

**Journal of Law & Social Studies (JLSS)**

Volume 5, Issue 2, pp 172-179

[www.advancelrf.org](http://www.advancelrf.org)**Freedom of Speech under Constitution of Pakistan****Abdul Ghaffar Korai**

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Email: [Sayhurra@gmail.com](mailto:Sayhurra@gmail.com)**Abstract**

*Many international treaties and constitutions, as well as international conventions and treaties enshrine "freedom of speech and expression" as one of the most fundamental human rights. Before being codified into Pakistan's 1973 Constitution as Article 19, this basic right was frequently affirmed by national legislatures, jurists, and the international community, although with considerable limitations and restrictions. There must be a balance between "the freedom and diversity of society" and unrestricted freedom, or society would become chaotic and confused. Numerous legal measures have been taken in industrialized countries and in Pakistan to enhance this fundamental right. Pakistan's constitution explicitly guarantees the right to free expression. Aside from providing a framework, the Constitution also sets limits. Many legislations have been made by the legislature based on these restrictions. In addition to the Anti-Terrorism Act of 1997 and the Pakistan Security Act of 1952, there are several laws that restrict freedom of expression, such as the Pakistan Penal Code of 1860. The purpose of this research was to examine restrictions on the right to free speech. There can be no progress in freedom of expression without the media. Unfortunately, Pakistan's past is littered with instances in which the media was subjected to arbitrary limitations in the name of safeguarding "national interest."*

**Keywords:** Freedom, Speech, Constitution of Pakistan.**Introduction**

There are several regional and worldwide treaties, charters, and legal frameworks that defend the basic human right of free expression. When people have the freedom to say what they want, it makes it easier for them to participate in democratic processes. According to Sun, one of the numerous advantages of freedom of expression is that it allows democratic society's decision-makers to fully appreciate the force of a variety of points of view (2014). Today is the Sunday of 2014. Under today's

democracies, free speech is in jeopardy due to a variety of factors. A country with such a wide range of perspectives, faiths, and beliefs makes it difficult to find a compromise between protecting public safety and ensuring freedom of expression. Restrictions on freedom of expression occur even in the most liberal nations like the United States. Because we know that free speech may lead to chaos and confusion if it is unfettered, we have set some restraints in place (Chaudary 2014). There are several procedures in place in every democracy that restrict the right to free expression, therefore it is not usually recognized as an unrestricted right. In the Stanford Encyclopedia of Philosophy, an author argues that restrictions on freedom of expression should be avoided if they contradict with other fundamental principles or rights. Legal penalties or public disgrace may be at stake (Van 2015). Like other democracies, Pakistan has some limitations on religion and national security. The purpose of this article is to explore the current state of freedom of speech in Pakistan and any new advancements in that area. This paper's primary goal is to provide light on the people and events that have shaped the issue paradigm.

Fundamental rights were developed by English common law philosophers Rousseau and Locke, both 17th and 18th century. New settlers to the United States brought with them a new understanding of natural and innovative rights, which were codified in the U.S. Constitution and its amendments. American courts have been expressing, interpreting, and further defining these concepts for almost a century now. The UN General Assembly recognized 30 human rights in December 1948, and as a result, all other member nations' constitutions throughout the globe adopted them as guiding principles for inclusion (M. Munir 1962). When it comes to freedom of speech, it is the mother of all rights and a valuable gift from God that allows people to express their thoughts, feelings, and ideas to others (R. Aqa, 2016). Fundamental rights must be defined in a way that includes freedom of speech and expression, as well as individual autonomy and independence. A democracy is characterized by dynamism and optimism (PLD 2017 Lahore 1). Article 19 of Pakistan's 1973 Constitution provides the right to freedom of expression and speech. "Freedom of speech and expression" is a basic human right that is protected by international and regional treaties and charters, as well as being requested by civil society (2017 LHC 1305).

## Literature Review

Free expression is guaranteed under Article 19 of the 1973 Pakistani constitutional amendments, however there are exceptions, such as those connected to "the glory of Islam," "law and order," "national security," and "law and order" (Hamdani 2014). Voter suppression and anti-blasphemy legislation are commonly used to restrict the rights of numerous groups, including religious minorities (CRSS 2014). The extremist ideals fostered by the regime of General Zia's state-sponsored religions (Siddique and Hayat 2008). Even if you don't want to be a target of criticism, you have the right to free speech and to express one's political rights without limitation. (2012) Harker However, the existing political theocratic legal climate makes it difficult to guarantee these rights. Free speech is regularly exploited by religious leaders and other authorities for the purpose of spreading hate speech, accusing Muslims and other minorities of blasphemy, and restricting access to information on the excuse that it poses a "threat to national security." (ibid.) Ahmed (2012) said that in a country like Pakistan, where the right to free expression is restricted, there is no opportunity for individual perspectives; instead, the population has a collective consciousness of thugs, leaving little room for fresh ideas. As Uddin and Tarin (2013) point out, the legislation is critical in limiting freedom of speech, as it protects powerful rapists while punishing nonviolent protesters.

Religious indifference may lead to social turmoil and chaos. Residents in blasphemous killing communities have a habit of attacking the perpetrators of such crimes. As many as eight people were killed and at least eighteen were injured by Christians in the Pakistani town of Gojra in 2009, while two churches were destroyed, and seventy-five homes set on fire by Christians. In the opinion of Razid (2012). Free speech rights have been violated to the point that important public figures who

advocate for the modification of blasphemy laws have been assassinated (Suleri 2011). The assassinations of Salman Taseer and Shahbaz Bhatti serve as stark reminders of Pakistan's human rights violations (USCIRF 2011). As a result, ladies who identify as Christian or Hindu are sometimes forced to modify their religious views because of the pressure they feel. According to the Bureau of American Statistics, an estimated 25 Hindu ladies convert to Islam per month (ibid.). The Sindh Provincial Assembly has prohibited forced marriages and is encouraging efforts to prevent them (Ahmed 2014). Freedom of expression, according to Chaudary (2014), does not lead to happiness, but rather to continual confusion. Restrictions on freedom of expression are important to prevent hate speech and provocation as well as the dissemination of disinformation. Even though Pakistani journalists are allowed to criticize the government, the military, security agencies, lawmakers, and courts continue to repress the media in the nation (Naveed 2013). According to Freedom Network (2015) statistics, 2014 was the worst year in Pakistani history for media and journalists. 2014 saw the assassination of 14 journalists, media assistants, and a blogger. Sabeen Mehmud's murder last year highlighted "the escalating influence of radical beliefs and the limited potential for political dialogue" (quoted by Lisa Curtis in Enos 2015).

### **Freedom of Speech History at the time of British India Rule**

No similar agreement existed under British rule of India, and the protection provided was limited to a few legislations. Even if they were to be removed by a higher authority, they'd still be (D. D. Basu, 2010). It is also possible to create specialized tribunals in the area of human rights and freedoms within the current legislation. After the First World War, as the Indian independence movement rose in fervor, clashes with British forces in India intensified. To address the 1918 Montagu Chelmsford Report, India's National Assembly held a special session to call for a new Indian Government Bill to contain a "Declaration of Rights of Indian People as British Citizens" (Krishna, 1966). Freedom of expression and the press, as well as equal treatment before the law and the protection of life, property, and liberty, would be protected by the proposed statement Fundamental rights were incorporated to the Irish Constitution by the Irish Free State in 1921. India's most senior authorities were also affected. The National Assembly enacted the Indian Union Act in 1925. It's (Basu, 2011). It was a comprehensive "law bill" that encompassed all of India's residents. The Irish Free State Constitution's constitutional provisions are like those of this document.

All these essential freedoms are included in this list, which includes C) freedom of speech, D) the right to peaceful assembly, E) free primary education; and F) free primary education. The Nehru Commission's Nehru Report also included several important human rights recommendations (1928). According to India's Statutory Committee, basic rights were not included in the Constitutional Act. The Simon Panel. Even in 1935, when the Government of India Act was enacted, significant rights in India were not recognized. In 1946, the British Cabinet Delegation endorsed fundamental rights. In accordance with Articles 19 and 20 of the Constitution, an advisory body shall be created to report on basic rights. In 2008, rather than 1947, the Indian Independence Act put this concept into reality by establishing fundamental rights.

Pakistan and India, on the other hand, both have unambiguous guarantees for free speech and other fundamental rights in their founding constitutions. As of 1947, Pakistan has been operating under an interim constitution. From the time it became a nation-state in 1947, Pakistan has had a troubled history with the legislative process. It was on this date in 1949 that the Pakistan Objectives Resolution was approved, defining the principles that would later be enshrined into the country's constitution. On the same day, the Constituent Assembly established a 24-member Committee on the Fundamental Principles. In order to carry out the holy duty of creating the first constitution, a committee was entrusted with it. Drafted constitutions were developed in 1954. On October 24, 1954, the nation's Constituent Assembly was disbanded before the draft's constitution was submitted to Parliament for adoption. The dissolution of Parliament was affirmed by Moulvi Tamizuddin, the chief justice of the

Federal Court, after he heard an appeal (*Federation of Pakistan v Maulvi Tamizuddin*, 1955). the first constitution of Pakistan, which was signed into law on February 29, 1956 by the second Constituent Assembly convened by the Governor-General in May 1955. (Khan, 2001). It was decided upon for the constitution to have a parliamentary system with a single legislature. In March 1956, Pakistan's new Constituent Assembly passed the nation's first constitution, but it wasn't until October 1958 that then-President Major General Iskander Mirza revoked and made it universally applicable. Until the declaration of martial law (Khan, 2001). Ayub Khan was appointed as the new executive director of the Ministry of Martial Law. This is the first time in Pakistan's history that the Supreme Court has had to deal with an unusual situation. A challenge facing the Supreme Court is how to protect Pakistan against tyrants while also reversing Pakistan's slide away from constitutional rule.

Contrarily, the Pakistani Supreme Court was an abject failure and handed down an insane decision. In decisions involving extraconstitutional claims, the Supreme Court put to the test the principles of "needs of the state" and "revolutionary legitimacy." Law-creating events have been cited by Kelsen to support the use of revolutionary ideas (*State v. Dosso*, 1958). The ruling had a "positive aspect," which said that the nation will continue to be led to the extent feasible by the constitution that had been annulled (*East Pakistan Province v. Muhammad Mahdi Ali Khan*). It wasn't until 1969 that Ayub Khan was ousted from office. Despite pressure from students and Zulfikar Ali Bhutto in 1969, Ayub Khan surrendered control to another military ruler, General Yahya Khan, who launched a war in Pakistan's east. For Bangladesh to come into being, Pakistan had to take military action after losing the 1971 war with India (Khan, 2001). The Supreme Court has reexamined Yahya Khan's declaration of martial law as unconstitutional (*Asma Jilani v Pakistan Federation*, 1972). It was ruled illegal this time, and the martial law head was demonized as a usurper.

### **Freedom of Expression has Received Widespread International Applause and Recognition**

When it comes to public policy, it's clear that all freedom of speech isn't always good speech (Toni M. 1991). Article 19 of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976), and other legal documents explicitly identify freedom of expression as the cornerstone of democracy. Democracy necessitates this kind of liberation (WJ. Van, 2015). According to Principle 2 of the Declaration "Everyone has the Right to Equal Opportunity," free speech is a fundamental and fundamental right of every human being, regardless of race, color, language, sex, religion, or any other social or political position. As a result, it gives an avenue for people to exchange information in any way they want. As a basic right, the right to freedom of expression is guaranteed under the American system regardless of the issue, setting, or level of societal approbation. Judiciary in the American System has recently established the notion or principle that the state's democratic institutions are tasked with disseminating more information and perspectives on issues relating to the public interest and the state, as well as on public officials. The restrictions give a narrow window in which public officials can still be subjected to intense popular scrutiny (IACHR 2013).

### **Traditional and Social Media**

Pakistan's social and political discourse is today considered to be heavily influenced by the media. People who took part in the survey said that the human rights situation in the country is greatly influenced by media outlets such as print, electronic, and social media. The nature of the impact, on the other hand, is still up to discussion. Several people who answered the survey said that the media is an important resource for spreading information on human rights in general. These days, more individuals are aware of the many forms of rape and how to get help if they are victims of one. As a result, they will have better access to resources, opportunities, and the law. In addition to highlighting human rights breaches, the media works as a pressure group for law enforcement officials to act (Sial 2009). According to some critics, media outlets are in a commercial race for ratings and regularly

exploit free speech to criticize certain groups and individuals, even though many people believe that media outlets safeguard individual rights and provide impartial coverage. Unbelievably good news. Some political leaders have formed alliances with media organizations in order to avoid media censorship and resistance. Media bias can be inferred from the widespread use of Muslim academics in entertainment and religious programming. Some TV networks' political bias is also clear; they favor major news people while minimizing their weaknesses and criticizing their rivals' competitors (Hussain 2011). As a result, the media is being accused of inciting a culture of sexism, violence, and depravity. Many people think media material is excessively inappropriate. For example, rather than empowering women, violence against women perpetuates victimization. A government official in the Punjabi language stated:

*“Have you seen the kind of themes that our dramas are highlighting? Polygamy, extra martial affairs, women being slapped and beaten up, flirtation, victimization of women, etc. are the themes presented in our dramas. Such issues are highlighted because they are sold easily”.*

People also criticized the information that news organizations released. Media outlets were called out for releasing stories without conducting adequate due diligence before publishing them. For minorities, the media's role as a change agent is typically viewed as harmful, even if it has the freedom to do so. Respondents felt that the media exerted minimal influence over the basic right to free speech. It's possible that because of their wealth or political position they can use the media to spread false and misleading information about an issue that affects many people. It is not uncommon for media proprietors, particularly those who operate news organizations, to have political or social ties, which can lead to the transmission of inaccurate information. Political parties, military organizations and even foreign governments (states or groupings of states) may apply pressure on firm owners to express a certain opinion, according to some poll participants. Issues that are divisive for no other reason than to get media attention can be exploited financially. When it comes to upending the established order, Ahmed's article from 2012 emphasizes the importance of free expression. Individual ideas aren't welcome in a country like Pakistan where free speech is restricted; instead, a nation-minded mob hinders the expression of innovative opinions, according to him. That ideology, which is now in charge of the country, may be defeated by developing an intellectual counter-narrative.

### **Foreign Influence**

In the country's game of power, it's stated that foreign influence is the most powerful force (Shah 2011). An extensive network of international opposition coalitions employs a wide range of state actors in order to exert this influence. For example, some may play on religious feelings to incite uprisings and unrest, while others may use global politics to achieve their own political or economic objectives. The presence of anti-Semitic content in school curricula was linked by several respondents to the conflict in Afghanistan, for example. These folks say it's a way of encouraging young people to support jihad. With some arguing that genuine foreign engagement may have happened, several religious NGOs and seminaries have had their financing questioned by the public. As a nuclear-armed nation, Pakistan is a prime target for foreign interference, according to several of the participants. One of the university's professors said:

*“Basically, if you pinpoint the use of religion in statecraft, then this is the main element behind violation of human rights particularly the freedom of expression. And this was used through proper planning in politics. There was no restriction on it. It was used in foreign policy initiatives”.*

## Restrictions on the Right to Free Expression

All essential rights can be linked together using a rope that ties people's fundamental constitutional guarantees. Wherever possible, fundamental rights must be considered and applied collectively rather than only individually. Liberties are the greatest way to define the Constitution's most important protections. In contrast, only nasty cave dwellers or jungle creatures have unrestricted freedom, or the liberty to behave in line with one's personal desires. Civic responsibilities should be recognized on the same level as human rights since they connect to or counterbalance human rights. Unrestricted and full personal freedom is becoming unacceptably rare in today's world. Every organized society places a high value on the preservation of the welfare of its citizens. In a country where the state is ineffective and insecure, fundamental rights are meaningless. A compromise between basic rights and practical constraints is therefore essential (Nawabzada Nasrullah Khan v Government of West Pakistan, 1965). Article 19 of the Pakistani constitution, in addition to ensuring freedom of expression, explains the reasons for restrictions. The Pakistani constitution's guarantee of freedom of expression is only a stipulation in the constitution. DG Cement & Pakistan Federation, 2013) utilize the identical phrases in the Pakistani constitution to express and manage freedom of speech:

*“Subject to reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof friendly relations with foreign States, Public order, decency or morality, or in relation to contempt of court, (commission of) or incitement to an offence”*

## Constraints on the Country's Security and Defense

The word "Integrity of Pakistan" appears in Article 10 of the Constitution, as well as Articles 17 and 19. (Basit, 2015). To maintain the integrity of the state, these conditions limit basic rights in accordance with what is appropriate to do. It is impossible to separate "Pakistani Integrity" from "Pakistani Ideology." There is a reference and inclusion of Islamic nationalism. Defining one's nationality as a Muslim means upholding the Qur'an and Sunnah as sacred, which is why the term is so important to Muslims. In the end, ideology was the determining element in the independence of the subcontinent. Two countries on the Indian subcontinent have long held this view. Thus, the two-state concept in the area is grounded on Pakistani and Islamic teachings. A country's sovereignty is threatened if it attempts to invade either Pakistani or Islamic ideology, because both are part of Pakistan's "integrity" (Benazir Bhutto vs Federation of Pakistan, vol. 1988).

Articles 10 and 232 of the Constitution also provide for debate of national security-related subjects, in addition to Article 19. "Security for Pakistan" implies exactly that: security for Pakistan. As a result, safeguarding state secrets and military hardware falls under the purview of ensuring national security. A state's foreign policy, which influences national security, must also be taken into consideration (Secretary of State v Rehman, 2000). The judges' interpretation of Pakistan's security means that figuring out what it means is now a matter of law. As for "in the interests of Pakistan's security," the executive branch is responsible for interpreting the phrase "in accordance with the time." Articles 19 and 10(4) of the Pakistani Constitution utilize the term "security or defense of Pakistan." The term "security of Pakistan" is defined under Article 260 of the Constitution.

*“Security of Pakistan includes the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan but shall not include public safety as such”.*

## Contempt of Court Restrictions

The rule of law is the bedrock of democratic and humane social governance. To say that the law has rule of law status is an understatement. At this point, everyone is inside the standard deviation of the distribution. "No one, no matter how tall, no matter how strong and wealthy, is above the law," the

message is conveyed. Rule of law cannot be applied unless the concept of "court" is put into practice and sustained throughout society. No community can function well if its laws aren't enforced. The rule of law is seen in the courts of every country. The rule of law is the cornerstone upon which a nation's constitution is erected. State's supreme court is responsible for enforcing the rule of law. The court must be impartial or independent for a society to thrive.

There are several sins that might jeopardize justice in the high courts, thus it is imperative to protect them from them. It was necessary to enact the Contempt of Court (Chand) Act in order to safeguard the court's good name and reputation among the public. To chastise contempt of court, the judge has inherent authority. Some may view this as an abuse of authority. In this instance, the prosecution and the trial are handled by the same person. But it's an important part of maintaining the rule of law. The primacy of the law must be preserved at all costs (Landis, 1924). It is only under Article 19 of the Pakistani constitution that the power of contempt of court is protected while also allowing for acceptable legal limits to be placed on that authority, which makes it unique in the region. This shows that the right to free expression is a general concept and that legislation that restricts speech based on contempt is an exception. Sections 19 and 204 of the Code of Criminal Procedure deals with contempt of a higher court. It's a well-established rule.

*“Article 204 of the constitution is to be construed in conjunction with article 19 and 66 thereof in a manner which should deter the commission of contempt of court but at the same time it should preserve and protect the freedom of speech and expression and freedom of press (Masroor Ahsan v. Ardeshir cowasjee , 1988)”.*

## Conclusion

Article 19 of Pakistan's constitution guarantees everyone the right to free expression. The judicial, legislative, and executive departments of government are obligated to uphold this right. The right to free expression is constrained by the Constitution's examination of constraints and rules based on those restrictions. It has been revealed that regulations limiting the freedom to express one's views infringe on the fundamental right to free speech by extending its reach. In addition, there are several terms that have ambiguous or incorrect meanings, which might lead to misunderstanding. The authors of this article propose that the legislation be amended in accordance with the principles of free expression.

Despite the constitution's promise of freedom of expression, there are some restrictions in Pakistan. Many factors have contributed to the current state of free expression. Restricted by strict rules and tactics such as harassing or murdering outspoken individuals like human rights campaigners and journalists, it is often confined. Repression of religious minorities and free expression are two more options. While rules are essential for limiting free expression, they also provide powerful criminals with impunity while penalizing peaceful portions of society. Regulated expression. Fairness and impartiality are essential when it comes to the application of the law. Government entities must uphold the rule of law while also being open to public criticism and reaction. Because it is a vital human right, the right to freedom of speech must be forcefully exercised as well. However, there must be certain limitations on this freedom.

From a more welcoming culture to an intolerant one, Pakistani society has developed through time. Education and curriculum also play a role in fostering racism and intolerance in our society. Although it would seem like a good idea, criminalizing religious intolerance would have no impact other than to raise tensions even higher. When it comes to preventing the spread of hostile material and speech based on racial, ethnic, or religious grounds, media, religious organizations, civil society, and academia can act as gatekeepers to stop this.

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