

Constitutional Protection of Islamic Identity and Its Impacts: A Comparative Study of Malaysia and Pakistan

* *Muhammad Waqas Sarwar*

* *Lecturer, College of law, Government College University, Faisalabad.*

Keywords

*Constitutional law;
Comparative analysis;
Islamic identity;
Legal pluralism;
Malaysia;
Pakistan;
Shariah*

Abstract

This research paper examines the constitutional protections for Islamic identity in Malaysia and Pakistan, two Muslim-majority countries with distinct historical, political, and socio-legal contexts. Both nations enshrine Islam as the state religion, yet their approaches to embedding Islamic identity in governance, law, and society differ significantly, influencing political stability, social cohesion, and human rights landscapes. Using a qualitative comparative methodology, the study analyzes constitutional provisions, judicial interpretations, and legislative frameworks, drawing on secondary sources such as legal texts, case law, and academic literature. Malaysia's Federal Constitution establishes Islam as the state religion while balancing secular governance and multiculturalism. In contrast, Pakistan's Constitution incorporates Islamic principles deeply through the Objectives Resolution and judicial oversight. The findings reveal that Malaysia's pragmatic approach fosters relative stability but encounters minority rights challenges, whereas Pakistan's extensive Islamization has led to complex legal pluralism and sectarian tensions. Impacts on governance, minority protections, and gender rights differ, with Malaysia achieving greater inclusivity and Pakistan facing challenges arising from rigid interpretations. The paper concludes with recommendations to harmonize Islamic identity with pluralistic governance, strengthen judicial independence, and promote interfaith dialogue. This study contributes to understanding how constitutional Islamic identity shapes statehood and societal dynamics in diverse Muslim-majority contexts.

Introduction

The integration of Islamic identity into the constitutional fabric of Muslim-majority states presents a complex and multi-dimensional challenge that blends legal, political, religious, and social considerations. Constitutions in countries such as Malaysia and Pakistan prominently feature Islam as the state religion; however, the ways in which this foundational identity is enshrined and operationalized differ substantially due to unique historical trajectories, demographic compositions, and political developments (Ahmed, 2016; Harding, 2010). This divergence has profound implications for governance structures, societal cohesion, minority rights, and gender equity, making it

a critical area of comparative constitutional study.

Malaysia, at independence in 1957, designed a federal constitution that declared Islam as the religion of the Federation under Article 3 but also explicitly guaranteed freedom of religion to all citizens (Government of Malaysia, 1957). This delicate balance reflects the country's ethnically and religiously diverse population, composed primarily of Malays, Chinese, and Indians, with significant populations adhering to Buddhism, Christianity, Hinduism, and other faiths. The constitutional framework permits a unique dual legal system where Islamic law applies to Muslim personal matters under Shariah

courts, while civil courts maintain jurisdiction over secular laws covering all citizens (Whiting, 2010). This pluralistic arrangement, while largely successful in promoting political stability and social harmony, faces ongoing tensions related to ethnic nationalism, religious freedom, and jurisdictional ambiguities, as exemplified in landmark cases such as *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* (Liow, 2016).

Pakistan took a markedly different path following its creation in 1947. The country's 1973 Constitution explicitly establishes Islam as the state religion in Article 2 and further elevates Islamic supremacy via Article 2A—the incorporation of the Objectives Resolution—which mandates that all laws enacted shall be consistent with the teachings of Islam (Government of Pakistan, 1973). This constitutional insistence on conformity with Shariah is operationalized through institutional mechanisms such as the Federal Shariat Court and the Council of Islamic Ideology, which exercise advisory and judicial oversight functions to ensure legislative compliance (Ahmed, 2016). The legal framework resulting from successive waves of Islamization policies, particularly under General Zia-ul-Haq's regime (1977–1988), has ushered in an era of heightened religious orthodoxy embedding Islamic jurisprudential norms broadly into the state's legislative and social fabric (Zaman, 2018).

These contrasting constitutional architectures have shaped divergent trajectories in state-society relations. Malaysia's relatively moderate and flexible approach has facilitated an inclusive governance ethos, allowing for limited religious pluralism and ethnic coexistence (Harding, 2010). However, it exhibits challenges in managing religious conservatism's surge and safeguarding

minority rights, including controversial legal boundaries on conversion and religious freedom (Whiting, 2010; Liow, 2016). Conversely, Pakistan's constitutional embedding of Islam has been linked to socio-political challenges such as sectarian conflict, legal fragmentation, human rights limitations, and contentious applications of laws such as the blasphemy statutes that adversely affect religious minorities (HRC, 2022).

The operationalization of Islamic constitutional identity also has significant effects on gender relations. Malaysia has engaged in a process of reforming Muslim family laws to enhance women's rights within the framework of Shariah, fostering a cautiously progressive legal environment (Mahmood, 2018). Pakistan's parallel journey is fraught with complexities, where legal provisions like the Hudood Ordinances have been criticized for restricting women's autonomy and agency, exacerbating societal patriarchal constraints despite some legal advancements (Weiss, 2014; Shah, 2016).

This study aims to provide a comprehensive comparative analysis of constitutional Islamic identity protections in Malaysia and Pakistan, investigating how these underpin governance, judicial interpretation, minority protections, and gender justice. Employing a qualitative methodology, it synthesizes constitutional texts, judicial rulings, legislative frameworks, and secondary scholarly literature to map the legal and socio-political implications of Islamic constitutionalism in each context.

The ensuing sections offer detailed reviews of relevant literature, explicit expositions of each country's constitutional frameworks, analyses of impacts on governance and society, and policy recommendations to harmonize Islamic identity with pluralistic democratic

governance and international human rights standards.

Literature review

The interplay between constitutional law, Islamic identity, and governance in Muslim-majority countries has engendered a substantial body of scholarship exploring multiple dimensions, including legal theory, political science, religious studies, and human rights. This literature provides the necessary foundation to understand how Malaysia and Pakistan navigate these complex issues differently.

Constitutional Islam and Legal Theory

Scholars have long debated the nature of Islamic identity within constitutional frameworks. Harding (2010) describes Malaysia's "soft Islamization" as a pragmatic accommodation where Islam is symbolically predominant but governance remains largely secular and inclusive. This balancing act enables religious pluralism, evidenced by constitutional provisions safeguarding freedom of religion alongside the designation of Islam as the state religion (Harding, 2010). In contrast, the literature on Pakistan highlights a more assertive form of constitutional Islamism, epitomized by the Objectives Resolution and subsequent institutionalization of Shariah to oversee all legislation (Ahmed, 2016; Weiss, 2014).

Legal scholarship utilizes the concept of legal pluralism to frame these dynamics. Malaysia's dual court system, with concurrent jurisdiction of civil and Shariah courts, reflects plural legal orders coexisting within a sovereign state (Whiting, 2010). Conversely, Pakistan's multiple overlapping legal frameworks—including secular, Shariah, and tribal customary laws—create contestations and jurisdictional ambiguities (Ahmed, 2016).

Political and Social Implications

The literature further explores the political implications of entrenched constitutional Islam. Malaysia's approach has been credited with supporting political stability and managing ethnic and religious diversity, albeit not without persistent political challenges and ethno-religious tensions (Liow, 2016). Harding (2010) notes that Malaysia's political elites have used Islam instrumentally to legitimize policy and consolidate Malay Muslim identity.

In Pakistan, scholars such as Zaman (2018) and Shah (2016) document how constitutional Islamization has correlated with increased sectarianism and intermittent political volatility. The aggressive enforcement of Islamic provisions in the legal system, including blasphemy laws, has exacerbated societal divisions and constrained minority freedoms (HRCP, 2022).

Minority Rights and Religious Freedom

Research on minority rights reveals considerable contrasts. Malaysia enshrines protections for non-Muslims and guarantees broad religious freedom, although with certain limitations on proselytization and conversion (Whiting, 2010). The case of Lina Joy (2007), which dealt with a woman's effort to legally convert out of Islam, underscores tensions between constitutional Islam and individual rights (Liow, 2016).

Pakistan's constitutional and legal regime exhibits systemic marginalization of religious minorities, such as Ahmadis and Christians, compounded by the application of blasphemy laws and other discriminatory provisions (HRCP, 2022). Amnesty International and other human rights bodies have repeatedly criticized Pakistan's use of such laws for persecution (HRCP, 2022).

Gender Justice under Constitutional Islam

Gender studies have critically assessed how constitutional Islam impacts women's rights. Malaysia's legal reforms, including amendments to Islamic family laws since the 2000s, have incrementally improved women's legal status concerning marriage, divorce, and inheritance within an Islamic framework (Mahmood, 2018). However, patriarchal interpretations and gaps remain (Weiss, 2014).

In Pakistan, the enactment of Hudood Ordinances under Zia's regime significantly constrained women's rights, particularly in matters of rape and adultery, leading to widespread critique on both domestic and international fronts (Weiss, 2014; Shah, 2016). Subsequent reforms have ameliorated some provisions, but challenges persist given entrenched social attitudes and legal pluralism.

Comparative Thematic Insights

Comparative analyses emphasize that while Malaysia demonstrates a more flexible coexistence of Islam and pluralism, Pakistan experiences profound tensions and fragmentations attributable to legal dualism and constitutional Islamization (Harding, 2010; Ahmed, 2016). Both countries face pressures to reconcile Islamic identity with international human rights obligations, notably under CEDAW and the Universal Declaration of Human Rights (United Nations, 2017).

The scholarship collectively argues that effective constitutional models for Islamic identity must incorporate judicial independence, respect for minority and gender rights, and institutional mechanisms ensuring balanced interpretations of Islamic provisions (Whiting, 2010; Weiss, 2014).

Constitutional Framework in Malaysia

Malaysia's Federal Constitution, adopted in 1957 at the time of independence from British colonial rule, explicitly declares Islam as the religion of the Federation under Article 3(1). The exact wording is: "Islam is the religion of the Federation; but other religions may be practiced in peace and harmony" (Government of Malaysia, 1957). This provision establishes a constitutional foundation for Islamic identity in the state, granting Islam a ceremonial and legal status while simultaneously acknowledging the multicultural and multi-religious composition of Malaysian society.

The constitution further guarantees freedom of religion for all citizens through Article 11. This article ensures that every person has the right to profess and practice their religion, subject to reasonable restrictions imposed by law (Government of Malaysia, 1957). The coexistence of Article 3 with Article 11 reflects the delicate balance Malaysia seeks between upholding Islam's privileged position and protecting religious pluralism and minority rights.

Malaysia's constitutional structure also incorporates a dual legal system. The Ninth Schedule delineates the jurisdiction of laws, establishing that Islamic law, administered through Shariah courts, applies exclusively to Muslims on personal matters such as marriage, divorce, inheritance, and apostasy (Harding, 2010). Civil courts handle all other matters, including the administration of secular laws applicable to all citizens regardless of religion. This duality institutionalizes legal pluralism within the Malaysian framework, allowing Islamic law to function alongside secular law while preserving the country's integrity and social cohesion.

Judicial interpretations have clarified the limits and scope of Article 3. In *Che Omar bin Che Din v. Public Prosecutor* (1987), the Federal Court ruled

that Malaysia's constitutional declaration of Islam as the religion of the Federation does not imply it is an Islamic theocracy but rather a secular state with Islam accorded a special position (Whiting, 2010). However, tensions have arisen when Islamic courts exercise jurisdiction in areas such as apostasy and conversion, as illustrated by the landmark *Lina Joy* case in 2007. In this case, the Federal Court affirmed the authority of Islamic law in matters of religious conversion, effectively limiting an individual's ability to renounce Islam in civil courts, thus raising significant questions about religious liberty and minority protections (Liow, 2016).

To manage Islamic affairs, Malaysia established institutions such as the Department of Islamic Development Malaysia (Jabatan Kemajuan Islam Malaysia - JAKIM) and State Islamic Religious Councils. These bodies oversee the administration of Islamic law and policy, influencing religious education, halal certification, and moral governance. The balancing act Malaysia engages in, maintaining Islam's constitutional primacy while accommodating cultural diversity through secular governance, has been widely regarded as a model of pragmatic pluralism (Harding, 2010).

Nonetheless, Malaysia still faces challenges reconciling minority rights and religious freedoms with Islamic identity, especially given rising religiosity and political ascendancy of conservative Islamic factions. These dynamics continue to shape debates on constitutional interpretation and policy implementation concerning religion and state.

Constitutional Framework in Pakistan

Pakistan's Constitution, promulgated in 1973, explicitly declares Islam as the state religion in Article 2, stating, "Islam shall be

the State Religion of Pakistan" (Government of Pakistan, 1973). More substantively, Article 2A incorporates the Objectives Resolution, making it a substantive part of the Constitution. The Objectives Resolution articulates that sovereignty belongs to Allah alone and that the authority delegated to state organs must be exercised in accordance with Islamic injunctions as laid down in the Quran and Sunnah. This embeds Islamic principles profoundly within the highest constitutional framework (Ahmed, 2016).

The constitution further reinforces this Islamic identity by mandating in Article 227 that all existing laws must conform to the injunctions of Islam as set out in the Quran and Sunnah. It provides for the institutionalization of Islamic oversight through key bodies such as the Federal Shariat Court (FSC) and the Council of Islamic Ideology (CII). The FSC is authorized to examine and determine whether laws are repugnant to Islam and can recommend legislative amendments or repeal non-Islamic laws (Ahmed, 2016). The CII serves in an advisory role to guide the legislature on Islamic matters, thus influencing the legislative agenda (Whiting, 2010).

During the military regime of General Zia-ul-Haq (1977–1988), Pakistan witnessed an accelerated Islamization process. This period introduced the Hudood Ordinances, which imposed Islamic criminal laws, particularly relating to zina (illicit sexual relations), and introduced blasphemy laws that significantly intensified the role of religion in governance (Zaman, 2018). This comprehensive Islamization reshaped Pakistan's legal landscape by formally prioritizing Islamic jurisprudence and norms within state laws and judicial functions.

Judicial interpretations have repeatedly affirmed the constitutional supremacy of Islam. For instance, in *Hakim*

Khan v. Government of Pakistan (1992), the Supreme Court upheld the Federal Shariat Court's authority to review legislation for Islamic compliance, reinforcing Article 2A's constitutional force. Additionally, the *Zaheeruddin v. State* (1993) decision exemplified the constitutional marginalization of minority sects, upholding restrictions placed on the Ahmadiyya community under Article 260(3) of the Constitution, which declares Ahmadis non-Muslims (Shah, 2016).

The deep constitutional embedding of Islamic identity has shaped governance frameworks, laws, and societal discourses but has also engendered challenges concerning legal pluralism. Pakistan's dual legal systems—secular and Islamic—as well as the overlay of customary and tribal laws in some regions, produce inconsistencies and conflicts in legal application (Ahmed, 2016). This contributes to legal uncertainties and sectarian tensions, which at times undermine both governance stability and minority protections.

Despite Pakistan's commitment to international human rights norms, including its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), internal constitutional and legal mechanisms reflecting rigid Islamic interpretations have complicated the realization of gender equality and religious freedom (Weiss, 2014; Human Rights Commission of Pakistan [HRC], 2022).

In sum, Pakistan's constitutional framework enshrines Islamic identity in a comprehensive and enforceable manner, positioning Islam at the core of national identity. This contrasts Malaysia's more symbolic approach but simultaneously produces complex challenges relating to legal coherence, sectarian relations, and human

rights that continue to evoke scholarly and societal debate.

Comparative Impacts

The constitutional frameworks of Malaysia and Pakistan concerning Islamic identity yield varied impacts on governance, minority rights, gender equity, and social cohesion, reflecting their distinct historical and socio-political contexts.

Governance

Malaysia exemplifies a hybrid governance model where Islamic identity coexists with a largely secular administrative and legal system. The constitutional entrenchment of Islam as the state religion under Article 3 carries symbolic and ceremonial weight without converting Malaysia into a theocratic state (Harding, 2010). Shariah courts operate within a confined jurisdiction on Muslim personal law while civil courts govern the wider legal sphere. This dual system allows Malaysia to effectively manage its ethnically and religiously diverse population through institutionalized pluralism, offering relative political stability and centralized governance while accommodating religious differences (Whiting, 2010).

Pakistan, in contrast, integrates Shariah principles more deeply into the national legal system through constitutional mandates and Islamic judicial institutions. This comprehensive Islamization permeates legislative, executive, and judicial branches, creating a complex legal pluralism with overlapping jurisdictions including secular courts, Shariat courts, and customary tribal laws (Ahmed, 2016). While this enshrines Islamic identity at the core of state legitimacy, it also engenders governance challenges. Inter-institutional conflicts, policy inconsistencies, and difficulties harmonizing diverse legal norms lead to judicial uncertainties and hinder effective governance (Zaman, 2018).

Minority Rights

Malaysia's constitutional provisions strive to protect religious minorities, safeguarding freedom of religion under Article 11, and permitting peaceful practice of other faiths. However, tensions arise in areas such as religious conversion rights and propagation restrictions, exemplified by the *Lina Joy* case where the Federal Court maintained Shariah jurisdiction over apostasy (Liow, 2016). Minorities enjoy general protection, but limitations exist within the constitutional and legal framework necessitating continuous negotiation in a politically sensitive environment.

Pakistan's minority protections are considerably more constrained. Constitutional and legislative measures explicitly or implicitly marginalize non-Muslim communities. Article 260's classification of Ahmadis as non-Muslims legally disenfranchises this group, and blasphemy laws disproportionately target religious minorities—Christians, Hindus, Ahmadis—leading to systemic persecution and social exclusion (HRCP, 2022). Over 1,000 blasphemy cases have been launched since 1987, often amid accusations of misuse and lack of fair trial protections. The marginalization of minorities under Pakistan's Islamized constitutional order remains a pervasive human rights concern.

Gender Rights

In Malaysia, Islamic family law reforms undertaken since the 2000s have progressively enhanced women's legal rights regarding marriage dissolution, child custody, and maintenance while remaining within an Islamic framework (Mahmood, 2018). Nonetheless, patriarchal interpretations persist within Shariah courts, restricting full realization of gender equity (Weiss, 2014). The plural legal order provides alternative secular avenues for

certain family-related rights, offering some protective flexibility.

Pakistan presents a more restrictive gender rights environment influenced by constitutionally embedded Islamic law and conservative social norms. Hudood Ordinances criminalizing certain sexual offenses and family matters have historically curtailed women's rights and agency with substantial societal impact (Shah, 2016; Weiss, 2014). Although subsequent reforms, such as the Women's Protection Act of 2006, have attempted to address these issues, entrenched patriarchal practices and legal inconsistencies continue to limit women's autonomy and access to justice.

Social Cohesion

Malaysia's constitutional approach—balancing Islam with multiculturalism—has fostered relative social cohesion and stability within a formally plural society. However, underlying ethno-religious tensions remain, periodically articulated in political discourse and societal debates over Islam's role and minority rights (Harding, 2010).

By contrast, Pakistan's deeper Islamization and legal pluralism have exacerbated sectarian divisions, notably between Sunni and Shia communities, and contributed to social fragmentation (Zaman, 2018). The constitutional privileging of a specific Islamic identity has sometimes fueled exclusionary nationalism, weakening interfaith relations and national unity.

This comparative analysis demonstrates the profound ways constitutional frameworks shape state capacity to manage religious identity, rights protections, and societal harmony. Malaysia's more moderated, pluralist model achieves greater stability and minority inclusion, while Pakistan faces ongoing tensions resulting from its assertive Islamization.

Policy Recommendations

Addressing the complex challenges posed by constitutional Islamic identity in Malaysia and Pakistan requires carefully tailored policy interventions geared toward fostering inclusive governance, strengthening judicial independence, and safeguarding minority and gender rights while respecting Islamic principles.

Harmonization of Legal Systems

A primary recommendation is the harmonization of Islamic and secular legal frameworks to reduce jurisdictional conflicts and promote legal clarity. In Malaysia, clearer delineation and coordination between Shariah courts and civil courts are necessary to resolve ambiguities, particularly in cases involving conversion and family law. This can be achieved through constitutional amendments or legislative reform that strengthens inter-court coordination mechanisms, thereby reducing disputes over jurisdiction (Harding, 2010).

Pakistan faces deeper complexities that require streamlining Shariah review processes with constitutional rights protections. Consolidating overlapping jurisdictions and ensuring consistency between Federal Shariat Court rulings and Supreme Court decisions would help mitigate legal pluralism. Establishing transparent, standardized judicial protocols that integrate Islamic jurisprudence with constitutional safeguards can enhance legal coherence and public confidence (Ahmed, 2016).

Strengthening Judicial Independence

Both countries would benefit from policies fortifying the independence of judicial institutions tasked with interpreting Islamic constitutional provisions. Ensuring that judges and Islamic legal scholars operate free from political interference is crucial to maintaining credible adjudication balancing

religious identity with human rights. Training programs emphasizing pluralism, constitutionalism, and international human rights law can nurture a judiciary capable of navigating sensitive religious-legal intersections (Whiting, 2010; Weiss, 2014).

Protecting Minority Rights

Policy reforms must prioritize robust protections for religious minorities. Malaysia should ease restrictions on religious conversion and propagation to better align with international human rights standards, thereby reducing socio-political tensions arising from perceived inequities (Liow, 2016). Pakistan urgently needs to reform its blasphemy laws, eliminating provisions that enable persecution and abuse, and repeal discriminatory articles such as those marginalizing Ahmadis. Legislative and institutional reforms, combined with public education, are essential for fostering an inclusive environment respecting religious diversity (HRCP, 2022).

Promoting Gender Equity

Policy initiatives should enhance women's legal rights within the framework of Islamic law, ensuring gender-sensitive interpretations in family and criminal justice systems. Malaysia's gradual reform model serves as a useful reference for Pakistan to embolden women's access to justice and autonomy, particularly by revising laws like the Hudood Ordinances and strengthening the enforcement of anti-discrimination provisions (Mahmood, 2018; Weiss, 2014). Both countries should implement comprehensive gender training for judges, lawyers, and Islamic scholars to eradicate patriarchal biases in the legal system.

Fostering Interfaith Dialogue and Social Cohesion

Given the fragmentary consequences of rigid Islamic identities on social cohesion,

institutionalizing platforms for interfaith dialogue is vital. Such councils can mediate religious tensions, encourage mutual understanding, and build resilience against sectarianism and communal violence. Aligning these initiatives with the Islamic principles of justice (adl) and compassion (rahmah) as outlined in maqāṣid al-sharī'ah can underpin their legitimacy and acceptance (Zaman, 2018).

Implementing these policy recommendations requires sustained political will, cross-sectoral collaboration, and engagement with civil society and religious authorities. Such a holistic approach promises to enhance governance effectiveness, protect fundamental rights, and promote peaceful coexistence within the constitutional frameworks of Malaysia and Pakistan.

Implications

The constitutional embedding of Islamic identity carries profound implications across political, social, international, and theological domains in Malaysia and Pakistan. Understanding these implications reveals both the potentials and pitfalls of constitutional Islamization in Muslim-majority states.

Political Implications

Malaysia's constitutional framework has facilitated a relatively stable political system by balancing Islamic identity with secular governance principles. This hybrid model encourages inclusive policymaking and seeks to maintain interethnic and interreligious harmony (Harding, 2010). Nonetheless, the persistent rise of Islamist political movements and debates over the extent of Shariah authority demonstrate underlying tensions that challenge long-term political stability if left unaddressed.

In Pakistan, constitutional Islamization underpins the ideological basis of state institutions but also contributes to political volatility. The prioritization of Islamic law within governance produces power struggles between secular and religious actors and fosters sectarian fragmentation, which undermines coherent policy formulation and social cohesion (Zaman, 2018). The frequent politicization of religious identity in electoral and legislative arenas often exacerbates divides, destabilizing the polity.

Social Implications

Malaysia's pluralistic constitutional approach has helped maintain relative social cohesion, integrating diverse ethnic and religious communities under a framework that recognizes Islam's special position without undermining minority rights. However, ethno-religious tensions remain latent and occasionally erupt into social discord, necessitating continuous dialogue and policy attention (Whiting, 2010).

Pakistan's constitutional entrenchment of Islam, while unifying in symbolic terms for the Muslim majority, has contributed to sectarian violence, discrimination against religious minorities, and social polarization. Discriminatory laws and societal violence against non-Muslims and intra-Muslim sects impede social harmony and erode the social contract, posing significant challenges for nation-building (HRCP, 2022).

International Implications

Both Malaysia and Pakistan face growing scrutiny by international human rights bodies, particularly regarding compliance with treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Universal Declaration of Human Rights (UDHR). Malaysia is gradually adapting its

constitutional and legal frameworks to meet these obligations, though gaps persist, especially in religious freedom and minority rights (United Nations, 2017).

Pakistan confronts more pronounced criticism due to the misuse of blasphemy laws and the systemic marginalization of minorities. These issues affect Pakistan's international relations, foreign aid prospects, and global human rights reputation (HRCP, 2022). Reconciling Islamic constitutional identity with international human rights norms remains an outstanding challenge with important diplomatic and development implications.

Theological Implications

From a theological perspective, the governance of Islamic constitutional identity requires alignment with the *maqāṣid al-sharī'ah*—the higher objectives of Islamic law—including justice, welfare, compassion, and pluralism. Malaysia's model more closely approximates this *maqāṣid* framework by pursuing inclusivity and coexistence, though it must continuously guard against legal rigidity and exclusion (Weiss, 2014).

Pakistan's deeper constitutional Islamization risks adherence to rigid interpretations that may conflict with Islamic principles promoting justice and mercy. Scholars advocate for renewed theological engagement to reinterpret Shariah in ways that are consistent with human dignity, rights, and contemporary pluralistic realities, thereby fostering more harmonious governance models (Zaman, 2018).

In summary, the constitutional protection of Islamic identity in Malaysia and Pakistan shapes not only legal and political structures but also societal dynamics and international standing, revealing the critical need for policies grounded in pluralism,

justice, and rights-based Islamic interpretations.

Conclusion

This comparative study has examined the constitutional protections and guarantees afforded to Islamic identity within Malaysia and Pakistan's legal and political frameworks, underscoring their significant and divergent impacts on governance, minority rights, gender equity, and social cohesion.

Malaysia's constitutional model, which declares Islam as the religion of the Federation while safeguarding freedom of religion and pluralism, exemplifies a pragmatic balance between Islamic symbolism and secular governance. This approach has fostered relative political stability and enabled coexistence among Malaysia's ethnically and religiously diverse population. However, it continues to grapple with tensions surrounding religious freedom, jurisdictional boundaries, and minority rights issues, as highlighted by judicial cases such as *Lina Joy*.

Pakistan's constitutional arrangements embed Islamic identity through substantive constitutional mandates and institutionalized Shariah oversight, which has produced a complex and often contested legal pluralism. This integration has intensified sectarian divisions, complicated minority protections, and limited gender rights protections despite formal commitments. The Islamization policies, especially under General Zia-ul-Haq, have left enduring legacies affecting the state's governance coherence and social harmony.

The comparative insights suggest that harmonizing Islamic constitutional identity with pluralistic democratic governance is essential for sustainable statehood in Muslim-majority countries. This entails clarifying legal frameworks, strengthening

judicial independence, ensuring robust protections for minorities and women, and fostering interfaith dialogue as a mechanism to reduce societal fragmentation.

heritage with pluralism and modern statecraft.

Ultimately, constitutional Islamic identity must be understood and operationalized not only as a religious declaration but as a dynamic commitment to justice, inclusivity, and the rule of law. Drawing on principles inherent in Islamic jurisprudence such as *maqāṣid al-sharīʿah* encourages the development of governance models that uphold faith without compromising universal human rights and social cohesion.

This study provides a foundation for further research and policy development that embraces the complexities and opportunities inherent in constitutional Islamic identity within diverse Muslim-majority societies, offering a roadmap to balance religious

References

- Ahmed, I. (2016). *Pakistan: The garrison state: Origins, evolution, consequences (1947–2011)*. Oxford University Press.
- Bari, A. A. (2017). Islamic law and the constitutional framework of Pakistan: Continuity and change. *Journal of Islamic Law Review*, 13(1), 45–68.
- Che Omar bin Che Din v. Public Prosecutor*, [1987] 2 MLJ 12.
- Government of Malaysia. (1957). *Federal Constitution of Malaysia*. Attorney General's Chambers.
<http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution.pdf>
- Government of Pakistan. (1973). *Constitution of the Islamic Republic of Pakistan*. National Assembly of Pakistan. http://www.na.gov.pk/uploads/documents/1333523681_951.pdf
- Hakim Khan v. Government of Pakistan*, PLD 1992 SC 595.
- Harding, A. (2010). *The constitution of Malaysia: A contextual analysis*. Hart Publishing.

- Human Rights Commission of Pakistan. (2022). *State of human rights in 2021*. HRCP. <https://hrqp-web.org/publication/wp-content/uploads/2022/04/State-of-Human-Rights-in-2021.pdf>
- Lina Joy v. Majlis Agama Islam Wilayah Persekutuan*, [2007] 4 MLJ 585.
- Liow, J. C. (2016). *Religion and nationalism in Southeast Asia*. Cambridge University Press.
- Mahmood, S. (2018). Family laws in Pakistan: An overview. *Journal of Islamic Law Review*, 14(2), 235–260.
- Moustafa, T. (2018). *Constituting religion: Islam, liberal rights, and the Malaysian state*. Cambridge University Press. <https://doi.org/10.1017/9781108531917>
- Mulla, D. F. (2017). *Principles of Mahomedan law* (22nd ed.). LexisNexis.
- Nelson, M. J. (2015). *Islamic law and the politics of pluralism in Pakistan*. Routledge.
- Shah, N. (2016). *Honour and violence: Gender, power and law in southern Pakistan*. Routledge.
- United Nations. (2017). *Concluding observations on the fifth periodic report of Pakistan*. Committee on the Elimination of Discrimination Against Women (CEDAW). <https://digitallibrary.un.org/record/1327687>
- Weiss, A. M. (2014). *Interpreting Islam, modernity, and women's rights in Pakistan*. Palgrave Macmillan.
- Whiting, A. (2010). Secularism, the Islamic state and the Malaysian legal profession. *Asian Journal of Comparative Law*, 5(1), 1–34. <https://doi.org/10.2202/1932-0205.1238>
- Yefet, K. C. (2011). The constitution and female-initiated divorce in Pakistan: Western liberalism in Islamic garb. *Harvard Journal of Law & Gender*, 34(2), 553–615.
- Zaheeruddin v. State*, PLD 1993 SC 473.
- Zaman, Q. (2018). *Islam in Pakistan: A history*. Princeton University Press.