REPORTED CASE LAW TRENDS ON THE FREEDOM OF SPEECH AND EXPRESSION IN THE ISLAMIC REPUBLIC OF PAKISTAN

AGHS Legal Aid Cell

Foreword

"I regard freedom of expression as the primary right without which one cannot have a proper functioning democracy."

Lord Hailsham

The freedom of speech and expression has been protected as a Fundamental Right by Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973. It is thus a right that every individual in Pakistan can enjoy subject to certain limitations and it is the State's duty to ensure that it is not unreasonably curtailed.

The freedom to freely express opinions and beliefs has remained a hotly debated topic in the legal fraternity.

This booklet hopes to serve as a comprehensive guide on this issue for practicing lawyers in Pakistan.

We will further discuss how Pakistani case law has contributed to creating legal jurisprudence in the country to facilitate or curb the exercise of the fundamental freedom of speech and expression.

We hope this booklet proves conducive in creating awareness in the legal fraternity as to the exercise of one's right to freely express opinions and beliefs.

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The Freedom of Expression: An Overview

What is the freedom of expression?

The word 'speech' has also been used in this Article. The term is more primitive than writing. It is a direct method to communicate one's ideas, but is subject to reasonable restrictions imposed by the law.

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 regardless of frontiers.

The term freedom of expression is sometimes used synonymously with the freedom of speech, but it also includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used.

The freedom of expression is particularly important for the media and press, and it applies to all mediums of communication- including the Internet. The word 'expression' has a wider sense and includes every type of speech, writing, figures, indications, any sign or mark, pamphlets etc. It can be political, social, economic, and religious etc. Expression is a matter of liberty and right. The liberty of thought and the right to know are the sources of expression. Freedom of speech and expression includes in its rubric, every other kind of expression, i.e. press, radio, television and internet.

Some of the laws governing the Right of Speech and Expression include,

- Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973
- Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973
- Contempt of Courts Ordinance, 2003
- Defamation Ordinance, 2002
- The Press Council Ordinance, 2002
- Motion Pictures Ordinance, 1979
- West Pakistan Use of Loudspeakers (Prohibition) Ordinance, 1963
- West Pakistan Maintenance of Public Order Ordinance, 1961
- West Pakistan Press and Publications Ordinance (XXX of 1963)
- Censorship of Films Act (XVIII of 1963)
- Pakistan Electronic Media Regulatory Authority Ordinance (XIII of 2002)
- 295-A & 295-C of the Pakistan Penal Code, 1860
- Chapter XXI (Defamation) of the Pakistan Penal Code, 1860
- Sedition (S. 124-A) of the Pakistan Penal Code, 1860
- S. 12, Security of Pakistan Act, 1952
- Punjab Prohibition of Expressing Matters on Walls Act, 1995
- Balochistan Prohibition Of Expressing Matters On Walls Ordinance, 2001

Freedom of Expression as a Constitutional Right

Article 19 of the Constitution of the Islamic Republic of Pakistan enumerates;

"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 defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, or incitement to an offence."

The Constitutional freedom of speech and expression is extended to two stakeholders;

1. The Citizens of Pakistan
2. The Press of Pakistan

The instant provision was enumerated in Article 8 of the 1956 Constitution and Fundamental Right No.9 of the 1962 Constitution;

"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 relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Two changes were made subsequently in this Fundamental Right in the 1973 Constitution;

a. Exclusion of the term, 'defamation' (Fourth Constitutional (Amendment) Act, 1975)
b. Inclusion of the phrase, 'The glory of Islam' (Original 1973 Constitution)

The seminal judgment on the freedom of speech and expression is Masroor Ahsan v. Ardeshir Cowasjee. **(PLD 1998 SC 823)**

Para 59

Munawar Ahmad Mirza, J.: *"Article 19 of the Constitution while unambiguously recognizing fundamental rights of every citizen with regard to freedom of speech, expression; and freedom of press, subject however, to limitations prescribed therein. A citizen demanding freedom under Article 19 is therefore necessarily obliged to ensure and protect glory of Islam; integrity and security or defense of Pakistan, or any part thereof. The Constitutional obligation further commands that exercise of such right by the citizen shall not affect friendly relations of Pakistan with foreign states, or cause public disorder. It is mandated that citizen shall not equally violate principles of decency; established norms of morality nor shall he cause any act calculated towards contempt of Court.*

Thus liberty of speech or expression and freedom claimed by the citizens shall always be subject to Constitutional sanctions and law."

Para 60

Munawar Ahmad Mirza, J.: *"No doubt, every citizen has an inalienable right to receive information and express what he believes to be right. But simultaneously important questions arise:*

(i) *Whether freedom of the citizen to speak, express, publish is unfettered, unbridled and totally uncontrolled or should it be regulated by legal or moral constraints?*

(ii) *Whether or not a citizen when demanding freedom can be permitted to transgress or encroach upon freedom of other citizens;*

(iii) *Whether the freedom of press or speech could be construed to permit obscenity, immorality or indecency."*

Para 62

Munawar Ahmad Mirza, J.: *"It may be seen that freedom of speech predicates freedom to communicate intellect and knowledge and promote ideas even in hostile atmosphere with freedom to dissent, without being confined to any specified field of human interest. It pre-eminently seeks free exchange and fearless publication without infringing existing law for improving institutional performance and society in every field of life."*

Para 63

Munawar Ahmad Mirza, J.: *"It is now established that citizens also enjoy freedom of information. Therefore, audio, video, print media freely is used for beneficial purposes to supply data-based information, for general welfare and public good. Obviously, right to publish, speak or express cannot be disturbed or thwarted except to the extent prohibited by the Constitution or law. Sometimes said, 'Freedom cannot be stretched or swayed across boundaries by whims or idiosyncrasies, which may infringe the law'. It may be mentioned here that the object of editorials, publications and news is to provide new ideas with up to date information suggesting guidelines for improving upon the existing unsurmountable problems and thereby, kindling the light of knowledge towards the right direction.*

Whenever the principles of freedom regarding speech, expression or press are canvassed by comparison with other States, it is mandatory to correlate the same with our social, cultural, religious and economic background as well as keep it in the perspective of Constitutional restraints and law. In the same way and same sense, the citizen while desiring to exercise freedom of press or expression under Article 19 of the Constitution must observe restrictions of decency, morality and other specified limitations including the Principles of Policy applicable with regard to Contempt of Court, and abstain from inciting any other for committing an offence. It is quite evident that any citizen seeking protection under a particular provision of the Constitution has a corresponding obligation to solemnly obey the provisions in entirety and also respect those rights which may be guaranteed to others."

Para 91

Munawar Ahmad Mirza, J.: *"Having considered the impact of precedent case-law and developing liberal approach with regard to action for contempt of Court, when looked in the perspective of fundamental rights, especially freedom of Press, speech and expression, the best amongst final conclusions appears to be of striking a balance between the two. The fundamental rights referred above are enshrined in Article 19 of the Constitution which also specifically mentions about restrictions imposed on the exercise of such facility by a citizen. Besides, the fundamental rights are also subject to other provision of the Constitution including Article 204, and restrictive laws existing in the country."*

Para 92

Munawar Ahmad Mirza, J.: *"Fundamental rights wherever exercised, impose corresponding restrictions for ensuring protection of collective benefit and safety including preservation of the society and its morals.*

Absolute liberty of an individual for doing what he pleases even with regard to innocent matters can sometimes be detrimental. Therefore, object of the exercise of rights should be subservient to common good. Bare perusal of Article 19 of the Constitution postulates reasonable restraints whereby citizen while exercising his right of freedom of speech or expression and freedom of Press is prohibited to conduct himself in any manner which may violate security or defense of Pakistan or a part thereof, or could affect friendly relations with Foreign States. In the same way citizen under freedom clause is bound to ensure that his freedom does not strike against public order, decency or morality or provisions regarding contempt of Court. The right of freedom further prohibits incitement of citizen for committing any offence. Therefore, owning the responsibility of honoring the dictates of the Constitution, the Supreme Law of the country firmly embodied in Article 19 of the Constitution, every citizen while making speech, expressing himself or causing publication in the press is obligated to refrain from all such acts which may be calculated to constitute contempt of Court. For emphasis we may impress upon normal circumstance, which under the Constitution disdains immoral, indecent, anti-State, or un-Islamic Publications, expressions or speeches. It equally creates an obligation for the citizen, while exercising his right to ensure that his comment with regard to conduct of a Judge or the Court should not be vocative of law. From scrutiny of the precedent case-law and all relevant factors coupled with fundamental rights, the Authors of editorials/articles, Publishers, Editors of newspapers or journals or Advocates have bounden duty to avoid using strikingly pungent language which smacks of loud bitterness or aimed at emitting intemperate expression or abnormal understanding suggesting scandalization of the Court or cause obstruction to the impartial administration of justice."

1. Mahmud Zaman v. District Magistrate, Lahore **(PLD 1958 (WP) Lah. 651)**

M. R. Kayani, C. J.: *"It was held that Article 8 of the 1956 Constitution requires that every citizen shall have the right to express himself freely; it does not mean that he can be restrained before he has actually expressed himself. Whatever restraint is to be placed on him will naturally relate to the manner of his expression. If he is required to fulfill a condition before actually expressing himself; the restraint will be of a preventive nature and that kind of restraint, in our opinion, is not contemplated by Article 8..."*

2. Muzaffar Qadir v. District Magistrate **(PLD 1975 Lah. 1198)**

Nasim Hassan Shah, J.: *"Every citizen is free to say or publish what he wants, provided that he does not trample upon the rights of others and this freedom could become a mockery and delusory if every man was at liberty to publish what he preached..."*

3. Independent Newspaper Corporation (Pvt.) Ltd. v. Chairman, Fourth Wage Board and Implementation Tribunal for Newspaper Employees **(1993 SCMR 1533 at page 1544)**

Muhammad Afzal Lone, J.: *"Article 19 of the Constitution guarantees right of freedom of speech and expression. It ordains that there shall be a freedom of press subject to reasonable restrictions imposed by law elucidated therein. The freedom of expression includes the right to receive information through organs of public opinion and the freedom of press on its turn rests on the assumption that there is a wide dissemination of information. Such dissemination inevitably contemplates absence of restraints."*

4. Mian Muhammad Nawaz Sharif v. The President of Pakistan and others **(PLD 1993 SC 473)**

Muhammad Afzal Lone, J.: *"The right of the citizenry to receive information can well be spelt out even from the "freedom of expression" guaranteed by Article 19 of the Constitution, of course, subject to inhibitions specified therein. Such right must be preserved. Thus, as head of the Government it was the essential responsibility of the Prime Minister to cultivate knowledge in the populace and to enlighten them about the burning issues."*

5. Jameel Ahmed Malik v. Pakistan Ordnance Factories Board **(2004 SCMR 164 at pg. 178)**

Nazim Hussain Siddiqui, J.: *"In a democratic set-up, freedom of speech expression and freedom of press are the essential requirements of democracy and without them the concept of democracy cannot survive. From perusal of Article 19, it is, however, absolutely clear that above the right is not absolute but reasonable restrictions on reasonable grounds can always be imposed. Reasonable classification is always permissible and law permits so."*

6. Liaquat Ali Ghangro v. Province of Sindh **(2007 CLC 923)**

Sabihuddin Ahmed, C.J.: *"In other words there must be some reasonable nexus between the law or the executive action taken in derogation of fundamental rights and the objects of the proclamation of emergency. Ex facie denial of a right to form Associations and Unions to a particular class of persons in one Province has nothing to do with dealing with the situation of a country being threatened by external aggression. Even otherwise, it appears wholly incongruous that all the citizens should stand denuded of their basic rights of movement, association, business, expression and property in their ordinary evocation of life having nothing to do with a national emergency or the Parliament…"*

7. Wali Muhammad Khoso v. Federation of Pakistan through Federal Secretary Information Government of Pakistan **(2010 CLC 546)**

Faisal Arab and Irfan Saadat Khan, JJ.: *"There is no denying the fact that freedom of speech and expression guaranteed under Article 19 of the Constitution doesn't entitle the print or electronic media to launch a campaign against any person which is defamatory or is directed to harm and damage his political life on baseless grounds. There cannot be any justification for doing so as this right is not absolute nor is it exercisable in all circumstances. Article 19 does not give constitutional protection to a defamatory utterance nor is the right to exercise freedom of speech and expression exempted from the liability of libel and slander. However, to seek any legal relief against such an abuse of freedom of speech and expression, the appropriate remedy under the ordinary law is always available to the person who is so aggrieved i.e. he should have locus stand to initiate such proceedings."*

8. Shariq Saeed v. Mansoob Ali Khan **(2010 YLR 1647)**

Muhammad Ali Mazhar, J.: *"Freedom of expression is one of those fundamental rights which are considered to be the corner stone of democratic institutions. The right of free speech extends to all subjects which affect ways of life without limitation of any particular fact of human interest and include in the main term "freedom of expression". Moreover the right of freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication. However, the right of freedom of speech and expression is not unfettered and unbridled. Absolute and un-restricted individual rights do not exist in any modern State and there is no such thing as absolute and uncontrolled liberty."*

While allowing freedom of speech and expression as a fundamental right, our Constitution also provides under Article 14 that the dignity of man and, subject to law, the privacy of home shall be inviolable. The principle is required to be extended further to the cases where any defamation is caused, because the human dignity, honor and respect is more important than physical comforts and necessities. No attempt on the part of any person individually, jointly or collectively to detract, defame or disgrace another person, thereby diminishing, decreasing and degrading the dignity, respect, reputation and value of life. Thus provisions providing for the dignity of man as a fundamental right is the most valuable right. Dignity of man is not only provided by Constitution of Pakistan, but according to history and belief under Islam, great value has been attached to the dignity of man and the privacy of home. So in all fairness, while exercising the right of freedom of speech and expression, one has to keep in his mind that he has also a corresponding responsibility and duty to ensure that his freedom of expression or speech may not transgress the limits of freedom beyond the boundaries of Article 14 of the Constitution."

9. All Pakistan Muslim League v. Government of Sindh **(2012 CLC 714 Kar.)**

Munib Akhtar, J.: *"Fundamental rights have been placed in the Constitution not merely to protect acts, conduct and views that we may approve of but also, and especially, to protect views with which we may disagree or which we may even find unpleasant or unacceptable. In the context of freedom of speech (and the expression of views at a political meeting is one form of speech), which of course engages Article 19, what therefore is protected is not merely speech that the listener may approve of or agree with, but also speech that he may disagree with* or even hate."

10. Workers' Party Pakistan v. Federation of Pakistan **(PLD 2012 SC 681)**

Iftikhar Muhammad Chaudhry, C.J.: *"The freedom of association, as enunciated by Article 17 of the Constitution, confers a Fundamental right on every individual to partake in the political governance of the State, whilst concurrently reinforcing the constitutional mandate to protect and advance this right through a democratic system. The 'freedom of assembly' (Article 16) and 'freedom of speech' (Article 19) also serve to realize this constitutional imperative..."*

11. Province of Sindh through Chief Secretary v. MQM through Deputy Convener **(PLD 2014 SC 531)**

Para 44

Tassaduq Hussain Jillani, C.J.: *"Similarly, the freedom of speech and expression (Article 19) encases the right of an individual to express his views and opinions and engage in dialogue without fear of misplaced sanctions and State intervention, but simultaneously possesses the right to remain silent."*

12. Arshad Mehmood v. Commissioner/Delimitation Authority, Gujranwala **(PLD 2014 Lah. 221)**

Para 28

Syed Mansoor Ali Shah, J.: *"Freedom of expression under Article 19 includes the freedom to express a political choice through a vote and through a free, neutral and transparent electoral system. Going to the ballot is the collective expression of freedom of a nation. Right to equality under Article 25 guards against electoral discrimination and ensures electoral equality. The principle of "one man one vote" gets its security and strength from the constitutional right to equality.*

Quaid-e-Azam in his Presidential address to the Constituent Assembly said: "If you change your past and work together in a spirit that every one of you, no matter to what community he belongs, no matter what relations he has had with you in the past, no matter what is his colour, caste or creed, is first, second, and last a citizen of this State with equal rights, privileges and obligations, there will be no end to the progress you will make." 'Political Justice' blossoms under the shade of these fundamental freedoms."

Para 31

Syed Mansoor Ali Shah, J.: *"In a constitutional democracy, a vote is a symbol of political dignity and freedom of a citizen. It embodies freedom of choice, expression, equality and the license to participate in the political life of a nation and the right to establish self-government. Life of a citizen in a representative democracy demands a life of equal participation in the establishment of a democratic State. The words of Saad Saood Jan, J in Nawaz Sharif Case are instructive: "There seems little doubt that the paramount consideration before the Constitution-makers was that no section of the citizenry no matter how small it might be, should be deprived of equal participation in the national life and no one should feel that he has not had a fair deal." This freedom of expression and participation is actualized through a vote."*

13. Pakistan Broadcasters Association and 10 others v. Pakistan Electronic Media Regulatory Authority through Chairman and another

(PLD 2014 Kar. 630)

Aqeel Ahmed Abbasi, J.: *"From careful reading of Article 19, it can be gathered that the right of a citizen of Pakistan relating to freedom of speech and expression as well as freedom of the press has been recognized as a fundamental right, whose enforcement can be sought through law.*

However, that right is also not absolute, but it is subject to reasonable restrictions which may be imposed by any law. It can be safely concluded that the rights of a citizen as guaranteed under Articles 18 and 19 of the Constitution of Pakistan are not absolute or unfettered, but the same are subject to law and reasonable restrictions which may be imposed by law."

14. Contempt Proceedings Against Imran Khan, Chairman, Pakistan Tehreek-i-Insaf **(PLD 2014 SC 367)**

Anwar Zaheer Jamali, J.: *"...We may observe that politicians and other public figures having their say and a following amongst the public are expected to use more decent and guarded language and have to be more careful in the selection of words in public gatherings or press conferences so as to show their intellect, maturity of mind and wisdom qua respect to various national institutions, and to present themselves, as role models for the society at large."*

Constitutional Limitations on the Freedom of Speech and Expression

There are eight restrictions stated on the freedom of speech and expression within Article 19 of the Constitution of Pakistan, 1973.

Therein forth, the freedom of speech and expression is not an absolute right and it may be curbed if it surpasses any of the following restrictions;

1. Against the glory of Islam
2. Contravenes any integrity, security or defense of Pakistan
3. Harms friendly relations with Foreign States
4. Disturbs public order
5. Causes an impediment on decency
6. Causes an impediment on morality
7. If the remarks lead to the incitement of an offence
8. If it is in relation to the Contempt of Court

These will be discussed one by one.

i. Glory of Islam

The term 'glory of Islam' has been included in Article 19 in the 1973 Constitution. It was not a part of the restrictions enumerated on the freedom of expression in the 1956 or the 1962 Constitutions.

One can assume that this restriction means that no one, in exercising their freedom of speech and expression, can make derogatory remarks or raise propaganda against Islamic principles.

However, case law trends as to the interpretation of the term have remained minimal.

Qazalbash Waqf v. Chief Land Commissioner **(PLD 1990 SC 99, Pg.108)**

Muhammad Afzal Zullah, J.:*"This expression 'glory of Islam' should not cause raising of so called modernists' eye-brows nor should it treated as a mere cliché. It is considered as one of the laudable objects of a Muslim State and thus has been safeguarded by our constitution, which is no less modern, than any other. See Art. 19, wherein an important Fundamental right enforceable by the Constitution, is controlled, amongst others by the needs for the "glory of Islam". This when read together with both parts of Art. 40, make it obligatory on our State to work for it. It is all in accord with the Islamic Injunctions."*

Zaheeruddin v State **(1993 SCMR 1718)**

Abdul Qadeer Chaudhry, J.:*"It was also argued that the phrase glory of Islam as used in Article 19 of the Constitution cannot be availed with regard to the rights conferred in Article 20. Article 19 which guarantees freedom of speech, expression and press makes it subject to reasonable restrictions imposed by law in the interest of glory of Islam etc., and decency or morality. The restrictions given therein cannot, undoubtedly, be imported into any other fundamental right. Anything, in any fundamental right, which violates the Injunctions of Islam thus must be repugnant. It must be noted here that the Injunctions of Islam, as contained in Qur'an and the Sunnah, guarantee the rights of the minorities also in such a satisfactory way that no other legal order can offer anything equal. It may further be added that no law can violate them."*

Masroor Ahsan v. Ardeshir Cowasjee. **(PLD 1998 SC 823)**

Para 61

Munawar Ahmad Mirza, J.: *"On bare perusal of relevant Constitutional provisions, the answer would be certainly in negative. Therefore, while invoking concepts of freedom we cannot by any means ignore Islamic Polity, social order and unwritten moral restrictions which are embodied in the national character. While borrowing legal theories and precedent case-law; a citizen has to be mindful about paramount religious, cultural or social textures and basic features by avoiding perversity of thought suggestive of violence, aggressiveness expressions tending to promote anarchy, writing affecting solidarity of country, provoking towards contravention of existing laws or prejudicing glory of Islam in the garb of freedom or liberty whether for speech or press."*

ii. Integrity, security and defense of Pakistan

Interpretation of the term, 'integrity, security and defense of Pakistan' is limited in light of Article 19 of the Constitution of Pakistan, 1973.

Hussain Bakhsh Kausar v. The State **(PLD 1958 Pesh. 15)**

Muhammad Shafi, J.: *"Freedom of speech, subject to the restrictions mentioned above is essential, because without it the society based on the ideas of peace, order, or justice, cannot take shape, nor can the people who wish to live in freedom can be assured of greater security guaranteed to them under the Constitution. Constitution, as is clear from the wording of Article 8, has been very careful to secure to even most repellent of the citizens the common right of free expression so long as it does not transgress the limitations placed by law. ."*

The police and the people in authority must change their outlook now and stop the unnecessary harassment of the people by censoring the letters of the citizens of Pakistan, tapping their telephones, and keeping a watch on their activities except in the case of the known traitors and treason-mongers because that amounts to the negation of the fundamental right guaranteed to the people by the Constitution. Freedom of expression of one's views is a gift of the Constitution, and it cannot be abridged by the people in authority so long as it is not intended to create a chaos in the country or disrupt or destroy it. In my view, it is permissible for a citizen to hold up the men who are charged or have been charged with the executive Government of our country and the care of her destinies to ridicule and contempt if they are guilty of mal-administration. It will be absurd to suggest that a citizen has no right to advocate the change of the Government of one political party, even if it commits blunders and betrays the trust reposed in it. It is high time that the people in power realized that they have no absolute power over the lives and conduct of the persons who reside within their jurisdiction. A man is entitled to his opinion and is within his right to express it. The citizens of Pakistan are free and they must be allowed to live in freedom and the law of the land should conform to this freedom."

Nawabzada Nasrullah Khan v. The District Magistrate, Lahore and another

(PLD 1965 (W.P.) Lah. 642)

Muhammad Akram, J.: *"Fundamental Right No. 6 ensures that every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order. In a way, this right is cognate to the right of movement by which subject to any reasonable restrictions imposed by law in the public interest, every citizen has the right to move freely and go anywhere he likes and also to the Right of Freedom of Speech and expression in hearing to the citizens of Pakistan.*

So that the people can go to and assemble at a place and speak freely subject to the reasonable restrictions imposed by law in the interest of the security of Pakistan, public order etc. etc. In U. S. v. Cruikshank ((1876) 92 U S 542) it was remarked that "The very idea of Government, republic in form, implies a right on the part of its citizens to meet peaceably for consultation in respect of public affairs and to petition for a redress of grievances". But absolute and unrestricted individual rights do not exist in any modern State and there is no such thing absolute and uncontrolled liberty. The collective interests of the society, peace, and security of the State and the maintenance of public order are of vital importance in any organized society. Fundamental Rights have no real meaning if the State itself is in danger, and. disorganized. If the State is in danger the liberties of the subjects are themselves in danger. It is for these reasons of State that an equilibrium has to be maintained between the two contending interests at stake: one the individual liberties and the positive rights of the citizen which are declared by the Constitution to be Fundamental and the other the need to impose social control and reasonable limitations on the enjoyment of those rights in the interest of the collective good of the society.

The State v. Pakistan Medical and Dental Council, Islamabad

(1990 CLC 1500)

Muhammad Munir Khan, J.: *"Freedom of expression does not give license to damage the honor and prestige of an individual or of the country and the nation."*

High Court Bar Association v. Government of Balochistan through Secretary, Home and Tribal Affairs Department **(PLD 2013 Quetta 75)**

Qazi Faez Isa, C.J.: *"Extremist hate literature, wall-chalking and threatening and spiteful press releases are not permissible because the same are contrary to the injunctions, undermine the integrity, security and defense of Pakistan, public order, decency and morality. The same also are also crimes under the laws of Pakistan, and they incite others to commit crime."*

iii. Friendly relations with Foreign States

A bare perusal of this limitation would tell the reader that this limitation seeks to curb the freedom of speech and expression to the extent where it harms Pakistan's international relations.

The State v. Abdul Ghaffar Khan **(PLD 1957 (W.P.) SC 142)**

Shabir Ahmad, J.: *"I am further clear in my mind that by making the speeches the accused brought the Government established by law in Pakistan into hatred and contempt and excited feelings of disaffection towards that Government. That the creation of hatred and contempt was his intention is clear from the fact that he blamed the Government of Pakistan of all kinds of atrocities. It needs no great imagination to know that if "A" tells "B" that "C" has disgraced and dishonored his womenfolk, has killed his relatives and showered bullets on his children and brothers, "B" can have no love for "C" who is stated to have done all these things. Nor can anything but contempt of the Government in Pakistan result if it is asserted that in the eye of the foreigners Pakistan has less value than the carcass of a dead dog."*

iv. Public Order

Qari Abdul Hameed Qadri v. District Magistrate, Lahore

(PLD 1957 Lah. 213 at page 217)

A.R. Changez, J.: *"Public order includes, danger to human life and safety and the disturbance of the public tranquility falls within the purview of this expression."*

Ramji Lal Modi v. State of U.P. **(PLD 1957 537 SC India)**

S. R. DAS, C. J.: *"If, therefore, certain activities have a tendency to cause public disorder, a law penalizing such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place section 295-A does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalizes only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalizes such activities, is well within, the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19 (1) (a)."*

Mian Tufail Muhammad v. The State **(PLD 1973 Lah. 747)**

Karam Elahee Chauhan, J.: *"The speech of the petitioner attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards it. It makes the present Government responsible for all evils which have be fallen this Country. It accused that radio, television, newspapers propaganda was being carried out to give an impression to outside world that Pakistan's rulers were enemies of Islam, enemy of "Deen" (i.e., religion). It attempts to promote feelings of enmity and hatred between different classes of the citizens of Pakistan. The speech is such which is intended or is likely to prejudice Pakistan relationswith a foreign power, namely, Russia. It is intended or likely to cause disaffection among or prejudice or prevent or interfere with the discipline of the performance of their duties by members of the Armed Forces and brings the same into hatred and contempt. It causes an alarm to the public and, therefore, is such which is punishable under section 124-A of the P.P.C. It is open for example to a writer to criticize any policy of the Government as permitted by Explanation to section 124-A, PPC but if he proceeds to attribute base motives to Government of having deliberately ruined the subjects etc., he will be liable to be punished. Similarly, it is not fair to attribute every calamity that falls to the country and peoples suffering to the Government. A man may comment upon any measure of Government legislative or executive and freely express his opinion upon it. But if he in the course of comments holds up the Government itself to the hatred of his listeners as for instance by attributing to it every sort of evil and misfortune suffered by the people, accusing it of hostility and indifference to the people, then he is guilty under section 124-A, PPC and the Explanations will not save him. It is further to be remembered that the gist of the offence under section 124-A PPC, lies in the intention of the speaker or the writer.*

Where a person says in his speech that he himself it is follower of the precept of non-violence but at the same time covertly praises disaffection towards State and where throughout his speech he insinuates various disabilities as for example of everyday life to be due to the present Government, there is an intention on his part to bring the Government into hatred and he commits an offence. It may further be pointed out, whether the words are seditious or not, is to be determined by the Judge and is not to be left to the judgment of witnesses."

Municipal Commissioner, K. M.C. v. Akbar Shah **(PLD 1988 SC 393, pg.400)**

Ahmad Ali U. Qureshi, J.: *"An act which concerns only an individual and does not amount to an activity prejudicial to public peace and tranquility is not prejudicial to public order."*

Thus, it must be concluded that an act or speech that hurts the sentiments of the public at large will fall within the purview of the restrictions placed on the freedom of expression and speech.

v. Harms Decency or Morality

The Crown v. Saadat Hasan Minto **(PLD 1952 Lah. 384)**

Muhammad Munir, C.J.: *"It is true that morality and obscenity are comparative terms and what is obscene or immoral in one society may be considered to be quite decent and moral in another. But while considering the question whether certain words or representations are obscene or not, one has to apply standards that are current in society in which those words have been uttered or representations have been made. In the present state of society in this country or anywhere else in the civilized world, there can be no doubt that a description of the acts preparatory to sexual intercourse, however graphic or lifelike that description may be, would be considered obscene."*

Mehtab Jan v. Municipal Committee, Rawalpindi **(PLD 1958 Lah.929)**

Para 11

M. R. Kayani, C. J.: *"Thus Article 8 gives the right of free speech and expression subject to reasonable restrictions imposed by law in the interest of decency and morality. The only reason for express mention of decency and morality in this Article can be that decency and morality may be more or less directly involved in the exercise of the right guaranteed by this Article."*

Para 12

M. R. Kayani, C. J.: *"Morality and decency are as fundamental as the fundamental rights themselves, and in the context of our Constitution, bearing in mind the preamble and the directive principles, a fundamental right is like the moon and morality is like the disk of light surrounding it."*

Yaqub Beg v. The State **(PLD 1960 (W.P.) Lah. 172)**

A.S. Faruqui, J.: *"...'Obscenity' as understood in law consists of publishing or exhibiting such matter or object which has the tendency to corrupt the minds of those who are open to immoral influences by exciting in them sensuality and carnal desire. In determining whether a certain picture or writing is or is not obscene, it would not do to apply the test of an artist, because if that were so, obscenity perhaps would never be culpable for to people to profess to represent art perhaps nothing might be obscene unless the so-called object of art is clumsy, vulgar, commonplace and wholly lacking in technical efficiency. But for the purposes of construing, 'obscenity', in penal law- this standard would be wholly inapplicable."*

"...In order to determine whether a picture or writing is obscene or not, it would also be necessary to see the prevailing normal standards and conditions of the society in which such an object is circulated, or is likely to be seen or read. Because it may be that what may be considered obscene in a strictly religious or dogmatic society might not be so considered by those who claim to be of more advanced ideas and of liberal way of thinking."

Morality has been defined in Benazir Bhutto v. Federation of Pakistan

(PLD 1988 SC 416, pg. 526)

Muhammad Haleem, C.J.: *"In common parlance the word "morality" occurring in Article 17(1), is far vaguer than the word decency. The difficulty of determining what would offend against morality is enhanced by the fact that not only does the concept of immorality differ between man and man, but the collective notion of society also differs amazingly in different ages. All that can be said is that the antonym of the word "morality" according to the existing notion depends upon acts which are regarded as acts of immorality by the consensus of general opinion. However, it may be pointed out that owing to ethnic, cultural and even physiological differences, it is not possible to formulate a universal standard of morality. Thus notions of morality vary from country to country and from age to age and the international community has not yet been able to settle any common code of morality. This is because like all other social ideas, ethical ideas are largely shaped or influenced by the exigencies of a particular society. Morality and obscenity are comparative terms and what is obscene or immoral in one society may be considered to be quite decent and moral in another.*

While considering the question whether certain words or representations are obscene or not, one has to apply standards that are current in the society in which those words have been uttered or representations made."

vi. Commission of or Incitement to an offense

The State v. Sardar Attaullah Khan Mangal **(PLD 1967 78 SC)**

Cornelius, C.J.: *"The gist of the offence, therefore, lies in the exciting or attempting to excite hatred, contempt or disaffections towards the Government established by law. It is, however, said that this necessarily brings in the question of motive and the intent with which the words were uttered or written and therefore, to gather this intention of the speaker or the writer the truth or falsity of the facts forming the subject-matter of the comments becomes very relevant. If the statements are factually incorrect then prima facie the intention cannot be a bona fide one. But does it follow from this that if the statements are factually true then the intention must necessarily be bona fide or harmless? A person may no doubt lawfully express his opinion even in strong terms on any public matter however distasteful it might be to others, he may assail his rival politicians, he may even criticize the Government of the day and may warn the executive of the day against taking a particular action, but does this entitle him to do so in a language which is calculated to engender feelings of hatred or contempt or to rouse passions to such an extent as to incite listeners to rebellion or insurrection or to use of violence to get rid of the object of hatred or contempt? The answer is that if he uses such language, then whatever his motive and whatever his intention, it will be difficult for him to escape from the mischief of this section. "The test", as observed by Coleridge, J. in a case of seditious libel is not either the truth of the language or the innocence of the motive with which he published it but*

the test is this: was the language used calculated, or was it not, to promote public disorder or physical force, or violence in a matter of State? It may be added having regard to the wording of section 124-A, PPC was the language used calculated, or was it not, to bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards the Government established by law."

Ghulam Ahmad v. Punjab Province and another **(PLD 1976 Lah. 773)**

K.M.A Samdani, J.: *"In the context of the election in Constituency, Lahore 6, which was held on the 19th of October 1975, it is obvious that the speech made by the detenu was a part of the election campaign, and if a citizen is not permitted the freedom to criticize the Government and the persons in power even in the course of an election campaign, then it would amount to a mockery of the guarantee of freedom of speech and expression enshrined in the Constitution. This freedom, however, does not imply a license to incite violence or to threaten peace and safety. But in the utterances attributed to the detenu we have not been able to find any incitement to violence even when read with reference to the context of the full speech. Reference to the events in Bangladesh resulting in the assassination of Sh. Mujib-ur-Rehman was obviously made as a lesson to all that even a popular leader like Sh. Mujib-ur-Rehman could sometimes come to a sorry end. But it is not possible to infer that the detenu was trying to incite the public to enact the same drama in Pakistan."*

Ghulam Sarwar Awan v. Government of Sindh **(PLD 1988 Kar. 414)**

Ajmal Mian, J.:*"Every citizen is expected and is required by law not to make any statement or communicate through any media which may have the effect of creating/increasing hatred and animosity between different ethnic groups."*

The concept behind this limitation is to ensure that no individual's freedom of speech or expression harms the social fabric of Pakistan.

Contempt of Courts has been dealt with separately in this booklet.

The usage of loud speakers, however, was held to be imperative in voicing the opinions of the public;

Khawaja Muhammad Safdar, M. P. A., Lahore v. Province of West Pakistan and others **(P L D 1964 (W. P.) Lahore 718)**

S.A Mahmood, J.: *"The use of loud-speakers finds no mention in the Right No. 9 (freedom of speech and expression in the 1962 Constitution), but the use of loud-speakers is "a necessary accompaniment of public speaking and indispensable instrument of effective public speech." The denial of permission to use a loud-speaker, means a denial of the right to communicate one's views and thoughts even to those who want to hear them. Section 2 of the West Pakistan Use of Loudspeakers (Prohibition) Ordinance, 1963 places a previous restraint on the right to public speaking and to be heard. It not only places a previous restraint on the right, but also an arbitrary and an uncontrolled discretion in an executive authority to refuse a license or the permission for any reason or no reason at all. The section is also capable of being used discriminately, as the Deputy Commissioner may grant permission to one person or party and refuse it to another, there being no guiding principles laid down by the legislature, no check and no objective standard or control on the exercise of the power."*

It can thus be seen that, except for the law governing contempt of Courts, there is little or no case law as to the constitutional restrictions placed on the freedom of speech and expression in Pakistan.

There is no definitional yardstick of what these limitations include. Hence, in the absence of such guidelines, it can be argued that the restrictions on citizens' freedom of speech and expression can be curbed arbitrarily by the State.

Case law trends suggest a dire need for the judiciary to define and limit the scope of the limitations on the freedom of speech and expression.

Case Law Trends on the Constitutional Right of the Freedom of Press

What is the Freedom of Press?

The freedom of speech and expression has also been granted to the press in Pakistan by virtue of Article 19 of the Constitution of Pakistan, 1973.

Begum Zeb-un-Nisa v. Pakistan **(PLD 1958 SC (Pak) 35)**

Muhammad Munir, C.J.: *"...We should not be taken to mean as laying down that the freedom of speech and expression guaranteed by the Constitution of Pakistan implies a freedom for her citizens to publish such attacks on the Head of the State, and that if he be so vilified the only course open to him to vindicate himself is to appear as an ordinary plaintiff or a prosecutor in a Court of law. The Constitution expressly provides that the freedom of speech and expression is subject to reasonable restrictions to be imposed by law and it can never be contended that the right to free speech includes the right to defame or the right of the Press to undermine the security of the State. All that we say in this case is that section 12 of the Security of Pakistan Act, in so far as it permits the Government to prohibit the publication of a newspaper for any reason whatsoever, has, after the Constitution become unenforceable."*

Muhammad Muzzaffar Khan v. The State **(P L D 1959 (W. P.) Peshawar 77)**

Muhammad Shafi, J.: *"The purpose of the Constitution is that there should be as few restrictions on the freedom of the Press in the light of the conditions prevailing in a country. In fact, no restriction should be placed on the freedom of the Press except in times of grave emergencies, such as war, civil commotion on a large scale, and even then only in respect of matters involving the security of the State.*

Press is the mouthpiece of the public opinion. Its free functioning is more important now when the country has become free than it was before. It has to work as a link between the Parliament which frames legislation and the public which express their hope and aspirations through it."

Muhammad Rafique Meer, Printer and Publisher, Urdu Daily 'Mussawat' v. Government of the Punjab through Home Secretary and another **(PLD 1989 Lah. 12)**

Muhammad Afzal Lone, J.: *"Right of freedom of Press is guaranteed by Article 19 of the Constitution. All instrumentalities of the State are, therefore, supposed to act in a manner which may be conducive to promotion of the object of the Constitution."*

The freedom of press is an essential ingredient to ensuring that the state apparatus is kept under a strict accountability check.

The State v. Editor Daily Jasarat **(P L D 1991 Karachi 233)**

Saleem Akhtar, J.: *"In this regard it deems pertinent to mention that the press does not enjoy any special privilege to scandalize or defame the Court or any individual citizen. The law relating to defamation, libel and slander for the press is the same which is applicable to every citizen in this country. A journalist in a contempt matter has no more privilege than an ordinary citizen. All of them have to accept the fullest liability for publishing such offending material. Even those journalists, editors, publishers and reporters who lift and copy out any news or article from another publication are equally responsible for quoting offensive publishing. Such offending material, repetition of contempt is also contempt.*

It is the duty of the Editor, Printer, Publisher, Manager and Reporter of a newspaper that where any news or article is to be published which in any manner scandalizes or lowers the authority of the; Court or a Judge in discharge of his duties they must first take proper measures to ascertain its correctness. Any dereliction of duty in this respect is bound to bring such persons within the clutches of law. Press has the freedom to publish but not the privilege to scandalize or defame anybody."

Unichem Corporation (Pvt.) Ltd. and Others v. Abdullah Ismail and Others

(1992 MLD 2374)

Salahuddin Mirza, J.: *"The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since. The reason sometimes given is that the defenses of justification and fair comment are for the jury, which is the unconstitutional Tribunal and not for the Judge."*

Majid Nazami and another v. Sheikh Muhammad Rashid

(P L D 1996 Lahore 410)

Para 23

Sh. Ijaz Nisar, J.: *"It is also widely believed that the right of the people to speak out through a free press is the hallmark of a democratic society. Also constitutionally protected are the rights of free speech and the freedom of the press. Far from creating sensational news it is expected of the press to carry reports about the people indulging in any sort of irregularities. The publication of reports considered to be in the public interest, thus, goes to make the press powerful. So, the media is supposed to take lead in reflecting if anything wrong is taking place. Press is also supposed to highlight the problems as well as successes in the society considering it as a national duty but not to go too far infuriating out information."*

Para 25

Sh. Ijaz Nisar, J.: *"If the press has a right to be free, the individual whom it represents has also a right to his standing in life and should not be defamed; the society for 'which it caters has also a right to maintain a certain standard of decency and guard against corrupting influences. The journalist may argue that in a free country the press has a right to publish everything in the first instance, as there is a right to eat anything. But if you eat a snake, you take the consequences. So also with publishing, and it is for that reason that although the press is in theory free to publish scandal and obscenity, if it produces conflict with wholesome laws which are intended to guard morals or reputations, it ought to be restricted. An independent press must cherish its role of informing the public about the misdeeds of others by resisting pressure of all kinds from local as well as national Government, from special interest groups in the country, from powerful individuals, from advertisers. This is a noble standard that is sometimes more difficult to follow in a small community than in a large one. From this also flows the point that the newspapers and its staff should exemplify independence in their actions'. Not only should they be independent in fact, but they must be seen to be independent. A newspaper that rewards its friends with unwarranted, fluttering stories or fawning editorials will not long be respected."*

Para 28

Sh. Ijaz Nisar, J.: *"Freedom of the press hardly requires any emphasis. It is essential not only for the healthy growth of democratic norms but also for inculcating awareness in the citizens and for reflecting public opinion, its ultimate object being the protection of the rights of the citizens. In an accountable democracy, it is a common practice that those who find on other venue of venting their views on matters of public interest use the columns of the press for this purpose.*

Thus, besides the known politicians even the ordinary people have an opportunity to express their opinion on any issue of public importance, if not otherwise at least through the traditional "letters to the editor". To the politicians press provides the blood for their political life. In the present age no politician, big or small, can afford to have a black out from the press. When they are in the press, allegations and counter-allegations against each other and the criticism of political adversaries is a common feature of their political life. In all the countries of the world where there is freedom of speech and freedom of press, the politicians make the criticism of their opponents in a highly rough and rigorous manner. A duty is cast upon such press to project the divergent views of the renowned leaders. It, however, goes without saying that the privilege available to the press in this behalf is not absolute and unbridled. The reports or statements published by a newspaper must be devoid of mala fides or malice. Privilege will apply with reference to a duty or right and if anything is found in the thing published which is not reasonably appropriated to that duty or right then that privilege could not be extended to that. The qualified privilege will not be available if any one of the following elements are established:

(1) Malice.

(2) Personal ill-will. .

(3) Indirect motive or publication actuated by spite, and

(4) Deliberate and false attack on one's personal life."

Para 43:

Sh. Ijaz Nisar, J.:*"Honest and fair reporting of a public statement or bona fide expression of opinion on a matter of public interest is not actionable even if it does not come to be true..."*

Para 44:

Sh. Ijaz Nisar, J.: *"The press as a fourth pillar of the State has carved out its place in the society by exposing fearlessly the evils which afflict it, and, one of them is the good use or the bad use to which people put the powers placed at their disposal as trust. In doing so, reporters should be absolutely sure of facts and to ascertain or check before publishing them, lest they should cause irreparable loss to the person concerned."*

Pakistan Chest Foundation v. Government of Pakistan **(1997 CLC 1379)**

Muhammad Aqil Mirza, J.: *"Neither the freedom of speech and expression nor the freedom of press is violated if cigarette-related commercials of-the tobacco companies are not shown on the T.V. or relayed from the radio."*

Masroor Ahsan v. Ardeshir Cowasjee **(PLD 1998 SC 823)**

Para 55

Ajmal Mian, C.J.: *"However, it may be observed that the freedom of press is only a specific instance of general right of freedom of speech; persons engaged in newspaper business cannot claim any other or greater right than that possessed by the persons not in that business Furthermore, the freedom of press is not absolute, unlimited and unfettered. The protective cover of press freedom must not be thrown open for wrongdoings. The press is expected to recognize its duties and responsibilities towards the society and in discharging their functions/duties, they should not compromise on public order, decency and morality. If they exceed the reasonable limit or limit of fair criticism, they become liable to be prosecuted for contempt. An irresponsible conduct and attitude on the part of an editor, reporter, columnist and publisher cannot be said to have been adopted in good faith. At the same time, one cannot overlook the fact that it is inalienable right of every citizen to comment fairly on any matter of public importance in accordance with law.*

The right is one of the pillars of individual liberty, freedom of speech which the Courts have always faithfully upheld in terms of the Constitutional mandate. It may be added that function/duty of a free Press is to act asa watchdog and to disseminate correct and fair accounts of the various public events and of other matters in which public may be vitally interested. In the discharge of the above function/duty there may be some occasional lapses on their part which are to be condoned, provided the same do not fall within the ambit of reckless or irresponsible conduct or prompted by malice or any other ulterior motive. In my view the Press besides relying upon Article 19 of the Constitution which provides that every citizen shall have the right of freedom of speech and expression and there shall be freedom of Press subject to any reasonable restrictions imposed by law which includes contempt law, may press into service Article 18 of the Constitution which guarantees freedom of trade, business or profession..."

Para 92:

Munawar Ahmad Mirza, J.: *"It appears necessary that citizens, Editors or Authors while making a speech or writing articles/editorials or arranging its publication must not use awkward or disrespectful language which may cause ridiculing or undermining the prestige of Court. The citizen, therefore, desiring to exercise fundamental rights specified under the Constitution and law must own responsibility of obeying its corresponding constraints by satisfying that they are acting with bona fides without mens rea to damage or affect the justice system in the country. While exercising rights, boundaries must be fixed whereby the disparaging or disrespectful remarks or attempts violating law or transgressing the limits of fair comments are avoided.*

Truth also can be expressed with noble and constructive objectives for institutional improvement by using decent and recognized phraseology. Ironical or sarcastic expression, intemperate speech, immodest or disgraceful publication merely with mala fide intentions aimed at blackmailing, must be avoided and abhorred."

However, **this right is not absolute.** The press has to adhere to certain limitations and principles in deciding whether or not to publish or report material.

Benazir Bhutto v. News Publications (Private) Limited **(2000 CLC 904)**

Rasheed Ahmed Razvi, J.: *"The freedom of Press is treated as one of the most essential parts of a democratic system. It works as a check and balance on the other organs of the Government. In case any authority exceeds its powers, it is the duty of the, Press to bring such excess to the knowledge of people at large. It has been regarded as "the mother of all liberties in a democratic society". The need of a free Press in a democratic system was emphasized by the Indian Supreme Court in re: Hirijai Singh and another AIR 1997 SC 73 at 78 in the following words: --*

.... It is, thus, needless to emphasize that a free and healthy Press is indispensable to, the functioning of a true democracy. In a democratic set up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries.

To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the Press is to provide comprehensive and objective information of all aspects of the country's political; social, economic and cultural life. It has an educative and mobilizing role to play. It plays an important role in moulding public opinion and can be an instrument of social change...."

Abdul Karim and 5 Others v. Abu Zafar Qureshi and 3 Others

(PLD 2001 Kar. 115)

Muhammad Roshan Essani, J.: *"The public man cannot claim amenity from criticism even when he holds public/official position. The criticism is essential for the healthy society as it is meant for the improvising the society. Thus a newspaper acts within its legitimate sphere when it offers criticism of what he considers and bona fide believes to be good for the community. This privilege is only available if the article was not published out of malice and personal ill-will."*

Sheikh Muhammad Rashid v. Majid Nizami, Editor in Chief, The Nation and Nawa e Waqat, Lahore **(PLD 2002 514 SC)**

Para 7

Mian Muhammad Ajmal, J.: *"Article 19 of the Constitution guarantees the freedom of Press. However, it does not even license the press to publish any material which may harm or cause damage to the reputation of a person and such freedom of press is subject to such restrictions as could be legitimately imposed under the law.*

Although the scope of freedom of press has been enlarged after the omission of the word 'defamation' from Article 19 yet it does not licentiate the press to publish such material which may harm or cause damage to the reputation, honor and prestige of a person. The Article provides the freedom of press subject to any reasonable restrictions which may be imposed by law in the public interest and glory of Islam, therefore, the press is not free to publish anything it desires.

The press is bound to take full care and caution before publishing any material in press and to keep themselves within the bounds and ambit of the provisions of the Article."

Para 10

Mian Muhammad Ajmal, J.: *"...We would like to observe again that the press is not free to publish anything which is prejudicial to the interest of any person or which may harm the reputation of anybody and it must take due care and caution before publishing any such matter in the press and it should verify the correctness of such matters from the concerned quarters."*

Miss Sadia Sumble Butt v. Rafiq Afghan **(2006 M L D 1462)**

Nadeem Azhar Siddiqi, J.: *"While publishing any news item, it is necessary for the press not to violate principles of decency and established norms of morality. In the reported case of Syed Masroor Ehsan v. Cowasji and others (PLD 1998 SC 823) it has been observed as under: "Freedom of press is not absolute, unlimited and unfettered. The protective cover of press freedom must not be thrown open for wrong doings. The press is expected to recognize its duties and responsibilities towards the Society and in discharging their duties/functions that should not compromise on public order, decency and morality."*

Rases Ghulam Sarwar v. Mansoor Sadiq Zaidi **(PLD 2008 458 Kar.)**

Para 15

Khalid Ali Qazi, J.: *"In respect of the freedom of press suffice it would suffice to say that the propagators, printers and publishers are bound by a fundamental duty to establish that whatever they publish is based upon the truth."*

Para 18

Khalid Ali Qazi, J.:*"...The freedom of press guaranteed under Article 19 of the Constitution is not absolute. In recent times we have seen a growing tendency of yellow journalism. While there is no cavil with the proposition that public policy and interest necessitate a very liberal construction of the right of freedom of expression, collaterally the need to stringently visit recalcitrant and irresponsible publication is also imperative. Competing interests are required to be balanced."*

The freedom of the press means the ability to communicate, express or impart any sort of information through a variety of mediums. These mediums do not only include print media, but have also been held to include electronic media.

Dr. Shahid Masood v. Federation of Pakistan **(2010 SCMR 1849, page 1857)**

Iftikhar Muhammad Chaudhry, C.J.: *"The reason for such weight being attached to electronic media is not far to find as the same stems out of the fundamental rights of freedom of speech, expression and of press as guaranteed by Article 19 of the Constitution and equally importantly, if not more, the right of every citizen to have access to information in all matters of public importance as guaranteed by the recently inserted provisions of Article 19-A of the Constitution."*

High Court Bar Association v. Government of Balochistan through Secretary, Home and Tribal Affairs Department **(PLD 2013 Quetta 75)**

Qazi Faez Isa, C.J.: *"It is obvious to even the most uninitiated that an extremist-terrorist organization desires to impose its own views upon the general public. To enable this to happen they require a vehicle to spread their propaganda (and justification for their barbarous acts of death and destruction); this they do by writing slogans on walls, distributing unmarked pamphlets, sending unmarked letters, but for the widest impact, they resort to the media. Article 19 of the Constitution tempers "the right to freedom of speech" and permits placing restrictions thereon in the following circumstances: (1) "in the interest of the glory of Islam", (2) "integrity, security or defense of Pakistan or any part thereof", (3) "friendly relations with foreign States", (4) "public order", (5) "decency", (6) "morality", (7) "in relation to contempt of court" and (8) "commission of or incitement to an offence". Extremist hate literature, wall-chalking and threatening and spiteful press releases are not permissible because the same are contrary to the injunctions, undermine the integrity, security and defense of Pakistan, public order, decency and morality. The same also are also crimes under the laws of Pakistan, and they incite others to commit crime."*

Pakistan Broadcasters Association and 10 others v. Pakistan Electronic Media Regulatory Authority through Chairman and another

(PLD 2014 Kar. 630, at page 648)

Aqeel Ahmed Abbasi, J.: *"Therefore, this free access to public at large provided by Government to the petitioners (the press) casts a great responsibility upon them not only to abide by the Constitution, law, rules and regulations but also to ensure that a certain discipline and restraint shall be demonstrated by them which may not only serve the purpose of the Constitution and law but may also be helpful in creating a better civilized society which is well informed, more educated tolerant and*

capable of forming correct opinion on religious, political, social, national or international issues and to take right decisions in their individual as well as collective lives."

British Broadcasting Corporation (Scotland) v. A, Supreme Court of UK

(2014 SCMR 1393)

Reed, LJ: *"Freedom of expression may conflict with other important values, including the rights to life and to bodily security, the integrity of legal proceedings, the rights of litigants and accused persons, and the right to respect for private life. Where there was a conflict between the right of the media to report legal proceedings and the rights of litigants or others under a guarantee which was itself qualified, a balance must be struck, so as to ensure that any restriction upon the rights of the media, on the one hand, or of the litigants or third parties, on the other hand, was proportionate in the circumstances. Where the conflict was between the media's rights and an unqualified right of some other party, such as the right to life and bodily security or the rights of litigants and accused persons, there could be no derogation from the latter. Care must nevertheless be taken to ensure that the extent of the interference with the media's rights was no greater than was necessary. The need for such care reflected the important role of the media in a democratic society in scrutinizing the administration of justice generally, as well as their role as the conduit of information about particular proceedings which may be of public interest. Balance to be achieved, in such context, was therefore between on the one hand protection of public discussion of matters of legitimate interest in a democracy, and on the other protection of the integrity of particular court proceedings or of the administration of justice more generally. Media did not have the right to publish information at the known potential cost of an individual being killed or maimed."*

Liberty Papers Ltd. v. Human Rights Commission of Pakistan

(PLD 2015 SC 42)

Para 9

Dost Muhammad Khan, J.: *"The defendant/appellants in a case of defamation for damages, as the publisher of defamatory material, needs to prove through evidence besides pleading good faith that they were diligent in checking facts and followed the best practices of professional ethics universally accepted. An appropriate illustration applicable in this case would be the. Codes of Ethics of the Council of Pakistan (CPNE) laying out for the press to avoid, biased reporting or publication of unverified material, and avoid the expression of comments and conjectures as established fact. Generalizations based on the behavior of an individual or a small number of individuals will be deemed unethical. If the publisher of defamatory material is unable to establish the factual correctness of the material published, malice on the publishers' part will stand established through implication, thus fulfilling the criteria of aggravated damages. Since this aspect was not brought to light in either the Courts below nor was it argued in this Court, this Court will not enhance damages."*

Para 10

Dost Muhammad Khan, J.: *"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*

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."

Para 11

Dost Muhammad Khan, J.: *"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 laws."*

James Rhodes v. OPO (By his litigation friend BHM), Supreme Court of UK

(2015 SCMR 1097)

Hale, LJ and Toulson, LJ: *"Freedom to report the truth is a basic right to which the law gives a very high level of protection. It is difficult to envisage any circumstances in which speech which is not deceptive, threatening or possibly abusive, could give rise to liability in tort for willful infringement of another's right to personal safety. The right to report the truth is justification in itself. That is not to say that the right of disclosure is absolute, for a person may owe a duty to treat information as private or confidential."*

Freedom of Speech and Expression and the Contempt of Court

Laws for Contempt of Court

I. S. 3, Contempt of Courts Ordinance, 2003

"Whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a willful breach of a valid undertaking given to a court; or does anything which is intended to or tends to bring the authority of a court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a court or scandalize a judge in relation to his office, or to disturb the order or decorum of a court, is said to commit "contempt of court". The contempt is of three types, namely, the "civil contempt", "criminal contempt" and "judicial contempt".

II. Article 204, Constitution of Pakistan, 1973

"(1) In this Article, "Court" means the Supreme Court or a High Court.

(2) A Court shall have power to punish any person who,

(a) Abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;

(b) Scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;

(c) Does anything which tends to prejudice the determination of a matter pending before the Court; or

(d) Does any other thing which, by law, constitutes contempt of the Court.

(3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court."

The term has been clarified in Pakistani case law;

The State v. Abdur Rahman **(PLD 1957 (W. P.) Baghdad-ul-Jadid 6)**

Shabir Ahmad, J.: *"It is not everything said or written against a Judge that amounts to contempt of Court an' it is only such utterances or writings which are calculated to bring a Court or a Judge of the Court into contempt or to lower his authority or such utterances or writings which art calculated to obstruct or interfere with due course of justice or the lawful process of the Courts that amount to it. The harm done by allowing aspersions to be cast on Judges will be so great that no reasonable person can doubt that the law of contempt of Court in force in Pakistan places no more than reasonable restrictions on the liberty of speech and expression guaranteed to citizens of Pakistan by our new Constitution. I am satisfied that in spite of Article 8 of the new Constitution the respondent cannot escape punishment if he has been guilty of contempt of Court."*

The State v. Abdul Latif **(PLD 1961 (W.P.) Lah. 51)**

M. R. Kayani, C. J.: *"Contempt, as Oswald, said "primarily signifies disrespect to that which is entitled to legal regard", and quite obviously, you can show disrespect to a Judge without looking round for a witness. The "despising" of the authority, justice or dignity of a Judge is another description of contempt (Miller v. Knox) and it cannot be reasonably said that such authority is not despised when the disposal is addressed to the authority itself, but that it is despised if the address is to a third person, This will amount to introducing almost a legal fiction in the definition of contempt, which is a thing of actual, visible perception, not a sentimental, over-sensitive ideology."*

Dr. A.N.M. Mahmood v. Dr. M. O. Ghani, Vice-Chancellor and Others

(PLD 1967 Dacca 67)

S. M. Murshed, C. J.: *"Contempt of Court" is an expression which is usually synonymous with what is described as disobedience to the Court or despising the authority, dignity or justice thereof. It commonly consists in a party doing otherwise than he is enjoined to do, or not doing what is commanded or required by the process or order of the Court. These powers are given to the Court to keep the course of, justice free powers of great importance to society, for by the exercise of such powers law and order prevail. It is the best insurer of the rule of law because those who violate the law and desecrate its streams are shown that the law is irresistible. This "obstruction" to the free flow of justice is known in legal phraseology as "contempt" and it has nothing to do with the personal feelings of the Judge."*

Masroor Ahsan v. Ardeshir Cowasjee **(PLD 1998 SC 823)**

Para 45

Munawar Ahmad Mirza, J.: *"Therefore, at the very inception it would be fair to discuss general misconception, which exists in the mind of people. It may be seen that 'Contempt' has not been described in any comprehensive or definitive terms. Often it is misunderstood, when critics portray the powers relating to 'Contempt of Court' as a measure of self-aggrandizement of Judges or far displaying glory to undermine or over-awe litigant, government functionaries or public in general. Whereas factually this inherent jurisdiction evolved merely for maintaining discipline to ensure dignity of Courts and majesty of law. This inherent power pre-eminently helps in effective administration of justice and impedes every effort to interfere obstruct any act,*

omission or conduct which may be directly or indirectly (i) threaten the aggrieved person whomsoever from availing his legitimate rights or (ii) shaking confidence of people in the Courts; which undisputedly exists to preserve Constitutional authority, of the State, besides, protecting the rights and liberty of people."

Para 46

Munawar Ahmad Mirza, J.: *"Thus object of 'Contempt' proceedings, or exercise of powers in this behalf would not be merely to vindicate individual prestige of the Presiding Officer or display hatred for others. Similarly this power is not used to cast slander or ridicule in any person, but essentially to devise ways and means for doing complete justice with utmost impartiality for the general benefit thereby, promoting public good; so that aggrieved party could fearlessly invoke jurisdiction of the Court to avail all remedies which are permissible under the law, and to have complete satisfaction of redress as regards wrong done to him."*

Para 47

Munawar Ahmad Mirza, J.: *"The word 'contempt' has been explained by the New Encyclopedia Britannia; Vo1.3, page 581 as to be "insult to, interference with, or violation of a sovereign Court or legislative body. The concept is of English origin and is found only in countries that follow the common law system. The primary importance of the notion of contempt is that it warrants judicial action in defense of the judicial or legislative power itself. Often, this power is without many of the safeguards that generally restrict the power of the State in the punishment of civil or criminal wrongs. An act or language that consists solely of an affront to a Court or interferes with the conduct of its business falls in the category of criminal contempt.*

An act of disobedience to a Court order, however, because of its multiple effects, may be treated either as civil or criminal contempt or both. On the one hand, it is an insult to the Court and an interference with its judicial authority and therefore constitutes criminal contempt. It may also have the consequence of depriving a party to a law-suit of the relief that the Court order afforded him, thereby constituting civil contempt. In the latter case, the Court may take measures to secure to the litigant that to which he was entitled under the Court order or to compensate him for the loss resulting from the disobedient act". The powers of Courts to punish for contempt have been invariably described as inherent and essential auxiliary of the due administration of law and preservation of authority for the judicial institutions. Authority which Court possesses to take action for contempt however, has been enunciated in para 43 of Corpus Juris Secundum, Vol.XVII -- Chapter 'Contempt' as power which Courts inherently possess and does not depend upon Constitutional law nor to the Courts essential by Constitutional provisions, or it is and was, at common law, inherent being necessary for self-protection and for execution of judicial functions.

K.J. Aiyar in the treaties "Law of Contempt of Courts", 7th Edition, has given following description of contempt at page 32:-

"A contempt can assume any form, any act, any slander, any contemptuous utterance, or can be the subject-matter of any news, report or article, or it may be an act of disobedience of Court's order Any of these can, in varying degrees, affect administration of justice or may, impede fair trial of sub judice matters, civil, criminal, miscellaneous, etc. whether for the time being, pending in a Court of first instance or in a Revisional or Appellate Court. It is noteworthy that, despite conferment of such extraordinary jurisdiction with summary powers, the expression "contempt of Courts"

or even the words "contempt of Courts" in so far as their interpretation in particular cases is concerned, will be matters for the consideration and determination of the Court only, in the light of circumstances of each case. Consequently, the Courts, dealing with contempt cases, have, in the peculiar circumstances associated with the nature and range of the delinquency in question, not been able to define the said words exhaustively. And in contempt law, it is also not possible to venture a complete definition of what constitutes contempt. For a delinquent can adopt any form, and device, to create public opinion in a particular way.

In this context observations in case Potter v. Clawson (1912) 47 LJ 735) are also profitable, to mention here:-

"The Legislature has deliberately refrained from enacting or defining the scope of the law of contempt. The obvious purpose was to maintain the elasticity of the law to enable it to reach the wide sweep of the diversity of situations that it has to meet. The contempt proceedings themselves do not display a uniform nature. They may partake of the nature of civil or criminal proceedings or of both. They are in a way sui generis.

The principles attracted in each case differ according to the nature of proceedings and circumstances of that case.

A passage from Blackstone's celebrated Commentaries, which also expounds this aspect with clarity is referred:-

"Some of this contempt may arise in the face of the Courts, by rude `J", and contumacious behavior, by obstinacy, perseverance or prevarication, by breach of the peace or any willful disturbance whatever; others in the absence of party, as by disobeying or treating with disrespect the King's

writ or the rules or process of Court, by perverting such writ or process to the purpose of private malice, the extortion or injustice, by speaking or writing contemptuously of the Court, or Judges acting in their Judicial capacity, by printing false accounts or even true ones, without proper permission, of cases then pending in judgment and by anything in short that demonstrates a gross want of that regard and respect which, when our Courts of justice are deprived of their authority so necessary for the good order of Kingdom is entirely lost among the people. " In the same way Oswald defines contempt "to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties or their witnesses during litigation". In the absence of Constitutional inhibition or legislative provisions, the superior Courts continue enjoying inherent powers to punish the condemners, responsible for; disobedience or causing gross disrespect."

Para 48

Munawar Ahmad Mirza, J.: *"It may be seen that the Constitutional obligation for the good governance of State, revolves around the steps taken for adopting necessary measures to create an atmosphere showing implicit confidence as regards supremacy of law so that prestige of Courts are maintained. Observations made by Wilmot, CJ in Rex v. Almon (1965 Wilm 243) which have all prevailing applicability without constraints of boundaries, nation or nationalities are reproduced hereunder. "Attacks upon Judges elite in the minds of the people a general dissatisfaction of judicial determination and whenever men's allegiance to the laws so fundamentally shaken, it is the most vital and dangerous obstruction of*

justice calling out for a more immediate redress than only obstruction; not for the sake of the Judges as private individuals but because they are the channels by which the King's justice is conveyed to `the people'. Similarly, the Calcutta High Court in case Bimalapati v. Sailendra Nath (AIR 1956 Calcutta 249) has observed that "the prestige and the dignity of the Courts of law must be preserved. The confidence of the litigant should not be shaken by the use of contemptuous and scandalous expressions towards Court or Judges attempting to belittle them. Stream of justice is not to be polluted by shaking the confidence in the administration of justice by conduct exhibited and words used by the bailiff in question"."

Para 49

Munawar Ahmad Mirza, J.:*"In the same way Wills, J. in case Rex/Davis (1906) 1 KB 32), has opined that "Courts or the administration of justice, exists for the benefit of the people, their independence must be protected from unauthorized interference and' law provides effective means by which this end can be secured"."*

Para 50

Munawar Ahmad Mirza, J.: *"Some of the aspects which can suitably help in understanding the concept of 'Contempt' are mentioned in para. 6 of case E.M.S. Namboodiripad v. T. N. Nambiar (AIR 1970 SC 2015) which is reproduced herein below:-*

"6. The law of contempt stems from the right of the Courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all Courts when contempt is committed in facie curiae and by the

superior Courts on their own behalf or on behalf of Courts subordinate to them even if committed outside the Courts. Formerly, it was regarded as inherent in the powers of a Court of Record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempt. The chief forms of Case Judgement contempt are insult to Judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of Courts, witnesses or the parties, abusing the process of the Court, breach of duty by officers connected with the Court and scandalizing the Judges or the Courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the Court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a Single Judge or a single Court but tray, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system."

Para 51

Munawar Ahmad Mirza, J.: *"While considering disciplinary control and effective administration of justice the Supreme Court of India in case Shari Baradakanta Mishra v. Registrar, Orissa High Court (AIR 1974 SC 710) has observed; thus:-*

We thus reach the conclusion that the Courts of justice in a State from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice, and' it is the expectation and confidence of all those who have or likely to have business therein that the Courts perform all their functions on a high level of rectitude without fear or favor, affection or ill-will.

And it is this traditional confidence in the Courts that justice will be administered in them which is sought to be protected by proceedings in contempt. The object, as already stated, is not to vindicate the Judge personally but to protect the public against any undermining of their accustomed confidence in the Judges' authority. Wilmot, CJ in his opinion in the case of Rex v. Almon already referred to says:--

The arraignment of the justice of the Judges, is arraigning the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and cites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; nor for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for the giving justice that free, open and uninterrupted current, which it has, for many ages, found all over this Kingdom. Further explaining what he meant by the words "authority of the Court", he observed:-

'The word "authority" is frequently used to express both the right of declaring the law, which is properly called jurisdiction, and of enforcing obedience to it, in which sense it is equivalent to the word 'power' but by the word: authority', I do not mean that coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity'."

Para 52

Munawar Ahmad Mirza, J.: *"The object of contempt action has also been examined in R. v. Gray (1904) 2 QB 36 which reads that "proceedings for punishing contempt are taken not with view to protect either the Court as a whole or the individual Judges of the Court from a repetition of the attack; but with a view to protect the public specially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court from the mischief they will incur if the authority of the Tribunal be undermined or imposed. The grievance is an endeavor to shake the confidence of public in the Courts."*

Para 53

Munawar Ahmad Mirza, J.:*"Contempt of Court was said to be coeval with the administration of justice by the State, and was necessary to keep up the dignity and majesty of law. No Court can function properly if the authority for exercising such powers does not exist."*

In light of Article 19 of the Constitution of Pakistan, 1973- the following amounts to contempt of court;

- Publication of a judgment before it is delivered **(PLD 1958 SC 528)**
- Using insolent language and deliberately addressing offensive communication to the Judge **(PLD 1969 Lah. 552)**
- Allegation of unfairness and partiality on part of any judicial officer **(PLD 1975 Lah. 1534)**
- Printing and publishing contemptuous material in newspapers **(PLD 1996 SC 42)**
- Disrespect of decisions of Supreme Court and High Court **(PLD 2002 SC 243)**
- Asking a judge of superior courts to transfer the case to another bench and not to hear the same without cogent reason **(2005 YLR 3046)**

Freedom of Expression of Citizens in Relation to Contempt of Court

Moosa v. Mahmmad **(PLD 1968 SC 25 at pg. 34)**

Fazl-e-Akbar, J.: *"...Privilege will apply to an Advocate with reference to what is written and published in response to a duty or right and that if anything is found in the thing published which is not reasonably appropriate to that duty or right, then privilege cannot be extended to it. In other words, an Advocate will be entitled only to claim qualified privilege for words spoken and written in his professional capacity and not as an absolute privilege as found by the High Court."*

The State v. Sheikh Shaukat Ali, Advocate and 3 Others **(PLD 1976 Lah. 355)**

Muhammad Akram, J.: *"To justify their actions the contesting respondents placed reliance on the fundamental right of "freedom of speech and expression" contained in Article 19 of the Constitution. This lays down that "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 defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence." The defense taken has no merit. It may be mentioned that the right is itself subject to the law of contempt. In other words the right to freedom of speech and expression does not extend to the grant of a license to the citizens to commit contempt of Court. In this connection Article 19 of the Constitution is in a way subject to Article 204 which now codifies the law of contempt of the superior Courts. It contains, if we can say so, constitutional safeguard against any attempt to scandalize the Court or undermine its dignity in public interest. The law of contempt of Court and the necessity for it is fully recognized in the countries practicing the Anglo American System of administration of justice. This is a necessary concomitant of our system of administration of justice in force in this country."*

Masroor Ahsan v. Ardeshir Cowasjee **(PLD 1998 SC 823)**

Para 62

Munawar Ahmad Mirza, J.: *"Worthy Advocates by virtue of their professional obligation are required to protect and safeguard the prestige and dignity of the Courts and fight against unwarranted onslaughts. Clause (c) of Chapter XII relating to 'Canons of Professional Conduct and Etiquette of Advocates' contains details about professional ethics of an Advocate which should be invariably observed. Factually responsibility of Advocates with regard to honor and prestige of the Courts is greater than an ordinary citizen. While claiming benefit of Article 19 of the Constitution concerning freedom of speech or publication, obviously they must maintain established convention, professional ethics settled norms of conduct, regulated by the laws, Bar Councils Act and Supreme Court Rules.*

It may be mentioned that Advocates not only belong to noblest profession but also endeavor in protecting the rights of oppressed and play an important role for safeguarding independence of Judiciary. By their attitude and overall conduct they are expected to display great tolerance, distinctive behavior, and cautious express and dignified mannerism specially when giving opinion about a decided matter or pending proceedings or working of any Court. Disparaging remarks, imprudent attitude or unprincipled injudicious or ardent conduct not only contravenes the professional ethics but damages the edifice of justice, thereby undermining the authority of the Court; obviously entailing disapproval."

Dhookharika v. Director of Public Prosecutions, Privy Council

(2014 SCMR 1423)

Lord Clarke: *"Lord Pannick identified four main points in support of abolition. First, the crime is based on dubious assumptions as to its necessity; for example that if confidence in the judiciary is so low that*

statements by critics would resonate with the public, such confidence is not going to be restored by a criminal prosecution in which judges find the comments to be scandalous or in which the defendant apologizes. Second, the existence of the offence will deter people from speaking out on perceived judicial errors and freedom of expression helps to expose error and injustice and promotes debate on issues of public importance. Third, the modern offence recognizes that some criticism of the judiciary is lawful. Fourth, where criticism deserves a response, there are other methods of answering it, as for example in appropriate circumstances by a public statement made bythe Lord Chief Justice or by libel proceedings"

Freedom of Expression of Press in Relation to Contempt of Court

State v. Mujibur Rehman Shami **(PLD 1973 Lah. 1)**

Para 19

Attahullah Sajjad, J.:*"The Judges do not claim infallibility. The press is free to offer criticism on the functioning of the Court or of a Judge or his judicial pronouncements as the very idea of the open Court rule, while has been adopted from the British system, is to make it appear to the world at large as to how the Courts of the country are functioning. But the press has no license to make insinuations and innuendos which tarnish the character of a Judge of a superior Court and call upon him to resign because he lacks piety."*

Para 20

Attahullah Sajjad, J.:*"The liberty possessed by a journalist is not at a higher level than that of an ordinary citizen. It consists in printing, without previous constraint but subject to consequences of law. When a journalist publishes an article questioning the piety and uprightness of a Judge, he commits the grossest form of Contempt."*

Suleman Habibullah v. The Editor, Printer; Publisher, Reporter (Staff) Daily Jang, Karachi and others **(PLD 1995 Kar. 1)**

Mammon Kazi, J.: *"Even the judicial acts of judges are not above criticism*

provided the criticism is in good faith as it is the ordinary right of the members of the public. Such right, however, when exercised in pursuance of improper motive or malice or in an attempt to impede the course of administration of justice, would attract the penal provisions of the law of Contempt of Court."

Masroor Ahsan v. Ardeshir Cowasjee **(PLD 1998 SC 823)**

Para 75

Ajmal Mian, C.J.: *"That since the freedom of speech under Article 66 of the Constitution is subject to the Constitution, as a corollary, it must follow that the freedom of speech of a Member of the Parliament is subject to the contempt law under Article 204 of the Constitution and, therefore, the above privilege is not absolute.*

That Article 204 of the Constitution relating to the contempt of Court is to be construed in conjunction with Articles 19 and 66 thereof keeping in view the modern trend about contempt law obtaining in the world to protect and project the freedom of speech and expression and the freedom of press subject to reasonable restrictions.

That the power of contempt should be used sparingly and only in serious cases and that the Court should not be either unduly touchy or over-astute in discovering new varieties of contempt for "its usefulness depends on the wisdom and restraint with which it is exercised."

That fair comments about the general working of Courts are made in good faith, in the public interest and in temperate language. Fair comments are made on the merits of a decision of a Court, after the pendency of the proceedings in a case, and in good faith and in temperate language- without impugning the integrity or impartiality of the Judge. These comments are protected under Exceptions (i) and (ii) to section 3 of the Contempt of Court Act.

That similarly subject to a prohibition of publication under section 9 of the Contempt of Court Act or under any other law for the time being in force, the publication of fair and substantially accurate reporting of any judicial proceedings is also protected under Exception (iii) to section 3 of the said Act."

Censorship of Films Act, 1963 (Repealed)

Motion Pictures Ordinance, 1979

It can be seen that the proviso in S. 9 (2) of the Motion Pictures Ordinance, 1979 (reproduced as under) is similar in its wording to Article 19 of the Constitution;

S. 9 of the Motion Pictures Ordinance, 1979, Revisional powers of the Government

(1) Notwithstanding anything contained in this Ordinance, the Government may at any stage call for the record of any proceedings in relation to any film which is pending before or has been decided by the Board and, after such inquiry into the matter as it considers necessary, and without notice to the person who has applied for certification of the film or to whom a certificate in respect of the film has been granted or to the distributor or exhibitor of such film, make such order in relation thereto as it thinks fit.

(2) Without prejudice to the powers conferred on it by sub-section (1), the Government may, by notification in the official Gazette, direct that–

(a) A film or class of films in respect of which a certificate has been granted under this Ordinance or under the Censorship of Films Act, 1963 (XVIII of 1963), shall be deemed to be an uncertified film or class of films in the whole or any part of Pakistan.

Provided that no such order shall be made by the Government unless it is satisfied that it is necessary to do so in the interest of the glory of Islam or the integrity, security or defense ofPakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or to prevent the commission of, or incitement to, an offence.

It may be noted that the power to pass such orders devolved from the Federal Government to the Provincial Governments by virtue of the 18th Amendment to the Constitution of Pakistan, 1973.

Messrs. Baho Film Corporation v. Islamic Republic of Pakistan and another

(P L D 1981 Lahore 295)

Rustam S. Sidhwa, J.: *"The conditions for decertification of films in they Act of 1963 were that the action had to be in the interest of law and order, or in the interest of the local film industry, or in any other national interest, as provided in the proviso to section 7 of the said Act, whereas under the Ordinance of 1979 it stands enlarged and has to be in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with Foreign states, public order, decency or morality, or to prevent the commission of, or incitement to, an offence, as provided in the proviso to section 9(2) of the said Ordinance."*

Abdullah v. S.D.M., Sukkur **(PLD 1989 Karachi 219)**

Tanzil-ur-Rehman, J.: *"Motion Pictures Ordinance, 1979: This Ordinance extends to the whole of Pakistan. It provides for the censorship of films and the regulation of exhibition of films by means of cinematographs. Section 2 (c) of the said Ordinance defines "Cinematograph" as "any apparatus for the reproduction of moving pictures or series of pictures". Section 3 provides for a Censorship Board. Section 4 provides that "no person shall make or arrange a public or private exhibition of a film by means of cinematograph unless the film has been duly certified for public exhibition by the Board. Section 13 provides for licensing of places for exhibition of films and says that "save as otherwise provided in this chapter, no person shall give a public exhibition by means of cinematograph elsewhere than in a place licensed under this Ordinance or otherwise than in compliance with any condition and restriction imposed by such license. Section 18 provides for penalties and punishments against a person who exhibits or causes or permits to be exhibited in any place or abets the exhibition of any film which has not been certified by the Board and fails to comply with the provision of section 5 regarding certification of films. Section 20 empowers the Federal Government which "may, by order in writing, exempt, subject to such conditions and restrictions as it may impose, any film or class of films or cinematograph exhibition or class of cinematograph exhibitions from all or any of the provisions of the said Ordinance or Rules made thereunder".*

Dramatic Performances Act, 1876

Zaheer Hussain Adil v. Punjab Council of the through Executive Director and another **(PLD 2009 Lahore 197)**

Para 6

Khurshid Anwar Bhinder, J.: *"...This court observes that the display of songs in films have a direct link with the story and also are subject to the approval by the Full Censor Board which does not allow the exhibition of vulgar and obscene dances. As far as the performances of dances by the dancing girls at private houses are concerned, it is observed that such type of dances are restricted to the four walls of the house and there is no display of obscenity or vulgarity as such type of dances are performed only to entertain the family on special occasions but performance of songs on stage is a live performance which crosses all norms and limits of decency. Display of vulgar, obscene and indecent dances of Punjabi and Indian films and indecent songs on live stage performance not only incites the sentiments of public but also promotes sexual perversion and frustration by viewing seminude private parts of the bodies of dancing women. Drama producers, for the sake of material gains are literally causing frustration and sexual perversion in the public without realizing that it is being done in an Islamic Republic of Pakistan which also inure the feelings of millions of religious minded people who can simply admonish this practice but practically cannot do anything except to show their displeasure and anguish to the concerned department of the Provincial Government."*

Para 7

Khurshid Anwar Bhinder, J.: *"Something positive has to be done in this regard, as number of times prior to the filing of instant writ petition, different mechanisms had been suggested to the relevant quarters but no positive results could be achieved so far. It perhaps may be because of failure*

on the part of concerned department that implementation of Court orders or directives of the concerned department could not be carried out in letter and spirit. Policies suggested and orders passed in the earlier writ petitions have certainly been adorable and convincing but somehow due to malpractice prevailing in the Government departments and underhand deals with the drama producers and monitoring teams of the concerned departments, this menace in the society is still prevailing. It also appears that lack of check by the monitoring teams established by the local administration at district level could be the one of the causes of not eradicating this prevailing vice in our society and culture. There are certain channels on television which display recording to the seminude dances, which are being exhibited on the stage, round the clock which, I am afraid, cannot be viewed with the family members. It is hazardous to the children's idiosyncrasies, as their immature mind is attracted to vulgarity and obscenity. Children are more prone to spontaneous adoptability and reaction."

Para 8

Khurshid Anwar Bhinder, J.: *"Above all it is absolutely deplorable to have this kind of cheap entertainment in an Islamic country like Pakistan, where millions of religious minded people's feeling are injured. Display of seminude private parts of the body of women is highly deprecated in Islam as it is being done on the stage plays by exhibiting and exposing women. It is certainly great humiliation to the womenfolk to be exposed in any manner publicly. Islam has attached great importance to the respect and honor to women, as she is a mother, a sister and a daughter."*

Freedom of Expression and Other Fundamental Rights

The freedom of speech and expression coincides with two other fundamental rights enshrined in the Constitution of Pakistan, 1973.

These rights include;

Article 9, Security of person.

No person shall be deprived of life or liberty save in accordance with law.

Mirza Muhammad Iqbal Baig v. Federation of Pakistan **(2006 YLR 2797)**

Khawaja Muhammad Sharif, J.: *"Moreover a citizen's right to travel abroad is an important aspect of the citizen's liberty and is closely related to the rights of free speech and association in the world become politically and commercially more dependent upon one and another and foreign policy decisions have come to have greater importance in the lives of the citizens, the right to travel has become correspondingly more important. Though travel by private citizens as well as by journalists and officials, information necessary to the making of informed decisions can be obtained. And, under our constitutional system ultimate responsibility to make informed decisions rests in the hands of the people."*

Watan Party v. The Federation of Pakistan **(PLD 2011 Supreme Court 997)**

Iftikhar Muhammad Chaudhry, C.J.: *"This aspect of the Islamic teachings, as well finds its reflection in the Constitution of the Islamic Republic of Pakistan 1973. The Constitution, in its very Preamble, postulates that the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed and the fundamental rights, including equality of status, of opportunity and before*

the law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality; shall be fully guaranteed."

Article 20, Freedom to profess religion and to manage religious institutions.

Subject to law, public order and morality:-

(a) Every citizen shall have the right to profess, practice and propagate his religion; and

(b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

Original Petition No.17-L/2013 and Constitution Petition No.98 OF 2011

(PLD 2014 Supreme Court 699)

Para 13

Tassaduq Hussain Jillani, C.J.: *"Religion has played an important role in human history, and faith has influenced the minds and actions of individuals, societies and nations down the ages. By freedom of religion and belief is meant the right of a person to follow a doctrine orbelief system which, in the view of those who profess it, provides spiritual satisfaction. However, it is impossible to define the term 'religion' in rigid terms. The freedom of religion must then be construed liberally to include freedom of conscience, thought, expression, belief and faith. Freedom, individual autonomy and rationality characterize liberal democracies and the individual freedoms thus flowing from the freedom of religion must not be curtailed by attributing an interpretation of the right to religious belief and practice exclusively as a community-based freedom. The freedom of religion and conscience has been protected in several treaties and declarations."*

Para 19

Tassaduq Hussain Jillani, C.J.: *"This question can best be appreciated if the socio-political conditions in the country are kept in view. Pakistan is a transitional democracy and like all other countries (similarly placed) is confronted with competing political and social challenges. Most of the political institutions of consequence are in the process of evolution. However, the defining feature of a democratic governance is complete dedication and adherence in everyday life to the seminal principles of equity, justice and inclusion of all irrespective of their color, creed, caste, sex or faith. The sustainability of democracy depends on how best these challenges are met. Democracy is not an unmixed blessing; on the one hand it confers respect for minorities' rights and on the other it provides a platform where intolerance and hatreds get leeway leading to societal friction and violence. Such intolerance and hatreds have found their way in the social media as well and no effort has been made to check it. The English Daily Dawn alluded to this trend in social media in its editorial comment (dated 9th of June, 2014) and said that:--*

"A Small-scale survey conducted by the online freedom of expression group Bytes for All of hate speech in social media used and frequented by Pakistanis has produced some disturbing, though not unexpected, results. Over 91 pc of nearly 600 respondents surveyed claimed to have come across hate speech online and a partial analysis of 30 popular Facebook and Twitter pages and accounts has shown how user comments are usually peppered with some form of hate speech. The names of the targeted groups will also cause little surprise: Shias, Ahmadis, Indians/Hindus, atheists/unbelievers, state institutions, women, gender minorities, Jews and local ethnicities. To be sure, views expressed online do not automatically reflect the views of wider society especially in a country where roughly 10pc of the population is believed to be online.

Yet, with the 3G/4G telecommunications revolution now just a matter of weeks or perhaps months, the number of Pakistanis online will certainly climb dramatically and soon. Hate speech online will be disseminated even further as a result. Also while the anonymity of sitting behind a screen tends to coarsen public comments and discourse in the online world internationally, there is a case to be made that the younger, tech-savvy Pakistanis online are taking their cultural, and hate, cues, from a society where such talk is increasingly acceptable currency.

While not every hateful word can or does lead to violence, there is surely more than just a correlation between the amount of hate speech against and the violence suffered by groups such as the Ahmadis and other religious minorities. With access to the online world about to explode, now is the time for some serious thinking."

Freedom of Expression and International Human Rights Case Law Trends

There are two instruments in specific which provide special protection for the freedom of speech and expression in international human rights law.

A. Article 19 of the Universal Declaration on Human Rights (UDHR)

"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."

B. Article 19 of the International Covenant on Civil and Political Rights (ICCPR)

"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 his 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 of public order (order public), or of public health or morals."

Comments of the Human Rights Committee

Mukong v. Cameroon

Communication No. 458/1991

Para 9.7

"Under article 19, everyone shall have the right to freedom of expression. Any restriction of the freedom of expression pursuant to paragraph 3 of article 19 must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraph 3(a) and (b) of article 19, and must be necessary to achieve the legitimate purpose. The State party has indirectly justified its actions on grounds of national security and/or public order, by arguing that the author's right to freedom of expression was exercised without regard to the country's political context and continued struggle for unity. While the State party has indicated that the restrictions on the author's freedom of expression were provided for by law, it must still be determined whether the measures taken against the author were necessary for the safeguard of national security and/or public order. The Committee considers that it was not necessary to safeguard an alleged vulnerable state of national unity by subjecting the author to arrest, continued detention and treatment in violation of article 7. It further considers that the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights; in this regard, the question of deciding which measures might meet the "necessity" test in such situations does not arise. In the circumstances of the author's case, the Committee concludes that there has been a violation of article 19 of the Covenant."

Tae Hoon Park v. Republic of Korea

CCPR/C/64/D/628/1995

Para 10.3

"The Committee observes that article 19 guarantees freedom of opinion and expression and allows restrictions only as provided by law and necessary (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (order public), or of public health or morals. The right to freedom of expression is of paramount importance in any democratic society, and any restrictions to the exercise of this right must meet a strict test of justification. While the State party has stated that the restrictions were justified in order to protect national security and that they were provided for by law, under article 7 of the National Security Law, the Committee must still determine whether the measures taken against the author were necessary for the purpose stated. The Committee notes that the State party has invoked national security by reference to the general situation in the country and the threat posed by "North Korean communists".

The Committee considers that the State party has failed to specify the precise nature of the threat which it contends that the author's exercise of freedom of expression posed and finds that none of the arguments advanced by the State party suffice to render the restriction of the author's right to freedom of expression compatible with paragraph 3 of article 19.

The Committee has carefully studied the judicial decisions by which the author was convicted and finds that neither those decisions nor the submissions by the State party show that the author's conviction was necessary for the protection of one of the legitimate purposes set forth by article 19 (3). The author's conviction for acts of expression must therefore be regarded as a violation of the author's right under article 19 of the Covenant."

Malcolm Ross v. Canada

CCPR/C/70/D/736/1997

Para 11.6

"Another before the Committee is whether the restriction on the author's freedom of expression was necessary to protect the right or reputations of persons of the Jewish faith. In the circumstances, the Committee recalls that the exercise of the right to freedom of expression carries with it special duties and responsibilities. These special duties and responsibilities are of particular relevance within the school system, especially with regard to the teaching of young students. In the view of the Committee, the influence exerted by school teachers may justify restraints in order to ensure that legitimacy is not given by the school system to the expression of views which are discriminatory. In this particular case, the Committee takes note of the fact that the Supreme Court found that it was reasonable to anticipate that there was a causal link between the expressions of the author and the "poisoned school environment" experienced by Jewish children in the School district. In that context, the removal of the author from a teaching position can be considered a restriction necessary to protect the right and freedom of Jewish children to have a school system free from bias, prejudice and intolerance. Furthermore, the Committee notes that the author was appointed to a non-teaching position after only a minimal period on leave without pay and that the restriction thus did not go any further than that which was necessary to achieve its protective functions. The Human Rights Committee accordingly concludes that the facts do not disclose a violation of article 19."

Vladimir Petrovich Laptsevich v. Belarus

CCPR/C/68/D/780/1997

Para 8.1

"The first issue before the Committee is whether or not the application of article 26 of the Press Act to the author's case, resulting in the confiscation of the leaflets and the subsequent fine, constituted a restriction within the meaning of article 19, paragraph 3, on the author's freedom of expression. The Committee notes that under the Act, publishers of periodicals as defined in article 1 are required to include certain publication data, including index and registration numbers which, according to the author, can only be obtained from the administrative authorities. In the view of the Committee, by imposing these requirements on a leaflet with a print run as low as 200, the State party has established such obstacles as to restrict the author's freedom to impart information, protected by article 19, paragraph 2."

Para 8.2

"The Committee observes that article 19 allows restrictions only as provided by law and necessary (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (order public), or of public health or morals. The right to freedom of expression is of paramount importance in any democratic society, and any restrictions to the exercise of this right must meet a strict test of justification."

Alexandre Dergachev v. Belarus

CCPR/C/74/D/921/2000

Para 7.2

"The Committee is of the view that the particular expression of political opinion expressed by the author in carrying the poster in question falls

within the scope of freedom of expression protected under article 19 of the Covenant. The State party has not advanced that any of the restrictions set out in article 19, paragraph 3, of the Covenant are applicable. The Committee therefore considers conviction of the author for expression of his views amounted to a violation of his rights under article 19 of the Covenant, and notes that his conviction had not been annulled when the communication was submitted to the Committee."

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