



# CONSTITUTIONAL ECONOMICS AND DEVELOPMENT

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The Constitution is an agreement setting out the basis on which individuals notionally agree to be a member of the state and political society. In addition to defining the formal structure of the state, the distribution of powers and authorities, rights and duties, the document allows citizens to imagine the normative state and to infer what the state promises, that “the people of Pakistan may prosper” - the essential bargain for providing voluntary obedience to the state. The Preamble, which is a substantive part of the Constitution of the Islamic Republic of Pakistan 1973 (Constitution), promises “a new order,” wherein, Pakistan shall be “a democratic State based on Islamic principles of social justice” and creating “an egalitarian society” promising “equality of status, of opportunity and before law, social, economic and political justice”. It commits to eliminating exploitation “so that people of Pakistan may prosper” based on the “gradual fulfilment of the fundamental principle, from each according to their ability to each according to his work”<sup>1</sup>.

This article examines the Principles of Policy,<sup>2</sup> which, informed by the Preamble, discusses the Constitutionally mandated state goals that define the promised “new order”. It outlines the Constitutional role and responsibilities of the State in the social, economic and political domains and highlights the Constitutional implications for economic policymaking, in particular, with respect to inequality. By examining how we have deviated from the promised goals and the “new order”, the Constitutional criteria and ambition, this article makes recommendations for strengthening the Principles of Policy framework and criteria in public policy formulation and legislation.

## THE CHALLENGE: INEQUALITY OF STATUS AND OPPORTUNITY

One key indicator for assessing how far we have failed to deliver on constitutional egalitarianism is the relative inequality in our state and society. Exploring the Extent of Selected Dimensions of Inequality in Pakistan (March 2020) found that inequality in wealth, as measured by the Gini-coefficient, is more than double the income equality. Wage inequality as indicated by the Gini-coefficient has increased from 35pc to 41pc.<sup>3</sup>

This analysis shows that a large share of inequality of opportunity is explained by predetermined factors such as socio-economic status, province and location of residence ... [I]nequality of opportunity has made limited progress. The mitigation of disparities associate ‘access to’ and ‘inequality in the distribution’ of opportunities warrants a significant policy focus ...<sup>4</sup>

According to the UNDP’s Inequality Adjusted Human Development Index, Pakistan’s “loss” in human development due to inequality stood at 30.1pc in 2021, placing Pakistan’s overall Human Development Index ranking in the low human development category. The anthropologist Rosita Armytage’s *Big Capital in an Unequal World: the Micropolitics of Wealth in Pakistan* (2022) reveals how the concentration of wealth and economic inequality distort politics, public policy priorities and spending in Pakistan in favour of elites. According to the economist Stefan Dercon, Pakistan’s elites have created an untenable situation, battling for zero-sum capture of resources and power and, in the process, sacrificing economic growth and development in the country.<sup>7</sup>

<sup>1</sup>ABID AMAN BURKI, ARSALAN HUSSAIN & KINZA EMAD KHAN, *Exploring the Extent of Selected Dimensions of Inequality in Pakistan*, March 2020, Oxfam GB Islamabad, pp. 40-41.

<sup>2</sup>BURKI, HUSSAIN & KHAN, P. 34.

<sup>3</sup><https://hdr.undp.org/data-center/specific-country-data/#/countries/PAK>

<sup>4</sup>Also see *Gambling on Development: Why Some Countries Win and Others Lose*, Hurst, 2022

<sup>7</sup>SHAHBAZ RANA, *Elite struggle to capture resources*, *The Express Tribune*, 23 September 2023 at <https://tribune.com.pk/story/2437328/elites-struggle-to-capture-resources>

<sup>1</sup>Article 3 of the Constitution

<sup>2</sup>See Part II, Chapter III of the Constitution

## WHAT ARE THE PRINCIPLES OF POLICY? WHAT IS THE GOVERNMENT'S OBLIGATION?

The Principles of Policy are contained in Chapter II of the Constitution, spread over 11 articles, from 29 to 40. They elaborate the role and responsibilities of the State. Informed by the Preamble, which promises equality of status and opportunity to all - notions that still require significant interrogation to translate them into social, economic and political policy prescriptions, the Principles of Policy provide State policy goals covering diverse subjects including the quality of life, local governance, social and economic wellbeing of the people.

The Principles of Policy prioritise the promotion of social and economic justice<sup>8</sup> and welfare<sup>9</sup>, and commit the State to raising the standard of living by preventing the concentration of wealth and means of production and distribution in the hands of the few. It insists on a more equitable distribution of rights of labour and capital, employers and employees, and landlords and tenants. Within the available resources, it promises adequate livelihood and social security for all. It commits the State to provide basic necessities of life such as food, clothing, housing, education and medical relief for those unable to provide. And that steps will be taken to ensure full participation of women in all spheres of national life.<sup>10</sup>

## CONSTITUTIONAL CRITIQUE AND 'EQUALISATION' IMPERATIVE

Whilst equality before law<sup>11</sup> is well understood and elaborated by the courts, the wider Constitutional imperative for equality with respect to society, economy and politics as a public policy imperative is less well developed and appreciated.

The promise of “a new order” and creating “an egalitarian society” that is a just and fair society – so that “the people of Pakistan may prosper”, the Constitution seeks to ensure equality of status and opportunity in the social, economic and political domains rather than equality in outcomes.<sup>12</sup> However, since there are no precise or settled Constitutional and jurisprudential definitions for equality of status and opportunity, this is a rich area for multi-disciplinary scholarship and debate to inform the Constitutionality of legislation, public policy and spending based on the Principles of Policy criteria – and how such principles and imperatives may be operationalised effectively. This knowledge gap may be one reason why judges have been reluctant to pronounce on this aspect of the Constitutional order that may be dismissed by our economic managers and the prevailing neo-liberalism and positivists as ideology.

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Equality of status insists on treating everyone as an individual according to their needs, abilities and interests, so that everyone has an equal opportunity to reach their full potential. It addresses or compensates for disabilities that arise due to the status of an individual such as religion, sect, sex, ethnicity, caste, language, culture, tribal, region and other forms of “disability”.<sup>13</sup> To ensure equality of status, the Constitution promises to safeguard the “legitimate interests” of minorities, backward and depressed classes and empowers governments to make special provisions for women and children to counter their vulnerabilities.<sup>14</sup> Slavery, forced labour, human trafficking are prohibited.<sup>15</sup> Children below the age of fourteen years cannot be engaged to work in any factory, mine or hazardous employment.<sup>16</sup>

Equality of opportunity however ensures that individuals have equal access for receiving particular public goods and resources such as health and education. According to one study, an essential part of inequality of opportunity is access to basic opportunities such as education, health, sanitation, clean drinking water, electricity etc. – their access is highly correlated with location of residence, gender, ethnicity, religion, et al.<sup>17</sup>

<sup>8</sup>Article 37.

<sup>9</sup>Article 38.

<sup>10</sup>Article 34.

<sup>11</sup>Equality of citizens: (i) All citizens are equal before law and are entitled to equal protection of law; (ii) There shall be no discrimination on the basis of sex; (iii) Nothing in this Article shall prevent the State from making any special provisions for the protection of women and children.

<sup>12</sup>It may be noted that the Constitution does insist on reducing the disparity in the income and earnings of individuals (Art. 38(e)).

<sup>13</sup>See articles 26, 27 and 33.

<sup>14</sup>Article 25.

<sup>15</sup>Article 11.

<sup>16</sup>Article 11.

<sup>17</sup>ABID AMAN BURKI, ARSALAN HUSSAIN & KINZA EMAD KHAN, Exploring the Extent of Selected Dimensions of Inequality in Pakistan, March 2020, Oxfam GB Islamabad, p. 8.

To ensure equality of opportunity, the State promises to promote the educational<sup>18</sup> and economic interests of 'backward' classes and areas; invest in removing illiteracy and provide free and compulsory secondary education. To make technical and professional education generally available and higher education equally accessible to all on the basis of merit. And enable people of different areas through training, agricultural and industrial development and other methods to participate in all forms of national activities.<sup>19</sup>

As mentioned earlier, although there are no Constitutionally fixed definitions for equality of status and opportunity, there is sufficient Constitutional content to inform economic and development policies and their objectives. It is sufficient to examine the distributive and equity features of the economy and public policy against Constitutional values and ambition. But it begs the question, why have such Constitutional imperatives largely been ignored and the courts unwilling to step in?

## IMPLEMENTING THE PRINCIPLES OF POLICY: OPT-OUT CLAUSES

Although the Constitution commits governments and officials at all tiers to implement the Principles of Policy in their respective areas of competence, they are honoured more in breach than in compliance or implementation. Firstly, because their implementation is subject to the availability of resources<sup>20</sup> and, secondly, they are non-justiciable.<sup>21</sup> Whether an action or policy is in compliance with the Principles of Policy is the sole responsibility of the person or organ responsible for their implementation!<sup>22</sup> Unfortunately, this has rendered "practically inoperative part of the supreme law of the land"<sup>23</sup> but had it been implemented "it would elevate the country to the level of a welfare state it was originally envisaged to be"<sup>24</sup>.

The only mechanism for their accountability is that annually, the President in relation to the Federation and the governors for their respective provinces are required to present a report before Parliament and the Provincial Assembly on the observance and implementation of the Principles of Policy.<sup>25</sup> Again, unfortunately, the courts have failed to insist on the implementation of this Constitutional mandate.

## RECOMMENDATIONS: CONSTITUTION AS COUNTER-FACTUAL - WHAT IF THE PRINCIPLES OF POLICY WERE IMPLEMENTED?

Unfortunately, in practice, economic and development planning and management are removed from the purview of Constitutional imperatives and goals. But had the Principles of Policy been followed in our policymaking in earnest, our economy, society and politics would be in a very different shape and place. Most probably, our equality and inclusion indicators would have been much healthier and positive -there may have been a modest trickle-down effect, greater fiscal justice, and certainly less inequality for the ordinary person to suffer.

To ensure implementation, ideally, Parliament could legislate the Principles of Policy into justiciable economic, social and cultural rights, complementing the civic and political rights already enacted as Fundamental Rights. In the absence of Parliament taking such bold legislative action, at the very least, the courts need to ensure basic accountability for the implementation of the Principles of Policy by insisting that the President and the governors present annual reports before Parliament and Provincial Assemblies on their implementation status. The courts should not allow a substantive part of the Constitution to be rendered redundant.

Further, to mainstream the Principles of Policy in policymaking, other disciplines such as economics could translate the constitutional goals into policy criteria and costed to inform, evaluate and analyse public policy and government performance. Organisations such as PIDE and other independent think-tanks and commentators could develop measures or standards to monitor, track, evaluate and publicly report governments' implementation of Principles of Policy and their impact. Policy options could be tested, proposed and debated to generate public awareness and pressure for delivering the promised "new order" by ensuring equality of status and opportunity for all.

<sup>18</sup>With the insertion of article 25A, education is a Fundamental Right, which provides: "The State shall provide free and compulsory education to all children of the age five to sixteen years in such manner as may be determined by law".

<sup>19</sup>See article 37.

<sup>20</sup>Article 29(2)

<sup>21</sup>Article 30(2)

<sup>22</sup>Article 30(1)

<sup>23</sup>WALID IQBAL, Rights, Duties and Powers: Under Pakistan's Constitutional Framework, Friedrich Naumann Foundation, 2020, p. 23.

<sup>24</sup>WALID IQBAL, Rights, Duties and Powers: Under Pakistan's Constitutional Framework, Friedrich Naumann Foundation, 2020, p. 26.

<sup>25</sup>Article 29(3)