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**LEGAL ANALYSIS OF FREEDOM
OF EXPRESSION WITH SPECIAL REFERENCE TO
BROADCASTING MEDIA IN PAKISTAN**



**DOCTOR OF PHILOSOPHY
UNIVERSITI UTARA MALAYSIA
2020**

**LEGAL ANALYSIS OF FREEDOM
OF EXPRESSION WITH SPECIAL REFERENCE TO
BROADCASTING MEDIA IN PAKISTAN**



YASIR ALEEM FATIANA (901725)

**A thesis submitted to the Ghazali Shafie Graduate School of Government in
fulfilment of the requirements for the Doctor of Philosophy
Universiti Utara Malaysia**



Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
(College of Law, Government and International Studies)
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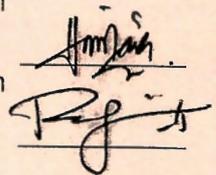
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ABSTRACT

Freedom of expression is one of the most cherished fundamental rights. Freedom of expression is imperative in all fields including media. Ever since the emergence of electronic media in Pakistan, the freedom of expression has also received more attention. Pakistan Electronic Media Regulatory Authority (PEMRA) was created in 2002 and subsequently governed by an ordinance, PEMRA Ordinance 2002, to regulate electronic media in Pakistan. Electronic media includes broadcast media and distribution services. The Constitution of Pakistan and different laws including PEMRA Ordinance 2002 and the Electronic Media (Programs and Advertisements) Code of Conduct 2015 afford various restrictions on freedom of expression of broadcast media. This study critically analyses as to how and to what extent freedom of expression of broadcast media is protected and restricted in Pakistan. For better insights on the subject, this study also comprehends the laws and practices of different countries such as Malaysia and United Kingdom, and considers international perspectives relating to freedom of expression of broadcast media. To achieve the objectives of the study, doctrinal legal research method was adopted. It was further supported by socio-legal research method. Under socio-legal research method, semi-structured interviews were conducted. This study finds, among others, that there are numerous issues annexed with freedom of expression of broadcast media in Pakistan. These issues have seriously affected the applicability of the principle of freedom of expression and also restricted the prospects of effective regulation of broadcast media in Pakistan. Consequently, the study sets out some recommendations such as amending the laws related to freedom of expression of broadcast media, in particular, PEMRA Ordinance 2002. This study also articulates clearer guidelines on the Code of Conduct of the electronic media. It is expected that the proposed amendments will resolve the prevailing issues of freedom of expression of broadcast media and pave the way for the PEMRA to work as more autonomous and effective regulatory body for the electronic media in the country.

Keywords: Broadcast Media, Electronic Media, Freedom of Expression, Pakistan Electronic Media Regulatory Authority (PEMRA), Restrictions, Legislation

ABSTRAK

Kebebasan bersuara adalah salah satu hak asasi yang paling bermakna. Kebebasan bersuara sangat diperlukan dalam semua bidang termasuk media. Semenjak wujudnya media elektronik di Pakistan, kebebasan bersuara juga telah mendapat perhatian. Pihak Berkuasa Pengawalseliaan Media Elektronik Pakistan (PEMRA) telah ditubuhkan pada tahun 2002 yang kemudiannya ditadbir oleh undang-undang yakni Ordinan PEMRA 2002 untuk mengawal selia media elektronik. Media elektronik adalah termasuk media penyiaran dan perkhidmatan penyiaran. Perlembagaan Pakistan dan undang-undang yang lain termasuk Ordinan PEMRA 2002 serta Kod Tatakelakuan Media Elektronik (Program dan Iklan) 2015 dilihat sebagai menyekat hak kebebasan bersuara dalam bidang penyiaran. Secara kritikalnya, kajian ini menganalisa bagaimana dan setakat mana kebebasan bersuara dalam bidang penyiaran dilindungi dan disekat di Pakistan. Untuk mendapatkan pandangan yang lebih baik berkaitan dengan isu ini, kajian ini juga mengkaji amalan dan undang-undang negara lain seperti Malaysia dan United Kingdom, di samping melihat perspektif undang-undang antarabangsa berkaitan dengan kebebasan bersuara. Untuk mencapai objektif kajian ini, kaedah penyelidikan undang-undang doktrin digunakan. Kaedah ini turut disokong dengan kaedah penyelidikan sosio-perundangan. Melalui kaedah penyelidikan sosio-perundangan, temu bual separa skstruktur telah dijalankan. Kajian ini menunjukkan antara lain terdapat pelbagai isu yang berkaitan dengan sekatan kebebasan bersuara dalam media elektronik. Isu-isu ini memberi kesan kepada prinsip kebebasan bersuara dan juga menghadkan perkembangan undang-undang berkaitan media elektronik di Pakistan. Justeru, kajian ini mencadangkan antaranya, meminda undang-undang berkaitan kebebasan bersuara dalam media penyiaran, khususnya Ordinan PEMRA 2002. Kajian ini juga menerangkan garis panduan yang lebih jelas bagi Kod Tatakelakuan media elektronik. Diharapkan pindaan yang dicadangkan akan menyelesaikan isu kebebasan bersuara media penyiaran dan juga akan membuka jalan bagi PEMRA untuk berfungsi sebagai badan pengawal seliaan yang lebih berautonomi dan berkesan bagi media elektronik di negara ini.

Kata kunci: Media Penyiaran, Media Elektronik, Kebebasan Bersuara, Pihak Berkuasa Pengawalseliaan Media Elektronik Pakistan (PEMRA), Sekatan, Undang-undang

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DECLARATION

I hereby declare that this thesis is based on my original work except for quotations and citations which have been aptly acknowledged. I also declare that it has not been previously or concurrently submitted for any other degrees at University Utara Malaysia or any other institution



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LIST OF ABBREVIATIONS

Abbreviation: Description of Abbreviation

BBC:	British Broadcasting Corporation
CIA:	Central Intelligence Agency
CMA:	The Communication and Multimedia Act
CMCF:	The Communication and Multimedia Content Forum
CPEC:	China Pakistan Economic Corridor
ECHR:	European Convention on Human Rights
ECTHR:	European Court of Human Rights
FIR:	First Information Report
FM:	Frequency Modulation
HRA:	The Human Rights Act 1998
IB:	Intelligence Bureau
ICCPR:	International Covenant on Civil and Political Rights
IPC:	Indian Penal Code
ICT:	Information and Communication Technology
LMDS:	Local Multipoint Distribution System
MCMC:	Malaysian Communications and Multimedia Commission
OFCOM:	The Office of Communications
OFTEL:	The Office of Telecommunications
OIC:	Organization of Islamic Cooperation
OSCE:	Organization for Security and Co-operation in Europe
PBUH:	Peace Be Upon Him
PEMRA:	Pakistan Electronic Media Regulatory Authority

PFUJ: Pakistan Federal Union of Journalists
PLJ: Punjab Law Journal
PPC: Pakistan Penal code
PPO: Press and publication ordinance 1960
PTV: Pakistan Television Network
UDHR: The Universal Declaration of Human Rights
UK: United Kingdom
UNESCO: The United Nations Educational, Scientific and Cultural Organization
USA: United States of America



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CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Freedom of Expression as a matter of liberty and right has great significance. Right of knowledge and liberty of thought are the fundamentals of freedom of expression¹. Freedom of expression is also imperative for growth and accomplishment of individual personality in a civilized world². Freedom of expression is mandated to achieve numerous objectives including search of truth³, promotion of democracy⁴ and individual autonomy⁵. Freedom of expression is paramount in democracy because democracy makes people sovereign⁶.

Freedom of expression is also one of the utmost contested fundamental right⁷. Still it is protected in almost all countries of the world. However, the nature of protection offered to freedom of expression may vary in different countries. Constitution of Pakistan also provides freedom of expression. Pakistan is an exciting case regarding protection of fundamental rights⁸. An independent state ever since the culmination of

¹Vincent Blasi, "Milton Areopagitica and the Modern First Amendment," *Yale Law School Legal Scholarship Repository*, (1995).

²Lingens v Austria 8 EHRR 407 (1986).

³John Stuart Mill, "On Liberty." www.constitution.org. (Accessed July 13, 2016).

⁴Larry Alexander, *Freedom of Speech Volume 1* (Ashgate, 2000).

⁵Alexander Meiklejohn, *Free Speech And Its Relation To Self-Government* (Harper Brothers Publisher, 2001).

⁶Greenawalt Kent, "Free Speech Justifications," *Columbia Law Review*, (January 1989) 119-155

⁷Adrienne Stone, "The comparative Constitutional Law of Freedom of Expression," *Melbourne Legal Studies Research Paper No. 476*, (2010).

⁸"Islam Constitution and Fundamental Rights".www.pakteahouse.net. (Accessed July 21, 2016).

British colonization of sub-continent in 1947 Pakistan owns a well-settled jurisprudence of constitution and pledge towards constitutional principles⁹. These values sit together with inherent religious, cultural and social norms that impact freedom of expression in the country¹⁰. The preamble of Pakistani Constitution elaborate that the people of country provided to themselves the democratic system with a view to practice the principles of equality, democracy, tolerance, freedom and social justice as offered by Islam. Additionally, liberties of belief, faith, worship, thought and expression are one of the basic foundations of Pakistan Constitution¹¹. Part III of Constitution of Pakistan deals with fundamental rights of the people of Pakistan¹². The right to freedom of expression is secured under Article 19 in the following words:

“Every citizen shall have the right to freedom of speech and expression, there shall be freedom of press, subject to any reasonable restrictions imposed by law in the interest of 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, [commission of] or incitement to an offence.¹³”

The Constitution promised that all countrymen shall be permitted to hold ideas and express opinions, without being reprimanded for doing so¹⁴. Meaning thereby that citizens may express their mind, place their opinions and ideas in writing, get them printed, telecast over the internet, or present as they feel in any way possible, which includes numerous forms of art and any other observable statement¹⁵. This also

⁹“Pakistan: A Political History” www.aiasociety.org. (Accessed September 12, 2016).

¹⁰Muhammad Abdul Basit, *The Constitution of the Islamic Republic of Pakistan with commentary* (Federal Law House Lahore, 2015).

¹¹Hamid Khan, *Principles of Administrative Law* (Oxford University Press Lahore Pakistan, 2013).

¹²Shahid Raza Malik, *The Constitution of the Islamic Republic of Pakistan, 1973* (Usmania Law Book House Peshawar, 2016).

¹³Shaukat Mahmood and Nadeem Shaukat, *Constitution of Islamic Republic of Pakistan 1973* (Legal Research Centre Lahore, 2006).

¹⁴Zaheer Uddin and others v. The State and Others, SCMR 1718 (1993).

¹⁵Engineer Jameel Ahmed Malik v Per Nazim Hussain Siddiqui, SCMR 164 (2004).

contains the right to receive, seek and impart information, opinions or ideas, in any manner which may be presented¹⁶.

Henceforth, Article 19 of Pakistan Constitution promises that freedom of expression will only be offered to human beings that are citizens. People who are non-citizens will not be entitled to this right¹⁷. However, Article 19 also protects freedom of press on the plea that although press is not a citizen. It enjoys the same privileges and rights of the citizens¹⁸. Press as an institution do not fall under the category of citizens but constitution has expressly protected press's right of expression in the country¹⁹. In "M.S.M. Sharma v. Krishna Sinha"²⁰ the Indian Supreme Court observed:

"Freedom of press being only a right flowing from the freedom of speech and expression, the liberty of the press stands on no higher footing than the freedom of speech and expression of the citizen and that no privilege attaches to the press as such as distinct from the freedom of the citizen"

This indicate that press is granted same freedom of expression. It will also be subject to same restrictions of Article 19 as are applied on the citizens of the country²¹. In recent time, with the rise of the technologies the press has also evolved into print and electronic media. Print media and electronic media are often used and utilized to receive and impart information²².

¹⁶Masroor Ahsan v Asdeshir Cowasjee, PLD 823 SC (1998).

¹⁷Sadaf Aziz, *The Constitution of Pakistan: A Contextual Analysis* (Oxford: Hart Publishing, 2018).

¹⁸Sheikh Muhammad Rashid v Majid Nizami, Editor-In-Chief, The Nation and Nawa-E-Waqat, P L D 514 SC (2002).

¹⁹Muhammad Abdul Basit, *Right to Information Laws of Pakistan* (Federal Law House Rawalpindi, 2017).

²⁰M.S.M. Sharma v Krishna Sinha AIR 395 (1959).

²¹Nadeem Asghar Kaira v Government of Punjab Through Secretary of Punjab, PLD 544 Lahore (2007).

²²Ministry of Information and Broadcasting, Government of India v Cricket Association of Bengal, AIR 1236 (1995).

Media work as the best apparatus of expression and provider of information²³. Exercise of right of expression is basic obligation of both electronic and print media²⁴. Electronic media in Pakistan consist of broadcast media and distribution services²⁵. The media works as mass communicator. It must relish this right for informing the public about the conditions of life and activities in society²⁶. Media in addition to providing information to the public also performs several other roles in the society. Provision of education and entertaining the masses are some of the important roles played by media in a society²⁷. Media also empowers the public to keep constant vigilance over the matters of country and express their opinions for curative actions if things are to go wrong²⁸. In Pakistan the recent developments of General Pervez Musharraf expulsion from the power and former chief Justice Iftikhar Muhammad Choudhry reinstatement movement indicate that the media is a vital pillar to impart its valued commitment to the democracy²⁹.

Prior to 2001 there was hardly any market for broadcast media in Pakistan because only state-owned radio and television stations were operating in the country³⁰. In 2002,

²³Madabhushi Sridhar, *The Law of Expression: An Analytical Commentary on Law for Media* (Asia Law House Hyderabad India, 2007).

²⁴Democracy and Dictatorship in Pakistan by Hasan Gardezi,, accessed May 08, 2019, <http://www.sacw.net/aii/gardezi99.html>.

²⁵Further details are provided in part of operational definitions

²⁶Javed Jabbar and Qazi Faez. Isa, *Mass Media Laws and Regulations in Pakistan - and a Commentary from a Historical Perspective* (Asian Media Information & Communication Centre Jurong Point Singapore, 1997).

²⁷Biswanathbanerjee, "Role of Media in Our Society," Review by Eokhardah, May 18, 2017, accessed May 08, 2019, <https://eokhardahreview.wordpress.com/2015/02/13/the-pen-is-mightier-than-the-sword-2>.

²⁸Biswanathbanerjee, "Role of Media in Our Society," Review by Eokhardah, May 18, 2017, accessed May 08, 2019, <https://eokhardahreview.wordpress.com/2015/02/13/the-pen-is-mightier-than-the-sword-2>.

²⁹The Fourth Estate, Australian Politics. com accessed May 8, 2019, <http://australianpolitics.com/topics/media/the-fourth-estate>.

³⁰Mudaser Shareef and Mudaser Shareef, THE Growth of Private TV Channels in the Post 2000 Pakistan, Academia.edu ShareResearch, accessed May 08, 2019, http://www.academia.edu/6382356/THE_growth_of_private_TV_channels_in_the_post_2000_Pakistan.

the government of Pakistan opened the market for private electronic media. To control and govern the market for private electronic media, “the Pakistan Electronic Media Regulatory Authority (PEMRA)” was formed in the same year and was entrusted with responsibility and power to regulate electronic media in Pakistan³¹. PEMRA was created by the ‘Pakistan Electronic Media Regulatory Authority Ordinance 2002 (PEMRA Ordinance 2002)’ which was later amended in 2007, 2015³² and most recently in 2018.

1.2 Problem Statement

Media Commission Report of Pakistan, which was released in 2014, presented that 89 licensed TV channels are operating in country. Those channels included 29 news channels. These TV channels also has access to more than 75 million viewers and 15 million households³³. The number of private television channels operating in Pakistan has increased in recent times to one hundred and twenty-one³⁴. These TV channels are always competing in their business for the attention of millions of viewers daily³⁵. This has resulted in some of the broadcast media to cross the limits of freedom of expression. It concurrently affords an opportunity to the state to restrict the expression that does not cross the limitations of freedom of expression of broadcast media.

Constitution of the Pakistan, under Article 19 has protected freedom of expression along-with a complete list of restrictions, but it does not make a direct reference to

³¹Legislations. <http://www.pemra.gov.pk/>. n.d. <http://www.pemra.gov.pk/> (accessed July 23, 2016).

³²Mohammad Abdul Basit, *Media Laws* (Rawalpindi: Federal Law House, 2017).

³³“MEDIA COMMISSION REPORT (FINAL) - Supreme Court of Pakistan.” Accessed June 14, 2019. <http://supremecourt.gov.pk/web/page.asp?id=1568>.

³⁴The Newspaper's Staff Reporter, PBA Opposes Issuance of Licenses for Satellite Broadcast Stations, DAWN.COM, May 02, 2019, accessed August 06, 2019, <https://www.dawn.com/news/1479743>.

³⁵Jawad Hassan, *Media & Mass Communications Laws in Pakistan* (Lahore: Manzoor Law Book, 2016).

freedom of expression of broadcast media³⁶. So, the question arises as to how and to what extent freedom of expression of the broadcasting media is recognized in the country. The questions of how and to what extent freedom of expression of broadcast media is protected and restricted together with the issues annexed to them are the prime focus of this study. While no such explicit freedom of expression of broadcast media in exists Pakistan.

The issue of concern is related with the restrictions imposed on the freedom of expression of broadcast media. The problems that inscribed under the PEMRA Ordinance 2002, the electronic media legislation is that some of the restrictions are vague or not properly elucidated. This elusiveness or non-explanation of the restrictions opens up some potentials to the PEMRA, as a regulatory body and the government to restrict even the legitimate expression on broadcast media and even permits broadcast media to cross their limitations of freedom of expression. For instance, in the recent cases of Dawn TV story³⁷ and Faiz-a-Abad Dharna case³⁸, a controversial area of restrictions on freedom of expression namely “national security” was argued. The lack of clarity regarding definition of “national security” in electronic media laws provided an opportunity to the government to shut down all private broadcasting channels in the wake of Faiz-a-Abad Dharna and PEMRA was then forced to act against Dawn TV in case of Dawn TV story.

³⁶Yasmeen Aftab Ali. *A Comparative Analysis of Media & Media Laws in Pakistan*. Lahore: Sang e-Meel Publications, 2012.

³⁷On 6th of October 2016 DAWN TV and DAWN newspaper presented a story about National security meeting. Government and army took serious notice of that story and committee was formed to investigate the matter. After the recommendations of committee, two federal ministers were removed from their office and PEMRA was ordered to initiate legal proceedings against the broadcasting company. Dawn Tv was accused of violation of restrictions related to National security.

³⁸Suo Moto Case No. 7/2017. In this Case, the Worthy Supreme Court declared that PEMRA as an institution failed to effectively restrict freedom of expression of electronic media on one side and at the same time failed to protect the freedom of expression of electronic media.

Another example is the limitations on the freedom of expression in relation to contempt of Court. Section 4, (3) of “the Electronic Media (Programs and Advertisement) Code of Conduct 2015” provides that programs on matters pending before courts can be telecasted in an informative manner³⁹. However, the practice is completely different as the frequent interference is made by the broadcast media in the right of fair trial of the accused. TV channels have the habit of presenting discussions and analysis on the pending cases. Broadcast media conducts media trials of the accused and even prove them guilty on media⁴⁰.

While commenting on similar situations of media trial the Chief Justice of Pakistan observed that “the discussions and debates in broadcast media about pending cases influence the judges to make up their minds about cases”⁴¹. These illustrations highlight the elusiveness of freedom of expression laws regarding broadcast media in the country.

Another issue is about the role and powers of PEMRA as the regulatory body. The role of PEMRA as an independent working body is questionable as it has the tendency to seriously affect freedom of expression of broadcast media in Pakistan⁴². Involvement of federal government regarding method of appointment of chairman, representation of federal government in PEMRA authority and role of federal government in selection

³⁹Electronic Media Code of Conduct 2015," Pemra.gov.pk,, accessed April 10, 2019,<http://www.pemra.gov.pk>

⁴⁰Similar situation of media trial arose in Dr Asim case. Dr Asim (a politician) was arrested by NAB on charges of corruption. His investigation videos were released on TV channels and TV shows and discussions were conducted on those videos. based on those investigation videos, a compete media trial was conducted, and he was indicted by the media as well. However, later he was released by the Courts.

⁴¹SUO MOTU CASE NO.28 OF 2018, Supreme Court of Pakistan.

⁴²Azmat Rasul and Jennifer M. Proffitt. “Diversity or Homogeny: Concentration of Ownership and Media Diversity in Pakistan.” *Asian Journal of Communication* 23, no. 6 (2013): 590–604. <https://doi.org/10.1080/01292986.2013.805797>

of members of council of complaints consistently highlight the involvement of federal government in the affairs of PEMRA and this involvement permits the federal government to use PEMRA as a tool to restrict freedom of expression of electronic media in the country⁴³.

The authority of PEMRA as a regulatory body regarding the transmission of broadcasting content is also a matter of debate. Currently broadcast media is transmitted through licensed cable network system in Pakistan. This system of transmission is flawed itself as it allows PEMRA and government bodies to control transmission system and restrict broadcast media's right of expression. The other practical flaw of transmission system is related with allocation of frequency number for broadcast media by transmission companies. The current cable network system in Pakistan is working on the analogue system. That system has a maximum capacity to transmit a total of 80 TV channels at a specified time. Ever since the PEMRA has already granted more than 120 licenses to TV channels for establishment of satellite broadcast stations, at least 30 or more TV channels cannot be televised. However, in small towns a maximum of 20 or more TV channels are telecasted by these cable network. There is no rule which provides mechanism for allocation of frequencies for these broadcast media. So, these companies are at liberty to allocate frequencies to different TV channels⁴⁴. These transmitting companies obstruct the signal of different broadcasters at the behest of PEMRA and federal government which seriously threaten

⁴³“SC Wants to See PEMRA Free from Govt Control.” Pakistan Today. Accessed July 14, 2019. <https://www.pakistantoday.com.pk/2018/04/16/sc-wants-to-see-pemra-free-from-govt-control/>.

⁴⁴Shahid Masood v Federation of Pakistan (2010) SCMR 1849

the freedom of expression of electronic media in general and broadcast media in particular.

1.3 Research Questions

Research questions which will be investigated under this study are presented as follows:

1. How does the law protect freedom of expression of broadcast media in Pakistan?
2. To what extent freedom of expression of broadcast media is restricted in Pakistan?
3. To what extent freedom of expression of broadcast media is protected under international treaties and laws of other countries?
4. How can the laws regulating freedom of expression of broadcast media be improved to promote freedom of expression and at the same time protect it from abuse?

1.4 Research Objectives

Objectives of this research are:

1. To examine the laws on freedom of expression of broadcast media in Pakistan.
2. To examine the restrictions on freedom of expression of broadcast media under Pakistani laws.
3. To study the law on freedom of expression of broadcast media from international perspective.
4. To make suggestions and recommendations to improve legislations on freedom of expression of broadcast media in Pakistan.

1.5 Significance of the Study

Current study provides in-depth legal examination of freedom of expression in related to broadcast media of Pakistan. In addition, this research is expected to be preliminary in-depth legal research in Pakistan which deals with freedom of expression of broadcast media. This study contributes to the legal reform efforts related with freedom of expression through explaining several international models and standards, as well as addressing the Constitution and current legislations. It is also assumed that the current research study is proper and timely. As the world in entering digital era and role of media has also changed in the current emerging situations of the world. From a Pakistani internal viewpoint, the study of this thesis provides policy creators recommendations on how different appropriate legislation models could be adopted. This research also has great significance for stakeholders of broadcast media in the country. That is explained in the following paragraphs.

Firstly, this study is significant for the Parliament and government of the Pakistan including its different departments. This is because the research expects to provide necessary conclusions for legislative development in freedom of expression of broadcast media in Pakistan. Legislative developments if adopted will help achieve true and independent right of expression for the industry of broadcast media in the country.

Secondly, this study is significant for media industry and PEMRA as an institution as media and PEMRA are important stakeholder of this research. The problematic areas of freedom of expression of Pakistan of broadcast media are identified and suggested

valuable solutions. Hence this research will help media industry and PEMRA to reach mutual conclusions regarding freedom of expression of broadcast media.

Thirdly, this study is significant for legal professionals as they are major stakeholders of current research. The instruments like the Constitution of Pakistan and PEMRA Ordinance 2002 are valuable documents for the legal professionals in explaining freedom of expression of broadcast media in Pakistan. This study will work as a reference point for legal professionals on the subject of broadcast media's freedom of expression.

Fourthly, this study is significant for the academic discussion about freedom of expression in the state. As there is scarcity of material on the subject. So, this study will be helpful in studying new perspectives of freedom of expression in the state. The main contribution of this research is to relook and suggest model laws regarding freedom of expression of broadcast media in Pakistan.

Fifthly, Media and especially broadcast media have progressed as an important part of today's society. So, the broadcast media has the propensity to generate negative as well as positive impacts on the society. These effects are the outcome of the media's right of expression. Hence current research will provide necessary conclusions regarding the freedom of expression of broadcast media. These conclusions will also help the media to present maximum positive image of the society to the world.

Lastly, Current study provides an opportunity to the world to discover the factual situation of freedom of expression offered to broadcast media in Pakistan. This

research can be a reference point for the countries which are facing the same situations and problems regarding freedom of expression of broadcast media.

1.6 Scope of the Study

This research focuses on freedom of expression under a special theme of freedom of expression of broadcast media of Pakistan. Media in recent times has evolved into print media and electronic media. Whereas electronic media in addition to others includes broadcast media and distribution services. This broadcast media may be private broadcast media or public broadcast media. Public broadcast media in Pakistan is regulated by Ministry of Information. While, “Pakistan Electronic Media Regulatory Authority (PEMRA)” is entrusted with the responsibility of regulating private broadcast media. PEMRA Ordinance also provides that broadcast media can be either private TV channels or private radio channels or it can even be both. This study concentrated on legal analysis for freedom of expression of private TV channels (hereinafter called as Broadcast media) in Pakistan.

Broadcast media is regulated by “the Pakistan Electronic Media Regulatory Authority Ordinance 2002 (PEMRA Ordinance 2002)”. Whereas limitations on freedom of expression related to broadcast media are presented under the Constitution of Pakistan, PEMRA Ordinance 2002 and “Electronic Media (Programs and Advertisements) Code of Conduct 2015”. This study analyzed all above-mentioned legislations related with freedom of expression of broadcast media. This research also approached international legal instruments and the laws of UK and Malaysia for better understandings of the nature and method of protection of freedom of expression related to broadcast media in diversified jurisdictions. The study of these jurisdictions will be helpful in reaching

out to conclusions on boundaries of freedom of expression related with broadcast media of Pakistan.

1.7 Research Methodology

Freedom of expression is a significant constitutional fundamental right. Ever since the emergence of broadcast media, this right has gained more importance. The emergence of broadcast media has also increased the issues annexed with freedom of expression. This research study attempts to examine freedom of expression of broadcast media in the country of Pakistan. While examining the freedom of expression of broadcast media, the study also discussed the issues annexed with it. For the purposes of this study, the doctrinal along with socio-legal research approaches are applied in this study. Reasons for selection of the combining doctrinal and socio legal approach and research methods, the participants of interviews and the sampling technique adopted in study, the questionnaire techniques, the data collection approaches, and data analysis methods are also explained in this part. Furthermore, the method for gaining informed consent is explained in this part of the study.

1.7.1 Research Design

Research encompasses a rigorous and organized course of enquiry. collection of relevant and valid data is the basic requirement of this process. Several methods can be applied for collection of data. It depends on the kind of research study, as diverse approaches would be proper for confronting different study questions⁴⁵. Legal research or law research denotes a systematic study of legal concepts, rules, theories, principles, decided court cases, doctrines, legal issues, legal institutions, or legal questions, or

⁴⁵Krauss, Steven Eric. "Research Paradigms and Meaning Making: A Primer." *The Qualitative Report* 10 , no. 5 (December 2005).

problems or mixture of some of them or all of them⁴⁶. There are five types of legal research. They are descriptive and exploratory, explanatory, analytical and critical, historical and comparative⁴⁷. Characteristics of each method are different from the other⁴⁸. The current research is analytical and critical doctrinal research as it is related to the legal process and principles.

Legal research is essentially separated into two core traditions: doctrinal and non-doctrinal or socio-legal research⁴⁹. Pure legal research or doctrinal research method is associated with legal issues and principles and socio-legal or non-doctrinal legal research in addition to analyzing law and legal phenomena's, critically evaluate relationships between law and society⁵⁰. Doctrinal research is also termed as qualitative research as it does not contain any statistical analysis of the collected data⁵¹. Whereas non-doctrinal or socio-legal research adopts methods of other disciplines to create empirical data for answering research questions⁵². Therefore socio-legal can adopt either qualitative or quantitative research approaches⁵³.

Bryman provides that “social research involves research that draws on social sciences for conceptual and theoretical inspiration that may be motivated by developments and changes in society⁵⁴”. This study intends to analyze the issues associated with freedom

⁴⁶Anwarul Yaqin, *Legal Research and Writing* (Malayan Law Journal Kelana Jaya, Selangor, 2007).

⁴⁷Anwarul Yaqin, *Legal Research and Writing* (Malayan Law Journal Kelana Jaya, Selangor, 2007).

⁴⁸Imran Ahsan Khan, Nyazee, *Legal Research and Writing* (Federal Law House Rawalpindi, 2014).

⁴⁹Robert P. O'Neill, *Legal Research and Writing: A Practical Approach for Paralegals* (OH Pearson Education Columbus, 2017).

⁵⁰Kathryn L. Myers, *Legal Research* (Upper Saddle River, NJ: Pearson, 2014).

⁵¹Dobinson I and Johns F, “Qualitative legal research in McConville M and Wing HC” (eds), *Research methods for law*, (Edinburgh: EUP, 2007)

⁵²Cheng Han Tan, Cheng-Han Tan, *The Goals and Objectives of Law Schools Beyond Educating Students*, *Penn State International Law Review*, 2010.

⁵³Michael McConville and Wing Hong Chui, *Research Methods for Law* (University Press Edinburgh, 2017).

⁵⁴Khadija Mohamed, “Combining Methods in Legal Research.” *The Social Sciences* 11 (2016).

of expression of broadcast media in Pakistan. To study and answer this question this study is conducted by applying a mixture of doctrinal and non-doctrinal or socio-legal research methods. Denzin reasoned that “the use of multiple and independent research methods should, if the same conclusions are reached, result in greater reliability than a single methodological approach to a problem, and thus rigor, breadth, complexity, richness, and depth are added to the inquiry”⁵⁵. In preceding portion, a brief introduction of doctrinal and socio-legal research method is presented.

a) Doctrinal Legal Research

A doctrinal research also called ‘black-letter law’ provides a systematic description of the rules governing a specific legal category, investigates the liaison between rules, explicates areas of trouble and possibly calculates future development is a doctrinal research⁵⁶. Doctrinal legal research method makes an emphasises on the conception of law as independent doctrine. It provides clear boundaries between other subject and law by “analysing court judgments and statutes with little or no reference to the world outside the law”. This approach of doctrinal legal research only relates a body of principles in originating a exhaustive understanding of the law. It does not find any place for dealing with human interaction. It is also worthy to mention that doctrinal approach is more related with a coherent and accurate description of the law rather than study of scientific theories related with law⁵⁷.

⁵⁵Denzin, Norman K., and Yvonna S. Lincoln. *The SAGE Handbook of Qualitative Research*. Thousand Oaks: Sage Publications, 2005.

⁵⁶Khushal Vibhute and Filipos Aynalem, *Legal Research Methods Teaching Material* (Justice and Legal System Research Institute, 2009).

⁵⁷Samuel, Geoffrey. “Is Law Really a Social Science? a View from Comparative Law.” *Legal Theory and the Social Sciences*, May 2017, 169–202. <https://doi.org/10.4324/9781315091891-7>.

Despite several criticisms on doctrinal research, this research approach is still frequently used in legal research. The doctrinal research approach adopted in current research study is very important in offering a detailed understanding of the substantive law in Pakistan and other countries through the examination of statutes, legal principles and higher court judgments. Interpretive research methods are adopted to examine the effectiveness in addressing the problems of the existing legal measures and procedures for protection of freedom of expression of broadcast media. This is done to analyze the possible progresses in the existing systems.

b) Socio-Legal Research

Complete and exhaustive definition of socio-legal research is not available⁵⁸. It normally refers to studies and research of laws that are related with social phenomena. It adopts the research methods of the social sciences to acquire a kind of empirical data to carry out research. The basic object of gathering empirical research data in this study is to present important insights from an exterior viewpoint into how the specific laws are working in the society⁵⁹. It provides the researchers an opportunity to study the law in focus in more effective and appropriate way. Socio-legal method is an interdisciplinary research technique for analyzing law, legal phenomena's, and relationships between law and society⁶⁰. It is maintained that the term "socio" used in "socio-legal" research does not denote to social sciences or sociology, but denotes, an interface with a background within which specific law exists. socio-Legal adopts both

⁵⁸Dermot, Feenan, ed. *Exploring the 'Socio' of Socio-Legal Studies*. Palgrave Macmillan, 2013.

⁵⁹"Theory and Object in Law: The Case for Legal Scholarship as Indirect Speech." *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?*, n.d. <https://doi.org/10.5040/9781472560896.ch-015>.

⁶⁰Anwarul Yaqin, *Legal Research and Writing* (Malayan Law Journal Kelana Jaya, Selangor, 2007).

theoretical and empirical work, and perspectives and methodologies are drawn from the “humanities” as well as the “social sciences”⁶¹.

In situations where the law or doctrinal research alone is not able to answer to an issue, question, problem, or the method of socio-legal is approached. Anwarul Yaqin, inscribed that “where the true factors for the emergence or existence of a problem or issue are identified by empirical inquiry, law, where it is applied and enforced with the necessary will, commitment and appropriate strategies, can serve as an effective mechanism of control, regulation, change and reform⁶²”.

With these opinions in mind, the approach of socio-legal in current study agrees on a number of social science research methods to be applied in this study, including the interviewing. For the interviews, the semi-structured interview questions are used by the researcher based on research questions and research aims of the current research⁶³. The structure, process, respondents, numbers of respondents and reason for selection of respondents for interviews is presented in the section of data collection method.

1.7.2 Types of Data

Data is collected from different sources⁶⁴. Sources are generally categorized as primary and secondary or tertiary sources depending on their novelty and their immediacy to the source or origin⁶⁵. A researcher who is seeking to conduct a legal research must be

⁶¹ Alan Bryman, *Social Research Methods* (Oxford University Press Oxford, 2015).

⁶² Anwarul Yaqin, *Legal Research and Writing* (Malayan Law Journal Kelana Jaya, Selangor, 2007).

⁶³ Joanne Banker Hames and Yvonne Ekern, *Legal Research, Analysis, and Writing* (NY: Pearson New York, 2015).

⁶⁴ John W. Creswell and J. David. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Sage Los Angeles, 2018).

⁶⁵ Uma Sekaran,, and Roger Bourgie. *Research Methods for Business: a Skill-Building Approach*. Chichester, West Sussex: Wiley, 2013.

conversant with the method of finding law and its related information. Sources of legal data always work as a laboratory for the people intending to research on any topic of law. In this research primary and secondary data will be used. The details of the both are presented below.

a) Primary Sources

Primary sources are defined as sources which are direct and not influenced by anyone's opinion⁶⁶. Original documents or legislation or statutes or treaties or any other document of similar type forms part of primary sources⁶⁷. In other words, primary sources afford first-hand information or direct evidence. They are generated by recorders or witnesses who have experienced the events themselves⁶⁸.

Primary resources for this study include Constitution of Pakistan, original texts of statutes relating to media law, regulations issued by different bodies and case law of higher courts of Pakistan. Semi-structured interviews⁶⁹, England law related to freedom of expression and Malaysian Federal Constitution including laws related to electronic media also forms part of primary data. International legal treaties and case law relating to electronic media are also part of primary data for current research.

⁶⁶Tim May., *Social Research Issues, Methods and Process*. Buckingham: Open university press, 2011.

⁶⁷Mark Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing Oxford, 2013).

⁶⁸Rattan Singh, *Legal Research Methodology* (LexisNexis Haryana, India, 2016).

⁶⁹Says, L. "InterViews: An Introduction to Qualitative Research Interviewing Steinar Kvale. Thousand Oaks, CA: Sage, 1996. 326 Pp." *The American Journal of Evaluation* 19, no. 2 (1998): 267–70. [https://doi.org/10.1016/s1098-2140\(99\)80208-2](https://doi.org/10.1016/s1098-2140(99)80208-2).

b) Secondary Sources

Secondary sources are those sources that are not of a primary nature⁷⁰. Opinions of professionals, articles and books are generally considered as illustrations of secondary sources⁷¹. These materials are called as ‘reference materials. A researcher presents them to support his views or to disagree to others’ views. Simply put, secondary sources digest, evaluate, analyze and interpret information provided within primary sources or in other secondary sources⁷². Secondary resources are one step detached from the original episode or “horse’s mouth”⁷³. These are not original sources. Secondary, resources for current study includes, relevant law journals articles, law reports, speeches and seminar notes.

1.7.3 Data Collection Methods

The research data applied in current research study was collected from various sources. for the purposes of this thesis, it is divided into two main groups; data collected from documents and data collected form detailed interviews.

a) Documentary Data

Documentary data is considered as the foundation of the study. The core information provided in primary and secondary sources is analyzed and examined in the doctrinal legal research approach. The preceding portion explains the types of documents

⁷⁰Carol M. Bast M, and Margie A Hawkins. *Foundations of Legal Research and Writing*. Cengage Learning, 2012. Bast, Carol M. Bast M, and Margie A Hawkins. *Foundations of Legal Research and Writing*. Cengage Learning, 2012.

⁷¹S. K. Verma and M. A. Wani, *Legal Research and Methodology* (Indian Law Institute New Delhi, 2001).

⁷²Russell K Schutt,, *Investigating the Social World: The Process and Practice of Research*. Los Angeles: Sage, 2019.

⁷³Pertti Alasuutari, *The SAGE Handbook of Social Research Methods* (SAGE Publishers Los Angeles, 2009).

examined for this study and the databases from which those were retrieved. The following types of documents were examined in this study.

- Legislation in Pakistan, Malaysia and UK;
- International conventions and treaties;
- Reports of pertinent adjudicated cases in Pakistan and other countries⁷⁴

The WESTLAW, LEXIS-NEXIS, PAKISTANLAWSITE.COM and Punjab Law Journal (PLJ) are electronic legal databases that were used for locating legal documents. University Utara Malaysia library and internet resources including online libraries and research repositories were also consulted for the collection of legal documents are part of data for this study.

b) Interviews

The research interviews are possibly the most extensively used approach within qualitative method of research. Generally, the interview is a talk or conversation with other person for the specific resolve to collect information. That information may be of a personal nature or it may be related to any problem or a matter in which the interviewer or researcher is interested. The basic purpose of the interview is always collection of in-depth and detailed information from the interviewee.

That information may relate to interviewee's own conduct or it may relate to other's attitudes, beliefs, norms, values. It may also relate to a topic or issue or a problem on which interviewer is conducting research. An interview can be structured or unstructured and it can be conducted face-to face or on telephone or it can even be a

⁷⁴complete list of legislation and cases is provided in the start of thesis

computer assisted interview. The interviews constitute an integral part of data of this research as it presents the practical experience. Representation of practical side along with theoretical side enrich the study⁷⁵.

In this study semi-structured interviews method was adopted. In semi-structured interviews questions was created on a questionnaire with relatively open questions which paved way for discussion and development of interviewees answer through detailed dialogue. This approach of interviews is very convenient for producing in-depth information about the research topic⁷⁶.

Those interviews were carried out face to face⁷⁷. those were carried out at different locations in Pakistan. On the other side, this interview technique allows exchanging ideas and provides an opportunity to better comprehend legal problems. It is not possible to grasp such practical knowledge and experience without interview method. “Singhal and Malik in *Doctrinal and Socio-Legal Methods of Research: Merits and Demerits*”⁷⁸ rightly pointed out that;

“Semi-structured interviews can be used to gather qualitative information. Interviews of this type are suited to working with small samples, in addition, since they provide access to perceptions and opinions, they are effective for gaining insight into problems that are not immediately perceptible but that nonetheless cause concern in certain areas or in certain segments of the population”

⁷⁵Matthew David, *Social Research: An Introduction* (Sage Publishers London, 2011).

⁷⁶Neil Stephens,, “Collecting Data from Elites and Ultra Elites: Telephone and Face-to-Face Interviews with Macroeconomists.” *Qualitative Research*7, no. 2 (2007): 203–16. <https://doi.org/10.1177/1468794107076020>.

⁷⁷David Silverman,, *Qualitative Research: Theory, Method, and Practice*. London: Sage Publications, 1997.

⁷⁸Ashish Kumar Singhal and Ikramuddin Malik, "Doctrinal and Socio-legal Methods of Research: Merits and Demerits," *Educational Research Journal* Vol. 2(7) (July 2012).

c) Sampling: Selection and Size

Sampling is a systematic method of selection of a small number of people or groups out of a larger grouping of persons (called population or universe). The defined principles are adopted for selection of selection of sample in research⁷⁹. The sampling method of this study for the interviews adopted the “Purposive Sampling” model. Neuman define “purposive sampling” as a technique of selection of interviewees by the concerned researcher who selects participants for their specific expertise of the research theme⁸⁰. This selection is based on the relevant experience and position, so that, it fed the study adequately⁸¹.

This type of method of sampling is termed as appropriate and useful for this kind of study since “the aim is to identify key informants whose context-specific knowledge and expertise regarding the issues relevant to the research are significant and information-rich⁸²”.

Based on the abovementioned criteria of sample selection, the researcher contacted 26 persons from targeted fields and entities if they accept the interview⁸³. Due to shortage of time, sensitive and critical information of the study, 14 of them had apologized or indirectly and politely denied the interview. 12 of respondents accepted the

⁷⁹Uwe Flick,, *An Introduction to Qualitative Research*. Los Angeles: SAGE, 2019.

⁸⁰W. Lawrence Neuman,, *Social Research Methods: Qualitative and Quantitative Approaches*. Boston, MA: Pearson Education, Inc., 1994.

⁸¹Alan Bryman, *Social Research Methods* (Oxford University Press Oxford, 2008).

⁸²“Planning and Recruiting the Sample for Focus Groups and in,” n.d. <https://journals.sagepub.com/doi/abs/10.1177/104973201129118975>.

⁸³Colin Macdougall,, and Elizabeth Fudge. “Planning and Recruiting the Sample for Focus Groups and In-Depth Interviews.” *Qualitative Health Research*11, no. 1 (2001): 117–26. <https://doi.org/10.1177/104973201129118975>.

interview⁸⁴. The place of interviews was Islamabad, Lahore and Karachi and these interviews were conducted between the months of May 2017 to September 2017. Consequently, the researcher had spent over 5 months to complete the targeted interviews. The reasoning behind this selection has assisted to enrich the study within depth information, accumulation of experience and a practical concept.

Although the sample was small, but it included senior representatives of PEMRA, electronic media journalists and legal experts. Since the object of the conducting interviews was to test the understandings of the issues and problems achieved from supplementary sources, and to document the discovery of any other problems not so far explored in the interviews, this small sample size was deemed adequate⁸⁵. The interviews included specific interviewees selected from the competent authorities related to the fields of the thesis⁸⁶ including;

- i. Pakistan Electronic Media Regulatory Authority Officials
- ii. Legal experts
- iii. Electronic media Journalists.

The researcher introduced himself as a PhD Student at UUM / COLGIS (endorsement letter UUM) and clarified the background of the study and the importance of interview to explain the freedom of expression available to the broadcast media in Pakistan. The

⁸⁴"How Many Qualitative Interviews Is Enough? - NCRM," accessed September 16, 2016, http://eprints.ncrm.ac.uk/2273/4/how_many_interviews.pdf.

⁸⁵Mira Crouch and Heather McKenzie. "The Logic of Small Samples in Interview-Based Qualitative Research." *Social Science Information* 45, no. 4 (2006): 483–99. <https://doi.org/10.1177/0539018406069584>.

⁸⁶Brinkmann, Svend, and Steinar Kvale. *InterViews: Learning the Craft of Qualitative Research Interviewing*. Los Angeles: Sage Publications, 2015.

respondents were also informed by the researcher of their rights of the following's issues;

1. Reject the interview and/ or terminate it at any time.
2. Keep personal information concealed, unless permission has been given by them to the researcher.
3. Decline to answer any question.
4. Consent letter: respondents had given their consent on written letters.

d) Questions Techniques

The respondents had been classified into 4 groups. The questions had been divided considering their respective fields of the study as a guideline in formulation. These 12 respondents had been selected based on their groups as follows;

- I. 4 respondents from senior legal experts.
- II. 1 respondent was retired judge of Supreme court.
- III. 4 respondents from PEMRA officials
- IV. 3 respondents from electronic media journalists

The respondents have been coded as follows;

- a) Interviews with senior legal experts' Respondent no 1-4
- b) Interview with retired judge of Supreme Court Respondent no 5
- c) Interviews with PEMRA officials' Respondents no 6-9
- d) Interviews with electronic media journalists' Respondents no 10-12

Therefore, this section with background endorse the validity and reliability of the study since the interview is deemed a primary data to this study⁸⁷. Where the fields of this thesis are associated to the respondents' knowledge and experience. Consequently, the principal fields of the respondents had been taken into consideration to set-up the interview questions⁸⁸. Data collected by interviews is used to accomplish research objectives of the study⁸⁹. Total number of questions which were asked from the interviewees are seven and those questions are attached as schedule at the end of the thesis. These questions had been divided considering their respective fields of the expertise as a guideline in formulation of the questions. freedom of expression of broadcast media is the core of the thesis; therefore, questions also revolve around them and bifurcation of question asked from interviewees is as follows. Questions no 1, is related with first research objective and also about a general overview of the study. Questions no 2,3,4, and 5 are related with second research objective. Questions no 6 is related with third research objective and finally questions no 7 is related with fourth research objective of the study.

⁸⁷Aberbach, Joel D., and Bert A. Rockman. "Conducting and Coding Elite Interviews." *Political Science & Politics* 35, no. 04 (2002): 673–76. <https://doi.org/10.1017/s1049096502001142>.

⁸⁸Jonathan Howard Amsbary and Larry Powell. "Qualitative Research Interviews." *Interviewing in a Changing World*, 2018, 123–38. <https://doi.org/10.4324/9781315113135-9>.

⁸⁹Sharan B. Merriam and Elizabeth J. Tisdell, *Qualitative Research: A Guide to Design and Implementation* (B.C Langara College Vancouver, 2017).

Table 1.1 Background Information of Participants

Sr. No	Label of Respondents	Categories	Number of the Participants
1	Respondent 1 to 5	Senior Legal Experts	5
2	Respondent 6 to 9	PEMRA Officials	4
3	Respondent 10 to 12	Journalists	3

1.7.4 Analysis of Data

In current research study, data analysis is done according to the kind of the data collected that is derived from interviews and documents. This study used the techniques of the doctrinal methodology to explain the theoretical framework of the core-subjects concerning freedom of expression, restrictions and broadcast media in Pakistan. Doctrinal methodology also identifies and describe the main areas of this thesis in relationship with the research objectives.

The study used qualitative approach to generate data⁹⁰. An analysis of the interviews has been done manually to carefully compare the findings of the primary, secondary, and tertiary data to the outcomes of interviews. Initially, the transcripts of interviews had been subjected to, cleaning, filtering and reviewing. Consequently, the draft had been reviewed with respondents to ensure the conformity which maintain reliability and validity. The answers had been coded according to the subject of the question in which it was categorized according to research questions, objectives and problem statement. Hence, the outcomes of interviews had been utilized in different chapters of the thesis as applicable to be linked with the data from other sources to achieve harmonization, in this manner, to make the text more coherently and well-explained.

⁹⁰Michael Quinn Patton, *Qualitative Research Et Evaluation Methods: Integrating Theory and Practice* (Sage Publishers Los Angeles, 2015).

Besides, the study had used content analysis techniques⁹¹ to enable this study to include the vast amount of textual information generated from: Pakistani laws, interviews, books and journal. To identify their features in systematic manner. Additionally, the study used the legal analysis to enhance the elements of the thesis, which provided ‘rigorous analysis and creative synthesis, through accurate information of the legal frameworks of the right of expression provided by the Pakistani law.

For the first instance, data has been analyzed manually after collecting it in the form of notes or texts. Then, it has been subjected to drafting and editing in a descriptive manner using the technique of content analysis and legal analysis. This is due to the big number of legal documents, local and international, such as related treaties, reports, standards and foreign court cases. This research study also associates the regulatory system of broadcast media in the UK and Malaysia. This comparative approach⁹² helped find better solutions for the problems associated with broadcast media freedom of expression in Pakistan. Thus, the information and meanings are extracted and edited to disclose and identify the insufficiencies or gaps of the Pakistani legal framework, aiming to support the study⁹³.

⁹¹Margrit Schreier,, *Qualitative Content Analysis in Practice*. London: Sage, 2013.

⁹²“Cambridge Studies in Comparative Politics.” *Comparative Historical Analysis in the Social Sciences*, n.d., 445–47. <https://doi.org/10.1017/cbo9780511803963.014>.

⁹³Bridget Somekh, and Cathy Lewin. *Research Methods in the Social Sciences*. London: SAGE Publications, 2005.

1.8 Limitations of the Study

The current study offers several insights and extensive information regarding broadcast media's freedom of expression in Pakistan. Due to the sensitivity of the subject of freedom of expression of broadcast media, it was not an easy area to study particularly in Pakistan. The limitation of the current study are explained in preceding paragraphs.

Firstly, data for current study was collected from documentary sources and interviews. However, there is scarcity of relevant documentary data on the subject. That scarcity includes lack of specific resources and court cases concerning the freedom of expression of broadcast media in the country. Even some of the case law on the subject was only available in print form and collecting them was a difficult task.

Secondly, there is scarcity of material in academic deliberations regarding freedom of expression of broadcast media mainly in Pakistan. According to the best of knowledge of researcher no such study was conducted in past, so the academic information is incomplete and even the available one is scattered. In such situation it was difficult for the researcher to execute research plans.

Thirdly, the researcher has also faced difficulties in collecting required data during the interview processes. The researcher is an employee and not funded at all and time is critical to this study. Sensitivity of some parts of the study in respect of the interviews also affected the cooperation of some respondents. The difficulties regarded interviews included transportation problems, long distances of different cities for interviews and

limited time for timings of the interviews. Despite these difficulties, efforts have been made as far as conceivable to collect required data.

1.9 Literature Review

1.9.1 Operational Definitions

This part examines the operational definitions of the basic terminologies used in the thesis.

1) Freedom of Expression

Freedom of expression have been well-defined in several documents and in several ways. The most comprehensive definition was provided under “the United Nation Declaration of Human Right (UDHR) 1948”. UDHR under Article 19 present the definition in the following words⁹⁴;

“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.”

Another important definition was provided by Supreme court⁹⁵ in following words;

“Freedom of expression means the action of making known one’s thought or feelings; the conveying of feelings in a work of art or in performance of a piece of music; writings, speech, or action that show a person’s ideas, thoughts, emotions or opinions.”

Lovell v. City of Griffin⁹⁶ and ‘Ramesh Thapar v State of Madras’⁹⁷ also provided important definition of freedom of expression in following words;

⁹⁴Universal Declaration of Human Rights, United Nations, accessed May 09, 2019, <http://www.un.org/en/universal-declaration-human-rights/index.html>.

⁹⁵Leo communications Limited vs. Federation of Pakistan, PLD Lahore 709 (2017).

⁹⁶Lovell v City of Griffin, 303 US 444 (1937).

⁹⁷Romesh Thappar v The State of Madras, AIR 124 (1950).

“To express one’s convictions and opinions or ideas freely, through any communicable medium or visible representation, such as gesture, signs and the like.”

Another important definition was provided by M. Stephen⁹⁸;

“The right to express one’s own convictions and opinions freely by words of mouth, writings, printing, pictures or any other mode.”

These four definitions are adopted for the purposes of this thesis.

2) Electronic Media

In recent times press has evolved into print and electronic media. Freedom of press is based on the premise that widest possible distribution of information from antagonistic and diverse sources is *sine qua non* to the wellbeing of the people. Such freedoms are the basics of a free and responsible government for free people of the country⁹⁹. Black’s Law dictionary explains electronic media as¹⁰⁰;

“Any type of device that stores and allows distribution or use of electronic information. This includes television, radio, Internet, fax, CDROMs, DVD, and any other electronic medium. Contrast to print media.”

For the purposes of this study, the words electronic media is discussed within the context of PEMRA and PEMRA Ordinance under Section 2(hc) provided definition of electronic media in following words¹⁰¹;

“Electronic media includes the broadcast media and distribution services.”

⁹⁸M Stephen, *Human Rights: Concepts and Perspectives* (Concept Publishers New Delhi, 2002).

⁹⁹M. Mahmood, *The Constitution of the Islamic Republic of Pakistan: As Amended up to Date* (Pakistan Law Times Publications Lahore, 2008).

¹⁰⁰“Black's Law Dictionary - Free Online Legal Dictionary.” The Law Dictionary. Accessed June 14, 2019. <https://thelawdictionary.org/>.

¹⁰¹Pemra.gov.pk. accessed January 11, 2019, <http://www.pemra.gov.pk/>.

Both terminologies of broadcast media and distribution services are also defined under the PEMRA Ordinance under section 2 (ha) and 2 (c) in the following words;

Distribution services means¹⁰²;

“Distribution Service means a service which receives broadcast and pre-recorded signals from different channels and distributes them to subscribers through cable, wireless or satellite options and includes Cable TV, LMDS, MMDS, DTH and such other similar technologies”

3) Broadcast Media

Broadcast media collects and transmits its own content while distribution service is a license to deliver the content of various broadcast media to the viewer. The broadcast media has the tendency to broadcast of ideas, culture, history, literature, opinions, thoughts, emotions and art through the medium of plays and dramas signifies freedom of expression in a country¹⁰³. So, while broadcast media can distribute its own content it cannot distribute other broadcasters' content whereas distributors deliver content from a variety of broadcaster to the viewers.

Broadcast media is defined in the PEMRA Ordinance 2002 section 2 (c) as¹⁰⁴;

“Broadcast media means such media which originate and propagate broadcast and prerecorded signals by terrestrial means or through satellite for radio or television and includes teleporting, provision of access to broadcast signals by channel providers and such other forms of broadcast media as the Authority may, with the approval of the Federal Government, by notification in the official Gazette, specify.”

¹⁰²Pemra.gov.pk. accessed January 11, 2019, <http://www.pemra.gov.pk/>.

¹⁰³Suo Motu Case No 28 of 2018, PLD 1 SC (2019)

¹⁰⁴Pemra.gov.pk. accessed January 11, 2019, <http://www.pemra.gov.pk/>.

This definition contemplates that electronic media consist of two things. The first is broadcast media and the second is the distribution services that transmit that broadcast media to the subscribers in Pakistan. Private TV channels and private FM channels are termed as the broadcast media in Pakistan¹⁰⁵. Whereas for the purposes of this thesis only private TV channels are taken into consideration. So, those TV channels will be termed as Broadcast media for the purposes of this thesis.

Literature review is an indispensable part of legal research as it reveals the researcher's in depth understanding of the subject area of research as well as justifying the research topics in terms of methodology and design that are apt in the circumstances. Such academic exercise aspires to operate within the bounds of the extant research principles such as showing respect for the earlier works while not being complacent, but critically focused by not merely engaging in unnecessary narration. This part of legal research reveals the gaps in previous studies on the subject and also show how the proposed research would accomplish a determined need in filling the identified loopholes through proffering of answers to the research questions.

This current thesis "An Analysis of Freedom of expression with Special Reference to Broadcast Media in Pakistan" investigated a subject matter which was not researched so far in Pakistan. Therefore, present research is considered as a primary effort in this regard. By virtue of the scope of this study which is limited to freedom of expression of broadcast media, review of literature focuses primarily on literature bearing on freedom of expression as general term and freedom of expression of broadcast media within the scope of this research as well as on evaluation of existing models of laws

¹⁰⁵Ali Raza and another v Federation of Pakistan, PLD 2017 Islamabad 64

and policies applicable to situations freedom of expression of broadcast media. however, in order to ensure in depth and broad analysis this review was extended to other relevant works on the subject matter of this research in another jurisdiction. There is some published material which is relevant to the current research. This part analyzes the literature relevant to the current research.

1.9.2 Freedom of expression

The word “freedom” was firstly used during the King Urukagina of Lagassh in twenty-four Century B.C and freedom of speech took birth during 800-600B.C¹⁰⁶. The term freedom of expression was firstly used in a case in 1921¹⁰⁷ by “Justice Brandeis and Justice Black” recapped it in a case but the origin of freedom of expression as a basic term is associated with “John Stuart Mill’s Famous essay on Liberty”¹⁰⁸. “John Stuart Mill” in “Liberty” demonstrated as “freedom of opinion and freedom of the expression of the opinion contributed to the well-being of humanity”¹⁰⁹.

Several jurists have presented several justifications and theories including arguments in support of freedom of expression. Kent Greenawalt¹¹⁰ justifies free speech on consequentialist and non-consequentialist reasons. Interestingly first consequentialist justification was presented by John Mill based on Discovery of Truth¹¹¹. Interest

¹⁰⁶James G. McLaren, The Primacy of the First Amendment: Does It Have a Justification in Natural Law, History, and Democracy, *USFA Journal of Legal Studies*, 11994-95.

¹⁰⁷Liberty Library of Constitutional Classics, Constitution Society: Everything Needed to Decide Constitutional Issues, accessed January 09, 2019, <http://www.constitution.org/liberlib.htm>.

¹⁰⁸Liberty Library of Constitutional Classics, Constitution Society: Everything Needed to decide Constitutional Issues, accessed January09, 2019, <http://www.constitution.org/liberlib.htm>

¹⁰⁹Ibid"Liberty Library of Constitutional Classics," Constitution Society: Everything Needed to Decide Constitutional Issues, accessed January09,2019, <http://www.constitution.org/liberlib.htm>

¹¹⁰Kent Greenawalt, "Free Speech Justifications," Scholarship Archive, accessed May 09, 2019, https://scholarship.law.columbia.edu/faculty_scholarship/84/.

¹¹¹John Stuart Mill, *On Liberty 1859* (Ontario, Canada: Batoche Books Limited, 2001).

Accommodation and Social Stability is considered as the second justification¹¹². Vincent Blasi presented third justification based on exposure and deterrence of Abuses of Authority¹¹³. Fourth argument is based on Autonomy and Personality Development¹¹⁴. Fifth argument is advancement of democracy¹¹⁵. Last consequentialist justification is promotion of tolerance¹¹⁶. The author then presents non-consequentialist reasons of free speech protection.

The first non-consequentialist reason for free speech is the Locke theory of Social contract between State and Individuals¹¹⁷. The second justification is Recognition of Autonomy and Rationality¹¹⁸. The Third non-consequentialist justification is Dignity and Equality¹¹⁹. Last argument is The Marketplace of Ideas¹²⁰. Devrim Kabasakal Badamchi¹²¹ also evaluated justifications of free expression based on Consequentialist and non-consequentialist justifications. He also divided “Consequentialist justifications” into two heads of personal development and discovery of truth. Whereas “non-consequentialist justifications” are also further divided into two categories of autonomy and democratic participation.

¹¹²Ibid.

¹¹³Vincent Blasi, "The Checking Value in First Amendment Theory," *American Bar Foundation Research Journal* 2, no. 3 (1977):, doi:10.1086/491834.

¹¹⁴Ibid.

¹¹⁵ E. M. Barendt, *Freedom of Speech* (Oxford University Press Oxford, 2009).

¹¹⁶Vincent Blasi and Lee C. Bollinger, The Teaching Function of the First Amendment, *Columbia Law Review* 87, no. 2 (1987), doi:10.2307/1122566.

¹¹⁷Ibid.

¹¹⁸David A. J. Richards, *Toleration and the Constitution* (Oxford University Press Cary, 2014).

¹¹⁹Ibid.

¹²⁰Abrams v. United States . 250 U.S. 616 (United States Supreme Court, 1919).

¹²¹Devrim Kabasakal Badamchi, Justifications of Freedom of Speech, *Philosophy & Social Criticism* 41, no. 9 (2014), doi:10.1177/0191453714564457.

In his work "Free Speech Constitutionalism"¹²², Alexander Tsesis analytically scrutinizes three leading theories of free speech which contends that free speech fosters democratic participation, that free speech promotes personal autonomy and finally free speech advances marketplace of ideas. He believes that all these theories are lacking certain things and suggest improvements in all those theories. "Larry Alexander in Freedom of speech"¹²³ explained that Freedom of speech was firstly defended by John Milton in 17th century and later incorporated into constitution of USA by First Amendment in 1791¹²⁴.

In second part Justifications of free speech based on theories are discussed. Consequentialist's theories favor free speech due to pursuit of truth and maximization of added values. Other values include self-rule, political self-rule and individual self-development. This theory requires some sort of balancing mechanism, proper values, proper weights and special treatment of speech. Democratic theories favor Speech because it is available against government and because speech require affiliation with democracy. Whereas democracy demands informed citizenry and informed citizenry demands free speech. Other justifying theories include Deontological theories which justify free speech on moral basis. It also stresses upon the reasons of enactment instead of enactment itself¹²⁵.

Larry Alexander in his provocative book "Is There a Right of Freedom of Expression?" offers a skeptical review of the claim that freedom of expression works as a human

¹²²Alexander, Tsesis. Free Speech Constitutionalism. University of Illinois Law Review, January 2015., " *University of Illinois Law Review* 5, January 2015.

¹²³Larry Alexander, *Freedom of Speech* (Ashgate Aldershot, 2000).

¹²⁴Ibid.

¹²⁵Ibid.

right. Larry scrutinize the several backgrounds in which freedom of expression might be asserted and contemplates that such a right to expression cannot be maintained in any of such contexts. He further maintains that legal protection and promotion of freedom of expression is highly valuable. He also contends that the form of protection will vary with cultural and historical circumstances. It is therefore not a matter of human rights. The book is written and presented in an accessible and clear style. The book is therefore a valuable addition to political science, political philosophy, law, and human rights.

Eric Barendt in his famous book “Free Speech” discusses the legal protection offered to free speech in different countries like England, the United States (including US Supreme court decisions), Germany and Canada. He reviews the different approaches adopted by different legal systems of the world. He also examined constitutional traditions regarding balancing speech and freedom of the press against rights of other persons regarding copyright, reputation, and privacy. Writer further explores case laws in light of the political and philosophical arguments and also for free speech guarantees. The book starts with an examination of four arguments usually presented to justify free speech principle. Those four arguments make a case for special protection of speech from regulation or suppression.

The second chapter of the book presents the constitutional provisions related with freedom of expression and speech in those liberal democracies. That chapter also examined the superior courts approaches and their implementation along-with interpretation method into those countries. This chapter concludes that all four countries derive and support four theories of free speech. Third chapter explained the

meaning and scope of freedom of expression and speech in those four jurisdictions. The author has also used the terms of freedom of expression and freedom of speech interchangeably in the book. Author also argues that speech is usually the term of art. After establishing the basic structure of the doctrine of free speech, the author has used that in the remaining chapters of the book.

libel is one of the most debated and prominent issues of freedom of speech in all over the world. libelous material must be balanced against freedom of speech because it has the tendency to give negative image of a person, business, or group of persons to public at large. The writer of the book has also discussed the treatment of libel afforded in US, UK, Germany and EU court of human rights.

The next chapter presents discussion on attacks on judiciary and the open court principle as the kind of contempt of court. Attacks on judiciary by publication has the tendency to disturb the fairness of judiciary. It is more relevant in criminal cases. The open court principle and presence of public and press in the court has also been discussed in the book. Other issues, which are discussed in the book includes raising of question of whether freedom of speech requires rights of access to attend, and to record and broadcast legal proceedings. This book is a good reference book for comprehending the basic concepts of free speech.

Richard Barron Parker and Deirdre Golash in their book “Freedom of Expression in a Diverse World” expressed that in the 1980s the discussion regarding boundaries and fundamentals of freedom of speech took on a new shape. Feminists started to advocate limitations on pornography. Whereas critical race theorists advocated restrictions on

the basis of hate speech. These consistent challenges to traditional liberalism brought into attention the questions of why free speech are valued and the weight it should be offered to competing values.

The publication of cartoons in Denmark which tried to radicalize Holy Prophet Hazrat Mohammed (PHUH) and protests against it indicates how intensely the stakes have been raised in the world regarding right of expression. Concerns are also raised regarding discriminatory treatment afforded to minorities, immigrants and Muslims in the world. Against such difficult background, the essays in this book seek to illuminate why people value speech and expression. This collections of essays in a book form also explain as to how expression and speech can be balanced against other values, such as the rights of sexual and ethnical minorities multicultural sensitivity, and the prevention of violence, both internationally and domestically.

In the book “Freedom of Expression: A critical and comparative analysis” Vincenzo Zeno-Zencovich addresses recent developments which have had a bearing on the debate including the changes in communication brought about by the internet, and recent European Union looking at the role of the ECHR and the Council of Europe. This book takes a multidisciplinary approach to the issues surrounding freedom of expression, looking at the current legal position in a number of European countries as well as engaging with the wider debates on the topic amongst sociologists, political scientists and economists.

1.9.3 Freedom of expression in Pakistan

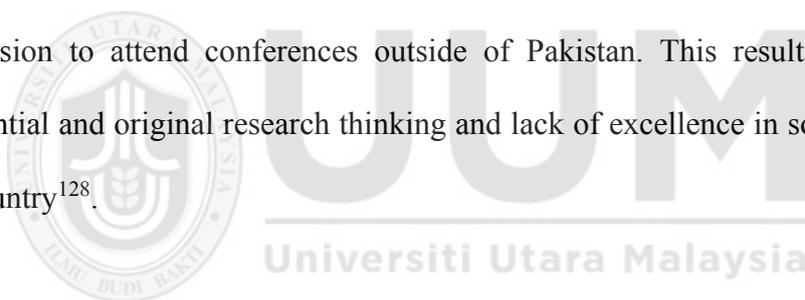
“Freedom of Expression and Justiciability in Pakistan” discussed freedom of expression and restrictions on it with specific reference to the provisions of International Covenant on Civil and Political Rights (ICCPR) and the “Justiciability Doctrine” as presented in the European Convention of Human Rights (ECHR). The question whether the freedom of expression claims are justified or not, in developing countries like Pakistan and how it helps in the improvement of rule of law and good governance are discovered. The focus is on the cultural relativism narrative developed ever since the adoption of the Universal Declaration of Human Rights (UDHR). The claims of “Universalism” associated with human rights especially freedom of expression was criticized with respect to the Margin of Appreciation Doctrine as reflected in the jurisprudence of the European Court of Human Rights (ECtHR) and adopted in other jurisdictions. Freedom of expression and the rights of minorities in Pakistan was discussed with a special reference of proselytization and enforced conversions¹²⁶.

“Pakistan: from the Rhetoric of Democracy to the Rise of Militancy” provide the basic ideas of Pakistan’s enduring, yet subtle, pursuit of democracy. The book elaborates the struggle of Pakistan for democracy, fundamental rights including freedom of expression, liberalism, rights of minorities and even to some extent practice of secularism. at the same moment this book also explain that how Pakistan has drifted towards religious extremism, authoritarianism, intolerance for minorities and non-practice of fundamental rights in the country for both non-Muslims and Muslims.

¹²⁶H.S Sharif and Jafar Riaz Kataria, “Freedom of Expression and Justiciability in Pakistan,” *A Research Journal of South Asian Studies* 34, no. 1 (January 2019)

Important areas like Pakistan's troubled standing as a theocracy; country's relations with the US; the status of women in society and their struggle for empowerment; the MQM movement in city areas of Karachi and Haider Abad; the sharp class division that has created an elite political culture; and lastly, a through discussion on the most interesting and popular topic the visions of Quaid-e-Azam for Pakistan - are the major themes of this book¹²⁷.

Pakistan military regimes has always suppressed academic freedom of expression. such suppression has adversely affected the academic system including research culture of social sciences. researchers disagreeing with military official line and doctrine have faced the threat of harassment, dismissal from service, denial of permission to attend conferences outside of Pakistan. This resulted into lack of substantial and original research thinking and lack of excellence in social sciences in the country¹²⁸.



1.9.4 Freedom of Expression and Media in Pakistan

The history of printing and press in the sub-continent traces back to more than 230 years. The first newspaper approved in the colonial era of Calcutta was 1780 in English language under the administrative control of the British East India Company. The next 42 years witness the prosperous of the institution of English languages Press in Bombay, Calcutta and Madras¹²⁹. All the newspapers were owned by the English citizens and most of them were ex-employees of "The British East India Company".

¹²⁷ Kalia, Ravi. *Pakistan: from the Rhetoric of Democracy to the Rise of Militancy*. London: Routledge, 2011.

¹²⁸ Shah, Mehtab Ali. "Academic Freedom in Pakistan." *Economic and Political Weekly* 40, no. 52 (January 2005). <https://doi.org/doi.10.2307/4417575>.

¹²⁹History of Muslim Press in Sub-Continent - News Pakistan, accessed January 11, 2019, <http://www.newspakistan.pk/2011/12/12/History-of-Muslim-Press-in-Sub-Continent-Last-Part>.

Hence all these newspapers were published in English. The East India Company administration for those cities was not bothered about the impact of these newspapers on the public opinion. Indian population were not incorporated in English-speaking people¹³⁰.

The appearance of the local Urdu language newspaper ‘Jam-e-Jahan Numa’ which was owned by an Indian in forced the company, administration to go for a regular press law to regulate the printing industry and the institution of the press. Thus, there came the first Press law in 1823¹³¹. Since then the Indian sub-continent, in which there are three countries now-Pakistan, India and Bangladesh, are continuing with this colonial legacy of press laws, including law for the installation of printing press¹³².

As discussed earlier the first local language newspaper made its entrance in the Indian sub-continent. Before that all newspapers in India were published in English- which was termed as the language of masters. In 1923, “The East India Company” announced the establishment of first Press Act in the region. It was the first of the numerous restrictions on media to follow¹³³. This act required that anyone intending to publish newspaper must file a “Declaration” before publication. Interestingly the meaning of declaration was to be that as taken as in the dictionary. Thus, once a declaration is filed the District Magistrate does not have the authority to turn down the application of the person filing.

¹³⁰Yasmeen Aftab Ali, *A Comparative Analysis of Media & Media Laws in Pakistan* (Sangemal Publishers Lahore, 2011).

¹³¹History and Development of Indian Press and Press Acts, Your Article Library, January 21, 2014,, accessed May 10, 2017, <http://www.yourarticlelibrary.com/history/history-and-development-of-indian-press-and-press-acts/23717>.

¹³² Ibid.

¹³³ Ibid

After the independence of Pakistan, the “Government of India Act 1935” was made the initial working Constitutional structure of Pakistan and press freedom and freedom of expression was not protected under that. In 1950 the senior working journalists of Pakistan with the organization name of “Pakistan Federal Union of Journalists (PFUJ)”, drafted the state’s first code of ethics for the journalists. The struggle of PFUJ spreading over a long period against anti-freedom press laws must be acknowledged¹³⁴.

In 1957 “Abdus Salam Achakzai approached the west Pakistan high Court by Writ petition against the decision that declined him permission to publish two weekly papers from Quetta. “The court ruled in accordance with the 1823 press Act, that once a declaration has been filed, the district Magistrate may not refuse permission.”¹³⁵

In 1961 “The Press and Publication Ordinance (PPO)” was promulgated as was labeled as the “Blackest of the black laws” in Pakistan. On the outer face law was designed to carry together diverse provisions of preventive incarceration of people, control of publications and persons linked with of public order maintenance. Conversely this law introduced more suppression and repression of news in Pakistan. In 1961 “Associated Press of Pakistan” was taken into custody by state and foreign news agencies were instructed to announce the news thorough local news agencies. This involvement of the government was termed as the start of “filtration “of news in Pakistan¹³⁶. PPO law was further strengthened by more harsher amendments in 1963. 25 years witnessed the operation of this law in the country. The current constitution was promulgated in 1973

¹³⁴Pakistan Federal Union of Journalists (PFUJ) | Pakistan, accessed May 11, 2019, <https://www.pakistanpressfoundation.org/tag/pakistan-federal-union-of-journalists-pfuj/>.

¹³⁵ Ibid.

¹³⁶Umer Aamer, *A History of Press in NWFP* (Free Lance Research Publications Peshawar, 1986).

and it promised freedom of expression along with freedom of press. In 1988 the government enacted “The Registration of Printing Press and Publications Ordinance (RPPO)”. This law presented some sort of freedom of press in the country¹³⁷.

When Britain left subcontinent in 1947, two separate countries came into existence named as India and Pakistan. The first interim Constitution for both countries was “The Government of India Act 1935”¹³⁸ and another act to support this act was “Indian Independence Act 1947”¹³⁹. It indicates that both Pakistan and India inherited its system of government directly from Britain.

Pakistan promulgated its first Constitution in 1956 on the same pattern of Britain Parliamentary system¹⁴⁰. Article 8 of the 1956 Constitution provided for freedom of expression¹⁴¹. In 1958 Ayub Khan levied Military law in the country and the Constitution of 1956 was suspended¹⁴². In 1962 Ayub Khan promulgated second Constitution of Pakistan on the US model of Presidential system¹⁴³. Article 19 Pakistani Constitution protected freedom of expression.

Present Constitution of Pakistan was promulgated in 1973 by then Prime Minister Zulifqar Ali Bhutto. It was a consensus Constitution for Pakistan because all political

¹³⁷Ravi Kalia, *Pakistan's Political Labyrinths: Military, Society and Terror* (Garland Science, 2017).

¹³⁸Government India Act of 1935, History Pak., accessed May 02, 2019, <https://historypak.com/government-india-act-of-1935>.

¹³⁹Muhammad Raza Kazmi, *A Concise History of Pakistan* (Oxford University Press Karachi, 2012).

¹⁴⁰Hamid Khan, *Constitutional and Political History of Pakistan* (Oxford University Press Karachi, 2012).

¹⁴¹A G Chaudhry and Javaid Bashir, *The Constitutional History of Pakistan With Leading Constitutional Cases* (Eastern Law Book House Lahore, 2015).

¹⁴²Flashback: The Martial Law of 1958, DAWN.COM, October 08, 2011, (accessed May 09, 2019) <https://www.dawn.com/news/664894>.

¹⁴³The Constitution of 1962," Pakistan Studies: The Constitution of 1962, (accessed February 09, 2019) <https://notesonpakistan.blogspot.com/2009/05/constitution-of-1962>

as well as religious parties concerned seemed satisfied. This 1973 Constitution is a unique case because it presents parliamentary system of government and simultaneously numerous features of US Presidential form of Government are adopted (like Judicial Review and Federalism)¹⁴⁴. In 1973 Constitution freedom of press is also protected under article 19 along with freedom of expression.¹⁴⁵

Press freedom was not expressly protected in the first two Constitutions¹⁴⁶. Constitution of 1973 clearly protected freedom of press alongside freedom of expression. Freedom of the press is a much more complex right covering numerous important values, in addition to the uninterrupted operation of editors, journalists, and media outlets. Freedom of press has not only been relied upon, by legal professionals, but also in discourses containing any public figure. Some of the jurists believe that governments should not regulate press rather stay away from this type of activities¹⁴⁷.

Press freedom at no time remained consistent in Pakistan. Diverse governments used different legal means to curb the media from public debate and condemnation. Pakistan since its independence has been governed by dictators more than the democratically elected governments. Press in Pakistan is prone to different kinds of threats, violence and economic pressure. The state's blasphemy laws have been allegedly used against journalists. There are several factors responsible for lack of development of press or media in Pakistan including meager literacy, placement of the press in big cities, and the high number of newspapers. Pakistan is now moving

¹⁴⁴Sadaf Aziz, *The Constitution of Pakistan: A Contextual Analysis* (Hart Publishing Oxford, 2018).

¹⁴⁵N. A. Palkhivala, *We, the Nation: The Lost Decades* (UBS Publishers Distributors Nueva Delhi, 1984).

¹⁴⁶MEDIA COMMISSION REPORT (FINAL), accessed May 10, 2019, <http://supremecourt.gov.pk/web/page.asp?id=1568>.

¹⁴⁷Sadaf Aziz, *The Constitution of Pakistan: A Contextual Analysis* (Hart Publishing Oxford, 2018).

towards open competition broadcast system from the previous centralized broadcasting system and the new system is providing audience, more power of discriminatory exposure. All governments including military and democratic talks high about the press freedom but when it comes to implementations then most of the them failed to deliver their promises of freedom of the press. However, during the Pervez Musharraf dictatorship for about nine-years, press functioned in a rather mixed character¹⁴⁸.

The 21st century has been designated as the century of mass media revolution. The messages of mass media are pointed, directed, and enormously influential. The use of media for transferring messages that persuade the viewers to bring some changes in the behavior pattern of masses is pretty common. the recent research studies have proved that media organizations work as razors which are sharpened at the both ends and have baneful affect for the listeners or audiences. that is one of the main reasons to formulate mass media code of conduct. that code of conduct must t be observed by the mass media to avoid disturbances in the society. Ethical issues of media are related with accuracy, impartiality, fairness, truthfulness, and privacy of individuals. It also includes what kind of messages to include in magazines, television, or films, and how to guard the confidentiality and privacy of sources. The paper proposes the several laws and code of ethics for media which is essential for the regulation of mass media¹⁴⁹.

¹⁴⁸Syed Abdul Siraj, Syed Abdul Siraj. Critical Analysis of Press Freedom in Pakistan, *Journal Media and Communication Studies*, 2009.

¹⁴⁹ Muhammad Riaz Raza et al., "Code Of Ethics And Laws For Media In Pakistan," *Asian Journal Of Social Sciences & Humanities* 2 , no. 1 (February 2013))

Pakistan Electronic Media Legal and Regulatory System by Abrar Ahmed explains the Pakistani media's legal and regulatory system¹⁵⁰. "The Pakistan Electronic Media Regulatory Authority (PEMRA)" is the sole authority to regulate and control private electronic channels. This regulatory body controls media by implementing state laws. Author analyzed different media laws¹⁵¹. Since the independence in 1947, most of the time military and authoritarian regimes have ruled Pakistan. Country's parasitic landlords, incapable judiciary and religious class has always stepped into to help military dictators in providing civilian and democratic masks to legitimize their illegal rule. Under the authoritarian arrangements, no disagreement or freedom of expression is permissible, and every channel of communication is positioned under tight state scrutiny.

Likewise, activists' compartments of resistance have also never hesitated to challenge and oppose such authoritarian forces and the status quo. the significant resistant forces in the country have been lawyers, media, intellectuals, pro-democracy elements and human right organizations of the country. The first part of this thesis scrutinized the social movements, resistance, and struggle for democracy under military rule or under authoritarian rule. The role of the state-controlled or government owned broadcast media and the autonomous but severely bounded print media in a historic perspective is discussed. After the liberalization of private sector broadcast media and transmission system of cable network in 2002, Pakistan witnessed an enormous surge in new media and digital technologies.

¹⁵⁰Muhammad Abrar, Pakistan Electronic Media Legal and Regulatory System, *Journalism and Mass Communication* 4, no. 1 (January 2014).

¹⁵¹ Those laws include "PEMRA (Amendment) Act 2007; Cable TV Regulations 2002; PEMRA (Council of Complaints) Rules 2010; and Broadcasting Regulations 2002

The second part of the thesis examined the role of newly emerged digital media in shaping collective action and aiding democratic struggles during the tenure of General Musharraf as military dictator. This thesis investigated the role played by these digital technologies and newly emerged media platforms for the services of the lawyer's movement in 2007. That movement was supported by the working journalists, print and broadcast media, and most importantly civil society of the country. During this tenure the country witnessed the imposition of Emergency Rule, media crackdown, brutal assassination of former Prime Minister Benazir Bhutto, and eventually, general elections of 2008. Those elections paved the way for ouster of Musharraf from power corridors of the country. This thesis tried to fill the vacuum of academic discussion on such topics¹⁵².

“Role of Media in Strengthening Democracy in Pakistan: Journalists’ Perception” explores the opinion of Journalists’ about the role of media in consolidation of democracy. It was further intended to ascertain the factors that undermined the role of media in consolidating democracy. The article determines that media is not performing a substantial role in consolidation of democracy in Pakistan. It discloses that although journalists and reporters are gratified with the role of media in generating awareness, information to masses and to work as an overseer to government, however journalists are not satisfied with the role of media as an agenda setter in the country¹⁵³.

Freedom of media is considered important for democratic societies due to its roles of information provider and watchdog. However, more freedom stresses to act more

¹⁵²Imran Munir, “Social Movements, Religion, Democracy, and Political Communication in Pakistan” (dissertation, 2014)

¹⁵³Mian Ahmad Hanan et al, Role of Media in Strengthening Democracy in Pakistan: Journalists’ Perception," *A Research Journal of South Asian Studies* Vol. 31 (2016).

responsibly. In this regard, media ethics acts as important guidelines for journalists to self-regulate their behavior. After the implementation of more liberalized media policy in 2002, media in Pakistan has got more freedom and voice, recently. In this paper, writer analyze the journalism principles, such as coverage, biasness and objectivity, practiced by the print and private television media in Pakistan after liberalization. writer concludes that many gaps exist in actual media practices as compared to ethical behavior. Our findings suggest that the immature private TV news channels and competitive print media sectors lack many basic professional ethics of journalism and needs to improve them to justify their liberalization¹⁵⁴.

The nationalism is essentially a notion related to the areas of language, culture, politics and history. The article emphasized on the role of media in creating values of nationalism in the people. The first part of the paper explained the notion of nationalism in general and also focused on Pakistan. The second portion of the article discussed the diversification of nationalism within Pakistan. The next section elaborates the issues involving nationalism is Pakistan. Those issues include ethnic issues as the foundation of conflicts surrounding nationalism. The fourth parts debate the general concept and over including different phases of media of Pakistan. Furthermore, that part also discusses the role of media regarding nationalism. The last or concluding part deliberates the role of globalization and media in nationalism. this section concludes that the media has been transformed in the recent past. is has created a remarkable and sound picture of nationalism for Pakistan apart from the fact that it is still confronting lots of problems and difficulties¹⁵⁵.

¹⁵⁴“Journalism Ethics: Evidence from Media Industry of Pakistan.,” *Global Media Journal* 7, no. 2 (2014)

¹⁵⁵Munawar Sabi, “The Role of Media in Creating Values of Nationalism in Pakistan,” *Journal of Political Studies* 18, no. 2 (2011))

Haroon Baloch in “Internet Rights and Legislation in Pakistan: A Critique on Cyber Crime Bill, 2016” critically analyzes the Cyber Crime Act and concludes that some parts of the acts are vague and lack justifications. The author identified the areas of concern and suggested improvements¹⁵⁶.

Hassan, Kiran in his article “Social media, media freedom and Pakistan’s war on terror” presents a different interpretation regarding the role of social media in Pakistan. this view is in contrast to the narrative of social media and its connotation with terrorism. it notes that the use of Twitter, Facebook, and LinkedIn in and across Pakistan, must be kept in context. The writer argues also that private television channels or broadcast media in Pakistan continue to be the most significant media platform. Recent studies assert that not more than 2% of social media is being used for extremist proselytization. It also explains that majority of Pakistani civil society has no craving for news reports about terrorism and need more positive stories form the media. Undeniably, social media in country is being used principally for entertainment purposes. While extremist are certainly using social media very effectively to recruit new supporters. This aspect of use of social media in country presents a distorted image.

“Media, politics and the threats to journalists in Pakistan” affords as to how freedom of expression media in Pakistan remains to be endangered by the conflicting parties and government. It also discusses the threats to the journalists’ safety and survival.

¹⁵⁶Analysis of Pakistan’s Cybercrime Bill - RSF, accessed March 9, 2019, https://rsf.org/sites/default/files/analysis_of_pakistan_s_cyber-crime_bill.pdf.

This article elaborates the stories of three Pakistani journalists who lost their lives during the America's so called "War on Terror". This article provides an account of the nature of the threats confronted by the Pakistani journalists. Those journalists are normally working and reporting on armed political conflicts. The author also interviewed five journalists in 2012 and 2014 regarding role of journalists in the light of the social responsibility theory. It also explored factors that contribute to making conflict reporting a dangerous business in Pakistan¹⁵⁷.

This study aims at exploring the relationships between language and ideology and how such relationships are represented in the analysis of spoken texts, following van Dijk's Socio Cognitive Model (2002). In this study, it is tried to show that political talk shows broadcast by private TV channels are working apparatuses of ideology and store meanings which are not always obvious for readers. Through the analysis of two episodes of a very popular talk show of a private television channel of Pakistan, the researchers attempt to reveal how the ideologies are represented in these shows. It also suggests that these talk shows mystify the agency of processes by using various strategies. In other words, critical text analyses reveal how these choices enable speakers to manipulate the realizations of agency and power in the representation of action to produce particular meanings which are not always explicit for all readers¹⁵⁸.

¹⁵⁷Rukhsana Aslam, "Media, Politics and the Threats to Journalists in Pakistan," *Pacific Journalism Review* 21, no. 1 (January 2015): p. 177, <https://doi.org/10.24135/pjr.v21i1.156>

¹⁵⁸Hafiz Ahmad Bilal et al. "Critical Discourse Analysis of Political TV Talk Shows of Pakistani Media," *International Journal of Linguistics* 4, no. 1 (October 2012), <https://doi.org/10.5296/ijl.v4i1.1425>

1.9.5 Restrictions on Freedom of Expression

Freedom of expression is unqualified in Pakistan. Express limitations are offered under the Article 19 of 1973 Constitution. There are several articles which are available on different aspects of the limitations on freedom of expression and which are relevant for current study.

Freedom of expression is the constitutional right of every citizen in Pakistan. However, this right is rarely applied in country. Current study explored the status of freedom of expression with the goal to identify the factors and actors that contributed to improve the condition of freedom of expression. A qualitative research approach is adopted comprehend the power dynamics. this approach also draws out conclusions from a variety of stakeholders about the issues at hand. this study was conducted in the Punjab and Sindh provinces of Pakistan. This research concludes that although freedom of expression is available to all citizens. However, this right is not absolute, and restrictions are also imposed on it. those restrictions include “glory of Islam, law and order, and national security”. It is also interesting to note that these restrictions s have been exploited and used against different groups like journalists, human right activists and most importantly against ethnic and religious minorities. these exploitations have resulted in increasing the number of blasphemy cases and targeted killing of the minorities. A detailed evaluation showed that there is dire need to address vagueness in certain clauses to avoid exploitations. Moreover, it is also required that a new and comprehensive definition of freedom of expression should be redrawn. That definition should be communicated to the public so that misinterpretation regarding other people’s faiths, opinions, and perceptions can be avoided¹⁵⁹.

¹⁵⁹Sadaf Liaquat, Ayesha Qaisrani, and Elishma Noel Khokhar Freedom of Expression in Pakistan: A myth or a reality, Working Paper-159,

One of the limitations on freedom of expression is glory of Islam and law restricting blasphemy also comes under this heading. However, it is not easy to define blasphemy. It all depends upon the values of the society whenever the matter of defining blasphemy comes to question. Generally denigrating and insulting words targeting God or other religious personalities are considered as blasphemous. Farhan, Raouf contends blasphemy under law, should be viewed a sub-category of hate speech. He believes that only those aspects of blasphemy should attract laws which incite hatred against people based on religion. He also augmented for repeal of Pakistan Penal Code provisions on Blasphemy laws due to their misuse to settle political, social, economic and cultural issues with opponents. Author presented Canadian law on hate speech as an exemplary method to settle issues. Thus, the argument of his thesis is that the method taken in section 319(2) of Canadian Criminal Code offers a convenient model for modernizing Pakistan's laws on blasphemy¹⁶⁰.

Bangladesh and Pakistan share a common historical background of freedom of media. Therefore, it becomes interesting to study "Freedom of the Press and its Constraints in Bangladesh". Being one of those developing countries that have yet to come to grips with the notion of liberalism and with the idea of free and open press. This paper examines both the history of the press in Bangladesh and Southeast Asia. Author also discussed the conduct of the authorities toward press action in Bangladesh. According to author the restrictions on free press started with the occupation of British but since

¹⁶⁰Modernizing Pakistan Blasphemy Law as Hate Speech by, accessed January 8, 2019, <https://dalspace.library.dal.ca/bitstream/handle/10222/71594/Raouf-Farhan-LLM-Law-April-2015.pdf?sequence=1>.

1947 there have been different efforts of freedom of press and then clamp downs by various governments on free press¹⁶¹.

The restrictions on expression right in Pakistan and Indian constitution are identical and courts in both countries have also used the precedents of other countries to interpret these freedoms in their respective countries. In article titled “Importance of freedom of press and media” discusses the importance of freedom of press in India. Author believes that press is the most important medium of expressing opinion in a civilized society. The restrictions applied to freedom of expression are also applicable to press in India. Presses do not enjoy any special status in India as compared to expression. Author believes that the media should work for strengthening the integrity and sovereignty of a nation. It is also the responsibility of the media to create an environment where the public can develop unity and harmony among themselves¹⁶².

1.9.6 Freedom of Expression under International law and in Diverse Legal Systems

This part of literature review discusses the state of freedom of expression in different legal systems of the world.

Philip Sales explored the role of fundamental rights in English private law and public law in his article “Rights and fundamental rights in English law”. He believes that fundamental rights have been more significant in public law rather than Private law. It also tries to identify the reasons of such importance by public law. Later, author makes

¹⁶¹ Abul Mansur Ahmed, Freedom of the Press and Its Constraints: A Study of Press Regulations in Bangladesh," *Canadian Journal of Media Studies*, 2006.

¹⁶² Anurag Roy, Importance of Press in Democracy, ImportantIndia.com, May 13, 2015, accessed May 09, 2019, <https://www.importantindia.com/2470/importance-of-press-in-democracy>.

a comparison of fundamental rights under English law with the system of rights under “European Convention of Human Rights¹⁶³”. At the concluding of article author considers the possible legal effects of repeal of Human Rights Act 1998. Art. 5, paragraphs 1 and 2 of the “Basic Law of the Federal Republic of Germany of 1949” affords for freedom of speech in Germany.

Freedom of Expression is a defensive right, as *Man vs. State*. Freedom of speech also works for security and promotion of democracy when it supports individual freedom. Article also discusses limitations of freedom of speech as it is believed that no right is absolute. Author favors post-censorship instead of pre-censorship. Freedom of speech can be curtailed by general laws which are also defined by the author in the article. In the last part Freedom of Press in Germany with its two issues of Concentration and internal Freedom of expression are critically evaluated¹⁶⁴.

Comparative Constitutional Law of Freedom of Expression” affords two diverse features of freedom of expression. These features present theoretical and substantive conceptions of freedom of expression. After features coverage, level of protection and doctrinal structure of freedom of expression are discussed in this research. In the concluding part of article foundations of comparative freedom of expression are discussed briefly¹⁶⁵.

Adrienne Stone critically analyze the law of freedom of expression in four major Asian Countries, Singapore, Japan, Malaysia and India. Fundamentals of the right of free

¹⁶³Philip Sales, Rights and Fundamental Rights in English Law, *The Cambridge Law Journal* 75, no. 1 (2016), doi:10.1017/s0008197315000987.

¹⁶⁴Ulrich Karpen, Freedom of Expression as a Basic Right: A German View, *The American Journal of Comparative Law* 37, no. 2 (1989); doi:10.2307/840173.

¹⁶⁵Adrienne Stone, The comparative Constitutional Law of Freedom of Expression, *Melbourne Legal Studies Research Paper No. 476*, (2010).

speech including content and coverage of the principle are explored in the first part. In the second part of the article structure of the principle of freedom of expression is discussed. In the last part grounds of boundaries of freedom of expression as applied in these four jurisdictions are explored¹⁶⁶.

In Asian Countries media freedom is a controversial issue, on one side right to information and freedom of expression is provided on other side media regulations and Press laws are ready to curb the media freedom. In China the party and government are attempting to act as a media watch dog in fast changing world of open communication. Advertisements of India Shining, spiritualistic image making of political leaders are very common practice over Indian media. Pakistani military government uses a range of legal and constitutional powers to curb press freedom. The protesters urged the government to remove what they said was a curb on media freedom. “BBC News Show the condition of press in Nepal where after royal highjack. Media structure of Malaysia was changed since independence in 1957, official control over the media has gradually tightened through ownership of media by political parties and connected business individuals. The military also banned all electronic media in Indonesia from broadcasting the rallies. The media and the public managed to get news from international radio broadcast gathering at the Indonesia Democratic Party (PDI) at Jakarta. The majority of Cambodian media are not completely independent relying on source of funding from powerful people, including political parties’ politicians and rich. In Cambodia the term media is as widely used and understood as the term "press” there is press law in Cambodia but no media law. this article presented a bird eye view

¹⁶⁶Adrienne Stone, Rishad Chowdhury, and Martin Clark, The Comparative Constitutional Law of Freedom of Expression in Asia, *Comparative Constitutional Law in Asia.*, doi:10.4337/9781781002704.00017

of the restrictions that are adopted in some countries. It however does not comprehend those restrictions in comprehensive details¹⁶⁷.

Niru Sharan discussed the idea for freedom of expression as offered under Indian Constitution. Article 19 secures freedom of expression along with restrictions on it are discussed in second part of Article 19 and those can be enforced in the name of integrity, sovereignty, foreign relations, security, decency, morality, public order, defamation, contempt of court and incitement offences. Media freedom was not clearly mentioned under Indian Constitution, but the Supreme Court has considered it to be included under Article 19¹⁶⁸. “Ramesh Thapar vs Madras”¹⁶⁹, “Brij Bhushan vs Delhi”¹⁷⁰ And K.A Abbas vs Union of India¹⁷¹ are some of the prominent cases on media freedom in India.

In “Freedom of Press in Indian Constitution Brief Overview” author states that freedom of press is protected under the larger connotation of freedom of expression in India and is not afforded any special status under the constitution. So, press enjoys the same rights of expression as offered to the citizens under the constitution. Restrictions practiced in Article 19 of Indian Constitution also apply to the Press in India¹⁷².

¹⁶⁷ Naveen K Mishra, “Governmental Threats for Media Freedom: Comparative Study Of Asian Countries,” *The Indian Journal of Political Science* 69, no. 1 (2008))

¹⁶⁸ Niru Sharan, Freedom of Speech and Expression; Indian Constitution: An Overview, *Journal of Humanities, Arts, Medicine and Sciences*, (2015).

¹⁶⁹ Romesh Thappar vs The State of Madras, 1950 AIR 124.

¹⁷⁰ Brij Bhushan and Another vs The State Of Delhi, 950 SCR 605.

¹⁷¹ K. A. Abbas vs The Union Of India & Anr, 1971 AIR 481.

¹⁷² M. V. Pylee, *Select Constitutions of the World* (Place of Publication Not Identified: Universal Law Publishing, 2012).

Most of jurisprudence developed by European Court on Human Right related to free speech was based on issues related with traditional media. Therefore, the courts have asked publishers to adopt the morals of journalism while exercising this expression right. This approach will be not successful in some part of digital media because valuable speech sometimes may not be protected if we impose the norms of professional journalism in every case. Small-scale digital writers and speakers will not be in position to fulfill the requirements of professional journalism. Furthermore, traditional system of investigative journalism and producing information may not be appropriate in this digital world. The article concludes that everyone should be enabled to enjoy freedom of expression in complete sense¹⁷³.

New challenges to online freedom of expression in Europe are discussed in a report. This report also discussed the responsibilities and roles of state and non-state players for advancement of freedom of expression in European countries. Furthermore, examination by the “Council of Europe and jurisprudence of the European Court of Human Rights (ECTHR)” on freedom of expression is discussed. It draws information from the Organization for “Security and Cooperation in Europe (OSCE) and European Commission”, and the investigations of the United Nations special mandate holders. A similar report speaks of Internet freedom matters involving to surveillance and privacy¹⁷⁴.

“In the Shadow of the Big Media: Freedom of Expression, Participation and the Production of Knowledge Online” Jacob,H,Rowbottom critically analyzed two

¹⁷³Jean François Flauss, The European Court of Human Rights and the Freedom of Expression, *Indiana Law Journal*, 2009.

¹⁷⁴Freedom of Expression in Europe - Echr.coe.int, accessed February 9, 2019, [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf).

contrasting traditions in the constitution of US. Those traditions are with related to government interference with print and broadcasting media in US. Author contends that print media is given almost complete protection from the government interference whereas the broadcast media is subject to several forms of control as supplied under the Communication Act 1934. The focus of the author is on affirmative regulations for facilitating the public to receive access to a variety of ideas and experiences. Author tries to determine whether is there any rational basis for treating one sector of the media differently from the other sector? Author discoveries that there is no such basis, but this dual approach can be justified to balance freedom of the media with a way of mitigating the serious inequality speech opportunities that exist¹⁷⁵.

Author also argued that free expression theory applied to print media is different world view from that of broadcasting policy. Free speech philosophy of print media presents individualism and a sharp public private distinction. Whereas broadcasting media's focus is community interests and may justify government paternalism. Each of the above theories has its advantages and disadvantages. Free speech philosophy is skeptical about extending government power over communication, but it assumes that a marketplace of idea will function effectively. Broadcasting regulations is also sensitive to structural inequalities.

Author argues that inconsistencies in broadcasting media are crucially linked to inadequacies in speech theory itself. It is difficult for marketplace idea to survive because of lack of opportunities afforded to public to clearly speak and convince others

¹⁷⁵Jacob H, In the Shadow of the Big Media: Freedom of Expression, Participation and the Production of Knowledge Online, SSRN, January 25, 2014,, accessed December 05, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2383901

about their views. Author solution to the dilemma is to examine the potential of the internet on the other as means of providing exposure for under privileged viewers¹⁷⁶. How can one reunite the fact of technological and media conjunction with legal presumption of distinct treatment? Author contends that in selecting which attitude to adopt for joining media technologies the broadcast model would be discarded in favor of the print model and new forms of media can be dealt with more suitably under the traditional First Amendment principles that have been applied to media of US.

“Media freedom in Malaysia¹⁷⁷” debates the contemporary issue of media freedom in Malaysia. It starts discussion with elaboration of the notion of freedom of the press. It then goes on to determine the suitability of theories like Social Responsibility, Libertarian, or Authoritarian, in the field of freedom of media in Malaysia. The list of media freedom standards from the Missouri University, Department of Journalistic Studies, US, have been done to quantify the state of media freedom in Malaysia. This article attempts to demonstrate the latest lobbies and movements externally and internally which supports media freedom in Malaysia. To conclude the present situation, the Malaysian régime has constrained media freedom for the purpose of political stability and national security. Nevertheless, this study undoubtedly displays that media has been controlled by the government for political survivability of ruling administration and leaders to grasp the power in Malaysia.

¹⁷⁶Jacob H, In the Shadow of the Big Media: Freedom of Expression, Participation and the Production of Knowledge Online, SSRN, January 25, 2014, accessed December 05, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2383901

¹⁷⁷Mohd Azizuddin Mohd Sani, “Media Freedom in Malaysia,” *Journal of Contemporary Asia* 35, no. 3 (2005): pp. 341-367, <https://doi.org/10.1080/00472330580000201>

“Media Freedom and Legislation in Malaysia¹⁷⁸” is about Malaysian regulation with regard to the issue of media freedom. Malaysia has many laws that restrict the function of the media, either printing media, broadcasting media or the Internet. The sources of the restriction can be found in Federal Constitution and many laws such as the Internal Security Act, Sedition Act, Printing Presses and Publications Act, and others. This restriction is actually limiting the degree of democracy practiced in this country. With the cases listed, this paper is in the intention to expose the limitation of media freedom in Malaysia¹⁷⁹.

There are always debates about the role of religion in the today’s modern world and how does it respond to the issues like freedom of religious, religious expression and hate speech, inter-faith dialogues, and war on terror led by the United States. Cultural sensitivities, especially concerning race and religion, are the main obstacles to the implementation of religious freedom in Malaysia. Great care is taken not to impinge on the religious sensitivities of various groups. Given the fact that Islam is the official religion, care is taken not to publish articles that cast a slur, intended or otherwise, on the religion or its adherents. All the media, including those operated by the opposition, follow this policy. Malays, by constitutional definition, are Muslims and with the inclusion of some aspects of Chinese, Indian, and tribal culture, and no media can carry articles that question the faith or ridicule it. Thus, religious expression has always been monitored by the government in order to protect the racial harmony in multiracial-multicultural society in Malaysia.

¹⁷⁸Mohd Azizuddin and Mohd Sani, “Media Freedom and Legislation in Malaysia,” *Journal of Ethics, Legal and Governance* 4 (2008)

¹⁷⁹ Mohd Azizuddin and Mohd Sani, “Media Freedom and Legislation in Malaysia,” *Journal of Ethics, Legal and Governance* 4 (2008)

This protection is covered in the constitution and it can clearly be seen in practice in certain issues such as religious expression in the press, blasphemy, religious authority, inter-faith commission, and dress codes. This paper will look into some important issues and explain how has the issue of religious expression been tackled by the government and society? Can religious expression harm the society? What is allowed and disallowed? All these questions are answered in this paper in explaining the practice of religious expression in Malaysia¹⁸⁰.

“Malaysia’s contemporary broadcast media regulation through the eyes of regulators” comprehends the perception of media regulators about media regulation processes and media landscape. The prime focus of the article is on broadcast media of Malaysia. The research comprehends processes of regulation procedures, conflicts of regulation and perceptions of regulators regarding media governance, self-regulation and freedom of speech. This study used the qualitative method of research. In Qualitative research in-depth interviews were conducted with five regulators from three different regulatory bodies of Malaysia. those bodies include “the Ministry of Home Affairs, Malaysia Communication and Multimedia Commission (MCMC) and Communication and Multimedia Content Forum (CMCF)”.

The interviews showed that in contradiction to the common belief, the public sphere has a strong effect on the regulators as all regulatory bodies in Malaysia act upon public complaints. The study also proved that there are informal and formal measures including conflict resolving policies practiced on case-to-case basis. Regulators of media believes that the existing system of media law in Malaysia is adequate, although

¹⁸⁰Mohd Azizuddin Mohd Sani, “Islam and Freedom of Religious Expression in Malaysia,” *The Journal of Social Sciences Research*, no. SPI6 (2018): pp. 1218-1224, <https://doi.org/10.32861/jssr.spi6.1218.1224>

there is a need to further improve the standard operating procedures. It is also believed that there is a collective responsibility of the industry rather than self-regulation.

Mohd Sani, Mohd Azizuddin Ahmad, Muhammad Zaki and Wahid, RatnariaS in “Freedom of the internet in Malaysia¹⁸¹” detailed that newly emerged social media networks like Blogs, Facebook, YouTube and Twitter has been enormously popular amongst the youth of Malaysia. It is also comprehended that online news portals have also become very central and dominant in Malaysia. In recent times, these portals have surpassed the old print and broadcast media. The internet has offered more space for democracy and has also provided more opportunities for expressing views against the oppressive governments and oppositions. This study has researched about the political speech on the internet. although Malaysia has adopted the policy of free cyberspace but here are several restrictions on political speech in Malaysia. Some of the restrictions like pornography and hate speech are justified in the current world. Freedom of expression on the internet is crucial for Malaysia.

Advancement in technology and new economic policies has increased the significance of freedom of expression related with press. Ever a greater number of people can produce, share and update the information on social networking sites by using internet. These new technologies are blessing and disguise at the same moment. These new technologies are also challenging restrictions imposed upon freedom of expression and freedom of media. It is imperative to understand that cross-country variation is significant in the continent of Asia. interviews in Korea and Japan expressed low to

¹⁸¹Mohd Sani, Mohd Azizuddin Ahmad, and Mohamad Zaki Wahid, “Freedom of the Internet in Malaysia,” *The Social Sciences* 11, no. 7 (2016))

moderate support for freedom of internet, less support regarding censorship of internet, censorship, low volume of anonymization and circumvention technology use, low protection of privacy, and less censorship for online content. Respondents in India and Vietnam presented a complete opposite position. Respondents from Thailand and Singapore falls under the “moderate” group. whereas in Malaysia and Hong Kong, people are in more favor of freedom of internet as compared to censorship. the last group of countries consists of Pakistan, Indonesia and Taiwan. in these countries the respondents indicated high support for internet censorship and comparatively low levels of support for freedom of internet.

These technological developments highlights queries that go to basis of “UNESCO’s mandate to promote the flow of ideas by word and image” among all persons, all over the world. For “UNESCO”, freedom of expression has been termed as vital right that supports all other liberties. Those liberties are imperative for good governance and rule of law. Freedom of expression for media is the heart and soul of media because it provides a platform for expression oneself¹⁸². At the 36th session of General Conference (November 2011), Member States authorized “UNESCO” to discover the impact of this transformation on press freedom and about the security of journalists. For these purposes, the Report has discussed freedom of press from four angles. Those angels were emerging trends of media freedom, independence, pluralism and the safety of journalists. One more issue of gender equality was also discussed in the report¹⁸³.

¹⁸²World Trends in Freedom of Expression and Media accessed October 11, 2017, <http://unesdoc.unesco.org/images/0026/002610/261065e.pdf>.

¹⁸³Ibid.

Press curiosity to report on legal proceedings has been a salacious feature in history of mass media. Pre-trial comment, media coverage of press proceedings and the protection of privacy of the defendant are some of the main legal issues which are raised by the ambiguous relation of media to court proceedings. The Internet revolution and the emergence of the blogosphere have added a new dimension to the analysis of these legal issues. A balance between freedom of expression and the guarantee of a fair unprejudiced process has to be achieved in the context of application of legal mechanisms of protection of the justice's authority, such as contempt of court.

As regards the question of media coverage of the court proceedings, the decision of the UK Supreme Court on May 2011 to permit television coverage of its hearings demonstrates an important shift as regards how publicity is perceived by the administration of justice in the UK, while there is a certain disparity between national legislators in the way they deal with this issue at a European level. The legal question of the protection of the defendant through the effective guarantee of the presumption of innocence and, consequently, that of a fair trial is often combined with the debate about the right of the defendant's privacy not only when there is a pressing social need for information to the public before or during the court trial but also many years after the end of the legal proceedings¹⁸⁴.

1.10 Organization of the Thesis

This current study is separated into six parts. The details of each chapter are provided hereby.

¹⁸⁴Tatiana-Eleni Synodinou, "The Media Coverage of Court Proceedings in Europe: Striking a Balance between Freedom of Expression and Fair Process," *Computer Law & Security Review* 28, no. 2 (2012): pp. 208-219, <https://doi.org/10.1016/j.clsr.2012.01.013>

The first chapter dowries the introduction of the current study. In introductory part, the contents of proposal are discussed. The contents of the proposal include “introduction of the study, problem statement, research questions, research objectives, significance of the study, and the research methodology of the study”. In methodology section of the proposal the research design, scope of the study, types of the data, data collections method and tools of analysis of the collected data are discussed. Research methodology part is followed by the limitations of the study, literature review and the outlines of the chapters of the thesis.

The second chapter discusses freedom of expression of the broadcast media in Pakistan. The significance of the freedom of expression as a fundamental right in Constitution of Pakistan. It also explains the concept of freedom of expression from Islamic law prospective. This chapter further comprehends the basic concepts of liberty of speech, press and expression as envisaged under Constitution of the Pakistan. Besides that, current chapter explains the freedom of expression of broadcast media as presented in the Constitution and comprehended by the superior courts of the country..

Third chapter explained the regulatory framework for broadcast media in Pakistan. For that purposes, this chapter presents explanation of public and private broadcast media, historical explanation of broadcast media legislation, current state including issues of existing regulatory framework of broadcast media in Pakistan and broadcasting services and its relationship with freedom of expression. Under this chapter and previous chapter answer of first research question was analyzed.

Fourth chapter of study provides a detailed analysis of the restrictions on the freedom of expression as presented under the Constitution of Pakistan and broadcast media laws. Express restrictions are available under Article 19 of the Constitution. Whereas PEMRA Ordinance 2002 and its code of conduct explains and comprehends and further adds in those constitutional restrictions on freedom of expression of broadcast media in the country. Restrictions on freedom of expression of broadcast media which are available under PEMRA Ordinance 2002 and Code of Conduct are also analyzed in this chapter. This chapter critically analyzed those restrictions of freedom of expression on broadcast media in Pakistan. This chapter presented the answer of second research question.

Fifth chapter of the study analyzed reviews the treatment afforded to freedom of expression by international treaties and laws of different countries. Chapter starts with elaboration of freedom of expression principle as described under international treaties and conventions. After deliberating international treaties and conventions freedom of expression principles, method of regulation and limits on freedom of expression of broadcast media as offered under UK and Malaysia laws are explained. After that an overall comparison of regulatory frameworks of broadcast media in Pakistan, Malaysia and UK is made. this chapter explored the answer of third research question.

Sixth chapter is intended to conclude the study. It concludes with the major findings along-with the recommendations of the current study. This chapter starts with general overview of the study. After that the research findings and recommendations are provided. Those findings and recommendations are based on the doctrinal and social legal methods and are in line with the research questions and objectives of the thesis.

Similarly, next part of chapter presents the contributions of the study. In addition, it provides the suggestions for future research and the overall conclusion of the study.



CHAPTER TWO

FREEDOM OF EXPRESSION OF BROADCAST MEDIA UNDER THE CONSTITUTION OF PAKISTAN

2.1 Introduction

This chapter starts with the elaboration of basic notion of rights. Concept of rights is followed by explanation of fundamental rights in Pakistan. Since Pakistan is an Islamic republic country hence the idea of freedom of expression as articulated under the Islamic law is explained. After that, the concept of the freedom of expression as explained under the Constitution is elaborated. Lastly as this study is related with freedom of expression of broadcast media accordingly this chapter also shed light on the freedom of expression of broadcast media as envisaged under the Constitution and interpreted by the superior courts.

2.2 Concept of Rights

Freedoms of expression as all other freedoms are closely connected with the notion of rights. Those rights are further strengthened in shape of fundamental rights, mostly provided under the Constitution. Freedom of expression is termed as one of those cherished fundamental rights. The origin and growth of the notion of the rights of humans is perhaps the greatest achievement of mankind¹. These rights are not created in a day or two rather they are the outcome of long struggles that took place in courtrooms,

¹Indif.com, "Fundamental Rights of India," Fundamental Rights in India,, accessed May 11, 2017, http://indif.com/india/government/fundamental_rights.asp.

meeting rooms, classrooms, streets and battlegrounds¹. The concept of right has been defined by different jurists in diverse manners. Salmond defines right as “an interest recognized and protected by a rule of right. It is any interest, respect for which is a duty, and the disregard of which is a wrong”².

Holland defined right as “A right is one man’s capacity of influencing the acts of another, by means, not of his own strength, but of the opinion or force of society”³. Right is an obligation imposed upon other persons, meaning a right is an interest the defilement of which creates a wrong. All rights are classified either as moral or legal rights⁴. In this sense right is like wrongs and duties. Rule of natural justice protects and promotes moral or natural rights. A moral right creates moral wrongs and moral duties⁵. On the other side legal justice rules protects and promotes legal rights. Violation of legal right creates a legal wrong⁶. Ihering says “Rights” are legally protected interests”⁷.

Duties and rights are always necessarily interconnected with each other. There can be no right without a duty and in the same way no duty without a corresponding right⁸. For every duty, it must be aimed towards some specific individual or group of individuals, in whom a correlative right is vested⁹. Every right or interest should also

¹Mohammad Abdul Basit, *Human Rights* (Rawalpindi: Federal Law House, 2012).

²John W. Salmond, *Jurisprudence, Or, The Theory of the Law* (London: Stevens and Haynes, 1910).

³Holland, "The Elements of Jurisprudence," Open Library,, accessed February 09, 2019, https://openlibrary.org/works/OL2543354W/The_elements_of_jurisprudence..

⁴Raymond Wacks, *Understanding Jurisprudence: - an Introduction to Legal Theory* (Oxford University Press, 2017).

⁵Dr V D Mahajan, *Jurisprudence* (Lahore: Imran Law Book House, 2011).

⁶George Whitecross. Paton and David A. Derham, *A Textbook of Jurisprudence* (Oxford, Clarendon Press, 1972.)

⁷Frederick Pollock, *A First Book of Jurisprudence: For Students of the Common Law* (Littleton, CO: F.B. Rothman, 1996).

⁸Ch Moazzam Ali, *English Jurisprudence* (Lahore: Imran Law Book House, 2016).

⁹Rainer Arnold, *The Universalism of Human Rights* (Dordrecht: Springer, 2013).

be against some specific individual or group of persons upon whom a correlative duty is obligated¹⁰. It concludes that there can be no right or interest until there is someone from whom this right is claimed. In this scenario it becomes imperative to follow the relationship between rights and duties to understand the philosophy of legal documents.

Legal documents always guarantee some rights to the persons which are conditioned with some duties¹¹. These conditioned duties are sometimes converted into the form of restrictions and these restrictions are imposed to achieve the collective good of the society. Hence, both duties and rights are mandatory for each other as to ensure peace and order in the societies¹².

The best possible case of rights is the instance of human rights as they are offered to every individual¹³. Human rights are such kind of rights which all human beings are entitled, irrespective of race, sex, ethnicity, nationality, religion, language or any other position¹⁴. This notion of human rights safeguards individuals from the excesses of the other individuals and of the States¹⁵. The concept of rights is normally measured to be inalienable, basic and universal rights, that are offered to all humans. The basic purpose of these rights and freedom is to guarantee the accessibility of minimum freedom to every human being of this universe¹⁶.

¹⁰Imran Ahsan Niazi, *Introduction of Law (For Pakistan)* (Rawalpindi: Federal Law House, 2011).

¹¹Hamid Khan, *A History of the Judiciary in Pakistan* (Karachi, Pakistan: Oxford University Press, 2017).

¹²Muhammad Abrar, "Pakistan Electronic Media Legal and Regulatory System," *Journalism and Mass Communication* 4, no. 1 (January 2014).

¹³Tom Campbell, *Rights: A Critical Introduction* (London: Routledge, 2007).

¹⁴Maureen Spencer, *Human Rights* (London: Sweet & Maxwell, 2007).

¹⁵Mark Frezzo, *The Sociology of Human Rights: An Introduction* (Cambridge, UK: Polity Press, 2015).

¹⁶Michael Haas, *International Human Rights: A Comprehensive Introduction* (London: Routledge, Taylor & Francis Group, 2014).

As rightly positioned, human rights are minutest interests which every person must enjoy against the public authorities or state. Individuals are offered such treatment and rights “as being a member of human family”¹⁷. There is no other consideration for the obtainability of this concept of human rights¹⁸. The concept of human rights took birth during the times of ancient Greece and matured after the ruins of Second World War¹⁹. The Second World War of 1948 forced the world to establish the “United Nations” and legislate “Universal Declaration of Human Rights²⁰”. Greeks influenced the Roman law which formed the concept of natural law²¹. However initially these were Romans who started to believe in universal rights for mankind. The Romans also founded the concept of citizenship, equal rights for women and granted higher positions to slaves in the Roman Empire²².

Different religions have also made contributions to the concept of rights. All these beliefs have together shaped the current concept of human rights which comprises the contributions starting from the “English Magna Carta, the U.S. Bill of Rights”, the Social Contract theories, The French Declaration of Labor Movements, the Laissez Faire theory, the Feminist and Universal Suffrage theories, the and lastly the Constitution of the United Nations Organization and of League of Nations²³.

¹⁷Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford, United Kingdom: Oxford University Press, 2015).

¹⁸Andrew Clapham, *Human Rights: A Very Short Introduction* (Oxford, United Kingdom: Oxford University Press, 2015).

¹⁹R. H. Helmholz, *Natural Law in Court: A History of Legal Theory in Practice* (Cambridge (Massachusetts): Harvard University Press, 2015).

²⁰Rebecca M. M. Wallace, Fraser Janeczko, and Karen Wylie, *International Law* (London: Sweet & Maxwell/Thomson Reuters, 2013).

²¹Alexander Passerin. Dentreves, *Natural Law: An Introduction to Legal Philosophy* (Place of Publication Not Identified: ROUTLEDGE, 2017).

²²Mark Frezzo, *The Sociology of Human Rights: An Introduction* (Cambridge, UK: Polity Press, 2015).

²³Durga Das. Basu and Sanwat Raj. Bhansali, *Human Rights in Constitutional Law*: (New Delhi: LexisNexis, 2008).

2.3 Fundamental Rights in Pakistan

The idea of human rights principally tries to protect the individual from oppression and injustice. However, the chief object for imbedding some fundamental rights in the Constitution is to keep them out of the reach of political majorities²⁴. In such situations it has become almost imperative that some specific human rights must be engrained in such a manner that they might not be violated, interfered or altered by the oppressive administrations of the time²⁵. To achieve these ends, some of the Constitutions of the world assure a few such rights to its citizens whereas state organs are proscribed from snooping with such rights²⁶. In those situations, guaranteed rights can only be denied or altered by the lengthy and elaborate process of constitutional amendments. These rights are formally branded as fundamental rights in the Constitution²⁷.

It is presumed that a Constitution generally encompasses of rules that normalize the relationship of state with its people on one side and organization of state power on other side. The rules regulating the relationship of state and its citizens are normally the relationships of the controlling and the controlled ones²⁸. These are named as the fundamental rights or public freedoms or human rights. Constitutional fundamental rights decide the amount of freedom that the citizens of a state have about State power²⁹. Fundamental rights prescribe the borders of law within which State authorities would work about their relationships with the citizens. Therefore,

²⁴P. Ishwara. Bhat, *Fundamental Rights: A Study of Their Interrelationship* (Delhi: Eastern Law House, 2004).

²⁵G. M. Chaudhry, *G.M. Chaudhry on Legislative Process in Pakistan: Policy to Law* (Rawalpindi: Federal Law House, 2010).

²⁶Anil Kumar Rai, *Concept of State and Fundamental Rights* (New Delhi: Deep & Deep Publications, 1996).

²⁷Mahabir Prashad. Jain, Samaraditya Pal, and Ruma Pal, *M.P. Jain Indian Constitutional Law: With Constitutional Documents* (Gurgaon, India: LexisNexis Butterworths Wadhwa Nagpur, 2010).

²⁸Pakistan Law On Human Rights By Ihro - Ihro.org.pk," , accessed April 11, 2016, [http://www.ihro.org.pk/downloads/Pakistan Law On Human Rights By Ihro.pdf](http://www.ihro.org.pk/downloads/Pakistan%20Law%20On%20Human%20Rights%20By%20Ihro.pdf).

²⁹ D. J. De, *Interpretation & Enforcement of Fundamental Rights* (Eastern Law House, 2000).

fundamental rights, sometimes have interdisciplinary legal approach. Fundamental rights articulate the basic rules of criminal law, administrative law, civil law, labor law, as well as procedural law of the land³⁰.

Fundamental rights of the Constitution have been positioned in the Constitution not simply to defend acts, views and conduct that one approves but also to shield opinions which one may find disagreeable or unacceptable³¹. The state is required to act in a style which must be favorable to the advancement of the fundamental rights³². Each fundamental right is a separate right, but all fundamental rights are conferred by the same Constitution³³. So, in this sense all fundamental rights are interconnected with each other and it is possible to attract two or more fundamental rights simultaneously. Therefore, fundamental rights can never be construed independently of all other fundamental rights³⁴.

Fundamental rights are categorized as including social, individual and political rights. Individual fundamental rights are the rights which has negative content, which guarantee the legal status negatively and create a claim for refrain of State power (status negatives). Political fundamental rights are rights with active content that establish a prerogative for participation of the holder in State power (status activus)³⁵. Social fundamental rights are also rights with positive content, that establish a claim for the delivery of some definite facilities and a privilege for fiscal provisions (status

³⁰ Ibid 84

³¹Rights & Constitutional Fundamental Rights in Pakistan ..., accessed January 11, 2019, <http://zklawassociates.com/wp-content/uploads/2012/03/Rights.pdf>.

³²Durga Das Basu and Bhagabati Prosad. Banerjee, *Law of the Press* (Gurgaon, Haryana, India: LexisNexis Butterworths Wadhwa Nagpur, 2010).

³³David Bilchitz, "The Justification of Fundamental Rights," *Poverty and Fundamental Rights*, 2008,, doi:10.1093/acprof:oso/9780199552160.003.0003.

³⁴Fateh Sher versus District Coordination Officer, Vehari, 2012 CLC 714 (Lahore High Court).

³⁵Fundamental Rights, *SpringerReference*, doi:10.1007/springerreference_223855.

positivus)³⁶. Still, all of the above-mentioned cataloging of fundamental rights is relative and schematic, as the all kinds are ancillary to one another since these rights conjointly affect the exercise and protection³⁷.

In Pakistan over the last 70 years, the Pakistani higher courts, predominantly the Supreme Court of the country, have in several judgments explained the Constitutional provisions concerning fundamental rights³⁸. The Supreme Court has demarcated the scope and nature of these rights in the background of changing economic, political, and social scenarios³⁹. A brief insight of the scope and trends of the interpretations of these constitutional articles, are constructive in a growing democracy of Pakistan⁴⁰. The Supreme Court while discussing fundamental rights in an observed that “no right can be properly described as fundamental if the legislature can take it away by a law not involving an amendment of the Constitution, or unless its suspension or surrender in a national emergency is specifically provided by the Constitution itself⁴¹”. In another case of “Province of East Pakistan v. Mehdi Ali Khan and others, Supreme Court observed that the essential characteristic of fundamental rights is that they impose limitations, express or implied, on public authorities, legislative, executive and judicial, prohibiting them from interfering with their exercise⁴²”.

³⁶Fundamental Rights, *SpringerReference*, doi:10.1007/springerreference_223855

³⁷Rights & Constitutional Fundamental Rights in Pakistan, accessed May 09, 2016, <http://www.zklawassociates.com/>.

³⁸Islam and Fundamental Rights, *The Role of Islam in the Legal System of Pakistan*., doi:10.1163/ej.9789004149274.i-250.26.

³⁹Government of Punjab v Dr Zahoor Ahmed Azhar, PLD 32 SC (2019)

⁴⁰Jabindra Kishore v Province of East Pakistan, PLD 9 SC (1957)

⁴¹Jabindra Kishore v Province of East Pakistan, PLD 9 SC (1957)

⁴²Province of East Pakistan v. Muhammad Mehdi Ali Khan, PLD 1959 SC 387

Fundamental rights treasured in the Constitution have nothing factual meaning if the country itself is going through its existential threat⁴³. If the country itself is at risk then the liberties of the subjects are of no use and are at peril. It is for these reasons that a equilibrium must be conserved among the opposing interests, positive rights of the citizens and individual liberties that are portrayed by the Constitution as fundamental. It is also the need of the time to impose rational restrictions on the use of those rights for the collective betterment of the society⁴⁴. While discussing the importance of fundamental rights the “Supreme Court of Pakistan”⁴⁵ declared that;

“A right to be fundamental must be such as is enforceable by judicial or some other process. Any action taken by the legislature or the executive in violation of fundamental right is void in law and the courts are bound to make a declaration accordingly and to give suitable relief to the aggrieved party. This duty is the very essence of what is called judicial review of legislation. Only a few of these rights can be stated in the form of absolute propositions. Most of them require qualification in the individual’s interest of society, particularly in a social welfare state, where the individual’s interest is subordinate to the public welfare”.

The spirit of fundamental right provides that these rights are enforceable by courts or other tribunals against contravening public authority⁴⁶. Under Pakistani Constitution, the fundamental rights are neither perpetual nor indefeasible. The operation of those rights can be suspended with the imposition of emergency under Part 10, and similar to any other legislative right, they are being conceptualized by the Constitution, can be taken away or abridged with a constitutional amendment⁴⁷. Freedom of expression is one of the protected fundamental rights of Pakistani Constitution.

⁴³Suo Motu Case No.7 OF 2017, PLD 318 SC (2019)

⁴⁴Nasrullah Khan v. District Magistrate, PLD 1965 Lahore 642

⁴⁵Abul ala Maududi v. Govt. of West Pakistan, PLD 1964 SC 673

¹⁷⁸Nasrullah Khan v. District Magistrate. PLD 1965 Lahore 642

⁴⁷Province of East Pakistan v Mehdi Ali Khan and others. PLD 1959 SC 387

2.4 Freedom of Expression in Islam

Freedom of expression has become one of the most momentous issues in the contemporary socio-political global scenario. Every field of socio-political life seems affected from its impacts and consequences, due to its significance and controversy⁴⁸. Therefore, freedom of expression is legally protected and defined in almost all the western's and eastern countries. Commonly, "the freedom of expression means the right to express one's own convictions and opinions freely by words of mouth, writings, printing, pictures or any other mode"⁴⁹.

It is also observed all modern international treaties like the "UDHR (Universal Declaration of Human Rights) and ECHR (European Convention of Human Rights)", and OIC documents advocates for the significance of freedom of expression⁵⁰. Therefore, majority of the western scholars deliberate it a fundamental plus right, which must not be despoiled in any case as, "freedom of expression is a fundamental human right in the modern democratic societies, and it has meticulous importance in relation to the proper performance of the constitutional democratic procedure"⁵¹.

According to the Islamic philosophy, freedom of expression is not an product of any historical struggle rather Almighty Allah (SWT) grants all rights and liberties alone as an exclusive gift to mankind to recognize their dignity and capacity to search for

⁴⁸Independent Newspapers Corporation (Pvt) Ltd vs Chairman Fourth Wage Board and Implementation Tribunal for Newspapers Employees, SCMR 1533(1993)

⁴⁹M. Stephen, *Human Rights Concepts and Perspectives* (Delhi: Concept Publishing, 2002).

⁵⁰J. Beatson, Yvonne M. Cripps, and David Williams, *Freedom of Expression and Freedom of Information: Essays in Honour of Sir David Williams* (Oxford: Oxford University Press, 2002).

⁵¹Riaz Ahmad Saeed, Exploration of Freedom of Expression in Islam and West: Its Relation with Blasphemy and Religious Defamation, *Journal of Islamic Thought and Civilization* 06, no. 01 (2016), doi:10.32350/jitc.61.02.

truth⁵². The Holy Qur'ān also endorses it as; “So, judge between them by what Allah (SWT) hath revealed, and follow not their vain desires, diverging from the Truth that hath come to thee⁵³.” Therefore, in Islamic perspective, the first important source of this fundamental human right is the divine revelation (Wahī). Second source is; the last Prophet Muhammad’s (SAW) sayings (Ahādīth) and actions (Sunnah). Prof. Khurshīd Ahmad says,

“It is not a solid claim but just like a joke that the contemporary west is trying to become the sole proprietor of the human rights and civil liberties, while Islam granted these rights and freedoms fourteen hundred years ago (without any demand).⁵⁴”

However, Islamic rights and liberties are not absolute, but have some reasonable moral, legal and social boundaries to manage human tyrannical behavior. Thus, Islamic freedom of expression is not absolute but responsible. Hence, Mr. Ghulām Hassan Malik writes; “It is necessary to put some reasonable limits and restrictions in a civilized society on freedom of speech. So, in Islam, freedom of speech is not unlimited but some reasonable legal, social and moral restrictions are imposed on it⁵⁵.”

The Islamic scholars have consensus on this issue that the absolute and the unlimited freedom of expression is not possible anywhere and if it is provided, then it will create conflict and chaos in the society. Islam grants liberties to a person with this responsibility that he may not harm any other person for his personal interest. Accordingly, Islam understands that the absolute freedoms are not beneficial for human being, but they can harm and damage the society. Likewise, a leading Islamic

⁵²Muhammad Ayoub v Federation of Pakistan through Secretary, Ministry of Interior, Islamabad PCrLJ 1133 Lahore High Court (2018)

⁵³Muhammad Bhat Ali, Freedom of Expression from Islamic Perspective, *Journal of Media and Communication Studies* 6, no. 5 (2014), doi:10.5897/jmcs2013.0378.

⁵⁴ Khurshīd Ahmad, Secular Democratic Rights and Blasphemy, *Policy Perspectives*, 2010.

⁵⁵Muhammad Bhat Ali, "Freedom of Expression from Islamic Perspective," *Journal of Media and Communication Studies* 6, no. 5 (2014): , doi:10.5897/jmcs2013.0378

scholar Mawlānā Mawdūdī argues, “The absolute right to freedom of expression can be harmful and destructive for ethical and moral values of the society and no law of any civilized society can bear it.”⁵⁶

The Holy Quran explains that while expressing opinions and ideas, it must be expressed by courtesy, gentleness, calmness and discreetly. These all concepts should be explained in manner of naseehah (advice) and hisbah (suggestion). The Quran also acknowledges the right of expression, speech and freedom of religion in a decent method. Freedom of expression has an incredibly high ethical base in Islam and Islamic laws⁵⁷.

Under Quran-i- Majeed there is no such verse or saying which prohibits freedom of expression. Contrarily, Islam and Quranic teachings boosts people to debate these substances openly, debate ideas and reject or accept them. Even the Shaitan was permitted to express himself openly;

The Quran-e-Majid declares:

“[God] said: O Iblis [the devil], What prevents thee from prostrating thyself to one whom I have created with my hands? Art thou haughty? Or art thou one of the high [and mighty] ones?

[Iblis]replied, I am better than he: thou createdst me from fire, and him thou createdst from clay.

[God]said: Then get thee out from here: For thou art rejected, accursed. And my curse shall be on thee till the Day of Judgment.

[Iblis] said: O my Lord, give me then respite till the day the [dead]are raised.

[God] said: Respite then is granted till the day of time appointed.

⁵⁶Riaz Ahmad Saeed, "Exploration of Freedom of Expression in Islam and West: Its Relation with Blasphemy and Religious Defamation," *Journal of Islamic Thought and Civilization* 06, no. 01 (2016): , doi:10.32350/jitc.61.02.

⁵⁷Riaz Ahmad Saeed, "Quranic Concept of Freedom of Expression A Descriptive Study in Modern Socio-Political Perspective," *Al-Qalam*, June 2013.

[Iblis]said Then by Thy power, I will put them all in the wrong. Except Thy Servants amongst them, sincere and purified [by Thy Grace]. (Sura 38, verses 13-17) ⁵⁸”

Islam also does not allow suppression of non-Muslims but permit believers to indulge in open discussion and debates. Every Muslim is given freedom of speech in all matters whether about the world or things related to religion. The objective of the freedom of speech is to build social harmony, tolerance, love and create understanding within society. Freedom of expression as a basic human right that is essential for living a life. Significance of freedom of expression in Islam can be witnessed in the practice of Shura. Shura allows differences of opinion exist to get the best solution. Everyone is permitted to submit their opinions for the benefit of all mankind⁵⁹.

Islam does not intend to control the speech and expression unless it tends to violate the injunctions of the Quran and al-Hadith⁶⁰. Moreover, freedom of expression is also allowed to implement the concept of enjoining good and forbidding evil (calling towards goodness and reject evil). Each individual Muslim is obliged to admonish and fellow Muslim opinion either enjoin good or forbid evil⁶¹. The concept of forbidding evil and enjoining good is widely mentioned in the Quran and al-Hadith. Allah says: Meaning: “You are the best of peoples, evolved for mankind, enjoining what is right, and forbid what is wrong, and believing in Allah⁶²”.

⁵⁸Quran-e-Majeed, Surah Al-Araf 7, verses 13-17

⁵⁹Syed Ameer Ali, *The Spirit of Islam: A History of the Evolution and Ideals of Islam* (New York: Cosimo Classics, 2010).

⁶⁰Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Sang-e-Meel Publication, 2017).

⁶¹Muhammad Hamidullah, *Islam in a Nutshell* (Alexandria, VA: Al Saadawi Publications, 1996).

⁶²Quran-e-Majeed, Surah Ali-Imran, 3:110

This verse explains that God created all humans as special as inheritors of the earth. Each individual Muslims are commanded to do good and forbid evil and noble in the human benefit. In addition, every individual Muslim is commanded to believe in Allah swt by performing all the rights of faith to Allah. Rasulullah s.a.w. said: *إل الي في عن* *رجال* *يبه الن اس أن يقو لبح حق إذاع لم ه* Meaning: Remember, do not let fear of man prevented with the right person to say if he knew.⁶³. Hadith previously explained the need for every individual Muslim to express their views in matters of rights.

However, every individual Muslim community or whether the leaders involved with the right of freedom of expression should follow the limits of law in the state of the view⁶⁴. This is to avoid any negative impact on Muslims and Islam itself. Islam has outlined some manners in the freedom of expression. According to Kamali, the etiquette for freedom of expression is to use a polite manner and avoiding verbal abuse or ridicule that can cause strife among people⁶⁵. In addition, do not raise your voice when you speak, finally, freedom of expression is carried out in a safe state without causing any damage⁶⁶.

2.5 Freedom of Expression under Constitution of Pakistan

The Pakistani Constitution of 1973 maintains the essentials for a vivacious democracy and pledges freedom of expression⁶⁷. Emphasizes is always made on state's

⁶³Ibn Majah, Hadith No 2191

⁶⁴Ḥamīd Allāh, Muḥammad Forme Avant 2007, *Introduction to Islam* (Beirut: Holy Koran Publ. House, 1977).

⁶⁵Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2011).

⁶⁶Muhammad Asad, *Islam at the Crossroads* (Lahore: Peace Publication, 2016).

⁶⁷Khalid Aziz v Pakistan Television Through Managing Director, PLD 115 Peshawar-High-Court (2017)

commitment to Islam and at the same time the Constitution features the vital civil rights intrinsic in a democracy⁶⁸. Constitution of Pakistan presents that citizens⁶⁹:

“Shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality”.

Fundamental rights are the heart and soul of a living Constitution and must always be ready to embrace and protect the sensibilities of the people. They must be progressively construed to advance the ideas and notions of freedom, free choice and individual autonomy. Such vitality and vibrancy are the hallmark and eminence of a living Constitution in a democracy⁷⁰.

Freedom of expression is key cornerstones of fundamental rights and also of democratic institutions. Freedom of expression extends from all subjects to all themes. It also affects all parts of life without imitating to any fact of human interest⁷¹. Article 19 of the Constitution of 1973 presents the notion of freedom of speech, expression and freedom of press in Pakistan in the following words⁷²;

“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, [commission of] or incitement to an offence”

⁶⁸A. G. Chaudhry, *Lectures on Constitutional Law* (Lahore: Eastern Law Book House, 2011).

⁶⁹Shoukat Mahmood, *Constitution of Pakistan*, (Rawalpindi: Federal Law House, 2015).

⁷⁰Zain Sheikh, *The Constitution of the Islamic Republic of Pakistan, 1973*: (Karachi: Pakistan Law House, 2007).

⁷¹Ali Raza v Federation of Pakistan, PLD273 Lahore High Court (2017)

⁷²Ali Raza v Federation of Pakistan, PLD273 Lahore High Court (2017)

Article 19 of the Constitution pledges freedom of speech and expression only to citizens. Foreigners and non-citizen residents do not enjoy this right⁷³. In Pakistan the notion of freedom of speech and expression does not take the shape of a positive or enforceable right⁷⁴. It falls under the umbrella of negative liberties to communicate with others or immunity from interference by others. This means that an individual may say or write as long as it does not infringe the right of others or violates any law. The freedom unlike an infringed right is subject to statutory curtailment and may be restricted by judicial development of law⁷⁵. Freedom of speech was defined by the Lahore High Court in 2017 as “an expression or communication of thoughts or opinions in spoken words. An expression of or the ability to express thoughts and feelings by articulating sounds or a sequence of lines written for one character in a play”⁷⁶.

Whereas freedom of expression means “the action of making known one’s thought or feelings; the conveying of feelings in a work of art or in performance of a piece of music; writings, speech, or action that show a person’s ideas, thoughts, emotions or opinions. Expression include speech. Any dramatic work is therefore a symbol of speech and expression. The right to communicate and receive ideas, knowledge, information, beliefs, theories, creative and emotive impulses by speech or by written words, theatre, dance, music film, through a newspaper, magazine drama or book is an essential component or the protected right of freedom of expression”⁷⁷. The broadcast

⁷³Suo Motu Case No 07 of 2017, PLD 318 SC (2019)

⁷⁴Salman Shahid v Federation of Pakistan, PLD 218 Islamabad (2017)

⁷⁵DG cement vs. Federation of Pakistan. PLD 693 Lahore (2013)

⁷⁶Leo communications Limited vs. Federation of Pakistan, PLD 709 Lahore (2017)

⁷⁷Leo communications Limited vs. Federation of Pakistan, PLD 709 Lahore (2017)

of ideas, culture, history, literature, opinions, thoughts, emotions and art through the medium of plays and dramas signifies freedom of expression in a country⁷⁸.

The right to freedom of expression covers the right to receive and circulate literature to public⁷⁹. Freedom of expression also infers freedom of communication including freedom to receive communication. It may be done by all lawful means, e.g. loudspeakers⁸⁰. More ever the right to freedom of expression brings with it the right to circulate one's ideas and publish his sentiments with complete freedom. we can also resort to any existing means of publications and subject to such restrictions as could be lawfully levied under the clause⁸¹.

The fundamental right of expression includes the right to the public to know as to what the government is doing in a democracy. An elected government attributes great value to this freedom. This freedom paves ways for good governance in a democratic country⁸². The nature and extent of this freedom and fundamental right determines the quality and maturity of democracy in a country⁸³.

The right to free of expression applies to all subjects that are related with all ways of life without limitation of any fact of human interest. Furthermore, the right of freedom of speech and expression carries with it the right to publish and circulate one's ideas,

⁷⁸Suo Motu Case No 28 of 2018, PLD 1 SC (2019)

⁷⁹Muhammad Ayoub v Federation of Pakistan through Secretary, Ministry of Interior, PcrLJ 1133 Lahore High Court (2018)

⁸⁰Province of Punjab v Qaiser Iqbal, PLD 198 Lahore High Court (2018)

⁸¹Sakal Papers (P) Ltd., And Others vs The Union of India, AIR 1962 S.C.305

⁸²Alicia Cafferty. Lerner and Adrienne Wilmoth. Lerner, *Freedom of Expression* (Detroit: Greenhaven Press, 2009).

⁸³ Ahmed Awais, *The Constitution of the Islamic Republic of Pakistan, 1973: As Amended by the Legal Framework Order, 2002, and Constitution (seventeenth) Amendment Act, 2003* (Lahore: Law Book Land, 2008).

opinions, and views with complete freedom⁸⁴. For this purpose, individual can resort to any available means of publication or transmission of his views. Similarly, Freedom of press is also protected under the same Article 19 of constitution of Pakistan under the flagship of freedom of expression⁸⁵. As freedom of expression and speech is not available to the organizations or companies, so freedom of press was specifically protected as an exception to general rule.

Freedom of press means “a medium of publication and is closely linked with freedom of person and independence of judiciary”⁸⁶. “Justice Marshall in Law of the Press” had to say as follows:

“It is the liberty of the press that is guaranteed, not the licensees. It is the right to speak the truth, not the right to bear false witness against your neighbor. Every citizen has a constitutional right to the enjoyment of his character as well as the ownership of his property, and this right is as sacred as the liberty of the Press⁸⁷.”

In “Indian Express Newspapers (Bombay) Pvt. Ltd v Union of India” the supreme court of India declared the significance of freedom of press in the following golden words:

“In today’s free world freedom of Press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in large scale particularly in the developing world where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments⁸⁸.”

⁸⁴A. G. Chaudhry and Shazib Masud, *The Leading Cases in Constitutional Law* (Khyber Publishers Lahore, 2017).

⁸⁵Mohammad Munir, *The Constitution of the Islamic Republic of Pakistan* (Lahore: PLD Publishers, 1999).

⁸⁶Ibid 7

⁸⁷M. Hasan and Another v. Government of Andhra Pradesh, AIR 1998 AP 35

⁸⁸Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India, AIR SC 515(1986)

In “Romesh Thappar v. State of Madras, Patanjali Sastri, C.J”. observed:

“Freedom of speech and of the press lays at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible⁸⁹”.

At the same moment, press does not receive any distinct protection as compared to citizens. It is subject to same limitations and regulations of freedom of expression⁹⁰. However, the right of freedom of expression is not unbridled or unfettered. Unrestricted or absolute rights of individuals’ do not find place in any modern country and there is no such matter as absolute and uncontrollable liberty⁹¹.

With the evolution of technologies, the press has also evolved into two organs: the print and electronic media. Print media is defined in “Black’s Law Dictionary” in the following words: “The industry that is involved in printing and distributing media through publications such as magazines and newspapers⁹²” whereas Electronic media according to Black’s Law dictionary is “any type of device that stores and allow distribution or use of electronic information. This includes television, radio, Internet, fax, CDROMs, DVD, and any other electronic medium⁹³”.

“The Press Council of Pakistan Ordinance 2002” regulates print media of Pakistan⁹⁴. which was promulgated by General (Retired) Pervez Musharraf, then President of

⁸⁹Romesh Thappar v. State of Madras. AIR SC 124 (1950)

⁹⁰Zaheer Uddin v State, SCMR 1718(1993)

⁹¹Shariq Saeed v Mansoob Ali Khan, YLR 1647(2010)

⁹²What Is Electronic Media? Definition of Electronic Media (Black's Law Dictionary)," The Law Dictionary, March 27, 2017,, accessed July 10, 2016, <https://thelawdictionary.org/electronic-media/>.

⁹³What Is ELECTRONIC MEDIA? Definition of ELECTRONIC MEDIA (Black's Law Dictionary)," The Law Dictionary, March 27, 2017,, accessed July 10, 2016, <https://thelawdictionary.org/electronic-media/>.

⁹⁴Press Council of Pakistan | Pakistan Press Foundation (PPF)," accessed May 9, 2017, <https://www.pakistanpressfoundation.org/tag/press-council-of-pakistan/>.

Pakistan in 2002. Whereas electronic media is regulated by “Pakistan Electronic Media Regulatory Authority Ordinance 2002(PEMRA Ordinance)”. It was also promulgated in 2002 by then Chief Executive and “President of Pakistan General (Retired) Pervez Musharraf”. It was later amended in 2007,2015 and most recently in 2018. The purposes of the said enactment are provided in the following words;

“WHEREAS it is expedient to provide for the development of electronic' media in order to

- (i) improve the standards of information, education and entertainment;
- (ii) enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest;
- (iii) facilitate the devolution of responsibility and power to the grassroots by improving the access of the people to mass media at the local and community level; and
- (iv) ensure accountability, transparency and good governance by optimizing the free flow of information”

In addition to PEMRA Ordinance 2002, there are many regulatory and legislative mechanisms that indirectly or directly affect electronic media. Those include the Constitution of Pakistan, and “The Electronic Media (Programs and Advertisements) Code of Conduct 2015, Freedom of Information Ordinance of 2002, the Defamation Ordinance of 2002, the Contempt of Court Ordinance of 2003”⁹⁵. The structure of regulatory body and method of regulation including limitations on freedom of expression of electronic media are explained in the preceding chapter.

⁹⁵Electronic Media in Pakistan, Pakistan Press Foundation (PPF), accessed July 11, 2016, <https://www.pakistanpressfoundation.org/tag/electronic-media-in-pakistan/>.

2.6 Freedom of Expression of Broadcast Media

The fundamental right to freedom of speech and expression in Article 19 of the Constitution means the right to express one's own opinions and convictions in any form or mode through all available mediums. This fundamental right is the catalyst of a democratic process where all citizens have the right to take part in the affairs of the country and is essential for guaranteeing the rule of law. Participation becomes meaningless where the citizens is not well well-versed on all sides of the issues, through a variety of options and outlooks. Therefore, the widest possible dissemination of information from divergent and diverse sources is vital for the wellbeing of the public and the existence of a democratic society. This right has been explained in following words⁹⁶; the case of where in it was held that

“no doubt freedom of speech goes to the very heart of a natural right of a civilized society to import and acquire information about their common interests. it helps an individual in self-accomplishment, and leads to discovery of truth, it strengthens and enlarges the capacity of an individual to participate in decision making and provides a mechanism to facilitate achieving a reasonable balance between stability and social change”.

In recent times press has evolved into print and electronic media. Freedom of press is based on the premise that widest possible dissemination of information from antagonistic and diverse sources is *sine qua non* to the well-being of the people. Such freedom is the root of a free government of a free people⁹⁷. Such freedom is the foundation of a free government for autonomous people. Any effort to stifle, impede, contravene or such right would definitely fall foul of freedom presented under Article 19 of the Pakistani Constitution.

⁹⁶Pakistan Broadcasters Association and others v Pakistan Electronic media Regulatory Authority and other, PLD Sc 692 (2016)

⁹⁷M. Mahmood, *The Constitution of the Islamic Republic of Pakistan: As Amended up to Date* (Pakistan Law Times Publications Lahore, 2008).

Sindh High Court stated that⁹⁸;

“the right to 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, this right to freedom of speech and expression is not unbridled or unfettered. Unrestricted or absolute and individual rights do not find place in any modern state and there is no such item as uncontrolled or absolute liberty. Similarly, no one is allowed to put any expression or language or words in any banner, speech, TV program, newspaper or journals which give an impression that one of the institutions should act according to their whims, without jurisdiction or in violation of constitutional mandate⁹⁹.

Electronic media is regulated by “Pakistan Electronic Media Regulatory Authority” and this authority is created by PEMRA Ordinance 2002. Under the preamble of the PEMRA Ordinance 2002 it is stated that the PEMRA Authority is to ensure a free and diverse electronic media giving an accurate and fair representation of information to the public. The importance of the diversity and plurality of the content with in the electronic media is contained in clause (ii) of the Preamble wherein it is stated that PEMRA must broaden the available choices to the people of Pakistan in the media for news, religious affairs, current affairs, religious content, culture, art, economic development, technology, science, music, drama, social sector, , sports, and all subjects of national and public interest¹⁰⁰. The preamble also requires that PEMRA

⁹⁸ Flt.Lt. (Dr) Shariq Saeed v Mansoob Ali Khan and 5 others, YLR 1647(2010)

⁹⁹Ali Raza and another v Federation of Pakistan and another, PLD Islamabad 64 (2017)

¹⁰⁰Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>

ensure accountability, good governance and transparency by augmenting the free flow of information. The emphasis on choice and flow of information is to encourage divergent viewpoint in the content so that the electronic media representative of all segments of society, be it demographic, ethnic, gender or otherwise. At the same time the electronic media is required to present a variety of viewpoints and ideas maintainability plurality in its content¹⁰¹.

Section 2 (hc) of PEMRA Ordinance 2002 provides that electronic media includes “broadcast media and distribution services”. Broadcast media has been defined in Section 2 (c) of the PEMRA Ordinance 2002 “to mean such media which originate and propagate broadcast and prerecorded signals by terrestrial means or through satellite for radio or television and includes teleporting, provision of access to broadcast signals by channels providers and such forms of broadcast media as the Authority may with the approval of the Federal Government, by notification in the official gazette”. Whereas distribution services are defined in Section 2 (ha) of the PEMRA Ordinance 2002, that a service which receives broadcast from prerecorded signals from different channels and distributes them to subscribers through wireless, satellite options or cable network, and includes “cable TV, LMDS, MMDS, DTH and such other similar technologies”¹⁰².

Simply put broadcast media collects and transmits its own content while distribution service is a license to deliver the content of various broadcast media to the viewer. The broadcast media has the tendency to broadcast of ideas, culture, history, literature,

¹⁰¹Abrar, Muhammad. *Pakistani Media Law: a Comparative Study*. Karachi: Oxford University Press, 2016.

¹⁰² Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>

opinions, thoughts, emotions and art through the medium of plays and dramas signifies freedom of expression in a country¹⁰³. So, while broadcast media can distribute its own content it cannot distribute other broadcasters' content whereas distributors deliver content from a variety of broadcaster to the viewers. Freedom of broadcast media or its freedom is to express oneself within a framework of values and that framework is the limitations inscribed by the Constitution and other media laws of the country. While keeping in view the limitations of the Constitution, it is pertinent to explain that what is incorporated in the freedom of expression of broadcast media and how the superior courts have interpreted this right. It is also pertinent to look as to what rights have been guaranteed to broadcast media under the umbrella of freedom of expression. So, the next portion will explain as to what is included in the freedom of expression of broadcast media.

(a) Right to Disseminate Information

The first right which is protected under the freedom of expression of broadcast media is right to disseminate information. This right embraces the right to circulate information and opinion. Right of circulation of one views or information is the cornerstone of the freedom of expression of broadcast media. Freedom of expression would have very little meaning without right to circulate¹⁰⁴.

(b) Right to Receive Information

The freedom of expression includes not only the right to present, express and propagate information but it also includes right to receive information. Supreme Court held this

¹⁰³Suo Motu Case No 28 of 2018, PLD 1 SC (2019)

¹⁰⁴James Rhodes v OPO, SCMR 1097(2015)

in several judgments which have debated the right to receive information¹⁰⁵ from advertisements enabling the people to receive vital information about life-saving drugs, to the right of sports lovers to watch cricket matches via tv and the right of voters to know the previous experiences of electoral candidates¹⁰⁶.

(c) Right to Broadcast

The concept of freedom expression has appreciated with the advancement of technology and incorporates all available means of communication and expression. The Supreme court of India held that “broadcasting is a means of communication and a medium of speech and expression within the framework of Article 19¹⁰⁷”. The case was related to the rights of a cricket associations to grant broadcast rights to an agency of its choice. It was further declared that the right to entertain and to be entertained, through the broadcasting media are a vital part of this freedom under Article 19. High Court declared that the author or broadcasting companies are not vested with unfettered liberty and impunity to public and broadcast any material which is prejudicial to the interests of any person or harmed or caused damage to reputation, honor, prestige of a person. Likewise broadcasting companies are not free to broadcast anything for promotion of a company or corporation. All broadcasters must follow the limitations inscribed under Article 19 of the Constitution¹⁰⁸.

¹⁰⁵Union of India v. Association for Democratic Reforms, 5 SCC 294(2002)

¹⁰⁶*Pakistan Broadcasters Association vs Pakistan Media Regulatory Authority, PLD 692 SC (2016)*

¹⁰⁷Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal, 2 SCC 161(1995)

¹⁰⁸*C'S Corporate Services vs Oil and Gas Development Company Limited, PLD 115 (2017)*

(d) Right to Advertisement (Commercial Speech)

A service or product may be made an object of advertisement on broadcast media if it does not cross the ambit of restrictions on freedom of expression¹⁰⁹. The same was reiterated under “Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd that a commercial advertisement or commercial speech was also a part of the freedom of speech and expression, which would be restricted only within the limitation of Article 19”¹¹⁰.

Advertising, which is mere commercial transaction, protected under the dissemination of information clause of freedom of expression. It is the right of public to receive the commercial speech under the same freedom of expression clause. Article 19 of the Constitution not only guaranteed freedom expression, it also protects the rights of individuals to listen, read and receive expression¹¹¹. Public at large benefited by the information made accessible through the advertisements. It is also in line with Article 18 of the Constitution as it protects right of individuals to conduct business in Pakistan¹¹².

Free flow of commercial information is indispensable in a democratic economy. There cannot be economical and honest marketing by public at large, without being educated by the information circulated through advertisements. Although advertisements are protected under the freedom of expression of electronic media, it does not mean that there will be no limitation on the time and length of the advertisements on the

¹⁰⁹*Pakistan Broadcasters Association vs Pakistan Media Regulatory Authority, PLD 692 SC (2016)*

¹¹⁰*Tata Press Limited vs Mahanagar Telephone-Nigam, AIR 2438(1995)*

¹¹¹*Pakistan Broadcasters Association vs Pakistan Media Regulatory Authority, PLD 692 SC (2016)*

¹¹²Zain Sheikh, *The Constitution of the Islamic Republic of Pakistan, 1973*: (Karachi: Pakistan Law House, 2007).

electronic media. The regulation of duration of advertisements broadcast and the spacing between advertisements slots and programs contents are not described as being invasive on the right to free speech and freedom of expression of broadcast media in Pakistan¹¹³.

(e) Right to Report Court Proceedings

It is also the right of broadcast media under freedom of expression principle to report judicial proceedings. This right of reporting judicial proceedings emerges from the requirement for transparency¹¹⁴. It is widely believed that justice should not only be done, it should be seen to be done. Openness of judicial system is a protection against judicial errors and misconduct.

“In the darkness of secrecy sinister interest, and evil in every shape, have full swing only in proportion as publicity has place any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying, under trial”¹¹⁵.

The broadcast media relishes privileges of reporting based on the national’s right to be well informed on matters of public significance. This privilege does not create any interest, status or special wisdom for electronic media. Rather this privilege is guaranteed as broadcast media works as the ears and eyes of the public. Media act on behalf of public. The journalists have a fundamental right and responsibility to witnesses the judicial proceedings of courts in country. Media has also got the right to broadcast an authentic report of the proceedings attended and heard in court. This right is available in respect of both judicial as well as quasi-judicial tribunals. Recently the

¹¹³*Pakistan Broadcasters Association vs Pakistan Media Regulatory Authority, PLD 692 SC (2016)*

¹¹⁴*Attorney-General v Times Newspapers LTD: HL (1973)*

¹¹⁵Bentham quoted in *Scot v. Scott, All ER 1(1911)*

Supreme Court of the country took a Suo Motu notice and issued the writ of mandamus to Pakistan Electronic Media Regulatory Authority to observe and implement following parameters for court reporting by media¹¹⁶.

- 1) “Pakistan Electronic Media Regulatory Authority should ensure that freedom of expression and right to information as promised under Article 19 and 19-A were fully protected and at the same time provided that reporting of sub judice matters must be conducted in manner which did not negatively affect another person’s fundamental right to be dealt with in accordance with law(Article 4 of the Constitution) and the right to fair trial and due process(Article 10-A of the constitution).
- 2) Any discussion on any matter which was pending before any court may be aired but only to the extent that it was to provide information to the public which was objective in nature and not subjective, and no content, including commentary, opinions or suggestions about potential fate of *sub-judice* matter which tended to prejudice the determination by a court, tribunal shall be aired”¹¹⁷.

It highlights that although electronic media have a right of reporting and presenting discussion on *sub-judice* matters but this right is not absolute in any way. Restrictions must be complied while presenting court proceedings.

(f) Right to Expression Beyond National Boundaries

The right to expression surpasses national borders. The revolution of communication technology and the broadcast media has broken down transnational barriers and national boundaries. This advancement of technology has made imaginable the transmission of information to any part of the universe in a matter of seconds. In “Maneka Gandhi v. Union of India¹¹⁸”, the Supreme Court investigated the question of applicability Article 19 of Indian Constitution outside of national boundaries. The

¹¹⁶PLD 1 SC (2019)

¹¹⁷PLD 1 SC (2019)

¹¹⁸Maneka Gandhi vs Union of India, AIR 597(1978)

Court concluded that this right of speech and expression is not confined to National boundaries;

“Everyone has a 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”

The similar view was adopted by Lahore High Court in “Leo Communications v Federation of Pakistan and others” that the concept of freedom of broadcast media is based on the premise that “the widest possible dissemination of information from diverse and antagonistic sources is sine qua non to the welfare of the people. The nature and extent of this freedom and fundamental rights determines the quality and maturity of democracy in a country. Nations are enriched by the crosscurrents of ideas and thoughts, they progress by expanding their frontiers of freedom, by encouraging plurality and diversity and not by insular and inward looking. Fundamental rights are the heart and soul of a living constitution and must always be ready to embrace and protect the sensibilities and sensitivities of the people. They must be progressively and purposively interpreted to advance the frontiers of freedom, individual autonomy and free choice. Such vibrance and vitality is the hallmark of a living constitution in a democracy”¹¹⁹.

The court was also of the view that foreign content does not itself become prohibited in Pakistan. The same test of reasonableness should be applied on the content. Only consideration that outweighed freedom of expression under the Constitution was a substantive, tangible, existing and enough public interest as demarcated by the Constitution and the laws of the land. The refusal to air Pakistani content by a private

¹¹⁹Leo communications Limited vs. Federation of Pakistan, PLD 709 Lahore 2017

Indian canal does not imperil or jeopardize public interest in Pakistan. The court allowed broadcast of foreign content if it does not reach to the limitations of freedom of expression as inscribed under Article 19 of the constitution.

(g) Copyright versus the Freedom of Expression

The law of copyright is intended to avert plagiarism and unfair exploitation of creative work. It is in this way a natural extension of the freedom of expression protected under Article 19 of the Constitution. If broadcast media company is offered freedom of expression, then it should also be guaranteed protection of the intellectual property. Copyright is not a positive right to do something but confers a negative right which restricts others from copying the original work of an author¹²⁰.

A right for one person is thus a restraint on another. The laws of copyright promote the right of one person and limits another person from exercising corresponding rights. The question rises are as to whether the right of the copyright owner invades the freedom of expression of another person or his freedom of business. Unlike morality, contempt, decency, incitement to an offence etc. Copyright is not one of the specified restrictions imposed under Constitution. The right of free expression or free trade cannot be stretched to mean that a person can be entitled to benefit from another's property or the fruits of another's labor. This is vital public interest in copyright protection. 'Copyright and the Public Interest' observed that

“copyright serves the public interest in freedom of expression. By enabling the creator to derive a financial award from the work, his artistic independence and right to create and publish according to his own wish and conscience is assured. Alternative methods of

¹²⁰Madhavi Goradia Divan and Soli J. Sorabjee, *Facets of Media Law* (Lucknow: Eastern Book, 2013).

rewarding creators, such as patronage, either by the State or by individual carry the risk of control or censorship¹²¹”.

(h) Right to Criticize

Freedom of expression of broadcast media also covers the right to criticize Government, which is imperative for a healthy and accountable democracy. In a historical US Case, the rationale of the freedom of speech was elucidated J. Douglas

"[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs the people to anger. Speech is often provocation and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.... There is no room under our Constitution for more restrictive view for the alternative would lead to standardization of ideas either by legislatures, courts or dominant political or community groups.¹²²"

In famous case of “Kedar Nath Singh v. State of Bihar” Sections 124-A and 505 of Indian Penal Code of 1860 was challenged. In these sections attempts to excite disaffection towards the Government by writing or words which has the tendency to disturb public tranquility are made punishable. The Supreme Court of Pakistan dismissed the challenge but “classified that criticism of public measures or comment on government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression of media”¹²³.

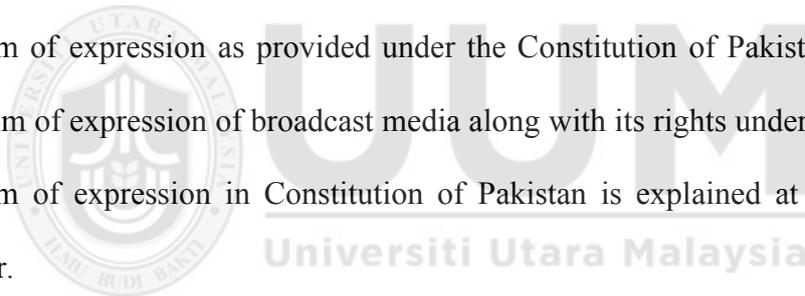
¹²¹Copyright and the Public Interest by Gillian Davies..,accessed June 11, 2018, <https://www.barnesandnoble.com/w/copyright-and-the-public-interest-gillian-davies/1002220005>.

¹²²Terminiello v. Chicago ,337 US 1 (1949)

¹²³Kedar Nath Singh v. State of Bihar, AIR 955 SC (1962)

2.7 Conclusion

Freedom of expression is one of the most important and cherished of fundamental rights. Press freedom along with freedom of expression and speech is protected under the same Article 19 of 1973 Constitution of Pakistan. Since the evolvement of information technology, this notion of traditional press has also grown in print media and electronic media. Whereas electronic media includes “Broadcast Media and Distribution Services. This chapter started with the explanation of concept of rights. Pakistan is an Islamic republic and Constitutional preamble declares that Islamic concept of democracy, equality, freedom and morality will be applied in the Pakistan. For this purpose, freedom of expression as presented in Islam is also explained in this chapter. After elucidation of Islamic concept of freedom of expression, the concept of freedom of expression as provided under the Constitution of Pakistan is explained. Freedom of expression of broadcast media along with its rights under the umbrella of freedom of expression in Constitution of Pakistan is explained at the end of this chapter.



CHAPTER THREE

REGULATORY FRAMEWORK OF BROADCAST MEDIA IN PAKISTAN

3.1 Introduction

The basic aim of this chapter is to comprehend the regulatory framework of broadcast media in Pakistan. For that purposes, this chapter presents explanation of public and private broadcast media, historical explanation of broadcast media legislation, current state including issues of existing regulatory framework of broadcast media in Pakistan and broadcasting services and its relationship with freedom of expression. At the end conclusion is presented.

3.2 Public and Private Broadcast Media in Pakistan

Press in the current scenario is divided into two organs of the Print Media and the Electronic Media. Print Media is defined in Black's law dictionary as "The industry that is involved in printing and distributing media through publications such as magazines and newspapers¹" whereas Electronic media defined by Black's Law dictionary is "Any type of device that stores and allow distribution or use of electronic information. This includes television, radio, Internet, fax, CDRoms, DVD, and any other electronic medium".

¹What is Electronic Media? www.thelawdictionary.org.n.d. <http://thelawdictionary.org/electronic-media/> (accessed 2017).

To regulate Print media in Pakistan, General (Retired) Pervez Musharraf, then President of Pakistan in 2002 promulgated “Press Council of Pakistan Ordinance 2002”¹. The purposes of the said enactment are provided in the following words “Whereas it is expedient to provide for Press Council of Pakistan for the purposes hereinafter appearing; AND WHEREAS Freedom of the press and public awareness is the foundation of democracy and the function of democracy and the principles of accountability depend inter alia upon free flow of information and freedom of expression without infringing on national interest; AND WHEREAS the press must be accountable to society to serve the public need to preserve the rights of the citizens; and whereas it is desirable to establish a Press Council of Pakistan as an autonomous and independent body; AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action²”

There are several regulatory and legislative mechanisms that directly or indirectly affects media in Pakistan. In addition to the PPO or Press and Publication Ordinance of 1988, several other laws also affect media of the country. Those laws include, the Freedom of Information Ordinance of 2002, Defamation Ordinance of 2002, the Press – Newspapers – News Agencies and Books Registration Ordinance 2003, the Press Council Ordinance 2002, Access to Information Ordinance 2006, the Intellectual Property Organization of Pakistan Ordinance 2005 and finally the Pakistan Electronic Media Regulatory Authority (PEMRA) 2002.

¹The Press Council of Pakistan, <http://presscouncil.org.pk/>. n.d. <http://presscouncil.org.pk/>. "Press Council to implement 17-point ethical code of practice. www.dawn.com. n.d. <https://www.dawn.com/news/63999> (accessed July 24, 2017).

²The Press Council of Pakistan. <http://presscouncil.org.pk/>. n.d. <http://presscouncil.org.pk/>.

the, the Contempt of Court Ordinance of 2003. Also, there were attempts in 2006 for further legislation ostensibly “to streamline registration of newspapers, periodicals, news and advertising agencies and authentication of circulation figures of newspapers and periodicals”³ (PAPRA)

3.3 Broadcast Media Laws

In addition to provision of definition in black’s law dictionary, the term electronic media was officially used in PEMRA⁴ ordinance in the following words; “Electronic media includes the broadcast media and distribution services”. It is the basic obligation and authority of the PEMRA to regulate electronic media in country. The next portion explains the historical background of regulation of electronic media in the country.

3.3.1 Evolutionary Period (1947 to 2000)

Pakistan started the broadcasting of television in 1964 by creating the Pakistan Television Corporation Limited at Dhaka and Lahore on 26th November. Later on, in 1967 Pakistan Television stations were established in Karachi and Rawalpindi/Islamabad. Whereas Peshawar and Quetta television stations started their operation in 1974.

The private electronic media of Pakistan started working from 1997 under Pakistan Telecommunication Authority. The Telecom Reorganization Act 1996 was made regulator of private sector of electronic media in Pakistan. Prior to creation of Pakistan

³Yasmeen Aftab Ali, A Comparative Analysis of Media & Media Laws in Pakistan: Sangemal Publishers Lahore, 2011

⁴Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

Electronic Media Regulatory Authority (PEMRA) , the electronic media laws in Pakistan were not codified in a single statute. They were scattered in different enactments. The major laws related to electronic media were Pakistan Television Company Act, 1964, Pakistan Penal Code, Merchandise Marks Act of 1889, and finally Custom Act of 1969. For international obligations, in 1948 Pakistan assented to the Berne Convention and in 1977 joined WIPO and finally in 1995 joined the WTO⁵. In Pakistan, the first attempt to license a privately-owned FM Radio Station and TV channel was made in 1993 during the government of Benazir Bhutto. However, it was alleged that discretionary power was heavily misused. Javed Jabbar and Dr. Mubashir Hassan, as private citizens, challenged this by a Constitutional Petition under Article 184 (c) to the Supreme Court⁶. Supreme Court admitted this petition for hearing. However, case was subsequently overtaken by events, but it remains pending before the Supreme Court of Pakistan for final disposal⁷.

Later on, in November 1996, subsequent to the removal of Benazir Bhutto's Government, the Caretaker Government of Malik Meraj Khalid promulgated the Electronic Media Regulatory Authority Ordinance (EMRA) on 14 February 1997. This law was enacted to grant all citizens equal opportunities to acquire licenses for private TV channels and radio stations. However, later Nawaz Sharif government did not convert the EMRA Ordinance into an Act of Parliament and this ordinance lapsed after the prescribed time of four months. No similar statute was presented to replace

⁵Mohammad Abrar, *Pakistani Media Law: An International and Comparative Study* UK ed. Edition. Oxford University Press; UK , 2016.

⁶Media Commission Report (Final). www.Supremecourt.Gov.Pk.N.D.
<http://www.Supremecourt.Gov.Pk/Web/Page.Asp?Id=1568> (Accessed June 12, 2017).

⁷Media Commission Report (Final). www.Supremecourt.Gov.Pk.N.D.
<http://www.Supremecourt.Gov.Pk/Web/Page.Asp?Id=1568> (Accessed June 12, 2017).

the lapsed EMRA Ordinance till the arrival of dictatorship on 12 October 1999. The military-led dictatorial Government of General Pervez Musharraf commenced its tenure with a strong belief to introduce private radio and TV stations in Pakistan. Later in the year 2000, the lapsed EMRA Ordinance was circulated for public opinion and, was approved by the cabinet in principles with some amendments and was presented new title of “Regulatory Authority for Media Broadcast Organizations (RAMBO) Ordinance”. However, this version of ordinance was not formally promulgated. Finally, in March 2002, a new law “Pakistan Electronic Media Regulatory Authority Ordinance (PEMRA)”, the Government of Pakistan promulgated the law that remains in force as of today. The original Ordinance was amended by the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 (Act No.II of 2007)⁸.

3.3.2 Latest Development (2000 to Present)

was established under the Pakistan Electronic Media Regulatory Authority Ordinance 2002⁹ created a body named The Pakistan Electronic Media Regulatory Authority (PEMRA) for facilitation and regulation of private electronic media in the country. On 8 April 2005, by an Ordinance, the Government of Pakistan decided to incorporate the Enforcement Committee in keeping with the upcoming global trend. The Pakistan Electronic Media Regulatory Authority is also one of the major stakeholders of committees. The laws which were incorporated to assist PEMRA ordinance are Broadcasting Regulations of 2002 including Rules 2002, Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007, Cable TV Regulations of 2002,

⁸Yasmeen Aftab Ali, A Comparative Analysis of Media & Media Laws in Pakistan: Sangemal Publishers Lahore, 2011

⁹Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

Copyright Ordinance, 1962 (amendment 2000), and PEMRA (Councils of Complaints), Rules of 2010¹⁰.

3.3.3 Institutional Arrangements of regulation

After the failure of EMRA the Pakistani Government tried to regulate electronic media by independent organizations and numerous regulatory bodies. These are executive and independent bodies which are assigned with tasks of implementation of the relevant legislation. These organizations are indirectly or directly related with media laws of the country. The organization, function and duties of these regulatory bodies is deliberated below.

3.3.4 Pakistan Telecommunication Authority (PTA) and Pakistan Electronic Media Regulatory Authority (PEMRA)

The private sector of Pakistan electronic TV media was initially governed by the PTA or Pakistan Telecommunication Authority. PTA was entrusted this authority in accord with the Telecom Reorganization Act 1996 but ever since the formation of PEMRA as a regulatory body, electronic media is controlled and regulated by it instead of PTA¹¹. Currently the PTA is entrusted with responsibility of the provision of telecommunication services and regulation of the creation, maintenance and operations of telecommunication systems in Pakistan. There is some kind of broadcast transmission which also comes under control of PTA. That broadcast belongs to telecommunication such as Mobile operators, IPTV, and cable Operators. These

¹⁰Mohammad Abrar, *Pakistani Media Law: An International and Comparative Study* UK ed. Edition. Oxford University Press; UK , 2016

¹¹Mohammad Abrar, *Pakistani Media Law: An International and Comparative Study* UK ed. Edition. Oxford University Press; UK , 2016

service providers also require a license from PTA to establish and run their businesses in Pakistan. Therefore, the PTA authority is indirectly involved and responsible for broadcasting transmission in Pakistan¹². The public owned or government owned electronic media is not controlled by PEMRA. The preamble of the Pakistan Electronic Media Regulatory Ordinance 2002¹³ states the following objectives:

“First to improve the standard of information, education and entertainment, enlarge the choice available to the people of Pakistan in the news media, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest; secondly, to facilitate the devolution of responsibility and power to the grass-roots by improving access of the people to mass media at the local and community level and thirdly, to ensure accountability, transparency and good governance by optimizing the free flow of information”.

The foremost obligation of the PEMRA Authority is to regulate and control the establishment and operations of all private broadcast media and distribution services of Pakistan. The PEMRA Authority also controls the distribution of foreign and local TV and radio channels in Pakistan¹⁴.

The PEMRA Authority, as a regulating body has executive, legislative, and judicial powers. It makes rules for TV industry, implements those rules, and entertains complaints of alleged violation of rules. The PEMRA Authority can also penalize against infringements. The verdicts of the authority can be judicial reviewed. However, in addition to PEMRA ordinance there are some special regulations related to electronic media. Those includes Cable TV Regulations 2002, Broadcasting

¹²Yasmeen Aftab Ali, A Comparative Analysis of Media & Media Laws in Pakistan: Sangemal Publishers Lahore, 2011

¹³Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

¹⁴Mohammad Abrar, Pakistani Media Law: An International and Comparative Study UK ed. Edition. Oxford University Press; UK , 2016

Regulations, 2002 and PEMRA (Councils of Complaints), Rules 2010. These statutes provide definitions of broadcast media, broadcast station, broadcaster, cable TV, cable television operator, cable television system, copyright, council, electronic media, eligible channel, illegal broadcast operation, illegal cable TV operation, license, and programme etc¹⁵. The details of regulatory process of PEMRA and restrictions imposed on freedom of expression of electronic media are presented in the preceding chapter which is on PEMRA and freedom of expression in Pakistan. PEMRA Ordinance provides that Electronic Media includes broadcast media and broadcasting services.

3.4 Regulation of Broadcast Media in Pakistan

Pakistan Electronic Media Regulatory Authority Ordinance 2002 (PEMRA Ordinance 2002)¹⁶ is the principal law related to broadcast media of Pakistan. This law was enacted in 2002 for the regulation of electronic media in the country. It was later amended in 2007 and most recently in 2018. PEMRA Ordinance of 2002 created a regulatory body “Electronic Media Regulatory Authority Pakistan (PEMRA)” for the regulation and establishment of Electronic media in country. The other purpose of establishment of PEMRA includes facilitation of the electronic media in Pakistan¹⁷. PEMRA Ordinance of 2002 is primarily entrusted to regulate private and not the public electronic media of the country. The government-based media is controlled by the Ministry of Information in Pakistan. Prior to enactment of PEMRA Ordinance

¹⁵ Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

¹⁶ Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

¹⁷ Pakistan started the television broadcasting in 1964 by establishing the Pakistan Television Corporation Limited at Dhaka and Lahore on 26th November. Later, in 1967 Pakistan Television stations were established in Karachi and Rawalpindi/Islamabad. Whereas Peshawar and Quetta television stations started their operation in 1974.

2002, The private sector of electronic media remained regulated by the “Pakistan Telecommunication Authority (PTA)”.

The preamble of the PEMRA Ordinance 2002¹⁸ states the subsequent objectives of the;

“Firstly, to improve the standard of information, education and entertainment, enlarge the choice available to the people of Pakistan in the news media, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest;

Secondly, to facilitate the devolution of responsibility and power to the grassroots by improving access of the people to mass media at the local and community level and thirdly, to ensure accountability, transparency and good governance by optimizing the free flow of information”.

The foremost obligation of the PEMRA Authority is toward control of “the establishment and operations of all broadcast media and distribution services in Pakistan”. The PEMRA Authority also controls the distribution of local and foreign radio and TV channels in Pakistan¹⁹.

The PEMRA Authority, while working as a regulating body has executive, judicial and legislative powers. It makes rules for TV industry, implements those rules, and entertains complaints of alleged violation of rules. The PEMRA Authority can also penalize against infringements. The verdicts of the authority can be judicial reviewed. However, in addition to PEMRA Ordinance 2002 there are some special regulations related to broadcast media. Those includes “Cable TV Regulations 2002, Broadcasting

¹⁸Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

¹⁹Muhammad Abrar, *Pakistani Media Law. An International and Comparative Study* (Corby: Oxford University Press, 2016)

Regulations, 2002 and PEMRA (Councils of Complaints), Rules 2010, Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 and the Electronic Media (Programmes and Advertisements) Code of Conduct 2015. These statutes and regulations provide rules for broadcast media, broadcast station, broadcaster, cable TV, cable television operator, cable television system, copyright, council, electronic media, eligible channel, illegal broadcast operation, illegal cable TV operation, license, and programs etc.”²⁰

The regulatory process of the PEMRA is consisted of three gears. First is related with the issuance of license for broadcasting companies, second provides conditions and restrictions which must be followed by the broadcasters while telecasting content on broadcast media and third gear provides the mechanism of enforcement of those conditions and restrictions.

Section 3 of “PEMRA Ordinance 2002”, establishes a body named “PEMRA Authority”²¹. Section 4 of the PEMRA Ordinance 2002 enumerates the basic functions of the PEMRA Authority. Those functions include regulation and operations of the all broadcast media in the country. This PEMRA Authority comprises of a Chairman and eight²² members which are selected by the President of the Pakistan. This authority has the exclusive responsibility to receive application and issue license to the broadcasting companies. Authority has the power to decide about the total number of licenses to be issued in each category. It can also charge fees for the award of a license.

²⁰Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

²¹Section 3; Establishment of the Authority. - (1) As soon as may be, after the commencement of this Ordinance, the Federal Government shall, by notification in the Official Gazette, establish an authority to be known as the Pakistan Electronic Media Regulatory Authority (PEMRA) for carrying out the purposes of this Ordinance

²²The total number of members is reduced by 2018 amendment in PEMRA Ordinance 2002. Previously there were 12 members of PEMRA Authority.

Upon receiving application, the Authority assesses the application as to technical competence, financial capability, economic viability, track record and credibility the range of Pakistani share in ownership.

However, it is mandatory to issue license within one hundred days from the date of receiving of application. Once the application of license has been approved by the PEMRA Authority, then it will be forwarded to the Frequency Allocation Board (FAB) for frequency apportionment and issues the license after apportionment of frequency. Similarly, the PEMRA Ordinance 2002 also elucidates the principles for refusing to issue the license is also prescribed. The law has also provided the specific grounds for refusing license. Those grounds of declining application include an application from non-citizen or non-resident of Pakistan, or a foreign company created under a foreign law, or if the majority of shares are controlled or owned by foreigners. the application will also be rejected if made or funded by a foreigner or foreign organization or by a foreign government²³. The application for license can also be refused by the Authority on the basis of public interest. However, the term public interest is not defined in the ordinance.

As suggested earlier that electronic media consists of broadcast media and broadcasting services. It is the authority of PEMRA to suspend or revoke the license of a distribution service company or broadcast media if the licensee fails to pay the annual renewal fee license fee or charges, or any other charges including fines. Broadcast media or cable TV (distribution services) operator who is issued a license has several obligations under the Ordinance. It is the responsibility of The Authority

²³Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

to confirm that every licensee follows the conditions and terms levied for preservation of the security, sovereignty, integrity of Pakistan and the cultural, national, social and religious ethics and the rules of public policy. The Authority shall make sure that all programs and advertisements do not contain or encourage terrorism, violence, religious, racial, or ethnic discrimination, extremism, sectarianism, hatred, militancy, pornography, copyright violations, obscenity, vulgarity or other material which has the tendency to be offensive for commonly accepted standards of decency. The Authority, in addition to the conditions and terms contained in the Schedule, can inflict any other conditions and terms as seem necessary²⁴.

PEMRA Authority is the principal body responsible for the operations and regulations of the broadcast media in the country. The regulation of broadcast media has direct relationship with freedom of expression. The same was asserted by legal experts in the following words;

“The role of the PEMRA Authority is of paramount importance for ensuring freedom of expression of broadcast media in the Pakistan. Freedom of expression and regulation of freedom of expression has a direct relationship with each other. Thereby independent working of regulatory body is imperative for ensuring freedom of expression of broadcast media²⁵”

Importance of PEMRA Authority was reiterated by the interviews conducted. The views of the PEMRA officials regarding role of PEMRA as regulator of freedom of expression of *broadcast media* are

“PEMRA is an independent body for the establishment and application of rules for electronic media in the country. PEMRA authority under section 4 is responsible for the regulation of electronic media in the country and for that purposes it has made

²⁴Section 20 of the PEMRA Ordinance 2002

²⁵Interview with legal experts, view of respondent no. 1 and 2

several rules. Those rules include Cable TV Regulations 2002, Broadcasting Regulations, 2002 and PEMRA (Councils of Complaints), Rules 2010 and most noteworthy PEMRA code of conduct for Electronic Media²⁶”

Similar views on the regulation of broadcast media and freedom of expression were presented by the journalists who were interviewed for this study. The journalists believed that

“Freedom of expression is an important concept and is of supreme interest for the broadcast media in any country. Freedom of expression improves the living conditions of the society. PEMRA is an organization established by the military dictator for the issuance of license and regulating electronic media in the country. The role of PEMRA as an independent body has always remained suspicious. PEMRA should be free enough to effectively consider matters of freedom of expression in the country²⁷”

As suggested by the legal experts the independence of the regulatory authority is also of paramount matter for ensuring freedom expression and for effective regulation of broadcast media in the country. If the PEMRA Authority is not working independently or is under the control of the government than it becomes very convenient for the government to restrict freedom of expression of broadcast media. It also affords an opportunity to the sitting government to silence the opposing voices on the electronic media. Section 6 of the PEMRA Ordinance 2002 provides that The PEMRA Authority will consists of a chairman and 8 members²⁸. All those appointments are made by the

²⁶Interview with PEMRA official respondent no. 6

²⁷Interview with Electronic Media Journalist. view of respondent no. 11 and 12

²⁸Section 6 of Amended PEMRA Ordinance 2002 provides that following shall be the members of the Authority, namely

- a. a member to be appointed by the Federal Government who shall be the permanent member of the authority and shall work on full time basis.
- b. An officer of BS-22 of the Federal government
- c. The Chairman, Pakistan telecommunication Authority (PTA)
- d. A member to be appointed by the Pakistan Broadcasters Association and

President of Pakistan²⁹. President is an elected person and is representative of the government. If the appointment is made by the representative of the government than it is a matter of concern for the independent working of the regulatory body. Legal experts expressed the similar kind of fears that

“Chairman and all members of the PEMRA Authority are appointed by the President of Pakistan and the President is always elected and nominee of sitting government. It is interesting that 3 out of 8 members are direct representative of the federal government. whereas 4 out of remaining 5 are the representatives of the provincial governments. Provincial governments in Pakistan are mostly fellows of federal government. only 1 of 8 is the representative of broadcasting companies. There is no representation of journalist, legal community or civil society in PEMRA Authority³⁰.”

The similar views were presented by the journalists in the following words;

“The first major issue is the involvement of federal government in the affairs of the PEMRA in Pakistan. Freedom of expression should always be free from external fears and the governments in all countries are afraid of criticism. Media always brings into light the wrong doings of the governments and brings the matters of public importance into highlight. In almost all developing countries the governments feel insecure from the media and always tries to make laws that restrict freedom of media in the country. There are several laws in the country which are considered as draconian in Pakistan and are drafted only to hinder the media from its basic responsibility of informing public in the country. All major appointments are made by the federal government in the PEMRA and by this way it controls media regulatory body in the country³¹.”

Chief Justice of Pakistan in “the appointment of PEMRA Chairman case stated that

The PEMRA is not an independent body, as the policy decisions and the appointments

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- e. Four members to be nominated by each Provincial Government from public out of which not more than two members shall be women

²⁹Section 6 of the Pemra Ordinance 2002

³⁰Interview with legal expert respondent no. 5

³¹Interview with Electronic Media Journalist. view of respondent no. 11 and 12

of its chairman and members are made by the federal government”. Even Justice Ijazul Ahsan questioned in the same case that “Why is the government always adamant to keep control over the PEMRA?”. Chief justice also reiterated that if the appointment of the members of the PEMRA Authority are made in a transparent manner than PEMRA would become an independent body³².

It can be gauged from the Chief Justice comments that “the independence of the regulatory body is the beginning point for ensuring freedom of expression of broadcast media in the country”. If the body regulating the broadcast media is not independent than the whole process of freedom of expression and regulation of broadcast media is at stake. Ironically as suggested earlier, PEMRA Authority is by no means an independent body as all major appointments in the Authority including chairman are made by the President. Even the President is not provided with any choice. He is obliged to follow the nominees of federal or provincial governments. If the Regulatory body is not free from the whims of the governments than the regulatory body will be used to silence critics of the governments and its policies. Ironically the same is happening in the country now a days. It has happened in past and is still happening in Pakistan as the government is using PEMRA as a tool to silence the opposing voices on broadcast media.

The second part of PEMRA Ordinance 2002 deals with enforcement process of decisions of PEMRA. If any broadcasting company makes violations of the terms of the license or violates any of the restrictions of freedom of expression than enforcement process is conducted by the Council of Complaints. Council of

³²CJP Says PEMRA Should Be an Independent Institution, The Frontier Post, April 17, 2018, , accessed July 14, 2019, <https://thefrontierpost.com/cjp-says-pemra-independent-institution/>.

Complaints is a body responsible for entertaining applications against any aspect of program on broadcast media in the county. Currently there are seven Councils of the Complaints working in the country. One is working in Islamabad federal capital and the remaining six are working at regional councils in provincial capitals³³.

A Council of Complaint acts as a recommendatory body that is required to assist the PEMRA Authority in fulfilling the purposes and objectives of the PEMRA Ordinance. Although each of the Council is independent in its working but it is required to work under the supervision of the PEMRA Authority. A direct complaint by an individual can be lodged to a Council of Complaint. These complaints can be made against any of the broadcast media companies or any of the distribution service operators. A Council of Complaint investigates and recommends action for any complaint. It does have the authority to take final action on any of these complaints. A Complaint Council makes recommendations to the PEMRA Authority several actions including a censure, a fine and/or revocation of a license. On the recommendations of the Council of Complaint the PEMRA Authority gives its decision. It is the PEMRA Authority which takes the final decision.

The Council has the power and authority to summon and ask for an explanation from licensee against whom a complaint has been made³⁴. After that, the Council may recommend to the PEMRA Authority for the revocation or suspension of a license or censure or impose a fine on a licensee for violating the PEMRA Ordinance 2002 and Code of Conduct for programs and advertisements. The Council consists of six members headed by a chairperson who holds the position for 2 years. The Council

³³Section 26 of the PEMRA Ordinance 2002

³⁴Section 30A of the PEMRA Ordinance 2002

monitors all aspects of broadcast including programs content, quality and standards of the transmissions from the broadcast stations³⁵.

It is the responsibility of the Council of Complaints to keep the PEMRA Authority informed on feedback and public response to the programs content, the quality and impact of the programs and advertisements that are broadcasted. The Councils submits bi-annually reports to the Authority about the nature and number of complaints received, recommendations made by the Council and the action taken by the Authority³⁶. Council of complaint is made under Section 26 of PEMRA Ordinance 2002. The Council of Complaint as suggested earlier is consisted of 6 members whci includes a chairman. All members including the chairman are selected by the federal government. Section 26(3) states that “Each Council of Complaints shall consist of a Chairperson and five members being citizens of eminence from the general public at least two of whom shall be women”. Interestingly, historically the members of ruling political parties were appointed as members of council of complaints and they have always given special favors to governments and stopped opposing voices on broadcast media. there is no representation of, provincial governments, journalists, civil society, legal community or broadcaster community. It is not even the power of PEMRA Authority to appoint council members, but only federal government will appoint it³⁷.

If the Council of Complaints is not working independently than it may seriously effect freedom of expression of broadcast media in the country. This is a big hurdle in the

³⁵Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>

³⁶Yasmeen Aftab Ali, A Comparative Analysis of Media & Media Laws in Pakistan: Sangemal Publishers Lahore, 2011

³⁷Interview with Legal Experts and PEMRA officials, views of respondent no. 1, 2, 3, 4, 5, 6, 7, 8, and 9

independent working of the Council of Complaint. The same view was adopted by the legal experts, and PEMRA Officials in the following words;

“The big issue is the composition of the council of complaint which is responsible for complaint handling under Section 26 of the ordinance. Section 26 of the PEMRA Ordinance 2002 authorizes the federal government to establish Council of Complaints at national, provincial and regional levels. Interestingly the federal governments in Pakistan has used this authority negatively and several times adjusted its political workers in the council of complaints. Council of Complaints is the body responsible for handling cases of violations of code of conduct in Pakistan and if political workers, instead of professionals are appointed there than the regulation of media will automatically be compromised in the country³⁸ ”.

The similar view was presented by the journalists about composition of council of complaints in the following words.

“Members of Council of Complaints are selected by the federal government. No member of media industry or representative of the industry represented in the council of complaints³⁹”

The legal expert stated a similar opinion about the Council of complaints.

“If the PEMRA is treated as an independent body than why Federal government appoints the members of the council of complaints?”

It is a valid question regarding membership of council of complaints to handle complaints. Council of Complaints is the chief and first body which is responsible for regulation of broadcast media in the country and if it is disputed one than all the process of the regulations becomes suspicious. PEMRA Authority and Council of Complaints are the main bodies of the PEMRA and if they are brought into dispute than the whole system is brought into dispute⁴⁰.

³⁸Interview with Legal Experts and PEMRA officials, views of respondent no. 1, 2, 3, 4, 5, 6, 7, 8, and 9

³⁹Interview with Electronic Media Journalist. view of respondent no. 10, 11 and 12

⁴⁰Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>

Any person, that is not satisfied with the verdict of the Authority, has the option of appeal to the High Court within 30 days. It is termed as a kind of judicial review. A further appeal to the Supreme Court of the country is also possible under the law. The judiciary can adjudicate disputed or controversial matters adopted by either council of compliant or by the Authority. It is a further step towards the enforcement mechanism⁴¹. A First Regular Appeal (FAO) against the order of the PEMRA Authority lies before the respective High Court. The Supreme Court is the highest apex court of Pakistan and it has simultaneous powers of original, advisory and appellate jurisdiction. It is the Court of final appeal in the country and for that, the final arbitrator of laws and of the Constitution. As a consequence, its decisions are binding on all other courts in Pakistan. Broadcasting cases are referred to the appellate jurisdiction (Supreme Court) in the form of a filing of a Civil Petition for Leave to Appeal (CPLA) against the decision of High Court⁴².

The law has provided a mechanism for approaching the higher courts in case any party is not satisfied with the decisions of PEMRA Authority and council of complaints. However, in recent past it has become rather a trend of approaching higher courts about broadcast media in Pakistan. The view of the legal experts and PEMRA officials presents the complete picture of the cases before higher courts.

“An important matter is the pendency of cases before the respective high courts of different provinces of the Pakistan. Whenever any matter is raised by the PEMRA the opposing parties approaches the respective high courts and in almost all cases injunctions are granted. Currently more than 500 cases involving PEMRA are pending before different courts of the country. Details provides that

⁴¹Mohammad Abrar, *Pakistani Media Law: An International and Comparative Study* UK ed. Edition. Oxford University Press; UK , 2016

⁴²Yasmeen Aftab Ali, *A Comparative Analysis of Media & Media Laws in Pakistan*: Sangemal Publishers Lahore, 2011

174 cases are pending before Lahore high court, 151 cases before Sindh high court, 123 cases before Islamabad high court, 09 cases before Peshawar high court, 01 case Baluchistan high court, 62 cases before different civil courts. Even 23 cases are pending before the honor able Supreme Court of Pakistan involving PEMRA. Unfortunately, when the PEMRA cases are related to higher judiciary than the injunctions are not granted or even the matters are disposed of earlier. However, the situation is totally different in other cases. The case of Dr Shahid Masood is of paramount importance as in 2016 when Dr shahid Masood accused the judge of Sindh High court of taking bribe and not performing the required assignment. PEMRA suspended Dr Shahid Masood for 45 days and at that time no injunction was granted by the higher courts and Dr Masood completed that term and then returned for his program on private TV channels. The same is the case with other situations. There is another case of suspension of license of a private TV channel. A TV channels was refused security clearance from Ministry of Interior in 2016 and forthwith the license of that TV channel was suspended by the PEMRA. However, that private TV channel approached the High court and the honorable court granted injunction on suspension order of PEMRA. That case is still pending before the high court and the channel can continue its operations and telecast. These all issues raise one important case of inability of PEMRA authority to effectively regulate broadcast media in the country. Whenever PEMRA tries to exert its authority and effectively implement its code of conduct, it faces the same problem⁴³”.

The pendency of cases involving PEMRA is a huge matter as it hinders the effective working of the PEMRA. PEMRA is a regulatory and it should be allowed to effectively implement its decisions. The similar opinion was presented by the other legal expert;

“Section 30 of the PEMRA ordinance deals with “power to vary conditions, suspend or revoke the license” in case of violations is not frequently applied and when PEMRA tries to implement this section, the alleged culprits immediately approach courts and get relief from the Courts⁴⁴”

⁴³Interview with Legal Experts and PEMRA officials, views of respondent no. 1, 2, 3, 4, 6, 7, 8, and 9

⁴⁴Interview with Legal Experts, respondent no. 5

If there is no representation of journalists, legal fraternity, and civil society in PEMRA Authority than the goal of independence of PEMRA Authority will not be achieved. Furthermore, the Federal governments will remain in position to manipulate decisions of PEMRA Authority. As suggested earlier that the federal governments have historically appointed its political workers in Council of complaints. It is feared that same episode of appointment of political workers will be repeated in the formation of PEMRA Authority. The issues related to independent working of PEMRA as an organization seriously affect the freedom of expression of broadcast media in the country. If the PEMRA Authority, Council of Complaints or any of its organs is not independent enough to decide matters on its own than the governments can easily utilize it to suppress the broadcast media in the country.

3.5 Broadcasting Services and Freedom of Expression of Broadcast Media

Electronic media consists of broadcast media and distribution services. Both terminologies of broadcast media and distribution services are defined under the PEMRA Ordinance under section 2(c) and 2(ha) in the following words;

“Broadcast media means such media which originate and propagate broadcast and prerecorded signals by terrestrial means or through satellite for radio or television and includes teleporting, provision of access to broadcast signals by channel providers and such other forms of broadcast media as the Authority may, with the approval of the Federal Government, by notification in the official Gazette, specify”

and distribution services means

“Distribution Service” means a service which receives broadcast and pre-recorded signals from different channels and distributes them to subscribers through cable, wireless or satellite options and includes

Cable TV, LMDS, MMDS, DTH and such other similar technologies⁴⁵”

This definition contemplates that electronic media consist of two mediums. The first is broadcast media and the second is the distribution services that transmit that broadcast media to the subscribers in Pakistan. Private TV channels and private FM channels are termed as the broadcast media in Pakistan. Whereas the networks which transmit that broadcast media to the subscribers is termed as distribution services. PEMRA under the law is authorized to;

- i. issue licenses for broadcast media– radio and television
- ii. issue licenses for distribution system– Cable TV, MMDS/LMDS, and Direct to Home (DTH) and
- iii. regulate the establishment and operation of the licensees.

These distribution services are carried out by the companies which are granted licensee by the PEMRA. These companies are responsible for the distribution of broadcast content. That broadcast content is created by the broadcasters for the viewers and the viewers have the right to receive information as the part of freedom of expression and freedom of information under Article 19-A⁴⁶. If that broadcast media content is not reached to the viewers than it is clear violation of freedom of expression of broadcast media. PEMRA grants licenses to distribution companies for the distribution of broadcast content in the specified region. However, there is double edge sword for the freedom of expression of broadcast media in the country. The first is the PEMRA authority to put and implement restrictions and the second is the authority of

⁴⁵Pemra ordinance, www.pemra.gov.pk. n.d. <http://www.pemra.gov.pk>.

⁴⁶Yasmeen Aftab Ali. A Comparative Analysis of Media & Media Laws in Pakistan . Lahore : Sang-e-Meel Publications , 2012

distribution companies to implement restrictions on freedom of expression of broadcast media in the country⁴⁷.

Broadcast media companies must satisfy PEMRA as well as distribution companies for the content. Although it is the authority of PEMRA to check the violations of Constitutional and electronic media laws restrictions but PEMRA (TV/Radio Broadcast Operations) Regulations, 2002 also provides authority to distribution companies on the order of the PEMRA authority to stop broadcast of any program. In the same regulations the distribution companies are required to follow and implement the guidelines as provided under Section 33 of PEMRA (TV/Radio Broadcast Operations) Regulations, 2002. Section 33 provides;

“33.2. The licensee shall broadcast a diversified mixture of programmes on information, education, entertainment, culture, religion, public service and such other areas of public interest. The Authority may issue guidelines, from time to time, on the proportionate program mix to be aired by the licensee

(4) The licensee shall ensure that nothing is contained in any program, or an advertisement, which is prejudicial to the interests of the sovereignty and integrity of Pakistan, Ideology of Pakistan, security, friendly relations with foreign states, public order or which may constitute contempt of court, defamation or incitement to an offence

(5) The licensee shall ensure emphasis on promotion of national dignity and character, values of national integration, religious, sectarian and communal harmony and a visible deference to the social, cultural, moral and traditional values of the Pakistani society, in relaying the programmes;

(6) The licensee shall show sensitivity and respect to all ethnic groups and minorities.

(7) The licensee shall not alter or delete a program in the course of its distribution except as required or authorized under a condition of its license or these Regulations and for the purpose of complying with the provisions concerning indecent and pornographic contents.

⁴⁷Pemra.gov.pk, accessed January 11, 2019, <http://www.pemra.gov.pk>

(8) Time-sensitive broadcasts such as news etc., if allowed, shall be broadcast in real-time.

(9) The licensee shall not broadcast, transmit, retransmit or relay the pornographic or obscene contents of any type

(11) The programmes and advertisements shall conform to the provisions of the laws relating to the Motion Pictures, pornography, intellectual property, censorship and any other laws in force in Pakistan and the Ordinance and the rules, regulations and code of conduct framed thereunder

(15) The Authority may issue guidelines regarding minimum Pakistani content in the programmes, to be broadcast by a licensee”

If any of the above-mentioned conditions are not fulfilled or there is a threat that those will not be fulfilled by the broadcaster than the distribution companies on the advice of the PEMRA authority will not broadcast that content. This is reiterated under the Section 24 in following words;

24. “Prohibition of broadcasts.- (1) The Authority, or an officer so authorized by the Authority, may, giving reasons in writing, prohibit any broadcaster from broadcasting or re-broadcasting any program , if the Authority, or as the case may be the officer, is of the opinion that such particular program is likely to create hatred among the people or is prejudicial to the maintenance of law and order or is likely to disturb peace and tranquility or endangers national security or is against the Ideology of Pakistan or contains pornographic material or is violative of the terms and conditions of the license⁴⁸”

If the distribution company does not follow any of the guidelines of the PEMRA authority than its license may be revoked under Section 27 of PEMRA (TV/Radio Broadcast Operations) Regulations, 2002. Section 27 provides;

27.“Cancellation of license.- (1) Where a licensee contravenes any provision of the Ordinance or the rules or the regulations made thereunder, or any condition of the license, the Authority, on its own accord or on the recommendation of the Council of Complaints, established under section 26 of the Ordinance, may, by written notice

⁴⁸Pemra.gov.pk, accessed January 11, 2019, <http://www.pemra.gov.pk>

require the licensee to show cause within fifteen days, as to why his license should not be cancelled.

(2) If the Authority, on considering the explanation of the licensee, is of the opinion that the licensee has contravened any provision of the Ordinance or the rules or conditions of the license, it may cancel the license”.

Although it is the responsibility of the distribution services to transfer the broadcast media content to the people, but it has huge impact on the freedom of expression of electronic media in the country. These distribution companies have the tendency to stop the broadcasting of any broadcast media. These distribution companies also have the tendency to change the previously allotted frequency numbers to broadcasting companies. Currently more than 120 tv channels are granted licenses by the PEMRA. Cable network system which is responsible for transmission of broadcasting content has the maximum capacity of transmission of 80 channels. However, not more than 30 channels are broadcasted by these transmission networks.

So, if allotted frequency number is changed or any tv channels is put off air than it will have huge impact on the financial status of that tv channel. If the tv channels is not broadcasted or pushed at the later number than that tv channels will not attract the advertisement content and advertisement will be heavily reduced. Recently the governments in Pakistan has started using this method of restriction as a tool to silence the opposing voices on broadcast media. By putting financial burden, the governments can force the broadcast media to pay heed to the governmental demands. These two issues were also highlighted by the legal experts and journalists. One of the legal experts stated that;

“Distribution companies have become the tools in the hands of the government of the time. The broadcasting company which is critic of the government is taken off air by these distribution companies at the whims of the PEMRA. Interestingly under electronic media laws, PEMRA can ask any distribution company not to air any program.

This authority which is vested with PEMRA is blatantly misused by these distribution companies and they tend to take off air broadcast media. These distribution companies also change the previous allotted frequency numbers of different broadcaster to limit the reach of their content to the viewers. There is no such law which can look and correct this phenomenon of distribution companies. Broadcasting companies are left with no other option except to bribe these distribution companies to keep their broadcast on air and not change their allotted frequency numbers”⁴⁹.

Similar views were adopted by the journalists in the following manner.

“Distribution companies have become blackmailer of modern times for the broadcasters at the behest of the government and PEMRA. These companies regularly change the allotted frequency numbers of the disliked broadcasters and take them off air on the behest of different agencies. In 2018 even, the chairman of the PEMRA was forced to request Chief Justice and Army Chief about this issue of removal of different broadcasting companies at the behest of government. Several broadcasters’ channels were not broadcasted by distributors on the wishes of powerful elite of the country⁵⁰”

Even the broadcasters of broadcast media were forced to resort to Supreme court of the country to restore the services of their network. The Supreme court in the famous case of Dr. Shahid Masood vs Federation of Pakistan⁵¹ that court was approached on the allegation of violations of Section 20,24,27 and 28 of the PEMRA (Amendment) Act for obstructing the transmission. It was the grievance of the petitioner was that PEMRA and cable operators suspended telecasting and transmission of their network.

The Supreme Court declared that;

“Act of operators of cable TV network, blocking/obstructing transmission of petitioners and consequent denial of distribution services to the channels in question and to the viewers who were paying the operators for the services, prima facie was a gross violation of terms and condition of licenses granted to them under section 20 and 24 read with the provisions of section 27 of PEMRA

⁴⁹Interview with legal experts, views of respondent no. 3 and 4

⁵⁰Interview with electronic media journalist, views of respondent no. 10 and 11

⁵¹Shahid Masood v Federation of Pakistan, SCMR 1849 (2010)

Ordinance 2002 and thus attracted penal provisions of sec 30 and 33 of the Ordinance in respect of not only the ones committing such violations but also those abetting the same”.

Supreme court after examining the legal, factual, eventually the constitutional aspects of the matter directed as under;

“that the chairman PEMRA would personally monitor and ensure that transmission of broadcaster of petitioner channels was continued to be aired without any hindrance or obstruction of whatever kind and was to sublet a report in such behalf”.

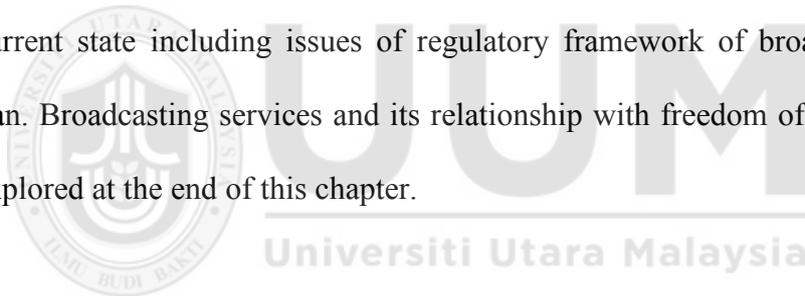
Unfortunately, the situation on the ground remains dismal as it was earlier. The situation can be gauged by the press conference of the PEMRA Chairman in which he alleged that even the PEMRA was not taken into confidence before or after suspending the transmission of different broadcasting companies by the distribution companies at the behest of provincial and federal governments. He went on to request to the Chief justice of the Country and the Army chief to investigate serious matter of restrictions on freedom of expression of electronic media int the country. However, the requests of the Chairman did not receive the desired results.

The situation on the ground remain the same and government is using PEMRA as well as distribution companies to silence the broadcasting companies who have the habit of criticizing government policies. As discussed earlier that the PEMRA Ordinance 2002 and Electronic Media (Programs and Advertisement) Code of Conduct are restrictive in nature. Governments is Pakistan has used different methods to silence the voice of the broadcast media. Those methods include the imposition of emergency by Pervaiz Musharraf, connivance of PEMRA with government and connivance of cable operators with the government.

PEMRA have other options of broadcasting services but those are not used by the PEMRA. other Methods are not used to save the monopoly of the PEMRA and government on cable network. if other methods like Direct to Home services (DTH) are used than there will no requirement of the Cable network. When cable network is not available or other options are available for transmission than manipulating and pressurizing broadcasting media companies will be almost impossible.

3.6 Conclusion

This chapter explained the regulatory framework of broadcast media in Pakistan. For that purposes, this chapter presented explanation of public and private broadcast media in Pakistan. It was followed by explanations of earlier broadcast media legislations and current state including issues of regulatory framework of broadcast media in Pakistan. Broadcasting services and its relationship with freedom of expression was also explored at the end of this chapter.



CHAPTER FOUR

RESTRICTIONS ON FREEDOM OF EXPRESSION OF BROADCAST MEDIA IN PAKISTAN

4.1 Introduction

This chapter examines the restrictions imposed on freedom of expression of broadcast media in Pakistan. Those restrictions are provided under Article 19 of the Constitution and are further comprehended under PEMRA Ordinance along with PEMRA Code of Conduct. This chapter starts with explanation of conditions of reasonability of restrictions on freedom of expression as presented in Article 19. After that the restrictions on freedom of expression as inscribed under Article 19 of Constitution along with broadcast media restrictions are explained and critically examined. At the end of the chapter conclusion is presented.

4.2 Restrictions on the Freedom of Expression of Broadcast Media

Freedoms of expression as all other freedoms are closely connected with the notion of rights. Those rights are further strengthened in shape of fundamental rights, mostly provided under the Constitution. Freedom of expression is one of those cherished fundamental rights. Rights of citizens are tied with or counterbalanced by responsibilities in a society. Absolute and uncontrolled individual freedom do not find place in present time in any state¹. In any organized society the collective interests,

¹Minnesota Voters Alliance, Et Al v. Joe Mansky, Et Al SCMR 1770 Supreme-Court-Of-United-State (2018)

security and peace are of vital importance. If the country itself is in chaotic and dangerous situation than the applicability of fundamental rights is irrelevant at that time in that country. It is therefore required that an equilibrium should be managed between the fundamental rights and its restrictions¹. The freedom of expression under the Constitution has maintained that equilibrium. Article 19 of the current Constitution of Pakistan has expressly protected freedom of speech, expression and freedom of press² and Constitution has expressly provided restrictions under the same Article 19.

Although the right of expression is expressly granted to the citizens of the country and no companies or organizations are offered freedom of expression. An exception was made where press was specifically promised freedom of expression in the same Article 19 of Pakistani Constitution and is subjected to the same restrictions³.

Bare examination of Article 19 of Constitution presents it clearly that this right of freedom of expression is not unqualified but a limited right. Limitations on freedom of expression may be levied if it meets the necessities of “reasonableness”. Nevertheless, the word “reasonableness” is not well-defined in the Constitution. It is neither conceivable nor advisable to present any theoretic standard of general application of reasonableness⁴. Than “what exactly is the test and method of defining Reasonableness of restriction within the ambit of freedom of expression?” This is an vital and most relevant question prior to proceeding to the different kinds of

¹NawabzadaNasrullah Khan v. Government of West Pakistan , PLD 1965 Lah. 642

²Independent Media Corporation (Pvt.) Limited v Pakistan Electronic Media Regulatory Authority, PCrLJ 262 Karachi-High-Court-Sindh (2019)

³KhalidAziz v Pakistan Television through Managing Director,2017 PLD 115 Peshawar-High-Court

⁴Ahmer Fazeel, *The Constitution of the Islamic Republic of Pakistan* (Karachi: Pakistan Law House, 2002).

restrictions. The superior Courts has defined this reasonableness and prescribes that “when state wishes to deny to its citizens the enjoyment of fundamental rights enshrined under the constitution; three significant features must be accomplished”⁵.

- i. The restrictions on expression under article 19 can only be levied by the authority of law, no restriction can be levied by the authority of executive of the country
- ii. Each restriction must fulfill the condition of reasonable restriction.
- iii. Restriction should be allied to the objects declared in Article 19.

However, to check acceptability of the restrictions on expression the following two-fold test is presented under Article 19.

- i. “Whether the restriction is reasonable one?”
- ii. Whether restrictions are for a purpose declared in the article under which the limitation is being imposed?”

It is the authority of the superior courts to determine the validity and reliability different laws and of these two questions. The decision of legislature regarding imposition of restrictions on freedom of expression is not unqualified and irrefutable. The judiciary in Pakistan has the authority to review those restrictions. Supreme Court of India in “State of Madras vs. V.G.Row⁶” has observed that “it is important in this context to bear in mind that the test of reasonableness wherever prescribed should be applied to each individual statute impugned and no abstract standard or general pattern

⁵Srivastava and Romit, Test to Determine Reasonable Restrictions Under Article 19 of the Constitution of India, SSRN, August 25, 2012, accessed May 12, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2135681.

⁶State of Madras vs. V.G.Row, AIR 196(1952)

of reasonableness can be laid down as applicable to all cases”. A detailed look at the reasonableness of restrictions is presented in the next chapter on restrictions on freedom of expression in Pakistan.

It is the Superior Courts, which decides and adjudicate about the reasonability of a restriction⁷. Chief Justice of Pakistan Justice Cornelius, in a significant case of “Abul Ala Maudoodi vs Government of West Pakistan⁸ about reasonableness of restriction observed that”;

“The Constitution expressly gave the court power of judicial review of legislation and reason in such affairs being peculiarly the province of the judiciary, it is surely within judicial review to examine both as to the reasonableness of the law itself, as well as the reasonableness of the mode of application of the restriction whether such mode be prescribed by the statute or not”.

It is evident from the abovementioned judgment that only higher courts are authorized to decide about the fate of reasonability of any restriction imposed upon freedom of expression in Pakistan. The courts have provided different rules for the determination of reasonableness of restrictions on freedom of expression and those rules are briefly explained herein after.

- 1) The basic rule for determination of reasonableness is that each of the case of reasonableness will be decided on its own merits. There is no such broad rule of reasonableness⁹.

⁷Chintaman Rao v State of M.P, AIR 1951 SC 118.

⁸Abul A ‘La Maudoodi v Government Of West Pakistan, PLD 1964 SC 673

⁹Dharam Dutt v Union of India, AIR 2004 SC 1295.

- 2) Substantial as well as procedural portion of laws will be taken into consideration while deciding about the reasonableness of restrictions on a fundamental right¹⁰.
- 3) The time and duration of the restriction will not be of unlimited nature¹¹.
- 4) While determining about the fate of reasonableness of any restriction, the principles of state policy will also be taken onto consideration¹²
- 5) Reasonable restrictions must essentially be shaped to preserve the constitutional themes of freedom, democracy, tolerance, equality, and social justice¹³.
- 6) While probing the rationality of limitations on freedom of expression it should be kept in mind as to whether in purporting to exercise freedom of expression one was infringing upon the right of freedom of expression of others¹⁴. Freedom of expression of every individual is paramount to the state and one individual cannot violate freedom of expression of others. It is the right of all individuals to live a nuisance free life. No one could be forced to listen or watch that he may not like.
- 7) It is the obligation of the state to strike a realistic balance between the requirements for warranting the people's right of free expression on one side and the need to inflict social control on publication and broadcasting business¹⁵.
- 8) "Justice Hamood Rehman in Moudoodi Case" declared that a restriction will be declared as unreasonable if it is disproportionate to the mischief sought to be prevented or if the law imposing the restriction has not provided any safeguard all against arbitrary exercise of power¹⁶.

¹⁰Abul A 'La Maudoodi v Government Of West Pakistan, PLD 1964 SC 673.

¹¹DG Cement v Federation of Pakistan, PLD 2013 Lahore 693.

¹²DG Cement v Federation of Pakistan, PLD 2013 Lahore 693.

¹³DG Cement v Federation of Pakistan, PLD 2013 Lahore 693.

¹⁴ Pakistan Broadcasters' Associations' v Pemra. PLD 2016 SC 692.

¹⁵ Government of Pakistan v Akhlaque Hussain, PLD 1965 SC 527.

¹⁶ Abul A 'La Maudoodi v Government Of West Pakistan, PLD 1964 SC 673

9) The way to approach reasonability of restrictions and these cases was detailed in an Indian case as follows¹⁷;

“What is reasonable is primarily for the decision of the legislature and ultimately for that of the court. If the court is satisfied that the restriction is reasonable it should have no difficulty in upholding the validity of the statute. If it is in doubt whether a restriction is or is not reasonable the court must defer to the legislative wisdom and resolve the doubt in favor of the validity of the statute. If however court comes to entertain the view that the restriction is unreasonable beyond doubt or if it is satisfied that the statute is manifestly in contravention of the constitution it would be plainly be the duty of the court to intervene”.

10) While determining “reasonableness” of the restrictions, the nature of the infringed right, the circumstances and causes which prompted the restrictions and the way including the objects for which the restrictions were levied might be taken into consideration.¹⁸

11) Roots of sub constitutional limitations (law or reasonable restrictions) must be presented in the constitution itself¹⁹.

12) Interestingly an act of the legislature cannot be challenged before any court on the ground of reasonableness, however the reasonableness is a well-recognized ground to contest the validity of subordinate legislation²⁰.

13) The burden to demonstrate that the constraint is reasonable lies on the state²¹.

Article 19 of the Constitution grants the power to the parliament to enforce reasonable restraints on freedom of expression “in the interests of” or in relation to glory of Islam,

¹⁷ Sardar Ram v Haji Abdul Majid, AIR 1960 PB 196.

¹⁸ Government of Pakistan v Akhlaque Hussain, PLD 1965 SC 527.

¹⁹ Durga Das. Basu and Sanwat Raj. Bhansali, *Human Rights in Constitutional Law*: (New Delhi: LexisNexis, 2008

²⁰ Durga Das. Basu and Sanwat Raj. Bhansali, *Human Rights in Constitutional Law*: (New Delhi: LexisNexis, 2008

²¹ State Of Madras v V.G. Row. Union Of India & State, 1952 SCR 597.

integrity and security of Pakistan, friendly relations of states with foreign states, public order, decency and morality, contempt of court, and commission or incitement to commit offences²². Those all restrictions are discussed in detail in the preceding part.

- **Restrictions on Freedom of Expression of Broadcast Media**

Pakistan Electronic Media Regulatory Authority (PEMRA) was created in 2002 to effectively regulate electronic media of the country. This body only regulate private electronic media. PEMRA Ordinance 2002 under Section 20 provides the conditions or restrictions which must be observed by the broadcast media. This section provides general guidelines of conditions and restrictions. Section 39 of the PEMRA Ordinance 2002 grants the power to the PEMRA Authority to formulate rules for carrying out purposes of the act. By using Section 39 power, the PEMRA Authority has formulated the Electronic Media (Programs and Advertisements) Code of Conduct 2015. Previously code of conduct of 2009 was operating in the country. However, the Supreme Court of Pakistan in Hamid Mir and Media Commission case gave the directions to the PEMRA to formulate new code of conduct in place of 2009 code of conduct²³. This new code of 2015 was adopted by the Supreme Court in the same Hamid Mir case and was made as a binding law like PEMRA Ordinance 2002. This new Electronic Media (Programs and Advertisements) Code of Conduct 2015 not only comprehends constitutional restrictions on freedom of expression of broadcast media but also comprehends and adds when needed to the conditions or restrictions inscribed under Section 20 of the PEMRA Ordinance 2002.

²²Hamid Khan and Waqar Rana, *Comparative Constitutional Law* (Lahore: Pakistan Law House, 2008).

²³Constitution Petition 105/2012, Supreme Court of Pakistan.

Broadcast media in Pakistan is subjected to three types of restrictions. The first is the constitutional restrictions inscribed under Article 19, secondly conditions or restrictions inscribed under Section 20 of the PEMRA Ordinance 2002 and lastly restrictions inscribed under Electronic Media (Programs and Advertisements) Code of Conduct 2015. The first type of constitutional restrictions on freedom of expression were discussed in the third chapter. This part analyses the restrictions inscribed under the PEMRA Ordinance 2002 and under Electronic Media (Programs and Advertisements) Code of Conduct. The Constitution has provided a complete list of limitations on freedom of expression in Pakistan. This part will firstly analyses the electronic media laws related to those restrictions.

4.2.1 Glory of Islam

Glory of Islam is a justifiable justification for restricting freedom of expression. It means that any legislation can be promulgated to safeguard the sanctity of Islam. It also means that any expression which tends to disrupt the glory of Islam will be prohibited²⁴. It is available in Article 19 of Pakistan Constitution²⁵. Former “Chief Justice of Pakistan²⁶” while observing on the inclusion of “Glory of Islam” in the part of restrictions observed;

“The only meaning one can attribute to this part of the Article is that no propaganda against Islam can be permitted. On that construction the provision may come in conflict with article 20 which grants the right to propagate one’s religion, since the propagators of a religion often compare their religion favorably with others and in the process, are opting to criticize other religions.”

²⁴Mohammad Munir, *The Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973* (P.L.D. Publishers, 1999).

²⁵The restriction for glory of Islam was not incorporated in the earlier Constitutions of 1956 and 1962.

²⁶Mohammad Munir, *The Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973* (P.L.D. Publishers, 1999).

Chief Justice Munir also mentioned a decision of Lahore High Court titled “Abdul Karim Shorish Kashmiri v Province of West Pakistan”²⁷ which was related to this restriction. Chief Justice Munir further observed “that a speech in which it is alleged that a particular sect is not a sect of Islam is covered by the constitutional guarantee of freedom of expression”. It is also worth mentioning that the petitioner right to say Ahmadies non- Muslims is also guaranteed by the right to freedom of expression²⁸. Non- Muslims have been defined by the Article 260 of the Constitution and according to that definition an Ahmadi or Qaidani are non-Muslims²⁹.

The term glory of Islam was interpreted under “Qazalbash Waqf v. Chief Land Commissioner”³⁰ by Judge Muhammed Afzal in following words

"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 Article 40, make it obligatory on our State to work for it. It is all in accord with the Islamic injunctions”

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

In another case named “Masroor Ahsan v. Ardeshir Cowasjee”³¹ Munawar Ahmad Mirza, J mentioned.:

"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 must be mindful about paramount religious, cultural or social textures and basic features by

²⁷Government of West Pakistan v Agha Abdul Karim Shorish Kashmir Begum, 1969 PLD Lah 289

²⁸Zaheeruddin vs State, SCMR 1718(1993)

²⁹Abdul Basit, *The Constitution of the Islamic Republic Of Pakistan With Commentary* (Rawalpindi: Federal Law House, 2015).

³⁰Qazalbash Waqf v. Chief Land Commissioner, PLD 99 SC (1990)

³¹Masroor Ahsan v. Ardeshir Cowasjee, PLD 823 SC (1998)

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. "

To explain further about the 'glory of Islam, legislation can be referred to "Chapter XV of the Pakistan Penal Code (PPC)". As suggested earlier any expression which has tendency to disturb the glory of Islam will be prohibited and for that purpose legislation can be promulgated. These provisions under the Penal law have been crafted to safeguard the sanctity of all religions and especially sanctity of Islam. It provides about the "Offences Relating to Religion". Section 295 to 298 are associated with religious freedoms and are intended to prevent and curb religious violence in the country³². Similar laws for offences relating to religions have also been put in penal codes of other countries. Even the wordings of these Sections of the criminal nature are identical with the relevant statutory provisions of Indian as well as Malaysian criminal laws³³. These Sections have one thing in common and that is the intention of the offender to hurt the religious susceptibilities of others is considered as integral to the offences

³²M.Mahmood, *The Pakistan Penal Code, 1860*. (Al-Qanoon Publishers, 2009).

³³ **Pakistan Penal Code Section 295**; "Injuring or defiling place of worship, with Intent to insult the religion of any class: Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction damage or defilement as an insult to their religion. shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both"

Malaysian Penal Code Section 295; "Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to two years or with fine or with both

Indian Penal Code Section 295; Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to two years or with fine or with both" Indian Penal Code Section 295; Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to two years or with fine or with both"

under this chapter. It is also of universal application meaning thereby that hurting the spiritual feelings of any group is made an offence under this chapter³⁴.

Wherein an important fundamental right enforceable by the constitution is controlled amongst others by the needs of the glory of Islam, this when read together with both parts of Article 40³⁵, makes it obligatory on our state to work for it. It is all in accordance with the Islamic injunctions”.

Blasphemy laws and their implementation in Pakistan are heavily debated due to their delicate subjects. Recently the United States government has placed Pakistan on watch list for religious intolerance. There are certain issues with the implementation of the blasphemy laws and even those issues were highlighted by the superior judiciary in several decisions. The Honorable Divisional Bench of the Lahore High Court in case of “Muhammad Mahboob alias Booba v. The State”³⁶ had taken judicial notice of rampant misuse of law. The case of “Rawlapindi Fiazabad Sit in” and the Supreme court taking suo motu of this situation is also relevant to “glory of Islam” as a valid restriction. Supreme Court declared that “persons carrying out violent acts, or advocating or propagating violence, or destroying or damaging property or abusing or resorting to hate speech violated the injunctions of Islam and violated glory of Islam principle. Persons killing, maiming and injuring, and those destroying or damaging property and those advocating or justifying violence, purportedly in the name if Islam, and calling ministers as blasphemous, attempt to denigrate Islam³⁷”.

³⁴M.Mahmood, *The Pakistan Penal Code, 1860*. (Al-Qanoon Publishers, 2009).

³⁵Article 40 of the constitution reads” Strengthening bonds with Muslim world and promoting international peace. The state shall endeavor to preserve and strengthen fraternal relations among Muslim Countries based on Islamic unity, support the common interests of the people of Asia, Africa, Latin America, promote international peace and security, foster good will and friendly relations among all actions and encourage the settlement of international disputes by peaceful means”

³⁶Muhammad Mahboob Alias Booba v The State, PLD 587 Lahore (2002)

³⁷Suo Motu Case No 7 of 2017, PLD 318 SC (2019)

Electronic media covered and broadcasted all informatory content which incite violence and people were declared blasphemous. Government was forced to take extreme measure of taking electronic media off the air. Supreme Court further said that everyone was bound to uphold the Constitution, including, media-anchors, politicians and religious aalims, and those who did not ensure that have not served the country. When electronic media broadcast inflammatory, proactive or offensive statements, it had the effect of fanning the flames. Independence of the media and freedom of speech and expression is a cherished right of the people. It is guaranteed right and there is no place in the constitution to use public discourse to proliferate or provoke people to adopt violence. Broadcasters must not encourage extremism, violence, hatred, militancy or declare any one non-Muslim³⁸. No one could be encouraged to act on his own for the alleged blasphemy under Pakistan Penal Code. The similar views were presented by the PEMRA official while commenting on the glory of Islam and freedom of expression in the country.

“Glory of Islam is an important restriction on the freedom of expression in Pakistan. PEMRA has also made rules in the interest of glory of Islam. However, the matter of misuse of blasphemy laws is of serious nature. Even the electronic media is not exempted from this menace as anchor persons and guests of several programs are not careful while commenting on matters related to Islam and its teachings³⁹”

The Lahore High Court in an earlier case, declared that “the term right of expression could not stretch to such an extent that it could be used as a tool to defy religious thoughts or sacred personalities of one’s religion⁴⁰”. Right of expression could not be allowed to thwart feelings of any religion on earth, because as a matter of fact

³⁸Suo Motu Case No 7 of 2017, PLD 318 SC (2019)

³⁹Interview with PEMRA official, views of respondent no. 6, 7, 8, 9

⁴⁰Muhammad Ayoub v Federation of Pakistan through secretary Ministry of Interior, Pcr.LJ 1133 (2018)

distortion of any religion on the pretext of right of speech, expression on information amounted to another form of terrorism and such was a fact that international community must succeed. If the authorities could not succeed to remove blasphemous content, as required by the Constitution and other laws applicable in the country, all such broadcasters or even the information system involved in pointed nefarious activities would be blocked or removed⁴¹.

The Honorable Court in another case observed that unscrupulous people use this law to settle their personal scores but also pointed out the sad situation of hazardous investigations by unexperienced investigating police officers. The Lahore High court observed that;

“It appears that ever since the law became more stringent, there has been an increase in the number of registrations of the blasphemy cases. A report from the Daily Dawn of 18th July 2002, says that between 1948 and 1979, 11 cases of blasphemy were registered. Three cases were reported between the period 1979 and 1986. Forty-four cases were registered between 1987 and 1999. In 2000 fifty-two cases were registered and strangely, 43 cases had been registered against the Muslims while 9 cases were registered against the non-Muslims. The report further states that this shows that the law was being abused more blatantly by the Muslims against the Muslims to settle their scores. Because the police would readily register such a case and without checking the veracity of the facts and without taking proper guidance from any well-known and unbiased religious scholar, would proceed to arrest an accused.⁴²”

The Honorable Supreme Court in “Malik Mumtaz Qadri” case 2015⁴³ observed that;

“It is an unfortunate fact which cannot be disputed that in many cases registered in respect of the offence of blasphemy false allegations are leveled for extraneous purposes and in the absence of adequate safeguards against misapplication or misuse of such law by motivated persons, the persons falsely accused of commission of that

⁴¹Salman Shahid vs Federation of Pakistan, PLD 218, Islamabad (2017)

⁴²Muhammad Mahboob Alias Booba v The State, PLD 587 Lahore (2002)

⁴³Malik Muhammad Mumtaz Qadri v The State, Criminal Appeal No. 210 of 2015 Supreme Court.

offence suffer beyond proportion or repair. Most of blasphemy cases are based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire community.”

The views of legal experts on the matter of operation of blasphemy laws is similar in the following words;

“Implementation of blasphemy laws in Pakistan is a matter of concern. Blasphemy laws are blatantly used against opponents and marginalized segments of society to fulfill personal agendas. The same problem was highlighted by the honorable Lahore High Court in renowned case of Muhammad Mahboob alias Booba v. The State. The honorable High court taken judicial notice of rampant misuse of law. The Honorable court observed that unscrupulous people use this law to settle their personal scores. The Honorable court also took the judicial notice of a report published in renowned daily English newspaper Dawn. The report clearly mentioned that between 1948 and 1979, 11 cases of blasphemy were registered. From 1979 to 1986 only 3 cases were registered. Forty-four cases were registered between 1987 and 1999. In 2000 fifty-two cases were registered and strangely, 43 cases had been registered against the Muslims while 9 cases were registered against the non-Muslims⁴⁴”

Legal experts also stated that;

“In these grim situations sometimes, the accused are even denied their rights of bail and early disposal of cases. In almost all cases involving blasphemy the accused are never granted bail and they remained in custody for long periods of time⁴⁵”.

Although glory of Islam is an important restriction regarding freedom of expression, but the issue of misuse of it to settle personal scores has become a serious matter in the country. It was also highlighted by the superior courts and the experts who were

⁴⁴Interview with legal expert, views of respondent no. 1, 2, and 4

⁴⁵Interview with legal expert respondent no. 3

interviewed. The issues of glory of Islam and electronic media are discussed in the preceding part.

4.2.1.1 Glory of Islam and broadcast media

Glory of Islam is the first restriction inflicted upon freedom of expression which is mentioned under the Article 19. On 22nd of March 2017 PEMRA vide its letter No.2 (05)/PR-2015/1⁴⁶ issued notification to all broadcast media channels and stressed that conditions inscribed in Article 19 of the Constitution regarding freedom of expression must also be observed while telecasting programs and advertisements on broadcast media. It affirms that the restrictions provided in PEMRA laws and under Article 19 of Constitution will be applied simultaneously.

It also reiterates that the laws made based on those restrictions under Article 19 will also be followed by the broadcast media. PEMRA Authority has devised Electronic Media (Programs and Advertisements) Code of Conduct for electronic media in Pakistan. As discussed earlier offences relating to religion under Pakistan Penal Code (PPC) will also have a binding effect on the broadcast media. However, PEMRA does not have authority to investigate cases against individuals. In addition to those laws which are provided in the PPC, the PEMRA Authority has also put guidelines and restrictions about religious harmony and glory of Islam.

Section 20⁴⁷ of PEMRA Ordinance 2002 provides terms and conditions of the license of broadcast media in Pakistan. It provides that a person who is granted a license of broadcast media must ensure the preservation of national, cultural, social and religious

⁴⁶Notification. No.2 (05)/PR-2015/1. PEMRA notification, march 22, 2017.

⁴⁷Pemra.gov.pk., accessed February 1, 2019, <http://www.pemra.gov.pk/>.

values as enshrined under the Constitution of Pakistan. Preamble of the Constitution of Pakistan provides inter alia sovereignty of Allah over entire universe⁴⁸. It also provides that the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam will be observed in Pakistan. It is also mandated that Muslims of Pakistan will be enabled by the state to order their individual and collectives lives according to teachings and requirements of Islam as advised by Holy Quran and Sunnah of Holy Prophet (PBUH). Constitution preamble also mandates to make provisions for minorities to profess and practice their religion and develop their cultures freely⁴⁹. Section 20 of the PEMRA Ordinance 2002 also mandates that there will be no discrimination grounded on religion basis among the persons about content of electronic media.

This Section also makes it clear that in addition to this Section's restrictions, the restrictions for programs and advertisements provided in Electronic Media (Programs and Advertisements) Code of Conduct 2015 will also be implemented by the PEMRA Authority. The Electronic Media (Programs and Advertisements) Code of Conduct 2015⁵⁰ also provides the working guidelines for electronic media about religious harmony and glory of Islam as promised under Article 19 of the Constitution of Pakistan. Section 3 of the above-mentioned Code of Conduct provides the fundamental principles regarding the content of the electronic media in Pakistan. Section 3(a) of the Code of Conduct provides that no content will be aired on broadcast media which is

⁴⁸Pemra.gov.pk., accessed February 1, 2019, <http://www.pemra.gov.pk/>.

⁴⁹Dr Basit, *The Constitution of the Islamic Republic Of Pakistan With Commentary*. Rawalpindi: Federal Law House, 2017.

⁵⁰Electronic Media Code of Conduct, [www.pemra.gov.pk](http://www.pemra.gov.pk/pemra/pemgov/wp-content/uploads/2015/08/Code_of_Conduct.pdf). 2015. http://www.pemra.gov.pk/pemra/pemgov/wp-content/uploads/2015/08/Code_of_Conduct.pdf (accessed December 23, 2017).

“Against the Islamic values, ideology of Pakistan or founding fathers of the nation including Quaid-e-Azam and Dr Allama Muhammad Iqbal⁵¹”.

This section makes it mandatory to protect Islamic values and nothing will be aired against Islamic values. This section is directly linked with the glory of Islam and Islamic values are the foremost important in Islam and anything done or said is always considered against Islam. Glory of Islam also protects Islam and its basic teachings and values. So, this part is made in the interest of glory of Islam as advised in Article 19 of the Constitution. Section 3,1(d) is also about glory of Islam and religious harmony. Section 3,1(d) of the above-mentioned code provides that

“No content is aired which; Passes derogatory remarks about any religion, sect, and community or uses visuals or words contemptuous of religious sects and ethnic groups or which promotes communal and sectarian attitude or disharmony”

The Section clearly indicates that religious harmony will be protected and content which can interfere or hamper the religious feelings of any community or sect must not be aired on the electronic media in the country. Section 3,1, (f) also promotes religious harmony and prohibits abusive comments about any sect or religion in the following words;

“no content will be aired which; contains abusive comment that incites hatred and contempt against any individual or group of persons, based on race, caste, nationality, ethnic or linguistic origin, color, religion, sect, gender, age, mental or physical disability⁵²”

Everyone is equal before the eyes of law and one can hamper this preposition. No one can pass hatred and contempt against anyone on due to reason mentioned above and

⁵¹Pemra.gov.pk., accessed February 1, 2019, <http://www.pemra.gov.pk/>.

⁵²Electronic Media Code of Conduct, [www.pemra.gov.pk](http://www.pemra.gov.pk/pemra/pemgov/wp-content/uploads/2015/08/Code_of_Conduct.pdf). 2015. http://www.pemra.gov.pk/pemra/pemgov/wp-content/uploads/2015/08/Code_of_Conduct.pdf (accessed December 23, 2017).

even no discrimination will be made based on religion in Pakistan. Section 10 of the Electronic Media (Programs and Advertisements) Code of Conduct 2015 also protects and promotes glory of Islam. It provides that;

“Section 10: Religious tolerance and harmony; - Licensee shall ensure that; -

- 1) The programs aired by it do not contain any derogatory statement or visual which is likely to lead to bias, hatred or disharmony with reference to any religion, sect, community or ethnic group.
- 2) Beliefs and practices of any faith are described accurately when discussed and interfaith harmony is always promoted.
- 3) No programs or comment is aired which incites or condones acts of violence and encourages violation of law in the name of religion, sect community or ethnic or any other pretext”

Glory of Islam is of paramount importance in the list of restrictions on freedom of expression in Pakistan. However, the actual application of glory of Islam as a valid restriction on freedom of expression of electronic media has several issues. These issues hinder the freedom of expression and seriously affect the regulation of electronic media in the country.

The biggest matter of concern for glory of Islam related restrictions is the misuse and non-practice of those regulations on electronic media. This misuse includes labeling of blasphemy charges on other persons. While analyzing the situation of glory of Islam and its related legislation including rules, the Legal experts believed that

“Restrictions related to glory of Islam and their implementation is a matter of critical nature even for the public in the country. People take this matter very seriously and even a retired judge of High court was killed because he (the judge) acquitted an accused of blasphemy. In these difficult situations the judges, lawyers and even the police officials face the threat of intimidations and harassment at the hands of mobs and public. In addition to threat of intimidation

and harassment the behavior of some of the judges, lawyers and even the police officials are biased against the defendants⁵³”.

The same was reiterated by the Superior Courts in several judgments. Even in the recent case of Faizabad sit in, the Supreme Court reiterated that freedom of broadcast media does not allow to label any one blasphemous⁵⁴. The legal expert while commenting on glory of Islam as a valid restriction of freedom of expression of broadcast media and the lack of comprehensiveness of PEMRA Ordinance 2002 and its code of conduct, stated that;

“Although PEMRA has made efforts in the code of conduct to restrict expression which is against the glory of Islam, however the it is rarely implemented. no one is willing to take the responsibility of regulating religious content due to its nature ⁵⁵”

Another legal expert while highlighting the incompetence for the authorities with regard religious matters stated that;

“There is no official forum which decides about the broadcasting of religious content on electronic media and in Pakistan everyone becomes the religious scholar especially in the days of Ramazan. This attitude gives rise to misuse of the freedom of expression by broadcast media regarding glory of Islam and religious matters. The cases of programs of Dr Aamir Liaqat, Dr shahid Masood, Hamza Ali Abbasi and Dr Shaista Lodhi in recent past shows that how blasphemy charges are levied and how these matters are misused by the people⁵⁶”

One of the legal experts went on to say that

“The most important matter of law is its implementation. whatever good law may be but if not implemented than it is of no use. the same is the case with code of content involving religious matters but no

⁵³Interview with legal expert respondent no. 5

⁵⁴Suo Motu Case No 28 of 2018, PLD, SC1(2019)

⁵⁵Interview with PEMRA official, views of respondent no. 6

⁵⁶Interview with legal expert respondent no. 3 and 4

one dare to ask questions from these so-called religious scholars of TV”⁵⁷.

Glory of Islam as a valid restriction on freedom of expression in Pakistan is an important restriction. It preserves the identity of the Islamic state. It also allows state to enact different laws to protect and preserve it. It is also a very serious matter as a governor of a province for allegedly supporting a blasphemy accused on electronic media⁵⁸. The nature of seriousness of matter and lack of PEMRA response was highlighted by a Legal Expert in the following words;

“Although religion and broadcast of religious content are matters of serious nature but unfortunately there is no stoppage of such content. The reason includes the threat posed by religious fanatics and mullahs in the country. another reason of broadcast of such material is the non-availability of editorial oversight of religious material on broadcast media. There is no concept of editorial oversight of religious material inside or outside of broadcast companies”⁵⁹”

More than ninety percent of the population of the country is Muslim and is very sensitive about religion. The responsibility of the *broadcast* media in this regard is much more than normal. However, the recent trends in the *broadcast* media have deteriorated the situation regarding religious content.

The examples of the programs of Dr Aamir Liaqat, Dr Shahid Masood, Hamza Ali Abbasi, Dr Shaista Lodhi programs, Sit in by a religious cum political parties recently⁶⁰ and Ramadan live transmission creates the unrest in the society and clearly

⁵⁷Interview with legal expert respondent no. 2

⁵⁸Jawad Hassan and Syed Ali. Hadi, *Media and the Mass Communication Laws of Pakistan: With Latest Laws on the Electronic Media & Broadcasting* (Lahore: Bookbiz, 2004).

⁵⁹Interview with legal expert respondent no. 1, 2, and 4

⁶⁰Sit in by Tehreek-e-Libaik for the alleged blasphemy of Federal Minister and the live telecast of sit in by different TV channels further deuterated the situation in the country.

violates the terms and conditions and laws of the country. The laws are enacted for the protection of glory of Islam but must not be used by any individual to settle his or her personal scores or promote personal agendas on broadcast media⁶¹. Interestingly these all above mentioned cases highlight that no one is ready to take the responsibility of accountability of these matters.

In Pakistan everyone is a religious scholar and can say anything on electronic media. The situation regarding the glory of Islam and allegations of blasphemy is a serious matter. If the governor and retired Judge can be killed on the allegation of blasphemy than who would dare to ask questions when someone is not following the code of religious matters on broadcast media? A similar episode was repeated last year when a religious cum political party made accusations of blasphemy against a federal minister and marched towards Islamabad the capital of Pakistan. That march of religious cum political party was live broadcasted by several TV channels. However, PEMRA was not able to take actions against those TV channels due to volatile nature of problem.

In order to avoid similar difficult situations, the Malaysian content code adopted by CMCF for religious matters has declared that no religious material will be telecasted on broadcast media without the prior approval of relevant religious bodies. It means that there are two benefits of Malaysian content code. The first is the pre telecast permission by religious bodies and second is non availability of live transmission of any religious material. Whereas in Pakistan PEMRA has made rules and code for religious matters but it is very difficult to implement that code. The situation of

⁶¹Interview with legal expert respondent no. 2, 3, 4 and 5.

sensitivity of religious material gets worse in the month of Ramazan when every individual is religious scholar on TV⁶². There is a dire need to tackle this issue of non-implementation of religious content code on broadcast media in Pakistan.

4.2.2 Integrity, Security or Defense of Pakistan

The second kind for which restrictions may be inscribed under Article 19 is ‘integrity of Pakistan’. It is also presented in Article 10 along with 17 of the Constitution of 1973⁶³. The fundamental rights enshrined in above mentioned Articles are subject to “reasonable restrictions imposed in the interest of integrity of Pakistan”. The expression “integrity of Pakistan” cannot be separated from the term of ‘ideology of Pakistan’. Ideology of Pakistan was based on the concept of “Two-Nation Theory”. Ideology of Islam was the basis of “Two Nations Theory”. Ideology of Islam means and includes Muslim nationhood and individuality of Muslims. It also means application of injunctions of Holy Quran and Sunnah and it is a chief aspect in the notion of Muslim nationhood⁶⁴.

This thought was a deciding factor in the partition of sub-continent in 1947 and creation of two states of Pakistan and India. Therefore the “integrity of Pakistan includes ideology of Pakistan” as well as ideology of Islam and invasion of any of the above will ipso facto lead to invasion of sovereignty of Pakistan⁶⁵. Questions related to national security as addressed under Article 19 can also be discussed under Article 10 and Article 232 of the Constitution of Pakistan. Security means the safety and ‘security of Pakistan’ means safety of Pakistan. National security hence includes

⁶²Interview with legal expert respondent no. 1

⁶³Abdul Basit, *Law of Contempt of Court* (Rawalpindi: Federal Law House, 2017).

⁶⁴Secretary of State v Rehman, All ER 122 SC (2000)

⁶⁵Benazir Bhutto v Federation of Pakistan, PLD 416,522 SC (1988).

defense and protection of the State's secrets and instruments of State's defense⁶⁶. It is also worthy to mention that national security cannot be separated from the foreign policy of the country because foreign policy is deciding factor in the security of the country.⁶⁷

Deciding the meaning of security of Pakistan is a question of law as it involve question of construction by the courts. However, on the other hand the meaning of “in the interest of security of Pakistan” is a matter of policy and judgment and the executive is responsible to interpret this question according to the needs of the time. The term ‘security or defense of Pakistan’ has been used in Article 19 and Article 10 clause (4) of the Constitution of Pakistan⁶⁸. The term “security of Pakistan” is also defined in the Article 260 of the current Constitution in the following words⁶⁹,

“Security of Pakistan includes the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan but shall not include public safety as such”

This definition is not conclusive as the words includes are used instead of means. However, it is clear from the definition that security of Pakistan is not public safety⁷⁰. As Supreme Court in famous case of Benazir Bhutto⁷¹ “observed that law and order represents the largest circle, within which is the next circle representing public order and the smallest circle represents security of the state” security of state is often referred to those intensified forms of harmful activities which threaten the very presence of the

⁶⁶Province of Punjab v Qaiser Iqbal, PLD 198, Lahore High Court Lahore (2018)

⁶⁷Secretary of State v Rehman, All ER 122 SC (2000)

⁶⁸Abdul Basit, *The Constitution of the Islamic Republic of Pakistan With Commentary* (Rawalpindi: Federal Law House, 2015).

⁶⁹The Constitution of Pakistan, The Constitution of Pakistan, accessed May 13, 2016, <http://www.pakistani.org/pakistan/constitution/>.

⁷⁰Abdul Basit, *The Constitution of the Islamic Republic of Pakistan With Commentary* (Rawalpindi: Federal Law House, 2015).

⁷¹Benazir Bhutto vs Federation of Pakistan, PLD 416,522 SC(1988)

state itself but those acts are not included which are involving the ordinary breaches of the peace. The Privy Council in *Zamora case*⁷² observed “those who are responsible for the national security must be sole judges of what national security requires”. In World War I *Schenck* was found guilty of violating “The Espionage Act” as he printed leaflets that urged to resist draft. *Schenck* believed his conviction violated “US First Amendment’s” guarantee. The Supreme Court of America in the words Justice Holmes said⁷³;

“When a nation is at war things which might be said in time of peace are such a hindrance to its efforts that their utterance will not be endured so long as men fight. No court regards them as protected by any constitutional right”.

Justice Black in “*New York Times v US*”⁷⁴ case said that the word “security” is a broad, vague and general and its contours can never be invoked to abrogate the fundamental law of First Amendment”. Therefore, all acts which threaten the existence of very nature of the state must be curbed in Pakistan⁷⁵. So, the laws relating to the defense and security and of the country, maintenance of discipline in the Armed forces, rules and regulation relating to treason, sedition, espionage, and official secrets will be held valid in Pakistan.

Qazi Faez Isa, C.J declared in “*High Court Bar Association v. Government of Baluchistan through Secretary, Home and Tribal Affairs Department*”⁷⁶.

"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

⁷²*Zamora Case*, 2 AC 77 Privy council, n.d.(1916)

⁷³*Schenck v United States*, 249 U.S. 47(1919)

⁷⁴*New York Times Co v United States*,403 U.S. 713(1971)

⁷⁵*The State v Abdul Ghaffar Khan (Bacha Khan)*, PLD 142 Lahore (1957).

⁷⁶*High Court Bar Association v. Government of Baluchistan through Secretary, Home and Tribal Affairs Department*, PLD 75 Quetta (2013)

Pakistan, public order, decency and morality. The same are also crimes under the laws of Pakistan, and they incite others to commit crime”

The Superior courts of Pakistan have stated that “the restriction imposed by Section 123-A of the Pakistan Penal Code are in the interests of the security of the state and are considered as a reasonable restriction on freedom of expression in Pakistan⁷⁷”. Section 123-A of Pakistan Penal Code provides that whoever commits a crime of “Condemnation of the creation of the State and advocacy of abolition of its sovereignty” shall be penalized with imprisonment of 10 years⁷⁸. The electronic media laws on the subject and analysis of these restrictions is made under the preceding chapter on the electronic media restrictions.

4.2.2.1 Integrity, Security, Defense of Pakistan and broadcast media

Constitution of Pakistan declares under Article 19 that freedom of expression can be restricted in the interest of integrity, security and defense of Pakistan⁷⁹. Electronic media laws including PEMRA Ordinance 2002 and Electronic Media (Programs and Advertisements) Code of Conduct 2015 incorporates those restrictions and presented certain conditions for broadcast media⁸⁰. These conditions must be fulfilled by the broadcast media while broadcasting its content. PEMRA Ordinance 2002 provides terms and conditions of license under section 20 of the ordinance⁸¹.

⁷⁷The State v Abdul Ghaffar Khan (Bacha Khan), PLD 142 Lahore (1957).

⁷⁸Pakistan Penal Code (Act XLV of 1860), accessed January 13, 2019, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

⁷⁹Emmanuel Zafar, *The Constitution of the Islamic Republic of Pakistan, 1973: Commentary* (Lahore, Pakistan: Irfan Law Book House, 1992).

⁸⁰*Prospects and Promotion of Electronic Media in Pakistan: (28 August 2003)* (Islamabad: Pakistan Electronic Media Regulatory Authority, 2005).

⁸¹Pemra.gov.pk., accessed February 1, 2019, [http://www.pemra.gov.pk/.](http://www.pemra.gov.pk/)

Section 20(a) of PEMRA Ordinance 2002 provides that it is responsibility of the licensee or broadcasting company to ensure preservation of sovereignty, integrity and security of Pakistan. In 2007 the words “respect” was replaced with “ensure preservation of”⁸². The difference between the respect and ensuring preservation is its mandatory nature of duty on PEMRA. Prior to 2007 when the word respect was inscribed then it was not obligation of the PEMRA Authority to preserve the identity of Pakistan rather respect it⁸³.

The second difference is that when someone is entrusted with the duty of preserving something than preservation also means promoting that thing. So, it is responsibility of PEMRA under the PEMRA Ordinance 2002 to promote the ideology of Pakistan including ideology of Islam⁸⁴. As discussed earlier that security and integrity of the state is protecting ideology of Pakistan and Islam. It is also notable that the role of PEMRA was changed from mere spectator to initiator and protector. The Electronic Media (Programs and Advertisements) Code of Conduct 2015 also provides that no content will be broadcasted which “is against the Islamic values, ideology of Pakistan or founding fathers of the nation including Quaid-e-Azam and Dr Allama Muhammad Iqbal”. Section 3.1(c) of Electronic Media (Programs and Advertisements) Code of Conduct 2015 provides that “no content will be aired which includes a call to arms against the Federation of Pakistan or anything against the integrity, security and defense of Pakistan”⁸⁵. Section 14 (8) of the above-mentioned code deals with rules of broadcast of advertisements on electronic media. This rule prohibits broadcast of any

⁸²In 2007 an amendment was made in PEMRA Ordinance 2002 via PEMRA (Amendment) Act

⁸³Interview with PEMRA officials, respondent no .7

⁸⁴Interview with PEMRA officials, respondent no. 6

⁸⁵Electronic Media Code of Conduct." www.pemra.gov.pk. 2015. http://www.pemra.gov.pk/pemra/pemgov/wp-content/uploads/2015/08/Code_of_Conduct.pdf (accessed December 23, 2017).

advertisements which exploit religious or nationalistic sentiments and use of religious or national symbols for advertisements⁸⁶.

All abovementioned PEMRA Ordinance 2002 and Electronic Media (Programs and Advertisements) Code of Conduct 2015, highlights the importance of integrity. Although broadcast media freedom and restrictions in the interest of security, integrity and defense of Pakistan are presented in the Constitution and other laws of the land but this is not a simple matter at all in Pakistan. There is a very thin line between expression controlled in the name of security, integrity and defense of the country and curbing freedom of expression only for the sake of vested interests and giving it the name of security, integrity and defense of the country⁸⁷.

The legal experts who were interviewed presented the lists of issues associated with practice of rules related to security, integrity and defense of Pakistan. It is believed that rules and laws protect and encourage freedom of expression of broadcast media, but the practice of the state is against the basic principles of freedom of expression of broadcast media. One of the legal experts stated that,

“Three most recent illustrations inter alia highlight the complex situation of relationship between freedom of expression of media and security, integrity and defense of Pakistan. Baluchistan issue and media response Banned Tahrek. i. Taliban Former spokesman interview on GEO news TV channel and Pakistan Dawn leaks case⁸⁸”.

Baluchistan is the biggest province of Pakistan and currently under turmoil due to military operations. In some parts of Baluchistan terrorist activities are in progress

⁸⁶Pemra.gov.pk, accessed January 11, 2019, <http://www.pemra.gov.pk/>.

⁸⁷Interviews with electronic media journalist respondent no. 12

⁸⁸Interview with legal expert respondent no. 1

against the state itself which gave rise to military action in the area. However, the situation is that the broadcast media is unwilling to bring the true picture of the story of terrorist activities and military action. The military is accused of human right violations by the human rights organizations. The mainstream electronic media don't bring programs and analysis on the grim situation of Baluchistan because they are prohibited by the state as it is against the national security, integrity and defense of Pakistan⁸⁹. Usually it is ignoring because it is believed that if anything said or aired than it will be treated against the national interest.

However, there is another side of the story that the electronic media channels don't have corporate or business interests in the Baluchistan as broadcast companies are operated from big cities and business interests are protected in big cities⁹⁰. So, the real question which arises is that can anyone decide himself that anything is against the national interests of the country? Legal experts believe that;

“broadcast media is called the whistle blower of the society and if it is stopped to blow whistles in the name of national security than what should be done? Secondly what is the real definition of national security, integrity or defense of Pakistan and most importantly according to law is military establishment only responsible for defining and implementing these terminologies?”⁹¹”

Superior Courts in the country have defined these but they are not exhaustive definitions. Secondly the implementation of these laws is the responsibility of the government to grant more space for freedom of expression. The second instance is the telecasting of interview of former spokesman of Banned Tehrek.i. Taliban Ahsan

⁸⁹Why Does the National Media Ignore Balochistan?”, accessed January 09, 2019, <https://nation.com.pk/29-May-2015/why-does-the-national-media-ignore-balochistan>.

⁹⁰Why Does the National Media Ignore Balochistan?”, accessed January 09, 2019, <https://nation.com.pk/29-May-2015/why-does-the-national-media-ignore-balochistan>.

⁹¹Interview with legal expert respondent no. 3

Ullah Ahsan. He was arrested by the security forces in an operation in Federal Administered Tribal Areas (FATA) and later his confessional statement was issued to media by the military of Pakistan. Later in April 2017 he was interviewed by Saleem Safi the anchorperson on GEO News for his program "JIRGA". However, PEMRA vide its notification No 2(5)/PR/2015 /I dated April 27, 2017 titled "PEMRA Prohibits Airing of Terrorist Interview"⁹² prohibited telecasting of interview as it was violation Electronic Media (Programs and Advertisements) Code of Conduct 2015. The Geo media broadcasting company approached the Islamabad High court against the orders of PEMRA and Islamabad High court allowed the appeal. Islamabad High court permitted the geo tv channel to broadcast the interview⁹³.

PEMRA while prohibiting interview presented that it would amount to glorification of the terrorism and it was not the interest of security, integrity and defense of the country. However, the Islamabad High Court accepted the plea of the channel and allowed it to telecast interview⁹⁴. This is another interesting case for the freedom of expression of broadcast media in the country. As on one side state is restricting expression in the interest of security of state and on the same moment in another case the state is pursuing Islamabad High Court to allow the broadcasting company to broadcast he program. The question again arises is that although the court has the authority to decide and interpret the laws, but the practice of the state is not in conformity with freedom of expression principles.⁹⁵

⁹²No 2(5)/PR/2015. PEMRA Prohibits Airing of Terrorist Interview." PEMRA Prohibits Airing of Terrorist Interview. 2017 .

⁹³Court Allows Geo News to Air Ehsanullah Ehsan's Interview, the news, May 12, 2017, accessed May 14, 2018, <https://www.thenews.com.pk/latest/204052-Court-allows-Geo-News-to-air-Ehsanullah-Ehsans-interview>.

⁹⁴Interview with PEMRA officials, respondent no. 6

⁹⁵Interview with Legal experts, respondent no. 4

The third illustration is also related to the security, integrity and defense of the country. Tensions between the broadcast media freedom and national security once again came to head last year in Pakistan when the country's famous newspaper and TV channel DAWN published and broadcasted remarks about a closed-door meeting between the military establishment and civilian government⁹⁶. The meeting as remarked by the channel and newspaper was about an unprecedented warning by the civilian government to military leadership on tacit support for militant groups.

However, this piece of information set off a firestorm of rebukes from civilian as well as military establishment. They considered it against national security. The government and military establishment appointed an inquiry committee to consider the leak issue. On the findings of the inquiry three persons including two ministers were forced to leave their jobs. Broadcast media company was also fined, and channel was suspended for one week⁹⁷. This was a significant issue about national security.

This issue proved one agenda of both civilian as well as military elite to silencing of the broadcast media in the name of national security⁹⁸. This again brought into light the issue of freedom of broadcast media and national security as who is competent to define national security. Interestingly there was no representation of PEMRA in this committee and it was forced to act against the broadcasting company. These above-mentioned issue highlights the sorry about media and national security. Constitution of Pakistan under Article 260 provided definition of security of Pakistan in the following words⁹⁹;

⁹⁶Danyal Adam Khan, "How One of Pakistan's Most Controversial Cases Has Unfolded," Herald Magazine, September 24, 2018, accessed February 10, 2019, <https://herald.dawn.com/news/1398663>.

⁹⁷Interviews with electronic media journalist respondent no. 11

⁹⁸Interview with legal experts, respondent no. 2

⁹⁹The Constitution of Pakistan, The Constitution of Pakistan, accessed May 13, 2016, <http://www.pakistani.org/pakistan/constitution/>.

“Security of Pakistan includes the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan but shall not include public safety as such”

PEMRA has not presented any definition of these terminologies and whereas, the above-mentioned definition is not comprehensive. It uses words like “includes” which keeps a room open for misinterpretation. This pays way to prohibit any kind of activity in the name of national security. In fact, even PEMRA in practice don’t have the authority to define such matters and content involving “security, integrity and defense” of the country. Practically it is the federal government and establishment which decides about such issues in Pakistan. There is a strong need to devise a clear roadmap for broadcast media and national security, integrity and defense of Pakistan.

4.2.3 Friendly Relations with Other States

Article 19 of Pakistani Constitution provides that state can also execute restrictions in the interest of friendly relations with other countries. The expression addressed in Article 19 “friendly relations with foreign states” includes international relations. Meaning thereby that Constitution allows imposition of limitations on freedom of expression in Pakistan on ground of international relations. International relations and national defense are related with each other. Executive in case of national defense is entrusted with huge powers in the country¹⁰⁰. As “Justice Steward in NEW York Times case” mentioned; “This power largely unchecked by the legislature and judicial branches has been pressed to very hilt since the advent of nuclear missile age”¹⁰¹. It is for this reason that media that is alert, conscious and free must vitally serve the basic

¹⁰⁰Abdul Basit, *The Constitution of the Islamic Republic Of Pakistan With Commentary* (Rawalpindi: Federal Law House, 2015).

¹⁰¹New York Times Co. v. United States, 403 U.S. 713(1971)

objective of freedom of expression. However, without free media there will not be the availability of enlightened people. Justice Stewart further stressed;

“It is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy. Other nations can hardly deal with this nation in an atmosphere of mutual trust unless they can be assured that their confidence will be kept. And within our own executive departments, the development of considered and intelligent international policies would be impossible if those charged with their formulation could not communicate with each other freely, frankly, and in confidence. In basic national defense, the frequent need for absolute secrecy is of course self-evident”¹⁰².

Judge further said;

I think there can be but one answer to this dilemma if it be a dilemma. The responsibility must be where the power is. If the constitution gives the Executive a large degree of unshared power in the conduct of foreign affairs and the maintenance of our national defense, then under the constitution the Executive must have the largely unshared duty to determine and preserve the degree of internal security necessary to exercise that power successfully. It is an awesome responsibility, requiring judgments and wisdom of a high order. I should suppose that moral, political and practical considerations would dictate that a very first principle of that wisdom would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the self-promoting. I should suppose in short that the hall mark of a truly effective security system would be the maximum possible disclosure recognizing that secrecy can best be preserved only when credibility is truly maintained. But be that as it may, it is clear to me that it is the constitutional duty of the Executive as a matter of sovereign prerogative and not as a matter of law as the courts know law through the promulgation and enforcement of executive regulations to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and national defense.”

¹⁰²New York Times Co. v. United States, 403 U.S. 713(1971)

Shabir Ahmad, J in “The State v. Abdul Ghaffar Khan”¹⁰³ while discussing the dignity of the country and importance of foreign relations stated;

"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"

Restrictions under this category of friendly relations can include libel of foreign luminaries and even propaganda in favor of rivals to authority in a foreign state after country has recognized an authority in that state. Currently there is no specific legislation which deals with this subject. However, several statutes contain limitations on forms of expression which may have an adverse effect on friendly relations with foreign states. Section 3 of “the Security of Pakistan Act 195”¹⁰⁴ envisages imposition of restrictions on the movement of persons who act or are about to act in a manner detrimental to the external affairs of country. These provisions of the statute have a distinct relation with the maintenance of friendly relations with foreign states. Laws exist where people of Pakistan are held liable for defamation and libel even if the person defamed is an outsider, by comity of nations, many states punish libels published by their citizens against the heads of foreign states and their diplomatic representatives because such libels will endanger peaceful relations with foreign countries and lead to open hostilities. Shukla¹⁰⁵ in “Constitution of India” says;

¹⁰³The State v. Abdul Ghaffar Khan, PLD 142 SC (W.P) (1957)

¹⁰⁴M. Mahmood, *The Constitution of the Islamic Republic of Pakistan: As Amended by 17th Amendment Act* (Lahore: Pakistan Law Times Publications, 2006).

¹⁰⁵Prof (Dr.) Mahendra Pal Singh, *V.N. Shukla's Constitution of India* (Lucknow: Eastern Book, 2012).

“It may be pointed out that it is a recognized principle of international law that states in their relationship with other states are responsible for acts committed by persons within their jurisdiction”

Section 125 of “Pakistan Penal Code” prescribed a punishment of 7 years with fine when someone wages war against any Asiatic power in coalition or at harmony with the government of Pakistan or has attempted to wage such conflict will also have the same punishment¹⁰⁶. It is imperative to note that provision of friendly relations with foreign countries help in promoting friendly relations with other states¹⁰⁷. Pakistan and India both have this unique provision of law to safeguard international relations between different countries. Pakistan and India have also another unique provision of law.

“The Foreign Relations Act, (XII of 1932)”¹⁰⁸ was passed in combined India and later adopted by both states. The law of both countries provides sentence for libel against external dignitaries. However, this restriction of friendly relations does not mean that fair criticism of foreign policy of the country isn’t allowed. One important and interesting point was made in “Jagan Nath V Union of India”¹⁰⁹ that “members of Commonwealth countries including Pakistan is not a foreign country for the purposes of the interpretation of this Constitution in India”. The question which arose before the Supreme Court of India at that time was whether expression can be curtailed on ground of its being prejudicial to a Commonwealth country? The Supreme Court of India responded to this that a state may not be viewed as foreign state for the Constitution

¹⁰⁶ Pakistan Penal Code (Act XLV of 1860), accessed January 13, 2019, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

¹⁰⁷ M. Mahmood, *The Pakistan Penal Code, 1860*. (Al-Qanoon Publishers, 2009).

¹⁰⁸ The Foreign Relations Act, 1932 – Josh and Mak International, Josh and Mak International, accessed January 10, 2019, <https://joshandmakinternational.com/resources/laws-of-pakistan/foreign-exchange-and-foreigners-regulaions/the-foreign-relations-act-1932/>.

¹⁰⁹ S Jagannath v Union Of India, AIR 811 SC(1997).

but may be watched as a foreign power for other objectives¹¹⁰. The outcome of the decision was that freedom of expression cannot be controlled on ground that a matter is averse to the hostile country including Pakistan.

This part of restriction in the interest of friendly relations is interesting in several aspects as it can stop fair discussion and fair criticism on the policies of the governments of the time. It happened several times in Pakistan as there is no specific mechanism which can determine as to what constitute a debate and criticism and which affects friendly relations with other states. It happened in Pakistan several times that a matter was rejected for discussion on the grounds of friendly relations with foreign or friend states in the country. The case of discussions on Turk company power producing ship, which was allegedly involved in corrupt practices and the electronic media was prohibited by the government to discuss it on electronic media. Secondly the government categorically asked the PEMRA stop broadcast of any programs which discusses the contracts of China Pakistan Economic Corridor (CPEC) as it may hamper the relations with china¹¹¹.”

Although this restriction of friendly relations is available under the Constitution but there is no specific mechanism to regulate it. The government has used this provision to stop fair debates on the matters of national importance. The electronic media regulation related to this restriction are discussed in the preceding chapter.

¹¹⁰S Jagannath v Union Of India, AIR 811 SC(1997).

¹¹¹Interview with legal experts, views of respondent no. 1, 2, 3 and 4

4.2.3.1. Friendly Relations with Foreign States and broadcast media

PEMRA Ordinance 2002 and Electronic Media (Programs and Advertisements) Code of Conduct 2015, do not provide any specific provision which deals with protection of friendly relations with foreign states. Only when the war of Yemen started, and Saudi Arabia led coalition started action against rebels in Yemen than PEMRA issued a circular which advised the media to refrain from discussing matters involving friendly relations with friendly states¹¹². The circular also highlighted the Article 19 of Constitution and restrictions provided under that Article. Electronic media Journalist while discussing the friendly relation believed that the matter of friendly relations is same as security, defense and safety of sates. There is no mechanism or rules of defining friendly relations with other states and PEMRA has the liberty to put any matter under the umbrella of friendly relations. The same was done in the matter of Yemen crises.¹¹³

Legal experts while elaborating the issue of friendly relation on broadcast media stated that fair discussion on matters of national importance are stopped from broadcasting in the name of promotion of friendly relations with other states in Pakistan. He went on to say Pakistan relations with other Muslims states and most importantly the case of Yemen crises is an excellent illustration of misuse of restrictions in the name of friendly relations with foreign states¹¹⁴.

When the government of Yemen was facing the threat of rebels and the Saudi Arabia led collation entered into war of Yemen, the Pakistan was invited by the Saudi Arabia

¹¹²Interviews with electronic media journalist respondent no. 10

¹¹³Interviews with electronic media journalist respondent no. 11

¹¹⁴Interview with legal experts, respondent no.1, 2 and 3.

led alliance to join hands in their campaign against the rebels in Yemen. There was a great unrest on this matter in the Pakistan as a sizeable population of Pakistan belongs to Shia section of Islam and the war in Yemen involves the Shia rebels.

This started a long debate of Pakistan role and participation in Yemen crises on the broadcast media. However, the government of the country was not satisfied with this discussion as it involved the role of Saudi Arabia and Iran in the regional politics. The Pakistan Electronic Media Regulatory Authority of Pakistan issued directions to broadcasting companies about not broadcasting any content or present discussion which may affect relations with Saudi Arabia. This story was also repeated after the Mina tragedy in which several thousand of hajjes died in an accident. Some TV channels criticized Saudi Arabian Hajj management over the accident and on mishandling of the situation after the accident took place.

The PEMRA again issued the notification to the broadcasting companies which cited Article 19 of the Constitution. The notifications prohibited broadcast of discussion on the tragedy of Mina. The PEMRA notification further directed the broadcasters to avoid discussion and criticism on Saudi government as it is against the Article 19 of the constitution. This is alarming trend in the country as it can be launching ground for stopping discussion even on some serious matters. Freedom of expression of broadcast media is a matter which calls for the oversight of the governments and highlights the malpractices of the governments but if the oversight of the governments is stopped in the name of friendly relations than there is no benefit of the freedom of expression¹¹⁵”.

¹¹⁵Interview with legal experts, views of respondent no. 1, 2, 3, 4 and 5

Restrictions in the interest of friendly relations with foreign state is an important and interesting subject. However, there is no clear guidelines on this law and no specific law is made on this subject in Pakistan. Only this restriction of Constitution is applied whenever there is need to silence any dissenting voice in the country. So, if the complete authority is granted to the PEMRA than it will use this to silence the legitimate discussion on important matters of national importance.

4.2.4 Public Order, Decency and Morality

Constitution under Article 19 also provides that an expression which disturbs public order will be prohibited. Additionally, any indecent or immoral expression will also be prohibited under the same Article. In the preceding part public order, decency and morality are explained in detail;

Public Order

Clinton Rossiter in ‘Introduction to the Federalist’¹¹⁶ concludes that “no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality and none of these great goods without stability and order”. This highlights the importance of public order in a society. In *Walker v Birmingham*¹¹⁷ the US Supreme Court observed that the constitutional civil liberties are the product of public order in an organized society and without the public order, the liberties will be lost by unrestrained abuses. In Pakistan the term public order is used in various Articles, “Article 10 Safeguards as to Arrest and Detention, Article 17 which protects Freedom of Association, Article 19, which protect

¹¹⁶Steve Straub, Alexander Hamilton, The Federalist Papers,, accessed January 20, 2018, <https://thefederalistpapers.org/alexander-hamilton>.

¹¹⁷ *Walker v. City of Birmingham*, 388 US 307(1967).

Freedom of Expression, and Article 20 which protects Freedom to Profess Religion and to manage religious institutions”¹¹⁸. However, the phrase "public order" is not explained in the constitution of Pakistan. The phrase “public order” is identical with public peace, safety and tranquility. It is of local significance as differentiated from state upheavals like “security of state and law and order”. An act detrimental to public order must disturb the public at large¹¹⁹.

A law that relates to individuals and does not reach to an act detrimental to the public peace and tranquility shall not come under the domain of Article 10(4) and (7) of the Constitution 1973¹²⁰. The expression “public order” or the maintenance of public order is one of the core justifications for perpetrating limitations on freedom of expression in the state¹²¹. Ahmad Ali Qureshi, J¹²² while discussing public order stated that “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.” A.R. Changez, J¹²³ declared that "public order includes, danger to human life and safety and the disturbance of the public tranquility falls within the purview of this expression”

The term public order implies absence of disorder involving violations at local levels. It is in contradiction to national disorders as civil strife, revolution or war, which directly affects the security of the country. The state has the authority to prohibit and punish the people in the interest of public order for causing lurid and raucous noise in

¹¹⁸The Constitution of The Islamic Republic of Pakistan, accessed May 30, 2018, <http://www.na.gov.pk/publications/constitution.pdf>.

¹¹⁹Benazir Bhutto v Federation of Pakistan, PLD 416,522 SC(1988)

¹²⁰Mrs Arshad Ali v Government of the Punjab, SCMR 1532 (1994)

¹²¹Begum Zeb-un-Nisa Hamidullah v Pakistan, PLD 35SC (1958)

¹²²K. M.C. v. Akbar Shah, PLD 393 SC (1988)

¹²³Qari Abdul Hameed Qadri v. District Magistrate, PLD 1957 Lah. (1957)

streets and public places¹²⁴. There must be an appropriate and practical relationship between the restriction and the attainment of public order. However, the restriction has no immediate node to the accomplishment of public order, the restriction will not be considered as a reasonable restriction.

The restriction must not be farfetched, problematic, hypothetical or too remote in its relationship with the public order. Subject to the requirements of close relationship, State is empowered to enact a law permitting a legitimate authority to impose pre-emptive limitations upon specific kinds of activities in an urgency for the objectives of protecting public order¹²⁵. Pakistan has enacted laws to protect public order in society. Section 124-A of the “Pakistan Penal Code” provides the offence of Sedition¹²⁶ and Section 505 provides Public mischief¹²⁷. However according to Indian

¹²⁴ Vijaya Narain. Shukla and Devendra Kumar. Singh, *V N Shukla the Constitution of India* (Lucknow, India: Eastern Book, 1979).

¹²⁵ Kedar Nath Singh v. State of Bihar, AIR 955(1962)

¹²⁶ “124-A. Sedition : 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.

Explanation 1: The expression “. disaffection includes disloyalty and all feelings of-enmity.’

Explanation 2: Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3: Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section

¹²⁷ 505. Statements conducing to public mischief:

(1) Whoever makes, publishes, or circulates any statement, rumor or report-

- (a) with intent to cause or incite, or which is likely to cause or incite, any officer, soldier, sailor, or airman in the Army, Navy or Air Force of Pakistan to mutiny, offence or otherwise disregard or fail in his duty as such; or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or
- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment for a term which may extend to seven years and with fine.

Supreme Court¹²⁸. mere criticism of government action would not fall within the rule of mischief of “Public order”. This mere criticism will be protected by the freedom of expression clauses of Constitution. In “Kedar Nath Singh v. State of Bihar¹²⁹.”, while interpreting the scope of Sections 124-A and Section 505 of “Indian Penal Code, 1860”, the Supreme Court held that “the activity would be rendered penal only when it is intended to create disorder”.

The criticism of public on government acts, however strongly worded, would fall within reasonable limits and would be in line with the fundamental right of free speech and expression. It is only when the words, spoken or written, have the pernicious intention or tendency of creating disturbance of law or issues of public disorder and other that the law enters in to prevent such actions in the interest of law and order. “Karam Elahee Chauhan, J”, in a famous case of “Mian Tufail Muhammad v The State¹³⁰” declared;

"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 relations with 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, P.P.C 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

¹²⁸ Kedar Nath Singh v. State of Bihar, AIR 955(1962)

¹²⁹ Kedar Nath Singh v. State of Bihar, AIR 955(1962)

¹³⁰ Mian Tufail Muhammad v. The State, PLD 747 Lahore (1973).

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 during 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”

There are numerous calls for the repealing this law of sedition. It is termed as against the very basic of freedom of expression. Najam Sethi a renowned journalist was booked and jailed under the sedition law by then “Prime minister Nawaz Sharif” for criticizing his government. He was later released, and the case was withdrawn against him¹³¹. The irony of the matter is that now a case is pending before the Lahore High court against the former Prime minister Nawaz Sharif on the charges of Sedition¹³². Nawaz Sharif gave an interview and it was alleged that in that interviewed he committed the offence of sedition and action must be initiated against him.

This offence of sedition has been historically used to silence the criticism against the government and to suppress the legitimate freedom of expression. This offence of sedition is product of common law and was abolished by UK in 2009¹³³. While obliterating sedition as a crime in 2009, the then “Parliamentary Under-Secretary of State at the Ministry of Justice of the United Kingdom” reasoned that:

“Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression was not seen as the

¹³¹Celia W. Dugger, Pakistan Frees Journalist It Held for Sedition, The New York Times, June03,1999, accessed May 19, 2018, <https://www.nytimes.com/1999/06/03/world/pakistan-frees-journalist-it-held-for-sedition.html>.

¹³² Mohammad Asghar, Sedition' Complaints Lodged against Nawaz, DAWN.COM, May 15, 2018, accessed February 13, 2019, <https://www.dawn.com/news/1407787>.

¹³³ PA Media Lawyer, Criminal Libel and Sedition Offences Abolished, Press Gazette, November 30, - 0001, accessed May 1, 2019, <https://www.pressgazette.co.uk/criminal-libel-and-sedition-offences-abolished/>.

right it is today... The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom... Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech”

Seditious libel was removed from “Section 73 of the Coroners and Justice Act, 2009”.

One of the explanations given for eradicating seditious libel was:

“Having an unnecessary and overbroad common law offence of sedition, when the same matters are dealt with under other legislation, is not only confusing and unnecessary, it may have a chilling effect on freedom of speech and sends the wrong signal to other countries which maintain and use sedition offences as a means of limiting political debate”

Even in India there are several people that have raised the voice against this common law offence and termed it against the freedom of expression. The criticism was of such a huge nature that law commission of India was forced to look and prepare the report on this offence. Law commission on 30 August 2018 presented its first report and called for the detailed investigation of the matter of sedition offence in India¹³⁴. The views of the legal experts for this study were similar and they unanimously made a call to relook at this common law offence.

One of the legal experts stated that “There is contempt everywhere in the country. Contempt of court and contempt of the government. There is no room for freedom of expression for electronic media and freedom of thought in the country. If we criticize decision of the court then the contempt of court will apply and if criticism is made against governments then sedition will apply¹³⁵”. The criticism on the administration

¹³⁴Government of India Law Commission Of India Consultation, accessed April 13, 2019, <http://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf>.

¹³⁵Interview with legal experts, views of respondent no. 1

and the plans of the government is part of the fundamental right of expression of electronic media in Pakistan. Another legal expert stated a similar view in following words,

“If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras. Right to criticize one’s own history and the right to ‘offend’ are rights protected under free speech. While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy. Therefore, every restriction on free speech and expression must be scrutinized to avoid unwarranted restrictions¹³⁶”

The views of others legal experts were also like the notion of revamping of sedition offence in Pakistan.

“People should be at liberty to show their affection towards their country in their own way. For doing the same, one might indulge in constructive criticism or debates, pointing out the loopholes in the policy of the Government. Expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means”

There is a need to relook this law of sedition in Pakistan as there are several incidents when the voices of the electronic media were controlled by this common law offence in Pakistan. The most recent is the registration of F.I.R against the Arshad Sharif for the same offence and initiation of proceeding against his program and against broadcasting company by the PEMRA¹³⁷. The other incidents related to electronic media are explained in the preceding chapter on the same subject.

¹³⁶Interview with legal experts, views of respondent no. 3 and 4

¹³⁷IB Seeks Registration of FIR against Arshad Sharif," Journalism Pakistan, accessed March 13, 2019, <http://www.journalismpakistan.com/ib-seeks-registration-of-fir-against-arshad-sharif>.

Decency and Morality

The electronic media with influential, multi-channel visual splendors is completely occupying our minds in recent times. Its utility in informing, educating, and news-providing is shrouded by its misuse in offering indecent and obscene stuff in a tag of entertainment. Decency, morality and public order is one of the restrictions inscribed under Article 19. The purpose of this restriction is to safeguard and protect the dignity of women and the image of humanity in the media projections. The society is bound to deteriorate if high morals of morality and decency are not well-preserved¹³⁸. Women in electronic media, either by themes of serials or shows or constant show of films, or way of commercial advertisements can easily influence the minds of young people. Item songs of women are having marvelous influence because of its repetition on TV. TV is considered as the most effective and powerful vehicle of views at present. The internet as “an information infrastructure is a communicative device, is viewed as a tool for democratizing speech on a global basis¹³⁹”.

The words “decency and morality” are comprehensive words. The word “obscenity” which is available under English law is virtually identical with the term “indecent” under the Pakistani Constitution. However, in Pakistan there is no definition of obscenity under the Constitution or Pakistan penal code. The word ‘morality’ is used in Article 17 and 20 of the Constitution. However, in Article 19 the word morality is used along with decency. These Articles should be read with Article 21 which is about ‘Principles of State policy’¹⁴⁰. It provides that the state shall endeavor as respects the Muslims of Pakistan to promote unity and observance of the Islamic moral standards.

¹³⁸Suo Motu Contempt Proceedings against Talal Choudhry, PLD 773 Supreme-Court (2018)

¹³⁹Suo Motu Contempt Proceedings against Talal Choudhry, PLD 773 Supreme-Court (2018)

¹⁴⁰M. Mahmood, *The Constitution of the Islamic Republic of Pakistan: As Amended by 17th Amendment Act* (Lahore: Pakistan Law Times Publications, 2006).

It proves that the Constitution has both a political as well as moral character. M.R.Kayani Chief Justice held in a case regarding the prohibition of prostitution in a specific part of the town,

“A profession whose practice Pakistan’s constitution guarantees to the citizens could not conceivably be a profession involving indecency or immorality. Is a constitution intended to guarantee indecency or immorality?¹⁴¹”

However, the question remains the same as what the meaning of morality in the Pakistani law is. “The Constitution of Pakistan 1973”, under Article 62 and 63, meets out qualifications and non-qualifications for members of Parliament in the country¹⁴².

Article 62 (d) that lays down the standard of qualifications of a person aspiring for seat of any house of Parliament states, “He who is of good character and is not commonly known as one who violates Islamic Injunctions.” This simple one line lays a heavy responsibility on the Parliamentarian’s shoulders to lead by example. It also states that aspirant of memberships must have a clean reputation, not having fallen below the acceptable standards.

The Constitution of Pakistan 1973 under Article 63 (g) states a citizen will be disqualified for membership if he has committed any act against morality and have been convicted by a court of competent jurisdiction on the same charges. Clause (h) of the same Article 63 disqualifies any individual if “he is convicted for any offence involving moral turpitude or sentenced to imprisonment for a term of not less than two

¹⁴¹Mehtab Jan v. Municipal Committee, Rawalpindi, PLD 929 Lahore (1958)

¹⁴²The Supreme Court of Pakistan, C.A.No.233 of 2015, etc.

years, unless a period of five years has elapsed since his release”. Moral turpitude is explained as¹⁴³,

“An act of baseness, vileness, or the depravity in private and social duties which man owes to his fellowmen, or to society in general, contrary to accepted and customary role of right and duty between man and man.”

Even in USA and England the immoral activities remained prohibited under the freedom of expression and speech. Number of American cases decided that obscenity do not fall under the protection clause under the First Amendment rule of freedom of expression. Justice Brennan in *Roth v US*¹⁴⁴ said;

“All ideas having even the slightest redeeming social importance unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion- have the full protection of the guarantees (of the First Amendment) unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First amendment is the rejection of obscenity as utterly without redeeming social importance”. In this case the court concluded that the obscenity is not within the protected of speech or press”

Constitution of Pakistan under Article 19 has placed an express limitation on freedom of expression. Under the same Article restrictions in the interest of public order, decency and morality can be presented in the country. Section 292 to 294 of the “Pakistan Penal Code”¹⁴⁵ affords grounds of limitations on freedom of speech in the interests of morality and decency. However, “Pakistan Penal Code” does not provide any precise test to explain obscenity. In renowned case of “*Ranjit D.udeshi v.State of Moharashtra*”¹⁴⁶, the Supreme Court of India detailed the test presented in

¹⁴³Mohammad Munir, *The Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973* (P.L.D. Publishers, 1999).

¹⁴⁴*Roth v. United States*, 354 U.S. 476(1957)

¹⁴⁵M.Mahmood, *The Pakistan Penal Code, 1860*. (Al-Qanoon Publishers, 2009)

¹⁴⁶*Ranjit D.Udeshi v.State of Moharashtra*, AIR 881 SC (1965)

“R.v.Hicklin¹⁴⁷” a famous case of England which was regarding deciding the obscenity of a material.

Court indorsed the conviction of a shopkeeper who was indicted under Section 292 of “Indian Penal Code”, for vending and keeping in custody the book titled “Lady Chatterley’s Lover” applying the above-mentioned test, the court declared novel as obscene. The Lahore high court also relied on “Hicklin Test” on “Crown v Saadat Hassan Minto”¹⁴⁸. “Saadat Hasssan Minto” a celebrated Urdu writer, engraved a short story titled “Thanda Gost” in an Urdu Magazine. The accused persons were convicted and sentenced under Section 292 of “Pakistan Penal Code” for in the words of Justice Munir Chief justice “judged by every standard of decency”. The Judge observed in the case that¹⁴⁹;

“It is true that morality and obscenity are comparative terms and what is obscene or immoral in one society may be quite decent and moral in other society. But while considering the question whether certain words or representations are obscene or not, one must apply standards that are current in the society in which those words have been uttered or anywhere else in the civilized world, there can be no doubt that a description of the actions preparatory to sexual intercourse, however graphic or life-like that description may be would be considered obscene”

Chief Justice in Benazir Bhutto case¹⁵⁰ observed about decency and morality in the following words;

“In common parlance the word ‘morality ‘is far vaguer than the word decency. The difficulty to determine 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

¹⁴⁷R.v.Hicklin, QB 360 LR 3 (1868).

¹⁴⁸Crown v Saadat Hassan Minto, PLD 384 Lahore (1952)

¹⁴⁹Mohammad Munir, *The Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973* (P.L.D. Publishers, 1999).

¹⁵⁰Crown v saadat Hassan Minto,PLD 384 Lahore (1952)

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 been able to settle any common code of morality”.

Morality, decency and public order are the basic requirements of a civilized society. However, if these are not properly explained and properly defined than it becomes difficult to regulate the media and society in the country. morality, decency and public order regarding electronic media are discussed in the next chapter on restrictions on freedom of expression of electronic media.

4.2.4.1. Public order, Decency and Morality

PEMRA Ordinance 2002 and Electronic Media (Programs and Advertisements) Code of Conduct 2015 prohibits airing of content which is immoral and indecent in nature. PEMRA Ordinance 2002, under section 20 (c) clears that it will be the responsibility of the licensee to ensure that the programs and advertisements telecasted on broadcast media will not contain pornography, vulgarity, obscenity and decency. This obligation was inserted in the PEMRA Ordinance 2002 in 2007 when it was amended¹⁵¹. Electronic Media (Programs and Advertisements) Code of Conduct 2015 also prohibits telecast of indecent, pornographic and obscene programs.

The word ‘indecent’ is defined in Section 2.1(h) of the code of conduct and it says that the word ‘indecent’ will have the same meaning as assigned in Indecent

¹⁵¹Pemra.gov.pk,, accessed February 1, 2019, <http://www.pemra.gov.pk/>.

Advertisements Prohibitions Act 1963¹⁵². The Indecent Advertisements Prohibitions Act 1963 under Section 2 (b) defines ‘indecent’. However, the definition is not exhaustive one as it uses the word includes instead of means. Definition provides that;

“Indecent includes whatsoever may amount to any incentive to sensuality and excitement of impure thoughts in the mind of an ordinary man of normal temperament, and has the tendency to deprave and corrupt those whose minds are open to such immoral influence, and which is deemed to be detrimental to public morals and calculated to produce pernicious effect, in depraving and debauching the minds of persons¹⁵³”

In August 2017 the controversy aroused about issuance of warning notices to some broadcasting companies by the PEMRA¹⁵⁴. Some of the Parliamentarians alleged that PEMRA is performing the duty of moral policing. However, in case of Independent Media corporation v PEMRA¹⁵⁵ the High Court decided that it is the authority of PEMRA to determine vulgarity, indecency and obscenity. Although PEMRA authority is competent to decide about the complaints and issues related to broadcast media Pakistan but even than exhaustive definition of such terms is required urgently the same was reiterated by a legal expert that if there is no specific definition of obscenity than it becomes very easy for the broadcast media to exploit this weakness in law and broadcast whatever they want. Similarly, a naked sword is awarded to the PEMRA to take notice of any matter it deems fit for action. This difficulty of defining obscenity is even available under the criminal laws of the country.

¹⁵²The Indecent Advertisements Prohibition Act, 1963 (XII OF ...", accessed February 10, 2019, http://moib.gov.pk/Downloads/Ordenances/Indecent_Advertisements_Prohibition_Act.pdf.

¹⁵³The Indecent Advertisements Prohibition Act, 1963 (XII OF, accessed February 10, 2019, http://moib.gov.pk/Downloads/Ordenances/Indecent_Advertisements_Prohibition_Act.pdf.

¹⁵⁴Why PEMRA issued warning to ARY communications, Hum TV and GEO Entertainment. F.NO.2(05)/PR-2015/I, Islamabad: PEMRA, 2017.

¹⁵⁵Independent Media corporation vs PEMRA . PLD 209 Sindh (2017).

The PEMRA is also sometimes accused of moral policing by the human rights organizations and political leaders. There are also several controversies regarding definition of morality and decency when it comes to telecasting on broadcast media in Pakistan. The similar view was adopted by the legal experts in the following words;

“PEMRA has provided a code of conduct for the electronic media but this code is not exhaustive in all aspects. Decency and morality are the important concept and are defined according to the requirements of the society. High court has rightly decided that it the sole authority of the PEMRA to decide the fate of decency and morality issues on the electronic media in the country. However, the standers set by the PEMRA should not be against the standers set by the society. The code of conduct is not an exhaustive document about decency and morality and leaves much to be decided by the authority¹⁵⁶”

PEMRA was criticized by the civil society and politicians on the matters of decency and morality. When PEMRA tried to implement its rules on decency and morality, it was termed as moral policing. The other legal experts and journalists believes that;

“The PEMRA should not work as a moral policeman of the society. It is rather a regulatory and recommendatory body and it should provide the guidance on the matters of decency and morality¹⁵⁷”

Public order, morality and obscenity are the grounds of restrictions of expression under the Pakistani laws. PEMRA has presented the definition of indecent according to “Indecent Advertisement Prohibition Act”. However, this definition is not a comprehensive one especially for broadcast media¹⁵⁸. It leaves the room for mis interpretation and PEMRA is termed a moral policeman by the civil society. It is the requirement of the time that PEMRA should present a new and comprehensive definition of indecent. The definition of Malaysian CMCF content code regarding

¹⁵⁶Interview with legal experts, views of respondent no. 1, 2, and 4

¹⁵⁷Interview with legal expert respondent no. 5 and journalist respondent no. 11

¹⁵⁸Interview with legal expert respondent no. 5 and journalist respondent no. 11

indecent is a comprehensive and has covered all new area of indecency. That definition has explained all relevant matters and provided a definition which is suitable for the current scenario as well. This CMCF content code regarding indecency can be guiding factor for PEMRA content code.

4.2.5 Contempt of Court

The impartial or independent Judicial system is the sine qua non of a healthy society. Therefore, it is crucial that the Judiciary should be safeguarded from all kinds of evils expected to influence the administration of justice. The law of the contempt of court have been drafted in order to protect and preserve the prestige and dignity of the courts.¹⁵⁹The authority to penalize for contempt anyone who hinders the administration of justice is an intrinsic power of judiciary¹⁶⁰. Contempt has been defined as “Contempt of Court” is an expression which is usually synonymous with what is described as defiance to the Court or deriding the authority, dignity or justice thereof. It normally consists in a party committing otherwise than he is ordered to do, or not doing what is commanded or required by the course or order of the Court¹⁶¹”

It is the responsibility of the courts to protects the interest of the public in the due administration of justice¹⁶². For performance of that responsibility the court is entrusted with the power to commit for contempt of court. This authority is provided, not to guard the dignity of the courts against insult or injury but, to vindicate and protect the rights of the public. This authority is also important so that the

¹⁵⁹Tek Chand Sir Bakhshi, *The Law of Contempt of Court and of Legislature. In Collaboration with Harbans Lal Sarin* (Allahabad: University Book Agency, 1949).

¹⁶⁰Contempt of Court I, Daily Times, August 19, 2013, accessed May 13, 2018, <https://dailytimes.com.pk/107914/contempt-of-court-ii/>.

¹⁶¹Dr. A.N.M. Mahmood v. Dr. M. O. Ghani, Vice-Chancellor and Others, PLD 67 Dacca (1967)

¹⁶²The State v. Abdur Rahman, PLD (W. P.) (1957)

administration of justice is not prejudiced, prevented, interfered, obstructed with¹⁶³. This power of the court may appear to be an arbitrary power because the role of prosecutor and adjudicator is combined in one person or body of persons. However, it is a necessary power for the protection of the impartial administration of justice to maintain the majesty of the law.¹⁶⁴

The origin of Contempt by “scandalizing” the court goes to the medieval ages in Britain. It was the time when the courts were measured as representatives of the monarch and were called “King’s Courts or Queen’s Courts”. Thus, any accusation against the courts was treated as an accusation against the sovereign and was made punishable. Where as in The United States has a more liberal dispensation, where only matter that presents a “clear and present danger to the administration of justice is considered contempt¹⁶⁵”.

The Constitution of Pakistan explicitly provides the details of contempt of court for High Court and Supreme Court under Article 204. This Article also keeps the door open for the statute on the subject. Article 204 provides that;

“Article 204: Contempt of Court

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

¹⁶³Delhi Judicial Service Assn. v. State of Gujarat 4 SCC 406,457 (1991)

¹⁶⁴Felix Frankfurter and James M. Landis, "Power of Congress over Procedure in Criminal Contempts in "Inferior" Federal Courts. A Study in Separation of Powers," *Harvard Law Review* 37, no. 8 (1924); doi:10.2307/1329026.

¹⁶⁵Contempt of Court I," Daily Times, August 19, 2013,, accessed May 13, 2018, <https://dailytimes.com.pk/107914/contempt-of-court-ii/>.

- 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 Court¹⁶⁶”

Article 204 of the Constitution provides three different classes of the contempt of court. These can be classified as follows.

- a) “Contempt in the face of the court
- b) Scandalize the court
- c) Prejudicing a fair trial”

In addition to these classes under the constitution, “Contempt of Court Ordinance 2003”, the law on the contempt of court has also presented three different kinds of contempt of court as;

- a) “Civil contempt
- b) Criminal contempt
- c) Judicial contempt”

a) Contempt in the face of the court

Paragraph (a) of clause (2) of Article 204 is attracted under this kind of contempt. It means a contempt by abusing, interfering with or obstructing the process of the Court in any way or disobeying any orders of the Court. It is usually made in the face of Court and there is no need of further evidence for proving contempt of court¹⁶⁷. In such situation judge can move in and punish a man on the spot. Paragraph (a) of clause (2) of article 204 is attracted under this kind of contempt.

b) Scandalize the Court

“Part (b) of clause (2) of Article 204 of the Constitution provides for punishing anyone who scandalizes the court or otherwise does anything which tends to bring the court

¹⁶⁶Sultan Mehmood Dar, *Law of Contempt of Court* (Lahore: Omer Law Book House, 2012).

¹⁶⁷Balogh v. St Albans Crown Court, Q.B. 73(1975)

or a judge of the court into hatred, ridicule or contempt”¹⁶⁸. Thus, to scandalize is to bring the judge of the court or the court into hatred, or contempt. “The Contempt of Court Ordinance 2003” brings this kind of contempt under the umbrella of judicial contempt under Section 2(c) in the following words. “Judicial contempt means the scandalization of a court and includes personalized criticism of a judge while holding of office¹⁶⁹”.

The process of the judicial contempt is presented under Section 11 of the above-mentioned Ordinance of 2003. On various occasions several persons have been convicted by the High Courts and Supreme Courts for committing this category of offence. The famous cases relating to contempt of court in Pakistan includes the removal of Prime Minister of that time “Syed Yousef Raza Gillani”¹⁷⁰ and the case of “Mohsen Tirmizi vs The State”¹⁷¹ who was working as District and Session Judge at “Dera Ghazi Khan (Punjab, Pakistan)”. Tendering unconditional apology is considered as the first defense against the charge of the contempt of court. When the contemnor tenders’ unconditional apology at the first opportunity and the court is satisfied that his regrets and repentance are sincere, he shall ordinarily not be punished. However unconditional apology was not accepted in cases of Nehal Hashmi¹⁷² and Faial Raza Abdi¹⁷³.

¹⁶⁸Shahid Orakzai Vs Pakistan Muslim League (Nawaz) and 8 others,2000 SCMR 1969.

¹⁶⁹Munir Ahmad. Mughal, *Contempt of Court Ordinance, v of 2003: Gazette of Pakistan ... with Selected Rulings on Contempt of Court* (Lahore: Hammad Law Book House, 2004).

¹⁷⁰Contempt of Court Proceedings Against Syed Yousuf Raza Gillani ,The Prime Minister of Pakistan. 909 SCMR (2012)

¹⁷¹Mohsin Tirmizi vs The State,PLD 28 S.C. (1965)

¹⁷²Herald, "Nehal Hashmi: The Loudmouth, Herald Magazine, July 13, 2017, accessed May 13, 2019, <https://herald.dawn.com/news/1153804>.

¹⁷³Faisal Raza Abidi Arrested in Contempt Case,Infoline News, October 10, 2018,, accessed May 13, 2019, <https://infolinenews.com/faisal-raza-abidi-arrested-contempt-case/>.

The irony of the matter is that the law of Contempt as provided under the Constitution and “Contempt of Court Ordinance 2003” did not and cannot stop criticism of the courts. However Supreme Court of Pakistan adopted the approach of judicial restraint and took no action against Benazir Bhutto on that abusive words¹⁷⁴. Historically the highest Court of Pakistan, Supreme Court has entertained some very important cases of contempt of court proceedings against the Prime Ministers of Pakistan and those include “Zulfiqar Ali Bhutto, Mian Muhammad Nawaz Sharif, Benazir Bhutto, Syed Yousuf Raza Gillani and Raja Pervez Ashraf”. Most recently Prime Minister Yousaf Raza Gillani was convicted on charges of contempt of court.

“Contempt of Court Act XVIII of 2011” was enacted inter alia to bail out Prime Minister Yousaf Raza Gillani. The Supreme Court declared new Contempt of Court Act XVIII of 2011 as contrary to Article 3 and 4 of the Constitution. The act was declared as void ab initio¹⁷⁵. Mr. Gillani then Prime Minister of the country was punished for simple imprisonment to sit in the court till the rising of the court on the date of judgment. Subsequently he was disqualified from the membership of National assembly of Pakistan. Disqualification from the membership of National Assembly forced Mr Gillani to leave the office of Prime minister of Pakistan¹⁷⁶.

The similar story was revised against the Danyal Aziz in 2018 and he was punished for scandalizing the court. He was also punished to sit in the court till the rising of court and disqualified from contesting the elections of 2018. The similar episode was

¹⁷⁴Contempt of Court I, Daily Times, August 19, 2013, accessed May 13, 2018, <https://dailytimes.com.pk/107914/contempt-of-court-ii/>.

¹⁷⁵Baz Muhammad Kakar and others v Federation of Pakistan through Ministry of Law and Justice. PLD 870 SC (2012)

¹⁷⁶Contempt of Court I, Daily Times, August 19, 2013, accessed May 13, 2018, <https://dailytimes.com.pk/107914/contempt-of-court-ii>

repeated in Nehal Hashmi case and he was sentenced one-month imprisonment. The cases of Danyal Aziz and Senator Nehal Hashmi also involved the electronic media. Their speeches were broadcasted on the electronic media and subsequently the Supreme Court took *Suo Motu* notice of those speeches. The PEMRA as a regulatory body of electronic media was also called by the court and was directed to proceed against the electronic media for broadcasting such speeches.

The scandalization of court as a class of contempt of court was adopted from the common law principles. However, in 2012 the UK law commission after thorough examination and debate have recommended “that scandalizing the court should cease to exist as an offence or as a form of contempt”¹⁷⁷. The offence has been criticized on the ground of freedom of expression, and it has been argued that judges do not need special protection not given to any other public official. The abolishment of scandalization of court finds support from all over the world. US Supreme Court “Justice Hugo Black stated in *Bridges v California* (1941)”¹⁷⁸ that;

“The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. An enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect”

The US intervenes with free speech only if there is “clear and present danger to administration of justice”. “The EU court of Human Rights” has presented a test for the restrictions to be judged against freedom of expression. This test includes restrictions must be prescribed by law. These restrictions must further the legitimate

¹⁷⁷Law Commission, Law Commission Home Comments, accessed May 13, 2019, <https://www.lawcom.gov.uk/>.

¹⁷⁸*Bridges v California*, 314 U.S. 252 (1941)

aim of administration of justice. The third is necessity of restriction in a civilized society. However, scandalization of court do not fall under any of the above-mentioned tests of restrictions.

There are some matters which needs attention of lawmakers about contempt of court laws in the country. These matters include the scandalization of court as a criminal offence in Pakistan. The similar view regarding scandalization of court was adopted by the legal experts are summarized below.

“Pakistan is in the situation when the when the superior courts are wielding contempt powers as a sword. In such grim situation, there is a need to consider whether the offence of scandalizing the court should exist at all in this day. Scandalizing the court actions is taking ground in the Pakistan¹⁷⁹”.

A rethinking of contempt of court laws especially ridiculing or scandalizing the judiciary is imperious in Pakistan. Originally criminalizing scandalizing court goes back to the judgment of “R v Almon” in 1765 in which scandalizing the court originated as an offence under the common law¹⁸⁰. Justice Wilmot in the case clearly stated that;

“The arraignment of the justice of the judges is arraignment the king’s justice. It is an impeachment of his wisdom and goodness in the choice of his judges and excites in the minds of the people a general dissatisfaction with all judicial determinations”.

Legal experts also stated the history of scandalization of court and the current situation of this offence in UK in following words;

“Pakistan have inscribed in our law this offence which originated under common law. However, the UK Law Commission in 2012 after

¹⁷⁹Interview with legal expert’s respondent no 4

¹⁸⁰Douglas Hay, Contempt by Scandalizing the Court: A Political History on the First Hundred Years, *Osgoode Hall Law Journal*, 1987.

wide consultation recommended that scandalizing the court should cease to exist as an offence or as a form of contempt¹⁸¹”.

Similar voices are raised in the India. India also inherited this contempt of court traditions from the common law. The legal expert stated the situation of India.

“There are several calls to abolish scandalizing of court offence in India. In 2002, the Indian Supreme Court convicted activist Arundhati Roy for scandalizing the court based on an affidavit she made in response to a contempt of court notice for protesting a SC judgment on Narmada Dam. In the affidavit, she questioned the court’s motives for initiating the contempt proceedings. The judgment was criticized severely because instead of protecting the judiciary against the disrepute, it caused an irreparable blow to the integrity of the judiciary”¹⁸².

Legal experts have also provided the reason of abolishment of this offence. He said that;

“Ever since the judiciary entering into the domain of executive power through micro-managing certain high-profile cases and venturing into moral, economic and political decision-making the role of judiciary has been criticized even by the most ardent supporters of the judiciary. Instead of favor, this power is attracting more criticism¹⁸³”.

The other experts stated that

“The courts in Pakistan should not fetter the fundamental right to free expression in the name of justice. Courts should not behave like holy cow demanding blind deference from citizens¹⁸⁴”.

In Pakistan issuance of contempt of court notices has become a routine matter especially on the statements issued on electronic media. Courts should not behave like parties to the matter rather it should be solution to the problem. There is a need to

¹⁸¹Interview with legal experts’ respondent no. 5

¹⁸²Interview with legal experts, respondent no. 3

¹⁸³Interview with legal experts, respondent no. 1

¹⁸⁴Interview with legal experts, respondent no. 2

revise scandalization of court as a criminal offence in the country. Contempt of court is one of the exceptions within Article 19 of the Constitution, dealing with freedom of expression. Article 204 of the Constitution of Pakistan deals with the concept of contempt of court. Article 204 of the Constitution of Pakistan enumerates certain classes of contempt of court leaving the rest to be defined by law. Article 204 should be read with Article 19 to understand bigger picture of the story of restrictions. Article 204 also empowers the State Legislature to enact law related to contempt.

c) Prejudicing a Fair Trial

Clause 2 (c) of Article 204 makes it an offence to do anything or comment by any way that tends to prejudice decision of a case pendant before the honorable court of law. Anything that tends to adversely affect a prejudice matter is considered contempt of court and is unlawful accordingly. The leading case on this matter is “Ch Zahoor Elahi v. Z.A Bhutto”¹⁸⁵. In this case the “National Awami Party (ANP)” has been banned by the government as a political party and a state reference against this political party was pending before the honorable Supreme Court of country for final determination of the case. Ch Zahoor Elahi filed a case of contempt against the then Prime Minister and Supreme Court. The Supreme Court was exonerated from the case, and no action was taken against Prime Minister and Hamood Rehman Chief Justice wrote¹⁸⁶;

“We have to remember that this power to commit for contempt of court is a power which has been vested in the superior courts as an extraordinary power and has therefore to be exercised with great circumspection only where it is absolutely necessary in the public interest to do so. Comments in respect of pending proceedings are treated as contempt to keep the stream of justice pure and unsullied. Only those comments or remarks should therefore be punishable

¹⁸⁵Ch Zahoor Elahi v.Z.A Bhutto,PLD 383 SC(1975)

¹⁸⁶Ch Zahoor Elahi v.Z.A Bhutto,PLD 383 SC(1975)

which really tend to substantially prejudice the hearing of a case or to interfere with the course of justice”.

Supreme Court of Pakistan dealing with contempt of court and fair trial presented some broad and basic principles of the law of contempt in Pakistan¹⁸⁷,

- i. “Committal for contempt of court was a weapon to be used sparingly and always with reference to the interests of the administration of justice. However, when a trial had taken place and the case was over, the judge or the jury were given over to the criticism.
- ii. Judges and courts were open to criticism and if reasonable argument or expostulation was offered against any judicial act contrary to law or the public good, no court could or would treat that as contempt of court.
- iii. One could not compel public respect for the administration of justice by flouting public opinion; judges, like all other public people, must rely upon their own conduct to inspire respect.
- iv. The courts not only in Pakistan but also of foreign jurisdictions, of India, The UK, Australia, New Zealand, Canada, the USA, besides the Privy council, also were slow in pressing into service the contempt law¹⁸⁸”

Prejudicing a fair trial is not only a form of contempt of court, but it also violates the newly inserted principle of fair trial of constitution. The constitution of Pakistan under 18th Amendment added right of fair trial under Article 10-A in the following words¹⁸⁹;

Article 10-A “Right to fair trial;
“For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process”

Prior to passage of 18th Amendment in Pakistan and right of fair trial, Article 4 and Article 9 were present in the Constitution and were used to protect and promote the rights of the individuals. Article 4 states that;

¹⁸⁷Masroor Ahsan v. Ardeshir cowasjee, PLD 823 SC (1998).

¹⁸⁸Ajmal Mian, *A Judge Speaks out* (Oxford: Oxford University Press, 2004).

¹⁸⁹18th Amendment 2010, The Constitution of Pakistan, 1973 Developed by Zain Sheikh, June 10, 2010, accessed January 12, 2018, <https://pakistanconstitutionlaw.com/18th-amendment-2010/>.

“To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Pakistan and no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law”.

Article 9 of the Constitution of Pakistan provided that “no person shall be deprived of life or liberty save in accordance with law”. Credit must be given to our innovative judiciary as they interpreted our constitution Article 4 and 9 in such a way that it equated with the concept of fair trial in Pakistan¹⁹⁰. These interpretations also to some extent filled the vacuum of fair trial provisions in our constitution. “Al-Jihad Trust v. Federation of Pakistan”¹⁹¹ and in “West Pakistan vs. Begum Agha Abdul Karim Shorish Kashmiri”¹⁹² the court decided that guarantees provided under Article 4 are complete like the due process clause American Constitution. The Supreme Court in Al Jihad case affirmed that “right to have fair and proper trial and a right to have an important court or tribunals a well-recognized inviolable right enshrined in Article 9 of the Constitution”¹⁹³. The Supreme Court also reconfirmed the same view under *Manzoor Elahi v Federation of Pakistan*¹⁹⁴.

In contemporary world the media is entrusted with the responsibility of informing public as the public has the right to know about the recent happenings in the world around them. However, this right to know is sometimes surrendered for the administration of justice in the society and in public interest¹⁹⁵. The confrontation between fair trial and freedom of expression is one of such instances when right to

¹⁹⁰Ali Zafar, "Fair Trial, Prospects and Implementation," *Pakistan Law Journal*, 2014

¹⁹¹*Al-Jihad Trust v. Federation of Pakistan* .PLD 324 SC(1996)

¹⁹²*West Pakistan vs. Begum Agha Abdul Karim shorish Kashmiri*,PLD14 SC(1969)

¹⁹³*P.N. Duda vs V. P. Shiv Shankar & Others*,AIR 1208 SC (1988).

¹⁹⁴*Manzoor Elahi v Federation of Pakistan*,PLD 66 SC(1975)

¹⁹⁵Ali Zafar, "Fair Trial, Prospects and Implementation," *Pakistan Law Journal*, 2014.

know and freedom of expression is compromised to provide right of fair trial to the accused. As discussed earlier that the accused has the right of fair trial and media has the right of freedom of expression. In Pakistan the right of freedom of expression is not absolute and restrictions can be applied on freedom of expression.

In Pakistan, the public is always concerned about what is going in the courts, particularly in the cases of constitutional nature and cases involving violation of fundamental rights. “Since the inception of the country, important cases have been decided by the courts and they made an impact on the political life of the country. Because of their importance wide coverage of court proceedings were given to such cases by the media. But this coverage has implications on trial and defeats the cause of justice. Media gives too much coverage to the cases. They leave no stone unturned to prove the fact that persons under arrest have committed the crime. The public presumes them as guilty. But the individuals who becomes the subject of press or electronic media, they may be prejudiced by such exposure. The media coverage poses great threat to the fair trial. The judges are also human beings and they are individual members of this society, they may be prejudiced by such exposure. But the most drastic thing is that if suspects are acquitted in accordance with law then they cannot restore their lost reputation”.

There is plethora of questions that may be raised in respect of above-mentioned discussion. “Does media have the right to report the judicial proceeding? If the answer is in affirmative then what are the limitation? Can media condemn a person before conviction by a court of law? Can media clippings be presented before a court as a piece of evidence? For the above facts, the subject of trial by media has, therefore,

assumed extraordinary importance. There is dire need to chalk out the constitutional limits of freedom of electronic media and their role with respect to judicial proceedings¹⁹⁶. In another important case decided by the Supreme Court states that electronic media commonly sensationalized issues of public importance and deduced guilt before any substantial finding had been recorded against the person undergoing trial or investigation or inquiry, and here this resulted in the mere risk of substantial danger of the judges seized of the matter no longer remaining impartial, the right to fair trial was irreparably lost. Essential component of fair trial was an independent judiciary and one could not turn a blind eye to the fact that comment on a subJudice matter in the media or any other widely circulated publication has at least the potential of having an indirect effect on the minds of the judges seized of the matter¹⁹⁷. Although judges had the ability to ignore any irrelevant considerations while adjudicating a matter, the mere risk or danger of causing prejudice pending proceedings and such risk of substantial danger of pre-judgment was sufficient to trigger the protection of the law with regards to the right of a person to an impartial judiciary, due process and right to put forth his defense before anyone else gave his subjective opinion on the same. Unfortunate there is lack of strict guidelines on the matter¹⁹⁸.

The list of questions on the conflict between freedom of expression and fair trial includes that whether the electronic media in the country has the right to discuss the judicial proceedings? If the answer to this question is positive than what are the limitations of this right of reporting, whether media has the right to condemn the

¹⁹⁶Muhammad Usman Ramzan, "Freedom of Speech and Media Trial in Pakistan," *Pakistan Law Journal*, 2016.

¹⁹⁷Suo Motu Case No 28 of 2018, PLD, SC1(2019)

¹⁹⁸Muhammad Usman Ramzan, "Freedom of Speech and Media Trial in Pakistan," *Pakistan Law Journal*, 2016

accused before the conclusion of trial before the court. These all things highlight the significance of media trial and relationship between the fair trial and freedom of expression in our legal system.

However, these situations raise one important question that which one of the rights will be preferred over the other right? In civilized societies the right of fair trial is preferred over the freedom of expression of the media as pre-trial media deliberations may adversely affect the defendant in the trial. In America in a case titled *Rideau v. Louisiana*¹⁹⁹, a conviction was overturned by the court for adverse media publicity. In USA the right to attend criminal trial is implicit in the guarantees of the First Amendment²⁰⁰. In 1940 the debate arose in USA over the issue of television trials. The media started to provide much coverage to cases which stirred the debate about televised trials. It was assumed that these televised trials are denial of due process. Justice Harlan's in *Estes v. Texas*²⁰¹ said "My conclusions are that there is no constitutional requirement that the television be allowed in the courtroom". The further details of electronic media regulations on contempt of court and fair trial are presented in the next chapter on the same subject.

4.2.5.1. Contempt of Court

Broadcast Media is regulated by PEMRA (Ordinance) 2002 and supported by the PEMRA rules including Electronic Media (Programs and Advertisements) Code of Conduct 2015. PEMRA Ordinance 2002 under section 39.1 authorizes the PEMRA Authority to make rules with the prior permission of federal government to carry out

¹⁹⁹*Rideau v. Louisiana*. 373 U.S. 723 (1963).

²⁰⁰*Richmond Newspapers Inc. v Virginia*. 448 US 555 (1980).

²⁰¹*Estes v. Texas*, . 381 U.S. 532 (1965).

the purposes of the of PEMRA Ordinance 2002. On basis of Section 39.1 the PEMRA Authority has framed the Pakistan Electronic Media Regulatory Authority Rules 2009 and Electronic Media (Programs and Advertisements) Code of Conduct 2015 for carrying out purposes of the ordinance. PEMRA Ordinance 2002 under Section 20 provides the terms and conditions of the license of electronic media in Pakistan²⁰².

Under subsection (d) and (f) of the Section 20 it is the obligation of the licensee to follow the rules and code of conduct made by the authority for electronic media in Pakistan. At the same time Section 15.1 of PEMRA rules 2009 makes it mandatory for programs and advertisements to fully comply the conditions of license under Section 20 of the PEMRA Ordinance 2002, PEMRA rules 2009 and Electronic Media (Programs and Advertisements) Code of Conduct 2015. In addition to contempt of court protection in Constitution and Contempt of Court Ordinance 2003, PEMRA Ordinance 2002 also protects the dignity of courts in Pakistan. PEMRA Ordinance 2002 authorizes the PEMRA to take cognizance of “aspersions” against judiciary of the country. Aspersions are defined under the definition part of PEMRA Code of Conduct for Programs and Advertisements 2015 in the following words²⁰³;

“Aspersions means spread false and harmful charges against someone; to attack the reputation of a person with harmful allegations. However, a fair comment does not mean aspersion”.

Section 3(i) and (j) of the Electronic Media (Programs and Advertisements) Code of Conduct 2015 makes it mandatory that no content will be aired if it²⁰⁴:

²⁰²www.pemra.gov.pk. 2007. http://www.pemra.gov.pk/pemra/pemgov/wp-content/uploads/2015/08/Ordinance_2002.pdf (accessed December 22, 2017).

²⁰³Electronic Media Code of Conduct 2015, Pemra.gov.pk, accessed April 10, 2019, <http://www.pemra.gov.pk/>.

²⁰⁴Electronic Media Code of Conduct 2015, Pemra.gov.pk, accessed April 10, 2019, <http://www.pemra.gov.pk/>.

- a) “Is known to be false; or there exist sufficient reasons to believe that the same may be false beyond a reasonable doubt;
- b) Contains aspersions against the judiciary or armed forces of Pakistan”

Section 20 of Electronic Media (Programs and Advertisements) Code of Conduct also prohibits the airing of any allegations against any person or organization in the following words;

“Licensee shall not air any allegation against any person or organization unless the licensee has credible information justifying such allegation and a fair opportunity to defend such allegation s has been provided to the person or organization against whom allegation is being levelled”²⁰⁵.

If any of the above-mentioned acts is committed by any person on the forum of broadcast media, PEMRA is required to take cognizance against the licensee. It is worth mentioning here that PEMRA can take cognizance and proceed against the licensed broadcasting company. PEMRA do not have the authority to proceed against the person or individual that made the allegations or aspersions. PEMRA can only regulate the electronic media in the country and not individuals presenting their opinions on the different forums of electronic media. PEMRA can revoke the license of the broadcast media channel and impose fine in case of allegations, or aspersions against judiciary.

Section 29 (c) and Section 30 of the PEMRA Ordinance 2002 are relevant for imposition of fine and revoking of license. The High Court refused to intervene on an appeal and declared that the imposition of fine and revocation of license on the ground

²⁰⁵Pemra Code of Conduct, Pakistan Press Foundation (PPF), accessed May 14, 2019, <https://www.pakistanpressfoundation.org/tag/pemra-code-of-conduct/>.

of aspersions against judiciary was justified under the PEMRA Ordinance 2002. The High Court also said that the more care and caution should be maintained while discussing about judges as judges or their representatives cannot come to talk shows to defend themselves²⁰⁶.

It is interesting to mention that despite having a detailed contempt of court laws, PEMRA Ordinance 2002 and rules including Code of Conduct, the contempt of court continues and will remain available. The Constitution (XVIII Amendment Act 2010) added Article 10-A: Right to Fair Trial for the determination of civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process. It is submitted that in view of this Article the law of contempt, which is *sui generis* (shorthand summary procedure), loses its validity. If the foundation is gone, the superstructure is bound to fall. It is apt to recall what Justice Black wrote in the Green case²⁰⁷;

“When the responsibilities of law maker, prosecutor, judge, jury and disciplinarian are thrust upon a judge, he is obviously incapable of holding the scales of justice perfectly fair and true and reflecting impartially on the guilt and innocence of the accused. He truly becomes the judge of his own cause. The defendant charged with criminal contempt is thus denied an indispensable element: the due process of law”

Freedom of expression of electronic media and right of fair trial has direct connection and it cannot be separated. There is a very thin line between the right of freedom of expression and infringement of right of fair trial. Freedom of expression can easily transform into media trial of accused on broadcast media. Broadcast Media is a vibrant

²⁰⁶Neo TV/Fun Messrs Information Network(PVT) Limited v PEMRA through Chairman and others. PLD 48 Islamabad (2017).

²⁰⁷Green v. United States. 355 U.S. 184 (1957).

force in today's world and plays an important role of whistle blowers in the society. However, this right of freedom of expression cannot be allowed to intervene in accused persons rights of fair trial.

- **Right of Fair Trial**

PEMRA Code of Conduct 2015²⁰⁸ under Section 4.3 mentions that;

- 1) "Programs on subjudice matters may be aired in informative manner and shall be handled objectively.
Provided that no content shall be aired, which tends to prejudice the determination by a court, tribunal or any other judicial or quasi-judicial forum".

However, this part is occasionally applied in broadcast media and this portion is not properly defined. Presenting information is the requirement of the law but in Pakistan decisions are made and conclusions are drawn on broadcast media. The trial of the media clearly affects the outcome of the decisions. Dr Asim (a politician) was arrested by NAB on charges of corruption. His investigation videos were released on TV channels and TV shows and discussions were conducted on those videos²⁰⁹. Based on those investigation videos, a compete media trial was conducted, and he was indicted by the media as well. However, later he was released by the Courts.

The similar situation arose in Pakistan in general election. The media broadcasted live scrutiny of nomination documents of contenders by returning officers. These returning officers while in the presence of electronic media started asking irrelevant questions from the candidates. This clearly affected the working of the returning officers in the

²⁰⁸Electronic Media Code of Conduct 2015, Pemra.gov.pk, accessed April 10, 2019, <http://www.pemra.gov.pk/>.

²⁰⁹Airing of Suspects 'confessional Videos' Illegal, Unethical: Nisar," Pakistan - Geo.tv, , accessed June 18, 2019, <https://www.geo.tv/latest/108061-Airing-of-suspects-confessional-videos-illegal-unethical-Nisar>.

elections. A writ petition was presented before the Lahore High Court in this regard. The petitioner contended in the writ that the scrutiny of nominations papers of the candidates is broadcasted live by the electronic media in the country. The returning officers of the elections were asking irrelevant questions from the candidates due to this live broadcast. The plea of the applicant was to stop live telecast of the scrutiny process. The Lahore High court” directed “Election Commission of Pakistan” and returning officers not to allow electronic media to live broadcast judicial proceedings. The above-mentioned case made it clear that even judiciary is affected by the electronic media reporting²¹⁰.

In criminal cases the impact is huge on the lives of the accused. It is a basic principle of criminal law that an accused is termed as innocent unless he is proved guilty. This concept of innocence is shackled when media is presenting news, discussion and even drawing conclusions on the subject. According to Article 68 of the “Evidence Act 1984 (Quannon-e-shahadat)”²¹¹ bad character of the suspect is irrelevant in criminal cases unless pleaded otherwise by the accused.

However, the accused is presented the real culprit and his character assassination is common on electronic media in Pakistan has and. In “Wali Muhammaded Khoso v Federation of Pakistan²¹².” the applicant sought instructions to the Federal government and “Pakistan Electronic Media regulatory Authority (PEMRA)” to restrain Geo News and the anchors of Geo News from continuing their media movement against the

²¹⁰Muhammad Usman Ramzan, "Freedom of Speech and Media Trial in Pakistan," *Pakistan Law Journal*, 2016

²¹¹Liaqat Ali Butt, *Qanun-e-Shahadat* (Rawalpindi: Federal Law House, 2017).

²¹²Wali Muhammaded Khoso v Federation of Pakistan

“President of Pakistan”. According to the application the respondents were busy in the character assassination of the President of the Pakistan. The court held that;

“Article 19 of the Constitution does not entitle the print and 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. They cannot be justification for doing so as right is not absolute nor is exercisable in all circumstances”

In a similar case of “Syed Feroz Shah Gillani V Federation of Pakistan”²¹³, the council of the supplicant referred to several declarations made by peoples regarding the beginning of trial of “General Pervaiz Musharaf” under Article 6 of the Constitution of the Pakistan. The case of Article 6 was pendant before a special court. The petitioner also referred to Article 204.2 of the Constitution “which treats the following actions to be punishable as contempt of court does anything which tends to prejudice the determination of a matter pending before the court”. The petitioner also relied on observations made by the Honorable Supreme Court in Zulifqar Ali Bhutto case²¹⁴, which observed;

“In doing so, we would like to make it clear that we don’t wish to give the impression that this court approves of the making of comments regarding pending proceedings. It is well established rule that when a matter is sub judice concerned should exercise restraint and avoid making any reference to such matters one way or the other and therefore as we have already observed in our first order in the reference itself that this well-established rule of not making comments regarding pending proceedings will, we hope also be observed in by all concerned during the pendency of the reference in this court”.

High Court held in this case that the formulations made by the applicant has a part of force. However, the learned petitioner should first approach PEMRA for redressing of

²¹³Syed Feroz Shah Gillani, Advocate v. Federation of Pakistan .Const.P.56/2015. (Islamabad High Court, 2015).

²¹⁴Zulifqar Ali Bhutto v State. PLD 38 & 53SC (1979)

his grievances. It was further directed that the special court dealing with the cases of Pervaiz Musharaff is a competent court and can take up any such issue under the “Criminal Amendment (special court) Act 1976”. Another case is titled as “President Baluchistan High Court Bar Association v Federation of Pakistan”²¹⁵, wherein it was contended that the electronic media was presenting news items of taking responsibility by different defunct organizations in respect of incident of killings of innocent citizens. This act of electronic media was creating a sense of uncertainty among the peoples and is contrary to section 11-A of “Anti-Terrorism Act 1997”²¹⁶ and PEMRA Ordinance 2002. “The Baluchistan High Court” passed the restraint orders against the media not to broadcast or publish any such news. Later, that order of Baluchistan High Court was confirmed by the Supreme Court of Pakistan.

The Supreme Court of the Pakistan also directed the electronic and print media to follow the provisions of Section 11-A of “Anti-Terrorism 1997”. There are several provisions in several laws which prohibits publications of a pending case. Juvenile Justice System Ordinance 2000 under section 8.1 prohibits the publications of cases involving Juvenile in following words;

“Unless the Juvenile Court specifically authorizes the court proceedings shall not be published in any newspapers, magazine or journal in any form which may disclose the name, address, school or any identifications or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published²¹⁷”.

²¹⁵President Balochistan High Court Bar Association v Federation of Pakistan, etc. . Constitutional Petition 77/2010 (Supreme Court of Pakistan, 2012).

²¹⁶Tariq Parvez and Mehwish Rani. An Appraisal of Pakistan's Anti-Terrorism Act. U.S. Institute of Peace, 2015.

²¹⁷Muhammad Amir Munir, "Juvenile Justice System Ordinance, 2000 - Theory.," *Pakistan Law Journal*, 2007.

In Pakistan two reasons for the trial by the media may be presented. The first is the presentation of loud thinking and observations of the Superior Court judges in the electronic media and press in such a manner that the public come to believe that the person is guilty in that case²¹⁸. The same perception is inserted into minds of prosecution and trial court by the media. Often the merits of the cases are discussed in the talk shows and even conclusions are drawn based on superior court observations of the cases. The second instance is the media trial by the electronic media on its own or on the wishes of some political opponents. Before the final disposal of the cases the talk shows are conducted on the sub-judices matter and conclusions are drawn on the matters²¹⁹. Even the videos of investigations are broadcasted by the electronic media. All efforts are made by the electronic media to present the person as culprit in the eyes of the public and influence the courts and prosecutions.

Most recently the Sindh High Court has taken a Suo-Motu notice of a news flash which showed that a father was vending his daughters to implement the decisions of “Jirga” as it had levied heavy amount on the father²²⁰. The father was forced to sell his daughters to enforce the decision of the Jirga. The court held that the usage of Jirga was against the law of the land. The court further directed the PEMRA and all related authorities to confirm that no photo or name of victims or Children were printed or telecasted as per the provisions of “Sindh Children Act 1955²²¹”.

²¹⁸Ch. Ishfaque Ahmad. Right To Dignity - A .Sine Qua Non.Of Fundamental Rights (A Study In Our Constitutional Discourse) ." *Pakistan Law Journal*, 2012.

²¹⁹Muhammad Usman Ramzan, "Freedom of Speech and Media Trial in Pakistan," *Pakistan Law Journal*, 2016

²²⁰Muhammad Usman Ramzan, "Freedom of Speech and Media Trial in Pakistan," *Pakistan Law Journal*, 2016

²²¹The Sindh Children Act, 1955 [SINDH ACT No. XII of 1955 ..., accessed January 11, 2019, http://www.sparepk.org/2015/pdf/Sindh_Children_Act_1955.pdf.

The reason for such prohibition is the safeguard of the children. These efforts were made to safeguard the reputation of the family. This decision concludes “that the open court rule is not an end itself but a means to promote the rule of law”. Openness of court that defeats the justice and brings the right of fair trial into dispute should not be adopted. The cases of presentations of interrogations videos to the electronic media and then electronic media broadcasting such videos to make reputation of the individuals disputable is very common in Pakistan.

In 2017 PEMRA on the directions of the Honorable Supreme Court of the Pakistan issued a press release No F.No.2 (05)/PR-2015/I in which PEMRA directed to all private TV channels not to air any live show regarding Hudabiya Papers Mills Limited, Lahore and others vs National Accountability Bureau (NAB)²²². In the last sentence of the press release it clearly prohibits that

“No analysis, discussion on the merits or demerits of the case is permitted in Hudabiya Papers Mills Case”.

This notice clearly explains the situation of media trial, right of fair trial and freedom of expression of the broadcast media in the country. However, in all other cases where there is no such direction then the broadcast media is working like a free horse that can eat anything and at any time. The cases of video presentations of interrogations of Mutahida Qoumi Movement hit man Soulat Mirza and Pakistan People’s Party Karachi Chief Dr Asim²²³ are the clear examples of the media trial. On basis of these tapes the TV channels present their shows and condemn the accused persons and reaches up to conclusion much before the decisions of the courts. This is a dangerous

²²²PEMRA Press Release no F.No.2 (05)/PR-2015/I

²²³From The Newspaper, Dr Asim Hussain Case Timeline, DAWN.COM, March 30, 2017, , accessed July 10, 2018, <https://www.dawn.com/news/1323700>.

concept as everyone is required to have full protection of right of fair trial, due process and equality before the laws, but these matters hinder all trials. Legal experts while commenting on media trial and right of fair trial stated that;

“Freedom of expression of broadcast media cannot be granted at the expense of right of fair trial. However, in Pakistan the broadcast media has the habit of doing so. The cases of Soulat mirza who was convicted for murder of Karachi Electric Chief and videos of his confessional statements, Dr Asim cases of corruption and videos of his investigations and most recently the presentation of Khadija stabbing case on TV channels are the prime examples of the issue²²⁴”

Another legal expert about situation of broadcast media stated that

“Media involvement in every matter has become a trend and especially the media trial is the biggest reality of our broadcast media, Khadija case was picked by the media and programs were conducted on that. TV channels asserted the pressure and judiciary was forced to punish culprit. However interestingly the Lahore High Court acquitted the accused”²²⁵

The similar view was adopted by another legal expert

“Media trial has become a biggest issue on broadcast media. The Hudaibya Paper Mills case before supreme court is the prime example of media involvement by way of media trial. The supreme court was forced to declare that no comments will be on Hudaibya Paper Mills case. This highlights the grim situation of the media trial in the country²²⁶”

However, media commentaries on pending cases may hamper the right of fair trial and it may turn out to be media trial. There are several instances when the broadcast media was involved in media trial of the accused and it heavily affected the right of fair trial

²²⁴Interview with legal experts, respondent no. 1

²²⁵Interview with legal experts, respondent no. 3

²²⁶Interview with legal experts, respondent no. 2

of accused in Pakistan. The views of the legal experts were similar on the subject. The legal experts stated that

“Although PEMRA provides that only fair comment is allowed on pending matters but practically the situation is completely different. TV channels not only comment on pending matters but also takes sides of specific parties and even offer verdict on cases. This is the clear indication of interference in the administration of justice system of the country.²²⁷”

The other Legal experts believes that

“broadcast media has the habit of interfering with the pending cases. PEMRA code of conduct provides guidelines for such interference. However, those parts of code of conduct are not properly implemented. The despondent situation of fair trial can be better understood by the statement of the chief justice of Pakistan, when he said that judges of superior courts makes up their mind of cases after watching programs on broadcast media²²⁸”.

No one can be allowed to commit contempt of court. Supreme Court of Pakistan in *Suo moto* case declared that although there is prohibition of presentation of discussion on sub-judices matters in UK but in Pakistan the state has entrusted the responsibility on the electronic media to present discussion with informative way. However, since the inception of fair trial right under the constitution, it has become difficult to offer fair trial to accused in high profile cases. It is mandatory to properly implement fair trial as a contempt of court.

Additionally, the supreme court in *Hudabiya Papers Mills* case has already barred the broadcast media to present analysis and discussion on pending case. The matter is that whether the principle of *Hudabiya Papers Mills* case and UK tradition of prohibition

²²⁷Interview with legal expert respondent no. 5 and journalist respondent no. 11

²²⁸Interview with legal experts, respondent no. 3 and 4

of discussion on cases should be applied to avert media trial and offer fair trial to the accused.

4.2.6 Commission of Offense or Incitement to an Offence

The Constitution of Pakistan under Article 19 prohibits any effort to commit offence or inciting anyone to commit offence. “General Clause Act 1897”²²⁹ under Section 2 (43) has defined offence as “any act or omission made punishable by any law for the time being in force”. Pakistan Penal Code under Section 40 also defines the expression “offence”²³⁰. The underlying principle of this restriction is “that the right of freedom of expression does not extend to a provocation to commit an offence, whether the offence intended to be committed is major or minor, cognizable or non-cognizable”. However, mere approval or admiration of an offence does not necessarily amount to commission or incitement to an offence.

The question before the court was whether part of a book which expressed support or appreciation of any crime or of any person, real or fictitious, tended to incite or encourage the commission of the offence within the meaning of “the Press (Emergency Powers) Act 1931”²³¹. The High Court while deciding a historical case stated²³²,

“We have to look to the circumstances in each case in judging such a tendency via the purpose of the work, the time at which it was published, the class of people who would read it, the effect it would produce in their minds, the effect it would produce in their minds, the context in which the objected words appear and the interval of time between the incidents narrated and the publication of the work”

²²⁹The General Clauses Act, accessed January 10, 2017, <https://indiankanoon.org/doc/192119411>

²³⁰Fazal Zada Khan and Touseef Zada Khan, *Pakistan Penal Code: XLV of 1860: Includes, Comments, Precedents Up-to-date*. (Lahore: Touseef Zada Khan Publications, 2011).

²³¹The Press (Emergency Powers) Act, 1931, Bartleby, accessed February 13, 2019, <https://www.bartleby.com/essay/The-Press-Emergency-Powers-Act-1931-FKGFJ6QKFT8X>.

²³²Kedar Nath Singh vs State of Bihar, AIR 955(1962)

The legislature has the power to impose restrictions on freedom of expression provided the court holds that the restriction imposed is reasonably necessary to prevent incitement to crime. The decision of this issue is of the very essence of the judicial function and while deciding it the court must consider is the nature, extend and duration of the restriction and its relationship with the avowed object²³³. “However, incitement is not mere advocacy or approval of an abstract doctrine, and where there is no danger that such advocacy will be immediately followed by practice, there is no incitement to the commission of an offense”²³⁴.

It is doubtful as the view adopted in Kedarnath case will fall short of the light of the law developed in the America. As discussed earlier in Schenck case that convictions and restraints on freedom of expression as compulsory to prevent grave and immediate threats to national security in war time were upheld. Ordinarily Justice Holmes in the Schenck believed that leaflets would be considered constitutionally valid, but the First Amendment protection could not be extended during war times²³⁵. He said that “the character of every act depends upon the circumstances in which it is done, the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic”.

This is a well-recognized “clear and present danger test” which was thoroughly explained by Justice Holmes in Abrams case. The latest version of this test is known

²³³Hate Speech, Law Commission of India, accessed January 30, 2019, <http://lawcommissionofindia.nic.in/reports/Report267.pdf>.

²³⁴Hate Speech, Law Commission of India, accessed January 30, 2019, <http://lawcommissionofindia.nic.in/reports/Report267.pdf>.

²³⁵Schenck v. United States, 249 U.S. 47, 48(1919)

as “the Branden Bury test” as adopted in *Branden Bury v Ohio*²³⁶. According to this test the state must prove incitement and

- 1) “The speaker subjectively intended incitement
- 2) In context the words used were likely to produce imminent lawless action
- 3) The words used by the speaker objectively encouraged and urged and proved imminent action”.

Hate speech poses vexing and multifaceted difficulties for contemporary constitutional rights of freedom of expression. The regulation of hate speech started after the World War II when the propaganda appeared about the Holocaust accusations against Hitler. This proscription was not only available under international declarations and conventions but also countries like “United Kingdom, Germany and United States of America” adopted similar approach of prohibition of hate speech. USA who was a strong contender of absolute free speech also excluded hate speech from the scope of constitutionally protected expression²³⁷. Hate speech is described as

“A communication that carries no meaning other than the expression of hatred for some group, especially in circumstances in which the communication is likely to provoke violence. It is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, national origin, gender, religion, sexual orientation, and the like. Hate speech can be any form of expression regarded as offensive to racial, ethnic and religious groups and other discrete minorities or to women²³⁸.”

Hate speech can be curtailed under different heads of restrictions provided under Article 19. Public order, incitement to offence and security of state can be legitimate

²³⁶*Brandenburg v. Ohio*. 395 U.S. 444 (1969).

²³⁷Michel Rosenfeld, "Hate Speech in Constitutional Jurisprudence," *The Content and Context of Hate Speech*, doi:10.1017/cbo9781139042871.018.

²³⁸Michel Rosenfeld, "Hate Speech in Constitutional Jurisprudence," *The Content and Context of Hate Speech*, doi:10.1017/cbo9781139042871.018.

grounds for prohibition of hate speech in Pakistan. Supreme Court of India differentiated public order, law and order, and security from each other in the succeeding words²³⁹;

“One has to imagine three concentric circles. Law and order represent the largest circle within which is the next circle representing public order and the smallest circle represents security of state. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State”

In Pakistan legal system many classifications exist which are near to hate speech. Supreme Court in a recent case of Faizabad Sit in by a religious political part stated that persons carrying out violent acts, or advocating or propagating violence, or destroying or damaging property or abusing or resorting to hate speech violated the Article 19 restrictions regarding blasphemy and incitement to commit offences²⁴⁰. Although some of the laws like Pakistani Blasphemy Laws, expressed in Articles 295-298 of the Pakistani Penal Code are controversial to some extent but they have a very explicit definition of religious hate speech²⁴¹.

The other laws of the Pakistan Penal Code related to hate speech in the country are, Section 124A, 153-A, and 505. These Sections of 153-A and 153-B of Pakistan penal code falls under the part VIII which is titled as “Offences against the public tranquility²⁴²”.

“This part criminalize criminalizes the following:

²³⁹Shreya Singhal vs Union of India. Writ Petition No. 167 of 2012.

²⁴⁰Suo Motu Case no. 7 of 2017, PLD 72 SC (2018)

²⁴¹Fazal Zada Khan and Touseef Zada Khan, *Pakistan Penal Code: XLV of 1860: Includes, Comments, Precedents Up-to-date* (Lahore: Touseef Zada Khan Publications, 2011).

²⁴²Fazal Zada Khan and Touseef Zada Khan, *Pakistan Penal Code: XLV of 1860: Includes, Comments, Precedents Up-to-date* (Lahore: Touseef Zada Khan Publications, 2011).

- 1) Promoting enmity between different groups [...] by words, either spoken or written, or by signs, or by visible representations or otherwise, promotes or incites, or attempts to promote or incite, on grounds of religion, race, place of both, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities”.

Article 153-A of the Pakistan Penal Code prohibits enmity amongst different groups.

This section is “explicit and relatively comprehensive in its definition of hate speech, it is restrained in its scope by the vaguely worded section that states that:

- 2) “It does not amount to an offence within the meaning of this section to point but, without malicious intention and with an honest view to their removal, matters which are producing, or tend to produce, feelings of enmity or hatred between different religious, racial, language or regional groups or castes or communities²⁴³”.

Anti- Terrorism Act 1997 of Pakistan²⁴⁴ also deals hate speech and under Section 6.1(b) provides that;

“The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society”

Electronic media has become a game changer when it comes to incidences and the general proliferation of hate speech in recent decades. Further details of this restriction regarding electronic media and issues with that are presented in the next chapter.

²⁴³Fazal Zada Khan and Touseef Zada Khan, *Pakistan Penal Code: XLV of 1860: Includes, Comments, Precedents Up-to-date* (Lahore: Touseef Zada Khan Publications, 2011).

²⁴⁴Tariq Pervaiz and Mehwish Rani, "An Appraisal of Pakistan's Anti-Terrorism Act," United States Institute of Peace, December 29, 2016, accessed March 10, 2019, <https://www.usip.org/publications/2015/08/appraisal-pakistans-anti-terrorism-act>.

4.2.6.1. Commission or Incitement to Commit an Offence and Hate Speech

PEMRA Ordinance 2002, “Electronic Media (Programs and Advertisements) Code of Conduct 2015” have provided prohibition of commission or incitement to crimes. Section 20 (c) of the PEMRA Ordinance 2002 provides that the licensee of broadcast media shall ensure that all programs and advertisements do not contain or encourage violence, terrorism, extremism or militancy²⁴⁵. “Electronic Media (Programs and Advertisements) Code of Conduct 2015” under Section 3.1(h) provides that;

“No content will be telecasted which is likely to incite, aid, abet, glamorize or justify violence, commission of any offence or leads to serious public disorder”²⁴⁶.

“Electronic Media (Programs and Advertisements) Code of Conduct 2015” under Section 8.1 also provides that the licensee shall ensure that;

“Coverage of incidents of accidents, violence and crime shall not incite, glamorize or in any way promote violence or anti-social behavior and such coverage does not prejudice the success of an ongoing security operation”²⁴⁷”

Section 9 of the Electronic Media (Programs and Advertisements) Code of Conduct provides rules for enactments of crimes and presentation of it on broadcast media in Pakistan. It provides that

“Re-enactment;

- 1) Dramatic re-enactment shall ensure same rigors as required for a factual program reporting crime.
- 2) Re-enactment of any sex crime shall not be allowed.
- 3) Standers in respect of entertainment programmes, relating to obscenity and gory scenes shall apply to such re-enactment also”

²⁴⁵PEMRA Press Release no F.No.2 (05)/PR-2015/I

²⁴⁶Electronic Media Code of Conduct 2015, Pemra.gov.pk, accessed April 10, 2019, [http://www.pemra.gov.pk/.](http://www.pemra.gov.pk/))

²⁴⁷Electronic Media Code of Conduct 2015, Pemra.gov.pk, accessed April 10, 2019, [http://www.pemra.gov.pk/.](http://www.pemra.gov.pk/))

This section is interesting as it provides re-enactment which is considered as an attempt to provide ways to conduct different crimes. This part is also considered as inciting for committing crimes. Constitutional law and other laws including the PEMRA Ordinance 2002 and Code of Conduct have discussed this restriction in detail. However, the problem with laws and PEMRA Ordinance 2002 and “Electronic Media (Programs and Advertisements) Code of Conduct 2015” under Section is that they are not properly elucidated and not exhaustive in nature. There is always a room of misinterpretation. The view of the legal experts and journalists are important in this regard. The legal experts believed that incitement to commit offence is an important restriction and this restriction replaced “defamation” as restriction under the constitution. PEMRA also prohibits incitement to violence and incitement to commit offence. However, the thin line between expressing view and inciting is not clear from the code”²⁴⁸. This thin line always create room for misinterpretation and any valid expression can be restricted under this definition. The other legal expert believed;

“Although PEMRA has placed restrictions related with incitement to offence, however the situation remains the same and this part is not properly implemented by the authority in the country. Secondly the clear interpretation is not provided by the authority. Broadcast media must behave responsibly in the country that is already facing the bunch of issues²⁴⁹.”

The journalists believed the PEMRA Ordinance 2002 and “Electronic Media (Programs and Advertisements) Code of Conduct 2015” is restrictive in nature and sometimes it amounts to suppressing of legitimate voices on broadcast media. Presenting news and opinions have become a matter of concern for the whole industry.

²⁴⁸Interview with legal experts, respondent no. 4

²⁴⁹Interview with legal experts, respondent no. 1

The recent example of Arshad Sharif story is the chief illustration of the grim situation of restrictive nature of freedom of expression in the country. Arshad Sharif a famous anchor on ARY TV presented a story on TV on alleged list of Intelligence Bureau (IB) which presented the names of politicians²⁵⁰. However, the IB rejected that alleged list and PEMRA initiated proceedings against the broadcast media company. Even a case was lodged against the Arshad Sharif. Even PEMRA called broadcasting company and served a notice for inciting politician against a law enforcement agency. This episode depicts situation of offences and incitement to commit offence²⁵¹". Another major area of concern regarding incitement to crimes was identified by a legal expert in the following words;

"Section 9 of Electronic Media (Programs and Advertisements) Code of Conduct under Section provides the conditions of Re-enactments of any incident. This re-enactment is always about the criminal act or criminal plan which was carried out by any individuals. This Section provides that same rigorous mechanism of rules must be followed by the makers of re-enactment. However, re-enactments will surely have negative impacts on the minds of ordinary viewers. These are used as an instigating factor in committing crimes. It will attract the provisions of incitement to offence as it may amount to incitement to offence²⁵²".

This Section of re-enactment is one of the biggest areas of concern because it has tendency to condone crimes and automatically incites people to commit crimes. Another respondent stated that Article 19 of the Constitution of Pakistan does not fulfill the threshold for permissible limitations on the right to freedom of expression, set out in Article 19 (3) of "the International Covenant Civil Political Rights²⁵³". Ofcom content code on crime details that "material that might demonstrates or explains

²⁵⁰Naveed Siddiqui, "Pemra Seeks ARY News Response to IB Complaint against 'fake News'," DAWN.COM, October 01, 2017, accessed January 14, 2019, <https://www.dawn.com/news/1361135>.

²⁵¹Interview with Electronic Media Journalist, Respondent no. 11

²⁵²Interview with Legal Experts, Respondent no. 2

²⁵³Interview with Legal Experts, Respondent no. 2, 3 and 4

criminal techniques containing essential details of the techniques must not be broadcasted”. re-enactment will always present s the techniques of crimes and in a society like Pakistan, it is imperative to stop such “trainings” of creation of crimes. The Ofcom approach regarding re-enactment is more suitable for Pakistani viewers.

This restriction of commission to offence and incitement to commit offence was inserted as a restriction of freedom of expression in place of defamation. Previously defamation was measured as a constitutional limitation on freedom of expression. This restriction was introduced to ensure that individual’s freedom of expression cannot be allowed to disturb the basic fiber of the Pakistani society. State policies can be criticized but it must remain within the limitations provided under the law of the country.

- **Electronic Media and Hate Speech**

Freedom of expression is an essence to democratic society and restrictions are subject to judicial scrutiny. Express limitations on freedom of expression are provided under Article 19, “Electronic Media (Programs and Advertisements) Code of Conduct 2105”, other constitutional provisions and some other legislations.

The higher courts have held that hate speech or incitement to offence can only be prohibited when it reaches the threshold of incitement. If the speech does not reach to the level of incitement, then the speech will be a protected one and will not be prohibited by the state. The higher courts in different jurisdictions have refrained from identifying criteria of hate speech. The most relevant part of the legislation for hate speech on electronic media is Section 23 of Electronic Media (Programs and

Advertisements) Code of Conduct, which provides the definition of hate speech. Section 23 of “Electronic Media (Programs and Advertisements) Code of Conduct” defines the hate speech in following words²⁵⁴;

HATE SPEECH;

- 1) “Licensee shall ensure that hate speech by any of its employees or any guest in a program is not aired.
- 2) The licensee shall not relay allegations that fall within the spectrum of hate speech, including calling someone anti-Pakistan, traitor or anti-Islam.
- 3) Where hate speech is resorted to by any guest, the channel and its representative must stop the participant and remind him and the audience that no one has the authority to declare any citizen as a kafir or enemy of Pakistan, Islam or any other religion.

Explanation; Hate speech includes any expression that may incite violence, hatred or discrimination based on religion, ethnicity, color, race, gender, caste, mental or physical disability”.

Hate speech has gained much importance in recent times in Pakistan especially on broadcast media. PEMRA has barred several TV programs and served notices to some channels for violating hate speech clauses. Nevertheless, the issue of implementation of hate speech clause has always remained in debate in Pakistan. It is also criticized for not having proper description of hate speech.

Political hate speech is not added in the definition of hate speech. Hate speech based on political agendas and differences has become a routine matter on the broadcast media. Even the media companies have become partners of political parties and political maneuvering is made by these broadcasting companies.

²⁵⁴Electronic Media Code of Conduct 2015, Pemra.gov.pk, accessed April 10, 2019, [http://www.pemra.gov.pk/.](http://www.pemra.gov.pk/))

The similar view was adopted by Supreme Court of Pakistan in the case of Faiz Abad sit in stated that persons carrying out violent acts, or propagating or advocating violence, or damaging or destroying property or resorting to hate speech despoiled the Article 19 restrictions regarding blasphemy and incitement to commit offences. Interestingly the Faizabad Sit in was supported by some broadcasting companies and the messages of leadership of religious protesters were live broadcasted by those broadcasting groups. The broadcasting companies in order to disturb the government, provided financial as well as provided food to these protesters. This protesting group incited people take law in their own hands and committed severe kind of hate speech against the government and government individuals. PEMRA did not take serious action against them and when the situation worsened, and private property was damaged by their instigation, then the government was forced to take severe action of taking off air all broadcasting companies²⁵⁵.

Similar views were also presented by legal expert while analyzing hate speech. One of legal experts stressed the need of revisit of discriminatory laws and some of hate speech clauses in the following words;

“Hate speech on political basis is not included in the definition. however, in recent times the political hate speech has become the biggest issue on broadcast media. people belonging to different political parties have discriminated and resented hate speech. however, PEMRA does not take actions as it is mostly carried out by members of ruling political party²⁵⁶”.

Another legal expert stated that

“False accusations on political bases have become a habit of the people on the electronic media in the country. These accusations have resulted into violence and even killing of the persons but

²⁵⁵Suo Motu Case of Faizabad Dharna

²⁵⁶Interview with legal experts, respondent no. 5

unfortunately the wrongdoers are not punished. PEMRA does not pay heed to Hate speech on political basis²⁵⁷”.

Similar view of another jurist on the dispersion of hate speech on the electronic media

“It has become a trend of making hate speech against specific community, religion, group or ethnicity. The sad side of the story is that no one is barred from doing so²⁵⁸”

This is an important section of restricting freedom of expression of broadcast media in the country. Hate speech is an emerging issue and trend and is affecting broadcasting media as well. PEMRA has devised rules to deal with it but the matter of political hate speech is not included in the definition.

4.2.7 Defamation in Pakistan

Right to reputation is an important right in modern world. Defamation laws are enacted to safeguard the reputation of individuals in civilized societies. Defamation laws offers an opportunity of redress to the persons whose reputation has suffered an unjustifiable harm by some defamatory action. However, till date there is no precise definition of the “defamation”²⁵⁹.

In *Sim v Stretch*²⁶⁰ Lord Atkin explained the definition by concentrating on defamation action. Furthermore, he also tried to define defamation in words “A statement is defamatory if it tends to lower the claimant in the estimation of right-thinking members of society generally”. To prove defamation, the claimant must prove that the language used is a defamatory one. For proving the nature of language two things are of paramount nature. Firstly, it must identify or refers to the claimant, and secondly it is

²⁵⁷Interview with legal experts, respondent no. 3

²⁵⁸Interview with Electronic Media Journalist, Respondent no. 11 and 12

²⁵⁹*Skuse v Granada Television*, Emlr 278 (1996).

²⁶⁰*Sim v Stretch*, Hl 2 All Er 1237 (1936).

circulated to a third party. Another important aspect of the defamation suit is the presumption of good reputation of claimant. Reputation is divided into professional reputation and creditworthy reputations. Reputation in first instance operates to safeguard professional reputations from vilification. Defamation is divided into two different categories of Libel and Slander. Libel is a defamatory statement in writing and slander is verbal type of defamation which includes broadcasting. Libelous material is permanent in nature or forms part of theatrical performance²⁶¹. It is the authority of the court to decide about the fate of material as falling under the umbrella of defamation or not.

Interestingly in Pakistan the situation regarding right of reputation and defamation laws is in total contrast to English law. As we witnessed that under Article 19 of the original 1973 Constitution of Pakistan, right to freedom of expression and freedom of press were guaranteed subject to reasonable restrictions. Defamation was one of those reasonable restrictions under Article 19. In 1975 Fourth Amendment in Constitution of 1973 was introduced. In this amendment the restriction on freedom of expression in the interest of defamation was replaced with new head of “commission or incitement to commit offence”²⁶².

The jurists are not yet clear about the factual reasons or objectives for exclusion of defamation from the list of restrictions²⁶³. However, some of the writers have surmised that the right protected under Article 19 is directed against the state. Whereas

²⁶¹Ursula Smartt, *Media Et Entertainment Law* (London; New York: Routledge, 2017).

²⁶²Muhammad Abdul Basit, *The Constitution of the Islamic Republic Of Pakistan*. Rawalpindi: Federal Law House, 2017.

²⁶³Muhammad Abdul Basit, *The Constitution of the Islamic Republic Of Pakistan*. Rawalpindi: Federal Law House, 2017

defamation is private wrong rather than public wrong. Another presumption was debated in *Majeed Nizami v Muhammad Rashid*²⁶⁴ in Lahore High Court and Supreme Court of Pakistan. The Lahore High Court discussed this in the following words “that the provisions after the said change widened the scope of freedom of press so that it could serve its purpose without a sword of Damocles permanently hanging on its head”.

However, the Supreme Court of Pakistan and Lahore High Court in the same case also stressed that this freedom is not qualified and fettered freedom. The Lahore High Court said that²⁶⁵;

“The omission of the word defamation thus implies that the press had a qualified freedom to publish any material which came to its notice, though it may be considered by someone to be defamatory of him, particularly regarding public figures against whom people have right to know and form opinion about their conduct, present or past”

Although the scope of freedom of expression enlarged by the exclusion of defamation from the list of restrictions under the Constitution, yet it does not grant license to publish or broadcast anything. It is possible for the state to make laws about defamation in Pakistan²⁶⁶. It is a separate question that under what head those laws will fall. Defamation may endanger public peace and order, or it may be indecent, immoral or even it may incite an offence. Defamation may fall in any of the above-mentioned categories under the restrictions on freedom of expression. However, defamation is an interesting topic for electronic media in Pakistan.

²⁶⁴*Majeed Nizami v Muhammad Rashid* . PLD 514 SC (2002).

²⁶⁵*Majeed Nizami v Muhammad Rashid* . PLD 514 SC (2002).

²⁶⁶Fazal Karim, *Judicial Review of Public Actions: A Treatise on Judicial Review, with Some Important Background Topics ...* (Karachi: Federal Law House, 2018).

It has become habit of people to use the platform of broadcast media to defame other individuals. It is also ironic that PEMRA Ordinance 2002 does not make any reference to defamation under its law. The only reference is under the Electronic Media (Programs and Advertisements) Code of Conduct general principles. Even this code does not explain defamation for broadcast media and no further elaboration is provided. It only provides that “no content is aired which is defamatory as defined in the law for the time being in force”. So, it becomes imperative to have a critical look on defamation laws in the country. The law of defamation in Pakistan is found both in civil as well as criminal law of the land²⁶⁷.

Criminal laws of Pakistan provide punishments for the offence of defamation under Pakistan Penal Code. Defamation under Pakistan Penal Code is discussed under Section 499 of PPC²⁶⁸. This Section makes of three distinct offences. The first offence is that of defamation itself. The second is printing or engraving a defamatory broadcast. The third offence is that of sellers. The rudiments of the defamation crime are;

²⁶⁷Khalid Umar Chauhdry, Defamation., *Pakistan Law Journal*, 2015.

²⁶⁸Section.499. Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said except in the cases hereinafter excepted, to defame that person.

Explanation 1: It may amount to defamation to impute anything to a deceased person, if the imputator would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered disgraceful”.

- 1) Publication or broadcast of material (in any manner: words, written material, signs, visible representations, engraving);
- 2) Imputation regarding a person; and
- 3) The intention to damage or information that this publication will harm person's reputation.

The punishments for the above-mentioned crimes are also presented under the Pakistan Penal Code. Section 500 provides the punishment of defamation as simple imprisonment for a term which may extend to two years, or fine, or both. Section 502 of PPC subjects the selling of defamatory matter to the same punishment as provided under Section 501²⁶⁹.

The civil law on defamation is codified by the Defamation Ordinance of 2002²⁷⁰. This law was enacted when the Constitution was held in abeyance by the then military dictator of Pervaiz Musharraf. Although this was enacted by the ordinance but is a permanent law. Section 4 of the Ordinance defines defamation as;

“Actionable wrong without proof of special damage to the person defamed and where defamation is proved, damage shall be presumed²⁷¹”

While Section 9 of the Ordinance enumerates the defenses and reliefs which the court may grant. The Supreme Court of Pakistan in a famous case of Majid Nizami v Muhammad Rashid declared that the defamation Ordinance is not the entire law on the

²⁶⁹Muhammad Abdul Basit, The Pakistan Penal Code. Rawalpindi: Federal Law House, 2017.

²⁷⁰The Defamation Ordinance, 2002, accessed February 14, 2019, <http://www.punjablaws.gov.pk/laws/2219a.html>

²⁷¹The Defamation Ordinance, 2002, accessed February 14, 2019, <http://www.punjablaws.gov.pk/laws/2219a.html>.

subject. The Court further stated that previous settled principles of defamation cases and defamation principles adopted in English as well American jurisprudence will be helpful to Pakistan authorities while deciding the cases of defamation. Under Section 5 of the Ordinance defenses to the defamation proceedings are discussed. The Civil Procedure Code and Qanon e Shahadat Ordinance 1984 (Evidence Act) will be applied for procedural purposes in defamation cases²⁷². The court of district judge will entertain the suits for defamation and the expeditious method will be adopted for resolution of defamation matters²⁷³. Even the law has provided the timeline for the disposing of the defamation cases.

The State v. Pakistan Medical and Dental Council, Islamabad Muhammad Munir Khan, J²⁷⁴; “Freedom of expression does not give license to damage the honor and prestige of an individual or of the country and the nation”. Although the civil as well criminal laws of defamation are operating in the country, but the problem of defamation and its associated issues remain a big problem. Defamation on electronic media is one of the most debated of issues in current times in Pakistan. The recent allegations of Dr. Shahid Masood (a famous TV anchorperson) in a famous Zainab rape and murder case²⁷⁵ and the cases of Geo Television Network against ARY Televisions Network have once again highlighted the grim situation of defamation laws in the country²⁷⁶. The allegations of Dr. Shahid Masood were of such a serious nature that even the Chief justice of Pakistan was forced to take Suo Motu notice of allegations under Article 184/3 of the Constitution. However, the allegations proved

²⁷²Liaqat Ali Butt, *Qanun-E-Shahadat* (Rawalpindi: Federal Law House, 2017).

²⁷³Saqib, *Defamation Ordinance, 2002* (Rawalpindi: Federal Law House, 2017).

²⁷⁴State v. Pakistan Medical and Dental Council, Islamabad, CLC 1500 (1990)

²⁷⁵“Top Court Suspends Shahid Masoods TV Show for Three, accessed May 10, 2019, <https://tribune.com.pk/story/1664747/1-sc-suspends-dr-shahid-masoods-tv-show-3-months/>

²⁷⁶Mir Shakil-Ur-Rahman v ARY Network Ltd, EWHC 3110, QB(2016).

to be just allegations so far and those were politically motivated. The Supreme Court decided that the allegations of Dr. Shahid Masood were false and misleading and suspended him for 3 months²⁷⁷.

Another important case which highlighted the defamation law weakness in the country is Geo TV case against ARY TV. The case was about defamation of Mir Shakelur Rehman the Editor-in-Chief of Jang/Geo Group by the ARY news. GEO and ARY are two different TV channels operating in Pakistan but also have landing rights in UK. In 2013-14 more than 24 programs were telecasted by the ARY in which the Editor in Chief of Jang/Geo group was labelled as “traitor of Pakistan who had conspired with Indian intelligence agencies and the CIA to publish fabricated stories maligning Pakistan’s armed forces.²⁷⁸” Geo TV and Jang group sued ARY TV Network in over 15 cases in Pakistan and one case in the UK. Ironically the cases in Pakistan are still pending before the court and the case was decided in UK years ago.

The Judge in United Kingdom decided in the favor of Mir Shakeul Rehman. Justice David Eady while pronouncing judgment found that the GEO TV was “singled out for persistent abuse over a year-long period”. Simultaneously judge fined ARY 185,000 UK pounds. Justice David while clarifying the logic behind such a huge amount of fine remarked “the sum I am awarding should be enough to convince any fair-minded observer of the baselessness of these serious charges²⁷⁹”. The lawyer of the firm presenting GEO TV after conclusion of case remarked “this ground-breaking case has

²⁷⁷Supreme Court Orders Ban on Dr. Shahid Masood’s TV Program, accessed May 14, 2019, <https://www.samaa.tv/news/2018/03/supreme-court-orders-ban-dr-shahid-masoods-tv-program-three-months/>.

²⁷⁸The Newspaper's Staff Correspondent, Case Registered against TV Channel, DAWN.COM, August 27, 2013,, accessed February 14, 2019, <https://www.dawn.com/news/1038671>.

²⁷⁹Mir Shakil-Ur-Rahman v ARY Network Ltd, EWHC 3110, QB(2016)

shown that broadcasters cannot get away with transmitting false allegations. And if they do, they can be ordered to broadcast a summary of the judgment against them”. He concluded that “it’s a good day for people trying to protect their reputation from unfounded attacks”.

However as discussed earlier that more than 15 cases were initiated in Pakistan on the same allegations of defamation, but those cases are still pending before the judiciary. The Defamation Ordinance 2002 under Section 14 provides in the following words “court to decide the cases expeditiously- the court shall decide case under this Ordinance within a period of ninety days” this period of limitation for decision of cases was fixed in 2012 by Amendment. However as pointed out earlier that the situation remains the same. The similar view was highlighted by the leading lawyer in an interview in the following words;

“Although the time limit is provided for disposal of defamation cases under the Defamation Ordinance 2002, but those deadlines are rarely achieved in Pakistan. The case of GEO TV against ARY TV is a clear example of such time delay mechanism.²⁸⁰”

The same approach was reiterated by a PEMRA Official about pendency of case before judiciary in the following words;

“Whenever any action or even notice is served to a private TV channels, the TV channels approaches the higher courts and receives stay order against the orders of the PEMRA. Ironically those stay orders continue for indefinite periods²⁸¹”.

This is a very serious thing about defamation cases and other matters. If the cases are not disposed of in stipulated time frame than it will give rise to increase in number of

²⁸⁰Interview with legal experts, respondent no. 1

²⁸¹Interview with PEMRA official, respondent no. 6

cases and will adversely affect the rule of law principle in the country. The famous case of BOL TV network revocation of license is another important case about pendency of cases. BOL TV license was revoked by the PEMRA on 3rd of May 2017 on refusal of security clearance from the Interior Ministry²⁸². However, the BOL TV network approached the Sindh High Court and was granted interim relief of restoration of services of channel till the final disposal of case. But the case is still pending before the court and BOL TV is still on air in the country. Even the notices issued by the PEMRA are challenged before the courts and courts grant injunctions on those notices till the decision of cases. The pendency of cases in Pakistan is a big problem.

Although truth is considered as the defense for defamation but the notion of fake news in the broadcast media remain a big problem in the country. The issues of Dr Shahid Masood, Geo TV cases and all other cases are not decided by the PEMRA rather sent to courts for final determination of the cases. It takes much time to dispose of the cases as compared to the decision of the PEMRA regarding it. The Defamation Ordinance 2002 also provides the minimum amount of damages. However, it is criticized that as “Pakistan is poor country so in addition to minimum amount of damages, a maximum amount of damages is not fixed under the law. Legal expert commented on the non-fixation of maximum amount of damages stated that;

“Sensationalism gives rise to defamation issues on electronic media. Common man doesn’t have the capacity to initiate defamation cases so this law of defamation on electronic media has become tool in the hands of rich people²⁸³”

²⁸²PEMRA Revokes Bol News Licence, Operators Asked to Take, accessed May 10, 2019, <https://tribune.com.pk/story/1399859/pemra-revokes-bol-news-licence-operators-asked-take-channel-off-air/>.

²⁸³Interview with legal experts, respondent no. 3

The law must be approachable to the poor and the law must not differentiate between the rich and poor. The reputation of poor and the rich is of same value to both. PEMRA is authorized to investigate allegations of defamation on electronic media in the Pakistan. The PEMRA clearly mentions in Electronic Media (Programs and Advertisements) Code of Conduct that the content should not be defamatory in nature. However, whenever PEMRA takes notice of such violations, it is accused of curbing the voice of the press and is termed as anti-freedom of expression. Journalist considers that;

“Defamation cases should not be initiated against anchorpersons and journalists as the stories presented by the journalist can bounce back. If the defamation cases or criminal proceedings are initiated against the journalists, then media will not be able to highlight the real issues of the society²⁸⁴”

Journalists also believes that they are the whistle blowers of the society and if any attempt is made to silence the voice of whistle blowers than there will be no one to expose the malpractices of the society and especially governments. However, the opinion of the lawyers and government official is somewhat different from the opinion of the journalists. One of the leading lawyers said that;

“In cases involving electronic media the broadcasters as well as the presenter or anchorperson should also be held liable²⁸⁵”.

In case of GEO TV vs ARY TV, the Ofcom had revoked six licenses of ARY TV network in United Kingdom after the ARY channel went into liquidation and it had applied for bankruptcy. It all started after ARY lost its defamation case of 3million pounds against GEO at London high court. This case forced the ARY to leave the UK

²⁸⁴Interview with PEMRA official, respondent no. 7

²⁸⁵Interview with Electronic Media journalist, respondent no. 10

electronic media market, but the anchorperson was just forced to leave the job in ARY and work in another channel. The PEMRA official is of the same opinion;

“The channels well as anchorpersons should be held accountable for defamation cases and only by this way the defamation issues can be reduced on electronic media in Pakistan²⁸⁶”

Another cause of defamation is lack of inhouse editorial boards of media houses.

Lawyers as well PEMRA officials believe that;

“There is lack of inhouse editorial body in electronic media houses. Editorial bodies of the media houses provide an opportunity to the channel administration to look deep into the matter. It also provides an opportunity to fully understand repercussions of the cases if material is telecasted by them²⁸⁷”

It is the need of the time to revisit these laws and every effort should be made to properly implement these laws in the country. Recently the Federal Minister on Information wrote a letter to Supreme Court of Pakistan for appointment of a special judge for matters involving electronic media and defamation cases in country²⁸⁸. The matters of defamation on electronic media and the pendency of cases involving electronic media requires an urgency of actions. The researcher believes that the idea of Media court is workable in our current media landscape. Defamation has become a trend on broadcast media, and it goes without notice of relevant authorities. Even if the cases are reported in courts than those are not settled as there is huge pendency of cases in normal courts. It was reiterated in Geo/ARY story. Secondly media court can also solve the matter of pendency of cases involving broadcast media in the country.

²⁸⁶Interview with PEMRA official, respondent no. 9

²⁸⁷Interview with legal experts, and PEMRA officials, respondent no. 3, 4, 7 and 8

²⁸⁸Our Correspondent, "SC Asked to Appoint Judges to Implement Defamation, Derogatory Laws," The news, March 31, 2019,, accessed July 16, 2019, <https://www.thenews.com.pk/print/451561-sc-asked-to-appoint-judges-to-implement-defamation-derogatory-laws>.

It is a good idea to appoint session judges after consulting respective High courts before the referral to matter to High courts. It will reduce the burden on the normal courts and will also provide speedy disposal of cases involving defamation and electronic media in the country.

4.2.8 Right to Privacy

Freedom of expression includes right not only to speak, but includes right to print, publish, distribute, receive information. But whether this right is unrestricted, unlimited and the journalists and the media are given a total freehand to publish or broadcast anything they desire? Whether right of freedom of speech and expression guaranteed under Article 19 of the Constitution of Pakistan can simply be exercised to invade into the privacy of life, which is exclusively reserved to an individual? On the question, as to whether, electronic or print media can publish or broadcast any such news which affects the individual's right of privacy, it deems fit to consider the Universal Declaration of Human Rights in Article 12,

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks²⁸⁹”

It means the individual's right to control dissemination of information about himself. It is his own personal possession²⁹⁰. It is well accepted that one person's right to know and be informed may violate another's right of privacy. In other words, disclosure of certain facts, events, actions, photographs, videotapes, in any form of media, print or

²⁸⁹Kathy Furgang and Frank Gatta, *Understanding Your Right to Privacy* (New York: Rosen Pub. Group, 2012).

²⁹⁰Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy [the Implicit Made Explicit]*, *Philosophical Dimensions of Privacy*, doi:10.1017/cbo9780511625138.005.

celluloid, internet would cause embarrassment, agony, emotional stress, to a person of reasonable sensitiveness. 'Right of Privacy' in other words can be said "to be let alone"²⁹¹. What is an information to others according to a journalist, could be a personal and sensitive information to an individual. The boundary, between freedom of media and privacy of individual is the "dividing line" and if the media, crosses the line of boundary, the invasion starts.

To strike a balance between these two competing interests is difficult. Right of privacy, vis-a-vis right of expression and information to be furnished to the public, in other words, the right of the media, should be with reference to the kind of information, which the law permits. Constitution does not guarantee absolute freedom or absolute protection to the media²⁹². Media laws have also put several restrictions on media about right of privacy. Although right of privacy is protected under the Constitution and there are several articles which directly or indirectly discusses about right of privacy but privacy as an express restriction is not available under Article 19²⁹³. In broadcast media the right of privacy as a restriction has great importance.

PEMRA Ordinance 2002 and “Electronic Media (Programs and Advertisements) Code of Conduct 2015” also grants much attention to right of privacy. Section 20 of PEMRA Ordinance 2002 provides the conditions of the license of electronic media in the country. Section 20(d) makes it mandatory for the licensees to follow the codes of programs. Based on Section 39 of the PEMRA Ordinance 2002, the Code of Conduct

²⁹¹Raymond Wacks, *Privacy: A Very Short Introduction* (Oxford: Oxford University Press, 2015).

²⁹²Andrei Marmor, "What Is the Right to Privacy?" *Philosophy & Public Affairs* 43, no. 1 (2015): , doi:10.1111/papa.12040.

²⁹³Mohammad Munir, *The Constitution of the Islamic Republic of Pakistan: Being a Commentary on the Constitution of Pakistan, 1973* (P.L.D. Publishers, 1999).

for programs and advertisements was made in 2009 and later modified in 2015 and named as “Electronic Media (Programs and Advertisements) Code of Conduct”. Section 3.4, Section 4.4, Section 4.7(d) and Section 11 of the Electronic Media (Programs and Advertisements) Code of Conduct explicitly protects privacy and its related terms. The above-mentioned section provides that²⁹⁴;

“Section 3; Fundamental Principles: the licensee shall ensure that;
3.4. Private behavior, information, correspondence and conversation should not be brought into public domain unless there is a public interest that outweighs the protection of privacy.

Section 4: News and current affairs programs: The Licensee shall ensure that;

4.4. In talk shows or other similar programs, the licensee and its employees shall ensure that:”

a) “Does not intrude into private life, grief or distress of individuals unless such individuals are a public figure and such intrusion is justifying in the public interest.

Section 11; Privacy and personal data protection: the licensee shall ensure that”; -

11.1. “Door stepping for the factual programs does not take place unless a request for an interview has been refused and door stepping is warranted by identifiable public interest.

Explanation; Door Stepping

Door stepping means the filming or recording of an interview or attempted interview with someone or announcing that a call is being filmed or recorded for broadcast purposes without any warning.

1) No interview is conducted or attempted to be conducted without consent of the interviewee, save in public interest”²⁹⁵.

In addition to general principles on right of privacy the protection of children and their privacy is an important issue on electronic media in Pakistan. “PEMRA Electronic Media (Programs and Advertisements) Code of Conduct” do mention about the protection of children in the following words under section 13²⁹⁶.

²⁹⁴Yasmeen Aftab Ali. A Comparative Analysis of Media & Media Laws in Pakistan . Lahore : Sang-e-Meel Publications , 2012.

²⁹⁵(yasmeen)

²⁹⁶Interview with PEMRA Official, respondent no. 7

“Protection of children;

- 1) Programs and advertisements meant for children shall not-
 - a) Be presented in a manner which may be disturbing or distressing to children or which may in way adversely affect their general wellbeing.
 - b) Be frightening or contain violence or
 - c) Be deceptive or misleading or against commonly accepted social values;
- 2) The licensee shall include proper warning through a disclaimer before airing any content that may not be suitable for children.
- 3) Due care must be taken over the physical and emotional welfare and the dignity of persons under eighteen years of age who take part or are otherwise involved in programs. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen years in loco parents”.

Protection of the children under in the broadcast media can be divided into 3 parts. The first deals with the programs and advertisements meant for the children. The second deals with issuance of appropriate warning before airing any content that may not be suitable for the children. The third parts deals with the physical, emotional welfare and dignity of the working children in the broadcast media. Interestingly in Pakistan the protection of the children is not addressed in these areas. There is no limitation on the broadcast media to restrict any program which may harm the children. It is only stated that a warning may be issued by the concerned channel. Prohibition of such programs which may adversely affect children is not provided. Interestingly watershed policy on the roadmap of Ofcom is not provided in the PEMRA code of conduct. A legal expert who was interviewed observed the same problem with the law in the following words;

“The watershed policy is an important pillar of regulations regarding broadcast media. However, there is no such mechanism or policy in Pakistan. Only a reference to warning is presented under the PEMRA code of conduct.”²⁹⁷

²⁹⁷Interview with legal experts, respondent no. 1 and 3

Another legal expert believed

“It seems that it is not the policy of the PEMRA to protect the children and under eighteen persons. It has not mentioned any strict provisions which protects the rights of children or even has not restricted electronic media to telecast such content which may impair the physical, mental or moral development of the children.”²⁹⁸”

Another legal expert believed that

“In England the ofcom has provided the term watershed and it is mandatory for the TV channels to follow that time of watershed. Though, in Pakistan there is no such timing of watershed. The code of conduct does mention protection of children but have not made practical arrangements for such protection”²⁹⁹”

The protection of children in this rating-oriented broadcast media is difficult task but efforts must be made to protect them. Freedom of expression never be permitted to compromise on the basic human rights of the children as they are the most beautiful creature of the world. PEMRA has discussed the issues of privacy of children that in case of programs not suitable for children, a warning should be issues prior to broadcast. In today’s busy world it becomes very difficult to keep a constant vigilance over the TV programs and on children. In order to settle such issues, the Ofcom code has provided the policy of ‘watershed’ which provides that content not suitable for children should be presented after a specific time. However, in Pakistan there is no such policy. If PEMRA can investigate this policy than the privacy and care of children can be achieved.

The practice of broadcast media and permission of door stepping in public interest by PEMRA Ordinance 2002 and “Electronic Media (Programs and Advertisements) Code

²⁹⁸Interview with legal experts, respondent no. 2, 3, and 4

²⁹⁹Interview with legal experts, respondent no. 5

of Conduct” is contrary to several provisions of law. While using these laws and code of conduct, it has become a habit of electronic media to intervene into the life of other persons. Moral policing, protection of children, infringement of privacy in the name of public interest and the privacy of public officials are the main causes of concern in broadcast media in Pakistan. One of the legal experts while discussing the importance of protection of children stated that;

“PEMRA law don not make any reference to protect the privacy of the children. Material that might seriously impair the physical, mental or moral development of people under eighteen is not prohibited from telecast³⁰⁰”

While commenting on the role of broadcast media and right of privacy the legal expert stated that;

“Electronic media tend to poke its nose in every matter and privacy of individuals is no exception to this. The single point for intrusion is public interest defense. However, it is interesting that it is the reporter of the TV channel that decides about the public interest”³⁰¹.

Another area of concern was raised by another legal expert that;

“The other matter of concern is the Door steeping by the broadcast media. PEMRA allows door steeping. However, it is a big issue as it confronts the right of privacy of individual. Every individual can live his life with dignity and includes the right to say no to any thing at the same time freedom of expression does not mean pushing someone else to do something against his wishes. No one can be forced to do which he is not willing to do. Door steeping is the asking someone to do which he is not willing to do.³⁰²”

³⁰⁰Interview with legal experts, respondent no. 1

³⁰¹Interview with legal experts, respondent no. 2

³⁰²Interview with legal experts, respondent no. 3

▪ **Different laws Relevant to Right of Privacy**

Article 4 and its relationship with privacy is discussed in first instance³⁰³. Article 4 of the Constitution discusses the due process of law in Pakistan. Under sue process of law, a refence is made to right of privacy under 4.2 (b) as “No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law³⁰⁴”. US Constitution has an identical section under Fifth and Fourteenth Amendment and it provide that neither US nor state governments shall deprive any person of life, liberty, or property without due process of law³⁰⁵. Justice Hamoodur Rehman in Begum Shorish Kashmiri case stated that it is the inalienable right of every citizen to be treated in accordance with law and only in accordance with law. Life of person includes quantitative as well qualitative element of life³⁰⁶.

Privacy is the bedrock of the liberty and liberty of individuals is mainly dependent upon allowing human to exercise the right of privacy. The body, property and reputation of individuals is closely associated with privacy and have strong linkages thereof³⁰⁷. The 1973 Constitution of Pakistan extends further in this section of “fundamental rights” to reaffirm the huge importance given to life and liberty in Pakistan under Article 9 of security of persons. Security of person has a direct connection with right to privacy. It is also the first fundamental rights. The words used in Malaysian Federal Constitution are same as Pakistani words and it says under

³⁰³Shaukat Mahmood, *The Constitution of Pakistan: (as Amended Upto Date)*. Pakistan Law Times, 1996.

³⁰⁴Hamid Khan and Muhammad Waqar Rana. *Comparative constitutional law*. Karachi: Pakistan Law house, 2008.

³⁰⁵(hamid khan, waqar rana)

³⁰⁶Government of West Pakistan And Another V. Begum Agha Abdul Karim Shorish Kashmiri PLD 1969 Sc 14

³⁰⁷Privacy as Life, Liberty, Property, *Ethics and Information Technology* 5, no. 4 (December 2003)

Article 5 that “No person shall be deprived of his life or personal liberty save in accordance with law”.

The provisions of the Article 5 of the Pakistani Constitution and Article 21 of the Indian Constitution and Article 5 of the Malaysian Federal Constitution amounts to a declaration that no person is to take life and liberty of another person without the authority of law³⁰⁸. The right to life can never be restricted to just vegetative life or animal existence. Life means much more than just physical survival of the individual³⁰⁹. The right of life must include right to live with human dignity³¹⁰. Human dignity includes necessities of life like adequate nutrition, clothing, shelter and other necessities of life. The same can be witnessed in US constitution under provisions of Fifth and Fourteenth amendments. These provisions say that no person shall be deprived of his “life, liberty or property without due process of law”³¹¹. The US Supreme Court in *Munn v Illinois*³¹² declared the right to life in the following words;

“By the term life as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and facilities by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with outer world”

In “*Employees of Pakistan Law Commission v Ministry of Works*”, the Supreme Court of Pakistan concludes that the right to life includes the right of enjoyment of life and maintaining adequate level of living. The Constitution doesn’t stop here; it clearly

³⁰⁸Durgadas Basu, Introduction to the Constitution of India. Lexis Nexis India, 2013.

³⁰⁹Francis Coralie Mullin vs The Administrator, Union ,AIR 746 (1981).

³¹⁰Maneka Gandhi vs Union Of India,AIR 597 (1978)

³¹¹Ibid

³¹²*Munn v. Illinois*,94 U.S. 113 (1876)

identifies the right to privacy of a person and the inviolability of dignity of every person in Pakistan to be a fundamental right, thus guaranteeing the privacy of home³¹³.

Article 14 (1): Inviolability of dignity of man

“The dignity of man, subject to law, the privacy of home, shall be inviolable³¹⁴”

Dignity of human being is the center of debate of right of privacy in any system of law. There are a lot of personal life aspects that a person doesn't want to share with public³¹⁵. The decision of United States Supreme Court in “Roe v Wade” is the starting point of debates regarding the right of privacy. In this case the Supreme Court declared that the right of privacy “is broad enough to encompass a woman's decision if to terminate her pregnancy”³¹⁶. This decision gave expression to a sense of moral individualism that is deeply rooted under the American constitution and culture. The decision of Roe v Wade was also widely criticized by the American society, which highlighted the strong presence of countervailing traditions in the society. The right of privacy is the most antagonistic area of constitutional law in America³¹⁷.

Article 14 of Pakistan constitution is divided into two parts. Article 14 (1) is further divided in two parts. The first part of Article 14 (1) deals with dignity of man while the second is related with privacy of home. Supreme Court of Pakistan declared that the dignity of man is an absolute right and is not subject to law but is an unqualified

³¹³Employees of Pakistan Law Commission v Ministry of Works, SCMR 1548 (1994)

³¹⁴M Mahmood, The Constitution Of Pakistan 1973. Al-Qanoon Publishers , 2010.

³¹⁵Ch Ishfaque Ahmad, Right to Dignity - A Sine Qua Non. Of Fundamental Rights (A Study In Our Constitutional Discourse, *Pakistan Law Journal*, 2012.

³¹⁶Roe v Wade, 410 U.S. 113 (1973)

³¹⁷Roe v. Wade. 410 U.S. 113 (1973)

guarantee³¹⁸. Supreme Court of Pakistan in “Benazir Bhutto v President of Pakistan”³¹⁹

declared that;

“The inviolability of privacy is directly linked with the dignity of man. If a man is to preserve his dignity, if he is to live with honor and reputation, his privacy whether in home or outside the home has to be saved from invasion and protected from illegal intrusion”

Salem Akhtar judge further stated in the same case of “Benazir Bhutto v President of Pakistan”³²⁰

“According to our history and belief, under Islam, great value has been attached to the dignity of man and privacy of home. If a person intrudes into the privacy of any man, pries on the private life, it injures the dignity of man, it violates the privacy of home. It disturbs the peace and tranquility of the family and above all it puts such persons to danger of being black-mailed”

The privacy of Home as protected under Article 14(1) was also discussed in the landmark case of Benazir Bhutto³²¹. The judge on privacy of home stated that;

“The dignity of man and privacy of home is inviolable, it does not mean that except in home, his privacy is vulnerable and can be interfered or violated. Home in literal sense will mean a place of abode-a place where a person enjoys personal freedom and feels secure. The emphasis is not on the boundaries of home but he person who enjoys the right wherever he may be. The term ‘Home’ connotes meaning of privacy, security and noninterference by outsider which a person enjoys”

Constitution of Pakistan further makes it clear under Article 8 that the fundamental rights as enshrined under the Constitution are of paramount importance, and no law can be made in contravention to those fundamental rights. If any law is made in contravention to fundamental rights that law will be void to the extent of such

³¹⁸Benazir Bhutto v President of Pakistan, SCMR 1028.1030(1994)

³¹⁹Benazir Bhutto v President of Pakistan, P.L.D. 1998 S.C. 388

³²⁰Benazir Bhutto v President of Pakistan, P.L.D. 1998 S.C. 388

³²¹Benazir Bhutto v President of Pakistan, P.L.D. 1998 S.C. 388

contradiction. Article 14 and Article 9 of the Constitution clearly affirms the sacred status of dignity of man and the also the relationship between the privacy and dignity of human beings³²². The landmark case of Benazir Bhutto reiterated one more important thing that the center of all protections is the “human being” himself. Privacy of home, defamation and all other things are made for human being. However, for human beings the first and paramount thing is the dignity of human beings and all things comes secondly³²³.

State has enacted several laws related to restricting freedom of expression in the country. Pakistan Penal Code is the primary law on the criminal law in the country. Although PPC was initially enacted under the English rule in subcontinent in 1860 but was modified according to the requirements of the time. Several provisions of Pakistan Penal Code are directly or indirectly related with the right of privacy in the country. Pakistan Penal Code prohibits criminal trespass and guarantees privacy of home³²⁴. Sindh High court in “Shariq Saeed v Mansoob Khan” declared³²⁵;

“Freedom of speech and expression is one of those fundamental rights which are measured to be the corner stones of democratic institutions. Right of freedom of speech and expression carries with it the right to publish and circulate one's idea, opinion and views with complete freedom and by resorting to any available means of publication. Right of freedom of speech and expression is not unfettered and unbridled---Absolute and unrestricted such 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, it is also provided under Art. 14 of the Constitution, that dignity of man, subject to law, the privacy of home are inviolable. Such principles are required to

³²²Yasmeen Aftab Ali. A Comparative Analysis of Media & Media Laws in Pakistan . Lahore : Sang-e-Meel Publications , 2012.

³²³Benazir Bhutto v President of Pakistan, SCMR 1028.1030(1994)

³²⁴M. Mahmood, The Pakistan Penal Code, 1860 Al-Qanoon Publishers Lahore, 2010.

³²⁵Shariq Saeed v. Mansoob Ali Khan and 5 others, YLR 1647(2010)

be extended further to the case where any defamation is caused, because human dignity, honor and respect is more important than comforts and necessities”

As discussed before that the dignity of human being is the cornerstone of any civilized society³²⁶. This judgment also clearly mentioned that the dignity of human beings one of the most valuable rights among the list of fundamental rights in Pakistan. Privacy and defamation are the protectors of dignity of man in Pakistan and all over the world.

The individual’s right to privacy under Article 14 of the Pakistani Constitution must be balanced against the competing rights of the broadcaster’s right to freedom of expression under Article 19 of the Constitution. Right of privacy and freedom of expression are both fundamental rights enshrined under the constitution of Pakistan and one fundamental right cannot override other fundamental rights³²⁷.

The same is the case with freedom of media and privacy rights under the constitution. In this situation it becomes mandatory for the state to balance freedom of expression with right of privacy. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be considered and any interference or restriction must be proportionate. A leading legal expert on the relationship of freedom of expression with privacy rights stated that;

“Provisions of Art. 14 of the Constitution, providing for dignity of man as a fundamental right, is the most valuable right---Dignity of

³²⁶(Ch Ishfaque Ahmad, Right to Dignity - A Sine Qua Non. Of Fundamental Rights (A Study in Our Constitutional Discourse, *Pakistan Law Journal*, 2012)

³²⁷M. Zeshan Abdullah, "Right to Fair Trial [A Newly Inserted Fundamental Right under the Constitution of Pakistan," *Pakistan Legal Journal*, 2011.

man is not only provided by Constitution of Pakistan, but according to history and under Islam, great value has been attached to dignity of man and privacy of home---While exercising 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 limits of freedom beyond the boundaries of Art. 14 of the Constitution³²⁸”.

The other experts believed

“Although Pakistan has ratified major international treaties that recognize privacy as a fundamental human right and the Constitution of Pakistan reaffirms the inviolability of the same, the legal framework available to enact these laws in the true spirit is far from being satisfactory. It is surprising that Colonial acts, such as the Telegraphs Act of 1885, devised two centuries ago, are still active. Furthermore, it is appalling to notice the excessive powers bestowed upon the federal government for intrusion into the private lives of individuals for reasons of safeguarding national interests, national security or even the apprehension of crime³²⁹”

The other legal expert while commenting on the dignity of human beings and violation of private property stated that;

“The violation of the private property’s boundary should therefore be considered a crime, even though the intent of the first entry was not criminal; unless authorized by the owner of the property to do so³³⁰”

Constitution as well as other laws including PEMRA Ordinance 2002 has protected privacy of the individuals. However, PEMRA Ordinance 2002 and “Electronic Media (Programs and Advertisements) Code of Conduct” has contradictions against Constitution and other laws. Those issues need to be addressed to balance freedom of expression of broadcast media and right of privacy of individual on the other hand.

³²⁸Interview with legal experts, respondent no. 5

³²⁹Interview with legal experts, respondent no. 3, 4

³³⁰Interview with legal experts, respondent no. 1

4.3 Conclusion

Freedom of expression and restrictions on freedom of expression is an important topic and Constitution has discussed them in depth. Freedom of expression is protected under Article 19. Constitution of Pakistan has also provided express limitations under Article. PEMRA Ordinance and PEMRA Code of Conduct further comprehended those restrictions. This chapter studied in depth the restrictions inscribed under the Constitution and broadcast media laws of Pakistan. While discussing restrictions the “reasonability” condition as explained by the Superior courts have also been presented in this chapter. Second research question states as to what extent freedom of expression of broadcast media is restricted in Pakistan. This chapter explored the answer of this research question.



CHAPTER FIVE

FREEDOM OF EXPRESSION FROM INTERNATIONAL PERSPECTIVE

5.1 Introduction

This Chapter of study reviews the treatment afforded to freedom of expression by international treaties and laws of different countries. Chapter starts with elaboration of freedom of expression principle as described under international treaties and conventions. After deliberating international treaties and conventions freedom of expression principles, method of regulation and restriction on freedom of expression of broadcast media as offered under UK and Malaysia laws are explained. A comparison of Pakistan, Malaysia and UK approaches towards freedom of expression of broadcast media is also drawn at the later stage of this chapter. At the end conclusion of chapter is made.

5.2 Freedom of Expression and International Legal Framework

This part will help understand freedom of expression and regulations of broadcast media from other international treaties and conventions perspectives. It is vital to study the International law regime of freedom of expression for many causes. Rapid globalization is forcing people of diverse social experiences to mix on with each other. One result of this development is that the ethics of freedom of expression have returned at the topmost of the agendas in political, academic and public debates. Precisely, the increasing cultural assortment within the populaces of Western liberal democracies

owing to exodus of people has led to debates over the public expression of views. These expressions of public views are sometimes debatable to the ethical sensibilities of associates of new refugees' cultures.

This new phenomenon of immigrants has been enlarged due to the changing globalization and emergence of new media platforms. Contentious publications these days rapidly feast outside the cultural contexts of their origin. This leading to an growing number of international events where what is at question is primarily what should and what should not be said or otherwise uttered in the new multiethnic and universal setting.

In fact, recently, the concept of human's inalienable rights has been agreed a more tangible and universal surface by the Charter of Human Rights made by the United Nations Organization and European Convention on Human Rights¹. The Preamble to the "Universal Declaration of Human Rights (UDHR)" states: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world²". Now some of the most important international law documents are offered here for the explanation of basic notion of freedom of expression in those documents and countries.

¹Amongst many influences on the drafting of the UN Charter, one which is worth mentioning is the "Declaration concerning the Aims and Purposes of the International Labor Organization", adopted in the 1944 Philadelphia General Conference of ILO. It laid special stress on the following fundamental principles of the organization: (a) Labor is not a commodity; (b) Freedom of expression and association are essential to sustained progress; (c) Poverty anywhere constitutes a danger to prosperity everywhere; (d) The war against want requires to be carried out with unrelenting vigor within nation, and by continuous and concerted international effort...with a view to the notion of common welfare"

²Julie Mertus, *The United Nations and Human Rights: A Guide for a New Era* (London: Routledge, 2017).

5.2.1 The Universal Declaration of Human Rights 1948

“The Universal Declaration of Human Rights (UDHR)” is a greatest accomplishment of the members of international community. UDHR has in fact achieved in founding international human rights standards for every human. It was a huge achievement since the world was just emerging after devastating world war. UDHR is “a common standard of achievement for all people’s and nations”³.

Article 19 of the UDHR declares that⁴:

“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”

UDHR was unanimously adopted by the “General Assembly of United Nations” on 10th of December 1948⁵. It is one of the most significant amplification of the human rights duties advanced in the Charter of United Nations. The Declaration safeguards all persons and is applicable to all governments. It is, as title of the document suggests, completely universal⁶ in its application to all members of human family, universally, irrespective of whether one’s government adopts UDHR rules or ratifies its covenants.

As “Chief Justice Muhammad Haleem” detailed that⁷;

“The result is that the Universal Declaration is now widely acclaimed as a Magna Carta of humankind, to be complied with by

³MashoodA.Baderin,"InternationalHumanRightsLaw,2016, doi:10.4324/9781315589404.

⁴Marna Anderson, *Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights* (Minneapolis: Human Rights Educators Network, 1999).

⁵History of the Document, United Nations, accessed May 9, 2017, <http://www.un.org/en/sections/universal-declaration/history-document/index.html>.

⁶Four substantial parts of the Declaration have been incorporated in the constitutions of several countries, including Algeria, the Ivory Coast, Madagascar and Cameroon. See UN Action in the Field of Human Rights, UN Doc. ST/HR/2/Rev. 1 (1980), 21; and UN Action in the Field of Human Rights (1983), Chap. II.F, Para. 75. In addition, many constitutions have based their protections of fundamental rights and freedoms on those set forth in the Declaration

⁷The Domestic Application of International Human Rights Norms, in *Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms*, Report of a Judicial Colloquium in Bangalore, 97 (Commonwealth Secretariat, September 1988).

all actors in the world arena. What began as mere common aspiration is now hailed both as an authoritative interpretation of the human rights provisions of the UN Charter and as established customary law . . . constituting the heart of a global bill of rights”

In 1971, the United Nations Secretary-General observed⁸:

“During the years since its adoption the Declaration has come, through its influence in a variety of contexts, to have a marked impact on the pattern and content of international law and to acquire a status extending beyond that originally intended for it. In general, two elements may be distinguished in this process: first, the use of the Declaration as a yardstick by which to measure the content and standard of observance of human rights; and, second the reaffirmation of the Declaration and its provisions in a series of other instruments. These two elements, often to be found combined, have caused the Declaration to gain a cumulative and pervasive effect”

UDHR is the starting points for all kinds of right, freedoms and human rights for all countries of the world.

5.2.2 The International Covenant on Civil and Political Rights 1966

“The International Covenant on Civil and Political Rights 1966” is an explanation of the political and civil rights present in the Universal Declaration of Human Rights. General Assembly resolution via resolution no “2200A (XXI) of 16 December 1966” opened this covenant for accession, signature and ratification 23 March 1976. It was done, in agreement with Article 49⁹.

So far, 167 countries had acceded or ratified this covenant. International Covenant is supervised by the Human Rights Committee for compliance. This committee also decides individual grievances against respective governments that have ratified “First

⁸Loraine Sievers, *The Procedure of the UN Security Council* (Oxford: Oxford Univ. Press, 2014).

⁹A/RES/2200A(XXI): International Covenant on Civil and . . .”, accessed February 15, 2019, [http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_2200A\(XXI\)_civil.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_2200A(XXI)_civil.pdf).

Optional Protocol of International Covenant”¹⁰. The declarations of that Human rights Committee are amongst the most commanding announcements of the responsibilities levied by the “The International Covenant on Civil and Political Rights 1966”. Article 19 of the ICCPR 1966 provides that¹¹;

Article 19

“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 its 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 (ordre public), or of public health or morals”

Article 19 of ICCPR 1966 presents right to freedom of opinion, expression and information. Paragraph 1 of the “ICCPR” proclaims the complete right to hold views “without interference”. Paragraph 2 of the ICCPR provides the positive content of freedom of expression; namely, “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”. Paragraph 2, contrasting paragraph 1, may be exposed to limitations as set forth in paragraph 3.

In a general comment about Article 19, the Human Rights Committee emphasized the three basic requirements levied by paragraph 3 with which any restriction of the right

¹⁰“International Covenant on Civil and Political Rights,” OHCHR, , accessed February 13, 2019, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹¹“International Covenant on Civil and Political Rights,” OHCHR, , accessed February 13, 2019, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

must adhere to¹². When a State party levies certain limitation on the exercise of freedom of expression; these will not put the right itself in jeopardy. The three conditions of the restrictions are; firstly, the restrictions must be ‘provided by law’; secondly restrictions may only be levied for one of the objectives set out in subparagraphs (a) and (b) of paragraph 3; and thirdly restrictions must fulfil the criteria of as ‘necessary’ for that State party for one of those purposes¹³.

5.2.3 European Convention on Human Rights 1950

The Council of Europe established a broad form of jurisprudence, law, and principles concerning freedom of expression, availability to information, and all associated rights¹⁴. The prime statement of law is “the Convention for the Protection of Human Rights and Fundamental Freedoms” (referred to in this thesis as the European Convention on Human Rights or ECHR); ECHR is one the earliest human rights treaties, (it was created in 1950. While it entered into force in year of 1953). ECHR procedure for implementation of decisions is also one of the most advanced of systems¹⁵.

Article 10 of the “European Convention on Human Rights” protects freedom of expression. “The European Court of Human Rights” which was established in year of

¹²Rainer Arnold, *The Universalism of Human Rights* (Dordrecht: Springer, 2013).

¹³Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford: Oxford University Press, 2017).

¹⁴Oddny Mjöll. Arnardóttir and Antoine Christian Buyse, *Shifting Centres of Gravity in Human Rights Protection: Rethinking Relations between the ECHR, EU, and National Legal Orders* (Abingdon: Routledge, 2016).

¹⁵Rainer Arnold, *The Universalism of Human Rights*, Dordrecht: Springer, 2013.

1959 has delivered more than twenty of judgments involving Article 10 problems¹⁶.

Article 10 defend freedom of expression in the following words¹⁷:

Freedom of expression

1. “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

Articles 10 has been further expanded through decisions and reports of “the European Commission of Human Rights”. Recommendations as well as decisions of the “Committee of Ministers (the political and executive arm of the Council of Europe)” add supplementary guidance, predominantly regarding access to information¹⁸. Decisions of “The European Court of Human Rights” are legal obligation and enforceable only on country parties to the case and against which a submission has been filed¹⁹. However, since these decisions establish authoritative elucidations of Convention’s responsibilities, so they are to be adopted by all States members to the

¹⁶Christoph Grabenwarter, *European Convention on Human Rights: Commentary* (München: C.H. Beck, 2014).

¹⁷Rainer Arnold, *The Universalism of Human Rights* (Dordrecht: Springer, 2013).

¹⁸Kanstantsin Dzehtsiarou et al., *Human Rights Law in Europe the Influence, Overlaps and Contradictions of the EU and the ECHR*(London ; New York: Routledge, 2016).

¹⁹Eva Brems and J. H. Gerards, *Shaping Rights in the ECHR: The Role of the European Court of Human Rights in Determining the Scope of Human Rights* (Cambridge: Cambridge University Press, 2015).

European Convention (currently numbering 26). It is applied every time questions regarding Convention rights arise²⁰.

5.3 Freedom of Expression under Different Legal Systems

Each country has different socio-political background and different method of protection of freedom of expression. This part explains freedom of expression principles as adopted in UK and Malaysia. It also presents method of regulation of broadcast media in these jurisdictions. The selection of countries for elaboration and better insights of freedom of expression is also diverse in nature. The list includes western democracy of UK and Muslim majority Malaysia, which have a settled principle of freedom of expression. UK laws has direct influence on Pakistani laws as country has inherited legal system form UK. Currently Pakistani Constitution is based on UK model of parliamentary democracy and the Ofcom method of regulation of electronic media is termed as the model law for regulation of electronic media in the world. Malaysia is a Muslim majority country and follow the footsteps of UK parliamentary system.

Malaysian experience will help us identify the approaches of regulation of electronic media from a Muslim majority country perspective and from a commonwealth country perspective. These countries and international law treaties offer a great footpath which countries like Pakistan can easily follow to settle their issues related with freedom of expression and regulation of electronic media.

²⁰Michel Verpeaux, *Europeans and Their Rights - Freedom of Expression* (08 (Strasbourg: Council of Europe Publishing, 2010).

Proceeding portion elaborates the method of protection and preferment of freedom of expression principle, the method of regulation and restrictions on freedom of expression of broadcast media in England and Malaysia.

5.3.1 England

Freedom of expression is not an unfamiliar concept in England legal system. However, the notion of freedom of expression is comparatively unique in the UK, in the meanwhile the country's Constitution is not available in a single written document and there is no inscribed guarantee of fundamental rights²¹. Even then, such codified absenteeism has not deprived people an approach to expression as the right. Previously it was conventionally protected by common law and specific statutes. This has been clearly elucidated in "AG v Guardian Newspaper Ltd," No. 2 by Lord Goff that

"Freedom of speech has existed in this country perhaps as long as, if not longer, than it has existed in any other country in the world".

Former British Prime Minister Sir John Major also echoed in following words "... we have no need for a bill of rights because we have freedom".

However, it was assumed that without a codified constitution or written human rights instruments, individual liberties were only residual that could be only practiced when not constrained by common law rules or statutes²². Therefore, the notion of freedom of expression in England has stayed fundamentally negative²³.

²¹The question of whether the British Constitution is 'unwritten' or merely 'uncodified' is discussed by David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law: Text with Materials* (4th ed, OUP Oxford 2007)

²²Eric M. Barendt, *Freedom of Speech* (Oxford: Oxford University Press, 2013).

²³M. V. Pylee, *Select Constitutions of the World* (Universal Law Publishing, 2012).

As there is no concept of challenging of any law passed by the British parliament, so the freedom of expression turns out be nothing, but the residue freedom left after the parliamentary regulations.

This idea of freedom of expression in England, developed with the origination of the printing press in fifteenth century and the arrival of newspapers in the seventeenth century²⁴. It cemented the way for freedom of press in England. Freedom of press and expression in England had been powerfully advocated in 18th century as it included the “right to write or say anything which a jury, consisting of twelve shopkeepers, thinks it expedient should be said or written”²⁵.

Any practice of censorship was unwanted, and it was assumed that “liberty of press consists in printing without any previous license, subject to the consequences of law”²⁶. In other words, press freedom in England at that time means “the right to print and publish anything which is not prohibited by law or made an offence, such as sedition, contempt of court, obscenity, defamation, blasphemy etc”. Any kind of prior curb was a fetter on the independent-will of public. It was termed as an effort to control expression by directorial establishments²⁷. A successive sentence will not put any prior curb on the right of free expression or thought. This sentence only makes account of the exploitation of freedom by accounting anyone that publishes material which have been made prohibited by law, as adverse to the norms of the society²⁸.

²⁴John M. Cunningham, "A Brief History of Press Freedom," Encyclopedia Britannica,, accessed November 15, 2018, <https://www.britannica.com/story/250-years-of-press-freedom>.

²⁵Mark Frezzo, *The Sociology of Human Rights: An Introduction* (Cambridge: Polity Press, 2015).

²⁶Nigel Warburton, *Free Speech: A Very Short Introduction* (Oxford: Oxford University Press, 2009).

²⁷Larry Alexander, *Freedom of Speech* (Aldershot: Ashgate, 2000).

²⁸Hilaire Barnett and Robert Jago, *Constitutional & Administrative Law* (8th ed, Routledge 2011) 492.

The A.V. Dicey discussed the exposition of the right and said that “it is essentially false” to explain that;

“The right to free expression of opinion, and especially that form of it which is known as the ‘liberty of the press’, are fundamental doctrines of the law of England ... and ... that our courts recognize the right of every man to say and write what he pleases, especially on social, political, or religious topics without fear of legal penalties.”²¹

Before to the enactment of “the UK Human Rights Act 1998”²⁹, there was nothing like US First Amendment or French laws of Press of 1881. However, under common law a Constitutional right to expression remained available as put under a notable case of “R v. Home Secretary”, Lord Steyn³⁰ that;

“The objectives of freedom of speech as promoting self-fulfillment of individuals, enabling the discovery of truth and providing the lifeblood for a democracy. This freedom also checks the abuse of power and it ‘facilitates the exposure of errors in the governance and administration of justice. It is desirable that the courts treat free speech as a legal principle while interpreting laws relating to public order, obscenity, defamation, breach of confidence or contempt of court”.

Owing to the lack of defense in local laws of England, the concerned parties to cases had to present cases related with human rights violations against the establishments and authorities of the states in the ECHR. However, parties had to bear an expensive and lengthy course to implement their rights in Strasbourg. Expectedly, England as a state was in numerous occurrences proved guilty of not following the provisions of “the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)”. This resulted into enactment of “Human Rights Act 1998” in UK.

²⁹Eric Barendt, "Freedom of Expression in the United Kingdom Under the Human Rights Act 1998," *Indiana Law Journal*, 2009.

³⁰R v Secretary of State for the Home Department, 4 All E.R. 289(2002)

The HRA was passed with the main reason of giving “further effects to rights and freedoms” of the ECHR in the UK.

Post Human Rights Act 1998

However, the promulgation of “the Human Rights Act in 1998” radically changed the situation in England³¹. The fundamental rights which were previously not explicitly protected under the common law were explicitly protected under the “UK Human Rights Act of 1998”.

The promulgation of “Human Rights Act 1998” in UK has an enormous impact on the laws related with human rights in England. This Act has brought the EU Convention rights to the UK and was termed as “brought home the Convention right”. It has also enhanced the protection afforded to the right of freedom of expression in UK. The limited applicability of Convention rights was no more applicable as all rights are part of the UK legal system now and this act has a strong presumption of conformity with convention rights. This right of freedom of expression of the EU Convention of Human Rights is presented and protected in the “Human Rights Act 1998” with some qualifications and proscribes public authorities to act in contravention to the Convention rights³².

Section 2 of HRA obliges tribunals or courts in the state to “take into account” the declarations, decisions, judgments, or advisory views’ of the ECHR, (Strasbourg jurisprudence) or the Committee of Ministers and Commissions in matters relating the

³¹Eric Barendt, "Freedom of Expression in the United Kingdom Under the Human Rights Act 1998," *Indiana Law Journal*, 2009.

³²Eric Barendt, "Freedom of Expression in the United Kingdom Under the Human Rights Act 1998," *Indiana Law Journal*, 2009

Convention rights³³. ECHR does not provide coherent and inflexible system of precedents. The roles of ECHR judges and national judges are not identical and even there are some judgments passed by Strasbourg which are considered as unpersuasive.

The similar views were expressed in *R v Horncastle* by Lord Phillips P:

“The requirement to take into account the Strasbourg jurisprudence will normally result in this Court applying principles that are clearly established by the Strasbourg court. There will, however, be rare occasions where this court has concerns as to whether a decision of the Strasbourg Court sufficiently appreciates or accommodates particular aspects of our domestic process. In such circumstances it is open to this court to decline to follow the Strasbourg decision, giving reasons for adopting this course”.

In spite of the non-binding nature of the jurisprudence, views expressed in “*Kay v Lambeth*” by Lord Bingham are;

“The mandatory duty imposed on domestic courts by section 2 of the 1998 Act is to take into account any judgment of the Strasbourg Court and any opinion of the Commission. Thus, they are not strictly required to follow Strasbourg rulings ... But it is ordinarily the clear duty of our domestic courts, save where and so far as constrained by primary domestic legislation, to give practical recognition to the principles laid down by the Strasbourg Court ... The effective implementation of the Convention depends on constructive collaboration between the Strasbourg court and the national courts of member states”.

Section 3 of Human Rights Act 1998 effectively intertwined the EU Convention rights into UK legal system. This section makes it obligation for the courts in UK to apply and interpret whereas ever possible legislations in accordance with EU Convention rights. Judge Lord Steyn in “*R v A (No 2)*” observed that, Section 3 places a duty on the court to strive to find a possible interpretation compatible with Convention rights”

³³Eric Barendt, "Freedom of Expression in the United Kingdom Under the Human Rights Act 1998," *Indiana Law Journal*, 2009

The Courts in England on the other hand, construed that HRA, 1998 does not offer any pre-eminence to freedom of expression but it must be balanced against competing rights and interests acknowledged by the “EU Convention on Human Rights”³⁴. At the same time, Section 3 of “The UK Human Rights Act 1998” entails the courts to construct the legislations, so nearly as possible, according to the Convention rights. In this regard, courts can take guidance from judgments of the “European Court of Human Rights” and the “European Human Rights Commission”. Mean-while decisions and opinions do not have binding effect on the English courts. The courts normally do not discriminate between freedom of expression available under the common law as well as under the “European Convention on Human Rights”³⁵. The “Human Right Act 1998” of England thus appears to make a substantial change to the overall reasoning of the courts regarding cases involving right of expression ³⁶.

Generally, the courts and House of Lords in UK have failed to ascribe radical significance to this new development, though, as “the Laporte case”³⁷ shows that there are exemptions to that hesitance. There can be several instances when the courts ponder as to whether the judgments of EU court accommodate or appreciates specific aspects of the domestic process of the UK system. In such cases the domestic courts can reject EU court decisions and the reasons for doing so must be penned down by the concerned domestic courts in UK.

³⁴Ibid

³⁵William Wade, *Constitutional Fundamentals* (Stevens, 1980)..

³⁶Eric Barendt, "Freedom of Expression in the United Kingdom Under the Human Rights Act 1998," *Indiana Law Journal*, 2009

³⁷Regina (Laporte) v Chief Constable of Gloucestershire Constabulary. UKHL 55 (2006)

The Human Rights Act of UK has presented a positive impact regarding the protection and safeguard of human rights in the country. Its preamble expressly states that the aim of the HRA is to “further effect” the EU convention rights. These rights include freedom of expression and HRA operation has also enhanced the protection offered to freedom of expression in UK. The same significant affect was explained in “Reynolds v Times Newspapers” Ltd by Lord Steyn,

“The starting point is now the right of freedom of expression, a right based on a constitutional or higher legal order foundation. Exceptions to freedom of expression must be justified as being necessary in a democracy. In other words, freedom of expression is the rule and regulation of speech is the exception requiring justification. The existence and width of any exception can only be justified if it is underpinned by a pressing social need”.

To conclude, freedom of expression with the adoption of HRA has become a statutory right. although previously it was considered only as a residual right and as defense right only. Currently it is also applicable to all UK citizens. Therefore, it becomes almost appropriate to debate the scope and meaning of the right as presented under Article 10 of the UK Human Rights.

Scope

The “UK Human Rights Act, 1998 (HRA)” incorporates all rights protected by the “European Convention on Human Rights”. Among the protected rights, freedom of expression was enshrined in the “European Convention on Human Rights”. Article 10 of the ECHR protects right to freedom of expression and is now incorporated in HRA under Schedule I. This article provides that ³⁸;

³⁸Christoph Grabenwarter, *European Convention on Human Rights: Commentary* (München: C.H. Beck, 2014).

“Article 10

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requesting the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”

It is evident that all people, whether legal or natural persons, are allowed to exercise freedom of expression. this right of expression is obviously conferred on “everyone” in the state. The word “expression” is much wider in scope as compared to “speech”. Expression has been provided a more generous interpretation which covers a variety of medium and expression including books, radio telecasts, films, paintings, internet, and information pamphlets. In addition to those traditional methods of expression, certain form of conduct also forms part of expression. That form of conduct include peaceful demonstration or marches and also extends to symbolic speech (expressive conduct).

Simple look at Article 10 elucidates the scope of expression into three main components. Those are freedom to impart and receive ideas including information, freedom to retain diversified opinions. ECtHR has not provided an exact definition or tried to avoid exact definition regarding the list of activities which are covered or not covered under Article 10 (1). Furthermore, in some exceptional circumstances freedom of expression has been deemed to include right to remain silent or right to not

to speak. Article 10 does not directly mention freedom of the press. However, the role of media as “public watchdog” and the significance of media freedom has been acknowledged by the ECtHR in several of its judgments. In a similar matter an Austrian court fined a journalist for publishing defamatory comments against a former Austrian Federal Chancellor.

The case was titled as “Lingens v Austria”, and the court ruled that the conviction of a working journalist constituted a breach of the Article 10 right and stated that,

“Whilst the press must not overstep the bounds set, inter alia, for the ‘protection of the reputation of others’, it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them”

Nevertheless, freedom of the press is not limited to only print media. It has long been established that broadcast media also forms part of freedom of press. In “Jersild v Denmark”, a Danish court convicted a journalist on basis of spreading racist comments when a journalist arranged a TV interview of a group of young racists. Those young racists made numerous claims during their racist conversations. The court declared that although the racist remarks of the group were not protected speech under the law but the conviction of the journalist amounted to a defilement of the right of freedom of press of the journalist. The ECtHR ruled:

“News reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of ‘public watchdog’... The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so”.

Another important feature of The Human Rights Act is inclusion of Section 12 which offers to the media, some sort of special protection³⁹. It is also pertinent to note that “the European Convention on Human Rights” does not afford any special guarantees to media and it only termed the press as a “public watchdog” in imparting information and ideas for public interest. Private broadcasters have been more tightly regulated in UK as compared to newspapers, editors and publishers⁴⁰.

A) Restrictions on Freedom of Expression

The “UK Human Rights Act, 1998 (HRA)” incorporates all rights guaranteed by the “European Convention on Human Rights”. Among the protected rights under HRA is the right of expression enshrined under Article 10 of ECHR. Article 10 isn’t an unqualified right of ECHR but a qualified and limited right. It means that the rights of the individuals should be balanced with the interests of society. There are several factors which determines the justifications of restriction on individual right of expression⁴¹.

Those factors include identity of the speakers, the purposes of the expression, context of the speech and the language of the spoken or written words. It is therefore the context of the expression which will determine the validity and reliability of the

³⁹Section 12(4) of Human Rights Act, 1998 is particularly important as it reads, “ The Court must have particular regard to the importance of Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims to be journalistic, literary or artistic material to: (a) The extent to which- (1) The material has, or is about to, become unavailable to the public; or (2) It is, or would be, in the public interest for the material to be published; (b) Any relevant privacy code”.

⁴⁰R v. BBC, 1 AC 185 (2004).

⁴¹Delfi as v Estonia, 64569/09(2014)

restriction⁴². The right to freedom of expression is not qualified and may be subjected to several limitations. The state has the absolute authority to implant restriction on expression if those are permitted by the laws, necessary in democracies, and are fulfilling lawful aims. local courts of the relevant countries are granted some powers regarding those restrictions, but the final say on the matter belong to the ECtHR. ECHR decided a case regarding context of the speech. A journalist in Denmark was convicted of aiding to spread racist statements based on broadcast of documentary on young extremists. The ECHR declared that the conviction of journalist violated his right to expression as available under Article 10⁴³. The court stated that although the Danish prohibition is a legitimate restriction against spreading racist statements but is was applied too generally and out of complete context.

In similar terms the court in **Sunday Times v UK** states that any stoppage of expression will be termed as a defilement of the right save it could satisfy the three-stage test in that provides:

- “1. Any interference, such as formalities, conditions, restrictions or penalties, must be prescribed by law;
2. The interference is aimed at protecting one or more of the legitimate aims: national security, territorial integrity, public safety; prevention of disorder or crime; protection of health or moral; protection of reputation or rights of others; preventing the disclosure of information received in confidence, and maintaining the authority and impartiality of the judiciary; and
3. The interference is necessary in a democratic society”

The ECtHR is normally averse to applying the concept of ‘balancing’ freedom of expression in Article 10(1) against the acceptable objectives in second paragraph.

⁴²Freedom of Expression," Freedom of Expression | Equality and Human Rights Commission,, accessed December 15, 2018, <https://www.equalityhumanrights.com/en/advice-and-guidance/freedom-expression>.

⁴³Jersild v Denmark (App no 15890/89) ECHR 23 September (1994)

This is because of the reasons that the two subsections of the Article are not corresponding to one another since the protected right has probable left that any limitations must be sturdily construed and justified. However, the situation and position of UK is completely contrary in contradiction of the application of the test by the ECtHR⁴⁴. It was also claimed local judge's approach is far less demanding than that adopted by the ECtHR.

1) Prescribed by Law

This first major condition of interfering with freedom of expression is that it must be “prescribed by law”. The same view regarding expression has been summarized in “Roger Andersson v Sweden” and Margareta;

“[T]he expression ... requires first that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate legal advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.

This point establishes that any restriction must be recognized and have origin in domestic laws. The word “law” has been expansively interpreted to include not only written laws but also unwritten regulations, including the rules of EU law, common law, secondary legislation and even guidelines of a specialized bodies. The expression also requires that the law in question must have two important qualities (foreseeability and accessibility) in order to be well-suited with the rule of law. These concepts of foreseeability and accessibility has been explained in “Sunday Times case” that:

⁴⁴Freedom of Expression, Freedom of Expression | Equality and Human Rights Commission, accessed December 15, 2018, <https://www.equalityhumanrights.com/en/advice-and-guidance/freedom-expression>

“In the Court’s opinion, the following are two of the requirements that flow from the expression ‘prescribed by law’. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.

2) Legitimate Aims

The second legitimate requirement of restrictions provides that it must be compatible with paragraph 2 of Article 10. In case of the “House of Lords in *A v Secretary of State for the Home Department*” the Court stressed that “there must be a link between the means employed and the legitimate aims pursued by the state”. Although the list of valid aims is exhaustive one, but it has been mostly relied and accepted by the state. The grounds of the interference are such broad that state can always make a case of involvement on those grounds. Those grounds of involvement include, “the protection and promotion of public order” and “the interest of national security and the prevention of disorder or crime⁴⁵”. Upon discovering that a legal aim adequately underlies an intrusion with freedom of expression, the relevant court will then turn towards into the third prerequisite of Article 10(2)⁴⁶. ”

⁴⁵Freedom of Expression, Freedom of Expression | Equality and Human Rights Commission, accessed December 15, 2018, <https://www.equalityhumanrights.com/en/advice-and-guidance/freedom-expression>.

⁴⁶*Jersild v Denmark* (App no 15890/89) ECHR 23 September (1994)

3) Necessary in a Democratic Society

Last paragraph states that Article 10(2) states that even where a constraint on freedom of expression is offered for any of the above-mentioned objects, it is mandatory that the restriction should be lawful “(meaning that it is clearly set out in legislation and that the interference with freedom of expression is ‘necessary in a democratic society’)”. It is the most conclusive feature which demands that any exceptions “must be narrowly interpreted and the necessity for any restrictions must be convincingly convinced”. The case of *Handyside* explained the term ‘necessary’ as neither equal with ‘indispensable’ nor has the flexibility of such expressions as “admissible’, ‘ordinary’, desirable, ‘reasonable’ or ‘useful”. The decision of *Handyside* has left out generous or strict description and interpretation of the term “necessary” under Article 10(2). Several of ECtHR decisions has reported the definition of necessary. the most notable case was *Sunday Times*. This case has set-out a threefold test for determinations of status of restrictions on freedom of expression. This threefold test makes it mandatory to match with requirement of a pressing need, must be justified by sufficient and relevant reasons, and must be proportionate to the legal perused objectives of the restrictions. Although the relevant state is entrusted with some margin regarding decision of the legality of the restriction, but the concluding authority always vests with ECtHR regarding the validity of the limitations imposed on freedom of expression under Article 10(1).

To conclude, prior to passage of HRA, the freedom of expression as a right was residual in nature in UK. The reason for such situation was non-availability of written Constitution or Bill of rights in UK. This non-availability also provided that right could only be exercised when there was a vagueness and ambiguity in common law

principles or statutes. This absence of written protection in UK legal system forced the victims of the human rights violations to present their cases against the State establishments to Strasbourg in ECtHR court. This situation has been changed since the inception of convention rights into HRA. This inception has also made the right of expression available to all legal and naturel persons in UK.

This statutory right of HRA covers an extensive range of expression and also includes different mediums. This statutory right empowers all persons to hold diversified opinions, right to impart and receive information including different ideas. freedom of media or press including freedom of expression of broadcast media forms part of such protection⁴⁷.

- **Regulation of Broadcast Media in England**

Presently in UK two different bodies are regulating the broadcast media. Those bodies include BBC and OFCOM. BBC is responsible to regulate all BBC content whether radio, online or transmitted over the TV. Whereas the OFCOM is responsible to regulate commercial radio and TV.

The British Broadcasting Corporation (BBC)

BBC or The British Broadcasting Corporation of UK as a corporate body was created by “Royal Charter”. That Royal Charter was created on 20 December 1926. Since then, several Charters were issued to the BBC to conserve its position as a corporation. On 19 September 2006, present Royal Charter was issued. The incorporation of the BBC

⁴⁷Eric Barendt, "Media Freedom as a Fundamental Right," *Journal of Media Law* 7, no. 2 (2015): , doi:10.1080/17577632.2015.1108601.

by a Royal Charter allows the state to decide about the BBC's duties and remit without the requirement to enact any statute.

A Royal Charter as a constitutional document provides BBC'S objects and governance model. Charter provides BBC's main actions and activities to promote its public objectives by provision of radio, television, online services and all other relevant services. It will educate, entertain, inform the public of the state. Royal Charter also guarantee the BBC'S independence regarding its management and content. A Royal Charter is continuously accompanied by An Agreement of Deed. That agreement is made between "the Secretary of State for Sport, Culture and Media and the BBC. The current Agreement (the Framework Agreement)" was made in 2006 July by the Parliament. It affirms the freedom of the BBC as contained in the Royal Charter and affords details of the BBC's obligations, role and rights as a public broadcaster of UK.

The Framework Agreement and current Royal Charter have also presented functions that are required to be completed by the BBC. These functions are performed by the Executive Board and BBC Trust. BBC Trust is an autonomous and sovereign body under the BBC and is required to see the work of executive board and also set the strategic direction of the BBC. Whereas the executive board is required to deliver BBC'S services according to the priorities of the BBC. although there is a close relationship between these two bodies of BBC but the independence of both of the bodies must be maintained for the better working of the BBC as an institution.

The Office of Communications (Ofcom)

The (Ofcom) or Office of Communications launched in December 2003, is the England's super regulator of electronic media⁴⁸. It was created under the parasol of "Communication Act 2003" to supervise all regulations in the communication sectors and media. Ofcom is termed as a "super-regulator" for the UK communications industry covering telecommunications, postal, wireless communications, radio and television services. Regarding the regulation of the Internet, initially it was not under the domain of the Ofcom's but with the implementation of the 2009 Audiovisual Media Services Regulations, Ofcom is entrusted to regulate television channels telecasted over the Internet and notified "On demand program services (ODPS)" in UK⁴⁹.

Ofcom is bestowed with wide regulatory powers which were⁵⁰ previously carried out by five bodies for telecommunications policies and diverse aspects of mass media⁵¹. Those bodies included "The Independent Television Commission (ITC), Radio Authority, Oftel, the Broadcasting Standards Commission, and the Radiocommunications Agency"⁵². Ofcom provides regulations for transmission of programs along with regulations for content of programs in UK. Ofcom's powers include imposition of fine on media organizations for contravening regulations and concluding illegal "pirate" broadcasters, and commercial broadcasters where needed⁵³.

⁴⁸Eric Barendt and Lesley Hitchens, *Media Law: Cases and Materials* (Pearson Education 2000) 44

⁴⁹Peter Lunt and Sonia M. Livingstone, *Media Regulation: Governance and the Interests of Citizens and Consumers* (Los Angeles, CA: SAGE, 2012).

⁵⁰*Ofcom* (Book on Demand, 2012).

⁵¹The five regulatory bodies are the Independent Television Commission (ITC), the Broadcasting Standards Commission (BSC), the Radio Authority, Oftel and the Radio Communications Agency

⁵²Eric Barendt and Lesley Hitchens, *Media Law: Cases and Materials* (Pearson Education 2000) 44

⁵³Ursula Smartt, *Media Et Entertainment Law* (London; New York: Routledge, 2017).

The UK tradition of broadcasting regulation is respected around the globe. Regarding the regulation and restrictions on the broadcast content, the ofcom has defined the scope of the regulation in within three tiers⁵⁴;

- 1) Related with negative content regulations across all television and radio broadcasters in England.
- 2) It is also related with BBC and relate to quantitative matters as quotations for independent television production, local production and original EU/UK production.

Covers the public service broadcasting remits of channels 3, channel 4 and channel five. This also includes format regulation for the radio. Ofcom does not regulate the BBC Tiers principles which are the obligation of the BBC governors⁵⁵.

Ofcom creation has drastically altered the construction of television regulation in England. Ofcom is dealt by Section 319 of “The Communication Act 2003”, with setting and reviewing a code for the standers of contents of television and radio progrmmes⁵⁶. Standard objectives or Ofcom Content Code for the television requires that;

- a) “That persons under the age of 18 are protected,
- b) That material likely to encourage or incite the commission of a crime or to lead to disorder is not included in television and radio services,

⁵⁴Helen Fenwick and Gavin Phillipson, *Media Freedom under the Human Rights Act* (Oxford University Press 2006) 565

⁵⁵Ofcom: An Evaluation of UK Broadcast Journalism Regulation ..., accessed January 1, 2019, http://www.communicationethics.net/journal/v9n1/v9n1_feat1.pdf.

⁵⁶The Law Library, *Communications Act 2003 (UK)* (CreateSpace Independent Publishing Platform, 2018).

- c) That news included in television and radio services is reported with due accuracy,
- d) That the proper degree of responsibility is exercised with respect to the content of programs which are religious programs,
- e) That generally accepted standards are applied to the contents of television and radio services to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material,
- f) That advertising that contravenes the prohibition on political advertising is not included in television or radio services,
- g) That the inclusion of advertising that may be misleading, harmful or offensive in television and radio services is prevented,
- h) That the international obligation of the United Kingdom with respect to advertising included in television and radio services are complied with
- i) That the unsuitable sponsorship of programmes included in the television services is prevented
- j) That there is no undue discrimination between advertisers who seek advertisements included in television and radio services and
- k) That there is no use of techniques that exploit the possibility of conveying message to viewers of listeners or of otherwise influencing their minds, without their being aware or fully aware of what has occurred”⁵⁷.

The Ofcom gave consideration to the Human Rights Act and European Convention of Human Rights Act while drafting the Code of Content⁵⁸. Ofcom while drafting code

⁵⁷Peter Lunt and Sonia M. Livingstone, *Media Regulation: Governance and the Interests of Citizens and Consumers* (Los Angeles, CA: SAGE, 2012).

⁵⁸Jan Oster, *European and International Media Law* (Cambridge UK: Cambridge University Press, 2017).

in addition to freedom of expression principles also taken in to account Article 9 and Article 14 of the Convention. Article 9 provides freedom of thought, conscience and religion and Article 14 talks about right to enjoyment of human right without discrimination based on sex, religion or race. The right to freedom of expression under Human Rights Act and European Convention of Human Rights also involves the right of audiences to receive and create information. It also includes presentation of thoughts and ideas without interference. However, all above mentioned rights are subject to restrictions approved and presented by law and essential in a democratic and independent society⁵⁹.

When Ofcom has reached on conclusion about breach of code than it will publish a finding. In these findings the reason of breach of code by the broadcasters will be mentioned. However, if the ofcom considers that a broadcaster has deliberately, seriously or repeatedly breached the code, it may impose statutory sanctions. Broadcasters are inevitably very wary of substantial fines or losing the license to broadcast. When applying the code and its breach the “material broadcasted” remains key factor⁶⁰.

The Ofcom Code does not intend to address each case that could arise. Individual broadcasters are likely to have their own compliance manuals to assist programs makers in maintaining the necessary standers. Broadcasters should be conversant with their audience and confirm that programs content should always be justified by the context and the editorial needs of the programs⁶¹.

⁵⁹Eric M. Barendt, *Freedom of Speech* (Oxford: Oxford University Press, 2013).

⁶⁰Gibbons, *Media Law in the United Kingdom* (Den Haag: Kluwer Law International, 2013).

⁶¹Ofcom: An Evaluation of UK Broadcast Journalism Regulation, accessed January 1, 2019, http://www.communicationethics.net/journal/v9n1/v9n1_feat1.pdf.

Duty is on the program maker (by virtue of his contract) and broadcasters (by statute) to conform with the Ofcom Broadcasting Code and the broadcasters have compliance officers to review content. Ofcom is prepared to offer guidance on the interpretation of the code but broadcasters must seek their own legal assistance on any compliance issues arising. Ofcom only gives informal guidance. It is not a censor and does not scrutinize programmes prior to broadcast⁶².

Ofcom provides the broadcasting code for the media in UK. "The Ofcom Broadcasting Code", the newest publication of which encompasses all programmes broadcast since 3rd of April 2017, offers rules and guidelines which broadcast media must observe to, or face penalties from their owners. One critical prerequisite of the Ofcom Code is that all broadcast journalists must yield politically unbiased content though, this does not entail them to be politically neutral themselves⁶³. The major sections of the broadcasting code are following.

A) Protection of Under Eighteen on Media

The first restriction or condition on the broadcast content is the protection of the children. The ofcom protects the children or peoples under the age of 18 years and made rules for their protection. It provides that to save the interests of the persons less 18 years of age following conditions should be observed while broadcasting content.

⁶²Gibbons, *Media Law in the United Kingdom* (Den Haag: Kluwer Law International, 2013).

⁶³The Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Program Service Rules)," Ofcom, May 08, 2019, accessed December 15, 2018, <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>.

- 1) “Firstly, it is mandatory not to broadcast any material which may seriously affect the mental, physical, or moral progress of persons under eighteen years of age.
- 2) Secondly, the same degree of care must be observed by the broadcasters for protection of people under age of eighteen years while providing services”.
- 3) “Children must also be protected by proper scheduling from material that is inappropriate for them”.

The misuse of drugs, alcohol and smoking must not be presented in the material created for children except there is a strong editorial or journalistic justification for its presentation in the programmes. If any of such material is included in the programs than it must not condone, glamorize or encourage it prior to the watershed or if there is strong editorial justification for it.

The definition of watershed is also provided in the following words under the code,

“The watershed means the time when TV programmes which might be unsuitable for children can be broadcast and it begins at 9 pm and material unsuitable for children should not in general be shown before 9 pm or 5.30 am”

Ofcom also insists that due care must be provided to the emotional and physical welfare as well as the dignity of people under 18 who takes part or otherwise involved in programmes. This care must be taken regardless of any consent given by the participant or their parents⁶⁴.

B) Religion

- It is the responsibility of the broadcasters to implement required level of responsibility relating to religious content of programmes.

⁶⁴The Ofcom Broadcasting Code (with the Cross-promotion Code and the On-Demand Program Service Rules). Section one: Protecting the under-eighteens

- Broadcasters must also guarantee that religious programmes do not contain the indecorous manipulation of any vulnerabilities of the audience or viewers for such a program.
- It is also the responsibility of the broadcasters to make sure that content related religion does not contain any abusive behavior of the religious opinions relating to any religion⁶⁵.

C) Harm and Offence

The principals presented in the “Ofcom Broadcasting Code” related to harm is to make sure that recognized standards of content are applied to radio and television services.

These principles are also applied to provide required protection for members of the society from the inclusion of harmful and/or offensive material in such services.

After deciding the commonly accepted standards, broadcasters of both radio or television should ensure that material which have the tendency to cause crime or offence is justified by the situation of the material. An important matter is the meaning of “Context of the material”.

Ofcom haven’t provided the precise definition of “context of the material”. However, it has provided that when looking at the background of the material aspects such as the editorial content of the program or series, the transmission service which the program is broadcast on, the specified time of the broadcast, the programmes scheduled both after and before the program in debate, the degree of harm expected to have been

⁶⁵The Ofcom Broadcasting Code (with the Cross-promotion Code and the On-Demand Program Service Rules). Section four: Religion

produced by the inclusion and the possible size of the viewers and audience among other aspects will be brought into consideration⁶⁶.

The offensive or harmful material includes, offensive language, humiliation, violence including sex and sexual violence, discrimination on basis of language gender, race, religion, beliefs and sexual orientation.

D) Crime

The Code of Ofcom Broadcasting related to crime provides that

- Material which has the expected tendency to incite or encourage the commission of an offence or crime or to lead to disorder must not be encompassed in radio or television services.
- Material that might demonstrate or explain criminal methods containing important particulars of the methods must not be broadcasted in television or radio services. However, editorial justification is an exception to this rule.
- No payment or promise of payment will be made to a criminal participant in any of the crime show.
- No monetary reward or promise of payment will be offered to witnesses involved in those proceedings.
- It is the responsibility of the broadcasters to avoid unwarranted infringement of privacy in the programmes. It is obligation of the broadcasters to avoid unwarranted infringement of privacy in procuring the material used in the programmes.

⁶⁶The Ofcom Broadcasting Code (with the Cross-promotion Code and the On-Demand Program Service Rules). Section two, Harm and Offense

- It is the responsibility of the broadcaster to establish the breach of the privacy as warranted in every case. The best illustration of warranted privacy “public interest”⁶⁷.

E) Fairness

It is the basic principles of Ofcom that broadcasters must avoid unfair or unjust treatment of individuals or organizations in programmes. Ofcom set out rules or practices to be observed by broadcasters while dealing with individuals or organizations participating in or otherwise indirectly affected programmes as broadcast.

Ofcom warns that following the practices will not automatically avoid a breach of the section but helpfully also that a failure to follow all the practices does not automatically result in a finding of unfairness. Broadcasters tend to send a right to reply letter to those who are going to find themselves appearing on screen. Contributors to programmes should;

- Be informed about the nature of the programmes. Contributors should also provide a clear explanation of why they were requested to contribute and when and where this program is likely to be first broadcast;
- Be informed about the kind of contribution they are required to make;
- Be intimidated about the possible areas of questioning. Those questioning might reasonably affect their original consent to participate and that might cause material unfairness;

⁶⁷The Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Program Service Rules). Section three Crime

- Be informed of possible important variations to the content of programmes that might reasonably affect their original consent to participate and that might cause material unfairness;
- Be intimated about the nature of their contractual obligations and rights;
- Be provided clear information if presented an opportunity to preview the content of programmes about whether they would be able to affect any changes to it;

However, it may be fair to reserve all or some of this information where it is justified in the public interest or under other provision of the Fairness Code. If a program charges wrong-doing or incompetence and makes other substantial accusations, those related should generally be provided a timely and appropriate opportunity to answer. As we are all familiar from viewing news and current affairs programs on television if a person approached to contribute a program on television. If a person was approached to contribute into a programmes decided to make no comment, it is the responsibility of the broadcasters to make clarification that the individual concerned has hosed not to appear. Where it is appropriate to present the views of the person or organization that is not participating in the programmes this should be done in a fair manner. As would be expected, ofcom requires special treatment for children. They should not be encouraged to express controversial opinion. Consent from parents or guardians should normally be obtained. Approval of a teacher may be enough for uncontroversial material, but broadcaster always need to consider obligation of privacy. In the last few

years it has become rare for children to be identifiable in a controversial context in news and current affairs⁶⁸.

F) Privacy

Privacy as area of restriction can be even more challenging as compared to fairness. Ofcom while acknowledging this challenge recognizes that there may be hard, on the spot decisions about whether privacy is unwarrantably invaded by filming or recording. It becomes more problematic while reporting on reporting on emergencies. The principle of privacy is that broadcasters must avoid any unjustified infringement of privacy in programmes. It is also important in matters in connection with procurement of material for presentation in programmes.

Any breach of privacy should be warranted. Legitimate expectation of privacy will change according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain and whether the individual concerned is already in the public eye. Privacy may need to be respected even in public places or where the subject is under investigation. The location of home of a person should not be revealed unless it is warranted. Any infringement of privacy in the making of a programmes should be with the person's consent or otherwise warranted. On privacy, the code is tough, to the point of choosing to make it clear that callers to phone-in shows are deemed to have given their consent to the broadcaster of the contribution been some would have thought that this was obvious. Broadcasters must exercise care when filming in sensitive places such as hospitals, schools or while

⁶⁸The Ofcom Broadcasting Code (with the Cross-promotion Code and the On-Demand Program Service Rules). Section Seven Fairness.

joining police operation. Surreptitious filming or recoding should only be used where it is warranted.

Surreptitious filming or recording, door stepping, or recording a call to obtain material for entertainment purposes may be warranted if is essential to the entertainment and does not amount to substantial breach of privacy such as to cause significant annoyance, distress or humiliation, the resulting material should not be broadcast without the approval of those involved. However, if the individual and or organization is identifiable in the programs, then consent for broadcast will be required.

When journalists are involved in surreptitious filming, they would normally obtain the approval of the program editor. Surreptitious filming may provide the evidence to justify defamatory allegations contained in a program, but the film should not use gratuitously but only if the story justified it in authenticity of the program.

Broadcasters must take care when dealing with people involved in suffering and distress. Even such as bombs going off in a city causing death and injury pose very real issues for editor because the need to inform the public must be balanced with the potentially damaging effect on the lives of those caught up in tragedy ⁶⁹.

G) Due impartiality and due accuracy and undue prominence of view and opinions

It is the basic responsibility of the Ofcom to ensure that news should be reported with due accuracy and presented with due impartiality. If a presenter gives a personal view

⁶⁹The Ofcom Broadcasting Code (with the Cross-promotion Code and the On-Demand Program Service Rules). Section Eight Privacy

or makes an authored program, this should be made clear and alternative views should be adequately represented, either in the programs or in a series of programs⁷⁰. It is also stated that “No politician may be used as a newsreader, interviewer or reporter in any news programs unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience⁷¹”

Reporting matters of major political or industrial controversy and major matters relating to current public policy is often difficult matter. News broadcasts will not take sides either strikes or management nor be expected slavishly to follow the government’s line in the build-up to a foreign war. Appropriately wide range of significant opinions must be contained and given due weight in each programs or series of programs.

5.3.2 Malaysia

Freedom of expression in Asian countries have been shaped according to distinctive political and socio-economic contexts and traditions. As in the West, the scope and the range of expression right varies greatly across Asian nations, on paper as well as in its actual application on the ground⁷². Alongside the sometimes-uncertain implementation of constitutional rights, there are certain sensitivities that are associated with freedom of expression. Social and cultural values in Asian countries often vary significantly from Western countries. This always affects the conceptualization and the application

⁷⁰The Ofcom Broadcasting Code (with the Cross-promotion Code and the On-Demand Program Service Rules). Section Five Due impartiality and due accuracy

⁷¹The Ofcom Broadcasting Code (with the Cross-promotion Code and the On-Demand Program Service Rules).Section Five Due impartiality and due accuracy

⁷²Adrienne Stone, Rishad Chowdhury and Martin Clark. The Comparative Constitutional Law of Freedom. In Comparative Constitutional Law in Asia of Expression in Asia, by Rosalind Dixon. Edward Elgar Publishers, 2015.

of the freedom of expression in certain environments⁷³ instead of attempting a comprehensive analysis of specific categories of freedom of expression protection in some important Asian jurisdictions, our investigation will draw out aspects of the right in the constitutional systems to illustrate the larger constitutional cultures.⁷⁴

Singapore and Malaysia share an intertwined and close cultural, political and constitutional similarity⁷⁵. Since the Malaysia as a state's inception in 1957, the constitutional system has looked for a strong Federal executive and is said to be typical of the "East Asian developmental states" that aimed at strong economic progress and later the development of democracy over time⁷⁶.

Malaysia practice the system of parliamentary democracy. It also has a constitutional monarch or the "King the Yang di-Pertuan Agong (King)", as the supreme leader of the state⁷⁷. Whereas prime minister works as the head of the government. Freedom of speech and expression has been grouped together with freedom of assembly and association in Article 10. It is specifically placed in Part II (Articles 5 – 13) of the Malaysian Constitution. under the heading of 'Fundamental Liberties' and is distinctively arranged after the supremacy clause. Since the legislative framework of

⁷³L. A. Thio, Singapore: Regulating Political Speech and the Commitment "to Build a Democratic Society, *International Journal of Constitutional Law* 1, no. 3 (2003): doi:10.1093/icon/1.3.516.

⁷⁴Adrienne Stone, Rishad Chowdhury and Martin Clark. " The Comparative Constitutional Law of Freedom." In *Comparative Constitutional Law in Asia of Expression in Asia*, by Rosalind Dixon. Edward Elgar Publishers, 2015.

⁷⁵Adrienne Stone, Rishad Chowdhury and Martin Clark. " The Comparative Constitutional Law of Freedom." In *Comparative Constitutional Law in Asia of Expression in Asia*, by Rosalind Dixon. Edward Elgar Publishers, 2015

⁷⁶Adrienne Stone, Rishad Chowdhury and Martin Clark. " The Comparative Constitutional Law of Freedom." In *Comparative Constitutional Law in Asia of Expression in Asia*, by Rosalind Dixon. Edward Elgar Publishers, 2015

⁷⁷ Article 32(1) of the Malaysian Constitution provides 'There shall be a Supreme Head of the Federation, to be called the Yang di-Pertuan Agong...'.The Yang diPertuan Agong shall be selected among the nine Malay Rulers and elected by the Conference of Rulers for a term of five years

the country is based on the doctrine of constitutional supremacy, this setting gives the impression that the right is very well guarded. In addition, any alteration to the constitutional provisions that house this right requires a two-third majority of the total number of members of Parliament.

Article 10 of the Federal constitution of Malaysia provides

“Article 10: Freedom of Speech, Assembly and Association

(1) Subject to Clauses (2), (3) and (4) –

(a) every citizen has the right to freedom of speech and expression;

(2) Parliament may by law impose –

(a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence”;

(4) “In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2) (a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law”⁷⁸.

The provisions of Constitution expressly protect and recognize freedom of expression in Malaysia. However, the explanation of its meaning is not provided in the above-mentioned Article. This right is only available to Malaysian citizens of the country. Artificial persons are also entitled to the protection of this right. Article 10(1) of the Malaysian constitution does not explain the scope of the freedom of expression. normally right refers to speech, writing of book and articles, and broadcasting over different mediums. Nevertheless, well settled principles of constitutional law explain

⁷⁸J.C.Fong, *Constitutional Federalism in Malaysia* (Petaling Jaya, Selangor: Sweet & Maxwell/Thomson Reuters, 2016).

that freedom of expression covers words of mouth, symbols, signs, artwork, sculpture, photography, gestures, music, films, books, magazines including newspapers.

The inter-connection of the freedom of expression with freedom of press has been highlighted in a famous case of “Abdul Hamid LP in The New Straits Times Press (M) Bhd v Airasia Bhd” in following words “...freedom of speech which is related to the freedom of the press’. Nonetheless, freedom of the press has not been explicitly mentioned in the Malaysian Constitution”. Such absence of expressive protection has prompted remarks from “Edgar Joseph Jr SCJ in Public Prosecutor v Pung Chen Choon”:

“[T]he Constitution of Malaysia says nothing about the freedom of the press. The relevant portion of art 19(1) of the Indian Constitution says this: ‘All citizens shall have the right: (a) to freedom of speech and expression; ...’. Nevertheless, a consistent current of judicial opinion in India has established the proposition that art 19(1)(a) includes within its ambit the freedom of the press...With this proposition we agree and indeed before us no attempt had been made by senior federal counsel to argue the contrary”.

The judgment indicates that since Article 10(1) of the Malaysian Constitution is substantially similar with Article 19(1) of the Indian Constitution, the right to freedom of expression should technically include freedom of the press. The decision was followed in “Mkini Dotcom Sdn Bhd v Ketua Setiausaha Kementerian Dalam Negeri & Ors” whereby it was ruled;

It is beyond doubt that the freedom of speech and expression, in Malaysia has its roots in article 10 of our Federal Constitution and further, to my mind that includes the freedom of press to print and publish. Clearly therefore, it is a right founded upon strong constitutional footing, though it must be noted that it is not an absolute right.

The position of the press has been further underlined by “Edgar Joseph Jr SCJ in Pung Chen Choon’s” case:

“The position of the press under our Constitution is not as free as the position of the press under the Indian Constitution and more so when compared to the position of the press in England or the United States of America”.

These cases have clearly established that although press freedom has been given due judicial recognition, no special constitutional protection is conferred on such a right. Thus, the press merely enjoys the same right to freedom of expression under Article 10(1) like any other ordinary citizens,

A) Restrictions on Freedom of Expression

There is no denying the fact that the freedom of expression is a fundamental right and liberty of the residents of any state. It is equally important that this right of freedom of expression is not qualified and is subject to certain limitations. Several judicial decisions have been passed by the courts of competent jurisdictions which clearly mention that there is no such thing as complete freedom of expression in any society. The rationale of imposition of such restrictions has been witnessed by judge Raja Azlan Shah who quoted a para of an approved judgment of the Indian Supreme Court in the case of “AK Gopalan v State of Madras”.

“There cannot be any such thing as absolute or uncontrolled liberty wholly free from restraint; for that would lead to anarchy and disorder. The possession and enjoyment of all rights ... are subject to such reasonable conditions as may be deemed to be, to the governing authority of the country, essential to the safety, health, peace and general order and moral of the community”.

Parliament has the authority by law to impose –

(a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with

other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence”

Clause 2 of the Article 10 authorizes Parliament to pass laws restricting freedom of expression on eight different grounds⁷⁹. The first of those grounds is related with security and safety of the Federation or any part of the federation. Several restrictive laws have been passed including the Official Secrets Act 1972, Printing Presses and Publications Act 1984, Protected Areas and Protected Places Act 1959, Public Order (Preservation) Act 1958 and Sedition Act 1948. Secondly, freedom of expression can be limited to preserve friendly relations with other countries. At present, no specific law has been passed for preserving good relations with foreign countries as these matters are specifically dealt with by the government in accordance to its administrative guidelines and foreign policies.

Thirdly, limitation on the right can be justified on the ground of public order. This basis has been invoked to pass the Sedition Act 1948, Police Act 1967 and Printing Presses and Publications Act 1984.

Fourthly, Article 10(2) recognizes morality as a justifiable limitation and a number of laws such as Films (Censorship) Act 1952, Indecent Advertisements Act 1953, Lotteries Act 1952, Medicines (Advertisement and Sale) Act 1956, Printing Presses and Publications Act 1984 and Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 have been passed to this effect.

⁷⁹Abdul Aziz Bari and Farid Sufian Shuaib, *Constitution of Malaysia: Text and Commentary* (Petaling Jaya, Selangor: Prentice Hall, 2012).

Freedom of expression can also be limited on the ground of defamation via the Defamation Act 1957 and the Penal Code. Lastly, the Parliament is also permitted to enact laws on the ground of incitement to commit any offence. Offences like obscenity,¹²³ or causing disharmony, disunity on grounds of religion¹²⁴ and many other Penal Code offences that are restricting the right to freedom of expression are derived from clause 2 of Article 10.

In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2)(a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law”

The restrictions in Article 10(4) were announced following to the Amendment in Constitution in 1971. Constitution also provides additional restrictions and duties in following manners “In addition, Article 10 (4) allows content-based restrictions on ‘sensitive issues’: it provides that as to restrictions to free expression on the grounds of national security or public order, ‘Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative protected by the provisions of Part III [citizenship], Article 152 [national languages], 153 [duties, responsibilities and powers of the Monarch] or 181 [savings for the powers of the Ruling Chiefs of various states] Article 10 is also further limited by executive emergency powers (Article 150).

For instance, Article 126 authorizes the courts to penalize action or speech that amounts to contempt of court. Article 63(4) and 10(4) is subject to Parliamentary proceedings to the law of sedition. In addition to the justifications for restricting freedom of speech in the constitution, Part XI under article 149 lists subversive

conduct and activities in detail. According to Article 149(1) of the constitution, if any act of parliament recites that actions has been taken or endangered by any substantial body of persons, whether outside or inside of the federation⁸⁰;

- 2) “to cause or to cause a substantial number of citizens to fear, organized violence against persons or property; or
- 3) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or
- 4) to promote feelings of ill will and hostility between different races or other classes of the population likely to cause violence; or
- 5) to procure the alteration, otherwise than by lawful means of anything by law established; or
- 6) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or
- 7) which is prejudicial to public order in or the security if the federation or any part thereof”;

Moreover, the Constitution explicitly demands courts to take a deferential approach to the interpretation of limitations on expression by limiting the power of the Courts to inquire into the necessity for laws directed at restrictions mentioned in Article 10 (2)⁸¹. Malaysia has never experienced freedom of speech to the extent it has come to be practiced in western democracies like US and UK. The notion of freedom of expression and speech in Malaysia was not introduced instantly. It was offered gradually in Malaysia after the colonization of the country by the British. Britain introduced a complete political system in Malaysia and freedom of expression and speech was an important part of that political system. However, Britain was also responsible for harsh laws like the Sedition and Emergency Ordinance. these laws later worked as the model laws for restricting freedom of speech in the country.

⁸⁰Mohd Azizuddin Mohd. Sani, *Freedom of Political Speech and Social Responsibility in Malaysia* (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2010).

⁸¹Padmanabha Rau K. V. and T. Johnson. Sampathkumar, *General Principles of the Malaysian Legal System* (Petaling Jaya: International Law Book Services, 2006).

- **Regulation of Broadcast Media in Malaysia**

Malaysia in the last two decades or so have witnessed expansion of Information and Communication Technology (ICT) and have gained rapid growth also. Several aspects have contributed to this situation. In the mid of 1990, the “Ministry of Energy, Communications and Multimedia (now Ministry of Energy, Water, Communications and Multimedia)” was established to demonstrate the state’s commitment to enable convergence of the media and ICT growth. In 1998, an Act, “The Communications and Multimedia Act (CMA 1998)”, was legislated to provide for a regulatory framework to harness the potential of convergence and to drive the growth of the communications and multimedia industry⁸².

In Malaysia “CMA 1998” regulates private electronic under the umbrella of Ministry of Energy, Water, Communications and Multimedia⁸³. Whereas the Ministry of Information control government owned electronic media in Malaysia⁸⁴. Under the Malaysian Communications and Multimedia Commission Act 1998 (MCMCA)⁸⁵, a body named as ‘The Malaysian Communications and Multimedia Commission (MCMC)’ was created as the regulatory agency for “Communications and Multimedia Industry in the Country⁸⁶”.

⁸²Safinaz Mohd Hussein, ‘The Malaysian Communications and Multimedia Act 1998 - Its Implications on the Information Technology (IT) Industry’ (2000) 9(1) Info & Comm Tech Law 79.

⁸³Preamble to the CMA stipulates that the CMA is ‘An Act to provide for and to regulate the converging communications and multimedia industries, and for incidental matters’

⁸⁴Media Regulation, Re-regulation and Self-Regulation, accessed July 15, 2018, https://www.researchgate.net/publication/265107115_Media_Regulation_Re-regulation_and_Self-Regulation_in_Malaysia_and_Singapore_A_Comparative_Analysis_of_Current_Status_Needs_and_Trends.

⁸⁵Section 4 of the MCMCA

⁸⁶Preamble to the MCMCA provides that ‘An Act to provide for the establishment of the Malaysian Communications and Multimedia Commission with powers to supervise and regulate the communications and multimedia activities in Malaysia, and to enforce the communications and multimedia laws of Malaysia, and for related matters’

This MCMC created a self-regulated forum of “the Communications and Multimedia Content Forum (CMCF)” in March 2001⁸⁷. CMCF is an independent working body and is registered with “the Registrar of Societies of Malaysia”⁸⁸. The basic purpose of CMCF is to self-regulate and manage media content in Malaysia⁸⁹. There are total of 13 members of this Content Forum (CMCF) and are elected for a period of two-years term. Six members each from the supply chain or industry category and the civic group category and one additional member from either category are elected onto the council. Chairman of the Content Forum is elected on a rotational basis. The CMCF members are the broadcasters, civic groups (higher public institutions), advertisers, audio-text host service providers, content creators including distributors and Internet access service providers.

The Complaints Bureau

In order to settle disputes regarding electronic media, the CMCF has provided a forum named “The Complaints Bureau”. This Bureau has the authority to receive, consider, mediate and if required, adjudicate and make a ruling on matters such as complaints and grievances relating to alleged breaches. This Complaints Bureau is comprised of a chairman and six members. The chairman of the forum should be a retired judge or senior judicial officer and each member should represent each of the six affiliations⁹⁰.

⁸⁷Section 98 (1) of the CMA1998

⁸⁸Media Regulation, Re-regulation and Self-Regulation, accessed October 15, 2017, https://www.researchgate.net/publication/265107115_Media_Regulation_Re-regulation_and_SelfRegulation_in_Malaysia_and_Singapore_A_Comparative_Analysis_of_Current_Status_Needs_and_Trends.

⁸⁹MALAYSIA - Defending Freedom of Expression and Information, accessed April 15, 2019, <https://www.article19.org/data/files/medialibrary/38689/Malaysia-analysis-Final-December.pdf>.

⁹⁰The Malaysian Communications and Multimedia Content Code, accessed March 15, 2019, [http://www.cmcf.my/download/Content_Code_\(V6-Final\).pdf](http://www.cmcf.my/download/Content_Code_(V6-Final).pdf).

The Responsibilities of Complaints Bureau

The responsibilities and powers of the Complaint Bureau includes;

- a) “to consider and deal with complaints relating to content as provided for in the Code.
- b) to investigate any Content which is in breach of the Code without necessarily having a complaint.
- c) to make decision on any dispute arising between members of the Forum or between a member and non-members.
- d) to create the Content Code which governs the standard practices of communications and multimedia industry in the country
- e) to interpret provisions of the Code when the need arises or when a request is made.
- f) In the event of a breach of the Code, the Bureau may impose fines and other penalties permitted by this Code⁹¹”.

The Content Code

The CMCF has created a Content Code which complies with the Communications and Multimedia Act 1998 ⁹². This Content Code consists of ten parts. The first part offers the introduction of the Content Code. In general introduction part, the preamble, general principles, objects, definition and rules of interpretation of content code are mentioned. The second part present the guidelines on the content code⁹³.

These guidelines should be observed while broadcasting. The third part of Content Code presents the rules for advertisements. Fourth part explains rules for specific broadcastings or broadcasting which are not covered under the second part of general

⁹¹“OVERVIEW | CMCF.” Accessed June 14, 2019. <http://www.cmcf.my/overview>.

⁹²Laws of Malaysia Agc. gov. my, accessed April 15, 2019, <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act 589.pdf>.

⁹³“OVERVIEW | CMCF.” Accessed June 14, 2019. <http://www.cmcf.my/overview>.

broadcastings. The next portions provide guidelines for online broadcasters. The remaining parts explains specific rules on audio text hosting service, specific limited content, code administration, public education, and consumer protection⁹⁴.

The general Code of Content and Code for specific broadcasting are mostly related with broadcasting material. These codes provide guidelines of what is right and what is wrong in media practices. These both Content Codes provides the rules which should be followed and are considered as the standards of content. These standards of content must be observed by the service providers in the communications and multimedia industry⁹⁵. The broad rules for regulation of broadcast media are presented in these two parts of the Content Code. These parts present rules on the following content type: “religious content, indecent content, obscene content, violence, menacing content, bad language, false content, children content, family values and persons with special needs”. These types are explained below;

1) Religious Content

In dealing with Religious Content on broadcast media, Islam shall have treated as the official religion of the country. The constitutional rights of other communities and their rights to freedom of religion will also be maintained. Religious broadcasts are required to provide respect and promote spiritual harmony among citizens. These contents are also required to cater to the diverse religious needs of the community. It is the responsibility of the broadcasters to ensure that religious broadcast content is not used

⁹⁴“OVERVIEW | CMCF.” Accessed June 14, 2019. <http://www.cmcf.my/overview>.

⁹⁵The Malaysian Communications and Multimedia Content Code.

to convey attacks upon any race or religion. These religious contents must not create any religious disharmony in the society.

It is also required that prior to transmission, all religious programs related to Islam must be approved by the relevant religious authorities. Whereas an advice should be sought from the appropriate religious authorities regarding the Content relating to other religion. However, the propagation of any religion other than Islam whether directly or indirectly is not permitted. Finally, wrongful, fanatical, critical or insulting content against any religion shall not be allowed to broadcast.

2) Indecent Content

Content Code defines indecent content as content that is not true and false. False content is usually offensive in nature, morally indecorous, against existing standards and recognized behavior of the society. Indecent content includes nudity and sex⁹⁶.

3) Obscene Content

Obscene Content is near to indecent content rather it is extension of indecency. It is defined as “The test of obscenity is whether the Content has the tendency to deprave and corrupt those whose minds are open to such communication. Furthermore, specific regards should be concerning:

(ii) Explicit Sex Acts or Pornography.

Any depiction of sexual activity that a rational person contemplates pornographic and explicit is proscribed. The portrayal of sex crimes, including rape or attempted rape and statutory rape, as well as bestiality is not allowed.

(iii) Child Pornography

⁹⁶The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines on Content, Part 2.0 Indecent Content.

Child pornography, including the depiction of any part of the body of a minor in what might be reasonably considered a sexual context is strictly prohibited.

(iv) Sexual Degradation.

The portrayal of women, men or children as mere sexual objects or to demean them in such manner is forbidden⁹⁷.

4) Violence

The code also prohibits broadcast of violence in the following words

“(i) Offensive violence a) The portrayal of violence, whether physical, verbal or psychological, can upset, alarm and offend”
“viewers. It can cause undue fear among the audience and encourage imitation.

b) Such public concerns require due consideration whenever violence, real or simulated, is portrayed. The treatment of violence must be appropriate to the context and audience expectations.

c) Gratuitous and wanton presentation of sadistic practices and torture, explicit and excessive imageries of injury and aggression, and of blood, are to be avoided.

d) The portrayal of violence is permitted to the extent of news reporting, discussion or analysis and in the context of recognized sports events in the following instances:

i. Use of appropriate editorial judgment in the reporting of audio and visual representation of violence, aggression or destruction within their content.

ii. Exercise of caution and discretion in the selection of, and repetition of Content, which depicts violence.

iii. Viewers to be cautioned in advance of showing scenes of extraordinary violence, or graphic reporting on delicate subject matter with appropriate warnings to audiences in the case of gore or actual scenes of executions or of people clearly being killed.

(ii) Imitable violence Due consideration must be given to the fact that violence portrayed visually may be imitated in real life. The presentation of dangerous behavior, which is easily imitated, must be justified, and ideally excluded.

⁹⁷The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines on Content, Part 3.0 Obscene Content.

- (iii) Sexual violence Graphic representations of sexual violence, such as rape or attempted rape or other non-consensual sex, or violent sexual behavior are not allowed.
- (iv) Violence and young, vulnerable audiences the susceptibility of younger audiences, particularly those impressionable minds must be considered⁹⁸.

5) Menacing Content

Content that has the apprehension of causing annoyance, evil or threatens harm or incites or encourages crime, or leads to public disorder is measured menacing and is prohibited. Information which might be a threat to national security or and safety public health, must also not to be broadcasted⁹⁹.

6) Bad Language

Bad language should not be used on broadcast media. Bad language is defined in the code in the following words:

- (i) “Offensive Language The use of disparaging or abusive words which is calculated to offend an individual or a group of persons is not permitted.
- (ii) Crude References Words, in any language commonly used in Malaysia, which are considered obscene or profane are prohibited including crude references to sexual intercourse and sexual organs. It is, however, permissible to use such words in the context of their ordinary meaning and not when intended as crude language.
- (iii) Hate Speech. Hate speech refers to any portrayal (words, speech or pictures, etc.), which denigrates, defames, or otherwise devalues a person or group based on race, ethnicity, religion, nationality, gender, sexual orientation, or disability and is prohibited. In particular: descriptions of any of these groups or their members involving the use of strong language, crude language, explicit sexual references or obscene gestures, are considered hate speech.

⁹⁸ The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines On Content, Part 4.0 Violence.

⁹⁹ The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines on Content. Part 5.0 Menacing Content

(iv) Violence Where the portrayal of violence is permitted with appropriate editorial discretion as in news reporting, discussion or analysis and in the context of recognized sports events, care must be taken to consider the use of explicit or graphic language related to stories of destruction, accidents or sexual violence, which could be disturbing for general viewing¹⁰⁰.

7) False Content

Content, which covers false material and is expected to be misleading, should be avoided. Broadcast content will be termed as false if prior to communications, reasonable measures for checking its reliability were not adopted. False content can be broadcasted if it is parody, satire or fiction¹⁰¹.

8) Children's Content

Rule and principles are also laid down for children of and below 14 years of age. It is recommended that specific attention must be paid to the below mentioned aspects of children content,

- a) "In children's content portrayed by real-life characters, violence should only be portrayed when it is necessary to the character.
- b) Animated Content for children, broadcast content must not depict violence as its fundamental theme
- c) In other broadcast content for children scenes of violence must not be presented
- d) the programs made for the children must carefully deal with themes which can threaten children's sense of security"¹⁰².

¹⁰⁰ The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines on Content, Part 6.0 Bad Language.

¹⁰¹The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines on Content. 7.0 False Content

¹⁰²The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines on Content, Part 8.0 Children's Content.

9) Family Values

The dignity of all individuals and emotional as well as intellectual equality of both sexes must always be respected. The broadcast content should raise awareness about discrimination on gender basis. Women and men would be portrayed as equals both emotionally and economically, and in both private and public spheres. It is also recommended that all persons of family should be presented as supporting participants in a family. All members should also be portrayed as equal beneficiaries under all types of thematic circumstances. While broadcasting non-Malaysian content, efforts should be made that the content should adhere to the guidelines of code regarding family values¹⁰³.

10) Persons with Special Needs

While broadcasting the humor or funny material, it is prohibited to make fun of disability of any kinds. If it is required to refer to disability than it must be used in neutral terms and for that purposes a person with special needs can be included in programmes¹⁰⁴.

5.4. Comparison Between Pakistan, Malaysia and England Regulatory Systems

Media and communication policies in Pakistan are framed and enforced by PEMRA. PEMRA was created in 2002 in a situation, when the state's media was in its nascent stage. PEMRA as an institution has received a substantial amount of criticism in recent times for its inability to work independently and sometimes not acting timely on different complaints regarding electronic media in the country. PEMRA has also been

¹⁰³The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines On Content, Part 9.0 Family Values.

¹⁰⁴The Malaysian Communications and Multimedia Content Code, Part 2: Guidelines on Content, Part 10.0 Persons with Special Needs.

criticized on the allegation of stopping the legitimate voices of the people and restricting the discussion on important issues. Although the market of broadcast media has expanded recently but the issues with it remains as usual. One of the Legal experts stated regarding the growth of broadcast media in Pakistan;

“According to the Media Commission Report released in April 2014, 89 licensed TV channels, including 29 news channels, are currently operating in Pakistan with access to 15 million households or about 75 million viewers. Similarly, nearly 180 FM radio stations with access to 78 million listeners have also sprung up across the country. Now the list has crossed the no 100 and much more FM channels are granted licenses in the country¹⁰⁵”.

However, PEMRA’s robust role in growing the broadcast sector has been eclipsed by its weak performance on various other fronts, particularly regarding its inability to work as an independent organization in Pakistan. PEMRA Authority is the chief body responsible for the working of the PEMRA and all actions are taken by it. Broadcast media journalist on the composition and working of PEMRA Authority stated that;

“The role of the PEMRA in broadcast media regulation is immensely huge as it is the sole body responsible to look after the electronic media in the country. PEMRA provides the first of its type of regulatory mechanism in the South Asia. It is claimed as an independent body established for the provision of services and regulation of media in the country. However, in PEMRA authority most of the members are appointed by the Federal government and this indirect involvement of government makes it difficult to work as an independent body¹⁰⁶”.

The same is the case with Council of Complaint which is responsible to handle complaints and all related matters. All members are appointed by the Federal government and one of PEMRA official who was interviewed explained the sad

¹⁰⁵Interview with legal experts, respondent no. 5

¹⁰⁶Interview with electronic media journalists, views of respondent no. 10, 11 and 12

situation of members of Council of complaint that “historically being a member of political party was enough qualification to become a member of Council of Complaint”¹⁰⁷. If members of the ruling party are made the members of the Council of Complaint than the idea of effective and independent regulation is difficult to achieve¹⁰⁸. If a comparison of PEMRA as an independent and effective body is made with Ofcom and CMCF than the difference is visible regarding independence.

The UK is a leading and advanced liberal democracy. In UK the commercial sector of media is regulated by the Office of Communications popularly known as Ofcom. Before Ofcom was set up in December 2003, following the adoption of the Communication Act 2003, the country’s media and telecom sectors were governed by five different regulators. Ofcom was established to replace the former regulators for both the broadcasting and telecom sectors. As defined in the Communications Act 2003, the principal duty of Ofcom is to “(a) further the interests of citizens in relation to communications matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

Ofcom’s main functions are carried out by Ofcom Board. this Ofcom Board is an independent body created by the Ofcom and there is no involvement of state governments in the selection of the its members. the other major body responsible for dealing with complaints of content is Content Board. even in this content Board there is no involvement of government in appointing its members. Legal experts while commenting on this comparison stated that;

¹⁰⁷Interview with PEMRA official, respondent no. 8

¹⁰⁸Interview with PEMRA official, respondent no. 6

“Ofcom carries on all its functions independently and without the involvement of the government. However, in Pakistan the situation is totally opposite. although it is claimed that PEMRA is independent body, but all of its major appointments are made by the government¹⁰⁹”

Regarding system of broadcast media control in Malaysia the legal expert stated that

“The Communications and Multimedia Content Forum of Malaysia (CMCF) is authorized to look after the affairs of communications and multimedia industry in Malaysia. This CMCF is authorized to do it under the Communications and Multimedia Act 1998. CMCF has provided a detailed code of content for the industry in Malaysia. The basic idea in country is self-regulation and only in case of dispute, the CMCF is called upon to intervene”¹¹⁰.

CMCF carries out all functions. it is assisted by Complaint Bureau. CMCF is an independent body and its members appointed from diverse fields. The CMCF members are the broadcasters, civic groups (higher public institutions), advertisers, audio-text host service providers, content creators including distributors and Internet access service providers. These members represent different fields and all these fields have direct relationship with media. In Pakistan in appointment of PEMRA Authority it is only the Federal government which is making most of the appointments and there are no representations of any of the above-mentioned fields. Only a representation of Broadcasters Association is made.

The same is the case with Complaint Bureau of CMCF. CMCF provides that the chairman of the Complaint Bureau should be a retired judge or senior judicial officer and each member should represent each of the six affiliations. However, in Council of

¹⁰⁹Interview with legal experts, respondent no.2

¹¹⁰Interview with Legal expert and PEMRA official, views of respondent no. 2 and 9

Complaint under the PEMRA Ordinance 2002, all members are the appointees of the federal government and there are no such criteria of any specific field.

Regarding restrictions or regulating the conduct of broadcasting media the Codes of Ofcom are much more comprehensive as compared to PEMRA Ordinance 2002 and Code of Code. The Communication Act 2003 provides the basic rules of business and Ofcom Code is presented on that.. The Ofcom content code also provides the explanations of each part of the code for regulation of broadcast media in UK but PEMRA only provides the code which is also lacking several things. It is wrongly believed that in Pakistan the electronic media is heavily regulated. If we compare the both regulations of UK and Pakistan about restrictions and code of conduct than we can easily conclude that the Ofcom code is easily more comprehensive, more detailed, more easily understandable and covers all matters of importance including the emerging matters. However, the same cannot be said about PEMRA. Ofcom has made total of 9 categories of regulations of broadcast media. PEMRA has also tried to follow the regulations of the Ofcom but has failed to do so.

PEMRA instead of adopting comprehensive approach to explain and present detailed regulations has adopted the summary method of regulations. The Ofcom method is to explain and elaborate each concept of regulations of broadcast media whereas PEMRA Ordinance 2002 and Content is opposite in nature. PEMRA Code although discuss all major concepts but leaves the room of misinterpretation as it not explained in detail¹¹¹. This lack of interpretation was also highlighted in previous part as it affords an opportunity to the PEMRA and government to use these vacuums and

¹¹¹Interview with legal experts, respondent no. 3

misinterpretation in laws to silence the legitimate voice of the electronic media. Another difference of approach is regarding the provision of finances by the government. Ofcom receives the funds from the government whereas the PEMRA is required to create its own resources and then submit budget reports to the government of the time¹¹².

The same is the case with Malaysian system of government that it provides minimum of governmental involvement in regulation, rather self-regulation approach is adopted¹¹³. CMCF present a comprehensive code of conduct for media and communication industry in Malaysia. It has touched upon all matters and explained in detail each aspect of it¹¹⁴. However, the implementation matter is left to the parties itself and approach of self-regulation is adopted. If any dispute arises only than CMCF is involved in content code. The PEMRA approach is quite different from it. Although PEMRA provided code of conduct but it is not exhaustive and elaborative as is Malaysian code and PEMRA is responsible to implement it¹¹⁵.

Freedom of expression is an important subject and one of the most debated fundamental rights. PEMRA in Pakistan is entrusted with the responsibility of regulating and looking into matters of freedom of expression of broadcast media in the country. However, if the PEMRA as a regulatory body is not independent than the freedom of expression of broadcast media is compromised in the country. secondly freedom of expression does not simply mean freedom to say rather it includes the right of viewers to receive information from the broadcast media. If the media content is not

¹¹²Interview with PEMRA official, respondent no. 9

¹¹³Interview with legal experts, respondent no. 3

¹¹⁴Interview with legal experts, respondent no. 4

reached to the viewers than it is a form of restricting freedom of expression of broadcast media. It is also worthy to mention that the PEMRA Authority has enacted a Code of Conduct for broadcast media on the advice of Supreme Court in Hamid Mir case. However, that code of conduct and PEMRA Ordinance 2002 is restrictive in nature and several of its provisions are utilized to silence the opposing voices of the people. While the regulatory bodies in the Malaysia and UK are much more comprehensive and to some extent more autonomous. Even the code of conduct provided by these countries are much more comprehensive. The comprehensive nature of codes will provide less opportunities of misinterpretation by the regulatory bodies and will ipso facto safeguard freedom of expression of electronic media in these jurisdictions.

This chapter comprehended freedom of expression as enunciated under international treaties and explained the method of regulation and restrictions of freedom of expression of broadcast media in UK and Malaysia. These both countries have different kind of approaches towards protection of freedom of expression. Formal Constitution does not find place in UK system. However, since the creation of UK Human Rights Act in 1998 and adoption of EU Human rights principles of freedom of expression the situation has changed in UK. The arrival of Ofcom in the wake of Communication Act 2003 has also completely changed the method and approaches of regulation of broadcast media in UK. Whereas Malaysia has enacted a formal Constitution and specific restrictions are also provided in the same Constitution. The method of self-regulation is adopted by the CMCF, a Malaysian regulatory body for electronic media. Both of these countries have different approaches towards regulation of broadcast media.

These models of these countries can be learning grounds for regulation of broadcast media in Pakistan.

Table 5.1. Summary Table Comparing the Regulation of Media

Country	Constitution	Electronic Media Laws	Regulatory Body and its structure	Electronic media regulations/code and Punishments
UK	Human Rights Act 1998 Freedom of Expression principle adopted from EU Convention of Human Rights	Communication Act 2003	OfCOM Independent Regulatory Body Run by Ofcom Board And Content Board	Ofcom Content Code. Protecting the under-eighteen, harm and offence, crime, disorder, hatred and abuse, religion, Privacy, commercial referencing Punishments Fines, License Revocation
Malaysia	Article 10 of Constitution of Malaysia	The Communications and Multimedia Act 1998 Communications and multimedia industry	CMCF Independent Regulatory Body Run by Complaints Bureau	Indecent Content, Obscene Content, Violence, Menacing Content, Bad Language, False Content, Children's Content, Children's Content Punishments Imposition of penalty
Pakistan	Article 19 of Constitution	PEMRA Ordinance 2002 Radio, Television	PEMRA Control of Government Run by PEMRA Authority and Council of Complaint	News, violence, crime, Religion, Privacy, Children, Advertising, Hate speech, decency, morality Punishments Fines, License Revocation

5.5 Conclusion

This chapter comprehended freedom of expression as enunciated under international treaties and explained the method of regulation and restrictions of freedom of expression of broadcast media in UK and Malaysia. These both countries have different kind of approaches towards protection of freedom of expression. Formal Constitution does not find place in UK system. However, since the creation of UK Human Rights Act in 1998 and adoption of EU Human rights principles of freedom of expression the situation has changed in UK. The arrival of Ofcom in the wake of Communication Act 2003 has also completely changed the method and approaches of regulation of broadcast media in UK. Whereas Malaysia has enacted a formal

Constitution and specific restrictions are also provided in the same Constitution. The method of self-regulation is adopted by the CMCF, a Malaysian regulatory body for electronic media.

Both of these countries have different approaches towards regulation of broadcast media. These models of these countries can be learning grounds for regulation of broadcast media in Pakistan. Lastly a comparison of regulatory framework of broadcast media in UK, Malaysia and Pakistan is made.



CHAPTER SIX

RECOMMENDATIONS AND CONCLUSION

6.1 Introduction

This chapter concludes the study. This chapter provides general overview of the study. After that the research findings and recommendations are provided. Those findings and recommendations are based on the doctrinal and social legal methods and are in line with the research questions and objectives of the thesis. Similarly, next part of chapter presents the contributions of the study. In addition, it provides the suggestions for future research and the overall conclusion of the study.

6.2 Review of the Study

The most important and largest industry benefiting from freedom of expression is the broadcast media in Pakistan. The media mobilizes, educate and most importantly provides awareness to the public. Broadcast media also plays a major role in pushing the governments to perform their basic duties and responsibilities. A strong, independent and vigilant broadcast media is mandatory for promotion of democracy and accountability in Pakistan. At the same time broadcast media must not be unaccountable and unregulated. Abuse of authority by media and application of unreasonable restrictions on media will weaken the confidence of the public in the regulatory system of the country along with its negative consequences.

With this background this study was conducted to study as to what extent freedom of expression of broadcast media is protected and restricted in Pakistan. Furthermore, this study thoroughly investigated the issues annexed with freedom of expression of broadcast media of Pakistan. Lastly it is intended to provide workable recommendations to improve the legislations on freedom of expression of broadcast media in Pakistan. Based on the problem of the study the following research objectives were identified.

1. To examine the laws on freedom of expression of broadcast media in Pakistan.
2. To examine the restrictions on freedom of expression of broadcast media under Pakistani laws.
3. To study the law on freedom of expression of broadcast media from international perspective.
4. To make suggestions and recommendations to improve legislations on freedom of expression of broadcast media in Pakistan

6.3 Findings of the Study

This part presents the findings of the study. These findings are divided into two parts. The first part presents findings related with the Constitution and freedom of expression of broadcast media in Pakistan. The second part of findings relates with broadcast media legislations. This part is further bifurcated into two parts. First part deals with findings on restrictions on freedom of expression of broadcast media in Pakistan. Whereas, second part deals with the organization and authority of PEMRA as an independent working body.

6.3.1 Constitution and Freedom of Expression of the Broadcast Media

Freedom of expression of broadcast media is not directly protected under the Constitution of Pakistan. This study finds that with the emergence of technologies the press has evolved into electronic media and print media. Whereas, electronic media includes broadcast media and broadcast services. Therefore, freedom of expression of broadcast media is protected under the umbrella of electronic media and finally under the press. This study also finds that the role of freedom of expression of broadcast media has also changed in recent times with the advancement of technologies in the world. The broadcast media now enjoys the right of dissemination and receiving of information, right of broadcast, right of entertainment, right of commercial speech, right to report court proceedings, right to transmit beyond boundaries and right to criticize governments. Although broadcast media enjoys all these right under umbrella of freedom of expression, but this freedom is not unlimited or unrestricted.

6.3.1 Broadcast Media Legislations

a) Restrictions on Freedom of Expression of Broadcast Media

The state has put several restrictions on the freedom of expression of broadcast media. Those restrictions are provided under the Constitution, PEMRA Ordinance 2002 and Electronic Media (Programs and Advertisements) Code of Conduct 2015. This study finds following issues with restrictions on freedom of expression of broadcast media in Pakistan.

- i. This study finds that the electronic media code involving religious matters is rarely implemented. PEMRA is incapacitated to take the responsibility to handle complaints involving religious matters.

- ii. PEMRA Ordinance 2002 or Code of Content does not make any reference to defining of “integrity, security and defense” of country. Practically PEMRA don’t have the real authority to define and implement these terminologies.
- iii. In PEMRA Ordinance or Code of Conduct there is no provision which provides rules for “protection of friendly relations with other states”. The only reference is made in Article 19 of the Constitution. This non-availability of specific provisions affords free hand to PEMRA to stop anything based on protection of friendly relations.
- iv. The definition of “indecent” adopted by the PEMRA is vague and not comprehensive.
- v. This study discovers that the issue of media trial and its relationship with right of fair trial and contempt of court are important matters. The matters of media trial have reached to such extent that Supreme Court was forced to issue directives to PEMRA to stop discussions on a specific case pending before it for final disposal¹.
- vi. Re-enactment of crimes on broadcast media presents the techniques of commission of crimes and has tendency to lead to “commission or crime or incitement to commit crimes”
- vii. Hate Speech on political basis is not included in the definition of Hate Speech.
- viii. This thesis concludes that privacy of the individuals and Children is an important matter. However, it to some extent ignored under the PEMRA Code of Conduct.

¹Supreme Court directed PEMRA to stop all discussion on a pending cases tilted as Hudabiya Papers Mills case

b) PEMRA as a Regulatory Body

- i. This study concludes that the PEMRA Authority is not an independent regulatory body under PEMRA Ordinance 2002.
- ii. The involvement of the federal government in the appointment of members of Council of Complaints makes it difficult to work independently.
- iii. The existing broadcasting services system of cable network provides authority to the governments and PEMRA to stop opposing voices.

6.4 Recommendations

This part presents the major recommendations of the study. This recommendation part is divided into two parts. The first part presents recommendations related with restrictions on freedom of expression on the broadcast media. These are basically referring to the restrictions inscribed under PEMRA Ordinance 2002 and Electronic Media (Programs and Advertisements) Code of Conduct 2015. The second part of recommendations is related with the PEMRA as a regulatory body.

6.4.1 Broadcast Media Legislations

This part presents the recommendations related to restrictions on freedom of expression as presented under the PEMRA Ordinance 2002, and Electronic Media (Programs and Advertisements) Code of Conduct 2015

a) Restrictions on Freedom of Expression of Broadcast Media

- i. This study recommends that PEMRA Authority should establish a religious body in addition to Council of Complaints to investigate religious content. That religious body should comprise of renowned members of civil society and religious scholars

of all sects of Islam. All religious content should be approved by that religious body before the telecast of that on electronic media. There must be complete ban on live telecast of religious material on broadcast media. It is also recommended that direct or indirect propagation of any religion except Islam should not be permitted. This should be added in the duty of religious body.

- ii. The power of defining ‘security, integrity and defense’ of the country should be transferred to a committee comprising all stakeholders. That committee should include members of parliament, judiciary, armed forces and PEMRA. Committee should further revisit all laws related with integrity, security and defense of the country. Once the definitions have been made than PEMRA should be assigned with the obligation of ensuring the compliance of report for that committee.
- iii. PEMRA under its Ordinance and code of conduct should add following for the protection and promotion of friendly relations with other countries.
 - a) “Electronic media should work for the promotion of friendly relations with other countries”
 - b) While telecasting programs and presenting discussions on broadcast media regarding matters involving other countries, it must be observed that religious feelings and affiliations of any religious sect of Islam should not be disturbed.
- iv. In the PEMRA Ordinance 2002 and Electronic Media (Programs and Advertisements) Code of Conduct, the following new definition of “indecent” should be added to make it clearer and more comprehensive;

“Indecent content means the content not conforming with generally accepted standards of behavior, especially in relation to sexual matters.

While deciding about the indecency the special attention should be given to

Explicit Sex Acts or Pornography. Any depiction of sexual activity that a rational person contemplates pornographic and explicit is proscribed. The portrayal of sex crimes, including rape or attempted rape and statutory rape, as well as bestiality is not allowed.

Child Pornography. Child pornography, including the depiction of any part of the body of a minor in what might be reasonably considered a sexual context is strictly prohibited.

Sexual Degradation. The portrayal of women, men or children as mere sexual objects or to demean them in such manner is forbidden”

- v. This study recommends that the principle of Hudaibiya Paper Mills Case adopted by Supreme Court should be observed by the broadcast media in all cases to ensure right of fair trial and following should be added under Section 4(3) of “Electronic Media (Programs and Advertisements) Code of Conduct”. “provided that no content shall be aired which presents analysis, discussion on the merits or demerits of a pending case”
- vi. This study recommends that Section 9 of the “Electronic Media (Programs and Advertisements) Code of Conduct” should be removed completely. There should be a complete ban on dramatization of crimes, whatever the nature of it may be.
- vii. This study commends that in definition of hate speech the words “violence based on political basis” should also be added. The reason for inclusion of such provision is the emerging trends of intolerance among political parties of the country.
 - a) It is also added that whenever a broadcast media company is fined by PEMRA Authority for hate speech on any ground, that matter must be brought into the notice of public officials for strict action against the individual culprit. The reason for such strict recommendation is the volatile nature of Pakistani society about religious matters. It will prevent further deuteriation of the condition in the country.

viii. In order to protect the privacy of individuals and children's the following measures should be adopted;

a) For privacy of children following should be added in the content code;

“material that might seriously impair the physical, mental or moral development of people under eighteen should be prohibited from telecast. For that water shedding technique should be used by the electronic media in Pakistan.

Explanation; Water shed; The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not, in general, be shown before 2100 or after 0530”.

b) Broadcast media should also ensure prior consent of the persons whose private actions, words or images are recorded, or live broadcasted from a public place.

c) The information which has the tendency to reveal the where about of home of a person or family should not be disclosed without prior approval.

d) The privacy of the individuals must be observed even when they are trapped in the live broadcast of events on news and following should be added in the content code related with privacy that;

“Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organization concerned”.

e) Due care should be observed while presenting any;

“pre-trial police investigation of criminal offence, broadcasters must pay regard to the potentially vulnerable position of any person who is not yet adult. That person may be victim, a witness or victim or even the alleged offender. Care must be taken before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them”.

b) PEMRA as a Regulatory Body

i. The representation of journalists, legal fraternity and civil society should also be made in PEMRA Authority.

- ii. This study recommends that members of PEMRA Authority appointed by the provincial governments under Section 6 of the PEMRA Ordinance 2002 shall be persons who are well-known for their integrity, competence, expertise and experience in the field of media, business, management, finance, economics or law.
- iii. Federal as well as provincial governments should be obligated not to include workers of political parties or their family members in PEMRA Authority or council of complaints.
- iv. It is further recommended that PEMRA Authority should be entrusted with responsibility of selection of Council of Complaint members. For appointment of members in the Council of Complaints the representation of Pakistan Broadcasters Association, provincial governments, journalists, legal fraternity and civil society should also be included.
- v. This study recommends that granting of Direct to Home (DTH) services licensees as was planned last year should be started at the earliest. These DTH facility will enable the viewers to watch the broadcast of their own choice without the intervention of any government or cable operators.
- vi. The world has entered new domains and has introduced new technologies for transmission of broadcasting. The PEMRA Authority should forms rules for introduction of new broadcasting technologies like LMDS, MMDS, OTT (Over the Top) and Web TV.

6.5 Contributions of the Study

The contributions of current study can be characterized into two aspects, namely; “practical and methodological contributions”. The practical contributions are intended and focused at the academic field, the body of the knowledge itself, PEMRA

organization, parliament, practitioners and society of Pakistan at large. whereas the methodological contributions are meant for research methodology.

Firstly, this study contributes to the understanding of the freedom of expression for broadcast media in Pakistan. This study is timely and appropriate, in current times as freedom of expression of broadcast media has gained much more importance due to recent developments in country. The contribution of the study is to increase of knowledge and awareness about freedom of expression of broadcast media and the issues annexed with it in Pakistan.

Secondly this study contributes to the legal reform efforts related with freedom of expression of broadcast media in Pakistan. For conclusion on the subject several international treaties and regulation models of UK and Malaysia are approached.

Thirdly, the practical contribution of this study is that it eased the work of parliament, legal community, and PEMRA itself as it identified the problematic areas of freedom of expression of broadcast media and provided solutions. Fourthly, this study also provides an opportunity to the world to discover the true situation of freedom offered to broadcast media in Pakistan and is also significant for the countries which are facing the same situations regarding electronic media.

This study also contributed in research methodology. To avoid the dilemma arising from the use of single method alone in the collection of data, this research adopted socio legal method and doctrinal legal research method in a single study to analyze the data collected form diversified sources, with the aim of bridging the methodological gap. In this regard, this study utilized face to face interview to provide support to the

doctrinal research technique, unlike other previous studies that provided only doctrinal legal method of research. This study uses mixed method in such a way that both doctrinal and socio legal method neutralize the inherent weaknesses in the use of single research method alone. These two methods of research are independent of each other but were later embedded during discussions. This provides an added advantage in the current study to capture both the perceptions of doctrinal and socio legal methods concerning freedom of expression of broadcast media in Pakistan.

6.6 Directions for Future Research

The area of restrictions related with media requires more concentration of studying and researching the regulatory frameworks of different mediums of media. It is the need of the time to study and research the restrictions and mechanisms of regulation of newly emerged “social media in Pakistan”. It is also important to look at the prospects of single regulatory body for all kinds of media in Pakistan. This is important as with the emergence of new technologies the role of media has also increased and simultaneously changed in the lives of people in the country.

Table 6.1. Summary of Findings and Recommendations

No	Findings	Recommendations
1	Implementation issues with Content Code on religious matters	Establish Religious body for religious material
2	Content code related to integrity, security and defense in not properly defined	New definitions of these terminologies
3	Content code lacks provisions on friendly relations with other states	Provide provisions on friendly relations with other states

4	Definition of “indecent” is vague and not comprehensive.	New definition of “indecent”
5	Media trial always intervene in right of fair trial	Stop discussion on pending cases
6	Re-enactment of crimes increase crimes in society	Proscribe re-enactment of crimes
7	Hate Speech on “political basis” is not included in code	Add political hate speech in definition of hate speech
8	Privacy of the individuals and Children is not properly explained	Improve code of privacy of individuals and children
9	PEMRA Authority is not an independent body	Re-organize structure of PEMRA Authority
10	Council of Complaints is not an independent body	Re-organize structure of council of complaints
11	Existing broadcasting services system is flawed	Change of broadcasting services system

6.7 Overall Conclusion

Freedom of expression of broadcast media is an important matter. The problems inherent in the Pakistani laws are obstructing freedom of expression of broadcast media and at the same time making it difficult for the PEMRA to effectively regulate broadcast media. This study critically examined freedom of expression of broadcast media in Pakistan. It also examined the issues annexed with freedom of expression of broadcast media. Those issues are related with restrictions on freedom of expression, PEMRA as an independent regulatory body and relationship of broadcasting services with freedom of expression of broadcast media in Pakistan.

This concluding chapter addressed the findings and recommendations on issues related with freedom of expression of broadcast media of Pakistan. This first part of recommendations suggested improvements in PEMRA Ordinance 2002 and Code of Conduct for content related restrictions. The second part of recommendations proposed improvements in PEMRA Ordinance 2002 to make PEMRA a true independent and effective regulatory body. This part further suggested steps to make distribution services process more convenient to promote freedom of expression for broadcast media. It is hoped that all recommendations of this study will be taken into a serious consideration to solve the existing problems of freedom of expression of broadcast media in the country.



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APPENDIXES



Appendix 1.

INTERVIEW RESEARCH QUESTIONS GUIDE

Research Questions	Probing Questions
<p>1. How does the law protect freedom of expression of broadcast media in Pakistan?</p> <p>2. To what extent freedom of expression of broadcast media is restricted in Pakistan?</p>	<p>1. In your opinion as to how and to what extent freedom of expression of broadcast media is protected in Pakistan?</p> <p>2. How do different laws of restrictions effect the freedom of expression of broadcast media in Pakistan?</p> <p>3. To what extent restrictions provided under the Constitution, contribute to the effective regulation of freedom of expression generally and freedom of expression of broadcast media specifically?</p> <p>4. Discuss the role of PEMRA as an independently working body to ensure freedom of expression of broadcast media in Pakistan.</p> <p>5. Discuss the role of broadcasting services in ensuring freedom of expression of broadcast media.</p>



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<p>3. To what extent freedom of expression of broadcast media is restricted under international treaties and laws of other countries?</p>	<p>6. To what extent laws relating to regulation of broadcast media are compatible with international norms of regulation of Media?</p>
<p>4. How can the laws restricting freedom of expression of broadcast media be improved to promote freedom of expression and at the same time protect it from abuse?</p>	<p>7. What should be way forward regarding restrictions on freedom of expression of broadcast Media in Pakistan?</p>



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Appendix 2.

Background Information of Participants

Respondent No	Location in the Study Area	Status	Sex	Unit of Analysis
R 1	Islamabad	Senior Legal Expert	Male	Individual
R 2	Lahore	Senior Legal Expert	Male	Individual
R 3	Lahore	Senior Legal Expert	Female	Individual
R 4	Karachi	Senior Legal Expert	Female	Individual
R 5	Karachi	Retired judge of Supreme Court and Senior Legal expert	Male	Individual
R 6	Islamabad	PEMRA Official	Female	Institution
R 7	Islamabad	PEMRA Official	Male	Institution
R 8	Lahore	PEMRA Official	Male	Institution
R 9	Karachi	PEMRA Official	Female	Institution
R 10	Islamabad	Journalist	Male	Individual
R 11	Lahore	Journalist	Male	Individual
R 12	Karachi	Journalist	Female	Institution

Appendix 3

Consent Form

In the name of Allah, the Entirely Merciful, the Especially Merciful. Dear Sir/Madam..... Thank you very much for accepting an interview with the researcher:

Yasir Aleem - a PhD. student at Utara University Malaysia (UUM) - Kedah – Malaysia. The researcher is preparing a PhD Thesis entitled: “***LEGAL ANALYSIS OF FREEDOM OF EXPRESSION WITH SPECIAL REFERENCE TO BROADCAST MEDIA IN PAKISTAN***”. The interview will enrich the study based on your information which it’ll be documented academically by this study to establish potential efforts in the same field. Therefore, research ethics require informing you of the following:

- 1. Confidentiality:** You have the right to keep your personal information such as: name, job or workplace confidential and not to be published
- 2. Permission of publishing:** the researcher is not allowed to publish any information relating to the content of the interview or personal information without your permission to do so.
- 3.** You have the right to refuse / reject any question.
- 4.** You have the right to end the interview at any time, even before the completion of questions.
- 5.** Your information, notes and suggestion that you will be making will be used solely for the abovementioned research purposes, the researcher is not allowed to use the content of this interview totally or partially in any other way.

6. This interview will be documented in taping or writing; and you have the right to decide any other method.

Consent: I don't mind documenting this interview in writing and I give the permission for the researcher to publish the personal information, as well as contents of this interview, for the academic purposes of abovementioned study.

Name:

Position:

E-mail:

