



**INDIGENOUS PEOPLES AND ANCESTRAL LAND RIGHTS IN PAKISTAN: A  
CRITICAL EVALUATION OF LAWS AND POLICIES**

**Asia Rahman Khan Lodhi**

Director , Press Information Department (PID), Ministry of Information & Broadcasting,  
Islamabad

Email: [asia.khan.lodhi@gmail.com](mailto:asia.khan.lodhi@gmail.com)

**Agha Qaleech Khan**

Lawyer, University of London

Email: [aghaqaleechlegal@gmail.com](mailto:aghaqaleechlegal@gmail.com)

**Alisha khan**

Department of Law, University of Karachi Pakistan

**Hassan Raza Bhutto**

Master student, Migration Human Rights Integration ,University of Palermo

Palermo, Sicily, Italy

[advhassanrazabhutto@gmail.com](mailto:advhassanrazabhutto@gmail.com)

**Abstract**

*This paper has critically looked at the legal and policy framework of Indigenous peoples and ancestral land rights in Pakistan. It asserts that the Pakistan is simply providing partial and scattered security to the communities, which have their identity, culture and means of livelihood attached to the ancestral territories. Despite the significant guarantees entailed in the Constitution of Pakistan, on property and culture as well as minority protection, Indigenous peoples are not identified as a distinct legal category and are not offered a complete framework of collective rights to territory. The given paper discloses that this gap is justified with references to the fact that, still existing laws of the colonial period, namely, the Land Acquisition Act, 1894, the Forest Act, 1927, concern state power, the official registration and administrative administration of the customary possession and communal tenure. Its significance to recent judicial authorities in Balochistan, where customary tribal possession has received increased acknowledgement, and where domestic law can be therefore regarded as moving towards a more rights-sensitive direction, is also highlighted in the discussion. We use the example of the Kalash people to see how there is a disjuncture between enshrinement and lived practice of dispossession, insecurity and cultural vulnerability. The paper also makes comparisons of the Pakistani situation with other international standards, especially the United Nations Declaration of the Rights of Indigenous Peoples and finds that the country is not completely compliant with the current standards on the collective land righting, participation, and consent. The paper will conclude that the existing constitutional and legal framework within Pakistani territory might possess some protective factors but it is still inadequate to an extent that should acknowledge and protect the historical land rights. Significant changes would need legal acknowledgment of indigenous and other disadvantaged groups, against colonial land laws, and reformation of the colonial land rules as well as introduction of consultation as well as consent processes in land management.*

**Keywords:** Indigenous peoples, ancestral land rights, Pakistan, constitutional law, customary tenure, minority rights, land governance, Balochistan, Kalash, UNDRIP

**Introduction**

Pakistan The situation of the Indigenous peoples and ancestral rights of land in Pakistan is itself a difficult issue to address concerning the constitutional interpretation, land management, minority rights and international human rights laws. The point is that Pakistan does not explicitly include the status of Indigenous people as the special category of the law into its constitution. Rather, other more usual methods involve addressing communities that have a significant historical, territorial and cultural attachment to land as minorities, tribes, local communities or socially marginalized groups. Such legal silence holds great importance in that



the rights of ancestral land are not merely a case of common property. These are group rights which are associated with identity, culture, livelihood, memory and self-government. Policy weakens the customary and intergenerational relationships of Indigenous people to land in a place where the state forms a very individualistic view of land, as either owned by or subject to taxation of an individual.

The hypotheses of this essay are that the legislation and policies of the Pakistani Government simply and in a fragmented manner defend the rights of the Indigenous peoples and their traditional territories. Even though the constitutional rights of the property, culture, minority could offer some background within the framework of which to deal with the claim to land based claims, it is not the foundation of the coherent framework of laws related to collective territories. Secondly, failure by Pakistan to divest land acquisition and forest regulations which were put in place centuries ago is likely to negate customary rights to land and consolidate state powers. Although this judicial change has occurred, mainly in the Baluchistan, where there is a bit of goodwill in accepting customary tribal possession, the general measure of it has failed namely because of inability to formally recognize Indigenous peoples, offer efficient protection of communal tenure, and responsive consultation criteria and because it is rights-oriented response to land governance. Hence, the present system of Pakistan safeguards the rights of ancestral lands indirectly and irregularly instead of basing on principles (Government of Pakistan, 2024).

#### **Constitutional Protection: Valuable but Limited**

In Pakistan, there were a number of provisions in the Constitution that could be employed to make claims to traditional land. Article 23 grants the right of property acquisition, ownership and Disposal to all citizens and Article 24 is its addition so that no man shall be deprived of property willfully except on breach of law along with compensation of forcible taken property (Government of Pakistan, 2024). In their various forms, these articles can be believed to provide material safeguard against unfair deprivation. They can make good jurist beachhead to those societies, which would wish to rebel against invasion by the state or rapacious invasion of individuals.

Both of these elements of a constitution system of property are restraining, however. First of all, it is brought up in the individualistic terms. Those tenure systems found in the native and tribal lands tend not to be registered or documented, intergenerational, customary and collective. These are community provisions and they could not be easily stated as a personal provision which is entrenched in the constitution. Second, constitutional defense to property, alone, does not entail consideration to any traditional systems of settlement, seasonality of land occupation, grazing lanes, and places of worship. Consequently, challenges of establishing rights to land rights in a legally system biased towards the state over the community, whose land rights have been historically good but never legalized, persist.

With this said, Article 28 of the Constitution has a lot to comment on it, as well. It grants that any group of citizens who use another language, writing or culture is allowed to protect their own and can create organisations with a reference to these ( Government of Pakistan, 2024 ). This is a very crucial article as culture and land are inseparable. Land is a source of economic power to most of the Indigenous and tribal groups not just because it provides employment. It is the seat of rituals, cemetery, seasonal migrations and agricultural activities, the pastoral regime and social institutions. Hence, there should be protection of some territory in which culture exists; that is, speaking the culture protection.



but Article 28 continues to be short of an express recognition of territorial rights. It conserves yet not invariably the group claim to the ancestral territory and resources by the groups which portrays a group culturally. The general supportive but not initiating-a-more-specific-land-rights regime is also article 36 of which the state must safeguard the legitimate rights and interests of the minorities (Government of Pakistan, 2024). These are thus handy but incomplete provisions.

Another challenge is Article 172 because it helps the property without the rightful owner to become a possession of provincial government in case such a property is located in a province (Government of Pakistan, 2024). This literally can cause serious dangers in the communities, the claims of which is not registered as per the registration concept but rather custom basis. In any case, the view of land as being shipless on the basis that it lacks an explicit title, ancestral territory might become stateal even after years of cooperative ownership. The Constitution is not so bad in principle, then, as not to be more loyal and protecting of ancestral rights to land.

### **Colonial Land Laws and Structural Weakness**

Most people have attributed the reason as to why Pakistan is still clinging to laws that had firstly been initiated during the colonial period as one of the worst assaults that the Pakistani legal system has had to bear. A land acquisition act of 1894 is one of the tools of compulsory acquisition of land. Among the most significant law protection afforded by legislation (Land Acquisition Act, 1894) is the fact that the state can take ownership of land to serve the common good and other purposes of development. Even though a compensation system can be perceptions to secure the holders of land interests, the very fabric of the law elevates the considerations of the state, government and the administration above the interests of the society and rights of the majority.

In a critical perspective, land Acquisition act is quite colonial in perceiving land as property which can be taken by the state at a price, and given to a different property whenever the state feels like it should. It fails to recognize the sacredness of ancestral land, also it fails to require free, prior and informed consent of the communities that are directly impacted. It also does not address, in an appropriate way the cultural, spiritual and collective nature of land loss. In the case of Indigenous people, or other localities, where Indigenous people have never been approved of, land cannot be brought down to a market price. It is also the loss of identity, memory, continuity not just property in the event of acquisition of ancestral land. The reaction is not normally adequate with respect to rewards.

Similar issues are raised by the forest regime. Forest Act of 1927 and provincial schemes have a lot of colonial ideas of centralization of forest and undeveloped land ( Forest Act, 1927). These laws allowed in the past the classification of forest lands by the state, the limitation of the local uses, and the transformation of traditional practices into privileges, which can be rescinded instead of being considered the rights. This is more damaging especially in communities that depend on forests either to get their livelihood, as pastures or using the available resources seasonally. By treating customary access as a marginalized right but not a right, the local communities are left vulnerable to marginalization, in an effort to save the environment by conserving, developing or state controlled.

These legacies of colonialism bring about an imbalance in its structure. Institutionalized written power is enforced by the state since the customary occupation is mostly non-formal, verbal and unwritten. This injustice gives the state and individuals a greater upper hand over the local communities in conflict of land which the individuals tend to consider as their ancestral land. Not that the legal system of Pakistan does not explicitly recognize the Indigenous rights, but it



has been an older law, which in fact, was not meant to govern any relationship that collectively operates in a territorial fashion.

### **Customary Possession and the Balochistan Example**

However, recent reforms of the legislation in Balochistan give hope that the Pakistani legislation can not turn out the option of recognizing customary and collective possession altogether. The mention of the *Sher Zaman v. Government of Balochistan* case discussed by Balochistan High Court shows that the court was willing to accept the notion that the possession of a claim to the land that had not been settled may be held by the local tribes, in which the joint ownership and control over it existed since the time of their fathers (Cheema, 2024). The significance with this interpretation is that much of the area of Balochistan is to be integrated to fall under the traditional tribal system and customary system and not through settled land ownership.

And this development is of a great significance. It shows us how the provincial land law can be utilized, and bases their powers on historical possession and customary authority on the Pakistani courts; where the courts are not under the obligation to abrogate their powers to default to state possession as per Article 172 of the Constitution. This is a conceptual way how communities might claim in their rights to an ancestral occupation and to allusive sharing to make claims to land where there are no (or incomplete) modern land records.

Such a development however should be taken with caution. First of all, it is not a legislative but a judicial evolution, and, in this respect, its impact can be lopsided and rather insignificant. Second, it is still wedded to certain provincial laws, and factual circumstances instead of creating a country-wide doctrine on Indigenous land rights. Third, litigation is costly; in addition to being time consuming; very many communities cannot afford it. Thus, the example of Balochistan holds promise, but does not respond to the greater problem structure. It demonstrates potential, rather than overall change.

### **The Kalash and the Gap Between Formal Rights and Reality**

These are the circumstances that the Kalash people live in and can be employed to illustrate a huge example of lack of correspondence between the legal concepts and the legal practice. The National Commission for Human Rights also reported that the Kalash people faced a considerable risk of extinction, which also involved a threat of land loss, or the lack of compensation when the land was already sold to the government (National Commission for Human Rights [NCHR], 2023). Specifically, the report has pointed out that the constitutional safeguarding of property was not followed spiritually and practically within the Kalash context (NCHR, 2023).

It becomes particularly important since the example illustrates that the scenario, in which, despite the rights granted to the constitutional provisions during a certain area, the issue of the weaker groups getting deprived in reality takes place. It is not always that the law is silent but the application of the law by institutions is applied to the disadvantage of history of the people, community vulnerability versus documentation, bureaucracy, and politics. The fact that the problem of the ancestral land in the case of the Kalash is directly related to the preservation of culture also speaks to that. Dispossession of land contributes to the pressures on lingo, existence of rituals, sacred areas and societal survival.

The uselessness of the approach where the rights of the minority or general property alone are taken into account is one theme of the Kalash experience. Without a legal system that will clearly recognize collective territorial relations, the communities will have to find protection



with a decentralized legal system. This normally results in bad solutions, derailing of justice and insecurity.

### **International Standards and Pakistan's Legal Gap**

The international human rights standards can be used to evaluate the level of laws and policies in Pakistan. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is the most important global instrument as it acknowledges the right of Indigenous peoples to uphold and enhance their spiritual connection to lands, territories, waters, and resources, and to own, utilize, develop, and control lands and resources (United Nations, 2007). UNDRIP is also concerned with participation, consultation and consent in the decision making process regarding the Indigenous territories.

As compared to these standards, Pakistan structure is half aligned. In Pakistan, general property rights, and cultural identity, as well as Minority groups are enforced, but no specific protection of Indigenous people as peoples with collective rights is identified. Nor does it bring us a costly system of demarcation, of restitution, of consultation, of collective tenure. It means, that, legal system of the Pakistani state is still lower than the rights-based system of protection of ancestral lands.

A free, prior and an informed consent is one of main international standards that is yet to be found in the domestic land structure of Pakistan. Major development, extraction, development and conservation projects can cause big effects to the local communities, but the act is generally interested in approval and compensation by the administration but not with genuine consent. More importantly, it fortifies a top-down kind of a development whose community affected by a project are not consulted at all, assuming they should as stakeholders.

### **Policy Landscape: Inclusion Without Territorial Justice**

The policy frameworks embraced in Pakistan are slowly referring to vulnerable populations, environmental justice, inclusive development. When applied to climate, in particular, marginalized groups are known to be disproportionately impacted when it comes to environmental degradation, displacement and overloading demand of resources. This is true because climate change, infrastructural projects, extractive projects, and conservation projects are known to intensify most of the disputes associated with ancestral land.

The weakness of the current policy language, though, is that in most cases these communities are viewed and known to be the beneficiaries of the state support and not the owners of the territorial rights. This is an important difference. Relocation, compensation or development can be a welfare type policy. A rights-based policy challenges not only the ability of communities to remain on, to identify and utilize their ancestral lands. The current policy still remains in Pakistan is more inclined to management and other means of assistance rather than recognition and territorial justice.

It is due to this that land-related policymaking most of the times is not associated with the issues of identity, historical occupation and self-determination. This is one of the main reasons as to why the current policies cannot be sufficient. They are able to concede that they are weak, but the power of land cannot be discussed as a sufficient aspect.

### **Critical Evaluation**

The Pakistani legal and policy framework can be critically analysed which makes three main inferences.

In the first place, Constitution provides useful principles but is not a thorough solution. The claims of the ancestors can be proved with paperwork on property, culture, and minority protection, but not explicitly refer to the Indigenous people, nor to the collective land rights.



This means that communities must generalise and apply common language in the constitution to fit ills that it was not specifically meant to address in the solution.

Second, governance of the colonial land still draws results in a way that is disadvantageous to the customary communities. The law of acquisition emphasizes more on the concepts of compensation and public purpose as opposed to consent. Forest law favours state control to local control. Formal records are granted more privileges by the revenues systems than oral records and communal tenure. These traits lead to a situation in which it is easy to absorb, regulate and acquire ancestral land compared to its recognition and protection.

Third, despite the encouraging trends in the law, especially in Balochistan, they remain in bits. The recognition in customary tribal ownership into the juridical system is a demonstration that domestic law can leap into a more sensible direction, but until the drastic transformation of the law, the directions are subject to unpredictability and inconsistency. Where no rights are apparent in society, ad hoc litigation, administrative discretion or institutional goodwill is being relied on.

### **Conclusion**

The caliber of law and policy that governs the country of Pakistan does not give a complete protection to the Indigenous populations and their rights to land. The Constitution has done as much as it can to provide more general protection to property, culture, and interests of the minorities, but it has not yet recognized that Indigenous people are a special group and a community with collective claims to their land. In the meantime, the colonial-era accession land and forest laws continue to promote the state ownership of the customary tenure. This forms a structural context whereby ancestral claims are unacknowledged, most of the times, when they are not written down.

Even the Pakistani law has shown its capability to evolve such as customary tribal possession which was declared in Balochistan. Equally, the orders of the institutions, in which the Kalash is treated, are so unambiguously that the alienation of land is not a question of property, but a question of cultural continuity and righteousness. A question however is whether these developments have sufficed unless there is extensive reform.

Strengthened architecture would require the acknowledgment of Indigenous and other similarly placed communities, protection of communal and customary tenure, substantial involvement and approval before decision-making with any land effects, amendment of colonial acquisition statutes, and also frameworks in identifying and acquiring ancestral territories. Without these reforms, the protection of ancestral land in Pakistan is still subject to vulnerability, indirectity and unequal protection.

### **References**

- heema, M. H. (2024). *Ownership of unsettled land belonging to the indigenous tribes in Balochistan*. Shaikh Ahmad Hassan School of Law, Lahore University of Management Sciences.
- Daes, E.-I. A. (2001). *Indigenous peoples and their relationship to land: Final working paper prepared by the Special Rapporteur*. United Nations Sub-Commission on the Promotion and Protection of Human Rights.
- Forest Act, 1927.
- Government of Pakistan. (2024). *The Constitution of the Islamic Republic of Pakistan*.
- Holt-Giménez, E., Borras, S. M., Jr., Franco, J. C., & Wang, C. (2025). Land tenure for resilient and inclusive rural transformation. *Global Food Security*, 44, 100770.



- Islam, H. S. (2024). An examination of the indigenous legal framework for protecting the rights of indigenous peoples in Pakistan. *Journal of Development and Social Sciences*, 5(2), 1-15.
- Land Acquisition Act, 1894.
- National Commission for Human Rights. (2023). *Saga of survival: A report on the issues faced by the Kalash community in Pakistan*.
- Pakistan Legal Research Team. (2024). Submission to the United Nations analytical study on laws, legislation, policies, constitutions, judicial decisions and other mechanisms by which Pakistan has taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples. *Office of the United Nations High Commissioner for Human Rights*.
- Siddiqui, S. (2023). Kalasha people in Pakistan: A mountain Indigenous tribe's struggles to protect identity, culture, ancestral lands, and survival. In *Indigenous societies in the post-colonial world* (pp. 285-299). Springer.
- United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples*.
- United Nations. (2024). *State of the world's Indigenous peoples: Rights to lands, territories and resources*. United Nations Department of Economic and Social Affairs.
- United Nations Office of the High Commissioner for Human Rights. (2024). *Indigenous peoples and the right to lands, territories and resources*. OHCHR.
- United Nations Permanent Forum on Indigenous Issues. (2023). *Report on Indigenous peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent*. United Nations.
- United Nations Special Rapporteur on the rights of Indigenous peoples. (2023). *Report on conservation measures and Indigenous peoples' rights*. United Nations Human Rights Council.
- Wily, L. A. (2018). Collective land ownership in the 21st century: Overview of global trends. *Land*, 7(2), 68.
- Yash Ghai Centre for Legal Studies. (2021). Indigenous people in Pakistan: In consideration of the right to self-determination. *Comparative Constitutional Review*, 7(2), 97-118.
- Yousaf, F. (2021). *Pakistan, regional security and conflict resolution: The Pashtun "tribal" areas*. Routledge.
- Zamudio, A. N. (2020). Indigenous rights and ILO Convention 169: Learning from the past and challenging the future. *The International Journal of Human Rights*, 24(2-3), 90-112.
- Zia, A. (2025). From Khalisa Sarkar land to land reforms: Legal liminality, state control, and resistance in Gilgit-Baltistan, Pakistan. *Third World Quarterly*.
- Zubair, A. A. (2025). Forced land acquisition, Indigenous people and international human rights law. *Al-Amīr Research Journal*, 4(1), 233-248.