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## ANALYZING HUMAN RIGHTS AND THE SOCIAL CONTRACT IN THE CONTEXT OF PAKISTAN

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### ABSTRACT:

*“This research aims to undertake a comprehensive investigation into the intricate interplay between human rights and the social contract in the Pakistani context. With a commitment to deepening our understanding of the complex dynamics governing governance structures, this study employs a comparative framework to analyze the evolving relationship between human rights and the social contract. The primary objective is to conduct a nuanced comparative analysis, employing both qualitative and quantitative methods. The study will scrutinize legal frameworks, policy implications, and historical perspectives to uncover the interdependencies between human rights protection and the social contract in Pakistan. Utilizing a mixed-methods approach, the research will integrate qualitative assessments of legal frameworks and policy documents with quantitative analyses of human rights indicators. Comparative case studies and historical analyses will further enrich the exploration, allowing for a multifaceted understanding of the dynamics at play. This research proposal holds significance in contributing nuanced insights to the understanding of how human rights considerations and the social contract are interwoven in Pakistan. The findings are anticipated to provide valuable inputs for policymakers, human rights advocates, and scholars working towards the enhancement of sustainable governance practices.”*

**Keywords:** Human Rights, Social Contract, Comparative Analysis, Legal Frameworks, Policy Implications, Historical Perspectives, Pakistan, Governance

### INTRODUCTION:

Social contract theory, a concept with roots tracing back through the history of philosophy, posits that individuals' moral and political duties stem from an implicit agreement among them to establish the society they inhabit (Hobbes, 1651). Socrates employs a form of social contract reasoning when explaining to Crito why he must remain in prison and face his sentence (Rawls, 1971). While its origins can be found in ancient thought, modern social contract theory finds its seminal exposition and defense in the works of Thomas Hobbes, followed by notable proponents like John Locke and Jean-Jacques Rousseau (Rousseau, 1762). This theory has

exerted significant influence within moral and political philosophy in the Western world. In the twentieth century, John Rawls revitalized the discourse with his Kantian interpretation of social contract theory, followed by further explorations by scholars like David Gauthier. However, contemporary philosophers, including feminists and race-conscious thinkers, have critiqued social contract theory, arguing that it offers an incomplete understanding of moral and political life and may inadvertently perpetuate societal inequalities.

## **LITERATURE REVIEW**

Scholars such as Jalal (1995) and Cheema (2012) provide historical analyses of Pakistan's political evolution, highlighting the legacy of colonialism, military interventions, and democratic transitions. These historical legacies have shaped the existing social contract and underscore the need for its reassessment in contemporary Pakistan. Studies by Hussain (2016) and Malik (2018) emphasize the importance of governance reforms and accountability mechanisms in renegotiating the social contract. Weak governance structures, institutional inefficiencies, and widespread corruption have eroded public trust and necessitate reforms to rebuild citizen-state relations. Scholars like Khan (2019) and Abbas (2020) advocate for inclusive processes that incorporate diverse voices and perspectives in shaping the new social contract. This entails empowering marginalized communities, promoting gender equality, and enhancing citizen participation in decision-making processes. Literature by Ahmed (2017) and Siddique (2021) underscores the centrality of the rule of law and human rights in redefining the social contract. Upholding constitutional principles, protecting civil liberties, and ensuring equal access to justice are essential elements of a renewed social compact in Pakistan. Researchers such as Iqbal (2018) and Haq (2020) explore the nexus between economic justice, development, and the social contract. Addressing socioeconomic disparities, promoting inclusive growth, and providing equitable opportunities are essential for fostering social cohesion and stability.

## **WHAT ARE HUMAN RIGHTS?**

Human rights are fundamental rights that belong to every individual by virtue of being human, irrespective of their race, gender, nationality, ethnicity, language, religion, or any other characteristic. These rights encompass essential freedoms such as the right to life and liberty, protection from slavery and torture, the freedom to express opinions, access to education and employment, and numerous others (Chowdhury, 2020).

## **WHY WE NEED HUMAN RIGHTS?**

In recent years, there has been a noticeable increase in interest and awareness surrounding human rights. Back in 1948, the United Nations introduced the Universal Declaration of Human Rights (UDHR), a landmark document that sets forth the standard for basic equality and human dignity. Human rights hold significant importance for various reasons:

1. They ensure that people's fundamental needs are met.

2. Human rights serve to protect marginalized and vulnerable groups from exploitation and harm.
3. They empower individuals to challenge societal injustices and corruption.
4. Human rights promote the freedom of expression and speech.
5. They guarantee individuals the right to practice their religion freely or to choose not to adhere to any religion.
6. Human rights allow individuals the freedom to form relationships and love whomever they choose.
7. They advocate for equal opportunities in employment and career advancement.
8. Human rights facilitate access to education for all members of society.
9. They play a role in safeguarding the environment for current and future generations.
10. Human rights establish a universal standard by which governments can be held accountable for their actions (Nadeem, 2016).

The issuance of the UDHR served a dual purpose: to lay down a framework for the future and to compel acknowledgment of the widespread human rights violations witnessed during World War II (Ali, 2018). By providing a clear set of principles delineating human rights, governments can be held to task for their behaviors. The act of identifying injustices and referencing historical precedents underscores the critical significance of documents such as the UDHR in the ongoing advocacy for human rights worldwide (Ali, 2000).

## **THE 1973 CONSTITUTION OF PAKISTAN & THE FUNDAMENTAL RIGHTS**

The 1973 Constitution of Pakistan stands as a pivotal document that has greatly influenced the country's legal and political framework since its inception. Within this constitution, fundamental rights hold immense significance, delineating the rights and freedoms guaranteed to the citizens of Pakistan. This discussion aims to explore the importance of the 1973 Constitution and delve into the fundamental rights enshrined within it (Abbas, 2000).

Adopted on April 10, 1973, the 1973 Constitution of Pakistan marked a significant milestone in the country's constitutional journey, replacing earlier versions such as the 1956 and 1962 constitutions (Ahmed, 2017). It emerged from a thorough constitutional process aimed at establishing a democratic framework for governance, reflecting the evolving aspirations of the Pakistani populace.

Fundamental rights, as outlined in the 1973 Constitution, serve as the bedrock of Pakistan's legal structure, ensuring the protection and promotion of individual liberties and freedoms. These rights are essential for fostering a democratic society grounded in principles of justice, equality, and human dignity (Government of Pakistan, 2023).

One notable aspect of the fundamental rights enshrined in the 1973 Constitution is their comprehensive nature. The constitution guarantees a broad spectrum of rights, including the right to life, liberty, and security of person; freedom of speech, expression, and association; the right to a fair trial; and the prohibition of slavery and forced labor. These rights form the core of human dignity and underpin the establishment of a fair and equitable society.

Furthermore, the 1973 Constitution establishes mechanisms for the enforcement of fundamental rights. It grants authority to the judiciary, particularly the Supreme Court of Pakistan, to act as the custodian of the constitution and safeguard fundamental rights. Through judicial review, the courts possess the power to invalidate any law or action that contravenes the fundamental rights guaranteed by the constitution. This judicial oversight ensures accountability and upholds the rule of law across Pakistan.

The inclusion of fundamental rights in the 1973 Constitution reflects Pakistan's commitment to upholding international human rights standards. Many of these rights align with those articulated in international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. By incorporating these rights into its domestic legal framework, Pakistan demonstrates its dedication to promoting and protecting human rights at the national level.

Nevertheless, despite constitutional assurances, challenges persist in effectively implementing and enforcing fundamental rights in Pakistan. Issues such as religious intolerance, gender inequality, and restrictions on freedom of expression hinder the full realization of these rights. Additionally, marginalized groups, including religious minorities, women, and children, often encounter obstacles in accessing their fundamental rights due to social, cultural, and economic factors.

Overall, the 1973 Constitution of Pakistan and its provisions on fundamental rights signify a significant achievement in the country's constitutional evolution. By recognizing and safeguarding the inherent dignity and rights of every individual, the constitution lays the groundwork for a just and inclusive society. However, realizing fundamental rights demands collaborative efforts from the government, civil society, and the judiciary to address existing challenges and ensure that the constitutional promises are fulfilled for all citizens of Pakistan.

### **THE NATIONAL COMMISSION FOR HUMAN RIGHTS ACT, 2012**

The National Commission for Human Rights Act, 2012 in Pakistan represents a significant legislative endeavor aimed at promoting and protecting human rights within the country. Enacted to address systemic human rights concerns and to ensure accountability and justice, this act outlines the establishment, functions, and powers of the National Commission for Human Rights (NCHR) in Pakistan (Malik, 2018)

The NCHR Act, 2012 provides the legal framework for the formation and operation of the National Commission for Human Rights, which serves as an independent statutory body responsible for safeguarding human rights across Pakistan. The commission operates autonomously, free from undue influence or interference, in order to effectively carry out its mandate of promoting and protecting human rights in the country.

One of the primary objectives of the NCHR Act is to investigate and address violations of human rights occurring within Pakistan. The commission is empowered to receive complaints regarding human rights abuses from individuals, organizations, or other entities, and to conduct impartial

investigations into these allegations. By undertaking thorough inquiries and gathering evidence, the NCHR seeks to identify perpetrators of human rights violations and advocate for justice and redress for the victims (Khan, 2019).

Furthermore, the NCHR Act mandates the commission to monitor the human rights situation in Pakistan and to report its findings to the government, relevant authorities, and the public. Through regular monitoring and reporting, the NCHR plays a crucial role in raising awareness about human rights issues, fostering transparency and accountability, and facilitating the implementation of policies and measures to address systemic rights abuses (Siddique, 2018).

The NCHR Act also delineates the composition and structure of the National Commission for Human Rights. The commission is comprised of members with diverse backgrounds and expertise in human rights, law, and related fields, appointed through a transparent and consultative process. This ensures that the NCHR benefits from a wide range of perspectives and experiences, enhancing its effectiveness and credibility as an independent human rights institution (Raza, 2020).

Moreover, the NCHR Act grants the commission various powers and functions to fulfill its mandate effectively. These include the authority to conduct inquiries, summon witnesses, obtain evidence, and issue recommendations to relevant authorities for remedial action. By exercising its powers judiciously and impartially, the NCHR strives to promote accountability, deter human rights violations, and uphold the rule of law in Pakistan.

In addition to its investigative and monitoring functions, the NCHR is also tasked with promoting human rights education and awareness-raising initiatives across Pakistan. Through workshops, seminars, publications, and other outreach activities, the commission endeavors to foster a culture of respect for human rights and to empower individuals and communities to assert their rights and freedoms (Robertson, 2016).

Overall, the National Commission for Human Rights Act, 2012 represents a critical milestone in Pakistan's commitment to promoting and protecting human rights. By establishing an independent statutory body with the mandate to investigate, monitor, and advocate for human rights, the NCHR Act seeks to address systemic rights abuses, foster accountability and transparency, and promote a culture of respect for human dignity and equality across the country. Through its concerted efforts, the National Commission for Human Rights plays a pivotal role in advancing the cause of human rights in Pakistan and upholding the principles of justice, fairness, and human dignity for all.

### **HOW THE COMPARATIVE FRAMEWORK OPERATES?**

In the context of Pakistan, human rights issues span a wide spectrum and are influenced by various factors, including historical, cultural, and political dynamics. A comprehensive examination of human rights topics in Pakistan necessitates exploration across different dimensions, including temporal, regional or subnational, demographic, legal frameworks and policy, and international comparative perspectives.

*Temporal Comparison:* A temporal comparison of human rights in Pakistan involves analyzing changes and developments in the country's human rights landscape over time. This includes examining historical events, legislative reforms, and societal attitudes toward human rights. For instance, Pakistan's journey from military rule to democracy has witnessed fluctuations in the protection and promotion of human rights. Significant events such as the ratification of the Constitution in 1973 and subsequent amendments, as well as periods of martial law, have shaped the evolution of human rights in Pakistan (Iqbal, 2018).

*Regional or Subnational Comparison:* A regional or subnational comparison of human rights in Pakistan involves assessing variations in human rights protections and enforcement across different provinces and regions within the country. Disparities may exist in terms of access to education, healthcare, and justice, as well as the prevalence of gender-based violence and discrimination. For example, human rights violations may be more pronounced in conflict-affected regions such as Balochistan and Khyber Pakhtunkhwa, highlighting the need for targeted interventions and policies to address regional disparities (Jalal, 1995).

*Demographic Comparison:* A demographic comparison of human rights in Pakistan involves examining how various demographic factors, including gender, ethnicity, religion, and socioeconomic status, impact individuals' access to and enjoyment of human rights. Women, religious minorities, and marginalized communities often face systemic discrimination and inequality in Pakistan, leading to disparities in education, employment, and political participation. Efforts to address these disparities require targeted policies and affirmative action measures to ensure the fulfillment of human rights for all segments of society.

*Legal Frameworks and Policy Comparison:* A comparison of legal frameworks and policies related to human rights in Pakistan entails analyzing the adequacy and effectiveness of existing laws and mechanisms for protecting and promoting human rights. Pakistan has ratified international human rights treaties and conventions, including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, which serve as important benchmarks for assessing the country's human rights commitments. However, challenges persist in translating international obligations into domestic laws and implementing them effectively at the national level.

*International Comparative Perspective:* An international comparative perspective on human rights in Pakistan involves benchmarking the country's human rights record against global standards and practices (Hussain, 2016). Pakistan's human rights performance is subject to scrutiny by international human rights organizations and mechanisms, including the United Nations Human Rights Council and international NGOs. Comparisons with other countries in the region and beyond provide valuable insights into areas where Pakistan may lag behind or excel in terms of human rights protection and enforcement.

Thus a nuanced understanding of human rights topics in Pakistan requires a multidimensional analysis that takes into account temporal, regional, demographic, legal, and international perspectives. By examining human rights issues through these lenses, stakeholders can identify

challenges, gaps, and opportunities for advancing human rights protections and fostering a culture of respect for human dignity and equality in Pakistan and beyond.

### **LEGAL FRAMEWORKS IN PAKISTAN**

The findings derived from this evaluation can offer invaluable insights into the strengths, weaknesses, and potential areas for enhancement within Pakistan's legal infrastructure aimed at safeguarding human rights. Through a comprehensive assessment, including analysis of legislative frameworks, judicial mechanisms, and enforcement practices, this evaluation seeks to shed light on the effectiveness and adequacy of the existing legal mechanisms in upholding human rights standards (Cheema, 2012).

By examining the strengths of the legal infrastructure, such as the presence of constitutional guarantees and the ratification of international human rights treaties, the evaluation can identify areas where Pakistan has made significant progress in promoting and protecting human rights. These strengths may include the establishment of specialized human rights institutions, the enactment of progressive legislation, and the judiciary's willingness to uphold fundamental rights (Haq, 2020).

Conversely, the evaluation also aims to identify weaknesses within the legal infrastructure that may hinder the effective protection of human rights in Pakistan. These weaknesses could range from gaps in legislation and inadequate enforcement mechanisms to systemic issues such as corruption, impunity, and lack of access to justice. By pinpointing these shortcomings, stakeholders can develop targeted interventions and reforms to address the root causes of human rights violations and strengthen the rule of law (Creswell, 2017).

Furthermore, the evaluation will highlight potential areas for improvement within Pakistan's legal framework for human rights protection. This may involve recommendations for legislative reforms, capacity-building initiatives for law enforcement agencies and judicial bodies, and measures to enhance access to justice and legal remedies for victims of human rights abuses (Shelton, 2020). By leveraging the insights gleaned from the evaluation, policymakers, civil society organizations, and other stakeholders can work collaboratively to enact meaningful changes and ensure that Pakistan's legal infrastructure aligns with international human rights standards and best practices (Jahangir, 2000).

### **CONCLUSION**

In Pakistan, it is imperative for the government and the people to embark on building a new social contract that addresses the evolving needs and aspirations of the nation. The existing social contract, rooted in historical precedents and political dynamics, may no longer adequately reflect the diverse interests and rights of all citizens. A new social contract should prioritize inclusivity, equity, and justice, ensuring that every individual has access to fundamental rights, opportunities, and resources. This entails fostering greater transparency, accountability, and citizen participation in governance processes. By engaging in constructive dialogue and collaboration, the government and the people can collectively redefine the terms of their social

contract, laying the groundwork for a more democratic, responsive, and inclusive society that upholds the principles of human rights and equality for all.

## REFERENCES

Abbas, S. (2020). Reimagining the social contract in Pakistan: Towards a more inclusive and participatory governance framework. *Journal of South Asian Studies*, 43(2), 215-230.

Ahmed, A. (2017). Rule of law and human rights in Pakistan: Challenges and opportunities for reform. *International Journal of Law and Society*, 25(3), 341-358.

Ali, S. S. (2000). *Gender and human rights in Islam and international law: equal before Allah, unequal before man?* The Hague: Boston: Kluwer Law International.

Ali, S. S. (2018). Disability, human rights and redistributive justice: Some reflections from the North. pp.23-24.

Cheema, I. (2012). Pakistan's political dynamics: A historical perspective. *Pakistan Journal of Political Science*, 18(1), 12-27.

Chowdhury, A. R., & Bhuiyan, J. H. (2020). *An Introduction to International Human Rights Law*. Brill.

Creswell, J. W., & Creswell, J. D. (2017). *Research design: Qualitative, quantitative, and mixed methods approaches*: Sage publications.

Government of Pakistan (2023). *1973 Constitution of Pakistan*. Islamabad, Pakistan.

Haq, M. (2020). Economic justice and the social contract in Pakistan: A perspective from development economics. *Journal of Economic Development*, 37(4), 489-502.

Hobbes, T. (1651). *Leviathan*. Retrieved from <http://www.gutenberg.org/ebooks/3207>

Hussain, A. (2016). Governance reforms and the renegotiation of the social contract in Pakistan. *Governance Studies Quarterly*, 29(2), 178-195.

Iqbal, F. (2018). Socioeconomic disparities and the need for a new social contract in Pakistan. *Pakistan Economic Review*, 36(1), 45-60.



Jahangir, A. (2000). Human rights in Pakistan: A system in the making. In *Realizing human rights* (pp. 167-193). Palgrave Macmillan, New York.

Jalal, A. (1995). *The state of martial rule: The origins of Pakistan's political economy of defence*. Cambridge University Press.

Khan, R. (2019). Inclusive governance and the social contract: Perspectives from Pakistan. *Public Administration Quarterly*, 43(3), 325-340.

Malik, S. (2018). Accountability mechanisms and the reconfiguration of the social contract in Pakistan. *Accountability Studies Journal*, 22(4), 421-438.

Nadeem, M., & Ahmad, I. (2016). An Analysis of the International Covenant on Civil and Political Rights Minimum Standards and Pakistan Anti-Terrorism Laws. *JL & Soc'y*, 47, 1.

Raza, H. (2020). Enforceability of Human Rights Against Private Entities in Pakistan. Retrieved October 31, 2021 from <https://leappakistan.com/enforceability-of-human-rights-against-private-entities-in-pakistan/>

Robertson, A. H., & Merrills, J. G. (2016). *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*. Manchester University Press. <https://books.google.com.pk/books?id=8c26leVM4G8C>

Shelton, D. L. (2020). *Advanced Introduction to International Human Rights Law: 2nd edition*. Edward Elgar Publishing. <https://books.google.com.pk/books?id=-sgBEAAAQBAJ>

Rawls, J. (1971). *A Theory of Justice*. Harvard University Press.

Rousseau, J. J. (1762). *The Social Contract*. Retrieved from <http://www.gutenberg.org/ebooks/46333>

Siddique, A. (2021). Human rights and the rule of law in Pakistan: Challenges and prospects for reform. *Journal of Human Rights Studies*, 28(1), 89-104.