

Pakistan's Domestic Implementation of its International Human Rights Obligations

Summary of Findings

Background

In early 2017, the Ministry of Human Rights embarked on a process to document Pakistan's legal compliance with its international human rights obligations. Among other initiatives, the Ministry sought to also undertake an exhaustive review of Pakistan's domestic legal framework to assess the State's level of compliance with its international human rights obligations. Through a transparent tendering process (Ministry Tender Notice #3/2017), the Research Society of International Law, Pakistan (RSIL) was awarded the tender for designing and implementing a legal research project to document Pakistan's international human rights obligations and provide recommendations for reform where gaps existed. This project commenced in April 2018 and a first draft of the report was handed over to the Ministry in October 2018.

The project is one of the largest studies ever conducted in Pakistan on the State's human rights obligations and compliance. The project took an initial six months to develop the first draft and a further 2 months to finalize after receiving input from the Ministry. In total, a dedicated team of 19 lawyers and researchers working with 4 support staff in RSIL's offices in Islamabad and Lahore were involved in the development of this report.

Project Objectives

The overarching objective of this project was to develop a set of recommendations to bring Pakistan's domestic legal landscape in line with its international human rights obligations. The subordinate objectives that stemmed from this were:

- Identification of Pakistan's international human rights obligations in their totality and the precise scope of these rights;
- Determination of the scope and parameters of fundamental rights in the Constitution based on latest jurisprudence of the Superior Courts in Pakistan;
- Identification of all domestic implementation mechanisms at the Federal and Provincial level and collation of gaps and lacunas;
- Development of targeted recommendations for improving Pakistan's domestic compliance with its international human rights obligations and suggested vehicles for reform e.g. Acts, Rules, Notifications, SOP's, capacity building etc.

Research Activities under the Project

- i. Detailed legal review of the **seven key** international human rights instruments ratified by Pakistan (ICCPR, ICESCR, UNCAT, CEDAW, CERD, CRC, CRPD) and the UDHR. Approximately **197 rights conferring Articles in these international instruments**.

- ii. **27 international human rights categories** emanating from these instruments have been identified for the purposes of review and analysis under this Project.
- iii. These 27 international human rights have been further categorized by RSIL into **five thematic groups** for the purposes of the research study – **civil, political, economic, social and cultural rights**.
- iv. Over **150 scholarly articles and academic publications** have been reviewed to ascertain the scope of the particular rights examined in the study.
- v. **41 General Comments of UN Treaty Bodies** have been reviewed and quoted in relation to the 27 human rights that have been identified.
- vi. **All State Party reports** submitted by Pakistan as well as **Shadow Reports** submitted by independent organizations in relation to Pakistan have been reviewed and analyzed.
- vii. The **Constitutional Obligations** laid down in Chapter 1 (Fundamental Rights) and 2 (Principles of Policy) of Part I of the Constitution of Pakistan have been identified and analyzed.
- viii. More than **900 judgments of the Superior Courts in Pakistan** have been reviewed in relation to the fundamental rights/constitutional obligations, with 331 selected as being seminal in the protection of fundamental rights.
- ix. A section-wise legal review of over **400 domestic laws** was conducted, and the gaps and lacunae have been identified. These laws include subordinate legislation in the form of Rules and Regulations as well.
- x. The mandate and work of **70+ statutory and other bodies** have been analyzed.
- xi. **Criminal Processes, i.e. the provisions of the Criminal Procedure Code, 1898, and the Pakistan Penal Code, 1860**, have been mapped out to identify areas where international obligations are being observed as well as those processes which undermine international human rights obligations and constitutional guarantees.
- xii. **219 specific recommendations** have been developed in relation to the challenges identified. These include new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

General Findings

Pakistan's ratification of seven core international human rights treaties is a testament to its commitment to ensuring the enjoyment of these rights for its citizens. However, these legally binding treaties place an important responsibility on the State to ensure that the rights enshrined therein are not violated and where violations do take place adequate mechanisms for redressal of these violations are available.

Despite the numerous challenges faced by the country, there remain several important indicators suggesting a positive trajectory of the State's efforts in protecting and promoting human rights. On the legislative front, the past decade is witness to the enactment of several laws which have greatly enhanced the protections of rights of particular groups including minorities, women, and children. Some examples of such laws are the Juvenile Justice System Act 2018, the Transgender Persons Act 2018, the Prevention of Trafficking in Persons Act 2018, the Khyber-Pakhtunkhwa

Elimination of the Custom of Ghag Act 2013, the Sindh Hindu Marriage Act 2016, as well as the Sindh Child Marriages Restraint Act 2013. Such laws demonstrate legislative responsiveness to critical human rights issues in Pakistan. In addition to these more recent enactments, there is a vast framework of laws that cater to the human rights of the citizens of Pakistan at both the Federal and Provincial levels. These laws touch upon almost every aspect of modern Pakistani life. Of these laws, close to 400 have a direct bearing to the rights enshrined internationally and in the Constitution. A further 800 federal and provincial laws tangentially deal with human rights.

The judiciary, too, has demonstrated sensitivity to issues of human rights and given groundbreaking judgements further entrenching the Constitution's human rights guarantees. The rights enshrined in the Constitution have been widely interpreted by the Courts of Pakistan and the superior judiciary routinely refers to international instruments in relation to our domestic human rights framework. In fact, even instruments that have not been ratified by Pakistan are referred to on the basis of customary law. Article 184(3) which deals with the enforcement of fundamental rights of individuals by the Supreme Court has been given a highly expansive definition and the judiciary has been exceptionally active in recent years in enforcing fundamental rights.

Pakistan has witnessed a growth in federal and provincial bodies tasked with ensuring the protection of rights especially for women and children. Child Protection and Welfare Bureaus, Social Welfare Departments, Treaty Implementation Cells, and importantly the National Commission on Human Rights are some examples of these bodies. Efforts have been made to improve the capacity and sensitivity of the Police in a number of areas of human rights concern. An active civil society sector has proved invaluable in pushing for reform and improving capacity throughout the country.

While progress has certainly been made in the last decade, there is much yet to be done in our journey to realize the goal of a State and society fully conducive to protecting the human rights of its people. At the legislative front, several areas have been identified in the report requiring reform in either substantive or procedural provisions. The study has noted a number of areas in the Pakistan Penal Code 1860 as well as the Code of Criminal Procedure 1898 that need to be updated to bring the criminal justice system of Pakistan into the 21st century and in compliance with our international human rights obligations. Certain laws establishing statutory bodies also need to be upgraded to either expand the jurisdiction of those bodies or enhance their powers and capacity.

The judiciary too can benefit from an increased focus on capacity building initiatives relating to new laws passed to promote human rights and sensitivity training on select issues. This is especially true for the subordinate judiciary. It is encouraging to note that Judicial Academies at the Provincial and Federal level remain progressive in this regard and their efforts ought to be encouraged. Additionally, the judiciary, as an arm of the State, can play a vital role in Pakistan's compliance with its international human rights organizations. The scope and contours of rights found in the Constitution and domestic legislation can be better defined through harmoniously interpreting these laws in line with our international treaty-based obligations.

Arguably, the most severe challenges exist at the implementation level. State entities ranging from Federal and Provincial departments tasked with ensuring human rights protections, to law enforcement and the various independent statutory bodies all would benefit from enhanced coordination and cooperation, adequate budgetary allocations, a greater respect for the rule of law, and capacity building. From a legal perspective, it has also been observed that there is an overlap in the competences of federal and provincial bodies dealing with human rights. Not only does this create problems in coordination, it also dilutes accountability and reduces ownership amongst stakeholders. Furthermore, certain bodies lack the clear jurisdictional mandate to tackle human rights issues that arise or lack the necessary legal powers to do so. There is, therefore, a need to revisit, reassess, and revise the mandate and powers of a number of statutory bodies.

Overcoming these many challenges is no small feat and will require a concerted national effort. However, the Ministry of Human Rights and the Government of Pakistan remain firmly committed to addressing these challenges and ensuring a Pakistan that protects its citizens through the realization of the fundamental rights and freedoms enshrined in our Constitution and various International treaties we are party to.

Intended Beneficiaries:

Primary Beneficiary:

Ministry of Human Rights

RSIL's research under this project can provide the Ministry with the legal blueprint for initiating wide ranging, multi-sectoral reform in the field of human rights.

The project also serves as a database of Pakistan's State Practice for all future reporting needs.

Secondary Beneficiaries

- 1) **Ministry of Foreign Affairs:** Better informed diplomatic positions and enhanced ability to showcase Pakistan's efforts in complying with its international obligations as a responsible member of the international community.
- 2) **Ministry of Interior & Subordinate Policing Bodies:** A clearer picture of international and domestic legal obligations can pave the way for improved capacity building of law enforcement personnel on human rights.
- 3) **Ministry of Law:** Will be in a better position to develop legislation based on the recommendations provided and can ensure that future legislation is in line with Pakistan's domestic and international obligations.
- 4) **Domestic Courts:** The review, consolidation, and analysis of domestic jurisprudence on human rights will help in the development of better-informed judgments on human rights in the future.

- 5) **Researchers and the Academic Community:** Scholars are provided a consolidated basis for research in the areas of human rights in Pakistan. The report will be of particular relevance to legal researchers working on reform.
- 6) **Legal Community:** Knowledge of international and domestic protections will enable lawyers to better inform their clients and defend them.
- 7) **General Public:** Ultimately, the greatest beneficiary of this study would be the people of Pakistan who will enjoy enhanced protections and greater realization of their inherent human rights.

Other beneficiaries:

- 8) Provincial Treaty Implementation Cells
- 9) Provincial Law Departments
- 10) Members of the Legislative Assemblies
- 11) Researchers, Academics, and Students
- 12) Civil Society Organizations

Structure of the Report

The report is divided into five thematic parts relating to Civil, Political, Economic, Social, and Cultural Rights. Each thematic part then has a number of chapters relating to particular rights or an amalgamation of related rights found in various international treaties ratified by Pakistan. Each of the 27 chapters has five sub-sections providing an overview of the chapter, the international scope of each right/group of rights, the corresponding Pakistani constitutional provisions and their analysis, followed by domestic law including subordinate legislation, and finally recommendations for reform. A sample structure for the Right to Equality and Non-Discrimination found in Part-I of the report on Civil Rights is provided below:

Part I - Civil Rights

1. The Right to Equality and Non-Discrimination

- a. Overview
- b. International Scope
- c. Correlating Constitutional Obligations
- d. Domestic Implementation
- e. Recommendations

The report is designed as a reform document but also serves as an important reference document on Pakistan's state practice relating to human rights. The structure of the document, therefore, promotes ease of use and provides cross-referencing to other sections of the report. The report is also accompanied by a set of 27 annexures corresponding to the categories of rights in the report. Each annexure provides the actual text of the legal provisions contained in the treaties, the Constitution, and the hundreds of laws analyzed in the report.

Overview of the Report

The following is a chapter-wise overview of the report.

I. Civil Rights:

Civil rights are a sub-set of first-generation rights which are also referred to as negative rights. The rights focus on the individual vis-à-vis political authority and mostly deal with the concept of equality, freedom and choice. They require the government to abstain from demeaning human dignity and from interfering with personal freedom. They are considered the core of the defense strategy employed against a State's potential arbitrary use of power.

Civil Rights as a thematic grouping forms a large portion of the Report. In that, this thematic grouping contains a total of 13 distinct rights that have formed separate Chapters.

These are:

- i. The Right of Equality and Non-Discrimination
- ii. Right to Life, Liberty and Personal Security
- iii. Right to be Treated with Dignity and Humanity while deprived of Liberty
- iv. Protection from Exploitation and other Abuse
- v. Right to Due Process, Fair Trial and the Administration of Justice
- vi. Right to Privacy
- vii. Freedom of Thought and Religion
- viii. Marriage and Family Life
- ix. Right to Seek Asylum
- x. Right to Nationality
- xi. Right to Free Movement
- xii. The Prohibition of Arrest in cases of Unfulfilled Contract
- xiii. Rights of Child

The seven core International Human Rights instruments ratified by Pakistan as well as the UDHR have all provided for these rights. The Constitution of Pakistan, 1973 has recognized these rights thereby giving them a constitutional footing through 23 distinct constitutional Articles.

After the analysis of close to 300 laws, a total of **178 Federal and Provincial** laws were relied upon in order to evaluate the protection of civil rights domestically. Moreover, a total of **156 seminal judgments** have been added to provide for the complete scope of these rights. Lastly,

it was seen that 35 domestic bodies have been mandated by Acts and Policies to fulfill these rights for the citizens of Pakistan. A total of **105 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercises, and Outreach Programmes.

A brief overview of the study of each right in this thematic category is provided below:

1. Right of Equality and Non-Discrimination

The right to equality and freedom from non-discrimination has wide ranging implications. For years Pakistan has faced international criticism vis a vis the protections granted to marginalized societies such as females, minorities, persons with disabilities and the transgender community. However, it is to be noted that the right to equality and freedom from discrimination is deeply entrenched in the Constitution of Pakistan which even permits positive discrimination in favour of a marginalized community. Moreover, the Principles of Policy provide guiding principles to the State when enacting laws and making executive decisions which also emphasize on the need to eliminate discriminatory practices and provide an equal platform to all the citizens of Pakistan.

Due to the wide and over-arching nature of the right to equality and freedom from discrimination, the legislative framework pertaining to it is scattered over different laws. The primary categories of people that are considered when discussing the right to equality and non-discrimination are women, minorities, persons with disabilities and the transgender community.

Based on the comments by the international community and the reports submitted to the Committee on the Elimination of Discrimination against Women, the main areas of concern related to women relate to violence, which includes rape, domestic violence and honor killings, anti-women practices such as forced marriages and *ghag*, discrimination in relation to family law, property law, citizenship laws as well as the protections provided under women specific labour laws.

Over the past few years, the State of Pakistan has shown political intent to curb patriarchal and outdated practices that relate to women. This is evidenced in Vision 2025 of the Government wherein stress is placed on ending discrimination against women. Accordingly, there exists a patchwork of laws that provides safeguards ranging from protection from violence, rape and sexual misconduct trials, discriminatory cultural practices such as honor killings to political representation and maternity benefits. However, despite the passage of these laws, the socio-cultural set up in Pakistan makes implementation an issue due to the slow trickle-down effect of top-down legislation.

Moreover, at the grass-root level, the patriarchal nature of Pakistani society makes it difficult for women to participate in activities outside the home. This impedes their access to justice and also makes it difficult for them to voice their opinions on issues which have a direct bearing on their lives. It is due to these societal roles that have been given to women that many of the laws that are enacted at a Provincial or Federal level become practically redundant.

However the Superior Judiciary, has been active in protecting the rights of women though many times this protection is triggered at an appellate stage. Also there is a disconnect between the directions made by the Courts and the subsequent actions of the State.

However, it is important to note that the rights of women have been given a new lease by virtue of the 18th Amendment which has devolved the competence for women-specific legislation to the Provinces. This is a good opportunity for Pakistan to address some of the concerns that are raised in relation to the rights of women by enacting new laws as opposed to simply adopting the existing Federal laws.

The second category of persons that have been highlighted as marginalized are minorities. Many concerns have been raised by the international community on the treatment of minority communities. It is important to mention at the outset that the protection of minorities has been heavily legislated upon and is deeply entrenched in the Constitution as well. The political representation of minorities, prohibition on hateful statements against minority groups and labour laws that relate to them have been discussed to showcase the protections they are provided as well as the areas that require amendments.

The Superior Judiciary has acted as a protector of the rights of minorities and has taken suo-motu notice of transgressions against minority communities and called for the establishment of commissions and forces to safeguard their rights. Very recently, the Supreme Court has given a progressive judgment upholding an appeal against the award of death penalty for Asia Bibi on an allegation of blasphemy. These are significant strides but are unfortunately triggered at an appellate stage.

Protecting the rights of minorities and ensuring non-discrimination against them is a cornerstone of Pakistan's Constitution. The electoral process in Pakistan has been made more inclusive to ensure representation of minorities. However, within the legal landscape there exist certain provisions that impede the access of minorities to important political positions and also institutionalize discrimination by imposing penalties on minority communities that publicly proclaim to be Muslim.

Another key issue with regard to discrimination arises in the context of persons with disabilities. Historically, persons with disabilities have been unable to attain quality education and therefore find proper employment. This in turn impedes their exercise of civil and political rights. However, since Pakistan ratified the International Convention on the Rights of Persons with Disabilities in 2011 there seems to be a renewed commitment towards mainstreaming differently abled persons. The devolution of powers in 2011 also presented a good opportunity for Pakistan to enact new provincial legislation on the subject.

The Courts have exercised activism in protecting the rights of differently abled persons and have also commented on the semantics used for them. The quotas reserved for them are also upheld by the Judiciary. However, despite the activism of the Court and the will of the State to mainstream persons with disabilities, there are implementation issues. While there are laws that

call for mandatory employment of persons with disabilities, the problem remains that in many public offices there is a lack of infrastructure catering to their special needs. Another key issue, in light of the right to equality and freedom from discrimination, is that there is no representation of people with special needs in the Parliament as no quotas been reserved for their inclusion.

The final category relates to non-discrimination against the transgender community. Transgender people in Pakistan continue to suffer human rights abuses and have generally been discriminated against vis a vis employment, education, housing and healthcare. State functionaries have also contributed to their persecution and have often times participated in their oppression. While Pakistan has enacted a landmark law on the rights of the transgender community, the socio-cultural environment makes a realization of those rights difficult and in some cases practically impossible. It becomes evident that legal reform has to be coupled with social progress at a grass root level to allow the transgender community to be given equal opportunities.

The main implementation mechanism for the laws that are in place is through the statutory and other State bodies that have been established. Bodies such as the Provincial Commissions on the Status of Women and the National Commission for Human Rights lack real enforcement mechanisms and efforts in bringing about social progress are often overridden by pre-existing societal constructs.

2. Right to Life, Liberty and Personal Security

The right to life, liberty, and security of person are fundamental human rights under international human rights law that are applicable to all individuals irrespective of their status. The right to life is non-derogable, however, not absolute. Any deprivation of life has to be non-arbitrary and in accordance with law. The right to liberty on the other hand is an individual's freedom from imprisonment of body. Examples of deprivation of liberty include, *inter alia*, police custody, administrative detention, involuntary hospitalization etc. The right to liberty is also not absolute in nature, as long as it is in accordance with and authorized by law. If a society is based on the rule of law, then the right of personal freedom has to be its cornerstone. The right to freedom incorporates within it the right not to be arbitrarily arrested or detained by a State without a legitimate motive. Additionally, it includes that a person should have the right to challenge the legality of their detention, which is enshrined in the principle of habeas corpus. The right to liberty has been strongly affected by legal and administrative measures that have been adopted when promulgating anti-terrorism legislation. The right to personal security "... concerns freedom from injury to the body and the mind, or bodily and mental integrity." The right provides protection to individuals, irrespective of whether they are detained or not, against deliberate administration of physical or mental injury.

The right to life and liberty is enshrined in the Constitution of Pakistan, 1973 in Article 9 which protects the right to life and liberty by stating that no person can be deprived of their life or liberty unless done so in accordance with law. The superior judiciary of Pakistan has interpreted this right to include all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. Furthermore, Article 10 of the

Constitution is designed to prevent abuses during arrest or detention that curtails the liberty of any person.

Pakistan has faced terrorism and militancy for the past two decades. However, the State of Pakistan acquired a renewed resolve to turn the tide against terrorism after the attack on Jinnah International Airport, Karachi in June 2014 which resulted in the formal initiation of military operations against militants residing in the North Waziristan Agency of erstwhile FATA. Moreover, the attack at the Army Public School Peshawar in December 2014 was a watershed moment for Pakistan. To deal with the catastrophic law and order situation, the State of Pakistan had to make serious legislative and executive decisions that had an immediate bearing on the right to life, liberty and personal security of citizens.

Pakistan has faced criticism internationally in relation to the protection provided to a citizen's life, liberty and personal security. However, these criticisms came at a time when Pakistan had to prioritize its counter-terrorism and counter-militancy strategies by providing legal cover to its kinetic operations. The main areas of concern as have been highlighted in international media and the reports submitted to the United Nation relate to the Anti-Terrorism Act, the Code of Criminal Procedure, the Actions in Aid of Civil Power Regulations 2011 and the 21st Amendment that extended the jurisdiction of military courts to civilians.

Despite State interventions that have had serious implications on this right, important jurisprudential principles have evolved in Pakistan that curtail the State's powers to take away the life, liberty or security of a citizen. The State's duty to safeguard and protect the life and liberty of citizens has been consistently upheld by the superior judiciary and it has been affirmed that all government authorities including the military and paramilitary are bound by the Constitution to provide safeguards to the citizens of Pakistan. However, at the same time, the Supreme Court of Pakistan in 2015, authorized the use of military courts to try civilians which when coupled with the death penalty, have the potential to be particularly problematic.

The domestic implementation of the right to life, liberty and personal security is mostly effected by the criminal and counter-terrorism laws that are in place. Pakistan's counter-terrorism strategy is primarily contained in the Anti-Terrorism Act 1997 which has over the years been amended drastically to keep in step with the law and order situation.

3. Right to be Treated with Dignity and Humanity while Deprived of Liberty

The right to be treated with dignity and humanity is a fundamental right from which other rights inherently flow, such as right to life, liberty, personal security, and protection from exploitation and other abuse. It provides that all individuals divested of their liberty must be treated with respect for their humanity and dignity.

The right to dignity and humanity is enshrined as a fundamental right in the Constitution of Pakistan which also makes specific reference to the prohibition on torture for the purposes of extracting evidence. Domestically, there are laws that refer to custodial torture and ill-treatment however there is no comprehensive framework criminalizing torture and creating a

compensation mechanism. Significantly, there is no definition of torture under the law which instead penalizes a number of torture-related acts, such as causing hurt.

Despite the legislation that exists, there continue to be significant problems in implementation. This is primarily due to 'thana culture' in Pakistan in which custodial ill-treatment is commonplace. Whilst the Judiciary has upheld the constitutional rights of detainees particularly with regards to their medical health and their right to not be tortured, in other respects, however, it has not been so progressive. For instance, the Courts have in some cases only imposed fines on police officers who had tortured detainees and not imposed a criminal sentence.

Whilst the High Court has held that it can award monetary compensation to victims of torture, this requires that all victims would have to pursue their claims in Court. This is not an adequate form of reparation and it must be enacted in the law. The inadmissibility of confessions made under police custody as evidence is an important feature of Pakistan's criminal law. However, it is also noted that the fact that such confessions are admissible in terrorism cases is problematic.

Regarding the segregation of prisoners, it is acknowledged that whilst there are robust legal provisions which require mandatory separation of convicted and under-trial prisoners as well as male and female prisoners, and adults and juveniles, these are not implemented in practice. It has been reported that 70 per cent of the prison population is pretrial and that juveniles are often detained with adults, some of whom are hardened criminals, and as a result they are at high risk of physical and sexual abuse. This is largely due to a lack of resources and overcrowding in jails. The general treatment meted out at these prisons is also an issue given that fetters are still used in jails despite a Court ruling that their use is unconstitutional.

The main implementation mechanism for the laws that are in place is through the statutory and other State bodies that have been established. These include Jail Committees which are to conduct regular visits to jails to inquire about the state of inmates, ensuring they are being treated humanely. There is also the Police Complaints Authority and the Justices of the Peace to which grievances can be aired. Furthermore, there are other bodies which enable implementation of these laws by providing protection for human rights generally such as the Human Rights Cell and the National Commission of Human Rights.

4. Protection from Exploitation and Other Abuse

The right to protection from exploitation and other abuse is a fundamental right from which other rights inherently flow, such as right to life, liberty, personal security, and humanity and dignity. The primary concerns related to this right relate to slavery, forced labour, prostitution and trafficking. All these areas have been legislated upon comprehensively, however, there continue to be significant problems in implementation.

The prohibition of slavery and forced labour is a fundamental right in Pakistan's Constitution and is absolutely prohibited under the domestic and provincial legislative framework. Moreover, the Principles of Policy provide guiding principles to the State when enacting laws and making executive decisions which also emphasize the need to eliminate exploitative practices and

eradicate social evils for all citizens. Nevertheless, problems at a grass-root level continue to exist because of the slow trickle down effect of top-down legislation. As a result, in 2014 it was reported that 2,058,200 people were estimated to be in some form of slavery placing Pakistan 3rd in the world for human slavery.

The Supreme Court, in this regard, has taken a pioneering role in abolishing bonded labour and based on its order, legislation has also been passed. However, this has not been implemented adequately to protect individuals so exploited. A primary issue in this regard is that there is a lack of awareness among victims regarding their rights. Moreover, socio-economic impediments limit access to justice. As a result, there were only 7 convictions for bonded labour in 2015 despite the fact that the practice continues at an alarming rate particularly in brick making, agriculture, and carpet weaving industries.

An essential component of the right to protection from exploitation and abuse is child labour. In Pakistan, a reported 12.5 million children are involved in child labour. Again, there are a number of laws both federal and provincial which regulate the practice in an effort to prevent and punish it. However, they do not impose sanctions that are strict enough to operate as a deterrent. Moreover, the definition of a child conflicts with the age that has been internationally prescribed. A significant failing in the law is also that the definition of hazardous work which is prohibited for children does not include domestic work. Many children are employed in homes and there are numerous accounts of such children being abused in the course of their employment.

Another key issue which arises in the context of the prohibition from exploitation and abuse is human trafficking. Pakistan operates as a source, transit hub and destination country for trafficked individuals. Recent legislation passed in 2018 aims to curb this form of abuse by imposing harsh penalties on those who traffic, particularly those who traffic women or children. It also includes adequate victim protection ensuring that they are not to be criminally liable and may only be witnesses in a criminal case. Furthermore, children are deemed to be trafficked without requiring proof that they were coerced or forced into it and consent cannot be used as a defence. This is a progressive and encouraging piece of legislation, however, it requires full and adequate implementation to ensure that the practice is quashed. A particular focus must also be placed on convicting complicit officials whose positions have previously rendered them immune from prosecution.

Another significant hurdle in the law is the fact that certain offences relating to illegal confinement of persons are compoundable. This fails to account for the fact that a wrongfully confined individual may be coerced into compounding the offence. This is particularly the case if they feel familial pressure to forgive the offence if it is committed by a family member or someone offering money in exchange for the compounding. It is at the court's discretion whether these offences can be compounded and it is hoped that the judiciary will consider the plight of trafficked and detained individuals when overseeing such cases.

The main implementation mechanism for the laws that are in place is through the statutory and other State bodies that have been established. These include the Vigilance Committees Against Bonded Labour which aim to enforce the legislation and oversee rehabilitation of victims. There

is also an Anti-Trafficking Unit, though its commitment to rehabilitation services for victims of trafficking is unclear. Furthermore, there are many other bodies which enable implementation of these laws by providing protection and safe spaces for female and child victims of such exploitation and abuse. These include for instance the Women Shelter Homes and Punjab Child Protection and Wellness Bureau.

5. Right to Due Process, Fair Trial and the Administration of Justice

Due process, fair trial and the administration of justice can be seen as the cornerstone of international law as well as the Constitution of Pakistan. For this reason, these rights have been protected through several constitutional provisions relating to fair trial, safeguards against arrest and detention, protection against retrospective punishment and self-incrimination, as well as the inviolability of the dignity of man. However, due process and administration of justice in Pakistan have been a continued struggle, and a number of deficiencies associated with the right remain largely unaddressed.

The Anti-Terrorism laws in Pakistan have been subject to international criticism because of their interplay with the right to a fair trial and due process. The definition of terrorism, denial of bail in terrorism cases and provisions for expedited trials among other issues pose serious questions against the backdrop of Pakistan's international obligations.

Following the APS attack in December 2014, the 21st Constitutional Amendment and the corresponding amendments to the Pakistan Army Act, 1952, were passed, which gave military courts jurisdiction to try all persons including civilians alleged to have committed certain offences related to terrorism. This move has been widely criticized by human rights activists since the principles of fair trial and due process are not being followed owing to the trials not being public, the absence of a right to appeal, and no legal qualifications of judges in the military courts. Press statements from 'Inter Services Public Relations' (ISPR), the military's public relations wing, seem to indicate that an astounding 90% of the accused had confessed to their crimes. Such a high confession rate has also raised concerns that torture or other ill treatment have been used to coerce confessions, in blatant violation of the right to a fair trial and due process.

In 2014, Pakistan also lifted a seven-year moratorium on capital punishment, and since then, more than 400 prisoners on death row have been hanged, while around 8000 still await execution. The Human Rights Commission of Pakistan has stated that the death penalty is an ineffective form of punishment considering the country's justice system is marred by unfair trials, poor counsel and police torture, due to which the moratorium on death penalty should be restored.

Additionally, other impediments to due process and administration of justice are the lack of legal aid and competent State-appointed lawyers for the defence of those who cannot afford legal representation. This disproportionately impacts those living in poverty and marginalised communities. Moreover, Courts often do not exclude from evidence statements that have been

made as a result of torture, and compliance with fair trial standards is hampered by investigators' reliance on obtaining confessions and their failure to make effective use of forensic and other investigative techniques.

Enforced disappearances is another issue that Pakistan continues to struggle with in context of the administration of justice. Despite the large number of disappearances coming to light, the perpetration of such actions has not been sufficiently brought under control. As per the update by the officially constituted Commission of Inquiry on Enforced Disappearances (CIED), the total number of missing persons since 2011 to July 2018 was 5,290. It is therefore imperative that legal mechanisms and procedures be created to criminalize enforced disappearances and hold the perpetrators accountable.

However, there are domestic bodies in place that ensure that the rights are protected, the National Commission on Human Rights being one of them. Other bodies include the Human Rights Cell, Public Defender Legal Aid Office, Jail Committees, and the Commission of Inquiry on Enforced Disappearances, which was created with a mandate to receive complaints on behalf of missing persons and hold those responsible for their detention accountable.

6. Right to Privacy

The Right to Privacy does not have a universal definition, but usually entails freedom from unreasonable intrusions into private activities. In recent years, the right to privacy has taken centre stage in the international arena. In 2015 the Human Rights Council established a dedicated mechanism to promote and protect the right to privacy by appointing a UN Special Rapporteur on the Right to Privacy.

There has been a failure on the part of the international community to develop a cogent framework defining the content and contours of this. Perhaps the problem with creating a codified definition for privacy is that it is an evolving social norm with an ever changing environment as new forms of data generation, storage and surveillance emerge. Nevertheless, secrecy of legal correspondences, privileged interactions, and the sanctity of the home can all be said to be integral facets of this right

Internationally, this right is guaranteed in Article 12 of the UDHR, Article 17 of the ICCPR, Articles 16 and 40(2)(b) of the CRC and Article 22 of the CRPD. These covenants restrict unlawful and arbitrary interferences into one's privacy, with only such minimum interferences allowed as are essential to the larger interests of society. Therefore, it can be said that not only is there a negative duty on the State to not interfere in private lives, but also a positive duty to protect and safeguard the right to privacy.

Domestically, the right to privacy stems from the 'inviolable dignity of man' as is guaranteed in Article 14 of the Constitution of Pakistan. This constitutional protection, on face-value, only refers to the privacy of the home, and so to provide meaningful protection of the right to privacy, these provisions necessarily require that they be read in an expansive manner. While the Courts have generally provided wide protections in aims of enforcing this fundamental freedom,

the Legislature has often lagged behind, as seen in the areas of law concerning data protection and the regulation of surveillance. To that end, far-reaching powers have been granted to the Executive.

NADRA, which has been tasked with ensuring the secrecy and security of sensitive citizen databases, has a particular role to play in the protection of privacy in Pakistan. Since it functions as a highly centralized repository of uniquely identifying citizen data—with the aim of also becoming an e-commerce secure payment clearing-house of sorts in the near future—there is an overriding need for all such data to be secure.

PTA, which regulates telecommunications systems and services, and monitoring thereof, has an important role to play in the protection of electronic data in Pakistan. With the advent of the Pakistan Internet Exchange, most data flowing through Pakistan—both that which is generated inside Pakistan, and that which simply uses Pakistan as a conduit—is funneled through a single node. This development is particularly alarming as such centralization can have negative repercussions both from a standpoint of protection through redundancy, which a single point of failure necessarily eliminates, and for privacy of communication, which can likewise be hijacked far more easily than in a more decentralized system.

Legislation has however been enacted for the prevention of cyber-crimes which is laudable in its stated aims. However there are some concerns regarding the search and seizure of sensitive data without extensive checks and balances and the mass-retention of user data for extended periods of time.

Laws enacted to facilitate and regulate surveillance operations in Pakistan have far-reaching consequences on the right to privacy. However, there do exist internal safeguards that protect victims from potential abuses.

7. Freedom of Thought and Religion

The freedom of thought and religion is a cornerstone of international human rights as well as Pakistan's Constitution. The importance of religious freedom is also reflected in the ideology of Pakistan which was created to provide Muslims with the freedom to practice their religion.

While Pakistan has over the years faced international criticism regarding its treatment of minorities, the right to freedom of thought is deeply entrenched within the Constitution- with eight separate Articles dealing with it. These constitutional provisions cover a range of issues from the fundamental freedom to practice and profess your faith, to the prohibition of exploitative practices against religious groups and even the preservation of places of worship and culture. There is also allowance for positive discrimination in the interest of religious minorities through quota systems to allow for proportional representation.

In line with these provisions the Superior Courts of Pakistan have, time and again, upheld the right to religious freedom. They have ruled in the interest of protecting places of worship ordering the government to go to the highest extent of the law to provide security to these

establishments, admonished forcible conversions, have reinforced marriage rights for Hindus and divorce rights for Christians. On numerous instances the Courts have struck down laws and practices that violate religious freedom not only for the Muslim majority but also for minority groups. Despite the controversy that surrounds the issue of blasphemy in Pakistan, an in-depth study of case-law shows an overwhelming precedent by the Courts to dismiss trials with false and unsubstantiated claims of blasphemy.

However, despite the Constitutional guarantees and the jurisprudence developed by the Superior Judiciary, in 2018, Pakistan was placed on the US Department of State's blacklist on grounds of "severe violations of religious freedom". Despite the political factors that may have motivated this decision, Pakistan has faced many challenges in protecting and upholding the freedom of religion in its territories. The greatest threat to Pakistan's full realization of the freedom of religion comes down to the misuse of the blasphemy law, religious intolerance and sectarian violence.

Often times the issue with implementation does not lie with the court but in vigilante action that is taken against the person accused of blasphemy. For example, in 2018 when the Supreme Court acquitted Asia Bibi for all blasphemy charges due to both insufficient evidence and contrived witness testimonies, protestors took to the streets issuing seditious threats against the Judiciary, the Government and the Army and inflicting millions of rupees worth of damage to public property. These acts of intimidation, despite being unlawful, are often left unchecked due to the sensitive nature of the subject matter. Allowing this disruptive and violent behavior to go unchecked is a massive hindrance to the implementation of laws that protect religious freedom and undoes the massive strides Pakistan has made in the recent years to protect its minorities.

On paper, it seems that Pakistan already has a comprehensive system of legislation in place that if enforced would allow its minority citizens the necessary protection to practice their beliefs uninhibited. This framework includes the existence of domestic bodies designed specifically to monitor the status of these minority communities, their rights, and the implementation of the requisite laws.

8. Marriage and Family Life

The nature of the right to marriage and family life is wide and encompasses a number of aspects. Cultural and religious attitudes have often conflicted with the international human rights norms Pakistan has committed to uphold in relation to the right to marriage and family life. For years Pakistan has faced international criticism on the treatment of women in Pakistan, specifically in terms of the discrimination they face in their family life.

It must be noted that while there is no fundamental right within the Constitution of Pakistan that deals with marriage and family life per se, it can be seen as an extension of the fundamental right to life. Moreover, emphasis has also been placed on the duty of the State to protect the marriage, the family, the mother and the child in the Principles of Policy, which provide guiding principles to the State for enacting laws and making executive decisions.

Problems faced by women stem from the fact that they generally live a life of subordination in the country's patriarchal social construct, while men are considered the ultimate decision-making authority for women. Owing to this, women are often unable to enjoy their basic rights including choosing their own marriage partners, seeking separation or dissolution of marriage on their own initiative, and making their own decisions concerning their property or children. Even if these rights are protected under domestic law, women are denied these rights due to the socio-cultural set up in Pakistan. Other than this, different cruel practices also exist that enforce the patriarchal mindset of the society, including domestic violence, child marriage and honour killings.

Due to the wide nature of this right and the numerous issues surrounding the right to marriage and family life, the domestic legal framework regarding this right is also scattered around different laws. The overarching legislation that governs Muslim personal law in relation to marriages in Pakistan is the Muslim Family Law Ordinance 1961. Although this law encapsulates women's rights with regard to marriage and divorce, it has been noted that due to the absence of efforts to inform people about women's legal rights, much of the population remain unaware of the provisions of Muslim personal law, for instance the requirement for the husband to take the permission of the first wife before marrying a second wife.

Another prevailing issue relating to marriage that has been highlighted is that of child/early marriages. Pakistan has the 6th highest number of child marriages, 1.9 million in all, making tackling this problem an urgent concern. Early marriages place adolescent girls at significant mental and physical health risks, exposes them to early pregnancies, with a high risk of maternal death and morbidity. Moreover, it threatens the lives and futures of girls and women, robbing them of their agency to make decisions about their lives. Their inherent rights to education, healthcare and full participation in economic, political and social spheres are violated. Although in recent years, laws have been enacted by the Provinces to curb child marriages, it is evident that social progress along with such legislation is required to reduce child marriages further.

While personal laws relating to Muslim marriages may be said to be expansive, the real challenge lies in safeguarding the interests of minorities in relation to this right. Forced conversion of Hindu and Christian women is on the rise as women confront increasing discrimination and multiple social problems, including and not limited to abduction, forced conversion to Islam and marriage to Muslim men. Although legislation has been promulgated to prevent forced marriages, the lack of enforcement has been witnessed in a report that found that regardless of the legislation, the police refuse to intervene in such cases.

Before the passage of the Sindh Hindus Marriage Act in 2016, there was no specific personal law for Hindus. The non-availability of a specialized legal mechanism resulted in a number of problems, including a lack of proper documentation, hence creating issues regarding travel, divorce and transfer of property since it was problematic to prove a marriage. Legislatively, the federal Hindu Marriages Act of 2017 has aimed at resolving some of these issues. Christian couples also struggled in dissolution of their marriages until the landmark judgment in 2017 by the Lahore High Court which enabled Christian couples to approach a court of law for dissolution of marriage on ordinary grounds in a dignified manner without having to accuse each other of adultery.

In recent years, laws have been promulgated by the provinces on domestic violence. Marital rape has also been impliedly recognized as an offence in the Pakistan Penal Code. However, practical difficulties surrounding domestic violence in Pakistan are that most cases go largely unreported, and women do not have access to effective remedies for violence committed against them by their spouses or other family members. Married women constitute the majority of survivors of violence, and domestic violence and marital rape have been characterized as the “most concealed and underreported” forms of violence against women.

Furthermore, another important factor to be considered in the right to marriage is the consent of women, which is often not taken. The unfortunate existence of traditions of giving a female into marriage under the tradition of *wanni* (giving a female as consideration for compromise), *swara* (giving a female as a mode of compromise to the victim’s family), as *badal-i-sulh* (consideration of compromise) for settling any civil or criminal dispute, and *ghag* (whereby a person forcibly demands or claims the hand of a woman through a public declaration) have aptly been legislated upon and criminalized. However, for complete eradication of such traditions socio-cultural progress of society will be necessary.

A number of laws exist for the protection of the right to marriage and family life, the implementation of these laws is effected and monitored through statutory and other State bodies that have been established. Bodies such as the Provincial Commissions on the Status of Women and the National Commission for Human Rights, although highlighting the main concerns surrounding women, forced marriages and domestic violence, lack real enforcement mechanisms. However, the Ministry of Human Rights has established Helpline 1099 to provide free legal advice and a referral for redressal of grievances on receipt of a human rights violation complaint, which can be seen as a critical step towards overcoming societal injustices.

9. Right to Seek Asylum

The right to seek asylum as codified in Article 14 of the UDHR effectively places international refugee law within the human rights paradigm. The codification within the UDHR represents the fundamental importance and unanimous acceptance by States of the right to seek asylum. In Pakistan this right is of particular relevance as Pakistan hosts one of the largest refugee populations in the world, primarily Afghan refugees who arrived during the decade-long Soviet Invasion of Afghanistan in 1979.

The refugee crisis in Pakistan has spanned over four decades owing to the porous borders between Pakistan and Afghanistan. The absence of policies governing refugees coupled with political issues and porous borders has exacerbated the refugee crisis in Pakistan. Pakistan’s refugee policy has oscillated from being welcoming and liberal to restrictive and conservative owing to the changing political and strategic situations in the region. Currently, the government is demonstrating a progressive and liberal approach towards the refugee situation with the Prime Minister pledging to grant citizenship to 1.5 million Afghan refugees who for years have been marginalized.

Given the absence of a national law on the issue, asylum seekers are granted the same status as foreigners and are thus governed by laws applicable to persons who are not citizens of Pakistan. While Pakistan's Citizenship Act of 1951 guarantees citizenship to anyone born in the country on the basis of *jus soli*, bureaucratic hurdles, ethnic rivalries, judicial interpretation and the political atmosphere have made it difficult for the children of most refugees to register as citizens of Pakistan.

The Judiciary in Pakistan has not provided valuable guidance on the interpretation of the right to seek asylum either. There is a general air of ambivalence with some judges showing leniency on the touchstone of due process and others demonstrating a more conservative approach and upholding the Government's unbridled discretion to deal with asylum-seekers.

It is also important to note that the political climate of the country has often influenced the treatment granted to certain refugees, allowing room for discrimination against others. The problem of terrorism and the US involvement in Afghanistan has often led to a stalemate in the Pakistan-US relations, bringing millions of Afghan nationals, including 1.4 million registered refugees, into the spotlight again as the Federal Government has decided to prepare a contingency plan for their return.

10. Right to Nationality

The right to nationality establishes the bedrock legal relationship between individuals and States. Citizenship in practice is an essential prerequisite to the fulfillment of the wide array of human rights enshrined internationally. While international law has evolved to allow States to regulate the acquisition and retention of nationality, it has restricted State discretion on citizenship through international norms relating to non-discrimination in the enjoyment of the right to nationality and the principle that statelessness should be avoided.

Domestically, the right to nationality has been recognized as a fundamental right for every citizen of Pakistan and has been held to be necessary for the realization of all other basic human rights guaranteed by the Constitution of Pakistan thereby making it essential to the functioning of a democratic and just society.

Quite notably, Pakistan is the only Asian country that provides unconditional *jus soli*, namely the granting of citizenship based on location of birth without any restrictions. While this places Pakistan amongst a progressive subset of nations that follow such rules, Pakistan has largely reserved its commitment to this principle, with both NADRA and the Courts opting for a far more restricted and narrow reading of this right. This is the case primarily in relation to Afghan refugees and their children born in Pakistan. It is estimated that 60% of the current Afghan refugee population in Pakistan was born here. This amounts to roughly 1.5 million individuals whom the State would then be wholly responsible for.

Having noted that, Pakistan has through its political will aided in the repatriation of more than 170,000 people who after the 1971 Civil War were denied both Pakistani and Bangladeshi citizenship. The new government has also shown a commitment to resolve the legal vacuum in

which the Afghan, Bengali and Rohingya refugees exist by recently proposing a policy change. However, action on this policy is yet to be taken by the Executive or the Judiciary.

Nevertheless, over the past few years, the Courts in Pakistan have shown a willingness to rectify discriminatory provisions in Pakistan's Nationality Codes. This is specifically with regards to the ability of alien males to acquire nationality via marriage to a Pakistani citizen, which prior to the Court's intervention, was only available to an alien female marrying a Pakistani citizen. The Courts have adjudicated on this matter and stated unequivocally that such a distinction is discriminatory, being contrary to Article 25 of the Constitution, and un-Islamic, as is elaborated on in sections below.

Parliament, however, has not moved to amend either the Pakistan Citizenship Act or the Pakistan Citizenship Rules in order to comply with the Court's directives, which has left any progressive change in this regard as a largely ad-hoc process carried out by the Courts.

11. The Right to Free Movement

The right to free movement is an essential element of international law that underpins the free development of a person and is also a basis for the realization of numerous other human rights. It encompasses a person's right to move without undue restriction, choose their own residence as well as the right to leave or return to their country.

In light of Pakistan's international obligations primarily under Article 12 of the ICCPR and the constitutional protection provided in Article 15 there are a number of laws in Pakistan that regulate a person's freedom of movement. Important to note is the fact that Pakistan is permitted to place limitations on movement, however, these have to comply with the requirement of necessity and public interest.

The UN Human Rights Committee in General Comment 27 has laid down that restrictions on a person's freedom of movement should be exceptional. Accordingly, the judicial limb of Pakistan has shown a proactive approach in interpreting the restrictions imposed by the State on a person's freedom. Directions have been given to the Executive to use its discretion to impose restrictions on a person's freedom to move in a fair, reasonable, and just manner in accordance with the law and the Constitution.

However, external factors such as infrastructural inadequacies, territorial landscape, and terrorist attacks have led to mass displacement of people and therefore adversely affected the movement of citizens. In June 2014, the military operations targeting terrorist groups launched in the North Waziristan area led to the displacement of peoples in the Federally Administered Tribal Areas (FATA) resulting in a mass exodus of over 2 million people to other parts of Pakistan. While the vast majority of these displaced persons have now returned to their homes, displacements of such a nature can have a devastating impact on the enjoyment of numerous other rights.

A distinctive feature of Pakistan's democratic setup is the culture of public protests that are rooted in strong political or religious beliefs. These protests severely impact and impede the

freedom of movement of citizens both by the protestors and the State that at times imposes curfew like situations to curtail the protests.

12. The Prohibition of Arrest in Cases of Unfulfilled Contracts

The right to not be arrested merely for the inability to fulfill a contractual obligation has been guaranteed in Article 11 of the ICCPR, and is said to be a non-derogable right. There has been sufficient implementation of the prohibition of an arrest in cases of unfulfilled contracts in Pakistan, since the mere non-fulfillment of contractual obligations does not generally incur criminal liability under any law in Pakistan, barring certain exceptions involving criminal intent, which does not fall foul of international human rights standards. However, it must be noted that there is no constitutional obligation that explicitly lays down the prohibition of an arrest in cases of unfulfilled contracts.

13. Rights of the Child

The rights of the child are one of the most complex and often culturally sensitive areas in human rights discourse. Internationally, the main framework for the rights of children is rooted in the Convention on the Rights of the Child, 1989. The Convention can be seen as a consolidation of various rights found across the spectrum of different international human rights instruments. It provides a set of guiding principles that fundamentally shape the way children are dealt with and protected by the law and the legal system.

Pakistan's progress towards recognizing the rights of children is manifested in the ratification of the Convention on the Rights of the Child and two of the three Optional Protocols to it. Important legislation has also been passed that caters to the rights of children under trial as well as children that are subjected to labour, harassment and neglect. Legislation pertaining to the health and education of children has also been introduced which is a welcome addition to the corpus of domestic law in Pakistan.

However, the primary issue in relation to children remains the definition of a child i.e. till what age should a child be considered such. Since many of Pakistan's laws are rooted in Islamic principles there is an inconsistency in what should be considered the age of adulthood with some laws prescribing it at fourteen and others at sixteen. These definitions of a child contravene the internationally stipulated age of legal adulthood (which is eighteen).

Constitutionally, the rights of children can be found in several different provisions that range from labour, slavery, sexual exploitation and human trafficking to the promotion of social justice and free and compulsory education for children. At the executive front, the new Government has shown a renewed commitment to protecting the rights of the child as stipulated internationally and constitutionally. The Government is in the process of introducing an action plan on child abuse and implementation of the Juvenile Justice System Act. The constitution of a Commission on the Rights of the Child is also being considered at a Federal level. These efforts have come at a time when Pakistan has faced international criticism due to widespread incidents of child abuse. In light of the international pressure being placed on the State of Pakistan it is

important to fully implement the rights that while legally available to children, are often lost within the socio-economic barriers that exist within Pakistan.

II. Political Rights

Political rights refer to an individual's ability to participate in the political life of the state without fear of discrimination or repression. These rights guarantee the positive liberty to contribute to the process of governing the affairs of the society in which they live. Political rights presume that the government processes should be structured so as to provide opportunities for political participation of all eligible peoples. It also includes the right to join a political party; the right to stand as a candidate in an election; the right to participate in a demonstration; and freedom of association.

While researching political rights, four distinct sets of rights were identified that have formed separate Chapters in the Report. These are:

- i. The Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred
- ii. The Right to Freedom of Opinion and Expression and to Information
- iii. The Right to Peaceful Assembly and Freedom of Association
- iv. Right to Take Part in Public Affairs, to Vote and to Access Public Services.

The rights amalgamated in this thematic grouping were drawn from all seven International Human Rights instruments been ratified by Pakistan as well as the UDHR. The Constitution of Pakistan, 1973 has provided a constitutional footing to political rights through 22 distinct Articles.

When identifying and evaluating the scope of these political rights **50 laws** were analysed to fully understand how domestic legislation in Pakistan affected their protection. Prior to the analysis of these domestic Federal and Provincial legislation, a total of 115 laws were filtered through.

In that, a total of 70 judgments were combed through so that **40 seminal judgments** could be relied upon in the Report itself. Lastly, it was seen that **four operational domestic Bodies** have been mandated for the fulfillment of Political rights in Pakistan. A total of **27 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

A brief overview of the study of each right in this thematic category is provided below:

14. Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred

The prohibition of propaganda for war and hate speech are two very different prohibitions which proscribe a variety of actions. However, they both share a common basis in that they seek to maintain peace and security. The prohibition of propaganda for war bars the use of propaganda that may lead to an illegal use of force which would violate the United Nations Charter. Due to difficulties in ascertaining when a use of force would be illegal and what constitutes propaganda, this prohibition has often been overlooked internationally and nationally as its meaning and scope remains unclear. Therefore, while developments in international law relating to the incitement or promoting war propaganda may gain traction in coming years.

The prohibition on hate speech, however, receives ample consideration. International criticism has been levelled at Pakistan for not protecting its minorities from discrimination, hatred and contempt. Pakistan's domestic laws do contain criminal and other provisions which penalize hate speech and operate in tandem with constitutional provisions which protect minority rights and religious freedom. Hate speech has also been included in the definition of terrorism even if a violent offence has not been committed. Moreover, given the proliferation of social media and internet sites, the need to sanction and curtail instances of hate speech was all the more necessary. A wider audience can access online speech faster than other types of speech. More than 92 percent of Pakistan's internet users have encountered hate speech online and more than 51 percent stated that they were the targets of hate speech. As a result, relatively new legislation has been passed to prevent the manifestation of hate speech in electronic media and on the internet. Policy measures were also taken to comply with this prohibition and as part of the National Action Plan of 2015, arrests were conducted in order to combat hate speech.

The legislative framework that regulates hate speech includes criminal sanctions, laws specific to media restrictions, electronic crimes, and loudspeakers and sound amplifier regulations. These laws have been analysed individually with the main issues presented. Instances of incitement of hatred against religious minorities are given special attention in Pakistan's context where sectarian disorder is the most prevalent.

The Judiciary has at times been able to prevent the misuse of these provisions by focusing on the intent of those who have allegedly spoken, written, or published the offending speech. Their rulings often therefore hold that the accused did not intend to injure religious feelings and therefore are not liable. There have, as yet, been no cases for hate speech under new legislation relating to electronic crimes and therefore this has not been scrutinized jurisprudentially.

The main implementation mechanism for the laws in place is through the statutory bodies that have been established to regulate broadcast media, online content, and telecommunications, as well as to investigate cybercrimes. Bodies such as the Pakistan Electronic Media Regulatory

Authority (PEMRA) and the Pakistan Telecommunications Authority (PTA) have been vested with wide, far-reaching powers to censor and restrict electronic content.

15. Right of Freedom of Opinion and Expression and to Information

The right to freedom of opinion and expression and to information is a seminal and foundational right from which many others naturally flow, such as assembly, association, and the right to vote. It allows the free exchange of ideas, opinions and information essential for a democratic country. The right is enshrined as a fundamental right in Pakistan's constitution as well as federal and provincial legislation and any restrictions to it must be reasonable and provided by law. Given the proliferation of the internet, there was deemed to be a need to regulate online content. Recently legislation has been passed to govern such content and this has changed the applicable legal framework considerably.

The legislative framework regulating electronic speech is analysed first as it aims to counter online harassment and terrorist content through censorship and the criminalization of certain forms of internet activity. In Pakistan the main issues relate to the fact that websites such as YouTube have been blocked in the past and mobile and internet cell services have been suspended for reasons of national security, all potentially impeding the right to freedom of expression if the use of these practices are abused.

There are also other restrictions on the right to freedom of expression which are found in nearly all legal systems around the world such as defamation. This restriction impedes the freedom when it comes into conflict with other rights held by individuals and is considered libellous or slanderous. Furthermore, sedition is also criminalized, however, the definition provided for the offence is broad and has been narrowed by the judiciary. The superior judiciary has tempered the scope of this broad definition by holding that criticism of the government is not in and of itself seditious speech. It has narrowed the wide leeway considerably by providing criteria for finding speech or actions seditious which helps to ensure that freedom of expression is not arbitrarily curtailed.

Of particular significance to the right to freedom of expression is the media. A free media can inform, raise awareness, and shape public opinion while acting as a watchdog to strengthen democracy. Therefore, this section discusses in depth the law, rules and code of conduct adopted by the statutory body, PEMRA, authorized to regulate the media.

The superior judiciary has at times protected the right by acknowledging that whilst it is not unfettered, any restrictions required a balance to be struck. Therefore, for instance, to curtail the right to maintain public order, there must be an anticipated danger which is proximate and directly connected to the expression. However, the courts have also granted the authorities vested with wide, far-reaching powers to censor and restrict electronic content even broader powers to block any information system in its entirety (such as Facebook or YouTube). This varying approach to the right indicates the difficulty in determining where the line can be drawn and how to strike the required balance.

The right to information, derived from the right to freedom of expression, is subsequently discussed. As a distinct and separate right, it is aimed at promoting transparency and accountability. The right is also constitutionally guaranteed and provided in federal and provincial legislation and requires a different kind of balance to be struck – that between national security and public interest. The laws in place are progressive in that they allow for the right of the public to access information and oblige bodies to disclose that information, subject to exceptions for national security.

The main implementation mechanism for the laws that are in place is through the statutory bodies that have been established to impose restrictions on free expression through broadcast media, online content, and telecommunications, as well as to investigate cybercrimes. Bodies such as the Pakistan Electronic Media Regulatory Authority and the Pakistan Telecommunications Authority have been vested with wide, far-reaching powers to censor and restrict electronic content.

16. Right to Peaceful Assembly and Freedom of Association

The rights to peaceful assembly and freedom of association are seminal for a functioning democracy. They both stem from the right to equal social and political participation among members of a society and are enshrined as fundamental rights in Pakistan's constitution. This section analyses both rights separately starting with the right to peaceful assembly. Both rights may be subject to reasonable restrictions stipulated by law and the restrictions are focused on and discussed in depth.

The right to peaceful assembly is restricted by the fact that the assembly must be peaceful and not involve the use of any deadly weapons. Assemblies involving five or more persons that do involve individuals armed with deadly weapons may be termed unlawful assemblies subject to being disbursed. The superior judiciary has preferred to interpret this restriction narrowly and have liberally construed the right to freedom of assembly to ensure that it is not deemed criminal without adequate cause. Furthermore, assemblies may also be subjected to reasonable restrictions to maintain public order and to prevent disruption. Action has thus been taken against peaceful protestors on the basis that they are acting in a manner prejudicial to public safety and order

The freedom of association includes the right of workers to form trade unions for collective bargaining and these are discussed first as they are an important means by which to exercise the right. There are an estimated total of 63.34 million workers in Pakistan which has the 10th largest labour force in the world. The majority of these workers work in agriculture (43.7 percent), in services (33.9 percent) and in industry (22.4 percent). A total of 1.8 million of these workers are involved in trade unions of which there were 945 that were active as of 2016.

Following the 18th Amendment which devolved competence for trade union and industrial action-specific legislation to the Provinces, all four provinces now have their own legislation regulating trade unions. Whilst the right to strike is not considered to be an inherent part of the

right to freedom of association, it is allowed under these provincial laws. However, these were not extended to the erstwhile FATA excluding its residents from their scope. It is hoped that after the 31st Constitutional Amendment which merges FATA with Khyber Pakhtunkhwa, this will be resolved by actions of the KP Assembly.

There are a number of laws which regulate associations with considerable overlap between them. This is in part because colonial era legislation has been retained with subsequent laws merely operating in addition to it. Whilst the freedom of association is not significantly restricted in any way by law, procedural requirements imposed upon associations may mean that the right is hindered by cumbersome administration requirements which act as a barrier. The number of NGOs has mushroomed in the country due to the injection of foreign funding after natural disasters and, as of 2016, there were approximated to be between 100,000 to 150,000 active NGOs in the country.

17. Right to Take Part in Public Affairs, to Vote and to Access Public Services

The right to take part in public affairs, to vote and to access public services is fundamental for a democratic society. It includes the right to elect representatives to make political decisions on citizen's behalf and the right to contest elections and stand as a candidate to be one of those representatives. Pakistan holds regular elections and has a competitive multiparty electoral system. 49.48 million voters voted in the 2018 General Election for over 3,600 candidates for the National Assembly in 85,317 polling stations. The number of voters increased by around 2.5 million compared to 2013 when 46.9 million voters were recorded.

The right to take part in public affairs, to vote, and access public services is enshrined in Pakistan's Constitution and are also a core part of other ancillary rights such as freedom of speech and freedom of association. Moreover, it is also governed by the recently enacted Elections Act, 2017. Prior to this Act, the legal framework for elections was scattered across eight different laws which suffered from overlaps, duplication and inconsistencies. The passing of this law consolidated all election related regulations into a single streamlined piece of legislation which improved upon the old legal framework considerably.

The new law included many progressive measures which focused on facilitating voting for all, particularly improving women's participation as well as that of disabled persons and minorities through special measures. This indicates strong political intent in favour of universal suffrage. These measures are very forward-looking and enhance credibility in the electoral process. This is the first aspect focused on in the domestic legalization section as it is a vital part of the election process. The superior judiciary has also upheld the right of overseas Pakistanis to vote in general elections.

The 2017 Act also empowered the Election Commission and made its role and function more transparent in overseeing elections. Scrutiny by an independent body is a key aspect of the

international right. The powers and functions of the body is analysed in this section in depth including its electronic results management system and the complaints procedure.

The process of delimitation of constituencies is then discussed as this is a key aspect of the right to vote. The difficulty faced by Pakistan in the 2018 election was that the official results of the 2017 census, held after 20 years, had not been finalized and, therefore, provisional results were used for delimitation of constituencies. However, for future elections, given the rate of population growth in the country, regular censuses will need to be conducted for accurate delimitations to take place and for individuals to be accurately represented based on population.

The section also discusses the right to take part in public affairs and focuses on the right to candidacy for general elections. The constitution details the requirements for eligibility for a seat in Parliament. These have been much scrutinized in the past year or so following the release of the Panama Papers and the disqualification of Pakistan's former Prime Minister under these provisions. The relevant law uses broad and subjective language which includes a series of moral requirements. This is despite the fact that the right as it is understood internationally does not allow for exclusion from eligibility for standing in an election to include unreasonable or discriminatory requirements. Disqualification under this provision was later held to be perpetual in nature raising further questions as to whether the subjective and broad language used should restrict an individual's right to take part in public affairs and also whether this should affect the electorate's right to elect the officials they want. This part of the section also discusses in depth the other cases in the Supreme Court under the same provision analysing what is required for a declaration of disqualification to be made.

The scrutiny of nomination papers for candidacy under the Elections Act 2017 is also assessed. The new law takes into account complaints made in previous elections where nominees complained that they were asked disparaging questions when submitting their papers for scrutiny. The Act now stipulates that no questions are to be asked which are not connected to the information or material provided. Furthermore, the legislation also revises candidates' spending limits to more realistic levels, however, it also raises that required by political parties who wish to be enlisted for elections. This may create a barrier to entry for new burgeoning political parties.

The main implementation mechanism for the law is through the statutory body known as the Election Commission. Although this body has been referred to throughout the section it will be further elucidated in the part relating to domestic bodies. Although the new law improves the working of the body, it still suffers from some capacity and resource issues, such as with the electronic results management system, which need to be further improved upon in coming elections.

III. Economic Rights

Economic Rights are a subset of second-generation rights, and impose a duty on the State to respect, protect, and fulfil them on a progressive basis, subject to the availability of resources. Economic rights include the rights to work, rest, social security, and property. As these rights cannot be provided in their absolute form, instead responsibility is placed on the State to create an enabling environment, meaning that the State should take steps to create the conditions necessary for individuals' full enjoyment of the right, and should also provide protection from those who seek to negate that enjoyment. This second obligation requires the State to take reasonable steps to prevent other actors from interfering with the enjoyment of these rights.

When identifying economic rights, four distinct set of rights were decided on that have formed separate Chapters in the Report. These are;

- i. The Right to Work
- ii. The Right to Rest, Leisure and Holiday
- iii. The Right to Social Security
- iv. The Right to Property

The rights amalgamated in this thematic grouping were drawn from six International Human Rights instruments that have been ratified by Pakistan. The Constitution of Pakistan, 1973 has provided a constitutional footing to political rights through 5 distinct Articles.

When identifying and evaluating the scope of these economic rights **51 laws** were analysed to fully understand how domestic legislation in Pakistan affected their protection. Prior to the analysis of these domestic Federal and Provincial legislation, a total of 115 laws were filtered through.

In that, a total of 70 judgments were combed through so that **47 seminal judgments** could be relied upon in the Report itself. Lastly, it was seen that **15 operational domestic Bodies** have been mandated for the fulfillment of Political rights in Pakistan. A total of **23 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

A brief overview of the study of each right in this thematic category is provided below:

18. Right to Work

The right to work has wide-ranging implications and imposes on the State of Pakistan a wide variety of obligations. Domestically, it is provided for in the Constitution both as a fundamental right and as a Principle of Policy. Consequently, the State is obliged to give citizens the freedom to choose their professions and also to ensure the provision of resources and work facilities.

The right to work has been adequately legislated upon by the Parliament, however, there are areas where a legislative vacuum exists especially with regards to domestic employment. Generally, legislation on workers in Pakistan covers, inter alia, occupational safety and health, wages and social security, informal workers, bonded laborers, and industrial negligence.

Pakistan in the past decades has suffered from issues that have been internationally considered as ‘modern slavery’, i.e. Bonded Labour. Thus, laws have been promulgated throughout Pakistan to protect those who are subjected to bonded labour. Changes have been made to the core criminal laws to reflect Pakistan’s commitment towards abolishing slavery. So much so, in recent years’ amendments have also been introduced in the Code of Criminal Procedure, 1898 and the Pakistan Penal Code, 1860.

Based on the international scope of the right to work and the reports submitted to the United Nation, the significant areas of concern have been isolated. These relate to occupational health and safety, bonded labour, informal workers and industrial negligence. Provisions of the laws promulgated for the protection of the right to work, have been analysed in turn to provide recommendations to address any shortcomings. The right to work may only be effectively and adequately protected where working conditions have been made safe for the workers/employees. Thus, for workers in Pakistan that have been employed in areas that pose significant health risks, laws have been introduced that specifically target occupational health safety.

The protection of this right for women has been a primary focus of the Parliament in recent years wherein, the Federation as well as the Provinces have enacted laws against the harassment of women in the workplace. While this is a huge step in the protection of this right without discrimination based on sex, it is noted that Pakistan has a long way to go in the complete realization of this right for women.

The Judiciary has been active in enforcing the right to work while also imposing reasonable restrictions as is mandated by the Constitution. In that, there have been instances where the inherent rights to the freedom of expression and association were restricted in aims of protecting the public's right to work and trade. The courts have further protected this right by maintaining the element of free competition to regulate trade and business. Minority quotas in governmental job recruitments have also been protected in aims of securing the well-being of people, irrespective of sex, caste, creed or race.

Forums such as the National Industrial Relations Commission and the Ombudsman on Workplace Harassment serve as forums for dispute resolution and enforcement of workers' rights. These statutory bodies have been created with the aim of regulating the relationship between employers and employees, conduct of individuals at the workplace and the general relationship between the State and workers.

19. Right to Rest, Leisure and Holiday

The right to leisure and holiday is enshrined in international law through a number of instruments that protect the right to rest from work. Rest is necessary in order for individuals to be able to live a life of dignity and to ensure human development and self-actualization. As a result, the State is required to provide adequate resources and facilities to ensure that this right is enjoyed. Moreover, it is particularly significant for children who require recreational and leisure activities.

The right has been recognized as one that is economic in nature, in that it refers to rest from work, and has a wide ambit. It does not only extend to the protection of an individual's right to holiday but also refers to the protection of a worker's right to rest. It can be argued that the right in the long run also protects an employee's right to health.

Although there is no fundamental right that pertains to the right to rest, it has been promoted through the Principles of Policy that the Executive and Legislature are to consider when making policy decisions and enacting laws.

The Legislature has enacted a law that, in line with the international scope of the right, explicitly provides for holidays that must be given in a week for employees of shops, restaurants and theatres. However, this law is restrictive in nature and should clearly allow for holidays to other organizations/establishments as well.

Laws regarding leave, particularly maternity, are problematic as after devolution not all the Provinces enacted enabling legislation. Additionally, there is a lack of harmony in the laws regarding the rules providing for leave. It is also important to note that the majority of the workforce in Pakistan remains largely unaware that a specific set of holidays in the year have been mandated for them for which they must be paid.

The right moreover extends to the enjoyment of recreational areas. This imposes a duty upon the State to create parks, gardens and playgrounds in public spaces and maintain them so they are accessible to the public. Within the domestic legal framework there are laws in each Province and in the Federal Capital that mandate State functionaries to make and maintain recreational parks for the general access to the public. Arguably these have been witnessed as being a priority in the Capital and other major cities of Pakistan, however, it is yet to be implemented fully in the rural areas of Pakistan.

Regarding the right to holiday, statutory bodies have been created for the specific purpose of protecting this right through the promotion of tourism. These have been created in each Province to promote and develop tourism in Pakistan, both domestic and international. However, tourism has not increased substantially in recent years. Whilst Pakistan has been described as a promising country for tourism, it is necessary that infrastructure be developed to invigorate and encourage tourism and reap the economic benefits that it would bring.

20. Right to Social Security

Through the right to Social Security, States guarantee protection to its citizens, especially the more vulnerable members of society in the event of unemployment, maternity, accident, illness, disability or old age. In Pakistan, the Right to Social Security stems from Article 38 of the Constitution, which calls for the general promotion of social and economic well-being of the people of Pakistan.

In order to provide adequate old-age, disaster, and poverty security to people in Pakistan, the government has established the Employees Old-Age Benefits Institution and the Benazir Income Support Programme where the former provides Old-Age, Invalidity, and Survivors' Pensions to workers, and the latter serves as a platform to alleviate poverty through unconditional cash transfers. Such agencies are aided in their endeavours through technical support from the National Database and Registration Authority, which acts to bridge the logistical gaps between beneficiaries and State institutions.

Internationally, this right is provided for under Article 22 of the UDHR, Article 9 of the ICESCR, Articles 11(1)(e), 13(1)(b), and 14(2)(c) of CEDAW, and Article 26 of the CRC. These protections encompass the right to receive benefits—monetary and otherwise—without discrimination, in order to protect from lack of income, inaccessibility to healthcare, and insufficient familial support, as is discussed in detail below.

Legislation enacted for the provision of social security, and bodies created pursuant to them, such as the EOBI, have proven to be woefully inadequate in providing social security to every worker, as is envisioned by Article 38 of the Constitution. The formula through which pensionary benefits are determined have failed to keep pace with cost of living, and the bulk of workers, who work in informal positions are not covered by the social insurance scheme. In any case, the financial solvency of the Institution is at risk due to general withdrawal of government support, coupled with financial mismanagement on the part of the EOBI, and unless there is a

change in government policy, the EOBI will find it difficult to further support the benefits that it does provide.

21. Right to Property

The right to property, i.e. to acquire it, hold it or dispose of it without unreasonable encumbrances has been internationally recognized as a human right only in the Universal Declaration of Human Rights. All other international legal instruments do not include an actual right to property, they merely prohibit discrimination in respect to the right to own property. Moreover, none of the international instruments stipulate that anyone deprived of their property must be compensated for it.

Despite the lack of international consensus regarding the rights codification, it is directly protected in Pakistan's Constitution, which dedicates two provisions to the realization of this right. It is an integral right of a citizen that may not be violated, or discriminated against based on sex, race or religion. Moreover, the Legislature has been exceptionally active when promulgating laws for the protection of the right to property. There are numerous laws that regulate, *inter alia*, the ownership, transfer, registration, taxation, acquisition, tenancy, and succession of immovable property. Some of these laws relate to property or land in rural areas, while others relate to property in urban areas. Whilst the laws that govern movable and immovable property in rural and urban areas are different, some do have overlapping application.

Significantly, the Government has the power to deprive an owner of their land for a 'public purpose', and while there are procedural safeguards to this deprivation, these are bypassed 'in urgent cases'. This impacts the right to property and allows the State wide powers in depriving an individual's right to property. The Legislature has enacted laws that protect rights of innocent parties from fraud and illegal dispossession, yet a lack of enforcement of these laws has been a growing issue over the years. Moreover, registration systems in Pakistan are in need of serious reform to effectively cater to the needs of citizens.

The inherent issue with regard to the right to property lies in the lack of enforcement of laws and the inefficiency of court systems. The reality in Pakistan is that the majority of citizens are left at the mercy of technical delays. A prime example of these delays is witnessed upon the death of a person, where the family of the deceased must jump through several hoops to receive their requisite shares of inheritance. This, as discussed in detail in the forthcoming sections, may be the direct consequence of outdated and inefficient laws. Whilst recent legislation has been enacted to curb these delays as well as to further criminalize illegal dispossession of property and *benami* transactions, it remains to be seen whether these will be adequately implemented.

The protection of this right becomes an issue when attempts are made to reconcile it with Shariah law. Muslim Personal Law impacts the protection of the right for women. For instance, a Muslim woman is required to give up some of her property when exercising her right to khula, moreover, she is unable to hold property for her children as a guardian and is only entitled to a

fraction of a male's share in the inheritance. However, Pakistan's domestic legal regime has attempted to pass laws directed towards the indiscriminate protection of this right.

The Judiciary when adjudicating upon this right has interpreted it expansively in terms of allowing the general enjoyment of property by individuals, free from unreasonable restrictions. The Courts have held in recent years that acts depriving a person of property without their consent, proper acquisition, purchase or payment are to be struck down as void. Moreover, the Superior Courts have made it abundantly clear that this right, in line with international standards is to be enforced indiscriminately. Consequently, the right has been recognized equally for transgender people, eunuchs and Non-Muslims both by the Judiciary as well as Parliament.

The Courts, in property cases, have also made it a known principle of law that no actor of the State has the right to deprive an individual of the right to acquire or dispose of property. Any deprivation of this right in the public interest by the Government is subject to just compensation by the Government. Despite efforts by the Courts, it is not uncommon for the laws to be abused by functionaries of the State that have acquired the land of private citizens, giving them inadequate compensation by labeling it a 'public good'. This is an area that is in need of amendment and review as it notably facilitates the violation of a citizen's right to property.

IV. Social Rights

Social rights, closely linked to economic and cultural rights, enhance the protections afforded to citizens by the State. They require governments and other powerful actors within a State to ensure people have access to basic needs, and that people have a voice in decisions affecting their well-being. These rights help enhance the enjoyment of numerous other rights and ensure minimum protections in society from the ravages of poverty, disease, and lack of education. The right to education for example, a social right, enhances the ability of individuals to participate in political life, affords people the chance of breaking the cycle of poverty, and improves economic conditions in the country. Similar, without the right to health and the adequate provision of healthcare to people, few rights, if any, can be enjoyed by people.

The thematic grouping of social rights is an amalgamation of three distinct rights that are:

- i. Right to Health and Well-Being
- ii. Right to Education
- iii. Right to an Adequate Standard of Living

The rights have been protected through provisions in all eight International Human Rights instruments that have been ratified and acceded to by Pakistan. These rights have been realized in the Constitution of Pakistan, 1973 through **9 constitutional Articles**.

Domestically, these rights have been protected through a total of **58 Federal and Provincial legislation**. Moreover, **48 seminal judgments** have been analysed in order to understand the ambit of the protection of these rights. **29 domestic Bodies** have been mandated to protect and fulfill these rights for the citizens of Pakistan. A total of **40 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

A brief overview of the study of each right in this thematic category is provided below:

22. Right to Health

There has been a rapid evolution of the right to health under international law which has significant conceptual and practical implications on a country's health policy. A review of international legal instruments and their interpretive documents highlights the fact that international law related to health extends beyond health care and includes preconditions such as water and adequate sanitation and nutrition that are largely covered by the right to an adequate standard of living.

Safeguarding the right to health of citizens is a good indicator of the quality of life that a State provides to its citizens. Based on Pakistan's international obligations and guidance offered by the Superior Courts there have been efforts to enshrine the right to health as a fundamental Constitutional provision, however, for now it remains a penumbra of the right to life and the right to inviolability of dignity of man. Nevertheless, the Principles of Policy lend direction to the State in enacting and regulating policies that relate to the provision of health care facilities.

As with all international human rights, implementation and enforcement of the right to health critically depends on legislative and judicial action. Legislative action in this area has led to the promulgation of close to two hundred Federal and Provincial laws in Pakistan. These laws are placed in three categories related to the right to health based on whether they are preventive, curative or rehabilitative in nature.

In the section in the report, the laws that relate to preventing the spread of diseases, malnutrition, the health of women and children as well as the health of occupational workers, rehabilitation of drug addicts, and mental health have been reviewed. Each of these categories have been broken down into the main issues that may arise during the implementation and provision of the right to health.

With the passing of the 18th amendment and the Provinces obtaining more autonomy to regulate, monitor and redress health conditions there has been an active effort at the grass-root level by the Legislature to fix issues related to health. This legislative action is substantiated with

the introduction of autonomous and domestic bodies responsible for regulating equitable, accessible & affordable health care services.

At a judicial level, the Courts have often upheld the protection of the right to health under the banner of the right to life. By clubbing health related rights such as the right to a safe environment, right to well-being and the right to drink uncontaminated water under the right to life, it has outlined the significance of the entitlement to the right to health for citizens.

However, despite the legislative effort and the judicial guidance on the right to health, the area still remains problematic in terms of the State delivering on the entire gamut of its international human rights obligations relating to health and its preconditions. This is primarily due to the wide socio-economic disparities, unhygienic living conditions especially for socio-economically depressed communities, rural-urban divide, traditional and cultural factors that discriminate against some sections of the populace.

Other issues that have resulted in poor health conditions are lack of access to information and services that may improve living and health conditions. Health information and services remain inaccessible to many in Pakistan due to lack of investment in health programs, inadequate laws and religious and traditional influences. Lastly, in a society like Pakistan, mental health related conditions are often left undiagnosed due to the lack of experienced professionals available to identify and classify the mental disorder as well as the stigma attached to mental illness within the society.

In the field of mental health, Pakistan has one of the lowest patient-to-doctor ratios in the world. There are less than 400 trained psychiatrists nation-wide, which is approximately one psychiatrist per half-million people. Services for mental health are also stunted due to the lack of implementing mechanisms for relevant legislation, with only 2.4 per cent of the country's annual expenditure going towards health, of which less than two percent is allocated for mental health specifically.

Issues of implementation and gaps in legislation are explored in detail in the report in relation to Pakistan's international and constitutional obligations related to the right to health. The sections provide an overview of the international scope of the right to health, the constitutional provisions that relate to it and the domestic implementation of the right. The section on domestic implementation highlights the laws that have a direct and, in some cases, tangential effect on the right to health of citizens including mothers, infants, mentally ill patients and victims of other communicable diseases. The chapter concludes with a set of recommendations to help bring Pakistan's domestic legal framework in line with its international and constitutional obligations.

23. Right to Education

The right to education remains critical to the development of both the individual and society as a whole. The right is indispensable for the realization of a wide variety of other human rights. The UDHR, ICESCR and the CRC in relation to the right to education have helped establish legal

mechanisms which States Parties can implement. Accordingly, the State of Pakistan has amended its Constitution to include the right to education as a fundamental right under Article 25-A.

In addition to this, Pakistan's Constitution is explicit in its prohibition of discrimination in educational institutions on the basis of caste, race, religion or place of birth (except in the case of the advancement of a backward class of people). It also protects institutions of religious instruction and removes the obligation of receiving religious instruction in a religion which one does not follow in the interest of minorities.

The Superior Courts of the country have also enhanced the State's commitment to providing education by ruling that in addition to the provision of education; textbooks, transportation and an environment conducive to learning are also to be provided.

The devolution of powers that occurred as a result of the 18th Amendment provided the Provinces with an opportunity to pass their own distinctive laws on education. Accordingly, each Province has enacted legislation that corresponds with the constitutional obligation to provide education under Article 25-A.

Pakistan has also taken historical strides in erasing discrimination against the transgender community and reaffirmed their right to education. Additionally, numerous domestic bodies concerned with children's welfare and development have also been established to monitor the quality and accessibility of educational institutions

That being said, realizing fully the right to education under the Constitution is difficult for Pakistan in light of its population and socio-economic setup. Currently, the literacy rate in Pakistan is 60 per cent with 22.64 million children out of school. This inordinately affects girls more than boys with 12.1 million girls out of school compared to 10.5 million boys.

One of the most pressing challenges faced by the State with regard to providing universal education is the absence of adequate infrastructure for schools and the existence of ghost schools – schools existing only on paper. The Judiciary has issued a directive to end these schools, and while efforts have been made to that effect, many still fall below the radar. Additionally, schools that are functional lack access to basic amenities such as seating, boards for instruction and trained instructors. According to reports, only 54 per cent of schools have a functional toilet, 60 per cent have usable water and 51 per cent have electricity.

When infrastructural challenges are overcome, the prevalence of child labor in the country serves as an impediment to education. Despite the promulgation of laws that criminalize child labour, over 12.5 million children are involved in child labour in Pakistan, in numerous industries involving carpet weaving, deep sea fishing, leather tanneries, domestic work, brick-kilns, coal mines and auto-workshops. Research by the Global Initiative on Out-of-School Children shows the relationship between child labour and being out of school. It reports that children engaged in child labour are more likely than non-working children to be out of school, with only 9.9 percent reporting school attendance. Prevalence of corporal punishment despite legislation that

discourages its use further pushes children away from education and towards labor where they are no less vulnerable.

While Pakistan has put the advancement of women at the forefront of its plans in the coming years, female students still continue to face discrimination and challenges in education. These range from conservative social attitudes to a lack of necessary sanitation facilities, like a girls' toilet and access to sanitary items as well as the prevalence of child marriages.

Latest estimates from a Population Census indicate that persons with disabilities constitute about 2.54 % of the population of Pakistan, and their number was around 5 million during 2012. Out of these, about 1.4 million are children of school going age. At present, it is feared, less than 5% of school aged disabled children are enrolled in special education.

This chapter in the report explores these challenges in relation to the legislation that has been enacted. The first section relates to the international scope of the right to education followed by an analysis of Article 25-A and other enabling constitutional provisions that relate to education. The section on domestic implementation looks at both the domestic laws that are in place for the provision of education and the challenges that are associated despite those laws, and the domestic bodies that have been constituted to implement the laws that are in place. The chapter ends with a set of recommendations aimed to help bring Pakistan's domestic implementation of the right to education in line with its international obligations.

24. Right to an Adequate Standard of Living

The right to an adequate standard of living encompasses a number of aspects, primarily including the right to food and water and the right to clothing and housing. Such obligations, at an international level, are enshrined through the UDHR, ICESCR, ICCPR and its protocols (collectively known as the International Bill of Rights) and through the CRC which caters, specifically, to the rights of children.

Although there is no overarching provision that governs the right to an adequate standard of living within the Constitution of Pakistan, different aspects of the right have been addressed through various rights in the Constitution as well as Principles of Policy that provide guiding principles to the State when enacting laws and making executive decisions. The Constitution provides for the freedom of trade, protection of property rights, and promotion of social justice and well-being of the people, which are a few of the essential rights that are crucial for the realization of an adequate standard of living. Additionally, laws enacted and domestic bodies in relation to this right have been examined at length, with a particular focus on wages, housing, food, and water in the domestic legal framework of Pakistan.

Despite protection being afforded through Pakistan's legislative framework, the standard of living in Pakistan is still far from being adequate for the majority of citizens. The standard of living in Pakistan varies greatly between different classes of society, and a large population of the country remains poor. According to the report launched by the Ministry of Planning, Development and Reform in 2016, nearly 39 percent of Pakistanis live in multidimensional

poverty, with the highest rates of poverty in FATA and Balochistan. For the unemployed, the maintenance of a reasonable standard of living is an uphill task to say the least, due to which there is a need for Pakistan to gradually transition towards introducing a system of unemployment benefits or expanding income support such as the BISP system.

It is also important to note that the minimum wage level in Pakistan fails to meet the requirements of workers as it does not adequately take into account the cost of living and is not sufficiently a 'living wage,' which has been discussed. Considering the growing living cost and inflation rate, there is a need for the State to make the minimum wage a living wage for all workers by taking account of real living costs in Pakistan, to allow them to lead a dignified life. Poverty and low pay are closely associated with social disadvantage including poor health, substandard housing and personal debt and street crime.

Housing as an essential component of the right to an adequate standard of living has also been highlighted in great detail in the report. Although the country has a plethora of laws and policies to strengthen the housing sector, there are still many legal loopholes and gaps in effective implementation. Pakistan is facing a shortage of 9 million residential houses, which is growing by 600,000 annually. Recent endeavours by the Government to address the housing shortage on a large scale are to be lauded and should be supported till they are fully realized.

Access to sufficient and healthy food also forms a part of the right to an adequate standard of living. However, almost half of the population (48.6%) in Pakistan does not have access to sufficient and nutritious food. Due to the growing populations of urban areas and new urban settlements, food security is being risked even more. Although prohibitions have been placed on unsafe food, false advertisement and false labeling, there still remain problems that need to be tackled. Food adulteration is still carried out in the country and food items continue to be prepared with dangerous or sub-standard ingredients, posing serious threats to health. The food sector is controlled by the corporate, for-profit sector which has unfortunately not prioritized the health of their customers.

The Government of Pakistan recognizes that the right to water is considered as an integral part of the right to an adequate standard of living, since it is one of the most fundamental conditions for survival. However, despite improvements in water sources and sanitation facilities through various initiatives by the government, UNDP's development advocate shares that 27.2 million Pakistanis still do not have access to safe water.

With respect to the legal protection ensuring an adequate standard of living, a number of laws have been highlighted which include specific legislation on wages, housing, food and water. After the 18th Amendment, these matters have come under the competence of the provincial governments. Owing to this, the provisions of all provinces have been analyzed and recommendations have been given accordingly so that all provinces are able to enhance the protections afforded under this right.

The Superior Courts have also often adjudicated upon different aspects of the right to an adequate standard of living. For instance, the Supreme Court has stated that the right to safe

drinking water is a part of the right to life guaranteed under the Constitution of Pakistan. Other than this, the Court has also found that the people of Sindh were not drinking clean water and filtration plants have been rendered almost redundant due to inefficient and corruption on the part of government departments responsible for operating them and recommended that new sources of water supply be acquired immediately for Karachi.

There are also a number of bodies of the State that have been identified which help ensure an adequate standard of living in Pakistan, including the Water and Power Development Authority, Federal Government Employees Housing Foundation, and the food authorities of provinces, among other bodies.

This chapter in the report sheds light on the international scope of the right to an adequate standard of living, and the constitutional obligations on the State in context of this right. The domestic implementation of this right is discussed extensively by examining the domestic law that is in place as well as the domestic bodies that have been established to oversee the implementation of the laws. The laws have been reviewed thematically while focusing on the primary issues that are faced by different groups of people regarding wages, housing, food and water. Finally, the chapter concludes with a set of recommendations to help bring Pakistan's domestic legal framework in line with its international and constitutional obligations.

V. Cultural Rights

Cultural rights, as a sub-set of human rights, ensure the enjoyment of culture, language, art, traditions, and customs. They also aim at protecting minorities and the distinct features of their traditions and customs. They do so by promoting culture in conditions of equality, human dignity, and non-discrimination and guarantee to people and communities access to culture and participation in it.

The Cultural Rights' thematic grouping is a collection of three distinct rights that have formed separate Chapters in the Report.

These are:

- i. Right to Culture and Science
- ii. Right to Social and International Order
- iii. Minority Rights

The thematic grouping of cultural rights has been created based on the international provisions of the eight International instruments as ratified and acceded to by Pakistan. The Constitution of Pakistan, 1973 has through **11 distinct Articles**, provided a constitutional footing to these three cultural rights.

Domestically, the rights have been protected through the passage of a total of **36 domestic Federal and Provincial legislation**. The ambit and scope of the rights that have been provided domestically has been analysed through the reliance of **28 seminal judgments** of the Superior Courts. Lastly, a total number of **24 many domestic Bodies** have been mandated with the protection and fulfillment of these rights for the citizens of Pakistan. A total of **24 recommendations** have been made, including new legislation, amendments in existing legislation, administrative measures, changes in the scope and function of government bodies, development of Standard Operating Procedures, Capacity Building Exercise, and Outreach Programmes.

A brief overview of the study of each right in this thematic category is provided below:

25. Right to Culture and Science

The right to culture and science protects a range of interests relating to cultural, scientific and other creative endeavours. This right is vital for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world. Culture is a broad term that can be construed to encompass multiple subsets ranging from art, music, dance to rituals and religion etc. Internationally, States not only have the negative duty of not interfering in people's cultural lives but also have the positive duty of safeguarding the pre-conditions for participation, promotion, access and preservation.

Regarding science, Pakistan's international obligations require that there be freedom of scientific research, an enabling environment that leads to the enjoyment of the benefits of scientific progress, and for the State to provide protection from adverse effects of science. Compliance with such a right not only enables people to be able to contribute to the society but also leads to a direct benefit to the State itself from this scientific research.

The importance of this right can be ascertained on both an international and domestic level. At the international level the right caters to the needs of specific subsets which include women, disabled persons, and those affected by racial discrimination. It is also preserved in more general language by virtue of the International Bill of Rights. At the domestic level, it is preserved within our Constitution either directly or through the interpretations accorded to certain constitutional rights by the Superior Judiciary of Pakistan.

Parliament too has endeavoured to promulgate legislation to cater to this right through laws touching on subsets of culture and science. These laws aim to protect cultural freedoms and heritage. The Provinces have also passed legislation to protect their provincial heritage and to promote their regional languages. For a deterrent effect, the law also provides for penal sanctions

so that individuals can be prevented from infringing upon the rights of others. The government has also taken steps to enable people to enjoy their culture. This includes, for instance, the restoration of a historical temple namely the 900-year old Katas Raj Temple and restoration works under the Lahore Walled City Authority.

However, there remains a lack of implementation and accountability of the bodies that have been tasked to supervise the enforcement of this right. This includes, *inter alia*, a paucity of proper regulation within the automobile sector, the ultimate responsibility of which lies with the Ministry of Science and Technology.

Pakistan is in need of legislation that acts as an enabler for people to be able to realize their rights alongside legislation that are preventive in nature i.e. those that prevent the infringement of rights. This could include legislation to promote culture through participation and access and the same could be properly enforced through the governmental bodies already in place and responsible for monitoring such aims. Moreover, the country should also ensure that those cultural markers which can be preserved and registered as geographical indicators should be so registered in order to promote trade and as a marketing tool.

The chapter explores the domestic implementation of the right to culture and science in detail by reviewing the laws that apply to it and the domestic bodies that are mandated to ensure its implementation. The final section proposes a set of recommendations to help bring Pakistan's domestic implementation of the right to culture and science in line with its international obligations.

26. Right to Social and International Order

International instruments such as the Universal Declaration of Human Rights are integrated documents wherein rights are to be seen in relation to each other, operating under over-arching principles such as peace and rule of law. Resultantly, the fulfilment of social and economic rights is largely based on the precondition of a just and peaceful social and international order. In the context of Pakistan, it is important for the State to take measures to prevent transboundary harm and to work in harmony with other nations to pursue international peace for its own domestic stability.

Within Pakistan's domestic legal regime, there is no explicit provision that focuses on promoting social and international order, however, the Principles of Policy lend guidance to State authorities to take measures that may improve and strengthen ties with other Muslim nations. The judiciary has also emphasized the State's responsibility to take necessary steps to eradicate terrorism to aid in the promotion of international peace and security.

With regard to transboundary harm, the Judiciary and Legislature in Pakistan have shown a proactive approach. Protection of the environment has become a key area of concern and dialogue and Environmental Protection Acts have consequently been passed by the Provinces. While issues of inter-provincial harmony and federal and provincial competence have given rise

to problems in this area, there is a general commitment to curbing pollution because of its harmful effect on the environment.

In terms of international peace, Pakistan has contributed to this cause either in the form of deploying personnel for peacekeeping missions or via political dialogue with significant international stakeholders. Pakistan is the third largest contributing country to the UN Peacekeeping Forces and since 1960 more than 169,000 Pakistani personnel have served in forty-one UN Missions in twenty-three countries.

Pakistan's new Government has also demonstrated its commitment to peace and stability in the region. In November 2018, the Prime Minister took the initiative for promoting international tolerance towards religions via a campaign that is to culminate in the execution of a multilateral treaty. The Government's allowance of visa free access to the Sikh pilgrims via the Kartarpur Corridor is also symbolic of its efforts to improve bilateral relations with India. Pakistan has also played an instrumental role in promoting peace and reconciliation in Afghanistan by facilitating peace-talks between the U.S and Afghan Taliban.

Since this right is not deeply rooted in law and is largely dependent on executive and policy decisions, the chapter does not follow the structure of the other rights discussed in this study. The international scope of the rights and correlating constitutional obligations have been highlighted, however, the section on domestic implementation relates more to Pakistan's contribution to the international legal order as opposed to legislative enactments. The domestic bodies that are primarily responsible for promoting a just and peaceful social and international order are also highlighted. The chapter ends with a set of recommendations to help guide stakeholders on how to bring Pakistan's domestic implementation of the right to social and international order in line with its international obligations.

27. Minority Rights

Under international law there is no general consensus on the definition of a minority. Minorities are generally understood to be groups with linguistic, ethnic or cultural characteristics which distinguish them from the majority. In the context of Pakistan, when referring to minorities, persons and groups that belong to cultures, religions, ethnicities or additional categories that deviate from the dominant majority have been highlighted.

The protection of minorities is a cornerstone of Pakistan's ideology as a nation, created to allow the Muslims of the subcontinent the freedom of conscience to choose and practice their religion. Despite the fact that Pakistan has received international criticism regarding its treatment of minorities, within the Constitution of Pakistan there are nine distinct provisions that deal with the matter of non-discrimination on the basis of religion and otherwise. These Articles cover everything from the equality of all citizens, to the fundamental freedom to practice and profess faith, prohibition of exploitative practices against religious groups, non-discrimination in the allotment of service positions and even the preservation of places of worship and culture. There is also allowance for positive discrimination in the interest of minorities through quota systems to allow for proportional representation. Pakistan has also taken many progressive steps to

empower the disabled and the transgender community through legislation that ensures their employment and participation in civic life.

In line with these provisions the Superior Courts of Pakistan have upheld the right of minorities particularly with regards to religious freedom. They have ruled in the interest of protecting minority places of worship ordering the government to go to the highest extent of the law to provide security to these establishments, admonish forcible conversions, reinforce marriage rights for Hindus and divorce rights for Christians. On numerous instances the Courts have struck down laws and practices that violate the religious freedom of minority groups. Despite the controversy that surrounds the issue of blasphemy in Pakistan, an in-depth study of the judgments shows overwhelming precedent by the Courts to dismiss trials with false and unsubstantiated claims of blasphemy.

In 2018, Pakistan was placed on the US Department of State's blacklist on grounds of "severe violations of religious freedom." Despite the political factors that may have motivated this decision, Pakistan has faced many challenges in protecting and upholding the rights of minorities in its territories. The greatest threat to Pakistan's ability to fully protect its minorities (particularly religious minorities) comes down to the misuse of the blasphemy law, religious intolerance, sectarian violence and parochial prejudice. Often the issue stems from vigilante action that is taken against the person accused of blasphemy. An egregious example of this are the protests that took place after the Supreme Court acquitted Asia Bibi of all blasphemy charges due to both insufficient evidence and contrived witness testimonies. Protesters took to the streets issuing seditious threats against the Judiciary, the Government and the Army and inflicting millions of rupees' worth of damage to public property.

This chapter in the report goes on to explore the laws enacted by Pakistan that cover everything from the penalty for incitement of religious hatred, to those protecting minority places of worship, personal law, the right to public participation and preservation of culture and curriculum. These laws seek to actively discourage religious intolerance and empower minorities by encouraging their participation in all spheres of public life.

On paper, it seems that Pakistan already has a comprehensive system of laws in place that if enforced would allow its minority citizens the necessary protection to practice their beliefs uninhibited. This framework includes the existence of three domestic bodies designed specifically to monitor the status of these minority communities, their rights, and the implementation of the requisite laws.

The chapter in the report highlights the international scope of the rights accorded to minorities followed by the constitutional obligations that are upon the State in relation to its treatment of minorities. The section on domestic implementation is divided into domestic legislation and domestic bodies. Within domestic legislation different themes have been highlighted which range from Pakistan's blasphemy laws to public participation and personal law. The chapter concludes with a set of recommendations to help bring Pakistan's domestic implementation in line with its international obligations.