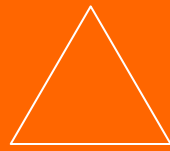
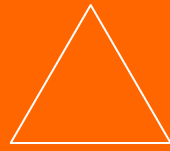


*Esquare's*  
*Guide to*

# **FREEDOM OF EXPRESSION**

IN PAKISTAN



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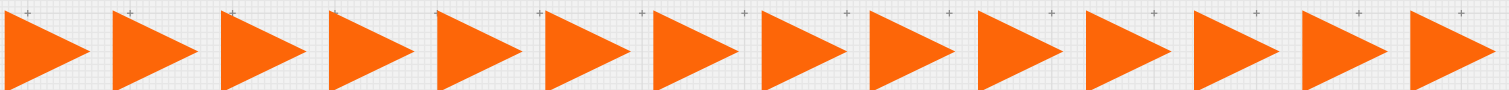
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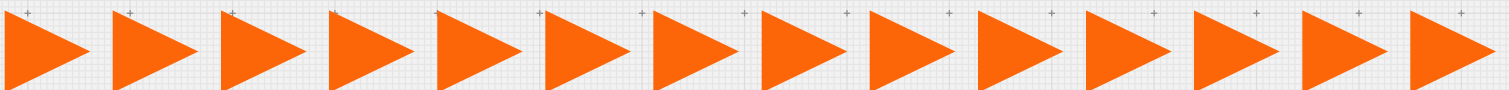
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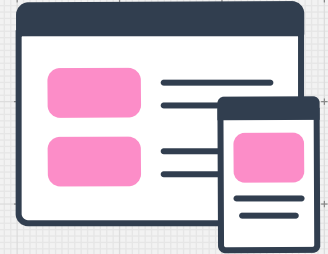


*Chapter One*

# **Executive Summary**



# EXECUTIVE SUMMARY



This white paper proposes to shed light on the right to freedom of expression in the context of Pakistan; however, to fully understand the line of reasoning adopted it is imperative to first gain awareness of the philosophical underpinnings regarding free speech that resulted in the creation of the given rights. The paper follows to identify the international conventions that mention the right to free speech followed by their evolution and development under the Constitution of Pakistan 1973. Although the constitution characterizes them as fundamental rights there are some limitations that exist while exercising this right, however it is widely believed that these limitations are not exercised for the purposes mentioned under law, i.e., to avoid causing harm to the interest of the state but is in fact used to suppress opinions not favored by the state authorities. To ascertain the extent to which this statement is true a few case studies have been added to the paper. In the end the writer submits their opinion on the matter and has tried to give a balanced conclusion based on the evidence presented in the form of case studies



*Chapter Two*

# **Introduction**



# Introduction

The notion of freedom of expression is by no means a creation of modern international human rights instruments, in fact it has a long history that predates any of these instruments. It is widely believed that the concept first emerged in ancient Greece and Rome somewhere in the late 5th or early 6th century. Subsequently, in England the Magna Carta was signed by King John in 1215, although it did not in particular mention the terms “Freedom of Speech” or “Freedom of Press” it is recognized as the first step towards constitutional liberties.



A major breakthrough, however, came with the invention of printing press by Johann Gutenberg in the mid 15<sup>th</sup> Century which gave many thinkers the opportunity to share their opinions and ideas with the masses. Although the law in Pakistan traces its roots from Islam the development of a legal structure in relation to free speech cannot be separated from the events that took place in Europe—leading to the development of the principle of free speech primarily because our laws are based on Anglo-Saxon traditions, that in itself owes its development to the philosophical underpinnings of European male thinkers.

Hence, the contemporary and our own historical issues have had a bearing on the development of the right in Pakistan as this was not a right that the state voluntarily gave. Despite the historical context the country was one of the first in the Muslim world to have an article on free speech in its constitution although, the extent to which it can be exercised is a topic that is open for debate.



*Chapter Three*

**Thinkers who contributed  
significantly to the  
concept of free speech**





# Thinkers who contributed significantly to the concept of free speech

*John Stuart Mill*

John Stuart Mill, a prominent philosopher of the 19th century, gained significant recognition for his advocacy of individual liberties. He fervently advocated for the granting of citizens the freedom to express themselves without constraint. The individual in question proposed the notion of a "Marketplace of ideas," wherein he advocated for the promotion of diverse and conflicting viewpoints.



He posited that open discussions and debates are crucial for the triumph of truth over falsehood, and he opposed the suppression or censure of unpopular opinions, as he believed such actions impede societal advancement. Furthermore, he argued that the freedom to express one's opinions enables citizens to hold those in positions of authority accountable and acts as a safeguard against tyranny. According to his rationale, the sole justification for limiting an individual's liberties is to avert injury to others, sometimes referred to as the "Harm Principle."

# Thinkers who contributed significantly to the concept of free speech

*Immanuel Kant*

Kant's ethical philosophy and his perspectives on freedom of speech are expounded upon in his seminal work, "Groundwork of the Metaphysics of Morals." This text serves as a comprehensive exposition of Kant's fundamental moral principles, with the central tenet being the concept of the "categorical imperative."



This principle posits that moral actions ought to be grounded in principles that are both universally consistent and applicable to all rational beings. According to Kant, it is his belief that persons contain rationality and autonomy, and as a result, they need to be seen as ends in themselves rather than mere means to a goal. Therefore, by applying this philosophical perspective to the concept of freedom of expression, it can be inferred that individuals bear a responsibility to grant others the liberty to express themselves, provided that these expressions do not cause harm or detriment to others.

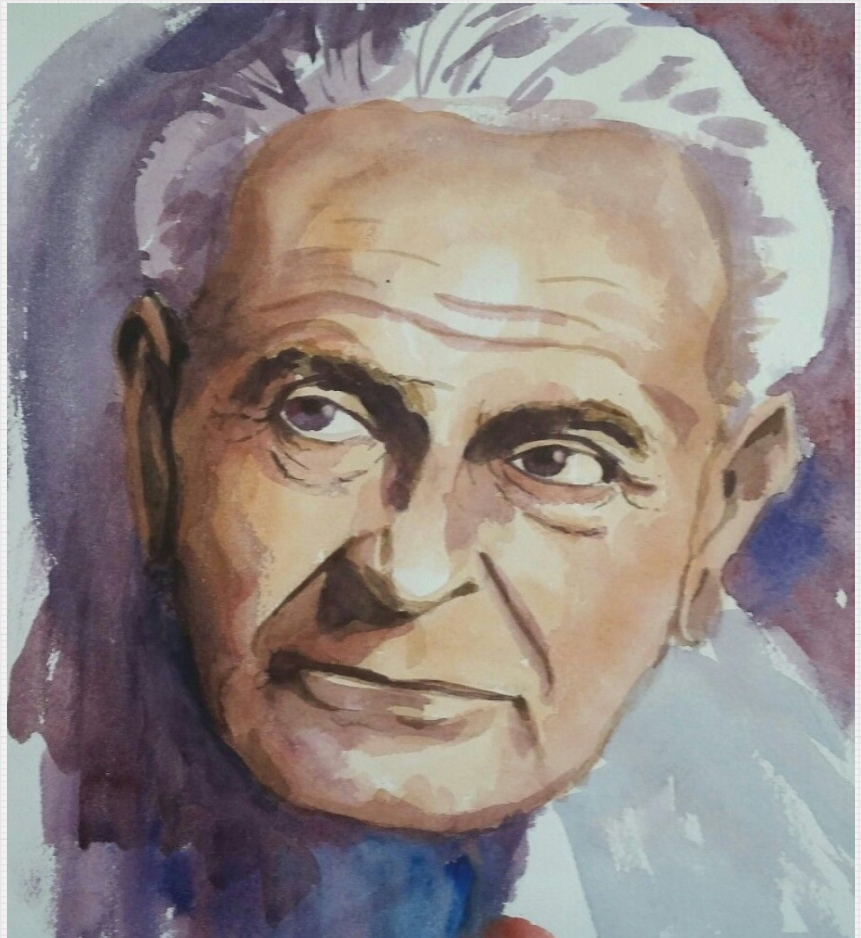
Conversely, the act of curtailing an individual's freedom to express themselves would constitute a violation of their inherent worth and autonomy, reducing them to a mere instrument for the attainment of alternative objectives, thereby disregarding their fundamental human dignity.



# Thinkers who contributed significantly to the concept of free speech

*Karl Popper*

In his seminal essay titled "The Open Society and Its Enemies," Karl, a very prominent philosopher and thinker, expounds upon the significance of a society that is characterized by freedom and openness, particularly in safeguarding fundamental principles such as the freedom of expression. The primary thesis of his scholarly contribution posits that political institutions ought to be structured in a manner that facilitates the presence of "critique," "debate," and the "exchange of ideas."



He contends that such elements are indispensable for the advancement and development of any given society. Furthermore, he argues that the unrestricted exchange of ideas serves as a countermeasure against totalitarianism, which, by imposing a singular perspective, can impede societal progress and development. However, it is important to note that this freedom must not be extended to propagate hatred within society. According to his perspective, it is imperative to strike a nuanced equilibrium between safeguarding the fundamental right to freedom of expression and upholding the principles that underpin a transparent and democratic society.

# Thinkers who contributed significantly to the concept of free speech

*Isaiah Berlin*



In his seminal work "The Concepts of Liberty," Isaiah Berlin, a renowned political theorist and philosopher, espouses a dualistic framework that encompasses negative liberty and positive liberty. According to Berlin, negative liberty refers to the state of being free from external interference or coercion, which enables individuals to act without constraints. Specifically, it entails freedom from interference by the state or other external authorities. This implies that individuals have the ability to express themselves without encountering censorship, punishment, or limitations imposed by the state. In contrast, positive liberty delves into the concept of personal autonomy and self-governance, enabling individuals to attain self-actualization. Personal agency refers to an individual's capacity to exert influence and control over the trajectory of their own life.

Therefore, when positive liberty is applied in a collective manner, it promotes the notion of creating the necessary conditions for individuals to effectively exercise their freedom of expression. These conditions also encompass economic factors such as education, diverse media outlets, and opportunities for public participation, which enable individuals to contribute meaningfully to public discourses.



# Thinkers who contributed significantly to the concept of free speech

*Jurgen Habermas*

Habermas's theory of communicative activity posits that open and rational communication constitutes a fundamental component of social existence. According to the individual's perspective, human contact is guided by two distinct forms of action: instrumental action, which is driven by the pursuit of individual goals and interests, and communicative action, which strives to establish mutual consensus through discourse. The notion of the "public sphere" is a fundamental term in the works of Habermas. It refers to a communal domain that is characterised by its openness, where persons convene to participate in reasoned discussions pertaining to shared concerns. In a democratic society, the public sphere holds significant importance in the formation of public opinion. However, Habermas acknowledges that this notion is frequently contested due to various factors.

These factors include the co-optation of the public sphere by influential entities, as well as its distortion through the influence of media and market forces. Such distortions can result in the dissemination of propaganda and misinformation, thereby undermining the capacity to cultivate a truly democratic environment. Consequently, Habermas advocates for societies to engage in critical assessment of the condition of the public sphere and actively participate in shaping decisions that impact their lives.





*Chapter Four*

# **Historical Context**



# Historical Context

## *Pakistan's beginnings*

1. In 1958, Gen. Ayub Khan restricted press freedom in Pakistan with the 1960 Press and Publications Ordinance, which gave the government control over media and silenced dissent.
2. Yahya Khan's rule (1969-1971) saw restrictions on media freedom and freedom of expression, leading to censorship and arrests of journalists during the Bangladesh Liberation War.
3. Zia-ul-Haq's 1977-1988 regime was a period of severe censorship, threats and harassment of journalists, and restrictions on cultural expression and public gatherings.
  1. The government actively controlled what could be printed, leading to pre-publication censorship enforced by provincial administrations. Newspapers had to submit their pages to designated officers for approval, resulting in deletions of critical content.
  2. Some editors cleverly left noticeable gaps in articles to highlight censorship, prompting authorities to issue directives for newspapers to keep extra content on hand. Journalists faced arrests and prosecution under Martial Law regulations for protesting and organizing meetings.



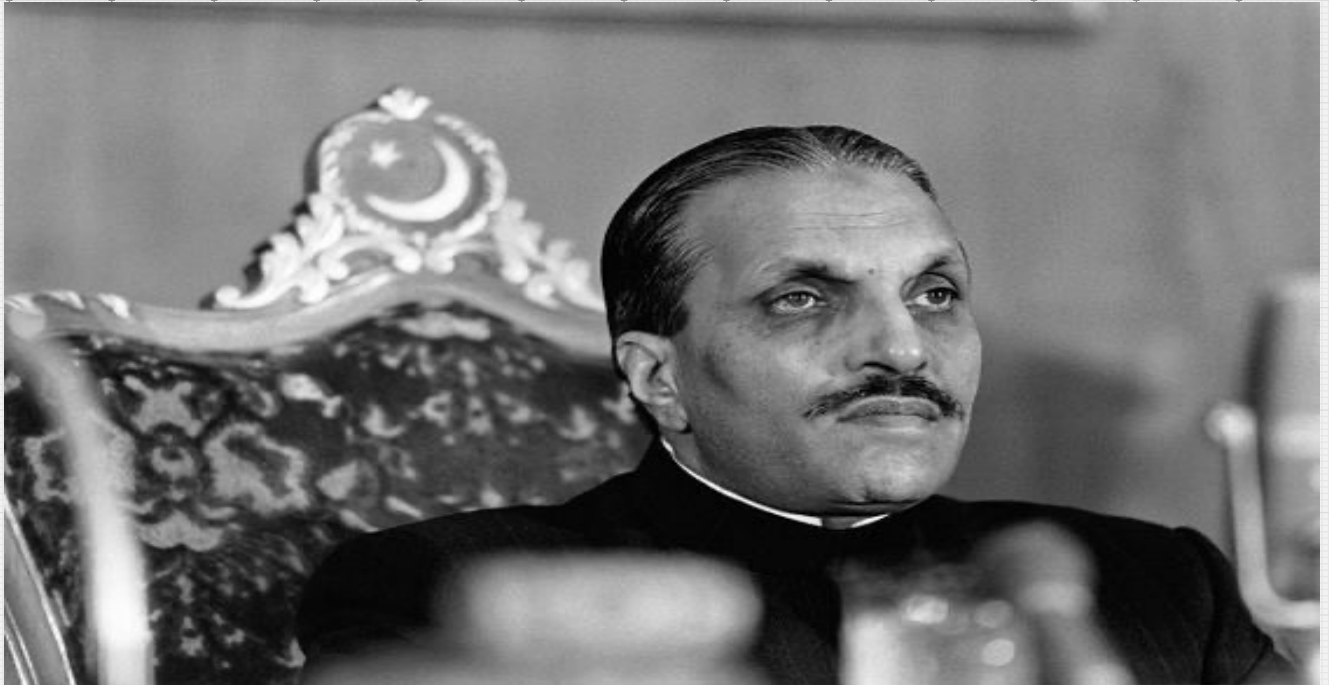
3. In 1980, Gen Zia introduced Martial Law Regulation No 49, banning any material deemed prejudicial to Pakistan's integrity, security, and public order, punishable by imprisonment, lashes, and fines. A defamation ordinance further curtailed press freedom, making the publication of defamatory matter a punishable offense.



# Historical Context

*Continued...*

4. Radio and television also faced censorship, with content strictly controlled to convey authority-friendly messages. Dress codes were enforced for on-screen appearances, leading to public defiance from media personalities



This was described by Hasan Abidi in an interview (Abidi 2005): “During the Zia-ul-Haq’s period, direct pressure from political groups was increased on newspapers. For example, when an organization had captured the city and it also got official patronage, the newspaper received telephone calls that we’re sending a news and this news should be included in the seventh or eighth column on the front page. Such threats were also given that the news should be published or else we’d see you tomorrow, we know where your daughter is studying at which school or by which route your child goes to school. Bomb blasts were carried out on their office, terror was spread in the country and it was felt and anything could be done by force. I believe that the newspapers compete with the steadfastness of the governments, but when the linguistic and religious groups they started to attack on newspapers, they were not condemned by the journalists.



# Historical Context

## *Pakistan's beginnings*

- Musharraf's regime promised media freedom but silenced critical reporting and dissent, raising concerns about censorship and surveillance through regulations such as the 2002 Cyber Crime Ordinance. The Constitution of Pakistan guarantees freedom of speech and expression as a Fundamental Right, as well as the right to access information in matters of public importance. The 18th Amendment added the right to access information to the Constitution, making freedom of speech and the press more effective.





*Chapter Five*

**Lawyer`s Movement**



# Lawyer`s Movement

*Pakistan in 2000s*



- Lawyers' Movement of 2007: A significant political and social movement in Pakistan.
- Initiated in Response to: President Pervez Musharraf's suspension and dismissal of Chief Justice Iftikhar Muhammad Chaudhry in March 2007.
- Role of Lawyers: Legal community took to the streets to protest the unconstitutional removal of the Chief Justice.
- Support from Civil Society: Gained momentum with support from various segments of society, including media professionals and journalists.
- Media's Role: Journalists and media covered the protests, highlighting the importance of freedom of speech in a democratic society.
- Demands: Emphasized the need for an independent judiciary to protect and promote freedom of speech and other civil liberties.
- Success: Movement succeeded in reinstating Chief Justice Iftikhar Muhammad Chaudhry in July 2007.
- Ongoing Challenges: Despite successes, challenges to freedom of speech and media freedom persisted in Pakistan.
- Continuing Efforts: Emphasizes the ongoing need to protect and promote freedom of speech for a vibrant and democratic society in Pakistan.



*Chapter Six*

**International Law  
Covenants**





# International Law Covenants



## Freedom of Speech and the UDHR:

- The Universal declaration of Human Rights is a historic document adopted by the United Nations on 10<sup>th</sup> December, 1948.
- Article 19 of the UDHR specifically addresses freedom of speech:  
“Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”



# THE UNIVERSAL DECLARATION OF Human Rights

**WHEREAS** recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

**WHEREAS** disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

**WHEREAS** it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

**WHEREAS** it is essential to promote the development of friendly relations among nations,

**WHEREAS** the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have

determined to promote social progress and better standards of life in larger freedom,

**WHEREAS** Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

**WHEREAS** a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

**NOW THEREFORE** THE GENERAL ASSEMBLY

DECLARES this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**ARTICLE 1** — All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**ARTICLE 2** — Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether this territory be an independent, trust or non-self-governing territory, or under any other limitation of sovereignty.

**ARTICLE 3** — Everyone has the right to life, liberty and the security of person.

**ARTICLE 4** — No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**ARTICLE 5** — No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**ARTICLE 6** — Everyone has the right to recognition everywhere as a person before the law.

**ARTICLE 7** — All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**ARTICLE 8** — Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**ARTICLE 9** — No one shall be subjected to arbitrary arrest, detention or exile.

**ARTICLE 10** — Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**ARTICLE 11** — 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**ARTICLE 12** — No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**ARTICLE 13** — 1. Everyone has the right to freedom of movement and residence within the borders of each state.

2. Everyone has the right to leave any country, including his own, and to return to his country.

**ARTICLE 14** — 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**ARTICLE 15** — 1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**ARTICLE 16** — 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**ARTICLE 17** — 1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

**ARTICLE 18** — Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**ARTICLE 19** — Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**ARTICLE 20** — 1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

**ARTICLE 21** — 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**ARTICLE 22** — Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**ARTICLE 23** — 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration

involving for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

**ARTICLE 24** — Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**ARTICLE 25** — 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, old age, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**ARTICLE 26** — 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

**ARTICLE 27** — 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**ARTICLE 28** — Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**ARTICLE 29** — 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**ARTICLE 30** — Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

# International Law Covenants

## Freedom of Expression and the ICCPR:

- The International Covenant on Civil and Political Rights (ICCPR) is one of the most significant international human rights instruments. It focuses on protecting and promoting civil and political rights, including the right to freedom of speech.
- Article 19 of the ICCPR specifically addresses the right to freedom of expression. It states:
  1. Everyone shall have the right to hold opinions without interference.
  2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of their choice.
  3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
    - a. For respect of the rights or reputations of others;
    - b. For the protection of national security or public order or public health morals



*Chapter Seven*

**The Exercise of  
Freedom of Speech in  
Pakistan**





# The exercise of Freedom of Speech in Pakistan

In Pakistan, Article 19 of the Constitution guarantees the right to freedom of speech and expression. However, this right is not absolute and is subject to certain restrictions to protect various interests and values.

Article 19 must be balanced with the need to protect individuals from false and harmful statements. While individuals have the right to express their opinions and criticize public figures, they must do so responsibly and within the bounds of truth and good faith.





*Case Study*

**Freedom of Media and  
Free Speech**



# Freedom of Media and Free Speech

## *Case Study*

### Case study 1

#### Rana Muhammad Arshad v. Pakistan

- **Finding:** The Federal Investigation Agency (FIA) abused its powers to retaliate against journalist Rana Muhammad Arshad for his reporting by summoning him without providing reasons, violating his fundamental right to freedom of speech and expression, free press, and public's right to access information as per Articles 19 and 19A of Pakistan's Constitution.
- **Court's Directives:** The Court ruled against FIA's actions, emphasizing the importance of an independent press in a democratic society. It directed the FIA to develop guidelines for investigating journalists and recommended establishing a forum to address complaints related to press freedom violations, urging meaningful consultations with key stakeholders, including journalists' associations, councils, and unions, to address concerns about the abuse of coercive powers by public functionaries, particularly in relation to the Prevention of Electronic Crimes Act 2016 (PECA 2016).

# Freedom of Media and Free Speech

## *Case Study*

### Case Study 2

#### Suo Motu Case No. 4 of 2021

- **Issues Raised:** Harassment, intimidation, and physical attacks on journalists with little accountability for perpetrators; Allegations of government entities violating press freedom, particularly targeting those reporting against the judiciary; Media houses suppressing journalists' independence and promoting specific political narratives for government benefits.
- **Violation of Constitution:** Highlighted violation of Article 18, which guarantees the right to enter any lawful profession or occupation.

**Concerns over Investigations:** Court expressed concern over inadequate investigations into attacks on journalists, especially under the surveillance of the Safe City Project in Islamabad. Chief Justice Evans Hughes of the US Supreme Court about 90 years ago said: "The administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unlawful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press.

Justice Oliver Wendell Holmes of the US Supreme Court: "If there is any principle of the constitution that more imperatively calls for attachment than any other it is the principle of free thought. Not free thought for those who agree with us but freedom for the thought we hate



*Case Study*

**National Security and  
Free Speech**





# National Security and Free Speech

## *Case Study*

Ammar Ali Jan Case:

The case regarding Dr. Ammar Ali Jan concerns a protest where he is alleged to have criticized the state, in particular that “the uniform is behind this terrorism”. While the case is still pending, Dr. Jan has been subjected to ongoing harassment. In June 2020, he was asked by the university where he was teaching to either stay silent or leave, eventually he was forced to quit his job at the university. In November 2020, prior to further planned protests, the authorities issued an administrative order for Dr. Jan’s preventive detention on the grounds that there would be a risk to public order if he were not detained.





*Case Study*

**Defamation and Free  
Speech**



# Defamation and Free Speech

## *Case Study*

### Case Study 1

#### Mir Shakil-ur-Rahman Defamation Case– By Esquare Legal

Journalist Tayyab Baloch of Bol TV was ordered by Additional District and Sessions Judge Muhammad Adnan to pay Rs100 million in damages to Jang/Geo Group and Editor-in-Chief Mir Shakil-ur-Rahman for making defamatory allegations.

The court directed Tayyab Baloch to issue an apology acceptable to the plaintiffs and publish it in a manner and prominence similar to the dissemination of the defamatory contents.

Tayyab Baloch was also instructed to "permanently" refrain from using cyberspace to damage the reputation of Jang/Geo Group and its Editor-in-Chief.

Barrister Safiullah Ghorri, along with his assistants Sarfraz Ahmad Baloch and Hasan Raza, represented Jang/Geo Group in the case filed under the Defamation Ordinance 2002.

The defamation suit filed against Tayyab Baloch was based on his outrageous and sinister allegations on foreign websites, which were found to be false, malicious, and highly defamatory by the court.





# Defamation and Free Speech

## Case Study

### Case Study 2

#### Meesha Shafi v. Federation of Pakistan

Meesha Shafi a well-known Pakistani singer and actress, who accused Ali Zafar, a popular singer of sexual harassment in April 2018. She made the allegations on twitter stating that Ali Zafar had subjected her to inappropriate behavior during rehearsal of a show, this brought the #metoo movement to the forefront of public discourse in Pakistan. Ali Zafar in response vehemently denied the allegations and responded with a tweet of his own, stating that the accusations were false and baseless and expressing the intention to take legal action against Meesha Shafi. Which was subsequently followed by the filing of a Defamation law suit against Meesha Shafi, claiming that her remarks had caused significant damage to his reputation and sought damages for the harm suffered. Meesha Shafi maintained her stance and defended her allegations stating that she had spoken the truth about the harassment she had experienced. Her legal team argued that she had the right to speak out against sexual harassment and that her statements were not defamatory.



#### Pakistani Singer Faces Prosecution for Accusing Pop Star of Groping Her

Meesha Shafi's accusation against Ali Zafar spurred #MeToo movement in conservative country



MailOnline

#### Meesha Shafi loses sexual misconduct case against Ali Zafar, faces three years in prison

Pakistani singer Meesha Shafi who accused Ali Zafar of sexual misconduct has been given three years in prison



Pakistani singer who accused pop star of groping her and sparked country's #MeToo movement faces three years in jail for 'criminal defamation'

Meesha Shafi, 38, claimed Ali Zafar, 40, groped her at recording studio in 2017

MOST POPULAR

Alia Shrivastava's first look poster as Sita in 8000; Sita and Rama Raju entering the same pendant, New York at their love track

Sussanne Khan about separation



*Case Study*

**Sedition and Free  
Speech**



# Sedition and Free Speech

## *Case Study*

### Case Study 1

#### The PTM Leaders Protection Movement in 2020

- The Islamabad High Court in Pakistan dismissed "sedition" charges against 23 rights activists arrested during a protest in the capital.
- The activists were demonstrating against the arrest of Manzoor Pashteen, the leader of the Pashtun Tahaffuz Movement (PTM), which advocates for accountability for alleged military abuses.
- The court ruled that the activists were unfairly targeted and ordered their release on bail, criticizing the use of sedition charges to suppress political dissent.
- This incident is part of a broader crackdown on dissent in Pakistan, with the PTM being one of the few movements openly calling for accountability from the military.
- Journalist Ammar Rasheed and Shahrukh were granted bail by court with the efforts of Esquare Legal.



# Sedition and Free Speech

## *Case Study*

### Case Study 2

2023 P Cr. LJ 100

The petitioner Mufti Kifayat Ullah, was detained under various sections of the Pakistan Penal Code (PPC) and Anti-Terrorism Act, 1997. He was accused of making anti state comments during a television program inciting violence and hatred against the government. A major point of argument was Section 124-A of the PPC, that deals with the offence of sedition, to protect the government from seditious activities that bring hatred or contempt towards the government. The defense on the other hand argued that the charges were baseless and politically motivated. They pointed out that the accused was a prominent political leader and that the case against him was fabricated. The court fully analyzed the allegations surrounding the circumstances to determine whether the offense of sedition was established. Hence, the court found that the provisions Section 124-A could apply to the case and the statements were capable of inciting hatred towards the government, however the court did not give a definitive ruling on the sedition charges. Eventually bail was granted to Mufti Kifayat Ullah upon furnishing a bail bond of Rs. 500,000 with two sureties of the same amount, who was also asked to submit an undertaking to refrain from making anti state comments that could endanger the security of Pakistan.







*Case Study*

# **Blasphemy and Free Speech**



# Blasphemy and Hate Speech

## *Case Study*

### Case Study 1

#### Asia Bibi Case

The case of Asia Bibi (also known as Asia Noreen) is arguably the most high-profile case in which a blasphemy accusation was used to persecute a member of a religious minority. In 2009, Asia Bibi, a Pakistani Christian woman, was arrested for blasphemy for allegedly making insulting remarks about the Prophet Muhammad. Asia Bibi refuted the allegations and said that they stemmed from a dispute with other women who worked with her on a farm and took offense to her, a Christian woman, sharing drinking water with her Muslim co-workers.

A trial court convicted Asia Bibi of blasphemy in November 2010 and sentenced her to death. Her initial conviction was followed by a series of violent events, including the murder by vigilantes of two high-ranking government officials who had advocated for Asia Bibi.

In a surprising turn of events, on October 31, 2018, the Supreme Court of Pakistan acquitted Asia Bibi of charges of blasphemy and ordered her release, almost nine years after her arrest. The Court opined that Asia Bibi's accusers had not proven that she had blasphemed and that the blasphemy allegations had stemmed from her Muslim co-workers taking offense to her drinking water from the same vessel as them. Unhappy with this ruling, hard-line Muslim groups in Pakistan incited protests that resulted in schools, businesses, and public transportation being shut down all over the country. Due to continued concerns about Asia Bibi's physical safety following her acquittal, the Pakistani and Canadian governments helped her move to Canada in May 2019.

Asia Bibi's case is one of many that demonstrate Pakistan's complicated relationship with blasphemy laws and its challenges in maintaining public order in the face of a blasphemy allegation, especially when the accused belongs to a religious minority.

# Blasphemy and Hate Speech

## *Case Study*

### Case Study 2

#### Mumtaz Qadri v. The State

On 4th January 2011, Mumtaz Qadri, acting as an official guard, shot Governor Salman Taseer in Islamabad. Taseer was critically injured and later died from his wounds. Qadri surrendered immediately after the shooting.

During the trial, Qadri admitted to killing Taseer but claimed it was justified as an act of defending Islam against the alleged blasphemy committed by the victim. He argued that Taseer had criticized the blasphemy law and sympathized with a convicted blasphemer, Aasia Bibi. Qadri asserted that his actions were justified due to grave and sudden provocation.

The Supreme Court analyzed the evidence presented in the case, including alleged utterances and interviews by Taseer criticizing the blasphemy law. The court held that no factual or legal justification was proven for Qadri's actions. It rejected the argument that criticizing the blasphemy law constitutes blasphemy itself, stating that seeking improvement in man-made laws for better enforcement does not amount to criticizing the religious aspect of the law. The court found that Qadri acted with the intent to spread fear and insecurity in society, making his actions tantamount to terrorism under Section 6(2)(a) of the ATA.

Thus, the Supreme Court upheld Mumtaz Qadri's conviction under Section 302 and reinstated his conviction under Section 7(a) of the ATA, sentencing him to death.

The Supreme Court's judgment in Mumtaz Qadri v The State showcases a shift towards a less activist court, while also actively critiquing the abuses of blasphemy laws in Pakistan. It firmly establishes that the law does not permit vigilante justice and that blasphemy laws can be criticized without constituting blasphemy itself. The judgment encourages open discussion on the issue of blasphemy and may pave the way for reforms to prevent misuse and abuse of these laws.



*Case Study*

**Officials Secret Act  
and Free Speech**

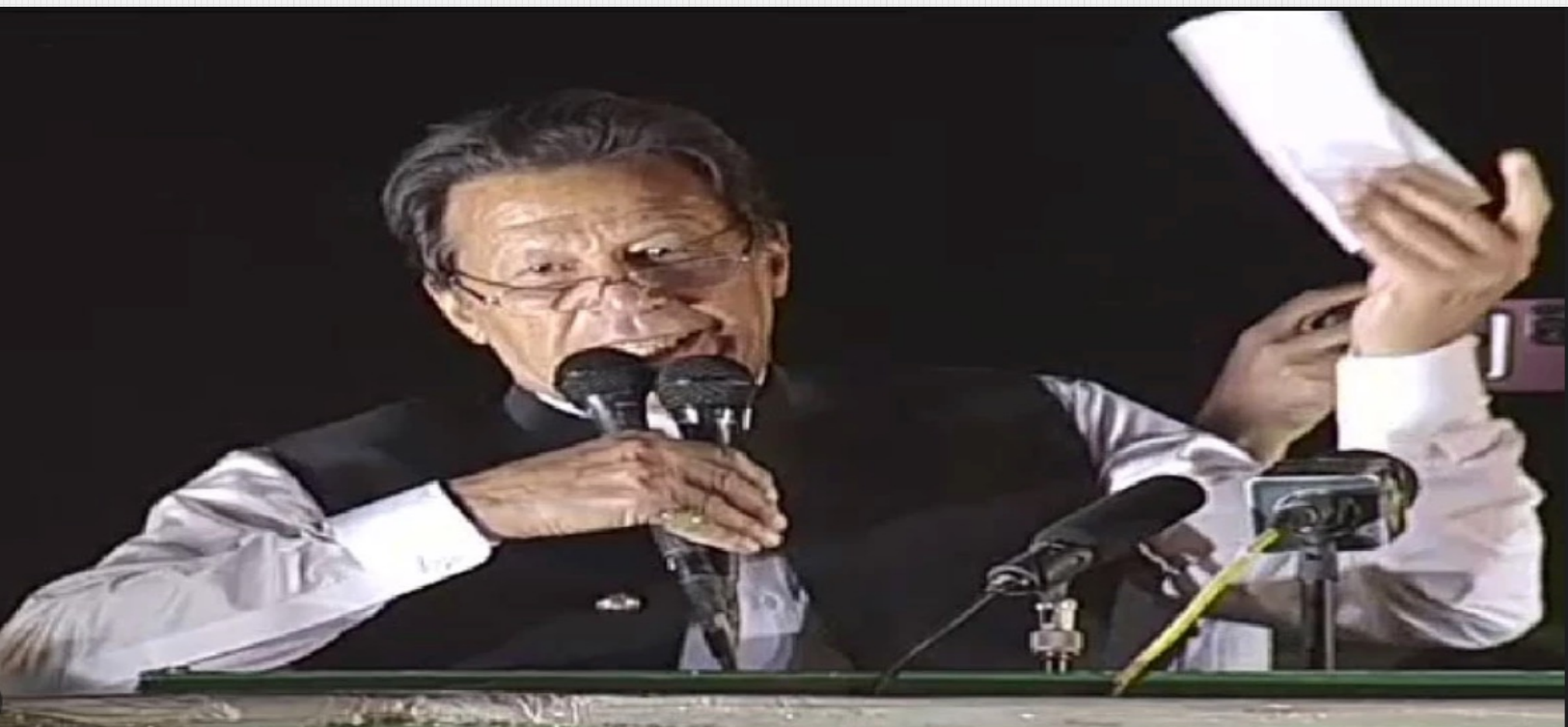




# Officials Secret Act and Free Speech

## *Introduction*

- **Official Secrets Act 1923:** Designed to protect sensitive government information and prevent unauthorized disclosure of classified material that could harm national security. Can be used to prosecute individuals leaking or publishing confidential information without proper authorization.
- **Freedom of Speech:** Constitutionally guaranteed right under Article 19 of the Constitution of Pakistan, allowing citizens to express thoughts, opinions, and ideas freely, including through media and press. Subject to reasonable restrictions to safeguard the integrity, security, and defense of Pakistan.
- **Balance and Challenges:** The challenge lies in striking a balance between national security concerns and the right to freedom of speech. Public interest cases may clash with the need to protect official secrets, especially when information exposes corruption, human rights violations, or matters of public concern.
- **Role of Courts:** Courts and legal authorities play a crucial role in defining the limits of these rights and ensuring a fair balance. They interpret and apply laws, considering factors like the nature of information, potential harm or benefit from its disclosure, and the public interest in making it available. Caution and transparency are vital to avoid stifling legitimate criticism and investigative journalism while upholding national security.



# Officials Secret Act and Free Speech

## *Case Study*

Manthar alias Manoo vs. Federation of Pakistan

### Facts:

- The applicant was convicted under Section 59 of the Pakistan Army Act, 1952, and Section 3 of the Official Secrets Act, 1923.
- He seeks the benefit of Section 382-B Cr.P.C. for his conviction.

### Issue:

- Whether a civilian convicted under the Army Act is entitled to the benefit of Section 382-B Cr.P.C.

### Arguments:

- The applicant contends that he has already served his sentence if the pre-sentence detention period is included and should be granted the benefit.
- The respondents argue that the Army Act does not provide for the benefit of Section 382-B Cr.P.C. and the sentence starts from the day the proceedings are signed.

### Decision:

- The court holds that a civilian convicted for a civil offence under the Army Act is entitled to the benefit of Section 382-B Cr.P.C.
- It cites previous judgments, including *Shah Hussain v. The State*, which support the applicability of Section 382-B Cr.P.C. for such cases.
- The court emphasizes that deprivation of life and liberty during pre-sentence detention must be accounted for and refusing the benefit would be discriminatory.
- It directs the release of the applicant, considering he has already served the sentence, and orders a compliance report from the jail authorities within 15 days.



*Chapter Eight*  
**Conclusion**



# Conclusion

In conclusion, freedom of speech and expression in Pakistan, as enshrined in Article 19 of the Constitution and international conventions, is a crucial pillar of a democratic society. While it provides citizens the right to freely express their thoughts and opinions, it is not an absolute right and may be subject to reasonable restrictions in the interest of various matters.

Challenges persist in ensuring the full realization of this right, such as the misuse of sedition, defamation, and blasphemy laws to suppress dissent and critical voices. Media censorship and harassment further hinder open discussions and investigative journalism, impacting the free flow of information.

However, recent case studies demonstrate the judiciary's efforts to uphold the right to freedom of speech and expression. Courts have ruled in favour of journalists and academics, emphasizing the significance of an independent press and encouraging open debates on sensitive issues.

To safeguard this fundamental right, it is essential for the government to strike a balance between protecting individual liberties and maintaining societal interests. Promoting transparency, ensuring fair trials, and protecting journalists and whistle-blowers are vital steps toward fostering a more inclusive and democratic society in Pakistan. By addressing these challenges, Pakistan can create an environment that values and upholds freedom of speech and expression, paving the way for a more vibrant and informed public discourse.