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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)
UNIVERSITI UTARA MALAYSIA

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Pengerusi Viva : **ASSOC. PROF. DR.
MOHAMMAD AZAM HUSSAIN**

Tandatangan
(Signature)

Pemeriksa Luar : **PROF. DR. FARID SUFIAN
SHUAIB**

Tandatangan
(Signature)

Pemeriksa Dalam : **PROF. DR. RUSNIAH AHMAD**

Tandatangan
(Signature)

Tarikh : **20 November 2019**
Date

Nama Pelajar
(Name of Student) : **YASIR ALEEM FATIANA (901725)**

Tajuk Tesis
(Title of the Thesis) : **LEGAL ANALYSIS OF FREEDOM OF EXPRESSION WITH
SPECIAL REFERENCE TO BROADCASTING MEDIA IN
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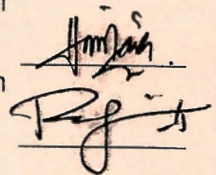
Program Pengajian
(Programme of Study) : **Ph.D**

Penyelia Pertama
(First Supervisor) : **ASSOC. PROF. DR. HARLIDA
ABDUL WAHAB**

Tandatangan
(Signature)

Penyelia Kedua
(Second Supervisor) : **DR. ROHIZAN HALIM**

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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



LIST OF LEGISLATIONS

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Juvenile Justice System Ordinance, 2000
Merchandise Marks Act, 1889
Pakistan Electronic Media Regulatory Authority Ordinance, 2002
Pakistan Penal Code, 1860
Pakistan Television Company Act, 1964
Press (Emergency Powers) Act, 1931
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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).

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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:

