



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Initial reports of States parties due in 2011**

**Pakistan\***

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\* The present document is being issued without formal editing.



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## I. Introduction

1. In pursuance of Article 40 of the Covenant, the Islamic Republic of Pakistan is pleased to present its Initial Report to the Human Rights Committee on the measures it has adopted to give effect to the rights recognized in the International Covenant on Civil and Political Rights (ICCPR) and the progress so far made in this direction.

2. The Islamic Republic of Pakistan ratified ICCPR (hereinafter referred to as "Covenant") on 23rd June 2010. At the time of ratification, it entered reservations, i.e., on Art. 3 and Art. 25 of the Covenant. The reservations are in the context and extent of upholding the supremacy of the Constitution. The explanation regarding the reservations on the provisions of Articles 3 and 25 as stated by Pakistan clearly mention that these "shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan."

3. Pakistan's commitment to the promotion and protection of human rights pre-dates its ratification of the Covenant. Chapter I of the Constitution of Pakistan already guarantees and lays down the framework for the protection of Fundamental Rights of all its citizens without any discrimination, as does Chapter II that lays down Principles of Policy which also envision substantive framework for the protection of rights of the citizens of Pakistan.

4. Most of the rights embodied in the Covenant as well as in other international human rights instruments ratified by Pakistan have always been part of the substantive law of the country, and have, thus, been enforced by the executive and the judiciary accordingly.

5. As a democratic and progressive country, Pakistan is firmly committed to promotion and protection of human rights and fundamental freedoms. The Government accords high priority to advancing mutually reinforcing objectives of development, human rights and democracy for the people of Pakistan. We believe that human rights are universal and inalienable, indivisible, interdependent and interrelated. The Constitution of Pakistan guarantees fundamental rights for all its citizens irrespective of religion, race, caste, colour or creed. Pakistan has taken significant measures to promote rights of women, children and minorities. We are laying special emphasis on creating an inclusive society.

6. Pakistan considers that the general approach of the state parties towards their respective obligations in the implementation of the Covenant should be to strive for giving effect to the various rights and duties embodied in the Covenant within the context of their national, socio-economic, and cultural circumstances in the best possible manner.

7. In order to bring awareness amongst the citizenry to respect the rights of each other and fulfill their respective duties, the state party has translated the human rights Conventions in Urdu language. Dissemination is undertaken by organizing seminars, conferences and workshops on the Conventions. The provinces are also considering translation of these Conventions into their respective provincial languages. This action is also aimed at realizing the objectives of the Conventions in line with the concepts enshrined in the Preamble of the Covenant.

### A. Existing issues and challenges for Pakistan

8. With a population of 190 million, the demographic and geographical contours of Pakistan make it a rich blend of diverse ethnic, linguistic and socio-cultural set-up. Its western and north-western borders are adjacent to Iran and Afghanistan, and its southern and eastern borders neighbor India, while the north is bordered with China. Consequently, not only are there strong socio-cultural links of these countries with the Pakistani society,

but their internal geo-political and economic set-up has also, at times, rippling effects on Pakistan's geo-political and economic conditions.

9. Owing to the developments in Afghanistan since 1979, Pakistan has to face a number of multifaceted complex issues, major among them, the influx of Afghans and the attempts to use Pakistan as one of the transit points for drug smuggling. Continuing instability in Afghanistan poses a number of social, economic and security challenges to Pakistan.

10. The influx of Afghans has impacted the socio-economic and cultural fabric of Pakistan's society as they have been hosted by the communities that are mostly within Pakistan's provinces neighboring Afghanistan, i.e. Khyber Pakhtunkhwa, Balochistan, and FATA (Federally Administered Tribal Areas). Besides, thousands of them are also living in the twin cities of Rawalpindi and Islamabad, and have spilled even beyond. They are of various ethnic origins including Pashtuns, Tajiks, Uzbeks, Turkmen, Hazaras, and Baloch. Many of them married the locals and have settled down in Pakistan. It added to the already diverse ethnic and linguistic mix, complex social structure, and causing serious internal and external security threats and challenges.

11. As a frontline state, Pakistan is fighting the menace of terrorism that has severely affected all areas of life. Terrorism has manifested in the most ruthless and inhuman forms including bomb blasts and suicide attacks on not only the military and law enforcement agencies but also on the innocent civilians including women and children, thus causing great loss of life and property to the country. As a result, the Government of Pakistan has had to strengthen its efforts to fight terrorism by taking strong measures against the terrorists, backed by effective legislative and policy measures.

12. Special resources have been diverted towards effective law enforcement. A comprehensive operation "Zarb-e-Azb" has been launched against terrorists. This is complemented by the National Action Plan, comprising wide-ranging counter-terrorism measures. With all its efforts and measures in ensuring stability and security, the Government is committed to promote and protect the basic fundamental rights.

13. The Government of Pakistan continues to assume its responsibility to create an enabling environment for the exercise and enjoyment of basic human rights across the board. Through its National Internal Security Policy 2014-2018, the government endeavors to maintain a secure law and order environment whereby the rule of law continues to prevail and the various fundamental rights and safeguards guaranteed by the Constitution remain intact, freely exercised, and accessed by the citizens. Proclamations of Emergency in Pakistan cannot abrogate the fundamental rights of its citizens, and this principle has remained central to the country's governance. In 1999, a ruling of the court validated the proclamation of the emergency, but declared the suspension of fundamental rights as unjustified.<sup>1</sup>

## **B. Overview of the existing constitutional, legal and policy framework**

14. To a large extent, the legal and institutional framework for the promotion and protection of human rights is embedded in Pakistan's Constitutional provisions, as mentioned earlier. Chapter I of the Constitution lays down the basic foundations for Fundamental Rights of all its citizens, without discrimination and across the board and referring specifically to the rights of women and minorities.<sup>2</sup> It states from the very outset

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<sup>1</sup> *Farooq Ahmad Leghari v. Federation of Pakistan*, PLD 1999 SC 57.

<sup>2</sup> Constitution of Pakistan, 1973. Part II, Chapter I.

that any laws inconsistent with Fundamental Rights would be void. While ordinary rights could be changed by the legislature in its ordinary process of legislation, a fundamental right guaranteed by the Constitution cannot be changed by any process other than that required for amending the Constitution itself.

15. The 1973 Constitution of the Islamic Republic of Pakistan contains a fairly comprehensive list of civil and political rights in the Chapter on Fundamental Rights (arts. 8-28). These include the right to security of person (art. 9); safeguards as to arrest and detention and right to a fair trial (arts. 10 and 10A); inviolability of individual dignity (art. 14); freedom of religion (art. 17); freedom of expression and right to information (arts. 19 and 19A); equality before law (art. 25), etc. The same Chapter also provides that any law inconsistent with these rights “shall, to the extent of such inconsistency, be void” and that the “State shall make no law which takes away these rights” (art. 8).

16. The fundamental rights under the Constitution of Pakistan can be classified into six major categories:

- Personal Rights
- Civil Liberties (Social Rights)
- Religious/Educational Rights
- Economic/Financial Rights
- Equality Rights
- Cultural/Language Rights

17. The Chapter<sup>3</sup> on Fundamental Rights in the Constitution provides for a single, uniform citizenship in a sovereign, democratic polity and confers the right to vote on every citizen of Pakistan above the age of 18 years. It enshrines the various legally enforceable fundamental rights of citizens including *inter alia* security of person; safeguards as to arrest and detention; right to fair trial; prohibition against slavery and forced labor; inviolability of individual dignity; freedoms of movement, assembly, association, speech, professing individual religion and entering into any lawful trade, business or profession; equality of citizens; and non-discrimination on grounds of race, religion, caste, sex, residence or place of birth.

18. Chapter II of the Constitution, on the other hand, focuses on the “Principles of Policy” and includes ensuring many core human rights guidelines. This Chapter already largely includes those provisions as are sought by the Covenant. For instance, the State shall discourage parochial, racial, tribal sectarian and provincial prejudices among its citizens. It would ensure full participation of women in national life and take appropriate measures in this regard. It further mandates the State to safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services, and seeks the State to promote social justice and eradication of social evils. Social justice here clearly refers to promote carefully the educational and economic interests of backward classes or areas, provide free and compulsory secondary education as well as make technical and professional education available to all on the basis of merit. It further seeks to ensure inexpensive and expeditious justice; provision of safe, secure and suitable working conditions especially for women and children etc. thus, ensuring optimum provision of access to enjoyment of public and private lives for the people of Pakistan.<sup>4</sup>

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<sup>3</sup> Op.cit.

<sup>4</sup> Constitution of Pakistan. Chapter II. Arts. 33-37.

19. The “Principles of Policy” call upon the State to ensure “full participation of women in all spheres of life” (art. 34), safeguard “the legitimate rights and interests of minorities” (art. 36), and “secure the well-being of the people, irrespective of sex, caste, creed or race” (art. 38 a). While the Principles of Policy are non-justiciable and meant to serve as guidelines for the government in enacting legislation, their interpretative and persuasive value cannot be underestimated.<sup>5</sup>

20. As the Sindh High Court observed in an important judgment, “these principles can always be called in aid for the purpose of interpretation of any legal provision or instrument.” Any interpretation which seeks to comply with or advance the Principles of Policy should always be adopted as against an interpretation which goes against them. Additionally, the Principles of Policy, being part of the Constitution, provide the overall framework for law-making and policy formulation around key socio-economic rights and citizens’ welfare.

21. A National Plan of Action (NPA) for Human Rights is also under formulation by the Human Rights Wing of the Ministry of Law Justice, and Human Rights. It is a focused document which has been prepared in consultation with a wide range of stakeholders and aims to help in effective implementation of human rights instruments at the domestic level. Pakistan’s society, like every other society in the 21<sup>st</sup> century, is passing through a socio-economic and cultural transition. In its transformation towards a strong and modern democratic state, Pakistan is also trying to preserve its cultural strengths and societal balance. NPA will play a key role towards our vision of an inclusive society.

### C. Institutional mechanisms

22. The institutional safeguards for the rights enshrined in the Constitution include primarily an independent and accountable judiciary and the separation of judicial, legislative and executive functions. Legislation in Pakistan is subject to judicial scrutiny and the exercise of executive power is subject to different forms of judicial review. In the event of infringement of an individual’s fundamental rights, the four provincial High Courts can be directly petitioned for immediate relief. Where enforcement of Fundamental Rights is sought in a matter of public interest, the highest court in the land, the Supreme Court can be petitioned directly under Article 184 (3) of the Constitution that can even take *suo moto* action against any human rights infringements as provided in Chapters I & II of the Constitution.<sup>6</sup> Similarly, Article 199 of the Constitution empowers the High Courts to give directives to any person or authority, including any Government official exercising any power or performing any function within the courts’ respective jurisdiction, to enforce any fundamental right not being accessed by any aggrieved person.<sup>7</sup>

23. Besides, in line with the powers conferred on the Supreme Court as one of its original jurisdictions, under Article 184 (3) of the Constitution, a small Human Rights unit

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<sup>5</sup> Shahabad Mattoon Case (PLD 1993, Kara 83).

<sup>6</sup> Constitution of Islamic Republic of Pakistan 1973. Art. 184: Original Jurisdiction of Supreme Court.- (3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article.

<sup>7</sup> Ibid. Art. 199. Original Jurisdiction of High Courts.- (c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.

had been working in the Supreme Court under the direct supervision of the Chief Justice of Pakistan and managed by a junior officer.<sup>8</sup> In 2013, to enhance and give it a “new momentum”, the Human Rights Cell was reorganized with a broader mandate and its staff was strengthened with a Director General level officer with support of a Director, law officers and law interns.<sup>9</sup> The idea was to “provide an expeditious and inexpensive remedy in matters relating to infringements of Fundamental Rights enshrined in Chapter II of the Constitution.”<sup>10</sup>

24. Operating under the direct supervision of the Chief Justice of Pakistan, the Cell is mandated to respond promptly to all the complaints and grievances received by him by post from the general public, through an effective and speedy mechanism. The matters are disposed off through a process by which, the Chief Justice initially seeks fact finding reports and comments from the concerned quarters, and after thorough scrutiny, the complaints are redressed. On the other hand, dates for cases requiring hearing are fixed by the Court and the matters decided therein. Relief is, thus, provided to the victims and the under-privileged by optimally averting the traditionally prolonged litigation process. The broad areas reviewed by this Cell include:<sup>11</sup>

- Missing persons
- Murder
- Rape
- Torture/Harassment
- High Handedness
- Acid Victims
- Abduction/Kidnapping
- Abduction of Women & Children
- Constitutional Petitions
- Other important matters regarding Human Right/Public Importance/ Encroachment/ Human Liberty, and Environmental Pollution, etc.
- Miscellaneous Cases

25. Provision of this quick and inexpensive relief to the common citizenry has resulted in winning their hearts and has also raised the level of trust and confidence in the judiciary as a whole and the apex Court in particular. The Human Rights focused initiative of the Supreme Court deals with a range of issues mentioned above. In only last two years (May 2013-15), the Cell decided over 76,000 cases.<sup>12</sup> The applications dealt in past two years, include variety of cases ranging from complaints against police, administrative highhandedness, and other injustices or from matters of threats to minorities and their places of worship, to matters of non-payment of salaries to low income employees. The mechanism has manifested in the form of public interest litigation in a manner that paved the way for bringing various statutory reforms in matters of importance to the general

<sup>8</sup> Annual Report. Supreme Court of Pakistan. 2013-14, P. 119.  
<http://www.supremecourt.gov.pk/Links/sc-a-rpt-2013-14/index.html#p=130>.

<sup>9</sup> Ibid.

<sup>10</sup> <http://www.supremecourt.gov.pk/web/page.asp?id=337>.

<sup>11</sup> <http://www.supremecourt.gov.pk/web/page.asp?id=1759>.

<sup>12</sup> Annual Report. 2014-15. Supreme Court of Pakistan. P. 114.  
<http://www.supremecourt.gov.pk/links/sc-a-rpt-2014-15/index.html>.

public, e.g., the enactment of the Human Organ Transplantation Ordinance 2007, and Prohibition of Smoking at Public Places Ordinance, etc.

26. In addition, a separate Wing in the Human Rights Cell of the Supreme Court has been established.<sup>13</sup> to attend to the issues and complaints of overseas Pakistanis. This was done to further protect and safeguard the rights and interests of the expatriate Pakistanis. Managed by a Director working under the DG, this wing is also closely supervised by the Chief Justice of Pakistan. In 2014-2015 alone, the Wing received 1,739 complaints out of which 1,692 have been decided, while 612 are in process (of calling reports/comments from the concerned quarters).<sup>14</sup> The range of complaints is in respect to the illegal possession of their property by land mafia, property frauds, or usurpation of their share in lawful inheritance, inordinate delay in disposal of cases, and plight of Pakistanis arrested or imprisoned abroad (These matters are followed up in partnership with Ministry of Foreign Affairs).<sup>15</sup>

27. Another very recent development has been the establishment of an independent National Commission of Human Rights (NCHR) by an act of the Parliament.<sup>16</sup> The Commission aims at promoting and protecting human rights in Pakistan and has, thus, been given *suo moto* powers to take action against cases of human rights violations in the country. The Commission, including its Chairperson, consists of nine members i.e. one from each province, one from FATA, one from the Islamabad Capital Territory (ICT), and one from the Minority Community. Besides, the Chairperson of the National Commission on the Status of Women (NCSW) is designated as its ex-officio member. The Commission also has at least two women as its members. This initiative is a leap forward in ensuring effective monitoring and optimum protection of human rights for the citizens of Pakistan.

28. Various monitoring, follow-up and accountability mechanisms have been put in place for the implementation of human rights of various segments of the society across Pakistan. The Provincial Governments have established Human Rights Departments at the provincial levels. The Provincial Government of Punjab through an executive order has established a human rights complaint cell in its Provincial Department of Human Rights. In the province of Khyber Pakhtunkhwa, a Child Protection and Welfare Commission has been established under the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010. The Sindh Government has set up the Sindh Human Rights Commission in 2013, under the Sindh Protection of Human Rights Act, 2011. The Commission is empowered to inquire into violations of human rights or in cases of negligence in the prevention of such violations by a public servant. These measures now supplement the corresponding mechanisms at the federal level.

29. Consistent with its well-rounded approach, the Government of Pakistan continues to enhance awareness of the fundamental human rights and freedoms guaranteed to its citizens under the Constitution as well as in compliance of various international instruments including the Covenant to which it is a party. In this regard, a variety of efforts are made for awareness raising of the legal and judicial fraternity, as well as of the executive branch of the government and for the general public. Amongst a range of initiatives, the Law and Justice Commission of Pakistan for instance, regularly holds international judicial conferences in which the judiciary reviews and reflects on the institutional mechanisms

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<sup>13</sup> Established on 10th January 2014. Annual Report. Supreme Court of Pakistan. 2013-14. P. 120. <http://www.supremecourt.gov.pk/Links/sc-a-rpt-2013-14/index.html#p=130>.

<sup>14</sup> Annual Report. 2014 -15. Supreme Court of Pakistan. P. 114. <http://www.supremecourt.gov.pk/links/sc-a-rpt-2014-15/index.html>.

<sup>15</sup> Ibid.

<sup>16</sup> National Commission for Human Rights Act, 2012 (Act No. XVI of 2012).



within its own setup for the compliance of international human rights commitments and identifies ways to strengthen those mechanisms and revise the existing flawed strategies if any. The Government itself, on the other hand, through its various arms, continues to work in close cooperation with relevant civil society organizations by extending its support to them and seeking their support in return for the implementation of these human rights treaties.

30. Increased awareness about the Covenant among the judiciary is being created through focused training modules at Judicial Academies that have been specifically designed to promote awareness of international human rights conventions ratified by Pakistan. Moreover, the Supreme Court of Pakistan, in conjunction with the Law and Justice Commission of Pakistan annually hosts international judicial conferences to discuss and raise awareness of various human rights issues among the legal fraternity as well as general public. It provides not only an awareness and learning opportunity but also a discussion forum to deliberate on the issues and challenges in the implementation of these commitments and the way forward.

31. Law enforcement officials and officers are generally trained to uphold fundamental rights of the citizens at Police Training Schools in all the provinces as well as at National Police Academy in Islamabad and Police Training College in Sihala.

32. Awareness raising is generally perceived to be underpinned by its nexus to improving the overall levels of literacy and education in the country. Article 25-A of the Constitution, added in 2010 as a consequence of the 18th Amendment, is a major achievement to this end. The Article mandates the government to ensure free and compulsory education up to the secondary level, across the country. In addition, laws are being increasingly translated into the country's national language Urdu primarily, and subsequently are being translated into local provincial languages. These efforts have further been intensified by the Government's decision to declare Urdu as the "Official Language" in compliance with a Constitutional provision that mandates the Government to make arrangements for using Urdu language for official and other purposes.<sup>17</sup>

33. The Government has adopted a policy of affirmative action to create an enabling environment for the exercise of human rights by all members of the society, especially those who are socially or economically disadvantaged. This is consistent with specific affirmative measures prescribed by the Constitution with twin objectives of safeguarding the fundamental rights of such vulnerable segments of society including removal of socio-economic disabilities and promoting their educational, economic, and political interests. These measures include reservation of special seats for women and religious minorities in the Federal and Provincial legislatures and a quota based system in the public sector services across the board for minorities, persons with disabilities, and women.

34. Since ratification of the Covenant, the Government has taken several important and concrete measures to strengthen and augment the available safeguards for the promotion and protection of human rights. It has, for example, enacted the National Human Rights Commission Act 2012 (mentioned earlier), and strengthened the National Commission on the Status of Women (hereinafter referred as "NCSW"), a statutory body established in 2000, by enacting the National Commission on the Status of Women Act 2012 which confers autonomy to the Commission, thus enabling NCSW to perform more effectively and in an un-biased manner. The Chairperson of NCSW is also an "Ex-Officio Member" of the NCHR,<sup>18</sup> to ensure that there remains a close coordination for ensuring the

<sup>17</sup> Constitution of Islamic Republic of Pakistan 1973. Art. 251. National Language.

<sup>18</sup> National Commission of Human Rights.

implementation of women rights. The Government has also made efforts to implement the Juvenile Justice System Ordinance 2000 (hereinafter referred as “JJSO”) besides recently completing national consultations and upgrading a draft bill for the establishment of a National Commission on the Rights of the Child. All these legal instruments and institutional arrangements are aimed at regular and transparent monitoring, evaluation, and channeling of complaints and allegations of human rights violations and provision for effective remedies for vulnerable groups.

35. In essence, Pakistan’s efforts to safeguard the human rights of its citizens have revolved around: (a) creating and strengthening an enabling legal and institutional framework; (b) establishing an effective network of mutually reinforcing safeguards both within and outside the legal and institutional framework backed by regular review; (c) pursuing a policy of transparency, responsiveness and dialogue with relevant local and international non-governmental organizations; (d) adhering to core international human rights instruments and cooperating with the United Nations human rights machinery; (e) adopting a holistic approach in tackling poverty and under-development which can significantly hamper the full realization and enjoyment of human rights; (f) generating awareness through dissemination of the relevant covenants and, more significantly, through promotion of literacy, education, and translation into local languages; and (g) creating a generally conducive environment for the enjoyment and enforcement of human rights across Pakistan.

#### **D. Reporting methodology**

36. Since the 18<sup>th</sup> Constitutional Amendment which decentralized specific legislative and implementation functions to the provinces, the overall supervision and monitoring of Human Rights implementation has been retained by the Federal Government as state responsibility. Even prior to the Devolution, matters covered by ICCPR fell partially within the domain of executive and legislative jurisdiction of the provincial governments and the respective provincial assemblies. This required the provincial governments’ active involvement in systematically collecting and maintaining relevant data and information for the compilation of this report.

37. In compliance with the Convention’s Reporting Guidelines, a series of extensive provincial and national consultations were conducted with a range of relevant stakeholders including the respective government departments, the civil society and academia, and further information was gathered that has also been included in this report after due scrutiny and analysis of the information received. Written responses to questionnaires developed in line with the Articles of the Covenant were sought and received from all concerned quarters by the Reporting Unit of the Ministry of Human Rights that have also been included in this Report and shared during the consultations.

38. Besides, it may be pertinent to inform the Expert Committee at this point that the Reporting on compliance and implementation of Human Rights Conventions ratified by Pakistan has been further institutionalized through setting up “Treaty Implementation Cells” at the provincial level, that are coordinated and monitored by the National Treaty Implementation Cell at the Federal Government level which is mandated to monitor and ensure treaty implementation, coordinate information, and undertake data collection for the country reports. The measure has been taken for making the reporting mechanism more prompt and effective.

## II. Implementation of specific provisions of the Covenant

### Article 1

39. Article 1 of the Covenant enshrines the right to self-determination. Pakistan came into being as a result of struggle of the Muslims of the sub-continent for the right to self-determination. It, thus, values the right of its citizenry to fully participate in public life. The Constitution of Pakistan has embodied this right through constitutional provisions guaranteeing all its citizens, over the age of 18, the right to franchise, i.e. to run for any public office under the law, freely vote and elect their representatives. An independent Election Commission, operating at the Federal and Provincial level, arranges and supervises the general elections, including the Senate elections and any bye-elections.<sup>19</sup> The Chief Election Commissioner has to be a former Judge of the Supreme Court of Pakistan or a former Justice of a High Court, and is appointed by the President of Pakistan.<sup>20</sup>

40. The universal realization of the right to self-determination is of great significance to Pakistan. Adhering to its principled position, the Government of Pakistan supports the right to self-determination and realization of the rights of all peoples subjected to colonization, alien domination or foreign occupation, including the people of Indian Occupied Jammu and Kashmir (IOK) and the people of the Occupied Palestinian and Arab territories in accordance with the relevant United Nations Security Council resolutions. We believe that the right to self-determination is the cornerstone of the UN system and a prerequisite to the exercise of other human rights. Pakistan itself gained independence as a result of a democratic struggle on the basis of the right to self-determination. Soon after its emergence as an independent nation, Pakistan played an active role at the United Nations to help various colonized and subjugated nations in North Africa, Middle East and other parts of Asia in exercising their right to self-determination.

41. Every year, Pakistan sponsors a resolution at the United Nations General Assembly under the title "Universal realization of the right of peoples to self-determination". This resolution has enjoyed consensus support of all UN member states. The resolution reaffirms the fundamental significance of the universal realization of the right to self-determination by all people, including those under foreign and alien domination, and declares opposition to all acts of aggression and foreign occupation which result in the suppression of this basic human right.

42. The right to self-determination occupies a prominent position in the UN Charter. Pakistan's principled stance on the Kashmir issue is in accordance with the UN Charter. Pakistan has backed the UN Security Council Resolutions 47 of 21 April 1948, 51 of 3 June 1948, 80 of 14 March 1950, 91 of 30 March 1951, 122 of 24 January 1957 and Resolutions of United Nations Commission for India and Pakistan (UNCIP) of 13 August 1948 and of 5 January 1949 all of which declare that the final disposition of the State of Jammu and Kashmir would be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

43. In this regard, it may be underlined that Resolution 91 of 30<sup>th</sup> March 1951, and 122 of 24<sup>th</sup> January 1957, while annulling any anticipated action of the then constituent assembly of IOK with regard to the determination of the final status of the State reminded that the final disposition of the State would be determined through a free and fair plebiscite. UNSC Resolution 91 reminds the Governments and authorities concerned "of the principles

<sup>19</sup> Ibid. Arts. 213-221.

<sup>20</sup> Ibid.

embodied in its resolutions 47 (1948) of 21 April 1948, 51 (1948) of 3 June 1948 and 80 (1950) of 14 March 1950 and the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the state of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under auspices of the United Nations.” UNSC Resolution 122 while referring to then constituent assembly of IOK reaffirmed that “...that any action that assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or actions by the parties concerned in support of any such action by the assembly, would not constitute a disposition of the State in accordance with above principle.”

## Article 2

44. Considered to be the primary accessory provision of the Covenant, Article 2 is designed to ensure that State Parties give effect to rights envisioned in the Covenant within their respective territorial jurisdiction. Pakistan is mindful of its obligations under this Article.

45. Most of the rights spelled out in the Covenant are already protected in the domestic law of Pakistan, with most being constitutionally guaranteed and protected. As a matter of general principle, all individuals within Pakistan are afforded equal enjoyment of the Covenant rights without any sort of discrimination. Article 25 of the Constitution guarantees all citizens equality before the law and its equal protection without discrimination.<sup>21</sup>

46. Judicial interpretation of Article 25 guaranteed in the Constitution has led to the development of an extensive body of decisional law covering a broad spectrum of governmental activity. In practice, equal protection of law is ensured by the right of individuals to challenge governmental actions in courts and the power of the courts to invalidate acts which are determined to be unconstitutional.

47. The principle of non-discrimination is thus, enshrined in Article 25 of the Constitution. At the same time, certain groups and individuals like women, children, persons with disabilities and the elderly need special attention and legal provisions to address their needs and concerns. Article 25, therefore, encourages the state to take special measures for the protection of the rights and interests of women and children in this regard.<sup>22</sup> This is reflected in the government policies and demonstrated in the schemes that provide job quotas in the government across the board as well as reserved seats in educational institutions.<sup>23</sup> It can be enforced directly by any individual within the jurisdiction of Pakistan through a constitutional petition before the relevant High Court having territorial jurisdiction.<sup>24</sup> The approach of the courts while hearing such petitions has been generally very considerate and numerous such petitions are heard and disposed of by the High Courts in Pakistan on a regular basis. The judicial interpretation of Article 25 is broad enough to address discrimination on the basis of race, color, sex, language, religion,

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<sup>21</sup> Constitution of Pakistan. Art. 25. Equality of citizens. 1) All citizens are equal before Law. 2) There shall be no discrimination on the basis of sex. 3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

<sup>22</sup> *IBID.* Art. 25(3).

<sup>23</sup> In the year 2010, five women were recruited to the Kohat University of Science & Technology; while in 2011, 9 women and 3 members of minority groups were recruited; whereas in 2013, one woman and 3 members of minority groups were recruited.

<sup>24</sup> Pak. CONST. Art. 199.

political or other opinion, national or social origin, property, birth or other status, as required by Article 2 of the Covenant.

48. Meanwhile, the Government is also in the process of realigning the existing laws to cater for the needs and concerns of the other two groups, i.e. persons with disabilities and the elderly, to ensure their protection and rights. Pakistan is a state party to the Convention on the Rights of Persons with Disabilities (CRPD). Laws have been drafted by the provincial as well as the federal governments and consultations have been held with the stakeholders extensively across Pakistan for the protection of the rights of persons with disabilities. Similarly, in 2014, the National Disaster Management Authority (NDMA) has launched a specific Policy for the Vulnerable Groups during disasters addressing the special needs and concerns of women, children, elderly and the persons with disabilities.

49. For the first time ever, the rights of Intersex persons have been recognized which had earlier been taken for granted. In July 2010, the Supreme Court of Pakistan emphasized on the rights and equal protection of law for the Intersex persons. In a judgement Order, the apex court directed the National Database Regulatory Authority (NDRA) to issue national identity cards for the Intersex persons.<sup>25</sup> The Court closely observed the problems experienced by *Intersex persons* in the areas of inheritance, registration of identity, voting, employment, and schooling.<sup>26</sup> Once registered, all Intersex persons now stand entered in the voter lists and can exercise their equal right to political participation.

50. Earlier, the Intersex persons were deprived of their rights as there was no provision in the CNICs recognizing their Intersex status; they had to categorize themselves either “male” or “female”. The Court also took serious notice of harassment and illegal detention of Intersex persons and declared it as violation of their fundamental rights including right to dignity, freedom from degrading and inhuman treatment, and freedom from arrest or detention. The landmark ruling stated that as equal citizens, the Intersex persons were entitled to the equal benefit and protection of the law and called upon the government to take steps to protect them from discrimination and harassment.

51. The Constitution of Pakistan pays special attention to the rights of minorities in Pakistan. Articles 20, 21, 25, 26, 27, 28 and 36 of the Constitution provide full protection and equal rights without discrimination, right to preserve and promote the culture to all citizens including the minorities etc. Section 505 (2) of PPC provides legal framework for ensuring inter-ethnic and inter-religious/sectarian harmony.

### Article 3

52. Article 3 of the Covenant contains an important provision. Unlike Article 2, it does not talk merely about discrimination in general but specifically addresses and focuses on the equality between men and women.

53. Pakistan has ratified the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and has presented its Fourth Periodic Report to the CEDAW Committee in February 2013.<sup>27</sup> In order to obviate the actual and sometimes perceived differences in treatment of men and women, Federal and Provincial Governments have taken a number of steps. The establishment of the National Commission on the Status of Women (NCSW) is a seminal step towards alleviating the problems faced by women in Pakistan. The mandate of the National Commission on the Status of Women is to review

<sup>25</sup> *Khaki v. Rawalpindi*, Supreme Court of Pakistan (12 December 2009), accessed 4 October 2013 at: [www.icj.org/sogicasebook/khaki-v-rawalpindi-supreme-court-of-pakistan-12-december-2009/](http://www.icj.org/sogicasebook/khaki-v-rawalpindi-supreme-court-of-pakistan-12-december-2009/).

<sup>26</sup> Ibid.

<sup>27</sup> CEDAW/C/PAK/4.

laws, policies and mechanisms with gender perspective and to come up with policy recommendations. Similarly, Provincial Commissions on the Status of Women have also been established in the provinces.

54. The focal machinery at the Federal level in Pakistan after devolution remains the Ministry of Law, Justice and Human Rights. The Constitution explicitly guarantees equality of men and women before the law through Article 25. As interpreted by the Supreme Court, this equal protection clause prohibits both the federal and the provincial governments from arbitrarily discriminating on the basis of gender.

55. Apart from Constitutional guarantees, the legislature has also passed several laws seeking to implement specific protections when it comes to the issues women face in Pakistan and to provide adequate forums for redress. The Criminal Law Amendment Act (2009) amended § 509 of the Pakistan Penal Code 1860. This amendment has added a clear definition of sexual harassment to the Penal Code with a penalty of upto 3 years imprisonment and/or fine upto Rupees five hundred thousand (Rs. 500,000).

56. The passage of the Protection Against Harassment of Women at the Workplace Act (2010) has made it mandatory for all public and private organizations to adopt an internal Code of Conduct and a mechanism for complaint/appeals if they so arise. An office of Ombudsperson has also been established to focus on adjudicating cases of harassment at workplace. Besides, at the national level, a Bill on Domestic Violence is being considered by the Standing Committee of the Parliament, and is likely to be passed shortly. It may also be underlined that §§ 332 to 337 of the Pakistani Penal Code (PPC) cover aspects of domestic violence. At the provincial level, Sindh and Balochistan have already passed Domestic Violence (Prevention and Protection) Acts of 2013 and 2014 respectively. They recognize all forms of domestic violence as illegal and punishable. Provinces of Punjab and KPK are in the process of passing this law as well.

57. Women are increasingly being integrated into the workforce and government is ensuring economic empowerment of women and their adequate representation in the public space. Special measures have been taken to ensure equal participation of women in all spheres of public and private lives. The Government of Pakistan has a reserved quota for women, minorities and persons with disabilities of 10%, 5% and 2% respectively at the Federal Level.

58. Recognizing the need to enhance the women's quota as a special measure, the provincial governments have undertaken various initiatives. For instance, the provincial Government of Punjab has raised job quota for women from 5% to 15% in total number of posts, across the board, with exception to the recruitment through competitive examinations conducted by the Punjab Public Service Commission, for the short term (less than six month period) vacancies, and vacancies to be filled in by transfer or promotions etc;<sup>28</sup> Besides, the Punjab Government has also made it mandatory to include one woman officer in departmental recruitment committees at provincial as well as district levels.<sup>29</sup> The Government of Sindh has also announced raise in women's job quotas from 5% to 25%, as has the Government of Khyber Pakhtunkhwa.

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<sup>28</sup> Government of Punjab. Services and General Administration Department (Regulation Wing). Notification No. SOR-IV (S&GAD)15-1/2012. Dated 21<sup>st</sup> May 2012. [http://wdd.punjab.gov.pk/system/files/enhancement\\_of\\_quota.pdf](http://wdd.punjab.gov.pk/system/files/enhancement_of_quota.pdf).

<sup>29</sup> Government of Punjab. Services and General Administration Department (Regulation Wing). Notification No. SOR-IV (S&GAD)10-1/2003. Dated 17<sup>th</sup> May 2012. <http://wdd.punjab.gov.pk/system/files/scan0036.pdf>.

59. Efforts are also being made to ensure the rehabilitation of financially needy girls and women through cultural specific schemes. The Collective Marriages program which relieves many girls and their families of the burden of arranging marriage ceremonies and dowry has been introduced. Besides, the provincial Government of Punjab, for instance, has announced a substantive “Women Empowerment Package” in 2012. The Package is in fact a comprehensive empowerment and gender equality policy aimed at poverty alleviation, universal primary education, child mortality reduction, improvement of maternal mortality health, elimination of violence against women, mainstreaming of gender perspective in policies and programs, enhancing training opportunity for women and girls, and increasing the participation of women in leadership and decision making. It also aims to safeguard women’s rights for social empowerment and targeted expansion of economic opportunities for women’s economic empowerment. Similar packages are being replicated in other provinces as well.

60. Family laws are one of the areas which are frequently debated in the context of gender equality. Various personal laws ensure the same right of both men and women to enter into marriage. Men and women are free to enter into marriage and to marry spouses of their choice. In practice, the parents in Pakistan generally select spouses for their children. In most of such instances there is no element of coercion by the parents but deference by the children to their parents’ wishes and their own willingness. Article 8 of the Constitution protects diversion from fundamental rights and states that any law, custom or usage having the force of law, insofar as they are inconsistent with the rights guaranteed under the Constitution, shall to the extent of such inconsistency, be void.<sup>30</sup> Supreme Court of Pakistan and all provincial High Courts have widely implemented aforementioned article and resultantly declared anti-women practices void. For instance, in 2004, the Sindh High Court (SHC) had declared jirgas<sup>31</sup> illegal.<sup>32</sup> The SHC single bench, banned all trials conducted under the Jirga system throughout Sindh and ordered that those found violating the SHC orders would be charged under the contempt of court law, irrespective of their status or influence. In 2011, the then Chief Justice of Pakistan, therefore, initiated *suo moto* proceedings after he went through some newspaper clippings about two jirgas deciding the fate of minor girls in Sindh.

61. Inequity in terms of economic conditions and hardships following the dissolution of marriage is a major cause of concern for women who more often than men are left with dependent children to rear and support. Litigation awards in such cases are often problematic to enforce. Moreover, the maintenance awards often fail to quantify the actual economic hardships faced by women. Therefore, in Pakistan, a system of family courts is in place and support from the judiciary to effectively deal with such cases definitely helps women. The Family Courts Act 1964 provides that family matters are to be decided within six months. The Muslim Family Laws Ordinance 1961 enables women to approach local government institutions (Union Councils) to get family maintenance from defaulting husbands without having to travel to distant Courts or engaging a lawyer.

62. It is further specifically recognized that the scope of obligation under Article 3 cannot be discharged in isolation as it permeates through the other Covenant rights as well.

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<sup>30</sup> Constitution of Pakistan. Art. 8. Laws inconsistent with or in derogation of fundamental rights to be void. (1) Any law, or any custom or usage having 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.

<sup>31</sup> Jirgas are assemblies of community elders that take decisions by consensus, particularly among the tribal people, to settle disputes within their communities.

<sup>32</sup> The judgment was passed during hearing of a petition filed by Shazia Mangi and Ehsan Chachar of Daharki, seeking protection from the court against the tribal elders. The couple had married of their free will and sought protection for their lives. PCr.LJ 1523.

Efforts to remove obstacles impeding equal enjoyment of rights by men and women are thus further discussed in this report in relation to the relevant articles.

#### Article 4

63. The Constitution of Pakistan contains specific provisions whereby the President can declare a state of emergency.<sup>33</sup> Whereas these constitutional provisions have mostly been legitimately invoked in Pakistan, the manner in which a state of emergency was declared on some occasions in the past raised constitutional questions where ex-post facto judicial and/or later constitutional cover through a judicial pronouncement<sup>34</sup> or constitutional amendment was invariably given to such actions. In a landmark judgment, the Supreme Court stated that the doctrine of necessity previously applied to grant cover to such actions lay forever buried in Pakistan, and that such extra-constitutional steps will not receive judicial sanction in the future.<sup>35</sup>

64. In case emergency is to be declared, there are constitutional safeguards as to the time for which such state of emergency can be extended with the approval of a joint sitting of both houses of the Parliament which must be convened within thirty days of such declaration by the President.<sup>36</sup>

#### Article 5

65. Pakistan through its Constitution has always upheld the fundamental rights of all its citizens without discrimination. The Constitution of Pakistan already guarantees almost all those rights enumerated in the Covenant. Article 8 of Chapter 1 on Fundamental Rights in the Constitution states, "Laws inconsistent with or in derogation of fundamental rights shall be void." The Article declares all laws, customs, usages, having the force of law as void to the extent of their inconsistency to the Fundamental Rights enshrined in the Constitution.<sup>37</sup> It also deters the State to make any law that "takes away or abridges" fundamental rights guaranteed in the Constitution.<sup>38</sup> While further ensuring human rights guarantees, the Article further lays down that the fundamental rights conferred by the Constitution cannot be arbitrarily suspended, unless expressly provided under the Constitution itself.<sup>39</sup>

66. Thus any action taken by the legislature or the Executive in violation of any Fundamental Right is void under the law, is enforceable by judicial process, and the courts are bound to make declaration accordingly and provide suitable relief to the aggrieved party. This is the very essence of what is called judicial review of legislation.<sup>40</sup> Similarly, in another case, it was determined by the court of law that characteristic of fundamental rights is that they impose limitations, express or implied on public, executive and judicial authorities, prohibiting them from committing violations.<sup>41</sup>

67. There is no bar on the jurisdiction relating to the powers of the High Courts prohibiting the suspending authority of judicial power which extends to whole of the

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<sup>33</sup> Pak. CONST. Arts. 232-237.

<sup>34</sup> See e.g., *State v. Dosso* [PLD 1958 (S.C.) 533].

<sup>35</sup> INTRA COURT APPEAL NO. 1 OF 2012; available at: <http://www.supremecourt.gov.pk/web/page.asp?id=956>.

<sup>36</sup> Pak. Const. Arts. 232 and 233.

<sup>37</sup> Constitution of Islamic Republic of Pakistan.1973. Chapter I: Fundamental Rights. arts. 8 (1) & II of the Constitution both include the rights laid down in the Covenant.

<sup>38</sup> *Ibid.* Art. 8 (2).

<sup>39</sup> *Ibid.* Art. 8 (5).

<sup>40</sup> *Abul ala Maududi v. Govt. of West Pakistan* PLD 1964 SC 673.

<sup>41</sup> *East Pakistan v. Mehdi Ali Khan and others* (PLD 1959 SC 387).



Constitution.<sup>42</sup> The Supreme Court of Pakistan in recent case regarding the validity of Proclamation (of Emergency) Order, held that the Judiciary had the right to review it under its powers to judicial review. The Proclamation of Emergency was thus validated, but the suspension of Fundamental Rights was declared “unjustified”.<sup>43</sup>

#### Article 6

68. The right to life in Pakistan is guaranteed by the Constitution. Its Article 4 provides that “no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law”. Article 9 further states that “no person shall be deprived of life or liberty, save in accordance with law”. These provisions represent the constitutional recognition of every human’s inherent right to life and the commitment to protect it by law. The right to life is hence the foundation of constitutional safeguards in Pakistan and has crucially been accorded a wide interpretation by the judiciary.<sup>44</sup>

69. The value of human life is further protected by the Pakistan Penal Code (hereinafter referred as “PPC”) which criminalizes every instance of arbitrary deprivation of life, whether intentional or negligent. In the most serious cases, the punishment for intentional and arbitrary deprivation of life of another person is death penalty. In other circumstances, imprisonment for life or a term which may extend to 25 years may be imposed.<sup>45</sup>

70. In case of death of a person occurring while under the state custody for investigation or serving custodial sentence, or for any other purpose, the investigation of this is to be conducted by a judicial magistrate through judicial inquiry.<sup>46</sup>

71. In Pakistan, death penalty is prescribed by law for serious offences. Where applicable and awarded, death penalty cannot be carried out unless imposed by way of a judgment from a court of competent jurisdiction through a transparent process. Such judgments carry an appeal to the High Court as a matter of right, and possibly a further appeal to the Supreme Court in case a relief is not granted in favour by the High Court.

72. Section 374 of Criminal Procedure Code (CRPC) provides that the death sentence shall not be executed unless it is confirmed by a Division Bench of the concerned High Court even if the convict does not prefer an appeal. An individual awarded the death penalty usually appeals his conviction, the sentence or both. If an appellate court vacates either the sentence or the conviction, it may remand the case to the trial court for retrial. In every case where death sentence has been passed, the Federal Government or the respective Provincial Government of the Province within which the convict has been sentenced may, without the consent of the convict, commute the punishment for any other punishment provided by the PPC.<sup>47</sup> The only exception is where the death penalty has been awarded for murder under § 302(a) PPC, in which case the death sentence cannot be commuted without the consent of the heirs of the victim.

<sup>42</sup> Art. 234. Constitution of Pakistan.

<sup>43</sup> *Farooq Ahmad Leghari v. Federation of Pakistan*, 1999: 57.

<sup>44</sup> See e.g., *Shehla Zia v. WAPDA* [PLD 1994 (S.C.) 693].

<sup>45</sup> § 302 PPC: Punishment of qatl-i-amd: “Whoever commits qatl-e-amd shall, subject to the provisions of this Chapter be: (a) punished with death as qisas; (b) punished with death or imprisonment for life as ta’zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in § 304 is not available; or (c) punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the injunctions of Islam the punishment of qisas is not applicable.”

<sup>46</sup> § 176 Cr.PC.

<sup>47</sup> § 54 PPC.

73. It may be underlined that death sentence cannot be carried out on a pregnant woman in Pakistan.<sup>48</sup> Even otherwise, the award and execution of death sentence to a woman is extremely rare. Moreover, under the Juvenile Justice System Ordinance (JJSO), a child<sup>49</sup> cannot be sentenced to death.<sup>50</sup> Article 8 of the JJSO provides for medical examination for determining the age of a person whose age might come under question at any stage.

74. There also exists a constitutional right to seek pardon. In addition, death sentences are also condoned where there is a clemency petition filed before the head of the state, i.e. the President of Pakistan, who is vested with constitutional authority/discretion to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.<sup>51</sup> The PPC specifically provides for the exercise of this constitutional authority of the President.<sup>52</sup>

75. In 2008, the Government of Pakistan had voluntarily placed a temporary moratorium on executing prisoners on death row. The moratorium was lifted by the Government in the wake of the December 2014 barbaric terrorist attack on a school in Peshawar that killed over 135 students and more than ten staff members. This decision was taken by the Government with political consensus representing the will of the people in the backdrop of the increasing demand from the families of the victims and all segments of the society for the Government to take all legal measures to protect the life and property of the people.

#### **Article 7**

76. Torture in any form has always been condemned by Pakistan and, therefore, it stands criminalized by Law through Constitutional and other existing legal frameworks. Dignity of man and the privacy of his home is considered highly sacred as laid down in the Constitution that further prohibits torture particularly in the context of obtaining evidence.<sup>53</sup> Article 14 of the Constitution provides for the inviolability of dignity of man. Its Section (1) mandates preservation of dignity as well as the protection and privacy of home, while Section (2) gives protection from torture. The said Section states that “No person shall be subjected to Torture for the purpose of extracting evidence.” This Article of the Constitution is similar to Article 7 of the ICCPR.

77. Similarly, Article 11 (4) (b) of the Constitution cautions against inhuman penalty of any individual serving a compulsory service. The said sub-Section states that “...no compulsory service shall be of a cruel nature or incompatible with human dignity.” It is, therefore, in line with Articles 14 and 11 of the Constitution that all other concerned laws and legal frameworks in Pakistan criminalize and prohibit torture, committed by anyone, whether at the public or private level. These Constitutional provisions and principles help Pakistan to fulfill its responsibilities as a State Party to the United Nations Convention Against Torture (hereinafter referred as CAT).

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<sup>48</sup> § 314 (3) PPC: “If the convict is a woman who is pregnant, the Court may, in consultation with an authorised medical officer, postpone the execution of qisas up to a period of two years after the birth of the child and during this period she may be released on bail on furnishing of security to the satisfaction of the Court, or, if she is not so released she shall, be dealt with as if sentenced to simple imprisonment”.

<sup>49</sup> According to § 2(b) JJSO, a child is defined as a person who has not attained the age of 18 at the time of commission of an offence.

<sup>50</sup> § 12(a) JJSO.

<sup>51</sup> Pak. CONST. Art. 45.

<sup>52</sup> § 55-A PPC.

<sup>53</sup> Pak. CONST. Art. 14.

78. Pakistan recognizes the intrinsic link between the right under Article 7 of the Covenant and the content of paragraph 1 of its Article 10 (that conceptualizes the definition of “Torture”), just as it recognizes the intrinsic link between its Constitutional Article 14<sup>54</sup> and Articles 8, 9, 10, 11, 12, & 13 of the Constitution<sup>55</sup> and all its other legal frameworks while conceiving what forms “Torture” beyond what is stated in Article 14. For instance, Chapter XVI of the Pakistan Penal Code (Ss. 299-338-H) deals with “Offences Affecting the Human Body [Of Offences Affecting Life]” and provides severe penalties to various kinds of injuries inflicted by anyone to another person. The various kinds of injuries have been detailed in the said chapter; Similarly, Chapter XVI-A of PPC deals with “Wrongful Restraint & Wrongful Confinement” (Ss. 339-377), while Chapter XXII deals with “Criminal Intimidation, Insult and Annoyance.”

79. Thus, the Criminal Justice System in Pakistan effectively deals with all constituent acts amounting to torture or to cruel, inhuman or degrading treatment. In this regard, the offences of “causing hurt” and the law in relation to hurt offences laid down in the PPC<sup>56</sup> mentioned above are quite effective and yield a high conviction rate.

80. Apart from the provisions of the PPC and specifically in relation to torture of detainees, the Police Order 2002 also makes it an offence for police officials to inflict torture on any person in their custody.<sup>57</sup> Art. 156 (d) of the Police Order 2002 states that whoever being a Police Officer, “inflicts torture or violence to any person in his custody; shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine.” In *Muhammad Amin v. State*,<sup>58</sup> a case in which police functionaries were charged with, among other offences, causing hurt contrary to provisions of the PPC as read with § 156 of the Police Order, the Sindh High Court took serious notice of the allegations against the accused who were public functionaries and pertained to maltreatment, unlawful confinement and torture of a citizen, which the court held could not be treated as a minor offence, but was to be taken very seriously. Accordingly, a plea of bail, in circumstances where prima facie material was available on record to connect a public functionary with the crime, was rejected and bail applications of the accused functionaries were dismissed in the circumstances. Importantly, courts in Pakistan have not been reluctant to hold police functionaries to account for illegal actions.<sup>59</sup>

81. The Human Rights Cell of the Supreme Court has effectively been monitoring cases of human rights violations including dealing with cases of police neglect, highhandedness, and atrocities. Since its inception in 2011 upto October 2015, the Cell received 10779 complaints in this regard alone. Out of the given number, 10329 have been disposed off while 450 are in process. In one of most recent cases<sup>60</sup> the complainant had filed a complaint that her daughter, who was married to son of a very senior police officer, serving in the federal government, had been murdered allegedly by that police officer and his son.

<sup>54</sup> Constitution of Islamic Republic of Pakistan 1973. The Article provides that “No person shall be subjected to Torture for the purpose of extracting evidence.”

<sup>55</sup> Ibid. Art. 8 deals with Laws inconsistent with or in derogation of fundamental rights to be void; Art. 9 deals with Security of person whereby No person shall be deprived of life or liberty save in accordance with law; Art. 10 deals with Safeguards as to arrest and detention; Art. 11 deals with Right to fair trial; Art. 12 deals with Protection against retrospective punishment; and Art. 13 deals with Protection against double punishment and self-incrimination.

<sup>56</sup> Part XVI PPC §§ 332 – 337-Z.

<sup>57</sup> § 156 of the Police Order, 2002. Penalty for vexatious entry, search, arrest, seizure of property, torture, etc.

<sup>58</sup> [2007 PCrLJ 1303].

<sup>59</sup> See e.g., *Masood Ahmad Javed v. State* [2006 MLD 855].

<sup>60</sup> HRC No. 19526-G/2013.

In her complaint, the complainant had stated that the police was not filing FIR for the murder and had also influenced the conduct of postmortem of the deceased. She, therefore, prayed that the postmortem be re-conducted and the FIR be lodged at the place of occurrence of the murder. Relief was provided to the complainant by the Chief Justice. The lead officials of the police and prosecution in this case were held accountable, strict directives to lodge FIR at the place of occurrence (in province of Khyber Pakhtunkhwa) were issued, the federal and provincial governments were directed to ensure independent investigation, and to take the involved officials who had undertaken criminal negligence to task under the law. A team of independent police officers was constituted to carry out the process and to report back to the Supreme Court within a span of two weeks. The alleged culprits were arrested and are now undergoing trial in the court of law.

82. In another case,<sup>61</sup> where the police allegedly tortured a Dubai returned mason to extort money, the two senior Justices of the Supreme Court directed the Punjab Government to immediately take steps to probe the matter through a senior functionary, from preferably a “different division” of the province and to report back within one week. It was found that the police was guilty. A case was filed and is currently sub-judice.

83. Given the culture of accountability and transparency within the government and outside, together with a vibrant and pro-active media, the confidence of people in accessing justice has been strengthened. Flow of information on any kind of human rights violation either by victims or by the investigative journalists is common and has on many occasions led to investigations without formal complaints, either on the instructions of senior officials or through intervention by the superior judiciary in exercise of its *suo moto* powers.

84. Besides, there exist in-built mechanisms within the criminal justice system in Pakistan to handle instances of torture, cruelty, inhuman or degrading treatment to any person in Pakistan, whether a citizen or a non-citizen without any discrimination. Prosecutions successfully follow any cases of torture, cruelty, inhuman or degrading treatment identification or reported thereof by any source as already noted. Any individual who claims to have been victim of such treatment, under the law, has the right to access justice and by suing the alleged culprit(s) whether individuals or belonging to the state agency/government on account of criminalization of any such action. Although there are no specific rules for payment of compensation, there have been instances of award of compensation by the courts, even against police functionaries, that have been upheld by the Supreme Court.<sup>62</sup>

85. Safeguard against treatment that may amount to torture in terms of hurt is also found in the Qisas and Diyat Ordinance which prohibits causing hurt to any person in order to extort a confession or any information which may lead to the detection of any offence or misconduct. Similar legal protections exist under the PPC<sup>63</sup> and also under the law of evidence.<sup>64</sup>

86. The Pakistan Prison Rules contain detailed provisions regarding treatment of convicted prisoners. Across the board prison reform measures are being taken including ensuring provision of quality and adequate quantity of food and enhanced safety measures, under the direct supervision of Jail Committees that include representatives of the local district judiciary, civil society and inmates. Learning and vocational trainings are imparted to the inmates so that they could become productive and positive members of the society. In this regard, efforts are being also made through public private partnership.

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<sup>61</sup> HRC No. 13279-E/2015.

<sup>62</sup> See e.g., *Rana Muhammad Aslam v. Azmat Bashir* [2011 SCMR 1420].

<sup>63</sup> § 337 – K PPC.

<sup>64</sup> Arts. 37, 38 and 39 of the Qanoon –e-Shahadat Order 1984.

87. A large number of under trial detainees are transported to and from court houses on a daily basis. This is generally done in a peaceful manner. On occasions, however, necessary restraining force is needed to maintain or restore discipline. Such force is similarly exercised in prisons at times to prevent harm to other inmates. However, all the necessary actions are undertaken in accordance with the rules, and the prison/jail police is given training on regular basis on how to deal with the inmates.

88. Medical facilities are available in jails throughout Pakistan with availability of men as well as lady doctors, basic medical equipment and medicines, and psychological counseling. Where required, for serious medical treatment, inmates are transported to state run hospitals which have special wards to administer them medical assistance.

89. Visitation rights are allowed to all detainees on specific days for specific classes of detainees. Usually no restrictions are imposed over and above the requirements of the Prison Rules.

### Article 8

90. Slavery in all its forms is prohibited by the Constitution of Pakistan.<sup>65</sup> Article 11 of the Constitution, at the very out-set prohibits forced and bonded labour as well as human trafficking. Section 1 of the said Article unequivocally states that “Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.” S.2 of the Article further prohibits all forms of forced labor and human trafficking, while its S.3 prohibits engaging minors below the age of fourteen, in factories, mining or any form of hazardous employment.

91. Pakistan has also ratified ILO Conventions No. 29 and No. 105, and has outlawed slavery, bonded labor with a fairly strong Bonded Labor System (Abolition) Act of 1992 (BLASA). The Act of 1992 requires all workers who owe their employers more than a week’s wage to be freed of their debts. It establishes fine and penalties for employers who do not comply. The Act also establishes a “District Vigilance Committee System” to promote enforcement nationwide by monitoring and identifying instances of bonded labour. The Act makes illegal any custom, tradition or practice, as well as makes it illegal and void and inoperative any contract, agreement or instrument through which anyone is required to do bonded work.<sup>66</sup> It also contains elaborate provisions regarding recovery of existing debts.<sup>67</sup>

92. In 1995, the Rules for the implementation of BLASA were formulated. In 2001 the government launched a nationwide program for the Abolition of Bonded Labor and Rehabilitation of freed bonded laborers to promote the anti-slavery law. The government spent over 1.5 million USD to register brick kiln workers and provided them with micro-

<sup>65</sup> See Article 11 of the Constitution. Slavery, Forced Labour etc. Prohibited.:” § 367 PPC: “Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery or knowing it to be likely that such person will be so subjected or disposed of shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;” § 370 PPC: “Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;” § 371 PPC: “Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, shall also be liable to fine.”

<sup>66</sup> Id. § 5.

<sup>67</sup> Id. §§ 6, 7, 8 & 9.

credits to help them pay their debts. In 2002, the government also enacted the Prevention and Control of Human Trafficking Ordinance in an attempt to ensure elimination of slavery.

93. The prohibition and criminalization of slavery in all possible forms, therefore, remains substantially clear under the domestic legal framework. In *Mst. Fatima Bibi v. The State*,<sup>68</sup> for instance, the Lahore High Court took strict view of abduction of a young girl. A similarly strict view was taken in another abduction case by the High Court of Sindh.<sup>69</sup>

94. In the seminal case of *Darshan Masih v. The State*,<sup>70</sup> the Supreme Court, on the instance of receiving a communication through a telegram that a system of bonded labour was operating in the field of brick kiln workers, initiated *suo moto* public interest proceedings, considering this to be a gross violation of the fundamental rights as enshrined in the Constitution. The Court also laid down principles and definitions of different forms of forced labour.

95. Prostitution is also dealt by the PPC.<sup>71</sup> These provisions are supplemented by the Prevention and Control of Human Trafficking Ordinance 2002, which criminalizes all aspects of activities related to human trafficking and places the authority and jurisdiction in relation to the offences under the Ordinance to the Federal Investigating Agency (FIA).

#### Article 9

96. The Constitution prevents the exercise of state/governmental power to infringe upon the liberty of not only citizens but also anyone else lawfully present within Pakistan. Article 4 of the Constitution categorically states that “no action detrimental to the...liberty...of any person shall be taken except in accordance with law”. Similarly, while providing for the security of persons, its Article 9 states that “no person shall be deprived of life or liberty, save in accordance with law”. Both of these constitutional provisions have highly developed case law and are directly enforceable in the High Courts through Article 199 of the Constitution. The due process clause<sup>72</sup> has been liberally interpreted in procedural and substantive terms by the Supreme Court, as illustrated by the cases of *Muhammad Anwar v. Mst. Ilyas Begum*,<sup>73</sup> and *Muhammad Akram Solangi v. District Coordination Officer, Khairpur*.<sup>74</sup> For cross-reference, the earlier narrower interpretative approaches are laid out

<sup>68</sup> [1996 PCrLJ 1749].

<sup>69</sup> *Gulzarar v. Amir Buksh* [1997 PLD (Kar) 309].

<sup>70</sup> [1990 PLD (S.C.) 513].

<sup>71</sup> § 371 – A PPC: “Whoever sells, lets to hire, or otherwise disposes of any person with intent that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person shall at any time be employed or used for any such, purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine;” § 371 – B PPC: “Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine;” § 364 - A PPC: “Whoever kidnaps or abducts any person under the [age of fourteen] in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.”

<sup>72</sup> Pak. CONST. Art. 4.

<sup>73</sup> [2013 PLD (S.C.) 255].

<sup>74</sup> [2013 PLC (C.S.) 121].

in *Pakistan Chest Foundation and others v. Government of Pakistan and others*.<sup>75</sup> Moreover, the Constitution also provides extensive safeguards as to arrest and detention.<sup>76</sup>

97. These constitutional provisions are reinforced by statutory provisions regarding arrest in the CRPC) which provide elaborate procedure with respect to powers of arrest by police and also with respect to when arrest can be effected by a judicial officer or even a private person.<sup>77</sup> Criminal offences for which arrest can be made are divided into cognizable<sup>78</sup> and non-cognizable offences.<sup>79</sup> Arrest for cognizable offences can be made without obtaining a warrant from a magistrate, whereas arrest of persons suspected of and/or involved in non-cognizable offences can only be made after obtaining warrant from a magistrate. Mode of arrest in all cases is regulated by extensive provisions of Chapter V of the CRPC.<sup>80</sup>

98. The legal framework in Pakistan also gives all arrested persons the right to apply for post arrest bail under § 496 and § 497 of the CRPC.

99. There are special and specialized Federal and Provincial statutes such as Accountability laws<sup>81</sup> and Anti-Terrorist laws<sup>82</sup> which establish criminal offences in addition to the ones given in PPC. The provisions of the CRPC applicable to all criminal proceedings apply generally to these statutes as well. The provisions of the CRPC are further supplemented by the Police Order (2002). The powers of the police with regard to arrest and search are defined and limited by the Order. § 56 of the Order imposes a penalty for vexatious “entry, search, arrest, seizure of property, torture” by a police officer.<sup>83</sup> Furthermore, § 157 seeks to curtail unnecessary detention by imposing a penalty “for unnecessary delay in producing arrested persons in courts.”<sup>84</sup>

100. The usual remedy in cases of wrongful arrests and detention is a writ of *habeas corpus*, which can be granted by the High Court or the Sessions Courts.<sup>85</sup> Courts have, however, been inclined in appropriate cases to also grant compensation for illegal arrest and detention.<sup>86</sup> The state has made efforts to provide legal services to those accused of a crime.

101. In recognition of the fundamental rights of the citizens against arbitrary detentions and their rights to liberty and security, the Supreme Court assumes its *suo moto* powers

<sup>75</sup> [1997 CLC 1379].

<sup>76</sup> Pak. CONST. Art. 10.

<sup>77</sup> Chapter V, §§ 46 – 67 CrPC ; § 22 – A CrPC.

<sup>78</sup> For definition see § 4 (f) CrPC.

<sup>79</sup> For definition see § 4 (n) CrPC.

<sup>80</sup> See e.g., § 50 CrPC: “The person arrested shall not be subjected to more restraint than is necessary to prevent his escape;” § 60 CrPC: “A police officer making an arrest without warrant shall, without, unnecessary delay and subject to the provisions herein contained as to bail, take and send the person arrested before a Magistrate having jurisdiction in the case or before the officer in charge of a police station;” § 61 CrPC: “No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under § 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court;” § 62 CrPC: “Officers in charge of police station shall report, to the District Magistrate, or, if he so directs, to the Sub-Divisional Magistrate, the cases of all person arrested without warrant, within the limits of their respective station, whether such persons have been admitted to bail or otherwise.”

<sup>81</sup> National Accountability Ordinance 1999.

<sup>82</sup> Anti-Terrorism Act 1997.

<sup>83</sup> § 156 of Police Order 2002.

<sup>84</sup> § 156 of Police Order 2002.

<sup>85</sup> § 491 CrPC.

<sup>86</sup> See supra note 31.

with other necessary measures. A judicial commission having its own business and procedure also works independently. It directs constitution of Joint Investigation Teams and holds hearings in each case. It works in close cooperation with families of victims. These and other measures taken in the light of the Constitution of Pakistan protect arrests of individuals from arbitrary arrest and detention.

102. Police and Prison reform have been one of the key priorities of the Government of Pakistan for over a decade. The police is being transformed from Police Force culture to Police Services culture. Intensive trainings and orientation sessions for police personnel, at all levels, are being conducted on regular basis. Prison rules and jail manuals as well as the Police Order 2002 emphasize on using protocols based on human rights standards in treating the arrested, detained and jailed persons. Each province has adapted the Police Order in line with its own respective needs and peculiarities.

#### **Article 10**

103. The Jail Manual regulates the treatment and conditions of detention of persons deprived of their liberty. There is a prison service in each province with its own formal structures and training which fall within the jurisdiction of respective provincial home departments and ministry of Interior at the federal level. In each of these training schools, special emphasis is given on how to treat the inmates keeping in view the fundamental human rights guaranteed by the Constitution. Special training manuals have been developed and approved for imparting these trainings. Human rights experts are also invited to give seminars to the participants on the rights of the inmates and the responsibilities of the jail staff in not only how to treat the inmates but also on what facilities need to be given to the inmates as their basic fundamental right.

104. There are regular checks of prisons by the formally notified Prison Committee comprising representatives of the local Bar, Civil Society and Medico Legal Experts. The District Judge also has superintendence over the conduct of affairs in prisons within his jurisdiction. The Committee and the District Judge have regular periodic visits to the jails to ensure the safety of shelter, quality and quantity of food, the provision of adequate medical aid and to enquire about any issues being faced by the inmates. In addition, the prison staff and officials are sensitized and given trainings on how to treat the inmates in line with their scope and mandate of duties.

105. Visitation rights are allowed to all detained individuals, in particular, visits from family members. Conjugal visits are also allowed. Men, women and children are segregated from each other in the jails, detention centres and prisons. Detention centers for children are separated from adult prisons and regulated by the JJSO. There are several classes of facilities within prisons and detainees are allocated quarters according to their eligibility. Individuals under investigation are segregated from those who have been convicted of an offence. Amongst the convicted, there is also a classification on the basis of the nature of crime they have committed. Members of foreign missions are allowed to visit detainees from their respective countries after seeking permission for such visits.

106. Detainees have the right to lodge a complaint about their treatment during detention. Generally all detainees are given equal treatment in the light of constitutional provision of equal protection.

#### **Article 11**

107. Imprisonment is never a sanction under Pakistani law for inability to fulfill a private contractual obligation. Contract law generally provides remedies for the promisee rather than punishment for the promisor. The purpose of remedies in contract law is to correct the problem or ameliorate the adverse consequences, and not to punish the non-performing



party. Breach of contract is a civil matter and imprisonment is never a civil remedy. The historical remedies for failure to fulfill a contractual obligation include assessment of damages to be paid by the non-fulfilling party to compensate the other party for its losses according to rules of assessment of damages. An alternate to damages in appropriate cases is an order directing the defaulting party to specifically perform. Contracts of service, however, cannot be specifically enforced. The Bonded Labour Abolition Act in particular, prohibits specific performance of service contracts and detention of labourers in lieu of purported advance payments by employers.

108. It is possible that if a debtor does not or cannot satisfy a judgment, a money decree against him may be issued for breach of contract requiring him to pay damages in whole or in part. In execution proceedings of such a decree, the courts of civil jurisdiction have the power to detain the judgment debtor for non-satisfaction of the decree.<sup>87</sup> In all cases, however, a judgment debtor who complies with the courts order to attend is given an opportunity to show cause as to why he should not be detained for failing to satisfy the decree and also an opportunity to satisfy the decree in full before any order of detention is made.<sup>88</sup>

109. Under the law of recovery of finances by financial institutions, any person who obstructs the execution of a decree, including the person against whom the decree is made, may be punished with a term of imprisonment. This provision, however, does not provide for imprisonment for breach of the finance contract with the banking institution itself.<sup>89</sup>

110. Similarly, the law is stricter for dishonestly issuing money cheques. S. 489-F of the Penal Code states that “whoever dishonestly issues a cheque towards re-payment of a loan or fulfillment of an obligation, which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years and with fine unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honoring the cheque.<sup>90</sup>” The offence under this section is cognizable by police, non-bailable and compoundable. It may, nevertheless, be noted that in such cases, each case is examined on its own merit/ facts and circumstances.

## Article 12

111. In Pakistan, the right of freedom of movement is guaranteed under Article 15 of the Constitution, which states that “Every citizen shall have the right to remain in, and subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.” Although Article 15 makes specific reference to a “citizen”, yet when harmoniously read with other provisions of the Constitution, in particular, Article 4, it refers to the protection of law as the right of every person lawfully present in Pakistan at any given time.

112. Every citizen has the right to enter the country. This right extends to people who are of Pakistani origin such as those whose parents are Pakistani nationals etc. Such persons, however, must obtain a National Identity Card for Overseas Pakistanis (NICOP) issued by National Database and Registration Authority (NADRA) in Pakistan and also through Pakistani Embassies and High Commissions around the world.

<sup>87</sup> See Order XXI, Rule 37 and 38 Civil Procedure Code (“CPC”).

<sup>88</sup> See Order XXI, Rule 40 CPC.

<sup>89</sup> See. § 20(3) Financial Institutions (recovery of Finances) Ordinance, 2001.

<sup>90</sup> Pakistan Penal Code (PPC) of 1860. S. 489-F. Dishonestly issuing a cheque.

113. The Supreme Court has interpreted the right of freedom of movement to include the freedom to not only enter or return to Pakistan<sup>91</sup> but also to leave Pakistan holding that there is an intrinsic link between the right of freedom of movement and the right to liberty in accordance with law enshrined in Article 4 of the Constitution.<sup>92</sup>

114. Names of individuals can also be placed on the Exit Control List (ECL) by the government itself or<sup>93</sup> on the instructions of the courts themselves under special circumstances. Any person aggrieved by the order of Federal Government regarding placement of his or her name on ECL, can under the law, file a Review Petition giving justifications for review and also can seek a personal hearing with the competent authority. The ECL is reviewed periodically to assess the need for further retention of a person on it. The FIA is tasked with its accurate and smooth running.

115. Government of Pakistan has unveiled a new Exit Control List (ECL) policy as a result of which the Government has recently deleted 4,987 names from ECL. In addition names of 59,603 persons have been removed from the Black List. Of this number, 22,491 names have been deleted completely from the Black List while 9,660 and 27,452 names have been shifted to Passport Control List and Visa Control List, respectively.

116. Passports are issued to all citizens by the Directorate General of Immigration and Passports, Ministry of Interior in accordance with The Passport Act 1974 and rules made under it. A passport may be cancelled, impounded or confiscated under specific circumstances.<sup>94</sup> A person whose passport is to be cancelled, impounded or confiscated shall be provided a notice in writing to show cause as to why his passport should be so dealt with.<sup>95</sup> Such notice is not required where the Federal Government has reason to believe that such person, whose passport is to be confiscated, cancelled or impounded, is involved in subversive activities prohibited by Article 19 [3] of the Covenant.<sup>96</sup>

117. The Passport Act also lays out offences in relation to passports which include, *inter alia*, concealing material information in order to acquire a passport, and to fraudulently alter or misuse a passport.<sup>97</sup> It also enumerates powers of arrest and seizure in relation to such offences.<sup>98</sup>

118. Non-Pakistani citizens are free to leave Pakistan unless they have committed an offence within the territory and are being prosecuted under the domestic penal law.

<sup>91</sup> Pakistan Muslim League (N) through Khawaja Muhammad Asif, *M.N.A. and others v. Federation of Pakistan* through Secretary Interior [2007 PLD (S.C.) 642].

<sup>92</sup> *Mehtab Ahmad v. Federation of Pakistan* through Secretary, Government of Pakistan, Islamabad and 3 others [2003 CLC 246].

<sup>93</sup> The Exit Control List (ECL) is a system of border control maintained by the Government of Pakistan under the Exit from Pakistan (Control) Ordinance 1981. Those persons on the list are prohibited from leaving. The Ordinance empowers the Federal Government to prohibit any person from proceeding abroad. Ordinarily, following categories of persons are placed on ECL:- (a) Persons involved in mass corruption and misuse of power / authority causing loss to the government funds/property; (b) Government employees involved in economic crime where large government funds have been embezzled or institutional frauds committed; (c) Hardened criminals involved in acts of terrorism and conspiracy; (d) Key directors of firms having tax default / liabilities of Rs. 10 million or more; (e) Only 2 -3 key directors of firms having more than Rs. 100 million loan default / liabilities; (f) Names of persons if recommended by the Registrar, High Courts / Supreme Court of Pakistan and Banking Courts only; and (g) Drug traffickers.

<sup>94</sup> § 8(1), Passport Act 1974.

<sup>95</sup> Id. § 8(2)

<sup>96</sup> Id. § 8(3).

<sup>97</sup> Id. §§ 3 and 6.

<sup>98</sup> Id. § 7.

119. Irrespective of origin and without discrimination, the Constitution guarantees equal protection of the law to all individuals residing legally within Pakistan.<sup>99</sup> Article 4 of the Constitution provides “inalienable right” to protection of law and be treated in accordance with law to every citizen of Pakistan, regardless of his/her current place of residence. This right is equally extended to every individual residing in Pakistan for the time being.<sup>100</sup>

120. Invariably, all aliens would require a valid Pakistani visa before their entry into Pakistan. For those who are not citizens, a valid visa would normally entitle an individual to lawfully enter Pakistan. Visas, however, may have restrictions either in relation to places that can be visited during an individual’s stay or in relation to entry into cantonment and other prohibited and sensitive areas. Usually a violation of a visa condition may lead to an individual’s visa being cancelled or revoked by the Ministry of Interior or the Home Department of the respective Province. Aliens/foreign nationals found involved in or guilty of commission of a criminal offence may be liable to prosecution under the ordinary penal law of Pakistan.

### Article 13

121. Pakistan is a State Party to and abides by the Vienna Convention on Diplomatic and Consular Relations having implemented its provisions within domestic law.<sup>101</sup> Besides, subject to the Extradition Act 1972 that deals with fugitive offenders, the government may extradite an individual to another country with which Pakistan has an understanding, agreement or arrangement with respect to extradition.

122. The Foreigners Act 1946 provides for deportation of foreigners who have been convicted and sentenced and who do not have permission to stay in Pakistan. It also provides penalties<sup>102</sup> and establishes offences in relation to foreigners and prohibits assisting illegal entry,<sup>103</sup> providing employment to illegal entrants,<sup>104</sup> and determination of nationality of aliens<sup>105</sup> in appropriate circumstances.

123. Article 10-A of the Constitution, inserted after the 18<sup>th</sup> Constitutional Amendment in 2010, states that: “For the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process.” It is now guaranteed by constitution that independent and impartial hearing is afforded to every individual.

### Article 14

124. Right to Fair Trial has been a right recognized and pronounced through various judgments even before it was incorporated in Chapter 1 (Fundamental Rights) through the 18<sup>th</sup> amendment to the Constitution.<sup>106</sup> The Superior Courts of the country have always had the Constitutional Jurisdiction to declare such law, custom or usage having a force of law, to the extent of such inconsistency as void. Since its insertion in the Constitution, under Art. 10-A, the right to fair trial has become one of the guaranteed Fundamental Rights that

<sup>99</sup> Pak. Const. Art. 4. Right of individuals to be dealt with in accordance with law, etc.

<sup>100</sup> Ibid.

<sup>101</sup> The Diplomatic and Consular Privileges Act, 1972.

<sup>102</sup> § 14, Foreigners Act, 1946.

<sup>103</sup> Id. § 13-A.

<sup>104</sup> Id. § 13-B.

<sup>105</sup> Id. § 8.

<sup>106</sup> Please refer to Reported Cases like: *Nazir Ahmad alias Pappu v. The State*. 2010. YLR 722; *Mureed v. The State*. MLD 318; *Samad Electronics v. Tariq Sherwaani*. 2008. SCMR 177; *Mir Ghous Bakhsh Bazenojo v. The State*. 1969. P.Cr.L.J 991.

is further backed up by virtue of Art. 8 of the Constitution that invalidates any law, custom or usage having the force of law insofar as it is inconsistent with right to fair trial.

125. It is a precedent followed by the courts in ensuring the right to fair trial that “justice must not only be done, it must be seen to be done”.<sup>107</sup> This principle also ensures that there is no likelihood of bias on the part of the judges.<sup>108</sup>

126. Augmenting the right to fair trial and due process, Article 19-A of the Constitution guarantees the right to information. It states: “Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.”

127. A transparent process of appointment of judiciary is necessary for ensuring the impartiality of courts and tribunals. Judges of the lower courts are inducted through competitive examinations. Judges of the High Courts and Supreme Court are appointed through an elaborate and non-partisan constitutional process.<sup>109</sup>

128. Once confirmed, Judges of the superior judiciary cannot be removed except through a reference to the Supreme Judicial Council. The security of tenure of judges reinforces judicial independence and impartiality.

129. Prosecution services also help to ensure the impartiality and fairness of trials. Public prosecutors are available for all courts in Pakistan and Prosecution Departments have specifically been set up in all the provinces providing systematic prosecution services including training to prosecutors. The right to a defense and a state lawyer are considered fundamental rights and the Government of Pakistan has made adequate efforts to extend this right to all detainees. The Public Defender and Legal Aid Office Act (2009) was passed to provide legal assistance to indigent or needy persons. Part of the functions of Public Defenders is to identify indigent persons in their area (*Tehsil*) for the purposes of free legal assistance and representation in court.<sup>110</sup> The Punjab Bar Council has been running a Free Legal Aid Program since 2006 and providing services to indigent persons.

130. The foundation of the principles governing bail application was laid down by the Supreme Court in the case of *Khalid Saigol v. The State*.<sup>111</sup> Today, in view of the rulings of the superior courts, the guiding principle for grant of bail is that it is a right whose refusal is an exception. Where bail has been granted on sound principles, the superior courts will not usually interfere with bail granting orders.<sup>112</sup> Bail will also be granted where there is unreasonable and inordinate delay in trial.<sup>113</sup> Additionally, § 497 CRPC which deals with post arrest bail states that “the Court shall, except where it is of opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, direct that any person shall be released on bail.”

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<sup>107</sup> *Barkat Ali v. Additional Commissioner* [2004 MLD 1633]; *Muhammad Asghar Khan v. Mirza Aslam Baig* 2013 PLD (S.C.) 1].

<sup>108</sup> *Abdul Shakoor v. Printing Corporation of Pakistan (Pvt) Limited* [1999 PLC (C.S.) 114].

<sup>109</sup> Pak. CONST. Art. 175-A.

<sup>110</sup> § 13 of the Public Defender and Legal Aid Office Act (2009).

<sup>111</sup> [1962 PLD (S.C.) 495].

<sup>112</sup> *Yasir Mahmood v. Sasharat Aziz* [2008 YLR 2886].

<sup>113</sup> *Muhammad Aslam v. Nazar Khan* [2012 SCMR 138]; *Muhammad Amin v. State* [2012 YLR 2275]; *Atto alias Atta Muhammad v. State* 2008 PLD (Kar) 177.

131. The courts operate on the salutary principle that an accused is presumed innocent until proven guilty.<sup>114</sup> In the case of *Khalid Mahmood v. The State*,<sup>115</sup> the Federal Shariat Court held that burden to prove all the ingredients of the charge always lies on the prosecution and it never shifts to the accused who is entitled to be presumed innocent under the law till such presumption is dislodged. Even in a case where the defense plea on its face appears to be sham, the prosecution is not absolved of its duty to prove its case.

132. Chapters XX, XXI and XXII-A of the CRPC mandate that trial commences and is conducted and concluded without undue delay.

133. The right to cross examine witnesses is a fundamental right under both criminal and civil law. There are elaborate criminal procedural rules with respect to summoning and examination of witnesses and the right of the accused to cross examine evidence against him.<sup>116</sup> There are similar provisions in relation to civil trials.<sup>117</sup> The only exception to this right is where proceedings are conducted ex-parte in civil matters and where the accused absconds in a criminal trial.<sup>118</sup> If an accused is not allowed to confront witnesses against him by way of cross examination or to nominate counsel of his choice, any subsequent conviction would be set aside.<sup>119</sup>

134. According to the Supreme Court, where an accused cannot afford private counsel, he has the right to a counsel assigned to him on state expense.<sup>120</sup>

135. All individuals convicted of an offence have a right to appeal against their conviction or sentence. § 407 CrPC reads: “Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under § 349 .... may appeal to the District Magistrate....;” § 408 CrPC states: “Any person convicted on a trial held by an Assistant Sessions Judge, [or any Judicial Magistrate] or any person sentenced under § 349 [...] may appeal to the Court of Session....;” § 410 CrPC states: “Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.” The CrPC also provides for appeals from sentences passed by the High Courts.<sup>121</sup> § 417 (2) gives the right to a complainant to file an appeal against acquittal of the accused.

136. Article 13-B of the Constitution also places a bar on a person being prosecuted or punished for the same offence for a second time as well as the right of an accused not to be compelled to self-incriminate.<sup>122</sup>

137. Information which surfaces after conviction may be placed before a court under Articles 199 and 187 of the Constitution, and coupled with the courts inherent power to recall an order passed mistakenly, a conviction may be reversed.

<sup>114</sup> See e.g., *Mst. Nazir Bibi v. State* [2005 MLD 1336]; *Ramzan Ali Hemani v. Habib Bank Limited* [2009 MLD 1424]; *Shabir v. State* [2003 PCrLJ 1521].

<sup>115</sup> [2004 PCrLJ984].

<sup>116</sup> See §§340 and 342 CrPC.

<sup>117</sup> See Order XVI and Order XVIII CPC.

<sup>118</sup> § 512 CrPC.

<sup>119</sup> *Noor Muhammad v. State* [2007 PLD (S.C.) 9]; *Mst. Parveen Kausar v. Shakil Ahmed* [2012 PCrLJ 614].

<sup>120</sup> *Ghulam Rasool Shah v. State* [2011 SCMR 735].

<sup>121</sup> §§ 411-A, 439 and 439-A CrPC.

<sup>122</sup> Art. 13. Protection against double Punishment and self-incrimination. No Person:- (a) shall be prosecuted or punished for the same offence more than once: or (b) shall, when accused of an offence, be compelled to be a witness against himself.

**Article 15**

138. The principle of non-retrospective penal liability and legislation is at the heart of the rule of law. The recognition of this fundamental principle finds recognition in the Constitution whose Article 12 states: “(1) No law shall authorize the punishment of a person- (a) for an act or omission that was not punishable by law at the time of the act or omission; or (b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.” The Supreme Court has consistently refused to give retrospective application to law. In *Dr. Muhammad Safdar v. Edward Henry Louis*,<sup>123</sup> it refused to give retrospective recognition to the Illegal Dispossession Act 2005. In *Maqbool Ahmed and another v. State*,<sup>124</sup> it held that punishment of offence was to be levied in accordance with the law in force at the time of commission of offence regardless of subsequent change in law.

**Article 16**

139. The Citizenship Act 1951 read with Article 4 of the Constitution grants legal recognition and protection before the law to every individual who acquires citizenship. Moreover, by virtue of Article 4(1) of the Constitution, every person present in Pakistan at any time is also afforded recognition and protection by the law. Since issuance of national identity cards to Intersex persons, as mentioned earlier,<sup>125</sup> makes them eligible for a range of legal opportunities.

**Article 17**

140. The right to privacy is constitutionally secured by clause 1 of Article 14 of the Constitution, which, subject to law, makes the privacy of home inviolable.

141. The CrPC extensively lays down provisions for search of premises. § 47 CrPC provides for search of residential premises under a warrant. § 48 CrPC permits entry through use of reasonable force only in certain cases where entry cannot be accessed even after notification from the competent authority that also enlists purpose for seeking the entry; or in cases where waiting to obtain a warrant would provide opportunity to someone involved in an offence, to escape. In cases where there are reasons to believe that women may be the occupants, a notice of entry has to be given in advance, and the law enforcers must also be accompanied by women police.

142. Moreover, there are detailed provisions providing for instances where search warrants may be issued<sup>126</sup> including that warrants may be restricted to certain parts of a premises.<sup>127</sup> Powers are granted to District Magistrates, Sub-Divisional Magistrates or a Magistrate of first class, to enter into a house with the assistance of the police etc. where there is credible evidence that the stolen goods or forged documents including forged currency is being kept.

143. In all instances, it is open to an individual to seek redress from a court of competent jurisdiction including the High Court, where in his view the privacy of his home is being or has been illegally or unreasonably violated.<sup>128</sup>

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<sup>123</sup> [2009 PLD (S.C.) 404].

<sup>124</sup> [2007 SCMR 116].

<sup>125</sup> Detailed under reporting on Article 2 in this report.

<sup>126</sup> § 96 CrPC.

<sup>127</sup> § 97 CrPC.

<sup>128</sup> See e.g., *Ghulam Hussain v. Additional Sessions Judge*, Dera Allah Yar [2010 PLD (Quetta) 21]; *Arshad Mahmood v. State* [2008 PLD (S.C.) 376].

144. With respect to attacks on reputation, the Defamation Ordinance 2002 makes illegal both libel and slander and provides for their remedies.

### Article 18

145. Article 20 of the Constitution provides: “– Subject to law, public order and morality- (a) every citizen shall have the right to profess, practice and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.”<sup>129</sup>

146. The Objectives Resolution passed by the Constituent Assembly of Pakistan in 1949, was made an operative part of the Constitution in 1985 through addition of Article 2-A to the 1973 Constitution. The Resolution’s substantive provisions, inter alia, guarantee freedom of thought, belief, faith and worship.<sup>130</sup>

147. Pakistan’s founding principles are echoed in Quaid-e-Azam Muhammad Ali Jinnah’s<sup>131</sup> historic speech of 11<sup>th</sup> August 1947: “You are free; you are free to go to your temples. You are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion, caste or creed—that has nothing to do with the business of the State. We are starting with this fundamental principle that we are all citizens and equal citizens of one state.”

148. In a case filed through the Ministry of Law & Justice, i.e. *Pakistan Hindi Council v. Pakistan*,<sup>132</sup> the Supreme Court held that every citizen had a fundamental right to profess, practice and propagate his religion. In the event of violation of such right including forced conversions, the subject matter of the case, the Court held that violation of fundamental rights can always be pressed directly before the court and no special law on this point was needed. In *Haji Muhammad Hanif Abbasi v. Capital Development Authority through its Chairman*,<sup>133</sup> the Lahore High Court held that under Article 20 of the Constitution, it was the right of every citizen to profess, practice or propagate his religion and that every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions. It accordingly held that a Church being a religious institution, its construction could not be halted as it was an expression of the right of the Christian citizens of Pakistan under the Constitution’s Article 20. The Supreme Court, in a landmark judgment in the case taken up *suo motu* after the unfortunate bombing of a church in Peshawar in 2013, averred that religion cannot be defined in rigid terms, holding that freedom of religion must also include freedom of conscience, thought, expression, belief and faith. It explained that these freedoms have both an individual and a community aspect, and on this basis, held that every citizen of Pakistan is free to exercise the right to profess, practice or propagate his or her religious views, even against the prevailing or dominant views of his or her own religious denomination or sect.

149. The Constitution simultaneously stipulates that Islam shall be the State religion.<sup>134</sup> It is open to an individual subscribing to any religion to adopt a religion of his choice. The Quran declares that “There is no compulsion in religion” (2:256). Further, any law that may be held to be repugnant to the injunctions of Islam shall either be amended or cease to have effect to the extent of the repugnancy.<sup>135</sup> Freedom to profess, practice and propagate one’s

<sup>129</sup> Constitution of Islamic Republic of Pakistan.

<sup>130</sup> Ibid. Preamble.

<sup>131</sup> Father of the Nation.

<sup>132</sup> [2012 PLD (S.C.) 679].

<sup>133</sup> [2005 CLC 678].

<sup>134</sup> Pak. Const. Art. 2.

<sup>135</sup> Pak. Const. Part V, Chapter 3-A.

religion is specifically guaranteed under Article 20(a) of the Constitution is, thus, in line with Islamic Injunctions.

150. The law affords protection to members of all religions and criminalizes incitement of religious hatred. § 295 PPC provides: “Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.”

151. The law caters genuinely to all nature of beliefs. § 298 PPC accordingly provides: “Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.” Moreover, § 296 PPC states: “Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.” § 297 PPC further provides: “Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a, depository for the remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

152. It is also a crime to promote enmity between religious groups and to organize any activity through which criminal force may be used or to train for such purposes or to participate in such activities.<sup>136</sup> Under the Anti-Terrorism Act 1997 (“ATA”), it is a crime to incite sectarian hatred.<sup>137</sup>

153. To a great extent, the aspect of moral education in religious affairs is inextricably linked to the matter of privacy and therefore the law discussed above in relation to Article 17 of the Covenant also provides cover and protection to individuals with respect to religious belief.

154. Efforts are being made to address hate speech. For instance, In Punjab a new ordinance has been passed (the Punjab Sound Systems Regulation Ordinance 2015) under which authorities are taking action against the violators and misuse of loudspeakers and related equipment is being prevented. Numerous arrests have been made in this regard. More than 1,777 cases have so far been registered across the country as part of the efforts against publication of hate material and 1,799 arrests have been made in this regard. Pakistani law enforcement have also confiscated a huge quantity of hate material and sealed publication facilities.

155. Section 5A(b) of the Press, Newspapers, News Agencies, and Books Registration Act 2002 (XCVIII) of 2002 restricts the publication of any graphic or printed representation or projection of statements, comments, observations or pronouncements based on sectarianism, ethnicity or racialism. This regulatory regime was further strengthened in 2007 by amending the Pakistan Electronic Media Regulatory Authority (PEMRA)

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<sup>136</sup> § 153-A PPC.

<sup>137</sup> § 2(f) read with § 8 ATA.



Ordinance 2002, which mandate all electronic media programs and advertisements production to ensure that all their contents are free of any element of violence, terrorism, racial, ethnic or religious discrimination, sectarianism, militancy, obscenity, and hatred. Section 33 provides severe punishment for violation or abetment of the provisions of this Ordinance.

#### Article 19

156. The freedom of opinion and expression is preserved through Article 19 of the Constitution. It states: “Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.”

157. The expression or voicing opinions to incite racial or religious hatred have been made offences under the law.

158. Likewise, the Defamation Ordinance 2002, restricts the freedom of expression and opinion in relation to libelous or slanderous words, whether in writing or through publication.<sup>138</sup> It should, however, be noted that there are defenses available under the law to any allegation that certain words amount to defamation.<sup>139</sup>

159. Section 20 of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2002, also places restrictions on those holding electronic media licenses to ensure that all programs and advertisements broadcast by licensees do not contain or encourage violence, extremism, terrorism, racial ethnic or religious discrimination, sectarianism, militancy, hatred, pornography, obscenity, or other material offensive to commonly accepted standards of decency. PEMRA also has authority under § 27 of the PEMRA Ordinance to prohibit any broadcast, through a written order incorporating reasons for such order, where such broadcast is likely to create hatred among people or is likely to endanger the maintenance of public peace and tranquility or endangers national security or is obscene or is offensive to commonly accepted standard of decency. Such order may also be made if such broadcast willfully places any other person in danger.

160. The Supreme Court has recently formed a Commission to look into the conduct and affairs of electronic media to ensure that the activities of the media conform with, *inter alia*, fundamental rights while preserving the rights of the media under Article(s) 19 and 19-A of the Constitution.<sup>140</sup> The courts generally take a liberal view of the fundamental right of freedom of expression. In *All Pakistan Muslim League v. Government of Sindh*,<sup>141</sup> the Sindh High Court held that fundamental rights have been placed in the Constitution not merely to protect acts, conduct and views that one may approve of, but to also and especially, protect views with which one may disagree with or even find unpleasant or unacceptable. Article 19 of the Constitution, therefore, is critical in not only protecting the speech that a listener may approve of or agree with, but also a speech that he may disagree with or even hate.

161. There is no restriction on the import and distribution of foreign newspapers and printed material in the country. The only restrictions are those under the PPC which prohibit the distribution and production of obscene and offensive materials noted above.

<sup>138</sup> § 3, Defamation Ordinance, 2002.

<sup>139</sup> *Id.* § 5.

<sup>140</sup> *Hamid Mir v. Federation of Pakistan* [2013 PLD (S.C.) 244].

<sup>141</sup> [2012 CLC 714].

**Article 20**

162. Advocacy of war is specifically criminalized in Pakistan. Chapter VI PPC contains provisions designed to punish acts which relate to waging war with Pakistan or against a country in alliance with Pakistan. These provisions also criminalize the attempt and abetment of these acts.

163. The Anti-Terrorism Act 1997, also deals with offences relating to incitement to violence and terrorist acts including acts of national, racial and religious hatred and violence.<sup>142</sup> The Act also establishes offence(s)<sup>143</sup> with respect to sectarian hatred.<sup>144</sup> It deals not only with individuals who may commit terrorist acts, but also organizations involved in such acts.<sup>145</sup>

164. Religious, racial and sectarian hatred has been discussed in detail above in relation to the Covenant's Articles 2, 18 and 19. The penal provisions cited in these paragraphs would cover advocacy in relation to these offences.

**Article 21**

165. The right of people to assemble peacefully is enshrined in Article 16 of the Constitution. It states: "Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order."

166. 144 of CrPC, provides limitations on the right to assemble in certain situations. It states:

"(1) In cases where, in the opinion of a District Magistrate, Sub-Divisional Magistrate, (or of any other Executive Magistrate], specially empowered by the Provincial Government or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed, ex-parte.

(3) An order under this section may be directed to a particular individual or to the public generally when frequenting or visiting a particular place."

167. An order passed under § 144 (1) CrPC may be challenged on application of any aggrieved person.<sup>146</sup> The Magistrate making the order will give such applicant an early

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<sup>142</sup> § 6, Anti-Terrorism Act, 1997.

<sup>143</sup> Id. § 8.

<sup>144</sup> Id. § 2(f) [definition of sectarian hatred].

<sup>145</sup> Id. § 11-A [definition of Terrorist Organizations].

<sup>146</sup> § 144 (4) CrPC.

opportunity of being heard and will record reasons for a decision on the application in writing.<sup>147</sup>

168. In any event, any limitation placed on the right to assemble is time restricted. § 144 (6) CrPC states: “No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Provincial Government, by notification in the official Gazette, otherwise directs.”

169. In *Noman Abid v. Station House Officer, Clifton Karachi*,<sup>148</sup> the petitioner had sought the registration of a criminal case against certain individuals who had participated in a peaceful demonstration. Upon refusal by the police officials to register a case, the petitioner had sought directions from the High Court under its Constitutional jurisdiction. The High Court held that right to assemble peacefully was a sacred and inalienable right which could not be abridged or construed or termed an offence of unlawful assembly. Such right guaranteed under the Constitution could not be interpreted as a crime as that would amount to denial of such right undermining the ideas of civil liberty, freedom of expression and freedom of assembly. Exercise of fundamental right by the citizens could not justifiably be made a ground for registering of a criminal case against them. Averring that demonstration in question was held in exercise of right of freedom of assembly in terms of Article 16 of the Constitution, the court dismissed the constitutional petition.

170. In cases where an individual disobeys an order made by the competent authority under § 144 CrPC, a criminal case for disobedience can only be registered against him if a complaint is made by a public servant. In this regard, § 195 (1) CrPC states: “No Court shall take cognizance: (a) of any offence punishable under §§ 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate.” The courts apply this requirement very strictly. Therefore, unless there is a complaint in writing for disobedience of an order under § 144 CrPC, the courts debar themselves from taking cognizance of the matter and the individual cannot be criminally held liable for act of assembly.<sup>149</sup>

## Article 22

171. The Government also allows trade unions and associations and has over 35 major confederations and Unions of key public sector organisations.<sup>150</sup>

172. Freedom of association is protected by Article 17 of the Constitution. It states: “(1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. (2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.”

<sup>147</sup> See § 144 (5) CrPC.

<sup>148</sup> [2011 PLD (Karachi) 99].

<sup>149</sup> See e.g., *Ghulam Akbar v. Nazim City District*, Multan [2009 PCrLJ 160]; *Noor Elahi v. S.H.O., Police Station, Layyah* [2007 YLR 465].

<sup>150</sup> List annexed.

173. Pakistan is a member of the International Labour Organization. It has also ratified ILO Convention No. 87 on Freedom of Association and ILO Convention No 98 on Right to Organize and Collective Bargaining. Therefore, the right to join an association is also contained in the Industrial Relations Act 2012. The subject of labor and labor relations have been transferred to provinces through 18th Amendment of Constitution. However, the trans-provincial labor unions and labor matters remain in the legislative powers of the federation. Further, labor matters related to Islamabad Capital Territory are in the domain of Federation. This Act deals with trans-provincial labor matters and Islamabad Capital Territory. Therefore, its application is restricted to the areas falling within federal jurisdiction. The provinces have, however, chosen to adopt the national legislation with minor amendments respectively. The law as currently applicable allows for the formation of trade unions called Collective Bargaining Agents (“CBA”). Membership to such CBAs is voluntary. There is invariably a system of registration. More than one CBA may be registered in every establishment. An attempt to subvert trade union activity amounts to unfair labour practice under the law.

174. Other than industrial trade unions, associations relating to sports, cultural, social or religious type may also be registered. There are different schemes of registration under the law. The choice of scheme for registration may depend not only on the type of association but the manner in which the association wishes to exist or conduct its business. It is also possible for non-governmental or non-profit organizations to be registered. As a matter of fact, a very large number of societies of all kinds exist in Pakistan.

175. Laws regulating the formation, registration and conduct of such associations, inter alia, include: The Societies Registration Act, 1860; The Co-operative Societies Act, 1925; The Partnership Act, 1932; Voluntary Social Welfare Agencies Act, 1961; Legal Practitioners and Bar Councils Act, 1973; Companies Ordinance, 1984; The Punjab Industrial Relations Act, 2010; The Industrial Relations Act, 2012 (Federal); and Sindh Industrial Relations Act, 2013.

176. More than 50 political parties took part in the 2013 general elections in Pakistan for the Federal and Provincial legislatures. The Political Parties are governed by the Political Parties Order 2002 and regulated by the Election Commission of Pakistan, a constitutional body. There is no restriction on the formation and membership of political parties. Every citizen not in the service of Pakistan<sup>151</sup> can form or be a member of a political party.

177. In 2015, the Local Bodies elections are also in the process of taking place with increased interest of the public.

### **Article 23**

178. Protection of family and marriage is guaranteed by Article 35 of the Constitution whereby “*the state shall protect the marriage, the family, the mother and the child.*” Every person is governed by his/her personal law in family matters. In this context, a number of laws exist in Pakistan including: The Muslim Family Laws Ordinance, 1961; The Child Marriage Restraint Act, 1929; Sindh Child Marriage Restraint Act, 2013; Dissolution of Muslim Marriages Act, 1939; Family Courts Act, 1964; Dowry and Bridal Gifts (Restriction) Act, 1976; Christian Marriage Act, 1872; Divorce Act, 1869; Parsi Marriage and Divorce Act, 1936; Hindu Widow Marriages Act, 1856; Hindu Marriage Disabilities Removal Act, 1946; Hindu Married Woman Right to Separate Residence and Maintenance Act, 1946; Pakistan Penal Code (offences relating to marriages); Khyber Pakhtunkhwa Elimination of Customs of Ghag Act, 2013; Guardian and Wards Act, 1890; Juvenile

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<sup>151</sup> § 5, Political Parties Order, 2002.

Justice System Ordinance, 2000; and Muslim Personal Law (Shariat Application) Act, 1962.

179. Subject to the Child Marriage Restraint Act, 1929, every Muslim of sound mind who has attained puberty may enter into a contract of marriage. If entered into without free consent of both parties, a Muslim marriage is void. These rights are provided by Shariah law and recognized by the Muslim Personal Law (Shariat Application) Act, 1962. The family courts are authorized to hear such cases.

180. The Nikah (marriage) Registrar is legally required under the Muslim Family Laws Ordinance to ensure that both the parties to a marriage give their free consent. The signatures/ thumb impressions of the spouses in the presence of witnesses are compulsorily affixed on the Nikah Nama (the marriage deed). Moreover, the PPC creates certain offences in relation to forced marriage including contracting a girl in marriage as peace offering (Badal-e-Sulah).

181. In the event of a divorce, § 25 of the Guardians and Wards Act provides for the guardianship of a minor. Guardianship is a legal responsibility. The duty to maintain a child remains the duty of the father till the child attains the age of majority, even in case of divorce. The custody of a child (called right of hizaanat) vests with the mother till age seven for a boy and eleven for a girl. Thereafter, custody is determined in the best interest of the child determined by the court. A mother may lose her right of custody in circumstances where she remarries or is adjudged unfit to have custody by the family court. Failing custody by mother and father, the law provides for custody by the maternal grandparents and then the paternal grandparents, and so on. The welfare of the child remains the paramount consideration.

182. Under Muslim family law, a Muslim woman is entitled to absolute right of “Nafqah” or Maintenance from her husband during the marriage. Additionally, under Muslim Women (Protection of Rights on Divorce) Act 1986, a divorced Muslim woman is entitled to reasonable and fair provision and maintenance within the Iddat period from her former husband. The maintenance of children, under the custody of a divorced mother, has to be paid by the father. A married woman is also entitled to an amount of Haq Mehr/dower money and all properties given to her before or at the time of marriage or after marriage by her relatives, friends or husband or any relative or friends of husband. If these entitlements in the Act are not provided by the husband upon divorce, the wife or somebody on her behalf can make an application to the Family Court for an order for payment of maintenance and all other legal entitlements.

#### **Article 24**

183. Article 35 of the Constitution specifically mandates the State to protect children.<sup>152</sup> Besides, Pakistan is also a State Party to the Convention on the Rights of the Child (CRC) and its Optional Protocol. At the regional level, Pakistan is signatory to the “SAARC Convention On Preventing And Combating Trafficking In Women And Children For Prostitution” as well to the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.

184. Pakistan stands firm with its national and international commitments on rights of the child, and thus continues to implement laws and policies for the protection and promotion of the rights of its children.

<sup>152</sup> Constitution of Islamic Republic of Pakistan. Art. 35. Protection of Family etc.:- The State shall protect the marriage, the family, the mother, and the child.

185. A number of initiatives including legislative and policy measures have been taken,<sup>153</sup> both at the federal as well as at the provincial levels, to strengthen the mechanisms of child protection in Pakistan prior to as well as subsequent to ratifying the CRC and its Optional Protocol. The particulars of these have already been detailed in the last CRC Country Report (5<sup>th</sup> periodic Report 2008-2013) submitted by Pakistan.

186. A National Commission for Child Welfare and Development (NCCWD) was established on 1<sup>st</sup> January 1980 under the then Ministry of Health and Social Welfare by the Government of Pakistan through a Resolution (Notification of the Government) passed on 16<sup>th</sup> December 1979. NCCWD was conceived as an advisory body to the Government of Pakistan on matters related to children and is also responsible to facilitate implementation of the UNCRC and other national/ international obligations. The Resolution establishing NCCWD has been amended from time to time in order to harmonize it with the emerging issues and challenges related to children. Since 2<sup>nd</sup> December, 2011, NCCWD stands placed with the Human Rights Wing of the Ministry of Law, Justice and Human Rights.<sup>154</sup> In order to give it a statutory status, a National Commission on the Rights of Children Bill 2015 has been introduced in the Parliament. The Bill aims at strengthening the existing Commission giving it effective supervisory, monitoring and coordinating role on ensuring child rights protection in Pakistan.

187. Many substantive measures have so far been taken by the NCCWD as well as the provincial governments in collaboration with relevant stakeholders for the protection and promotion of Child Rights in the country. These consist of legislative, institutional, policy, and programmatic initiatives, and include:

### **Legislative Measures**

#### *National Level*

(a) In 2008, a National Child Protection Policy was drafted to address and prevent violence, abuse, neglect and exploitation of and discrimination against children. Since the 18th Constitutional Amendment that devolved the subject to the provinces, this Policy has, thus, been adopted as a Model at Federal level. The provincial governments are in the process of making their separate policies.

(b) Amendment in the Constitution of Pakistan was made and Article 25-A was inserted which mandates the State to provide free and compulsory education to children between the age of five and sixteen (5-16 years).<sup>155</sup> To take forward the provisions of Article 25-A, compulsory primary education Acts have been passed by all provincial governments.

(c) National Commission on the Rights of Child Bill, 2015: The National Commission on the Rights of Children Bill, 2015 has been drafted to strengthen the existing Commission for effective supervision, monitoring and coordination on Child

<sup>153</sup> For instance:- The Criminal Law (Child Protection) Amendment Bill 2015; Juvenile Justice System Ordinance 2000 that is soon being replaced with Juvenile Justice System Bill 2015; Code of Ethics for Media on Reporting of Children's Issues; Minimum Quality Standards for the Child Care Institutions; National Communication Campaign against Child Abuse and Corporal Punishment; Citizenship Act 1951; Bonded Labour System (Abolition) Act, 1992; And The Employment of Children Act, 1991.

<sup>154</sup> Website is as follows: <http://www.mohr.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTMwOjkwODAvbW9ocndlYi9mcm1lEZXRhaWxzLmFzcHg%2Fb3B0PW1pc2NsaW5rcyZpZD01OA%3D%3D>.

<sup>155</sup> Constitution of Islamic Republic of Pakistan. Art. 25-A; Right to Education.

Rights. The Bill has been introduced in the National Assembly and considered by the National Assembly Standing Committee on Law, Justice and Human Rights.

(d) The Criminal Law (Child Protection) Amendment Bill, 2015: The Bill was drafted and processed while keeping in mind our international commitments and legal requirements. The Bill proposed amendments in the Pakistan Penal Code (PPC) and Code of Criminal Procedure (CrPC) to harmonize these with the UNCRC. The proposed amendments, for instance, in Sections 82 and 83 of PPC aim at increasing the minimum age of criminal responsibility in compliance with the international standards. It also proposes to insert new Sections that criminalize the offences that expose children to sexual abuse, seduction, child pornography, cruelty, and human trafficking. The Bill was introduced in the National Assembly and presented to the National Assembly Standing Committee on Law, Justice and Human Rights for its consideration.

(e) Juvenile Justice System Bill, 2015: In order to harmonize the Juvenile Justice System in conformity with the international standards, reformation is being undertaken in the Juvenile Justice System. Accordingly, the Juvenile Justice System Bill, 2015 has been drafted in consultation with all relevant stakeholders. The Bill is in process of finalization.

#### *Provincial Level*

188. Following are some of the legislative measures taken at the Provincial level for the protection of the rights and interests of the children in recent years:

#	<i>Name of the Act</i>	<i>Overview of the Act</i>
1.	Punjab Destitute & Neglected Children's Amendment Act 2007	Punjab Child Protection & Welfare Bureau, an autonomous body has been established under this Act.  Child Protection Units have been established that act as the basic functional unit/arm of the Bureau undertaking the task of affected children's rescue, recovery, assessment, reintegration and follow up.
2.	Punjab Marriage Restraint Act, 2015	According to the law, the minimum age for marriage of a girl is 16 and for a boy it is 18 years. The fine and punishment for violating the law has been increased from Rs. 1000/- and one month imprisonment, to Rs. 50,000/- with six months imprisonment.
3.	The Sindh Child Marriage Restraint Bill 2013	The Act prohibits marriage of children below 18 years of age.  Violation of this law by those involved can lead to three years imprisonment, and they can also be fined.
4.	Khyber Pakhtunkhwa Child Welfare and Protection Act, 2010	A Provincial Commission for the Welfare and Protection of Children has been set up under this Act; and  Five Child Protection Units are operating under this Commission in partnership with UNICEF at Swabi, Mardan, Peshawar, Swat, and Buner.
5.	Khyber Pakhtunkhwa Elimination of Custom of Ghag Bill 2012	The Law declares the custom of "Ghag" (i.e. forced marriage of women) unlawful; and the violators face up to seven years imprisonment or a fine of Rs.500,000/-, or both.

*Institutional Measures*

189. A specific Inter-Agency Group on Child Trafficking was also set up in 2008 by ten agencies including UN agencies and NGOs. A National Plan of Action for Combating Human Trafficking (Trafficking NPA) was launched in 2006 that was developed by the Ministry of Interior. The plan is consistent with the preceding government's effort in dealing with illegal migration and human smuggling with particular emphasis on Iran and the Gulf States as destinations.

190. Meanwhile, Child Protection Committees (CPCs) have been formed in selective districts across Pakistan. At the regional level, Pakistan is a member of the Regional Task Force for the implementation of the SAARC<sup>156</sup> Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The Task Force has been formed to enhance international cooperation against human trafficking including children, and member countries meet annually. Pakistan has also been part of various joint-working groups with several countries on the issue, as well as having bilateral cooperation with countries such as Greece, Turkey, and Iran.

191. Child Protection Mechanisms have been set up in selected districts across Pakistan including Islamabad. The purpose is to provide shelter to the homeless/street children, victims of violence, and runaway children and those who are in need of such protection including rehabilitation, reunification, reintegration and documentation of their cases, through provision of shelter, psychological counseling, referral services and social, legal, medical assistance. Similar efforts have also been made by the provincial governments. For instance, various child protection centers and child protection units have been established by the provincial governments like the Child Protection Bureau in Government of Punjab, Sindh has established child protection institutions and so has the Government of Khyber Pakhtunkhwa established child protection units.

192. There are Twenty Eight (28) Pakistan Sweet Homes being run by Pakistan Baitul Maal (PBM) throughout Pakistan. It has nine homes in Punjab, five in Sindh, five in KPK, two in Balochistan, two in ICT, one in AJK, and one in GB. Similarly, apart from three pilot projects, it also has Child Support Programmes (CSPs) being run across Pakistan (i.e. 3 in Punjab, 2 in Sindh, 2 in KPK, and 2 in Balochistan).

193. The Government, in collaboration with Lawyers for Human Rights and Legal Aid (LHRLA), has established a National Help Line "Maddadgar" (English meaning Helper), which provides support and assistance to women, children and Intersex persons suffering from violence, abuse and exploitation. It has been working for more than a decade. The Helpline provides telephonic counseling, face to face counseling to walk-in survivors, crisis intervention, guidance, legal advice and legal aid and referral services to the victims of violence, abuse and exploitation particularly children and women. Initially the project was based in one province Sindh, but since 2013, Madadgaar is providing services to children, women and Intersex persons at national level with existence at provincial headquarters in Lahore, Quetta and Peshawar.

**Programmatic**

194. Pakistan's preventive strategies against Commercial Sexual Exploitation of Children (CSEC) mostly focus on access to basic education and awareness-raising of child rights and issues relating to sexual abuse. The government, the civil society and the NGOs work individually as well as in partnership towards child protection in Pakistan. Apart from government initiatives for awareness-raising of the law enforcement agencies in respect to

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<sup>156</sup> South Asia Association of Regional Countries.



combating child trafficking, the Civil Society and the NGOs also play a substantive role in the implementation of preventive activities, many of which are in partnership with the Government.

195. Implementation of National Plan of Action (NPA) for Children: In order to address children issues, a comprehensive NPA for Children, approved in 2006, is being implemented by the NCCWD which provides concrete measures for the survival, development and protection of children from all forms of neglect, abuse, violence and exploitation. The goals and targets as set forth by the UN Special Session outcome document “A World Fit for Children” are clearly reflected in the NPA. The NPA covers all areas of child health, education and protection. Also as annexed to the NPA for Children is the National Plan of Action against Child Sexual Abuse and Exploitation which was developed in order to address sexual abuse and exploitation by covering key specific actions to be taken around prevention, protection and recovery.

196. Preventing Violence Against Children in Pakistan is a project being implemented in Pakistan. The Project focuses on trainings on child rights and protection for the public sector stakeholders at federal as well as at the provincial level. In addition, Training of Trainers (ToTs) are also organized at the provincial headquarters for the public sector stakeholders and civil society organizations.

197. Section 3 of the Citizenship Act of 1951 provides the right of a child in Pakistan to acquire nationality at birth. Accordingly, all children born in Pakistan to Pakistani parent are entitled to be its citizens except for a person if at the time of his birth:- (a) his parents possess such immunity from suit and legal process as is accorded to an envoy of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan; or (b) his parent is an enemy alien and the birth occurs in a place then under occupation by the enemy.<sup>157</sup>

198. Subject to the above restriction, children born in Pakistan, without discrimination, are entitled to registration with NADRA<sup>158</sup> which is mandated to issue Birth Registration Certificates including documentation of the name of the child and that of his/her parents. A “Bay” form is issued to all individuals under the age of 18 years of age which serves as their National Identity Certificate. Upon attaining the age of 18 years, NADRA issues all individuals a Computerized National Identity Card (CNIC).

199. Further details on Child Protection in Pakistan can be viewed in the 5<sup>th</sup> Periodic Report already submitted before the Expert Committee on UNCRC.

#### Article 25

200. The right to vote and the electoral process has been discussed at some length above in relation to the Covenant’s Articles 1 and 22.

201. Universal adult franchise and the right to vote are guaranteed under the Constitution.<sup>159</sup> Any citizen of Pakistan at the age of 18 years and above who is also of sane mind is eligible to cast vote.<sup>160</sup>

<sup>157</sup> For example: a) The children of diplomatic missions will not be considered/ registered as citizens of Pakistan, because their parents enjoy immunity from being tried in the local courts as local laws do not apply to them; and b) If any part of Pakistani territory is occupied by an enemy, the children born out of enemy parents, within that occupied territory of Pakistan, will not be considered Pakistani citizens.

<sup>158</sup> National Database and Registration Authority (NADRA).

<sup>159</sup> Pak. Cons. Art. 51.

<sup>160</sup> Ibid. Art. 51 (2).

202. The legal framework for political participation is broad and includes:

- The Constitution of the Islamic Republic of Pakistan 1973
- The Representation of the People Act (RoPA), 1976
- The Representation of the People (Conduct of Election) Rules, 1977
- The Conduct of General Elections Order, 2002 (Chief Executive's Order No. 7 of 2000)
- The Political Parties Rules 2002
- The Allocation of Symbols Order, 2002
- The Code of Conduct for Political Parties and Contesting Candidates for General Elections, 2002-08 and
- Directives Issued by the Election Commission of Pakistan

203. Articles 62 and 63 of the Constitution and the Representation of the Peoples Act 1976, provide detailed legal framework about the eligibility and disqualification of candidates to contest elections in Pakistan. These are supplemented by the Representation of the People (Conduct of Election) Rules 1977.

204. According to the Political Parties Order 2002 (as amended till 2012) and the Political Parties Rules 2002, any citizen who is not in the public service of Pakistan is eligible to contest elections in Pakistan, subject to the eligibility criteria referred above.

205. According to the Constitution, women and minorities have special quota of reserved seat allocated in the legislatures at the national as well as provincial levels. Special reserved seats are also available at the local bodies levels for women. Besides, the special reserved seats, women are also entitled to contest elections on general seats without discrimination.

206. Part VIII of the Constitution deals with the Elections. There are two Chapters in this Part in which Chapter 1 provides for the "Chief Election Commissioner and Election Commissions" (arts. 213-221), and Chapter 2 sets forth framework for "Electoral Laws and Conduct of Election" (arts. 222-226). The main objectives of the Election Commission include the oversight of free, fair and transparent democratic elections of the President, the Parliament, the four Provincial Assemblies and any other office as the law may so require the Election Commission to undertake.

207. The Election Commission of Pakistan ("ECP") is an autonomous, independent and a dynamic institution. It has the constitutional mandate to oversee the electoral process in Pakistan. To that end, it has undertaken a massive exercise to update and correct voter lists, managing to remove in excess of 30 million forged entries in voter lists. The efficacy of the process, however, received some criticism due to the absence of recent census in the country.

208. The digitization of the electoral rolls coupled with technological improvements introduced by the ECP now allows all individuals eligible to vote to check their registration on the electoral roll through SMS via mobile phone networks. This has gone a long way in boosting voter confidence and removed issues of tampering with voter information. Every voter now knows exactly where his/her vote is registered. Any individual who is not included in the voter list can get his details incorporated or corrected.

209. Special measures are also taken to ensure optimum participation of women in casting votes during the general elections. Article 34 while protecting women's right to fully participate in the national life, directs the state to take measures in this regard. The Article dealing with "Full Participation of Women in National Life:" states that: "Steps shall be taken to ensure full participation of women in all spheres of national life".

## Article 26

210. The equal protection and anti-discrimination provisions of the Constitution have been discussed in relation to preceding articles. Suffice it to state that the Constitution, largely through Articles 4 and 25 provides an effective mechanism for equal treatment of all persons within Pakistan. It may, nevertheless be pointed out again that the Constitution of Pakistan mandates the State to ensure Non Discrimination.

211. Pakistan's Constitution of 1973 provides for "non-discrimination" and "women's rights" in Part II regarding "Fundamental Rights and Principles of Policy (arts. 7-40)". The two chapters in this Part deal with Fundamental Rights (arts. 8-28), and Principles of Policy (arts. 29-40). These two chapters contain a number of definitions promulgating basic human rights which have a non-discriminatory nature and attempt to protect rights of all regardless of gender, religion, caste or creed. Protection of these rights begins with Articles 4, 5, 8 and 9 that envision an individual's right to be dealt with "in accordance with law" and place an obligation of "loyalty and obedience to the Constitution and law" on all the citizens of Pakistan; These also ensure that any law or customary practices being used as "declaration, decision or a covenant" that are repugnant to the fundamental rights guaranteed in the Constitution shall be "void".

212. Article 4 dealing with "Rights of Individuals to be Dealt with in Accordance with Law etc," states in its clause (2) that:

- No action detrimental to life, liberty, reputation or property of any person shall be taken except in accordance with law
- No person shall be prevented or hindered in doing that which is not prohibited by law and
- No person shall be compelled to do that which the law does not require him to do

213. At the heart of this is the concern with ensuring equal protection to women, children and minorities. These provisions are further strengthened by the Constitutional provisions to the right of fair trial,<sup>161</sup> the right to information under Article 19-A and the legal structure which exists to ensure that the law is applied without discrimination.

214. Under the Constitution, any law which is *ultra vires* the fundamental rights of citizens protected by the Constitution is void.<sup>162</sup> The Supreme Court has held such rights to be inviolable and stated that it is the paramount duty of courts to ensure compliance with fundamental rights guaranteed by the Constitution.<sup>163</sup>

215. Further information has already been provided in this Report. Please refer to the Introductory paragraphs and responses to Articles 2 and 14 above.

## Article 27

216. Rights of minorities are safeguarded by various Articles of the Constitution including 2-A (discussed above) and 36, which reads: "The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services." Article 28 states: "Subject to Article 251 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." Article 20

<sup>161</sup> Pak. Const. Art. 10-A.

<sup>162</sup> Pak. Const. Art.8.

<sup>163</sup> *Information Systems Associates v. Federation of Pakistan* through Secretary Information Technology and Telecommunication Division Ministry of Information Technology [2012 CLC 958].

further states: "Subject to law, public order and morality- (a) every citizen shall have the right to profess, practice and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions." And, Article 22 of provides: "(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation. (3) Subject to law: (a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and (b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth. (4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens."

217. All citizens of Pakistan are equal before law including the minorities. They enjoy equal rights as citizens of the State. Members of the minorities communities work in every field of life: from scientific to judicial, to armed forces to core of diplomats and civil services, to politics to business, medicine, engineering, journalism and education etc. The contributions of minorities in Pakistan have been substantive and they have excelled in all spheres of life

218. It is noteworthy that in addition to constitutionally reserved seats for minorities in federal and provincial legislatures, the minorities also have fixed quotas (5%) in Federal and Provincial Civil Services as well as in public universities and professional schools.

219. At the provincial level, minority rights are increasingly being protected through various measures. After 18<sup>th</sup> amendment to the Constitution of Pakistan and devolution of powers to the provinces, a Human Rights and Minorities Affairs department was constituted, for instance, in province of Punjab. Its functions includes, inter alia, to refer and recommend investigations and inquiries in case of any violation of human rights, to formulate policies to foster equality, unity, peace and harmony among all citizens with compassion and care for the oppressed segment of the society and administering specifically The Christians Marriage Act 1872 and the Hindu Gains of Learning Act 1930.

220. The Punjab Government has also reorganized its provincial and district interfaith harmony committees to make them more inclusive, accessible, and harmonious in nature. Besides, the Punjab Government has also initiated a sensitization program for the Master Trainers involved in training public sector officials on issues of religious rights and freedom. The Government of Sindh has initiated greater protection and security of minorities and their places of worship in the province. A list of sensitive Hindu Mandirs (temples) has been carefully made and CCTV cameras have been installed in and around those places. In addition, the Sindh Assembly has passed a Resolution regarding inclusion of Religious Text Books of Hindus in the curriculum for the Hindu community in Sindh. Similarly, the Khyber Pakhtunkhwa Government has taken special measures for the protection and security of the worship places of the minority communities of the province. The Protection of Communal Properties of Minorities Act 2014 has been passed by the KPK Government. Besides, the KPK Government has also initiated a scheme for the improvement of educational institutions of the minorities and has initiated a welfare package for the minorities of the province including a special package for the Kalaash minority. In addition to the aforementioned initiatives, conferences and seminars are frequently being organized at the national and provincial levels on interfaith harmony and respect for peaceful co-existence as a matter of right as well as a key to sustainable development. Public service messages and awareness campaigns are being launched extensively on the subject matter.

221. To assess and monitor the state of minorities in Pakistan, the government has constituted a National Commission for Minorities (NCM). The members of this Commission belong to the religious minority communities themselves. The Commission is mandated to watch over protection of the rights of the minorities. A sub-committee of the Commission comprising parliamentarians has reviewed and vetted the draft national policy on interfaith harmony. Besides, following the recommendations of NCM, the Islamabad Capital Territory and all the provinces have been asked to constitute District Interfaith Harmony Committees and make them effective where already constituted. The amount of annual welfare fund for the minorities has been increased to strengthen the minority communities. The fund is spent on the economic uplift of the minorities, development schemes, financial assistance to needy individuals, scholarship schemes for their children (from primary to professional level) on need as well as incentive basis, celebration of religious festivals and seminars for the promotion of interfaith harmony. Setting up of an Interfaith Community Centre is also being planned in the federal capital to facilitate minority communities and providing them an effective platform for various activities. The facility would be extended to all the provinces at a later stage. The religious minorities also enjoy a 2-3% job quota<sup>164</sup> across the board in all public sector organisations, in addition to quota in the parliament and provincial legislative assemblies.

222. The minorities are free to preach their respective faith. In *Hafiz Asmatullah v. Government of Punjab*,<sup>165</sup> the Lahore High Court addressed the substance of the constitutional provisions with respect to minorities. In response to the plea that the Provincial Government be directed to impose ban on the book "God's Special Agents" and that the respondent be restrained from preaching and projecting Christian faith in Pakistan, the court held that under Article 20 of the Constitution every citizen enjoys a Fundamental Right to profess, practice and propagate his religion and every religious denomination and every sect thereof has a right to establish, maintain and manage its religious institutions. The court was of the view that the Petitioner failed to point out and advance any argument as to how the actions of the respondent offended against any particular law, public order or morality so as to exclude the application of Article 20 of the Constitution. The reliance of the petitioner upon Article 227 of the Constitution in the context was inapt inasmuch as clause (3) thereof ensures that "nothing in this part shall affect the personal laws of non-Muslim citizens or their status as citizens" and rather gives added strength to Article 20 of the Constitution and is also consistent with the principles of policy as contained in Article 36 of the Constitution. The court emphasized that benevolence and tolerance are the hallmarks of Muslim faith which are inherently reflected in the Constitution's Articles 20, 36 & 227(3).

223. Further information on this Article is also contained in this Report's response to Articles 2, 14, and 18 stated above.

<sup>164</sup> For instance Punjab has 2% job quota for minorities while the Khyber Pakhtunkhwa has enhanced this quota to 3%.

<sup>165</sup> [2005 PLD (Lahore) 354].