

The Nexus between Fundamental Rights and Necessities of Life: A Case Study of Pakistan

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Abstract: *The Constitution of Pakistan 1973 protects its citizens by guaranteeing some fundamental rights. It is, however, a matter of great concern that these rights do not cover the “right to access the necessities of life like access to clean water, food, clothing, shelter, and medicine etc.” It, thus, leads imperfection of the constitutional rights. Therefore, this study aims to highlight this gap by evaluating the constitutional fundamental rights in the light of the necessities of life. This study concludes that lack of access to the necessities of life has made the people least concern towards the national issues and development of the country. Hence, this paper recommends filling up this gap and to incorporate the “right to access to the necessities of life” in the Constitution 1973.*

Key Words: Necessities of Life, Pakistan, Constitutional Rights, Conclusions and Recommendations

Introduction

The modern world has declared the human development as an unavoidable tool for the development of the country and that human development cannot be achieved without fulfilling the necessities of the life such as access to clean water, food, clothing, shelter, medicine and education (UNDP, 2000; Neil, 2002).

In Pakistan, however, the issue of access to the necessities of the life has become a critical economic problem of the people and has badly affected the economic growth of the country. Despite the fact that Pakistan was amongst the top 15 countries of the world in achieving the sharpest and largest decline in the poverty ratio between 2000-2015 (UNDP, 2000; UNDP, 2015-16).

Likewise, Pakistan is among those first countries of the world which declared “Sustainable Development Goals” as part of its national policy (UNDP, 2016), yet the issue of fulfillment of the necessities of life could not be resolved rather the ratio of poor people is increasing day by day.

Looking into the supreme law of the land, the Constitution of Pakistan 1973 (Articles, 8-28) guarantees certain rights as fundamental such as right to life, right to dignity, right to education, right to equality, right to freedom of religion and movement etc. However, these rights does not include some basic rights without which human life cannot be sustained. As Sen (2010) pointed out that the fact is that a human society cannot be developed if people do not have access to the necessities of life. Access to clean water, food, shelter, medicine and education are the sustainable drivers which are inevitable to achieve human development and

development of the society (Acemoglu & Robinson, 2012).

This entire situation thus, leads that there are some major flaws in the existing legal apparatus because of which Pakistan could not overcome the issue of extreme poverty and has failed to provide the necessities of life to its citizen.

Under this context, this study intends to investigate the issue from a legislative perspective to find out the root cause behind the failure of the government policies to overcome the issue. This study also evaluates the certain articles of the Constitution of Pakistan 1973 relevant to the fundamental rights of the people to find out the loopholes and to recommend certain recommendations to improve the existing legal structure. As John, (2012) found the satisfaction of the people in accessing necessities of the life, not having a particular form of the government.

Objectives of the Study

Among the objectives of the study are to evaluate the constitutional rights in the light of the necessities of the people, to highlight the prominence of the necessities over other rights and to recommend to reform the existing legal structure to ensure accessibility to the necessities of life.

Hypothesis of the Study

This study is based on the following hypothesis:

1. Constitutional rights ensure protection of life from all aspects including the necessities of life

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2. For common men, right to access the necessities of life is more crucial than constitutional rights
3. Constitutional rights are deficit and unable to protect the people from acute poverty
4. Constitutional rights may provide protection against poverty if amended and improved.

Research Methodology

This study aims to utilize descriptive and analytical methods of research by using academic writings, books, articles, surveys and reports of national and international organizations.

Literature Review

Aristotle (1940) presented the concept of a political state in his writings, *politika* and *The Nicomachean Ethics* in the meanings of the affairs of the city-state where the state would be responsible to provide necessities of life to all the citizens.

Noumani (1998) in his book *al-Farooq*, pointed out that during the period of Hadrat Umar, the state was responsible to provide necessities of life to the citizens by way of daily, monthly and annual allowances. To remove poverty from Madinah Hadrat Umar took all the private cultivated lands under the direct control of the state. Further, he took the surplus houses of the rich and allocated to the poor.

Juwayni (1940) in his book *Kitab al-Burhan* discussed the necessities of life in terms of the objectives of Shari'ah and declared the fulfillment of these objectives as the primary goal of Islamic legal system. He divided the objectives into two types, the *dunyawi* (worldly) and *ukhrawi* (world hereafter).

Ghazali (1980) in his book *al-Mustasfa'* further elaborated the importance of the objectives of Shari'ah with reference to the necessities of life. He added some other complements (*mukammilat*) to the objectives derived from the Qur'ān and Sunnah.

Shatibi (1980) in his book *al-Muwafaqat*, discussed the objectives of Shari'ah on the basis of rationality and their utilization. He divided objectives of Shari'ah into three major categories on the basis of their strength and importance in human life such as necessities, needs and luxuries.

Karl Marx (1848) wrote *The Communist Manifesto* and sought poverty elimination and social justice in the ethical principles of the economic development and declared the state responsible to provide necessities of life to its citizens.

Weber (1905) in his work, *The Protestant Work Ethic and the Spirit of Capitalism* studied the issue under social change and insisted to utilize the ethics of religion to motivate the rich people to contribute in removing poverty and bringing up social justice.

Maslow (1943) in his article "A theory of Human Motivation" discussed the importance of human life with reference to the fulfillment of the necessities of life and presented a list of those necessities which must be provided to all the human beings without any discrimination on the basis of colour, race or ethnicity.

Allister (et al, 2009) in their article "Needs, Wants and Goals: Wellbeing, Quality of Life and Public Policy," *Applied Research in Quality of Life*, studied the

necessities of life and listed out basic things which are necessary for the survival of human life.

John, (2012) in his article "Democracy and Human Development" *The Journal of Politics*, discussed the issue of access to the necessities of life with reference to the human development and pointed out that the states where people have access to the necessities of life succeed to achieve improvement in the human development.

Acemoglu & Robinson (2012) in their book *Why Nations Fail* describe that the nations fail when people do not have proper access to the necessities of life. The authors declared poverty as a major contributor in the economic decline of a country.

Daud, et al, (2017) in their article, "Drinking Water Quality Status and Contamination in Pakistan", *BioMed Research International*, discussed the lack of access to the clean drinking water in Pakistan and found a grave shortage and lack of government concern regarding accessibility of water to the people of Pakistan.

Moonis Ahmar (2018) in his article *Peace and Conflict Management for Sustainable Development in Pakistan*, *Journal of South Asian and Middle Eastern Studies* discussed the issue with reference to sustainable development and pointed out that the

Constantin (2018) in his article *Human Subject Research: International and Regional Human Rights Standards*, discussed the importance of fundamental rights by declaring the states obliged to adopt legislative measures for the enforcement and protection of those rights through judicial recourse.

Karagiannia & Sadjadi. (2012) in their book "Modern State Intervention in the Era of globalization," opined that a state has right to intervene in the economic activities of the people to reduce poverty and to ensure social justice by providing necessities of life to the deprived segment of the society.

Rizwanul Islam (2006) in his writing "Fighting Poverty, The Development-Employment Link," discussed the issue in terms of the connection between social justice and human rights and elaborated that there is a strong connection between human rights and access to the necessities of life.

The constitution of Pakistan 1973 provides certain fundamental rights to its citizen. The constitution also provide "right to education on behalf of the state. It is, however, lacks "right to access necessities of life" on behalf of the state such as water, food, shelter, and medicine

Importance of Necessities of Life in Economic Growth

The International Labour Organization (1996) established certain indicators to evaluate the economic development of the states which consist of economic, demographic, health and education sectors. These indicators include per capita income, basic needs, employment opportunities, dependency ratio, population growth rate, total fertility rate, infant mortality rate, and condition of education etc.

The matter of the necessities of life falls under economic indicator and refer to those things and means upon which the survival of human life is dependent and

without which human life cannot be sustained (Juwayni, 1984; Salam, 199; Ghazali, 1978; Shatibi, 1990; Allister, et al, 2009). The majority of the social scientists and economists include water, food, clothing, shelter, medicine and education ((Juwayni, 1984; Salam, 199; Ghazali, 1978; Shatibi, 1990; Maslow, 2000; Allister, et al, 2009)

Maslow (2000) included 6 fundamentals of life in the list of the necessities of life, such as water, food, shelter, sleep, physical connection with others and opportunity to improve the qualities of human beings to develop.

The World Bank (2020) pointed out that economic development of a state demands growth in three basic dynamics like human capital, physical capital, and natural capital while human capital has 64% share. All this lead that to achieve human development, a state must ensure access to the necessities of the life to its citizens, otherwise, the efforts of the development would be a dream.

Access to the of Necessities of Life in Pakistan: An Analysis

Pakistan has under developing economy with a low per capita income, lower saving and less investment. The State Bank Report (2018) showed the GDP growth at 5.79% ranked Pakistan 147th in the world while in 2020, it reduced to -0.5% and expected to reach 1.50% in 2021 and 4.00% in 2022, (Trading Economics global macro models, 2020).

In the industries, the 66% of the industrial wealth is under the direct control of the ruling class with 87% of the assets of the banking and insurance companies. (World Bank Group on Pakistan Economic Development, 2020).

This entire situation has led into acute poverty and about half of the total population is living below the poverty line. The Business Recorder (2020) explored that about 40% of Pakistani people are living blue the poverty line in Pakistan and that almost 87 million people are suffering from the issue of lack of access to the necessities of life (<https://www.theigc.org>). The following table provides a comparative analysis of the increase in the poverty ratio every five years (Table, 1).

The increasing ratio of poverty resulted in the lack of necessities of life for the poor people and poor class does not have access to basic facilities like access to latrines, sanitation, and underground sewerage. The following table shows access to cleanness facilities in Pakistan (Table, 2).

Access to Clean Water

Talking about the access to the clean water, the majority of the population does not have access to the clean water. A study (2017) found that only 20% of the population have access to safe drinking water while remaining 80% of the population use unhealthy water (Daud, et al, 2017). Because of the use of unhealthy water, diarrhea is a widespread disease throughout the country and about 2.5 million people die each year (Daud, et al, 2017). Further, Pakistan lacks proper legislation for the accountability of service providers which provide clean water to the people (www.thenews.com).

To improve the situation and to deliver sustainable access to safe water supply the government of Pakistan adopted "The National Environment Policy -2005. For conservation of water resources and for an effective management, this policy intended to develop legal and policy framework for promotion of safe drinking water in Pakistan. The clean drinking water program was initiated in two parallel phases, firstly, the clean drinking water plants would be projected in each district and *tehsil*, and then in each union council and villages (http://www.finance.gov.pk/survey/sur_chap_06-07/16).

Access to Safe Food

In Pakistan, food availability is sufficient to meet the needs of the people, however, due to lack of proper managing policies, a sufficient quantity of food is a waste which led the 60 % of the population to use unhealthy food. The majority of the people are facing the issues of food insecurity while the poorest people are unable to afford an enough diet due to high inflation rate (Sleet, et al, 2019).

The National Survey on Nutrition (2018) pointed out that 36.9 % of people face food insecurity while 20.5% of the population is undernourished in Pakistan. The survey also revealed that Pakistan scores 2nd highest rate of malnutrition in the region. The study also pointed out that about 18% children under 5 years suffer from acute malnutrition, 29% are underweight and 40 % in the same age group are underdeveloped.

A study (2019) revealed that average Pakistani people spend about 52% of their income on food in which poor people spend 61% of their income on food while others spend 39 % (<http://mpr.aub.uni.muenchen.com>)

The United Nations Report (2019) shows that in Pakistan, the pervasiveness of undernourishment is 20.3% and about 40.0 million Pakistani people do not have access to enough food. The report also showed lack of access to nutrient food as a major challenge to meet the "UN Sustainable Development Goals" by 2030.

The World Food Program Report (2020) pointed out an increase in the number of daily wagers with a decline in purchasing power, particularly, the purchasing power of skilled labour has been declined by 18.5%. The report also shows that since 2002, household expenditures on food have been increasing, but consumption of calories has been falling where people consume an average of only 1,570 calorie per day, which is about 23% lower than recommended. In the rural areas, the drop in calorie consumption is worse than cities. (<https://www.wfp.org/countries/pakistan>).

For many decades, Pakistan has been enacted many laws to ensure food safety and quality and to control prices such as "Pakistan Pure Food Laws 1963", "The Pure Food Ordinance, 1960", "Pakistan Hotels and Restaurant Act, 1976", "The Pakistan Standards and Quality Control Authority Act, 1996", however, all these enactments became useless due to lack of the government concerns and lack of proper enforcement mechanism. Thus, the existing legal mechanism has failed to protect the basic right of the people to access safe food.

To overcome the issue and to reform current legal mechanism, the government of Pakistan adopted its

first “National Food Security Policy 2018”, with the objectives of reduction in poverty and hunger. It also aimed to promote sustainable food production through close co-operation between federal and provincial governments. This policy aimed to be implemented with new food safety measures and with a “zero hunger” program (<http://propakistani.pk/2018/05/31>).

Access to Shelter

The Pakistani people are also suffering from the issue of lack of access to safe shelter. The Pakistan Bureau of Statics Report (2020) revealed that about 75% Pakistani have access to own housing of which 67.7 % is in rural areas and 32.3% is in urban cities while every 3rd Pakistani is living in the city. This study thus, leads that about 78% people of urban areas are living on rent. With the inflation, the capacity of home purchasing is declining day by day. The criteria of home affordability set by the World Bank is as if a house worth 4 times (4:1) the average annual salary is considered to be within the purchase capacity/affordable while world average house size is about 1300 sq ft (World Bank Report, 2015; Razi, 2020).

Thus, lack of proper shelter led in the decline of human development and development of the state because access to dwelling has been considered as a part of the fundamental rights of the human being and a necessary component of life without which a human being remains unstable, undeveloped and poor. As Razali (2002) opined that where a large number of people consume housing below the socially desirable level, the nation cannot be developed economically and socially (Razali, 2002).

And Dingeldey & Rothgang (2002) pointed out that a man can neither be an intellectual nor be a successful man unless he has sufficient material to survive. It is argued that the prosperity of the citizens enables them to contribute to the development of society despite their diverse strengths, weaknesses, interests, and backgrounds (Neil, 2005).

Access to Medicine

Among the 2200 million of Pakistani people more than 50% don't have access to proper medicine and primary health care services. Although, Pakistan ratified and signed UN Millennium Development Goals and has taken certain initiatives to promote health care system and has set up “Basic Health Units” in cities and as well as “Rural Health Units” in the rural areas yet, in a very low pace due to which many of the people do not have access to medicine or health care. (<https://borgenproject.org/facts-about-healthcare-in-pakistan/>). As Beliger, et al., (2012) pointed out that about 42% Pakistani people do not have health coverage.

Further, a Study (2020), reported that Pakistan spends only 2.8% of its gross domestic product on Health. In which the share of the government is 36.8% and the share of the private services is 55%. The local NGOs (nongovernmental organizations) spend 6%, and social security system contributes 3%, while the donor's contribution is 2%. The 70% of the population avail private health services (www.emro.who.int).

The Sehat Kahani (2019) reported that Pakistan is producing thousands of doctors every year, but the doctor-patient ratio is about 1: 1200 which is crucial. The World Health Organization Report (2020) pointed out that Pakistan has the 7th highest tuberculosis (TB) burden globally, with hepatitis B and C endemic in the general population and malaria in focal geographical areas (<https://www.who.int/alliance-hpsr/projects/AHPSR-Pakistan>).

In addition to this, COVID-19 has burdened the health care system of Pakistan. Due to lack of a safe and appropriate health care system, the frontline workers are taking the effect of the virus. It is estimated that out of the total COVID cases, about 3% include healthcare workers, which led the medical professionals to protest and to demand necessary safety equipments to treat COVID patients (www.thenews.com). As a result and after arrival of COVID Vaccine, the government of Pakistan decided to provide vaccine to the health care workers first and then to the old age citizens which is commendable ([Http://www.dawn.com](http://www.dawn.com)).

The World Health Organization Report (2020) shows Pakistan as a strong demonstrator to deliver on the promise of health while the system of health is under immense strain from COVID-19.

Access to Education in Pakistan

Access to education to all is also in critical condition in Pakistan and despite policy improvement, Pakistan could cover the issue and hundreds of children are out of school or do not have access to schooling. The National Survey (2018) revealed that about 7.3 million children of primary school age are not enrolled while 57% of whom are girls (<https://www.wfp.org/countries/pakistan>).

Further, because of the lack of apprehension on behalf of the stakeholders, the speed of improvement in literacy rate is very slow. The Pakistan Economic Survey (2019) shows that the literacy rate is increasing in a poor manner which was 58% in 2015-16 and reached 60% in 2018-19. In urban areas, the literacy rate is about 74%, while in rural areas it is only 51%.

The following table shows a comparative analysis of literacy rate among different provinces and regions during the last 10 years in Pakistan (Table, 3).

This study shows a very slow increase in the literacy rate like the “Net Enrollment Rate” at the national level was 65% in 2015-16 which reached 66% in 2018-19 with a 1% increase.

The Province wise comparison shows that only the province of Punjab got increased in the net enrollment in primary schools which was 71% in 2015-16 and increased by 2% and reached to 73% in 2018-19. Likewise, Sindh showed an improvement of 58% in 2018-19 as compared to 56% in 2015-16. The provinces of Khayber Pakhtoon Khawah witnessed an increase of 1%. In 2015-16, the net enrollment in Khyber Pakhtunkhwa was 88%, which enhanced up to 89% in 2018-2019. The study shows Balochistan as stable with net enrollment at 40% in the primary schools (The Pakistan Economic Survey, 2019). Fortunately, right to access to education has been inserted in the Constitution of Pakistan 1973 through 18th amendment.

An Analysis of the Constitutional Rights in Pakistan

The constitutional rights or fundamental rights are those rights which are guaranteed by the constitution of a state (Perry, 2012). These fundamental rights have been included almost in all the constitutions of the modern world. The credit goes to the social activists and reformers who launched a movement in favour of the depressed class of the society and led the modern states to incorporate these rights in their constitutions (Neil, 2002).

After the establishment of Pakistan, these fundamental rights also incorporated in the constitution. Looking into the Constitution of Pakistan 1973, chapter 1 of the part 1 consists of the fundamental right (The Constitution of Pakistan, 1973, Articles 8-28).

Article, 8 declares all those laws void which is inconsistent with or in derogation of the Fundamental Rights and states: "Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void and that the State shall not make any law which takes away or abridges the rights so conferred. Article, 9 provides security to all the citizens of Pakistan and states that no person shall be deprived of life or liberty save in accordance with the law while article, 10 provides safeguards as to arrest and detention without any legal reason. This Article further states (10-A) that for the determination of the civil rights and obligations or of any criminal charge against any person, he shall be entitled to a fair trial and due process.

Article 11 bans bonded labour and slavery and declares all forms of slavery and bonded labour as prohibited. It also provides protection to the children below the age of 14 from engaging in any factory or mine or any other hazardous employment.

Articles 12 and 13 are protecting the citizens of Pakistan against retrospective punishment (12) and double punishment and self-incrimination (13) respectively.

Article 14 is about the inviolability of the dignity of every man and states that the dignity of man (subject to law) and the privacy of the home shall be inviolable and that no person shall be subjected to torture for the purpose of extracting evidence.

Articles 15, 16, 17, 18, 19 and 20 are dealing with different kinds of freedom of a person being human such as freedom of movement (15), freedom of assembly (16), freedom of association (17), freedom of trade and business (18), freedom of speech and right to information (19,19-A), and freedom to profess a religion and to manage religious institutions, subject to law, public order and morality (20) etc.

Article, 21 provides protection against special taxes on the propagation or maintenance of any religion other than his own while Article 22 ensures safeguard as to educational institutions in respect of religion that no person in any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own. It also provides protection against discrimination on the basis of religion.

Articles, 23 and 24 are relevant to the property rights of the citizens. Article 23 declares that every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan (subject to the Constitution and any reasonable restrictions imposed by law in the public interest) and Article 24 ensures protection of property rights and states that no person shall be deprived of his property save in accordance with law.

Article, 25 deals with the issue of equality of the citizens and declares, all the citizens as equal before the law and as entitled to equal protection of law. It also ensures non-discrimination on the basis of sex except for the protection of women and children.

Under this article a new insertion has been made by way of the 18th amendment in the constitution, which is relevant to one of the necessities of life that is "Right to Education". Thus, Article 25 (A) pronounces that the state shall provide free and compulsory education to all children of the age between 5 to 16 as determined by law (The Constitution Eighteenth Amendment Act, 2010).

Article, 26 is related to the issue of non-discrimination in respect to access to public places for entertainment or resort on the ground of race, religion, caste, sex, residence or place of birth while Article, 27 provides protection against discrimination in services and explains that no citizen (qualified for appointment in the service of Pakistan) shall be discriminated on the ground of race, religion, caste, sex, residence or place of birth.

The last article, 28 ensures preservation of language, script and culture subject to Article 251 which describes that any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.

In this way, chapter 1, articles 8 to 28 of the constitution 1973 provides protection against certain rights of the people, excluding the necessities of life upon which life is dependent. This situation thus, against the objectives of the constitution, which clearly states that "the principle of social justice, as enunciated by Islam, shall be fully observed by the state" (Article 2-A).

Conclusions

In conclusion, this study points out lack of access to the necessities of life as the most critical issue of Pakistani people yet is ignored by the stakeholders.

This study thus, concludes that access to the necessities of life is crucial for human development and sustainable development of the country.

It is also concluded that despite a certain set of laws and policies for the reduction of poverty, the Pakistani society is at a significant danger in terms of access to the necessities of life, stability, human development and social justice.

This study also found that the absence of the "right to access to the necessities of life" in the constitution of Pakistan has made the constitutional fundamental rights insignificant and deficient, for instance, the right to protect against slavery and forced labour (Art, 11), right to protect the dignity of man (Art, 14), and right to

education [Art, 25-A) lose their worth and become invaluable in case of absence of the necessities of life. The poor people do not care to protect their dignity in comparison with the necessities of life and just demand food, shelter and medicine.

This study also found poor legislature and enforcement mechanism as great contributors in the rise of poverty in Pakistan.

That absence of the “right to access necessities of life”, is also against the principle of social justice as endorsed under Article 2-A of the Constitution 1973.

This study also credits to the Article 25-A which ensure access to education to all and due to which ratio of education is getting rise every year.

This study also concludes that lack of concern towards the necessities of life is against the objectives of Islamic legal system and system of Islamic politics, which founded the principles of a welfare state and social justice.

Table 1. Poverty Increase in Pakistan

S. No	Year	Poverty ratio below the Poverty line (Less than US\$1.25 a day)	People in million
1	2010	12.4%	22 million
2	2015	24.3%	50 million
3	2020	40%	88 million

(<https://www.odi.org>, 2011; UNDP, 2015-2020)

Table 2. Access to Cleanliness in Pakistan

Garbage Collection	Sanitation	Latrines	Drainage	Open Drainage	Underground Sewerage
50%	40%	55%	51%	35	16%

(State Bank of Pakistan, The Pakistan Infrastructure Report, 2018; Razi, 2020).

Table 3.

Province Area	2015-16			2018-19		
	Male	Female	Total	Male	Female	Total
Pakistan	70	48	58	71	49	60
Rural	63	36	49	65	38	51
Urban	81	68	74	80	67	74
Punjab	72	54	62	73	57	64
Rural	66	44	55	67	47	57
Urban	82	73	77	82	73	77
Sindh	67	44	55	68	44	57
Rural	51	19	36	55	21	39
Urban	80	65	73	79	64	72
Khuber Pakhtunkinva (Including Merged				75	36	55
Rural	-	-	-	74	33	52
Urban	-	-	-	82	51	66
Kliyber Paklituiikiwa (Excluding Merged	72	36	53	76	40	57
Rural	70	33	50	81	54	67

(<https://www.thenews.com.pk/latest/671198-economic-survey-pakistan>).

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