

## FUNDAMENTAL RIGHTS AND JUDICIAL REVIEW IN PAKISTAN: TOWARD A PROCEDURAL CONSTITUTIONALISM FRAMEWORK

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### Abstract

This article critically examines the evolution, implementation, and judicial enforcement of fundamental rights in Pakistan through the mechanism of judicial review. Drawing upon Syed Shabbar Raza Rizvi's seminal analysis of Articles 184(3) and 199 of the Constitution, this study argues that effective rights protection requires "procedural constitutionalism"—faithful adherence to textual mandates, procedural safeguards, and institutional hierarchy. Through qualitative doctrinal analysis of constitutional provisions, landmark Supreme Court decisions (1973–2024), and Rizvi's jurisprudential contributions, this research demonstrates that while Pakistan's Constitution provides comprehensive fundamental rights guarantees, their realization depends on moderating the tension between judicial activism and procedural regularity. The Supreme Court's expansion of suo motu jurisdiction and public interest litigation has democratized access to justice but simultaneously disrupted the constitutional scheme of concurrent jurisdiction, concentrated excessive power in the Chief Justice's office, and compromised due process protections. The article proposes a framework for reform that prioritizes: (a) statutory clarification of the High Court-Supreme Court jurisdictional relationship; (b) formal procedural rules for public interest litigation; (c) constitutional amendment regarding suo motu powers; and (d) institutional mechanisms for implementation monitoring. These reforms, grounded in Rizvi's textual methodology, offer a pathway toward sustainable rights protection that balances accessibility with legitimacy.

### 1. Introduction

The protection of fundamental rights through judicial review represents the cornerstone of constitutional democracy, yet its effectiveness depends upon institutional design and procedural fidelity. In Pakistan—a jurisdiction marked by alternating democratic and authoritarian governance—the tension between expansive judicial activism and procedural regularity has assumed particular significance. The Supreme Court's post-2009 assertiveness, while challenging

executive overreach and expanding rights access, has simultaneously raised concerns about democratic legitimacy, institutional hierarchy, and due process that demand systematic scholarly attention.

Syed Shabbar Raza Rizvi's *Fundamental Rights and Judicial Review in Pakistan* (2000) provides the most comprehensive exposition of the constitutional framework governing superior court jurisdiction. As Additional Advocate General Punjab and subsequently a judge of the

Lahore High Court, Rizvi combined practical institutional knowledge with rigorous textual analysis to demonstrate that Articles 184(3) and 199 establish a carefully calibrated system of concurrent jurisdiction requiring judicial self-restraint (Rizvi, 2000). His subsequent critique of the 2009 judicial restoration crisis—where he resigned rather than participate in proceedings he viewed as procedurally irregular—exemplifies his methodological commitment to "procedural constitutionalism": the principle that constitutional legitimacy depends upon faithful adherence to textual mandates and procedural safeguards, not merely substantively desirable outcomes (Rizvi, 2011).

This article advances three interconnected arguments. First, Pakistan's constitutional framework provides comprehensive fundamental rights protection, but effective realization requires institutional mechanisms beyond judicial declaration. Second, the Supreme Court's expansion of suo motu jurisdiction and public interest litigation, while democratizing access, has systematically disrupted the constitutional scheme of concurrent jurisdiction in ways that undermine long-term rights protection. Third, Rizvi's procedural constitutionalism framework offers a methodologically sound and institutionally feasible pathway for reform that balances rights accessibility with democratic legitimacy and procedural justice.

The article proceeds as follows. Section 2 situates the analysis within constitutional theory and reviews relevant literature, with particular attention to Rizvi's distinctive contributions. Section 3 outlines the research methodology. Section 4 examines the constitutional framework of fundamental rights and enforcement mechanisms. Section 5 analyzes the evolution of judicial review, incorporating Rizvi's critique of jurisdictional expansion. Section 6 presents detailed case studies, including Rizvi's direct involvement in the 2009 judicial crisis. Section 7 discusses findings and their implications. Section 8 develops the procedural constitutionalism framework for reform. Section 9 concludes with specific recommendations.

## 2. Literature Review and Theoretical Framework

### 2.1 Constitutional Theory and Rights Protection

The theoretical foundations of fundamental rights protection rest upon the social contract tradition and the concept of limited government. Locke's (1689) argument that individuals possess natural rights to life, liberty, and property—which governments are established to protect—influenced modern constitutionalism's conception of rights as inalienable entitlements limiting state power. Dicey's (1885) formulation of the "rule of law" emphasized equality before the law and rights protection through ordinary courts, though his original model did not encompass judicial review of legislation.

The "counter-majoritarian difficulty" identified by Bickel (1962)—the tension between judicial review and democratic accountability—remains central to constitutional theory. Hamilton's (1788) justification in *Federalist No. 78*, that courts must serve as intermediaries ensuring constitutional supremacy over temporary majorities, provides institutional grounding but does not resolve legitimacy concerns when courts assume governance functions. Dworkin's (1977) conception of rights as "trumps" overriding collective welfare considerations has influenced rights-based jurisprudence globally, including in South Asia.

For post-colonial states, "transformative constitutionalism" (Klare, 1998) suggests that constitutions should actively mandate social change rather than merely limit state power. This framework has particular relevance for Pakistan, where constitutional rights must address entrenched poverty, inequality, and social exclusion. However, as Hirschl (2004) cautions, judicial review may serve hegemonic interests rather than genuine rights protection, particularly where courts lack independence or engage in selective enforcement.

### 2.2 Judicial Review in South Asia: Comparative Perspectives

The Indian Supreme Court's development of public interest litigation (PIL) and the basic structure doctrine in *Kesavananda Bharati v. State of Kerala* (AIR 1973 SC 1464) significantly

influenced Pakistani jurisprudence. Baxi's (1982) analysis of Indian "social action litigation" demonstrated how relaxed standing requirements could democratize access to justice, though subsequent scholarship identified risks of judicial overreach and implementation gaps. The "judicialization of politics" (Tate & Vallinder, 1995)—courts deciding increasingly political questions—is evident across South Asia, with varying implications for democratic governance. In Bangladesh, the judiciary has faced similar challenges of military intervention and constitutional suspension, with less consistent resistance than Pakistan's post-2009 Supreme Court. Comparative analysis reveals that judicial assertiveness alone does not guarantee rights protection; rather, effectiveness depends upon institutional coordination, executive compliance, and social mobilization (Ginsburg, 2003).

### 2.3 Islamic Constitutionalism and Rights Frameworks

Pakistan's constitutional identity presents distinctive challenges through the interaction of Islamic principles with modern democratic norms. March's (2015) analysis of Islamic constitutionalism demonstrates how sharia compliance can be reconciled with constitutional supremacy, though tensions persist regarding religious minorities, women's rights, and personal status laws. Kennedy's (1996) examination of Pakistani courts navigating between Islamic and secular traditions reveals the doctrinal instability introduced by Article 2A's incorporation of the Objectives Resolution.

The dual sovereignty framework—where "sovereignty over the entire Universe belongs to Almighty Allah alone" but authority is "delegated to the people" within prescribed limits—creates interpretive challenges that Pakistani courts have managed through harmonizing constructions, though this balance remains contested (Mehdi, 2002).

### 2.4 Judicial Review in Pakistan: Historical Evolution

Newberg's (1995) institutional history documented the Pakistani judiciary's inconsistent

stance during martial law periods, particularly the "doctrine of necessity" invoked to legitimize unconstitutional seizures of power. The 2007 lawyers' movement and subsequent judicial restoration marked a transformative moment, analyzed by Rizvi (2014) and others as shifting the judiciary from accommodation to assertive rights protection.

Yusuf's (2013) examination of expanded suo motu jurisdiction identified both democratizing potential and separation of powers concerns. However, existing scholarship has not systematically engaged with the procedural and textual critiques advanced by Rizvi, particularly regarding the displacement of High Court jurisdiction and the absence of explicit constitutional authorization for suo motu powers.

### 2.5 Rizvi's Contribution: Procedural Constitutionalism

Syed Shabbar Raza Rizvi's *Fundamental Rights and Judicial Review in Pakistan* (2000) represents the most detailed exposition of superior court jurisdiction under Articles 184(3) and 199. His analysis yields four propositions with significant reform implications.

First, the "without prejudice" clause in Article 184(3) preserves High Court jurisdiction under Article 199; the provisions are concurrent, co-extensive, and co-existent, not hierarchical (Rizvi, 2000, p. 156). This constitutional architecture reflects deliberate framers' intent to distribute judicial power rather than concentrate it in the Supreme Court.

Second, Article 184(3)'s requirements—"public importance" and fundamental rights nexus—establish conditional, not discretionary, jurisdiction. The absence of explicit suo motu authorization, contrasted with Article 203(D)'s explicit grant to the Federal Shariat Court, indicates textual intent to limit self-initiated Supreme Court action (Rizvi, 2000, pp. 89–94).

Third, routine invocation of Article 184(3) for matters adequately addressable by High Courts: (a) overburdens the Supreme Court; (b) denies litigants appellate review; (c) undermines High Court jurisprudential development; and (d)

concentrates excessive power in the Chief Justice's discretion (Rizvi, 2000, pp. 201–215).

Fourth, procedural safeguards—including notice, hearing, and precedent fidelity—constitute substantive constitutional requirements, not mere technicalities. Rizvi's 2011 critique of the Sindh High Court Bar Association judgment, where he documented the removal of over 100 judges without individual notice in violation of Article 209(7) and Supreme Court Rules, exemplifies this methodological commitment (Rizvi, 2011, pp. 30–35).

Rizvi's resignation from the Lahore High Court rather than accept the 2009 restoration's procedural irregularities—"a decision without notice to the affected parties is a 'zulm' [act of extreme cruelty]"—demonstrates the practical stakes of procedural constitutionalism (Rizvi, 2011, p. 28). His framework thus offers an insider-practitioner's perspective that complements external academic analysis.

### 2.6 Research Gaps

Existing literature exhibits three limitations this article addresses: (a) insufficient attention to the procedural dimensions of rights enforcement, particularly High Court-Supreme Court jurisdictional relationships; (b) inadequate engagement with Rizvi's textual methodology and its reform implications; and (c) lack of systematic evaluation of implementation mechanisms linking judicial orders to practical rights realization.

### 3. Research Methodology

This study employs qualitative doctrinal legal research methodology, appropriate for analyzing constitutional provisions, judicial precedents, and legal doctrines (Hutchinson & Duncan, 2012). The research combines:

**1. Textual Analysis:** Systematic examination of constitutional provisions, particularly Articles 184(3) and 199, with Rizvi's (2000) interpretive framework as primary reference.

**2. Case Law Analysis:** Critical evaluation of landmark Supreme Court decisions (1973–2024) selected by: (a) precedent-establishing status; (b) Rizvi's involvement or commentary; (c) rights category representation; and (d) practical impact.

**3. Secondary Source Review:** Academic literature, official reports, and comparative constitutional materials.

Data sources include constitutional texts, Supreme Court and High Court judgments (PLD, SCMR, CLC, CLD), Rizvi's published works, and international human rights instruments. The analytical framework integrates historical-institutional analysis, doctrinal interpretation, and Rizvi's procedural constitutionalism.

Limitations include reliance on published judgments (which may not reflect full deliberative complexity) and the absence of empirical data on implementation outcomes. These constraints are acknowledged through explicit characterization of findings as legal-doctrinal rather than comprehensive social science analysis.

### 4. Constitutional Framework of Fundamental Rights

#### 4.1 The 1973 Constitution: Structure and Rights Architecture

The Constitution of the Islamic Republic of Pakistan, 1973, establishes a federal parliamentary democracy with comprehensive fundamental rights guarantees in Part II (Articles 8–28). The framework covers: security of person (Articles 9–14); religious freedoms (Articles 20–22); safeguards against discrimination (Articles 25–28); and economic rights (Articles 23–24). The Eighteenth Amendment (2010) strengthened protections by inserting Article 10A (fair trial) and Article 25A (education), removing presidential dissolution powers, and devolving authority to provinces.

Article 2A's incorporation of the Objectives Resolution creates a dual sovereignty framework requiring harmonization between Islamic principles and rights guarantees. The Supreme Court has generally managed this tension through interpretive synthesis, though instability persists regarding religious minorities and gender equality.

#### 4.2 Enforcement Mechanisms: The Dual Forum Structure

The Constitution establishes two primary enforcement mechanisms that Rizvi's analysis

reveals as carefully calibrated rather than hierarchically arranged.

**Article 199: High Court Jurisdiction.** High Courts possess writ jurisdiction (habeas corpus, mandamus, prohibition, quo warranto, certiorari) over persons exercising executive authority within their territorial jurisdiction. This provision ensures localized, accessible remedies with appellate review available to the Supreme Court.

**Article 184(3): Supreme Court Original Jurisdiction.** The provision authorizes the Supreme Court to issue orders "if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights... is involved." Rizvi's textual analysis identifies three critical features:

First, the "without prejudice to the provisions of Article 199" clause preserves High Court jurisdiction and enables litigant forum choice, but does not authorize Supreme Court intervention when High Courts are seized of matters (Rizvi, 2000, p. 156).

Second, the conditional formulation—"if it considers"—establishes jurisdictional prerequisites (public importance; fundamental rights nexus) rather than discretionary grant.

Third, the reference to "orders of the nature mentioned in the said Article" incorporates Article 199's specific writ remedies, not open-ended remedial authority.

Rizvi emphasizes that this architecture reflects constitutional intent to: (a) provide accessible, multi-layered protection; (b) reserve Supreme Court capacity for genuinely national matters; and (c) maintain appellate review integrity by preventing direct Supreme Court invocation for individually remediable grievances (Rizvi, 2000, pp. 201–215).

#### 4.3 The Concurrent Jurisdiction Problem

Despite this constitutional design, practical operation has systematically disrupted the intended relationship. The Supreme Court's routine entertainment of Article 184(3) petitions for matters adequately addressable by High Courts has created what Rizvi terms "forum shopping" that undermines judicial federalism. In *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC

416), Chief Justice Haleem cautioned that forum choice should generally be binding to prevent circumvention, yet subsequent practice has largely ignored this guidance (Rizvi, 2000, p. 189).

The consequences include Supreme Court docket overload (averaging 30,000 pending cases annually), denial of appellate review to direct petitioners, High Court jurisprudential underdevelopment, and concentration of discretionary power in the Chief Justice's office regarding suo motu invocation.

### 5. Evolution and Critique of Judicial Review Mechanisms

#### 5.1 Historical Trajectory

Pakistan's judicial review evolution reflects broader political instability. The "doctrine of necessity" legitimized martial law in *state v. Dosso* (PLD 1958 SC 533) and *Zafar Ali Shah v. Federation of Pakistan* (PLD 2000 SC 869), though subsequent decisions sought to limit such accommodation. The 2007 lawyers' movement and 2009 restoration transformed the judiciary into an assertive rights protector, but procedural regularity concerns accompanied this empowerment.

#### 5.2 Public Interest Litigation: Democratization and Dilution

PIL expansion relaxed standing requirements, enabling marginalized communities and civil society organizations to seek judicial intervention. The *Darshan Masih* line of cases accepted telegraphic petitions and informal initiation, democratizing access but risking procedural degradation.

Rizvi's assessment acknowledges PIL's potential while identifying risks: (a) absent formal rules, respondents face orders without adequate notice or hearing; (b) reliance on media reports rather than evidence creates error risks; (c) remedial overreach blurs separation of powers; and (d) implementation gaps undermine effectiveness (Rizvi, 2000, pp. 245–267).

#### 5.3 Sua Motu Jurisdiction: The Core Critique

The Supreme Court's suo motu practice represents the most significant departure from constitutional

text and institutional design. Rizvi's critique, grounded in textual analysis and institutional concerns, challenges conventional celebration of this expansion.

**Textual Absence:** Article 184(3) contains no explicit *suo motu* authorization; contrast with Article 203(D)'s explicit Federal Shariat Court grant indicates deliberate omission. The Supreme Court's self-assumed power represents judicial innovation without constitutional foundation (Rizvi, 2000, pp. 89-94).

**Institutional Violations:** Routine *suo motu* intervention: (a) displaces High Court jurisdiction contrary to the "without prejudice" clause; (b) concentrates excessive power in the Chief Justice's discretionary determination of "public importance"; (c) denies litigants appellate review; and (d) overburdens the Supreme Court with matters better addressed at lower levels (Rizvi, 2000, pp. 201-215).

Rizvi's personal experience during the 2009 judicial crisis—resigning rather than accept procedural irregularities in judge removals—demonstrates the practical stakes. His observation that "the SC has become One Man Show" regarding *suo motu* invocation highlights democratic legitimacy concerns (Rizvi, 2011, p. 35).

#### 5.4 The Basic Structure Doctrine

The Supreme Court's implied adoption of basic structure limitations on constitutional amendment (Wukala Mahaz Barai Tahafuz Dastoor, PLD 2015 SC 1) establishes that Parliament's Article 239 power is not unlimited. However, the doctrine's undefined scope creates uncertainty. Rizvi's textual methodology suggests that explicit constitutional enumeration of unamendable features would provide greater clarity and democratic legitimacy than judicial implication.

### 6. Case Studies: Judicial Practice and Procedural Critique

**6.1 Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416):** Establishing Jurisdictional Balance

This case, challenging presidential dissolution of the National Assembly, established foundational principles for Article 184(3) jurisdiction. Chief Justice Haleem's judgment upheld the dissolution while cautioning that Supreme Court intervention should be restrained where High Courts could adequately address matters. Rizvi identifies this as the constitutional intent subsequently ignored: forum choice should generally be binding to prevent circumvention and preserve appellate review (Rizvi, 2000, p. 189).

### 6.2 Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324):

Judicial Independence and Institutional Risk

The "Judges Case" restructured judicial appointments, making the Chief Justice's opinion "primordial." While celebrated for strengthening independence, Rizvi's subsequent critique reveals risks of judicial self-interest in constitutional interpretation. The 2009 Supreme Court's reliance on Al-Jehad Trust to justify removing PCO judges misapplied precedent: the original case concerned appointment review, not removal; directed reconsideration rather than direct removal; and upheld procedural protections that the 2009 judgment violated (Rizvi, 2011, pp. 32-33).

### 6.3 Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879):

Procedural Breakdown and Rizvi's Resistance

The judicial restoration judgment, while substantively significant for constitutional supremacy, exemplifies procedural irregularities that Rizvi's critique illuminates. As a directly affected Lahore High Court judge, Rizvi documented violations of:

**1. Notice Requirements:** Rule 9 of Order XXV, Supreme Court Rules, 1980, mandates notice to "all persons directly affected"; over 100 judges were removed without individual notice (Rizvi, 2011, p. 30).

**2. Article 209(7):** The explicit command that judges "shall not be removed from office except as provided by this Article" was circumvented by

direct Supreme Court removal rather than Supreme Judicial Council proceedings (Rizvi, 2011, p. 31).

**3. Precedential Fidelity:** The Al-Jehad Trust distinction between appointment review and removal was ignored; contempt proceedings against sitting judges were "unknown in contemporary judicial history" (Rizvi, 2011, p. 34).

**4. Arbitrary Distinctions:** Judges who took oath under the 2000 PCO (validated by the 17th Amendment) were treated differently from 2007 PCO oath-takers despite structural similarity.

Rizvi's October 8, 2009 resignation—"a decision without notice to the affected parties is a 'zulum'"—demonstrates that procedural safeguards constitute substantive rights, not mere technicalities (Rizvi, 2011, p. 28). His subsequent apology and retirement, shared by most affected judges, illustrates the human costs of procedural irregularity.

#### **6.4 Wukala Mahaz Barai Tahafuz Dastoor v. Federation of Pakistan (PLD 2015 SC 1): Basic Structure and Security Deference**

The Twenty-First Amendment case, upholding military courts for terrorism trials while recognizing implied basic structure limitations, illustrates the security-rights tension. The majority's deference to legislative security judgments, while asserting review power over constitutional amendments, demonstrates contextual flexibility that Rizvi's textual methodology might question: if basic structure limits are constitutionally implied, their application should not vary with security circumstances.

#### **6.5 Implementation Gap Cases: Shehla Zia, Bonded Labor, and Education Rights**

Cases expanding rights recognition—environmental protection (*Shehla Zia v. WAPDA*, PLD 1994 SC 693), bonded labor prohibition (*Suo Motu Case No. 16 of 2009*), and education rights (*Munir Hussain v. Federation of Pakistan*, PLD 2014 SC 608)—demonstrate judicial capacity

for rights expansion but persistent implementation failures. Rizvi's analysis suggests that procedural regularity in initial adjudication—including clear remedial specification and implementation monitoring—would enhance effectiveness (Rizvi, 2000, pp. 267–289).

## **7. Findings and Analysis**

### **7.1 Constitutional Framework Assessment**

Pakistan's Constitution provides comprehensive rights coverage comparable to international standards, with recent strengthening through the Eighteenth Amendment. However, the framework's effectiveness is compromised by: (a) implementation gaps between judicial orders and practical realization; (b) disruption of intended jurisdictional relationships; and (c) concentration of discretionary power without adequate procedural constraints.

### **7.2 Judicial Review Evolution: Achievements and Distortions**

The judiciary's transformation from authoritarian accommodation to rights assertiveness represents significant democratic consolidation. However, this evolution has systematically distorted the constitutional scheme: suo motu expansion lacks textual authorization; High Court jurisdiction has been functionally displaced; and procedural safeguards have been compromised for accessibility.

### **7.3 The Rizvi Thesis: Procedural Constitutionalism Validated**

Rizvi's analysis, validated by subsequent developments, establishes that:

**1. Textual fidelity matters:** Article 184(3)'s conditional, non-suo motu formulation reflects deliberate constitutional choice that judicial innovation has overridden.

**2. Institutional hierarchy serves functional purposes:** The High Court-Supreme Court relationship ensures accessibility, appellate review, and distributed capacity that routine Article 184(3) invocation undermines.

**3. Procedural safeguards constitute substantive rights:** Notice, hearing, and precedent fidelity are not technical obstacles but essential legitimacy requirements, demonstrated by the 2009 crisis's damaging precedent.

**4. Remedial restraint enables implementation:** Overbroad orders lacking implementation mechanisms create legitimacy deficits; procedurally regular, specifically remedial decisions enhance compliance.

#### 7.4 Comparative Assessment

Compared to Indian PIL, Pakistan's mechanism lacks institutionalized procedural safeguards and implementation monitoring. Compared to Bangladesh, Pakistan's judiciary has demonstrated greater independence but similar implementation challenges. Commonwealth standards are met formally but not operationally due to resource constraints, executive resistance, and security challenges.

### 8. Toward Procedural Constitutionalism: A Reform Framework

Building upon Rizvi's methodology, this article proposes a four-pillar reform framework:

#### 8.1 Pillar One: Statutory Jurisdictional Clarification

**Parliament should enact legislation codifying Article 184(3)-Article 199 relationships:**

**Preservation Clause:** Explicit reaffirmation that High Court jurisdiction remains "without prejudice" and that Supreme Court intervention is inappropriate when High Courts are seized of matters.

**Binding Forum Choice:** Litigant election of forum should generally preclude subsequent circumvention, with narrow exceptions for subsequently discovered public importance.

**Public Importance Definition:** Statutory criteria emphasizing systemic impact, national significance, and non-individualizable grievances.

#### 8.2 Pillar Two: PIL Procedural Formalization A Public Interest Litigation Act should establish:

**Standing Requirements:** Balanced accessibility (civil society organizations, public-spirited individuals) with genuine public interest nexus (community impact, systemic issues).

**Notice and Hearing:** Mandatory notice to affected state agencies and opportunity to respond; adversarial proceedings except in genuine emergencies.

**Evidentiary Standards:** Formalized requirements proportionate to remedial scope; judicial notice of facts subject to verification mechanisms.

**Remedial Specificity:** Orders must specify implementation responsibilities, timelines, and monitoring mechanisms.

#### 8.3 Pillar Three: Constitutional Amendment on Suo Motu

Given textual absence and institutional risks, constitutional amendment should:

**Option A:** Explicitly authorize suo motu jurisdiction with procedural constraints (Chief Justice in Chambers determination; notice requirements; High Court consultation).

**Option B:** Remove the power entirely, requiring formal petition for all Article 184(3) matters.

Rizvi's textual analysis supports Option B; political feasibility may require Option A's constrained authorization.

#### 8.4 Pillar Four: Implementation Institutionalization

Judicial orders require complementary mechanisms:

**Implementation Committees:** Multi-stakeholder bodies (judicial, executive, civil society) for complex PIL remedies.

**Contempt Procedures:** Streamlined but procedurally regular mechanisms for non-compliance.

**High Court Capacity:** Resource allocation to strengthen High Court jurisdiction, reducing pressure for direct Supreme Court invocation.

### 9. Conclusion

Pakistan's experience demonstrates that judicial review can advance fundamental rights protection even in challenging political environments, but that expansion without procedural regularity risks

undermining long-term legitimacy and effectiveness. Syed Shabbar Raza Rizvi's procedural constitutionalism—grounded in textual fidelity, institutional comity, and procedural justice—offers a methodologically sound framework for reform that balances rights accessibility with democratic accountability.

The Supreme Court's post-2009 assertiveness has challenged executive overreach and expanded rights recognition, but its procedural irregularities—particularly regarding suo motu invocation and the 2009 judicial crisis—have concentrated power, displaced High Courts, and compromised due process. These distortions are not necessary consequences of judicial independence but correctable departures from constitutional design.

The proposed four-pillar reform framework—statutory jurisdictional clarification, PIL procedural formalization, constitutional amendment on suo motu, and implementation institutionalization—provides a pathway toward sustainable rights protection. These recommendations derive from Rizvi's analysis but extend beyond his specific proposals to address contemporary challenges.

For developing democracies grappling with similar tensions, Pakistan's experience offers generalizable lessons: judicial independence requires procedural regularity; rights accessibility must be balanced with institutional hierarchy; and constitutional text provides democratic legitimacy that judicial innovation cannot substitute. The "Rizvi Thesis"—that procedural constitutionalism is essential for sustainable rights realization—deserves attention beyond Pakistan's specific context.

The fundamental rights project in Pakistan remains incomplete. Constitutional guarantees, judicial creativity, and civil society mobilization have established foundations, but procedural reform and implementation institutionalization are necessary for realization. The procedural constitutionalism framework advanced in this article offers a roadmap for this next phase—one that honors both the Constitution's rights aspirations and its procedural wisdom.

**Author Contributions:**

Mr. Ayaz Khan conceived the research idea in consultation with and under the guidance of his Ph.D. Supervisor, Prof. Dr. Muhammad Zubair Khan (Chairman, Department of Law), who provided overarching supervision, critical feedback on theoretical framing, and fine-tuning guidance culminating in this research. The doctrinal analysis was inspired by the Constitutional Law module (Course Code: LAW-710) taught by Dr. Ashraf Ali (Associate Professor), who additionally provided guidance on constitutional analysis and review of the jurisprudential framework. Mr. Ayaz Khan drafted the manuscript and integrated Syed Shabbar Raza Rizvi's jurisprudential contributions into the reform proposals.

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**Data Availability:**

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