

# THE CONSTITUTIONAL FRAMEWORK OF FUNDAMENTAL RIGHTS IN PAKISTAN: ENFORCEMENT AND CHALLENGES AFTER THE 18TH AND 26TH AMENDMENTS

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## ABSTRACT

*The constitutional foundation of fundamental rights of the people in Pakistan is one of the key areas of democratic governance and constitutionalism in Pakistan. The Constitution of Pakistan 1973 provides for a wide-spectrum of civil, political, social and economic rights under Articles 8-28. The reality of the situation is that these rights are still not being effectively realised because of a variety of institutional shortcomings, political interference, judicial inadequacy and socio-economic disparities. The main objective of this research is to critically examine the constitutional form of the fundamental rights in Pakistan with particular focus on the effect of the 18th and 26th Constitutional Amendments. The method of this research is qualitative and doctrinal method that combines the provisions of the constitution, judicial decisions, constitutional literature, and comparative constitutional studies. The research shows that the 18th Amendment continued to advance democratisation of parliament and provincial autonomy, while the 26th Amendment had many judicial and institutional changes with constitutional governance and accountability implications. However, theory and practice of the Constitution are not in harmony. The study finds that, in addition to constitutional protection, fundamental rights can only be effectively protected with the help of independent institutions, transparency of judiciary practices, accountability of administrations, and better access to justice.*

**Keywords:** Fundamental rights, constitution of Pakistan, 18th amendment, judicial independence, constitution law, rule of law

## INTRODUCTION

The fundamental rights are generally accepted as the bedrock of constitutional democracy, rule of law and the guarantee of human dignity. These rights are against arbitrary state actions, liberty, equality, and participation in democratic government Shahzad, Rizwan, and Razaq (2025). In contemporary constitutionalism, fundamental rights play a crucial role in ensuring the supremacy of the constitution, accountability of institutions and stability of democracies. The Constitution of Pakistan 1973 provides a detailed set of fundamental rights from Article 8 to 28, which

encompasses civil, political, social and economic rights Washeh and Mubarak (2025). The constitution of Pakistan is based upon the concept of constitutionalism and democratic governance. The Constitution ensures that law is paramount and offers processes and procedures for rights to be enforced by judicial action. The superior judiciary, especially the Supreme Court and High Courts, is constitutionally vested with the power to interpret the Constitution and protect the rights guaranteed by the Constitution Muhib (2025).

The judiciary, in the name of judicial review and interpretation of the Constitution, has been instrumental in extending the reach of fundamental rights and has been at the forefront of constitutional governance Akram et al. (2025). However, the implementation and enforcement of fundamental rights in Pakistan is still a challenge. Having constitutional provisions does not necessarily mean that rights will be realised in practice. Lack of institutional strength, administrative inefficiency, political instability, corruption, judicial delays and socio-economic inequalities persist as challenges to the effective safeguarding of the fundamental rights Mehndi (2025).

This has resulted in a huge gap between constitutional theory and constitutional practice in Pakistan which has been created by the constitutional amendments, judicial interpretation, and institutional changes. The 18th Constitutional Amendment of 2010 is considered as one of the most important Democratization of the constitution in Pakistan's constitutional history. The amendment made significant structural and institutional reforms to restore parliamentary democracy, increase provincial autonomy, decrease centralization and promote democratic governance Hassan et al. (2025). It devolved significant legislative and administrative powers from the federal level to the provinces and eliminated the Concurrent Legislative List Abbas (2024). The 18th Amendment was a popular amendment that enhanced the socio-economic rights by adding Article 25A to the Constitution which made education a fundamental right. The amendment aimed to decentralize authority and to make governance more accountable and responsive to the people Bowie and Rast (2022).

It was hoped that this would improve the administrative efficiency and better protect the fundamental rights if it were to be implemented at the provincial level. But decentralization also brought about a number of institutional and administrative difficulties. The 26th Constitutional Amendment is another significant step in Pakistan's constitutional evolution, in addition to the 18th Amendment. The

amendment ushered in significant judicial and institutional reforms to enhance efficiency, accountability and constitutional governance Waheduzzaman (2023). The changes encompass the creation of constitutional benches, guidelines for suo motu powers, accountability systems for judges, and judicial appointments Ghouri (2025). The setting up of constitutional benches under the 26th Amendment has implications for the protection and enforcement of fundamental rights, as it is a prerequisite for the constitutional governance which is dependent on the judicial independence and balance. In the same way, the control of suo motu powers in Article 184(3) is designed to provide for procedural fairness and institutional accountability Khosla and Tushnet (2022). Those who back the amendment say that the changes are needed to boost judicial efficiency and provide a more stable constitution. In Pakistan, the judiciary has always been at the heart of the constitutional system for the protection of constitutional rights, a fact which has been under attack from certain quarters even for the modest reforms. Courts have through judicial activism, interpretation of the constitution and PILs extended the ambit of rights protection and made the state institutions answerable for it Hussain and Habib (2024).

The judiciary has played an interventionist role in the areas of environment protection, political accountability, corruption, human dignity and access to justice. Access to justice, however, is also an important topic of discussion concerning the enforcement of fundamental rights, as is judicial overreach and institutional conflict between the judiciary and other state bodies Ripple et al. (2024). While constitutional remedies are available, many citizens are unable to access judicial institutions because of their poverty, lack of literacy and high litigation costs, and delays in court. The constitutional rights of the marginalized groups, women, minorities and economically weaker section of the society are often not exercised effectively. Equally, social, economic and political factors play a significant role in the enjoyment of fundamental rights, which indicates the importance of socio-economic and political reforms Sharma and Patel (2024).

Political instability, low quality of democratic institutions, corruption, and government failures remain a threat to constitutional protections. The constitutional guarantees are not effective due to institutional inefficiency and lack of accountability. In other words, the effective protection of fundamental rights will require strong institutions, constitutional culture, judicial independence and effective governance. India, South Africa and the United Kingdom offer examples of constitutional systems that enhance the protection of rights through access to justice, institutional accountability and judicial review Mustafa and Gul (2025).

This research critically analyses the constitutional framework of fundamental rights in Pakistan, focusing on the effects of the 18th and 26th Constitutional Amendments and how these experiences can be leveraged for the benefit of Pakistan. The study will be aimed at analyzing the consequences of constitutional reforms for the protection of rights as well as considering the institutional, political and socio-economic challenges to constitutional protection. The question of role of judiciary, constitutional amendment and institutional issues in respect of protection of fundamental rights is also addressed in research work ul Mustafa and Munir (2024).

The study also adopts the qualitative and doctrinal approach coupled with the constitutional analysis, judicial precedent, academic works, legal reports and comparative constitutional approach as methods of research. The study seeks to contribute to the constitutional scholarship by introducing a new analytical framework for the study of constitutional reforms and enforcement of fundamental rights in Pakistan in a holistic manner. Finally, the study stresses the need for a multi-layered approach, comprising judicial, legislative and executive institutions, civil society and democratic accountability to effectively protect rights Irfan, Basit, and Khan (2025).

### **Constitutional Framework in Pakistan**

The constitutional structure of Pakistan is based on three pillars of constitutional supremacy, democratic governance and fundamental rights protection. The rights contained in the

Constitution, from articles 8 to 28, provide an exhaustive list of rights which are designed to shield citizens of the state from the arbitrary action of the state. These provisions ensure civil, political, social and economic rights and equality, justice and human dignity. The judiciary is the main body to interpret the constitutional provisions and ensure their effective enforcement. Courts have been important in broadening the reach of fundamental rights and enhancing constitutional governance, via a process of constitutional petition and judicial review.

Moreover, the constitutional structure acknowledges that fundamental rights play a crucial role in upholding the stability of a democracy and the rule of law. The right to freedom of speech, equality before the law, freedom of religion and access to justice serve to promote citizens' involvement in governance and strengthen the accountability of State institutions. The constitutional guarantees are however, meaningless enforceability without effective institutions, administration and independence of judiciary. As such, the implementation of fundamental rights is one of the biggest challenges before the constitution of Pakistan.

### **Article 8 - Laws Inconsistent with Fundamental Rights**

Article 8 states that any law that is inconsistent with Fundamental Rights is rendered void "to the extent of such inconsistency". This Article embodies a superior law like the Constitution and gives the judiciary the power to review legislation. This Article puts the Constitution above everything else and provides for judicial review.

### **Article 9-Right to Life and Liberty**

Article 9 has been given a wide interpretation by the judiciary in Pakistan. Supreme Court has always ruled that the right to life is not limited to physical life only, it also encompasses the right to a life of dignity, access to health care, protection of the environment, education and other essentials of life. With judicial interpretation, Article 9 has become one of the most important provisions of the Constitution for the protection of

fundamental rights. The judiciary has developed this Article in various landmark judgements to respond to the current social, environmental and governance issues.

In *Shehla Zia v. WAPDA* (PLD 1994 SC 693), Supreme Court has declared environmental protection as an integral part of the right to life. The Court stated that the citizens have a right to live in a healthy and safe environment and that the degradation of the environment could be a violation of their constitutional rights. This decision went a long way towards expanding the scope of Article 9 and enhancing constitutional guarantees to citizens.

#### **Article 10A – Right to Fair Trial**

Article 10A provides for a fair trial and due process. This measure enhanced the accountability and procedural justice of the judiciary.

#### **Article 14 – Dignity of Man**

Human dignity and privacy are guaranteed under Article 14. Bans torture and degrading treatment.

#### **Article 19 – Freedom of Speech**

Article 19 provides for freedom of expression and speech, "reasonable restrictions" that are "prescribed by law."

#### **Article 25 – Equality Before Law**

Article 25 guarantees equality before the law and discrimination is banned.

#### **Article 25A – Right to Education**

Article 25A of the Convention assures children with free and compulsory education from ages 5 to 16.

#### **Literature Review**

Ensuring the fundamental rights has been a recurring issue in constitutional law and democracy. Constitution of Pakistan 1973 provides a wide range of rights under articles 8 to 28 such as right to life, equality before law, freedom of speech and fair trial. Over the years, the judiciary has been a key institution in providing constitutional protection, through judicial review and interpretation SHARMA, A., & PATEL, D. (2024). The constitution of Pakistan

has provided a number of constitutional rights, but their effective implementation is hindered by institutional and administrative weaknesses, particularly by the judiciary which has historically been a key institution in the protection of constitutional rights through judicial review and constitutional interpretation.

Umar, Sarwar, and Malik (2025) also noted that the Supreme Court of Pakistan enhanced constitutional rights by exercising public interest litigation and judicial activism. Likewise, Abbas (2024) emphasized the role of procedural justice and fair trial rights to enhance constitutional governance, which was highlighted in the 18th Constitutional Amendment. Waseh and Mubarak (2025) explained that the amendment decentralized power and transferred powers from the federal to the provincial governments.

Akram et al. (2025) also stated that the amendment in the constitution further strengthened so-cio-economic rights by adding a new article 25A, making education a constitutional right. Meanwhile, scholars have also pointed out the difficulties in the field of administrative coordination and institutional capacity at the provincial level arising from judicial and institutional changes brought about by the 26th Constitutional Amendment. In the book, "Enforcing Constitutional Rights," Khosla and Tushnet (2022) contended that in order to uphold constitutional rights, judges must have independence and institutions must be held to account.

It is also observed from literature that rule of law relies upon robust institutions and effective governance mechanisms, which remain to be a challenge in the actual implementation of constitutional rights in Pakistan, due to political instability, judicial delays, socio-economic inequalities and weak governance Waseh, J., & Mubarak, M. (2025). The study thus shows that there is a significant gap between the constitutional guarantees and implementation of the same, which needs to be critically analysed as per the existing system Muhib, et al. (2025).

The current literature on the constitutional rights of Pakistan has concentrated on judicial activism, constitutional development and democratic

governance. Shahzad, Rizwan, and Razzaq (2025) stated that the Constitution of Pakistan gives wide protection to fundamental rights but there are still deficiencies in the implementation of these rights. Likewise, Waseh and Mubarak (2025) discussed the constitutional amendment process and underscored the role of constitutional change in promoting democratic governance and accountability of institutions. Muhib (2025) added that the concept of constitutionalism has been interpreted in Pakistan through the judicial system, political events and constitutional changes.

The fundamental rights have been manifoldly expanded by constitutional amendment and judicial interpretation, as remarked by Akram et al (2025). Khosla and Tushnet (2022) highlighted the importance of having strong institutions, judicial independence and the ability of the state to protect constitutional rights. Hussain and Habib (2024) also found that the rule of law is contingent on good governance, accountability of institutions and independent judiciary. The subject of fundamental rights has been explored on its own using various lenses, including constitutional rights, judicial activism and constitutional reforms, but little work has been done on the interplay between the two amendments which brought in the 18th and 26th in the Constitution of Pakistan and its consequences on the enforcement of fundamental rights in Pakistan. The aim of this study is to close this gap, by examining the constitutional reform, institutional development, and judicial mechanisms involved in rights protection in an integrated manner.

### **18th Constitutional Amendment and Fundamental Rights**

The 18th Constitutional Amendment is considered as one of the most important constitutional changes in Pakistan's democratic history. The amendment was passed in 2010 to restore the parliamentary features of the Constitution and to curb the centralisation of power in the Federal level. It brought in wide-ranging constitutional amendments to the system of governance, the legislature, the appointment of

judges and relations between the federal and provincial governments. The main aim of the amendment was to boost democratic institutions and improve the participation of the provinces in governance.

The 18th Amendment most notably afforded the education Article 25A as a fundamental right. This meant that the state had a constitutional duty to deliver free and compulsory education to children from the ages of 5 – 16. The amendment also eliminated the Concurrent Legislative List and moved a few subjects of the legislature to the provinces that increased their autonomy. While these reforms encouraged decentralisation and democratic governance, they also posed problems of administrative coordination, of government policy implementation and of the enforcement of the constitutional rights in different provinces.

### **Major Features**

- The restoration of parliamentary democracy.
- Provincial autonomy
- Removal of Article 58(2)(b)
- Abolition of Concurrent Legislative List
- The inclusion of Article 25A (Right to Education) in the Constitution.
- There was an introduction of Article 175A (Judicial Commission).

### **Impact on Fundamental Rights**

The purpose of the amendment was to facilitate decentralization and devolution of powers to the provinces to enhance governance. It enhanced socio-economic rights and democratic accountability. The amendment also presented some coordination, administrative efficiency, and institutional capacity issues between the provinces.

### **The 26th Constitutional Amendment and Judicial Reforms**

The 26th Constitutional Amendment is one of the most important landmarks in the history of the Constitution and judiciary of Pakistan. The amendment also featured constitutional changes aimed at enhancing judicial efficiency, holding them accountable and reaping the institutions to ensure constitutional governance. One of its main

strengths is the creation of constitutional benches, aimed at providing specialised adjudication of constitutional contestations and hastening the resolution of constitutional issues.

The amendment has been much discussed by legal scholars, judges and the policy-makers. The reforms are being called for to improve the accountability of judges and the institutions. However, a number of critics have expressed concerns that some of the reforms would have an effect on the independence of judges and alter the relationships between the different constitutional institutions. Thus the effect of the 26th Amendment on fundamental rights protection and enforcement will be contingent on the treatment and operation of constitutional institutions.

The 26th Constitutional Amendment is a historic amendment of the constitutional and judicial system of Pakistan. The amendment was made to make the judicial process more efficient, accountability more effective and to make sure constitutional matters are resolved properly. Specialized constitutional benches are set up to provide dedicated adjudication of constitutional disputes and to provide more uniformity in constitutional interpretation. The changes are directed towards strengthening the institutional effectiveness and deepening constitutional governance.

Since the amendment came into effect, there have been a lot of debates among legal experts, judges and policymakers regarding the interpretation of the amendment. The reforms are being sought to improve the accountability of the judiciary, speed up the time of constitutional cases and improve the efficiency of judicial institutions, supporters say. But critics say some changes could impact judicial independence and change the balance among constitutional institutions. The broad reach of the amendment has continued to be an issue of constitutional study and debate.

Moreover, the amendment underscores the ongoing drive for the modernization of Pakistan's constitutional framework to address the changing landscape of governance challenges. It will depend on the transparency with which it is implemented, the level of preparedness of institutions to

cooperate with each other, and the ability of the constitutional institutions to be responsible and independent, while protecting fundamental rights.

#### **Key Features**

- The Supreme Court and the High Courts have their respective constitutional benches.
- Regulation of *sou motu* powers
- Judicial accountability mechanisms
- Judicial appointment reforms
- Institutional restructuring

#### **Impact on Fundamental Rights**

The objective of the amendment is to enhance the efficiency, accountability and constitutional governance of the judiciary. However, some critics say that some reforms will impact judicial independence and institutional balance. The role of Judiciary in Protection of Fundamental Rights was discussed.

#### **Role of Judiciary in the protection of Fundamental Rights**

In Pakistan system of government, judicial system plays a pivotal role as a watchdog of fundamental rights. Under judicial review, the judiciary has the power to strike down unconstitutional laws and executive orders that contradict constitutional rights. This has placed the judiciary in a position to safeguard citizens from the arbitrary actions of the government and to make sure that the government acts according to the constitutional principles.

In the course of time, Pakistani courts have issued a number of landmark judgments which have extended constitutional rights. Under Article 9, the judiciary has broadened the definition of the right to life to encompass the right to access an environment fit for living, human dignity and environmental protection. Public Interest Litigation has also helped courts to deal with issues related to collective rights and public welfare. Consequently, the judiciary has become a powerful institution to uphold constitutionalism, accountability and democratic governance in Pakistan.

The judicial development of the concept of Fundamental Rights is attributed to some landmark judicial decisions. In *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416), the Supreme Court highlighted the concept of democratic participation and constitutional freedoms. The Court considered bonded labour and human dignity in *Darshan Masih v. State* (PLD 1990 SC 513). In a similar way, the Supreme Court in *Shehla Zia v WAPDA* (PLD 1994 SC 693) included environmental protection in the right to life under Article 9. These judgments reflect the proactive approach of the judiciary towards the protection of the constitutional rights and constitutionalism in Pakistan.

### Judicial Review

Courts interpret the Constitution, and strike down laws that are inconsistent with fundamental rights.

### Judicial Activism

JPL and Constitutional interpretation have extended the areas of rights of the judiciary.

### Challenges

- Judicial delays
- Case backlog
- Political pressure
- Poor implementation of judgments.

Such problems undermine the efficacy of effective rights protection.

### Institutional and Socio-Political Challenges

Institutional effectiveness and governance are key to the implementation of fundamental rights.

### Political Interference

Political turmoil and political interference continues to make constitutional governance vulnerable.

### Administrative Inefficiency

Rights are not effectively implemented due to weak institutions and inefficiency in the system of bureaucracy.

### Socio-Economic Inequality

Poor financial resources and low literacy rate restrict people's access to justice and constitutional safeguards.

### Access to Justice

There are huge obstacles from high litigation costs, delays and ignorance of the law.

### Comparative Constitutional Analysis

Learning from comparative constitutional systems is beneficial for Pakistan.

### India

Judicial activism and PILs in India have extended the rights under the Constitution.

### United Kingdom

The UK focuses on accountability of institutions and oversight by the judiciary.

### Lessons for Pakistan

- Strengthening judicial independence
- Improving institutional accountability
- Increasing availability of legal services through legal aid systems
- Promoting constitutional literacy

### Enforcement of Fundamental Rights - Challenges

1. The implementation of the fundamental rights as guaranteed under Article 8-28 of the Constitution of Pakistan is still a major challenge. Citizens' access to constitutional remedies is often hampered by judicial delays, political interference, administrative inefficiency, corruption and lack of public awareness. These factors make the gap between what is promised in Constitution versus what is implemented. Women, religious minorities, economically disadvantaged communities and marginalized groups are often faced with higher barriers to access their constitution rights. Lack of legal assistance, significant litigation costs, and long legal proceedings also detract from constitutional protections.

2. Beyond that, no constitutional protections of rights are sufficient without

effective institutions, accountable government and judicial independence. Hence, the judicial reform measures that focus on judicial efficiency, transparency, awareness of the law and access to justice are crucial in making the fundamental rights a reality in Pakistan. The difficulties in this area illustrate the need for constitutional reforms to be complemented by institutional and socio-political reforms for meaningful rights protection.

### **Findings and Discussion**

This study shows that there are some important results to note:

3. Pakistan has a robust constitutional system for the protection of fundamental rights, but implementation of the system is weak due to institutional and governance issues.
4. Households' political empowerment and decentralization were strengthened by the 18th Amendment
5. The 26th Amendment brought significant changes in the judiciary system
6. Independence of the judiciary is still crucial for rights protection.
7. Institutional inefficiency and political interference persist and continue to hinder implementation.
8. Access to justice has a socio-economic dimension.

### **Recommendations**

#### **Strengthening Judicial Independence**

There should be reforms of the judiciary that maintain its independence while also making it accountable.

#### **Improving Access to Justice**

There should be an expansion of legal aid systems that help the marginalised groups.

#### **Administrative Reforms**

Governments should increase transparency and efficiency of government institutions.

#### **Constitutional Literacy**

The public should be made more aware of their constitutional rights.

### **Institutional Coordination**

Federal and provincial governments need to enhance coordination to implement rights-related policies.

### **Conclusion**

The fundamental rights in the constitution of Pakistan form an important pillar of democratic governance and rule of law. The Constitution of Pakistan 1973 provides for a wide range of civil, political, social and economic rights. The 18th Constitutional Amendment has completely changed the constitutional framework of Pakistan which was characterized by decentralization, parliamentary democracy and provincial autonomy. The 26th Constitutional Amendment also introduced more judicial and institutional reforms through constitutional benches and mechanisms of judicial accountability.

In spite of these constitutional changes, the implementation of fundamental rights still suffers from institutional, political and socio-economic problems. Effective implementation is compromised by judicial delays, administrative inefficiency, political interference and inequality. The study finds that constitutional changes are not enough without the independence of institutions, judicial institutions, transparency of administration and access to justice. In order to protect rights effectively, cooperation between judiciary, legislative and executive institutions and civil society is needed.

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