

Fundamental Rights vs. National Security: A Constitutional Dilemma

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Abstract

This conflict between the importance of core rights on the one hand and the dictates of the national security on the other has been growing in recent decades especially on the states that are battling with the menace of terrorism, political instability as well as weak democratic institutions. Pakistan offers an interesting background to study this dilemma in the constitution. Although the Constitution of Pakistan provides an effective system of rights, the governments have been very quick to curtail civil liberties under the pretence of maintaining national security which has in most of the cases been done with less oversight and little accountability. This paper provides a critical analysis of the conceptual, constitutional and political aspects of this conflict and claims that an unmonitored pursuit of security is threat to the democratic spirit and social accord. It ends with the statement that to achieve a balance between state interest and individual freedom it would be necessary to have a calibrated law reform, transparency of institutions and international best practices.

Key Words: Fundamental Rights, National Security, Constitutional Law, Civil Liberties, Pakistan Legal Framework

Introduction

The correlation between the rights of the individual and the power of the state is one of the pillars of modern constitutional democracies but at the same time fraught. There is no place where this tension is worse than in situations of national security used to restrict or suspend fundamental rights. Since 9/11 we have seen an explosive growth in the number of laws against terrorism that have been enacted worldwide, spying systems, and executive powers that are frequently in the name of national security.¹ This international trend is reflected in Pakistan where since its creation the country has suffered domestic and external security challenges as sectarian violence, insurgency, and geopolitical instability. Here national integrity is associated with exceptional measures taken by a state, which, in most cases, is directed to the detriment of constitutional liberties of a person.²

¹ Fionnuala Ni Aolain, "The Rise of Counter-Terrorism and the Demise of Human Rights," *Emory International Law Review* 39 (2024): 1.

² Mehwish Muhib, Kainat Muhib, and Zeenat Muhib, "Evolution of Constitutionalism in Pakistan: Challenges and Prospects," *Journal of Social Signs Review* 3, no. 03 (March 27, 2025): 376–93.

The Pakistani constitution contains a wide list of fundamental human rights, mainly the rights to life and liberty as well as freedoms of airing, assembly, and religion. Nevertheless, most of these rights are to be restricted reasonably in the name of security, maintenance of law and morals- a legal malleability that has received a considerable expansion to suit political and security demands.³ This has led to normalization of the use of emergency powers, restrictions on the freedom of the press, arbitrary arrests, and more extensive state surveillance with little or no substantive judicial oversight and parliamentary controls.⁴

This article examines the constitutional conflict that this trade off brings about. Although there can be no doubt that state survival requires national security, uncontrolled breakdown of the fundamental rights may erode democratic legitimacy and lead to citizen alienation. Based on current academic-based arguments, international best practices, and our national constitutional system, this paper aims at critically exploring how far the national security claims can be deemed above any other appeal to individual rights. This analysis is to leave the dichotomous thinking, shifting to another, more complex paradigm and referring to it as the one supporting constitutionalism without infringing the state sovereignty.⁵

Theoretical Foundations of Fundamental Rights and National Security

The contest between fundamental rights and national security is rooted in competing constitutional philosophies. On one side lies liberal constitutionalism, which prioritizes individual autonomy, rule of law, and limitations on state power. On the other side stands the security-centric paradigm, which views state survival as the highest constitutional imperative, especially during crises. Both perspectives are grounded in legitimate concerns, but their reconciliation remains a perennial challenge.

Fundamental rights are often described as inalienable and universal, forming the normative backbone of democratic governance. They are derived from natural law traditions and codified in modern constitutions to protect citizens against arbitrary state interference.⁶ Political theorists such as John Rawls and Ronald Dworkin have emphasized that rights should not be sacrificed merely for utilitarian gains, including those related to national security.⁷ Rawls' theory of justice insists that liberty must only be restricted for the sake of liberty itself, and not for expedient security policies.⁸

Conversely, realist theories of governance argue that rights exist within the framework of state interests. Thinkers such as Carl Schmitt have argued that the sovereign must retain the power to suspend rights in times of exception, asserting that the state is defined by its capacity to decide on the exception.⁹ This approach underpins many national security doctrines that allow governments to impose emergency measures, restrict civil liberties, and expand surveillance, especially in the name of counter-terrorism.

³ "Right to Privacy and Freedom of Expression in the Constitution of Pakistan | SpringerLink," accessed June 28, 2025, https://link.springer.com/chapter/10.1007/978-3-031-45575-9_4.

⁴ "Chapter 1: Fundamental Rights," accessed June 28, 2025, https://sja.gos.pk/assets/se/ConstIRP/Part_II_Fundamental_Rights_and_Principles_of_Policy__Articles_7-40/Chapter_1__Fundamental_Rights.htm.

⁵ Arshad Ali and Robert G. Patman, "The Evolution of the National Security State in Pakistan: 1947?1989," *Democracy and Security* 15, no. 4 (2019): 301–27.

⁶ Cristina Lafont, "Human Rights, Sovereignty and the Responsibility to Protect," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 2014), <https://papers.ssrn.com/abstract=2453409>.

⁷ "Justice for Hedgehogs — Harvard University Press," accessed June 28, 2025, <https://www.hup.harvard.edu/books/9780674072251>.

⁸ "A Theory of Justice," Harvard University Press, accessed June 28, 2025, <https://www.hup.harvard.edu/books/9780674000780>.

⁹ "Sovereignty - The Wiley Blackwell Companion to Political Geography - Wiley Online Library," accessed June 28, 2025, <https://onlinelibrary.wiley.com/doi/abs/10.1002/9781119753995.ch8>.

International human rights law attempts to balance these competing visions by permitting limited derogations from certain rights under exceptional circumstances. However, such derogations must be necessary, proportionate, and non-discriminatory. The Siracusa Principles, for instance, provide a legal framework to assess whether security measures are justifiable limitations on rights.¹⁰ Pakistan, despite its international obligations under instruments like the ICCPR, has often failed to internalize these normative safeguards into domestic practice.¹¹ Ultimately, the theoretical foundation of this constitutional dilemma lies in how the state perceives the citizen: as a bearer of inalienable rights, or as a potential threat in need of surveillance and control. Bridging this divide requires a jurisprudential and policy shift that treats national security not as antithetical to rights, but as dependent on their effective protection.

Historical Context: Balancing Rights and Security in Pakistan

The constitutional history of Pakistan is marked by recurrent attempts to strike a balance, often an uneasy one, between the protection of individual rights and the imperatives of national security. Since independence in 1947, the state has experienced multiple military takeovers, regional insurgencies, sectarian conflict, and geopolitical confrontations, all of which have been used to justify exceptional measures curtailing civil liberties. In each phase of political upheaval, national security has become a convenient and powerful rationale for overriding fundamental rights.

The earliest instance of this dilemma emerged with the promulgation of the Public and Representative Offices (Disqualification) Act, 1949 (PRODA), which allowed for arbitrary disqualification of public officials under the guise of public morality and integrity. The imposition of martial law in 1958, followed by constitutional abrogation, further institutionalized the idea that security and stability necessitate the suspension of democratic norms and rights.¹² This pattern continued through subsequent military regimes, where national security was used to justify prolonged censorship, imprisonment of dissenters, and suppression of political opposition.¹³

In the post-9/11 era, Pakistan aligned closely with the United States in the global war on terror. This strategic partnership led to the enactment of expansive anti-terrorism legislation, most notably the Anti-Terrorism Act (ATA) of 1997, which was frequently amended to broaden state powers. These changes allowed for prolonged preventive detention, military trials, and secret surveillance, often with little judicial or legislative oversight.¹⁴

The creation of military courts in 2015 through the 21st Constitutional Amendment further intensified concerns about the shrinking space for civil liberties. Although the amendment was presented as a temporary response to the 2014 Army Public School attack in Peshawar, its continuation beyond the intended timeframe reflected a normalization of extraordinary measures.¹⁵ Civil society actors, journalists, and opposition politicians have frequently faced state reprisals, justified by vague references to “national interest” or “state security.”

¹⁰ “The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights | Refworld,” accessed June 28, 2025, <https://www.refworld.org/legal/resolution/unchr/1984/en/57200>.

¹¹ Khurram Baig, “Analyzing Pakistan’s Counter-Terrorism Strategies in the Lens of Balancing Rights, Interests and Security,” *Pakistan Journal of Law, Analysis and Wisdom* 3 (2024): 46.

¹² Muhammad Fahd Amin, “Constitutionalism and Judicialization of Politics in Pakistan,” *Journal of Law & Social Studies* 5, no. 2 (June 30, 2023): 211–22, <https://doi.org/10.52279/jlss.05.02.211222>.

¹³ Khurram Baig et al., “The Counter-Terrorism and Human Rights: An Analysis in the Context of Pakistan,” *The Critical Review of Social Sciences Studies* 2, no. 2 (December 20, 2024): 1389–1410, <https://doi.org/10.59075/yw94pe77>.

¹⁴ “CEEOL - Article Detail,” accessed June 28, 2025, <https://www.ceeol.com/search/article-detail?id=1051524>.

¹⁵ “Military Court Trials of Civilians in Pakistan : Constitutional Rights, International Obligations and Sustainable Justice – ScienceOpen,” accessed June 28, 2025, <https://www.scienceopen.com/hosted-document?doi=10.13169/polipers.20.2.ra1>.

This historical trajectory illustrates that Pakistan's national security paradigm has often prioritized regime preservation and geopolitical alignment over citizen empowerment and constitutional fidelity. Fundamental rights have been treated not as cornerstones of democratic governance, but as privileges that may be withdrawn during periods of perceived crisis.

Constitutional Framework: Rights and Limitations

The Constitution of the Islamic Republic of Pakistan, 1973, contains a detailed enumeration of fundamental rights under Part II, Chapter 1. These include the right to life and liberty (Article 9), freedom of speech (Article 19), freedom of religion (Article 20), and the right to equality (Article 25), among others. While these rights form the backbone of Pakistan's democratic aspirations, nearly all of them are qualified by provisions that allow for "reasonable restrictions" in the interest of the "glory of Islam," "security of Pakistan," "public order," or "morality."¹⁶ These qualifications, though constitutionally embedded, create broad discretionary space for the executive to limit fundamental rights under the pretext of national security.

Notably, the Constitution itself recognizes that the state may impose restrictions on rights during emergencies. Article 232 empowers the President to declare a state of emergency in case of war, external aggression, or internal disturbances. Once an emergency is declared, Articles 233 and 234 allow for the suspension of fundamental rights, including those related to freedom of speech, assembly, and movement.¹⁷ This framework, although not unique to Pakistan, becomes problematic in the absence of strong institutional checks and judicial review mechanisms to ensure that the declaration and continuation of emergencies are necessary and proportionate.

The language of the Constitution does not clearly define the thresholds for what constitutes a national security threat or what qualifies as a "reasonable restriction." This ambiguity allows for subjective interpretations, often manipulated by successive governments to suppress dissent or target political opponents. Moreover, despite being a party to international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), Pakistan's constitutional limitations on rights remain domestically dominant due to the dualist legal system that prevents direct application of international law unless incorporated by legislation.¹⁸

Another structural issue lies in the weak parliamentary and judicial oversight over security-related legislation and executive action. While the Constitution provides for a separation of powers, in practice, the judiciary has often been reluctant to challenge national security justifications, leading to a culture of judicial deference in security matters.¹⁹ In this environment, the constitutional framework, although seemingly protective of rights, becomes highly susceptible to executive overreach, especially under the shadow of national security.

Contemporary Challenges to Fundamental Rights

In recent years, Pakistan has witnessed a troubling expansion of state authority under the guise of national security, raising serious concerns about the erosion of fundamental rights. These challenges are not confined to periods of emergency; rather, they have become embedded in routine governance through digital surveillance, shrinking civil society space, and suppression of dissenting voices.

¹⁶ "Constitution of the Islamic Republic of Pakistan 1973 - Part II," accessed June 28, 2025, <http://www.commonlii.org/pk/legis/const/1973/3.html>.

¹⁷ "Constitution of the Islamic Republic of Pakistan 1973 - Part II."

¹⁸ Babar Zaheer et al., "Violation of Human Rights in Pakistan, Challenges and Progress," *The Critical Review of Social Sciences Studies* 3, no. 1 (February 11, 2025): 1864–78, <https://doi.org/10.59075/armh4y03>.

¹⁹ Aamir Khan, Dr Imran Naseem, and Dr Muhammad Inamullah, "Constitutional Dynamics and Judicial Autonomy in South Asia: A Comparative Study of Pakistan and Its Neighbors," *Al Manhal Research Journal* 5, no. 1 (February 18, 2025), <https://almanhal.org.pk/ojs3303/index.php/journal/article/view/246>.

One of the most critical areas of concern is the use of digital surveillance and cyber regulation to monitor citizens. The Prevention of Electronic Crimes Act (PECA) 2016, originally framed to combat cybercrime, has increasingly been used to silence journalists, activists, and political opponents. The Act allows broad powers for the Pakistan Telecommunication Authority (PTA) to block content considered against “public order” or “national interest,” without clear standards or transparent oversight.²⁰ This has led to a chilling effect on free expression and online activism, with social media platforms increasingly censored or monitored.²¹

Another pressing issue is the curtailment of media freedom. Journalists who report on sensitive topics such as enforced disappearances, military operations, or corruption are frequently harassed, abducted, or prosecuted. In 2023 and 2024, multiple journalists were summoned under PECA provisions or faced sedition charges for social media posts. Press freedom watchdogs have repeatedly ranked Pakistan among the most dangerous countries for journalists, highlighting an environment where freedom of the press is treated as expendable in the name of national security.²² Civil society organizations have also come under increased scrutiny, particularly those receiving foreign funding or working on human rights issues. New rules introduced in 2023 under the Foreign Contributions Regulation regime require extensive disclosures and allow the state to de-register NGOs deemed “anti-state” or “politically motivated.”²³ These regulatory tactics, while framed as accountability measures, have been widely criticized for targeting dissenting voices and undermining democratic participation.

The rights of religious minorities and marginalized groups are similarly compromised under the pretext of public order and national harmony. Blasphemy laws, although not new, continue to be used to target minorities, with state authorities often reluctant to intervene in cases of mob violence or false accusations. This environment fosters majoritarian impunity and restricts the constitutional promise of equality and religious freedom.²⁴

These challenges illustrate how the language of national security is often invoked not to protect the state from external threats, but to suppress internal criticism and pluralism. The normalization of such practices risks entrenching authoritarian governance under a democratic façade, eroding the rule of law and trust in constitutional protections.

Post-9/11 National Security Narratives and Global Comparisons

The events of September 11, 2001, reshaped the global understanding of national security, particularly in relation to individual rights. Across democracies and authoritarian states alike, the post-9/11 security landscape facilitated the introduction of expansive counterterrorism laws,

²⁰ “(PDF) Digital Authoritarianism and Journalistic Dissent in Pakistan: An Empirical Investigation of PECA,” accessed June 28, 2025,

https://www.researchgate.net/publication/390266095_Digital_Authoritarianism_and_Journalistic_Dissent_in_Pakistan_An_Empirical_Investigation_of_PECA.

²¹ Asma Jabeen Khan et al., “The Right to Be Forgotten in the Digital Age: A Pakistani Perspective on Balancing Data Protection & Privacy, Freedom of Expression, and Cyber Security,” *Journal for Social Science Archives* 3, no. 1 (January 27, 2025): 387–403, <https://doi.org/10.59075/jssa.v3i1.126>.

²² “Pakistan Archives,” *Committee to Protect Journalists* (blog), May 28, 2025, <https://cpj.org/asia/pakistan/>.

²³ Ifra Iftikhar, Irem Sultana, and Sajjad Ahmad Paracha, “Balancing Act: Pakistan’s Quest for Responsible Social Media Regulation,” *Pakistan Journal of Law, Analysis and Wisdom* 3 (2024): 216.

²⁴ “Review Essay: Blasphemy Laws, Sectarianism and Religious Minorities in Pakistan: Sharia and the State in Pakistan, by Farhat Haq, Abingdon, Routledge, 2019, 209 Pp., A\$77.99 (Paperback), ISBN 9780367786403. and Islam and Sectarian Violence in Pakistan: The Terror Within, by Eamon Murphy, Abingdon, Routledge, 2020, 226 Pp., A\$77.99 (Paperback), ISBN 9780367585617. and Ahmadi and Christian Socio-Political Responses to Pakistan’s Blasphemy: A Comparison, Contrast and Critique with Special Reference to the Christian Church in Pakistan, by Qaiser Julius, Carlisle, Langham Monographs, 2017, 349 Pp., A\$46.96 (Paperback), ISBN 9781783683017: South Asia: *Journal of South Asian Studies*: Vol 45, No 3,” accessed June 28, 2025, <https://www.tandfonline.com/doi/abs/10.1080/00856401.2022.2065750>.

increased surveillance regimes, and new restrictions on civil liberties, all under the pretext of preventing terrorism. Pakistan's experience in this regard reflects global trends, but with notable differences in legal safeguards, accountability mechanisms, and institutional oversight.

In the United States, the passage of the USA PATRIOT Act expanded state powers significantly, allowing for extensive surveillance, detention without trial, and secrecy in judicial proceedings. While many of these provisions were challenged or revised over time, they set a precedent for a securitized approach to governance, which other countries emulated.²⁵ The United Kingdom similarly enacted broad counter-terrorism laws, but embedded them within stronger judicial and parliamentary frameworks, including periodic review clauses and human rights impact assessments.²⁶

Pakistan's post-9/11 security architecture evolved rapidly, but often without such institutional counterweights. The Anti-Terrorism Act (ATA), although enacted in 1997, became the primary tool for prosecutions after 2001. Over time, it was supplemented with military courts, preventive detention laws, and expansive executive powers, all justified through Pakistan's frontline role in the global war on terror.²⁷ Unlike Western democracies, however, Pakistan lacked the same level of procedural safeguards or vibrant parliamentary oversight, leading to significant human rights concerns.²⁸

Another major divergence lies in the absence of transparent oversight bodies. Countries such as Canada, Australia, and Germany have established independent watchdog institutions that review security operations and ensure rights compliance. Pakistan's intelligence and law enforcement agencies, in contrast, operate with significant opacity and impunity, particularly in regions such as Balochistan and Khyber Pakhtunkhwa, where enforced disappearances and extrajudicial killings have been documented under security pretexts.²⁹

Although the world, comparisons show that there is a general tendency to take an immediate measure of protecting its security in time of crisis, it does demonstrate the value of the legal and institutional protection in the maintenance of rights. By continuing to use exceptional measures without commensurate protections of rights, Pakistan runs the danger of creating a permanent state of exception in which the extraordinary become the rule and the constitutional guarantee of fundamental rights is left forever unfulfilled.

Arguments for Prioritizing National Security

The adherers of the security-first notion posit that the preservation of national integrity, sovereignty, and safety of its citizens is the paramount obligation of any nation. They argue that, in the absence of safety, enjoyment of your basic rights is an illusion. Such an argument is particularly strong in cases like Pakistan where terrorism, sectarian conflicts, and foreign interventions are some of the fundamental threats to the stability of the state.

Among the most important reasons would be the reason that security has to precede all the other rights. Life and physical security, according to the proponents, should take precedence since its infringement undercuts all the other constitutional rights. During the case of mass violence or insurrection, the state should have an authority to take strong steps, even at the cost of the short-

²⁵ "Chapter 10: National Security Studies in: An Introduction to War Studies," accessed June 28, 2025, <https://www.elgaronline.com/edcollchap/book/9781802203325/book-part-9781802203325-16.xml>.

²⁶ "The Juridification of the UK's Counter Terrorism Prevent Policy: Studies in Conflict & Terrorism: Vol 45, No 11," accessed June 28, 2025, <https://www.tandfonline.com/doi/abs/10.1080/1057610X.2020.1727098>.

²⁷ Nazar Hussain and Shaukat Hussain Bhatti, "The Tightrope of Individual Liberties amid Pakistan's Counter-Terrorism Agenda," *ANNALS OF SOCIAL SCIENCES AND PERSPECTIVE* 5, no. 1 (June 30, 2024): 145–55, <https://doi.org/10.52700/assap.v5i1.360>.

²⁸ "Terrorism and the Varieties of Civil Liberties | Journal of Global Security Studies | Oxford Academic," accessed June 28, 2025, <https://academic.oup.com/jogss/article-abstract/6/3/ogaa032/5880057>.

²⁹ "No Power Vacuum: National Security Neglect and the Defence Sector in Brazil: Defence Studies: Vol 21, No 1," accessed June 28, 2025, <https://www.tandfonline.com/doi/abs/10.1080/14702436.2020.1848425>.

term suspension of some civil liberties. This argument has been influential in defining applications of military courts, preventive detention legislation and widened surveillance apparatus in Pakistan especially in aftermath of major terrorist attacks.³⁰

Security-oriented governance is also defended on the basis of “state necessity” and “public interest.” These principles suggest that, in extraordinary circumstances, constitutional guarantees may need to be flexibly interpreted or even suspended to enable the state to survive. The doctrine of necessity, while controversial, has historically been used in Pakistan to justify emergency rule, military governance, and counterterrorism measures. Though widely criticized, it continues to influence policy thinking and legal justifications.³¹

In the international context, this approach is supported by certain permissible derogations under international law. Article 4 of the ICCPR allows for limited suspensions of certain rights during declared emergencies, provided they are necessary, proportionate, and non-discriminatory. Advocates of national security argue that Pakistan, being party to such instruments, is acting within its rights when it enacts emergency laws or imposes restrictions to address real and present dangers.³²

A further argument is that modern security threats are asymmetrical and diffuse, making traditional legal frameworks inadequate. Cyber threats, ideological extremism, and transnational terrorism require real-time responses that may not align with judicial timelines or conventional due process. This logic is often used to advocate for enhanced executive powers and secrecy in decision-making, particularly in military and intelligence operations.³³

In this view, prioritizing national security is not an abandonment of rights but a temporary recalibration aimed at safeguarding the very conditions in which rights can be meaningfully exercised. Proponents maintain that once stability is restored, rights protections can be reactivated—though critics often note that such “temporary” measures have a tendency to become permanent

Arguments for Protecting Fundamental Rights

While national security is undeniably crucial, a growing body of legal scholarship and rights-based advocacy warns against sacrificing constitutional freedoms in its name. The protection of fundamental rights is not merely a moral or humanitarian imperative; it is a structural necessity for legitimate governance. States that routinely violate individual rights under the pretext of security tend to suffer long-term instability, weakened rule of law, and diminished public trust.

One of the central arguments is that rights are not privileges to be granted or revoked, but inalienable entitlements derived from the social contract and enshrined in constitutional and international law. Curtailment of these rights undermines the moral and legal authority of the state and erodes democratic legitimacy. In Pakistan, arbitrary detentions, suppression of dissent, and curbs on press freedom have historically fueled resentment, resistance, and even radicalization, ironically compromising the very security these measures claim to protect.³⁴

Another key point is that security policies lacking transparency and accountability breed impunity and human rights abuses. The absence of independent oversight over intelligence agencies, military operations, and surveillance mechanisms creates a culture of secrecy that facilitates abuse

³⁰ Muhammad Imran and Dr Syedah Sadia Kazmi, “The Rule of Law Crisis and Its Implications on National Security in Pakistan,” *Journal of Political Studies* 32, no. 1 (May 20, 2025): 36–57.

³¹ Mark M Stavsky, “The Doctrine of State Necessity in Pakistan,” n.d.

³² “General Comment No. 29, States of Emergency (Article 4) :,” accessed June 28, 2025, <https://digitallibrary.un.org/record/451555?ln=en>.

³³ “The Legal Challenges Of Asymmetrical Warfare: Lessons from Afghanistan’s Armed Conflict (2001-2021) by Yunusa Usman :: SSRN,” accessed June 28, 2025, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4908942.

³⁴ “The Myth of Tomorrow,” accessed June 28, 2025, <https://www.thenews.com.pk/print/1236848-the-myth-of-tomorrow>.

of power. This undermines not only the rights of individuals but also institutional integrity and public confidence in the legal system.³⁵ Democratic resilience, scholars argue, depends not on unchecked executive authority, but on robust constitutional protections and legal remedies.

Furthermore, international human rights law imposes both negative and positive obligations on states—not just to avoid violating rights, but to proactively protect and promote them. Instruments like the ICCPR, to which Pakistan is a party, require that even in emergencies, core rights such as the right to life, protection against torture, and recognition before the law must not be derogated. Pakistan's repeated derogations without adequate legal justification have drawn criticism from UN treaty bodies and international watchdogs.³⁶

Additionally, empirical studies suggest that democratic regimes with strong rights protections are more effective in countering terrorism and maintaining long-term stability. Policies that respect civil liberties encourage public cooperation, reduce grievances, and enhance intelligence gathering through community trust. In contrast, heavy-handed measures often backfire, exacerbating the security threats they aim to neutralize.³⁷

The rights-based perspective thus reframes the debate: security and liberty are not mutually exclusive. Rather, the enforcement of fundamental rights creates the conditions under which legitimate security strategies can be pursued. Rights-respecting governance is not a luxury for stable times, but a necessity even during crises.

Striking a Constitutional Balance: Policy Recommendations

In a publicly acceptable dimension, as a solution to the constitutional paradox between protecting the national security and ensuring fundamental rights, Pakistan needs to devise a legal, accountable, and transparent framework of security that does not undermine the rights of citizens in the name of securing the national security. This is not to say that the purpose of state protection against internal and external threats is being undermined but this means there is need to institutionalize safeguards, which prevent the concerns of security policies eating into the constitutional fabric of the state and democratic legitimacy of the state.

To begin with, it is urgent to properly match the scope and boundaries of the so-called reasonable restrictions provided by the Constitution. Broad and imprecise expressions like, security of Pakistan and even the term public order, allow the discretionary misuse. To the extent that any restrictions are placed on liberty and basic rights, legislative reforms ought to offer specific benchmarks, grounded on need and proportionality.³⁸ The reforms ought to be based on international principles such as the Siracusa Principles that give legal standards of the limitation of rights in democratic societies.

Second, Pakistan has to enhance institutional controls over general security agencies, such as the military and the intelligence services. This could be fulfilled by forming Parliamentary National Security Committee with the powers of investigation and supervision, like it has been done in the

³⁵ "Security Sector Reforms in Pakistan: Challenges, Remedies and Future Prospects - GSDRC," February 10, 2013, <https://gsdrc.org/document-library/security-sector-reforms-in-pakistan-challenges-remedies-and-future-prospects/>, <https://gsdrc.org/document-library/security-sector-reforms-in-pakistan-challenges-remedies-and-future-prospects/>.

³⁶ "CCPR/C/PAK/CO/1: Human Rights Committee: Concluding Observations on the Initial Report of Pakistan | OHCHR," accessed June 28, 2025, <https://www.ohchr.org/en/documents/concluding-observations/ccprcpakco1-human-rights-committee-concluding-observations>.

³⁷ Emma DeSouza, "Implementation of the Good Friday Agreement: A Rights-Based Agenda for Advancing the Pillars of a Positive Peace," *Fordham International Law Journal* 48, no. 4 (January 1, 2025): 863.

³⁸ Atta ur Rehman Khan, Muhammad Aqeel Khan, and Hidayat ur Rehman, "The Impacts of Judicial Review over the Sovereignty of the Parliament in Pakistan," *Pakistan Journal of Law, Analysis and Wisdom* 3 (2024): 126.

United Kingdom and the Australian models.³⁹ Moreover, such mechanisms as Independent Human Rights Commission which will be headed by civilians charged with examining the complaints of abuse, arbitrary detention, surveillance, and disappearance must be introduced.

Third, judicial independence and capacity must be enhanced to allow the courts to play a proactive role in reviewing the legality of security-related laws and executive actions. Courts should not default to judicial deference when national security is invoked, especially when fundamental rights are at stake.⁴⁰ Specialized human rights benches, trained in constitutional jurisprudence and international law, could be established within high courts to handle such matters swiftly and fairly. Fourth, a robust digital rights framework is essential. PECA should be revised to eliminate vague terms and grant citizens enforceable rights to notice, appeal, and judicial review when content is blocked or surveillance is authorized. The Pakistan Telecommunication Authority must operate transparently and be subject to judicial and parliamentary checks.⁴¹ Protecting digital privacy, especially in a hyper-connected world, is integral to securing other fundamental rights such as free expression and association.

Finally, Pakistan must harmonize its domestic laws with its international human rights obligations. This requires incorporating treaty provisions into national law and ensuring that emergency measures comply with global legal standards. A National Human Rights Action Plan should be revived and updated to include clear mechanisms for balancing rights and security in line with democratic norms.⁴²

Striking a constitutional balance is not about choosing between rights and security, but about ensuring that one does not systematically erode the other. A state that guarantees the dignity and freedoms of its citizens is ultimately more resilient, secure, and just.

Conclusion

The interaction between the fundamental rights and the national security is still one of the most problematic and disputable questions of the constitutional governance. This tension has been especially high in Pakistan as it was a country that experienced military interventions, persistent security threats, and a weak democratic structure. Although the Constitution of Pakistan is an effective vehicle of protection of civil liberties, invocation of national security by each successive government has enabled them to stretch civil liberties, place them at suspension, or subvert them depending on the nature of the security threat, with little to no legal justification or institutional checks.

These issues have further been compounded by the post-9/11 formulation of global security paradigm that entitles the extraordinary powers and emergency administration in the name of protection against terrorism. But, as followed in this paper, unchecked engorgement or strengthening of the state power is, paradoxically, the one that undermines its foundations. The one that neglects the basic concept of these rights is likely to create the situations of estrangement, opposition, and the inability to regulate stably in the long term.

There are no remedies to this constitutional dilemma. Pakistan can start readjusting the balance between liberty and security through introduction of more concrete legal boundaries on restrictions of rights, independent checks over the security agencies, strengthening the judiciary, and ensuring

³⁹ "Why Pakistan's First National-Security Policy Matters for Future Regional Stability," accessed June 28, 2025, <https://www.iiss.org/online-analysis/online-analysis/2022/02/why-pakistans-first-national-security-policy-matters-for-future-regional-stability/>.

⁴⁰ Haroon Khalid, "Judicial Activism in Pakistan: A Comparative Study of CJP Saqib Nisar and Umar Ata Bandial," *The Critical Review of Social Sciences Studies* 2, no. 2 (November 18, 2024): 322–37, <https://doi.org/10.59075/gtnm3436>.

⁴¹ "Discussion: PECA Reforms And The New Rules On Content Regulation - Digital Rights Monitor," accessed June 28, 2025, <https://digitalrightsmonitor.pk/discussion-peca-reforms-content-regulation/>.

⁴² "Pakistan - National Action Plans on Business and Human Rights," accessed June 28, 2025, <https://globalnaps.org/country/pakistan/>.

that domestic legislation abides with international commitments. This readjustment is not merely a legal mandate but a democratic requirement that is necessary to make certain that the promise of the Constitution is not kept empty in the name of safety.

In the end, the construction of a just and secure society cannot operate on the basis of fear or repression, but a social contract of rights about which national security is no longer regarded as an exception to the norms of constitutional rule, but on the contrary, their telos.

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