Constitution, for instance, provides robust protection for freedom of expression, which has been consistently upheld through judicial review. American courts have developed a sophisticated body of jurisprudence that not only defines the scope of rights but also ensures their enforceability through clear standards and remedies. Moreover, the effectiveness of rights protection is reinforced by broader institutional and cultural factors, including a high degree of legal awareness, access to legal representation, and a strong tradition of constitutionalism.

In contrast, Pakistan's experience demonstrates that the mere presence of judicial review and constitutional remedies is insufficient to guarantee effective rights protection. While the formal powers of the judiciary in Pakistan are, in some respects, comparable to those in the United States, the surrounding institutional environment marked by limited access to justice, delays, and weak enforcement significantly constrains their impact (Rahman, n.d.).

The comparative analysis thus underscores a central theme: that the effectiveness of a Bill of Rights is contingent upon a combination of factors extending beyond constitutional text. These include judicial consistency, institutional capacity, administrative compliance, and societal engagement with the legal system. Pakistan's relative underperformance in enforcing fundamental rights is not the result of a deficient constitutional framework, but rather of systemic weaknesses that impede the translation of legal guarantees into practical realities.

By examining these jurisdictions, it becomes evident that successful rights enforcement requires not only judicial innovation but also sustained institutional support and a culture of accountability. This comparative perspective reinforces the argument that addressing the enforcement gap in Pakistan necessitates reforms that extend beyond constitutional interpretation and engage with the broader structural conditions within which rights operate (Muhammad et al., 2024).

RECOMMENDATIONS

The analysis undertaken in this article demonstrates that the shortcomings of the Bill of Rights in Pakistan are not rooted in constitutional design but in deficiencies relating to enforcement, accessibility, and institutional capacity. Accordingly, meaningful reform must move beyond textual amendments and instead focus on strengthening the mechanisms through which rights are realized in practice. This requires a multi-dimensional approach addressing judicial performance, institutional accountability, and societal access to justice.

A central priority lies in the strengthening of the judiciary, particularly at the level of subordinate courts. While the Supreme Court of Pakistan has played a pivotal role in developing rights jurisprudence, the bulk of litigation is handled by lower courts, where delays, procedural inefficiencies, and limited capacity significantly undermine the enforcement of fundamental rights. Reform in this area must therefore focus on case management systems, judicial training, and resource allocation to ensure timely and effective

adjudication. Without addressing these foundational issues, constitutional remedies will remain inaccessible to a large segment of the population.

At the same time, there is a need to recalibrate the exercise of judicial activism. The use of suo motu jurisdiction under Article 184(3) has enabled the superior judiciary to intervene in matters of public importance, but its application has often been inconsistent and selective. A more structured and principled approach is required, one that prioritizes systemic issues and ensures continuity in enforcement rather than episodic intervention. This includes developing mechanisms for monitoring compliance with judicial orders, thereby transforming judgments from declaratory statements into enforceable directives.

Equally important is the strengthening of institutional accountability within the executive branch. The effectiveness of fundamental rights ultimately depends on the willingness and capacity of administrative authorities to implement judicial decisions. In this regard, the absence of robust enforcement mechanisms has allowed non-compliance to persist with limited consequences. Establishing clearer lines of accountability, including sanctions for failure to comply with court orders, is essential to reinforcing the authority of the Constitution and the judiciary.

Access to justice represents another critical dimension of reform. The procedural and financial barriers associated with constitutional litigation continue to exclude marginalized communities from the protection of fundamental rights. Expanding legal aid services, simplifying procedural requirements, and enhancing public legal awareness are necessary steps to democratize access to constitutional remedies. Without such measures, the Bill of Rights risks functioning as a privilege available only to those with the resources to invoke it.

In addition to formal legal reforms, there is a need to address the broader socio-legal context within which rights operate. Informal barriers, including cultural norms, social hierarchies, and legal illiteracy, play a significant role in limiting the assertion of rights. Efforts to strengthen constitutionalism must therefore include educational initiatives and civil society engagement aimed at fostering a culture of rights awareness and accountability. This is particularly important in relation to vulnerable groups, whose ability to claim constitutional protections is often constrained by factors beyond the legal system.

Finally, comparative insights suggest that effective rights enforcement depends not only on judicial power but also on institutional coherence and a culture of compliance. Jurisdictions such as the United Kingdom, operating under frameworks like the Human Rights Act 1998, demonstrate that even where courts lack the power to invalidate legislation, strong administrative practices and respect for legal norms can ensure meaningful protection of rights. For Pakistan, this underscores the importance of developing a coordinated approach in which the judiciary, executive, and civil society collectively contribute to the enforcement of constitutional guarantees.

In sum, bridging the enforcement gap requires a shift from a purely rights-based discourse to an implementation-focused approach. The effectiveness of the Bill of Rights depends not on the expansion of constitutional provisions, but on the creation of institutional conditions that enable their realization. Without such reforms, the constitutional promise of fundamental rights will remain largely aspirational, falling short of its transformative potential.

REFERENCES

Legislation

Constitution of the Islamic Republic of Pakistan 1973

Constitution of India 1950

Human Rights Act 1998

First Amendment to the Constitution of the United States 1791

Cases

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

Benazir Bhutto v Federation of Pakistan (1988) PLD SC 416

Shehla Zia v WAPDA (1994) PLD SC 693

Journal Articles

Afzal, Z., & Khan, A. B. (2025). Constitutional and Political Development in Pakistan: An Insight into the Political Context and Legislative Performance of the 15th National Assembly of Pakistan (2018-2023). *Pakistan Social Sciences Review*, 9(2), 729–740.

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.

Anjum, R., Jatoti, A. A., & Shaikh, E. (n.d.). *ALGORITHMIC ACCOUNTABILITY IN PAKISTAN: CONSTITUTIONAL CHALLENGES TO AUTOMATED DECISION-MAKING AND THE PRESERVATION OF DUE PROCESS*.

Awais, M., Muhammad, S., Baig, K., & Shah, A. H. (2024). Flaws in child protection laws in Pakistan: Under the umbrella of international standards. *The International Journal of Human Rights*, 4(2), 481–499.

Bozdar, M. Y., Solangi, A. B., & Shabbir, T. (n.d.). *CONSTITUTIONAL CONCEPTIONS OF LIBERTY AND THE JURIDICAL CONSTRUCTION OF INDIVIDUAL FREEDOM IN PAKISTAN*.

Chowdhury, J. (2025). The Dilemma Between Fundamental Rights and Human Rights in the Constitution of Bangladesh: A Comparative Analysis. *Available at SSRN* 5262968.

Hyder, H. S. A. F., Rehman, T. U., Muhammad, A., Shahzad, S. A., Zawar, A., Usmani, M. A., & Bukhari, S. A. A. (2024). Forced Religious Conversions in Pakistan. *Al-Mahdi Research Journal (MRJ)*, 5(5), 761–776.

Iqbal, A., Akbar, N., & Hussain, N. (2025). FROM DECLARATIONS TO ENFORCEMENT: BRIDGING THE GAP IN INTERNATIONAL HUMAN RIGHTS LAW. *International Journal of Social Sciences Bulletin*, 3(6), 728–737.

Afzal, Z., & Khan, A. B. (2025). Constitutional and Political Development in Pakistan: An Insight into the Political Context and Legislative Performance of the 15th National Assembly of Pakistan (2018-2023). *Pakistan Social Sciences Review*, 9(2), 729–740.

- 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.
- Anjum, R., Jatoti, A. A., & Shaikh, E. (n.d.). *ALGORITHMIC ACCOUNTABILITY IN PAKISTAN: CONSTITUTIONAL CHALLENGES TO AUTOMATED DECISION-MAKING AND THE PRESERVATION OF DUE PROCESS*.
- Awais, M., Muhammad, S., Baig, K., & Shah, A. H. (2024). Flaws in child protection laws in Pakistan: Under the umbrella of international standards. *The International Journal of Human Rights*, 4(2), 481–499.
- Bozdar, M. Y., Solangi, A. B., & Shabbir, T. (n.d.). *CONSTITUTIONAL CONCEPTIONS OF LIBERTY AND THE JURIDICAL CONSTRUCTION OF INDIVIDUAL FREEDOM IN PAKISTAN*.
- Chowdhury, J. (2025). The Dilemma Between Fundamental Rights and Human Rights in the Constitution of Bangladesh: A Comparative Analysis. *Available at SSRN 5262968*.
- Hyder, H. S. A. F., Rehman, T. U., Muhammad, A., Shahzad, S. A., Zawar, A., Usmani, M. A., & Bukhari, S. A. A. (2024). Forced Religious Conversions in Pakistan. *Al-Mahdi Research Journal (MRJ)*, 5(5), 761–776.
- Iqbal, A., Akbar, N., & Hussain, N. (2025). FROM DECLARATIONS TO ENFORCEMENT: BRIDGING THE GAP IN INTERNATIONAL HUMAN RIGHTS LAW. *International Journal of Social Sciences Bulletin*, 3(6), 728–737.
- Khan, M. (n.d.). Islamic Republic of Pakistan. *2022 Global Review of Constitutional Law*, 278.
- Mehndi, A. (2025). Theoretical Perspectives on the Constitutional Development of Minority Rights in Pakistan (2008–2024): A Multidimensional Analysis through Liberal Pluralism, Critical Race Theory, Postcolonial Theory, and Legal Pluralism. *Journal of Economics, Management & Business Administration*, 4(1), 48–86.
- Muhammad, A., Khan, U., & Shahid, A. (2024). The Intersection of Legal Reforms and Judicial Crisis: A Study of Pakistan's 26th Constitutional Amendment and the Black Day for Judiciary. *The Critical Review of Social Sciences Studies*, 2(2), 1248–1267.
- Nisar, A. (2023). A Critical Analysis of Pakistan's Legislative Measures Against Sexual Abuse of Children in the Light of International Human Rights Law. *Pakistan JL Analysis & Wisdom*, 2, 432.
- Rafiq, M. A., & Riaz, K. (2025). A Comparative Legal Analysis of Judicial Autonomy, Freedom of Expression, and Criminal Justice in Pakistan and the UK: Bridging Constitutionalism and Control. *ASSAJ*, 3(02), 1805–1818.
- Rahman, S. K. M. (n.d.). *Rights of Minorities in the 21st Century: A Comparative Study of India and Pakistan*.
- Rizwan, S. (2023). Constitutional Framework: A Comparative Analysis of Legal Systems in Pakistan and the United States. *Global Legal Studies Review*, 8(4), 10–15.

- Shahzad, K., Rizwan, S., & Razzaq, A. (2025). A Critical Analysis of Fundamental Rights in the Constitution of Pakistan 1973. *Journal for Current Sign*, 3(4), 316–328.
- Sohail, A., Musa, N., & Rahman, M. R. A. (2025a). Tracking the Decline or Progress? An Empirical Assessment of Pakistan's Performance on Fundamental Rights. *Legal Transformation Muslim Soc'y*, 2, 121.
- Sohail, A., Musa, N., & Rahman, M. R. A. (2025b). Tracking the Decline or Progress? An Empirical Assessment of Pakistan's Performance on Fundamental Rights. *Legal Transformation Muslim Soc'y*, 2, 121.
- Tabassum, N. (2025). A Critical Analysis of the Transgender Persons (Protection of Rights) Act: Toward Inclusive and Affirmative Legal Reform. *Advances in Psychological Sciences and Applications*, 1(02), 99–107.
- Wahab, A. (2025a). The Constitution as a Living Document: Challenges of Implementation in Contemporary Pakistan. *ASSAJ*, 4(02), 1112–1126.
- Wahab, A. (2025b). The Constitution as a Living Document: Challenges of Implementation in Contemporary Pakistan. *ASSAJ*, 4(02), 1112–1126.
- Zahra, S. H., Rizwan, S., & Naz, S. (2025). Between Promise and Practice: A Constitutional Analysis of Women's Rights in Pakistan. *Journal of Social Signs Review*, 3(08), 313–328.
- Ziaullah, M., Hussain, J., Ahmad, A. W., & Nauman, M. (n.d.). *Advancing Equality: An Analysis of Legal Rights and Protections for the Transgender Community in Pakistan*.

BOOKS

- Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Brill 2006)
- Osama Siddique, *Pakistan's Experience with Formal Law: An Alien Justice* (Cambridge University Press 2013)
- Upendra Baxi, *The Future of Human Rights* (Oxford University Press 2002)
- Cass Sunstein, *Designing Democracy: What Constitutions Do* (Oxford University Press 2001)
- Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press 2003)
- Ayesha Jalal, *The State of Martial Rule: The Origins of Pakistan's Political Economy of Defence* (Cambridge University Press 1990)

REPORTS

- Human Rights Commission of Pakistan, *State of Human Rights in Pakistan* (2023)