



## Abuse of Discretionary Powers in Pakistan: Legal Loopholes, Institutional Weaknesses, and the Crisis of Accountability

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### ABSTRACT

*This paper explores the misuse of discretionary powers in Pakistan, as discretionary powers lead to arbitrariness, injustice, and loss of confidence by people in the institutions of the state. The paper considers legal omissions and judicial pronouncements and administrative practices that enable this abuse through the use of doctrinal and empirical approaches. A disturbing trend in the literature regards an unchecked discretion, particularly in the field of law enforcement, revenues, and the issue of license issuance. It largely results in selective policing and violation of constitutional rights. The lack of effective accountability procedures and a weak judicial oversight is explained as one of the key enablers of this type of abuse in the study. The article proposes practical changes to enhance transparency, justice, and juridical predictability. The solutions are based on case studies, legal framework analysis, and the comparison with international models. Finally, the reform of discretionary powers is of vital importance to unravel the constitutional balance and to keep in line the rights and rule of law in Pakistan.*

## Introduction

This essential flexibility of discretionary powers has been widely recognized necessitating the good governance and the dispensation of justice in the circumstances of a welfare state (Khan et al., 2024). These authorities often are given to the administrative units and enable them to address rather complex issues and shape regulations in the spheres where legal and judicial jurisdictions might not always be relevant, and this shift is to address the demands of society which is sometimes hard to predict with the help of rigid laws (Habib, 2020; Qureshi et al., 2023). The need of such powers is due to the dynamic nature of the administration and the need to be flexible over the rigid legal structure in the best interest of the people to serve in the most effective, efficient,

and efficient way, especially in a developing nation (Aziz and Mohammed, 2024; Munir et al., 2020).

Nonetheless, despite the fact that discretion itself is not a bad practice, its unregulated and uncompromising use may result in extreme negative consequences that contradict the principles of fairness and the rule of law, which it is supposed to support (Azeem et al., 2023). The abuse of such powers is a serious and widespread problem in Pakistan, which affects numerous aspects of society, such as the right to humans, gender equality, and institutional integrity, which only contributes to the existing social inequalities (Farid, 2025; Hassan, 2022). The paper will seek to address the complex problem of the abuse of discretionary powers in the Pakistani context by examining what this issue means to both the legal, social and political environment. This is because it is important to understand these dynamics so as to promote good governance, strengthen democratic institutions and to promote equity of justice in the country.

### **Research Justification**

Abuse of discretionary authority in Pakistan poses a serious problem to the concept of equity, responsibility, and the justice of the law. Inasmuch as this power is central in effective governance and handling complicated administrative and legal issues, its unconstitutional use causes major wrongdoings, corruption, and apathy among the masses towards the national governance system.

This problem is especially high in law enforcement, tax collection, licensing, and local government in Pakistan. Weak checks and balances and unclear provisions of the law are tantamount to an atmosphere that can accommodate the manipulative rule of law by the selective application of existing laws and abuse of constitutional rights. The paper will critically review the failure of judicial and institutional protection in place and how the improper use of cuts through structural and legal vulnerabilities. It will suggest realistic and working solutions to predict and control the abuse through the examination of the case laws, administrative practices, and international standards.

To move forward towards being a democratic country, discretionary regulation needs to be tolerated to guarantee openness, legality, and people's confidence in governing. The study will make a contribution to law research and policy-making in the proposed solutions to restore balance to discretionary power and bring it to the constitutional principles and principles of democratic accountability.

### **Research Objectives**

1. To discuss the historical context of the misuse of discretionary powers in Pakistan.
2. To highlight the theoretical context of the misuse of discretionary powers in Pakistan.
3. To analyze the laws regarding the misuse of discretionary powers in Pakistan.
4. To identify the key challenges regarding the misuse of discretionary powers in Pakistan.
5. To explore the opportunities for minimizing the misuse of discretionary powers in Pakistan.
6. To propose effective prevention and intervention strategies.

### **Research Methodology**

This study employed a systematic review methodology, with research objectives established accordingly. A comprehensive literature review was conducted (Komba & Lwoga, 2020). Research findings were categorized based on their content (Hiver et al., 2021; Petticrew & Roberts, 2006), and classified information was incorporated into the study by organizing it into

headings (Gan et al., 2021; Pawson et al., 2005). The evaluation of classified information and titles formed the basis of the study (Page, 2021; Rahi, 2017), ensuring the integrity of the research subject and its contents (Egger et al., 2022; Victor, 2008). The criteria for selection are listed.

**Relevance:** Researches that directly addressed the questions posed by this study are included.

**Quality:** Studies that meet a certain quality threshold (e.g., methodological rigor, bias risk) are included. Most of the research is from Scopus-indexed and Clarivate Analytics journals and reputed publishers.

**Recency:** Consideration of the publication date to ensure that the review reflects the most current evidence. Most of the studies are from the last three years.

**Language:** Only studies published in English are included.

**Data Completeness:** Previous studies must provide sufficient data on outcomes of interest for practical synthesis; this is also ensured in this research.

This study did not use primary data from human participants; therefore, no ethics clearance letter from the ethics committee was required.

## **Literature Review**

The concept of judicial review, which empowers courts to protect fundamental rights against violations by the executive, has evolved significantly in Pakistan, acting as a crucial check on administrative overreach and the exercise of discretion (Habib, 2020; Qureshi et al., 2023). Nevertheless, rule of law in transitional democracies, such as Pakistan, is a disputed and weak concept that is commonly subject to significant political counteracting forces of legal change and integrity (Hassan, 2022). Current studies also point to deep-rooted political opposition, politicization of the judiciary, and elite capture of the institutions as a major underminer of major reforms including those of judicial appointments and anti-corruption campaigns (Irfan et al., 2025; Usman et al., 2022).

Furthermore, the application of prosecutorial discretion, however, is deemed to be the sole means of efficient prosecution within the criminal justice framework, the use of which, however, needs to be well-structured in order to prevent abusive and inefficient use of the discretionary powers allowing to reduce the aspect of arbitrariness (Hassan, 2022; Khan et al., 2024). Corruption, which is typically inherently connected to the abusive and inefficient use of the discretionary powers, is defined as a potent contributor to the wretched.

It points to an acute lack of information about how uncontrolled discretionary power can drastically harm the basic human rights and propagate systemic injustices, which go beyond economic effects to have significant societal impacts. Among such problems, there is no successful access to justice, major problems when discussing such issues as coercive control and domestic violence within the current legal streams, which require immediate legislative and judicial solutions (Farid, 2025).

## **Historical Context of Misuse of Discretionary Powers in Pakistan**

The constitutional experience of Pakistan, especially since the implementation of the 1973 Constitution, has been dedicated to the establishment of the ideas of democracy, the rule of law, and safeguarding the fundamental rights (Khan et al., 2024; Qureshi et al., 2023). In the past, the

development and practice of judicial review over executive actions have played an imperative role in this respect, attempting to balance the power of the government and the freedoms of each individual and uphold constitutional principles against tyrannical actions (Aziz and Mohammed, 2024; Habib, 2020).

Nevertheless, it was not an easy road, with the dominance of parliament often being disputed by the abnormal way ordinances and provisional constitutional decrees of dictatorial governments were promulgated (Usman et al., 2022). This behavioral pattern marked a powerful deviation of the constitutional principles that were shaped by the constituent assembly and resulted in the system that tended to resemble more closely the colonial models instead of promoting a contemporary popular democratic culture and constitutional obedience (Irfan et al., 2025).

The absence of systematic compliance with core values has led to occasions when state constitutions were superseded or suspended at the will of the executive and individuals and organizations were usually unjustly criticized as systems failures. This historical pattern of political resistance and elite efforts to control state institutions continues to pose significant obstacles to strengthening the rule of law and institutional integrity in Pakistan, impacting democratic consolidation and public trust in governance (Khan et al., 2024; Usman et al., 2022).

### **Theoretical Context of Misuse of Discretionary Powers of Pakistan**

Abuse of discretionary powers in Pakistan can be examined with a number of theoretical frameworks, all of which point to the result of power without accountability, i.e., arbitrariness and violation of rights. The strictness in following the codified law, in the absence of common sense governing the law, is not a problem in Pakistan because of the ambiguity of legal requirements. This grey matter allows discretion to serve self or political interest instead of serving the people. The theory of administrative law held that discretion must be reasonable, fair, and lawful. In Pakistan, however, weak institutions and insufficient upholding of the rule of law often lead to decisions that show contempt for the said principles. A.V. Dicey's rule of law theory account equality before the law and the curbing of arbitrary power. The misuse of discretion directly violates these principles, fostering legal inequality and systemic injustice.

Lastly, the public choice theory is what determines how bureaucrats and officials can misuse their discretion and abuse it to personal or political advantage. All these theoretical frameworks promote greater transparency of law, strong institutional oversight, and accountability to curb abuse and make use of discretionary powers to the benefit of the common good.

### **Laws Regarding Misuse of Discretionary Powers of Pakistan**

**The Anti-Terrorism Act, 1997:** Intended to combat terrorism, it provides sweeping discretionary powers, including extended detention without trial, which raises serious concerns about human rights violations and selective application.

**The Constitution of Pakistan, 1973:** Articles 4, 10-A, and 25 guarantees due process, equality. It provides a fair trial when arrested but due to broad and weak laws, these fundamental rights are infringed on the basis of misuse of discretionary powers.

**The Code of Criminal Procedure, 1898 (CrPC):** This provision gives way to discretionary powers to the police and judges in cases of arrests, bail and investigations.

**The National Accountability Ordinance, 1999:** This provision provides powers to NAB which are vague and are used for discretionary abuse of authority and power in cases especially in investigation and arrests.

**The Police Order, 2002:** This order was passed for police reforms to make this authority accountable for the actions taken regarding the public safety but the implementation is weak thus, this provision enables misuse of discretionary powers.

### **Challenges for Misuse of Discretionary Powers of Pakistan**

In Pakistan, the misuse of discretionary powers raises several systemic issues that have impeded justice, fairness, and the rule of law. The problem is also exacerbated by poor institutional control and accountability. The Police Complaints Authority or judicial review powers all exist but are either inactive, under-resourced, or politically compromised, so there is little control over abuse of power. The other critical issue is political interference. Political discretionary powers belong to areas that are likely to be abused in favor of or against opponents, to stall investigations, or reward loyalty, weakening institutional neutrality and reducing confidence in government.

Also, most discretionary decisions are facilitated by corruption and personal gain. Bribing law enforcement officers, selective issuing of licenses by bureaucrats, and so on are a fact of life to many citizens, particularly to those with no access to power or wealth. Lastly, most abuse victims cannot find justice due to a lack of awareness and the means of legal action. It is entrenching the impunity culture where officials do whatever they want. These issues need to be resolved through overall reform, transparency, and legal protection.

### **Opportunities for Minimizing the Misuse of Discretionary Powers in Pakistan**

**Digital Governance:** The discretion of human beings in service delivery can be reduced by the introduction of e-governance tools including application systems, online complaint channels, and case-tracking programs. The emergence of technology encourages accountability, the enforcement of rules, and the minimization of face-to-face interactions, which can be easily corrupted as a way of corruption.

**Judicial Training and Accountability:** Well-structured judicial training based on ethical principles, constitutional limits and impartial discretion can make judges and public leaders act with discretion. Improved judiciary control systems, which can be independent review boards, can assist in uncovering and curtailing capricious court system actions.

**New Legislation:** Full legislative reforms may serve to seal the loopholes that permit the abuse of discretionary power. creating constraints on discretionary power, setting out procedural conditions and reforming ambiguous statutory provisions are all which can lead to more legal predictability. Stiffer anti-corruption policies and enforcement strategies will keep the public institutions accountable.

**Public Legal Awareness:** It is through the press, schools and non-governmental organizations that people can become aware of their legal rights and therefore they can fight against abuses of power. The rights gap can be further bridged by having those in need access easily available legal assistance programs and complaints procedures to bridge the gap.

## **Discussion**

Narrow legal boundaries and a lack of regulation typically imply arbitrariness in choice, bribery, and selective use of the law, despite the fact that this is designed to be flexible. There is also a question of judicial discretion, which is subjective in the allocation of bench and suo motu cases, whereby transparency may be lacking. To the citizens, the overall consequences are infringement of rights, denial of justice, and marginalization in the state institutions. In spite of these problems, there are chances of making things better. Discretion should be contained in open and auditable lines to be able to serve justice.

## **Conclusion**

In Pakistan, the abuse of discretionary authority continues to be a major obstacle to equality, justice, and sound governance. Even though these powers are essential for administrative flexibility, their reckless use leads to unjust decisions, corruption and a loss of public trust. Insufficient legal safeguards, political interference and weak accountability structure worsens the issue. Poor and ordinary citizens are highly impacted by discriminatory enforcement of law and delayed justice but with targeted legislative changes, institutional support, electronic transparency and public awareness, we can change this easily. Restoring the rule of law and democratic integrity requires regulating discretion within moral and constitutional bounds.

## **Recommendations**

**Codify Limits on Discretionary Powers:** Make new laws or change previous ones to clearly define the limits of discretion for official authorities to nullify the abuse of discretionary powers.

**Engage Civil Society and Social Media:** Teach people their basic rights and give them power to report the abuse of power wherever happening using social media.

**Enhance Legal Literacy and Public Awareness:** People should be made aware of the limit between abuse and using the powers correctly in the limit by the officials and they should also be made aware of the legal remedies in cases of misuse of discretionary powers.

**Ensure Transparency in Decision-Making:** Written document must be required for all the decisions or actions taken using discretionary powers.

**Establish Independent Accountability Bodies:** Influence free accountability bodies should be instituted everywhere to monitor abuse of power.

**Introduce Digital Governance Systems:** Start using e-governance in the state to automate every act so that the use of face-to-face interaction would be diminished.

**Mandate Righteous Training for Public Servants:** Public servants should be trained professionally and in a way where they recognize the difference between ethical use and abuse of power.

**Protect Reporters of Misuse:** Strict laws should be made in protection of people who stand up against misuse of discretionary power and report them.

**Reform the Police and Judiciary:** The recruitment of public officials should be done seeing the merit to enhance the performance and minimize the misuse of discretionary power.

**Strengthen Judicial Oversight:** The judiciary should be powerful enough to monitor the misuse of discretionary powers against any public official and take strict legal action is done so.

### **Research Limitations**

This study admits a number of limitations that could affect the scope and importance of its conclusions. First of all, the study uses secondary data, which does not accurately represent the true circumstances of people impacted by the abuse of discretionary power. Examples of secondary data include court judgements, legal documents, reports and publications. Furthermore, an in-depth investigation of the practicality of discretion of powers was hindered by the absence of access to government data and internal administrative proceedings.

Third, objective sources could have been inhibited by political sensitivities of the topic, particularly when it comes to high-level judicial or presidential decisions. Moreover, some of the conclusions can become obsolete due to the existence of institutional systems and legal frameworks in Pakistan that are constantly in motion and each time new reforms take place. Lastly, the absence of empirical data of the fieldwork or interviews limits the study as it can only reflect the opinion of the people and immediate impact. These limitations should be followed in future, more comprehensive research.

### **Research Implications**

**Access to Justice:** Every citizen of the country without any discrimination should have access to justice if they have been a target of misuse of discretionary powers from any public servant and strict action should be taken.

**Civil Society Engagement:** There should be a good communication between societies so as a whole they can take stand against misuse of discretionary powers and can enforce accountability and report the misuse to judiciary or higher authorities.

**Judicial Accountability:** The judiciary should be made strong by closing the gaps present in judicial oversight. It should be developed in a way that it can hold a person who misuses his powers can be held accountable of his actions.

**Policy Reform:** The policy makers should target the real issues faced by every class of citizens in the state and draft policies regarding them where the abuser can be held accountable and strict legal action can be taken too.

**Training and Education:** This paper shows the urgency to teach and made aware of the fundamental rights to the citizens as well as ethical training to the officials.

### **Future Research Directions**

The areas that may be addressed by future research on the misuse of discretionary powers in Pakistan may include a range of critical spheres and help to address the existing problems and improve the system:

**Comparative Legal Studies:** Comparisons of how Pakistan has exercised discretionary powers as compared to the legal systems of other democracies can serve as illustrations of reform and working practices in overseeing and being accountable.

**Analysis of Empirical Examples:** To document the first hand experiences of discretionary abuse in different institutions, subsequent study must entail field based case studies and interviews with the victims.

**Assessment of Legal Trends:** Future studies ought to look into the application, efficacy and the lasting effects of the new legislation and judicial processes on justice and rule of law to address discretion.

**Influence on Marginalized Individuals:** Future research ought to examine how underprivileged populations, such as women, minorities, and people with low incomes, are inadequately impacted by the misuse of discretion.

**Sector-Specific Research:** More thorough studies about a particular industry, e.g. law enforcement agencies, tax agencies, courts, or local governments can shed additional light on how discretion is utilized and abused in each sector.

## References

1. Azeem, M. H., Tariq, M., & Umar, M. (2023). Prosecutorial discretion: An imperative for effective prosecution in the Punjab criminal prosecution service. *Review of Education, Administration and Law*, 6(2), 541–556. <https://doi.org/10.47067/real.v6i2.351>
2. Aziz, Q. A., & Mohammed, A. H. (2024). Judicial oversight of the discretionary power of the Secretary-General in imposing disciplinary measures. *Journal of Ecohumanism*, 3(8), 11497–11523. <https://doi.org/10.62754/joe.v3i8.5747>
3. Egger, M., Higgins, J. P., & Smith, G. D. (Eds.). (2022). *Systematic reviews in health research: Meta-analysis in context*. John Wiley & Sons.
4. Farid, S. (2025). Coercive control and domestic violence laws in Pakistan: A feminist legal analysis of legislative gaps. *Social Science Review Archives*, 3(2), 1780–1791. <https://doi.org/10.70670/sra.v3i2.797>
5. Gan, J., Xie, L., Peng, G., Xie, J., Chen, Y., & Yu, Q. (2021). Systematic review on modification methods of dietary fiber. *Food Hydrocolloids*, 119, 106872. <https://doi.org/10.1016/j.foodhyd.2021.106872>
6. Habib, R. I. (2020). Evolution and exercise of the power of judicial review of executive actions in Pakistan. *Review of Education, Administration and Law*, 3(1), 1–10. <https://doi.org/10.47067/real.v3i1.16>
7. Hassan, H. (2022). Social implications of corruption in developing countries: Case study of Pakistan and India. *Central European Journal of Public Policy*, 16(1), 1–13. <https://doi.org/10.2478/cejpp-2022-0003>
8. Hiver, P., Al-Hoorie, A. H., Vitta, J. P., & Wu, J. (2021). Engagement in language learning: A systematic review of 20 years of research methods and definitions. *Language Teaching Research*, 25(6), 894–920. <https://doi.org/10.1177/13621688211001289>
9. Irfan, A., Basit, A., & Khan, A. A. (2025). Rule of law in transitional democracies: Political challenges to legal reform and institutional integrity. *Journal of Asian Development Studies*, 14(2), 697–716. <https://doi.org/10.62345/jads.2025.14.2.55>
10. Khan, H., Shabbir, S. S., Mustafa, A. U., Shabbir, O., & Sheikh, S. J. (2024). Constitutional rights and access to justice in Pakistan: A comprehensive analysis with case laws. *Social Science Review Archives*, 3(1), 2080–2098. <https://doi.org/10.70670/sra.v3i1.519>
11. Komba, M. M., & Lwoga, E. T. (2020). Systematic review as a research method in library and information science. In P. Ngulube (Ed.), *Handbook of research on connecting*

- research methods for information science research (pp. 80–94). IGI Global. <https://doi.org/10.4018/978-1-7998-1471-9.ch005>
12. Munir, B., Khan, A. N., & Ahmad, N. (2020). Necessity of discretionary powers: A critical appreciation as a necessary evil. *Global Regional Review*, 5(3), 183–191. [https://doi.org/10.31703/grr.2020\(V-III\).19](https://doi.org/10.31703/grr.2020(V-III).19)
  13. Page, M. J., McKenzie, J. E., Bossuyt, P. M., Boutron, I., Hoffmann, T. C., Mulrow, C. D., Shamseer, L., Tetzlaff, J. M., & Moher, D. (2021). Updating guidance for reporting systematic reviews: Development of the PRISMA 2020 statement. *Journal of Clinical Epidemiology*, 134, 103–112. <https://doi.org/10.1016/j.jclinepi.2021.02.003>
  14. Pawson, R., Greenhalgh, T., Harvey, G., & Walshe, K. (2005). Realist review: A new method of systematic review designed for complex policy interventions. *Journal of Health Services Research & Policy*, 10(1), 21–34. <https://doi.org/10.1258/1355819054308530>
  15. Petticrew, M., & Roberts, H. (2006). *Systematic reviews in the social sciences: A practical guide*. Blackwell Publishing. <https://doi.org/10.1002/9780470754887>
  16. Qureshi, G. M., Shahid, A., & Chaudhary, F. (2023). Analyzing the writ jurisdiction of High Courts: A case study from Pakistan. *Current Trends in Law and Society*, 3(1), 44–49. <https://doi.org/10.52131/ctls.2023.0301.0014>
  17. Rahi, S. (2017). Research design and methods: A systematic review of research, sampling issues, and instruments development. *International Journal of Economics Management Sciences*, 6(2), 403. <https://doi.org/10.4172/2162-6359.1000403>
  18. Usman, A., Hussain, A., & Amir, F. (2022). Supremacy of parliament undermined by irregular promulgation of ordinances: A case study with reference to Pakistan. *Journal of Law & Social Studies*, 4(3), 393–408. <https://doi.org/10.52279/jlss.04.03.393408>
  19. Victor, L. (2008). Systematic reviewing in the social sciences: Outcomes and explanation. *Enquire*, 1(1), 32–46. <https://www.nottingham.ac.uk/sociology/documents/enquire/volume-1-issue-1-victor.pdf>