

## PATERNALISM IN CONSTITUTIONAL LAW AND ITS IMPACT ON FUNDAMENTAL RIGHTS IN PAKISTAN

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### Abstract

*This study explores the role of paternalism in Pakistan's constitutional framework and its impact on fundamental rights. Paternalism, understood as state intervention in individual choices to protect welfare, morality, or security, has been evident across legislative, executive, and judicial actions. The study aims to analyze the types and justifications of paternalism, examine its influence on key rights such as liberty, freedom of speech, religious freedom, and protections for women and minorities, and evaluate the roles of the judiciary, legislature, and executive in shaping constitutional governance. Using a qualitative doctrinal approach complemented by comparative analysis, the study draws on classical liberal theory, concept of soft paternalism, and the proportionality doctrine to assess the legitimacy and scope of state interventions. The findings indicate that while certain paternalistic measures serve to protect vulnerable populations, excessive or unjustified interventions risk undermining autonomy and democratic principles. The study concludes with recommendations for rights-based governance, proportional state action, and legal reforms to achieve a balance between public welfare and individual freedoms.*

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## INTRODUCTION

Paternalism in constitutional law refers to the state's interference in the rights, choices, or actions of individuals with the justification of protecting them from harm, promoting welfare, or safeguarding societal morals. In democratic governance, the tension between individual autonomy and state intervention is a recurring concern, particularly in countries with diverse socio-religious and political contexts. In Pakistan, paternalistic tendencies have been evident in legislative, executive, and judicial practices. The Constitution of Pakistan (1973) enshrines fundamental rights such as liberty, freedom of speech, freedom of religion, and equality before the law, but it also allows restrictions on these

rights in the interest of public order, morality, and national security (Ahmed, 2015). This duality creates a legal and normative space where the protection of public welfare often intersects and at times conflicts with individual freedoms. Historically, Pakistan's socio-political evolution has fostered conditions conducive to paternalistic governance. Frequent political instability, periods of military rule, and fragile democratic institutions have encouraged both courts and legislatures to adopt protective interventions under the guise of preserving public order or moral standards (Kennedy, 2005; Newberg, 1995). Similarly, socio-religious imperatives, anchored in the Objectives Resolution of 1949,

have infused Islamic principles into the constitutional framework, providing further justification for paternalistic measures aimed at shaping moral behavior and safeguarding collective societal interests (Lau, 2006). Understanding paternalism in Pakistan is therefore critical, not only for evaluating the role of state authority but also for assessing the protection and limitations of fundamental rights in a pluralistic society.

Paternalism, in the context of constitutional governance, can be broadly classified into hard and soft forms. Hard paternalism occurs when the state restricts individual choices even when the individual is fully informed and capable of making rational decisions. Soft paternalism, on the other hand, intervenes only when an individual's autonomy is compromised due to ignorance, lack of information, or coercion (Dworkin, 1972; Feinberg, 1986). Beyond these categories, paternalism may also be moral, welfare-oriented, legal, or judicial, depending on whether the objective is to promote moral behavior, social welfare, compliance with law, or rights protection. In constitutional governance, paternalism becomes particularly relevant when interventions affect fundamental rights. The harm principle, articulated by John Stuart Mill, emphasizes that state interference is justified only to prevent harm to others (Mill, 1978). This principle underpins liberal objections to excessive paternalism, asserting that individuals should have freedom over personal decisions unless those decisions directly harm others. In contrast, modern theories, including soft paternalism and libertarian paternalism, recognize that some interventions may be necessary to protect autonomy, ensure welfare, or guide decisions without fully eliminating individual choice (Dworkin, 1972; Sunstein & Thaler, 2008).

The Constitution of Pakistan (1973) serves as the supreme law and provides the structural foundation for balancing state authority with individual rights. It establishes a separation of powers among the legislature, executive, and judiciary, while outlining the protection of fundamental rights in Articles 8-28. These rights include the right to life and liberty, equality

before law, freedom of speech, freedom of religion, and safeguards against discrimination and arbitrary state action (Ahmed, 2015). At the same time, the Constitution permits limitations on rights under clauses related to "reasonable restrictions," which allow the state to intervene in the interest of public order, morality, health, and national security. The Objectives Resolution, incorporated into the Constitution, adds an Islamic normative layer, emphasizing moral and ethical governance. This dual framework guaranteeing individual rights while permitting state intervention creates a complex interplay between paternalistic governance and the protection of fundamental rights (Lau, 2006). In practice, this structure has allowed the judiciary to adopt a paternalistic role through judicial activism and interventions. Courts have sometimes prioritized collective welfare or moral standards over individual liberties, particularly in cases involving public interest litigation or constitutional interpretation of social policies. Similarly, legislative and executive branches have enacted laws that reflect paternalistic concerns, including morality-based regulations, public health measures, and restrictions on expression and religion. This interplay raises normative and practical questions about the appropriate limits of state intervention and the mechanisms available to protect constitutional rights.

Despite constitutional guarantees, fundamental rights in Pakistan are frequently limited under paternalistic reasoning. Judicial, legislative, and executive interventions often prioritize public welfare, morality, or security over individual autonomy, creating a persistent tension between state authority and constitutional freedoms. The problem is compounded by socio-religious factors, weak institutional capacity, and political instability, which can justify or obscure overreach. The research problem, therefore, lies in identifying the extent to which paternalism affects the scope and quality of fundamental rights in Pakistan, and whether existing constitutional and institutional mechanisms effectively balance state protection with individual freedoms.

The primary objective of this study is to provide a comprehensive analysis of paternalism within the framework of constitutional governance in Pakistan. It seeks to examine the different forms and types of paternalism, including hard and soft paternalism, moral and welfare-oriented interventions, and their implications for the protection of individual rights. A central focus of the study is to assess the impact of paternalistic interventions on fundamental rights guaranteed under the 1973 Constitution, including liberty, freedom of speech, religious freedom, and protections for women and minorities. In doing so, the study evaluates the roles of the judiciary, legislature, and executive in both promoting and restricting individual liberties, highlighting the tensions between state authority and personal autonomy. Furthermore, the study critically explores theoretical frameworks that justify or limit paternalistic governance, drawing on classical liberalism, soft paternalism, and the proportionality doctrine to provide normative guidance. Finally, the study aims to propose policy and legal strategies designed to balance necessary paternalistic interventions with the protection of fundamental rights, ensuring that state actions remain proportional, accountable, and consistent with democratic and constitutional principles.

This study is significant because it addresses a gap in scholarship that links normative theories of paternalism with constitutional structures and institutional practices in Pakistan. By analyzing judicial, legislative, and executive interventions in relation to fundamental rights, the study provides insights into the legitimacy, necessity, and proportionality of paternalistic measures. It contributes to broader debates on judicial activism, legislative discretion, and governance, while offering recommendations for rights-based constitutional reform. The study also provides a comparative perspective, drawing lessons from other jurisdictions, to guide Pakistan toward a more balanced and accountable approach to paternalism within its constitutional framework.

## Literature Review

The modern debate on paternalism in constitutional law is rooted in classical liberal political theory. John Stuart Mill (1859/1978), in *On Liberty*, articulated what has become the foundational principle of anti-paternalism: the harm principle. According to Mill, the only legitimate justification for state interference with individual liberty is the prevention of harm to others. Conduct that affects only the individual however imprudent or morally questionable does not warrant coercive intervention. Mill's argument rests on the moral sovereignty of the individual and the belief that personal autonomy is essential for human development and social progress. Mill's theory has deeply influenced constitutional democracies by establishing a presumption in favor of liberty. In constitutional adjudication, his harm principle functions as a normative benchmark against which restrictions on freedom of speech, religion, privacy, and personal autonomy are evaluated. Laws grounded in morality, public decency, or paternalistic concern must therefore demonstrate tangible harm to others rather than mere social disapproval. Mill's framework remains central to liberal constitutionalism, particularly in assessing whether state action is protective or excessively intrusive. Expanding upon Mill's work, Joel Feinberg (1986) refined the distinction between harm and offense. Feinberg argued that not all offensive conduct constitutes legally cognizable harm. He maintained that criminalizing self-regarding behavior requires compelling justification, particularly where individual autonomy is fully voluntary and informed. While Feinberg acknowledged that certain limited forms of "soft paternalism" might be justified—such as intervention where consent is impaired he firmly rejected broad moral paternalism. Feinberg's contribution is particularly relevant to constitutional discourse because it clarifies the boundaries of legitimate state intervention. His emphasis on voluntariness, informed choice, and rational agency strengthens the autonomy-centered critique of paternalistic governance. Together, Mill and Feinberg establish a strong liberal presumption against coercive state

interference, a presumption that provides a critical lens for evaluating constitutional restrictions in Pakistan.

Although classical liberalism resists paternalism, contemporary philosophical scholarship has developed more nuanced defenses of limited intervention. Gerald Dworkin (1972) offered one of the most influential arguments in favor of “soft paternalism.” Contended that state interference may be justified where an individual’s autonomy is compromised by misinformation, coercion, psychological incapacity, or immaturity. In such circumstances, temporary restrictions may protect rather than undermine autonomy. Distinguished between interference that substitutes the state’s judgment for that of a competent individual and intervention that safeguards the conditions necessary for meaningful choice. His theory therefore reframes paternalism as autonomy-enhancing rather than autonomy-restricting in certain contexts. In constitutional systems, this reasoning often underpins judicial intervention to protect vulnerable groups or prevent exploitation. However, critics argue that determining when autonomy is genuinely impaired remains inherently subjective, thereby creating space for judicial overreach. A more recent development in paternalist theory is the concept of “libertarian paternalism,” advanced by Cass Sunstein and Richard Thaler (2008). They argue that governments can influence individual decisions through subtle policy design commonly referred to as “nudging” without eliminating freedom of choice. By structuring default rules in ways that promote welfare-enhancing outcomes, the state can guide behavior while preserving individual autonomy. Libertarian paternalism attempts to reconcile freedom with regulation. Unlike coercive paternalism, it does not prohibit choices but shapes the environment in which decisions are made. While this approach has gained prominence in regulatory governance, it has also generated debate about manipulation and transparency. In constitutional analysis, the distinction between coercive and non-coercive paternalism is significant, particularly in jurisdictions where moral or religious

considerations frequently inform legislative and judicial action.

In South Asia, paternalism assumes a distinctive constitutional character shaped by colonial legacies, political instability, and strong judicial institutions. Pakistan’s constitutional development, marked by periods of military rule and democratic fragility, has fostered a judiciary that often perceives itself as guardian of the constitutional order. Paula R. Newberg (1995) observed that Pakistan’s courts have historically assumed a supervisory role over political institutions. Rather than functioning solely as neutral arbiters, they have frequently positioned themselves as protectors of national integrity and public interest. This guardian model reflects a paternalistic orientation in which judicial intervention is justified as necessary to correct institutional failure.

Similarly, Martin Lau (2006) examined the Islamization of Pakistan’s legal system and its implications for constitutional rights. He noted that constitutional provisions affirming the Islamic character of the state significantly influence judicial reasoning. In areas such as blasphemy, gender relations, and public morality, courts have at times adopted a protective stance grounded in religious norms. This dynamic creates a hybrid constitutional order in which liberal rights discourse coexists with religiously informed paternalism. Charles H. Kennedy (2005) critically assessed Pakistan’s judicial activism, arguing that the expansion of judicial review often reflects a political dimension of paternalism. While courts justify intervention as necessary for safeguarding democracy and fundamental rights, such activism may blur the boundaries between adjudication and governance. Kennedy suggests that when courts substitute their policy preferences for those of elected institutions, they risk undermining democratic legitimacy. The South Asian experience thus reveals a form of constitutional paternalism that is context-specific. In Pakistan, paternalism is not merely philosophical but institutional, shaped by socio-religious norms, political instability, and a historically assertive judiciary.

The period between 2005 and 2013 marked a significant transformation in Pakistan's constitutional jurisprudence. During this era, the Supreme Court expanded its *suo motu* jurisdiction under Article 184(3) of the Constitution, enabling it to initiate proceedings in matters of public importance relating to fundamental rights without formal petitions. The International Commission of Jurists (2015) documented this phase as one of intensified judicial activism. The Court intervened in areas traditionally reserved for the executive and legislature, including administrative appointments, economic regulation, and anti-corruption measures. Supporters argue that such activism strengthened accountability and rights protection in a politically unstable environment. Critics, however, contend that it reflects an assertive and paternalistic conception of judicial authority. This expansion of judicial power illustrates a shift toward judicial supremacy, where courts assume a managerial role in governance. While this approach may enhance the enforcement of fundamental rights, it simultaneously raises concerns regarding separation of powers and institutional balance. The literature remains divided on whether such paternalistic activism is a necessary corrective in weak democracies or an overextension of judicial authority.

## Gap Analysis

Despite substantial scholarship on judicial activism and Islamization in Pakistan, significant gaps remain. First, existing studies rarely integrate normative theories of paternalism developed in Western political philosophy with Pakistan's constitutional practice. The philosophical debates initiated by Mill, Feinberg, Dworkin, and Sunstein are seldom systematically applied to Pakistani jurisprudence. Second, scholars often examine judicial activism or Islamic constitutional provisions in isolation, without analyzing how constitutional structure itself may facilitate paternalistic governance. The interaction between reasonable restrictions clauses, Islamic provisions, and expansive judicial review remains underexplored. Third, limited

attention has been paid to the direct impact of paternalistic reasoning on the scope and quality of fundamental rights protection. While courts frequently justify intervention as rights-enhancing, the long-term implications for autonomy, democratic accountability, and institutional legitimacy are insufficiently examined. This study seeks to address these gaps by synthesizing philosophical theory with doctrinal constitutional analysis. By situating Pakistan's constitutional jurisprudence within broader debates on paternalism, it aims to provide a more coherent and theoretically grounded understanding of how fundamental rights are interpreted, protected, and constrained within Pakistan's constitutional framework.

## Theoretical Framework

Paternalism in constitutional law refers to the exercise of state authority by the legislature, executive, or judiciary on the basis that such intervention protects individuals or society, even when it restricts personal autonomy or fundamental freedoms. In constitutional democracies, paternalism often appears in legislation or judicial decisions that limit rights in the name of public morality, collective welfare, religious values, national security, or social order. Although such measures are frequently framed as protective, they raise serious normative concerns regarding autonomy, democratic accountability, and the proper limits of constitutional power. In Pakistan, this issue is particularly significant. The Constitution of Pakistan guarantees a comprehensive set of fundamental rights, yet these rights are subject to "reasonable restrictions" in the interests of Islam, public order, morality, and the integrity of the state. The incorporation of the Objectives Resolution into the constitutional framework further embeds religious and communitarian principles within constitutional interpretation. Consequently, paternalistic reasoning is not incidental but structurally connected to Pakistan's constitutional identity.

The theoretical foundation of this study begins with the harm principle articulated by John Stuart Mill (1859/1978). Mill argued that the

only legitimate reason for restricting individual liberty is to prevent harm to others. Actions that concern solely the individual, regardless of their moral or prudential character, do not justify state coercion. The harm principle establishes a presumption in favor of liberty and individual self-determination. Within constitutional analysis, it requires that limitations on fundamental rights such as freedom of speech, religion, privacy, or personal liberty be supported by evidence of tangible harm rather than by moral disapproval or protective paternalism. Mill's framework therefore provides a normative baseline against which paternalistic constitutional practices may be assessed.

However, classical liberalism does not fully address situations in which autonomy itself is compromised. To account for such complexities, this study also draws upon the theory of soft paternalism advanced by Gerald Dworkin (1972). Contends that limited intervention may be justified where an individual's decision-making capacity is impaired due to misinformation, coercion, immaturity, or psychological incapacity. In these circumstances, temporary interference may preserve rather than undermine autonomy. Soft paternalism differs fundamentally from hard paternalism, which overrides voluntary and informed choices. In constitutional adjudication, this distinction is significant because courts often justify intervention as necessary to protect vulnerable individuals or to safeguard human dignity. Theory thus introduces nuance into the evaluation of paternalism by recognizing that certain forms of intervention may enhance the conditions necessary for meaningful freedom. At the same time, it cautions against expansive interpretations of impaired autonomy that could legitimize excessive state control.

In addition to these philosophical foundations, the framework incorporates the proportionality doctrine as a methodological tool for assessing the legitimacy of rights restrictions. Proportionality has become a central principle in constitutional adjudication worldwide, requiring that any limitation on fundamental rights pursue a legitimate aim, maintain a rational connection to that aim, be necessary in the sense that no less

restrictive alternative is available, and strike a fair balance between public interest and individual rights. This structured approach transforms abstract constitutional commitments into concrete standards of review. In Pakistan, while the Constitution permits "reasonable restrictions," the proportionality doctrine offers a more rigorous and transparent mechanism for evaluating whether paternalistic measures are excessive or justified. It ensures that even well-intentioned protective interventions do not disproportionately curtail individual liberty.

Finally, the framework recognizes the importance of Islamic constitutional thought in shaping Pakistan's legal order. Scholars such as Martin Lau (2006) have demonstrated that Islamic principles significantly influence constitutional interpretation, particularly in matters relating to morality, religion, and social regulation. Islamic constitutionalism emphasizes collective welfare, moral order, and accountability to divine sovereignty, which may support communitarian limitations on individual autonomy. Similarly, Paula R. Newberg (1995) highlights how Pakistan's judiciary has historically perceived itself as a guardian of constitutional and national integrity, reinforcing a protective orientation within constitutional governance. These perspectives illustrate that paternalism in Pakistan cannot be evaluated solely through secular liberal theory; it must also be understood within its religious and historical context. By integrating Mill's harm principle, soft paternalism, proportionality analysis, and Islamic constitutional thought, this study constructs a comprehensive normative framework for evaluating paternalistic constitutional practices in Pakistan. This framework does not presume that all paternalism is inherently illegitimate. Rather, it provides principled criteria for determining when state intervention protects fundamental rights and when it undermines the constitutional commitment to autonomy, liberty, and democratic governance.

## Research Methodology

This study employs a qualitative doctrinal legal research design to critically examine paternalism

in constitutional law and its impact on the protection of fundamental rights in Pakistan. The study adopts an analytical, comparative, and normative approach in order to evaluate constitutional principles, judicial reasoning, and philosophical foundations in a structured and systematic manner. The primary sources of data include the Constitution of Pakistan, relevant constitutional amendments, and leading judgments of the Supreme Court of Pakistan that have shaped fundamental rights jurisprudence. Secondary sources consist of peer-reviewed journal articles, scholarly books, Law Commission reports, and international human rights publications, which provide theoretical depth and contextual understanding. The analysis is conducted through doctrinal case-law examination to assess judicial interpretation, thematic content analysis to identify patterns of paternalistic reasoning in constitutional decisions, and comparative constitutional analysis to situate Pakistan's experience within broader global debates on paternalism and rights protection. The study relies on purposive sampling, selecting landmark constitutional cases that significantly influenced the development of judicial activism and fundamental rights enforcement. Although this methodology allows for rigorous legal and theoretical evaluation, it is subject to certain limitations, including reliance on reported judgments as the primary record of judicial reasoning and the absence of empirical interviews, which may limit insight into institutional motivations beyond the formal text of judicial decisions.

### Conceptual Foundations of Paternalism

Paternalism is generally defined as the exercise of authority by the state, judiciary, or other governing body to restrict an individual's autonomy or freedom for their own good or for the welfare of society (Dworkin, 1972; Feinberg, 1986). The term derives from the Latin *pater*, meaning "father," reflecting the notion of a guardian who intervenes in the interests of those considered unable to make fully informed or rational choices. In constitutional law, paternalism often manifests in limitations on

fundamental rights, such as liberty, freedom of speech, religion, and privacy. These restrictions may be justified on grounds of public morality, national security, collective welfare, or the protection of vulnerable individuals. While frequently presented as benevolent or protective, paternalism raises critical questions about autonomy, consent, and the legitimate boundaries of state authority (Mill, 1859/1978; Sunstein & Thaler, 2008).

Paternalism can be classified in several ways, reflecting differences in justification, scope, and method of enforcement. One fundamental distinction is between hard and soft paternalism. Hard paternalism occurs when the state intervenes despite the individual making a fully informed and voluntary choice, assuming that the state possesses superior judgment about the individual's best interests. Soft paternalism, by contrast, is justified only when the individual's autonomy is compromised for example, due to misinformation, coercion, incapacity, or immaturity (Dworkin, 1972). Another distinction exists between moral and welfare paternalism. Moral paternalism seeks to enforce societal moral standards or prevent moral degradation, even in the absence of tangible harm, while welfare paternalism focuses on protecting individuals from physical, psychological, or economic harm (Feinberg, 1986). A further categorization differentiates legal paternalism where legislative action restricts individual rights for protective purposes from judicial paternalism, in which courts assume an active role in shaping rights protections or public policy through interpretive or corrective intervention (Newberg, 1995; Kennedy, 2005). These distinctions illustrate that paternalism is not a monolithic concept but a spectrum of interventions with differing degrees of intrusiveness and normative justification. Classical liberal theory provides a robust critique of paternalism, with John Stuart Mill being its most prominent advocate. In *On Liberty*, Mill (1859/1978) proposed the harm principle, which asserts that the only legitimate justification for restricting individual liberty is the prevention of harm to others. Self-regarding conduct, even if morally questionable or self-destructive, should

not be subject to coercive interference. Mill's emphasis on autonomy and individual liberty frames personal choice as essential to moral development, individuality, and social progress. From this perspective, paternalistic interventions are presumptively illegitimate unless they can be justified by demonstrable harm to others, rather than by moral judgment or protective intent alone. Classical liberalism thus situates autonomy at the core of constitutional governance, treating it as a precondition for any legitimate exercise of state authority.

Modern philosophical scholarship, however, has offered more nuanced justifications for limited paternalism. Dworkin (1972) argued that interventions are permissible when autonomy is impaired, such as in cases of misinformation, coercion, or incapacity. For such interventions protect rather than undermine autonomy, ensuring that individuals retain the conditions necessary for meaningful choice. Feinberg (1986) similarly developed a distinction between harm and offense, cautioning that criminalizing self-regarding behavior requires strong justification. He allowed limited paternalism in cases where consent or understanding is impaired but rejected broad moral or welfare-based paternalism. More recently, Sunstein and Thaler (2008) introduced the concept of libertarian paternalism, emphasizing that governments can influence decisions through subtle policy design commonly called "nudging" without eliminating freedom of choice. By structuring defaults to encourage welfare-enhancing behaviors, the state can promote beneficial outcomes while formally preserving autonomy. However, even non-coercive interventions are debated for their potential to manipulate decision-making subtly, raising ethical concerns about autonomy and consent.

In constitutional democracies, paternalism operates within the framework of fundamental rights, judicial review, and democratic accountability. Modern constitutions typically guarantee individual freedoms while permitting limitations in the public interest. The challenge lies in distinguishing legitimate regulation from overreaching paternalism. Courts often play a

mediating role, applying doctrines such as proportionality, reasonableness, and necessity to ensure that restrictions on rights are justified and balanced. Judicial activism can both limit and reinforce paternalism: it may expand rights protection by striking down excessive paternalistic legislation, but it can also itself assume a paternalistic role, justifying intervention on grounds of morality, social welfare, or public interest (Kennedy, 2005; Newberg, 1995). Therefore, the legitimacy of paternalistic practices depends on principled evaluation, balancing protection, autonomy, and democratic accountability. Understanding these conceptual foundations provides essential tools for analyzing how constitutional systems, particularly in Pakistan, navigate the tension between liberty and protective intervention.

## Constitutional Framework of Fundamental Rights in Pakistan

The Constitution of Pakistan, adopted in 1973, serves as the supreme law of the country, providing the legal and institutional framework for governance, rule of law, and the protection of individual rights. It is a written constitution that blends liberal democratic principles with Islamic norms, reflecting Pakistan's unique identity as an Islamic republic committed to both individual liberties and moral-communal obligations (Ahmed, 2015; Lau, 2006). The Constitution establishes the separation of powers among the legislature, executive, and judiciary, and enshrines fundamental rights, federalism, and mechanisms for constitutional review. It is also informed by the Objectives Resolution of 1949, which emphasizes sovereignty of Allah, the promotion of social justice, and the protection of citizens' dignity. These provisions collectively shape the interpretive framework for understanding rights and restrictions within Pakistan's constitutional order.

Articles 8 to 28 of the Constitution comprehensively enumerate fundamental rights, covering equality before the law (Article 25), non-discrimination on the basis of sex, religion, or caste (Articles 26-27), freedom of movement and residence (Article 27), freedom of speech and

expression (Article 19), freedom of religion (Articles 20-22), protection against arbitrary detention (Article 10A), and the right to a fair trial (Articles 10-13). These provisions guarantee both civil and political rights, establishing the legal foundation for individual autonomy and participation in public life (Mahmood, 2018). In addition to these specific guarantees, the Constitution recognizes socio-economic rights such as the right to education, work, and social welfare, thereby integrating liberal individual rights with principles of distributive justice (Ahmed, 2015). The inclusion of these rights reflects an attempt to reconcile the liberal-democratic conception of individual freedom with Pakistan's Islamic and social welfare objectives.

A key feature of the fundamental rights regime in Pakistan is the "reasonable restrictions" clause, which permits the state to limit rights in the interest of Islam, public order, morality, or national security (Articles 8-28). While the Constitution guarantees a broad array of rights, this clause allows legislatures and courts to impose restrictions that may override personal liberties. For example, freedom of speech can be restricted to prevent defamation, incitement, or blasphemy, while freedom of assembly may be limited in the interest of public order. Scholars argue that the reasonable restrictions clause has been both necessary for maintaining social cohesion and problematic, as it leaves room for subjective interpretation and potential abuse of power (Rashid, 2017; Newberg, 1995). Judicial interpretation has been central in defining the boundaries of these restrictions, attempting to balance individual freedoms with collective welfare.

Islamic provisions further influence the constitutional protection of fundamental rights. Articles 31 and 227, among others, require the state to promote Islamic principles, including social justice, economic equity, and moral order. The Objectives Resolution, now part of the Constitution, enshrines the sovereignty of Allah and the role of Islamic law in guiding legislation and governance. These provisions have been interpreted to legitimize paternalistic

interventions by the state, particularly in areas such as blasphemy law, regulations, and family law (Lau, 2006; Newberg, 1995). While these measures are framed as aligning with religious obligations, they often create tensions with liberal notions of individual autonomy and universal human rights, highlighting the hybrid character of Pakistan's constitutional system.

The judiciary plays a pivotal role in interpreting fundamental rights and defining the scope of state interference. The Supreme Court of Pakistan has increasingly engaged in judicial review, particularly through the expansion of powers during the tenure of Chief Justice Iftikhar Muhammad Chaudhry (2005-2013). Courts have occasionally invalidated legislation or executive action that excessively restricts rights, while in other instances, they have endorsed paternalistic interventions in the name of public morality, national security, or Islamic principles (Kennedy, 2005; Newberg, 1995). Judicial activism, therefore, functions both as a check on legislative overreach and as a potential source of paternalism, depending on the interpretive approach adopted. Scholars argue that the judiciary's dual role reflects a broader struggle in Pakistan between protecting individual rights and enforcing collective, moral, or religious norms (Rashid, 2017).

The constitutional framework of fundamental rights in Pakistan reflects a complex interplay between liberal guarantees, legally sanctioned restrictions, Islamic norms, and judicial interpretation. Articles 8-28 provide a broad spectrum of civil and political rights, while reasonable restrictions and Islamic provisions allow for intervention in the name of public interest or moral order. The judiciary has emerged as a central actor in defining the boundaries of these rights, balancing competing normative demands. This hybrid constitutional structure illustrates the challenges of reconciling individual autonomy with collective and religiously informed governance in a developing constitutional democracy. Understanding this framework is essential for analyzing the role of paternalism in Pakistan's legal and political system, as it highlights both the opportunities

and constraints for protecting fundamental rights.

## Judicial Paternalism in Pakistan

Judicial paternalism in Pakistan refers to the phenomenon where courts, particularly the Supreme Court, assume an active, sometimes interventionist role in governance and the protection of public interest, often justifying the restriction or shaping of rights on the grounds of societal welfare, morality, or constitutional order. This form of paternalism is closely intertwined with judicial activism, a trend that has evolved over decades in response to political crises, executive overreach, and societal demands for accountability. The judiciary's role has often been framed as that of a constitutional guardian, balancing state authority, fundamental rights, and public interest. While such activism has sometimes reinforced rights protection, it has also generated debates about judicial overreach and the boundaries of paternalistic intervention in a constitutional democracy (Newberg, 1995; Kennedy, 2005).

The evolution of judicial activism in Pakistan has been shaped by the country's turbulent political history, including military takeovers, constitutional suspensions, and institutional crises. Early cases, such as *State v. Dosso* (1958), demonstrated the judiciary's initial willingness to legitimize executive authority, often at the expense of civil liberties. In *Dosso*, the Supreme Court applied the doctrine of necessity to validate General Ayub Khan's military coup, thereby subordinating fundamental rights and parliamentary authority to state preservation. Scholars have criticized this case as a foundational moment for judicial paternalism, wherein the Court assumed a protective role for the state, effectively placing national stability above individual liberties (Rashid, 2017). Conversely, subsequent jurisprudence, particularly after the 1973 Constitution, reflected an increased awareness of the judiciary's responsibility to protect constitutional rights, signaling a shift toward activist paternalism that sought to correct imbalances between the state and citizens (Mahmood, 2018).

Several landmark cases illustrate the paternalistic tendencies of the judiciary in Pakistan. In *Asma Jilani v. Government of Punjab* (1972), the Supreme Court invalidated the martial law imposed by General Yahya Khan, emphasizing that no authority is above the Constitution. While this decision restored constitutional supremacy, the Court also asserted an interpretive authority that effectively guided governance, reflecting a form of paternalistic oversight. Similarly, in *Benazir Bhutto v. Federation of Pakistan* (1988), the Court reviewed executive actions to ensure compliance with constitutional procedures, intervening in political disputes and governance matters. The *Sindh High Court Bar Association v. Federation of Pakistan* (2009) case further highlighted the Court's proactive role, particularly in challenging executive measures during a state of emergency, where it assumed a supervisory role over the preservation of democratic norms and fundamental rights. In each instance, the judiciary justified its intervention as necessary to protect public interest, constitutional order, and the broader societal good, demonstrating a consistent pattern of judicial paternalism (Newberg, 1995; Kennedy, 2005).

A central mechanism reinforcing judicial paternalism in Pakistan is the exercise of jurisdiction under Article 184(3) of the Constitution. This provision empowers the Supreme Court to take cognizance of matters of public importance relating to the enforcement of fundamental rights without a formal petition. The expansion of powers, particularly during the tenure of Chief Justice Iftikhar Muhammad Chaudhry (2005–2013), significantly amplified the Court's influence over governance and policy. Through actions, the Court addressed issues ranging from corruption and environmental protection to human rights violations, effectively assuming a supervisory role that often extended beyond traditional judicial functions. While proponents argue that such intervention has strengthened accountability and rights protection, critics contend that it blurs the separation of powers and allows judicial preferences to shape policy, reflecting a paternalistic approach that substitutes judicial

judgment for legislative or executive discretion (Kennedy, 2005; Rashid, 2017).

Public interest litigation (PIL) has also emerged as a key avenue for judicial paternalism. PIL allows courts to address issues affecting broad segments of society, particularly marginalized or vulnerable populations, even in the absence of direct personal grievances. The expansion of rights through PIL has led to significant judicial intervention in areas such as environmental protection, labor rights, and access to justice. Courts have often justified these interventions on the grounds of promoting social welfare and ensuring constitutional obligations are met, thereby exercising a paternalistic authority that goes beyond adjudicating disputes between parties. While PIL has been praised for advancing rights and democratizing access to justice, it has also raised concerns about the judiciary encroaching upon the policymaking domain, creating a tension between protective paternalism and overreach (Rashid, 2017; Mahmood, 2018). Critiques of judicial paternalism in Pakistan focus on the risks associated with overreach, the erosion of democratic accountability, and the potential for arbitrary decision-making. Scholars argue that while judicial activism can correct executive or legislative failures, it may also lead to inconsistent jurisprudence, undermine institutional checks and balances, and prioritize judicial discretion over participatory governance (Kennedy, 2005; Newberg, 1995). Critics highlight that courts, acting paternalistically, may impose their perception of public interest, morality, or welfare, thereby constraining the autonomy of elected representatives and potentially infringing on individual rights. The challenge, therefore, lies in striking an appropriate balance: ensuring that the judiciary protects constitutional rights and public welfare without assuming excessive authority that risks undermining the democratic and constitutional order.

Judicial paternalism in Pakistan has evolved as a complex phenomenon shaped by historical, political, and constitutional contexts. Landmark cases such as *State v. Dosso*, *Asma Jilani v. Government of Punjab*, *Benazir Bhutto v. Federation*

*of Pakistan*, and *Sindh High Court Bar Association v. Federation of Pakistan* illustrate the judiciary's dual role as both protector and regulator of rights and governance. The expansion of jurisdiction and public interest litigation has further reinforced the Court's paternalistic function, enabling proactive intervention in matters of public concern. While such judicial activism has contributed to the expansion of rights and accountability, it has also prompted critiques of overreach and the blurring of the separation of powers. Understanding judicial paternalism is therefore essential for analyzing the evolving balance between fundamental rights protection, state authority, and democratic governance in Pakistan.

### Legislative and Executive Paternalism

Legislative and executive paternalism in Pakistan refers to the intervention by the state through lawmaking or administrative action aimed at regulating individual behavior for perceived societal or moral benefit. Unlike judicial paternalism, which operates primarily through interpretation and adjudication, legislative and executive paternalism manifests in statutes, regulations, and government policies that restrict personal freedoms in the name of morality, security, or public welfare. These interventions are often justified as protecting vulnerable populations, maintaining public order, or preserving national and religious values. However, critics argue that they may unduly limit individual autonomy and fundamental rights, especially when broad or vague standards empower authorities to exercise discretionary control over citizens' conduct (Rashid, 2017; Mahmood, 2018).

Morality-based legislation constitutes one of the clearest examples of legislative paternalism in Pakistan. Laws regulating personal behavior including restrictions on gambling, alcohol consumption, dress codes, and family relations seek to enforce a specific moral or religious standard in accordance with Islamic principles enshrined in the Constitution and the Objectives Resolution (Lau, 2006). While these measures are framed as protective of societal morality, they

inherently involve value judgments that prioritize collective conceptions of right and wrong over individual choice. Such moral legislation often reflects the influence of Islamic law and societal norms, but it also raises tensions with liberal rights guarantees, particularly regarding privacy, freedom of expression, and personal autonomy (Ahmed, 2015).

Blasphemy laws and public order statutes provide another prominent domain of legislative paternalism. Pakistan's blasphemy provisions, codified in the Pakistan Penal Code, criminalize insults to religious figures, texts, and beliefs, and prescribe severe penalties, including death. These laws are justified as protecting the religious sentiments of the majority and maintaining communal harmony. In practice, however, the implementation of these laws has led to controversies over arbitrary enforcement, misuse for personal vendettas, and suppression of dissenting opinions (Khan, 2019; Human Rights Watch, 2020). The laws demonstrate how paternalistic legislation, framed as protecting public morality and order, can directly affect fundamental freedoms, including freedom of speech, thought, and religion. Similarly, statutes regulating public gatherings, protests, and assembly are often justified on public order grounds but can limit citizens' ability to express political or social grievances, illustrating the tension between collective security and individual liberty.

Media regulation in Pakistan also reflects executive and legislative paternalism. Laws and regulatory frameworks governing print, electronic, and digital media often impose restrictions intended to safeguard public morality, national security, and social stability. Examples include restrictions on content deemed blasphemous, obscene, or offensive, as well as limitations on criticism of state institutions (Mahmood, 2018). While such regulations are framed as protecting societal interests and public morals, they may also serve to curtail freedom of expression and the press, creating a climate where journalists and media organizations operate under uncertainty and self-censorship. Media censorship and control demonstrate the complex

interaction between paternalistic intent and rights limitation, highlighting how executive authority can shape public discourse in the interest of perceived collective welfare.

Legislative and executive paternalism also extends to public health and security laws. Statutes regulating vaccination, quarantine, road safety, and emergency powers are often justified on the basis of protecting public health and security. For instance, mandatory vaccination policies and restrictions during public health emergencies may curtail personal autonomy but are designed to prevent harm to others, aligning more closely with Mill's harm principle than with moral paternalism (Mill, 1859/1978; Dworkin, 1972). Similarly, counter-terrorism and national security laws, including restrictions on movement, communication, and assembly, are framed as necessary to protect citizens collectively. While these measures may have clear welfare or harm-prevention objectives, their broad scope and discretionary enforcement often create opportunities for misuse and raise concerns regarding proportionality and the balance between public protection and individual rights (Rashid, 2017).

Legislative and executive paternalism in Pakistan manifests in multiple domains, from morality-based legislation and blasphemy laws to media regulation and public health or security statutes. These interventions reflect the state's role as a moral and protective guardian but also highlight the inherent tension between collective objectives and individual autonomy. While some paternalistic measures, particularly those aimed at preventing harm, can be justified within normative frameworks of constitutional law, others especially those rooted in moral or religious enforcement risk undermining the constitutional guarantees of fundamental rights. Analyzing these patterns of paternalism provides essential insights into the interaction between state authority, societal values, and individual freedoms in Pakistan's constitutional system.

## Paternalism vs. Fundamental Rights

The tension between paternalism and fundamental rights is a central concern in

Pakistan's constitutional framework. While paternalistic interventions by the legislature, executive, and judiciary are often justified on grounds of public welfare, morality, or national security, they can simultaneously constrain the exercise of constitutionally guaranteed freedoms. This section examines how paternalism intersects with specific fundamental rights under the Constitution of Pakistan and explores the principles used to balance individual autonomy with collective interests. It also highlights how doctrinal and proportionality-based approaches can provide a principled framework for evaluating the legitimacy of state interventions. The right to liberty, enshrined in Article 9, is one of the most fundamental guarantees in Pakistan's Constitution. It protects individuals from arbitrary detention, deprivation of personal freedom, and coercive state action. Legislative and executive interventions, such as preventive detention under public security or anti-terrorism laws, exemplify welfare-oriented paternalism justified in terms of harm prevention (Rashid, 2017). Similarly, judicial decisions that expand or restrict liberty often invoke paternalistic reasoning, particularly in cases involving public safety or morality. For instance, the Supreme Court has occasionally upheld preventive measures against individuals deemed a threat to public order, even when such measures limit personal autonomy. While the protection of society can legitimize certain restrictions, excessive or disproportionate interventions risk undermining the core of the right to liberty (Mahmood, 2018).

Freedom of speech, guaranteed under Article 19, is frequently subjected to paternalistic limitations intended to maintain public order, morality, or national security. Laws regulating blasphemy, defamation, and hate speech exemplify legislative paternalism that restricts expression to protect religious and social sensibilities (Khan, 2019). Judicial paternalism also emerges in the interpretation of these laws, where courts may sanction restrictions in the name of societal interest or moral preservation. The challenge lies in distinguishing between legitimate protection against harm and undue suppression of

dissenting voices. Scholars argue that excessive paternalistic regulation can stifle public discourse, inhibit democratic debate, and undermine the autonomy of individuals to express opinions freely (Newberg, 1995; Rashid, 2017).

Freedom of religion, enshrined in Article 20, illustrates the complex interplay between paternalism and fundamental rights in a religiously plural society. Legislative paternalism, such as restrictions on proselytization or proscribed religious practices, aims to maintain social harmony and protect the religious sentiments of the majority. Judicial interpretations of religious freedom often navigate between protecting minority rights and accommodating broader societal or religious norms. Cases involving blasphemy laws and the implementation of Islamic provisions highlight the judiciary's paternalistic role in determining permissible religious conduct (Lau, 2006). Although intended to prevent social conflict, such interventions can disproportionately constrain individual religious autonomy, raising normative questions about the limits of state authority in matters of personal belief.

The right to privacy, though not explicitly articulated in the Constitution, has been recognized through judicial interpretation as an essential component of personal liberty and dignity. Executive and legislative measures such as surveillance laws, restrictions on digital communication, and public health mandates often reflect a form of welfare-oriented paternalism designed to protect security, public health, or social order (Mahmood, 2018). While such interventions may be justified under principles of harm prevention, they necessitate careful scrutiny under proportionality and balancing doctrines to prevent undue intrusion into personal life. Judicial review plays a critical role in evaluating the legitimacy of these restrictions, ensuring that the state's protective functions do not override individual autonomy arbitrarily.

Women's rights and minority protections further illustrate the tension between paternalism and constitutional guarantees. Legislative

interventions, such as family law reforms or gender-specific protective statutes, often aim to shield women from exploitation, violence, or discrimination, reflecting welfare-oriented paternalism (Ahmed, 2015). Similarly, laws designed to safeguard religious or ethnic minorities, including protective quotas and social welfare measures, embody paternalistic intent to ensure equitable treatment. While these measures are intended to promote substantive equality, they also raise questions about autonomy, agency, and the potential for overprotective paternalism that may inadvertently perpetuate dependency or restrict freedom of choice (Rashid, 2017).

The balancing test and proportionality doctrine provide a normative framework for resolving conflicts between paternalistic interventions and fundamental rights. The proportionality analysis typically involves assessing whether a restriction on rights pursues a legitimate aim, maintains a rational connection to that aim, is necessary in the absence of less restrictive alternatives, and achieves an equitable balance between public interest and individual liberty (Mahmood, 2018). This approach allows courts to evaluate the legitimacy of paternalistic measures, distinguishing between justified protective interventions and excessive limitations that undermine autonomy. In Pakistan, proportionality and reasonableness tests are increasingly applied in constitutional adjudication to ensure that paternalistic reasoning does not exceed the bounds of democratic accountability or constitutional legitimacy (Newberg, 1995; Kennedy, 2005).

The interaction between paternalism and fundamental rights in Pakistan reflects an ongoing struggle to balance collective welfare, moral order, and individual autonomy. Rights such as liberty, freedom of speech, religious freedom, privacy, and protections for women and minorities are all susceptible to limitations justified on paternalistic grounds. While some interventions are legitimate under harm-prevention or welfare-oriented principles, others risk overreach and disproportionate restriction of freedoms. By applying the balancing test and proportionality doctrine, the judiciary can

provide principled guidance, ensuring that paternalistic measures protect public interests without unduly undermining the constitutional guarantees of individual autonomy and liberty. This framework underscores the importance of careful, context-sensitive adjudication in navigating the tension between state authority and fundamental rights.

### Comparative Constitutional Perspective

Understanding paternalism in Pakistan's constitutional framework can be enriched through a comparative perspective, particularly by examining how other common law jurisdictions manage the tension between state intervention and fundamental rights. The United Kingdom and India offer instructive examples of legal and judicial approaches to paternalism, illustrating different balances between individual autonomy and protective regulation. By comparing these contexts, insights can be drawn for refining Pakistan's constitutional adjudication and legislative practices.

In the United Kingdom, paternalism has historically manifested through both legislative and regulatory measures aimed at protecting public welfare, morality, and health. Classic examples include seatbelt laws, restrictions on tobacco and alcohol, and public health interventions. These measures are often informed by the principle of "soft paternalism," emphasizing protection while maintaining individual choice (Sunstein & Thaler, 2008). The UK legal system has generally emphasized proportionality and reasonableness, particularly under the Human Rights Act 1998, which incorporates the European Convention on Human Rights into domestic law. Courts assess whether restrictions on rights, such as freedom of expression or assembly, are justified, necessary, and proportionate to legitimate aims. The UK experience demonstrates that paternalistic regulation can coexist with robust rights protection when clear principles of proportionality, transparency, and accountability are applied (Elliott & Thomas, 2017).

India presents a contrasting example where judicial activism has become a prominent feature

of constitutional governance. The Supreme Court of India has actively interpreted fundamental rights under the Constitution, often assuming a paternalistic role in protecting vulnerable populations and ensuring socio-economic justice. Landmark judgments, such as *Maneka Gandhi v. Union of India* (1978), expanded the scope of the right to personal liberty under Article 21, emphasizing due process, procedural fairness, and substantive protection of autonomy. Similarly, public interest litigation (PIL) in India has empowered courts to intervene in matters of environmental protection, labor rights, and health, often adopting a paternalistic stance in the absence of executive or legislative action (Bhattacharyya, 2012). While Indian judicial activism has advanced rights and promoted accountability, it has also raised concerns regarding overreach, separation of powers, and the potential imposition of judicial preferences over policy choices.

Comparative lessons for Pakistan emerge from these examples. First, the UK model highlights the importance of clear legal standards and proportionality in regulating paternalistic interventions, demonstrating that rights protection and public welfare need not be mutually exclusive. Pakistan could benefit from codifying proportionality and reasonableness tests more explicitly within constitutional adjudication to ensure that restrictions on rights are justified, limited, and transparent. Second, India's experience underscores both the potential and the pitfalls of judicial activism. Courts in Pakistan have similarly expanded their role through jurisdiction and public interest litigation, protecting fundamental rights and addressing governance failures. However, like India, excessive paternalistic intervention risks undermining democratic accountability and blurring the separation of powers. Finally, both comparative contexts suggest that a balance must be struck between soft paternalism protective measures that preserve autonomy and hard paternalism that may restrict rights without sufficient justification. By incorporating these lessons, Pakistan can refine its constitutional approach, promoting a framework where

paternalistic interventions are justified, proportionate, and consistent with both fundamental rights and societal welfare.

Comparative constitutional analysis demonstrates that paternalism is neither inherently incompatible with fundamental rights nor inherently benign. The UK emphasizes proportionality and soft paternalism, while India illustrates the expansive potential of judicial activism in rights protection. Pakistan's experience, characterized by judicial paternalism, legislative restrictions, and constitutional pluralism, can benefit from these comparative lessons. Adopting principles of proportionality, accountability, and restrained judicial intervention may allow Pakistan to safeguard fundamental rights while maintaining legitimate paternalistic protections for public welfare and morality. Such a comparative perspective provides both a normative and practical framework for reconciling autonomy and state authority in Pakistan's constitutional system.

## Critical Analysis

Paternalism in Pakistan's constitutional framework raises fundamental questions about the nature of state authority, the protection of individual rights, and the challenges posed by socio-political realities. The prevalence of legislative, executive, and judicial paternalism suggests that some degree of state intervention is entrenched, yet its inevitability and legitimacy remain contested. Understanding the drivers, consequences, and potential remedies for paternalism requires a critical assessment of Pakistan's socio-religious context, institutional capacities, and constitutional philosophy. One key question is whether paternalism is inevitable in Pakistan. Scholars argue that the country's political history characterized by frequent military interventions, weak democratic institutions, and political instability has created conditions in which paternalistic governance is often justified as necessary to maintain order and protect public welfare (Kennedy, 2005; Newberg, 1995). Courts and legislatures have frequently assumed a protective role, positioning themselves as guardians of societal interests, morality, or

national stability. While some degree of paternalism may be functionally unavoidable in transitional or fragile democracies, the challenge lies in distinguishing necessary interventions from overreach that undermines constitutional guarantees and entrenches discretionary power. Paternalism becomes problematic when it substitutes institutional authority for participatory governance, limits individual autonomy without sufficient justification, or is applied inconsistently across different groups. The socio-religious context of Pakistan further compounds the prevalence of paternalistic governance. The Constitution, informed by the Objectives Resolution, mandates the promotion of Islamic principles, social justice, and collective morality, embedding moral and religious imperatives into the legal framework (Lau, 2006). These provisions have historically justified restrictions on rights, such as blasphemy laws, restrictions on personal behavior, and morality-based legislation. While these interventions are often defended as culturally and religiously legitimate, they also highlight the tension between collective moral objectives and the liberal-democratic ideal of individual autonomy. In a society where religious and moral norms are deeply intertwined with state authority, paternalistic measures may appear necessary for social cohesion but simultaneously constrain democratic freedoms, pluralism, and minority rights (Rashid, 2017).

Institutional legitimacy is another critical concern. Pakistan's judiciary has increasingly assumed a paternalistic role through judicial activism, *suo motu* interventions, and public interest litigation. While such actions can protect fundamental rights and hold the executive accountable, they also risk overstepping the separation of powers and creating perceptions of judicial overreach (Kennedy, 2005). Similarly, legislative and executive authorities often exercise paternalistic discretion under broadly worded provisions, such as the reasonable restrictions clause, which allows significant latitude in limiting rights. These practices can undermine institutional legitimacy by concentrating power in unelected actors or by fostering inconsistent and

arbitrary application of laws, reducing public trust in governance structures (Mahmood, 2018). Given these challenges, there is a compelling need for a rights-based approach to constitutionalism in Pakistan. Rights-based constitutionalism emphasizes that all state actions, including those intended to protect welfare or morality, must be grounded in principles of proportionality, reasonableness, and accountability. This framework requires that paternalistic interventions be justified through clear legal standards, narrowly tailored to achieve legitimate objectives, and subject to independent oversight. Embedding rights-based reasoning within legislative drafting, executive enforcement, and judicial interpretation can reduce excessive paternalism while preserving the state's ability to protect vulnerable populations and maintain public order. By prioritizing autonomy, equality, and fundamental rights, Pakistan can reconcile the protective functions of the state with democratic accountability and constitutional legitimacy (Newberg, 1995; Mahmood, 2018). While paternalism in Pakistan is partly shaped by historical, socio-religious, and institutional factors, its inevitability is not absolute. The persistence of paternalistic practices reflects both functional needs in a fragile democracy and normative choices about the balance between collective welfare and individual autonomy. Addressing the challenges of paternalism requires strengthening institutional legitimacy, clarifying legal standards, and embedding rights-based constitutional principles in all branches of government. By doing so, Pakistan can move toward a constitutional order where paternalistic interventions are limited, justified, and consistent with fundamental rights, thereby enhancing both governance and individual freedom.

## Conclusion

Paternalism in Pakistan's constitutional framework reflects the state's ongoing effort to balance collective welfare, morality, and security with the protection of individual freedoms. Judicial, legislative, and executive interventions have often assumed a protective role, justifying restrictions on personal autonomy in the name of

public interest. While such measures can serve important societal goals such as safeguarding vulnerable populations, maintaining public order, and promoting social cohesion they also risk overreach, inconsistent application, and erosion of democratic accountability. The tension between paternalism and fundamental rights is particularly evident in areas such as liberty, freedom of speech, religious freedom, privacy, and protections for women and minorities. Excessive or poorly justified interventions can undermine individual autonomy and compromise the rule of law, highlighting the need for principled approaches to governance. At the same time, carefully designed and proportionate paternalistic measures can provide essential protection without infringing on core rights.

The analysis suggests that the key to resolving this tension lies in a balanced and rights-based constitutional framework. By embedding principles of proportionality, reasonableness, and accountability in judicial, legislative, and executive actions, Pakistan can ensure that paternalistic interventions remain justified, limited in scope, and consistent with democratic norms. Furthermore, fostering civic awareness and strengthening institutional capacities can help create a governance culture that respects individual freedoms while addressing societal needs. Ultimately, paternalism in Pakistan need not be inherently detrimental. When carefully constrained and guided by constitutional principles, it can coexist with the protection of fundamental rights, enhancing both public welfare and individual autonomy. The challenge lies in maintaining this delicate balance, ensuring that state interventions serve as instruments of protection rather than instruments of control, and promoting a constitutional democracy that upholds the dignity, liberty, and rights of all citizens.

## References

- Ahmed, K. (2015). *Constitutional law of Pakistan*. Lahore: Paramount Publishing.
- Bhattacharyya, H. (2012). Judicial activism in India: Balancing rights and governance. *Indian Journal of Constitutional Law*, 6(2), 45-67.
- Dworkin, G. (1972). Paternalism. *The Monist*, 56(1), 64-84. <https://doi.org/10.5840/monist197256119>
- Elliott, M., & Thomas, R. (2017). *Public law*. Oxford University Press.
- Feinberg, J. (1986). *Harm to self: The moral limits of criminal law* (Vol. 1). Oxford University Press.
- Human Rights Watch. (2020). *Pakistan: Events of 2019*. <https://www.hrw.org/world-report/2020/country-chapters/pakistan>
- Kennedy, C. H. (2005). *The political economy of judicial activism in Pakistan*. Oxford University Press.
- Khan, A. (2019). Blasphemy laws and human rights in Pakistan. *Journal of South Asian Legal Studies*, 11(1), 31-50.
- Lau, M. (2006). *The role of Islam in the legal system of Pakistan*. Brill.
- Mahmood, A. (2018). Fundamental rights and constitutional interpretation in Pakistan. *Journal of South Asian Legal Studies*, 10(2), 45-68.
- Mill, J. S. (1978). *On liberty* (E. Rapaport, Ed.). Hackett Publishing. (Original work published 1859)
- Newberg, P. R. (1995). *Judging the state: Courts and constitutional politics in Pakistan*. Cambridge University Press.
- Rashid, A. (2017). Judicial activism and fundamental rights in Pakistan. *Pakistan Journal of Law and Society*, 9(1), 23-41.
- Sunstein, C. R., & Thaler, R. H. (2008). *Nudge: Improving decisions about health, wealth, and happiness*. Yale University Press.
- Supreme Court of Pakistan. (1958). *State v. Dosso*, PLD 1958 SC 533.
- Supreme Court of Pakistan. (1972). *Asma Jilani v. Government of Punjab*, PLD 1972 SC 139.
- Supreme Court of Pakistan. (1988). *Benazir Bhutto v. Federation of Pakistan*, PLD 1988 SC 416.

Supreme Court of Pakistan. (2009). *Sindh High Court Bar Association v. Federation of Pakistan*, PLD 2009 SC 879.

