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## Balancing surveillance and privacy rights: A constitutional study of the digital era in Pakistan

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### Abstract

Rapid technological advancements in surveillance in the digital age have primarily transformed the collection, analysis and use of data by governments, corporations and individuals. Whereas these advancements enrich security and efficiency, they also pose substantial risks to privacy, sovereignty, and civil liberties. The introduction of digital technology over the constitutional system of Pakistan generated the necessary changes in the justice practice by developing new benefits and, at the same time, requiring the essential moral solutions to the complex problems. This research investigates Pakistan's digital constitutional era through an ethical and legal technological framework that investigates constitutional protections and judicial supervision of developing balancing surveillance of legislation.

*Keywords:* constitution, digital technology, privacy rights, security, surveillance

### Introduction

Privacy law of Pakistan is exciting the justification which is offered and addressing the design of media regulatory framework in Pakistan and right to privacy of an individual that is connected to the constitutional law, cultural values, and worldwide ethics supported by international law (Aftab, 2024). Pakistan assures the right to privacy and dignity to its citizens



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under the constitutional framework. Article 14 of The Constitution of Pakistan, 1973 "the dignity of man and, subject to the law, the privacy of home, shall be inviolable" (Amin & Hassan, 2024).

Digitalization encourages progress and increases data protection and obtains fundamental sense in direct relative to privacy and security and individual rights, as the capacity of data produced grows with rising technological development (Noorani, 2025). Right to privacy refers to personal independence & something linked to the individual and something confidential or top-secret (Munir, 2025). The issues of privacy and surveillance in Pakistan are becoming increasingly difficult to legally and technologically address, as the current laws are failing to manage to moderate the needs of the state and citizens in terms of fundamental rights (Rana & Iqbal, 2025).

The international legal frameworks of surveillance revealed connectivity between the interests of state safety and the basic rights of fundamental rights, certain Articles' primary right of privacy, home, family, proclaimed by the UNO, as well as the International Covenant on Civil and Political Rights and European Convention on Human Rights (Sethi et al., 2025). Relationship between human rights and the digital world on whether access to the internet should be a human right or not. It emphasizes the influence that contemporary technology is exerting on rights and the need to revise human rights to suit the digital age (Siddiqui et al., 2024).

The freedom of speech was born during the French Revolution (1789) and was later acknowledged by the UN in 1948 and the U.S in the First Amendment (1791) to guard freedom of expression without censorship. The legislative framework of Pakistan that ensures the balance of the freedoms of religion, speech, and press as the basic rights (Zehra et al., 2024). The Supreme Court has demonstrated a progressive jurisprudence of the Supreme Court to safeguard fundamental rights through suo motu and has assisted in streamlining the judicial processes and facilitated the Court's role through the 26<sup>th</sup> amendment (Umar et al., 2025). Digital authoritarianism in Pakistan revolves around the prevention of electronic crime act and its influence on digital rights. It considers the role of civil society in safeguarding online freedoms (Ahmed et al., 2023).

## **Research Justification**

This research is about studying how Pakistan's constitution protects the rights of privacy and also allows the state to conduct surveillance. It looks at how the government can keep people safe through surveillance without abuse of laws and constitutional privacy rights, and in what way the laws, jurisdiction, and policies in Pakistan can manage this balance. This research explores the balance between national security and privacy rights under the constitutional framework of Pakistan.

## **Research Methodology**

This study employed a systematic review methodology, with research objectives established accordingly. A comprehensive literature review was conducted (Komba & Lwoga, 2020). Research findings were categorized based on their content (Hiver et al., 2021; Petticrew & Roberts, 2006), and classified information was incorporated into the study by organizing it into headings (Gan et al., 2021; Pawson et al., 2005). The evaluation of classified information



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and titles formed the basis of the study (Page, 2021; Rahi, 2017), ensuring the integrity of the research subject and its contents (Egger et al., 2022; Victor, 2008). The criteria for selection are listed.

1. **Relevance:** Research that directly addressed the questions posed by this study is included.
2. **Quality:** Studies that meet a certain quality threshold (e.g., methodological rigour, bias risk) are included. Most of the researches are from Scopus-indexed and Clarivate Analytics journals and reputed publishers.
3. **Recency:** Consideration of the publication date to ensure that the review reflects the most current evidence. Most of the studies are from the last three years.
4. **Language:** Only studies published in English are included.
5. **Data Completeness:** Previous studies must provide sufficient data on outcomes of interest for practical synthesis; this is also ensured in this research.

This study did not use primary data from human participants; therefore, no ethics clearance letter from the ethics committee was required.

## Literature Review

The feature of fundamental rights enforcement in Pakistan is its direct outcome. Reflecting the right to privacy, freedom of speech, and the right to life, it enacted the limitation and give cleared balancing between public interest, free speech against private interest, and well-developed privacy protection of an individual (Aftab, 2024). Privacy of "home" is no longer just a physical site, but also extends to personal information. In *Benazir Bhutto v. Federation of Pakistan*, the Court underlined that uninformed action violates constitutional rights, indirectly spreading to informational privacy. In *Justice Khurshid Anwar Bhinder v. Federation of Pakistan*, the Supreme Court highlighted the principles that are laid down in the Holy Quran connect individual dignity and sovereignty with constitutional rights (Amin & Hassan, 2024).

Prevention of Electronic Crimes Act, 2016 remains the fundamental legal context for addressing cybercrime in Pakistan. "unauthorized access to information systems" section 3, PECA, and "cyberterrorism" section 10, PECA (Noorani, 2025). The specified statute has its own conditions or scope related to its exclusive provision, which is provided under Pakistan's law that helps to protects person's rights regarding data. E.g., custom act, 1969, the Pakistan Telecommunication Reorganization Act 1996, the Prevention of Electronic Crimes 2016, personal data protection bill 2013 (Munir, 2025). The digital era has fundamentally transformed the atmosphere of surveillance, helping to increase the state's ability to confirm security internationally and also protect the privacy of individuals (Sethi et al., 2025). Freedom of speech is a human right established by the constitutions of the world and Article 19 of the Pakistani Law; however, the right should be factored by societal interests to ensure order (Zehra et al., 2024).

The new surveillance laws of Pakistan, such as telecommunication act, are violating the constitutional privacy rights, that it proposes a right-based surveillance system with judicial control to suit international standards (Zaib et al., 2025). Bilateral digital law concentrates on strategies of digital proof across boundaries and emphasizes the need to revise current frameworks of international legal ambiguity because of increasing cybercrime (Afzal, 2024).



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Pakistan Supreme Court emphasizes its action of safeguarding the fundamental rights by means of suo motu. Such aspects as religious minorities, women's rights, and socioeconomic justices have been dealt with by the Court, which is problematic at some point (Umar et al., 2025). Prevention of electronic crimes can be abused to monitor people excessively, its ambiguous definition of cybercrime, and Pakistan had an active civil society campaign to ensure digital rights and privacy (Ahmed et al., 2023).

## **Historical Context of Balancing Surveillance and Privacy Rights in Pakistan**

The comprehensive concept of right of privacy might be promoted that electronic surveillance activities hit both fundamental rights, i.e., right to dignity and privacy (Article 14) and the Right to Freedom of Speech (Article 19) (Aftab, 2024). Justice Qazi Faez Isa v. President of Pakistan, the Court examined illegal searching into private lives. The majority ruled that accessing publicly available property records did not breach privacy rights, whereas judges warned against covert surveillance lacking legal authorization, framing it as a constitutional violation (Amin & Hassan, 2024). Pakistan faces challenges in upholding a balance between state surveillance and the constitutional right to privacy. The absence of a data protection law allows government and private entities to collect and store citizens' personal data without satisfactory protections (Noorani, 2025).

In Muhammad Rehmat Ullah v. The State court acquitted, setting aside his conviction. Key exhibits, including banned materials, were not produced, creating reasonable doubt electronic device was rejected due to privacy violations and lack of lawful authorization (Munir, 2025). Modern technology of surveillance provide opportunity to gather personal information, whether in a massive ideology border. Bounces transparency method to maintain the democratic liberties, i.e., judicial review, legislative oversight is not enough, but quite of unification of freedom and security (Sethi et al., 2025).

Balancing free expression with national security is delicate & free speech is a fundamental right, but it can't be restricted to prevent harm or threat to security. Public awareness of cyber law to ensure national security responsibly (Zehra et al., 2024). Digital law The birth of digital law is concerned with the issue and betterment of digital law in efficient legal practice, necessitating the enforcement of traditional law by the state in the digital economy (Afzal, 2024). Pakistan's interest laws were based on the laws of the colonial era, such as telecommunication reorganization act that increased state surveillance and restriction of online activities (Ahmed et al., 2023).

## **Laws Regarding Surveillance and Privacy in Pakistan**

1. **No data protection legislation:** Pakistan does not have a designated personal data protection act and this gap undermines safeguards against mishandling of personal data.
2. **Constitutional recognition (Article 14):** Article 14 of the Constitution of Pakistan 1973 protects the right to dignity and right to privacy of home. Also, this right is subject to practical restraints, enabling state government to restrict privacy for national security and enforcement of law.



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3. **Judicial perspective:** Courts recognize privacy as a constitutional right, then permit lawful restrictions under due process, underlining proportionality and requirement.
4. **Need for legal balance:** Pakistan must confirm clear surveillance tracks, self-governing mistakes, and strong data defense laws to balance state security and individual privacy constitutionally.
5. **Surveillance under PECA 2016:** The Prevention of Electronic Crimes Act (PECA), 2016 authorizes the FIA to admission digital data and monitor electronic communications to avoid cybercrimes. However, broad controls under Sections 29 and 32 have high constitutional concerns about privacy damages.
6. **Telecommunication interception (1996 act):** Section 54 of the Pakistan Telecommunication (Reorganization) Act, 1996, authorizes the government to stop communications during disasters, though the law lacks clear judicial oversight instruments.

## Challenges for Balancing Surveillance and Privacy Rights in Pakistan

1. **Limited judicial oversight:** No third-party or powerful judicial implement is there to monitor the method of surveillance. Nevertheless, in Shehla Zia v., the right to privacy was considered at the standard of the Supreme Court. Its request for digital surveillance is yet to be determined (WAPDA, 1994).
2. **Lack of public awareness:** A number of citizens do not know their rights to privacy on the internet, and they make it easy for both the government and other individuals to spy on or abuse their personal information.
3. **Conflict of National Security vs. Privacy:** National security and counter terrorism are frequently invoked by the government as a defense to mass surveillance, which has the potential to cause injury to individual rights to privacy, which is the main principle.
4. **Technological misuse:** Attitudes to biometric information, CCTV videos, and mobile stalking by state or non-state actors constitute a grave threat to personal privacy.
5. **Transparency deficit:** The surveillance activities in Pakistan are often confidential in nature, and no transparent accountability or reporting to the citizens.
6. **Weak legal framework:** Pakistan does not have a full-fledged data protection and privacy legislation like the Prevention of Electronic Crimes Act (PECA) 2016 provide a robust representation of security operations without providing substantial safeguards against confidential information.

## Opportunities for Balancing Surveillance and Privacy Rights in Pakistan

1. **International standards adoption:** Pakistan can be guided by learning through the universal examples, such as the General Data Protection Regulation (GDPR) of the EU, in establishing a middle ground between privacy and state security.
2. **Online knowledge and awareness:** Promoting digital literacy can help citizens to be aware of their right to privacy and apply the knowledge more responsibly and frequently.



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**3. Laws governing data protection:** Pakistan should become accustomed to or add to data protection legislation to ensure that surveillance is transparent, acceptable, and restricted to unimpeded security requirements.

**4. External controlling entities:** By establishing a separate Data Protection Authority, it will be possible to demonstrate the surveillance activities and ensure that the information about individuals will not be abused.

**5. Strong constitutional base:** The Constitution of Pakistan (Article 14) safeguards the dignity and privacy of citizens as a legal form to define the privacy legislation in the digital age.

## Discussion

Balancing surveillance and privacy rights in the constitutional study of Pakistan's digital era is both a lawful and ethical requirement. The fast growth of digital technologies, online communication, and data collection has increased the state's surveillance volume. However, this should be based on Article 14 of the Constitution that emphasizes the privacy and dignity of the citizens. The data protection laws and judicial control can be put into operation in a manner that ensures surveillance does not commit security resolutions without infringing on the privacy liberties. The *Shehla Zia v. The case of WAPDA (PLD 1994 SC 693)* was the source of establishing privacy as a constitutional right with the significance of proportionality in the state operations. The global standards, like the GDPR, can be implemented by Pakistan to plan transparent devices to manage data. Educating the population, online education, and developing a separate data protection department are essential measures of achieving a reasonable system where privacy and surveillance coexist reasonably.

## Conclusion

The digital era has transformed the definition of privacy and the extent of spying in Pakistan. Unlike the state that has a real interest in ensuring that national security is safeguarded and that it combats cybercrime, the constitutional context requires that these authorities be undertaken within the confines of legality, necessity, reasonableness, and culpability. Existing laws, such as Prevention of Electronic Crimes Act, 2016, and Pakistan Telecommunication (Re-organization) Act, 1996, have a broad scope and lack judicial oversight. Hence, the right to privacy is sacrificed. Eventually, a democratic state's legality depends not only on its capability to defend itself, but also on its disposition to respect the dignity and liberty of its citizens.

## Recommendations

- 1. Online education:** Citizens must be educated about their right to online privacy and the potential repercussions of online surveillance.
- 2. Use of global standards:** Pakistan must adopt international standards such as the GDPR (General Data Protection Regulation) for surveillance and data protection.
- 3. Form independent lapse bodies:** Establish an external body that will oversee the surveillance operations and guarantee that the privacy protection guaranteed by the constitution is adhered to.
- 4. Court permission for surveillance:** Surveillance activities must be preceded by a qualified court to ensure that they are not abused through the manipulation of the rights of citizens.



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5. **Parliamentary oversight:** Intelligence and surveillance practices must be considered by parliamentary committees to bring in accountability in a democratic manner.
6. **Encouragement of technology ethical use:** Make digital governance ethical by incorporating the principles of privacy by design in all government and private digital systems.
7. **Existing legislation review:** Review legislation like the Prevention of Electronic Crimes Act (PECA) 2016 in order to incorporate it with constitutional provisions on the same in Article 14 (Right to Privacy).
8. **Enhance data protection legislation:** To ensure that the collection, storage, and sharing of personal data is controlled by the state and non-state actors, Pakistan needs to implement a full-fledged and enforceable data protection act.
9. **Mechanisms of transparency and accountability:** The government is supposed to release transparency reports periodically on the extent and the objective of the surveillance programs.
10. **Technological safeguards:** Implement encryption, anonymization, and cybersecurity measures that would keep citizens' offline communications safe against spy attacks.

## Research Limitations

Many security and intelligence operations also remain classified, which restricts the ability to correct the assessment. Second, the legal and policy frameworks, such as the Prevention of Electronic Crimes Act (PECA) 2016, are still evolving, creating ambiguity in interpreting privacy protections under Article 14 of the Constitution of Pakistan. Third, the limited public awareness and digital literacy make it difficult to evaluate the societal understanding of individual privacy rights in the digital era. Lastly, the study's scope is limited to legal analysis, and excludes the detailed technical aspects of surveillance technology.

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