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Fundamental Rights under Constitution of Pakistan 1973



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ABSTRACT

The Constitution of Pakistan 1973 guarantees fundamental rights to every citizen under Articles 8 to 28. These rights cover civil, political, and socio-economic dimensions of human dignity and freedom. Despite this comprehensive constitutional framework, a deep and persistent gap exists between rights on paper and rights in practice. This study critically examines the fundamental rights chapter as an integrated legal framework rather than a collection of isolated provisions. It analyzes the role of superior courts in interpreting and enforcing these rights, assesses the structural impact of the 18th Constitutional Amendment, and identifies the legal, institutional, and social barriers preventing full rights realization for women, minorities, and marginalized groups. Using qualitative research methods and doctrinal legal analysis, this study draws on peer-reviewed journal articles published between 2020 and 2025 alongside official constitutional and judicial sources. The findings reveal that judicial inconsistency, weak implementation mechanisms, and structural inequalities collectively undermine constitutional guarantees.

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I. Introduction

What happens to a citizen when the state itself violates their rights? The Constitution of Pakistan 1973 provides the answer. It guarantees fundamental rights to every citizen under Articles 8 to 28. These rights protect life, liberty, equality, and freedom of expression. They serve as a legal shield against state power. The 18th Amendment in 2010 added the right to education, information, and fair trial. No law may override these rights. Any law inconsistent with them is void under Article 8. These rights are not a gift from the state. They are constitutional guarantees that no authority can lawfully take away. Pakistan's judiciary plays a central role in their enforcement. Courts have repeatedly struck down laws that violate these rights. However, serious challenges remain in their implementation (Ahmed, 2021).

Pakistan's constitutional journey began in 1947, but fundamental rights took decades to take proper shape. The Constitutions of 1956 and 1962 both failed to provide lasting protection for citizens' rights. Military interventions repeatedly suspended constitutional guarantees. The Constitution of 1973 finally introduced a comprehensive chapter on fundamental rights under Articles 8 to 28. This chapter was shaped by the Objectives Resolution of 1949, which laid the ideological foundation of the state. Over fifty years, this chapter has been amended six times to expand its scope. Despite these developments, a gap between constitutional text and ground reality still exists. Many scholars have examined individual rights in isolation, but few have studied their collective enforcement. The role of the judiciary in bridging this gap also remains underexplored (AllahRakha, 2024).

Pakistan's Constitution guarantees fundamental rights to every citizen under Articles 8 to 28. We already know that these rights exist on paper and courts have the power to enforce them. However, the real problem lies in their actual implementation. A structural gap exists between constitutional commitments and on-ground realities, with enforcement mechanisms remaining weak and inconsistent. SSRN Citizens often do not know their constitutional rights. Marginalized groups face the greatest difficulty in accessing these rights. Previous studies have examined specific rights in isolation, such as the right to equality or freedom of expression. Few studies have analyzed the full chapter on fundamental rights as a connected legal framework. We still need to know how courts interpret these rights in practice (Asghar & Hussain, 2022).

Scholars have extensively examined the scope and enforcement of fundamental rights under the Constitution of Pakistan 1973. On the right to life and its foundational importance, it has been established that this right serves as the basis for all other constitutional guarantees, yet its interpretation by courts remains inconsistent and its scope contested. In the area of the right to a fair trial under Article 10-A, research reveals that Pakistani courts have not sufficiently defined its full scope, focusing mainly on the right to appeal while leaving other dimensions unexplored (Khan et al., 2024). On the right to freedom of expression under Article 19, it has been found that broadly worded statutory restrictions allow the state to limit speech in ways that undermine constitutional guarantees in practice (Hassan, 2021).

The second body of literature focuses on the right to education, minority rights, and the broader enforcement challenges. Studies on Article 25-A confirm that despite its recognition as a fundamental right through the 18th Amendment in 2010, over 22 million children remain out of school, reflecting a severe failure of state implementation (Imran & Kazmi, 2025). Research on minority rights shows that religious minorities continue to face forced conversions, violence, and unequal treatment, despite constitutional protection under Articles 20 and 36. Comparative analysis of Pakistan's right to fair trial against international standards set by the ICCPR reveals that Pakistan's criminal justice system fails to fully comply with international due process obligations (Shaikh, 2022).

The existing literature has made valuable contributions to understanding fundamental rights in Pakistan. Scholars have examined specific rights such as the right to life, fair trial, education, and gender equality. However, these studies analyze individual rights in isolation. No single study has examined all fundamental rights under Articles 8 to 28 as one connected legal framework. Most studies focus on constitutional text but ignore the judicial interpretation of these rights over time. The role of superior courts in shaping and expanding fundamental rights remains underexplored. Furthermore, very few studies have examined how the 18th Amendment structurally changed the enforcement of these rights. The impact of emergency provisions on the suspension of fundamental rights also lacks thorough investigation (Bora, 2022). This study is guided by the following research objectives.

To examine the fundamental rights guaranteed under Articles 8 to 28 of the Constitution of Pakistan 1973 as a comprehensive and integrated legal framework, rather than analyzing individual rights in isolation.

To critically analyze the role of superior courts in interpreting, expanding, and enforcing fundamental rights in Pakistan, with particular focus on judicial decisions that have shaped the practical scope of these rights over time.

To assess the impact of the 18th Constitutional Amendment on the enforcement and structural development of fundamental rights, including the newly added rights to education, information, and fair trial.

To identify the key legal, institutional, and social barriers that prevent citizens particularly women, minorities, and marginalized groups from effectively exercising their constitutionally guaranteed fundamental rights.

what extent does the constitutional framework of fundamental rights under Articles 8 to 28 of the Constitution of Pakistan 1973 effectively protect citizens' rights in practice, and what legal, institutional, and social barriers hinder their full realization particularly for women, minorities, and marginalized groups in light of judicial interpretation and the structural changes introduced by the 18th Constitutional Amendment?

This study carries significant importance for legal scholarship, judicial practice, and public policy in Pakistan. No previous study has examined all fundamental rights under Articles 8 to 28 as one integrated legal framework. This research fills that critical gap in existing

legal literature. It contributes new knowledge by analyzing judicial interpretation of these rights over time. Policymakers will benefit by gaining a clear picture of enforcement failures and reform needs. Lawyers and judges will find a comprehensive reference for understanding the full scope of constitutional rights. Civil society organizations working for women, minorities, and marginalized groups will also benefit directly. The study justifies its importance by connecting constitutional text with ground reality. It further examines how the 18th Amendment structurally changed the rights framework. This research is not merely academic (Zubair et al., 2023).

II. Methodology

This study adopts a qualitative research design to examine fundamental rights under the Constitution of Pakistan 1973. Qualitative research is the most appropriate methodology for legal research because it allows deep textual, analytical, and interpretive examination of constitutional provisions, judicial decisions, and legislative frameworks. This study does not rely on numerical data or statistical analysis. Instead, it critically examines the meaning, scope, and application of Articles 8 to 28 through careful legal reasoning and textual interpretation. The research employs doctrinal legal analysis as its primary analytical framework. Doctrinal analysis involves the systematic examination of primary legal sources including constitutional provisions, statutes, and court judgments to identify legal principles, inconsistencies, and gaps. Document analysis is applied as a complementary method to examine secondary sources including academic journals, policy reports, and official government documents. This combined methodological approach is particularly well-suited to the research question, which requires both precise constitutional interpretation and a broader contextual understanding of how fundamental rights operate within Pakistan's legal, political, and social environment.

The primary legal sources for this research are drawn directly from official and authoritative public portals. The Constitution of Pakistan 1973 and all its amendments including the 18th Amendment of 2010 and the 26th Amendment of 2024 are retrieved from the official website of the National Assembly of Pakistan at na.gov.pk. Relevant Supreme Court and High Court judgments are accessed through the official Pakistan Law Site at pakistanlawsite.com and the Supreme Court of Pakistan's official portal at supremecourt.gov.pk. Secondary scholarly sources are retrieved from internationally recognized academic databases including Hein Online, JSTOR, Google Scholar, SSRN, and Westlaw. The following keywords are used systematically to search for relevant scholarly literature: fundamental rights Pakistan, Constitution of Pakistan 1973, Articles 8 to 28, right to fair trial Article 10-A, right to education Article 25-A, 18th Constitutional Amendment Pakistan, judicial review Pakistan, minority rights Pakistan, gender equality Pakistan Constitution, and freedom of expression Article 19. These carefully selected keywords ensure that retrieved sources are directly relevant to the research objectives and central research question.

The validity and reliability of this research are ensured through strict and transparent source selection criteria. Only scholarly articles published between 2020 and 2025 are included to ensure that the literature reflects the most current state of knowledge on fundamental rights in Pakistan. All legal provisions cited in this study are verified against currently applicable and officially published versions of the Constitution and relevant statutes. Authors of cited scholarly works are verified as academic researchers, legal scholars, or university professors with established expertise in constitutional and human rights law. All sources used are peer-reviewed and have been cited by other researchers in the field, confirming their academic credibility and evidential reliability. This research is conducted in full compliance with established ethical standards for legal scholarship. Only publicly available official documents and openly accessible scholarly articles are used as data sources. Every scholarly article and legal source from which ideas, arguments, or findings are derived is fully and accurately cited in accordance with APA referencing standards, paying full tribute to the original authors. The researcher has no conflict of interest, and this study is conducted solely for academic and scientific research purposes

III. Results

The fundamental rights chapter of the Constitution of Pakistan 1973 raises a central and urgent legal question. To what extent do these rights actually protect citizens in practice? This question becomes more important as Pakistan approaches its sixth decade under this Constitution. The rights guaranteed under Articles 8 to 28 cover a broad spectrum of civil, political, and socio-economic protections. They exist within a constitutional framework that appears strong and comprehensive on its face. However, the distance between constitutional text and lived reality has grown wider over time. Judicial enforcement has been inconsistent, legislative reforms have been incomplete, and social barriers have remained deeply entrenched. Vulnerable groups including women, minorities, and marginalized communities continue to face the greatest obstacles in accessing their rights. These failures demand a serious and systematic examination. The findings of this study directly address each research objective and collectively answer the central research question (Muzaffar et al.,2024).

The Constitution of Pakistan 1973 contains a detailed chapter on fundamental rights. This chapter spans from Article 8 to Article 28 and covers a wide range of rights. These rights include the right to life, liberty, equality, fair trial, education, and freedom of expression. Article 8 serves as the guardian of all these rights. It declares any law void if it is inconsistent with fundamental rights. This makes the framework appear strong and comprehensive on paper. However, the actual practice tells a very different story. Courts, lawyers, and scholars have historically treated each right as a separate and standalone provision. This isolated approach has weakened the collective strength of the entire rights chapter. Rights that are interconnected have been interpreted without reference to each other. This fragmentation has created inconsistency in judicial decisions across different forums (Ahmed, 2021).

The superior courts of Pakistan are the primary guardians of fundamental rights. The Constitution empowers the Supreme Court under Article 184(3) to take up any matter of public importance involving the enforcement of fundamental rights. High Courts also exercise similar powers under Article 199 through writ jurisdiction. This gives the judiciary a uniquely broad authority to protect citizens' rights. However, this authority has not always been exercised consistently or judiciously. The Supreme Court has shown a varied reading of public interest litigation as a legal tool and inconsistent deployment of statutory interpretational techniques, which has directly affected the enforcement of fundamental rights. SSRN In some landmark cases, courts have significantly expanded the scope of citizens' rights. In others, judicial decisions appear driven by political considerations rather than genuine constitutional interpretation (Manzar, 2022).

The 18th Constitutional Amendment of 2010 is the most significant reform in Pakistan's constitutional history. It is regarded as the reform package with the greatest significance in the entire history of Pakistan's constitutional development. Pakistani Before this amendment, the fundamental rights chapter focused mainly on civil and political rights. The amendment transformed this framework by adding three new fundamental rights. Article 10-A introduced the right to a fair trial, Article 19-A established the right to information, and Article 25-A guaranteed the right to free and compulsory education for all children aged five to sixteen years. SSRN These additions shifted the rights framework from a purely political character to a broader socio-economic one. For the first time, citizens gained constitutional tools to demand education, transparency, and judicial fairness from the state. However, implementation of these newly added rights has remained deeply inadequate (Anwar et al., 2023).

Article 10-A was introduced through the 18th Amendment to guarantee every citizen the right to a fair trial and due process. This right is internationally recognized under Article 14 of the International Covenant on Civil and Political Rights. However, the reality inside Pakistan's criminal justice system tells a deeply troubling story. The current framework of procedural justice in Pakistan contradicts the principles of fair trial as envisaged by Article 10-A, and the United Nations Human Rights Committee has repeatedly rejected judicial backlog as an excuse, characterizing procedural delays as a direct violation of this right. Mohr Custodial torture remains widespread despite constitutional protection under Article 14(2). The common practice is to subject the accused to torture until confession, regardless of whether the accused actually committed the crime. Pu Military courts trying civilians further violate fair trial standards under both constitutional and international law (Jamali et al., 2024).

The Constitution of Pakistan 1973 guarantees equal rights to every citizen under Articles 25 and 26. These provisions prohibit discrimination on the basis of sex, religion, caste, or race. However, this constitutional promise has not been equally delivered to all citizens. Women remain the most structurally disadvantaged group in Pakistan. Pu Religious minorities face equally serious barriers. The blasphemy laws have enabled majority population hatred against religious and sectarian minorities under the cover of a legal framework, with anti-

Ahmadi laws further declaring them non-Muslims by state law. SSRN Marginalized communities face bonded labor, forced conversions, and denial of basic civil rights. Worldlier This result confirms that the most vulnerable citizens bear the greatest burden of constitutional enforcement failure in Pakistan (Asghar & Hussain, 2022).

IV. Discussion

A. Fundamental Rights Framework under Articles 8 to 28 is Comprehensive but Fragmented in Practice

The Constitution of Pakistan 1973 dedicates an entire chapter to fundamental rights. This chapter runs from Article 8 to Article 28 and covers a wide range of protections. These rights include the right to life, liberty, dignity, equality, education, and freedom of expression. Together, they form the most important chapter in the entire constitutional document. Article 8 acts as the supreme guardian of this chapter. It renders void any law that takes away or abridges the rights guaranteed in this chapter. This makes the framework legally robust and constitutionally supreme. Understanding this chapter as a whole is essential for every citizen, lawyer, and policymaker in Pakistan. The breadth and depth of rights covered under this chapter reflect the founding vision of a rights-protective democratic state (Ahmed, 2021). This comprehensive design was intended to protect every citizen from the arbitrary exercise of state power.

The practical significance of this finding cannot be overstated. Pakistan is home to over 230 million citizens. Their daily lives are directly shaped by whether these rights are enforced or ignored. The right to life under Article 9 protects citizens from unlawful detention and extrajudicial killing. The right to equality under Article 25 protects every citizen from discrimination. The right to education under Article 25-A protects children from being denied schooling. These rights are not theoretical luxuries. They are practical tools for justice, dignity, and development. When courts enforce them effectively, lives improve. When courts fail to enforce them, citizens suffer silently. The clinical significance of treating these rights as one interconnected framework lies precisely in their collective power to hold the state accountable (Imran & Ashraf, 2022). Fragmentation weakens this collective power and reduces constitutional protection to a selective privilege.

Key evidence strongly supports the finding that this framework is fragmented in practice. Scholars have consistently identified that courts, lawyers, and legal academics examine individual rights in complete isolation from each other. A judge deciding a case on freedom of expression rarely examines how that right connects to the right to dignity or the right to information. A lawyer arguing a right to education case rarely frames it alongside the right to equality and the right to life. This piecemeal approach produces inconsistent outcomes across different courts and different cases. Research confirms that the absence of a unified interpretive approach to fundamental rights has resulted in judicial decisions that contradict

each other in scope, application, and remedy, leaving citizens without a coherent and predictable rights framework. This fragmentation is not accidental. It is the product of decades of legal training that treats constitutional rights as isolated provisions rather than a living, interconnected system.

A significant bias in existing legal scholarship has contributed directly to this fragmentation problem. Most legal research on Pakistan's constitutional rights focuses on high-profile rights such as the right to life, freedom of expression, or the right to a fair trial. Lesser-known rights such as Article 15 on freedom of movement, Article 17 on freedom of association, and Article 22 on safeguards against educational discrimination rarely receive scholarly attention. This selective focus creates an unbalanced legal literature. It signals to courts and practitioners that some rights matter more than others. This is constitutionally indefensible. All rights under Articles 8 to 28 carry equal constitutional weight. The limitation of existing studies lies in their failure to analyze underexplored rights with the same rigor applied to prominent ones (Hassan, 2021). This study deliberately addresses that imbalance by treating all rights under this chapter with equal analytical seriousness and depth.

A critical comparison reveals an important contradiction at the heart of Pakistan's rights framework. On paper, Pakistan's fundamental rights chapter compares favorably with the constitutions of neighboring states. India's constitution, for instance, contains a similar fundamental rights chapter under Articles 12 to 35. Bangladesh's constitution protects fundamental rights under Articles 26 to 47. However, in practice, Pakistan consistently ranks lower on international human rights indices than both countries. The 2024 World Justice Project Rule of Law Index places Pakistan significantly below India and Bangladesh in fundamental rights protection. This contradiction between constitutional design and practical performance is deeply troubling. It confirms that having a comprehensive rights chapter on paper is insufficient without strong institutional enforcement. The fragmented approach to rights interpretation is one important reason why Pakistan's strong constitutional framework has failed to translate into equally strong rights protection in practice (Bora, 2022).

Several important factors beyond judicial fragmentation also influence the poor practical performance of this rights framework. Low levels of legal literacy among Pakistani citizens mean that most people are unaware of their constitutional rights. A citizen who does not know their rights cannot demand their enforcement. The high cost of litigation prevents poor and marginalized citizens from accessing courts. The geographic concentration of superior courts in major cities further limits access for rural populations. Institutional weakness in the police, prosecution, and prison systems compounds the problem at every stage of the justice chain. These systemic factors do not operate in isolation. They interact with judicial fragmentation to produce a rights environment where the Constitution protects those who can afford to invoke it and leaves others unprotected (Zubair et al., 2023). Addressing fragmentation alone is therefore insufficient. Structural reforms across multiple institutions are simultaneously required.

Recent developments have begun to challenge this pattern of fragmentation in encouraging ways. The Supreme Court of Pakistan has increasingly used suo motu jurisdiction under Article 184(3) to take up cases involving multiple interconnected rights simultaneously. In several landmark decisions, the Court has interpreted the right to life broadly to include the right to a clean environment, the right to health, and the right to livelihood. These expansive interpretations represent a positive shift toward a more integrated understanding of fundamental rights. The National Commission for Human Rights, established under the National Commission for Human Rights Act 2012, has also begun producing thematic reports that analyze rights holistically rather than in isolation. Civil society organizations have similarly adopted a rights-based approach that connects multiple constitutional protections in their advocacy work (Manzar, 2022). These developments signal a growing recognition that fragmentation weakens the entire rights framework and that integration is the path forward.

The implications of this finding are profound for legal reform, judicial training, and constitutional scholarship in Pakistan. If fundamental rights under Articles 8 to 28 are treated as an integrated framework rather than isolated provisions, their collective enforcement power increases significantly. Legal education must be reformed to teach constitutional rights as a connected and mutually reinforcing system. Judicial training programs must equip judges with interpretive tools that allow them to draw connections across different rights provisions. Law reform commissions should review existing legislation through the lens of the entire rights chapter rather than individual articles. Parliamentary committees examining new legislation must similarly apply a comprehensive rights-compatibility test. These reforms are practically achievable and constitutionally necessary. The Constitution of Pakistan 1973 was designed as a living document capable of protecting every citizen. Realizing that design requires treating its fundamental rights chapter as a coherent, unified, and indivisible whole (Khan, 2021).

B. Superior Courts Have Played a Central but Inconsistent Role in Enforcing Fundamental Rights

The superior courts of Pakistan occupy a uniquely powerful position in the constitutional order. The Supreme Court and High Courts serve as the primary enforcers of fundamental rights under the Constitution of Pakistan 1973. The Supreme Court exercises original jurisdiction under Article 184(3) to take up matters of public importance involving fundamental rights. High Courts exercise writ jurisdiction under Article 199 to enforce these rights at the provincial level. This dual-tier judicial structure was deliberately designed to bring constitutional protection closer to every citizen. The framers of the 1973 Constitution understood that rights on paper mean nothing without a strong judicial mechanism to enforce them. Courts were therefore given broad and flexible powers to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus. These powerful judicial tools make Pakistan's rights enforcement framework theoretically strong and constitutionally well-equipped (Ahmed, 2021).

The practical significance of consistent judicial enforcement cannot be separated from the daily lives of ordinary Pakistani citizens. When a person is unlawfully detained, only a court can order their release through a writ of habeas corpus. When a government authority acts arbitrarily against a citizen, only a court can strike down that action through judicial review. When a law violates fundamental rights, only a court can declare it void under Article 8. The entire constitutional promise of fundamental rights therefore depends on whether courts are willing and able to enforce them consistently and courageously. Inconsistent judicial enforcement creates a dangerous uncertainty. Citizens cannot plan their lives, claim their rights, or seek remedies if courts apply constitutional protections unpredictably. This uncertainty disproportionately harms vulnerable citizens who rely on courts as their only available shield against state power (Manzar, 2022). Consistent enforcement is therefore not merely a legal ideal but a practical necessity for justice delivery.

Strong evidence confirms that superior courts have played an enormously positive role in expanding fundamental rights in Pakistan. The Supreme Court's landmark judgment in *Shehla Zia v. WAPDA* expanded the right to life under Article 9 to include the right to a clean and healthy environment. In *Workers Party Pakistan v. Federation of Pakistan*, the Court read the right to life broadly to encompass the right to livelihood and social security. In *Benazir Bhutto v. Federation of Pakistan*, the Court protected the right to political participation as an extension of fundamental rights. These landmark decisions demonstrate judicial creativity and constitutional courage of the highest order. The Supreme Court has shown a varied reading of public interest litigation as a legal tool, creating inconsistency in its application of constitutional rights standards across different cases and different political contexts. SSRN This inconsistency between progressive landmark judgments and regressive routine decisions is the defining contradiction of Pakistan's superior court jurisprudence.

A serious and acknowledged bias runs through the superior courts' approach to fundamental rights enforcement. Cases involving powerful political actors, state security agencies, or military institutions have historically received markedly different judicial treatment than cases involving ordinary citizens. Courts have been significantly more cautious, deferential, and reluctant to enforce rights when state security interests are invoked by the government. This institutional bias toward deference to powerful actors is well-documented in legal scholarship. It represents a fundamental limitation in the judicial enforcement framework. Furthermore, access to superior courts remains practically limited to educated, urban, and financially resourceful citizens (Khan et al., 2024). Poor, rural, and uneducated citizens rarely reach the Supreme Court or High Courts, meaning the courts' protective role is structurally skewed toward the privileged.

A revealing comparison between Pakistan's judicial enforcement record and that of India's Supreme Court exposes important contradictions. Both countries share the same colonial legal heritage and drew on similar constitutional models at the time of their respective constitution-making. India's Supreme Court developed the Basic Structure Doctrine in *Kesavananda Bharati v. State of Kerala* in 1973, permanently protecting fundamental rights

from parliamentary amendment. Pakistan's Supreme Court adopted a similar doctrine only partially and inconsistently in subsequent decades. India's Public Interest Litigation jurisprudence has produced thousands of enforceable orders improving citizens' access to food, education, health, and shelter. Pakistan's *Suo motu* jurisprudence under Article 184(3), while expansive, has been criticized for targeting politically convenient causes rather than systematically enforcing socio-economic rights (Baig & Naseer, 2023). This comparison reveals that institutional consistency, judicial independence, and political neutrality are the decisive factors that separate effective rights enforcement from selective judicial activism.

Several important factors beyond judicial capacity and willingness also shape the consistency of rights enforcement in Pakistan. The frequent changes in government, repeated constitutional crises, and prolonged periods of military rule have systematically undermined judicial independence. Judges appointed during military regimes have often delivered judgments that prioritized regime stability over constitutional rights. The absence of a permanent and independent judicial appointments commission for many decades left the appointment process vulnerable to executive interference. The physical security of judges deciding sensitive fundamental rights cases has also been a documented concern. Bar associations and civil society organizations have played a vital role in pressuring courts to maintain constitutional standards, but their influence has been uneven and episodic. Media coverage of landmark judicial decisions has increased public awareness of fundamental rights but has also exposed courts to political pressure from powerful interest groups (Hassan, 2021).

Recent institutional developments offer cautious grounds for optimism about the future consistency of judicial enforcement. The Supreme Court (Practice and Procedure) Act 2023 introduced new procedural rules governing the exercise of *Suo motu* jurisdiction under Article 184(3). This reform was designed to reduce the perception of individual judges using public interest jurisdiction selectively and arbitrarily. The establishment of Constitutional Benches under the 26th Constitutional Amendment in 2024 further restructured the mechanism for hearing fundamental rights cases at the apex court level. These reforms reflect a growing institutional recognition that procedural consistency is inseparable from substantive rights protection. The National Judicial Policy Making Committee has also introduced case management reforms aimed at reducing the enormous backlog of cases that delays rights enforcement for millions of citizens (Imran & Ashraf, 2022). Whether these reforms will produce genuinely consistent fundamental rights enforcement remains to be tested through actual judicial practice in the coming years.

The broader implications of inconsistent judicial enforcement extend far beyond individual court cases. When courts enforce fundamental rights unpredictably, the rule of law itself is weakened. Citizens lose faith in constitutional institutions and seek justice through informal, extrajudicial, or corrupt channels. Investors and businesses lose confidence in the legal system. International human rights bodies lose trust in Pakistan's commitment to its constitutional and treaty obligations. Domestically, inconsistent enforcement perpetuates inequality by protecting the powerful while leaving the powerless unprotected. Reforming

judicial enforcement requires simultaneous action on multiple fronts. Judicial independence must be structurally strengthened through transparent appointments and security of tenure. Legal aid systems must be expanded to bring poor citizens into the constitutional protection framework. Judicial training on fundamental rights must be made systematic, continuous, and practically oriented. Superior courts must develop clear and principled doctrines for reviewing laws that restrict fundamental rights (Zubair et al., 2023).

C. The 18th Constitutional Amendment Significantly Expanded Fundamental Rights

The 18th Constitutional Amendment of 2010 represents a watershed moment in Pakistan's constitutional history. It was passed unanimously by the National Assembly after extensive deliberation by a Special Parliamentary Committee comprising members from all major political parties. This rare cross-party consensus gave the amendment extraordinary democratic legitimacy. The amendment made over one hundred changes to the Constitution of Pakistan 1973. Among its most important contributions was the expansion of the fundamental rights chapter through the addition of three entirely new rights. Article 10-A introduced the right to a fair trial and due process. Article 19-A established the right to access information held by public bodies. Article 25-A guaranteed the right to free and compulsory education for all children between the ages of five and sixteen years. These three additions transformed the fundamental rights chapter from a primarily civil and political framework into a broader socio-economic and procedural justice framework (Anwar et al., 2023).

The practical importance of these three newly added rights reaches into the daily lives of millions of Pakistani citizens. The right to education under Article 25-A directly affects approximately sixty million school-aged children across the country. Before its constitutional recognition, education was a policy goal rather than a legally enforceable entitlement. After Article 25-A, every parent gained the constitutional right to demand schooling for their child from the state. The right to information under Article 19-A empowers every citizen to demand transparency and accountability from government institutions. Before this right, corruption and administrative secrecy operated in a legal vacuum. After Article 19-A, citizens gained a constitutional tool to pierce that veil of secrecy. The right to a fair trial under Article 10-A strengthened the procedural protections of every accused person in the criminal justice system. Together, these three rights represent the most meaningful expansion of constitutional protection for ordinary Pakistani citizens since the Constitution was originally adopted (Imran et al., 2022).

Substantial evidence confirms that the 18th Amendment fundamentally restructured the constitutional rights framework in ways that continue to generate judicial and legislative activity. Courts have repeatedly been called upon to interpret the scope and content of all three newly added rights. In *Federation of Pakistan v. Ali Ahmed Kurd*, the Supreme Court interpreted Article 10-A broadly to include the right to be heard before any adverse decision is taken against a citizen. Provincial governments have enacted Right to Information Acts in

direct response to Article 19-A, creating institutional frameworks for transparency at the provincial level. The Khyber Pakhtunkhwa Right to Information Act 2013 has been internationally recognized as one of the strongest accesses to information laws in South Asia. The 18th Amendment is regarded as the reform package with the greatest significance in the entire history of Pakistan's constitutional development, reshaping the relationship between the federation and the provinces as well as between the state and individual citizens. Pakistani This evidence confirms that the amendment's impact on the rights framework has been both deep and lasting.

Despite its historic significance, the 18th Amendment's expansion of fundamental rights carries important limitations that scholars and practitioners have identified. The amendment added new rights but did not create dedicated enforcement mechanisms or institutions to implement them. Article 25-A, for instance, places the obligation of providing free education on provincial governments but does not specify the financial resources, timelines, or accountability mechanisms required to fulfill this obligation. This structural gap between right recognition and right implementation has been widely criticized as a critical flaw in the amendment's design. Furthermore, the amendment's focus on three specific rights meant that other important socio-economic rights such as the right to health, the right to housing, and the right to social security remained outside the fundamental rights chapter (Baig & Naseer, 2023). A bias toward politically visible rights rather than structurally important ones shaped the amendment's final design. This selective expansion left significant gaps in the constitutional protection of citizens' basic needs and human dignity.

A compelling comparison between Pakistan and other constitutional democracies reveals important contradictions in the amendment's implementation record. South Africa's Constitution of 1996 guarantees socio-economic rights including housing, health care, food, water, and social security directly in its Bill of Rights. Courts in South Africa have developed a robust jurisprudence of progressive realization of these rights, holding the government accountable through detailed and enforceable remedial orders. India's Right to Education Act 2009 preceded Pakistan's Article 25-A by one year and has produced measurable improvements in school enrollment rates through dedicated legislative and institutional frameworks. Pakistan's Article 25-A, by contrast, has produced far more modest results despite its constitutional status. Over twenty-two million children remain out of school more than a decade after the right to education was constitutionally guaranteed (Imran & Kazmi, 2025). This stark contradiction between constitutional recognition and implementation performance reveals that constitutional amendment alone is insufficient without parallel legislative action, institutional development, and sustained political commitment.

Several important factors beyond constitutional text have shaped the uneven implementation of the 18th Amendment's expanded rights. Political instability following the amendment's passage disrupted the continuity of government programs needed to implement Article 25-A. Repeated changes in provincial education ministers and policy priorities prevented the development of long-term implementation strategies. The devolution of

legislative authority to provinces through the 18th Amendment created coordination challenges between federal and provincial governments in areas directly affecting rights implementation. Financial constraints at the provincial level further limited the state's ability to build the schools, train the teachers, and develop the infrastructure required to deliver the right to education. The right to information framework, while legally sound in several provinces, has been systematically undermined by bureaucratic resistance, delays in appointing information commissioners, and weak penalty enforcement against non-compliant public bodies (Hassan, 2021).

Recent policy developments have attempted to address some of these implementation failures with varying degrees of success. The Federal Government launched the National Education Policy Framework 2018 with a direct reference to Article 25-A as its constitutional foundation. The Single National Curriculum initiative, introduced in 2021, sought to standardize educational quality across public schools to better fulfill the right to education's constitutional promise. The Federal Information Commission, established under the Right of Access to Information Act 2017, has processed thousands of information requests and issued orders against non-compliant federal public bodies. The Supreme Court has increasingly cited Article 10-A in criminal cases to set aside convictions obtained through unfair trial procedures. These developments reflect a growing institutional momentum around implementing the 18th Amendment's rights additions. However, critics argue that these initiatives remain fragmented, underfunded, and politically vulnerable to reversal with each change in government (Anwar et al., 2023).

The long-term implications of the 18th Amendment's rights expansion extend well beyond the three specific articles it added to the fundamental rights chapter. The amendment demonstrated that the Constitution of Pakistan 1973 is a living document capable of evolving to meet new social needs and expanding its protection to new dimensions of human dignity. This constitutional flexibility is enormously important for the future of rights protection in Pakistan. It opens the door for future amendments to add rights to health, housing, clean water, and social security to the fundamental rights chapter. It also establishes a constitutional precedent for using parliamentary consensus to expand rather than restrict citizens' rights. Legal scholars have argued that the amendment's approach to rights expansion should serve as a model for future constitutional reform efforts (Khan, 2021). For policymakers, lawyers, judges, and civil society actors, the 18th Amendment's legacy is a powerful reminder that constitutional text can be changed when political will exists, but that changing text without building implementing institutions produces rights that remain aspirational rather than real.

D. The Right to Fair Trial under Article 10-A Remains Poorly Implemented

Article 10-A of the Constitution of Pakistan 1973 guarantees every citizen the right to a fair trial and due process. This right was formally introduced through the 18th Constitutional Amendment in 2010. Before this amendment, fair trial protections existed only in ordinary legislation and were frequently violated without constitutional consequence. The addition of

Article 10-A elevated fair trial from a statutory protection to a fundamental constitutional right. This elevation was enormously significant because it made fair trial enforceable through writ jurisdiction before High Courts and the Supreme Court. Article 10-A must be read alongside Article 9, which protects liberty, Article 10, which protects against arbitrary arrest, and Article 14, which guarantees dignity of the person. Together, these provisions create a comprehensive procedural justice framework within the fundamental rights chapter. However, the critical question this result addresses is whether this constitutionally elevated right has actually improved justice delivery for ordinary citizens inside Pakistan's criminal courts (Khan et al., 2024).

The practical importance of fair trial rights for Pakistani citizens is difficult to overstate. Pakistan's criminal justice system processes millions of cases annually across district courts, sessions courts, and special tribunals. At every stage of this system, citizens' fair trial rights are routinely at risk. A person accused of a crime depends entirely on the criminal justice system to treat them fairly, impartially, and in accordance with established legal procedures. When police torture suspects to extract confessions, fair trial is violated at the investigation stage. When prosecutors withhold exculpatory evidence, fair trial is violated at the trial stage. When judges decide cases under political pressure, fair trial is violated at the adjudication stage. When appeals drag on for decades in overcrowded courts, fair trial is violated at the appellate stage. Each violation represents not merely a legal failure but a human catastrophe for the accused and their family (Jamali et al., 2024).

Compelling evidence from multiple sources confirms that Article 10-A remains poorly implemented across Pakistan's criminal justice system. Pakistan's prison population provides the most striking evidence of this failure. Official data consistently shows that over eighty percent of Pakistan's prison population consists of undertrial prisoners awaiting trial rather than convicted offenders serving sentences. These individuals are constitutionally entitled to a speedy trial under Article 10-A but languish in overcrowded prisons for years without meaningful judicial progress in their cases. The United Nations Human Rights Committee has repeatedly rejected judicial backlog as an acceptable excuse for trial delays, characterizing prolonged pre-trial detention as a direct and serious violation of the right to a fair trial under international human rights standards. Mohr Custodial torture remains a systemic practice in police stations across Pakistan despite its explicit prohibition under Article 14(2) of the Constitution. Confessions extracted through torture are routinely presented as evidence in criminal trials, directly violating the fair trial guarantee of Article 10-A and the prohibition against self-incrimination (Shaikh, 2022).

An important limitation in assessing Article 10-A's implementation lies in the absence of comprehensive and reliable official data on fair trial violations across Pakistan. The government does not publish systematic statistics on custodial torture complaints, illegal detention rates, denial of legal counsel, or trial delay durations broken down by court and region. This data deficit makes it extremely difficult to measure the precise scale of fair trial violations or to track improvement over time. Research on fair trial in Pakistan has therefore

relied heavily on case studies, prisoner surveys, and reports from human rights organizations rather than official government statistics. This methodological limitation means that existing evidence, while deeply concerning, may not fully capture the total scale of Article 10-A violations occurring daily across Pakistan's courts and police stations. A further bias exists in the literature toward examining fair trial violations in high-profile terrorism and blasphemy cases, leaving ordinary criminal cases underexplored (Hassan, 2021).

A critical comparison between Pakistan's fair trial framework and international human rights standards reveals serious and persistent contradictions. Article 14 of the International Covenant on Civil and Political Rights, which Pakistan ratified in 2010 in the same year Article 10-A was added to the Constitution, sets out comprehensive fair trial standards including the right to be tried without undue delay, the right to legal assistance, the right to examine witnesses, and the right to appeal. Pakistan's ratification of the ICCPR created binding international obligations that directly parallel its constitutional commitments under Article 10-A. However, Pakistan's compliance reports submitted to the UN Human Rights Committee have consistently drawn critical responses identifying gaps between legal commitments and ground realities. The operation of military courts for trying civilians represents the most glaring contradiction between Pakistan's constitutional fair trial framework and its international obligations. Military courts lack the independence, transparency, and procedural safeguards required by both Article 10-A and Article 14 of the ICCPR. Democracy (Jamali et al., 2024).

Several powerful structural factors beyond judicial capacity explain why Article 10-A continues to be poorly implemented in practice. The ratio of judges to population in Pakistan is among the lowest in the world, with approximately ten judges per one million citizens compared to the international standard of fifty judges per million. This severe shortage of judicial officers makes timely trial delivery structurally impossible regardless of constitutional guarantees. The legal aid system remains grossly underdeveloped, leaving millions of accused persons without competent legal representation despite the constitutional right to counsel implicit in Article 10-A. Police reforms necessary to eliminate custodial torture have been repeatedly promised but never comprehensively implemented. The prosecution service remains institutionally weak, inadequately trained, and heavily dependent on police investigation reports that are frequently unreliable. Special courts and tribunals created under anti-terrorism and anti-corruption legislation operate under procedural frameworks that dilute standard fair trial protections (Manzar, 2022).

Recent legislative and institutional developments reflect a growing recognition of Article 10-A's implementation crisis and signal important reform momentum. The Criminal Law Amendment Acts of 2020 and 2021 introduced specific provisions aimed at reducing pre-trial detention periods and strengthening accused persons' rights during police custody. The Supreme Court's Prison Reform Committee, established through suo motu proceedings, has produced detailed recommendations for reducing undertrial populations and improving conditions in Pakistan's chronically overcrowded prisons. The National Action Plan for Human Rights, launched in 2020, specifically identified fair trial reform as a priority area

requiring coordinated federal and provincial action. The Law and Justice Commission of Pakistan has published detailed reform proposals recommending the expansion of legal aid coverage, the introduction of plea bargaining in ordinary criminal cases, and the strengthening of forensic investigation capacity to reduce reliance on confession-based evidence (Imran & Kazmi, 2025).

The long-term implications of Article 10-A's poor implementation reach far beyond individual criminal cases and affect the entire constitutional order of Pakistan. A criminal justice system that routinely violates fair trial rights produces wrongful convictions, destroys innocent lives, and erodes public trust in constitutional institutions. Citizens who experience or witness systematic fair trial violations lose faith not only in courts but in the Constitution itself. This erosion of constitutional legitimacy is perhaps the most dangerous long-term consequence of implementation failure. It creates a perception that constitutional rights are privileges of the powerful rather than protections for all. Restoring the credibility of Article 10-A requires a comprehensive reform strategy that simultaneously addresses judicial capacity, police accountability, legal aid delivery, and prosecutorial independence. International development partners including the United Nations Development Programme and the European Union have funded judicial reform initiatives in Pakistan that directly target fair trial implementation (Shaikh, 2022).

E. Implications

The findings of this study significantly challenge the long-held assumption that constitutional text alone is sufficient to protect citizens' fundamental rights. Traditional legal positivism argues that rights are protected once they are formally written into a constitution. This study directly contradicts that theoretical position by demonstrating that Articles 8 to 28 of the Constitution of Pakistan 1973, despite being comprehensive and detailed, have consistently failed to deliver equal protection to all citizens in practice. This challenge to positivist legal theory opens important new directions for rights scholarship in Pakistan and beyond. However, the negative reality is that these positive developments have remained selective, inconsistent, and structurally limited. Women, religious minorities, undertrial prisoners, and rural communities continue to experience systematic exclusion from constitutional protection despite formal guarantees. Practitioners including lawyers, judges, and legal aid providers can directly apply this study's findings by adopting an integrated rights-based approach that treats all fundamental rights as mutually reinforcing rather than isolated provisions. Policymakers can use these findings to design targeted legislative reforms addressing the three interconnected barriers of legal, institutional, and social exclusion identified in this research. Ultimately, this study's greatest contribution lies in reframing fundamental rights not as a collection of separate legal provisions but as a living constitutional system whose true protective power can only be realized when all its parts work together (Imran et al., 2022).

Conclusion

The Constitution of Pakistan 1973 places fundamental rights at the very heart of its democratic promise. Articles 8 to 28 guarantee every citizen protection from state abuse, discrimination, and injustice. This study has demonstrated that this constitutional promise, while comprehensive in design, remains deeply fractured in delivery. Three interconnected findings define this fracture most clearly. First, treating fundamental rights as isolated provisions rather than an integrated framework has weakened their collective enforcement power. Second, superior courts have expanded rights impressively in landmark cases but applied them inconsistently in routine judicial practice. Third, the 18th Amendment's addition of the rights to education, information, and fair trial transformed the constitutional framework but produced modest implementation results on the ground. Together, these findings confirm that Pakistan's fundamental rights crisis is not a crisis of constitutional text but a crisis of institutional will, judicial consistency, and structural reform.

The gap between constitutional guarantees and lived reality carries consequences that extend far beyond courtrooms and legal textbooks. Over twenty-two million children remain outside the classroom despite Article 25-A's constitutional mandate. More than eighty percent of Pakistan's prison population consists of undertrial prisoners whose Article 10-A rights are violated daily. Women and religious minorities continue to face systemic discrimination despite the equality guarantees of Articles 25 and 26. These are not abstract legal failures. They represent real human suffering experienced by millions of Pakistani citizens every day. The National Human Rights Action Plan 2020, the Supreme Court Practice and Procedure Act 2023, and the 26th Constitutional Amendment 2024 all signal a growing institutional recognition that this suffering demands urgent and systematic constitutional reform. These recent developments create genuine policy windows that reformers, legislators, and civil society actors must use strategically and courageously.

Future research must build directly on the gaps this study has identified. Scholars should examine how Pakistan's fundamental rights jurisprudence compares systematically with constitutional courts in South Asia and beyond. Empirical studies measuring citizens' actual awareness of their constitutional rights across different provinces and demographic groups are urgently needed. The impact of the 26th Constitutional Amendment's newly established Constitutional Benches on fundamental rights enforcement deserves dedicated scholarly attention as this reform unfolds. Policymakers must develop integrated implementation frameworks that simultaneously address judicial capacity, legal aid delivery, police accountability, and public legal literacy. Legal education institutions must reform their curricula to teach constitutional rights as a unified and mutually reinforcing system rather than a collection of separate provisions. Every citizen of Pakistan, regardless of gender, religion, or economic status, deserves a constitution that protects them not merely on paper but in the full reality of their daily lives.

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