

INTRODUCTION OF HUMAN RIGHTS

Every person has dignity and value. One of the ways that we recognise the fundamental worth of every person is by acknowledging and respecting their human rights.

The term “Human Rights” contains a set of legal and moral rights that can be claimed by any person as human being. These rights come with birth and applicable to all people throughout the world irrespective of their race, colour, sex, language, political or other opinion.

Human rights therefore characterize as universal, inalienable, inherent and indivisible that have a common focus of protecting life of human being with dignity. The concept of human rights firstly revealed in **the Universal Declaration of Human Rights (UDHR) in 1948 by UNO** where 30 articles about human rights are declared. Human rights are stipulated in the Constitution of Pakistan, written in 1973 provides for fundamental rights, which include freedom of speech, freedom of thought, freedom of information, freedom of religion, freedom of association, freedom of the press, freedom of assembly etc. Therefore, the Constitutional obligations made a platform for Pakistan government to ratify the core international human rights conventions and treaties for the protection and promotion of human rights. It enables Government of Pakistan to translate international agreements into domestic law. It obliges all branches (i.e. Executive, Legislative and Judiciary) of government to respect and ensure the rights it enunciates.

Human rights are a set of principles concerned with equality and fairness. They recognise our freedom to make choices about our lives and to develop our potential as human beings. They are about living a life free from fear, harassment or discrimination.

Human rights can broadly be defined as **a number of basic rights that people from around the world have agreed are essential**. These include the right to life, the right to a fair trial, freedom from torture and other cruel and inhuman treatment, freedom of speech, freedom of religion, and the rights to health, education and an adequate standard of living.

These human rights are the same for all people everywhere – men and women, young and old, rich and poor, regardless of our background, where we live, what we think or what we believe. This is what makes human rights ‘universal’.

UNIVERSALISM VS RELATIVISM

The Universalism vs. Cultural Relativism debate has existed in legal scholarship for decades, and is increasingly entering public discourse on international law and human rights.

***Universalism** refers to the notion that human rights are universal and should apply to every human being. **Cultural Relativists** object, and argue that human rights are culturally dependent, and that no moral principles can be made to apply to all cultures. They argue that the principles embedded in the Universal Declaration of Human Rights (1948) are the product of Western political history. Indeed, the origins of the Universal Declaration are rooted in political landmarks in Western history, such as the Magna Carta of the United Kingdom (1215), the French Revolution (1789) and the American Bill of Rights (1791). Cultural Relativists argue that Universalism, in its attempt to extend a Western ideal to the rest of the world, is a form of cultural imperialism. As the establishments of post-conflict ad-hoc tribunals for Rwanda and the Former Yugoslavia in the 1990's and the International Criminal Court in 2002 illustrate, universalism is steadily being put into force. Cultural Relativists are critical of the validity, relevance and effect of these tribunals and of the ICC especially. Instead, Cultural Relativists are generally supportive of 'traditional' or local approaches to justice, as they believe these will contribute more to post-conflict reconciliation.*

***Universalists** firmly believe that human rights and fundamental freedoms are inherent in the nature and dignity of each human being and that there should be a set of basic ethical standards and principles, acceptable to all cultures, religions and political systems.³⁰ As in their view humanity or some particular facet of human nature is the only source of rights, cultures are irrelevant concerning the validity of moral rights and rules.*

***Cultural relativism** is attractive at least from two aspects at first glance. First, it states that everyone is equally entitled to respect and second that this respect entails respect for that person's culture as culture is part of the person's identity.⁶² However, according to Freeman, the principle that we should respect all cultures is a self-contradiction as some cultures do not respect all cultures. He even goes further stating that those cultures that support human rights violations cannot demand our respect, simply because they are cultures. In the view of cultural relativists, there are no absolute values or principles upon which any culture or society could be judged, apart from those of the given culture, so no moral judgment is universally valid.*

Consequently, if a human right is not indigenous to a particular culture, its validity and applicability is questionable.

HUMAN RIGHTS IN CONSTITUTION OF PAKISTAN

The situation of Human Rights in Pakistan is complex as a result of the country's diversity, large population, its status as a developing country and a sovereign Islamic democracy with a mixture of both Islamic and secular law. The Constitution of Pakistan provides for fundamental rights, which include freedom of speech, freedom of thought, freedom of information, freedom of religion, freedom of association, freedom of the press, freedom of assembly and the (conditional) right to bear arms. The Clauses also provide for an independent Supreme Court, separation of executive and judiciary, an independent judiciary, independent Human Rights commission and freedom of movement within the country and abroad. However these clauses are not respected in practice.

Followings are the fundamental rights guaranteed to the citizens of Pakistan under constitution.

- No person shall be deprived of life or liberty, save in accordance with law (article 9)
- Safeguard as to arrest and detention. All arrested person must be informed of grounds of their arrest, they have right to consult and defended by lawyer of their choice.
- Right of fair trial under article 10A
- Slavery, forced labor is prohibited and no child under age of 14 year be employed in factory and mines.
- There shall be protection against retrospective punishment
- There shall be protection against double punishment and self-incrimination.
- Freedom of movement to everyone
- Freedom of assembly for all citizens
- Freedom of association for all citizens
- There shall be freedom of trade, business and profession for all citizens.
- Freedom of speech for all citizens
- All citizens shall have right to have access to information in all matters of public importance under article 19A.
- Freedom to profess religion and to manage religious institution in country
- Safeguard against the taxation for the purposes of any particular religion.
- Safeguard as to educational institutes in respect of religion etc.
- All citizens have right to acquire, hold and dispose of property in any part of Pakistan.
- Protection of property rights of owners.
- All citizens are equal and there shall be no discrimination on bases of sex etc.

- Free and compulsory education to all children of age 5 to 16 by Government
- No discrimination in respect of access to public places.
- Safeguard against discrimination in services.
- All citizens have right to preserve their particular language, script and culture.

Constitutionalism and democratic process

DEFINITION

A system of political arrangement that is founded and governed by a supreme law, that can only be amended by the will of the people or through their constituent representatives, in which the practice of the rule of law, separation of powers, checks and balances and good governance are observed, and the rights and development of the citizens are paramount.

From the foregoing section, it is clear that constitutionalism implements the rule of law. This brings about predictability and security in relations between individuals and the State, as constitutionalism provides for defining, in advance, the powers and limits of government, and its responsibilities and behaviours. Predictability entails that the State ensures that the law must be objective as opposed to being arbitrary and be made known to all before hand. For instance, predictability is ensured in that every individual suspected of a crime should be charged in a language he or she understands (to help him or her prepare and adequate defence) and brought before a court of law within twenty fours (24) hours or be released on bond. Where it is not practicable to bring him or her before court within the specified time, he or she should be brought before court within reasonable time. Thus, inherently, constitutionalism is a convergent means by which respect of human rights is, not only implemented but also institutionalised. In any case a country's constitution is its cornerstone in protecting the rights and liberties of individuals in its population.

Constitutionalism implies that the chosen polity or political governance system of a people necessitates two principles. First, that the people are supreme to government. This provides for the understanding that a constitution represents the will of the people. Secondly, that the people shall have controlling influence on the decisions and affairs of government. In short, constitutionalism demands democratic governance. The principles of democracy are three fold and are interlinked. These are the application of principles of equity in choice, participation and representativeness. That is, people can freely choose, participate and be represented in their form of governance, without any impediments from other individuals or the State.

Democratic system assures the scope of people's participation to choose their leadership and government. Democracy failed exceptionally quickly after independence because Pakistan possessed a weak and fragmented political party that was unable to resolve key governing conflicts. In the wake of intensifying political instability, the civilian bureaucracy and military assumed governing power in 1958. Since its independence, Pakistan's democratic system has fluctuated between civilian and military governments at various times throughout its political history, mainly due to political instability, civilian military conflicts, political corruption and by the military establishment against weak civilian governments, resulting in the enforcement of Martial Law across the country

The democratic governance and human rights protection FRAMEWORK;

- (i). review electoral laws and processes to instil confidence;
- (ii). undertake continuous voter registration exercises; and,
- (iii). undertake social mobilisation interventions to bridge the gaps of knowledge and understating between the citizenry and the State in the practice of the rule of law, constitutionalism and democratic governance.

Current human rights issue in Pakistan:

There are a number of issues of human rights in Pakistan, which is denying the national image and rights of a person as a human being. Some of these issues are given bellow:

- **Extra Judicial Killing**: The "extra judicial killing" is a severe form of human rights violation that often denying justice. It has become as an integral part of law enforcement system in Pakistan. Through the Constitution of Pakistan and UN's Universal Declaration of Human Rights strongly defined this act as violation of human rights, it is still continues in Pakistan. The government is failing to keep its commitment to end extra judicial killings, torture and other by the Counter Terrorism Department and Police towards assuring their accountability. In spite of High Courts ruling's, extra judicial killings are continued that violates the rule of law of the country.
- **Custodial Torture and Deaths**: Custodial torture and death are strongly prohibited by the national and international laws. But in Pakistan it has seen as a routine procedure to extract information from the accused persons in detention. In some cases, the victims simply 'disappear'. In several of the cases of death in custody allegedly due to torture, the police said that the detained person committed suicide or that the victim died of natural causes. In some of them, there is evidence that the police tried to cover up the commission of crimes, sometimes by interfering with

commission of crimes, sometimes by interfering with police records or by ensuring that the text of the post mortem or medical reports reflected the police version of the detainee's death. In several cases, relatives were threatened with reprisal if they tried to bring the police officers concerned to justice.

- **Political Violence**: The political violence is another form of human rights violation in Pakistan like other third world countries. It has been observed that political domination, lack of democratic culture among political parties, mistrust, and un-law full exercise of power are the main contributing factors in the political violence in Pakistan.
- **Corruption**: Corruption is another restricting force in advancing rule of law and human rights in Pakistan. It is often denying the enforcement of law against the powerful perpetrators and limiting the hope of justice for the mass people. Due to corrupt officials in the border security agencies, children and women are trafficked to other countries and are brought to Pakistan. In result of corrupt police officials, criminals are walking free and killing people incessantly; the police in Pakistan is the most corrupt agency which is one of the major source of unrest in the society and deprivation from basic human rights.
- **Freedom of Media**: Qai -e-Azam, the founder of Pakistan says "I expect press for complete fearless." Regrettably, press in Pakistan has been unsuccessful to appreciate the goal of Qaid-e-Azam. The constitution provide for freedom of speech and press, but government frequently failed to respect these rights in practice. In recent time, the attack on journalists has come out as a concern. There was an increase in individuals affiliated with the government or ruling party harassing, arresting and assaulting journalists. In 2018 Freedom Index and Reporters without border ranked Pakistan number 139 out of 180 countries based on freedom of the press.
- **Border Killing**: Border killing by border forces is another miserable issue for the border lying people in Pakistan. The poor and marginalized people in border lying areas are often crossing the border for serving works and commence. While some of those killed are engaged in smuggling goods and contraband, border force systematically use lethal force without justification. In spite of repeated complain of Pakistan Government, the border killing is still continued.

- **Violence against Women**: Violence against women is alarming in context of traditional socio-legal structures in Pakistan. It is observed that the women and girls are mainly becoming the victim of violence. Violence against women is occurring in public and private places, it has many forms, ranging from domestic and intimate partner violence to sexual harassment and assault, trafficking and sexual violence and gender related killing. Its impact spans from immediate to long-term multiple physical, sexual and mental consequences for women and girls, including death.
- **Freedom of peaceful Assembly and Association**: In spite of the constitutional provisions for freedom of assembly and association, the law enforcing agencies to some extent making some restriction in certain area in the name of traffic and security concern. The restriction is ultimately blaming to the government as violation of freedom of assembly.
- **Rights Violation of Workers**: It is frequently reported that the rights of workers are violated in term of minimum wage for their labor and safe working environment. The leader of the workers are often claiming their rights issues and often declaring strikes to achieve it. The process is often creating mistrust between the owners and the workers that turns into a conflicting situation.