

The Evolution of Fundamental Rights: A Comparative Study of the constitution of Pakistan and the United States

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Abstract

It is generally presumed that the discourse on human rights has universal application, yet its constitutional implementation is invariably mediated by distinct national contexts. This study comparatively analyzes the historical evolution and constitutional frameworks of fundamental rights in the United States of America and the Islamic Republic of Pakistan. It examines how the development and application of these fundamental rights have been influenced by their distinct historical roots, philosophical foundations, and judicial philosophies. It employs a qualitative research approach centred on a structured and focused comparison of the two nations with a thorough examination of constitutional texts, landmark judicial rulings, and existing literature. The findings reveal some fundamental differences between the two nations. Pakistan's system incorporates Islamic principles, resulting in qualified rights developed amidst constitutional fragility, while the U.S. framework, which is based on secular liberalism, supports absolute right guarantees which are nationalized through judicial interpretation. Notwithstanding these divergences, both frameworks underscore the crucial role of judicial review in upholding and extending rights. The study concludes that the realization of universal human rights is a deeply national undertaking, showing that despite the aspirations being global, the local historical, philosophical, and political circumstances have a significant influence on how they are interpreted and applied.

Keywords: Fundamental Rights, US Constitution, Constitution of Pakistan 1973, Judicial Review

Introduction

One of the most fundamental principles of international law is that each and every individual, as well as a government, has the duty to respect universal human rights. The Universal Declaration of Human Rights (UDHR), the United Nations Charter, and numerous other human rights treaties that have since been ratified all endorse this idea (Saito, 1997). Though the notion of sanctity of human life existed since ancient times, enshrined in Various religious codes, the idea of human beings having a set of inviolable rights arose during the Renaissance in the early modern period. Magna Carta also enshrined the notion of habeas corpus in 1215. Liberalism, hence human rights, remained at the core of European struggles during the Age of Enlightenment in the 18th century. The same idea of human rights led to the

American and French Revolutions in the 19th century. Ultimately, the world wars in the twentieth century culminated in the Universal Declaration of Human.

With different treaties and declarations, they kept evolving with time. When these human rights started to be recognized by the constitutions of the states, they became fundamental rights. The Universal Declaration of Human Rights, 1948, sets the total number of human rights as 25, with 19 Civil and Political Rights and 06 Economic, Social and Cultural Rights. However, the number of fundamental rights varies from state to state (Kamruzzaman, 2016). Earlier times saw the expression of Enlightenment principles about citizen rights in new liberal and democratic constitutions, including the Constitution of the United States. However, it appears that claims of universal rights and values that are present in every person, regardless of citizenship, are reflected in the most recent constitutions (Beck, 2012). International human rights law is derived from a range of sources involving international as well as domestic materials. When Domestic courts are faced with human rights, they firstly resort to constitutions, statutes, decrees, regulations, judicial and administrative decisions, and policy statements, in order to determine relevant rules of decisions. However, the trend of considering international human rights by domestic courts while making decisions is rapidly increasing (illich, 1993).

In the United States of America, fundamental rights did not arise at the time of the Constitution's origin in 1787; rather, they only developed as a result of political compromise, which culminated in the emergence of the Bill of Rights in 1791 with the first ten amendments. The primary purpose of these first 10 amendments was to serve as a safeguard against the new federal government, preventing congressional excess and preserving individual liberties like the freedom of speech, religion, and due process. In fact and originality, the Bill of Rights was a "popular" document that was designed to protect the rights of the people against a distant central government, reflecting the Anti-Federalist fears of a consolidated republic (Amar, 1992). Yet throughout a large portion of American history, these assurances only applied to the federal government, giving states considerable discretion, the idea which was upheld in the case of *Barron v. Baltimore* (1833). In 1868, the introduction of the historic provisions of Equal Protection, Due Process, and Privileges or Immunities, via the Fourteenth Amendment, drastically changed the federal-state relationship. In a process known as "incorporation," The Supreme Court eventually interpreted the Due Process Clause of the Fourteenth Amendment to apply the majority of the Bill of Rights' protections to state governments. which led to the nationalization of fundamental rights (Curtis, 1999).

However, in Pakistan, the origins of fundamental rights are inevitably linked to the country's turbulent constitutional history, colonial legacies, and Islamic Jurisprudence. After gaining independence in 1947, the country functioned under the modified Government of India Act (1935), which served as an interim constitution. "Objectives Resolution" 1949 was the first decisive step, which formally established the philosophical foundation for a rights framework by declaring that sovereignty belongs to Allah but is delegated to the state to be exercised within "limits prescribed by Him" (Khan H. , 2001).

The Government of India Act (1935) and the Universal Declaration of Human Rights (1948) served as direct inspiration for the inclusion of a specific "Fundamental Rights" chapter in Pakistan's first constitution in 1956, which guaranteed the rights to equality, freedom of speech, and religious liberty. However, due to the ongoing political unrest at that time, which included the revocation of the constitution by military regimes, these rights were frequently suspended. This set a precedent that made constitutional protections susceptible to military and political interference. The Constitution of 1973 established a more robust and justiciable framework for rights in its Part II, Articles 8 to 28, giving citizens the explicit right to petition the Supreme Court for the enforcement of these rights. This constitution mandates that any legislation or executive action that conflicts with these fundamental rights is null and void to the extent of the conflict. The judiciary is also granted the constitutional authority to protect basic rights. The High Courts are empowered under Article 199 to grant writs "habeas corpus, mandamus, certiorari, prohibition, and quo warranto" to enforce rights (Hashmi M. A., 2024).

This research study is an endeavor to comparatively analyze the historical evolution of fundamental rights in the Islamic Republic of Pakistan and the United States of America. It highlights the distinct constitutional journeys of both nations by starting with their foundation. It critically analyzes the major turning points in the evolution of fundamental rights jurisprudence of both nations, like the introduction of the Fourteenth Amendment in the US, which nationalized individual freedoms in the face of state infringement. Similarly, it examines, in Pakistan, despite political instability and challenges, how the enforcement of fundamental rights culminated in the robust framework of the 1973 constitution, and the assertive role of its supreme court. By contrasting these two narratives, this study examines how national contexts, which are shaped by distinct historical battles, colonial legacies, and judicial philosophies, adopt and implement global human rights principles as outlined in texts such as the UDHR.

This comparative research signifies a dynamic and contested nature of fundamental rights. The comparison between the United States and Pakistan will provide a roadmap to understand the constitutional approach of the countries towards human rights. The US experienced a gradual expansion of the right, led by the judiciary, from a federal guarantee to a

national one. It established a powerful model for constitutional interpretation. On the other hand, Pakistan experienced post post-colonial fundamental rights framework, which periodically remains in suspension due to political turmoil, though ultimately sustained and expanded by judicial activism.

It is essential to comprehend these parallel developments as they demonstrate how the establishment of fundamental rights is a constant process of negotiation between judicial interpretation, state authority, and popular political will rather than a linear or guaranteed process. Though the intellectual underpinnings of rights may be universal, their actualization is a very national endeavour, and the comparative lessons learned from Pakistan and the United States provide valuable insights for the worldwide endeavor of human rights preservation.

Research Questions

How have the distinct historical origins and philosophical backgrounds shaped the trajectory of the fundamental rights framework in the United States and Pakistan?

In what ways do the constitutional frameworks and judicial philosophies of the US and Pakistan differ or diverge in interpreting and enforcing fundamental rights?

In what ways do the constitutional frameworks and judicial philosophies of the US and Pakistan and the United States converge or show similarities in the interpretation and enforcement of fundamental rights?

Research Methodology

In order to examine the evolution of fundamental rights in the US and Pakistan, a qualitative method of study has been adopted in this study, which primarily focuses on comparative legal analysis. The study, at its core, is a structured and focused comparison of these two nations. It is 'structured' because it applies the same set of analytical questions to both cases. Similarly, it is 'focused' as it remains concentrated on the fundamental rights instead of having a full-fledged constitutional comparison.

The study has recourse to both primary and secondary documentary sources. Primarily, a detailed textual analysis of the Constitution has been carried out. In the US Constitution, the Bill of Rights and the Fourteenth Amendment have been specifically focused on. While Part II: Fundamental Rights and the Principles of Policy in the Constitution of the Islamic Republic of Pakistan, 1973 is thoroughly examined. Secondary sources, like existing academic literature on the topic, have also been used. The role of landmark judgments from the Supreme Court of the United States and the Supreme Court of Pakistan, which are related to judicial review, public interest litigation, and the enforcement of fundamental rights during martial law periods, has been analysed. These cases are selected for their crucial role in shaping the framework of fundamental rights in the respective countries. Besides, key historical founding documents such as the "Objectives Resolution 1949" of Pakistan is consulted, in order to comprehend the original philosophical intent.

The study begins with the historical and philosophical foundations of fundamental rights in the countries, the proceeds to directly compare the provisions of both constitutions on specific rights. It examines the points where they converge and diverge. Landmark court rulings from each country have been analysed too. This helps to identify key patterns in how each framework interprets and applies these fundamental rights. Ultimately, the findings are synthesized to more explicitly highlight the major similarities and differences in their judicial approaches.

Literature Review

Lillich (1992), while commenting on the complication of the acknowledgement of international human rights legislation in U.S. courts, notes that though the ratified treaties are constitutionally binding, judges usually find their human rights clauses to be non-self-executing. This behavior of courts led to the limitation of the direct application of international norms, which causes the instrument, like the UN charter unenforceable in local courts. Ultimately, U.S. courts frequently give constitutional interpretation precedence over international law, which develops a unique judicial philosophy that influences the state of the fundamental rights landscape in the country. Similarly, Moravcsik (2004) contends that the United States' hesitancy to be bound by multilateral human rights treaties is a result of its distinct geopolitical power, stable democratic institutions, vocal conservative minority, and decentralized political system that generates many veto points rather than a particular "rights culture." The paradox of a country actively promoting human rights overseas but opposing their domestic implementation through international instruments is resolved by this pluralist approach. His study offers a vital framework for comprehending the political limitations that have influenced the unique constitutional approach of the US towards fundamental rights.

Michael J. Douma (2017) presents a unique face of the famous "Bill of Rights". He provides a vital linguistic history by stating that the phrase "the Bill of Rights" as a proper noun for the first ten amendments was created in the twentieth century. He contends that a "bill of rights" was an abstract idea rather than a concrete document during the

initial era and throughout the nineteenth century. He further argues that in the 1920s and 1930s, patriotic organizations, civic education, and legal discourse helped to shape its current meaning and form. This evolution turned it from a vague idea into a tangible, recognizable document.

Slaughter (1988) elaborates on the contentious role of the Ninth Amendment in the development of fundamental rights in the US, turning the attention to domestic constitutional interpretation. He believes that historically, the amendment was not meant to serve as a separate source of rights for judges to uphold, but rather as a rule of construction to ensure that unenumerated rights were not automatically deemed surrendered to the federal government. Thus, the debate surrounding the Ninth Amendment captures a fundamental conflict in American jurisprudence between a narrow reading of the Constitution and a more expansive, dynamic understanding of fundamental liberties.

As far as the scenario of Pakistan is concerned, there is a gap between the strong fundamental rights guaranteed by Pakistan's 1973 Constitution and their inefficient application. Iqbal Hashmi et al. (2024) render the institutional inefficiencies, political meddling, and sociocultural hurdles as the main cause why many people still view rights as a distant dream, even though there exists a justiciable framework and judicial activism under Articles 199 and 184(3). The study shows that, especially for marginalized groups, the rights to life, education, and religious freedom are consistently not upheld. They concludes that in order to close this gap between promise and reality, radical transformation is required.

Razzaq (2023) places the development of fundamental rights in Pakistan in a unique historical and ideological framework influenced by Islamic law and a contentious constitutional past. He draws attention to the 1973 Constitution's creation of a justiciable framework for rights and underscores the judiciary's significant role in upholding rights through provisions like Article 184(3). However, the constitutional fragility, characterized by periodic suspensions during martial law and, as a result, the growth of judicial activism to defend rights, provides an essential viewpoint for comparison with other models, such as the US model (Razzaq, 2023).

Similar to Razzaq (2023), Khan's (2021) study elaborates on the influence of Islamic law on the one hand and a perceptive contrast between Pakistan's constitutional framework and Islamic law on the other. It highlights how the Qur'an and Sunnah influenced the 1973 Constitution, especially through the Objectives Resolution and Article 227, which require that laws be in accordance with Islamic teachings. The study demonstrates areas of convergence between Islamic principles and constitutional guarantees by looking at rights, including protections against arbitrary arrest and detention, the right to a fair trial, the ban on slavery and forced labor, and protection against retrospective punishment. Islam has historically permitted limited forms of slavery, but the Constitution categorically forbids it, reflecting changing views on human dignity. It finds commonality in both systems about the strong emphasis on justice and equity, their methods of implementation vary and examines how Islamic jurisprudence continues to influence Pakistan's discourse on constitutional rights (Khan B. , 2021)

A significant advancement in the constitutional enforcement of fundamental rights in Pakistan is the rise of Public Interest Litigation (PIL). Although PIL officially gained recognition in the landmark cases like Benazir Bhutto v. Federation of Pakistan (1988) and Darshan Masih v. State (1990), as noted by Ali and Rehman (2021), its origins can be found in earlier judicial attempts in the 1960s that aimed to expand access to justice through progressive interpretation of constitutional provisions. To redress socioeconomic disparities and guarantee more comprehensive protection of rights under Article 184(3) of the Constitution, the Supreme Court of Pakistan adopted public interest litigation as a vital mechanism, departing from the adversarial system. However, PIL practice in Pakistan is still vague and developing despite the fact that it has experienced significant growth over the previous three decades.

There exists an extensive literature on the evolution of fundamental rights in both the United States and Pakistan; however, there is a research gap in any comparative analysis of the two legal frameworks which could encompass the distinct historical origins and constitutional framework that have shaped them. Existing research either emphasizes Pakistan's constitutional vulnerability, judicial activity, and Islamic foundations in rights enforcement, or it concentrates on the constitutional interpretation and judicial constraint of the U.S. model. There is a total lack of any study that compares these two countries methodically in order to explore convergences and divergences in the interpretation and implementation of fundamental rights. Bridging this gap will not only broaden the theoretical knowledge of constitutionalism across a variety of legal traditions but also offer useful insights into the localization of universal human rights concepts in various sociopolitical circumstances. It will certainly contribute to comparative constitutional law scholarship by bridging the gap where U.S.–Pakistan analyses are scarce, moving beyond one-sided and domestic-focused studies.

Philosophical Foundations of Fundamental Rights in the United States

In the United States, the idea of fundamental rights has its roots in colonial common-law traditions on the one side and in the Enlightenment political philosophy, including natural law theory on the other. Campbell's argument in "Determining Rights" (2025) argues, leaders of the founding era often viewed the Bill of Rights as declarations of

rights based on natural or customary law rather than as a fully developed legal document, expecting common law and governmental organizations to fill in the gaps. Haines (2024) is of the opinion that, in this tradition, natural law plays a central role, which also holds that certain moral principles are universal and discoverable by reason.

Furthermore, scholars have also pointed out how the early implementation of rights enforcement was influenced by common law tradition. Even before clear constitutional language, the scope of rights like due process, property, and speech was truly determined by customs and judge-made rulings. Later academic research that examines the ways in which natural law impacted constitutional interpretation both during and after the foundational era adds another layer of the philosophical underpinnings. Many of the framers thought that human-made law was governed and supported by a higher moral law that could be known by reason. This higher law influenced provisions of the Constitution, even though it was not always acknowledged explicitly (Barker, 2012).

Historical and Philosophical Foundations of Fundamental Rights in Pakistan

From its British colonial origins to the post-1947 constitutional experiments, Islamic jurisprudence, colonial statutory law, and the political theory of modern constitutionalism remained vital factors that have influenced Pakistan's fundamental rights philosophy and legal framework. In the pre-independence period, though mainly restricted and subject to executive discretion, the British colonial government established legislative frameworks like the Government of India Act to protect certain legal rights. However, after independence, the early constitutional framers attempted to incorporate Islamic principles, particularly those outlined in the Objectives Resolution, into Pakistan's constitution. This was an explicit effort to combine divine law (Shariah) with contemporary legal rights (Lau, 2012).

Many of these concepts were formalized in the 1973 Constitution, which upheld civil liberties like equality before the law and freedom of religion while also making fundamental rights justiciable and binding the legitimacy of laws to Islamic injunctions through Article 227 (Ahmed N. , 2021). Nevertheless, despite constitutional guarantees, the political upheavals, constitutional suspensions, and executive overreaches frequently prevented the realization of these rights, underscoring the idea that philosophical underpinnings are insufficient on their own without stable institutions and judicial enforcement.

The philosophical underpinnings of rights are further strengthened by the interaction between the constitutional texture and jurisprudence. Many of the 1973 Constitution's protections, like those against arbitrary arrest, retroactive punishment, and forced labour, reflect Islamic jurisprudence principles while being framed within a constitutional framework (Khan B. , 2021).

Furthermore, more recent research on the 1973 Constitution's fundamental rights contends that the philosophical basis of rights must keep on changing to reflect the shifting needs of society. The Idea of a "right that no one can take away" highlights the timeless moral assertion that is unaffected by the law. This additional layer emphasizes that when cultural values, judicial activism, and constitutional amendments interact over time, the philosophical foundation of Pakistan's fundamental rights framework is not static but subject to re-interpretive pressures (Razzaq, 2023).

Historical timeline of fundamental rights in the United States

The United States' conception of fundamental rights underwent a clear historical development from its inception to the twentieth century. The founders of the Constitution combined the principles of English common law and eighteenth-century natural rights into the Bill of Rights in 1791, guaranteeing due process, freedom of speech, and freedom of religion (Campbell, 2017). These promises' durability was put to the test and their contentious nature was shown by early disputes like the Alien and Sedition Acts of 1798. A pivotal period was marked by the Civil War and the ratification of the Fourteenth Amendment in 1868, which redefined the relationship between individual rights and governmental power and extended federal constitutional protections against state violations (Amar, 1992). The Supreme Court gradually extended the majority of the Bill of Rights to the states during the 20th century by using the theory of selective incorporation, which strengthened a national standard for fundamental rights and broadened their substantive reach.

In recent years, Significant court reinterpretations have influenced the evolution of fundamental rights in the United States, particularly with relation to freedom of speech in the digital era, gun ownership, and reproductive rights. At the same time, discussions about individual liberty and governmental boundaries have changed as a result of expanding First and Second Amendment jurisprudence. These changes reflect how constitutional rights in the US are constantly being reevaluated in light of changing social and political conditions.

Historical timeline of fundamental rights in Pakistan

The root of the subcontinent's fundamental rights can be traced back to the Mughal era, when Islamic administrative practices and jurisprudence (Sharia) placed a strong emphasis on justice, equality before the law, and the protection of life and property. These ideas later shaped South Asian legal consciousness. However, these native customs were gradually superseded by codified laws based on English legal traditions during British colonial administration (1858–

1947). The British colonial legal traditions and reform statutes distinctly shaped the foundations of fundamental rights in what later became Pakistan. After 1947, Pakistan first relied on inherited laws of the colonial era, but it soon sought to define rights constitutionally, starting with the Objectives Resolution (1949) and continuing through successive constitutions, including the constitutions of 1956 and 1962. This ultimately culminated in the comprehensive Constitution of 1973, which formally enumerated fundamental rights (e.g., Articles 8–28) and provided judicial remedies for their enforcement (Ahmed N. , 2021).

Therefore, by combining parliamentary sovereignty with explicit rights guarantees, the 1973 Constitution set a significant post-independence standard for Pakistan. However, many constitutional protections were curtailed or reinterpreted during General Zia ul-Haq's regime in the late 1970s and early 1980s, and those guarantees were subject to periodic suspension under various martial law regimes. Through the doctrines of original jurisdiction, public interest litigation, and an increasingly assertive Supreme Court, Pakistan's judiciary played an expanding role in interpreting and protecting fundamental rights from the late 20th century into the early 21st century. This shift was linked to complex civil-military tensions and episodes of judicial populism, which both extended and reshaped the enforcement of fundamental rights (Kureshi, 2024). In short, the history of fundamental rights in Pakistan extends from colonial legacies to the Objectives Resolution and the 1973 Constitution periods of martial suspension to subsequent judicial activism.

The Evolution and Comparison of Particular Fundamental Rights in Pakistan and the United States

Articles 8 to 28 of Pakistan's Constitution and Amendments I–X, XIII–XV, XIX, XXIV, XXVI in the U.S. Constitution represent the core of the fundamental rights framework in each nation, respectively. Both demonstrate a common commitment to justice and human dignity by safeguarding fundamental human rights like equality, life, freedom of speech, freedom of religion, and due process, though there are some trivial differences in their textual languages. However, their conceptual foundations are different; the U.S. model is based on secular liberalism and individual liberty, whereas Pakistan's framework is based on Islamic values and social morality. This section examines the textual parts of both the constitutions that deals with fundamental rights.

2. Right to Life and Liberty

The right to life and personal liberty is a fundamental component in both constitutions. According to the U.S. Constitution's Fifth and Fourteenth Amendments, no one may be "deprived of life, liberty, or property, without due process of law." Similarly, Article 9 of Pakistan's 1973 Constitution states, "No one shall be deprived of life or liberty except in accordance with law." The language of the articles are same, while the American provision emphasizes on "due process" and "equal protection," and the Pakistani language stresses conformity with the law. The Supreme Court of Pakistan, in the landmark case of *Shehla Zia v. WAPDA*, enhanced the meaning of the *Right to Life to the inclusion of right to a clean and healthy environment*. It ruled that "life" encompasses all of life's amenities and necessities, rather than just physical existence.

2. Freedom of Speech and Expression

The variety in the language of provisions regarding the freedom of speech and expression in the two constitutions is quite interesting. Article 19 of the Constitution of Pakistan entitles every citizen to "the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam, national security, public order, decency, or morality". However, the US Constitution doesn't make any such conditional provision. The First Amendment of the U.S. Constitution simply provides that "*Congress shall make no law ... abridging the freedom of speech, or of the press.*"

3. Freedom of Religion

The Pakistani model combines personal tolerance with religious preference, while the United States maintains a rigid division between church and state. This fact can be explicitly seen in their constitutions. The Pakistani constitution, on the one hand, declares "Islam shall be the State religion of Pakistan" (Article 2). On the other hand, it guarantees the freedom of religion under Article 20, by stating that "every citizen has the right to profess, practice, and propagate his religion".

Contrarily, the First Amendment in the U.S. strictly prohibits Congress from making any law "respecting an establishment of religion or prohibiting the free exercise thereof. Conforming with this separation of state and church, the U.S. Supreme Court ruled in the famous *Employment Division v. Smith* (1990) case that a person's religious convictions do not exclude them from obeying a law that is applied uniformly to all. Two Native Americans were fired in this case for using the illegal narcotic peyote during their religious rite. The Court held that the drug ban was a general statute and not specifically targeted at any religion.

4. Equality Before Law and Non-Discrimination

Article 25 of the Constitution of Pakistan proclaims: "All citizens are equal before law and are entitled to equal protection of law." It echoes the Fourteenth Amendment to the U.S. Constitution, which states, "No State shall deny to any person within its jurisdiction the equal protection of the laws." However, Article 25 of the Pakistani constitution, immediately after this declaration, in sub article (2), specifically mentions that "There shall be no discrimination on the basis of sex." The principle of non-discrimination and the Equal Protection Clause of the Fourteenth Amendment was further solidified by the U.S. Supreme Court in its historic ruling in the case of *Brown v. Board of Education* (1954). It held that segregation inherently creates inequality, hence it overruled the "separate but equal" doctrine from *Plessy v. Ferguson* (1896).

5. Protection Against Arbitrary Arrest and Detention

Article 10 of the Constitution of Pakistan protects individuals against arbitrary arrest and detention, including the right to be informed of reasons, access to legal counsel, and production before a magistrate within 24 hours. However, this article provides an exemption to 'preventive detention' under certain conditions. Article 199 provides extensive remedy for such arrest or detention by rendering powers to the high courts of "directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner".

As far as the Constitution of the United States is concerned, its Fourth, Fifth, and Sixth Amendments protect individuals against unreasonable searches and seizures and guarantee due process, a fair and speedy trial.

6. Freedom of Assembly and Association

The First Amendment of the US constitution safeguards the people rights to peaceful assembly and association. It states, "*Congress shall make no law respecting.... the right of the people peaceably to assemble*". Article 16 of Pakistan's constitution guarantees every citizen "the right to form associations or unions". However, it subjects it to "any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality". Similarly, article 17 protects citizen's right to "assemble peacefully". It is also conditional that they must be "without arms", and there may also be "reasonable restrictions imposed by law in the interest of public order". In the landmark *Benazir Bhutto v. Federation of Pakistan* case, the Supreme Court of Pakistan struck down the restrictions imposed on political activities by the Martial Law regime. It held that free political association is a vital component of the constitutional order. It stresses on the point that such restriction cannot be unreasonable and arbitrary.

7. Right to Property

Both constitution guarantees right to property to the citizens. In Pakistan, every citizen holds "the right to acquire, hold, and dispose of property in any part of Pakistan" (Article 23). While the Fifth Amendment in the US constitution states that "private property shall not be taken for public use, without just compensation.". Pakistan subjects the right to property to "reasonable restrictions in the public interest," while the U.S. requires just compensation.

Novel Provisions of Fundamental Rights in the Constitutions

Due to the philosophical, historical, and cultural divergences with regard to fundamental rights frameworks, there are also certain rights in each constitution which are unique and exclusive to each constitution. The major exclusive fundamental right of each constitution with respect to the other has been discussed below.

Rights Unique to the Constitution of Pakistan

The Constitution of Pakistan includes several distinctive rights due to its Islamic values and other cultural factors. Objectives Resolution under Article 2A makes Islamic principles of justice, equality, and morality an enforceable part of the Constitution. It also stresses on a style of governance in accordance with Islamic Injunctions. Similarly, Article 22 safeguards citizens from being forced to receive religious instruction in a faith not their own, and Article 21 protects them from forcing anyone to pay any sort of taxes used for promoting another religion.

Rights Unique to the Constitution of the United States

Unlike Pakistan, the Second Amendment in the US constitution ensures that "the right of the people to keep and bear Arms, shall not be infringed". The Third Amendment forbids the quartering of soldiers in private homes "without the consent of the Owner". Similarly, the Fifteenth and Nineteenth Amendments are also exclusive to the US constitution which expand voting rights to citizens regardless of race or sex.

Discussion

The comparison of the fundamental rights frameworks in the US and Pakistan presents an interesting scenario, where they have unique philosophical, historical, and practical threads, however, a shared constitutional aspiration. The results show that although both countries uphold a fundamental set of civil and political rights that are consistent with the international consensus, but their development, philosophical basis, and judicial enforcement strategies differ significantly. This section of the study summarizes these findings and interprets them in light of the previous literature

as well as the distinct sociopolitical circumstances of each nation. It elaborates the significant convergences and divergences between the two in detail, explaining their implications on the implementation of fundamental rights.

Major Convergences between the two constitutions

I. Textual and Structural Similarities

A primary similarity between the two is the textual commitment to the core fundamental rights. Essential liberties like the right to life and liberty, freedom of religion, freedom of speech, equality before the law, and protections against arbitrary arrest and imprisonment are guaranteed by both Pakistan's Part II (Articles 8–28) and the U.S. Bill of Rights (and its amendments). The similarities in language can be quite obvious at points like in the provision of "due process," where the Fifth and Fourteenth Amendments find the same language in Article 9 of the Pakistani Constitution, which declares that "No one shall be deprived of life or liberty save in accordance with law."

2. Enforcement of fundamental rights via Judicial Review:

In both frameworks, the judiciary is now positioned as the supreme guardian of fundamental rights. In the United States, though the power of judicial review has not been explicitly stated in the constitutional text, however, it was established in the landmark case of **Marbury v. Madison*. Now, it has become the cornerstone of rights enforcement in the US. However, the Constitution of Pakistan 1973 expressly grants this authority to its judiciary. Article 8 declares any law that violates fundamental rights null and unlawful, while Articles 199 and 184(3) offer strong writ jurisdiction enforcement procedures. This convergence demonstrates a global trend in which courts are empowered to mediate arbitrate between the state and the person, where matters of fundamental rights are concerned.

3. Extending the Rights by Judicial Interpretation

The dynamic and changing character of rights jurisprudence in both nations has an important resemblance. Neither of the constitutions is regarded as a static document, but rather an evolving one. An evolutionary step that closely resembles the Pakistani Supreme Court's enhancement of the interpretation of rights is the U.S. Supreme Court's "selective incorporation" approach. Through this doctrine, the US Supreme Court nationalized the Bill of Rights through the Fourteenth Amendment. Similarly, in the landmark decision of *Shehla Zia v. WAPDA*, the Supreme Court of Pakistan enhanced the meaning of the constitutional right to 'life' to a healthy environment. This shows that the constitutional texts are living instruments whose meanings must adapt to contemporary challenges and understandings.

4. Protection of Fundamental Rights in Times of Political Stress

The judiciaries of both countries have a history of being put to the test during times of political unrest for the protection of fundamental rights. Direct martial law and constitutional suspensions have been experienced in Pakistan, whereby the judiciary has actively acted to defend liberties, as demonstrated in the Benazir Bhutto case. The United States' Supreme Court has been compelled to reassert fundamental rights in instances like habeas corpus for detainees, of due to executive overreach brought on by crises like the World Wars and the post-9/11 era. This convergence highlights the ever-present and global challenge of preserving a balance between individual liberty and state security on the one side, and the crucial role of the judiciary in such scenarios on the other.

Major Divergences between the two constitutions

I. Philosophical Foundations: Secular Liberalism vs. Islamic Democratic System

The first and foremost notable difference between the fundamental rights framework of the United States and Pakistan lies in their philosophical foundations. The Enlightenment principles of secular liberalism, social contract theory, and natural rights (which presume that rights are innate and pre-political) are the actual basis of the U.S. Constitution. The First Amendment's rigorous separation of church and state is a well-known example of how the state is supposed to safeguard these individual liberties from violation when they contradict religious injunctions. In total contradiction to this, Pakistan's Constitution clearly combines religious (Islamic) values with contemporary constitutionalism. According to the Objectives Resolution (Article 2A), Allah has sovereignty over the state, and laws of the nation must be in accordance with the Islamic injunctions (Article 227). As Khan (2021) points out, this results in a theocentric approach in which rights are upheld but framed within the "limits prescribed by Him." This divergence highly influences the structure of fundamental rights. For instance, when it comes to freedom of expression and religion, Pakistan's promises are expressly "subject to the glory of Islam".

2. Limitations on the Scope of Rights:

The divergence in the conditionality of fundamental rights has been manifested in the textual formulation of rights. The U.S. Bill of Rights frequently uses negative, absolute language that "Congress shall make no law...". This is due to the long-standing historical tussle between the federation and states, which reflects a deep-seated suspicion of government. There are very rare conditions on the fundamental rights in the US Constitution other than this phrase. On the contrary, the Pakistani Constitution usually limits the fundamental rights to "reasonable restrictions". It frequently limits the scope of rights by using phrases like "in accordance with law" "the glory of Islam," "security of Pakistan" "public order," or "morality." For example, Article 19 of Pakistan's Constitution expressly permits limitations on the

freedom of speech based on Islamic principles and national security, yet the First Amendment in the United States guarantees free expression with minimal limits. Such limitations in the constitution of Pakistan create a discrepancy between constitutional promise, for which results in a system of conditional liberties, in which the state maintains a substantial role in defining the boundaries of permissible exercise (Hashmi M. A., 2024).

3. Historical Development of fundamental rights: Organic Nationalization vs. Contested Post-Colonialism

The development of fundamental rights has had a unique historical trajectory in each of the nations. In the US, nationalization of fundamental rights happened naturally under the lead of the judiciary. As Amar (1992) has described how the Fourteenth Amendment and the doctrine of incorporation were used to establish a consistent national standard for rights, starting with a federal level guarantee. However, according to Razzaq (2023) and Kureshi (2024), Pakistan's journey has been far more turbulent. Pakistan's fundamental rights story is a post-colonial framework, enduring struggle, revival, and abrogation. The frequent abrogation and suspension of constitutions during martial law regimes created a scenario of "constitutional fragility." This constitutional fragility led the judiciary to the creation of special tools like the assertive interpretations of Article 184(3) and Public Interest Litigation (PIL). This tactic was not only used to expand rights but also to simply restore them from suspension sometimes.

4. The Engagement with International Law and the existence of exclusive Fundamental Rights

Another significant variation between the fundamental rights framework of the US and Pakistan can be seen in their attitude towards international law and the existence of some exclusive rights in each constitution with respect to the other. U.S. courts are somehow reluctant to directly apply international human rights legislation, giving preference to their own domestic constitutional interpretation, as mentioned by Lillich (1992) and Moravcsik (2004). However International rules seem to have a more direct influence on Pakistan's constitution, which was drafted after the UDHR. Additionally, as a reflection of particular historical and cultural settings, each constitution provides rights that are alien to the other constitution. There is no parallel in Pakistan to the Second Amendment's right to bear weapons and the Third Amendment's ban on quartering troops in the United States. Similarly, because of its religious (Islamic) identity, Pakistan has special constitutional protections against religious taxation (Article 21), which is exclusive to it with respect to the US Constitution. The table below summarizes the major divergences between the two.

Aspects	United States	Pakistan
Philosophical Foundation	<p>Secular Liberalism & Natural Rights: -Rooted in Enlightenment thought. -Strict separation of church and state (1st Amendment).</p>	<p>Islamic Democracy: -Objectives Resolution (Article 2A). -Rights are exercised within "limits prescribed by Him (Allah)" (Article 227).</p>
Nature of Rights	<p>Rarely conditional & Absolute: -Frequently Uses the phrase "Congress shall make no law...".</p>	<p>Conditional & Qualified: -Rights are explicitly subject to "reasonable restrictions" by law in the interest of "Islam, integrity, security, public order, morality".</p>
Historical Trajectory	<p>Organic Nationalization: -Evolution from federal to national guarantee -Steady and judiciary-led expansion (e.g. 14th Amendment's "Incorporation Doctrine").</p>	<p>Contested post-colonialism: Characterized by constitutional abrogation, martial law suspensions, and revival. -Fragility and resilient judicial activism</p>
Engagement with Int'l Law	<p>Resistant: -Courts are hesitant to apply international human rights law directly.</p>	<p>Receptive: -Shows direct influence of international norms like the UDHR, for been drafted in the post-UDHR era.</p>
Unique Rights	<ul style="list-style-type: none"> Right to keep and bear arms (2nd Amendment). Prohibition on quartering soldiers (3rd Amendment). Explicit voting rights amendments (15th, 19th, 24th Amendments). 	<ul style="list-style-type: none"> Islamic provisions as enforceable constitutional law (Article 2A). Protection from religious taxation for other faiths (Article 21).

	19th).	21). <ul style="list-style-type: none"> • Protection from religious instruction in other faiths (Article 22).
Non-Discrimination	Focus on "due process of law" (5th & 14th Amendments) and "equal protection of the laws" (14th Amendment).	Emphasizes conformity "in accordance with law" (Article 9) and explicitly prohibits sex-based discrimination (Article 25(2)).

Table: Major Divergences in the fundamental Rights framework of the US and Pakistan Source: Designed by the Author

Conclusion

In short, these convergences and divergences between the two constitutions confirm the existence a basic, universal language of fundamental rights. They show that a free judiciary with judicial review authority is generally seen as necessary for the protection of these rights, irrespective of its place of origin. However, the differences between the two are much bolder. They unequivocally show that the "actualization" of universal human rights concepts is in fact, a deeply national endeavor. Although the rights framework produced by the U.S. model, with its secular and individualistic emphasis, is more absolute in language, it is continually being renegotiated through judicial precedent. On the other hand, Pakistan provides a strong example of hybrid constitutionalism, which attempts to combine traditional Islamic principles with contemporary human rights. This frequently ends up with more conditional and politically vulnerable rights.

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