

## Freedom of Expression in Pakistan and Malaysia; A Comparative Study

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### ABSTRACT

*Freedom of expression is protected and promoted in almost all states of the world. Freedom of expression is also one of the most contested of fundamental rights. This article comprehends and analyze the principle of freedom of expression as articulated in the constitution of Pakistan and Malaysia. Both countries have explicitly protected freedom of expression in their respective constitutions. However, in both of the countries, freedom of expression and its application has constantly remained a contentious matter. Under this research doctrinal legal research method is adopted. Under doctrinal legal research comparative legal research method is employed to ascertain and examine the principle of freedom of expression as expounded by both systems. This study learns that although freedom of expression is explicitly protected in both countries but there are numerous problems which makes it difficult for the people to fully enjoy this right of expression. It is proposed that both states should make efforts not to curb opposing voices and reasonable constraints should be followed. Moreover, efforts should also be made learn from experiences of other countries.*

**Keywords:** Freedom of expression, Restrictions, Comparison, Malaysia, Pakistan

### INTRODUCTION

Freedom of expression in one of the most discussed and also protected fundamental rights (Kent, 1989). It has been safeguarded under nearly all of the constitutions of the world. Even countries that do not possess formal constitutions have protected it by some different means (Stone, 2010). This fundamental right is central for growth and accomplishment of individual personality. This fundamental right has been granted to fulfill various important objectives. Those objectives include development of personal autonomy, protection, and promotion of democracy in the world, and the search for truth (Larry, 2000). Democracy affords an option to the public to govern their states. Freedom of expression is imperative in democratic state and also in making people supreme (On Liberty, 2016). Although freedom of expression a contested right but it is continually safeguarded and advocated in liberal democratic systems.

In Pakistan freedom of expression is likewise protected under the fundamental rights part in the constitution (Mahmood, 2010). Present constitution was introduced in 1973 and even in some of earlier constitutions this right of expression was safeguarded. However, this right is not absolute. Precise limits are also carved under the same article. Malaysia is one of commonwealth countries along with Pakistan, where freedom of expression is protected under the constitution. Express limitations are also provided under the Malaysian Constitution (Ginsburg & Dixon 2011). This short paper comprehends and critically examines the notion of freedom of expression as provided in Pakistan and Malaysia. For those reasons, this article is separated into 3 parts. First part presents an introduction to the subject, second part provides research methodology, third part comprehends and examine the principle of freedom of expression as presented.

## **METHODOLOGY**

Doctrinal legal research and non-doctrinal legal research are two types of legal research (Kharel, 2018). Previously only doctrinal legal research was utilized but with the evolution of technologies and peoples interests in the operations or working of laws have highlighted the significance of non-doctrinal legal research methods. Non doctrinal legal research is also named as socio-legal research (Budianto, 2020). Under socio-legal research the methods of social sciences are utilized to study the law in actions (Pradeep, 2019). Those methods may include quantitative and qualitative research methods. Under this present study, doctrinal legal research is applied. Doctrinal legal research is also separated into four distinct methods namely, descriptive, analytical, historical, and comparative. Under present study comparative research methods of laws are adopted to ascertain as well compare principle of freedom of expression in Pakistan and Malaysia. Data for this study is adopted from primary as well secondary sources. Primary sources include decisions, statutes, law journals, books and interpretation of jurists.

### **Freedom of Expression under Constitution of Pakistan**

Fundamental rights are at the core of a living Constitution, and they must constantly be ready to accept and safeguard the people's sensitivities. They must be gradually construed to enhance the ideas and ideals of liberty, free choice, and personal autonomy. Pakistan's 1973 Constitution upholds the fundamentals of a vibrant democracy and guarantees Freedom of expression (Jamil, 2015). In Pakistan, the concept of Freedom of speech along with expression is defined and protected under article 19 of the constitution. this article provides that freedom of expression, speech and press will be provided to the citizens of the state (Basit, 2015). This right is only available to the citizens of Pakistan and non-citizens are not allowed to enjoy this right the state is also authorized to impose restrictions on this right, but those restrictions must achieve the object of reasonability. A complete list of limitations is providing and govt is authorized to present laws in the interests of those restriction. Those restrictions include "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 concerning contempt of court, [commission of] or incitement to an offense" (Mahmood, The Constitution Of Islamic Republic Of Pakistan, 2015).

Article 19 of the Constitution guarantees free expression only to citizens. This privilege is not available to foreigners or non-citizen inhabitants. The right to Freedom of speech and expression does not exist in Pakistan as a positive or enforceable right. It is included in

negative freedoms to communicate with others or immunity from outside influence. This means that individuals may speak or write whatever they want as long as they don't infringe on others' rights or break any laws. In contrast to a violated right, Freedom is subject to legislative restrictions and may also be limited by judicial development of law. The Lahore High Court defined Freedom of speech in 2017 as "the communicating or distribution of beliefs or opinions in verbal words. While freedom of expression represents the action of producing someone's ideas; the conveying of feelings in a work of art or performance by way of music; written work, speech, or action that exhibit a person's opinions and thoughts, passions or opinions".

Unqualified Freedom can only belong to vicious cave inhabitants or jungle beasts. Citizenship duties, which must be emphasized as rights, are linked to or counterbalanced by rights. Individual unrestrained and unregulated liberty has no place in today's world. Collective interests, security, and peace are critical in every organized community. Fundamental rights are meaningless in a society when the state is in disarray and in danger. As a result, a balance must be reached between fundamental rights and appropriate limitations. Constitution of Pakistan has expressly protected provided limitations of freedom of expression and those limitations are discussed below.

In Pakistan, the term "glory of Islam" is a justifiable argument for restricting Freedom of expression (Munir, 1999). The restriction related with Islam was not incorporated in the 1962 or 1956 constitutions. The criminal law of the territory governs legislation relating to the "Glory of Islam." The "Offenses Relating to Religion" are covered in Chapter 15 of PPC. Two commandments are discussed in this chapter concerning the "Glory of Islam." Sections 298-b and 298-c. Although these regulations were enacted to defend the grandeur of Islam as promised in Article 19, their reach is far broader. This broader breadth allows for the misapplication of the law concerning Islamic honor. It also broadens the extent of the restriction and harms the country's right to free speech.

Article 10 of the Constitution, together with articles 17 and 19, defines the word "integrity of Pakistan" (Basit, 2015). The fundamental rights guaranteed by these articles are subject to reasonable constraints to protect the country's integrity. 'Pakistani integrity' is inextricably linked to 'Pakistani philosophy. the two-nation idea in the area is built on these principles of Pakistani and Islamic philosophy. As a result, the 'integrity of Pakistan' includes both Pakistani and Islamic philosophy. Any invasion of either will ipso facto result in an attack on Pakistan's sovereignty (Benazir Bhutto vs Federation of Pakistan, 1988). Security denotes safety, and the security of Pakistan indicates Pakistan's protection. As a result, national security encompasses the defense and safeguarding of the state's secrets and defensive tools. It's also worth noting that national security is inextricably linked to the country's foreign policy, as foreign policy is a determining element in the country's security and the interpretation of "in the interest of Pakistan's security" is a matter of policy and judgment. The administration is responsible for interpreting this question in light of the circumstances. The phrase "security of Pakistan" is also classified under Article 260 of Constitution as under. It provides that "Security incorporates safety, welfare, stability, and integrity and each part of Pakistan" (Secretary of State v Rehman, 2000).

For cordial relations with neighboring states, the state can place reasonable limits on Freedom of expression, according to Article 19 of the Constitution. International ties are included in the definition of "friendly relations with foreign governments" in Article 19.

As a result, the Constitution allows for limits to preserve international ties. Both national defense and international relations are intertwined. In the event of national security, the Executive has enormous authority in the country. "Section 03 of Security of the Pakistan Act, 1952 (Mahmood M. , The Constitution Of Islamic Republic Of Pakistan, 1973, 2010) imposes travel limitations on those who act or are about to work in a harmful way to Pakistan's foreign affairs. This section of the Act deals with preserving cordial ties with other countries differently. Section 125 of the Pakistan Penal Code stipulates a seven-year term with a fine for anybody who fights or attempts to fight a war against any Asian nation in coalition or friendship with Pakistan's Government. These Cordial Ties with Foreign States section is notable because it underlines the importance of social connections with other countries.

Freedoms will be surrendered to unchecked abuses if there is no public order (Hamilton, 1961). Several articles in Pakistan include the phrase "public order," such as Article 10 on Detainment, "Article 17 right of association, Article 19 right of Expression, and Article 20 on right to possess and practice Religion". On the other hand, the phrase "public order," phrase "public order," on the other hand, is not mentioned in Pakistan's Constitution. The terms civility and ethics are broad terms. The term "obscenity presented under English law is practically the same to indecency as presented and discussed by our Constitution". Section 292 and section 294 of the Pakistan Penal Code. "Public order" and "public peace and tranquility" are interchangeable. It is of local importance instead of national upheavals such as "state security and law and order." A public order violation should have a wide-ranging impact (Benazir Bhutto vs. Federation of Pakistan, 1988). Articles 10(4) and (7) of the Constitution of 1973 do not apply to acts that affect individuals and do not constitute activities that endanger public peace and tranquility. One of the key arguments for restricting expression is the word "public order" or the maintenance of public order.

The authority of contempt of court is unusual in the Pakistani Constitutional system, as Article 19 preserves Freedom of Press and speech while simultaneously allowing for justifiable limits imposed by legislation in the case of contempt of court (Landis, 1924). It indicates that while Freedom of expression is a common concept, expression regulated by contempt legislation is an exception. It's also worth noting that both article 19 and article 204 deal with contempt of superior courts. In Pakistan, the courts have recently exploited the contempt of court power to suppress critics. The courts took up the political issues, and lawmakers were reprimanded and barred from standing for office. This limitation has also broadened the scope of prohibitions and reduced the state's implementation of the concept of Freedom of expression (Masroor Ahsan v. Ardeshir cowasjee , 1988).

"The General Clause Act of 1897" describes offense as "any act or omission made punished by any law for the time being in effect" under section 2(43) (Basit, 2015). Section 40 of the Pakistan Penal Code also defines "offense." This restriction is based on the premise that Freedom of expression does not extend to an incitement to perpetrate a crime, whether the offense is significant or tiny, cognisable, and or non-cognizable. Still, simple appreciation or approbation of a crime does not always imply encouragement to commit a crime or commission a crime. The court had to decide if sections in a book expressing appreciation or acceptance of the offense, or any person contributed to inciting or promoting the commission of the crime under the Press (Emergency Powers) Act 1931.

When determining this matter, the court should assess the restriction's kind, scope, duration, and time of the limitation, including its relation to the stated goal. On the other hand, Provocation is not just endorsing or adopting an abstract thought, and committing a crime is not made worse if such lobbying is not accompanied by action. Next part presents a detailed comprehension of freedom of expression principle as presented in Malaysia.

### **Freedom Of Expression In Malaysia**

Malaysian democracy is a parliamentary-federation system of government with “King the Yang di-Pertuan Agong (King)” as a head and Supreme Leader of the state (Azrae, 2020). Whereas prime minister works the head of executive branch in the country. Under the heading of “Fundamental Liberties” particularly placed after the supremacy clause, freedom of expression is granted as a fundamental right in Part II (Articles 5 – 13) of the Malaysian Constitution. Article 10 protects freedom of expression along with clear restrictions. The grounds of restrictions on expression are “security of country as Federation, practice of friendly relations with other states, public order or morality and limitations planned to guard the freedoms of Parliament or legislative Assembly or contempt of court, defamation, or even incitement to any offence” (Fong, 2019). This right is only available to the citizens of Malaysia and not to the aliens or residents who are not citizen of the country.

Eight distinct grounds for restricting expression and empowering Parliament to promulgate restrictions on the freedom of expression are explicitly provided under Clause 2 of the article 10 of the Malaysian Constitution (Burns, 1997). Amongst aforesaid grounds, first and foremost ground for imposition of restriction on expression is the security and safety of the Federation or any part thereof. Several legislations have been enacted including the “Official Secrets Act of 1972, Printing Presses and Publications Act 1984, Protected Areas and Protected Places Act 1959, Public Order (Preservation) Act 1958 and Sedition Act 1948”. Expression maybe subject to limitations to preserve friendly relationship with other countries under second ground as provided by the second clause of Article 10 (Bari, 2004). However, no such legislation has been enacted so far for preservation of good relationships with other countries, since such matters are governed in accordance with the administrative guidelines and policy on foreign affairs.

Third limitation provided by clause 10(2) of constitution is the justification of restriction on grounds morality, upon which numerous laws has been enacted e.g., “Films (Censorship) Act 1952, Indecent Advertisements Act 1953, Lotteries Act 1952, Medicines (Advertisement and Sale) Act 1956, Printing Presses and Publications Act 1984. Defamation Act 1957” and the Penal Code governs the fifth ground of defamation for restrictions as provided by clause 2 of Article 10 (Rau & Sampathkumar 2006). Parliament may also enact laws on grounds of incitement to carry out any offence. Activities like obscenity or instigating disharmony, conflict on bases of religion and numerous other offences incorporated in Penal Code restrict the right to expression which are derived from clause 2 of Article 10. Restrictions on freedom of expression incorporated in article 10 (4) were inserted the constitution through amendment in 1971. Constitution additionally contains restrictions and duties in following manners “In addition, Article 10 (4) allows content-based restrictions on ‘sensitive issues’: it provides that as to restrictions to free expression on the grounds of national security or public order” (Sani, 2010).

## CONCLUSION

Freedom of expression along with speech is protected in Pakistan and Malaysia. Express limitations are also inscribed under the same articles. These restrictions provide power to respective governments to legislate laws in order to safeguard those restrictions. The govts of Pakistan and Malaysia have enacted several laws on the basis of that authority of restricting expression. This right to expression is a negative right in both of these countries. Negative rights means that the right itself is no enforceable rather right is only whatever is left after imposing restrictions. Therefore, the significance of restrictions is increased. In Pakistan and Malaysia Both Malaysia and Pakistan have used their powers and authority to restrict even legitimate voices. it is also asserted that both countries while restring expression has expanded the scope of those restriction. that expansion is made at the cost of principle of freedom of expression. Moreover, several terms of restrictions are not appropriately defined and comprehended by in both countries and these ambiguous interpretations makes it easy for the govt to make misinterpretations. this study recommends that all laws related with freedom of expression should be revisited and liberal interpretation of right to expression principle should be made.

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