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## Policy Input on Human Rights Issues by the Supreme Judiciary in Pakistan: Application of Stage Model of Public Policy

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**Abstract:** The researches have revealed the legislature as the policy or law-making body and the executive branch as the policy implementing body whereas the third pillar of the state, the judiciary, is considered as a legal institute working as an arbitrator in all legal matters. However, the increasing pieces of evidence depict that the judiciary not only acts as an arbitrator in all legal controversies but also plays a role in public policymaking and politics. It is one of the official actors that plays its role in policy processes. This paper examines the role of the Supreme Court of Pakistan (SCP) in generating policy input at different stages of policy making. Content and thematic analysis methods have been used on all judicial verdicts given by the SCP on Human Rights Cases (HRCs). The time period ranges from 2009 to 2019. Purposive sampling technique is utilized to draw a sample containing HRCs from the population of judicial verdicts given by SC during the last ten years. The analysis reveals that the Supreme Judiciary provides its policy input and impacts policy process. It has the power to play its significant role in policymaking by giving policy input in problem identification and agenda-setting, policy formulation, policy adoption, and policy evaluation. The policy input given by SCP should be utilized in an effective way to reduce human rights issues and alleviate the infringement of fundamental rights of the citizens of Pakistan.

**Keywords:** Human Rights, Policy Input, Supreme Judiciary, Official Policy Actor, Pakistan

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### INTRODUCTION

The role of courts in national policymaking has been a great subject for debate in countries like America, Brazil, Mexico, Costa Rica and various others (Casper, 1976; Taylor, 2008). It is said that courts play a major role in determining different national coalitions and unavoidably become a policy-making institute. They just like any other political institution have to repeatedly choose between different policy options regarding which the society is at disagreement and there is unpredictability about the effects of those options (Dahl, 1957).

Decisions given by court may direct other institutions to act in response to a problem or issue which they seem to ignore. Hence, courts help in assembling members and resources towards a particular issue (Casper, 1976). Various factors control the judiciary's influence on policy by impacting litigants' views on whether the judiciary can and should be triggered towards policy ends. The three major factors; importance of policy, political environment, and judicial institutional environment; play a key part in deciding to use court or judiciary as a venue for policy contestation in the presence of other venues (Taylor, 2008).

The practice of policymaking by the judiciary is not uncommon in Pakistan. In many instances, the Supreme judiciary of Pakistan has upheld the constitution, has restricted the legislative and executive powers to their constitutional domains and has helped the sufferers in the society by taking suo moto actions (Munir & Khalid, 2018). The Supreme Judiciary of Pakistan has been playing the role of a policymaker as recently in the tenure of Chief Justice (CJ) Mian Saqib Nisar; the formation of Chief Justice of Pakistan Dam Fund for collecting money for the construction of Diamer Bhasa and Mohmand Dams, agenda-setting by the Supreme Judiciary regarding the issue of population explosion in the country and the Supreme Court order to reduce 20% of the fee charged by private schools are the evidences of it. Therefore, this study is conducted to get an in-depth understanding of the ways in which the Supreme Judiciary of Pakistan from the year 2009-2019 has played a role in policymaking by protecting the human rights of the citizens and the number of times such actions have been taken place by the Supreme Court.

The research objectives of this particular article are:

- To examine the policy issues in relevance to human rights highlighted by the Supreme Judiciary of Pakistan

- To examine the frequency of policy input generated by the judicial decisions in human rights issues
- To examine the role played by Supreme Court of Pakistan in policy making by safeguarding human rights of the citizens

The research question of this article is stated as:

- What is the role played by Supreme Judiciary of Pakistan in policy making by protecting the human rights of the citizens from 2009-2019?

This research is delimited only to the role that SCP has played in policymaking; the role of the other two branches of Superior Judiciary which are High Courts (HCs) and Federal Shariat Court and the lower courts is out of its scope. Furthermore, the role of the Supreme Judiciary as a policy-making body from 2009-2019 is considered only and the policy input by the SCP before that period is not made a part of this research.

Due to ease of accessibility of data from the SCP for the years 2009 to 2019 and to examine the role of SCP in policymaking after Lawyers' Movement; the respective time period is selected. The role of SCP in policymaking is only analyzed because it is the highest court in the country and the court of final appeal. Everyone is bound to follow the directions and the decisions given by it. Therefore, instead of analyzing the role of HCs or Federal Shariat Court; which are the other two pillars of Superior Judiciary; the role of SCP in policymaking is directly analyzed.

The remaining part of the paper is organized as: Section II provides theoretical underpinning and reviews the literature. Section III briefs the research methodology and Section IV analyses the results and discuss them and lastly Section V provides conclusion and policy implications.

## **THEORETICAL UNDERPINNING AND REVIEW OF LITERATURE**

### **Theory of Institutions**

Institutions are rules created by humans that help in regulating or organizing political, economic and social interactions in a society and minimizing unpredictability in exchange (North, 1991). There are two kinds of institutions or rules; informal institutions or rules and formal institutions or rules (North, 1991). Informal rules comprise of taboos, traditions, customs, norms, and conventions whereas, formal rules or institutions include constitutions, laws, and contracts (North 1990, 1991). Formal institutions consist of a hierarchy-based structure which is comparable to legal norms and ranges from constitutions to contracts (Faundez, 2016). Policymaking is the function of formal institutions present in a state which are legislative, executive and judiciary. Judiciary being a formal institute is backed by constitutional provisions and established rules and plays a role in molding and framing public policies in a state.

### **Stages Model of Public Policy**

The stages model was introduced by Lasswell (1956) and it had seven stages. The stages model presented by Brewer & DeLeon (1983); DeLeon (1999); Sabatier (1999, 2007) used for public policy has five stages which are agenda setting, formulation, legitimation, implementation, and evaluation.

In the first stage i.e. agenda setting; issues relevant to the emergence of the problem and its appearance on the public agenda are solved (Howlett & Ramesh, 1995). In the second stage i.e. formulation different policy options or alternatives are developed to solve problems on the agenda (Dye, 2008; Ripley & Franklin, 1984). In case of legitimation, citizens' demands are considered in this process and different alternatives are assessed and policies are molded according to the desires of the public (Anderson, 1984; Kulac & Ozgur, 2017). At the implementation stage, the transformation of policy goals and objectives into action takes place (Fitz, Halpin & Power, 1994). Finally, in the last stage the results, outputs, and effects of the policies are examined (Dunn, 1981; Peters, 1996 & Dye, 2008).

### **Influence of Courts on Public Policies**

In industrialized states and modern welfare democracies decision making by judiciary has penetrated every corner and aspect of social policy (Barnes 2017). According to Ginsburg (2003), Hirschl (2004, 2008), Sweet (1999, 2000) and Tate & Vallinder (1995), there is a significant expansion of "judicialization" all over the world. Moreover, (Kelemen, 2011; Bignami, 2011 and Kagan, 1997, 2007) have found a major increase in "legalism" and "legalization" (Goldstein, 2001) throughout the world. Courts directly as well as indirectly impact policymaking. They act directly by forming new constitutional rights and laws of actions or by issuing injunctions directed at reforming institutional structures and functions (Chayes, 1976; Feeley & Rubin, 1998 and Sandler & Schoenbrod, 2003). Whereas by giving procedural rulings, they induce policy changes indirectly (Keck, 2014 and Galanter, 1974).

Baumgartner & Jones (2002) have specified that courts can cause dramatic policy changes particularly in areas such as nuclear power, pesticides, smoking, child abuse, drugs, auto safety, alcohol, and urban affairs. Interest groups turn to court when they failed at finding answers to their queries in other institutional settings such as governmental agencies.

It is inferred from the theoretical underpinning and review of literature that judiciary a formal institution and it plays its role in policy process. Being an official policy actor, it directly and indirectly impacts on different stages of policymaking. In Pakistan, Supreme Judiciary is the protector of fundamental rights as enshrined in the Constitution of Pakistan 1973.

### **RESEARCH METHODOLOGY**

This research is qualitative in nature. It utilizes thematic and content analysis to scan through the available data and to examine how the Supreme Judiciary of Pakistan impacts policy making in the country and gives policy input. Content analysis is an organized, duplicating method for compacting various words of text into shorter content; based on exhaustive rules of coding (Berelson, 1952; GAO (Government Accountability Office), 1996; Krippendorff, 1980 and Weber, 1990).

The population of the data required for this research is the judicial verdicts given by the judiciary of Pakistan. Therefore, the basic unit of analysis is judicial verdict. This research intends to explore how and in what various ways policy input is provided by the Supreme Judiciary of Pakistan in the country. Therefore, verdicts given by SCP are evaluated in this research. The sample consists of judicial decisions given by the SCP in HRCs from the year 2009-2019. This sample helps in analyzing how the SCP; as constitutional court working for protection and provision of fundamental rights of the public; has in the period of 10 years played a role in policymaking and has protected human rights in the country. This research utilizes purposive sampling technique which is also known as selective, subjective or judgmental sampling technique. The judicial verdicts for specified time period are collected from the official website of the SCP. The official website (<https://www.supremecourt.gov.pk/>) has a separate section labeled as “Judgments/Orders” which contains HRCs for the year 2009 to 2019.

After that, the qualitative data have been examined by following the method suggested by (Braun & Clark, 2006). Thematic analysis has been carried of the qualitative data where themes have been extracted based on the commonalities, theoretical constructs, overarching patterns and explanatory principles.

The first step of any qualitative research is to go through the collected data several times. This step aids in becoming familiar with the entire data set; which in this research are the judicial verdicts given by the SCP for the year 2009 to 2019. Preliminary notes related to the data were formulated and transcribed. The data is secondary as the judicial verdicts available on the official website are analyzed in this research. A total of 56 Human Rights cases were collected. The analysis of the data depicts that out of these 56 cases, there are 19 such cases in which the decision given by the SCP has not directly impacted public policymaking in the country. The remaining 37 cases have influenced policymaking by playing a role in different policy stages i.e. problem identification and agenda-setting, policy formulation, policy adoption, and policy evaluation. Out of these 37 cases; there are 6 such cases in which the SCP has played a role in policymaking by protecting human rights of the citizens.

In the second step, the data collected is placed in a systematic order by generating codes. Coding helps in reducing a large volume of data into small meaningful pieces. Paragraph by paragraph coding of the collected judicial verdicts is performed and initial codes are generated.

Braun & Clark (2006) defined themes as an aspect of data that highlight something interesting or significant about the data. A theme is formulated on the basis of its signification. Themes in this research are developed by considering the issues discussed in the HRCs of the SCP for the year 2009 to 2019 which is the third stage. Four themes are identified which are population explosion in Pakistan, issues faced by minorities, high tax imposed by telecom companies and water crisis in Pakistan.

In the fourth stage initial themes generated in Step 3 are reviewed, revised and reformed. The themes which could be merged into a single theme are combined together, for example, the themes population explosion in Pakistan, issues faced by minorities and water crisis in Pakistan are merged in a single main theme which is social issues in Pakistan whereas, the theme high tax imposed by telecom companies is placed under the main theme; political and constitutional matters. The data related to every theme is assembled and is placed under it.

According to Braun & Clark (2006) in the 5<sup>th</sup> step, each theme is presented and thematic maps are formulated. All the themes derived and reviewed in step 3 and 4 respectively are illustrated in the form of maps under specific policy stage to which they relate (Figure 1).

The final stage is write-up where each theme relating HRCs is analyzed and discussed. After doing thematic analysis, the derived themes are placed under respective policy stages to which they relate. The policy stages according to stages model of public policy given by Howlett and Ramesh (2003), are problem identification and agenda-setting, policy formulation, policy adoption, policy implementation, and policy evaluation.

### **FINDINGS AND DISCUSSION**

A total of 56 Human Rights cases were collected from the data of the SCP of Pakistan for the time 2009 to 2019. The analysis of the data depicts that out of these 56 cases, there are 19 such cases in which the decision given by SC has not directly impacted public policymaking in the country. The remaining 37 cases have influenced policymaking by playing a role at different policy stages i.e. problem identification and agenda-setting, policy

formulation, policy adoption, and policy evaluation. Out of these 37 cases; there are 6 such cases in which the SCP has played a role in policymaking by protecting human rights of the citizens. The role of SCP in policy implementation stage of stages model of public policy is not analyzed because according to Dye (2004) courts do have a role in problem identification and agenda-setting, policy formulation, policy adoption, and policy evaluation but not in policy implementation as it is the function of the executive of the state.

The analysis of the data further discloses that there are 5 such human rights related cases in which the SCP has impacted problem identification and agenda setting, there are 3 cases in which it has influenced policy formulation, only in one case it has affected policy adoption and policy evaluation. For complete thematic and content analysis of the data, the collected cases are segregated into various themes and sub-themes such as, population explosion in Pakistan, water crisis in Pakistan, and social issues in Pakistan etc. In the following paragraphs, the cases under each theme are analyzed and are related to the policy stage of the policy stages model under which they fall.

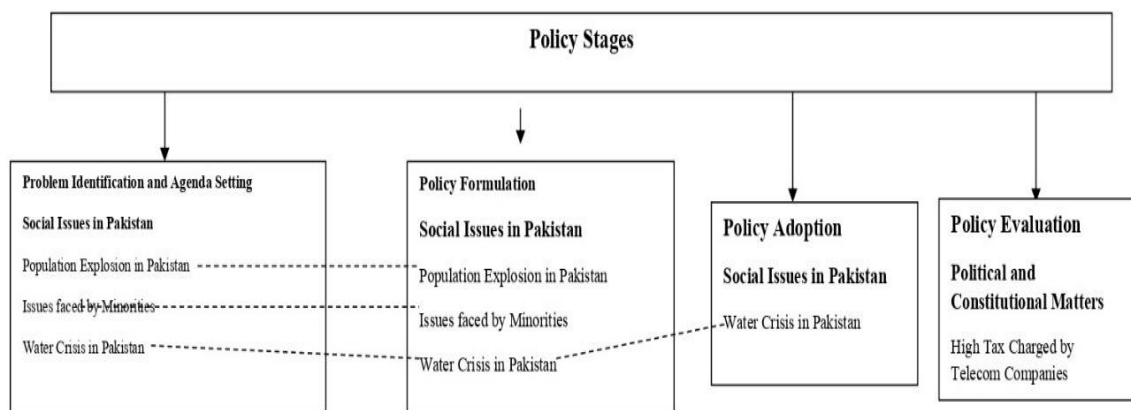


Figure 1 Consolidated Thematic Map

Source: Authors' compilation

### Policy Stage: Problem Identification and Agenda Setting

The efforts made by interest groups help governments to concentrate on public problems (Willemsen 2018). The SCP either takes notices of the problems highlighted by the media or itself highlights the issue to direct the attention of the government towards a public problem. The HRCs from 2009-2019 discussed below under different themes show how the SCP played a role in problem identification and agenda-setting stage.

#### Theme: Social Issues in Pakistan

Pakistan being a developing state faces several social problems. The major social problems encountered by Pakistanis are; health issues, unemployment, terrorism, poverty, population explosion, sectarianism, security issues, illiteracy and excessive crime rate (McCombs, 2002). **Sub-theme 1: Population Explosion in Pakistan** Pakistan is considered as one of the fastest-growing countries in the world in terms of population with the potential to be ranked as the 4th most populous country in the world by 2050 (Wazir, 2013). Since 1950, the population in Pakistan has been growing at a fast rate; ranging between two to four percent; annually (Wazir, 2013). Pakistan has a population growth rate of 2.8% which is the highest in Asia (Afzal, 2009). Considering this alarming situation, the SCP identified and took notice of the issue of high population growth in the country by initiating Human Rights Case No.17599 (2018). The court considered this massive population growth as a ticking bomb that could explode at any moment.

#### Sub-theme 2: Issues faced by Minorities

Pakistan is a Muslim majority state and almost 5% consists of different minorities. Minority Rights Group International (2014) has ranked Pakistan among the top ten countries where minorities face extreme large-scale violence. The SCP has played a significant role in identifying the problems faced by minorities in Pakistan. As in the Human Rights Case No.32642-P (2018) the SCP took notice of the issue of non-registration of Christian marriages and directed the HR&MA (Human Rights & Minorities Affairs) Department to introduce a mechanism by which names of all persons who can solemnize Christian marriages could be gathered.

Furthermore, in the Human Rights Case No.20171-B (2018), the SCP took notice of the issue of delay in payments to victims of the Methodist Church terrorist attack.

Besides, the SCP highlighted the issue of non-compliance of the government with the decision of Council of Islamic Ideology to mention Christian community as 'Masihi' instead of 'Esai'. The court directed to follow the decision of the Council of Islamic Ideology strictly and make arrangements to call Christian community as 'Masihi' instead of 'Esai' in all official documents. Then in the SMC 1 (2014), the SCP took notice of the issue of terrorist attack on Church in Peshawar leading to death of 81 individuals, security issues posed to worship places of Hindus and forced conversion of Ismailies and people of Kalash tribe to a different sect of Muslims.

### **Sub-theme 3: Water Crisis in Pakistan**

Water is the basic building unit of life as it is crucial for sustaining life on this planet. Without water, life would not be possible in this world (Ahmad, 2011). Considering the situation of Pakistan, according to Gassert, Maddocks & Reig (2013), Pakistan is among the 36 most water-stressed countries in the world. In the year 2000, World Bank declared Pakistan as a water-stressed country when it happened to reach the water availability level of 1700 cubic meters per capita per annum (Khalid & Khan, 2016). As per the World Resource Institute, by 2040 Pakistan will retain 23<sup>rd</sup> position in the top 33 water-stressed countries (Iqbal, 2010).

Considering the intense situation of water crises in the country, the judiciary of Pakistan being a guardian of law, fundamental rights of citizens and the constitution took notice of this problem of public importance under the umbrella of Constitution Petition No.57 (2016) so that it could get to governmental agenda and immediate steps could be taken to alleviate the issue of water scarcity.

### **Policy Stage: Policy Formulation**

According to Dye (2008); Ripley & Franklin (1984), different alternatives are developed and different proposals are given to eradicate the problem identified. The SCP has in many instances given proposals or recommendations to the government to solve an issue. All the cases mentioned below under specific themes show how the SCP has played a role in policy formulation.

### **Theme: Social Issues in Pakistan**

#### **Sub-theme 1: Population Explosion in Pakistan**

According to World Bank Report (1989) high fertility or high population growth in Pakistan has resulted in increased infant mortality, increased poverty, decreased educational acquisition, high maternal mortality, increased unemployment, lower economic growth, and increased public expenditure. Considering the deleterious consequences of population explosion, the SCP devised suggestions to be adopted by the government to overcome the issue of population explosion. The SCP constituted a task force to formulate recommendations to reduce this issue of excessive population growth. The recommendations given by the task force included enhancing the use of contraceptives in the country by seeking support from Muslim scholars, youth, academia, intellectuals, executive, media and judiciary, granting free airtime to advertise family planning messages by Pakistan Electronic Media and Regulatory Authority (PEMRA), providing family planning services in all public health facilities, providing family planning counseling and services in all registered private health facilities, giving training to lady health workers and male mobilizers to counsel men and women of each family, launching cash transfer schemes for using family planning services and institutional deliveries (Human Rights Case No 17599, 2018).

#### **Sub-theme 2: Water Crisis in Pakistan**

The water demand for domestic and industrial sector is ever increasing due to increase in population and industrialization. If in the near future no new water reservoirs are developed, the escalating demands of domestic and industrial sectors shall be met by utilizing the water allotted to the agriculture sector which will ultimately affect the crop production and harm the economy of the country (United Nations Development Programme, 2016). Considering this situation, the SCP in the Constitution Petition No.57 (2016) gave several recommendations to eradicate the problem of water scarcity. The SCP proposed the Federal Government, Provincial Governments and all concerned executive authorities to take steps to construct Diamer Bhasa and Mohmand Dams on an immediate basis.

It formulated an Implementation Committee for construction of Diamer Bhasa and Mohmand Dams. For making the nation contribute to the development of these dams and to receive donations from Pakistanis residing here and abroad, the SCP established a dam fund named as 'Supreme Court of Pakistan Diamer-Bhasa and Mohmand Dams Fund'. Additionally, the adoption and implementation of the National Water Policy (NWP) was also directed by the SCP.

### **Sub-theme 3: Issues faced by Minorities in Pakistan**

The policies made by the government have failed in protecting minorities residing in Pakistan (Tahir & Tahira, 2016). The terrorist attack on Church in Peshawar and the issues faced by Hindus and the people of Kalash tribe are the examples of it. To overcome these issues the SCP commenced SMC 1 (2014) and recommended the Federal Government to form a task force to constitute a scheme to enhance religious tolerance in the country. It further suggested formulating such a curriculum in schools and colleges which would encourage social and religious tolerance. It also proposed banning and discouraging hate speeches on social media, safeguarding the rights of minorities by establishing National Council for minorities' rights and founding special Police Force for securing worship places of minorities (SMC 1, 2014).

### **Policy Stage: Policy Adoption**

According to Dye (2012) policy adoption is the process in which decision-makers evaluate different policy alternatives and select the best policy option among all; which could reduce and eradicate public problems from society. Judiciary has the power to play an important role in policy adoption by providing a platform for problem eradication.

### **Theme: Social Issues in Pakistan**

#### **Sub-theme 1: Water Crisis in Pakistan**

Considering Constitution Petition No.57 (2016) which is related to the issue of water scarcity in Pakistan; in response to the recommendations given by the SCP the government approved Pakistan's first-ever NWP in 2018 ("Unanimous approval of NWP from CCI", 2018). Besides that, according to Budget 2019-2020, the principal focus of the development budget is the formation of water-related projects encompassing dams. For that matter, around 70 billion rupees have been reserved for projects alleviating water scarcity from the country ("Federal Budget", 2019).

### **Policy Stage: Policy Evaluation**

According to Dye (2008) during policy evaluation, the results and impacts of an implemented policy are analyzed. This evaluation can be undertaken by different stakeholders (Howlett & Ramesh, 2003). The cases described below under specific themes depict that SCP has played a role in the policy evaluation stage.

### **Theme: Political and Constitutional Matters**

#### **Sub-theme 1: High Tax Charged by Telecom Companies**

In response to the issue of heavy tax charged by telecom companies on top-ups, the SCP initiated the HRC referred to as Human Rights Case No. 18877 (2018). It considered this tax deduction as illegal, unlawful and unconstitutional and dismissed it as a result of which the government and all the telecom companies stopped tax deduction on top-ups ("No tax deduction on mobile top-ups", 2018).

## **CONCLUSION AND POLICY IMPLICATIONS**

After conducting an extensive research by evaluating the content of policy issues discussed by the SCP and analyzing the data highlighting the role of Supreme Judiciary in policymaking in Pakistan, it can be deduced that the SCP has the tendency to influence policymaking in the country by taking action on human rights issues. It is found that the Supreme Judiciary of Pakistan plays a role in policymaking as it has at many instances from 2009 to 2019 given an input on several human rights issues which can be classified into different stages of policymaking cycle.

The first objective of this research is achieved as the findings depict that SCP or the Supreme Judiciary of Pakistan has played a role in policymaking in the country and has influenced various policy stages by giving policy input on various human rights issues from 2009-2019. The second objective of this research is also accomplished as the content of policy issues discussed by SCP from 2009 to 2019 is also evaluated by analyzing the HRCs of the SCP for the year 2009-2019. And by considering the third objective of the research and scouting the frequency of policymaking action of SCP in human rights issues, it is disclosed that the Supreme Judiciary of Pakistan has played a role in problem identification and agenda setting 5 times, policy formulation 3 times, policy adoption and policy evaluation 1 time each.

The policy input from the SCP should be utilized efficiently and effectively to alleviate the issues and reduce the infringement of fundamental rights of the citizens of Pakistan. The policy input from the judiciary in terms of problem identification has helped in bringing forth various issues in front of the government such as the issue of population explosion, water crises, etc. The government is required to consider the directions given by the SCP seriously and take serious actions to eradicate all these problems from society.

Policies formulated by the SCP provide a framework or give different policy options to the government following which the government can create and implement a policy to overcome an issue. In various cases mentioned above different policy options are given to eradicate a specific problem such as, the issues faced by

minorities, population explosion and water crisis. The government should ensure effective employment of all the recommendations to create a policy fruitful enough to relieve the problem. The policy created should have clear goals, vision and mission strategies. It is very important for the government to not only focus on the creation of an effective or goal-oriented policy but also concentrate on the effectual implementation of the policy to achieve its goals and targets successfully.

This research despite contributing to existing pool of literature on the policymaking and being comprehensive in nature still has some limitations. Firstly, due to privacy concerns and other issues, the large volume of data available on cases related to fundamental rights of citizens have not been accessed from the Registrar office of SCP. Secondly, this research has only focused on the role of the SCP in policymaking which is one part of Superior Judiciary of Pakistan. The role of the other two segments i.e. High Courts and Federal Shariat Court has not been discussed. For future researchers, it is recommended to analyze whether the policy inputs given by the SCP are translated into policies or not and this needs to be checked from concerned government departments.

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**ANNEXURE A**

**Details of HRCs of SCP from 2009-2019**

Sr. No.	Case title	Case Reference	Date
1.	Suo moto actions regarding suicide bomb attack of 22.9.2013 on the Church in Peshawar and regarding threats being given to Kalash tribe and Ismailies in Chitral	SMC-01-2014 etc	19.06.2014
2.	Issue of Water Scarcity	C.P. NO.57 OF 2016	04-072018
3.	Regarding alarming high population growth rate in the country	HUMAN RIGHTS CASE NO.17599 OF 2018	03-01-2019
4.	In the matter regarding deduction of high Tax/other charges by Mobile Companies in Pakistan	Human Rights Case No. 18877 of 2018	11-06-2018
5.	In the matter regarding murder of non-payment of victims of terrorist attack on church in Quetta on 17.12.2017	HUMAN RIGHTS CASE NO.20171-B OF 2018	11-05-2018
6.	In the matter regarding non-registration of Christian Marriages	HUMAN RIGHTS CASE NO.32642-P OF 2018	11-09-2018

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