

Sanctioned Silence: Examining the Barriers to Freedom of Expression in Pakistan

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Abstract

Freedom of expression is a sacred right for the country's citizens, which enables them to exercise and enjoy civil liberties. Unfortunately, Pakistan is a developing country where rights exist only on paper. The right to freedom of speech and expression is limited and restricted under state security, religion, order of the public, harmony, and in Judiciary's honor within state institutions. These sanctions make the state ponder on an unanswered question, "When, how and to what extent can the right to freedom of expression be exercised and enjoyed? This year, Pakistan celebrated its 77th independence anniversary, however, the citizens remained restricted to enjoy their fundamental rights as a Pakistani citizen. This is because the state has imposed sanctions on the citizens, thus restricting them to enjoy free speech and freedom of expression. This study adopts a qualitative doctrinal research method, precisely, a normative judicial or library research that describes sanctions, for instance, the glory of Islam, security and defense of Pakistan, decency and morality, friendly relations with foreign states, contempt of court, and incitement to an offense that is misused and misinterpreted by the country nationals. Although, Pakistan is not a secular state, however, these sanctions, particularly religious sanctions have been massively misused, misinterpreted, and misinformed. Therefore, the right to free speech and expression must be duly implemented and practiced by the state government. However, this may only be possible if the state government aims to lift self-posed sanctions on individual's rights.

Keywords: *Freedom of Expression, Fundamental Rights, Freedom of Speech, Free Speech, State Security, Sanction.*

1. INTRODUCTION

Ensuring accurate implementation of free speech is a basic right, protected by various regional and international treaties, charters, reforms, laws, and regulations. This delivers an ideological concept where in, the citizen of the democratic society has the liberty to actively participate in practicing free speech and expression. Freedom of speech is a mere challenge, faced by the existing democracies of the modern world. Another challenge for the democracy is to uphold balance between protecting the right of an individual to freely speak and express themselves, ensuring the nation's safety whose citizens adhere to a multilingual and ethnically eccentric religious and philosophical background. Despite enjoying liberalism, most states impose sanctions and restrictions on free speech, for instance, the US. US constitution's first amendment is subjected towards freedom of speech, where the politically influential groups have been misusing and taking advantage of the amendment. However, the clause on the first amendment prohibits the nationals from "Abridging the freedom of speech," but does not explicitly define what the clause entails¹.

Since the first amendment, the US nationals have reported being uncomfortable when speaking freely. According to a survey report in 2022, the Knight Foundation of the United States reported, “Representing the most comprehensive public opinion study on free speech at present.” The report entailed evidences on political polarizations between the US nationals, which fostered hatred and resentment with the state. However, statistics reveal much similar results as of the pertaining situation after the first amendment. In 2022, the New York Times conducted a national poll, which revealed that the restriction on free speech has become quite common across US. Moreover, most individuals drift themselves away from political conversations. 66% participants, chosen from Sienna College reported, “We do not believe that the American enjoy free speech.” Whereas, 8% participants believed that the Americans do not possess the power to enjoy freedom of speech².

Likewise, the first amendment of Article 11 in the US constitution, the Article 19 of 1973 constitution of Pakistan delivers the rightful protection of free speech among Pakistani nationals. According to the 1973 constitution, the individuals are guaranteed the right to free speech and expression. Article 19 states, “Every citizen has the right to freedom of expression and the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam, the integrity, security, or defense of Pakistan or any part of it, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, committing or inciting an offense.” However, the article does not protect the right to free speech and is limited to certain sanctions that include, the honor of Islam, the safety of the state and its territories, goodwill toward other countries, morality, public order, or against crimes, for instance, contempt or incitement.

Theoretically, the prestige attached to Freedom of expression within the state appears in good shape and form, however, its practicality remains questionable. The freedom to speech and expression is not enjoyed by the citizens, since the very same article of the constitution; Article 19, restricts its implementation. These restrictions practically paralyze the right to free expression. Various groups, including religious minorities and political parties have faced significant exploitation and manipulation in the name of the constitution and Article 19, notably by enforcing anti-blasphemy legislation and suppression of the right to vote.³

1.1. Practitioner Points

1. The right to free speech is sanctioned under the security of the state, religion, public order, harmony, and honor of the Judiciary.
2. This study aims to describe sanctions and restrictions in the Article 19 of 1973 constitution that restricts the right to free speech and expression.
3. It describes restrictions in terms of Article 19 of the 1973 constitution that restricts speech in terms of the glory of Islam, security and defense of Pakistan, decency and morality, friendly relations with foreign states, contempt of court, and incitement to an offense that is misinterpreted by the country nationals.

2. LITERATURE REVIEW

Javed Rashid⁴ has investigated the status of Pakistan in endorsing free speech and expression by qualitatively assessing the fundamental rights to free speech, guaranteed by the 1973 constitution. However, influence of political parties and religious beliefs become a barrier for individuals to freely communicate on political issues. This issue has infested the society

with an environment of political unrest that significantly affects the political and societal development of the nation.

As per the week staff news magazine, “An incendiary US-made film smearing the Prophet Muhammad (PBUH) has sparked outrage in at least 20 countries from Libya to Australia, triggering deaths and dozens of arrests.” The magazine has compared the liberty of free speech in United States with that of Pakistan. It addresses the protests against the movie “Innocence of Muslims” that was released on YouTube, 1st July 2012. The movie portrayed an anti-Islam perception, which led to severe outrage in the Muslim community. The protests with regard to the movie showed that the US media was far more liberal than the media operations in Pakistan⁵. Comparative studies on freedom of expression compare the ideological conflict between Islam and the Western world⁶. The basic human rights of the individuals bear certain limitations. Hence, the freedom of expression must alienate with the socio-religious definition of freedom of speech to develop a democratic society that is peaceful and tolerant.

Raiz Ahmad Saeed has explored the freedom of expression under Islamic and Western perspectives, relating it to blasphemy and religious defamation at the hands of the Western world. The Western ideology is liberal and limitless, however, in Islam, the freedom of expression has specific limitations when addressing speeches that induce blasphemous inclinations towards the Prophet Muhammad (Peace be upon him)⁷. Sadaf, Ayesha, and Elishma (2017) have evaluated the power dynamics in Pakistan, understanding freedom of expression level in the state, thus highlighting facts that contribute to the existing rights guaranteed in the 1973 constitution, for instance, narrow legislation, censorship, harassments, targeted killings of journalist and political celebrities, and contributions of the human rights activist in Pakistan⁸.

Most researchers have discussed the practice of free speech and expression in Pakistan. They have also discussed hindrances and barriers that restrict the state nationals to practice liberalism and individual rights. Additionally, research studies have analyzed the perception and utilization of rights on free speech in the Western world. However, none of the research studies have contemplated the misuse of Islamic principles and their influence on freedom of expression. Therefore, this research aims to highlight the salient features of freedom to speech and expression in Pakistan.

3. METHODOLOGY

The research adopted a qualitative doctrinal or legal library research method that aims to examine both, library materials and secondary sources in describing the misuse of Islamic principles that restrict freedom of expression in Pakistan. Library research method utilizes legal principles, rules, and doctrines to address legal issues⁹. With the help of a thorough descriptive analysis, this research provides a clear, detailed, and systematic view on barriers that hinder the implementation of free speech. Moreover, it qualitatively analyses and suggests solutions to eradicate the influence of sanctions on rights to free speech and expression¹⁰.

4. RESULTS AND DISCUSSION

4.1. Historical Development on Freedom to Expression in Pakistan

The growing consciousness on free speech in Pakistan dates back to history, where it took nine years for the first government of Pakistan to form its first constitution. Before the Constitution of 1956, Pakistan was governed by Government of India Act 1935, particularly

Section 8, 1947 Indian Independence Act¹¹. History on the right to free speech is addressed within the constitutional developments of 1973 Constitution, while delving into “reasonableness” issues in the constitution.

4.2. 1949 Resolution Objectives

In March 1949, the Constituent Assembly adopted the Objective Resolution, which provided a general description of the Constitution's framework. On March 7, 1940, Prime Minister, Liaquat Ali Khan and his cabinet introduced the resolution in the assembly. 21 out of 75 members voted against the resolution; nonetheless, amendments proposed by the minority were declined. Eventually, the resolution proposed by Liaquat Ali Khan was accepted by two-third of the majority, and was later implemented on March 12, 1949.

The preambles of the Objective Resolution were included in the Constitutions of 1956, 1962, and 1973. Moreover, these objectives were enforced in the Pakistani court of law, according to a Presidential Order signed by President Zia-ul-Haq, 1985, which was later added to the 1973 Constitution by virtue of Article 2(A), Eighth Amendment; “The Objectives Resolution will not be immediately suspended, diluted, or annulled in the event that the Constitution is abrogated.” In an effort to deduce the resolution as inclusive, the phrase “freely” was removed¹². Religious and moral concepts were added to the Objective Resolution, under due considerations of Quaid-e-Azam, who intended to establish a Muslim state. It is manifested that the religious and moral disciplines added in the Objective Resolution of 1949, remained antagonistic to the basic democratic principles and fundamental human rights on free speech and expression¹³. However, till date, these rights remain restricted due to religious glory and security of the state.

4.3. Constitution 1956

In light of the Objective Resolution of 1949, 1956 constitution of Pakistan was promulgated. Restrictions on free speech and expression and speech were imposed on the basis of morality, foreign relations, defense of the country, and reasonableness of legally imposed restrictions. Pakistan was governed under Section 8, 1947 Indian Independence Act, which was a provision of the Government of India Act 1935. Prime Minister, Chaudhary Muhammad Ali and his colleagues drafted the constitution of 1956¹⁴, right after Pakistan secured independence. The Constitution was approved and immediately effective on March 23, 1956.

As Governor-General, Iskander Mirza was elected the first president of Pakistan, the Constituent Assembly transitioned into an interim National Assembly. The 1956 Constitution's Article 8 stated, “Every citizen shall have the right to freedom of speech and expression subject to any reasonable restrictions imposed by law in the interest of the security of Pakistan, friendly relation with foreign states, public order, decency or morality, or concerning contempt of court, defamation or incitement to an offense.” Due to the lack of two-third majority in the elections, the Constitution 1956 never came into practice. Later, on October 7, 1958, martial law was imposed in Pakistan. Therefore, the basic liberties guaranteed by the Constitution 1956 were never practiced nor enjoyed¹⁵.

4.4. Constitution 1962

The right to free speech in Pakistan was one of the many issues brought about by the 1962 constitution. It was drafted on March 1, and implemented on June 8, 1962. It was believed that the constitution hindered the Pakistani citizens to freely express themselves. Despite the President's veto authority, emergency powers, limitations on the Judiciary, and the inclusion of

Islamic principles in the constitution, the citizens were unable to exercise their right to free speech. On March 25, 1969, constitution 1962 was terminated after Yahya Khan imposed Martial Law in the country¹⁶.

4.5. Constitution 1973

The 1973 Constitution was adopted on August 14, 1973. Article 8 of the Constitution 1973, guarantees the right to free speech, along with other basic liberties. In accordance to Article 19 of the Constitution, "Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restriction imposed by law in the interest of the glory of Islam or integrity, security, or defense of Pakistan or any part thereof, friendly relations with foreign states, public order, decency, morality, or concerning contempt of court, a commission of or incitement to an offense." Article 8 and 6 of the constitution of 1956 and 1962 underwent amendments, and were later added to the clauses of Article 19 of the 1973 constitution. The addition of "freedom of the press" introduced restrictions in terms of protecting the "glory of Islam." Press and speech freedoms have been the target of several challenges to the 1973 Constitution. It introduced phrases, for instance, national security, law and order, moralism, and glory of Islam. The constitution curtailed the liberty of the citizens by limiting their ability to freely express themselves.

4.6. Reasonableness

The Constitution of Pakistan added a condition of "Reasonableness," to restrict freedom of expression.¹⁷ Therefore, to curtail freedom of expression and speech, it must be implemented on reasonableness grounds. However, this right has been paralyzed by the state powers who interpret vague and undefined words and phrases to restrict rights. However, the Supreme Court of Pakistan owns the power to determine reasonability. The Chief Justice of Pakistan, Justice Cornelius clarified, "reasonableness" by stating, "The Judiciary alone has the authority to decide on questions of law and constitutionality, which are perfectly within the purview of judicial review that determine whether or not, the restrictions' application is reasonable, regardless of whether or not the statute explicitly calls for it. The court does not have jurisdiction over interpretations of limits, hence there is no limit to the amount to which freedom of speech and press may be restricted without resort to reasonability."

4.7. Analysis of Restrictions

In the Constitution of 1973, Article-19 states that the freedoms guaranteed by the state is limited to certain limitations and restrictions, including the interest of national security, morality, defense of the country, Islam's honor, good public morals, and peaceful relations with other countries.¹⁸

4.8. Glory of Islam

The glory of Islam is protected under blasphemy laws. Internationally, there is no generally accepted definition of blasphemy. It is the crime of insulting or exhibiting disdain or lack of respect for God. Moreover, it is described as an insult to religious ideas and practices, especially the denigration of gods or other religious figures. One must be familiar with the meaning of blasphemy in order to grasp the essence of greatness in Islam. Those, whose opinions were dangerous to religious morals and instigated hatred among the followers of the religion, were severely prosecuted and punished under blasphemy laws. According to Jewish law, such opinions led to Jesus's condemnation for blasphemy.

Judge, Muhammad Afzal quotes, “The 'grandeur of Islam' should not raise the eyes of so-called modernists or be dismissed as a mere cliché. It is one of the admirable goals of a Muslim state and have been protected by the contemporary Pakistani Constitution.” According to Munawar Ahmed Mirza, “It is impossible to use the idea of freedom while ignoring the national character's imbuelement of Islamic government, social order, and unwritten moral constraints. Every citizen, while studying legal theories and precedent case law, must keep in mind the fundamental religious, cultural, and social aspects of our society. This includes avoiding writing that undermines national unity, encouraging people to break the law, or bringing shame on Islam in the name of freedom of expression or press.¹⁹”

The Islamic restrictions were regulated under sections 295C, 298A, 298, and 298C of the Pakistan Penal Code, 1860²⁰. In Pakistan, the deflation of sacred personalities for blasphemy is interpreted by ordinary people and investigating agencies²¹. Different factors have worsened the religious situation by changing the collective consciousness of societies in Pakistan. According to an incident, a group of laborers claimed that a Chinese engineer committed blasphemy, even after he was restricted to indulge in other activities during working hours. Hours later, The Government of Pakistan sent a helicopter to rescue the Chinese from being killed due to allegations on blasphemy claims²².

The nation is plagued by a collective mentality that stifles fresh ideas, which is why liberty is crucial to challenge the current quo of society versus individual opinions. As per another incident caused due to blasphemy, protestors in Sri Lanka lynched Priyantha Kumar Diyawanda on December 3, 2021, accusing him of blasphemy. In order to regulate free speech, the government plays a significant role in controlling the right to freely speak on political matters. However, the government also penalizes aggressive speakers, while providing a safe haven for prominent individuals who do not violate the law. Furthermore, religious intolerance is harmful and might cause society to become disordered. Tragically, blasphemy murders often occur when concerned individuals decide to handle the prosecution themselves, launching attacks on the accused, without seeking legal advice.

4.9. The Security and Defense of Pakistan

No amount of “democratic” freedom can justify the destruction of the state that grants it. According to Justice Shafi Ur Rehman, “The safety and security of Pakistan, or any portion of it, and all of its territory are more important than the right to freely express oneself.” Section 123A of the Pakistan Penal Code imposes limits on freedom of speech in Pakistan, however, the court has ruled that these restrictions are fair since they are necessary for the state's security.

A definition on security that encompasses the welfare, stability, and integrity of Pakistan has been sought under Article 260 of the Constitution. However, it not entail clauses on public safety. The decisions of the Secretary of State, Rehman, stated, “Security refers to the well-being of Pakistan and its citizens.” One aspect of national security is to safeguard the secrets of the state and its military assets. Since foreign policy determines the country's security, it is important to note that national security and foreign policy remain inseparable under the above stated context.

Secretary of State, v. Rehman, further stated, “Ideology of Pakistan is inseparable from the notion of Pakistan's integrity.” Islam as a whole, encompasses both, Muslim nationalism and Islamic thought. Furthermore, it denotes the perceptions of the Holy Quran and Sunnah that are an essential component of the Muslim community. The Islamic worldview and Pakistani ideology are both widely recognized, and any challenge to either would inevitably

result in challenging Pakistani sovereignty. Every phrase use in defining the integrity of the state further requires explanation, except the difference between the state of security in Pakistan and its public. However, the question remains, “What is meant by integrity, security and defense of Pakistan? The same applies to restrictions mentioned in Article 19 of the Constitution. In Pakistan, these undefined words are misinterpreted to deny freedom of expression. Moreover, none of the citizens dare to give an opinion on issues related to security and defense of Pakistan. Similar incidents have happened in the past, which led the government to take serious action against individuals who spoke on politically sensitive issues²³.

Pakistan is a country where it's Prime Minister, Benazir Bhutto was declared a 'security risk' and astonishingly, the same security risk was elected as prime minister. Similarly, Prime Minister, Nawaz Shareef was charged on corruption cases, and was also declared a traitor²⁴. In Pakistan, the situation worsened when in 2019, a judgment was passed on the “Faizabad Dharna Case,” that all intelligence agencies and the ISPR must not exceed their respective mandates²⁵. Retired Colonel Inam and Javed Lateef, a member of the National Assembly, were arrested for anti-state remarks, after a session court rejected his bail petition²⁶. Absar Aalam, a veteran journalist, was severely shot near his house, but luckily survived. A political party, MQM, led by Altaf Hussain, enjoyed great powers during the reign of President, General Musharraf. Later, Altaf Hussain and his party was declared as agents of the enemies²⁷. A political party named ANP was also claimed to be connected with state enemies. Similar allegations were made on other political parties, for instance, Sepahsahaba and Tahreek E Labaik. However, under Article 19, criticism is declared a crime. This restriction is unjustified and it must be excluded from the Constitution.

4.10. Friendly Relations with Foreign States

Friendly relations with foreign states also restrict freedom of expression in Pakistan. The purpose behind this restriction is to maintain healthy relations with other states, which may be affected by activities performed by the citizens. However, there are specific legislations that determine the extent of this restriction. This restriction was regulated by various laws, for instance, Section 3 of the Security of Pakistan Act 1952 restricts the movement of suspected individuals²⁸. It also restricts discussing matters on the state's defense and security, moreover, section 11 and 12 of the Security of Pakistan Act 1952 also entails similar restrictions²⁹.

Pakistan's relation with most foreign states, whether Iran, Saudi Arabia, USA, Russia, India or China, are highly controversial and diplomatic, for instance, the ex-Prime Minister of Pakistan accused America of overthrowing his Government, while at the same time, the US was requested to help him save his political party. No efforts have yet been made to bring clarity under this regard. It is difficult to determine disturbances in Pakistan's friendly relations with foreign states. State authorities take advantage of their political powers and thus, misinterpret information. Daniel Pearl, an American journalist, was killed by a Pakistani citizen Umer Shiekh, who claimed that Daniel Pearl was a spy for the CIA³⁰. On the contrary, the state released Ramand Devas, who killed a Pakistani citizen. General Ayub Khan aimed to achieve public approval, because of which he accused Fatima Jinnah of being an American and Indian spy agent. As of now, Indo-Pak relations are propagated under the necessity of time. Indian Prime Minister, Wajpae visited Minar-e-Pakistan, after which the country fought the Kargil war. Indian Prime Minister, Modi visited Pakistan, at the personal request of Pakistan's Prime Minister, Nawaz Shareef, however, Mr Shareef was later declared a traitor. Saudi Arabia is highly regarded in terms of Pakistan's relations with other states. Even relations with other states are determined, based on Saudi Arabia's decisions and political planning. The Cold War

between China and America increased the ambiguity in Pakistan's policy regarding friendly relations with other states. Pakistan claims to bear friendly relations with both, America and China. However, the restriction to speak on political matters is unjustified and nullified to practice freedom of speech and expression.

4.11. Public Order

To enhance economic growth, the political and social well-being of the citizens, depends upon safety, public peace, and tranquility. Similar to other countries, different laws have been made to ensure and maintain public safety in Pakistan. Section 124A of the Penal Code states, "Whoever, by words, either spoken or written, or by signs, or by visible representations, or otherwise, brings or attempts to bring into hatred, or excites or attempt to excite disaffection towards, Federal or Provincial Government established by law shall be punished with imprisonment which may extend to three years, to which a fine may be added, or with both." This provision is included in the constitutional legislation. Furthermore, Sections 153A, 153B, and 505 of the Pakistan Penal Code address public mischief. Section 499 of the Pakistan Penal Code defines defamation. Section 501 of the Pakistan Penal Code defines printing or engraving matter that is known to be defamatory. Section 6 of the Maintenance of Public Order Ordinance of 1960 provides for the power to control publications, whereas, Section 10A of the Prevention of Electronic Crime Act, 2016 provides explanation on hate speech. Section 11 of the Prevention of Electronic Crime Act, 2016, Section 20 of the Pakistan Electronic Media Regulatory Authority Ordinance of 2002, Section 8 of the Anti-terrorism Act of 1997, and Section 3 of the Defamation Ordinance 2002, state subjects related to public defamation and criminal injustice.

The phrase "public order" has not been defined in the Constitution, A.R. Cornelius defines the term "public order" by saying, "Public order includes danger to human life and safety, and the disturbance of the public tranquility falls within the preview of this expression." A further clarification was provided by Ahmed Ali U. Qureshi, stating, "An act that is exclusively concerned with a single person and does not constitute an activity that is detrimental to public peace and quiet is not detrimental to public order."³¹

In Pakistan, this restriction is not used to maintain public order as constitutionally required but to suppress freedom of speech. Surprisingly, public order is mainly disturbed by segments of the state itself. Chief Minister Ayub Khoro and Prime Minister Hussain Shaheed Soharwardi were charged under 124A of PPC for disturbing public order. Under other instances, politician, Sheikh Rasheed instigated the masses but was protected by the then-military establishment and was never arrested or prosecuted for disturbing public order. In the recent past, a religious party, Tahreek E Labaik Pakistan disturbed and violated public order in Pakistan, however, none of the political powers dared to control or suppress their injustice. The state remained helpless, despite the attack on the interior minister, law minister, foreign minister and the prime minister. This public disorder was justified on the basis of religion. Tahreek e Labaik Pakistan were agitated on the same issue, after which they were arrested, tortured and even killed to maintain public order. Therefore, freedom of expression must be unrestrained and excluded from the restriction of public order within the ambit of reasonableness, so long as the freedom of expression does not result in the disturbance of public order.

4.12. Decency and Morality

Pakistan has restricted freedom of expression based on decency and morality. Section 292 of the PPC of 1860 governs this prohibition and makes it illegal to sell, distribute, circulate, or show any obscene book, pamphlet, paper, drawing, picture, representation, figure, or other thing for profit. Another provision that governs this restriction is Section 20 of the Post Office Act 1898. It states that, “No one shall send through the post (a) any article that is indecent or obscene in nature, including but not limited to prints, photographs, lithographs, engravings, books, or cards; or (b) any postal item that bears the words, markers, design of an inscription that is indecent, obscene, seditious, abusive, threatening, glossy, or offensive.”³²

Similarly, Articles 62 and 63 of the Constitution of Pakistan determines the qualification of a member of parliament, based on morality. According to Article 62(b), “A person of good character is one who does not violate Islamic injunctions. Article 63(g) says that, “A citizen stands disqualified if he/she commits an act against morality and has been convicted by a court of competent jurisdiction for the offense. Article 63 (h) of the Constitution disqualifies a member of a parliament for being an ex-convict of any offense involving moral turpitude or being sentenced to not less than two years, unless a period of five years has elapsed since the terms and conditions of the prison.”³³

Freedom of expression has been restricted without defining decency, morality, obscenity, and Islamic injunctions. However, the word morality is used in Articles 17 and 20 of the Constitution of Pakistan, as such, it is suggested that Article 19 should be read with Article 21 of the Constitution, which deals with the principles of state policy. In Pakistan, religious and sectarian differences make it more difficult to create a consensus on issues related to morality and decency.

Hence, decency and morality are relative terms and connected with religion and religious teachings, which are entirely different from the concept of morality as used in the rest of the secular world. In Pakistan, the masses decide matters outside the court according to their perception of morality and decency. Thus, a short story, titled ‘Thanda Ghost’ by Saadat Hassan Minto may be taken as obscene by one party and very serious by another, depicting a humane tragedy during migration resulting in the Indo-Pak division. This restriction is also being misused by state authorities. This led to the disqualification of Nawaz Sharif for not having good character after his election in 2013. Therefore, this restriction hinders freedom of expression in Pakistan.

4.13. Contempt of Court

One of the reasons why free speech might be limited is because of contempt of court. As defined in Article 3 of the Contempt of Court Ordinance, 2003. “To be in contempt of court is to disobey a lawful order, direction, or process of a court, to willfully violate a valid undertaking issued by a court, to do anything that disgraces or disrespects the court's administration or authority, to interfere with, obstruct, interrupt, or prejudice the due course of any judicial proceedings, to lower the court's authority, or to scandalize or disturb the order and decorum of a court.” Furthermore, in order to address contempt of court, the 2003 Contempt of Court Ordinance was enacted in accordance with Article 204(3) of the Constitution for civil contempt, criminal contempt, and judicial contempt. Article 204 of the Constitution, on the other hand, categorizes contempt of court as either, disrespecting the court, bringing disgrace upon the court, or interfering with a fair trial.

Due to close relationship between the military and the court in Pakistan, the behavior of judges is remains doubtful. In order to legitimize the coup and consolidate power for the military rulers, experts agree that there is a predictable pattern to the typical maneuvering that follows. From the first military coup until Musharraf's 1999 overthrow, six critical actions were taken by the army commanders. Using the theory of state necessity, the Supreme Court also upheld Musharraf's 1999 coup, proclamation of emergency, and establishment of a PCO. No court could issue an injunction against Musharraf or challenge the emergency proclamation according to the PCO. With three years to prepare for national elections, the Supreme Court granted Musharraf the power to change the Constitution. He reinstated the president's discretionary authority to dissolve the national parliament under Article 58(2) (b) in a contentious referendum he staged in 2002, which also elected him to a five-year term as president. The military may now trial citizens for crimes that were previously handled by the country's Judiciary, according to a modification to the 1952 Army Act.

According to Pakistan's separation-of-powers system, the judiciary and courts are tasked with safeguarding the Constitution. However, they have termed it essential or convenient to allow unlawful moves or amendments to the constitution by Pakistani authorities on several occasions. They acted in this way because they believed it was crucial to their continued existence. Chief Justice of Pakistan, Syed Naseem Hassan Shah once opinionated that most judges were not brave enough to sacrifice their jobs to ensure justice. They prefer to kill justice to secure their jobs.

Judges like Qazi Faiz Esa and Justice Waqar Saith, particularly Justice Shaukat Aziz, are exceptions who refused illegal orders of an officer of the military establishment. Otherwise, most judges, like Malik Qayyum Chief Justice Saqib Nisar, and Chief Justice Asif Saeed Khosa compromise to secure their jobs. In 1977, elected Prime Minister, Zulifqar Ali Bhutto was sentenced to death in a case where he was alleged to have abated a murder³⁴. Prime Minister of Pakistan, Syed Yousaf Raza Gilani, was imprisoned by the court and disqualified as a member of the National Assembly. Chief Justice, Saqib Nisar began collecting funds for dam and awareness programs on family planning, instead of focusing on the administration of justice but victimized leaders of different political parties.

The elected prime minister was disqualified based on an Aqama (work permit) issued by his real son. The disqualification of Mr Javed Hashmi was disclosed by the judges of the Supreme Court, after which he was jailed. In a signed affidavit, Gilgit Baltistan's former Chief Justice claimed that Saqib Nisar directed the judge not to release Nawaz Maryam before elections, while deciding the case of Nawaz Shareef in 2017. Chief Justice, Umar Ata Bandial claimed that the Prime Minister was not granted constitutional immunity. Later in 2021, the same judge in similar allegations against Imran Khan declared that the Constitution ensures immunity for the Prime Minister. The same immunity denied the former minister was accorded to another minister on the same allegations. Therefore, this restriction also requires removal to deter further arbitral actions, based on perceived interpretations of the constitutional restrictions.

4.14. Incitement to an Offense

Hate speech is connected to the restriction on freedom to speech and expression. The provisions of the Anti-Terrorism Act of 1997 (Section 6(1) (b)) and the PPC (Articles 124A, 153A, 505, 153A, 153 B) govern this limitation³⁵. It states, "It is the use of force or threats of force with the intent to subdue, frighten, or overwhelm a group, whether that group be the

government, the general public, a specific community or sect, or to sow social unrest and terror.” This clause prompts two inquiries that urge immediate responses on, “What is the guiding idea behind this limitation?” According to one interpretation of this question's possible response, “Nobody should be able to break the law or encourage others to do so in the name of free speech.” The second question remains, “Which act or word amounts to 'incitement' or 'provocation'?” This question has not been determined in the Constitution. However, guidelines explained by Justice Holmes in *Abram's case* can be helpful in this regard³⁶. The most recent iteration of this test, called the *Branden Bury Test*, takes into account the following criteria:

1. The speaker's subjective intent to incite.
2. The word's likelihood to create immediate illegal action in context.
3. The word's objective encouragement, urging to prove impending actions.

In Pakistan, however, there is no concept of the *Branden Bury Test* and state authorities, judiciary and even its citizens do not follow standards set out by the international community. Rather this undefined restriction is used to silence constructive criticisms and the many voices of the Pakistani citizens.

5. CONCLUSION

On the whole, Article 19 of the Islamic Republic of Pakistan's constitution guarantees the right of every citizen to freedom of speech and press. However, in practice, these rights are severely limited due to the authorities' use of censorship, restrictive laws, and persecution of journalists, human rights advocates, and religious minorities. The powerful can continue to violate these laws with impunity, while the peaceful section of society remains severely punished. The constitution emphasizes the need for rationality, impartiality, and fairness for law interpretation. To fully realize the inherent right to free speech and work towards a stronger, more progressive, and liberal Pakistan, the current constitutional limitations on free speech must be removed.

Footnotes

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- 2) Freedom of Speech' in the United States: Truth and Facts, March 2024.
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