

Freedom of Expression, Laws & Limitations

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1. Introduction

Freedom of expression is a right to express one's thoughts and opinions without governmental restriction². It is a principle that supports the [freedom](#) of an individual or a community to articulate their opinions and ideas without fear of retaliation, [censorship](#), or legal sanction³. That articulation or expression can be in any form i.e spoken words, written material, insinuation, picture, simile, caricature, and piece of art or any other medium. Freedom of expression is one of the distinguishing features of democracy from fascism. The Fascist regimes would not tolerate any kind of criticism or difference of opinion. The world has had its experiment with fascism in the first half of the 20th century & it has preferred democracy over that.

2. Origins

We will have to dig deep into the history to find the period when did this concept emerge. It is believed that freedom of expression might have had its roots in Athenian Democracy somewhat in the late 6th or early 5th century BC⁴. Socrates (470–399 BC) is world famous for his anti-government views. He was accused of for being irreverent & corrupting the young⁵; a charge on which he was eventually given capital punishment. Socrates could have had avoided the punishment on the promise of abstaining from the repetition of the “offence” but he

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² **Black's Law Dictionary** (8th edition, 2004) P 1960

³ <https://en.wikipedia.org/wiki/Freedom_of_speech> accessed 05 August, 2019

⁴ **Raaflaub, Kurt; Ober, Josiah; Wallace, Robert** (2007). *Origins of democracy in ancient Greece*. University of California Press. p. 65. ISBN 0-520-24562-8.

⁵ <www.cam.ac.uk/news/socrates-was-guilty-as-charged> accessed 05 August, 2019

preferred to drink the poisonous potion (named Hemlock) than giving up his views.

3. Laws Concerning Freedom of Expression

The humans have traversed a long way from the Athens of Socrates. Now the principle of freedom of expression is recognized by almost every country. 1st⁶ & 14th⁷ [amendments](#) to **the [Constitution of the United States](#)** ensure this right to the US citizens⁸. Under article 10 **of the Human Rights act 1998**, everyone has the right to freedom of expression in the UK. Similarly Article 10 of **European convention**, Article 19 of **the Universal Declaration of Human rights**, Article 5 of **the Basic Law for the Federal Republic of Germany**, Article 11 of **the Declaration of the Rights of Man and of the Citizen 1881** (of France), Article 19 of **the Indian constitution**, Article 21 of **the Japanese constitution**, Article 35 of **the constitution of Peoples Republic of China**, section 16 of **the constitution of the republic of South Africa**, & section IV and IX of Article 5 of **the [Constitution of Brazil](#)** protect this right within their respective countries. The **Australian Constitution** does not explicitly protect freedom of expression. However, the High Court has held that an implied freedom of political communication exists as an indispensable part of the system of representative and responsible government created by the Constitution⁹.

3.1 Law in Pakistan

⁶ Adopted on December 15, 1791

⁷ Adopted on July 9, 1868

⁸ <www.britannica.com/topic/freedom-of-speech> accessed 05 August, 2019

⁹ <www.humanrights.gov.au/our-work/rights-and-freedoms/freedom-information-opinion-and-expression> accessed 07 August, 2019

Pakistan is no exception to the world. Freedom of expression is one of the fundamental rights of the Pakistanis & is protected by the constitution of the country. Article 19 of the Constitution of Pakistan reads as:

“19. **Freedom of speech, etc.**-Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence 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.”

In support of the principle it is held by the Supreme Court of Pakistan that no one, including any government, department or intelligence agency can curtail the fundamental right of freedom of speech, expression and press beyond the parameters mentioned in Article 19 of the Constitution. Those who resort to such tactics under the mistaken belief that they serve some higher goal delude themselves. Pakistan is governed by the Constitution and, "Obedience to the Constitution and the law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being in Pakistan¹⁰.

4. Importance

Freedom of expression is intrinsically valuable and necessary for the healthy functioning of democracy and civil society. It is necessary for the achievement of other human rights such as fair administration of

¹⁰ Suo Motu Case No.7 Of 2017 (P L D 2019 Supreme Court 318) para 39

justice, education, adequate standard of living, equality, human dignity, and the rights of women, peoples, and minorities¹¹. Freedom of expression also cultivates the virtues like patience, forbearance, tolerance & resilience. In the words of [Edward Bulwer-Lytton](#)¹² a pen is mightier than a sword. To purge a society from the social evils, expression is much more effective tool than violence.

5. Limitations

However there is a common misconception about the concept of freedom of expression. Someone has said that one's right to swing one's fist ends where other man's nose begins; so one cannot use the concept to defame, abuse, threaten, and harass the other. Similarly freedom of expression cannot be used as an excuse to foment violence, ridicule religion/holy sculptures or sacred personalities, commit perjury, spread hatred or racial abuse, indulge in obscenity, or carry out acts that are prejudicial to a state or its institutions. If such like acts are permitted in a society, it will lead to anarchy & ultimate breakdown of social set up. Therefore one must be mindful that freedom of expression is not an absolute right, rather it is subject to a number of limitations.

5.1 Limitations in the World

5.1(1) England

In England the state can restrict this right on the ground that the action is lawful, necessary and proportionate in order to:

- Protect national security, territorial integrity (the borders of the state) or public safety;

¹¹ < <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0105.xml> > accessed on 07 August, 2019

¹² (An English writer and politician.; he also served as Governor General of India from 1876 to 1880)

- Prevent disorder or crime;
- Protect health or morals;
- Protect the rights and reputations of other people;
- Prevent the disclosure of information received in confidence; &
- Maintain the authority and impartiality of judges.

An authority may be allowed to restrict freedom of expression if, for example, you express views that encourage racial or religious hatred¹³. A number of Laws in UK bar hate Speech; section 4 of the Public Order Act 1986 (POA), which makes it an offence for a person to use “threatening, abusive or insulting words or behavior that causes, or is likely to cause, another person harassment, alarm or distress”. This law has been revised over the years to include language that is deemed to incite “racial and religious hatred”, as well as “hatred on the grounds of sexual orientation” and language that “encourages terrorism”¹⁴. In the views of Odger¹⁵, “Our Present Law permits any one to say, write & publish what he pleases; but if he makes a bad use of his liberty, he must be punished. If he unjustly attacks an individual, the person defamed may sue for damages. If on the other hand, the words be written or printed, or of treason or immorality be thereby inculcated, the offender can be tried for the misdemeanor either by information or by indictment”¹⁶.

5.1(2) United States

In US the right of freedom of expression is limited when dealing with acts of obscenity, fraud, child pornography, speech integral to illegal conduct, speech that incites imminent lawless action, speech

¹³ <www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression> accessed 5 August 2019

¹⁴ <www.theweek.co.uk/97552/hate-speech-vs-free-speech-what-are-the-uk-laws> accessed 5 August 2019

¹⁵ William Blake Odger (1849 to 1924)

¹⁶ Libel & Slander by Odger, P12. Shoukat Mahmud, Nadeem Shoukat: *The constitution of Pakistan* (First Published in 1973, 5th Edition) 238

that violates intellectual property law, true threats, and commercial speech such as advertising. In 1950s communism was perceived in US as the biggest threat. John Henry Faulk, a radio and television performer, in a bulletin, was charged by the defendants *Aware, Inc.* (an organization formed to combat communism in the entertainment industry) to be either a communist or a participant in communist activities. The bulletin was mailed to about 2,000 persons. The impact on Faulk was total devastation, his engagements were cancelled and he could not gain employment in his field despite every effort on his part. The court did not declare the false accusation as covered by the right of freedom of expression & in view of the deliberate and malicious character of the libel, the court approved compensatory damages of \$400,000 and punitive damages of \$150,000¹⁷.

5.1(3) Other Countries

Almost similar sort of limitations are found in the laws of every civilized nation qua the right of free expression.

5.2 Limitations in Pakistan

I have already chalked down **Article 19 of the constitution** of Pakistan which carries some of the limitations on the right of freedom of expression. These are:

- 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,

¹⁷ *Faulk v. Aware, Inc.*, 244 N.Y.S.2d (App. Div. 1963). William K. Jones: *Insult to Injury-Libel, Slander, And Invasions Of Privacy* (2003 edition)09

- **Commission of** or incitement to an offence.

Nevertheless **Article 4 2(a) of the constitution** enjoins that no action quo the reputation of a person can be taken except in accordance with law. Similarly per **Article 14 (1) of the constitution** declares that the dignity of everyman is inviolable. Abusing, threatening and attacking people undermine their right to live a life of "dignity" (guaranteed under Article 14 (1) of the Constitution) which requires enforcement¹⁸.

In addition to the constitutional provisions mentioned *ibid*, there are a number of other laws in field which serve as a check on the right of freedom of expression:

- Art 204(2) of the constitution of Pakistan;
- Defamation Ordinance 2002;
- Pakistan Penal Code 1860 (Sec 107 to 117, 120-A, 120-B, 121-A, 124-A, 124-B, 135, 181. 182, 191 to 195, 199, 200, 203, 205, 209,211, 211, 227, 228, 229, 236, 292-A, 292-B, 292-C, 293, 294, 295-A to 295-C, 298 to 298-C, 377-A, 515 to 421, 496-A, 496-C, 499 to 507, , 509 PPC);
- Contempt of court act 1976;
- Pakistan Electronic Media Regulatory Authority Ordinance, 2002;
- Code of Ethics of the Council of Pakistan Newspaper Editors (CPNE);
- Copyright ordinance 1962, Copyright rules 1967;
- Trademark ordinance 2001 & trade mark rules 2004;
- Provincial Acts/Ordinances qua Prohibition Of Expressing Matters On Walls i.e Punjab Prohibition Of Expressing Matters On Walls Act 1995, Baluchistan Prohibition Of Expressing Matters On Walls Ordinance 2001 etc
- The Prevention of Electronic Crimes Act 2016;

¹⁸ Suo Motu Case No.7 Of 2017 (P L D 2019 Supreme Court 318) Para 12

- Being a common Law country suits for damages can also be filed on the basis of Libel, Slander & Malicious Prosecution, etc.

5.2(1) Case Laws

The right to freedom of speech and expression as guaranteed under Article 19 of the Constitution admittedly is not absolute, unlimited or unfettered but subject to reasonable restrictions imposed by the law and one such restriction so imposed is in relation to the contempt of Court. The protective cover so provided to freedom of speech and expression cannot be stretched to cover a speech, comment or publication which may tend to influence, impede, embarrass or obstruct the administration of justice, scandalizes the Court and brings the Hon'ble Judges of this Court into hatred, ridicule or contempt¹⁹.

Freedom of expression and right to peaceful protest are undoubtedly most sacrosanct, nonetheless, exercise thereof is subject to law and there is no right in derogation to citizen's primary and fundamental responsibility of loyalty to the State. No cause howsoever sublime or sacred can be allowed to disrupt civic life or to question/ challenge the writ of the State.²⁰

It is a matter of grave concern when inflammatory, provocative or abusive statements are broadcasted as these have the effect of fanning the flames. There are also those who are pushing out hate propaganda. One wonders whether the violence that results and continues to express itself is a direct consequence of such broadcasts. **Freedom of speech**

¹⁹ *Talal Ahmed Chaudhry Versus The State (2019 S C M R 542) Para 14*

²⁰ *Sheikh Muhammad Nadeem Versus The State And Another (2019 M L D 790) Rawalpindi Bench, Para 3*

and expression and independence of the media is cherished by the people of Pakistan guaranteed as it is under the Constitution; however, there is no place in the public discourse to propagate the commission of an offence or to incite people to resort to violence. Broadcasts cannot encourage violence, extremism, militancy or hatred²¹.

It is undeniable that every citizen has been conferred right of freedom of speech and expression and such right has been conferred in Article 19 of the Constitution, which is one of the fundamental right provided in Para-II of the Constitution. **However, such freedom of speech and expression given to every citizen has been made subject to reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with the foreign States, public order, decency or morality, or in relation to contempt of Court, [commission of] or incitement of an offence.** Thus it is apparent that contempt of Court is one of the law to which the fundamental right of every citizen to freedom of speech and expression has been subjected to. In exercising the fundamental right of freedom of speech and freedom of expression, if a citizen impinges upon and transgresses the reasonable restrictions of law of contempt of Court, he will make himself culpable and liable to be proceeded against under the contempt of Court Law²².

As shall be seen from the preamble of our Constitution, the rights of every community have been delicately balanced and freedom of speech/expression and information is also hallmark of our constitution,

²¹ *Suo Motu Case No. 7 of 2017 (P L D 2018 Supreme Court 72) Para 6*

²² *Suo Motu Contempt Proceedings initiated against Mr. Talal Chaudhry, State Minister on account of Derogatory and contemptuous speeches/statements at public gathering in respect of this Hon'ble Court telecasted by different T.V. Channels (P L D 2018 Supreme Court 773) Para 12*

but the term "right of expression" cannot be stretched to such an extent that it be used as a tool to defy the religious thoughts or sacred personalities of one's religion. This court is of the clear view that under the umbrella of "freedom of speech and information" not only the Muslim community, in fact the followers of all the religions have been made to suffer immensely e.g. Salman Rushdie wrote a book hurting the feelings of Muslims all over the world and his book was banned in 1988, James Laine characterized Shivaji (Shivaji Maharaj Bhonsle) hurting the feelings of that sect, as a result Bhandarkar library was vandalized by the mob and similarly Wendy Doniger wrote a book "The Hindus: An Alternative History" creating rage amongst Hindu community. In view of the above, the right of expression cannot be allowed to thwart the feelings of any religion on earth, because **as a matter of fact distortion of any religion on the pretext of right of speech/expression or information now amounts to another form of terrorism a fact that the international community must now concede**²³.

Under the provisions of the Constitution of the Islamic Republic of Pakistan, 1973, reputation of a person 'has received the highest protection in Article 4(2)(a). Further under Article 14 the dignity of man and, subject to law, the privacy of home, shall be inviolable right of each and every citizen. The defamation of any person or citizen through spoken or written words or any other means of communication lowers the dignity of a man fully guaranteed by the Constitution, thus, not only is it the constitutional obligation of the State but all the citizens and persons living within the State of Pakistan to

²³ *Muhammad Ayoub Versus Federation Of Pakistan Through Secretary, Ministry Of Interior, Islamabad And 6 Others (2018 P.Cr. L J 1133) [Lahore (Multan Bench)] Para 8*

respect and show regard to dignity of every person and citizen of Pakistan otherwise if anyone commits an act of malice by defaming any person, would be guilty under the Constitution and would cross the red line of prohibition imposed by the Constitution, attracting serious penal consequences under the law and the person violating the same has to be dealt with under the law.

No lenient treatment shall be shown to anyone in this regard nor anyone can plead the unbridled right of expression and right to have access to the information when the subject matter is disgraced, his/her dignity brought to almost naught because the rights with regard to expression and access to information are regulated by law, rules and regulations under which the license is granted under the Press and Publication laws²⁴.

6. Conclusion

Freedom of expression is a bulwark against authoritarianism, despotism & dictatorship. If this right is taken away from the masses, they will eventually cease their every other right, as no one will be able to raise his voice against the oppression, injustice, crime & intolerance. But at the same time freedom of expression cannot be used as a tool to harass, insult, tease or annoy others. In civilized societies, despite difference of opinion, every possible effort is made not to hurt the feelings of anyone. Bano Qudsia has once said that it is not that the truth that is bitter rather it is the method of telling the truth where the problem lies. The rationale behind imposition of conditions on freedom of expression is to ensure that the citizens while exercising such

²⁴ *Liberty Papers Ltd: And Others Versus Human Rights Commission Of Pakistan (P L D 2015 Supreme Court 42) Para 10-11*

right maintain decency and decorum and do not violate the rights of others citizens or transgress the mandate of law in relation to the working of State Institutions²⁵.

²⁵*Suo Motu Contempt Proceedings initiated against Mr. Talal Chaudhry, State Minister on account of Derogatory and contemptuous speeches/statements at public gathering in respect of this Hon'ble Court telecasted by different T.V. Channels (P L D 2018 Supreme Court 773) Para 12*