

CONSTITUTIONAL PROTECTION OF FUNDAMENTAL RIGHTS IN PAKISTAN: A COMPARATIVE STUDY OF PAKISTANI CONSTITUTIONAL LAW AND ISLAMIC JURISPRUDENCE

Saif Ur Rehman^{1*}, Basharat Ali², Tariq Hussain³, Muhammad Imran Anwar⁴

¹Post Graduate Institute of Law, The University of Lahore, Pakistan

^{2,3,4}Bahauddin Zakariya University, Multan, Pakistan

^{1*}saifurrehmanptk@gmail.com, ²basharatali3087@gmail.com, ³tariqptk@gmail.com

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Corresponding Author: *

Saif Ur Rehman

Abstract

Fundamental rights constitute the principal constitutional mechanism for protecting human dignity, liberty, equality and justice against arbitrary exercise of state power. In Pakistan, the constitutional protection of fundamental rights exists within a distinctive normative framework in which modern constitutionalism operates alongside Islamic principles. This article critically reviews the relationship between Pakistani constitutional rights and Islamic jurisprudence by examining the constitutional protection of life, liberty and fair trial; freedom of speech and religious liberty; and gender equality and non-discrimination. Particular attention is given to Articles 9, 10, 10A, 19, 20 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, together with Articles 227 and 203D concerning the Islamic character of legislation and the jurisdiction of the Federal Shariat Court. The article further examines the concepts of Huquq al-Ibad and Maqasid al-Shari'ah as possible theoretical bridges between constitutional rights and Islamic jurisprudence. Judicial developments are analysed through leading decisions of the Supreme Court of Pakistan and the Federal Shariat Court, while the post-2025 constitutional restructuring and establishment of the Federal Constitutional Court are incorporated into the institutional analysis. The article argues that Pakistani constitutionalism and Islamic jurisprudence should not be understood through a simplistic binary of compatibility or conflict. Considerable convergence exists concerning protection of life, human dignity, justice, property, family and protection against arbitrary state action. Difficulties arise primarily in areas involving freedom of expression, religious liberty, gender-specific rules and the methodology used to reconcile classical jurisprudence with contemporary constitutional conditions. The article concludes that a constitutionally grounded, Maqasid-oriented and methodologically disciplined approach to contemporary Ijtihad can contribute to the development of a coherent rights jurisprudence in Pakistan.

INTRODUCTION

The protection of fundamental rights is one of the defining characteristics of constitutional government. Modern constitutional systems seek to establish legal limits upon public authority and to provide individuals with enforceable protection against arbitrary interference with their life, liberty, dignity, equality and other legally recognised interests. The Universal Declaration of Human Rights similarly places life, liberty, security, equality before law, fair trial, freedom of religion and freedom of expression among fundamental human rights.¹ (OHCHR)

Pakistan's constitutional order presents a particularly important context for examining these questions because fundamental rights operate within a constitutional system that expressly incorporates Islamic principles. The Constitution of the Islamic Republic of Pakistan, 1973 guarantees fundamental rights principally through Chapter 1 of Part II, including security of person under Article 9, safeguards concerning arrest and detention under Article 10, fair trial and due process under Article 10A, freedom of speech under Article 19, freedom of religion under Article 20 and equality under Article 25. At the same time, Part IX establishes constitutional mechanisms relating to Islam, including Article 227 and the jurisdiction of the Federal Shariat Court.²

This constitutional structure creates an important jurisprudential question: how should fundamental rights be understood where modern constitutional principles and Islamic jurisprudence operate within the same legal order?

The question cannot satisfactorily be answered by assuming either complete compatibility or inevitable conflict. Islamic jurisprudence itself is a diverse intellectual tradition containing different schools, methodologies and historical interpretations. Similarly, constitutional rights are not absolute and are frequently subject to limitations designed to protect competing public interests.

The concept of *Maqasid al-Shari'ah* is especially relevant to this discussion. Classical Islamic

jurisprudence identifies the preservation of essential human interests, including life, religion, intellect, lineage and property, as among the principal objectives of Islamic law. Contemporary scholarship has developed *Maqasid* beyond a narrow classification of legal necessities and has considered justice, human dignity, freedom, welfare and social development as relevant dimensions of Islamic legal reasoning. Jasser Auda, for example, advocates a systems approach that emphasises wholeness, multidimensionality, openness and purposefulness in interpreting Islamic law.³ (IIIT)

A second relevant concept is *Huquq al-Ibad*, or rights owed between human beings. Unlike a purely individualistic conception of rights, this framework connects rights with reciprocal duties and moral responsibility. It therefore provides a potentially useful basis for examining the relationship between individual constitutional rights and collective social obligations.

The Pakistani constitutional experience is historically complex. Islam has occupied different positions in Pakistan's constitutional development, ranging from a general normative limitation upon legislation to more institutionally enforceable forms of Islamic review. Martin Lau's examination of Pakistan's constitutional history demonstrates that the role of Islam has been central to the development of Pakistan's constitutional identity.⁴ (OUP Academic) Comparative scholarship similarly shows that Islamic constitutionalism should not be treated as a single model applicable uniformly across Muslim-majority states.⁵ (Annual Reviews)

This article therefore undertakes a critical doctrinal review of selected fundamental rights and their relationship with Islamic jurisprudence. It focuses on three groups of rights. First, it examines life, liberty and fair trial under Articles 9, 10 and 10A. Secondly, it examines freedom of speech and religious liberty under Articles 19 and 20. Thirdly, it analyses equality and non-discrimination under Article 25, particularly in relation to women and family law.

The article further considers the role of superior courts. Historically, the Supreme Court

developed an extensive fundamental-rights jurisprudence under its constitutional jurisdiction. However, the constitutional position changed significantly following the Constitution (Twenty-Seventh Amendment) Act, 2025, which established the Federal Constitutional Court and transferred important constitutional functions, including public-importance fundamental-rights jurisdiction, to that Court.⁶ (National Assembly of Pakistan) Accordingly, this article distinguishes between the historical contribution of the Supreme Court and the current constitutional allocation of jurisdiction.

The central argument is that Pakistani constitutionalism can potentially accommodate a rights-oriented interpretation of Islamic law without treating Islamic jurisprudence merely as an obstacle to fundamental rights. The strongest basis for such reconciliation lies in justice, human dignity, *Huquq al-Ibad*, *Maqasid al-Shari'ah* and disciplined contemporary *Ijtihad*.

Research Methodology and Conceptual Framework

This article adopts a qualitative doctrinal and comparative legal methodology. It reviews constitutional provisions, legislation, judicial decisions, Islamic legal sources and contemporary academic scholarship.

The primary legal sources include the Constitution of Pakistan, judgments of the Supreme Court, judgments of the Federal Shariat Court, decisions of the Federal Constitutional Court where relevant, and legislation concerning family law and fundamental rights. Islamic primary sources include selected Qur'anic principles and Prophetic traditions, while classical and contemporary juristic literature is used to contextualise their interpretation.

The comparative method is not intended to establish that Pakistani constitutional law and Islamic jurisprudence constitute identical systems. Rather, the comparison considers four dimensions:

1. the source of a right;
2. the legal scope of the right;
3. permissible limitations;

4. institutional mechanisms for enforcement.

The theoretical framework combines constitutionalism, rights theory, *Huquq al-Ibad* and *Maqasid al-Shari'ah*. Constitutionalism provides the basis for examining limitations on government power. *Huquq al-Ibad* provides an Islamic perspective on interpersonal rights and corresponding obligations. *Maqasid al-Shari'ah* provides a purposive methodology through which specific legal rules can be considered in light of broader objectives.

Wael Hallaq's analysis of Islamic legal theory is particularly important because it demonstrates that Islamic jurisprudence developed through a sophisticated interaction between textual sources, legal methodology, juristic reasoning and social circumstances.⁷ (Cambridge University Press) Thus, historical *fiqh* should not automatically be equated with immutable divine law.

This distinction is essential for the contemporary debate. *Shariah* represents the normative ideal of Islamic law, while *fiqh* represents human attempts to understand and formulate legal rules from Islamic sources. Consequently, acknowledging the authority of *Shariah* does not necessarily require treating every historical juristic opinion as beyond reinterpretation.

Constitutional Foundations of Fundamental Rights in Pakistan

The constitutional protection of rights begins with Article 8, which places fundamental rights in a superior position to ordinary legislation. Article 8 establishes that laws, customs and usages inconsistent with fundamental rights are, to the extent of inconsistency, void. This is a central expression of constitutional supremacy.

The Supreme Court historically reinforced this principle in *Benazir Bhutto v Federation of Pakistan*, where the Court adopted an expansive approach to constitutional rights and public-interest standing.⁸ The case became particularly influential in the development of judicial protection of fundamental rights.

The Court subsequently used its constitutional jurisdiction to address a broad range of social and legal issues. *Darshan Masih v The State*, for

example, demonstrated the willingness of the superior judiciary to intervene in matters involving bonded labour and fundamental rights.⁹ The decision illustrated how constitutional rights can operate as instruments for protecting vulnerable persons rather than merely as abstract limitations upon government.

The right to life was given an expansive interpretation in *Shehla Zia v WAPDA*. The Court treated Article 9 as extending beyond mere physical existence and recognised that the quality and safety of life can fall within constitutional protection.¹⁰ (Law and Policy Reform)

This approach is significant for Islamic jurisprudential comparison. Protection of life corresponds closely with *Hifz al-Nafs*, traditionally recognised as one of the essential objectives of Shariah.

The constitutional model therefore contains an important purposive dimension. Rights are not merely words in the constitutional text; they are interpreted in light of their underlying purposes.

Life, Liberty and Fair Trial: Articles 9, 10 and 10A

Article 9 and the Right to Life

Article 9 provides that no person shall be deprived of life or liberty except in accordance with law. The provision establishes legality as a fundamental condition for state interference with the most basic interests of an individual.

The decision in *Shehla Zia* represents an important expansion of this protection. The Court's recognition that "life" includes dimensions of health, safety and dignified existence illustrates the capacity of constitutional adjudication to respond to new forms of harm.¹¹ (Law and Policy Reform)

Islamic jurisprudence provides a strong parallel. The preservation of life constitutes *Hifz al-Nafs*, one of the essential *Maqasid*. Qur'anic principles concerning the sanctity of human life reinforce this objective, particularly Qur'an 5:32.

The convergence is therefore significant. Both frameworks recognise human life as a protected interest of exceptional importance.

The difference lies principally in legal

methodology. Constitutional law expresses the protection through enforceable legal rights against the state, whereas Islamic jurisprudence approaches protection of life through a combination of rights, duties, morality and divine accountability.

Liberty and Arbitrary State Action

Personal liberty is protected not only by Article 9 but also by Article 10, which establishes procedural safeguards in cases of arrest and detention.

The constitutional requirement that deprivation of liberty occur according to law embodies a basic rule-of-law principle: state power must be legally authorised and procedurally constrained.

Islamic jurisprudence similarly contains strong principles against arbitrary deprivation of liberty. Justice ('*adl*') and procedural fairness are central concepts within Islamic adjudication. The requirement of evidence, the opportunity to respond to allegations and the prohibition of arbitrary punishment demonstrate that legal authority is not equivalent to unrestricted authority.

This comparison suggests that the substantive objectives of constitutional due process and Islamic justice are often closer than their institutional structures initially suggest.

Article 10A and Fair Trial

Article 10A was inserted through the Eighteenth Amendment in 2010 and expressly guarantees fair trial and due process. The provision covers both civil rights and obligations and criminal charges.

The constitutional importance of Article 10A has been repeatedly recognised by the superior courts. In a constitutional judgment concerning military trials, the Supreme Court emphasised that fundamental rights cannot ordinarily be taken away through ordinary legislation and described fair trial as an integral constitutional guarantee.¹² (Supreme Court of Pakistan)

The international dimension is also relevant. Pakistan ratified the International Covenant on Civil and Political Rights (ICCPR) in 2010,

under which Articles 9 and 14 protect liberty and fair-trial rights respectively.¹³ (United Nations Treaty Collection)

Islamic jurisprudence similarly values procedural justice. The administration of justice requires impartial adjudication, credible evidence, hearing of the parties and protection against arbitrary punishment.

Thus, there is substantial convergence concerning the **objective of fair adjudication**, although the sources and technical rules may differ.

The comparative conclusion should nevertheless remain cautious. It would be inaccurate to claim that Islamic due process and modern constitutional due process are identical. Contemporary fair-trial law incorporates concepts such as institutional independence, legal representation and procedural safeguards that developed within modern constitutional systems. Islamic jurisprudence, meanwhile, developed its own evidentiary and adjudicatory principles in historically different institutional settings.

The more defensible conclusion is that both traditions contain normative resources capable of supporting protection against arbitrary adjudication.

Freedom of Speech and Religious Liberty

Article 19 and Freedom of Expression

Article 19 recognises freedom of speech and expression while permitting constitutionally defined restrictions. The right therefore exists within a framework of balancing individual freedom against competing constitutional interests.

This structure resembles the broader international approach. Article 19 of the ICCPR protects freedom of expression but permits certain restrictions where provided by law and necessary for recognized legitimate interests.¹⁴

The Islamic jurisprudential approach is more difficult to translate into a modern constitutional category. Islamic sources emphasize truthfulness, justice, consultation (*Shura*), accountability and responsible speech. Qur'an 4:135, for example, commands believers to stand firmly for justice, while Qur'an 33:70 instructs believers to speak

words that are upright.

At the same time, Islamic jurisprudence contains restrictions upon forms of speech considered harmful, defamatory, false or socially destructive. The important analytical distinction is therefore between **freedom of expression** and **unrestricted expression**. Neither constitutional law nor Islamic jurisprudence necessarily treats speech as an unlimited right. The central question becomes whether restrictions are:

- legally grounded;
- directed toward a legitimate objective;
- proportionate or reasonably connected to that objective; and
- consistent with the wider constitutional or legal order.

This is an area where contemporary Pakistani jurisprudence would benefit from greater methodological clarity.

Article 20 and Religious Liberty

Article 20 protects the right of every citizen to profess, practice and propagate religion, subject to law, public order and morality. It also protects religious denominations and sects in relation to their institutions.

The Supreme Court's judgment in *Suo Motu Case No 1 of 2014* is especially significant. The Court discussed the constitutional position of religious minorities and emphasized the importance of religious conscience and minority protections.¹⁵ (Supreme Court of Pakistan)

The judgment is important for another reason: it demonstrates that religious liberty can be explained not only through liberal constitutional theory but also through Islamic values concerning tolerance, dignity and protection of minorities.

Pakistan's international commitments are relevant as well. The ICCPR protects freedom of thought, conscience and religion under Article 18, while the UDHR protects freedom of religion under Article 18.¹⁶

Pakistan's constitutional framework therefore exists within a wider international rights environment. However, the constitutional Islamic provisions create additional interpretive questions concerning the extent to which

international standards can influence domestic constitutional interpretation.

Classical and Contemporary Islamic Formulations

Religious liberty is among the areas in which historical Islamic jurisprudence and contemporary human-rights discourse can generate significant tension.

One reason is historical context. Classical Muslim jurists developed rules concerning religious identity, political membership, apostasy and non-Muslim communities in societies that were not structured according to the modern nation-state model of equal citizenship.

Modern constitutional citizenship differs significantly from those historical arrangements. Contemporary Islamic scholarship has therefore developed competing approaches. Some scholars emphasize continuity with classical doctrine, while others argue that principles such as non-coercion, human dignity, citizenship and public welfare require reinterpretation.

Ann Elizabeth Mayer has cautioned against treating "Islamic human rights" as a monolithic category, emphasizing the diversity of Islamic rights discourse and the political context in which particular formulations are developed.¹⁷ (Routledge)

The Pakistani constitutional debate should consequently avoid simplistic propositions that Islam either completely guarantees or completely rejects modern religious liberty.

Gender Equality and Non-Discrimination under Article 25

Article 25 establishes equality before law and equal protection of law while prohibiting discrimination on the basis of sex and permitting special provisions for the protection of women and children. The provision contains both formal equality and the possibility of protective differentiation. This distinction is essential to the Islamic jurisprudential debate.

Equality and Human Dignity

Islamic sources strongly affirm the equal moral

worth of human beings. Qur'an 49:13 emphasises that human beings originate from a common humanity and that superiority is not based upon race, tribe or social status.

The Qur'anic concept of human dignity is also significant. Qur'an 17:70 describes humanity as honoured.

These principles provide a strong foundation for arguing that women and men possess equal human dignity.

However, Islamic jurisprudence historically developed different rules in some areas of family law, inheritance and financial responsibility.

The existence of differentiated rules does not automatically answer the contemporary constitutional question. The legal analysis must determine whether a particular distinction remains justified within the constitutional framework and whether the historical rationale of a rule continues to operate under contemporary circumstances.

Equality Does Not Necessarily Mean Identical Treatment

A major analytical mistake is to equate equality with identical treatment in every circumstance. Constitutional equality generally permits reasonable distinctions where a legitimate objective exists and where the distinction is not arbitrary. Islamic jurisprudence similarly contains differentiated legal rules in specific contexts. The real question is therefore whether a particular distinction is:

1. based upon an authentic legal source;
2. properly interpreted;
3. directed toward a legitimate objective;
4. consistent with justice; and
5. capable of being reconciled with the contemporary constitutional framework.

Pakistani Family Law

Pakistan's family-law system provides an important example of interaction between Islamic jurisprudence, legislation and judicial interpretation.

The Muslim Family Laws Ordinance 1961 introduced significant statutory regulation of

Muslim family relations.¹⁸ The Family Courts Act 1964 established a specialised framework for resolving family disputes.¹⁹ (Pakistan Code)

The Supreme Court's decision in *Khurshid Bibi v Baboo Muhammad Amin* remains particularly important concerning *khula*.²⁰ The case illustrates the capacity of Pakistani courts to engage with Islamic jurisprudence in a manner responsive to the protection of women's interests.

Recent Federal Shariat Court jurisprudence has continued to consider *khula* as a matter of Islamic jurisprudence. A 2025 judgment considered the Qur'anic basis of *khula* and the circumstances in which a judge may grant dissolution where the husband does not agree.²¹ (Federal Shariat Court) This is important because it demonstrates that Islamic family law continues to be interpreted institutionally rather than merely reproduced mechanically from historical texts.

Contemporary Ijtihad and Gender Justice

Ihsan Yilmaz's analysis of Federal Shariat Court jurisprudence argues that the Court has engaged in forms of collective *Ijtihad* in relation to gender equality, women's rights and family life.²² (Taylor & Francis Online)

The significance of this scholarship is methodological. It challenges the assumption that Islamic jurisprudence is necessarily static. However, contemporary *Ijtihad* must remain methodologically disciplined. It cannot simply replace textual reasoning with personal preference. Rather, it should engage with Qur'anic principles, Sunnah, juristic methodologies, *Maslahah*, *Maqasid* and the realities of contemporary society.

Judicial Interpretation and the Institutional Framework

The relationship between constitutional rights and Islamic jurisprudence cannot be understood without considering institutional structures. Historically, the Supreme Court of Pakistan played a major role in developing fundamental-rights jurisprudence. Cases such as *Benazir Bhutto*, *Darshan Masih* and *Shehla Zia* demonstrated the capacity of the Court to use

constitutional jurisdiction to protect vulnerable persons and expand the substantive meaning of rights.²³ The Federal Shariat Court represents a different constitutional mechanism. Article 203D authorises it to examine whether a law or provision of law is repugnant to the injunctions of Islam as laid down in the Qur'an and Sunnah.²⁴ (Pakistani) Its jurisdiction is constitutionally defined and is not identical to the general constitutional jurisdiction historically exercised by the Supreme Court.

The Post-2025 Constitutional Position

For a contemporary article, an important qualification is necessary. The Constitution (Twenty-Seventh Amendment) Act, 2025 fundamentally restructured constitutional adjudication by establishing the Federal Constitutional Court. The new Article 175E gives that Court jurisdiction where a question of public importance concerning enforcement of fundamental rights is involved.²⁵ (Pakistan Kanoon)

The amendment also altered Article 189 so that decisions of the Federal Constitutional Court are binding on all other courts, including the Supreme Court, whereas Supreme Court decisions are not binding upon the Federal Constitutional Court.²⁶ (Pakistan Kanoon)

This development significantly changes the institutional analysis of constitutional rights. Accordingly, the traditional formulation of a direct institutional comparison between "Supreme Court versus Federal Shariat Court" is now incomplete. The contemporary institutional structure involves at least three relevant judicial institutions:

- the Federal Constitutional Court for constitutional interpretation and specified fundamental-rights jurisdiction;
- the Supreme Court for its remaining appellate and other constitutional functions; and
- the Federal Shariat Court for its constitutionally defined Islamic-review jurisdiction.

The Federal Constitutional Court has already begun interpreting its new constitutional role. In

a 2025 judgment, it noted that the Twenty-Seventh Amendment restructured the distribution of constitutional judicial power and that its constitutional interpretation function now occupies a distinct position within the judicial hierarchy.²⁷ (FCCP) This institutional transformation should be incorporated into contemporary scholarship on Pakistani constitutional rights.

Federal Shariat Court and Islamic Review

The Federal Shariat Court's jurisdiction under Article 203D allows it to examine laws for repugnancy with Islamic injunctions. If a provision is declared repugnant, the constitutional mechanism provides for governmental steps to bring the law into conformity.²⁸ (Pakistani) The Court therefore occupies a distinctive position: it is neither simply a conventional constitutional court nor merely a religious advisory body. Its jurisdiction is itself constitutionally created. The existence of this specialized institution creates a form of constitutional pluralism. Rather than assuming that constitutional rights and Islamic review must necessarily compete, the institutional structure can be understood as establishing different constitutional pathways for legal reasoning.

Convergence and Doctrinal Tension

The comparative review identifies substantial convergence between constitutional rights and Islamic jurisprudence.

Protection of Life

Article 9 and *Hifz al-Nafs* both prioritise protection of human life.

Human Dignity

Article 14's protection of dignity corresponds with Islamic concepts of human honour and

dignity.

Justice

Constitutional equality, fair trial and judicial review reflect objectives that can be related to the Islamic principle of '*Adl*'.

Property

Constitutional property rights correspond with *Hifz al-Mal*.

Family

Family protection is recognised by both Pakistani law and Islamic jurisprudence.

Protection from Arbitrary State Action

The rule of law and constitutional due process have strong conceptual parallels with Islamic principles against arbitrary injustice. However, substantial questions remain concerning freedom of expression, religious liberty and gender-specific legal rules. The appropriate response is not to deny these differences but to examine their causes. Some differences arise from genuine differences in normative principles. Others result from differences between classical legal institutions and the modern constitutional state. Still others arise because historical juristic interpretations represent particular human interpretations of Islamic sources rather than the only possible interpretation. This distinction provides space for disciplined contemporary *Ijtihad*.

Maqasid al-Shari'ah and Modern Ijtihad as a Framework for Reform

The most promising theoretical bridge between constitutional rights and Islamic jurisprudence is the purposive approach represented by *Maqasid al-Shari'ah*. A conventional formulation of the essential *Maqasid* includes:

Table 1. Maqasid al-Shari'ah and Modern Ijtihad as a Framework for Reform

Islamic objective	Contemporary constitutional relevance
<i>Hifz al-Nafs</i>	Life, health and personal security
<i>Hifz al-'Aql</i>	Education and intellectual development
<i>Hifz al-Din</i>	Religion and religious liberty
<i>Hifz al-Nasl</i>	Family and child protection
<i>Hifz al-Mal</i>	Property and economic security
<i>'Adl</i>	Equality and justice
Human dignity	Protection from degrading treatment

These correspondences should not be understood as suggesting that each constitutional right is simply a direct equivalent of a *Maqсад*. The relationship is interpretive rather than mechanical. Auda's systems approach is particularly valuable because it places purpose at the centre of Islamic legal analysis and seeks to understand legal rules within larger systems of justice, welfare, freedom and human development.²⁹ (IIIT)

This approach can support contemporary *Ijtihad* in three ways.

First, it allows jurists to identify the purpose behind a legal rule.

Secondly, it allows consideration of changing circumstances.

Thirdly, it permits comparison between different legal means for achieving the same underlying objective.

However, this approach must not become an unrestricted licence for judicial policymaking. Contemporary *Ijtihad* should remain grounded in recognised Islamic legal methodology. Hallaq's work demonstrates that Islamic legal theory historically developed through complex methods of interpretation, reasoning and juristic authority.³⁰ (Cambridge University Press)

Accordingly, modern *Ijtihad* should be based upon:

- textual analysis;
- *Usul al-Fiqh*;
- *Maqasid*;
- *Maslahah*;
- awareness of historical context;

- contemporary social realities; and
- constitutional principles.

Such an approach could provide a more intellectually credible bridge between Islamic jurisprudence and constitutional rights.

International Human Rights and Pakistan's Constitutional Framework

Pakistan's domestic constitutional framework does not operate in isolation from international human-rights law.

Pakistan ratified the ICCPR in 2010.³¹ (United Nations Treaty Collection) It also acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1996 and ratified the Convention on the Rights of the Child in 1990.³² (United Nations Treaty Collection)

These instruments are relevant to the interpretation and development of rights discourse, although their precise domestic legal effect depends upon Pakistan's constitutional and legislative framework.

The international framework also demonstrates that many rights commonly described as "Western" have become part of a wider global legal discourse.

At the same time, Islamic states have developed their own human-rights formulations. The Organisation of Islamic Cooperation adopted the Cairo Declaration on Human Rights in Islam in 1990.³³ (OIC-OCI)

The existence of these instruments demonstrates that the relationship between Islam and human rights is an active field of legal and intellectual

debate rather than a settled opposition.

The more productive question for Pakistan is therefore how domestic constitutional law, Islamic jurisprudence and international human-rights standards can be interpreted in a coherent manner.

Challenges and Doctrinal Gaps

Several challenges remain.

Fragmentation of Legal Reasoning

Constitutional rights, Islamic law, statutory law and international human-rights law are sometimes discussed separately. Greater interdisciplinary reasoning is needed.

Classical Jurisprudence and Contemporary Society

Historical juristic rules were often formulated in circumstances substantially different from those of the contemporary nation-state. This does not make classical jurisprudence irrelevant. It means that its methodological application requires care.

Inconsistent Judicial Approaches

Differences between judicial decisions can generate uncertainty concerning the scope of rights.

Institutional Complexity

The post-2025 establishment of the Federal Constitutional Court adds another institutional dimension to constitutional adjudication. This may ultimately strengthen constitutional specialisation, but it also requires clear doctrines concerning institutional boundaries and precedent.

Implementation

A constitutional right is meaningful only when it can be practically enforced. Delay, limited legal awareness, unequal access to justice and institutional weaknesses may undermine the practical value of constitutional guarantees.

Recommendations

The following reforms are proposed.

Develop a Coherent Rights Interpretation Methodology

Constitutional courts should articulate clearer principles concerning legality, reasonableness, proportionality and permissible restrictions.

Strengthen Maqasid-Based Scholarship

Pakistani law schools should encourage interdisciplinary research involving constitutional law, Islamic jurisprudence, human rights and *Maqasid al-Shari'ah*.

Promote Methodologically Disciplined Ijtihad

Contemporary Islamic legal questions should be addressed through qualified *Ijtihad* rather than by simply reproducing historical rulings without contextual analysis.

Distinguish Shariah from Fiqh

Academic and judicial discourse should clearly distinguish divine normative principles from historically situated human interpretations.

Protect Religious Minorities

Article 20 should continue to receive a rights-protective interpretation consistent with constitutional guarantees of religious freedom and the Islamic principles of justice and dignity.

Strengthen Gender Justice

Article 25 should be interpreted in conjunction with relevant family legislation and Islamic jurisprudence to promote substantive justice while maintaining methodological fidelity to Islamic legal sources.

Encourage Judicial Dialogue

The Federal Constitutional Court, Supreme Court and Federal Shariat Court should, within their respective constitutional jurisdictions, develop jurisprudential dialogue concerning rights, constitutionalism and Islamic principles.

Improve Access to Justice

Constitutional rights require effective remedies. Legal aid, judicial efficiency and implementation mechanisms should therefore form part of any broader fundamental-rights reform programme.

Conclusion

The relationship between fundamental rights and Islamic jurisprudence in Pakistan cannot adequately be described through the simplistic proposition that constitutional rights are Western while Islamic law is inherently opposed to them. Such an approach overlooks the internal diversity of Islamic jurisprudence and the purposive nature of constitutional interpretation. Pakistan's Constitution contains both a comprehensive catalogue of fundamental rights and explicit Islamic constitutional provisions. Articles 9, 10, 10A, 19, 20 and 25 protect major dimensions of individual liberty, while Article 227 and the Federal Shariat Court establish mechanisms for relating legislation to Islamic injunctions.

The comparison undertaken in this article demonstrates significant areas of convergence. The constitutional protection of life corresponds closely with *Hifz al-Nafs*. Equality, dignity and fair trial can be understood alongside Islamic principles of justice and human honour. Protection of property, family and freedom from arbitrary treatment also has substantial Islamic jurisprudential support.

The areas of greatest difficulty concern religious liberty, freedom of expression and gender-specific legal rules. These questions require more sophisticated analysis than simple claims of compatibility or incompatibility.

The judicial experience demonstrates that development is possible. The Supreme Court's historical fundamental-rights jurisprudence expanded constitutional protection in cases such as *Benazir Bhutto*, *Darshan Masih* and *Shehla Zia*. The Federal Shariat Court has also engaged in contemporary Islamic interpretation, including questions concerning women's rights and family law. The jurisprudence of *Khurshid Bibi* illustrates the possibility of developing family law through

Islamic reasoning in response to contemporary conditions.

The constitutional restructuring of 2025 adds a further dimension. The creation of the Federal Constitutional Court has changed the institutional architecture of constitutional adjudication, and its decisions now occupy a constitutionally superior precedential position over the Supreme Court on questions of law within its domain.³⁴ (Pakistan Kanoon)

This development makes it particularly important for future scholarship to examine the relationship between the Federal Constitutional Court, Supreme Court and Federal Shariat Court rather than relying exclusively on the pre-2025 constitutional structure.

Ultimately, Pakistan does not necessarily face a choice between fundamental rights and Islamic jurisprudence. A more constructive constitutional model may be developed through the interaction of constitutional supremacy, human dignity, *Huquq al-Ibad*, *Maqasid al-Shari'ah* and disciplined contemporary *Ijtihad*.

Such a model would not require the abandonment of Islamic jurisprudence or the uncritical adoption of external rights models. Instead, it would require serious engagement with the purposes of law, the constitutional text, judicial precedent, Islamic legal methodology and contemporary social realities.

The objective should therefore be the development of a **rights-protective Islamic constitutional jurisprudence** that is faithful to Pakistan's constitutional identity while capable of responding to contemporary questions of liberty, equality, dignity and justice.

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REFERENCES

- Universal Declaration of Human Rights, GA Res 217 A (III) (10 December 1948) arts 3, 7, 10, 18 and 19.
- Constitution of the Islamic Republic of Pakistan 1973, arts 8–28, 227 and 203A–203J. The official National Assembly version is currently stated to be amended up to 21 November 2025. (National Assembly of Pakistan)
- Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought 2008). (IIIT)
- Martin Lau, 'Islam and the Constitutional Foundations of Pakistan' in Rainer Grote and Tilmann J Röder (eds), *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (OUP 2012) 171–200. (OUP Academic)
- Ran Hirschl, 'Islamic Constitutionalism' (2007) 3 *Annual Review of Law and Social Science* 103.
- Constitution (Twenty-Seventh Amendment) Act 2025 (Act XXXII of 2025), ss 8–36. The Act was enacted on 13 November 2025. (National Assembly of Pakistan)
- Wael B Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (CUP 1997). (Cambridge University Press)
- Benazir Bhutto v Federation of Pakistan* PLD 1988 SC 416.
- Darshan Masih alias Rehmatay v The State* PLD 1990 SC 513.
- Shehla Zia v WAPDA* PLD 1994 SC 693. (Law and Policy Reform)
- ibid.*
- Constitution Petitions Nos 24 of 2023 etc* (Supreme Court of Pakistan, 10 January 2024), particularly discussion of art 10A. (Supreme Court of Pakistan)
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; Pakistan ratified the ICCPR on 23 June 2010. (United Nations Treaty Collection)
- ICCPR (n 13) art 19.
- Suo Motu Case No 1 of 2014* (Supreme Court of Pakistan). (Supreme Court of Pakistan)
- UDHR (n 1) art 18; ICCPR (n 13) art 18.
- Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (5th edn, Routledge 2013). (Routledge)
- Muslim Family Laws Ordinance 1961 (Ordinance VIII of 1961). (Pakistan Code)
- Family Courts Act 1964 (West Pakistan Act XXXV of 1964). (Pakistan Code)
- Khurshid Bibi v Baboo Muhammad Amin* PLD 1967 SC 97.
- Haji Saif ur Rehman v Government of Pakistan*, Shariat Petition No 16/I of 2022 (Federal Shariat Court, 2025). (Federal Shariat Court)
- Ihsan Yilmaz, 'Pakistan Federal Shariat Court's Collective Ijtihād on Gender Equality, Women's Rights and the Right to Family Life' (2014) 25(2) *Islam and Christian-Muslim Relations* 181. (Taylor & Francis Online)
- Benazir Bhutto* (n 8); *Darshan Masih* (n 9); *Shehla Zia* (n 10).
- Constitution of Pakistan 1973, art 203D. (Pakistani)
- Constitution of Pakistan 1973, art 175E(3), as inserted by the Twenty-Seventh Amendment.
- Constitution of Pakistan 1973, art 189, as substituted by the Twenty-Seventh Amendment. (National Assembly of Pakistan)
- CPLA Nos 4293 of 2025 etc* (Federal Constitutional Court of Pakistan, 2025). (FCCP)
- Constitution of Pakistan 1973, art 203D(2)–(3). (Pakistani)
- Auda (n 3).
- Hallaq (n 7).
- ICCPR (n 13); United Nations Treaty Collection, Pakistan ratification record. (United Nations Treaty Collection)

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; Pakistan accession 12 March 1996; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3; Pakistan ratification 12 November 1990. (United Nations Treaty Collection)

Organisation of Islamic Cooperation, *Cairo Declaration on Human Rights in Islam* (1990). The OIC records its adoption by the Nineteenth Session of the Council of Foreign Ministers in Cairo. (OIC-OCI)

Constitution of Pakistan 1973, art 189, as amended by the Constitution (Twenty-Seventh Amendment) Act 2025. (Pakistan Kanoon)

Bibliography

Primary Sources

Constitution of the Islamic Republic of Pakistan 1973.

Constitution (Twenty-Sixth Amendment) Act 2024.

Constitution (Twenty-Seventh Amendment) Act 2025 (Act XXXII of 2025).

Muslim Family Laws Ordinance 1961 (Ordinance VIII of 1961).

Family Courts Act 1964 (West Pakistan Act XXXV of 1964).

Protection of Women (Criminal Laws Amendment) Act 2006.

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

Universal Declaration of Human Rights, GA Res 217 A (III) (10 December 1948).

Organisation of Islamic Cooperation, *Cairo Declaration on Human Rights in Islam* (1990).

Benazir Bhutto v Federation of Pakistan PLD 1988 SC 416.

Darshan Masih alias Rehmatay v The State PLD 1990 SC 513.

Shehla Zia v WAPDA PLD 1994 SC 693.

Khurshid Bibi v Baboo Muhammad Amin PLD 1967 SC 97.

District Bar Association, Rawalpindi v Federation of Pakistan PLD 2015 SC 401.

Suo Motu Case No 1 of 2014 Supreme Court of Pakistan.

Liaquat Hussain v Federation of Pakistan PLD 1999 SC 504.

Shirin Munir v Government of Punjab PLD 1990 SC 295.

Zaheeruddin v The State PLD 1993 SC 344.

Nadeem Asghar v The State PLD 2021 SC 600.

Haji Saif ur Rehman v Government of Pakistan, Shariat Petition No 16/I of 2022, Federal Shariat Court.

CPLA Nos 4293 of 2025 etc, Federal Constitutional Court of Pakistan.

Riaz Hussain through Legal Representatives v Chairman Federal Land Commissioner 2026 CJ Review 1.

B. Books

Ahmed L, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press 1992). (JSTOR)

An-Na'im AA, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse University Press 1990).

Auda J, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought 2008). (IIIT)

Hallaq WB, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (CUP 1997). (LawCat)

Hallaq WB, *An Introduction to Islamic Law* (CUP 2009).

Hallaq WB, *Shari'a: Theory, Practice, Transformations* (CUP 2009).

Kamali MH, *Principles of Islamic Jurisprudence* (3rd edn, Islamic Texts Society 2003).

Kamali MH, *The Dignity of Man: An Islamic Perspective* (Islamic Texts Society 2002).

Lau M, *The Role of Islam in the Legal System of Pakistan* (Brill 2006).

Mayer AE, *Islam and Human Rights: Tradition and Politics* (5th edn, Routledge 2013). (Routledge)

Grote R and Röder TJ (eds), *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (OUP 2012). (OUP Academic)

Ali SS, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (Kluwer Law International 2000).

Ahmed E, *The Islamic Law of Contracts* (2nd edn, Islamic Research Institute).

C. Journal Articles and Academic Sources

Hirschl R, 'Islamic Constitutionalism' (2007) 3 *Annual Review of Law and Social Science* 103. (Annual Reviews)

Lau M, 'Islam and the Constitutional Foundations of Pakistan' in Grote R and Röder TJ (eds), *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (OUP 2012) 171.

Yilmaz I, 'Pakistan Federal Shariat Court's Collective Ijtihād on Gender Equality, Women's Rights and the Right to Family Life' (2014) 25(2) *Islam and Christian-Muslim Relations* 181. (Taylor & Francis Online)

Waseem M, 'Islamic Constitutionalism in Pakistan' (2024) 38(4) *Arab Law Quarterly* 446. (ResearchGate)

Abbasi MZ, 'Islamic Constitutionalism in Pakistan: Nature, Impact, and Compatibility with International Human Rights Law'.

Mayer AE, 'The Islamic World and the Alternative Declarations of Human Rights' in Düwell M, Braarvig J, Brownsword R and Mieth D (eds), *The Cambridge Handbook of Human Dignity* (CUP 2015). (Cambridge University Press)

Maqsood N, 'Competing Interpretations of Islam and Women's Political Rights in Pakistan's Constitution-Making Process (1947–1956)' (2025) *Journal for Social Science Archives*. (JSS Archives)

Khan B, 'Comparing the Fundamental Rights in Islamic Law and Pakistan Constitutional Law Perspective' (2023) SSRN.

Rambe T, Nasution K and Matondang SK, 'The Concept of Human Rights in the Maqasid al-Shariah Perspective' (2026) 7(1) *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam*.

An-Na'im AA, 'The Compatibility Dialectic: Mediating the Legitimate Claims of Western and Islamic Law' (1992) 6 *American Journal of International Law*.

Ali SS, 'The Position of Women in Islam: A Progressive Interpretation' (relevant scholarship on Islamic family law and gender).

Siddique O and Hayat Z, scholarship on the Federal Shariat Court and constitutional adjudication in Pakistan.

Lau M, scholarship on Islamic law, constitutionalism and judicial development in Pakistan.