

In the name of Allah, the Most Merciful, the Most Kind



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FINAL APPROVAL

It is certified that we have read the dissertation submitted by Mr Haroon Mudasar Registration No 139-FSL/LLMHRL/F13 on "**Freedom of Expression and Protest with Special Reference to Pakistan**" in Department of Law Faculty of Shariah & Law We have evaluated the dissertation and found it upto the requirement in its scope and quality by the International Islamic University Islamabad for award of LL.M (Human Rights Law) degree

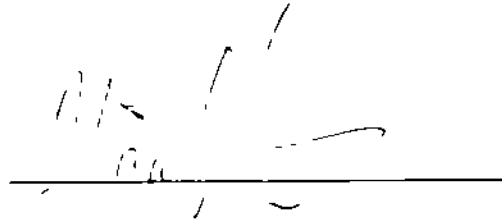
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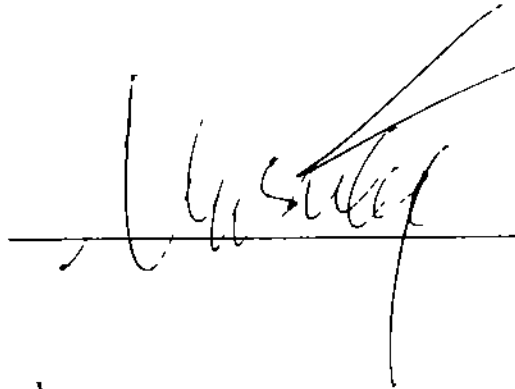


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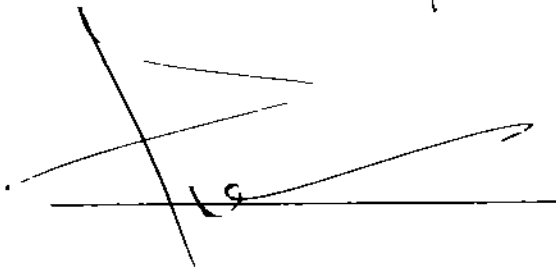


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A dissertation submitted in partial fulfilment of the
Requirements for the degree of Master of Laws (Human Rights Law)
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DECLARATION

I, Haroon Mudasar, hereby declare that the work in this dissertation was carried out in accordance with the Regulations of the International Islamic University. The work is original except where indicated by special reference in the text and no part of the dissertation has been submitted for any other degree. The dissertation has not been presented to any other University.

Haroon Mudasar

139-ISL/LLMHRL/F13

2016

PREFACE

The successful completion of the Dissertation was a unique experience for me because by visiting many places and interacting various persons, I achieved a better knowledge about this system. The experience which I gained by doing this dissertation was essential at this turning point of my career this project is being submitted which contains detailed analysis of the research undertaken by me. The research provides an opportunity to the student to devote his/her skills knowledge and competencies required during the technical session. The research is on the topic 'Freedom of Expression and Protest with special reference of Pakistan

DEDICATION

This thesis is dedicated to Allah Almighty
My parents, my daughters and rest of my family for their love endless support and
encouragement

ACKNOWLEDGEMENT

Saying of the Holy Prophet Muhammad (PBUH)

‘ A person who is not thankful to his benefactor is not thankful to Allah ’

First and foremost, all and every kind of praises in upon Allah almighty. I humbly thank to Allah Almighty for bestowing me with powers to complete this task. Allah has made my life more bountiful. All and every kind of respect to His Holy Prophet Muhammad (Peace Be Upon Him) for unique comprehensive and everlasting source of guidance and knowledge for humanity.

I would like to express my sincere gratitude to my Supervisor Mr. Ataullah Khan Mahmood for the trust deposited in my work and his patience, motivation, enthusiasm and immense knowledge. His guidance helped me in all the time of research and writing of this thesis. I could not have imagined having a better advisor and mentor for my ILM study.

Last but not least, my deepest gratitude goes to my family (specially my father) for their unflagging love and support throughout my life. This dissertation was simply impossible without them.

TABLE OF CONTENTS

ACRONYMS.....	viii
TABLE OF CASES.....	xiv
ABSTRACT.....	xvi
INTRODUCTION OF THESIS.....	1
 CHAPTERIZATION:	
 Chapter One: Historical background and developments in the Right to Protest and Freedom of Expression.....	
	4
Introduction	4
1.1 Historical background	5
1.1.1 Developments in Freedom of Expression Before Christianity	5
1.1.1.2 Socrates (469-399 BC)	5
1.1.2 Evolution in freedom of Expression before UDHR	7
1.1.2.1 Magna Carta (1215)	7
1.1.2.2 Desiderius Frasmus (1469-1536)	8
1.1.2.3 Galileo Galilei (1564-1642)	9
1.1.2.4 Areopagitica, a pamphlet by the poet John Milton in 1644	11
1.1.2.5 Bill of Rights 1689	12
1.1.2.6 Voltaire 1770	13
1.1.2.7 The Declaration of the Rights of Man 1789	14
1.1.2.8 The First Amendment of the US Bill of Rights 1791	15
1.1.2.9 On Liberty 1859	15
1.1.2.10 Jurist Oliver Wendell Holmes, Jr of the US Supreme Court (1841-1935)	16
1.1.3 Evolution in freedom of Expression after UDHR	17
1.1.3.1 The Universal Declaration of Human Rights 1948	17
1.1.3.2 European Convention on Human Rights 1953	18
1.1.3.3 International Covenant on Civil and Political Rights 1966	19
1.2 National Regulations	19
1.2.1 United States	19
1.2.2 Europe	20

1 2 2 1 France	21
1 2 2 2 Germany	21
1 2 2 3 United Kingdom	21
1 2 2 4 Eastern Europe	22
1 2 2 5 Turkey	22
1 2 3 Australia	23
1 2 4 Africa	23
1 2 5 Asia	23
1 2 5 1 India	24
1 2 5 2 Pakistan	24

Chapter Two Origin, Role and Developments in the right to Freedom of expression and protest in history and present situation in the United States of America . 25

Introduction	25
2 1 Developments in the Right to Freedom of Expression	26
2 2 The Supreme Court of the US and first amendment	27
2 3 Unprotected acts under the right to Freedom of Expression	27
2 3 1 Obscenity	28
2 3 2 Child Pornography	29
2 3 3 Rebelious words and real threats	29
2 3 4 Prepare or convey disgusting materials	30
2 3 5 Defamation	30
2 3 6 Activities that can hurt others	31
2 3 7 Burn symbolic cards as a symbol of anti-war protest	32
2 3 8 Advertisement of drugs in the school	32
2 4 Protected acts under the right to Freedom of Expression	33
2 5 Other rights Associated with the right to protest	36
2 5 1 The right to Freedom of gathering	36
2 5 2 Freedom of Location	37
2 5 3 Freedom to pick the structure and way of protests	37
2 6 State obligations and duties on the right to protest	38
2 6 1 State obligations	38
2 6 1 1 Respect the Right to Protest	38
2 6 1 2 Protect the Right to Protest	39
2 6 1 3 Fulfil the Right to Protest	39

2.6.2	State duties	39
2.6.2.1	Protect the human rights	39
2.6.2.2	Protect the participants	40
2.6.2.3	Provide the security to the general public	40
2.6.2.4	Non-Discrimination	40
2.7	Main Three Reasons why Freedom of Expression is necessary to a free society	41
2.7.1	The base of self-fulfillment	41
2.7.2	Improvement of knowledge and search of truth	41
2.7.3	A checking system of government's policies and function	42
 Chapter Three: Freedom of Expression and Protest in Pakistan - A case law study		43
	Introduction	43
3.1	Constitutional Developments in freedom of expression	44
3.1.1	Freedom of expression in previous Constitutional Documents	45
3.1.1.1	Freedom of expression in the constitution 1956	45
3.1.1.2	Freedom of expression in the constitution 1962	46
3.1.1.3	Freedom of expression in the constitution 1973	47
3.1.2	Freedom of expression in the regime of President Zia ul Haq	49
3.1.3	Freedom of expression in the regime of Pervez Musharraf	49
3.2	Hurdles to freedom of expression and protest in Pakistan	51
3.2.1	Lack of Education	51
3.2.2	Poverty	52
3.2.3	Terrorism	52
3.2.4	Political instability	52
3.2.5	Unfair election system	53
3.2.6	Corruption	53
3.3	Restrictions on Freedom under the constitution of Pakistan	54
3.3.1	Main Challenges to Freedom of Expression on our homeland	54
3.3.2	Impunity	55
3.4	Freedom of expression in Islam	55
3.5	International Covenants Signed and Verified by Pakistan	56
3.6	Freedom of Expression in developing and developed countries	58
3.7	State versus Society Weak Relationship always Leads to a Collapsed State	59
3.8	Why Freedom of expression is utmost needed for the development of democracy	59

Chapter four: Conclusion and Recommendations	61
Conclusion	61
Recommendations	63
Bibliography	65

ACRONYMS

UDHR	Universal Declaration of Human Rights
C D	Christian Dior
C E	Christianity Era
B C	Before Christianity
UK	United Kingdom
US	United States
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
LA	Espionage Act
SC	Supreme Court
CPPA	Child Pornography Prevention Act
UN	United Nation
ICESCR	International Covenant on Economic Social and Cultural Rights
PPC	Pakistan Penal Code
ACLLD	Armed Conflict Location and Event Dataset
LHC	Lahore High Court
PLD	Pakistan Legal Decisions
UNO	United Nation Organization
ICESCR	International Covenant on Economic Social and Cultural Rights

TABLE OF CASES

1 <i>Inc v Falwell</i> , 485 U.S. 46 (1919)	26
2 <i>Abrams v United States</i> , 250 U.S. 616, 630 (1919)	26
3 <i>U.S. v Stevens</i> 559 U.S. 460 (2010)	28
4 <i>Roth v United States</i> 354 U.S. 476 (1957)	28
5 <i>Stanley v Georgia</i> 394 U.S. 557 (1969)	28
6 <i>United States v Reidel</i> 402 U.S. 351 (1971)	28
7 <i>United States v 12 200-Ft Reels of Film</i> 413 U.S. 123 (1973)	28
8 <i>New York v Ferber</i> 458 U.S. 747-764 (1982)	29
9 <i>Osborne v Ohio</i> 495 U.S. 103 (1990)	29
10 <i>Ashcroft v Free Speech Coalition</i> 435 U.S. 234 (2002)	29
11 <i>Virginia v Black</i> 538 U.S. 343-363 (2003)	29
12 <i>Chaplinsky v New Hampshire</i> 315 U.S. 572 (1969)	30
13 <i>Roth v United States</i> , 354 U.S. 476 (1957)	30
14 <i>Freedman v Maryland</i> , 380 U.S. 51 57-58 (1965)	30
15 <i>New York Times Co. v Sullivan</i> 376 U.S. 254 279-80 (1964)	30
16 <i>Curtis Publishing Co. v Butts</i> 388 U.S. 130 (1967)	31
17 <i>Schenck v United States</i> 249 U.S. 47 (1919)	31
18 <i>United States v O'Brien</i> 391 U.S. 367 (1968)	32
19 <i>Morse v Frederick</i> , 551 U.S. 393 (2007)	32
20 <i>West Virginia Board of Education v Barnette</i> 319 U.S. 624 (1943)	33
21 <i>inker v Des Moines</i> 393 U.S. 503 (1969)	34
22 <i>Cohen v California</i> 403 U.S. 15 (1971)	34
23 <i>Buckley v Valeo</i> 424 U.S. 1 (1976)	34
24 <i>Bates v State Bar of Arizona</i> 433 U.S. 350 (1977)	35
25 <i>Texas v Johnson</i> , 491 U.S. 397 (1989)	35
26 <i>Jahindera Kishore v Province of East Pakistan</i> P.L.D. 1957 SC 9	45
27 <i>East Pakistan v Mehdi Ali Khan and others</i> P.L.D. 1959 SC 387	46
28 <i>Ch Munzoor Elahi v Punjab Government</i> P.L.D. 1975 SC 66	46
29 <i>I B Ali v The State</i> P.L.D. 1975 SC 506	46
30 <i>Asma Jilani v Govt of the Punjab</i> P.L.D. 1972 SC 139	46
31 <i>Federation of Pakistan v United Sugar Mills Ltd</i> P.L.D. 1977 SC 397	46
32 <i>Bennett Coleman v Union of India</i> A.I.R. 1973 SC 106	48

33	<i>Muhammad Nawaz Sharif v. President of Pakistan and others</i>	P I D 1993 SC 473-49	
34	<i>Rah Nawaz Hingoro v. Govt of Pakistan</i>	P L C 2008 STS 509	53
35	<i>The State v. Abdul Ghaffar Khan</i>	P I D 1957 Lah 142	54
36	<i>Abulala Maudhudi v. Govt of West Pakistan</i>	P L D 1964 SC 673	54

ABSTRACT

Freedom of expression is protected in all constitutions and in major instruments of international law. But despite this widespread consensus as to its status as a right of high moral and political significance, there is deep disagreement as to its precise meanings and applications.

My whole thesis is divided into three chapters which are as follows:

Chapter one gives the precise historical background about the right to freedom of expression and protest. As an idea, freedom of expression arguably dates back to Socrates. He said to his prosecutors: if you offered to let me off this time on condition I am not any longer to speak my mind, I should say to you: Men of Athens, I shall obey the Gods rather than you. Although Socrates was advocating for it more than 2000 years ago, freedom of speech as a legal right did not exist until the 17th century.

Chapter two will focus on the global approach about the right to freedom of expression and protest. This chapter will specially focus on United State of America about this right. The chapter will also provide a complete overview of the major exceptions to the First Amendment of the ways that the Supreme Court has interpreted the guarantee of freedom of speech and press to provide no protection or only limited protection for some types of speech. For example, the Court has decided that the First Amendment provides no protection for obscenity, child pornography, or speech that constitutes what has become widely known as fighting words.

Chapter three will provide complete approach to the freedom of expression in Pakistan through case laws. It will also discuss about the developments in the right to freedom of expression. This chapter specially focus that how this basic right emerge and is incorporated in constitutions. This chapter will also discuss current situation of freedom of expression in Pakistan.

FREEDOM OF EXPRESSION AND PROTEST WITH SPECIAL REFERENCE TO PAKISTAN

Introduction

Never be afraid to raise your voice for honesty and truth and against injustice and lying and greed. If people all over the world would do this, it would change the earth.

William Faulkner

The First Amendment to the United States Constitution provides that "Congress shall make no law abridging the freedom of expression, or of the press". This language restricts government's ability to constrain the voice of citizens for their rights. The prohibition on abridgment of the freedom of expression is not absolute. Certain types of freedom to express may be prohibited outright.

The U.S. Constitution's protection of freedom of expression embodies the notion that an individual's ability to express himself freely without fear of government punishment produces the autonomy and liberty that promote better governance. Allowing citizens to openly discuss topics of public concern results in a more transparent and representative government, more tolerant ideas and a more stable society.

The right to freedom of expression and peaceful protest are crucial in democracy. Freedom of expression and peaceful protest are both vital parts of healthy democracy. Freedom of expression, as well as press freedom and freedom of information, are indispensable to the attainment of all human rights. Article 19 of the Universal Declaration of Human Rights has four key elements, the right to hold opinions without interference, the right to seek information,

the right to receive information and the right to impart information to others. Without the freedom of expression, other rights deteriorate.

Freedom of expression is broadly understood as the notion that every person has a natural right to freely express himself/herself through any media and across any frontier without outside interference, such as censorship, and without fear of reprisal, such as threats and persecution. Rule of law, freedom of information, free, independent and pluralistic media and active civil society are the conditions needed for freedom of expression to flourish. The advent of the Internet and the World Wide Web led the advocates of freedom of expression to believe that with the new technology, the people could truly experience the full range of freedom of expression, from simple speech to artistic expression to political and religious debates.

However, various tactics such as denial of licence to publish or broadcast or access to online content, physical or emotional intimidations, undue denial of or limitations on the access to information, abuse of defamation, slander or libel suits, and restrictive laws and regulations are commonly employed to stifle freedom of expression.

People in Pakistan encountered several challenges and constraints to the rule of law, freedom of information, free, independent and pluralistic media and civil society.

The rule of law provides a basis for a fair relationship between society and the state. When the rule of law prevails, authorities get the mandate to govern and deliver services among others to the vulnerable communities. Injustice, insecurity and exclusion contribute to political instability and violence and thus, establishing the rule of law is essential for reducing tensions and societal divisions, and giving people the confidence to secure their livelihoods. But in Pakistan, armed violence, lack of education and insecurity continued to inhibit freedom of expression. Also, a high level of violent crime perpetuated a lack of trust among individuals, communities and the state.

The present constitution formulated in 1973 is the fifth constitution of Pakistan and third enacted constitution. In a departure from tradition, this constitution envisaged a more definite role of religion in the state. However, the Constitution also provides fundamental rights, including the freedom of speech and expression Art. (19A) albeit with certain restrictions such as the glory of Islam, law and order, and national security. The fundamental rights are supreme in the Constitution and any law that is in violation of the fundamental rights can be struck down by the superior courts in their constitutional jurisdiction vested on them under Article 199 of the Constitution.

Chapter one

Historical background and Developments in the Right to Protest and Freedom of Expression

Introduction

Historically freedom of expression¹ and protest² have regularly magnificent positive social change and improvement of human rights and they carry on characterizing and secure urban space in all parts of the world. Peaceful protests support the advancement of a connected with and educated nation. They authenticate delegate democracy by empowering direct support in public matters. They empower people and gatherings to express contradiction and grievances, to impart perspectives and insights, to uncover defects in administration and to freely request that the powers and other intense substances correct issues and are responsible for their activities. The right to peaceful protest formally includes the activity of various major human rights and is vital for securing every single human right. While critical in all social orders, rare protest are totally free of danger or potential damage to others. Henceforth worldwide measures take into consideration confinements on a large portion of the human rights occupied in protest, these are permitted just under constrained and thin circumstances.³ In spite of existing assurances in global human rights law, it has been broadly perceived that

¹ Art 19 UDHR

² According to Black's Law Dictionary, Protest is a formal revelation made by a man intrigued or worried in some demonstration going to be done, or as of now performed, and in connection thereto, whereby he communicates his contradiction or dissatisfaction, or asserts the demonstration to be done without wanting to or feelings, the article being by and large to spare some right which would be lost to him if his suggested consent could be made out, or to absolve himself from a obligation which would append to him unless he explicitly negative his consent to or willful interest in the demonstration.

³ <https://right-to-protest.org/wp-content/uploads/2015/06/right-to-protest-for-web.pdf> (last Accessed: 17/02/16 10:58 PM)

States need more noteworthy direction in comprehension and actualizing their commitments in this field. The Principles are expected to be utilized by common society associations, human rights activists, lawyers, judges, chosen represented, open authorities and different partners in their endeavours to fortify the assurance of the privilege to dissent locally, territorially and internationally basis.⁴ The concept of freedom of expression is not modern. The arguments of jurists about the origin of the freedom of expression are different.

1.1 Historical Background

Modern ideas of political opportunity and individual freedom are not quite advanced. Thoughts regarding resistance for religious and political thoughts developed throughout history of mankind. Around 2,500 years prior, extraordinary moral frameworks underlining religious flexibility thrived in China. It also additionally thrived in 331 CE in the Roman Empire and in 622 CE in Islamic Era.⁵

1.1.1 Developments in Freedom of Expression before Christianity

1.1.1.2 Socrates (469-399 BC)

Socrates is attributed with attempting to free individuals from the oppression of built-up statements of faith. He was the first who demand that we ought to transcend whatever sludge happens to grasp us, keeping in mind the end goal to look for something better and more

⁴ Ibid

⁵ Ibid

genuine. He was in this manner the first to present the good ideas sponsored by no power yet our own particular capacity of reason⁶

Socrates neglected to transcend a propensity basic in his time: he considered prophets important. In any case, he questioned Homeric religion and ethics. Socrates trusted that the divine force of Homer were no aides for profound quality. Rather than the disorder made by the clashing interests of these divine beings, he believed that the universe was guided by a divine being with a feeling of reason: a divine being that was the well-spring of human awareness and profound⁷

Socrates is not known a politically dynamic. He did not talk for or against the dangerous simple bolstered government that took power toward the end of the Peloponnesian war. However, maybe in light of the fact that Socrates had connected with a large number of the blue-bloods who had bolstered the government that took power after the thrashing of Athens in Peloponnesian war, or on the grounds that huge numbers of his students had been against vote based system: a few individuals from the professional vote based system administration that took after theocracy held him think. Pioneers of the new popularity based administration had captured him. They had faith in the customary forces of Athens, and they accused him of not trusting the lords of the state, with presenting new divine beings and with defiling youth with his discussion⁸

In court, Socrates conceded that he didn't have confidence in the divine forces of the state, however he expressed that he had not purposefully debased his kindred Athenians. He told the court that instead of arraign him they ought to let him know what course of believed was right. The court wasn't drawn into that open deliberation with Socrates. It discovered

⁶ <http://www.tsmitha.com/hl/ch10.htm> (Last Accessed: 12/01/16 7:19 PM)

⁷ Ibid

⁸ <http://www.ancient.eu/socrates/> (Last Accessed: 12/01/16 10:06 PM)

Socrates liable and sentenced him to death. On the off chance that Socrates had asked for a sensible lesser sentence, similar to the custom in Athens, he would have given the court a chance to decrease his sentence. He is portrayed rather as having stunned the court with a disobedient declaration that as opposed to being sentenced he ought to be lauded as an open sponsor. He was standing extreme, so capital punishment stood.⁹

Socrates declared that he regarded and cherished the men of Athens and that he would never surrender logic. As requested by the court, Socrates drank hemlock and passed on in the year 399 BCF, five years after the Peloponnesian war had finished.¹⁰

1.1.2 Evolution in freedom of Expression before UDHR

1.1.2.1 Magna Carta (1215)

The Magna Carta, an agreement between an English lord and his subjects is a Latin expression signifying extraordinary sanction. In 1215, a gathering of English nobles defied King John, all gathered to slow down their activities. The disliked ruler consented to sign a contract expressly laying out his king's rights. In spite of the fact that King John utilized the Magna Carta as an approach to keep up his throne for a brief timeframe until he could recapture the high ground in his battle with the respectability, the substance of the contract would demonstrate to be indispensably imperative to future basic and sacred law. Surprisingly, an English ruler perceived the privileges of his individuals (for this situation aristocrats, not formal

⁹ Ibid.

¹⁰ Doug Linder, *The Trial of Socrates*, legal ancient 12.6 (2007): 1-8. Also available at <http://ssrn.com/abstract=1021219> (last accessed 13.01.16 10:06 PM).

individuals) in writing ¹¹ For instance, the sanction guaranteed that the subjects would not have their property unlawfully seized as in article 31

Neither we nor our bailiffs will take someone else's wood for repairing castles nor for doing any other work of ours except by the will of him to whom does the wood belong ¹²

It likewise ensured the safe section of individuals all through the nation as in Article 42

'It might be legal in future for any one (aside from dependably those detained or prohibited as per the law of the Kingdom and locals of any nation at war with us and dealers who should be dealt with as is above given) to leave our Kingdom and to return sheltered and secure via arrive and water with the exception of a brief period in time of war on grounds open approach, holding dependably the dependability because of us ¹³

While a portion of the rights sketched out appear to be unusual today the Magna Carta changed the conditions the honourability had been enduring under at the hands of the government It likewise showed that nobody including the sovereign was exempt from the rules that everyone else follows ¹⁴

1.1.2.2 Desiderius Erasmus (1469-1536)

The Education of a Christian Prince ERASMUS said in 1516 that In a free state tongues too should be free ¹⁵

¹¹ Susan Muaddi Darraj *The universal declaration of Human Rights: Milestones in Modern World History* (New York: Chelsea House, 2010): 49

- Ibid

¹³Ibid p.50

¹⁴Ibid

¹⁵https://www.law.kuleuven.be/jura/art_47n1_hugelier.pdf (Last Accessed: 13/01/16 7:46 PM)

Erasmus of Rotterdam¹⁶ was a scholar and he wrote enough on the freedom of expression¹⁷

Although Desiderius Erasmus was not a humanist but from his present and previous experience he found himself such type person who should raise voice for the rights of the general public. At first time when he demand for the rights of the people so it was a surprising question for everyone¹⁸. In 1524, he publish a research paper which was against the basic views of the Lutheran and in the favour of general public. Although this paper could not achieve very much publicity but this was first step against the power of the Lutheran¹⁹. Accordingly Luther's also publish a paper to counter the paper of Desiderius²⁰, in which Desiderius directly attacked by the Luther's through religious statement that he is not a Christian. In 1526 after a long give the detailed answer against the Luther's statement. It is no doubt that Luther's create many hurdles against Desiderius to stop but they cannot suppress his voice for the freedom of Expression²¹.

1.1.2.3 Galileo Galilei (1564-1642)

Galileo Galilei was born in 1564 that year Shakespeare was conceived²². From an early age Galileo demonstrated his investigative aptitudes²³. At age nineteen he found the

¹⁶ Desiderius Erasmus Roterodamus (1466-1536) known as Erasmus of Rotterdam or simply Erasmus was a Dutch Renaissance humanist, Catholic priest, social critic, teacher, and theologian.

¹⁷ https://en.wikipedia.org/wiki/Desiderius_Erasmus (Last Accessed: 13/01/16 ~ 33 PM)

¹⁸ Ibid

According to Black's Law Dictionary, A tirade is a discourse, more often than not comprising of a long string of brutal, sincerely charged words.

¹⁹ On the Bondage of the Will (actually, On without un Will or Concerning Bound Choice) by Martin Luther was distributed in December 1525. It was his answer to Desiderius Erasmus De libero arbitrio revivendum collatio or On Free Will, which had showed up in September 1524 as Erasmus' first open assault on Luther after Erasmus had been watchful about the strategies for Luther for a long time. At issue was whether people, after the Fall of Man, are allowed to pick great or wickedness. The level-headed discussion in the middle of Luther and Erasmus is one of the most punctual of the Reformation over the issue of unrestrained choice and fate.

²⁰ https://en.wikipedia.org/wiki/Desiderius_Erasmus (Last Accessed: 13/01/16 8:51 PM)

²² Douglas Under, The Trial of Galileo, *University of Missouri at Kansas City, Science* (2002), 1-9.

²³ Ibid

isochronism of the pendulum²⁴ By age twenty-two he had concocted the hydrostatic parity²⁵ At the age of twenty five year accepted his first lectureship at the University of Pisa Inside of couple of more years Galileo earned a notoriety all through Europe as a researcher and heavenly teacher In the end he would be perceived as the father of exploratory material science Galileo's witticism may been take after learning wherever it drives us²⁶

On 12 April 1633 boss inquisitor Father Vincenzo Maculano da Frenzuola selected by Pope Urban begins the examination of physicist and cosmologist Galileo Galilei Galileo was requested to turn himself into the Holy Office to start trial for holding the conviction that the Earth spins around the Sun, which was regarded blasphemous by the Catholic Church Standard practice requested that the charged be detained and disengaged amid the trial²⁷ This was the second time that Galileo was in the last place anyone would want to be for declining to acknowledge Church conventionality that the Earth was the unfaltering focus of the universe In 1616 he had been prohibited from holding or guarding his convictions In 1633 during cross examination Galileo denied that he held confidence in the Copernicus see however kept on expounding on the issue and confirm as a method for exchange as opposed to conviction The Church had chosen the thought that the sun moved around the Earth was an outright actuality of sacred writing that couldn't be debated in spite of the way that researchers had for quite a long time that the earth was not the focal point of the universe²⁸

This time Galileo's specialized contention didn't win the day On June 22 1633 the church passed on the accompanying request we maintain judge and announce that you the said Galileo have rendered yourself intensely associated by this Holy Office with apostasy that is, of having accepted and held the principle (which is false and in opposition to the Holy and

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ <http://www.history.com/this-day-in-history/galileo-is-convicted-of-heresy> (Last Accessed: 11/01/2016 10:39 AM)

²⁸ Ibid

Divine Scriptures) that the sun is focal point of the world and that it doesn't move from east to west and is not the focal point of the world²⁹

1.1.2 4 Areopagitica 1644.- "A speech of Mr. John Milton³⁰ for the freedom of unlicensed printing to the Parliament of England"³¹

This is genuine Liberty when free conceived men advising people in general might speak free which he who can and will deserves high praise who neither can nor will might hold his peace what can be jester in a State then this?³²

Milton starts with verifiable proof taking note of that Ancient Greece and Rome did not stick to the act of permitting. At times irreverent or offensive works were blazed and their creators rebuffed however it was after generation that these writings were dismissed as opposed to preceding it. Milton's point is that if a content is to be dismissed it ought to first be "analyzed, negated, and denounced" as opposed to disallowed before its thoughts have even been communicated. Milton calls attention to that permitting was initially organized by the Catholics with the Inquisition. This spoke to Parliament's religious convictions since it was ruled by Protestants and there were clashes between the Protestants and Catholics in England. Milton gives verifiable samples of the result taking after the Inquisition including how there were popes in Rome starting in the fourteenth century who got to be oppressive licensers. For instance, Pope Martin turned into the first to forbid the perusing of shocking books and after that in the sixteenth century the Council of Trent and Spanish Inquisition denied writings that were not even fundamentally sinful yet just unfavorable to the monks.³³

²⁹ Galileo concurred not to educate the apostasy any longer and spent whatever is left of his life under house capture. It took over 300 years for the Church to concede that Galileo was correct and to demonstrate his innocence of sin.

³⁰ John Milton (1608-1674) was an English poet, polemicist, and man of letters, and a civil servant for the Commonwealth of England under Oliver Cromwell. He wrote at a time of religious flux and political upheaval and is best known for his epic poem *Paradise Lost* (1667) written in blank verse.

³¹ https://www.dartmouth.edu/~milton/reading_room/areopagitica/text.shtml (Last Accessed 03/02/16 8:18 PM)

³² <https://en.wikipedia.org/wiki/Areopagitica> (Last Accessed 03/02/16 8:56 PM)

Milton goes before his contention by talking about the reason for perusing. He says that Moses, David, and Paul were realized, which reminds his Protestant gathering of people that being found out includes perusing "books of various types"³⁴. He contends this incorporates even the "terrible" or blasphemous books, since we can gain from their wrongs and find what is valid by considering what is most certainly not. Milton's point is that God invested each individual with the reason, unrestrained choice, and still, small voice to judge thoughts for themselves, so the thoughts in a content ought to be dismissed by the reader's own decision, not by an authorizing power.³⁵

In spite of the fact that Milton perceives singular right, he is not totally libertarian. In *Areopagitica* as he contends that the norm state worked best.³⁶

1.1.2.5 Bill of Rights 1689

One of the persevering protected legacies of the Glorious Revolution in 1688, whereby the English Parliamentary powers under William of Orange vanquished to a great extent French royalist troops under James II, subsequently finishing the Stuart governments' utilization of discretionary privilege force, was the Bill of Rights 1689 (UK). Article 7 ensured the right to speak freely and invulnerability from court procedures in connection to matters associated with Parliamentary procedures.³⁷ The Bill of Rights 1689 is an iron-nerve-ink original copy on material. It is a unique Act of the English Parliament and has been in the guardianship of Parliament since its creation. The Bill immovably settled the standards of incessant

³⁴ John Milton, *Areopagitica: A Speech of Mr. John Milton for the Liberty of Unlicensed Printing to the Parliament of England with an introduction by James Russell Lowell* (New York: Grolier Club, 1890), 16.

³⁵ *Ibid*.

³⁶ *Ibid*.

³⁷ Peter Johnston, "The 'Glorious Revolution' Down Under: Parliamentary Privilege and the Bill of Rights 1689 (UK) -- Its Application in Criminal Proceedings against Members of Parliament, England and Australia Compared," *Australian Association of Constitutional Law* (2013): 2-5. Also available at <http://ssrn.com/abstract=2353712> (last accessed 05/02/16 8:56 PM).

parliaments free decisions and the right to speak freely inside of Parliament referred to today as Parliamentary Privilege³⁸

Additionally it was utilized as a model for the U.S. Bill of Rights 1789. Its impact can likewise be seen in different records setting up the privileges of people. UDHR and LCHR are the best examples of it.

1.1.2.6 Voltaire (1694-1778)

Voltaire was a French Enlightenment essayist, student of history, and scholar celebrated for his mind, his assaults on the set-up Catholic Church, and his support of flexibility of religion, opportunity of expression, and partition of chapel and state.³⁹

Voltaire was an adaptable author, delivering works in practically every scholarly frame including plays, lyrics, books, papers, and verifiable and investigative works. He composed more than 20,000 letters and more than 2,000 books and flyers. He was a frank promoter of a few freedoms, notwithstanding the danger this put him in under the strict restriction laws of the time. As a humorous polemicist, he was, now and again, made utilization of his attempts to reprimand prejudice, religious doctrine, and the French organizations of his day.⁴⁰ According to Voltaire, Freedom of Expression is the right of every man, woman & child.⁴¹ He was a solid scholarly challenger to the French government, laws, and its authorities. For his free thinking and straightforwardness, he was imprisoned few times and even sent into outcast. His books and discourses on common freedoms, flexibility of religion, opportunity of expression, and

³⁸ Lois G. Schworer, *the Declaration of Rights, 1689* (the University of Michigan, University Microfilms, 1981), 289.

³⁹ <https://en.wikipedia.org/wiki/Voltaire> (last accessed 03/02/16 12:23 AM).

⁴⁰ Ibid.

⁴¹ <https://thelargestdemocracy.wordpress.com/2012/06/16/voltaire-freedom-of-expression-is-the-right-of-every-man-woman-child/> (last accessed 03/02/16 12:39 AM).

most imperative of every one of his contentions on partition of chapel and state formed the world in numerous regards ⁴²

Voltaire's contentions standards and savings are typified in the composed Constitutions of numerous free majority rule nations ⁴³

Voltaire is credited with the accompanying quotes

(a) *I do not agree with what you have to say but I'll defend to the death your right to say it* ⁴⁴

(b) *I detest what you write but I would give my life to make it possible for you to continue to write* ⁴⁵

Couple of persons can be taken to speak to the eighteenth century and to exemplify the soul of the edification and in addition Voltaire. It may not be astonishing that many discovered numerous events to remark on Galileo's trail given his multidisciplinary hobbies and his association in the critique of religion and religion and the battle for opportunity of expression ⁴⁶

1.1.2.7 The Declaration of the Rights of Man 1789

The Declaration of the Rights of Man an archive composed by the National Assembly of the French Revolution was composed in 1789. Not at all like the British Bill of Rights it incorporated a procurement for the right to speak freely for all subjects and not just individuals from Parliament. It peruses the free correspondence of contemplations and conclusions is a standout amongst the most valuable of the privileges of man. Each resident might accordingly talk, compose and print unreservedly.

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Maurice A Finocchiaro *Retrying Galileo 1633-1992* (Los Angeles: University of California Press, 2005), 115

Article 11 states categorically that -

'The free communication of thoughts and opinions is one of the most precious of the rights of man. Every citizen may therefore speak, write, and print freely, if he accepts his own responsibility for any abuse of this liberty in the cases set by the law.'⁴⁷

1.1.2.9 First amendment

The First Amendment to the United States Constitution classifies the right to speak freely as a protected right. The Amendment was embraced on December 15, 1791. The Amendment states

*Congress should make no law regarding a foundation of religion or forbidding the free practice thereof or shortening the right to speak freely or of the press or the privilege of the general population quietly to collect and to request of the legislature for a review of grievances.*⁴⁸

Proposed taking after the in many cases severe 1787-88 fight over sanction of the Constitution and created to address the complaints raised by Anti-Federalists, the Bill of Rights alterations include certain shields of majority rule government, particular sureties of individual flexibilities and rights, clear confinements on the administration's energy in legal and different procedures, and express affirmations that all forces not particularly appointed to Congress.⁴⁹

1.1.2.10. On Liberty (1859)

On Liberty is a philosophical work by English logician John Stuart Mill, initially expected as a short paper. The work, distributed in 1859, applies Mill's moral arrangement of utilitarianism to society and the state. Mill endeavours to build up principles for the relationship

⁴⁷ Article 11, the Declaration of the rights of the man and of the citizen, 1789.

⁴⁸ Amendment I, US bill of rights, 1791.

⁴⁹ James E. Leahy, *The First Amendment, 1791-1991: two hundred years of freedom* (The University of Michigan, McFarland & Co., 1991), 289.

in the middle of power and freedom. He accentuates the significance of distinction which he considered as an essential to the higher delights, the summum bonum of Utilitarianism. Moreover, Mill censured the blunders of past endeavours to guard singularity, where, for instance, equitable standards brought about the oppression of the lion's share. Among the benchmarks built up in this work are Mill's three essential freedoms of people, his three real protests to government mediation, and his two proverbs with respect to the relationship of the person to society, which together shape the whole regulation of Mill's Essay.⁵⁰

On Liberty was an incredibly compelling and generally welcomed work, despite the fact that it didn't abandon feedback. Some assaulted it for its obvious brokenness with Utilitarianism, while others censured its unclearness. The thoughts exhibited in *On Liberty* have remained the premise of much liberal political thought. It has stayed in print ceaselessly since its starting distribution. Right up till the present time, a duplicate of *On Liberty* is gone to the president of the British Liberal Democrats as an image of office. A duplicate of the same book is additionally introduced to and afterward held by the president of the Liberal Party as an image of office.⁵¹

1.1.2.11 "Jurist Oliver Wendell Holmes, Jr. of the US Supreme Court (1841-1935)"⁵²

Oliver outlines his belief in free speech:

The principle of free thought is not free thought for those who agree with us but freedom for the thought we hate.⁵³

⁵⁰David O. Brink, "Mill's Political and Moral Philosophy," *San Diego Legal Studies* 07-98 (2007): 6-15. Available at SSRN: <http://ssrn.com/abstract=978824>

⁵¹Ibid.

⁵²Oliver Wendell Holmes Jr. was an American jurist who served as an Associate Justice of the Supreme Court of the United States from 1902 to 1932, and as Acting Chief Justice of the United States January–February 1930.

⁵³Catharine P. Wells, "Old-Fashioned Postmodernism and the Legal Theories of Oliver Wendell Holmes," *Brooklyn Law Review* 63 (1997): 3. Available at SSRN: <http://ssrn.com/abstract=2213328>

The Framers of the Constitution ensured the right to speak freely and expression to the residents of the United States with the First Amendment, which peruses, to some degree, "Congress might make no law compressing the right to speak freely. Almost since the reception of the BILL OF RIGHTS nonetheless, the legal has attempted to characterize discourse and expression and the degree to which the right to speak freely ought to be secured. A few similar to Justice HUGO I. Black,⁵⁴ have trusted that the right to speak freely is outright. In any case most law specialists alongside generally U.S. natives concur with Justice OLIVER WENDELL HOLMES JR. who felt that the Constitution permits a few confinements on discourse in specific situations."⁵⁵ To represent this point Holmes composed

"The most stringent insurance of free discourse would not ensure a man in erroneously

yelling fire in a theatre and creating a panic."⁵⁶

1.1.3. Evolution in freedom of Expression after UDHR

1.1.3.1 The Universal Declaration of Human Rights 1948

After the injuries of the Second World War, the UN's Universal Declaration of Human Rights of 1948 was the primary worldwide articulation of rights to which every single person are intrinsically entitled. It was a defining moment ever and was a composed content advancing peace and tact.⁵⁷

UDHR was a breakthrough record ever. Drafted by agents with various legitimate and social foundations from all regions of the world, the Declaration was announced by the United

⁵⁴ Hugo Lafayette Black was an American politician who served as a Democratic United States Senator and represented Alabama in the Senate from 1927 to 1937, and served as an Associate Justice of the Supreme Court of the United States from 1937 to 1971.

⁵⁵ <http://law.jrank.org/pages/7023/Freedom-Speech.html> (Last Accessed 01/02/16 2:11 PM)

⁵⁶ Ibid

⁵⁷ <http://www.theguardian.com/law/2014/oct/03/what-is-european-convention-on-human-rights-udhr> (Last Accessed 01/02/16 8:15 PM)

Nations General Assembly in Paris on 10 December 1948 General Assembly, and as a typical standard of accomplishments for all people groups and all countries. It sets out interestingly, essential human rights to be all around ensured.⁵⁸

Article 19 states that -

*Everybody has the privilege to opportunity of opinion and expression. This privilege incorporates flexibility to hold conclusions without impedance and to look for, get and grant data and thoughts through any media and paying little heed to boondocks.*⁵⁹

1.1.3.2 European Convention on Human Rights 1953

The European tradition on human rights was drafted by the recently shaped Council of Europe in Rome on 4 November 1950. The tradition for the security of human rights and essential flexibilities intended to accomplish more noteworthy global solidarity in perceiving the equivalent privileges of men and ladies and to consolidate the customs of common freedom. It came into power on 3 September 1953. The reception of the tradition by the Council of Europe was the initial phase in actualizing the Declaration of Human Rights in composing.⁶⁰

Art 10 state that -

*Everybody has the privilege to flexibility of expression. This privilege might incorporate flexibility to hold assessments and to get and bestow data and thoughts without impedance by open power furthermore, paying little respect to wildernesses.*⁶¹

⁵⁸ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Pennsylvania University of Pennsylvania press, 2010), 282.

⁵⁹ Article 19, the Universal declaration of Human Rights 1948.

⁶⁰ <http://www.theguardian.com/law/2011/oct/03/what-is-european-convention-on-human-rights-udhr> (Last Accessed 04/02/16 8:15 PM).

⁶¹ European Convention on Human Rights 1953 - Article 10.

Then again, qualifications are additionally frequently made in the middle of discourse and different acts for example, banner burning, which might have typical criticalness⁶⁷

Inside of the U S the right to speak freely likewise changes broadly starting with one state then onto the next Of all expresses, the condition of California allows its residents the broadest conceivable scope of free discourse under the state constitution⁶⁸

1 2 2 Europe

Currently, all individuals from the European Union and Council of Europe are signatories of the European Convention on Human Rights and additionally having shifting sacred and legitimate assurances for flexibility of expression at the national level Likewise these nations acknowledge the ward of the European Court of Human Rights Every gathering to the tradition must adjust (change alter) its laws and strategies to fit in with the Convention A few, for example, the United Kingdom and the Republic of Ireland have explicitly joined (incorporated) the Convention into their domestic laws⁶⁹

Nonetheless the states are allowed to sanction over laws and to ensure their rights and hobbies said in the second part of Article 10 Still their judgments are interested in the Court's review A basic issue in specific nations on the move is that the courts are not autonomous and they need to translate the law in the most suitable route for their bosses⁷⁰

For European Union, the Charter of Fundamental Rights of the European Union certifications flexibility of expression yet at present only has the status of a grave announcement and is not binding law⁷¹

⁶⁷ Ibid 15

⁶⁸ Ibid at 31 32

⁶⁹ Ibid

Ibid

⁷¹ Ibid

1.2.2.1 France

The Declaration of the Rights of Man and of the Citizen of established quality states in its article 11

"The free correspondence of contemplations and of feelings is a standout amongst the most valuable privileges of man any subject along these lines might talk compose print openly spare [if it is necessary] to react to the misuse of this freedom in the cases controlled by the law " ⁷²

1.2.2.2 Germany

The right to speak freely is ensured by Article 5 Paragraph 1 of the German Basic Law. There are in any case a few reservations in Article 5 Paragraph 2 for confinements to secure the young or to ensure an individual or aggregate's honour against individual abuse or detest discourse ⁷³

1.2.2.3 United Kingdom

In 1998 the United Kingdom facilitated European Convention and surety of adaptability of expression it contains in Article 10 into its private law under the Human Rights Act ⁷⁴

UK law imposes a number of limitations on freedom of speech not found in some other jurisdictions. For example its laws recognize the crimes of incitement to racial hatred and incitement to religious hatred ⁷⁵

⁷² Article 11 Declaration of the Rights of Man 1789

⁷³ Article 5 Basic Law for the Federal Republic of Germany Available at http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0030 (Last Accessed: 06/02/16 8:43 PM)

⁷⁴ Article 10 Human Rights Act 1998 Available at <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/1/chapter/9> (Last Accessed: 06/02/16 8:52 PM)

⁷⁵ Ibid

1 2 2 4 Eastern Europe

There is probably massive advancement in the field of the right to speak freely and/or expression has been accomplished in Central and Eastern Europe since the fall of socialism. Be that as it may, genuine and unsuitable infringement of this flexibility are still dedicated in various nations. Oversight is practiced through roughness, trial and detainment or financial provocation.⁷⁶

Russia, Ukraine, Serbia and especially Belarus are the nations where the activities of the powers most conspicuously conflict with the qualities and standards of current democracy.⁷⁷

1 2 2 5 Turkey

Article 26 of the Constitution of Turkey ensures the privilege to "Opportunity of Expression"

Everybody has the privilege to express and scatter his/her contemplations and assessments by discourse, in composing or in pictures or through other media, independently or by and large. This flexibility incorporates the freedom of getting or giving data or thoughts without impedance by authority powers. This procurement might not block subjecting transmission by radio, TV, silver screen, or comparative intends to an arrangement of authorizing.⁷⁸

Besides, the Republic of Turkey is a signatory of the European Convention on Human Rights and submits to the judgments of the European Court of Human Rights.⁷⁹

⁷⁶ <https://www.opensocietyfoundations.org/publications/scholarforum-freedom-expressionmiddle-east> (Last Accessed: 06/02/16 2:16 PM)

⁷⁷ Ibid.

⁷⁸ Article 26, Constitution of The Republic of Turkey

⁷⁹ <http://blogs.lse.ac.uk/europpblog/2012/03/14/turkey-echr/> (Last Accessed: 06/02/16 3:30 PM)

1.2.3 Australia

Australia does not have a bill of rights. In a case in 1992

The High Court of Australia judged on account of Australian Capital Television Pty Ltd v Commonwealth that the Australian Constitution, by accommodating an arrangement of agent and dependable government, suggested the assurance of political correspondence as a fundamental component of that framework.⁸⁰

This flexibility of political correspondence is not an expansive right to speak freely as in different nations, but instead an opportunity whose reason for existing is just to ensure political free discourse. This flexibility of political free discourse is a shield against the legislature and the administration; just, it is not a shield against private hobbies.⁸¹

1.2.4 Africa

The greater part of African constitutions give legitimate assurance to the right to speak freely. Be that as it may, these rights are practiced conflictingly by and by.⁸²

South Africa is likely the most liberal in allowing the right to speak freely, except for the promotion of contempt that depends on race, ethnicity, sexual orientation (sex) or religion, and that constitutes instigation to bring about mischief.⁸³

1.2.5 Asia

A few Asian nations give formal legitimate sureties of the right to speak freely to their subjects. These are not, be that as it may, actualized practically speaking in many spots.⁸⁴

Angela Daly, "The Legal Framework in Australia around the Use of Encryption and Anonymity in Digital Communications" (2015): 2. Available at SSRN: <http://ssrn.com/abstract=2562916>

⁸¹ Ibid.

⁸² Solomon Mebric Gofie, "The Making and Unmaking of Political Communities in the Horn of Africa: Implications for Citizenship" (2013): 3-15. Available at SSRN: <http://ssrn.com/abstract=2315015> (last Accessed: 06/02/16 3:30 PM)

⁸³ M. Christian Green, "From Social Hostility to Social Media: Religious Pluralism, Human Rights, and Democratic Reform in Africa" *African Human Rights Law Journal* 14:1 (2011): 5-33. Available at SSRN: <http://ssrn.com/abstract=2543311>

⁸⁴ <https://cpj.org/reports/2006/05/10-most-censored-countries.php> (last Accessed: 06/02/16 3:30 PM)

The right to speak freely has been incredibly enhanced in the People's Republic of China as of late, however right to free express is still required enough work in western countries ⁴⁵

1 2.5.1 India

The Indian constitution guarantees freedom of speech to every citizen and there have been landmark cases in the Indian Supreme Court that have affirmed the nation's policy of allowing free press and freedom of expression to every citizen. In India, citizens are free to criticize politics, politicians, bureaucracy and policies. ⁴⁶

1 2 5 2 Pakistan

Each citizen have the privilege to the right to speak freely and expression, and there should be opportunity of the press, subject to any sensible confinements forced by law in light of a legitimate concern for the grandness of Islam or the trustworthiness, security or safeguard of Pakistan or any part thereof, well-disposed relations with outside States, open request, goodness or ethical quality, or in connection to contempt of court, commission of or instigation to an offense. ⁴⁷

⁴⁵ Ibid 6-45

⁴⁶ The constitution of India 1949, Art 19 (1) (a)

⁴⁷ The constitution of Islamic republic of Pakistan 1973, Art. 19

Chapter Two

Origin, Role and Developments in the right to Freedom of expression and protest in history and present situation in the United States of America

Introduction

Freedom of expression is secured basically in all constitutions and in all major instruments of international law. The US defends the freedom of expression through the 1st Amendment, which states that,

*'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'*¹²

The US Constitution protect even the most hostile and questionable discourse from government concealment, and grants direction of discourse just under certain constrained and restricted circumstances. The US framework is based on the possibility that the free and open trade of thoughts supports understanding, progresses truth-looking for and takes into account the reply of lies. The United States accepts and encounter has appeared, that the most ideal approach to counter hostile discourse is not with direction but rather with more discourse.¹³ History has demonstrated that reducing free expression by banning discourse does not promote democracy. The drafters of the US Constitution perceived that when governments disallow residents from discussing certain subjects it frequently compels those nationals to talk about

¹² 1st Amendment in the US constitution

¹³ Ibid

such points secretly ⁹¹ By permitting people to express their sentiments regardless of how much the legislature and different residents may differ with them the First Amendment advances straightforwardness and social dependability ⁹¹ This uninhibited open level discussion additionally compels thoughts into the scholarly marketplace where they should contend with the thoughts unreservedly communicated by different people ⁹² This opposition of thoughts implies that second rate or hostile thoughts offer approach to better ones ⁹³

2.1 Developments in the Right to Freedom of Expression

In 1770 after the one year of American Revolution the Virginia provincial council passed a Declaration of Rights that incorporated the sentence The freedom of the expression is one of the best defence of freedom and can never be limited yet by authoritarian Governments ⁹⁴ From thirteen states, eight states comparatively recognized it In 1780 after four year of American Revolutionary War discussion over the selection of another Constitution brought about a division between Federalists for example Alexander Hamilton who supported a central government and Anti-Federalists for example Thomas Jefferson and Patrick Henry who supported a weaker federal government ⁹⁵ After a long and detailed discussion a new constitution came into existence on 17th September 1787 For the ratification of the constitution there were required nine states from thirteen to recognize it in the state conventions Anti-federalist was against the ratification After all the Constitution of the United States of America was in the long run ratified by every one of the thirteen states In the first United States Congress taking after the state governing bodies solicitation James Madison proposed twenty

⁹¹ *Inc v. Falwell* 485 U.S. 46 (1919)

⁹² *Abrams v. United States* 250 U.S. 616 (1919)

⁹³ *Ibid*

⁹⁴ *Ibid*

⁹⁵ *Ibid*

⁹⁶ *Ibid*

established amendments and his proposed first draft of the First Amendment read as takes after -

The civil rights of none shall be abridged on account of religious belief or worship nor shall any national religion be established nor shall the full and equal rights of conscience be in any manner or on any pretext infringed. The people shall not be deprived or abridged of their right to speak to write or to publish their sentiments and the freedom of the press as one of the great bulwarks of liberty shall be inviolable. The people shall not be restrained from peaceably assembling and consulting for their common good nor from applying to the Legislature by petitions or remonstrance for redress of their grievances."

2.2 The Supreme Court and first Amendment

In spite of its long history of more than two centuries the Supreme Court did not appreciate freedom of expression until 1919. It was not until after Congress instituted Espionage Act in 1917⁹⁷ which sentenced the individuals who frustrated the war exertion that the Court gave an underlying understanding of the First Amendment to the Constitution which expresses that Congress should make no law compressing the right to speak freely or of the press.

2.3 Unprotected acts under the Freedom of Expression

The SC has distinguished categories of Freedom of Expression that are unprotected by the First Amendment and might be precluded entirely. Like obscenity, defamation, child pornography,

⁹⁶ Hasnes Charles et al. *The First Amendment in Schools: A Guide from the First Amendment Centre*, p. 13.

⁹⁷ Espionage Act of 1917, Ch. 30, § 3-40 Stat. 217-219 (repealed 1948).

rebellious words and true threats and such activities that would hurt others are not protected under the shadow of 1st amendment. The SC Court clarified in a case of 2010 that it would not be liable to add more classifications to the checklist of kinds of discourse that as of now fall outside the 1st Amendment's domain, but it didn't totally decide out the likelihood that different types of unprotected discourse exist.⁹⁸

2.3.1 Obscenity

Obscenity⁹⁹ is distinctive in being the main sort of discourse to which the SC has denied 1st Amendment insurance without respect to whether it is unsafe to people. According to the verdicts of the SC, there is proof that, when the 1st amendment adopted, obscenity was not in the domain of protection.¹⁰⁰ Therefore, obscenity might be banned essentially on the grounds that a governing body presumes that banning it secures "the social enthusiasm in order and ethical quality."¹⁰¹ According to the SC of US -

Any individual has an established that right to have obscene material under the privacy of his own private place.¹⁰² In any case, there is no sacred right to give obscene material to private utilize¹⁰³ or even to secure it for private use.¹⁰⁴ A court assesses every component independently and won't order expression as foul unless all variables exist. For instance, if a book utilizes coarse dialect and portrays sexual direct but, taken overall, does not speak to vulgar interests or has artistic worth, it is not an obscene.

⁹⁸ *U.S. v. Stevens*, 559 U.S. 460 (2010).

⁹⁹ *In Miller v. California*, 351 U.S. 543 (1973).

¹⁰⁰ *Roth v. United States*, 354 U.S. 476 (1957).

¹⁰¹ *Ibid*.

¹⁰² *Stanley v. Georgia*, 391 U.S. 557 (1969).

¹⁰³ *United States v. Reidel*, 402 U.S. 351 (1971).

¹⁰⁴ *United States v. 12 200-Ft. Rects. of Film*, 413 U.S. 123 (1973).

2.3.2 Child Pornography

Child obscenity is a material which visually portrays sexual behaviour by kids ¹⁰⁵ According to the 1st Amendment it is completely unprotected notwithstanding when it is not indecent ¹⁰⁶ In 1996 the (CPPA) which approved by the Congress ¹⁰⁷ which characterized "child obscenity" to incorporate visual illustration that seem by all accounts to be of a minor regardless of the fact that no minor is really utilized ¹⁰⁸ The SC pronounced the CPPA illegal to the degree that it disallowed pictures that are delivered without genuine minors ¹⁰⁹ Obscenity that utilized real children might be banned in light of the fact that laws against it target the generation of the work, not its substance the CPPA by differentiation focused on the substance not the creation ¹¹⁰ The legislature may not forbid discourse since it expands the chance an unlawful demonstration will be submitted at a few inconclusive future time ¹¹¹

2.3.3 Rebelious words and real threats

Rebellious worlds and real threats also consider beyond the shadow of 1st Amendment protection ¹¹²

"The rebellious words started in *Chaplinsky v. New Hampshire* where the Court held that rebellious words by their extremely expression deliver damage or have a tendency to prompt a quick break of the peace and might be punished predictable with the 1st

¹⁰⁵ *New York v. Ferber*, 458 U.S. 747 (1982) any one is not limited to nude exhibitions or exhibitions in which the outlines of those areas are discernible through clothing

¹⁰⁶ *Osborne v. Ohio*, 495 U.S. 103 (1990)

¹⁰⁷ The CPPA 1996 was a United States federal law to restrict child pornography on the internet including virtual child pornography

¹⁰⁸ Child Pornography Protection Act (CPPA) 1996

¹⁰⁹ *Ashcroft v. Free Speech Coalition*, 435 U.S. 234 (2002)

¹¹⁰ *Ibid* 239

¹¹¹ *Ibid* 251

¹¹² *Virginia v. Black*, 538 U.S. 343-363 (2003) A subset of laws that prohibit "fighting words" are laws that prohibit speech expressed with the intent to threaten. The Supreme Court has found that true threats may be punished without offending the constitution. Finding that cross-burning is a particularly virulent form of intimidation that may be punished as a true threat

TA/17/98

Amendment ¹¹³ In this case, the Court maintained a statute which disallowed a man from tending to any hostile criticizing or irritating word to some other individual who is legitimately on any road or other open spot calling him by hostile or negative name or making any clamour or outcry in his nearness and hearing with the purpose to ridicule outrage or pester him or to keep him away from seeking after his legal business or occupation ¹¹⁴ The state court interpreted the statute as denying just those expressions that have an immediate inclination to bring about demonstrations of viciousness by the individual to whom independently the comment was addressed ¹¹⁵ Given the constrained extent of utilization the Supreme Court held that the statute at issue did not prohibit ensured expression ¹¹⁶

2.3.4 Prepare or convey disgusting materials

Discourse may be limited in view of its substance in the event that it falls inside the restricted class of genuine dangers of violence ¹¹⁷ For instance a Philadelphia lady was sentenced to eight months imprisonment after she exited an unknown debilitating note on her associate's seat ¹¹⁸

2.3.5 Defamation

In the US constitution defamatory discourse is a wrong proclamation of actuality that harms a man's fame character or reputation ¹¹⁹ Under United States defamation law there are

¹¹³ *Chaplinsky v. New Hampshire*, 315 U.S. 572 (1969)

¹¹⁴ *Ibid.* at 569

¹¹⁵ *Ibid.* at 572

¹¹⁶ *Ibid.*

¹¹⁷ *Roth v. United States*, 354 U.S. 476 (1957)

¹¹⁸ *Treedman v. Maryland*, 380 U.S. 51, 57-58 (1965)

¹¹⁹ *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964)

various standards for legal authorities and private people¹²⁰ Speakers are managed more prominent insurance when they remark around an open authority rather than a private native¹²¹

The SC has granted very limited 1st Amendment shelter to defamation The SC declared that public authorities and general figures may not reclaim harms for defamation unless they demonstrate, with persuading clarity, that the defamatory explanation was made with real grudge that is with information that it was wrong or with unwise ignore of whether it was untrue or not¹²²

Indeed even where courts discover defamation they don't force criminal discipline Rather courts may summon the speaker to make an amendment in the defamatory articulation and or also financially remunerate the victim¹²³

2.3.6 Activities that can hurt others

Such acts or activities which could harm or hurt others are not protected by the 1st Amendment Words which customarily and in numerous spots would be inside the right to speak freely secured by the 1st Amendment may get to be liable to preclusion when of such a nature and utilized as a part of such circumstances to make an undeniable threat that they will realize the substantive disasters which Congress has a privilege to prevent¹²⁴ The character of each demonstration relies on the situation in which it is finished¹²⁵

¹²⁰ Ibid

¹²¹ Ibid

¹²² *Curtis Publishing Co v Butts* 388 U.S. 130 (1967)

¹²³ Ibid 125

¹²⁴ *Schenck v United States* 249 U.S. 47 (1919)

¹²⁵ Ibid

2.3.7 Burn symbolic cards as a symbol of anti-war protest

United States vs O'Brien, was a verdict by the SC of the US which decided that a criminal disallowance against blazing a draft card did not abuse the 1st Amendment's insurance of free discourse.¹²⁶ O'Brien set on fire his Selective Service enrolment authentication in front of sizable gathering to impact others to embrace his anti-war opinion.¹²⁷ He was arrested and convicted after trial for abusing US Code a part of the Universal Military Training and Service Act subdivision 3 of which applies to any individual who produces, modifies, intentionally demolishes, purposely ravages, or in any way changes any such authentication, the words stressed thus having been included by Amendment in 1965.¹²⁸ The trial court reject the arguments of O'Brien on the ground that such type of act has been already declared illegal, unlawful and punishable.¹²⁹ The appellate forum also declare that the pronouncement of conviction and fine to the O'Brien is not the violation of 1st Amendment because through Amendment of 1965 it has been already added an illegal act.¹³⁰

2.3.8 Advertisement of drugs in the school

Advertising materials for the use of drugs in the schools is not permitted by the US law. Advertisement of drugs through banners directly or indirectly is the violation of school policy and it does not come under the shelter of 1st Amendment. In Morse vs Frederick case, the SC of US declared that the 1st Amendment give the right to Freedom of Expression to the students but it does mean that students have no any limits regarding their rights.¹³¹ Joseph Frederick

¹²⁶ *United States v. O'Brien*, 391 U.S. 367 (1968).

¹²⁷ *Ibid*.

¹²⁸ *Ibid*.

¹²⁹ *Ibid*.

¹³⁰ *Ibid*.

¹³¹ *Morse v. Frederick*, 551 U.S. 393 (2007).

was a student of high school Juneau-Douglas which suspended by the principle of school Deborah Morse for the violation of school policy. The superintendent upheld the decision of the principle Frederick file a suit against the principle and administration of school by claiming that his constitutional right to Freedom of Expression has been violated. District court dismissed the suit by declaring that it is not the violation of 1st Amendment. But appellate forum reversed the decision and held that Frederick right to Freedom of Expression were violated. Morse challenge the decision of appellate forum in the SC. SC not only reverse the decision of the appellate forum but also declare a detailed judgement that such type of acts are not protected by the 1st Amendment and prevention of such acts is not the violation of 1st Amendment.¹³²

2.4 Protected rights under the right to Freedom of Expression

Without the above mention unprotected rights all other rights to Freedom of Expression are protected under the 1st Amendment. In general, the law abiding agencies may not forbid the people from participating in discourse. The SC of the US struggled on regular basis to elaborate the rights which are exactly protected under Freedom of Expression. There are some examples of those rights which are secured under the 1st Amendment in any case.

In *West Virginia Board of Education vs Barnette*¹³³ the SC declared that the students¹³⁴ are free from salute to the American flag and students could never be forced to salute the flag.¹³⁴ Before this judgement students were bound to salute the flag of America. Through this verdict indirectly provided Freedom to express to the students.

- Ibid

¹³³ *West Virginia Board of Education vs Barnette*, 319 U.S. 624 (1943)

¹³⁴ Ibid

In *Finker vs Des Moines* case, the court has declared that students of the public schools have the right to wear black armbands during the school time as a sign of protest against the Vietnam War¹³⁵

*Cohen vs California*¹³⁶ is such type of case in which the SC permit the general public to use the offensive phrase or hated words to convey their messages to the government or political leader¹³⁷ Before this case it was a serious crime to speak against the government through hated words

In *Buckley vs Valeo*¹³⁸ the court permits to contribute fund for political campaigns¹³⁹ As it was prohibition to collect money for political purposes before this case

Bates v State Bar of Arizona, was a first case in which SC maintained the rights of the attorneys to publicize their services¹⁴⁰ Short background of this case is that John Bates did graduation in law from Arizona State University in 1972 and get licence of attorney from Arizona State Bar¹⁴¹ After receiving membership start practice as Attorney in Arizona district Court¹⁴² After four year of his practice he feel that there should be a low fee schedule for those clients who have routine cases such as change of name, uncontested adoptions or uncontested divorced and not in a position to afford greater fee¹⁴³ For this purpose he advertise his fee schedule package in Arizona Republic¹⁴⁴ As it was an advertisement with address and phone but the State Bar of Arizona clearly forbade the lawyers in 1976 to advertising their services in

¹³⁵ *Finker v Des Moines*, 393 U.S. 503 (1969)

¹³⁶ *Cohen v California*, 403 U.S. 15 (1971)

¹³⁷ Ibid

¹³⁸ *Buckley v Valeo*, 424 U.S. 1 (1976)

¹³⁹ Ibid

¹⁴⁰ *Bates v State Bar of Arizona*, 433 U.S. 350 (1977)

¹⁴¹ <https://www.law.cornell.edu/supremecourt/text/424/1/> (Last Accessed: 28/08/16 11:11 PM)

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ The Arizona Republic is an American daily newspaper published in Phoenix. Circulated throughout Arizona, it is the state's largest newspaper. Since 2000, it has been owned by the Gannett newspaper chain.

the state¹⁴⁵ State Bar initiated disciplinary action against John Bates¹⁴⁶ Disciplinary committee after hearing the arguments from both sides suggest that John Bates membership should be suspend for not less than six months¹⁴⁷ State Bar was not satisfy with this decision and challenge this decision in the SC by the prayer to suspend the membership of John Bates for life time as he violate Sherman Antitrust Act¹⁴⁸ and 1st Amendment The SC along with the suspension of John Bates reverse the decision of the disciplinary committee and held that John Bates did not violate Sherman Act and 1st Amendment The SC also declared that John Bates have the right to advertising his legal services under 1st Amendment

In the case of Texas vs Johnson the SC established some principles for the protesters to record their protest¹⁴⁹ As it was a serious crime within the entire states of U S to burn national flags or banners in the protest¹⁵⁰ This case was a pioneer for the protesters to permit them to burn national flags or banners as a sign of aggression in the protest¹⁵¹ As it was a serious matter because through this decision anti-states actors can misuse it so the SC impose some exceptions to this decision¹⁵² Any demonstrator should not be injured other demonstrators should not be forced to do the same act general public or national property should not be damaged as the results of this act¹⁵³ Short background of this is that in 1984 during a national republication convention defendant Johnson participate in a political protest against the policies of administration of Reagan¹⁵⁴ When the protesters passing through the streets reached on main road. Johnson burned an American flag before the gathering¹⁵⁵ No one was injured

¹⁴⁵ Ibid

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ The Sherman Antitrust Act 1890

¹⁴⁹ *Texas v. Johnson* 491 U.S. 397 (1989)

¹⁵⁰ Ibid

¹⁵¹ Ibid

¹⁵² <https://www.law.cornell.edu/supremecourt/text/491/397> (Last Accessed: 29/08/16 2:27 PM)

¹⁵³ Ibid

¹⁵⁴ Ibid

¹⁵⁵ Ibid

neither anybody threatened with injuries¹⁵⁶ State court of Taxes convicted Johnson on the ground that he violate Taxes statute and also 1st Amendment Appellate forum change the decision of the state court but did not release Johnson, that although it is not clear that Johnson violate 1st Amendment but it is violation of the Taxes Statute¹⁵⁷ Johnson challenge the decision of Appellate Forum in the SC and the SC held that Johnson's act does not fall under any crime, neither he make any violation of 1st Amendment and state statute¹⁵⁸ For the protection of demonstrator's rights SC also held that in the future protesters have the right to burn national flag throughout states of America under some exceptions to record their protest¹⁵⁹

2.5 Other rights Associated with the right to protest

There are some other human rights which are also associated with the right to protest

2.5.1. The right to Freedom of gathering

Freedom of assembly is essential for fulfilment of right to Freedom of Expression or Right to Protest Citizens' rights to join their fellows in protest or peaceful assembly is basic for any functioning democracy, and it was a centre of the 1st Amendment Unfortunately law enforcement authorities some of the time disregard this right directly through means proposed to impede free open expression In late history, difficulties to one side to challenge have come

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Ibid

¹⁵⁹ Ibid

in numerous structures. Sometime police get serious about showings through mass captures unlawful utilization of power and curfews.¹⁶⁰

2.5.2 Freedom of location

Everybody must have the opportunity to select the area for protest, and the picked area should be viewed as vital to its expressive reason. States ought to allow the protests in every open spot including places that are exclusive yet are practically open i.e. places that are interested in the open and routinely utilized for open purposes. States ought to guarantee that dissents can happen inside sight and sound of their item or focused on audience. States ought to encourage counter-protests inside sight and sound of each other in as much as this is conceivable and convey satisfactory assets to that impact. States ought to likewise cease from forcing limitations on online Freedom of Expression.¹⁶¹

2.5.3. Freedom to pick the structure and way of protests

Everybody ought to have the opportunity to pick the way and type of the protest including its length. Peaceful direct activity should be viewed as a real type of protest. States should avoid to introducing time limits on the length of duration of protest in specific areas. States should also avoid from restricting people from covering their physical character during protests. Any constraints on obscenity in protest both online and also offline, ought to be legitimized on the premise of an individualised suspicion of a genuine criminal offence. Every individual should be permitted to utilize digital devices in protest. States should elevate and

¹⁶⁰ <https://www.aclu.org/issues/free-speech/rights-protesters> (Last Accessed: 26/08/2016 3:21PM)

¹⁶¹ Brownstein, Alan I. "Taking Free Exercise Rights Seriously Case." *Western Reserve Law Review*, Vol. 47, 2006, 10-14. Available at SSRN: <http://ssrn.com/abstract=931687>

encourage the access of digital devices and it is also pertinent to mention here that state should not restrict the utilization of digital technologies in protest¹⁶²

2.6. State obligations and duties on the right to protest

There are some obligations and duties of the states regarding the right to protest

2.6.1 State obligations

With respect to the right to protest state have many obligations for the protection of rights of the protesters but there are three essential obligations of the state with regard to the safety of protesters and general public

2.6.1.1 Respect the Right to Protest

State should not arrest, obstruct or limit the privilege of the individuals to challenge but to the degree permitted by universal human rights law¹⁶³ It is the obligation of the state that neither violate the rights of the demonstrators nor prevent them from their basic rights during the protest. State should respect the individuals and fulfil all requirements which will be essentials for peaceful protest¹⁶⁴

¹⁶² Roger Power S. *Protest, Power, and Change: An Encyclopedia of Nonviolent Action from C.I.U.P. to Women's Suffrage* (Washington: Routledge, 2012), 139.

¹⁶³ <https://www.hrw.org/news/2011/10/28/us-respect-rights-protesters> (last Accessed 26/08/2016 11:55 AM)

¹⁶⁴ Ibid

2.6.1.2. Protect the Right to Protest

State ought to attempt sensible steps to ensure the individuals who need to practice their entitlement to challenge. This incorporates embracing measures important to avoid infringement by outsiders.¹⁶⁵

2.6.1.3. Fulfil the Right to Protest

This is an additional obligation of the state to build up an empowering situation for the right to protest. This incorporates giving viable solutions for infringement.¹⁶⁶ It is included in the necessary obligations of the state regarding the rights of the demonstrators to fulfil their additional needs during the protest.¹⁶⁷

2.6.2 State duties

There are also some positive duties of the state to guarantee those people who may practice their Right to Protest.

2.6.2.1 Protect the human rights

The first and foremost duty of the state is to protect the human rights at the place of protest with all respects. Certify that human rights assurances apply in all challenges, even where there are individual or across the board demonstrations of brutality, or where circumstances require particular and brief limitations on the RTP.¹⁶⁸

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Henry David Thoreau, *Civil Disobedience* (New York: Hayes Barton Press, 1912), 25.

2.6.2.2 Protect the participants

The second duty of the state is to provide adequate security to the protesters. Effectively ensure protesters, close by other individuals against any type of danger or brutality by the individuals who wish to avert, upset or deter challenges including provocateurs and counter-demonstrators.¹⁶⁹

2.6.2.3 Provide the security to the general public

It is also include in the duties of the state to protect the general public which are not participating in the protest.¹⁷⁰ During the protest the rights of the general public could never be ignored, neither the security of the public property could be ignored. State should take such steps in which everyone will be safe and not prevent from his/her basic rights, either he/her is a demonstrators or general public.¹⁷¹

2.6.2.4. Non-discrimination

States should ensure in their enactment and guarantee that everybody can practice their Right to Protest similarly without discrimination for example race, sex, ethnicity, religion or conviction, inability, age, sexual introduction, sex character, dialect, political or other sentiment, national or social inception, nationality, property, birth or different status.¹⁷²

¹⁶⁹ Ibid

¹⁷⁰ Ibid

¹⁷¹ Ibid

¹⁷² Ibid

2.7 Main Three Reasons why Freedom of Expression is necessary to a free society

There are three main utmost reasons that why the FoE is necessary for a free society

2.7.1. The base of self-fulfilment

It's the establishment of self-satisfaction. The privilege to express one's considerations and to discuss uninhibitedly with others certifies the pride and worth of every single individual from society and permits every person to understand his or her full human prospective. In this way, opportunity of expression is an end in itself and accordingly merits society's considerable¹⁷³

2.7.2 Improvement of knowledge and search of truth

It's key to the achievement and headway of information and the search for reality. The famous nineteenth century author and common libertarian John Stuart Mill¹⁷⁴ fought that edified judgment is conceivable just in the event that one considers all realities and thoughts from any source and test those ideas one's own decisions against restricting perspectives. In this manner, all perspectives even those that are terrible or socially destructive ought to be spoken to in the public eyes can become commercial hub of thoughts¹⁷⁵

¹⁷³ <https://www.aclu.org/freedom-expression-aclu-position-paper> (last accessed 03/03/16 1:19 PM)

¹⁷⁴ John Stuart Mill was an English philosopher

¹⁷⁵ <https://www.aclu.org/protest-aclu-position-paper> (last accessed 03/03/16 1:19 PM)

2.7.3 A checking system of government's policies and functions

It's important to our arrangement of self-government and allow the American individuals a "checking capacity" against government wrongdoing and corruption. In the event that the American individuals are to be the experts of their destiny and of their chosen government, they should be all-around educated and have permission to all data, thoughts, and perspectives. Mass lack of awareness is a reproducing ground for mistreatment and oppression.¹⁷⁶

¹⁷⁶ Ibid.

Chapter Three

Freedom of Expression and Protest in Pakistan - A case law study

Introduction

Fundamental rights are important rights which are given by every welfare state to its public. In the constitution of Islamic Republic of Pakistan these rights are incorporated from article eight to twenty eight. Freedom of expression is an important human right which is given in the article 19 of the constitution. This right is acknowledged by international law in their different conventions as in the article nineteen of the (UDHR)¹⁷⁷ and article nine of the (ICCPR)¹⁷⁸ (ICESCR)¹⁷⁹ is also acknowledges this right of freedom of expression. The constitution of Islamic Republic of Pakistan 1956 article eight provided for the right to freedom of speech. 1962 constitution did not clearly mentioned this right while through different judgements it was acknowledged. In the Constitution of 1973 it clearly mentioned that every person has right to speech but there are certain limitations as no one can speak against the integrity of Islam against the security of the country as defence of Pakistan. No one has right to speak to disturb the public order as well as relation to contempt of court and against the relation with other countries.

There are many political system in the world like democracy, dictatorship, autocracy and kingship. The best political system out of all which discuss preceding is democracy. In present time every developed country has a democratic political system. For the development

¹⁷⁷ Art. 19 Universal Declaration of Human Rights (UDHR). Pakistan is the signatory of UDHR and also include in the list of those countries who ratify it.

¹⁷⁸ Art. 9 International Convention on Civil and Political Rights (ICCPR) 1966.

¹⁷⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976. Pakistan ratified this covenant in 2008.

of democracy as well as to control the menace of terrorism, it is utmost needed free speech and press. So people can freely give their opinion and cast vote for the formation of government. So real democratic government can come into existence.

Not only constitution of Pakistan accept the fundamental rights, Islamic law also acknowledged and accept the basic rights as freedom of expression and press. No one can be compelled to enter in Islam. Some people criticized the constitution of Pakistan and especially section 298C of the Pakistan Penal Code (PPC) in which it is prohibited to Ahmadies and Lahories group to use different names as Azan, Caliph, prophets, and Ummaha tul momeneen. In this way, some scholars said that this section of PPC is not giving the right of free speech. In fact every right is not indefinite as the constitution tells that everyone has right to free speech but subject to certain limitation.

These rights has giving by every welfare state for the betterment of its public. No nation can be built with lot of limitation. Therefore they are utmost needed for the development of welfare state as well as meet the challenges of present time.

3.1 Constitutional Developments in freedom of expression

The ideology of Pakistan based on the protection of Muslims as well as minorities because Muslims were not protected in the sub-continent. Hindus were not giving their legitimate rights. As Quaid-e-Azam Muhammad Ali Jinnah demanded in his fourteen points. When Quaid-e-Azam and other leaders of the Muslim League thought, Hindus will make the Muslims their slave and they are not ready to give their basic rights. They frustrated from the treatment to Congress leaders and started struggle for their own homeland. In result Pakistan came into existence on 14th of August 1947. In that time the Indian act 1935 was taken as Interim constitution of the country. After it, in 1949 an objective resolution passed for the legislation of new constitution. After a hard struggle, Muslims become able to make their first

constitution in 1956 Fundamental rights were incorporated in the constitution especially article eight deals with freedom of expression This constitution was suspended in 1958 by Governor Ghulam Muhammad After this, in 1962 second enacted constitution promulgated in which clearly fundamental rights were not incorporated This constitution could not work for long time A new temporary constitution in the name of legal frame work came into existence After this order, the third enacted constitution 1973 promulgated Article eight to twenty eight of this constitution deals with fundamental rights especially article nineteen of this constitution deals with freedom of expression and press Under this right every citizen of Pakistan have right to express his view without any fear

3.1.1 Freedom of expression in previous Constitutional Documents

3.1.1.1 Freedom of expression in the constitution 1956

Constitution of 1956 was first constitution of Pakistan which was came into existence after a hard struggle of nine years In this constitution, fundamental rights were incorporated for the protection of all citizen of Pakistan and especially minorities Article eight of this constitution deals with Freedom of Expression and free speech Now researcher will present two cases which were decided by the Supreme Court of Pakistan -

Jabindera Kishore v Province of East Pakistan

The Supreme Court of Pakistan has decided in this case 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 itself ¹⁸⁰

¹⁸⁰ *Jabindera Kishore v Province of East Pakistan* P.T.D. 1957 SC 9

East Pakistan v Mehdi Ali Khan and others

It was held 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 exercise.¹⁸¹

3.1.1.2 Freedom of Expression in the Constitution of 1962

The second enacted constitution 1962 of the constitution of Pakistan did not clearly mentioned the freedom of expression as laid down in the present constitution of 1973. But there are some important decision done by SC in respect of Freedom of Expression. Some of them are given below

Ch. Manzoor Elahi v Punjab Government¹⁸²

In this case it was held that expression law as used in Article 2 of 1962 Constitution (corresponding to the present Article 4) was not necessarily confined to written statute or any other law but it is covered through the judgements of the courts. These judgements of superior courts are precedents for the lower courts. The Supreme Court of Pakistan infer this rights in its many decisions. As in the Manzoor Elahi's case this case was rejected by the SC by the majority of justices by I. B. Ali v The State¹⁸³ making a base the case of Asma Jilani's case¹⁸⁴ after a comprehensive discussion the Chief Justice of SC of that time Hamoodur Rehman stated the meaning of word law is limited to positive law. In simple language connotation of expression law used in the sense of a formal pronouncement of the will of a competent law-giver and it did not cover all other legal concepts or theories. Once again same matter came before the SC in the case of Federation of Pakistan v United Sugar Mills Ltd¹⁸⁵ Muhammad

¹⁸¹ East Pakistan v Mehdi Ali Khan and others P.T.D. 1959 SC 387

¹⁸² Ch. Manzoor Elahi v Punjab Government P.T.D. 1975 SC 66

¹⁸³ I. B. Ali v The State P.T.D. 1975 SC 506

¹⁸⁴ Asma Jilani v Govt of the Punjab P.T.D. 1972 SC 139

¹⁸⁵ Federation of Pakistan v United Sugar Mills Ltd P.T.D. 1977 SC 397

Gul Justice wrote the judgement at end of discussion both article four and eight contradistinction with any custom and traditions having the force of law and thus must be given limited connotation

3.1.1.3. Freedom of Expression in the Constitution of 1973

The constitution of Pakistan 1973 also guarantee of the basic rights. These rights are always given to independent states to their masses. These rights cannot be violated in any situation until or unless constitution is suspended. They can be suspended only in the time of emergency or martial law. The following articles of the constitution are regarding fundamental rights

In Pakistan, the Fundamental Rights are enshrined in Part (II) Chapter (I) of the Constitution of Pakistan 1973 (the Constitution) and relate to Security of person (Article 9) Safeguards as to arrest and detention (Article 10) Right to fair trial (Article 10A) Slavery Forced labour prohibited (Article 11) Protection against retrospective punishment(Article 12) Protection against double punishment and self-incrimination (Article 13) Inviolability of dignity of man (Article 14) Freedom of movement (Article 15) Freedom of assembly (Article 16) Freedom of association (Article 17) Freedom of trade business and profession (Article 18) Free speech (Article 19) Right to information(Article 19A) Religious rights (Article 20) Safeguard against taxation for purposes of any particular religion(Article 21) Safeguards as to educational institutions in respect of religion (Article 22) Provision as to property(Article 23) Protection of property rights(Article 24) Equality of citizens(Article 25) Right to education(Article 25A) Non-discrimination in respect of access to public places

(Article 26) and Safeguards against discrimination in services (Article 27)

Preservation of language, script and culture (Article 28)¹⁵⁶

Article nineteen of the constitution deals with the freedom of expression. This article clearly tells

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 defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.¹⁵⁷

In this article, a bar is fixed on legislature as well as the executive authorities that they have no power to interfere in the freedom of speech and press but certain limitations are also attached with this freedom. If a person speaks in such a way on which law has fixed reasonable restrictions, it will not amount to freedom of speech.

Article 19 of the constitution guarantees the Freedom of Expression, and adjacent to it the right of freedom of press. In the first constitution of 1956, it was not specifically given this right. This article was incorporated in the constitution of Islamic Republic of Pakistan 1973 to specifically show the importance of this right. Now media has become an important pillar of state. For the freedom of press, acquire information is needed. Right to obtain information includes right to access to the basic source of information.¹⁵⁸ This right is also acknowledged by the Supreme Court of Pakistan in its judgement. In this judgement, SC said it is a right of every citizen of Pakistan to take information about the public documents. It also said this right is

¹⁵⁶ The Constitution of Islamic Republic of Pakistan 1973, Part II, Chapter I. Available at <http://www.pakistan.org/pakistanconstitution> (Last Accessed 31/08/2016 3:25 PM)

¹⁵⁷ Pak Const art 19

¹⁵⁸ Bennett Coleman v Union of India, AIR 1973 SC 106

correlate with the right to FoE because this right cannot be implemented without the accessing information ¹⁸⁹

3.1.2. Freedom of expression in the regime of President Zia ul Haq

The constitution 1973 of Pakistan guarantee the human rights and specifically his article 19 gives guarantee of freedom of expression and press, though there are certain limitations. When General Zia ul Haq suspended the constitution of Pakistan and enforced the martial law, he suspended the fundamental rights which were given by the constitution ¹⁹⁰

3.1.3. Protest in the era of Pervez Musharraf regime

In the regime of General Musharraf, the year of 2007 was very violent and it includes many things. The ex-chief justice of supreme court of Pakistan was suspended by General Musharraf, operation in Lal Masjid, bogus presidential election, the killing of Bloch Sirdar Akbar Bugatti and its companions, imposing emergency as well as suspension of the constitution and slaying of the ex-prime minister of Pakistan Mohtarma Benazir Bhutto ¹⁹¹

General Musharraf ordered to Chief Justice Iftikhar Muhammad Chaudhary to resign from his post. His refusal from resign create a worse condition between the military executive and Judiciary. This action of chief justice got much importance and popularity among the public. In this way, a masses on large scale become the part of lawyer protest. Before this incident, judiciary was unpopular and separate institution of the country. Lawyer acted as like central part among the state and population. Some other protesters who were demanding food

¹⁸⁹ Muhammad Nawaz Sharif V. President of Pakistan and others, P.L.D. 1993 SC 473

¹⁹⁰ <http://www.pakistan.com/pakistan/ziaulhaq.html> (Last Accessed 31/08/16 3:16 PM)

¹⁹¹ <http://search.proquest.com/openview/1c0f78f8593f7908bcd931fad82a1256/1?pq-origsite=gscholar> (Last Accessed 31/08/16 3:52 PM)

on low cost made a part of this protest. In this way, a large number of people become part of the procession and a great pressure was build.¹⁹²

According ACLED (Armed Conflict Location and Event Dataset), a very detail report about the political violence in developing countries from January 1, 2006 to election. The number of all conflicts were 2399, especially 874 conflicts were about riots and protesters. Some were other conflicts include bad treatment with civilians, battles.¹⁹³

847 protesters were further divided into six categories and they are follow as:

Against U S A, these were anti-American protest (e.g. air-strikes, drones, generally against the U S), 2 Government, these were protests for dissatisfaction towards the government (e.g. against emergency rule, suspension of chief justice, police brutality or general anti-government), 3 Grievance, were primarily to show ill-treatment or injustice towards something specific (e.g. targeted killings, against electricity load shedding, water shortage, civilian deaths, or general displacement towards a specific event), 4 local, are protests that were confined only to a specific local and were not spread throughout the country. (e.g. bombings that occurred in only one city, college activities, kidnapping, or murders), 5 Political, these protests were carried out by specific political parties, either held specifically by them or for their agendas (e.g. protest against causes – Bhutto's death, torture of political leaders, or unfair treatment – other political parties, and other perceived injustices), 6 Religious, were held due to religious conflicts (e.g. military operation against the Red Mosque, desecration of the Qur'an, and – Hindus, Shites, Buddhists, and other religious minorities protesting for crimes against their beliefs).¹⁹⁴

¹⁹² <https://www.pakistanimes.com/topics/jitkhar-muhammad-chaudhry> (Last Accessed: 18/08/2016 11:18 AM)

¹⁹³ <https://www.strausscenter.org/aced.html> (Last Accessed: 31/08/16 5:30 PM)

¹⁹⁴ <https://www.prio.org/Data/Armed-Conflict-Armed-Conflict-Location-and-Event-Data> (Last Accessed: 16/08/2016 10:18 PM)

3.2 Hurdles to freedom of expression and protest in Pakistan

Pakistan is a developing state which into existence 69 years ago. When it came into being, the founder faced a lot of difficulties. In this time, he said, we will first meet other challenges of the time after focus would be on the constitution. He was thinking, it is not a great problem for me because I am an advocate as well as people of Pakistan believe on me. This was reality but unfortunately he died in 1949. After it, such charismatic leadership could not come in politics of Pakistan.

3.2.1 Lack of Education

First important reason is lack of education. There are many problems in respect of education. Firstly, mostly people are illiterate. Secondly, those who are literate, they got education from different systems. Commonly, researchers divide the Pakistani student into four kinds: firstly, those who get education from madrasas; secondly, get education from government schools; thirdly, those who get education from private schools like Beacon House and City School system; and last of all, some students who are from rich families get education from foreign countries.¹⁹⁵ The approach of students who get education from four different systems is also different and they are not ready to hear each other. In this way, they cannot work together and demand their right of speech and expression.¹⁹⁶ Thirdly, in Pakistan, a student has to learn three languages in one time. His mother language is Punjabi, Pashto, Sindhi, etc. National language is Urdu, and students get education in Urdu till the class of five, after that automatically English is started. In this way, most of students leave the education due to

¹⁹⁵ Staff country report, Pakistan: Poverty Reduction Strategy Paper (International Monetary Fund, 2010). Available at https://books.google.com.pk/books?id=BJDb1M94N6oK&dq=lack+of+education+in+Pakistan&source=gbs_navlinks_s (Accessed August 31, 2016).

¹⁹⁶ Ibid.

multiple language¹⁹⁷ These all reasons of lack of education. When people will not able to learn basic education, it is not possible for them to demand their rights.

3.2.2. Poverty

It is said that poverty is the mother of all crime. In developed nation, there are some people who have no information about their basic rights. But as compare to developing countries, they are very less in number. In developing countries, people only think how can be managed food for the next time.¹⁹⁸ Government have not finance to develop the institution. So people can take education and can demand their rights.¹⁹⁹ But in developing countries like Pakistan poverty is main element which should be eliminate for the fulfilment of basic rights.²⁰⁰

3.2.3. Terrorism

Terrorism has become an international issue. International community is not able to develop consensus on the definition of terrorism. There were many efforts done to control the menace of terrorism at national and international level.²⁰¹ But they all are fail. Due to terrorism, no will speak truth at national and international level.²⁰² Therefore, people do not demand their basic rights.

3.2.4. Political instability

One of important reason is political instability. From 1947 to 2016 many time constitution is suspended and martial law is imposed. First constitution was suspended after

¹⁹⁷ Ibid

¹⁹⁸ Hyun Hwa Son, 'Inequality of Human Opportunities in Developing Asia', *East Development Bank Economics Working Paper Series No. 328*(2012): 6-14. Available at SSRN: <http://ssrn.com/abstract=2103001>

¹⁹⁹ Ibid

²⁰⁰ Ibid

²⁰¹ Basil Siddique, 'Does Poverty Fuel Terrorism', *Federal Board of Revenue (Aik Council)* (2012): 7-16. Available at SSRN: <http://ssrn.com/abstract=2181390>

²⁰² Ibid

two years, second constitution was suspended after seven year third constitution was suspended by General Zia ul Haq in 1977 only after four years after enactment²¹³ This constitution was restored by democratic government after ten years of dictatorship²¹⁴ General Musharraf again suspended the constitution in 1999. This dictator remained till 2008. In 2008 Pakistan people party came in power. Such type of political instability is also one important factor of worse condition of country. In such types of government, people fear to speak about any policy of the government. This was a big hurdle for the enforcement of basic rights²¹⁵.

3.2.5. Unfair election system

In developing country people are illiterate they cast vote on to person who is from their own cast. Secondly, it is mostly said by political parties rigging is done in the election²¹⁶. Through such type of election illiterate and incompetent Politian come in power. They save their own interests. They do not give basic rights to its masses. This is also a reasons of lack of freedom of expression.

3.2.6. Corruption

There is a rampant Corruption in Pakistan society. wealth is considered to be the only source of getting respect²¹⁷. They think how we can earn more money. In such system, honest people life has become miserable. Therefore people cannot freely express their views. Most of people indulge in corruption. They think, if they raise slogans for fundamental right they will not continue their practice.

²¹³ Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* (New York: Cambridge University, 2002) 83.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ http://www.huffingtonpost.com/malik-siraj-akbar/pakistans-unfair-election_b_3200750.html (Last Accessed 08/08/2016 10:06 PM).

²¹⁷ *Rab Nawaz Hingoro v. Govt of Pakistan* P.L.C. 2008 S.I.S. 509.

3.3 Restrictions on Freedom of Expression under the constitution of Pakistan

The constitution 1973 gives right to every person that he can express his views without any fear but some restriction impose by same section of the Constitution of Pakistan. No one can talk against the religion security of Pakistan²⁰⁴ Article 295C of criminal law prohibit two groups to use the name of Azan, Ummul mohmineen etc. Some scholars criticise the constitution that it is not fully giving the right to free speech

3.3.1 Main Challenges to Freedom of Expression on our homeland

The foundation of this country was laid down by Quaid-e-Azam for the restoration of fundamental rights of the Muslims and all minorities. These fundamental rights were made the part of constitution of Pakistan. In these rights minorities are fully protected. Every citizen of Pakistan go anywhere in Pakistan. He can express his view about the government policies and government should act upon the public desire under constitution. But practically this is not doing which is written in the constitution. Now researcher want to put case law so it practical form can be checked

In the YouTube Case i.e. Writ Petition 958/2013 in front of IHC have argued that sanctions on the YouTube is illegitimate and illegal because government is violating the spirit of constitution 1973 article 19. Some videos regarding the defamation of Holy Prophet was uploaded on YouTube and it cause to protest in whole country. This ban on YouTube by executive was illegal because it violated the basic structure of the constitution. Constitution article 19 discuss about the reasonable restriction imposed by law. It means this power is confer to legislature not to executive which is void²⁰⁹ The judge was agreed with this argument and government could not produce any counter argument but government try to linger on the case

²⁰⁴ The State v. Abdul Ghaffar Khan P.L.D. 1957 L.Jh. 142

²⁰⁹ Abulala Maududi v. Govt. of West Pakistan P.L.D. 1961 SC. 673

as long as possible²¹⁰ After a long time ban was removed²¹¹ In this way, government is creating hurdles in the way of fundamental rights which provided in the constitution of Pakistan²¹²

3.3.2 Impunity

Government is not so serious for the development of true democracy and freedom to express including protection of journalist on sensitive issue as well as it has failed to end the culture of impunity. In result of this ignorant behaviour of government the number of crimes are increasing continuously, these increasing rate of killing of journalists became a dangers for those who talk about the different political and ideological views²¹³ In this way people cannot discuss their views. It will cause to stop the new ideas which is utmost need of the time and it is also a one type ban on human rights²¹⁴

3.4. Freedom of expression in Islam

Under the Shelter of Freedom of Expression no one has power to violate the principles of Islamic system. Those who violate the principles of Islamic Law and give offensive speech may be punished under Islamic law. It could be found from the life of the Holy Prophet (PBUH) and his first four companions, those who committed blatant disbelief be punished severely. Propagation of Islam is not allowed under coercion but Islam saves the Muslims against the

²¹⁰ Writ Petition 958/2013 LHC also available at http://www.media-defence.org/blog/major-challenges-fundamental-right-freedom-speech-pakistan/#:~:text=Vilixul,WI_s (last accessed 17/10/15 11:10 PM)

²¹¹ Ibid

²¹² Ibid

²¹³ At least 71 journalists and media workers have lost their lives since 2001 while pursuing their duties in Pakistan said a report released as the United Nations marks as the International Day to End Impunity for Crimes against Journalists. Pakistan ranks as the fifth worst country in the world in terms of the number of unresolved cases of violence against journalists. There are still at least 22 such cases open in Pakistan. Available At <https://www.thnews.com.pk/latest/9553-71-journalists-killed-in-pakistan-since-2001-report> (1st Accessed 31/08/16 11:29 PM)

²¹⁴ Ibid

aggression of those who reject the freedom of believers. But fitnah²¹⁵ cannot come under the shadow of freedom and no validity can be claimed under the Islamic law.

There are two illustrations which researcher wants to present here so the difference can be made between fitnah (sedition) and FOF.

The second caliph of Islam Hazrat Umar (R.A) was deciding the case of theft. He (R.A) asked a question to thief, why did you commit this crime? In reply he said, It was God's will. Hazrat Umar (R.A) awarded some additional punishment to thief because he was misguiding the general public.²¹⁶

According to another report Hazrat Umar (R.A) found in investigation some people who were drunk. He (R.A) asked from them, why did you drink? In reply they recited the verse of Holy Quran (Quran 5:90). This verse of the Holy Quran was in the context of general importance, is understood in such terms that it could probably be elaborated as along those who are straight forward and remain steadfast in righteousness to eat and drink whatever they wish. This verse was in general context while these people use it in specific situation, while specifically it was prohibited in another place (Quran 5:90). Hazrat Umar replied tersely, Had you been pious, you would have avoided drinking. This report clearly says he awarded less punishment because it was incidental and they excuse on their sin. They were not inviting the others to start sin as well as they were not challenging the already accepted meaning of Holy Quran.²¹⁷

3.5 International Covenant Signed and Verified by Pakistan

Freedom of Expression is given under many conventions of the United Nation Organization (UNO). Freedom of Expression is very necessary for the development of

²¹⁵ Fitnah is an Arabic term which mean unrest or rebellion, especially against a rightful ruler.
Mohammad Hashim Kamali, *Freedom of Expression in Islam* (U.K. Islamic Texts Society, 1997), 95.
Ibid.

countries as well as for the promotion of international peace and democratic system. Article 19 (UDHR) states that "Everyone has the right to freedom of opinion and expression."²¹⁸ Article 9 of the (ICCPR) repeats the same which was given in the proceeding article of the UDHR. It clearly says, "Everyone shall have the right to freedom of expression."²¹⁹ UDHR further tells about some other things which are also part of right of free expression as "to seek, receive and impart information and ideas through any media and regardless of frontier."²²⁰ (ICJ/SCR) also acknowledged the right to free expression. As some scholars mentioned here, right to information is the essential for freedom as well as right to hold opinion and express it according to his own will.

Some other regional instruments are also acknowledged the right of free expression as -

Charter of Fundamental Rights of the European Union, American Convention implemented by the Inter-American Court of Human Rights and Inter-American Commission, and the African Charter on Human and People's Rights under the Organization for African Union and implemented by the African Commission on Human and People's Rights.²²¹

Freedom of expression is given very long time ago by the different developed countries as the United States of America (USA). Freedom of Expression was incorporated through first amendment in the US constitution as the Bill of Rights, and these rights were enshrined by many other countries in their constitutions. In these rights includes freedom of assembly, freedom of the press, freedom of religion and freedom of speech. Developing countries are also signatory of ICCPR in which right of Freedom of Expression is provided as Pakistan but practically it is not acting upon it.²²²

²¹⁸ Art 19, United Nations Declaration of Human Rights

²¹⁹ Art 9, International Covenant on Civil and Political Rights

²²⁰ Ibid, Art 16, 17, 18

²²¹ Ibid

²²² Pakistan is the signatory to the ICCPR

3.6. Freedom of Expression in developing and developed countries

Sida has presented a report about the Freedom of Expression. This report tells the importance of Freedom of Expression and after it tells the difference of approaches and circumstances of developed and developing countries. Firstly, Freedom of Expression is essential for the democratic society. Those nations are developing which have Freedom of Expression. Their masses can freely criticise the policy of government. Due to this fear, government makes every policy according to the sweet will of the state.²²³

There are difference between the approaches of developed and developing countries. In developing countries, journalists are not allowed to work freely.²²⁴ In many countries, government exile the journalists, so they work in foreign countries. Sida is supporting in many foreign countries.²²⁵ Some radio stations are working in foreign countries on the finance of Sida. The purpose of these radio stations is to bring democratic change. Radio is an important source of information in poor countries as well as less expensive instead of other sources. It can broadcast the news in more languages. It example is independent radio of Indonesia, where Sida is paying from last many years.²²⁶

But in developed countries, the new technologies as internet, mobile phone presented a new ways of freedom of speech and democracy. In developed countries, large number of people use digital technologies to convey their message regarding social issues and to communicate what is doing in front of them, which was not past practice as well as not possible at that time.²²⁷

²²³ Sida reports on democracy in developing and developed countries. Available at <http://www.sida.se/English/how-we-work/our-fields-of-work/democracy-human-rights-and-freedom-of-expression/democracy-and-human-rights> (Last Accessed 26/07/2016 11:26 PM)

²²⁴ Ibid

²²⁵ Ibid

²²⁶ Ibid

²²⁷ Ibid

3.7 State versus Society Weak Relationship, always leads to a Collapsed State

Developing countries especially Pakistan has become the victim of corruption at high level and its public is frustrated from democracy also. When weak state and weak democracy will not able to develop the good relation among themselves, result will be not good. The same situation is of our own country Pakistan, in which public do not believe on government while government does not protects the rights of people. People comes on roads and protest but government did not pay attention²²⁸. People did not believe on election because they consider it a drama with masses. This all process is vague when both parties have no confidence on each other. This weak relation of state and society leads to verse situation as low capacity and low autonomy of the state. Such inability leads to a collapsed state²²⁹.

3.8 Why Freedom of expression is utmost needed for the development of democracy

Democracy is system of government in which rights of every person is protected. Sida has prepared a report in which it said

Freedom of expression is a human right and central to democracy. People shall have the right to express themselves, and have access and right to disseminate information and opinions. A free word contributes to democratic development through support to organizations working with independent media, artistic freedom issues or ICL and human rights²³⁰.

²²⁸ The Azadi March, also called Tsunami March (Freedom march) was the public protest march that held in Pakistan began on 14 August 2014 to 17 December 2014. Organised by the Pakistan Tehreek-e-Insaf party against Prime Minister Muin Nawaz Sharif over the claims of systematic rigging by PMF-N in the 2013 general election. This protest was carried on for four months, and thousands of protesters show their participation in protest but government don't like to pay attention on the voice of demonstrators. Available at https://en.wikipedia.org/wiki/Azadi_March (Last Accessed: 05/07/2016 9:50 PM).

²²⁹ <https://www.foreignaffairs.com/reviews/capsule-review/2004-05-01/when-states-fail-causes-and-consequences> (Last Accessed: 05/07/2016 12:50 PM).

²³⁰ Ibid. at 49.

Freedom of Expression is very important for the promotion and development of human rights. This right gives courage to people to demand their rights from government. In this way, this right plays a vital role in taking their right to clean water, shelter, health and basic education.

Social Media is also playing a vital role in the promotion of democracy. Social media got a lot of attention during the Arab Spring in Tunisia, Libya, Egypt, Turkey, and Syria. Modern technology as internet plays a good role to mobilise people and make reports from different incidents in a text, audio and video. These reports became good sources of information for international media. To prepare reports from foreign countries was a big problem for the world media.

Chapter four

Conclusion and Recommendations

Conclusion

On the above discussion it can be concluded that freedom of expression is a fundamental right which is provide in article 19 of the constitution of Pakistan 1973. This was not only incorporated in present constitution but it was also part of first constitution of Pakistan 1956. It shows the importance of this right. This right was not part on any constitution before this but different rulers accepted its importance but they could not take such step which took by Americans. According to west first time this right was incorporated in the American constitution through first amendment.

Islam gave same right to people fourteen hundred years ago. As Allah said in Holy Quran there is no compulsion in faith (deen). Holy prophet (PBUH) negated his own view about different works and accepted the suggestions of his companions. There are many illustrations when Hazrat Abu Bakar (RA) and Hazrat Omar (RA) alter their views and accepted the opinion of their companions. It clears from Islamic history. Islam acknowledge this right.

Law of nature also recognizes this right. *Audi alteram partem* is a natural law which means no person judged without a fair hearing. International law recognizes this right under many covenants, conventons and declarations like UDHR, ICCPR and ICESCR. UN passed many resolutions in favour right of self-determination, freedom of expression and protest. This right is not only acknowledged under national law but Islamic international law as well as international law accepted this right.

Even from a long time people accepted the importance of this right. researcher never find any time in history till now when this right implemented completely. There are many

reasons behind the seen but researcher makes only three main reasons part of this thesis Firstly a large number of people are uneducated and have not knowledge about their rights and duties and even they do not know what constitution is? What are our fundamental rights? Which are provided in the constitution of country therefore they do not demand their rights from government. Defiantly, when people will not demand their basic rights government will not give them their rights. In result people live their life without these rights. Secondly poverty is also a main cause to deprive the people from their basic rights. To provide food shelter and dress is the primary duties of states when states fail to fulfill their primary duty it will also not allow to people to protest and freely spread their ideas. Thirdly injustice system of country is also play a vital role in the lack of this right. Bias election system, lengthy courts procedure, heavy fees of advocates and corrupt officers practices are playing significant role for non-performance of government their duties. Therefore people deprived from system and now they do not demand any right.

This right was incorporated in the constitution of America in 1791 but nobody was willing to act upon this right till 1919. It means to include a section is not sufficient. For this purpose literate nation as well as strong judicial system is most needed. As this right is a part of our constitution of Pakistan but nobody is willing to act upon him. For the implement of this right we have to increase education as well as strong judiciary.

Recommendations

- One of significant obstacle in the route of right of freedom of expression and protest is lack of education. People have no knowledge about their rights and duties, due to lack of education. For the promotion of this right governments should educate their masses.
- Poverty is one biggest obstacle in the promotion of this right. Poor people only think about the next time food. They do not research about their rights. Secondly, poor people have not facility of modern devices, so they can consult them and educate ourselves. If we compare the developed and developing countries, this rights is given in developed countries while developing countries are not giving right as given by developed countries. Governments should try their utmost to eradicate the menace of poverty so people can think about future, make inventions and demand rights.
- Political parties are not mature in under developed states, most of politicians are even unable to read the constitution of their land. Mature political parties and honest and educated politicians are also very necessary to run the business of government.
- Impartial election commission and voting are also need of time. In Pakistan, those party which could not take majority seats, it propagate rigging is done in election. Secondly, illiterate people cast vote on to his own cast. They do not choose honest and hard worker man. People should educate that vote is a sacred duty on your part. You must cast vote to that person who is honest with you and your country.
- Speedy judicial system is utmost needed for the implementation of fundamental rights. Those countries which have strong and judicial system, they can easily implement their basic rights, as American Supreme Court implemented the fundamental rights of people in 1919, though this right was incorporated in the constitution of America in 1791.

- One of law subject especially which relate to fundamental rights which are donated to every person of state must be included in every course so students of other facilities also have knowledge about their basic rights

Bibliography

Acts

- Child Pornography Protection Act (CPPA) 1996
- Espionage Act of 1917
- Sherman Antitrust Act 1890
- Universal Military Training and Service Act

Articles

- Alan F. Brownstein. Taking Free Exercise Rights Seriously Case. *Western Reserve Law Review*. Vol 47. 2006. 10-14. Available at SSRN <http://ssrn.com/abstract=931687>
- Daly, Angela. The Legal Framework in Australia around the Use of Encryption and Anonymity in Digital Communications. (2015). 2. Available at SSRN <http://ssrn.com/abstract=2562946>
- Gofie, Solomon Mebric. The Making and Unmaking of Political Communities in the Horn of Africa. *Implications for Citizenship*. (2013). 3-15. Available at SSRN <http://ssrn.com/abstract=2315015>
- Green, M. Christian. From Social Hostility to Social Media: Religious Pluralism, Human Rights, and Democratic Reform in Africa. *African Human Rights Law Journal*. 14.1 (2014). 5-33. Available at SSRN <http://ssrn.com/abstract=2543311>
- Johnston, Peter. The 'Glorious Revolution' Down Under: Parliamentary Privilege and the Bill of Rights 1689 (UK) -- Its Application in Criminal Proceedings against Members of Parliament: England and Australia Compared. *Australian Association of Constitutional Law*. (2013). 2-5. Also available at <http://ssrn.com/abstract=2353712>
- Under, Doug. The trial of Socrates. *Legal Incident* 12.6 (2007). 1-8

- Linder Douglas, *The Trial of Galileo* University of Missouri at Kansas City-School (2002) 1-9
- O Brink David, *Mill's Moral and Political Philosophy* San Diego Legal Studies 07-98 (2007), 6-15 Available at SSRN <http://ssrn.com/abstract=978824>
- P Wells Catharine, *Old Fashioned Postmodernism and the Legal Theories of Oliver Wendell Holmes Jr.*, *Brooklyn Law Review* 63 (1997) 3 Available at SSRN <http://ssrn.com/abstract=2213328>
- Siddique Basil, *Does Poverty Fuel Terrorism*, *Federal Board of Revenue* (AJK Council) (2012) 7-16 Available at SSRN <http://ssrn.com/abstract=2184390>
- Son Hyun Ilwa, *Inequality of Human Opportunities in Developing Asia* *Asian Development Bank Economics Working Paper Series No. 328* (2012) 6-11 Available at SSRN <http://ssrn.com/abstract=2103001>

Books

- A Enochiaro Maurice, *Retrying Galileo 1633-1992* Los Angeles University of California Press 2005
- Chaudhry A G, *Lectures on Constitutional Law* Lahore Eastern Law Book House 2013
- Darraj Susan Muaddi, *The Universal Declaration of Human Rights: Milestones in Modern World History* New York Chelsea House 2010
- L Leahy James, *The First Amendment 1791-1991 two hundred years of freedom* The University of Michigan McFarland & Co 1991
- Kamali Mohammad Hashim, *Freedom of Expression in Islam* UK Islamic Texts Society 1997
- Lehmann, Jacqueline, *The Promotion of Freedom of Speech in China and South-East Asia: The Role of the United Nations* Switzerland GRIN Verlag 2011

- Melissa Castan Sarah Joseph *The International Covenant on Civil and Political Rights Cases, Materials and Commentary* United Kingdom Oxford University Press 2013
- Milton, John *Areopagitica: A Speech of Mr. John Milton for the Liberty of Unlicensed Printing to the Parliament of England with an introduction by James Russell Lowell* New York Grolier Club 1890
- Morsink Johannes *The Universal Declaration of Human Rights: Origins, Drafting and Intent* Pennsylvania University of Pennsylvania press 2010
- Newberg Paula R *Judging the State: Courts and Constitutional Politics in Pakistan* New York Cambridge University 2002
- Power S Roger *Protest, Power and Change: An Encyclopaedia of Nonviolent Action from AIC-UP to Women's Suffrage* Washington Routledge 2012
- Schwoerer Lois G *The Declaration of Rights 1689* The University of Michigan press University Microfilms 1981
- Staff country report, Pakistan, *Poverty Reduction Strategy Paper* International Monetary Fund 2010
- Thoreau Henry David *Civil Disobedience* New York Hayes Barton Press 1942
- Werhan Keith *Freedom of Speech: A Reference Guide to the United States Constitution* Washington Greenwood Publishing Group 2004

Conventions

- European Convention on Human Rights 1953
- International Covenant on Civil and Political Rights 1966
- International Covenant on Economic, Social and Cultural Rights 1976
- The Declaration of the rights of the man and of the citizen 1789
- The Universal Declaration of Human Rights 1948

Webliography

- <http://blogs.lse.ac.uk/europpblog/2012/03/14/turkey-echr/> (Last Accessed 06/02/16 3:30 PM)
- <http://ipdigital.usembassy.gov/st/english/pamphlet/2013/04/20130416145829.html#a5774H7XQmmBb> (Last Accessed 12/08/16 7:26 pm)
- <http://law.jrank.org/pages/7023/1/freedom-Speech.html> (Last Accessed 04/02/16 2:41 PM)
- <http://search.proquest.com/openview/fe0f78f8593f3908bed931faf82a1256/1?pq-origsite=g scholar> (Last Accessed 31/08/16 3:52 PM)
- <http://www.ancient.eu/socrates/> (Last Accessed 12/01/16 10:06 PM)
- <http://www.britannica.com/topic/Declaration-of-the-Rights-of-Man-and-of-the-Citizen> (Last Accessed 04/02/16 12:41 PM)
- <http://www.fsmitha.com/h1/ch10.htm> (Last Accessed 12/01/16 7:19 PM)
- http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0030 (Last Accessed 06/02/16 8:43 PM)
- <http://www.history.com/this-day-in-history/galileo-is-convicted-of-heresy> (Last Accessed 14/01/2016 10:39 AM)
- http://www.huffingtonpost.com/malik-siraj-akbar/pakistans-unfair-election_b_3200750.html (Last Accessed 08/08/2016 10:06 PM)
- <http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html> (27/01/16 7:22 PM)
- <http://www.ihrecherche.com/your-rights/what-are-human-rights/echr.html> (Last Accessed 06/02/16 2:16 PM)

- <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/1/chapter/9> (Last Accessed 06/02/16 8:52 PM)
- <http://www.pakvisit.com/pakistan/ziaulhaq.html> (Last Accessed 31/08/16 3:46 PM)
- <http://www.parliament.uk/about/living-heritage/evolution-of-parliament/parliamentary-authority/revolution/collections/1/collections-glorious-revolution/billofrights-image-2> (Last Accessed 03/02/16 11: PM)
- <http://www.theguardian.com/law/2014/oct/03/what-is-european-convention-on-human-rights-udhr> (Last Accessed 04/02/16 8:15 PM)
- <https://cpj.org/reports/2006/05/10-most-censored-countries.php> (Last Accessed 06/02/16 3:30 PM)
- https://en.wikipedia.org/wiki/Desiderius_Erasmus (Last Accessed 13/01/16 7:33 PM)
- https://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution (Last accessed 25/08/16 10:27 AM)
- <https://supreme.justia.com/cases/federal/us/424/1/case.html> (Last Accessed 28/08/16 11:11 PM)
- <https://thelargestdemocracy.wordpress.com/2012/06/16/voltaire-freedom-of-expression-is-the-right-of-every-man-woman-child/> (Last Accessed 03/02/16 12:39 AM)
- <https://www.aclu.org/freedom-expression-aclu-position-paper> (last accessed 03/03/16 1:19 PM)
- <https://www.aclu.org/issues/free-speech-rights-protesters> (Last Accessed 26/08/2016 3:21 PM)
- <https://www.ag.gov.au/RightsAndProtections/HumanRights> (Last Accessed 14/10/2015 12:00 am)

- https://www.dartmouth.edu/~milton/reading_room/areopagitica_text.shtml (Last Accessed 03/02/16 8:18 PM)
- <https://www.hrw.org/news/2011/10/28/us-respect-rights-protesters> (Last Accessed 26/08/2016 11:55 AM)
- <https://www.law.cornell.edu/supremecourt/text/424-1> (Last Accessed 28/08/16 11:11 PM)
- <https://www.law.cornell.edu/supremecourt/text/491/397> (Last Accessed 29/08/16 2:27 PM)
- <https://www.law.kuleuven.be/jura/art-47nl/hugelier.pdf> (Last Accessed 13/01/16 6:47 PM)
- <https://www.liberty-human-rights.org.uk/human-rights/free-speech-and-protest/> (Last Accessed 14/10/2015 12:30am)
- <https://www.opensocietyfoundations.org/publications/scholarforum-freedom-expression-middle-east> (Last Accessed 06/02/16 2:16 PM)
- <https://www.pakistantimes.com/topics/iftikhar-muhammad-chaudhry/> (Last Accessed 18/08/2016 11:18 AM)
- <https://www.prio.org/Data/Armed-Conflict/Armed-Conflict-Location-and-Event-Data/> (Last Accessed 16/08/2016 10:18 PM)
- <https://www.strauscenter.org/aclcd.html> (Last Accessed 31/08/16 5:30 PM)
- The Constitution of Islamic Republic of Pakistan 173 Part II Chapter 1 Available at <http://www.pakistan.org/pakistan-constitution/> (Last Accessed 31/08/2016 3:25 PM)