

National Security: An Exception of Freedom of Speech

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ABSTRACT

The real autonomy would not be possible if people were not capable to express their thoughts, compose their opinions, or linked with those who might discuss their feelings and thoughts. It is also an essential right in a free society to be liberally allowed to participate in the welfare of society. The equilibrium should be maintained by imposing realistic restrictions which may be levied under the law when the right to Freedom of Speech comes in clash with rights of other individuals which can help the democratic state to preserve the basic right of Freedom of Speech at an admissible level. The basic purpose of this article is to explore the scope and extent of “protection of national security” an exception of Freedom of Speech in the light of national and international instruments.

Keywords: National Security, Freedom of Speech, Freedom of Expression, Human Rights, Free Debate during Emergency

Introduction

Freedom of Speech (FOS) establishes one of the indispensable foundational stone of [a democratic] society, one of the primary requirements for its evolution and welfare of every man ... which are the needs of ... multiplicity, and open-mindedness deprived of which there is no concept of “democratic society” means, amongst other things, that each “formality”, “condition”, “restriction” or “penalty” levied regarding this must be proportional to the lawful purpose pursued. Any person who exercises his FOS takes on “duties and responsibilities” whose extent is based on his circumstance and the technical means which he utilizes (*Handyside v The United Kingdom*, 1976). Right of FOS and Freedom of Expression (FOE) embraces the right to print and disseminate one's views, perception and understandings with full autonomy and by resorting to any accessible methods of publication (*Flt. Lt. (Dr) Shariq Saeed v Mansoob Ali Khan*, 2010).

The right of FOS is also a fundamental common law right (*Derbyshire County Council v Times Newspapers*, 1995). Alexander (Alexander, 2005) stated that the theory of the FOS acknowledges not only the right of the peoples to speak but also the right of the public to hear. FOS, which is frequently used synonymously with FOE, has always been supposed to cover more than what are literally speech, i.e.

spoken language – Generally, then, speech liberty refers to – and is usually referred as – FOE or Freedom of Communication.

FOS and FOE comprises the right to gather information (Mian Muhammad Nawaz Sharif v President of Pakistan, 1993). The people's right to know and Freedom of Information (FOI), FOS and FOE should therefore, have a munificent patronage from all those who reliance in democracy and the contribution of people in the management and matters of public significance (Province of Punjab v Qaisar Iqbal, 2018). The expression which is manipulated by motion pictures is included also within the ambit of FOS and Freedom of Press (FOP) guaranteed by the 1st and 14th Amendments of US. There is no doubt that the motion pictures are an eminent channel by the help of which the ideas can be transmitted (Joseph Burstyn, Inc. v Wilson, 1952).

FOS is the lifeblood of any republic. The nature and limit of this freedom and fundamental right evaluates the quality and maturity of democracy in a country (Leo Communication (Pvt.) Ltd v Federation of Pakistan, 2017). It is necessary for the well-beings of the community and the survival of a democratic society that there is largest conceivable propagation of information from distinct and divergent sources (Independent Newspapers Corporation (Pvt) Ltd v Federation of Pakistan, 2017).

Speaking words is God's reward to human beings. Via communication an individual communicates his ideas, opinions and sentiments to others. FOS and FOE is a natural privilege which an individual attains on birth. Thus, it is a primary social right; attempts by racist organizations to demote or asphyxiate this liberty have always been decisively revolted (Life Insurance Corporation of India v Prof. Manubhai D. Shah, 1993). In democratic societies, FOS has never been an unrestrained right. Speech is structured through a large body of laws which cover a spectrum including defamation, privacy, pornography, political campaign contribution limits, broadcasting license regulations, and many others (Melkonian, 2012).

In Abrams case (Abrams v United States, 1919) the Court said that the US 1st Amendment does not provide shelter to the speech which is devised to undermine the US in war by promoting sedition and disorder. Justice Blackmun (New York Times Co. v United States, 1971) stated that the disclosure of information in wartime among various things including the activities of troops and information about intelligence activities might threaten the national security and disclosure of such information might cause “the death of soldiers, the destruction of alliances, the greatly increased difficulty of negotiations with our enemies, the inability of our diplomats to negotiate,...[the] prolongation of the war, and further delay in the freeing of US prisoners”.

Although there are many exceptions of FOS provided under the ICCPR¹, various regional and international treaties, charters, frameworks, statutes and constitutions, but this article focus on “the protection of national security”.

Concept of National Security

Treinovskis and Jefimovs (Jānis Teivāns-Treinovskis, 2012) elaborated that the concept of national security is as ancient as the state. Individuals, who made the first community and state development, from the earliest starting point, had the thought for the security of their livelihood and safeguard from internal and external extortions. Historically the concept of national security has been basically comprehended as a risk to be suppressed fiercely from the impacts of external enemies. That is the reason the security angle, irrespective of its expansion to the public relations area, and was generally credited to military power. The advancement of mankind made the need to investigate further the possibility of national security by considering noticeable as well as internal and imperceptible threats also. Al-Serhan and others (Sayel F. Al –Serhan, 2017) argued that first time in 1947 the term national security was developed, when the American National Security Council was made, after the WW-II and the development of the term Cold War to demonstrate the state's capacity to accomplish its security so as not to forfeit its legitimate concerns to keep away from war and the capacity to ensure those interests whenever forced by war.

Toubat and others (Hazem Suleiman Toubat, 2017) stated that the concept of national security, by and large, is connected to the freedom, stability, and advancement of the state. Where it infers its speculative and practical validation from two fundamental ideas that represent to the spirit of the survival of the state: (a) the first is the autonomy, which implies that the state has added up to control of its territory freely without any interruption of any other authority except if it is limited by international conventions consented by the state. The defense of national security is an impression of this sovereignty, as a thought which is based on the legal right of the state to safeguard its entity and ensure its security by taking the essential measures (Groves, 2010); (b) the second is the essential and fundamental interests of the state spoken to by social, political, pecuniary, and sociopolitical concerns. In this way, the national security of any state is the sum of its indispensable interests (Sayed, 2003).

Classification of National Security

A prominent Indian scholar Paleri (Paleri, 2008) while classifying the elements of national security considered all factors which are generally associated with the idea and satisfy particular characteristics like (a) have directly influence on human life; (b) complete basic concept which is definable and significant; (c) free threat attractor i.e. always under threat; (d) periodic in origin as developed in various periods of time; (e) continuous and without interruption since derivation, if interrupted then will be a new element on re-entrance; (f) autonomous variable with a profile in which the values of the elements varied from minimum to maximum scale; (g) have interaction with other elements; (h) easily comprehensible for its usage in national security; (i) it should have macro level

social influence; (j) territory specific; (k) have competency to maximize national security; (l) universal in character and as a universal idea its components have same appeal, and after consideration the said factors enlists various elements of national security i.e. (i) military security, (ii) economic security, (iii) resource security, (iv) border security, (v) demographic security, (vi) disaster security, (vii) energy security, (viii) geostrategic security, (ix) informational security, (x) food security, (xi) health security, (xii) ethnic security, (xiii) environmental security, (xiv) cyber security and (xv) genomic security.

Free Debate versus National Security in International Instruments

(a) Liberty of Views in UDHR 1948

Morsink (Morsink, 2010) stated that when the UN was founded in “San Francisco” in 1945; at that time the representatives of the founding conference were under pressure to comprise an “International Bill of Rights” in the Charter of the UN and such pressure was gradually building during the WW-II. In 1941, the US President Roosevelt proposed four freedoms in his address including FOS and FOE. The drafters, while outlined the “Universal Declaration”, included FOS in its preamble basically paid tribute to the ideas of Roosevelt.

The UDHR (Nations, n.d.) is a landmark instrument in the history of human rights. It was drafted by delegates from all over the world who had diverse legal and social backgrounds. The UNGA affirmed the Declaration at its 3rd session in Paris on December 10, 1948 vide Resolution 217A (III). In the history, first time, the basic human rights were acknowledged by the adoption of this Declaration.

According to “International Media Support” (Support) the scope of the right of FOE is wide and multilayered. Firstly, being a human right as expressed in Article 19 of UDHR², FOE has privilege to everyone. There are no dissimilarities on the basis of individual's “race, color, nationality, sex, language, social origin or property”. Secondly, it embraces the right to communicate information and views “of all kinds”.

(b) Liberty of Opinions in ICCPR 1966

According to “Canadian Civil Librarians Association” (Association, 2015) the ICCPR tries to guarantee the protection of civil and political privileges of human beings. The UNGA approved it on 19 December 1966 and it became functional on 23rd March 1976. It is also an important component of the International Bill of Rights. Tomuschat (Tomuschat, 2008) avowed that the ICCPR embraces approximately all established human rights which are given in the historical manuscripts like the US 1st ten amendments (1789/1791) as well as the “French *Déclaration des droits de l’homme et du citoyen*” (1789).

The General Comment No. 34 (UNHRC, 2011) (on Article 19 of ICCPR) which was adopted by the UNHRC³ in its 102nd session emphasizes the

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significance of FOS and FOE in a democracy regarding the development of individuals and community. It stated that for the complete development of an individual the FOS and FOE are imperative requirements. Both are indispensable for the progress of any society. In any autonomous and democratic nation they institute the foundational stone. Both of the liberties are comprehended with each other, FOE is providing the medium for the conversation and elaboration of ideas. FOE is an essential requirement for the recognition of the values of transparency and accountability that are crucial for the advancement and safety of human rights.

According to CCPR General Comment No. 11 (Rights, n.d.) the Article 20⁴ of the ICCPR expresses that any promulgation for war and any support to national, racial or religious contempt that establishes provocation to discrimination, hostility or aggression will be restricted according to law. The Committee suggested that these required restrictions are completely consistent with the privilege of FOE as elaborated in Article 19 of ICCPR, the exert of which conveys with it particular obligations and duties. The restriction which is stated in first paragraph embodies all types of promulgation undermining or bringing about an act of aggression or infringement of the harmony which is contrary to the UN Charter, while the second paragraph of the article is coordinated against any support of national, racial or religious hatred that establishes provocation to discrimination, aggression or violence, regardless of whether such kind of propaganda or promotion has intentions which are external or internal to the State concerned. Article 20(1) does not restrict promotion of the sovereign right of self-protection or the privilege of people to self-assurance and autonomy as per UN Charter. It is required that there should be proper legislation and an appropriate sanction imposed on the infringement of Article 20, so that it can be implemented in its letter and spirit. The Committee, in this manner, trusts that States parties which have not yet done as such should take the appropriate measures to fulfill the obligations as mentioned in Article 20, and should cease themselves from such kind of propaganda or advocacy.

O'Flaherty (O'Flaherty, 2012) acknowledged that the FOE plays a vital role for smooth functioning of the whole human rights system. The 1st paragraph of Article 19 of ICCPR⁵ according to CEELI (Initiative, 2003) ascertains one of the important safeguards of the Covenant prerogative. The historical debate on drafting of Covenant specifies that the condition of liberty to hold views was accommodated to the FOE after a considerable discussion over whether the “private matter, belonging to the realm of the mind” should be joined with the public matters of FOE as described in Article 19(2). CEELI (Initiative, 2003) also considered the 2nd paragraph of Article 19⁶ in broad spectrum, although, the manuscript of the paragraph does not expose any distinction between the respect of expression or to seek out information. Nowak (Nowak, 1993), one of the prominent analysts, observed that it safeguards “de facto the entire area of (public) freedom of expression and information”.

The Article 19(3) (b) of the ICCPR stated that the privilege to exercise the FOS transmits “special duties and responsibilities” and may “therefore be subject to certain restrictions” when required “for the protection of national security”.

Free Debate versus National Security in Constitution of Pakistan and India

(a) Freedom of Speech in Pakistan

Constitutionnet (Constitutionnet, 2018) expounded that after the WW-II, the British government conceded liberty to its Indian Colony by enacting the “Indian Independence Act, 1947”. On August 14, 1947 the sovereignty powers were transferred to the newly recognized territories. The “Government of India Act, 1935” was amended to fulfill the obligations as mentioned in the Act of 1947. At that time the both constitutional instruments jointly served as an “interim constitutional order” for newly established territories. After the lapse of nine year in 1956 the 1st Constitution of Pakistan was furnished. In 1962, General Ayub Khan, who had captures all the powers, proclaimed the Constitution by an Executive Order. In 1973, the 3rd Constituent Assembly passed the current Constitution.

Amanullah (Malik, 2018) stated that the right to speak freely was not ensured in the “Government of India Act, 1935”. Since Pakistan could not outline its constitution for a long time, for which the Constituent Assembly was authorized under the “Indian Independence Act, 1947”, due to that the citizens could not possess the liberty to speak freely. But, the Objectives Resolution ensured that basic rights would be granted in the upcoming Constitution. Khan (Khan, 2009) stated that the fundamental prerogatives included FOS was not granted under the 1962 Constitution. However, these rights were granted under the umbrella of 1st Constitutional Amendment. Hamdani (Hamdani, 2014) expounded that the current Constitution granted various entitlements as primary human prerogatives which also includes the FOS and FOE under Article 19⁷.

In 1960, during the regime of President Ayub Khan in Pakistan, “Press and Publication Ordinance (PPO)” was promulgated. The ordinance empowered the authorities to impose restrictions on newspapers and news providers on various issues including the material which contradict the security of Pakistan. In 1979, during the era of President Zia-Ul-Haq, “Motion Pictures Ordinance”⁸ was issued which authorized the public functionaries not to grant certificate for public exhibition to any film if, in their opinion, the whole film or any part of the film is prejudicial and breach security or defense of Pakistan. Moreover, a number of amendments were made in the PPO and imposed direct censorship on media during 1980s. In July 1990, during the regime of Prime Minister Mohtrama Benazir Bhutto, for regulating the matters regarding the publications and printing presses “The Registration of Printing Press and Publications Ordinance” was

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proclaimed. In 2002, during the tenure of President Pervez Musharraf, “Defamation Ordinance, 2002” and “Pakistan Electronic Media Regulatory Authority Ordinance, 2002” were proclaimed for regulating media.

The National Assembly of Pakistan enacted the “Prevention of Electronic Crimes Act”⁹ in 2016 for providing a legal structure to define different types of electronic crimes including those which are against the integrity and security of the state, procedures for their investigation, prosecution and adjudication regarding electronic crimes.

CJ Kayani (Mahmud Zaman v District Magistrate, Lahore, 1958) elaborated that as per 1956 Constitution the Article 8 ensured that all citizens of state shall have the prerogative to disseminate their views without any hindrance and it prohibited the pre-censorship. In the case of All Pakistan Muslim League (All Pakistan Muslim League v Government of Sindh, 2012), the court said that the purpose of the Constitutional Fundamental rights is not only to provide protection of actions, conduct and ideas of any person, it also protected the opinions which are disapproved or which may be unpleasant or objectionable. The free speech clause of the Constitution not merely provide safeguard to the speech which may be approved by the listener, but it also provide the shelter to the speech which may be obnoxious or even hateful. The Court in a case (Ali Raza v Federation of Pakistan, 2017) stated that the FOS and FOE embodies the right to print and disseminate one’s views, ideas and opinions with full liberty and by using all available sources of communication.

The Section 124(a)¹⁰ of PPC elaborated that a person is liable for punishment if he or she utters words, either libel and slander, which attempts or attempts to stimulate disloyalty towards, the Federal or Provincial Government established by law.

The Court in the case of High Court Bar Association (High Court Bar Association v Government of Balochistan, 2013) said that the literature which embodies hate material, wall-chalking and frightening and malicious press releases were not allowed in light of the fact that such kind of activities are against to the injunctions of Islam, undermined the honor, security and defense of the state, public order, dignity and ethics...and same were also offences according to law, and they motivated others to carry out crime.

The Court (Province of Sindh v M.Q.M., 2014) also asserted that the FOS and FOE as provided in the free speech clause of the Constitution not merely embraces the prerogative of a person to convey his ideas and opinions and allowed to participate in any debate without any dread of state interference, but it also comprised the prerogative of a person to keep on silent. In Dr. Shahid Masood (Dr. Shahid Masood v Federation of Pakistan, 2010) case the court said that the constitutional safeguard provided to FOS, FOE and FOP under Article 19 have equal significance, if not more, the entitlement of each citizen to retrieve information regarding issues of public importance as provided in 18th Amendment under Article 19(a).

Justice Kazi (Sardar Sher Bahadur v Government of Pakistan, 2018) stated that the right of FOS and FOE granted under Article 19 of the Constitution of Islamic Republic of Pakistan¹¹ is not “unfettered” and “unbridled”, instead of that it is levied under rational constraints which may be enforced according to law in the interest of “glory of Islam”, “integrity”, “security of defense of Pakistan or any part thereof”.

In the case of Muhammad Ayoub (Muhammad Ayoub v Federation of Pakistan, 2018) the court said that the free debate is internationally recognized as foundational and fundamental prerogative of human beings. It is not only foundation of a democracy but also essential to thriving democratic society. The prerogative of free speech is protected by a large number of territorial and international treaties, frameworks and charters but internationally certain restriction are applied on it because no nation could permit the rebellions to deliver speeches against the state, advancing terrorism in the state. If such speeches are permitted to continue, then the frustrated elements will start to employ natives of the land as a force to start a war against the state. Thus the restrictions imposed in Article 19 of the Constitution could not be avoided.

Athar Minallah, C.J. (Riaz Hanif Rahi v Federation of Pakistan, 2020) said that it is the obligation of public authorities to guarantee that the rights given under the constitution of each and every citizen are safeguarded. It is a crucial obligation of the State and its representatives to maintain public order. The prerogative of people to protest is not an absolute prerogative but it is depending on reasonable limitations. It is the obligation of the law implementing functionaries to consider various factors while forcing limitations or restrictions for the reasons to regulate a peaceful protest with the goal that the freedoms of other citizens also stay secured. In such manner they might force restrictions concerning route or venue or force some other condition having respect to keeping public order and safeguarding the freedoms of other citizens. Only in exceptional and extraordinary conditions the State can restrain an individual from practicing their prerogative to protest on the basis of national security. The Athar Minallah, C.J. (Shahid Akbar Abbasi v The Chief Commissioner, Islamabad, 2021) told that free discourse is not restricted to speaking but extends to paying attention to and regarding views of others. Concealment of free debate prompts backward social orders, empowering fanaticism and disintegrating law and order. It unavoidably brings about disorder and insurgency. An independent press has the role of a watchdog and obstructing its capacity to scatter information and consider the State and its functionaries accountable definitely prevents to individuals the enjoyment from getting their privileges. Our national security must be fortified and improved by keeping individuals educated and empowering them to practice the option to communicate freely, depending on reasonable restrictions.

(b) Free Speech in India

According to Wikipedia (Wikipedia, n.d.), under Article 13(1)(a) of the Draft Constitution, 1948 the Constituent Assembly discussed the FOS and FOE on December 1-2, 1948 and October 17, 1949. Most of the members acknowledged the insertion of this prerogative in the Constitution. Although, there was debate on the issue that whether this right is unbridled and unrestricted or some restrictions could be imposed on this right. At the end Constituent Assembly approved the free debate clause of the Draft Constitution, 1948 and embodied in the Article 19(a)¹² of the new Constitution.

Balaji C (C, 2017) affirmed that the Indian Constitution Preamble confirms the FOS and FOE to all citizens of India. The Indian court (*The Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal, 1995*) stated that it is essential for exercising the right of free speech that the inhabitants of the state have the advantage of diversity of ideas and a variety of views on public matters. In a healthy democracy it is postulated that there is well-known citizenry. In a liberal democracy multiplicity of views, ideas, notions and philosophies are necessary so that citizens are enabled to reach at well-versed judgment on all matters relevant to them.

Justice Bhagwati (*Maneka Gandhi v Union of India, 1978*) highlighted the significance of FOS and FOE and stated that the open and free debate is the foundational stone of a democratic society, because it is the only curative of a state action in a liberal society. If it is believed that the essence of the democracy is “government of the people by the people”, it is clear that each citizen must be eligible to contribute in the development of democracy and for this purpose, it is essential that he must be entitled to utilize his prerogative of making a choice and participate in open and liberal debate of public issues.

The Indian Superior Court (*Brij Bhushan v The State of Delhi, 1950*) ruled that the FOP is embodied in the protection of FOS and FOE as given under free speech clause of the Constitution. Sadual (Sadual, 2015) asserted that the FOP attains the constitutional status by its interpretation of the Judiciary, although specifically there is no provision available in the Constitution which establishes the FOP. He further elaborated that the FOP is considered as a species of which FOE is an intellectual.

In a case (*State of Bihar v Shailabala Devi, 1952*) the court elaborated that the signals, graphical demonstration having a high possibility to cause problem in the state can be limited and are covered within the domain of Article 19(2)¹³ of the Indian Constitution. The court (*Sanskar Marathe v The State of Maharashtra and Anr, 2015*) held that only those demonstrations which stimulate or instigate or attempts to stimulate disaffection against the government or the expressions which may cause public disorder are covered under the ambit of Section 124(a) of the IPC¹⁴ and punishable according to law.

Johannesburg Principles on National Security

The second principle of the Johannesburg Principles (Expression, 1996) elaborated that there is no legitimization for imposing restrictions on FOE based on national security except if its genuine reason and evident impact is to ensure the existence of the state or its national integrity against the exercise or threat of exercise the power, or its capacity to react to the exercise or risk of exercise the power, regardless of whether from external sources, for example, a threat from military, or a domestic source, for example, incitement to vicious revolution of the government. Consequently, trying to legitimize the limitations based on national security is not appropriate if the genuine intention is to ensure the interests disconnected to national security, including, for instance, sheltering the government from awkwardness or criticism, and suppressing information regarding the work of its institutes, or suppressing labor protests.

Moreover, sixth principle (Expression, 1996) certifies that the expression of the opinion cannot be counted as a danger to the security of the country except if the government can establish that the expression is proposed to incite imminent aggression, or that it is probably going to incite such aggression. It is further required by the administration of the state to demonstrate that there is an immediate relationship and quick correspondence between the expression and the likelihood of the happening of such violence.

According to seventh principle (Expression, 1996), the amicable exercise of the privilege to FOE is not counted as a risk to national security, and in this way should not be liable to any restrictions or confinements if (i) its purpose is to change the government strategies or even a replacement in the administration itself by using peaceful ways or (ii) is a criticism or affront to a foreign State or (iii) establishes objection, or promote objection on the basis of religion, integrity or belief, to army recruitment or service, a specific conflict, or the risk or exercise of power to resolve international conflicts or (iv) is directed at transmitting information regarding alleged infringements of global human rights principles or international humanitarian law.

Free Speech during Proclamation of Emergency in Pakistan

Mian Allah Nawaz (Shaukat Ali Mian v The Federation of Pakistan, 1999) said that in Part-X of the Constitution named as Emergency Provisions the Article 232¹⁵ and 233¹⁶ exists. In this Chapter there are five articles which provide a procedure in the constitution how to manage conditions emerging out of exceptional events and presenting danger to existence of the State. The articles provide divergence from the constitutional control. The various organs of state like legislature, executive and judiciary are performing their functions independently because our constitution is in written form and clearly distributed their powers. There is also distribution of powers between federation and its units and it also ensure provincial sovereignty.

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The Article 232 of the constitution relates to a national emergency. The President may declare a proclamation that he is satisfied that there is impending risk to security of the country from internal and external dangers. The President summoned the joint sitting of National Assembly and Senate in which that proclamation is to be laid. The proclamation of emergency changed the shape of our constitution from federal to unitary form during the span of emergency. The president, during the course of emergency, is entitled to proclaim that the right to move any court for execution of fundamental freedoms will stay suspended.

Conclusion

The right of free speech has been granted by UDHR, ICCPR, various regional and international treaties, charters, frameworks, statutes and constitutions but it is not unbridled and unfettered. There is no such thing as absolute and un-restricted liberty in any modern state. The legislature can impose reasonable restrictions on the prerogative of free speech which are reasonable and according to law to maintain public order. The speech which is against the national security, defense of Pakistan or stimulate public disorder can be restricted as provided under the Article 19 of ICCPR and Article 19 of the Constitution of Pakistan, 1973. Moreover, Article 15(1) of ECHR¹⁷ stated that during the course of public emergency a State is allowed to take derogatory methods in derogation of the conventions subject to the condition that the derogatory measures ought to be to the degree expected by the exigencies of the circumstance provided such measures are not conflicting with their other commitments under the International Law.

In Pakistan various enactments were proclaimed like Press and Publication Ordinance 1960, Motion Pictures Ordinance 1979, Defamation Ordinance 2002, Pakistan Electronic Media Regulatory Authority Ordinance 2002 and Prevention of Electronic Crimes Act 2016 to restrict speech on various grounds including protection of National Security.

UNSC¹⁸ adopted a resolution in which all States are required to approve such measures which might be essential and appropriate and according to their commitments under international law to: (a) restrict according to law any instigation whose purpose is to do terrorist act or acts; (b) prevent such behavior; (c) refuse to provide secure place to any individual as for whom there is reliable and related information giving genuine reasons behind thinking about that they have been blameworthy of such conduct. Although, the first victim is FOS in case of national security but the FOS is a sacred and inviolable human right. However, it must not be allowed to be derogated in the name of artificial national security except in case of clear and present issue of national security.

References

- Abrams v United States, 250 U.S. 616 (1919).
- Alexander, L. (2005). *Is There a Right of Freedom of Expression?* (1 ed.). Cambridge University Press, UK.
- Ali Raza v Federation of Pakistan , PLD 64 (2017).
- All Pakistan Muslim League v Government of Sindh, CLC 714 (2012).
- Association, C. C. (2015, October 27). *Summary: International Covenant on Civil and Political Rights (ICCPR)*. Retrieved October 8, 2018, from ccla.org: <https://ccla.org/privacy/surveillance-and-privacy/summary-international-covenant-on-civil-and-political-rights-iccpr/>
- Brij Bhushan v The State of Delhi, AIR 129 (1950).
- C, Balaji. (2017, September). Ambit of Freedom of speech in Indian Media. *International Journal of Academic Research and Development*, 2(5). Retrieved October 9, 2018, from www.academicjournal.com/download/727/2-5-206-363.pdf
- Constitutionnet. (2018, April). *Constitutional History of Pakistan*. Retrieved October 9, 2018, from [constitutionnet.org: http://www.constitutionnet.org/country/pakistan](http://www.constitutionnet.org/country/pakistan)
- Derbyshire County Council v Times Newspapers, AC 534 (1995).
- Dr. Shahid Masood v Federation of Pakistan , SCMR 1849 (2010).
- Expression, X. A. (1996, November). *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*. Retrieved December 12, 2018, from [article19.org:https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf](https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf)
- Flt. Lt. (Dr) Shariq Saeed v Mansoob Ali Khan, YLR 1647 (2010).
- Groves, S. (2010). The Interdependence of National Security and National Sovereignty. *The Heritage Foundation, AR 10-03*. Retrieved December 10, 2018, from http://thf_media.s3.amazonaws.com/2010/pdf/AR10-03.pdf
- Hamdani, Y. L. (2014, December). Major Challenges to Fundamental Right of Freedom of Speech in Pakistan. *Media Legal Defence Initiative*. Retrieved October 9, 2018, from https://www.mediadefence.org/news/major-challenges-fundamental-right-freedom-speech-pakistan#.VbXhi_mqqko
- Handyside v The United Kingdom, ECHR 5 (1976).
- Hazem Suleiman Toubat, R. H. (2017). Limitations on Freedom of Expression for the Protection of National Security: A Case Study of Jordan. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(11). Retrieved December 10, 2018, from <http://www.onlinejournal.in>
- High Court Bar Association v Government of Balochistan, PLD 75 (2013).
- Independent Newspapers Corporation (Pvt) Ltd v Federation of Pakistan, PLD 289 (2017).
- Initiative, C. E. (2003, July). *International Covenant on Civil and Political Rights (ICCPR): Legal Implementation Index*. Legislative Assistance and Research

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- Program Technical Leadership Tool Series. Retrieved October 8 , 2018, from https://www.americanbar.org/content/dam/aba/directories/roli/misc/iccpr_legal_implementation_index_2003.authcheckdam.pdf
- Jānis Teivāns-Treinovskis, N. J. (2012). State National Security: Aspect of Recorded Crime. *Journal of Security and Sustainability Issues*, 2(2). Retrieved December 11, 2018
- Joseph Burstyn, Inc. v Wilson, 343 U.S. 495 (1952).
- Khan, H. (2009). *Constitutional History of Pakistan* (2nd ed.). Oxford University Press.
- Leo Communication (Pvt.) Ltd v Federation of Pakistan , PLD 709 (2017).
- Life Insurance Corporation of India v Prof. Manubhai D. Shah , AIR 171 (1993).
- Mahmud Zaman v District Magistrate, Lahore, PLD (WP) Lah. 651 (1958).
- Malik, A. (2018, Jan.-Jun.). Criminalizing Literature of Hate Speech in Pakistan. *Bazyaft*, 32. Retrieved September 4, 2018, from http://pu.edu.pk/images/journal/bazyaft/PDF/20_v32_2018.pdf
- Maneka Gandhi v Union of India, AIR 597 (1978).
- Melkonian, H. (2012). *Freedom of Speech and Society: A Social Approach to Freedom of Expression*. Cambria Press, Amherst, NY .
- Mian Muhammad Nawaz Sharif v President of Pakistan, PLD SC 473 (1993).
- Morsink, J. (2010). *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*. University of Pennsylvania Press, Philadelphia, ProQuest Ebook Central. Retrieved August 12, 2018, from <http://ebookcentral.proquest.com/lib/hec-ebooks/detail.action?docID=344142>
- Muhammad Ayoub v Federation of Pakistan, PCrLJ 1133 (2018).
- Nations, U. (n.d.). *The Universal Declaration of Human Rights*. Retrieved October 4, 2018, from Un.org: <http://www.un.org/en/universal-declaration-human-rights/index.html>
- New York Times Co. v United States, 403 U.S. 713 (1971).
- Nowak, M. (1993). *UN Covenant on Civil and Political Rights; CCPR Commentary*. NP Engel.
- O'Flaherty, M. (2012, December). Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 34. *Human Rights Law Review*, 12(4). Retrieved October 8, 2018, from <https://academic.oup.com/hrlr/article-abstract/12/4/627/628921?redirectedFrom=fulltext>
- Paleri, P. (2008). *National Security: Imperatives and Challenges*. Tata McGraw-Hill Publishing Company Ltd, New Delhi.
- Province of Punjab v Qaisar Iqbal, PLD Lahore 198 (2018).
- Province of Sindh v M.Q.M. , PLD 531 (2014).
- Riaz Hanif Rahi v Federation of Pakistan, PLD Islamabad 175 (2020).
- Rights, U. N. (n.d.). *General Comment No 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art 20)*. Retrieved December 12, 2018, from [ohchr.org:https://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo11.pdf](https://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo11.pdf)

- Sadual, M. K. (2015). Freedom of Press in Indian Constitution: A Brief Analysis. *International Journal of Applied Research*, 1(8). Retrieved October 9, 2018, from <http://www.allresearchjournal.com/archives/2015/vol1issue8/PartD/1-7-160.pdf>
- Sanskar Marathe v The State of Maharashtra and Anr , Cri.PIL 3 (2015).
- Sardar Sher Bahadur v Government of Pakistan, CLC 1202 (2018).
- Sayed, M. W. (2003). Evolution of the Concept of National Security and its Implications for the Security Function. *Journal of Police Thought, Sharjah*, 12(2).
- Sayel F. Al –Serhan, A. A. (2017, December). Challenges Facing National Security in the Arab Gulf States: A Case Study of Bahrain. *International Journal of Humanities and Social Science*, 7(12). Retrieved April 11, 2022, from <https://www.ijhssnet.com/>
- Shahid Akbar Abbasi v The Chief Commissioner, Islamabad, PLD Islamabad 1 (2021).
- Shaukat Ali Mian v The Federation of Pakistan, CLC 607 (1999).
- State of Bihar v Shailabala Devi, AIR 329 (1952).
- Support, I. M. (n.d.). *Briefing Note Series on Freedom of Expression: Freedom of Expression as a Human Right*. Centre for Law and Democracy International Media Support (IMS). Retrieved October 4, 2018, from <http://www.law-democracy.org/live/wp-content/uploads/2015/02/foe-briefingnotes-1.pdf>
- The Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal , AIR 1236 (1995).
- Tomuschat, C. (2008). International Covenant on Civil and Political Rights. *United Nations Audiovisual Library of International Law*. Retrieved October 8, 2018, from http://legal.un.org/avl/pdf/ha/iccpr/iccpr_e.pdf
- UNHRC, U. N. (2011, July 11-29). *General Comment No. 34, Article 19: Freedoms of Opinion and Expression*. Retrieved September 13, 2018, from [refworld.org: http://www.refworld.org/docid/4ed34b562.html](http://refworld.org/docid/4ed34b562.html)
- Wikipedia. (n.d.). *Freedom of Expression in India*. Retrieved October 9, 2018, from [wikipedia.org: https://en.wikipedia.org/wiki/Freedom_of_expression_in_India](https://en.wikipedia.org/wiki/Freedom_of_expression_in_India)

¹ International Covenant on Civil and Political Rights 1966, Article 19

² The Universal Declaration of Human Rights 1948, Article 19 stated that 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.

³ The United Nations Human Rights Committee (UNHRC) is a United Nations organ created under the International Covenant on Civil and Political Rights (ICCPR). It receives reports from states party to the Convention regarding realization of obligations under the Convention and may issue general comments regarding the obligations arising under it. See Articles 28 and 40 of the Convention.

⁴ International Covenant on Civil and Political Rights 1966, Article 20(1) stated that any propaganda for war shall be prohibited by law. (2) Any advocacy of national, racial or

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religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

⁵ International Covenant on Civil and Political Rights 1966, Article 19(1) stated that everyone shall have the right to hold opinions without interference.

⁶ International Covenant on Civil and Political Rights 1966, Article 19(2) stated that 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.

⁷ The Constitution of the Islamic Republic of Pakistan 1973, Article 19 stated that every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press...

⁸ Motion Pictures Ordinance 1979, Section 6(1) stated that a film shall not be certified for public exhibition if, in the opinion of the Board, the film or any part thereof is prejudicial to the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality or amounts to the commission of, or incitement to, an offence.

⁹ Prevention of Electronic Crimes Act 2016, Section 37(1) stated that the authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or incitement to an offence under this Act.

¹⁰ Pakistan Penal Code 1860, Section 124(a) stated that whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Federal or Provincial Government established by law shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

¹¹ The Constitution of the Islamic Republic of Pakistan 1973, Article 19 stated that ... subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence. (Section 4 of the Constitution (Fourth Amendment) Act, 1975 (71 of 1975) substituted the [commission of] in place of the word "defamation", in Art. 19, (w.e.f. November 21, 1975)).

¹² Constitution of India 1950, Article 19(1)(a) stated that all citizens shall have the right to freedom of speech and expression.

¹³ Constitution of India 1950, Article 19(2) stated that nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

¹⁴ Indian Penal Code 1860, Section 124(a) stated that whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

¹⁵ The Constitution of the Islamic Republic of Pakistan 1973, Article 232(1) stated that if the President is satisfied that a grave emergency exists in which the security of Pakistan, or any part thereof, is threatened by war or external aggression, or by internal disturbance

beyond the power of a Provincial Government to control, he may issue a Proclamation of Emergency

¹⁶ The Constitution of the Islamic Republic of Pakistan 1973, Article 233 stated that (1) Nothing contained in Articles 15, 16, 17, 18, 19, and 24 shall, while a proclamation of Emergency is in force, restrict the power of the State as defined in Article 7 to make any law or to take any executive action which it would, but for the provisions in the said Articles, be competent to make or to take, but any law so made shall to the extent of the incompetency, cease to have effect, and shall be deemed to have been repealed, at the time when the Proclamation is revoked or has ceased to be in force. (2) While a Proclamation of Emergency is in force, the President may, by Order, declare that the right to move any Court for the enforcement of such of the Fundamental Rights conferred by Chapter 1 of Part II as may be specified in the Order, and any proceeding in any Court which is for the enforcement, or involves the determination of any question as to the infringement, of any of the Rights so specified, shall remain suspended for the period during which the Proclamation is in force, and any such Order may be made in respect of the whole or any part of Pakistan. (3) Every Order made under this Article shall, as soon as may be, be laid before [both Houses of Majlis-e-Shoora (Parliament) separately] for approval and the provisions of clauses (7) and (8) of Article 232 shall apply to such an Order as they apply to a Proclamation of Emergency.

¹⁷ European Convention of Human Rights 1967, Article 15(1) stated that in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

¹⁸ UNSC Resolution 1624, Adopted by the Security Council at its 5261st meeting, on 14 September 2005
