

Freedom of Expression

And

Derogatory Remarks against Sacred Personalities

(A case study of Pakistan in the perspective of Shariah & Pakistan's Law)



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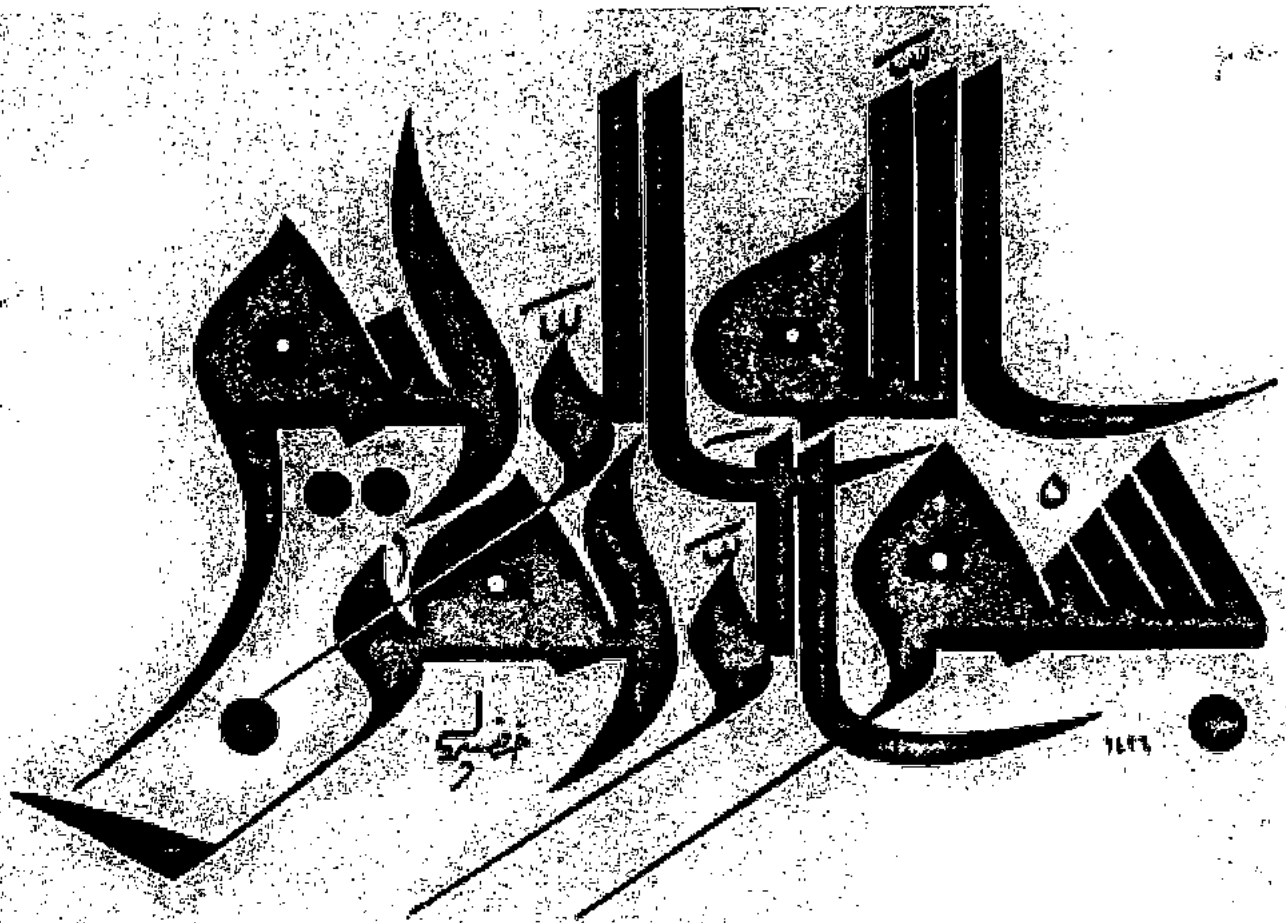
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TRANSLITERATION TABLE

ا	a	د	d	غ	gh	بھ	Long Vowels	
ب	b	دھ	dh	ف	f	پھ		آ
پ	p	ر	r	ق	q	تھ	آ	ā
ت	t	ز	z	ک	k	ٹھ	ی	ī
ٹ	ṭ	ج	j	گ	g	یھ	و	ū
ث	th	ژ	ẓ	ل	l	چھ	و (URDU)	ō
ج	j	س	s	م	m	دھ	و (URDU)	ē
چ	ch	ش	sh	ن	n	دھ	Short Vowels	
ح	ḥ	ص	ṣ	و	w	رھ		ا
خ	kh	ط	ṭ	ہ	h	کھ		ی
د	d	ظ	ẓ	ی	y	گھ		و

Diphthongs

و	—	(ARABIC)	aw
		(PERSIAN/URDU)	au
		(TURKISH)	ev
ی	—	(ARABIC)	ay
		(PERSIAN/URDU)	ai
		(TURKISH)	ey

Doubled

و	—	uww/uvv
ی	—	iiy

Letter ؤ is transliterated as elevated comma (') and is not expressed when at the beginning.

Letter ع is transliterated as elevated inverted comma (').

ض as Arabic letter is transliterated as ḍ, and as Persian/Turkish/Urdu letter as z.

و as Arabic letter is transliterated as w, and as Persian/Turkish/Urdu letter is transliterated as v.

اھ is transliterated as ah in pause form and as at in construct form.

Article ل is transliterated as al- (l- in construct form) whether followed by a moon or a sun letter.

و as a Persian/Urdu conjunction is transliterated as -o.

Short vowel َ in Persian/Urdu possessive or adjectival form is transliterated as -i.

ACCEPTANCE BY VIVA-VOCE COMMITTEE

**FREEDOM OF EXPRESSION AND DEROGATORY REMARKS AGAINST SACRED
PERSONALITIES**

**(A CASE STUDY OF PAKISTAN IN THE PERSPECTIVE OF SHARIAH AND PAKISTAN'S
LAW)**

By

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Accepted by the Faculty of Shariah and Law, International Islamic University Islamabad (IIUI)
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DECLARATION

I, Muhammad Yasar S/O Abdul Wahab, Registration No. 29-FSL/MSILJ/ F10, hereby declare that this thesis titled, "*Freedom of Expression and Derogatory Remarks against Sacred Personalities (A case study of Pakistan in the perspective of Shariah and Pakistan's Law)*" is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this thesis has been duly acknowledged.

Muhammad Yasar

Signature

Date:

DEDICATION

This thesis is dedicated to

Students

Of

Coming **g**enerations

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ABBREVIATIONS

BBC	British Broadcasting Corporation
CrPC	Code of Criminal Procedure
CSW	Christian Society Worldwide
ECHR	European Court of Human Rights
HRCP	Human Rights Commission of Pakistan
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICrCP	Indian Code of Criminal Procedure
IUDHR	Islamic Universal Declaration of Human Rights
NGO	Non-Governmental Organization
PPC	Pakistan Penal Code
PLD	Pakistan Law Digest
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational Scientific and Cultural Organization
UNHRC	United Nations Human Rights Committee

INSTRUMENTS

INTERNATIONAL INSTRUMENTS

Acts:

Indian Code of Criminal Procedure Act 2 of 1973-1974

Articles:

Art.10, of European Convention of Human Rights

Art.18, of Universal Declaration of Human Rights

Art. 19, of Universal Declaration of Human Rights

Art.20, of International Covenant on Civil and Political Rights

Art.107- (1) (2) and Art.174 of Croatian Penal Law

Art.129 (2), of Universal Declaration of Human Rights

Sections:

Canadian Law, sec. 318 clause (1), sec.319 clause (1) a-b.

Danish Criminal Code, sec.266 and 266b (1), September 27, 2005, Order (No. 909)

Indian Penal Code, sec.295A

NATIONAL INSTRUMENTS

Art.1, of the Constitution of Pakistan

Art.2 and 2-A, of the Constitution of Pakistan

Art.19, of the Constitution of Pakistan

Art.31 (1), of the Constitution of Pakistan

Art.45, of the Constitution of Pakistan

Art.227 and 228, of the Constitution of Pakistan

**Art.185 (2) (a), 186A, Pakistan Constitution of 1973 vid Constitution (18th Amendment) Act
2010**

Criminal Code Procedure 1898, sec.374, 376, 410, 417-(2A)

Defamation Ordinance 2002

Federal Shariat Court Judgment, PLD 1991, FSC. sec.33, 66, 67. PLD (2002) Lah, 247.

Qanun-e-Shahadat Order 1984

PLD SC 18. PLD SC (1989) Lah, 642. PLD (1964) Lah, 718.

PLD SC 412. PLD SC (1969) Lah, 289. PLD (1976) Sc. 717.

PLD SC (1975) Lah, 499. PLD SC (2000), 111.

PLD SC (1975) Lah, 1198. PLD (1964) Sc. 637.

PLD SC (1965) Lah, 642. PLD (2002) Sc. 514.

ACKNOWLEDGEMENT

It is with deep sense of gratitude to Almighty Allah for all His blessings!

The basic purpose of this thesis, besides the fulfillment of partial requirements of MS Shariah (Islamic Law & Jurisprudence) degree from Pakistan's recognized University IIUI, is to do something valuable that help others while studying the blasphemy laws in the context of contemporary legal rights such as the right to freedom of expression. A primary objective of this study is also to assess the basic conceptual differences between Islamic and Western freedom of expression which further identify the discrepancies and contradictions found in both the systems regarding this right and blasphemy law. This research has been done in the good sense of finding truth and with true spirit of contributing the scholastic work therefore, I am hopeful that it will be helpful not only to those students concerned with the protection of blasphemy laws in Pakistan but also to those who are willing to do their researches in the field of freedom rights.

I am very thankful to and pleased by my teacher and supervisor Mr. Abdullah Rizk Al-Muzaini who guided me properly and let me do freely then direct my efforts to the right track of the researchers. I am also much impressed by Dr. M. Mushtaq Ahmad's scholastic expertise in this regard as without his guidance it would be impossible for me to give this work the shape in which it now presents. A special gratitude to my parents, my wife and all my family members who never ever discussed their worries and hardships they were facing and always encouraged me to work hard. I am indebted to my cousins; Hamid Rabbani, Amjid Kamran, Bilal Ahmad, Ali Raza, Aisha Khan and Memoona Fatima also to my friends; Hasan Shakeel Shah and Zuhair Ahmad Siddiqui for their assistance and support in one or the other way during my research.

Muhammad Yasar

ABSTRACT

The subject of freedom got much notoriety in the twentieth century which later triggered by the robust moves of the fundamental human rights and soon, the insurgency of these freedom rights, has got a hype that wasn't less than like a nuclear weapon. The people become so addicted of liberty that the concept of inviolable values even comes to be decadent. The sacred values seem like bondages to them and they started asking for freedom even in the form of defamatory and malicious speech or action against inviolable religious personalities. In the meantime, the world's second largest community (Muslims) seemed to be scared and fearful regarding their valuable concerns about sacredness and sacred religious personalities. Because, the concept of sacredness or sacred religious personalities is not merely a concept but held as essential in Islamic beliefs ideology and this concept of inviolable figures is not only found in Islam but in other religions such personalities are being held sacred and protected by their state laws. So, this perplex situation appealed me to study the concept of freedom of expression with reference to religious inviolabilities and their defamation in Islam and Pakistani law.

Pakistan, as an Islamic State, is a significant case in this regard that should be studied in the perspective of Islamic as well as the contemporary laws that have been established in the world. After the enactment of blasphemy laws in Pakistan as a state's law the country has to face a massive criticism at national and international level whereas, on the other side, after the Universal Declaration of Human Rights the incidents of religious hatred and defamation of religious personalities increased rapidly in Euro-American States. Moreover, Pakistan as a signatory member of UDHR is expected to follow the Human Rights Commission's instructions regarding freedom of expression while, the scope and use of HRCP regarding particular right is

not compatible with Islamic as well as Pakistan's State Law. Both the subjects (blasphemy law and freedom of expression) are considered as controversial to each other and therefore, the HRC and ECHR strongly held that the blasphemy law of Pakistan is a discriminative law and a curb over freedom of expression that curtails its scope of activity, consequently, must be abrogated or at least revoked. Whereas, all the amendment bills on blasphemy laws of Pakistan have been rejected by the Ministry of Law, Justice and Parliamentary Affairs of the State. It is also observed in the research that the contemporary use of freedom of expression is challenging to the States' law and order situation, as most of the articles of Pakistan's blasphemy laws are clearly overlooked by the users of freedom rights.

The first chapter comprises of the Islamic and Pakistani legal concept, principles and rules of freedom of expression. The main highlight here is that how Islamic legal system treats freedom of expression and how much vast its scope of activity has been offered there. The second chapter talks about the legal position of Pakistan regarding the particular right of freedom of expression. In which the incompatibility and ineffectiveness of freedom of expression has been reviewed in Islamic perspective and has also been analyzed under the framework of State Laws of Pakistan.

A comprehensive account about sacredness and sacred religious personalities is to be presented in the third chapter. It is also observed that the expressions or words can hurt others' feelings by defaming one who is being held sacred among them therefore an effective mechanism should be adopted by the human rights' commission to sort-out the problem.

In the fourth chapter I examined blasphemy law of Pakistan and right to freedom of expression by assessing the reports issued by ECHR, HRC and by other organizations on the particular law. The status of religious minorities in Pakistan and their concerns regarding blasphemy law and the issue of amendments in blasphemy laws of Pakistan has also been well argued.

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INTRODUCTION

Making a man free is a prerequisite for contentment of basic human needs. It is therefore, considered by Islam as a basic right of every human being and held that a man was born free until he/she doesn't cross the limits set by the Islamic law (Shariah). According to Islamic literature,¹ with the advent of Islam the particular right has become an active agent and a part of Islamic social, political and legal affairs. The right to freedom of speech and expression had remained essential for the propagation of Islamic beliefs and ideologies all over the world. It was considered a helpful tool by the advisory councils too. However, in an Islamic legal system (Shariah) the particular right could never ever gain an ultimate or absolute position that may interrupt or seem challenging to Islamic social, moral and legal order.

While, on the other side in the Western World, like the other freedom and human rights concepts such as; Magna Carta (1215), American Declaration of Independence (1776) Declaration of Rights of Man (1789), the French Revolution, etc., the concept of freedom of expression has also become a part of their legal charter of Universal Declaration of Human Rights (UDHR. 1948). The "right to freedom of expression" comes under the article 19, of the UDHR as declared by the United Nations' Charter 1948. It is known as the fundamental right of every person, similarly its resemblance with development of ideas, independence "authority and power" are also proclaimed in modern age. It is held by the Western higher authorities that the Charter of human rights has a universal or global position at the time however, many articles and at the top of them

¹ There are many examples from the Islamic literature has been mentioned in the first chapter of this research.

is the Article. 19, (freedom of expression) is observed incompatible with the freedom ideology of Islamic world, the second largest community on the globe!

Pakistan, like other countries, has signed the Charter of Human Rights but being an Islamic State the country has to face many challenges regarding religious issues, such as defamation of religious sacred personalities. It is noteworthy that, Pakistan is an Islamic republic whose constitution declares that Islam is the States' religion and that no law shall be passed against the injunctions of Quran and Sunnah and the articles: 295 to 298 are the articles of country's Legal Statutes that declare the offence of blasphemy as a capital crime. So being a controversial issue it has become a very source of critique. Moreover, the distinction between Islamic legal system and modern concept of right to freedom of expression depicts its inappropriateness and contradiction with Muslim societies therefore; there is dire need that both the issues (right to freedom of expression and blasphemy law of Pakistan) should be analyzed in Islamic as well as in contemporary context.

Therefore, I am interesting to conduct my research in the area of freedom of expression and its relation with derogatory remarks to sacred personalities. This research mainly aimed to approach the answers of following issues:

- What is freedom of expression stands for in an Islamic legal system (Shariah)?
- Whether freedom of expression has been held as an absolute right in Islam?
- Does Islam allow anyone to defile or defame the fundamental Islamic beliefs or sacred personalities belonging to Islam?
- Is it possible for an Islamic State to tolerate such rights or laws, for its citizens, which are against or even contrary to the Islamic creed?

- Does the Western's contemporary practice of freedom of expression come under the actual ambit that has been declared in the UDHR or ECHR?
- Does the Pakistan's blasphemy law meet the international standard?
- Whether the existing blasphemy law of Pakistan alone is a restriction on the right to freedom of expression or there are other laws that have also been enacted in the world?
- Is there any possibility to sort-out the issues or the only solution is to revoke or at least repeal both the right and law?

THE RESEARCH STATEMENT

There has been much controversy among scholars about right to freedom of expression and blasphemy law of Islam. However, some of them have focused only on blasphemy law in pure Islamic perspective, which is also important because the comparative evaluation about non-Islamic concepts of the particular subject could go easily through such researches. A lot of work has already been established on the Islamic as well as Western concepts of freedom separately. However, there is a significant gap that has been left regarding Pakistan's legal conception about the issue.

Although, the freedom of expression has mostly been discussed as either blasphemy law of Islam, freedom of expression can also be seen as the social and legal issue of Pakistan. This is significant because Pakistan as an Islamic republic deals with the subject that is, some ways or the other, challenging to the State's constitution as well as its legal rulings.

The core issue of my research is whether the Western concept of right to freedom of expression is compatible and compliant with the Islamic concept of the particular right or is there some inconsistency between particular right and Islamic as well as Pakistan's legal system? And

whether the right to freedom of expression is an absolute right or there should be some limitations upon its scope of action?

This research will show the link between right to freedom of expression and blasphemy law of Pakistan which will lead up to the consistency or inconsistency of the particular right with both Islamic and Pakistan's legal system. I will establish these connections by discussing the Islamic and Pakistani concept of freedom of expression, the concept of sacredness among them and impact of contemporary use of expressions on the dignity of sacred personalities and this will be followed by an examination of Pakistan's blasphemy law in accordance of freedom of expression. I will then conclude by exploring the blasphemy laws of Pakistan and an analysis of these laws will be conducted with reference to freedom of expression.

This research shows that sacred personalities have significant and inviolable value in an Islamic (Shariah) as well as Pakistan's legal system and it is unacceptable to defame them under cover of freedom of expression. I will develop this view by;

1. Examining the basic conceptual differences between Islamic and Pakistani ideology of freedom of expression.
2. Evaluating the social, moral and legal limitations of freedom of expression in Islamic system and their significance regarding expressions and defamation of sacred personalities.
3. Explaining the significance of sacred religious figures in Islamic as well as Pakistan's legal system and showing the ways in which freedom of expression influenced these sacred entities.
4. Exploring the manipulation of freedom of expression and its influence on the Pakistani society and their response.

5. And finally clarifying the significance of blasphemy laws in Pakistan and their violation at national and international level under the cover of freedom of expression.

SIGNIFICANCE OF THE RESEARCH

Right to freedom of expression is essential for both the developed and under developing countries alike. It is a useful tool for all human beings to approach other human rights in a society they are living in therefore, the particular right has been acquired a full and comprehensible position than other freedom rights. Islam as a religion and law is inventor of the right to freedom of expression and still making its part for its best expansion all over the world. On the other end, all the Western countries, whether through their constitutional articles or by way of their legal statutes, also guarantee this right on the foremost priority. However, either the modern concept of the right to freedom of expression or either its contemporary use in Western countries has made it center of critique in many non-Muslim countries in general and especially in most of the Islamic countries in which the blasphemy laws have held inviolable.

Pakistan, as a part of the international community also guaranteed the right to freedom of expression through the State's Constitution however, because of contradictory status of freedom of expression and blasphemy laws of the country, the State has to endure serious pressure at both national and international level.

Therefore, it is pressing that both the subjects in accordance of their mutual relation and their impact on the society must be investigated. It is significant too that, a comparative analysis of both the subjects in the perspective of Islamic law (Shariah) and existing contemporary laws should be made which enables us to come to an end that, whether the provisions of blasphemy law of Pakistan are against the right to freedom of expression or whether the particular right is in opposing or conflicting position.

OBJECTIVES OF THE RESEARCH

This research is aimed to;

- a) Provide a detailed account of Right to Freedom of Expression in Islamic perspective and its analysis with Pakistani concept of the particular right.
- b) Examine the freedom of expression in the light of general principles and limitations of Islamic as well as Pakistan's law that will show how freedom of expression became the center of critique.
- c) Analyze the origin and concepts of sacredness between Islamic and Pakistani systems. Moreover, to investigate the reasons for giving such a valued status of sacredness to religious personalities in both of the societies respectively. Finally, to observe the freedom of expression's impact on these personalities and its effect on the global peace.
- d) Scrutinize the contemporary use of freedom of expression in the perspective of blasphemy law a national and international analysis.
- e) Find out an alternative mechanism for legislation of both the blasphemy law and right to freedom of expression in the perspective of global peace and mutual respect.

LITERATURE REVIEW:

I have searched and assessed a variety of relevant literature on the particular subject of "Freedom of Expression and Derogatory Remarks to Sacred Personalities" and I observed that, the issue has not been discussed in such manners I was searching for. Most of the classical and contemporary, Muslims and non-Muslim scholars have discussed the subject, in their respective books, in different ways; some of them have talked over the subject of freedom only and did not discuss the freedom of speech or expression as a separate subject. Some others have discussed the defamation only and left the issue of sacredness untouched, some combined the defamation

and sacredness together but did not interlink it with freedom of speech or expression and many others assessed the later but disregarded the former.

Both the subjects, whether defamation or freedom of expression, are mostly discussed by the contemporary Muslim scholars in the Islamic perspective only, some tried to examine it in Western perspective too but the legal aspect of the subject being left blurry and same was the case regarding Western scholars. However, the following notable work has been found relevant to the particular subject of freedom of thought, speech and expression that has been done by the Arab Muslim scholars and deals with the issue to the great extent.

1. The prominent contemporary Muslim scholar Dr. Wahba al-Zuhayli in his book "*al-Fiqh al-Islāmī w Adillathu*" has contributed with his share by discussing the subject "freedom" (*al-Ḥurriyah*) and "freedom of thought and speech (*Ḥurriyat 'l-Ra'ī w 'l-Qawl*) in an Islamic perspective. He just neither held the conceptual analysis between Islamic and western societies regarding the subject nor drew any distinctive line between legitimate and illegitimate speech and expression. He also never established any criterion in the form of Islamic principles or rules which further provide grounds to maximize the particular right. While, my research not only covers all these aspects of the subject but gives more understanding of it.
2. The contemporary Muslim scholars have also done much effort to explain the subject of freedom of speech and expression in the mode has been established in the modern world. Such as; a discussion made by the prominent scholar Abu al-Kalam Azad on the subject of "Freedom to Express an Opinion, its Rules and Conditions" (*Ḥurriyat 'l-Ta'bīr 'an 'l-Ra'ī, al-Ḍawābit w, 'l-Shurūṭ*). He defined the subject nicely and took a little connection about the understanding of freedom of expression in the perspective Quranic injunctions

and later he held some rules and conditions of the particular subject in the context of Islamic teachings.

3. Likewise, the prominent Muslim scholar Dr. Muhammad Abdul Latif Sleh al-Farfur has also discussed the particular subject in Islamic perspective entitled with "*Manāhij 'l-Hurriyah fī 'l-Ḥaḍārat 'l-'Islāmiah Hurriyat 'l-Ta'bīr 'an 'l-Ra'ī*". He made an addition of philosophical understanding while discussing the general understanding of freedom and I think this is a significant aspect of his research that differentiate his work from others in the same subject. He also mentioned some rules of freedom in the first chapter of his research and also raised the point of valuable rank of man in Islam which is supportive to my research work. However, the scholar mainly focused on the subject of freedom and less attention is being paid to the freedom of expression particularly.
4. Another share has also been participated with the title "Freedom of Expression, Its Rules and Regulations" (*Hurriyat 'l-Ta'bīr Ḍawābiḥuhā w 'Aḥkāmuhā*) by a Muslim scholar Ahmad bin Sa'ud al-Sibai. He has done good effort to explain the subject necessarily and explicitly and so should be appreciated. He mainly focused on the three points; the division of freedom, general scope of freedom of expression and the rules of freedom of expression. His work also seems, to some extent, supportive to that of mine, as he also briefly discussed some of those issues which had remained a sole purpose of my research work such as; defamation of the holy Prophet [p.b.o.h]. However, he did not explain the topic to its depth as I discussed it in the third and fourth chapter of my research work.
5. An appreciable work has been done by Dr. Abdul Hafiz bin Iwaji Salawi, entitled with Freedom to Express an Opinion through Media in Muslim and Western Societies (*Hurriyat 'l-Ta'bīr 'an 'l-Ra'ī fī Wasā'il 'l-'Ilām fī Muḡtami' al-Muslim w, 'l-Muḡtami'āt*

al-Gharbiah). No doubt, the particular work should be considered valuable because of its comparative and analytical mode. He also made an addition of manners (*asālib*) of freedom of speech and expression and also held a comparative analysis while discussing its rules which is also a differentiative aspect of his work.

6. Another contemporary Muslim scholar Dr. Hani bin Abdullah bin Jubayr has contributed his share for the progression of modern Islamic literature. He, very nicely, explained the subject with the title "Freedom of Opinion and Islamic Legal Rules for its Expression" (*Hurriyat 'l-Ra'ī w 'l-Dawābiṭ 'l-Shar'iah li 'l-Ta'bīr 'Anhu*). He defined the subject comprehensively and led his discussion by following the Quran and Sunnah. He is only one who discussed the principles of freedom of speech and expression in the Islamic perspective, after that he also described some of rules for the particular right. However, even though, most of these scholars couldn't differentiate between the general idea and the actual concept of freedom of expression in Islam. Some of them discussed the former and overlooked the later one while others did inversely. Some others just mixed-up these elements with each other, that theologically and thematically is a big failure regarding scholastic work as these basic and essential conceptual differences further lead us to stand on a defining resulting position.

Whereas, in this respect a special consideration is being paid in my research work. Moreover, the principles of Islamic freedom of expression, its rules, manners and characteristics have also been discussed in detail and a comparative analysis has also been established while defining the subject. As the comparative nature of my research work and its inter-linkage with contemporary misuse are the characteristics that give a matchless status to my research work.

7. Dr. Zaynab Abdussalam also discussed the subject of freedom of opinion and expression as a political right of a man under chapter "*al-Huqūq al-Siyasiah li 'l-'Insān*" in the first volume of her book "*Ināyat 'l-Qurān bi Huqūq 'l-'Insān*". She didn't explained the subject deeply however, a very important issue has been discussed by her under the subject that never or rarely discussed in the aforementioned books on the related topic. The issue is "*al-Amr bi 'l-Ma'rūf w 'l-Nahī 'an 'l-Munkar*", she held it as the basic purpose of freedom of expression in an Islamic society, nevertheless, but she also explained that what kind of expression or actions to be known as prohibitive or evil (*al-Munkar*), who has the legal authority to declare that whether these expressions or acts are good or evil, what kind of evil must be strictly stopped or immediately be eradicated and which expression would be tolerated in their first happening if occurred. Moreover, when Islām permits its followers to disobey their president (*al-Hākim w 'l-Imām*) and who has the authority to declare such kind of civil disobedience (*al-Khurūj 'ala 'l-Imām*).

These and many more are the issues that need special concentration from the scholastic work today, therefore, keeping this in view, I tried my best to discuss such issues to an extent that required in this research level.

8. The literature that have contributed by the Pakistani scholars on the same subject has also been remained a part of my study during this research work. Many scholars put their share according to their understanding of the issue; some of them are as follows:

A remarkable work has been done by a Pakistani Muslim Scholar Mahboob Pervaiz Awan (Advocate HC) in his book "Civil Liberties, Human Rights Constitutional Protections". The author came with the massive legal and constitutional arguments during his discussion, and also proved the limited status of the particular right of freedom of

expression, as I, established a massive argumental material for the limitations of this particular right in the second chapter of this research.

9. Dr. Khalid Alwi in his book "Islam and Fundamental Human Rights" (*Islām aur Bunyādī Insānī Huqūq*) has also discussed the human rights in Islamic perspective but he didn't pay a special concentration to the particular subject of freedom of speech and expression. However, his scholastic work is being observed supportive in some ideological aspects like man's sacred status in Islam and global brotherhood.
10. Dr. Aslam Khaki, a Pakistani Muslim scholar in his book "Islam and Human Rights Issues" has talked about the evidence and prevalence of human rights in Islam. He didn't make any special discussion regarding the particular subject of freedom of expression. However, the author seemed much influenced by western human rights ideology. He strictly criticized the Muslim *Ulama*, their ideologies and views are held as immoderate literature. He addressed Muslims that to become tolerated in their attitude, while on the other hand, he himself declared disbeliever (*kafir*) to all those who are in the belief that *Ahl-e-Bey'at* have sacred status in an Islamic society. I think, this is an overstatement that point out writer's deficiency in related field of knowledge. He also used Quranic injunctions and many hadiths just as supportive tool to prove the authentication of UDHR's articles. Furthermore, he also made a critical analysis of Pakistani as well as the Islamic blasphemy law. He while discussing the particular subject in his aforementioned book clearly disapproved the capital punishment for blasphemy and not even this, but according to his opinion, all those classical and contemporary Muslim scholars who are

in the opinion that blasphemy offence is chargeable with capital punishment are "aggressive and class three Muslim jurists"²

He also criticized the Federal Shariat Court by claiming that it was influenced by orthodox *Ulama* and also claimed that the judges of Shariat Court are not required to be a primary student of Islamic jurisprudence. However, his claim will be considered constructive if the writer comes with solid arguments on his claim instead of mere objections. While my discussion deals with the legitimate and illegitimate use of freedom of expression and its deep relation with the blasphemy law and their mutual impact on the society.

11. "Rights and Liberties under Islam: Encyclopaedia of Islam Series"³ by Dr. M. Mukarram Ahmad. A remarkable work has been attributed to the Islamic contemporary literature in the form of Encyclopaedia of Islam Series. The focal point of this work is the determination of human rights and liberties in the true Islamic sense that, in other words, is an effort for making people aware of essential role of Islam in upholding human rights and civil liberties and a denial of false perception that the subject of human rights and liberties would only be understood in the Western perspective. A special stance is being held in this book regarding the "security of honour and dignity" that comprises of mostly those injunctions which are held as Islamic limitations of freedom of expression in my research work. As, all these injunctions deal with the verbal as well as actual expressions and thus described appropriately in my research work.

² Islam and Human Rights Issues, p. 119.

³ Published by Anmol Publications, PVT.LTD, New Delhi. 2006.

12. "Freedom of Expression in Islam" by Muhammad Hashim Kamali is a unique book on the particular subject. It is a massive contribution in the contemporary Islamic literature and a great work of the like sort never ever seen in the contemporary history.

The important elements of the subject are being discussed comprehensively in this book, such as; the definition of freedom of expression, different types of this right, the legal as well as moral limitations of this right, and its relation with blasphemy law. However, all these issues have been discussed in the Islamic perspective only whereas, my research deals with all these aspects in a broader spectrum, as my research deals with the Islamic and Pakistani approach of freedom of expression. Moreover, in my research work, a special consideration has been given to the Islamic principles of freedom of expression, its rules, manners and characteristics as primary elements. While, the same are either overlooked in the aforementioned book or at least discussed as secondary elements.

13. There are some other books that specifically not written in the perspective of freedom of expression and defamation of the sacred personalities however, some-way or other, the subject of freedom of speech and expression has remained a part of their discussion at a minimum level that proves the notoriety of the subject which needs a detail discussion. Some of those books are as follows: "Islam in Focus" by Hammudah Abdalati, in this book, at page; 37, he discussed the subject "the concept of freedom" and held that concept of freedom is often misunderstood with the consideration of its absolute status.

14. Another book of the like sort is "The Quran's Basic Teachings" by Thomas Ballantine Irving, Khurshid Ahmad and Muhammad Manazir Ahsan. The book basically deals with Islamic concepts and teachings about different aspects of the life, even though, most of these concepts and teachings have their deep connection with the subject of freedom of

expression, its limits, its abuses and dignity of man etc. however, no special concern is being showed about the particular subject of freedom of expression.

15. A separate discussion about freedom of expression has been made by Fakhruddin Malik in the book "Islamic Concept of Human Rights" by Dr. S. M. Haider and by Pro. M. A. Saeed. Both the writers are on the same opinion that the right to freedom of expression is a fundamental right Islam emphasis on however, it must be limited to an extent by observing the fundamental values of an Islamic society, yet they didn't establish any pattern or rules for such limitations.
16. Another book "The Islamic Law and Constitution" by Sayyid Abul Ala Maududi, also deals with the rights of non-Muslims, that in its obvious representation does not relate to the particular right of freedom of expression however, some points that have been discussed in this book could be held under the subject of freedom of expression as well as civil rights of non-Muslims in Pakistan.
17. The particular subject of freedom of expression has also been discussed briefly in the book "Human Rights and Obligations" (in the light of Qurān and Hadith) by Dr. Syeed Muzaffar-ud-Din Nadvi. The writer didn't define the subject, neither mentioned its limitations nor discussed its abuses but the emphasis has only been made on its evidence in Islamic history.
18. There are some books in which "blasphemy" has discussed as a major subject however, a little account, as sub-subject, has also been made on the issue of freedom of expression. In this regard, the most appreciateable work can be supposed that has done by the two classical Muslim Scholars namely; Qazi Ayad in his renowned book "*al-Shifa bi T'arīf Huqūq 'l-Muṣṭafā*" and by al-Shykh Ibn Teymiyyah in his famous book "*al-Ṣarim al-*

Maslūl 'Alā Shātim 'l-Rasūl". These are the source books in Islamic literature in which the issue of blasphemy has been discussed in detail. In both of the books no special concern being paid to the subject freedom of expression however, the words, sentences, signs, writings, poetry and gestures in which defamation or derogation of God and Prophets (p.b.o.t) could be done. During my research work I consulted both books and tried to make their effort as a part of the contemporary literature.

19. I also consulted many other books that basically deal with the issue of blasphemy and less attention is being paid to the right to freedom of expression there. Some of those are; *"Ehanat-e-Rasūl aur Āzādī-e-Izhār"* by Abu al-Imtiyaz Muslim. This book deals with different issues randomly and the discussion has never been led in appropriate manners of research as has depicted in its title. The triggering reason of writing this book was the letters from M.K.H to the author which were comprise of some critical questions about blasphemy law of Islam and its implementation in Pakistan.
20. Another book *"Mas'alah Ehānat-e-Rasūl"* by Pro. Habib Ullah Chishti. The work specifically done in the Islamic perspective of blasphemy. No consideration has been held regarding freedom of expression.
21. Similarly, Dr. Mahmood Ahmad Ghazi has also contributed to the same subject of blasphemy entitled with *"Qānūn-e-Tohīn-e-Risālat: samā'ī, siyāsī aur tārikhī tanāẓur main."* The book deals with the topics such as; tolerance, law of defamation of Prophet ﷺ, its historical review, the legal articles related to blasphemy law of Pakistan, the classical reasoning on capital punishment for blasphemy offence and conceptual analysis of the particular offence of blasphemy in the perspective of sub-continental and western societies. Though no special debate is being made on the subject of freedom of

expression and its deep relation with offence of blasphemy in contemporary world. However, it is held that the misuse or abuse of the freedom of expression is of considered blasphemy and this opinion is strongly supportive to the stance I have held in my research work.

22. A remarkable work has done by a prominent Pakistani Muslim scholar Dr. Muhammad Tahir-ul-Qadri in his book "*Tahaffuz-e-Nāmūs-e-Risalat*". The subject of defamation of the holy Prophet ﷺ has been explained comprehensively in the true Islamic sense. The offender of blasphemy offence deserves capital punishment is being proved by discussing different aspect of the issue; one of them is "the selection of words in the court of the holy Prophet ﷺ". A complete chapter has been established on this subject and it can be a useful tool for understanding the derogative expressions or the words and types of speeches that are prohibitive in Islamic law.

Another booklet "Anti Islam Movie & Freedom of Speech" has also been written by the same author. There is another book written by the same author entitled with "*al-Ḥuqūq 'l-Insāniyah fī 'l-'Islām (Islām Main Insānī Huqūq)*". The subject of freedom of speech and opinion has comprehensively explained in this book too and therefore remained under study during my research work.

23. Similarly, a massive work of the like sort has also been done by a Pakistani Muslim scholar, the senior advocate Supreme Court of Pakistan and chairman of WAMJ⁴ Mr. Muhammad Ismail Qureshy with the title of "Muhammad the Messenger of God and the Law of Blasphemy in Islam and the West". The book is a combination of Islamic as well as contemporary legal stance regarding the subject of blasphemy offence. The subject of

⁴ World Association of Muslim Jurists

“freedom of expression” is discussed under the 10th chapter in Part: II of the book where three constitutional articles⁵ of France, Germany, and USA respectively declare that freedom of expression is not given as an absolute right. The author strictly criticized the contemporary misuse of the right to freedom of expression in Western societies and held that the abuse of particular right of freedom of expression severely affects the blasphemy law. I have consulted this book during my research work and tried my best to fill-up those spaces which I observed to be filled. The book is also republished in its Urdu addition (Jan, 2010) and entitled with *“Nāmūs-e-Rasūl aur Qānūn-e-Tohīn-e-Risālat”*.

24. Some of the books that have written by the Western scholars regarding the subject of blasphemy are being consulted too. e.g., “A Brief History of Blasphemy” by Richard Webster. “Blasphemy: Impious Speech in the West from the 17th to the 19th century” by Alain Cabantous. And “Freedom of Expression” by Archibald Cox. I also took a brief account of the Encyclopedia of Religion⁶ and Halsbury’s Laws of England⁷. Instead of explaining all these books one by one it is better to held a comprehensive observation here that according to these Western scholars the right to freedom of speech or expression is a free or, in other words, an unlimited right in respect of Islam and Muslim nation but as for their own concerns like; religion, their political and social reservations, freedom of expression is still a limited right.

25. During my research work I also went through some of research thesis have submitted by Pakistani students of different Universities. Such as; *“21 Şadī aur Tahaffuz-e-Nāmūs-e-*

⁵ Two of them are mentioned in the book such as; Article No. 2 of France Constitution 1958, Article No. 20 (3) of Germany however, the American Constitutional article didn’t described by the author.

⁶ Vol: 2, 2005.

⁷ Ed: 4th, 1970-74, Vol: 11.

*Risālat ke Taqāzay*⁸ by Imtiaz Ahmed. He highlighted the subject of blasphemy in the light of Quran, Sunnah and for its assessment he came with the opinions of Muslim Jurists of different schools of thought. In the second chapter of his research he mentioned some of blasphemous expressions and types of blasphemous speech but these expressions or types of speech couldn't be interlinked properly with the contemporary issue of right to freedom of expression. Moreover, though he examined the subject of blasphemy in the perspective of Pakistan however, his discussion remained focused only on historical movements had been done for establishing the legal status of blasphemy offence in the country whereas, the issues that have much importance in present-day and need to discuss have left untouched.

His work is, no doubt, appreciable but seems to be of general nature as he mostly discussed the past history of the subject (blasphemy) and no special focus has given to the current issue of right to freedom of expression and its relation with blasphemy law. While, in my research work, both the subjects have been observed in the present scenario and also explained very well.

26. Sheezah Taimouri in her research thesis entitled "Pak and US Newspapers on Blasphemy Cases"⁹ also held that blasphemy cases have instigated numerous debates in national as well as in international media including the freedom of speech. He also highlighted the Danish newspaper scandal and pointed out the double standard of Euro-American media by declaring that heinous act as legal practice of freedom of expression. However, this research specifically discusses the role of print and electronic media regarding offence of

⁸ The thesis has been submitted at National University of Modern Languages, Islamabad. June 2006.

⁹ The thesis has been submitted at Islamic International University, Islamabad. Sep, 2011.

blasphemy and never discussed the blasphemy and freedom of expression as a combined subject.

27. Waqar Uddin Qureshi in his research thesis "Freedom of Speech in Talk Shows"¹⁰ also concluded that, despite the constitutional guarantee of free speech in United States however, the legal system have not treated freedom of speech as an absolute right. This research consists of a very narrow scope of freedom of speech that never covers those important aspects that have been covered in my research work.

28. A massive research thesis has been written by Taimina Sabiha entitled with "Apostasy, Blasphemy and Religious Freedom in Islam and Christianity" (a case study of Pakistan)¹¹. The focal point of her research is the subject of blasphemy and apostasy and therefore no concern being showed regarding freedom of speech or expression there.

She concluded that the core issue is not whether there should be blasphemy law or not, it must be there for sanctity of the Prophet [p.b.o.h] and law and order situation, what needed to be discussed is whether the law should be rationalized to make its misuse impossible. However, her work is missing an important area of the subject that has been covered in the third chapter of my research work and which comprises of an investigation that ends to an answer of the question that why some personalities or some things have held sacred and revered in Islam.

29. Sahibzada Irfan Sarwari in his thesis "*Āzādi-e-Raey ke Mu'āşir Taşawwur Kā Muṭal'ah (qurān-o-sunnat kī roshnī main)*"¹² talked about the subject of freedom of opinion and expression. It is a detailed document on the subject but it deals with evidential and conceptual analysis of the issue in Islamic as well as Western perspective only. The

¹⁰ The thesis has been submitted at Islamic International University, Islamabad. 2011.

¹¹ The thesis has been submitted at Islamic International University, Islamabad. Dec, 2004.

¹² A thesis presented to HITEC University, Texila Cantt, Pakistan. 2014.

Islamic as well as the contemporary legal principles of the particular subject have also been mentioned in the research to some extent however, a mistake been made by the researcher during the determination of the principle as no obvious difference is being held between principles of freedom of speech and its limitations in both Islamic and Western law. While, special consideration has been paid to the issue in my research.

30. Hajra Saboor also done her thesis entitled "Blasphemy and Freedom of Speech (the Islamic perspective)"¹³. She discussed the subject of blasphemy and freedom of speech in the Islamic perspective and no account has been made in respect of its legal status in contemporary world or even in Pakistan. She focused on the primary aspects of both the subjects while the output of the subjects and controversies over there are overlooked.

After reading the abovementioned literature regarding right to freedom of expression and blasphemy, it was observed that there is much room have left on the issue that must be discussed in contemporary perspective, as there are some aspects that leave a question mark on the legitimacy of both the subjects (freedom of expression and blasphemy law). Moreover, the increasing ratio of killing of the accused persons under blasphemy offences raising different questions on freedom rights in Pakistan while, on the other hand, frequent incidents of derogations in European countries also makes the situation more and more ambiguous. Such and many more of the like sort are the issues that need to be investigated in free and fair state of affairs. Thus, I got an opportunity to do my research on this issue which is known as most important and burning subject in current scenario and must be discussed carefully under title "Freedom of Expression and Derogatory Remarks to Sacred Personalities: a case study of Pakistan in the perspective of Shariah and Pakistan's law".

¹³ The thesis has been submitted at Islamic International University, Islamabad. 2007.

RESEARCH METHODOLOGY

In order to conduct and complete this valuable research work the comparative analytical method seems appropriate to be followed, where the concept of freedom of expression is to be analyzed in Islamic perspective as well as Pakistani concepts regarding the same subject will be described in reference to their comparison with Islamic concept.

By following the particular methodology, the basic differences between Islamic and Pakistani concepts of freedom of expression will also be pointed out. During the research, a critical analysis will also be made with reference to the contemporary practices of the right to freedom of expression and blasphemy law in the West and in Pakistan respectively. The research is mostly based on library consultation therefore; the main part will be contained on Islamic as well as Western literature whether in the form of books, research papers, articles, reports, online papers or enacted statutes on the subject. The historical and statistical method will also be given some room wherever the need arises.

SCOPE OF THE RESEARCH:

The scope of my research work will be limited to Islamic injunctions, Western as well as Pakistani constitutional articles, legal rulings, provisions and declarations concerning the particular subject of freedom of expression. However, the subject of blasphemy will be discussed in the Pakistani perspective only where legal articles, sections, national and international reports and some cases regarding freedom of expression and blasphemy shall also be discussed to a required extent. As for the subject of sacredness, the theological as well as the legal viewpoint will be described.

Chapter 1:

Freedom of Expression in Islam and Pakistan's Law

Section 1: Freedom of Expression in Islamic Perspective

1.1 Introduction:

The Right of freedom of expression no doubt has significant value all around the world. Similarly, it has been acquired fundamental position in Islamic legal system. Islam denoted it as one of the sources of creativity, and it has added an excellent contribution in existing literature. Islam also declares that the right of freedom of expression in all possible directions awards a tremendous identification to the cultures by art work. As right to freedom of expression develops self-confidence among generations, gives hope to them and establishes a superior and uncontaminated social as well as political system in their countries.

However, the Islamic concept of the particular right differed from that one has been prevailed in the Western societies. Because, according to Islamic ideology of freedom the particular freedom is like a divine right and thus, held as a responsibility. Therefore, it negates all those expression which can be, directly or indirectly, supposed as violation of the divine itself. According to Islamic ideology, it is essential to enable people to participate freely but sincerely and effectively in public social life and to push them forward with innovative ideas that would be more helpful in developing their lives. However, violation of the basic Islamic principles had never been remained an acceptable option in the Islamic legal system.

"Freedom of expression includes freedom of the press and the liberty to communicate ideas in all forms including books, pictures, signs and other means of communication. The purpose

may be to inform, to persuade, to convince others, to reveal the truth, or to clarify and eliminate doubt”¹ provided that both, the source and the expressions are not contrary to the rules of Shari’ah. Whereas, Pakistan as member state of United Nations often expected to follow the Western concept of freedom that has been held in Universal Declaration of Human Rights however, being an Islamic State, the serious concerns about State and State religion (Islam) have been preserved by the legal authorities. In order to make the contemporary concept of freedom of expression compliant with Shari’ah some constitutional and legal remedies have been held in Pakistan. However, a comprehensive Islamic concept of the particular right is still needed.

Therefore, to identify the concept of “freedom of expression” in Islam one should know first, the nature of “freedom” in Islam because it is (freedom) a source ideology or theory² from which other concepts of freedom are spread out, e.g. concept of freedom of thought, opinion, speech and “expression” the latter we are dealing with.

1.2 The Freedom in Islamic Perspective:

In Islamic legal system the word “freedom” is equal to word “*al-Huriyyah*” and it does not take place in the al-Qurān in the aforementioned form. While its synonyms that have much resemblance with it in meaning were found in the al-Qurān, e.g. *Almighty Allāh says, “... the freeman for the freeman... (“al- Qurān, 2-178).³* The word “*Hurr*” is similar to “free man” and means “In the legal sense, “free” as opposed to “slave”, with social and ethical extensions, “generous”, “gentlemanly”, in modern age, used for both “free” and

¹ Muhammad Hashim Kamali, *Freedom of Expression in Islam* (Kuala Lumpur: Berita, 1994), p.8-9.

² Theories (*al-Nazarīāt*) are major constitutions and concepts, constitute an integrated system in a large aspect of life and legislation (*al-Tashrī*). And that every theory includes a set of rules. Dr. Ḥmmād bin Muhammad al-Duraynī, *al-Nazarīāt al-Fiqhiyyah* (Cairo), Dār al-Turās al-‘Arabī, p. 25.

³ Muhammad Marmaduke Pickthall, *Translation of al-Qurān al-Karīm* (Pakistan: Islamic Research Institute, Islamabad, IIUI, 1988).

“independent”.⁴ The phrase *‘rajulun hurrūn’* did not only mean a free man as opposed to a slave, but also a man of noble character and descent”. In order to stress the moral meaning of *hurr*, it is frequently paired with *Karīm* (noble, generous), *al-hurr al-karīm* thus means true gentleman, a man who is pure in his human dignity, a person of integrity possessing a free conscience unrestrained by material consideration”.⁵ Abu al-Kalam Azad defines “freedom” as, “It is the ability to choose the act with the best of our capability and strength to refuse doing it”.⁶ The Muslim scholar ‘Ibn ‘Āshūr has defined *Hurriyah* as; “the opposite of slavery and the independent disposition of a prudent man to manage his own affairs by his own free will, his ability, in other words, to manage his personal affairs as he wishes free from the opposition and hostility of others”.⁷ On the one hand, the definition provides evidence for individual’s basic right of freedom in an Islamic society while it insists about careful use of that right on the other hand.

Abdul Wahab Khallaf has defined “freedom” as “the ability of a person to manage his own affairs free from oppression and the interference of others, while enjoying the safety of his person, honor, property, home and all the rights belongs to him, provided that the manner of his management does not amount to hostility or prejudice against others”.⁸ Three aspects are clearly highlighted here; (a) One should not be oppressed by others while he is exercising his right of freedom on “legal tracks”. (b) As long as he is “following the law” while exercising his rights, the state’s law itself responsible for his security and protection. (c) He should be aware of “other’s rights” which prevent him from demolishing those rights.

⁴ The Encyclopaedia of Islam, 1979, ed., s.v. B. Lewis, C.h. Pellat and J. Schacht. III, p. 587.

⁵ Muhammad Hashim Kamali, Freedom, Equality and Justice in Islam (United Kingdom of Britain: 2002), p. 3.

⁶ ‘Abū al-Kalam Azad, “Hurriyat ‘l-Ta’būr ‘an ‘l-R’aī: al-Ḍawābiṭ w ‘l-Shurūt,” (19), Majma’ al-Fiqh al-Islāmī al-Dawlī, p. 4.

⁷ Muhammad al-Tahir ‘Ibn ‘Āshūr, Maqāṣid ‘l-Sharī‘ah al-Islāmiyah (Tunis: 1966), p. 133.

⁸ ‘Abdul Wahāb al-Khallāf, al-Siyasah al-Shar‘iyyah fi ‘l-Sh’un ‘l-Dustūriyyah w ‘l-Kharjiyyah w ‘l-Maliyyah (Beirut: 1988), I, p. 38.

The Muslim scholar Dr. al-Qutub defines freedom that, "The freedom (*Hurriyah*) is to be benevolent to human in to do what he wants, provided no harm to others."⁹

The Muslim scholar Ḥamūdah 'Abdulāti cited that, "freedom, both as concept and as a value, has been denied many individuals, groups, and nations. It is often been misunderstood and abused".¹⁰ All the definitions mentioned above mainly talk about the significance of the freedom and its magnitude in Islam, at the same time it is essential to recognize the results and outcomes of freedom that actually makes it imperative, essential and necessary in a society. So, according to Islamic ideology freedom is a measure in itself to judge the sense of responsibility of human being. With the power of morality it edifies the individual a good conduct and excellent behavior by which he proves himself a valuable individual of the society. So, one's right of freedom is sacred as long as he doesn't deliberately violate the Law of God or desecrate the right of others. "In the traditional Islamic view, absolute freedom belongs to God alone and man can gain freedom only to the extent he becomes God-like."¹¹

1.3 The Definition of Freedom of Expression in Islamic Legal System:

The Muslim scholar Abu Zuhrah defined it as, "the liberty of the individual to believe in and to express what seems right to him pertaining to the affairs of the society in which he lives, as well as his ability to act in pursuit of his welfare without interference and compulsion from others, is the essence of his personal freedom".¹² This definition can be considered a good one but not a comprehensive one. Because the ability of a person to decide by himself that what is right and what is wrong is, however, a kind of limitation on the authoritative scope of the law. In addition, the definition doesn't cover the Islamic purpose of promoting truth, justice and virtue in the society and preventing it from evil.

⁹ al-Qutub Muhammad al-Qutub Ṭabaliyyah, *al-Islam w Ḥuqūq al-'Insān* (1986), p. 332.

¹⁰ Ḥamūdah 'Abdulāti, *Islam in Focus* (Kuwait: 1938-1978), p. 37.

¹¹ Dr. Shafiq Ali Khan, *Freedom of thought in Islam*, (Karachi: 1989), p. 39.

¹² Muhammad Abu Zuhrah, *Tanzīm 'l-Islam li 'l-Mujtami'* (Cairo), p.190.

Dr. Hashim Kamali defined freedom of expression as, “the ability of the individual to say or do what he or she wishes, or avoid doing so, without violating the right of others, or the limits that are set by the law.”¹³ Though, this definition holds a basic universal message, and also ensures the authority of law, yet it’s not a comprehensive one but representing the legal perspective of freedom of expression only.

Dr. Hani bin Abdullah bin Jubayr defined as, “the freedom of opinion and expression means human’s full enjoyment of freedom to speak the truth, and to provide advice in all religious matters and of the world, while investigating the benefit of Muslims, and safeguard the interests of both the individual and of the society, and preserve public order, and it is in the framework of the promotion of virtue and prevention of vice”.¹⁴

1.3.1 Explanation of Salient Features of Dr. Hani’s Definition:

He points out that, freedom means “human’s full enjoyment” that affirm the basic principle of Islamic ideology, that man was born free, and also indicates that an insane person is not the objective of this definition. The sentence “full enjoyment” means that the individual should not be oppressed by others whether to coercion the truth or to elevate the wickedness. The definition carries the words “speak the truth” which negate and invalidate all those expressions which hold the meanings that directly or indirectly promote the falsehood, fabrication, accusation and blameworthiness. The more interesting point is the combination of religion with the world that means both shall not be overlooked while exercising right to freedom of expression. The definition also ensures the Muslims’ concerns however it never disregarded the benefits of non-Muslims as well. It also highlights the relation of individual with the society that means one should realize the moral values and ethical norms of that

¹³ Kamali, Freedom of Expression in Islam, p.08.

¹⁴ “freedom of opinion and rules of Shari’ah to expression,” <http://www.saaaid.net/Doat/hani/8.htm> (accessed 22 August 2013).

society while exercising his right. At the end, the definition talks about an important element of Islamic legal system and that is endorsement, encouragement and projection of virtue and condemnation of evil. Therefore, in my opinion this definition is more appropriate and comprehensive one.

1.4 The Concept of Freedom of Expression in Islam:

According to Islamic literature, Islam being a Divine religion has an eternal, comprehensive, sustainable and tolerant ideology of life. It deals with every part of life and leaves no aspect uncompleted. It verifies all issues and takes deep, careful, safe and fruitful review, and offers such a concept that would be in accordance with the purpose of creation of this universe. "Islam establishes a realistic way of life in which the concept and the Sharī'ah both are represented in a practical form".¹⁵ Thus Islam in all matters has its own viewpoint and categorically here regarding freedom of expression it differs from other religions and systems as well.

"Islam and truth are identical terms. It claims to be rational and a system of life for all times to come, to wit; it also claims eternity and universality."¹⁶ The Islamic system bases on some fundamental, fixed and absolute principles which are further used as a helpful tool for resolving issues. Thus differences, dissimilarities and disagreeableness with ideology or concepts may be acceptable but divergence and deviation from the fundamental principles and laws is however, not permissible in Islam. Technically speaking, freedom for what and freedom from what are the two basic questions on which Islam seeks to bring attention of its followers. If anyone asks for doing such acts by any means of expression that have harmful outcomes then his/her pursuit is out of the Islamic scope of right to freedom of expression and

¹⁵ Sayyid Qutb, "Islam its meaning and message" Islamic Approach to Social Justice, ed. Khurshid Ahmad, (Leicester, U.K.:1988. Islamabad, Pakistan: 1993), p. 119. See also Sayyid Qutub, *al-'Adālah al-'Ijtīmā'īyah fi'l-Islam*, ed. Meraj Muhammad.

¹⁶ Freedom of Thought in Islam, p. 35.

if one demands escape from legal boundaries held by Islamic legal system then again its against the Islamic criterion of the particular right.

However, "the concept of human rights and civil liberties in Islam is broader than mere fundamental rights guaranteed by any constitution of the world".¹⁷ The views that generates from the confrontation of opinions find an extensive space in Islamic scope of thinking. Islam always offers legally testified ways to exercise these liberties. Therefore, the freedom of expression in Islamic conception is the right, that doesn't harm others and not move across the legal boundaries. It runs the system with cooperation of other laws and does not become the cause of their failure. That grows and develops the society on strong, eternal, and meaningful basis. The concept of freedom in Islam supports the law that increases the fertility in ideological and theoretical field. Islam doesn't hold up the right that contradicts with laws of Shari'ah and challenges its own legal system. The Islamic legal system as provides shelter to the right of freedom of expression similarly it also wards off violation of inviolabilities (*Hurumāt*) so as to protect the freedom of belief and dignity. As well as, the protection of moral and social values is the vital objective of Islamic legal system, so Islam doesn't offer a concept that threatens its own legal authority.

1.5 The Fundamental Principles of Freedom of Expression in Islam:

The right to freedom of expression in Islamic legal system bases on some essential principles. Though, these principles are not found in a collective form under the same topic (freedom of expression) however during the research I observed many Muslim scholars have discussed them separately. Regarding the issue I describe here some of these principles in the light of al-Qurān and *al-Sunnah* that shall further enable to make an analysis of "Islamic ideology of

¹⁷ Mehboob Parvaiz Awan, *Civil Liberties Human Rights Constitutional Protections* (Rawalpindi, Pakistan: 2003), p. 10.

freedom of expression” and shall also help to evaluate that, if the concept of right to freedom of expression in Islamic legal system support the one that has been presented by United Nation in the Universal Declaration and implemented almost in all Western countries even in some of Islamic states as well? These Islamic fundamental principles are as follows;

1.5.1 The Absolute Obedience:

Almighty Allāh says; *“Follow that which is sent down towards you from your Lord; and follow not any patrons beside Him.”* (al-Qurān, 7:3)

A Muslim scholar Abdul Hamid Siddiqui cited that, “it implies that only by obeying the commands of Allāh vouchsafed to humanity through the Holy Prophet ﷺ, one proves his/her fidelity and loyalty to God”. He further stated, “The Lord who has created this world and all that exists in it and has created resources to maintain it and lead it to perfection, has also given al-Islam, a code of life by following it man can find peace and happiness in this world and the world to come”.¹⁸ Thus, it can be said that the Islamic legal system has been arranged the patterns for Muslims to follow and doesn’t deny all other systems and laws but the one that is incompatible with its laws.

1.5.2 Responsibility and Accountability:

The followers of Islam under its legal network don’t enjoy their rights only, but they are also responsible for maintenance of these rights in terms of protection from abusing and breaching them. Almighty Allāh says, *“Each soul is responsible only for its own self...,”* (al-Qurān,

¹⁸ Sayyid Qutb, “Islam its meaning and message, p. 200-201.

6:164) the same emphasis can also be seen in Prophetic *Sunnah* where Allāh's Apostle ﷺ said, "Everyone of is a guardian and responsible for his charge..."¹⁹

*Almighty Allāh says, "You shall be questioned about whatever you have been doing."*²⁰

According to Islamic ideology the believers are accountable in the court of their Lord ﷻ for all their activities they do. So they, in any case, are not permitted to misuse their rights because they know that despite the God ﷻ has power over everything therefore, they shall have to be answered before their Lord ﷻ if they do anything wrong with His ﷻ servants.

Almighty Allāh says, "GOD is Aware of anything you do." (al-Qurān, 24:28). The famous Muslim scholar Muhammad Qutub cited that, "all men shall be presented before Him ﷻ on the Day of Judgment to account for their performance in this life."²¹

Therefore the claim for exercising the natural rights and respect for dignity, belief and opinion is what that nature owed to an individual as a member of the society so in Islamic legal system upholding the freedom with responsibility is also a part of that society and his right's as well. Thus, a Muslim should utilize his/her freedom in the making of society and must refrain himself/herself from doing bad deeds or misuse his/her rights.

1.5.3 Establishment of Justice:

"Muslim writers on the subject have consistently stated that Islam not only validates freedom of expression but it also urges Muslims not to remain silent nor indifferent when expressing an opinion which is likely to serve the cause of truth, justice, or be of benefit to society."²²

¹⁹ Muhammad bin Ism'īl al-Bukhārī, Ṣaḥīḥ al-Bukhārī, ed., Dr. Muhammad Muhsin Khan, III, (al-Madīnat 'l-Munawwarah), H/N. 730, p. 438.

²⁰ al-Qurān, 61:93.

²¹ Muhammad Qutub, *Islam the misunderstood religion*, edit., 7th, (Lahore: 1984), p. 06.

²² Kamali, *Freedom of expression in Islam*, p. 16.

Almighty Allāh says, "Whenever you judge between people, you should judge with justice."²³ Hence, justice is one of the most valuable aspects of Islamic legal system. Islam often emphasizes its followers to establish justice in the society without any distinction of Muslim and non-Muslim. *Almighty Allāh says, "... and don't let ill will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness and heed God."* (*al-Qurān*, 5:8).

Islam urges people to steadfast with justice and promote it among yourselves across the borders even if it became against your own selves or besides your family members. *"Stand out firmly for justice, as witnesses to Allāh, even though it be against yourselves, or your parents, or your kin..."* (*al-Qurān*, 4: 135) The famous Muslim Scholar Muhammad Quṭub cited, "I don't think that any system has ever aimed at establishment of justice or the opposition of tyranny as much as Islam did. Islam made it a duty of people to put the ruler right if he is unjust. He ﷺ also says: "A word of justice uttered before an unjust ruler is the greatest of *jihād* (holy war)".²⁴ It was due to these very principles that the people revolted against 'Uthmān, the third Caliph, when they believed that he had deviated from the straight course though the revolution itself brought about even a greater deviation".²⁵ So justice is the most fundamental and structural element of society Islam claims for. Obviously one can never overlook its association with the right to freedom of expression, anyhow, justice is related to one's thought, opinion, speech, art or any source by which he wants to express himself in the society he relates with.

²³ *al-Qurān*, 4:58.

²⁴ 'Abū 'Abdullāh Aḥmad bin Muhammad bin Hanbal al-Shībānī, *Musnad al-'Imām Aḥmad bin Hanbal*, ed., Shu'ayb al-'Arna'ūṭ w 'Ādil Murshid, (2001/1421), H/N. 18828-18830, p. 124-126.

²⁵ Muhammad Qutub, "Islam the misunderstood religion," *Islam and freedom of thought*, p. 160-161.

1.5.4 Prevalence of Peace:

*Almighty Allāh says, "if they should incline to peace, then incline to it too ...,"*²⁶

All the Islamic principles mentioned above orderly and consequently work as foundational tool to prevail peace in the society and all over the world as well. As it can be understood from this verse, *Almighty Allāh says, "... do not create disorder on earth once it has been set right, that will be best for you if you are believers".*²⁷ In Islamic viewpoint "peace" acquired central position as an atom has, around which electrons and protons revolve. So Islam's essential and fundamental objective is the establishment of peace and its maintenance. Since all the principles of Islamic system, all the duties the system holds and all the rights the system delivers dependent on the validity of peace. Therefore, Islam permits "freedom of expression" to its followers but on the condition that it should be helpful to "sustain peace".

The Prophet ﷺ of Islam also put emphasis on that and said: "...Shall I not tell you of something which, if you do it, you will love one another? Spread peace (the greeting) among yourselves."²⁸

1.5.5 Commanding of Proper and Prohibition of Improper:

*Almighty Allāh says, "Those who, if We established them in the land, will ..., command what is proper and forbid what is improper."*²⁹ There are several more Quranic injunctions³⁰ of the like sort which show the importance of this emphatic core principle of Islam. For example;

²⁶ al-Qurān, 8:61. For detail see Tafsīr 'Ibn Kathīr (Urdū), ed., Zia-ul-Quran publication, II, (Lahore: 2004), p. 551-552.

²⁷ al-Qurān, 7:85.

²⁸ 'Imām Muhammad bin Yazīd 'Ibn Mājjah al-Qazwīnī, Sunan 'Ibn Mājjah, ed., Naşīru 'l-Dīn al-Khāṭib. V, (Riyad: 2007), p. 29.

²⁹ al-Qurān, 22:41.

³⁰ (al-Qurān, 03:110) (al-Qurān, 09: 71). Also al-Qurān, 05: 78-79.

"They believe in Allāh and the Last Day, and enjoin right conduct and forbid indecency, and vie one with another in good works. These are of the righteous." (al-Qurān, 03: 114).

Promotion of proper and prohibition of improper is the posterior step that Islam takes for continuation and protection of peace in the society. Therefore Islam considers "freedom of expression" an appropriate tool to endorse righteousness, morality, beneficence and humanness in the society. Similarly, Islam also favors and ratifies it (freedom of expression) to forbid abomination, meanness, mischievousness and distortion.

Therefore, "commanding good and forbidding evil is a cardinal Quranic principle, this principle is the supreme objective of the *Sharī'ah*, and the ethical core of governmental political power. This Quranic principle, also known as *hisbah*, lays down the foundation of some of the basic liberties that form the principle theme of many modern constitutions."³¹ The prominent Muslim 'Imām al-Ghazālī characterizes *hisbah* as, "the greatest pole of the faith and the most important objective of all of God's revealed scriptures and Messengers (peace be on them all). Therefore, as this is the essence of all religion, a total neglect of *hisbah* would bring about the collapse of religion, and widespread corruption and ignorance."³²

Therefore it is stated in the Universal Islamic Declaration of Human Rights that, "*the right and duty of every person to speak for and defend the rights of others, and the rights of the community when these are being threatened or violated.*"³³

Almighty Allāh says; "*Let there arise (waltakun) from among you a group that calls others to good work, they command good and forbid evil...*" (al-Qurān, 3: 104)

³¹ With some changing in sort of sentences from Kamali, Freedom of expression in Islam, p. 30-31.

³² Muhammad bin Muhammad al-Ghazālī, 'Iḥyā' Ulūm 'l-Ddīn, II, (Beirut), p. 333. Also 'Abū al-Ḥasan 'Alī bin Muhammad bin Muhammad bin Ḥabīb al-Baghdādī, al-Māwardī, al-'Aḥkām al-Sultāniyah (Cairo), I, fi 'Aḥkām al-Hisbah, p. 368-372.

³³ Universal Islamic Declaration of Human Rights.

'Imām al-Ghazālī has observed that "since this *āyah* (verse) begins with a command (*waltakun*), it conveys an obligation (*wājib*) which is, however, a collective obligation of the entire community".³⁴ Accordingly, no doubt the citizens of an Islamic State are permitted to command and forbid whether by their action, speech or silent condemnation whatever they seem good and bad respectively³⁵, nevertheless, it should no more than their state of affairs, their capabilities and their legal boundaries. It is also necessary to grant this permission or confers upon those who have the ability to deal any issue, concerning social responsibility, in proficient manners. As we find a hadith where it denotes the importance of *ḥisbah*, it also indicates the potential difference among people facing a problem or dealing an issue being committed. The Prophet ﷺ said, "That who amongst you sees something abominable, should modify it with his hand; and if he does not have the strength to do it, then he should..."³⁶ Hence, the believers are instructed here that, they should carry out their right of *ḥisbah* in accordance with their aptitude and to the extent which circumstance permitted them. Same opinion has been held by al-Sibai³⁷ and Dr. Zaynab 'Abd 'l-Salām.³⁸

1.5.6 Ward Off Sedition (*Fitnah*):

Almighty Allāh says, "Sedition is more serious than killing".³⁹

'Ibn Kathīr reported that, "'Abū al-'Aliah, Mūjāhid, Sa'īd bin Jubayr, 'Ikrimah and Ḥasan Baṣri said that, *shirk* (polytheism) is more dangerous than killing".⁴⁰ It is apparent here that in respect of Islam, partnership with God ﷻ causes the sedition thereupon freedom of

³⁴ al-Ghazālī, 'Ihyā'Ulūm 'l-Ddīn, II, p. 333-334.

³⁵ Muḥammad bin 'Abdullāh al-Khaiṣib al-'Umarī al-Tabrayzī, Mishkāṭ 'l-Maṣābiḥ, III, Edit., 3rd, (Beirut: 1985), kitab: al-'Adab, Bāb: al-'amr bi 'l-Ma'rūf, p. 1424-1425, H/N. 5148.

³⁶ Ṣaḥīḥ Muslim, ed., Dr. Maḥmūd Matraji, I-A, xx, (Beirut. 1993), p. 75.

³⁷ Kamali, Freedom of expression in Islam, p. 32.

³⁸ Dr. Zaynab 'Abd 'l-Salām, 'Ināyat al-Qurān bi Huqūq al 'Insān, edit., 2nd, I, (Cairo: 2010), p. 458-59.

³⁹ al-Qurān, 2:191.

⁴⁰ Tafsīr 'Ibn Kathīr (Urdū), ed., Zia-ul-Quran publication, I, p. 351. 'Imām 'Ibn Kathīr explained the verse above that, "In most instances, this process is stringent and rigorous than killing".

expression should be cooperative and practically profitable to stimulate and develop the oneness of God ﷻ. However, talking in a global perspective, this obligation is specific with Muslims alone as most of the religions do not believe in oneness of God. There is another verse that can help us to characterize this principle more clearly.

*Almighty Allāh says, "And guard yourselves against a chastisement which cannot fall exclusively on those of you who are wrongdoers, and know that Allāh is severe in punishment". (al-Qurān, 8: 25)*⁴¹ 'Ibn Kathīr explained this verse that, "Allāh ﷻ warns His ﷻ servants of a *fitnah*, trial and test, that encompasses the wicked and those around them. Therefore, such *fitnah* will not be limited to the sinners and evildoers. Rather, it will reach the others if the sins are not stopped and prevented".⁴² There are some hadiths that can well explain the verse above. "From 'Abdullāh bin 'Abbās (r.d), he said, "Allāh commanded the believers to stop evil from flourishing among them, so that Allāh does not encompass them all in the torment (*fitnah*)".⁴³

'Imām Aḥmad recorded that, 'Abū al-Riqad said, "I heard Hudhayfah saying, "A person used to utter one word during the time of the Messenger of Allāh ﷺ and become a hypocrite on account of it. I now hear such words from one of you four times in the same sitting. Surely, you will enjoin good, forbid evil and encourage each other to do good or Allāh will surround you all with torment, or make the wicked among you become your leaders. The righteous among you will then supplicate, but their supplication will not be accepted".⁴⁴ The hadith shows that how the Messenger's Companion (r.d) used his right of freedom of expression to

⁴¹ al-Qurān al-Karīm, Translation, Pickthall.

⁴² al-Mubarakpūrī, Tafsīr 'Ibn Kathīr (Abridged), IV, p. 288-289.

⁴³ al-Tabrayzī, Mishkāt 'l-Maṣābī, III, p. 1422, H/N. 5140. Also 'Abū Muhammad al-Ḥusayn bin Mas'ūd bin Muhammad al-Baghawī, Sharḥ al-Sunnah, XIV, edit., 2nd, (Beirut: 1983), p. 345, H/N: 1454. There is another hadith on this subject Imām Ḥāfiẓ 'Abū 'Isā Muhammad bin 'Isā al-Tirmidhī, Jāmi' al-Tirmidhī, ed., 'Abū Khaliyl, (Riyad: 2007), IV, XXXI, IX, p. 229, H/N: 2169, and Ibn Hanbal al-Shībānī, Musnad 'l-'Imām Aḥmad bin Hanbal, XXXVIII, H/N., 23301- 23326, p. 332- 352.

⁴⁴ Ibn Hanbal, al-Musnad, XXXVIII, p. 312, H/N., 23278.

protect the society from evil as well as the partaker of vice and also endorse advice but neither nominated the person because of his self-respect and dignity nor abused the particular right by giving fatwa of hypocrisy on the spot against that person.

1.6 The Islamic Rules of Freedom of Expression:

The Islamic legal system usually bases on the Quranic and Prophetic teachings as well as on the consensus of the Muslim Nation (*al- 'Ijmā*). There are some Quranic verses and Prophetic hadiths the general rules of Islamic legal system lies on. These general rules further provide ground work for sub-rules or laws which may belong to different fields of life, whether the matters of worship, criminal laws (*Hudūd*) or the social matters (*mu'āmlāt*) all are treated under these rules however, these sub-rules or laws can never go out the boundaries have held by the Islamic general rules. Here I present some of those Quranic verses and hadiths from Prophetic *Sunnah* to examine how Islam deals with freedom of expression in the framework of its legal system (Islamic law) and defines some rules and manners within the scope of these rules a Muslim can freely exercise and enjoy his/her right to liberty.

- The right to freedom of expression must be exercised under the methods have been prescribed by the *Sharī'ah* however, in case of unavailability of directives from *Sharī'ah* one must try to follow those tracks which aren't be against Islamic laws or its teachings. As 'Imām Qurṭubī held that, it is permissible to made *'ijtihād* in some matters or may take commands by conjectures (*al-Zunnūn*) while the probability of revelation is available because the Almighty Allāh has permitted it to His Messenger ﷺ.⁴⁵ However, the capability of *'ijtihād* is specified with the *'Ulamā* whereas, a common person has the right to follow the tracks if established by the *'Ulamā* otherwise can ask about the right way of enjoying his/her right to freedom of

⁴⁵ al-Qurṭubī, al-Jāmi' li 'Aḥkām 'l-Qurān, V, p. 380.

expression. Thus, the position of the freedom of expression in an Islamic society is thus, subservient to the Quranic, Prophetic as well as unanimous teachings (*al-'Ijmā'*).

- *Almighty Allāh said, "And insult not those whom they (disbelievers) worship besides Allāh, lest they insult Allāh wrongfully without knowledge..." (al-Qurān, 06: 108)*

This is because, the Almighty Allāh prevented Muslims from abusing or calling evil towards non-Muslims as they in return shall revile the Holy name and the Holiest rank of the God ﷻ.

- While exercising the right to freedom of expression the prudence and antidotes of welfare and betterment of the society must be considered especially when the matter relates to other communities, societies, cultures and religions, as the objection or suspicion about God ﷻ or criticism on His sacred personalities of Messengers (peace be on them all) or their true calls and preaching is, however, an open misuse of the particular right of the freedom of expression. *Almighty Allāh said, "And say to My slaves that they should (only) say those words that are the best. (Because) Shayṭān (Satan) verily, sows disagreements among them. Surely, Shayṭān (Satan) is to man a plain enemy." (al-Qurān, 17: 53)*
- The means or sources must also carries the Islamic (*Shar'i*) acceptability or permissibility with them because an illegal or forbidden means wouldn't be used while propagating a legal or permissible cause.
- The expressions, whether they are in the form of speech, opinion, or action or any kind or type they have, must not be used for inter-mixing the truth or to hide or to conceal the facts. *And mix not truth with falsehood, nor conceal the truth while you know (the truth). (al-Qurān, 02: 42)*
- One of the fundamental goals of *Shari'ah* is to stop damages, vice and riot from the society therefore, the expressions which are, may be, permissible in their actual state

but noticing their harmful effects they wouldn't be enjoyed for the betterment of the society. Because, the actions prescribed by the *Sharī'ah* are not the actual cause of Islamic legal system but the actual requirement is the welfare and prosperity of the society for which these actions are being upheld in Islam.⁴⁶ Keeping in view, therefore, it acquired as a jurisprudential ruling position in Islam that is known as; prevention of the means which leads to sedition (*sad 'l-zarā'ay' al-mufdiyyah li 'l-fasād*). According to this Islamic rule any kind of lawful speech, opinion, statement, writing and even a verdict that has harmful effect greater than its benefits however, is not allowed to be expressed. In other words, according to Islamic jurisprudential rules, where, necessity gives permissibility of prohibitions (*al-durūrah tubīhu 'l-mahzūrāt*) there necessity can also make prohibitions for some permissibilities.

- A basic Islamic jurisprudential rule must be acknowledged while exercising the right to freedom of expression or while choosing its means that, the prevention of harmfulness is to be given precedence over choosing benefit (*dir'i 'l-mafāsīd muqaddamun 'alā jalbi 'l-mṣālih*).
- Similarly, it must be well thought-out that during the enjoyment of particular right of freedom of expression the greater value or benefit will be held advantageous if the choice being made between two benefits or values. As there is another jurisprudential rule held in Islamic law that, between the two of benefits the greater or best one will be adopted by rejecting the lower one (*taḥṣīl 'a'zam 'l-maṣliḥatayn bi tafwīt 'aḥillihimā*).⁴⁷

⁴⁶ For example; while offering prayer (*al-ṣalāh*) the standing (*al-qiyām*), bowing (*al-ruḳū'*) and prostration (*al-sujūd*) are not the only requirement of Almighty Allāh from His servants but the actual purpose can be observed in the hadith and that, the prayer (*al-ṣalāh*) forbids a Muslim from indecent, evil, most detestable and rebellious acts. Accordingly, it indicates that the actual purpose of the prayer (*al-ṣalāh*) is to prevent and secure a society from evils or violence and making it a peaceful place.

⁴⁷ These Islamic jurisprudential rules can be accessed different books of *al-qwā'id al-fiqhiyyah*. e.g, 'Abū Muḥammad Ṣāliḥ bin Muḥammad bin Ḥasan al-Qaḥṭānī. *Majmū'at 'l-Fawā'id 'l-Bahiyyah 'alā Manzūmat 'l-qwā'id 'l-fiqhiyyah* (al-Mamlakat 'l-'Arabiyyat 'l-Sa'ūdiyyah: 2000), p. 44-58.

- According to Islamic way of life the news, opinion, statement or speech must be investigated in respect of its authenticity and factual position before publishing, broadcasting or disseminating it publicly. This is a significant rule found in Islamic legal system (Shari'ah) and rarely exercised in other legal systems. "*If a rebellious evil person comes to you with a news, verify it, lest you harm people in ignorance...*" (*al-Qurān*, 49: 06) same guidance has also been given in *al-Qurān*, 68: 10-11-12.

1.7 The Islamic Manners of Freedom of Expression:

Islam is the only system that not just guaranteed the particular right to its followers but also taught them the manners of exercising such a sacred right in the society. After taking on these manners one can be able to contribute his/her society with the productive outputs of the right to freedom of expression. Some of those are as follows:

- ❖ Islam always alarms people to avoid indulging yourselves in troubles or in a cause whose ending would be dreadful but at all times it encourage them to do good as a result you shall receive good. *Almighty Allāh said "do not throw yourselves into destruction, and do good..."* (*al-Qurān*, 02: 195) Islam also offers the easiest way while doing anything instead of putting oneself in troubles. "*Allāh intends for you ease, and He does not want to make things difficult for you.*" (*al-Qurān*, 02: 185)
 - ❖ Islam teaches believers that if anyone of you ever criticized by others even that you are on the right way then it doesn't mean to fight others or make quarrelsome with them but keep moving on your right way without indulging with them. As *Allāh said*, "*And if they belie you, say: "For me are my deeds and for you are your deeds..."*"⁴⁸
- Islam also teaches that, if ever you found misuse of one's right of free speech or expression in the form of abusing you then be patient on that insult and do not reply

⁴⁸ *al-Qurān*, 10: 41.

him/her wrongfully as he/she did. *"And be patient (O Muhammad) with what they say, and keep away from them in a good way."*(*al-Qurān*, 73: 10) accordingly the repay must be in a finest state even if the other is one of your enemies. Such Islamic manners can be a better option for establishing better regional, national as well as international relationships. *Almighty Allāh said, "Repel (the evil) with one which is better (i.e. Allāh ordered the faithful believers to be patient at the time of anger, and to excuse those who treat them badly), then verily! he, between whom and you there was enmity, (will become) as though he was a close friend."*(*al-Qurān*, 41: 34)⁴⁹

- ❖ All the sacred or worship places, whether or not belongs to Islam, are secured by Islam and no one allowed to destroy them or revile or pollute their honor behind the cover of protest that is guaranteed under the freedom of speech and expression. *Almighty Allāh said, "For had it not been that Allāh checks one set of people by means of another, monasteries, churches, synagogues, and mosques, wherein the Name of Allāh is mentioned much would surely have been pulled down."*⁵⁰
- ❖ According to Islamic manners of freedom of expression one should lower his voice while exercising his/her right to freedom of speech or expression during a party and be modest in his/her walk while joining a peaceful protest or while crossing through public places and should not make hullabaloo or tumult. *Almighty Allāh said, "And be moderate (or show no insolence) in your walking, and lower your voice."*⁵¹ A wonderful example of the like sort is that Muslims are obliged to not loud their voices during prayer (*ṣalāh*) as the people around you may disturbed because it is possible that you are living in a community where people belong to different religions live together and may be they are practicing their own religious rituals or prayers thus,

⁴⁹ Muhammad Taqī 'l-Dīn al-Hilālī & Dr. Muhammad Muḥsin Khan, Interpretation of the Meaning of The Noble Qurān.

⁵⁰ *al-Qurān*, 22: 40.

⁵¹ *al-Qurān*, 31: 19.

obviously, they wouldn't like to be interrupted at the moment therefore, keeping in view, Islam commanded its believers that do not loud your voices. Meanwhile, Islam also stops them from decreasing their voice, while praying, to a lower level because listening of Qurān is a fundamental religious right of a Muslim too therefore, a Muslim is being allowed to recite prayer in mid-level to an extent that the worshiper could hear his/her own voice. Accordingly, a Muslim by following this commandment can enjoy his own freedom right without violating others'. *Almighty Allāh said, "...And offer your Salat (prayer) neither aloud nor in a low voice, but follow a way between."* (al-Qurān, 17: 110)

- ❖ Women are also advised to wrap themselves in cloaks or shawls it is best to live a dignified and respectfull life in the society and do not express or expose themselves to whom they have no lawful status.⁵² *Almighty Allāh said, "O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies..."* (al-Qurān, 33: 59) However, respecting the natural feelings of human being and considering their legal rights Islam allows women to enjoy their personal life with their life partners. *"...before Fajr (morning) prayer, and while you put off your clothes for the noonday (rest) and after the 'Isha' (late-night) prayer. (These) three times are of privacy for you, other than these times there is no sin on you or on them to move about, attending (helping) you each other."* (al-Qurān, 24: 58)

There are many more examples in *Qurān* and *Sunnah*⁵³ which shows the uniqueness of Islamic freedom of expression. All the aforementioned principles, rules and manners here are

⁵² In the period of ignorance of old ages man was living openly with uncovered body later he/she come to know that some private parts of one's body should be covered so they covered them with tree leaves and with other stuff of the like sort. Far along, as soon as the people turned to civilization gradually they recognized that the whole body of a human must be covered. It was considered a symbol of modesty, nobility and chastity at that time but later, with the advent of Islam, it acquired a legal and compulsory status among the Muslim societies, while, the other civilizations of the world are mostly overlooked this significant characteristic of a noble and modest civilization.

⁵³ Please consult kitab 'I' Adab in both the Ṣaḥīḥayn (Bukhārī and Muslim).

just taken as exemplary, however; the Islamic literature is awash with such values. These standards, on the one hand, develop the instinct importance of the particular right to freedom of expression among people while, the sense, that how this significant right should be exercised by human beings in a mosaic society, is also build up on the other hand.

1.8 Observations:

- The freedom in Islam has a broader sense, wherein, the state of being free or exemption from slavery is not the only meaning that it has in obvious exposition but also accompanied with the meanings of nobleness, decency, truthfulness, etc., and therefore considered as a noble cause.
- In the Islamic legal system the freedom of expression is never being treated merely a right but also a responsibility because, in the perspective of Islamic ideology the particular freedom is a divine right that negates all those aspects which can be, directly or indirectly, supposed as violation of the divine itself.
- Islam has guaranteed the particular right from its beginning up to the date now in different forms such as; speech, opinion, dialogue, debate, criticism advice, *hisbah* as well as *'ijtihād*, etc., however, all these liberties of different nature are permissible only with the condition that they wouldn't be contrary to the Islamic fundamental principles and rules held by the *Sharī'ah*.
- The non-Muslims are free to exercise their right to freedom of expression to its legitimate extent prescribed by the Islamic law of *Sharī'ah* but in case of violation of the integrity of Islam, Islamic beliefs the sacred personalities, divine objects and the state law the Muslims and non-Muslims shall be accountable to the law.

Section 2: Freedom of Expression in Pakistan's legal Perspective

2.1 Freedom of Expression in Pakistan

Pakistan is an Islamic democratic country of Asia. Being an Islamic as well as a democratic State of the world it is advantageous to offer such a crucial right of freedom of expression to its citizen. The particular right to freedom of expression is well defined by the state law that, "every citizen shall have the right to freedom of speech and expression, subject to any reasonable restriction imposed by law in the interest of the security of Pakistan, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence".⁵⁴ Therefore, like the other fundamental rights, the country also guarantees the particular right of free speech and expression through the article.19 of its Constitution that is as follows:

2.2 Article.19 of the Constitution of Pakistan:

"Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of press, subject to any reasonable restriction imposed by law in the interest of the glory of Islam or integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency of morality, or in relation to contempt of court, commission of or incitement to an offence".⁵⁵

2.2.1 Salient Features of the Definitions:

According to above definitions the Constitution of Pakistan and its Law not only premises the fundamental rights of individuals but also sponsors them. It encourages the citizens to

⁵⁴Pakistan, Constitution of the Islamic Republic, II, [www.pakistanlawsite.com/law online/section description/](http://www.pakistanlawsite.com/law_online/section_description/) (accessed 24 Sep, 2013)

⁵⁵ Ibid., ed., Shaukat Mahmood and Nadim Shaukat, edit. 3rd, Art.19., "Freedom of Speech," (Lahore: 1996), p. 141.

exercise their right to freedom of expression in accordance of Pakistan's foreign policies, and their role should be responsible, helpful and determinant in developing its relations with other States. The definitions has organized almost all the imperative constituent as, security or defense of Pakistan, public order, decency of morality, contempt of Court and defamation or incitement to an offence set down some precautions that prevents the citizens from abusing their right to freedom of expression.

However, the right to freedom of expression could be exercised until it promotes the objectives of Islam and increases its honor, prosperity and dignity, and does not contradict with its fundamental principles laid down by Almighty Allāh and His Messenger ﷺ in al-Qurān and *al-Sunnah*. Therefore, it can be stated that, both of definitions are satisfactory, sufficient and relevant to the objectives of the topic (freedom of expression), country (Pakistan) and religion (Islam) respectively.

2.3 The Concept of Freedom in Pakistan's Law:

The concept of freedom or liberty in Pakistan's law is the same as held in the Islamic legal system (*Shari'ah*) both considered it more than a fundamental right. The reason of such conceptual similarity between both systems is their unanimity of the religion (*Islam*), as *Islam* is the State religion of Pakistan and the State's constitution has also been assembled in accordance of Islamic injunctions. Yet, the non-Muslim minorities of Pakistan are not deprived of their constitutional representation regarding these fundamental liberties and freedoms. However, both units, Muslims and non-Muslims, are obliged to maintain the limits have been declared by the constitution while exercising their lawful liberties. Regarding the subject some legal and constitutional citations are presented herein below:

Liberty of a citizen is a divine right protected by the Constitution. It does not differ from man to man race to race or nation to nation.⁵⁶ The Pakistan's law offers freedom to its citizens in every field of life but meanwhile it imposes some restraints to maintain the constitutional authority in the State. "Literally it means freedom, exemption from extraneous control except just restriction imposed by law. In broader sense, it means enjoyment and protection of fundamental rights guaranteed by constitution with regard to individual as well as body of person, subject lawful restraint."⁵⁷ "In the broader sense civil liberty is assurance of rights, which includes the rights of an individual to settle his own destiny, in complete freedom from any outside influence. In broader sense civil liberties means, enjoyment and protection of the fundamental rights guaranteed by the Constitution with regard to individuals as well as body of persons, in its generic sense denote immunity of a person from incarceration, confinement, detention or restraint but also carries with it a wider meaning of citizen following freely his course of action in matters of his private life a right to do anything whatever subject to any lawful restraint."⁵⁸

2.4 The Concept of Freedom of Speech and Expression in Pakistan's Law:

Pakistan is a country where multiple communities are living together. Each community further divided into numerous racial and tribal units and each unit represents its religious affiliation. Therefore, it is difficult for a socialist or for a student of sociology to enclose all the different concepts, each of them with its specific representation, in a single statement. So far, it is not a hard job for a legal practitioner to arrange all these communities, with their sectarian and religious differences, on a single page and keeping the State's interests in view define the legal boundaries of their rights, so that, it would be exercised by whole the nation

⁵⁶ The all Pakistan legal decisions, PL J, 2002, Lah, 475. L III, Supreme Court-1-1056, Lahore: 2001, (Late Malik Mir Muhammad)

⁵⁷ PLD, 1975, LAH499

⁵⁸ PLD 1975 Lah 499, PLD 1973 Kar 132,

instead of anyone of the entire communities. Therefore, the presented concept of freedom of speech and expression here is according to its legal perspective and not the social one.

The freedom of speech and expression is an essential pre-requisite for the purpose of successfully working of democratic institution, article 19 of the Constitution, not only guarantees freedom of speech but freedom of expression and press is also guaranteed.⁵⁹ "The concept of freedom of expression would imply that every citizen is free to say or publish what he wants, provided he does not temple upon the rights of others and this freedom is not to become a mockery and delusory."⁶⁰ "Similarly the freedom of expression is not mean to give license to damage honor or prestige of an individual or of the country or nation."⁶¹ "Press has been regarded as the mother of all liberties in a democratic society and is the most essential part of democratic system and works as check and balance on others organ of the state."⁶²

2.5 Principles of Freedom of Expression in Pakistani Law:

Every human society in the world has some basic legal, political as well as ethical principles to run the social order, to maintain the existing values and rights as well as to introduce the new laws for future challenges. Therefore, it may, possibly, be said that these principles work as a check on rights and duties of the individuals and also as a measure for drawing new laws to reduce the illegitimate scope of freedoms. As for the subject of right to freedom of expression in Pakistan the country has also been established some legal principles that regulate the different social, legal and political aspects within the country.

⁵⁹ PLD 1976 SC 57

⁶⁰ PLD 1975 Lah 1198

⁶¹ PLD 1988 Karachi 414

⁶² PLD 2000 CLC 904

These principles set forth a proper equilibrium between the right to freedom of expression and the need to guard values, dignity and reputations of individuals, widely recognized by the Islamic legal system (Sharī'ah) as well as by the political and legal instruments in different countries across the world. These principles are founded on the idea that in an Islamic democratic society, the right to freedom of expression must be guaranteed and should be subject to restrictions which necessitate the protection of legitimate interests of citizens and of the State itself, including religious inviolabilities, State's foreign policies and social values. These principles are mostly established in the context of laws and standards have been held internationally which require a long course of work, impartial but critical analysis, review of the existing laws and positive survey of new introducing recommendations and consultations particularly in respect of right to freedom of expression. Pakistan is an Islamic democratic country that has serious religious as well as political concerns on the one hand whereas, on the other hand, being a signatory member of the United Nations the country also has reservations regarding indoor infringement of particular right.

Accordingly, keeping in view an autonomous and unbiased judiciary to safeguard the rule of law situation within the State and to defend human rights, particularly freedom of expression, also to offer appropriate scope of the particular right of freedom of expression and protection for individuals religious as well as political feelings, some legal principle regarding Article: 19, have been held in Pakistan. These principles based on national constitutional as well as legal provisions and these are as follows;

2.5.1 Rights of Others Must Be Secured:

The liberty of an individual is based on the principle, that, a citizen may say or do what he pleases provided he does not transgress the substantive law or infringe the legal rights of others, literally it means freedom, exemption from extraneous control except such as are

justly imposed by law which includes and comprehends all personal rights and their enjoyment.⁶³

2.5.2 Implementation of the Islamic Principles:

“Insertion of Article 2-A in the Constitution as substantive part of the Constitution has further increased the importance of the principles of policy. The courts are now obliged to enforce the existing laws within such adaption as are necessary in the light of *Holy Qurān* and *Sunnah* of Holy Prophet (s.a.w.s) to uphold the holy provisions thereof, and every organ of the state is now duty bound to act and implement the Islamic principles as are enshrined in the *Holy Qurān* and *Sunnah*.”⁶⁴

2.5.3 Establishment of Social Justice:

“Protection of social justice and eradication of social evils from society in accordance with tenets of Islam is foremost duty of the State...”⁶⁵ because, “It is a supreme right, based on the principles that a citizen may say or do whatever he pleases provided he does not transgress the substantive law or infringe the legal rights of others.”⁶⁶

2.5.4 Prevention from Abuse and Conservation of Public Order:

“Although the freedom to express one-self ought to be freely granted, yet at the same time care should be taken that this freedom should not be abused.”⁶⁷

“Maintenance of public order is of vital Importance in an organized society, because, fundamental rights have no real meaning if the state itself is in danger and also the liberties of the subjects. It is for these reasons, that, the equilibrium has to be maintained.”⁶⁸

⁶³ Awan, Civil liberties Human rights Constitutional Protection, p. 19.

⁶⁴ PLD 2001 SC 18, L III, Supreme Court-1-1056.

⁶⁵ PLD 1991 SC 412, XL III, Supreme Court-1-1056.

⁶⁶ PLD, 1975, LAH499

⁶⁷ PLD, 1975, Lah, 1198

⁶⁸ PLD 1965 Lah 642

2.5.5 Promotion of Constitutional Objectives and Submission to the State's Law:

"As the right of freedom of press is also guaranteed by this Article, thereof, all organs of the State are supposed to act in a manner which may be conducive to promote the object of the Constitution."⁶⁹ "The freedom of the journalism and journalists is part of the freedom of speech, but apart from statute law, their privileges are not higher than granted by law."⁷⁰ "Similarly every citizen has the right to lead his life in accordance with law and what is not prohibited by law."⁷¹

2.6 Observation:

The concept of freedom or liberty that has been presented in Pakistan's law seems natural and logical. Like the other fundamental rights the right to freedom of expression has attained a special Constitutional position in Pakistan. The article.19 of Pakistan's Constitution is a comprehensive piece of law and fulfills almost all the moral, social, political, religious and legal requirements. Muslims and non-Muslims are being offered the same opportunity of exercising the particular right of free speech and expression however, the limits that have been prescribed by the Pakistan's law are inviolable and special concern has been given to the religious integrity, State's security and international relations that shall never be bargained at any cost.

2.7 Comparative Analysis:

- The right to freedom of expression has acquired crucial position across the world and thus entitled as a fundamental right of every human being by both the Islamic and

⁶⁹ PLD 1989Lah 642

⁷⁰ PLD 1969 Lah 289

⁷¹ PLD 2000 SC 111

Pakistani legal system. However, the particular right is considered as a fundamental divine right in Islam.

- In the Islamic legal system the particular right is subservient to Islamic laws of *Shari'ah* and its principles however, along with the superamacy of national law special importance has also been given to the external interference in Pakistan.
- Islam guarantees only necessary, decent and productive expressions which are also amind by the State Law of Pakistan.
- The Article.18 (right to freedom of thought, conscience and religion) of the UDHR which is, somehow, interlinked with the right to freedom of expression is totally against the Islamic teachings as well as Pakistan's law of blasphemy.
- Violation of the fundamental principles has been held as the violation of the State's law in both the Islamic and Pakistani legal system.
- Both the Islamic and Pakistani concepts of freedom of expression apprehended that every citizen is free to say, write or publish what he wants, provided he does not hurt others sentiments or temple upon the rights of others and this freedom is not to become a mockery and delusory.
- In Pakistan the particular right can be entitled as religio-political right while, instead of political, more concentration has been given to the social, moral and religious values in Islamic legal system.

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2.8 Findings:

- Freedom of expression is a basic and fundamental right for everyone who wants to deliver something productive and constructive to the society he/she lives in, and thus contribute his/her share to a progressive world.

- The cultural differences also affect the conceptual channels and aptitudes that cause separation of mainstream from both sides.
- All the social, political and economic aspects have been considered significantly by western societies but the only thing that has been overlooked is the religious phase while the same acquired precedence in Islamic and Pakistani social as well as legal order.
- Though, establishing the rules of Shari'ah on freedom of expression, less attention is being paid to the political and institutional interests however, the sole basis and values of the right are covered carefully.⁷²
- The perception, that westerns are the first one who introduced the human rights first, has become wide of the mark⁷³ and it is exposed by a western scholar himself. Prof. Briffault, in the "Making of Humanity" states, "The idea of freedom for all human beings, of human brotherhood, of the equality of all men before the law, of democratic government by consultation and universal's suffrage, the ideals that inspired the French revolution and the declaration of rights, that guided the framing of the American constitution and inflamed the struggle for independence in the Latin American countries were not inventions of the west. They find their ultimate inspiration and source in the Holy Qur'an. They are the quintessence of what the intelligentsia of Mediaeval Europe acquired from Islam over period of centuries through several of Muslim Spain, Sicily, the Crusaders; and of the ideals propagated by the various societies that developed in Europe in the wake of the Crusades in limitations of the brotherhood associations of Islam."⁷⁴

⁷² See also Kamali, *Freedom of Expression in Islam*, p. 09.

⁷³ The same stance has also been held by Dr. Khalid Alwi, *Islam Aor Bunyadi Insani Huquq*, (Islamabad: 2011), p. 20-21.

⁷⁴ A. Hafeez Siddiqui, *Civil Liberties under our constitution*, PLD 1976 J87. Also Awan, *Civil Liberties Human rights constitutional protections*, p. 10-11.

Chapter: 2.

Limits of freedom of expression in Islam and Pakistan's Law

Section 1: Limitations of Freedom of Expression in Islamic Legal System

1.1 Introduction:

Freedom of speech and expression has been a part of almost every society in the past. However, it is not an absolute right yet, therefore, "it is inconceivable that any society would have attempted or achieved total and unrestrained rights to free speech for a certain amount of restriction goes hand in hand with the facts of life."⁷⁵ Consequently, it has to confront some legal, political, social, economic, ethical, moral and cultural limitations. These limitations differ of various degrees from one society to another, according to the law, religion, political system, dominant culture, historical experiences and social values respectively and particularly in relation with issues where people had serious opinions and emotional attachments e.g. religion and politics. Therefore, happening of a particular issue in a society may not achieve a serious attention but the same issue in another community may lead to social disorder and cause trouble that may eradicate.

It is observed that all the heavenly revealed religions, at the top of them is Islam, and different state's laws prevailed across the world have set some limitations which prohibits the misuse of the right to freedom of expression. These are the limitations and principles under which a person can freely enjoy his/her freedom right as these principles, rules and limitations do not permit any kind of harm to be said or done in any form of insult or defamation to others. Yet, people living in western countries repeatedly defames Islam and

⁷⁵ Kamali, Freedom of expression in Islam, p. 15.

insults the holy Prophet ﷺ of Islam by publishing ridiculous and insulting caricatures in their famous newspapers and magazines, as happened in the Denmark,⁷⁶ and sometime by writing and publishing the books like 'Satanic Verses' by Salman Rushdie. Sometimes, it happens by burning, toring and destroying the Islamic Sacred Scripture al-Qurān, as it took place in the prisons at Guantanamo and also in Palestine during Jew Muslims confrontations. While, on the other hand, Islam not only prohibits its believers from reviling any other religion or the holy personalities and sacred objects associated to these religions but even address them to respect all other religions, their holy scriptures and the Messengers of Almighty Allāh ﷻ without making any distinction among them,⁷⁷ as it is evidenced in a Quranic injunction.⁷⁸ "Thus, the basic notion of freedom and freedom of expression would appear to strike a common note in all legal traditions, including that of Islam. However, the scope and character of freedom of expression under the *Sharī'ah* differs widely from other laws in respect of detail, especially with reference to the limits that are imposed by the *Sharī'ah* and the values that are to be upheld."⁷⁹

1.2 Limitations of Freedom of Expression in Islamic Legal System:

Similar to the events of the past the literary work of the scholars also clarifies the view that all freedoms have their limitations. So in relation to Islamic legal system, freedom of expression though a qualified right but it doesn't occupy an absolute status yet. "The fact is that in no human society can man be free in the absolute sense of the word. There must be some limitations of one sort or another, if the society is to function at all."⁸⁰

⁷⁶ The issue will be discussed later in the fourth chapter.

⁷⁷ Shaykh Ahmad bin Sa'ūd al-Sibā'i, *Ḥurriyah 'l-Ta'bīr Dawābiṭuhā w Ahkāmuhā* (Majma' Fiḥ al-Islāmī al-Dawlī), p. 12.

⁷⁸ al-Qurān. 2: 285, Hilali & Muḥsin Khan. Interpretation of the Meaning of The Noble Qurān.

⁷⁹ Kamali, *Freedom of Expression in Islam*, p. 09.

⁸⁰ 'Abdulāti, *Islam in Focus*, p. 37.

Since, the right got qualified acceptance in Islamic legal system, so Islam put some limitations to “protect the right itself from exploitation” and also laid a set of principles and rules⁸¹ that organize the individuals in an order and helps them to exercise these liberties in order to maintain the reputation, honour and dignity of the Muslim community. Expressing this relationship between the general principles of the Sharī’ah (Islamic legal system) and basic freedoms, Shaykh al-Azhar Dr. Ahmed al-Ṭayyib cited, “In defining such a relationship, scholars shall establish the foundations and “principles” of those basic freedoms and “determine their conditions” which “protect the development” and open up the horizons of the future. These are the freedom of belief, the freedom of expression the freedom of scientific research, and the freedom of literary and artistic creativity. All these freedoms should have their roots in serving the objectives of the *Sharī’ah* and grasping the spirit of modern constitutional legislation and the requirements of human knowledge advance.”⁸²

According to Islamic teachings one cannot under estimate the importance of these principles and limitations because it is very thematically related to Islamic faith⁸³ and its ideology. This is because it is stated in Cairo Declaration that, “*everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Sharī’ah.*”⁸⁴

1.3 The Islamic Purpose of Limitation:

As I discussed that Islam does not hamper ones freedom but it defend it, so there must be a purpose for maximizing the scope of this particular right of freedom of expression in Islamic legal system. Explaining that purpose Sayyid Qutūb cited, “when the social system vouches for the rights of the community in the efforts and abilities of the individual, and lays down the

⁸¹ I have been discussed these principles and rules in chapter one.

⁸² Grand Shaykh of al-’Azhar Dr. Ahmed al-Ṭayyib, “al-’Azhar Document for Basic Freedoms,” 8 January (2012). www.google.com.pk (accessed 29 November 2013.)

⁸³ Islamic faith is like Infidelity, blasphemy, polytheism, apostasy and insulting the sacred personalities (Ṣaḥābah and Ahl-e-Bayt).

⁸⁴ Dr. Mohamed Mattar and Fareeda Wael Abou al-Maged. Human Rights in Islām, “with reference to the Cairo Declaration of Human Rights in Islam (1990) and the Arab Charter on Human Rights (2004),” p. 12.

curbs and limitations on the freedoms, the desires, and the ambitions of the individual, it should not, therefore, ignore the right of the individual concerning the freedom of action within the limits which safeguard the welfare of the community and of the individual himself, and which prevent his actions from coming in conflict with high objectives of life.”⁸⁵

The socio-political order of society is one of the more important objective of Sharī‘ah, on that Sharī‘ah took more emphatic and serious position. “Freedom of expression and speech, like other liberties, is subservient to the essential interests (*maṣālih ḍaruriyyah*) and values that are needed to maintain a stable socio-political order in society. Therefore, exercise of this freedom must not jeopardize the five essential values of life, faith, intellect, lineage and property.”⁸⁶

Furthermore, to elaborate the significance of Islamic purpose of limitation, Muhammad Qutub cited, “In trying to meet the genuine requirements of man Islam effects a perfect balance so far as the limitations of human nature would allow... thence, it proceeds to achieve equilibrium between the needs of the individual and those of the community. It does not allow an individual to transgress other individuals, or the community. Nor does it allow the community to commit transgression against the individual... Islam exercises a beneficent constraint on all these mutually opposed forces, prevents them from coming into collusion with one another, calling upon them all to join hands and cooperate for the general good of mankind as a whole.”⁸⁷ Therefore, the Islamic purpose of limitation, of the particular right is not to hinder the freedom of individuals, but to achieve stability in their behaviour, and to protect their right by drawing lines between right and wrong or legal and illegal. Thus it can be said that, “to promote peace and order in society and to promote fraternity among Muslims

⁸⁵ Sayyid Qutub, *Islam its Meaning and Message*, viii, p. 127.

⁸⁶ Kamali, *Freedom of expression in Islam*, p. 161.

⁸⁷ Muhammad Qutub, *The misunderstood religion*, p. 20.

is indeed the ultimate goal of the restriction that the Sharī'ah imposed on freedom of expression."⁸⁸

1.4 Determination and Standard of Limitation in Islam:

The limitation of freedom of expression in Islam is basically assigned by the legal principles of Sharī'ah;⁸⁹ these principles based on Quranic injunctions and further instructed by *Sunnah*, public opinion, moral values and custom which recommend a good indication about the vision of the Islamic society and the pattern by which it regulates the conduct of its members, therefore, one can be easily identify these limits with the consideration of those Islamic legal principles, which play a significant role in determining the extent and dimension of the limitations of this right. Thus determination of limits depends upon the determination of density and solidity of the Islamic legal principles. It was the first step, after that, Islam takes the next to secure people from harm, destruction and indemnifying themselves and this step is effectuated by fixing up some restrictions.

"In Islam freedom is not restricted but on the legal (Sharī'ah) and logical basis. Because following by whims, fantasy and supporting the particular purposes, causes of chaos, deterioration, turmoil, war and destruction. It doesn't get any religious or worldly interests and benefits."⁹⁰ Thus, when it is observed that, Islam does not direct its followers to those tracks which are illogical, unnatural or unbearable, it is therefore, compulsory in Islamic legal system that, the limits, whether on freedom of expression or on any other kind of right, must be in accordance with natural, logical and legal (Sharī'ah) perspective. As the "freedom in Islam is essential and limitation of this origin must be in a narrower band, and in case of

⁸⁸ Kamali, Freedom of expression in Islam, p. 164.

⁸⁹ We have been discussed these principles in Chapter one under topic, The fundamental principles of freedom of expression in Islam

⁹⁰ Muhammad Uhid Umar, al-Raqābah fī 'l-'lāmi 'l-Islami (Riyad: 1412), p. 42-43.

necessity, and as far as it required, and where their alternative is impossible.”⁹¹ These restraints are consisting of several types (as we mentioned above), implemented in states and imposed by law all over the world but in Islamic legal system it can be generally classified into two categories.

1.5 Classification of Restrictions:

The restrictions on freedom of expression imposed by Islamic legal system are divided into;

(a): The Social Restrictions.

(b): The Legal Restrictions.

1.5.1 The Social Restrictions:

According to Islam, an individual is a social creature, Almighty Allāh said; “*O mankind! We have... and made you into nations and tribes, that you may know one another. (al-Qurān, 49: 13)* and being a *khalīfah*⁹² of the Lord also responsible for upholding the social norms, moral values and ethical standards obviously that are the primary rights of individuals and have been achieved a significant and central position in an Islamic society. Furthermore “being a religious law, the Sharī’ah is expected to be emphatic on moral and religious values, which might mean imposing restrictions on freedom of expression in areas where this might come into conflict with the principles of Islam.”⁹³ The Sharī’ah emphasized that, a Muslim will be rewarded upon good deeds that are done with the intention of welfare.⁹⁴

Therefore it is also stated in Cairo Declaration that, “*everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Sharī’ah.*”⁹⁵

⁹¹ Ṭabaliyyah, *al-Islam w, al-Ḥuqūq al-’Insān*, p. 345.

⁹² “*And when your Lord said to the angels, I am going to place in the earth a khalīfah...*,” (*al-Qurān, 02: 30*).

⁹³ Kamali, *Freedom of expression in Islam*, p. 09.

⁹⁴ See hadithson the subject in *al-Bukhārī, Ṣaḥīḥ al-Bukhārī*, (1422), VIII, H/N. 6022, p. 11.

⁹⁵ Dr. Mohamed Mattar and Fareeda Wael Abou al-Maged, *Human Rights in Islām*, p. 12.

Thus, obligation of these social, moral and ethical values means to honour, respect and dignify the society individually or collectively and upholding the rule of law. However, infringement of these values is considered the violation of the law.

1.5.1.1 Telling Lies:

There are two types of information or reporting, the true report and the false report. The former is basis on truth, legitimacy and accuracy, while the latter depends on fakeness, falsehood, and inaccuracy. Therefore, it is obvious, that in accordance of the Islamic concept of freedom of expression the former is always welcomed, whereas, there is no place for the second type of information in Islamic legal system. *Almighty Allāh said, "And mix not truth with falsehood, nor conceal the truth while you know (the truth)." (al-Qurān, 02: 42)*⁹⁶

*"It is (not the Prophet but) the disbelievers in Allāh's verses who forge lies, and it is they who are the liars." (al-Qurān, 16: 105)*⁹⁷ The constant demand made by Islam is that the principles of morality must be observed at all costs and in all walks of life. Hence it lays down as an unalterable policy that the state should base its policies on justice, truth and honesty. It is not prepared, under any circumstances, to tolerate fraud, falsehood and injustice for the sake of political, administrative or national expediency. Whether it is relations between the rulers and the ruled within the state, or the relations of the state with others states, precedence must always be given to truth, honesty and justice.⁹⁸

1.5.1.2 Blameworthy Opinion (*al-ra'yī al-madhmūm*):

The blameworthy opinion is a kind of opinion that always followed by selfishness, misinterpretation and ignorance. It often contradicts al-Qurān and *al-Sunnah* and creates uncertainty and perplexity among people. "The blameworthy opinion (*al-ra'yī al-madhmūm*) is a type of *ra'yī* which is neither completely false nor totally invalid and yet it is misguided

⁹⁶ al-Hilali and Muhsin Khan, Interpretation of the Meaning of The Noble Qurān.

⁹⁷ Muftī Taqī Usmani, Translation of The Noble Qurān.

⁹⁸ Abu Ala Maududi, Human Rights in Islam, p. 9.

and reprehensible. It may occur in the form of *al-bid'ah* (pernicious innovation), *al-baghiyā* (transgression), *al-hawā* (caprice) or *jahl* (ignorance). All of these verities fall under restrictions on freedom of opinion primarily because the right of free speech and expression does not extend to these areas. The whole of this field is governed, not by legal prohibitions as such, but moral sanctions, sincere and persuasive advice. Although the precise legal position is not always clear on some forms of *al-bid'ah* and *al-hawā*, these are, broadly speaking, non-justiciable violations of the freedom of speech.”⁹⁹

1.5.1.3 Backbiting (*al-Ghībah*):

It is the description of a fault in the absent (faulted) one. *Almighty Allāh said, “Neither backbite one another...” (al-Qurān, 49: 12)*

Prominent Muslim 'Imām, al-Qurṭubī held that Almighty Allāh ﷻ prohibits from backbiting, and it (backbiting) is that, you say about someone what is (fault) in him, if you say about him that (fault) is not in him then it will be a great lie (*al-Buhtān*).”¹⁰⁰ Allāh's Messenger ﷺ said, “...backbiting implies you're talking about your brother in a manner which he does not like. It was said to him ﷺ: What is your opinion about this, that, if I actually find in my brother which I made a mention of? He ﷺ said: If (that failing) is actually found (in him) what you assert, you in fact backbited him, and if that is not in him it is a slander.”¹⁰¹

'Imām 'Ibn Kathīr cited, “backbiting was sternly warned against, and this is why Allāh the Exalted, compared it to eating the flesh of a dead human being in al-Qurān, 49: 1.”¹⁰² 'Imām Qurṭubī reported from al-Sufyān al-Thawrī that, “the lowest degree of backbiting is that, you say about someone that he is bald (hairless) and (you know that) he feels it bad.”¹⁰³ Thus,

⁹⁹ Kamali, *Freedom of expression in Islam*, p. 125.

¹⁰⁰ al-Qurṭubī al-Jāmi' li 'Aḥkām 'l-Qurān, XVIV, p. 401.

¹⁰¹ 'Imām Muslim, Ṣaḥīḥ Muslim, ed., Abdul Hamid Siddiqi, (Lahore: 1998), IV, MLXIX, p. 1369.

¹⁰² al-Mubarakpūrī, Tafsīr 'Ibn Kathīr (abridged), VIV, p. 202-203.

¹⁰³ al-Qurṭubī, al-Jāmi' li 'Aḥkām 'l-Qurān, XVIV, p. 404.

backbiting is strictly prohibited in traditional reports¹⁰⁴ and with the consensus (*bi'l-'ijmā'*) of Muslim Jurists.¹⁰⁵ Consequently, in Islamic perspective, the freedom of expression has no place for such behaviour of an individual, further it do not support one to exercise his/her right of freedom in such manner that demolish the rules of Sharī'ah.¹⁰⁶

1.5.1.4 Mocking (*al-Sukhriah*):

Almighty Allāh prohibits people from mocking others, said, "*O you believe! Let not a group scoffs at another group; it may be that the latter are better than the former...*" (*al-Qurān*, 49: 11) "Allāh the Exalted forbids scoffing at people, which implies humiliating and belittling them."¹⁰⁷ The prohibition of humiliation is also found in a Prophetic *Sunnah* Allāh's Messenger ﷺ said: "A Muslim is the brother of a Muslim. He neither oppresses him nor humiliates him nor looks down upon him..."¹⁰⁸

Thus, "Allāh has prescribed a number of things related to the preservation of brotherhood and what this implies with regard to what is to be held sacred among human beings. The first among these is the prohibition of mocking, deriding, and scoffing at others."¹⁰⁹

1.5.1.5 Evil talks (*al-Fahishah*) and Calling by Derogatory Nicknames:

Almighty Allāh said, "*Verily, those who like that Fahishah should be circulated among those who believe they will have a painful torment*" (*al-Qurān*, 24: 19)

"This is a third instance of discipline directed at those who hear evil talk, believe it to some extent, and start to spread it; they should not spread such talk or pass it on to others."¹¹⁰ There is an important hadith concerning this issue Messenger of Allāh said: "O you who have believed with your tongues, but faith has not entered your hearts, do not backbite about the

¹⁰⁴ Imam Muslim, *Ṣaḥīḥ Muslim*, ed., Matraji, 1-A, xxxiv, H/No: 292, p. 381. 'Ibn 'Ābidīn, *Radd 'l-Muḥtār 'alā 'l-Durr 'l-Mukhtār* (Beirut: 1992), V, p. 102.

¹⁰⁵ Yaḥyā bin Sharaf al-Nawawī, *al-Minhāj Sharḥ Ṣaḥīḥ Muslim bin al-Ḥajjāj*, (Beirut: 1392), edit. 2nd, II, p. 113. Also al-Ghazālī, *'Iḥyā' Ulūm 'l-Dīn*, III.

¹⁰⁶ For more detail you may consult *al-Qurṭubī*, *al-Jāmi' li 'Aḥkām 'l-Qurān*, XIV, p. 404-405.

¹⁰⁷ *al-Mubarakpūrī*, *Tafsīr 'Ibn Kathīr* (abridged), Vol: 09, p. 198.

¹⁰⁸ 'Imām Muslim, *Ṣaḥīḥ Muslim*, ed., Siddiqi, IV, MLX, p. 1361.

¹⁰⁹ al-Qardawi, *The lawful & the Prohibited in Islam* (Lahore: 1933), p. 311-312.

¹¹⁰ *al-Mubarakpūrī*, *Tafsīr 'Ibn Kathīr* (abridged), Vol: 07, p. 48.

Muslims or seek their faults, for whoever seeks their faults, Allāh will seek his faults, and if Allāh seeks a person's faults He will expose him, even in his house."¹¹¹ As for people who stick at denigrating others, who spread evil, and expose the faults of others, Islam warns them of the harsh consequences of their behavioral conduct.

As in another hadith it is stated that the silence is much better than speaking futilely and acknowledged that the finest speech is a part of faith (*imān*) and further the Muslims are guided to say good or stay silent.¹¹² Accordingly, the Islamic legal system does not permit anyone to spread evil in the society on the name of right to freedom of expression and calling others by derogatory nicknames is also excluded from the extent of Islamic freedom of expression. *Almighty Allāh said, "Nor insult one another by nicknames (al-Qurān, 49: 11)"*

1.5.1.6 Suspicion and Spying (*al-Zann al-Fāsid w 'l-Tajassus*):

Suspicion that ascribe of evil motives is denoted by Islam as sin. *Almighty Allāh said, "O you who believe! Avoid much suspicion; indeed some suspicion is sin..." (al-Qurān, 49: 12).* "This text clearly forbids indulgence in unfounded suspicion that is thinking the worst of motives behind the acts and sayings of others."¹¹³ As we find this restriction is also apparent in a hadith, the Messenger ﷺ of Almighty Allāh ﷻ said, "Avoid suspicion, for suspicion is the gravest lie in talk..."¹¹⁴ and "...suspicion is the falsest of speech".¹¹⁵

Regarding the subject 'Imām 'Ibn Kathir held that, "Allāh the Exalted forbids His ﷻ faithful servants from being suspicious, which includes having doubts and suspicions about the conduct of one's family, relatives and other people in general. Therefore, Muslims are to

¹¹¹ 'Imām Hāfiz 'Abū Dā'wud Sulaymān bin Ash'ath, *Sunan 'Abū Dā'wud*, ed., Naṣīru 'l-Dīn al-Khṭṭāb, (Riyad: July, 2008), V, XXXX (*al-'Adab*), xxxv, H/N. 4880, p. 302.

¹¹² See Imam Muslim, Ṣaḥīḥ Muslim, ed., Matraji, 1-A, xviv, p. 75.

¹¹³ Kamali, *Freedom of Expression in Islam*, p. 58.

¹¹⁴ 'Imām Muslim, Ṣaḥīḥ Muslim, ed., Hamid Siddiqi, IV, MLIX, P. 1361.

¹¹⁵ 'Imām Abu 'l-Hussain Muslim bin al-Ḥajjāj, *The English Translation of Ṣaḥīḥ Muslim*, ed., Naṣīru 'l-Dīn al-Khṭṭāb, (Riyad: Aug, 2007), VI, XXXXV, VIV, H/N. 6536, p. 430.

avoid suspicion without foundation.”¹¹⁶ Consequently, the suspicious behaviour has no place in Islamic concept of freedom of expression. Moreover, prying into secrets of others is a kind of act, that, opposite to the principles of Islamic freedom of expression. Therefore, “just as spying follows suspicion, the prohibition of spying comes immediately after that of suspicion.”¹¹⁷ Almighty Allāh said, “... and spy not...” (*al-Qurān*, 49: 12). As its prohibition has also been declared by the holy Prophet ﷺ said, “... and do not spy upon one another...”¹¹⁸ The same prohibition would be applicable on one, who tries to snoop others conversation or visit them with the purpose to investigate the matters which they want to keep secret and then expose it to other people. Therefore, according to an Islamic social system it is adequate to a Muslim that he must believe in or induce only on the obvious and noticeable good deeds or flaws of other and he should not interfere in their secrets, because spying is one’s searching for what is concealed and hidden from him.¹¹⁹

However, following some certain rules, it is permissible in some cases to spy some of people. Since, it is somehow indispensable, that the national security should be preferred on personal rights or liberties. “The domination over these freedoms in order to protect the security of the State, or the interests of the Muslims in general, however, not conceivable as the prohibited surveillance, evils that affect the higher interests of the nation must take all measures to prevent them before they occur.”¹²⁰

1.5.1.7: Cursing (*al-la'n*):

It is a dissatisfied or displeased expression of a person which invokes malediction upon its victim. It includes all kinds of calls often utters by calling the anger of God on someone, for example: May God destroy someone! O God eliminate/slay them all! Or, simply, may God’s

¹¹⁶ al-Mubarakpūrī, *Tafsīr 'Ibn Kathīr* (abridged), Vol: 09, p. 200-201.

¹¹⁷ al-Qardawi, *The lawful & the Prohibited in Islam*, p. 314, (with some changing in the text).

¹¹⁸ 'Inām Muslim, *Ṣaḥīḥ Muslim*, ed., Abdul Hamid Siddiqi, IV, *Kitāb al-Birr w Ṣilah*, MLIX, p. 1361. Also *Tafsīr 'Ibn Kathīr* (abridged), VIV, p. 201.

¹¹⁹ Zaynab 'Abd 'l-Salām, *Ināyat al-Qurān bi Ḥuqūq al-'Insān*, I, p. 461.

¹²⁰ *Ibid.* I, p. 172-173.

curse be upon someone! etc. These types of speech or expression are not permissible in Islam, therefore, cursing an individual or his/her parents or relatives whether alive or dead is strictly prohibited, even al-Ghazālī stated, "cursing is normally rest upon animals, things and human beings and all kinds of such conduct are strictly prohibited (in Islam)".¹²¹ The reasons which claim for curse are: disbelief (*kufṛ*), heresy (*al-bid'ah*) and transgression (*fisq*) and the curse further divided into three categories;

(i) the general curse: as you say, May curse be upon disbelievers (*kāfir*) and heretics (*mubtadī*), and transgressors (*fāsiq*).

(ii) the specific curse: as you say, May God's curse be upon Jews and Christians and Magian and *Khawārij* and *Rawāfiḍ*, and upon oppressors and so on, all such forms are permissible, but, while cursing the heretic there is doubt and hazard because the knowledge of fabrication is unknown, also not found in the references, therefore, it is necessary to avoid people from doing so because the same response shall be made that incite harm and can causes sedition.

(iii) the curse upon a particular individual and it is more hazarder or dangerous: as you say, for example; May God's curse be upon Zayd. And he is infidel (*kāfir*) or transgressor (*fāsiq*) or heretic (*mubtadī*), whereas, the principle is that, everyone, whose curse has been declared and proven by Sharī'ah specifically, such as God has cursed Pharaoh and 'Abū Jahl, is permissible. Since, it has been confirmed and supported by the Sharī'ah and that they had died as infidels".¹²² "Apart from cases like this it is unlawful to curse a particular person by name, partly because it is just possible that the person concerned, if a non-Muslim or a sinner, might have become a Muslim or might have repented. Thus, if cursing a disbeliever is

¹²¹ al-Ghazālī, 'Ihyā'Ulūm 'l-Dīn, (Arabic), III, Kitāb; Āfāt 'l-Lisān, p. 132.

¹²² Ibid.

unlawful, then it is all the more so with regard to a transgressor (*fāsiq*) and heretic (*mubtadi*).”¹²³

According to above discussion the observation has been made that, normally people exceed their limits while exercising their right to freedom of speech or expression, they take no notice that what they utter and about whom they say or do such kind of acts, whereas, with regard to an Islamic concept of freedom, it (insulting by curse) is a serious matter of an individual's honour, dignity and social reputation Islam emphasizes for. Since the Blessed Prophet ﷺ said: “do not curse the wind, for it is merely doing as ordered and Whoever curses something undeservingly, then the curse returns upon him.”¹²⁴

1.5.2 The Legal Restrictions:

“Under the Sharī‘ah, violations of the freedom of speech occur either in the form of particular offences, such as slanderous accusation (*qadhaf*), blasphemy, sedition (*fitnah*), insult and cursing (*sabb, la'n*), attribution of lies, and disbelief to others (i.e. *‘iftirā* and *takfir*). It may also take the form of contempt to, or a denial of, the accepted norms and principles of Islam which may fall under the general headings of *kufir*, and heresy. Some of these are criminal offences and carry specific penalties, whereas others are not so well defined and often tend to invoke a moral condemnation only.”¹²⁵

When certain primary rights are violated the wrong is called *ma'shiyyah*, that is crime or offence; and it gives rise to certain substitutory public rights in the form of *‘uqūbah* or punishments. Criminal offences relate mostly to property, human body, reputation, the State, religion, public peace, and tranquillity, decency or morals.¹²⁶ Therefore, Islam has held some legal restrictions and put emphasis on their obligation and stops individuals to overrule these

¹²³ Kamali, Freedom of expression in Islām, p. 177.

¹²⁴ Imam al-Tirmidhī, Jāmi' al-Tirmidhī, ed., 'Abū Khaliyl, (Riyad: 2007), IV, H/N. 1978, p. 76-77.

¹²⁵ Kamali, Freedom of expression in Islam, p. 161.

¹²⁶ Zafar Husain Chaudhary and Mehr Ghulam Ali. Islamic law of Hudud & ta'zīr (Lahore: 1983), p. 01.

limits because it is illegal and affect the dignity and reputation of the society and contravene the rights of the individual consequently causes prosecution and punishment. Different legal restrictions have been explicitly described in Islamic legal system some are as follows;

1.5.2.1 Manifestation of Evil or Disgracing Speech:

The Quranic injunction denotes the evil speech as *al-jahr-bi'l-su' min 'l-qawl*, conceivably it is one of the most comprehensive Quranic depictions that offer guiding principle on the restraint that may enforced on freedom of expression. The Islamic legal system does not allow anyone while exercising his/her right of freedom of expression to manifest evil or bad speech that harm others by disgracing their honour and decreasing their family's gravity of dignity in the society or blaming one with some awful acts. Because the basic assumption concerning people is that they are innocent. *Almighty Allāh said, "God loves not the public utterance of evil speech except by one who has been wronged."* (*al-Qurān, 04: 148*)

"Note that this text imposes one major restriction on free speech and that is when it is evil, obscene, immoral, or hurtful to others."¹²⁷ Therefore, freedom of speech must not be either hurtful to others nor to encroach on people's rights or their dignity. Similarly, it falls beyond the scope of the valid exercise of this freedom to be used as a means to cause chaos, violence, or social strife.¹²⁸ Accordingly, the bad manifestation is of different kinds, such as offensive or huff approach to someone, insulting, finding faults in one's character, attributing misdeeds to one's family, or defaming someone. It may also comprise of self-admiration and permissive expressions on evil deeds done by oneself, e.g., drinking wine, gambling, adultery, or theft and fraud schemes and publication of obscene literature and all other forms of the like sort also contained within. In short, it includes all kinds of bad talk, whether by words or written or by propagating through publishing, programming, or announcing, by any means, whether on radio, television or in mass media, internet and social media or by any sort

¹²⁷ Kamali, *Freedom of expression in Islam*, p. 10.

¹²⁸ *Ibid.*, p. 161.

of appliances that often used for this purpose. The Messenger of Allāh ﷺ said, "... desist from doing mischief to the people. That is the charity of your person on your behalf."¹²⁹

1.5.2.2 Libel or Slander (*al-ʿiftirā*):

It's a false attribution to someone else or being accused him/her of committing an awful act. Literally it means "piercing and stabbing. Here it is used to mean finding faults, as the person who finds faults in others is doing similar to piercing them with sword or stabbing them with a dagger- and perhaps the wound inflicted by the tongue is more lasting."¹³⁰ While, Dr. Hashim Kamali by defining *ʿiftirā* says that, "*ʿiftirā* means attribution of lies to another person, maliciously accusing another person of criminality, or inventing something about an individual which he or she has not done."¹³¹ This definition of *ʿiftirā* is more appropriate to the subject because of the word "malice" which differ it from a simple lie, in that the *ʿiftirā* often coupled with the intention of derogation or defamation.

Its prohibition has been revealed in the al-Qurān and *al-Sunnah*, Almighty Allāh said, "*Do not slander yourselves,*" (*al-Qurān*, 49:10-12). As Allāh's Apostle ﷺ said, "And do not be inquisitive about one another..."¹³² The harmful effect of slandering is that it creates conflict among people and violates them. The holy Prophet ﷺ said: "should I inform you that slandering, is in fact a tale-carrying which creates dissension amongst people..."¹³³ Moreover, *ʿiftirā* is synonymous with *qadaf* and further treated as its subcategory, even, the judge has right and responsibility to punish the fabricator with the maximum penalty of eighty lashes as punishment (*hadd*). Consequently, excluded from the the Islamic freedom of expression.

¹²⁹ Imam Muslim, Ṣaḥīḥ Muslim, ed., Matraji, 1-A, xxxvi, p. 111.

¹³⁰ The lawful & the Prohibited in Islam, p. 313.

¹³¹ Freedom of expression in Islam, p. 169.

¹³² Imām Muslim, Ṣaḥīḥ Muslim, Abdul Hamid Siddiqi, IV, MLX, p. 1361.

¹³³ Ibid. MLXXVIII, p. 1375.

1.5.2.3 False Testimony (*Shahadat 'l-Zur*):

Where Islam has a high regard for fair testimony and praises those who, through exercising their right to freedom of expression, strictly states the truth when they bear witness, (*al-Qurān*, 04: 135), there, Islam condemned the false testimony that breaches trust and wipes out the justice. *The Almighty Allāh says: "And shun the word that is false."* (*al-Qurān*, 22: 30). It is a worst act that has been forbidden by the Prophet ﷺ too. The Messenger of Allāh ﷺ said, "Should I not inform you about the greatest of the sin? ...Associating anyone with Allāh,¹³⁴ disobedience of parents, false testimony or false utterance..."¹³⁵ Thus the prohibition of false witness maximizes the right to freedom of expression. Its punishment didn't prescribe in the holy Qurān and the *Sunnah*, so it does not come under fixed punishment (*ḥadd*) therefore it should be dealt under discretionary (*ta'zīr*) offences. "For libel and slander (or vituperative remarks) against a person, the case should be referred to a Qāḍī under *qawl al-zur* and the Qāḍī can inflict punishment (*ta'zīr*) and pass decree of redress."¹³⁶

1.5.2.4 False Accusation of Fornication (*al-Qadaf*):

By *qadaf*, in the language of law, is understood to levy a charge of adultery against a married man or woman. The person so acting being termed the *qādhif*, or slanderer and the man or woman so scandalized the *maqdhūf* / *maqdhūfah* or slandered.¹³⁷

Literally, *qadaf* means throwing words of abuse at others.¹³⁸ In this general sense, *qadaf* could comprise all forms of abusive words including slander, libel, insult, and cursing etc. However, the Quranic offence of *qadaf* is more specific concept which consists of either

¹³⁴ The act of false testimony has been mentioned three different places in conjunction with Shirk (association with Allah ﷻ) for two times in the Qurān; 22: 30, and 07: 33, and for one time in the hadith that we mentioned above, which shows the seriousness of this awful act.

¹³⁵ 'Imām Muslim, Ṣaḥīḥ Muslim, ed., Matraji, 1-A, xxxvii, p. 117.

¹³⁶ Muhammad Iqbal Siddiqui, *The Penal Law of Islam* (Lahore: 1979), p. 180.

¹³⁷ Ibid., p. 87.

¹³⁸ "The literal meaning of Qadaf is "throwing out". Qadaf means "accusing a virtuous man or woman of adultery", Zafar Husain Chaudhari and Melur Ghulam Ali Mubashar, *Islamic law of Hudud & ta'zīr*, p. 138.

accusing another person of committing the act of adultery (*zinā*), or denying legitimacy of his or her child.”¹³⁹ Therefore, according to Islamic legal system, false accusation of fornication (*qadaf*) is a criminal act that is liable to *hadd* (punishment) and it is somehow interlinked with the right to freedom of expression. “Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes an imputation¹⁴⁰ of ‘*zinā*’ concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation, or hurt the feelings, of such person, is said, except in the cases of hereinafter excepted, to commit *qadaf*.”¹⁴¹ However, it determines the legal boundaries of the right to freedom of expression and stops one from ruining the social values. Almighty Allāh said; “*And those who accuse chaste women*¹⁴², *and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever; they indeed are the Fasiqun (liars, rebellious, disobedient to Allāh).*” (*al-Qurān*, 24: 4). Several harmful effects of *qadaf* can be observed, as “accusing a lady of fornication not only damages her reputation but also creates bad blood between the families. It renders parentage doubtful, spoils conjugal relations and ruins the mental peace of scores of other people also for years to come.”¹⁴³ Secondly the accuser has to face the embarrassing and painful punishment and thirdly he loses his testimonial status forever.

1.5.2.5 Insulting or Abusing (*al-Sabb w 'l-Shatm*):

It includes every word and sign, spoken or written, uttered in the form of joke or any kind of serious expressions, in public or in private that attacks the dignity of individuals and harm

¹³⁹ Kamali, *Freedom of Expression in Islam*, p. 165.

¹⁴⁰ An imputation ordinarily implies an accusation or something more than an expression of a suspicion. Islamic law of Hudud & ta'zīr, p. 141.

¹⁴¹ Ibid., p. 138.

¹⁴² Mir Walī Ullah cited, “the above verses relate to false charge of adultery against a woman, but the majority of our jurists say that by way of qiyas the verses apply to a false charge of that nature against a man as well.” Mir Walī Ullah, *Muslim Jurisprudence and the Quranic Law of Crimes* (Lahore: 1982), edit. 2nd, II, p. 145.

¹⁴³ Muhammad 'Iqbāl Siddiqi, *The Penal Law of Islam*, p. 87-88.

others by diminish their honour in the society.¹⁴⁴ There are a lot of words or expressions that would be representing significant meaning but these words often not prescribed in the literary or law books. As one cannot define the "insult" specifically, the reason is the variation of one society to another and the circumstances or context in which words may uttered. It may be considered as insult in some wordy society or in a particular environment, in definite time period while not measured as well as in the vicinity of same society of same time period.¹⁴⁵ Insult or abuse may have wide range in variation, however, certain words and expressions are usually obvious everywhere in existing cultures, and according to human nature insulting someone or abusing him/her is a grievous act that can be easily determine by their behavioral reaction and legal rejection in any kind or in any place it may be exercised.

The prohibition of abusing others has been revealed both in the Qurān and the *Sunnah*.¹⁴⁶ Almighty Allāh says: "Abuse not those who pray apart from Allāh." (*al-Qurān*, 06: 108). This is the only Quranic verse that is more relevant to the offence of insult or abusing (*sabb*) of non-Muslims because the non-Muslims have been explicitly mentioned in the text, nevertheless it does not mean that insulting or abusing a Muslim is permissible. Since, the verse forbids believers from abusing or insulting non-Muslims, then how it can permit non-Muslims to insult believers (Muslims), as by the process of deduction or the analogy of the superior (*qiyas al-'awlā*) the believers have superiority on disbelievers. Therefore, in accordance of *Shari'ah*, insulting or abusing of a Muslim is forbidden all the more so.

Silence over one's misconduct is better than indulging with offensive speech as it is evident from the Prophetic *Sunnah* Messenger of Allāh ﷺ said, "when two persons indulge in

¹⁴⁴ Muhammad Hashim Kamali cited, "an insult can refer to any word, expression, or gesture which attacks the dignity of the person to whom it is addressed, and which humiliates the latter in the eyes of his or her compatriots." "Freedom of expression in Islam", p. 171.

¹⁴⁵ Ibn Taymīyah has observed that, a word may amount to *sabb* in certain circumstances but not in others, and that without reference to circumstances, neither the language nor the law may be expected to provide definitive guidelines." See Kamali, "Freedom of expression in Islam" p. 171.

¹⁴⁶ Imam al-Bukhārī, Ṣaḥīḥ al-Bukhārī, ed., Mohsin Khan, IV, H/N. 58-59.

hurling (abuses) upon one another, it would be the first one who would be the sinner so long as the oppressed does not transgress the limits.”¹⁴⁷ ‘Imām Muslim by considering it as a serious import also arranged a chapter on the subject and recorded a hadith on the authority of Abdulla b. Mas’ūd that the Messenger of Allāh ﷺ said: “Abusing a Muslim is debauchery (*fusūq*) and fighting him is disbelief (*kufṛ*).”¹⁴⁸ And fighting is even uglier than insult, consequently abusing or insulting is liable to *ta’zīr* (deterrent punishment) offence in Islamic legal system and thus excluded from the legitimate scope of Islamic freedom of expression.

Thus, Islam on the one hand, with the prohibition of insulting others denounces this awful act of insulting or abusing others similarly; it promotes the reverence, honour and respect among people on the other hand. Since, avoiding harm from others and honouring one’s fellow human beings is a foremost subject of the moral teachings of Islam. Thus, according to Prophetic *Sunnah*¹⁴⁹, every Muslim for his brother Muslim is a part of which complement his existence, he keeps him safe from which he saves his family and his relatives, and defends his honour if he suffered a bad.”¹⁵⁰ The message here is delivered in multiple forms, perspectives, and familiar notions all of which are symptomatic of Islam’s accent and stress on the honour and self-esteem of the people. Therefore, Islam never advocates and further legalizes such acts as a right which invokes hostility, abuse and aggression to anyone, Muslim or non-Muslim alike. Moreover, it is not included in the context of Islamic freedom of expression. This is because, it is stated in the Islamic universal declaration of human rights (IUDHR) that, “*The concept of freedom of expression is valued in Islam; however, there are*

¹⁴⁷ ‘Imām Muslim, *Ṣaḥīḥ Muslim*, ed., Abdul Hamid Siddiqi, IV, *Kitāb al-Birr w, Ṣilah w, ‘I-‘Adab*. Ch. MLXVIII, It is forbidden to indulge in abusing, P: 1368.

¹⁴⁸ Imam Muslim, *Ṣaḥīḥ Muslim*, ed., Matraji, I-A, xxviii, p. 97.

¹⁴⁹ “Whoever protects his brother’s honour, Allāh ﷻ protects his face from the Fire on the Day of Resurrection Imam Tirmidhī, *Jāmi’ al-Tirmidhī*, ed., ‘Abū Khaliyl, IV, xx, H/N. 1931 p. 45. ‘Abū Hurayrah narrated that the Messenger of Allāh said: “a Muslim is the brother of other Muslim; he does not cheat him, lie to him, nor deceive him. All (things) of a Muslim are unlawful to another Muslim: his honour, his wealth, and his blood...” Imam Tirmidhī, *Jāmi’ al-Tirmidhī*, IV, xviii, H/N. 1927, p. 42.

¹⁵⁰ Dr. Zaynab ‘Abd ‘I-Salām, *Ināyat al-Qurān bi Ḥuqūq al-‘Insān*, I, p. 458-59.

*also limitations when it comes to freedom of expression, as it is not permissible to abuse this right to taint someone's honor or incite any form of hatred."*¹⁵¹

1.5.2.6 Contempt of Court:

It is recognized that, Islam have always been endorsed freedom of expression even if the king or ruler is a tyrant, the individual is permitted to present his/her opinion or deliver his/her speech through proper way to stop that depravity, vitiation and morbidity. Meanwhile, Islam doesn't allow its followers to reject any order or judgement that has been made by a fair king, ruler or judge (Qāḍī). "Since the Qāḍī is an 'adl (just) and of reputed integrity, any statement or remark against his judicial actions is cognizable offence. The offender shall have to produce evidence and prove his assertion, or else shall be convicted and punished for lying and defaming the 'adl.'"¹⁵²

1.5.2.7 Profanity (*Takfīr*) of a Muslim:

Takfīr of a Muslim or accused him/her of infidelity, blasphemy or heresy is strictly prohibited in Islamic legal system. "This is a normative principle which is to apply even to doubtful cases where one suspects another of disbelief (*kufīr*)."¹⁵³ According to Islamic law, one (Muslim) has no right to indict another of infidelity, even if the claimant hears one's speech, reads something in written or observes him/her indulging in acts that seems to him (claimant) as suggestive of disbelief (*kufīr*) and the claimant is doubtful then, the defendant must be given the advantage of doubt and should be favored by avoiding charge him of disbelief. It is also prohibited in Islam to attribute someone of infidelity only because of opinion's divergence. A common Muslim, who has no knowledge of the theological doctrine of Islam and Shari'ah rules to accuse his/her fellow Muslim of disbelief only on the basis of suspicion,

¹⁵¹ Dr. Mohamed Mattar and Fareeda Wael Abou al-Maged, Human Rights in Islām, p. 12.

¹⁵² Muhammad Iqbal Siddiqui, The Penal Law of Islam, p. 183.

¹⁵³ Kamali, Freedom of expression in Islam, p. 179.

doubts and notions. In Islam, it is compulsory that such matters must be discussed with, and referred to a competent judge. *Almighty Allāh said, "...So, ask the people (having the knowledge) of the reminder if you do not know" (al-Qurān, 16: 43)*

There is another reason of "certainty" that persists to avoid such act of calling others as disbeliever. We may approach that reason in a hadith the holy Prophet ﷺ said; "every child is born upon the *fitrah* (Islam)..."¹⁵⁴ according to this hadith the certainty of one's belief has been proven. Moreover, a person maintains the achieved certainty by saying *Shahadah* (testimonial of faith), since, according to a hadith Messenger ﷺ of Allāh ﷻ said: "The bondsman who would meet Allāh without entertaining any doubt about these (that there is no god but Allāh, and I am His messenger) would enter Paradise."¹⁵⁵ Hence, all the above hadiths affirm the certainty of one's belief even by saying *Shahadah*, and according to an Islamic legal maxim, *al-yaqīnu lā yazūlu bi 'l-shak* "certainty may not be overruled by doubt", no amount of doubt, suspicion, or allegation is allowed to hamper or override the maintained certainty and validity of one's faith. 'Imām 'Abū Hanifa, Abu Zuhrah¹⁵⁶ and Dr. Zaynab 'Abd 'l-Salām¹⁵⁷ from the contemporary Muslim scholars also held the same opinion. There is another Hadith¹⁵⁸ 'Imām Muslim described this hadith under the chapter "the proof of one's belief, who became pleased with Allāh as his Lord, with Islam as a code of life and with Muhammad as a Messenger, even if, he/she indulged in grave sins", the appealing thing here is that, the eminent 'Imām upheld a more exhaustive viewpoint by pointed out that even if a person has done grave sins but he/she just pleased with the three fundamental values of Islam (mentioned above) then the person will be recognised as a Muslim.

¹⁵⁴ al-Nawawī, al-Minhāj Sharḥ Ṣaḥīḥ Muslim bin al-Ḥajjāj, XVI, book. al-Qadr, H/N.2658, p.207.

¹⁵⁵ Imam Muslim, Ṣaḥīḥ Muslim, ed., Matraji, 1-A, x, p. 47. Also p. 45.

¹⁵⁶ Kamali, Freedom of Expression in Islam, p. 179-180.

¹⁵⁷ Zaynab 'Abd 'l-Salām, 'Ināyat al-Qurān bi Huqūq al-'Insān, I, p. 172.

¹⁵⁸ Messenger of Allāh said: "He relished the flavour of faith that who became pleased with Allāh as Lord, with al-Islam as a code of life and..." Imam Muslim, Ṣaḥīḥ Muslim, ed., Matraji, 1-A, xi, p. 61.

Furthermore, a Muslim under the principles of Sharī'ah has no right to assess or evaluate one's degree of faith. *Almighty Allāh said, "Say not to those who greet you with Salām that you are not a believer."* (*al-Qurān*, 04: 94) As the same message can be found in a hadith¹⁵⁹ in which the three more similarities (the prayer, the *qiblah*, and eating the slaughter) has been described that would be enough then to prove an individual's religious status to being a Muslim. Thus according to above discussion, it is impermissible to anyone while enjoying his/her right to freedom of expression, to accuse others of disbelief (*kufṛ*), apostasy (*'irtidād*) transgression (*fisq*) or of blasphemy (*'Isā'ti 'l-Rusūl*) unless one's disbelief is established on reality basis, confirmed by indisputable evidence and attested by authorities.

1.5.2.8 Defamation or Insult to God ﷻ, to the Prophets [peace be on them all] and to other Sacred Personalities:

This research does not deal comprehensively the matter of defamation, as many of the details such as arrestment of the offender, judicial trial of the offences, and its punishment fall properly under the Islamic criminal law. However, keeping our subject in view here (the legal restrictions on right to freedom of expression) it is attempted to discuss those expressions briefly which are considerably forbidden or, in other words, known as restrictive expressions in Islam. These expressions may be observed in the concerning issues, such as disbelief (*kufṛ*), apostasy (*riddah*) heresy (*zandaqah*), and blasphemy (*tajdīf*), and may be found in different forms, such as, verbal, in written, actual, in gesticulation, symbolic, sketchier, and metaphoric or in an ironical expression. They may be uttered in such state of mind and circumstances like; intentionally or unintentionally, knowingly or ignorantly, tranquilly, angrily, boastfully, under duress, depressively, during quarrel, and uselessly. These expressions often followed by a purpose such as; denial of religion, renunciation of faith, to propagate religious prejudice among the people of different religions and sects, to spread

¹⁵⁹ al-Tabrayzī, *Mishkāt 'l-Maṣābiḥ*, I, H/N. 13. Imam Muslim, *Ṣaḥīḥ Muslim*, ed., Matraji, 1-A, XXVI, p. 95.

mischievous or seditious in the society, to hurt the sensibilities of people, to achieve some financial or political benefits, to get self-authentication over opponents by falsify or accusing their basic religious principles, and to create uncertainty about religious values. It causes perplexity, anxiety and confusion among people that ends to curiosity or investigation about religion, at last, resulted by depicting indecent, unacceptable or restricted expressions. These expressions, of different varieties, are often expounded in such modes; in the sense of humor, insulting, taunting, mocking, reproaching, associating, ridiculing, falsifying, neglecting, assaulting, throwing, tearing and shouting. These expressions, regarding human's behavioral status, are categorized in the rank as; irrespective, derogative, defamatory, abusive, irreligious, malicious, offensive, filthy, immoral, indecent, mischievous and blasphemous.

1.5.2.8.1 The Significance of Words and Expressions Regarding Blasphemy:

This is an essential and important issue regarding the words or expressions might have uttered by a blasphemer. For instance, does the words and expressions, that have uttered by an offender are deemed as blasphemous or the estimation is made on what he might have thought or intended? This question is essentially basis on another question that, does the inner affirmation (*taṣḍīq*) is sufficient to having faith in Almighty Allāh, His Messenger ﷺ and other principles of Islam or the confirmation by words or expressions have the same significance by comparison? There are some sects who have the opinion that, the words or expressions concerning disbelief are not necessarily required in this matter. While, on the other hand, the four leading *madahib* of 'ahl 'l-sunnah have held that, only inner affirmation is not sufficient to have faith (*īmān*), but authentication of the faith by words and expressions is must be required. For the reason that, "a person who conceals his disbelief is still an infidel in the eyes of God, but that the rules of Sharī'ah concerning blasphemy and

apostasy do not apply to him unless his state of mind is expressed in words and conduct.”¹⁶⁰ Accordingly, regarding disbelief, both the intentional and expressional evidence must be amount. The supportive words has been stated by 'Ibn Taymīyah that, “no doubt, abusing God or abusing His Messenger ﷺ, explicitly and implicitly (*zāhiran w, bāḥinān*) is *kufr*, nevertheless, the offender was partaking the belief of its (abusing) forbiddance, or its permissibility, or even he was lost his faith. This is the *madhab* of all jurists of 'ahl 'l-sunnah who, says that the faith (*'Imān*) is sayings and actions (*qawlun w, 'amalun*)”¹⁶¹

Keeping the same view, the prominent 'Imām 'Abū 'Ishāq bin 'Ibrāhīm known as 'Ibn Rahwiyah states, “there is general agreement among Muslims that, whosoever, abuses God or His Messenger ﷺ, or rejects anything from revelation of the God, or killed anyone of the recognised Prophets (p.b.o.t) of God, for this reason, he will become disbeliever. Though, he was still consistent in the revelations of the God the Most Gracious.”¹⁶² 'Ibn Hazam has made a firmly rejection of the arguments of those who believed that abusing or insulting the holy Prophet ﷺ does not amount to disbelief (*kufr*), however, regarding abuse to God Most High, he stated that, “among the Muslims, there is no one on the earth would disagree that, the abuse to God amounts to disbelief (*kufr*).”¹⁶³

Whereas, on the other hand, *al-jahmiyyah* stated that, “the faith is just the authentication that rests in heart, even if, the words from tongue, and the action from the body parts are not its counterpart. 'Abū Ya'la, by explaining it, stated that, “If a disbeliever (*kāfir*) said that, he believes in God and His oneness from his heart but, he can't bear witness for *shahādatayn*, similarly as he can't do other worships because of laziness, then his faith in Islam would not be acceptable as for his obvious status, but acceptable internally.”¹⁶⁴ Thereupon, *Jahmiyah*

¹⁶⁰ Kamali, Freedom of expression in Islam, p. 217.

¹⁶¹ Taqī ud-Din Aḥmad 'Ibn Taymīyah, al-Šārim al-Maslūl 'alā Shātim 'l-Rasūl (Beirut:1975), I, p. 512.

¹⁶² Ibid.

¹⁶³ 'Abū Muhammad 'Alī bin Aḥmad bin Sa'īd bin Ḥazam, al-Muḥallā bi 'l-Āthār (Beirut), XII, p. 435.

¹⁶⁴ 'Ibn Taymīyah, al-Šārim al-Maslūl 'alā Shātim 'l-Rasūl, I, p. 515.

and 'Ash'ariyyah held that, abuse (*sabb Allāh*) to God the Almighty, and announcement of disbelief (*kufr*), is not essentially amount to disbelief, but only an indication that the offender has ceased to believe in God."¹⁶⁵

'Ibn Ḥazam stated that, this view is premised on a corrupt foundation which is remote from the consensus of the followers of Islam. In their view, a man may utter words of disbelief and yet may still be a believer. 'Ibn Ḥazam rejects this line of argument and regards it as undiluted disbelief (*kufr mujarrad*) as it is contrary to the consensus (*'Ijmā*) of the Muslim 'Ummah and violates the commands of God Most High and His Messenger. At this point, 'Ibn Ḥazam cites two Quranic passages in support of his statement: "*Verily those who say that Jesus, the son of Mary, is God are disbelievers.*" (*al-Qurān*, 05: 17) "*And they uttered the word of kufr and so they reverted to kufr following their profession of Islam.*" (*al-Qurān*, 09: 74)

Qurān also speaks of people who verbally expressed what they did not believe but who still become infidels, e.g., the Jews affirmed the truth of the Prophethood of Muhammad ﷺ, but, when they uttered words of disbelief, they become infidels even if what they said was contrary to their affirmation.¹⁶⁶ Therefore, defaming God and His Messenger ﷺ or abusing them amounts to disbelief (*kufr*), irrespective of the possibility that the offender may not have meant to renounce Islam unless, it is known that they were uttered under duress. Anyhow, the words and expressions have much importance in this respect, and therefore, are being classified by 'Ulamā as moral or immoral and praiseworthy or blameworthy regarding their impact on the religious, traditional and normative values. I discuss here some of those words or expressions which are known as defamatory or blasphemous.

¹⁶⁵ Ibn Ḥazam, *al-Muḥallā bi 'l-'Āthār*, p. 435.

¹⁶⁶ Ibn Ḥazam, *al-Muḥallā bi 'l-'Āthār*, p. 436. Also Kamali, *Freedom of expression in Islam*, p. 216-17.

1.5.2.8.1 (a) The Defamatory or Blasphemous Words and Expressions:

The hallmark of blasphemy is, of course, a contemptuous and hostile attack on the fundamentals of religion, which offends the sensibilities of its believers.”¹⁶⁷ Therefore it is held by 'Ibn Qudāmah that, all those (expressions) which qualified “defamatory sense” to the Lord (Almighty Allāh) or the book (al-Qurān) or the religion (Islam) or to the Messenger (Muhammad ﷺ) will be held derogative among Muslims.¹⁶⁸ Accordingly, it includes all irreverent, disrespectful, offensive, irreligious, disgusting, impious and blasphemous expressions in contempt of God, His names, attributes, His judgments and the orders handed down, “for instance if a Muslim declares that it is impossible for Allāh to see and hear everything, or that Allāh cannot endure to all eternity, or that He is not one (*wāḥid*).”¹⁶⁹

Regarding defamation of the Prophet ﷺ, it includes all those words and expressions that impair his ﷺ rank and his name and reputation or distrust to his ﷺ prophethood. Insulting these Islamic sanctities is however not limited to verbal and written expressions, but it consists of some actual forms of humiliation too, such as tearing the Islamic scripture al-Qurān or insulting it by any means of defamation. As Qāḍī 'Ayāḍ stated that, “all those talks and “expressions” that are being used for abuse or insult to the holy Prophet ﷺ or that causes to find faults in him ﷺ, or which damages his ﷺ valued personality, his ﷺ religion, his ﷺ characteristics or anyone of his ﷺ virtues. Or objecting him ﷺ in the manner of abuse and uttering words in its resemblance, or contempt, decrease or diminution his ﷺ dignity by means of abuse or insult. Or criticizing or moaning him ﷺ, all shall be amount to abuse.”¹⁷⁰ Cursing him ﷺ, malediction upon him, wishing to harm him ﷺ, in

¹⁶⁷ Kamali, Freedom of expression in Islam, p. 206.

¹⁶⁸ 'Ibn Qudāmah, al-Mughnī, book: al-Jizyah, VI, p. 360.

¹⁶⁹ Kamali, Freedom of expression in Islam, p. 207.

¹⁷⁰ 'Abū al-Faḍl Qāḍī 'Ayāḍ, *Shifā' bi Ta'rīf Ḥuqūq 'l-Muṣṭafā* (Lahore: 2004), ed., Muftī Ghulām Mu'īn 'l-Dīn, II, p. 288. And al-Ṣārim al-Masfūl 'alā Shātim 'l-Rasūl, p. 288.

censuring manner, assigning him ﷺ of such things which are not suitable to his ﷺ esteemed rank, impute towards him ﷺ an indecent and bad discourse or falsehood. Shame him ﷺ of those difficulties and torments that he ﷺ had suffered. Looking down on him of falling through some human sicknesses and which are legal, in other words, were permissible for him ﷺ. All such forms shall be amount to defamation and derogation.¹⁷¹

The defamatory words or expressions that normally identified to be abusive and explicitly bear malice, aggression, mockery and contempt in the case of such conduct the question of objective and intention is inconsequential, providing that the offender is in full possession of his abilities.

1.5.2.8.1 (b) Uncertain or Suspicious Expressions:

However, there are some types of discourses which are apparently doubtful itself or in their customary usage and meanings. It further creates ambiguity and difficulty to know that whether or not, these words and expressions reference to good or bad and amount to blasphemy? For example; the person who says to the other that pray upon the holy Prophet ﷺ, thereupon, the latter replied that, may God never bless upon whom who have prayed upon him ﷺ. Muhammad bin Saḥnūn was asked about such person that does he bear a resemblance to that one who abuses the Prophet ﷺ or angels? upon this Saḥnūn replied, no, he does not. 'Abū 'Ishāq Barqī and 'Aṣbagh bin al-Faraj stated that he should not be killed because, he just abused the people. While Qāḍī Ḥārith bin Miskīn and some others, regarding this example, have held that he should be killed. Similarly, one who said that curse be upon Arabs or Banī 'Isrā'īlis or bani Ādam, according to 'Abū Zayd, he doesn't meant the

¹⁷¹ Ibid., p. 289. Ibn Taymīyah, al-Ṣārim al-Maslūl 'alā Shātim 'l-Rasūl, I, p. 526.

Prophets (p.b.o.t) but the oppressors out of them it means, however, such person should be learned discipline by acting upon the opinion of the king.¹⁷²

Likewise, if a person said to his opponent witness that, you have accused me falsely thereupon, the latter replied, the Prophets (p.b.o.t) had also been reproached and you unquestionably, do not deserve such worth. Reviewing such situation, 'Abū 'Ishāq bin Ja'far has held the mandatory punishment of death because its obvious wording is cheap and insulting. While, Qāḍī 'Abū Muhammad bin Maṣṣūr and Qāḍī 'Abū 'Abdullāh bin al-Ḥājj delayed from his killing because according to their opinion, there is maximum probability that the perpetrator might be aimed to just inform him that, the Prophets (p.b.o.t) had been reproached by the infidels. However, Qāḍī 'Abū Muhammad suggested the imprisonment of the perpetrator for a long time and an oath must be taken by him that what has said against him was falsehood, after that he was released."¹⁷³ Therefore, the words or expressions that have no obvious evidence or don't have clear indication to being defamatory or blasphemous and not indicative to the sacred personalities or sanctities and the context in which they have uttered is not supportive to execute them, will not be considered as offensive.

1.5.2.8.1 (c) The External Impact on Expressions:

The impact may be received from some kind of threat, death warning or fear for loss of family members or from intoxication and may be some type of customary effect. Therefore, "words that are uttered under duress while the speaker remains a believer, or when such words are said in a state of permissible intoxication, are of no account. However, according to Malikis, Shafis and Hanbalis the offender having forbidden intoxication is accountable. Whereas, Hanafis, according to their preferred view, held that regardless of the type of intoxication an intoxicated person may not be declared *kāfir*."¹⁷⁴ On the other hand the

¹⁷² Qāḍī 'Ayāḍ, al-Shifā bi Ta'rīf Ḥuqūq 'l-Muṣṭafā, p. 291-305.

¹⁷³ Qāḍī 'Ayāḍ, al-Shifā bi Ta'rīf Ḥuqūq 'l-Muṣṭafā, p. 291-317.

¹⁷⁴ 'Ibn Taymiyyah, al-Ṣārim al-Maslūl 'alā Shātim 'l-Rasūl, I, p. 539-540.

context, in which the words or expressions might be practiced, is also examined on the basis of prevailing custom and public opinion, moreover, the nuances they may have acquired through customary usage. But, often these words or expressions and their customary usage are unclear, consequently, there is always a sure risk of uncertainty arises with regard to defamatory words that are implicit and allusive.¹⁷⁵ For this reason, 'Ibn Taymīyah points out that, "sometime a word or sentence that amounts to an abuse (*sabb*) at the same time, it does not amount to *sabb*. So it is observed that it (*sabb*) varies with the differences of words, expressions and circumstances."¹⁷⁶ Hence, insult or abuse is neither defined comprehensively either on linguistic nor on judicial grounds alone, then the basic measure or criterion to which reference must be made is prevalent custom. The judgments of the *Ṣaḥābah* (r.d) and of 'Ulamā are thus applicable on what is known as *sabb* in prevalent custom.

1.5.2.8.2 *Umhāt 'l-Mu'minīn* (r.d)

The jurists are in agreement that the insult and the attribution of unchaste behaviour (*qadaḥ*) to the wife of the Prophet ﷺ, 'Ā'ishah (r.d) amounts to blasphemy and disbelief, because her (r.d) chastity is clearly affirmed by the Quranic text (*al-Qurān*, 24: 17). Charges of this kind not only compromise the honour of the Prophet ﷺ but also attributing a lie to the Qurān itself. Thus all the leading Imams ('*a'immaḥ*), Qāḍī Ayāḍ and 'Ibn Taymīyah are in accord that insulting 'Ā'ishah (r.d) is tantamount to an affront on the Prophet ﷺ himself. According to 'Imām Malik insult to 'Ā'ishah (r.d) invokes the same punishment as an insult on the Prophet ﷺ, whereas, 'Ibn Ḥazam called it apostasy (*riddah tāmmah*) as insulting 'Ā'ishah (r.d) is same as attributing falsehood to al-Qurān."¹⁷⁷ As for insult and abuse to the other wives (r.d) of the Prophet ﷺ, the 'Ulamā have recorded two different views; firstly,

¹⁷⁵ Kamali, Freedom of expression in Islam, p. 217-218.

¹⁷⁶ 'Ibn Taymīyah, al-Ṣarīm al-Maslūl 'alā Shātim 'l-Rasūl, I, p. 540-541.

¹⁷⁷ Qāḍī 'Ayāḍ, al-Shifa bi Ta'rīf Ḥuqūq al-Muṣṭafā ('Urdū), II, p. 65.

that it is like abusing the rest of the Companions (r.d), and is liable to *ta'zīr* punishment only. Secondly, which is considered to be preferable, held that affront and *qadaḥ* to any of the Prophet's wives is to be treated on the same footing as an insult to 'Ā'ishah (r.d).¹⁷⁸

1.5.2.8.3 *al-Ṣaḥābah* (r.d)

With reference to the Companions (*Ṣaḥābah*), it is noted that the holy Prophet ﷺ held them in affection and esteem. This is not only sustained by the tone and tenor of hadith literature in general, but more specifically as in the following quote, where the believers are instructed to refrain from reviling the Companions. Revile not my Companions, revile not my Companions! By the One in Whose hand my life reposes...you would not match them not even by half, let alone in whole.¹⁷⁹ The emphasis that the Prophet ﷺ has laid on the dignified status of his Companions (r.d) has led the 'Ulamā to treat insult of the Companions (r.d) (*sabb al-Ṣaḥābah*) as a separate offence which is next in order of gravity to the capital offence of blasphemy. Notwithstanding this, however, according to the majority of 'Ulamā, the offence carries an unspecified deterrent (*ta'zīr*) punishment. The penalty so accorded must reflect the enormity of reviling a Companion (r.d) which is a far more serious crime than the common offence of *sabb*.¹⁸⁰ As this deterrent (*ta'zīr*) punishment has also been described in a hadith reported by 'Alī 'Ibn 'Abī Ṭālib (r.d) said: The Messenger of Allāh ﷺ said, "Insulting the prophets killed, and insulting of my Companions will be flogged."¹⁸¹ Some scholars are in the opinion that though, 'Ulamā are in agreement that abusing or insulting the *Ṣaḥābah* (r.d) is one of the grievous sins however, there are some instances in which the offenders have been forgiven by the *Ṣaḥābah* (r.d). e.g. "the attitude and activities

¹⁷⁸ Kamali, Freedom of expression in Islam, p. 218-223.

¹⁷⁹ Ṣaḥīḥ al-Bukhārī, II, H/N. 3673, p. 522-523.

¹⁸⁰ Kamali, Freedom of expression in Islam, p. 175.

¹⁸¹ 'Alī bin 'Abī Bakr bin Sulaymān al-Haythmī, Majma' al-Zawā'id w Manba' al-Fawā'id (Cairo: 1994), ed., Huṣām 'l-Ddīn al-Qudṣī, VI, H/N. 10568, p. 260. al-Ṭabrānī has reported it in al-Saḥīḥ w 'l-'Awsaṭ.

of the *Kharijites* in the day of the Caliph 'Alī (r.d)..."¹⁸² It must be remember here that this instance has been described with reference to *Kharijites*, and not of the Muslims. The other reason is that, the *Ṣaḥābah* (r.d) were, according to their moral greatness and superior attitude, often overlook people's mistakes which were especially relating to their (r.d) personalities and not with reference to cause of Islam. Therefore, whosoever (Muslim or non-Muslim living in Islamic State) revile the *Ṣaḥābah* (r.d) shall be punished legally.

Thus, Islam guarantees all types of freedom of expression, except that breaks or contravenes the basic principles of the Islamic faith. Accordingly, it is observed that, among Muslim scholars, there are preservations regarding the functional and practical aspect of this right, which requires its appropriate maximization. This is because, all the constitutions that uphold human as well as citizen rights also maximized these rights with some restrictions which were provided by law. Accordingly, "everything that is not legally forbidden is perfectly permissible; and a man is rewarded for his salutary deeds which he performed observing the boundaries set by the Divine law, and for seeking the pleasure of God alone, and which are conducive to the achievement of the high ideals of life that God approves of."¹⁸³

1.6 Observations:

- According to Islamic ideology of freedom, no doubt that, a man is born free but this freedom cannot be perceived in the absolute sense. Therefore a balance between an individual and the community is, however, being established. In other words, the equal distribution of powers and forces is one of the sole reasons of freedom in Islam.
- The determination of the limitations usually obtained in the framework of the fundamental principles and rules of *Sharī'ah*. At the same time, the logical legitimacy of these restrictions on freedoms is never overlooked in an Islamic legal system.

¹⁸² Abu Ala Maududi, *Human Rights in Islam*, p. 25.

¹⁸³ Sayyid Qutub, *Islam its Meaning and Message*, viii, p. 127.

- In Islam the obligation of social moral or religious values is considered as dignifying the society while the violation of these values is known as the violation of the law.
- Islam as a religion mostly addresses the whole humanity, therefore, the restrictions that are prescribed by its legal system are impartial and do not invade a legal right of an individual or particular community but fall against the evils and offer safeguard to every member of the society regardless of their religious, ethnic, political affiliations thus, fulfill the genuine need of a civilized society and are sound in gravity.
- All types of social and moral mischiefs have their direct relation with the Islamic injunctions which prohibits their exercises in Islamic and non-Islamic societies as well. Therefore, a special stance regarding these mischiefs is being held in the Islamic legal system consequently, all the rights offered by Islam and the right to freedom of expression in particular does not extend to these areas of social and moral mischiefs.
- Violation of some of these moral values, no doubt, is critical and condemnable act however, not punishable and cannot be treated under the Islamic criminal law.
- The expressions that falls under the legal restrictions are usually associated with the religion itself or to religious personalities, such as; blasphemy etc., or related to the fundamental Islamic beliefs upon which the whole religion stands, or connected to the Islamic State, such as; treason or sedition however, all these actions or expressions are violative to the values which are very crucial to Islam and can cause of social disturbance therefore, carries specific legal punishments in Islamic legal system.
- Islam's basic aim of these limitations is not to narrower the scope of people's rights but only to protect people's rights. So, in an Islamic legal system the basic purpose of limiting one's freedom is to protect the welfare of the society and of the individual.
- In Islam, several rights and one of them is the freedom of expression, are being guaranteed for the non-Muslim but the perpetuity and continuity of these rights is

conditional with the duties implemented on them within an Islamic society. So, As the Muslims are obliged by the Islamic law to respect non-Muslims' sentiments likewise, non-Muslim citizens of an Islamic state are also bound to respect the feelings of their Muslim natives and do not hurt them by any means of expressions.¹⁸⁴

- The words or expressions have acquired a significant position in Islamic legal system. Whether it is a matter of belief (*Imān*) or disbelief (*kuf*) both the situations necessitates the obvious and expressive state of such acts and no judgment can be made by viewing one's inner feelings or intention only.

¹⁸⁴ See Shams 'I-Ddīn Muhammad bin Aḥmad al-Khaṣṣ al-Sharbinī, *Mughnī al-Muḥtāj 'ilā Ma'rifat Ma'ānī 'Alfāz 'I-Minhāj*, VI, p. 61, 82-84. 'Abū Ya'lā Muhammad bin al-Ḥusayn bin Muhammad bin Khalf bin al-Farrā, *al-'Aḥkām al-Sulṭāniyah* (Beirut: 2000/1421), edit. 2nd, I, p. 158-162. al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb 'I-Sharā'i'* (Beirut: 1986), VII, p. 113-114. Shahāb uddīn al-Qarāfī, *al-furūq* (Beirut), III, p. 27. 'Alī bin 'Abī Bakr bin 'Abdul Jalīl al-Murghinānī 'Abū 'I Ḥasan Burhān 'I-Dīn, *al-Hidayah fī Sharḥ Bidayat 'I Muḥtadī*, ed., Ṭalāl Yusuf (Beirut), II, p. 405.

Section 2: Limitations of Freedom of Expression in Pakistan's Legal System

2.1 Limitations of Right to Freedom of Expression in Pakistan's Law:

Despite, Pakistan is one of those forty-eight countries which had voted for the universal declaration of human rights, however, being an Islamic Republic, still some concerns have been acknowledged under its Constitutional and penal law.¹⁸⁵ Especially, pertaining to the Article 19 of the UDHR, Pakistan's position is ambiguous and can be seen as an attempt to protect its essential ideological basis and values on which the Country was came into being and which clearly violated all over the world behind the shadow of article 19 of the declaration. For that reason, in Pakistan "freedom of expression remained, theoretically, subject to the Constitutional restrictions imposed 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 or commission of, or incitement to an offence."¹⁸⁶ These limitations of and restrictions on the particular right to freedom of expression have been prescribed by the State's law. Some are as follows:

2.2 Suppression of Mischief and Termination of Hatred from Society:

Moreover, the past and present century are witnessed for such violations of the right that has been endured by the Muslims community. Different cases¹⁸⁷ are evident for such damages, therefore, it is stated under the section; SC 637 PLD 1964 that, "the Article has not guaranteed unbridled, unrestricted freedom of speech or expression which instead of suppressing mischief, encourages or accelerate mischief. Therefore statements and communications which might have effect of creating or increasing hatred or animosity

¹⁸⁵ The Sections of PPC e.g. 295, 295-A-B-C, 296, 297 and 298-A-B-C shall be discussed in the third and fourth chapter of this research.

¹⁸⁶ Pakistan, State of Human Rights in 1994, p. 65 (Human Rights Commission of Pakistan).

¹⁸⁷ Some of those cases shall be discussed in the fourth chapter.

between different ethnic groups are held, violative of the constitution, and every citizen is required by law not to make any statement of the sort.”¹⁸⁸

2.3 Restrictions Relating Press and Media:

As for upholding the Constitutional supremacy among the citizens of the State and to diminish the irresponsible behaviour of people towards State’s law, the same attitude has been taken regarding other means of expressions like freedom of speech, press and media. This is because the “freedom of speech and press though fundamental personal rights are the corner stone of democratic institutions, yet are subject to certain reasonable restrictions imposed by law.”¹⁸⁹

“However under the Constitution press is not free to that extent to publish anything it desired. But, its freedom is subject to some reasonable restrictions imposed under law; press must take due care and cautions before publishing any material by verifying its correctness from the concerned authorities”.¹⁹⁰

As it is stated under the section; Lah 642 PLD 1965 that, “yet freedom of speech and liberty of press are not absolute and unqualified rights, they are neither absolute at all times and in all circumstances, nor does it mean that one can take or distribute where, when, and how once chooses.”¹⁹¹ However, any restriction imposed upon the right to publish, to disseminate information or to circulate would be considered an attack on freedom of press.”¹⁹²

2.3.1 Defamation and Derogatory Remarks:

According to the defamation ordinance 2002, of Pakistan any kind of defamation consist of defamatory remarks, speech, action, publication or visual representation is however

¹⁸⁸ PLD 1964 SC 637. See also Mahbob Pervaiz Awan, Civil liberties, Human rights Constitutional Protection, p. 84.

¹⁸⁹ Ibid., p. 83.

¹⁹⁰ PLD 2002 SC 514. Also Awan, Civil liberties, Human rights Constitutional Protection, p. 84.p. 85-86,

¹⁹¹ PLD 1965 Lah 642. Ibid., p. 85.

¹⁹² AIR 1958 SC 986. Ibid.

prohibited in Pakistan and thus never includes in the definition of the right to freedom of speech and expression.

It is stated in the provision. 3, of the Ordinance 2002 that, "Any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person, tends to lower him in the estimation of others or tends to reduce him to ridicule, unjust criticism, dislike, contempt or hatred shall be actionable as defamation."¹⁹³

According to this ordinance the following sources, means, material and persons can be charged under the offence of defamation if proved:

"Xxx"¹⁹⁴, "broadcasting", (writings, signs, signals, pictures and sounds of all kinds through any electronic device directly or by the medium of relay stations which includes; wireless radio-electric communication, radiotelegraph, radiotelephone or cables, wires, fiber-optic, computers or laser beam.

The "editor" or operator is a person having equivalent responsibility for circulating publicly the content that is being used or statement uttered or decision held while defaming other. The "Newspaper" that contains public news including intelligence, occurrences, remarks, observations or advertisements printed for distribution to the public and published periodically. The "originator" of the defamatory material i.e. statement, act or other stuff of like sort which consist of defamation. The "publication" in words or by newspaper or by broadcasting while using internet or other media. The "publisher" is a person who issues material to the public.¹⁹⁵

¹⁹³ Sayyid Mazhar Ali Akbar Naqvi, New Laws (Lahore: 2005), Defamation Ordinance (2002 LVI of 2002), p. 91-92.

¹⁹⁴ This clause of "XXX" omitted by the Defamation (Amdt) Act (IX of 2004), dt. 11.30.2004.

¹⁹⁵ Naqvi, New Laws, Defamation Ordinance (2002), p. 91-92.

2.4 Contempt of Court:

Furthermore, because of indefinite nature of the article, an alarming threat about the contempt of court has also been expected from this right. As “in many countries, it is illegal or at least discouraged to degrade or abuse the constitution or certain national institutions such as the army, courts of law, or parliament. Contempt of court also exists all over the world which severely limits freedom of speech, violation of which can lead to imprisonment. So the right to freedom of expression is no more absolute; it is seen in relation to other basic human rights.”¹⁹⁶ Therefore, it is stated under the section Lah 247 PLD 2002 that, “The right to freedom of speech and expression does not extend to grant licence to commit contempt of court. This right is subject to the law of contempt and contains constitutional safeguards against any attempt to scandalize the court or undermine its dignity in public interest.”¹⁹⁷

2.5 Restriction relating Islam:

There are number of sections and provisions are being held in the Pakistan Penal Code which strictly prohibit defiling Islam or falsely propagating its beliefs, or insulting, slandering or defaming anyone of the 'Ahl Bayt (r.d) and Şaḥābah (r.d), or tearing, polluting or destroying the holy scripture al-Qurān and insulting, defaming or passing blasphemous remarks towards the holy Prophet Muhammad ﷺ. These legal sections or provisions are known as blasphemy laws of Pakistan. These laws shall be discussed later in the third and fourth chapter of this research.

¹⁹⁶ Dr. Muhammad Tahir-ul-Qadri, *Anti-Islam Movie & Freedom of Speech* (Lahore: 2012), p. 8.

¹⁹⁷ PLD 2002 Lah 247. Awan, *Civil liberties Human rights Constitutional Protection*, p. 85.

2.6 The Restrictions must be Reasonable:

As the right to freedom of expression has been maximized by some legitimate restrictions, likewise, it has also been protected by the State's law from some arbitrary restraints. As it is stated, "however, Section 2 of the West Pakistan use of loudspeakers (Prohibition) Ordinance, prohibiting the use of loudspeaker except for Azan has been held to be unreasonable restriction on the freedom of speech."¹⁹⁸ But reasonable restriction imposed by law of Contempt is neither unreasonable nor unconstitutional."¹⁹⁹

2.7 Restriction Relating National Interests and Abuse of Powers:

A country with enormous population has to establish an appropriate Constitution which, on the one hand, delivers rights to the citizens of that state and handover responsibilities to its functional bodies on the other hand. Therefore, freedom of expression has been identified at one and the same time as a right and a responsibility. Thus, where people by considering it their fundamental right exercise their freedom, it has, as a responsibility, also been watched over by the functional bodies of the state and further maximized with the reasonable restrictions set by the law to protect the national interests, reduce the chaotic risks and to promote peaceful society. "Though, reasonable restriction is nowhere defined in the Constitution, however, it depends upon a variety of circumstances, including, the interest and the urgency of the action proposed and the nature of safeguard, to prevent possibilities of abuse of power, however, any action which is arbitrary or excessive will of course be outside the bounds of reasons."²⁰⁰ Therefore, any sound and judicious restraint, which is imposed by the law in the favour of maintaining public order, do not peruse as violative of this right.²⁰¹

¹⁹⁸ PLD 1964 Lah 718.

¹⁹⁹ PLD 1976 SC 717.

²⁰⁰ PLD 1976 SC 57 & PLD 1958 SC 41.

²⁰¹ Awan, Civil liberties Human rights Constitutional Protection, p. 84.

2.8 Observations:

- Though the right to freedom of expression is constitutionally and legally recognized in the State of Pakistan however, the certain freedoms are never left unrestricted yet.
- The significant bodies of the State are being observed under intimidation therefore serious concerns regarding these bodies or the units working with them are being showed by restricting the useless or unnecessary spheres of the particular right.
- The country of multi-populace facing the challenges of racial or ethnic controversies has been discouraged the expressions that can boost the racial hatred and can cause of social disorder.
- The Pakistan's law while defining the appropriate limits of and restraints on the particular right of free expression also took guidance from the Islamic legal system regarding this matter, i.e., suppression of mischief, verification of news or statements, discouraging the ethnic hatred, propagation of truth, prevailing of justice, defence of the State and religion, establishing of a peaceful society, etc. are the Islamic features Islam always emphasised on.
- It is also held by the legal authorities that the restraints should be reasonable and must be in accordance with the State's law.
- Each mean, source or supportive sector of the particular right has been given a free and equal opportunity to play its positive role by providing their services for publishing, propagating and disseminating information.
- The authority and control to differentiate what is right and what may be wrong has been given to the State's law itself and not to individuals.

2.9 Comparative Analysis:

- A series of defamatory and blasphemous words or expressions is being mentioned in the Islamic scholastic work. These expressions or words may be differed according to societal and cultural differences but all expressions and words of such sort are strictly prohibited in Pakistan's law too.
- The oneness of God and belief in all the previous Messengers and Prophets of Almighty Allāh (peace be on them all) prevents Muslims from any kind of abusive, insulting or derogatory expressions regarding these sacred personalities however, such a wonderful example of excellent behaviour against religious hatred cannot be observed in Pakistani societies.
- Islam has utilized the more beneficial way of the right to freedom of speech and expression by inviting people to global brotherhood where Muslims and non-Muslims would avail the opportunity of mutual understanding and equal respect for each other that would lead to the Universal peace. While the same spirit of globalization couldn't be examined among Pakistanis except on national or commune level.
- According to Islamic freedom of expression a person has no right to interfere other's secrets because it is a personal right of others that must be secured too. However, dealing the State's interests it is permissible to a legitimate extent. While, in Pakistan the authorities and secret agencies do chase the private activities of individuals and full check of phone calls and letters also happen.
- An Islamic society has a proper and strong social and moral mechanism that regulates different offices of its societies and enables its believers to follow the established norms and laws and live their lives according to that mechanism, whereas no such mechanism or social and moral order can be found in Pakistani societies.

- In Islamic legal system the religion and religious values have the supremacy over democracy. While, in Pakistan opposite situation has been observed regarding the issue.
- The conception of accountability and reward are the fundamental elements of Islamic faith which trigger them to follow the lawful tracks while exercising the right to freedom of expression. Whereas the same is even forgotten or even overlooked in Pakistan as many governmental and non-governmental figures have been involved in different moral as well as legal violations like corruption, bribery and nepotism.
- Islam is the only religion that stress its believers for giving safeguard to the non-Muslims' rights. It teaches them that all the non-Muslims as human beings are respectable and their social as well as religious honor and dignity, self-respect, life and property must be protected from all forms of evil and mischievous expressions. Whereas, the same position, regarding the issue, couldn't held or even rarely exercised in Pakistan particularly and in any other country of the world in general.
- A special regard has been given to the religious beliefs and sacred personalities in both the Islamic and Pakistan's law.
- The matters like defamation, slander, or blasphemy, etc. are held by the mutual contribution of both the Divine and the State's laws in Pakistan.
- The restrictions on the freedom of speech and expression are not only held by the Islamic and Pakistani law but the particular right has also been limited or, in other words, restricted by International Covenants (ICCPR)²⁰² as well as by Western Laws.

²⁰² The International Covenant on Civil and Political Rights.

2.10 Findings:

- The concept of limitation in an Islamic legal system actually based on the thinking that the particular right is to be protected from abuse. Therefore, for the betterment and good functioning of the society some reasonable restrictions on right to freedom of expression are necessary.
- A general rule or criteria for understanding the scope of the limitations regarding freedom of expression can be that they (expressions) wouldn't be contrary to the principles of Islam therefore a general consensus among entire Muslim community should be made universally.
- In Islam generally four sub-rules for limitation of a freedom are suggested that; it is provided that the limitations are necessary, required and no other option is available there however, even so, the limitations should be in contracted form. Such conditions fulfill the International requirement for instituting restrictions on the right to freedom of expression.
- It is well-known that an Islamic State always bases its policies on justice, truth and honesty therefore, the westerns should also study, asses and scrutinize those limitations have offered by Islam for freedom of expression because by this way the chances of global consensus would be increased.
- In Islam the insult or defamation divided into three categories first; that relates to common people or Muslims, second; that relates to some religious holy personages of Islam such as *Ahl Bey'at*, *Umhaat-ul-Muminin* and *Ṣaḥābah* (mercy be on them all), third; the insult that relates to the God ﷻ Himself or to sacred personality of the holy Prophet Muhammad ﷺ and all other Messengers of Almighty Allāh (peace be on them all). Insult in both the earlier forms is clearly refers to transgression and

consequently treated with the unprescribed punishment however a difference may be found in the severity of their punishment, while, the insult in the later form is known as blasphemy which is according to Islamic as well as Pakistan's legal system carries the capital punishment with it. However, still there is need of global consensus over the issue.

- The suggestive element of tolerance makes Muslims to response patiently over others evil expressions however, it is hardly observed in its practical form in the Muslim societies. To prove their claim that the Islam means peace and Muslims are peaceful people they must to be tolerated people first.
- According to Islamic law (*Shari'ah*) the lives, properties, honor and religious beliefs of confederates (*dhimmīs*) have the same value as Muslims have in an Islamic State therefore, minorities in a country like Pakistan must be respected and should be dealt according to *Shari'ah* laws. Moreover, the non-Muslims have permanent citizenship as Muslims have in Pakistan consequently, have equal status before the state's law.
- According to four leading *madahib* of Muslim Jurists (*fuqahā*) a special consideration being paid to the national interests, social law and order situation and religious values, as well as, these values and interests have also been given legal status in Pakistan's law therefore, violation of these interests and values will not only be considered as the violation of *Shari'ah* alone but the State's law too and that will be ended to legal penalties.
- According to western laws the hate speech can cause of social disorder and can put the entire community into strife thus the Article.10, of European convention and Article.19, of UDHR should be reviewed within the perspective of global concerns under due procedure carefully.

Chapter: 3

The Sacred Personalities in Islam and Pakistan's Law

Section 1: Sacred Personalities in Islamic Perspective

1.1 Introduction:

In particular in relation with religious sacred personalities, the meaning and the latitude of particular right to freedom of expression has been tested now days. Serious concerns have been showed about the religious sensitivities within religio-pluralistic societies across the world. It has made a profound and effective impact on the workings of legal authorities of the United Nations with reference to that several special Resolutions for "Combating Defamation of Religions"²⁰³ were being adopted by the General Assembly and Human Rights Council.

However, as a result of these Resolutions no good response has been observed yet, as the defamatory instances have examined more developing and the defamatory or insulting misconduct appears to overstepping the mark rapidly that may lead to more chaotic situation of counter-defamation worldwide.

While, on the other hand, in a pluralistic society, like Pakistan, where more than one religion is being followed and practiced as well, an irregular focus on protecting only one religion or its sacred personalities against defamation might be counterproductive insofar as the right to freedom of belief itself is concerned. Giving much representation to some extremist sects, no matter what religious recognition they have, or taking influential descions on legal stages however can shift the emphasis from guarding the rights of the citizens to defending the

²⁰³ For details see, Commission on Human Rights Resolutions: 1999/82 of 30 April 1999 (Defamation of Religions), 2000/84 of 26 April 2000 (Defamation of religions), 2001/4 of 18 April 2001 (Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity), 2002/9 of 15 April 2002.

religions itself. In short, the counter-criticism from both, the religious figures and human rights activists, is not and will never be a proper approach to dealing such serious issues of religious intolerance and freedom rights abuses. Because, it is well known, that apart from the difference lays between Western holistic life and modernism the spiritual condition or the divine position was remained and still is the prime goal of Westerns. The holistic range of sacred or holy among Westerns starts from the positions, rituals and relics of priests and ends to Prophets and Gods. All are held sacred and protected legally from insult or desecration. Meanwhile, the same protection or at least respect have never been given to other religions or their sacred personalities in general and to Islam in particular. Moreover, any demand for protection of religious personalities against defamation if ever being made by the Muslim community then no effective footsteps has ever been taken by the Western authorities regarding misuse of right to freedom of expression. While, there is dire need of consensus to be built up on mutual interest that may lead to the religious sentimental respect and tolerance among people and stopover the counter-defamation in coming ages. According, to my subject here I present a comprehensive account about the religious personalities have been held sacred in both Islamic as well as Pakistani legal system, and that is as follows:

1.2 The Messengers of Almighty Allāh:

According to the Islamic viewpoint of sacredness the most sacred personalities are known as the Messengers and the Prophets (peace be on them all) of Almighty Allāh ﷻ. Almighty Allāh ﷻ blessed them with some leading or prominent features and intrinsic worth that had never been bestowed to anyone before. These are the preferred personalities from whole mankind that have been awarded with the title of Apostleship or Prophethood (*al-Nubuwwah*) which is very next rank in sacredness and excellence to that of the Lordship (*al-Rabūbiyyah*). The Almighty Allāh has delivered His devine message and complete guidance to every nation

through His ﷺ, marvelous, truthful and trustworthy Messengers and Prophets (p.b.o.t). As it is evident from many verses of the Qurān; *“And verily, We have sent among every ‘Ummah (community, nation) a Messenger...”*²⁰⁴

The Messengers of Almighty Allāh ﷻ has been characterized with some particular physical and perceptual (*ma'nawī*) appearances that make them unique from others and reveal some facts that one can easily understand the distinctive grounds on which Messengers and Prophets (peace be on them all) have been preferred over other people. These individualities are specific with all Messengers (peace be on them all) of Almighty Allāh ﷻ equally and no distinction²⁰⁵ has been made among them regarding these characteristics, such as; the seal of prophethood²⁰⁶ that was considered as a divine proof of truthfulness of a Messenger. The true dreams,²⁰⁷ the shepherdess of sheep,²⁰⁸ alarming from al-Dajjāl,²⁰⁹ choice between this world and Hereinafter,²¹⁰ preview of their seats in Haven (*al-jannah*),²¹¹ prevention from eating or accepting charities, nonentity of inheritance,²¹² eternity of the bodies in graves,²¹³ means secured and protected forever by Almighty Allāh ﷻ from any kind of harm that can be expected for common people after their burial in the earth, and lastly, the acceptance of their prayers (*al-du'ā*) by Almighty Allah.²¹⁴

These are the obvious and discernable features that everyone can easily comprehend them and are the common attributes in which all the Messengers of Almighty Allah ﷻ were equal

²⁰⁴ al-Qurān, 16: 36. Also al-Qurān, 15: 10.

²⁰⁵ The prohibition of distinction among Messengers (peace be on them all) is discussed by 'Imām Qurṭubī. See Tafsīr Qurṭubī, Sūrah al-Baqarah, verse: 253.

²⁰⁶ 'Imām al-Bukhārī, Ṣaḥīḥ Bukhārī, book: al-wuḍū', H/N. 190.

²⁰⁷ Ibid., book. al-t'abīr, H/N. 6989.

²⁰⁸ Ibid., book. al-ijārah, ra'yu 'l-ghanam, H/N. 2262.

²⁰⁹ Ibid., book. al-Jihād, kayfa yurad al-Islam..., H/N. 3057.

²¹⁰ Ibid., book. al-Mghāzī, H/N. 4435. Ibid., book. al-Manāqib 'l-Anṣār, H/N. 3904.

²¹¹ Ibid., H/N. 4437.

²¹² Ibid., book. al-frā'id, qawl 'l-Nabī ﷺ lā nūrathu..., H/N. 6725-6726-6727. and Ṣaḥīḥ Muslim, H/N. 1758.

²¹³ Sunan 'Abi Dā'wud (2009), ed., Shu'ayb al-'Arna'ūṭ and Muhammad Kāmil, II, H/N. 1047, p. 279. Another hadith reported in Ṣaḥīḥ Muslim, H/N. 2375.

²¹⁴ Ṣaḥīḥ Bukhārī, VIII, book. al-d'awāt, p. 67, H/N. 6304.

but no one from common people could share these characteristics in the past and no room has been left for association of other people with Messengers in the future.²¹⁵ Accordingly, these particular physical and perceptual (*ma'nawī*) common features of all the holy Messengers (peace be on them all) are sufficient to recognise their superiority over rest of the creation and therefore must be revered among people. As their (peace be on them all) respect and honour has been held sacred and obligatory for all people in general and for the Muslims particularly meanwhile, their insult and defamation is also being held as a criminal offence in Islam as well as in Pakistani law. Accordingly, no one, by any means of expression, is allowed to hold for himself any kind of resemblance with them. Moreover, every one of these most sacred personalities had also been blessed with great potential of particular spiritual and miraculous characteristics²¹⁶ separately which is also a strong evidence for their utmost position and holiness in Islam.

1.3 The Prophet Muhammad ﷺ as holiest Personality:

"And We have sent you (O Muhammad) not but as a mercy for the 'Alamin (mankind, Jinns and all that exists)." (al-Qurān, 21: 107)

The attributes of the holy Prophet Muhammad ﷺ are numerous that can't be enclosed in one chapter or more therefore, here, we describe some of the noteworthy features that are specific with the most sacred personality of Prophet Muhammad ﷺ and make him ﷺ unique among other Prophets (peace be on them all) of Almighty Allāh ﷻ. The attributes usually divided into three major categories by the 'Ulamā. Firstly, for example; the attributes that relates to the world of spirit (*'alim 'l-arwāḥ*) that includes; the creation of holy Prophet

²¹⁵ Ahmad bin 'Abdul Fattāḥ Zawawī, *Shamā'il 'l-Rasūl*, I, p. 62.

²¹⁶ For detail see 'Ibn Kathīr, *Stories of the Prophets from Ādam to Muhammad (Qasas-ul-'Anbiyā)* (Egypt), ed., Sayed Gād, Tamir 'Abū al-Sa'ūd, Muhammad A. M. 'Abū Shīshā and Nawḥah Kamāl 'l-Dīn.

Muhammad ﷺ that was the actual cause of creating the whole universe²¹⁷, the promised Prophethood.²¹⁸ Secondly, the attributes that relates to this world (*al-dunyā*) e.g; inclusiveness of the Prophethood,²¹⁹ authenticity and advantage of Qurān over other scriptures,²²⁰ purification of the entire earth,²²¹ permissibility of booty (*al-ghanā'ym*),²²² permissibility of *qitāl* in the sacred city Makkah,²²³ the superiority of His ﷺ nation (*ummah*),²²⁴ inspiration of awe and dignity,²²⁵ absolute forgiveness²²⁶ from the Lord, genealogical sacredness of Prophet Muhammad²²⁷ ﷺ in this regard the prominent imam Ibn Kathīr stated that, "by caste, glory, grace and lineage the family of Prophet Muhammad ﷺ is the noblest and most respectable family all over the world".²²⁸ Holiness and purity of the early life of Prophet Muhammad, ﷺ as the hadiths related to the instance of opening of the heart²³⁰ and the hadith reported by 'Abū Na'im on the authority of 'Alī bin 'Abi Ṭālib²³¹

²¹⁷ 'Imām 'Abdūl Razzāq bin Hummām al-Ṣin'ānī, al-Muṣannaf, ed., Dr. 'Isā bin 'Abdullāh, I, (Beirut: 2005), p. 63-66.

²¹⁸ The Qurān speaks about the matter al-Qurān, 03: 81, The 'Ulamā have held two different opinions regarding this agreement for detail see al-Māwardī, al-Nukat w, 'l-'Uyūn, I, p. 406.

²¹⁹ al-Qurān, 04: 170. Also Ṣaḥīḥ Muslim, book: al-masājīd w mawāḍi' 'l-salāh, H/N. 521 and 523.

²²⁰ al-Qurān, 05: 48.

²²¹ Ṣaḥīḥ Bukhārī, I, book: al-Tayammum, p. 74, H/N. 335. And Ṣaḥīḥ Muslim, book: al-masājīd w mawāḍi' 'l-salāh, H/No. 522 and 523. 'Imām Aḥmad bin 'Alī 'Ibn Ḥajar al-'Asqalānī, Faṭḥ 'l-Bārī (Beirut: 1379), I, p. 553.

²²² al-Qurān, 08: 69. and Ṣaḥīḥ Bukhārī, I, book: al-Tayammum, H/N. 335, p. 74. And also; Ṣaḥīḥ Bukhārī, IV, book: fard al-khumas, H/N. 3122, p. 85.

²²³ Ṣaḥīḥ Bukhārī, I, book: al-'ilm, H/N. 112, p. 33.

²²⁴ al-Qurān, 35: 32.

²²⁵ al-Qurān, 08: 12.

²²⁶ (al-Qurān, 48: 02). 'Ibn Kathīr, Tafsīr al-Qurān al-'Aẓīm, (Arabic) IV, p. 185, and Tafsīr 'Ibn Kathīr (Urdū), IV, p. 333. also Zawawī. Shamayel 'l-Rasūl, I, p. 244.

²²⁷ Muhammad Tahir-ul-Qadri, al-Minhāj al-Sawīyyu (Lahore: 2005), p. 304. 'Imām 'Ibn-e-Kathīr, al-Bidāyah w Nihāyah, (Beirut), I, p. 658. Sulaymān bin Aḥmad bin 'Ayyūb al-Ṭabrānī, al-Mu'jam al-Awsaṭ (Cairo), VI, H/N. 6285, p. 237.

²²⁸ Ḥāfiẓ 'Imād uddin 'Ibn Kathīr, Tafsīr-ul-Qur'an al-'Aẓīm, IV, p. 217.

²²⁹ Imām al-Bukhārī, Ṣaḥīḥ Bukhārī, ed., Muhammad Muhsin Khan, I, viii, H/N. 360, p. 220. And Ṣaḥīḥ Muslim bi Sharḥ al-Nawawī (Beirut, Lebanon: 1995), II, xviv, p. 30. Also 'Abū Na'im al-'Iṣbahānī, Dalā'il 'l-Nubuwwah (Beirut, Lebanon. 1991), ed., Dr. Rawwās Qal'ajī. edit. 3rd, I, p. 188/189. Also Dr. Aḥmad al-Musayyir, Falsafah al-Sīrat 'l-Rasūl w 'l-Wahī (Dimusqas: 1987), p. 39. Also Dr. Saeed Muhammad Ṣaleḥ al-Ṣawābī, al-Ma'in al-Rā'iq (Alexandria: 2006), edit. 2nd. I, p. 82.

²³⁰ 'Ibn Ḥajar, Faṭḥ 'l-Bārī, I, H/N: 349, p. 460-463. And 'Imām Muslim in Ṣaḥīḥ Muslim, A, p. 229. H/N: 163. 'Abū Na'im al-'Iṣbahānī in his book Dalā'il 'l-Nubuwwah, I, H/N: 167-166, p. 221-219.

²³¹ 'Imām al-Bayhaqī, Dalā'il 'l-Nubuwwah, (Beirut: 1985), II, p. 33. And also see 'Abū Na'im, Dalā'il 'l-Nubuwwah, ed., Dr. M. Rawwās Qal'ajī and 'Abdul Barr 'Abbās, I, p. 186. al-Mustadrak, kitāb al-Tawbah w 'l-Inabah, IV, p. 245. al-Ḥāfiẓ 'Ibn Kathīr in al-Bidāyah w Nihāyah II, p.287-288. al-Ḥāfiẓ 'Ibn Ḥajar in his book "Tahzīb 'l-Tahzīb (Beirut: 1993)," V, p. 176. Dr. Saeed Muhammad Ṣaleḥ al-Ṣawābī in his book al-Ma'in al-Rā'iq, I, p. 87.

also throws light on his ﷺ greatest admiration in the sight of the Almighty Allāh ﷻ. Whereas, thirdly, the attributes that relates to the next world (*al-ākhirah*) are; the greatest entreaty and endorsement (*al-shafā'ah al-'uẓmā*),²³² the glorious prostration before Almighty Allāh,²³³ the favour and appreciation from the Lord ﷻ,²³⁴ the ownership of *al-Kawthar*,²³⁵ witness and testimonial to all nations,²³⁶ the opening of earth and the opening of Haven²³⁷ the first who will cross the bridge (*al-Ṣirāṭ*),²³⁸ the owner of *al-waṣīlah*²³⁹ the sacred status of Prophet Muhammad ﷺ enhanced by sanctifying him ﷺ with the ownership of *al-waṣīlah* as the haven has been divided into different levels²⁴⁰ and *al-waṣīlah* is the highest level of the Haven.

Well, this is the case of Islam regarding the most honourable status of their Prophet Muhammad ﷺ. According to Muslim faith all the attributes mentioned above belong to the Prophet Muhammad ﷺ and prove his ﷺ superiority and highest rank of dignity and sacredness to an extent²⁴¹ not among his nation only or among all other nations passed before, but it manifests his ﷺ distinguishing status even among all the honourable Messengers and Prophets (peace be on them all) of Almighty Allāh ﷻ. Even though, the Muslims do respect for all holy Messengers and Prophets (peace be on them all) of Almighty Allah ﷻ. Thus,

²³² Almighty Allah ﷻ said, "None shall have the power of intercession, but such a one..." (*al-Qurān*, 19: 87) "...It may be that your Lord will raise you to Maqaman Mahmuda (a station of praise and glory, i.e. the highest degree in Paradise!)." *al-Qurān*, 17: 79. Ṣaḥīḥ al-Bukhārī, book: Tafsīr 'l-Qurān, H/N. 4712.

²³³ "The Prophet added, "Then I will go beneath Allāh's Throne and fall in prostration before my Lord..." Ṣaḥīḥ al-Bukhārī, book: Tafsīr 'l-Qurān, H/N: 4712.

²³⁴ This is another evidence of his ﷺ magnificent status on the Day of Judgment that, Almighty Allāh will order him ﷺ to raise your head, whereas, it is likely to be said that stand up and ask what you want rather "...O Muhammad Raise your head. Ask, and it will be granted..." Ibid.

²³⁵ Ṣaḥīḥ Muslim, book: al-ṣalāh, H/N: 400. Mukhtaṣar Ṣaḥīḥ Muslim, Abdul Hamid Siddiqi, IV, xii, H/N. 0790.

²³⁶ *al-Qurān*, 02: 143.

²³⁷ Ṣaḥīḥ Bukhārī, book: al-khuṣūmāt, H/N. 2412.

²³⁸ Ibid., I, book: al-Ādhān, H/N. 806, p. 160.

²³⁹ Ṣaḥīḥ Muslim, book: al-ṣalāh, H/N. 384.

²⁴⁰ "verily there are hundred levels in Paradise (*al-jannah*)..." Ṣaḥīḥ al-Bukhārī, IV, H/N. 2790, p. 16.

²⁴¹ Still there are so many spiritual and miraculous features of Prophet Muhammad ﷺ that because of extensive range and lengthiness cannot be described here.

what should be the standing point of those non-Muslims and so called Muslims²⁴² all over the world who, persistently, have been trying to pollute or revile the most sacred personality of Prophet Muhammad ﷺ under the cover of their right to freedom of expression? How a supporter of such abusive right can assess the magnitude of grievance and harm has been tolerated by the Muslims all over the globe. The freedom rights are given to the people to make their lives joyfull for themselves but not to harm others. These rights were essentially held in a constructive mode but not as a destructive one. No law in the whole world could ever be seen which gives right to some people to cart off the happiness of the other people. However, the offenders of defamation must acknowledge the deepest relationship of Muslims with their holy Prophet Muhammad ﷺ. As their single act of insult to holy Prophet Muhammad ﷺ can cause of harm to billions of people.

1.4 The Family and the Companions of Holy Prophet Muhammad ﷺ:

According to the Islamic perspective of sacredness the family of Prophet Muhammad ﷺ and his Companions (r.d) are at the second level of superiority and holiness that comes after the Messengers and Prophets of Almighty Allāh but before the *Muttaqūn*. The basic reason of their sacredness over others is the complete devotion to the cause of Almighty Allāh and prodigious nearness to the Prophet Muhammad ﷺ his ﷺ absolute following and invaluable love for him ﷺ. Therefore, both of the units (the Family and Companions) or some of their persons directly or indirectly have mentioned in the Allāh's book *al-Qurān* and the Prophetic sayings *al-Sunnah*. This is itself, a comprehensible but solid reason for their significance and holiness over others.

²⁴² A Muslim can not be remained a Muslim after insulting or reviling anyone of the Prophets and Messengers (peace be on them all) of Almighty Allah ﷻ.

1.4.1 The Family ('Ahl al-Bay'at (r.d):

*The Almighty Allāh said; "The Prophet is closer to the believers than their own selves, and his wives are their (believers') mothers (as regards respect and marriage)."*²⁴³

Regarding the subject, the 'Ulamā, held that, the respect and honour of Prophet Muhammad ﷺ also comprises the reverence and honour for his ﷺ family. Because the Prophet ﷺ has instructed the believers and urged them of respect and love for his ﷺ family members therefore, all the classical 'Ulamā ('asāf) exemplified it with their action²⁴⁴ as it is also evident from a hadith.²⁴⁵ Therefore, some 'Ulamā have considered the reverence and love for *Ahl al-Bay'at* essential to achieve the special consent of the holy Prophet. ﷺ²⁴⁶ The wives of the Prophet ﷺ also had an advantage over others as their houses were blessed with the revelation of Allāh's verses.²⁴⁷ In this respect the 'Ā'ishah (r.d) beloved wife of the Prophet Muhammad ﷺ was foremost among them all. As she (r.d) was also being favored with Quranic justification of chastity.²⁴⁸ The Almighty Allāh bestowed a special rank, enriched with respect, care and significance, to the wives of the holy Prophet ﷺ said; *"O wives of the Prophet! You are not like any other women. If you keep your duty (to Allāh)..."* (*al-Qurān*, 33: 32) Means; you are not like any other women in respect of superiority, sacredness and dignity and said "any other" which comprises the negation of males and females as it also

²⁴³ (*al-Qurān*, 33: 06).

²⁴⁴ Qāḍī 'Ayāḍ, *al-Shifā bi Ta'rīf Ḥuqūq al-Muṣṭafā* ('Urdū), ed., Ghulām Mu'in 'I-Ddin Nu'aymī, II, p. 65.

²⁴⁵ It is reported on the authority of 'Abdullāh b. 'Abbās said that the Prophet ﷺ said; "Love your Lord because of the blessings He (ﷺ) has bestowed you and love me to attain the Allāh's love and love my households for the love of mine." Imam Tirmidhī, *Sunan al-Tirmidhī*, VI, H/N. 3789, p. 134.

²⁴⁶ Qāḍī 'Ayāḍ, *al-Shifā bi Ta'rīf Ḥuqūq al-Muṣṭafā* ('Urdū), p. 65.

²⁴⁷ "And remember, that which is recited in your houses of the Ayaat (verses or signs)... And remember this blessing with which you alone of all the people have been favoured..." (*al-Qurān*, 33: 33-34).

²⁴⁸ For detail check Tafsīr 'Ibn Kathīr (Urdū), Vol: 3, Tafsīr Sūrah al-Nūr, topic: incident of ifk, p. 457.

covers the negation individually and collectively as well.²⁴⁹ "If you keep your duty (to Allāh)" means; Almighty Allāh addressed the wives of the Prophet ﷺ that they (r.d) should keep (*taqwa*) fear of Allāh ﷻ as He ﷻ directed them so, no other woman can be equal to them in virtue and status.²⁵⁰ According to this view it can be established here that the *taqwa* have made them more superior and most sacred that no one can compete them in their status even the *muttaqūn* from general Muslims. But this view is not completely correct because if the *taqwa* alone is the criterion or reason of their superiority and extreme holiness then the other Muslim women who have high level of *taqwa* too should be equal in sacredness with the wives of the holy Prophet ﷺ. Indeed, the situation is inversing to it. Therefore, the 'Ulamā have pointed out that the *taqwa* here is just a condition to maintain their most sacred status that they already have been acquired by having the company and close relation with the Prophet Muhammad ﷺ.²⁵¹ Moreover, the addressing phrase "O wives of the Prophet" itself proves their excellence is basically dependent on their relative status with the Messenger of Almighty Allāh ﷺ.

Another salient feature of *Ahl al-Bay'at* is the ultimate purification from all evils guaranteed by the Lord ﷻ Himself. Said, "...Allāh wishes only to remove al-Rijs (evil deeds and sins) from you, O members of the family (of the Prophet), and to purify you..." (*al-Qurān*, 33: 33) The verse holds the title of *Ahl al-Bay'at* with it, which leaves a question here that, to whome the title of *Ahl al-Bay'at* can actually be referred? Or do the wives of the holy Prophet ﷺ enjoy this revered status alone or there are some other members includes in this blessing? 'Ibn Kathīr held that according to the verse (*al-Aḥzāb*: 33) it becomes clear that the wives of the Prophet ﷺ are included in *Ahl al-Bay'at*. He further said; if one held that the *Ahl al-*

²⁴⁹ 'Imām Qurṭubī, *al-Jāmi' li 'Aḥkām 'l-Qurān*, ed., 'Abdullāh b. 'Abdul Muḥsin, XVII, p. 137.

²⁵⁰ Tafsīr 'Ibn Kathīr (Urdū), III, p. 804.

²⁵¹ 'Imām Qurṭubī, *al-Jāmi' li 'Aḥkām 'l-Qurān*, ed., 'Abdullāh b. 'Abdul Muḥsin, XVII, p. 138.

Bay'at refers to the holy wives of the Prophet ﷺ alone and no one other than them includes in it then it is not acceptable because the hadiths prove that *Ahl al-Bay'at* also comprises of some other members along with the holy wives (r.d). Since, if his ﷺ wives are members of his household, then this title is even more appropriate for his ﷺ own relatives.²⁵² According to hadith narrated by Zayd b. Arqam (r.d) the wives of the holy Prophet ﷺ and the members of his family for whom the acceptance of alms is forbidden shall be considered as *Ahl al-Bay'at*. And those are 'Alī and the offspring of 'Alī, 'Āqil and offspring of 'Āqil, and the offspring of the Ja'far and offspring of 'Abbās.²⁵³

1.4.1.1 Significance of 'Ahl al-Bay'at (r.d):

"O wives of the Prophet! Whoever of you commits... the torment for her will be doubled..." ((*al-Qurān*, 33: 30) *"And whosoever of you is obedient to Allāh and His Messenger... We shall give her, her reward twice over, and We have prepared for her Rizqan Karima (a noble provision in Paradise)."* (*al-Qurān*, 33: 31) the threat (*inzār*) of double torment in the first verse and glad tidings of dual reward in the second verse above depicts here the significance and uniqueness of the Wives of the holy Prophet ﷺ as the rulings in both of the verses above were being applied particularly to them and not to other one. 'Ibn Kathīr stated, "In Paradise, for they shall be in the dwellings of the Messenger of Allāh in the highest reaches of 'illiyyīn, above the dwellings of all the people, in *al-waṣīlah* which is the closest of the dwellings of Paradise to the Throne."²⁵⁴ There are a lot of sayings of holy Prophet ﷺ that proves the esteemed significance of *Ahl al-Bay'at*.²⁵⁵ Thus, the sacredness of *Ahl al-Bay'at*

²⁵² Tafsīr 'Ibn Kathīr (Urdū), III, p. 804- 810.

²⁵³ Imam Muslim, Ṣaḥīḥ Muslim, IV, H/N. 2408, p. 1873. Also Ibid., H/N. 2424, p. 1883.

²⁵⁴ Tafsīr 'Ibn Kathīr (Urdū), III, p. 804.

²⁵⁵ Jabir b. 'Abdullāh said: I saw the Prophet ﷺ in his pilgrimage..., I heard him ﷺ was saying: O people verily I have left the thing among you that if you hold it strongly you wouldn't be deviate (from the right path):

has been proven by both the chief sources (Qurān and the *Sunnah*) of Islamic faith, so loving *Ahl al-Bay'at* and protecting their blessed holy status should be the foremost duty of every one who considers himself a Muslim.

1.4.2 The Companions (*al-Ṣaḥābah r.d*):

The Companions (*as-Ṣaḥābah*) of the holy Prophet ﷺ also had the same level of respect, love and sacredness among Muslims as the members of the *Ahl al-Bey'at* have. The 'Ulamā considered the respect for *Ṣaḥābah*, security of their rights, their followings, praising them during one's talk, wishing mercy for them from Almighty Allāh, overlooking the disputes that had occurred among them, even disliking their enemies and avoiding from all those unjust, unauthentic or false narrations, reports and news that lessen their respect or cause to disgrace them, as an essential part of the love and honour of the holy Prophet ﷺ and therefore makes it obligatory for all Muslims equally²⁵⁶

1.4.2.1 The Reason of their Superiority:

The reason that signifies the *Ṣaḥābah* and gives them most respected and sacred status among Muslims is their exceling quality of embracing Islam with miserable condition in a terrible period, their complete devotion to the Lord ﷻ by absolute obedience to the Messenger ﷺ of Almighty Allāh ﷻ, in all departments of the life. For instance, they had an outstanding advantage that couldn't be achieved by anyone of Muslims except them and that can be observed in their indispensable expedient relation with the Messenger ﷺ of Almighty Allāh ﷻ. As it is evident from this narration; "Yazīd b. Ḥayyān reported, I went along with

the book of Almighty Allāh and my households." Imam Tirmidhī, *Sunan al-Tirmidhī* (Beirut: 1998), ed., Bashār 'Awwād Ma'rūf, VI, H/N. 3786-3788, p. 131-133.

²⁵⁶ Qāḍī 'Ayāḍ, *al-Shifā bi Ta'rīf Ḥuqūq al-Muṣṭafā* ('Urdū), II, p. 71.

Ḥusayn b. Sabra and 'Umar b. Muslim to Zayd b. Arqam and, as we sat by his side, Ḥusayn said to him: Zayd, you have been able to "acquire a great virtue" that you saw Allāh's Messenger ﷺ listened to his talk, fought by his side in (different) battles, offered prayer behind him, Zayd, you have in fact earned a great virtue'...,²⁵⁷ These were some of the features that were specified with the *Ṣaḥābah* only as the holy Messenger ﷺ of Almighty Allāh ﷻ had passed away from this world to the next and so, no more one can be a sharer with *Ṣaḥābah* in these characteristics.

Some of the magnificent features have also been depicted in the Qurān that can be a valid reason of their superiority and holiness over other Muslims because no one was being addressed directly or particularly by Almighty Allāh ﷻ, except them (r.d). e.g. *the Almighty Allāh said; "Muhammad is the Messenger of Allāh, and those who are with him are severe against disbelievers, and merciful among themselves..." (al-Qurān, 48: 29)*, it is more imperative and excellent virtue of *Ṣaḥābah* (r.d) that they are promised of forgiveness and mighty reward by Almighty Allāh ﷻ Himself. The pledge of Ridwān²⁵⁸ is also one of the salient features that should be supposed a differential characteristic which occurred in the period of *Ṣaḥābah* only. The holy Prophet ﷺ also made it known to everyone that his Companions have superiority over others; Jabir bin 'Abdullāh narrated: On the day of al-Ḥudaybiyah, Allāh's Apostle said to us "You are the best people on the earth!" We were 1400²⁵⁹ then."²⁶⁰

²⁵⁷ Ṣaḥīḥ Muslim, ed., M. Fū'ād Ab. Bāqī, book: faḍā'yl As-Ṣaḥābah, Chap. min faḍā'yl 'Alī b. 'Abi Ṭālib, IV, H/N: 2408, p. 1873.

²⁵⁸ "Indeed, Allāh was pleased with the believers when they gave their Bai'a (pledge) to you (O Muhammad) under the tree..." (al-Qurān, 48: 18). Also (al-Qurān, 33: 23).

²⁵⁹ The number of Ṣaḥābah was not mentioned exactly because there are many narrations that carry different figure that amount seven hundred to fifteen hundred and twenty five. For detail see Hafiz 'Ibn Kathīr, Tafsīr 'Ibn Kathīr (Urdū), IV, p. 336. And Imam Qurtubī, al-Jāmi' li 'Aḥkām 'I-Qurān, XVIV, p. 317.

²⁶⁰ Imam al-Bukhārī, Ṣaḥīḥ al-Bukhārī, Kitāb 'I-maghazi, H/N. 4154.

1.4.2.2 Obligations of Believers towards *al-Ṣaḥābah* (r.d):

They were the best people with Messenger ﷺ of Almighty Allāh ﷻ who devoted their lives to the Prophet ﷺ giftedly and sacrificially for the sake of religion. Therefore, if they have assigned with the uppermost rank of excellence by the holy Prophet ﷺ and God's majestic gaze, then it is the duty of believers towards this victorious group to love them, verily love for them is the religion the God obliged Muslims with it. God learns believers by telling them about the *Tāb 'īs* who came after the *Ṣaḥābah*; *"And those who came after them say: Our Lord! Forgive us and our brethren who have preceded us in Faith, and put not in our hearts any hatred against those who have believed..." (al-Qurān, 59: 10)*

'Imām Malik and some other 'Ulamā have held that, teaching one's children to love 'Abū Bakr and 'Umar (R.d) is a part of the religion. Thus, it is obligatory for this nation to love the Companions of the Messenger ﷺ of Allāh ﷻ from all its core of heart for many reasons, e.g. First; if nothing more but at least it is enough to love them in order to save the dignity and honour of the Prophet ﷺ of Almighty Allāh ﷻ. Secondly; if nothing more then, only because that they have conveyed every movement and every silence from the Messenger ﷺ of Allāh ﷻ as the whole religion reached to us by means of them (r.d) and that would be enough for their love. Thirdly; it is most important for one to stop talking about clashes that have happened among themselves; this is a moral value and must be in possession of every believer. As 'Ibn Kathir held; the battle that happened to them (r.d) God ﷻ has secured our swords from that, now we must keep our tongues controlled and lips sealed of such speech.²⁶¹

²⁶¹ Muhammad Ḥasan 'Abdul Ghaffār, *Sharḥ Mukhtaṣar al-Ba'ī li Kitāb al-Ṣarīm al-Mas'lūl 'alā Shātim 'l-Rasūl*, VIII, p. 3-5.

Moreover, love and respect for Companions is also a Prophetic *Summah* as Prophet Muhammad ﷺ also praised his ﷺ companions (r.d) more than once and highlighted their attributes to the Muslim 'Ummah that everyone would be realized their (r.d) sacrifices for Islam and their (r.d) esteemed love for the holy Prophet ﷺ. Therefore, same difference between the common Muslims and the sacred personalities has also been detained lagally by Islam and therefore, the insult or defamation in respect of these sacred personages is called blasphemy and made its punishment as more severe than the common offence of insult.

1.5 The Sacred Places and Objects:

"...and whoever honours the sacred things of Allāh, then that is better for him with his Lord..." (*al-Qurān*, 22: 30). The 'Ulamā held that, "the *al-Haram* is the most scared place as the rituals attached to it and therefore, the hunting and destroying the trees there is strictly prohibited and no place can be measured upon it. The infidels are also forbidden to enter that sacred place *al-Haram*. Even if a messenger (infidel envoy) comes to meet the 'Imām being appointed at *al-Haram* then the message will be communicated to the 'Imām and if the envoy insists for meeting 'Imām and there may be some concerns for such meeting then the 'Imām should join him outside the *al-Haram* but the envoy should never be authorized to enter it. If he knowingly entered the *al-Haram* then he will be charged with deterrent punishment and if he entered obliviously or mistakenly then he will be forbidden and threatened."²⁶²

Moreover, the *Masjid 'l-Nabawī* in medina and *Bayt 'l-Muqaddas* in Palestine comes at second position in sacredness if compared to *al-Haram* in Makkah. Both the sacred places acquired their sacred rank in Islam because of its crucial attachment with Islamic beliefs and as both the places were being honored by the sacred Personalities of Messengers and Prophets of Almighty Allāh (peace be on them all). There are several more objects, things

²⁶² 'Ibn Qudāmāh, *al-Mughnī*, book: *al-Jizyah*, VIV, p. 359.

and places and even months and days²⁶³ that are also held sacred in Islam, for example; the *al-Ṣafā w al-Marwā* mountains and the sacred water of *Zam-Zam* both have historical association with the most chaste and holy lady; the mother of holy Prophet 'Ismā'īl (p.b.o.h) and the wife of holy Prophet 'Ibrāhīm (p.b.o.h) the forefathers of the holy Prophet Muhammad ﷺ. Furthermore, the tombs, graves and relics that belong to holy Prophet Muhammad ﷺ and to *al-Ṣaḥābah* are also treated as sacred places in Islam. Respect for all these sacred places is however comes under the obligation of Muslim *Ummah* collectively. Moreover, insulting, degrading or destroying anyone of these sacred places, objects, relics and things is held as serious criminal offence of blasphemy in Islamic legal system. Almighty Allah ﷻ says; "*O ye who believe! Profane not Allāh's monuments nor the Sacred Month nor the offerings nor the garlands, nor those repairing to the Sacred House, seeking the grace and pleasure of their Lord. (al-Qurān, 05: 02).*"

1.6 Observations:

- According to Islam the compulsion (*al-taklīf*) and responsibility (*al-mas'ūliyyah*) are the basic factors of a human highness thus, a man gets high to highest level with the incensement of these factors and his/her highest rank falls down with the decreasing level of the same factors. Whereas, having the physiological, psychological and spiritual life functions, man is the highest order of creation²⁶⁴ but meanwhile, a man according to western ideology, has the viable choice to do something or to leave undo and not bound to be obedient or to be disobedient to Lord. Simply, the man is in the position to choose and not to obey.

²⁶³ Ṣaḥīḥ al-Bukhārī, VIII, Book: 81, H/N. 776.

²⁶⁴ James A. Fowler, *Man as God Intended (A Theological Survey from an Anthropological Perspective)* (California, United States of America: 2005), "the fall of man," p. 19-20.

- Islam does not recognize the ability of understanding and positivity in thinking of an intellectual person only, but also necessitates respect for that intellectual as a human being and guarantees his honour and sacredness in the society as whole.
- Being human all people are equal in dignity and no distinction or difference shall be entailed on the basis of cast, colour and nationality except one's state of piousness (*taqwah*).
- A clear line of superiority and holiness between the Holy Messengers (peace be on them all) of Almighty Allāh ﷻ and rests of the people has been drawn by Islam and in this respect, all the Messengers (peace be on them all) share equal part of holiness and dignity.
- According to Islamic view of holiness, the holy Prophet Muhammad ﷺ has the highest rank of the holiness and sacredness among the whole series of the blessed Messengers (peace be on them all) of Almighty Allah ﷻ, but, this significance is not the comparative one but an individualistic type of uniqueness that does not held on the accord of Muslims but on the blessings of Almighty Allāh Himself ﷻ.
- According to the Islamic faith, the Muslims are obliged to love, respect and sanctify Muhammad ﷺ the holy Prophet of Almighty Allāh ﷻ as it had happened for other Messengers (peace be on them all) in all other true revealed religions, faiths and beliefs however, the Muslim nation remained successful to maintain this honourable and sacred status of their Prophet ﷺ while other have failed or, at least, remained unsuccessful.

Section 2: Sacred Personalities in Pakistan's Legal Perspective

2.1 Pakistan's Legal Stance about Sacred Personalities:

The legal protection is one of those distinctions that enable an individual to differentiate between sacred personages in general and those of the most sacred personalities in Islamic faith, as it has already been indicated above.²⁶⁵ Being an Islamic State in sub-continent the initiative of such protective legislation has been taken by the legal body of the State of Pakistan, though an emphatic and appealing role had been played by the 'Ulamā and scholars of the country, however, the prodigious credit, no doubt, goes to the legislative body of the regime. The legislation comprises of four essential sections 295, 296, 297 and 298 that had been remained a part of the legislation in 1860 which latter supported with additional sub-sections, e.g. 295-A, 295-B, 295-C 298-A, 298-B and 298-C, all these sections comes under the 15th chapter of Pakistan Penal Code and their obvious representation is known as Pakistan's Blasphemy Law. All the (above mentioned)²⁶⁶ most sacred personalities are also held holy and sacred by the law of Pakistan and consequently, safeguarded from all kinds of defamatory expressions through these sections which are as follows:

2.2 PPC Sections Rlating Blasphemy Law:

Injuring or defiling place of worship, with intent to insult the religion of any class:

Section: 295. Whosoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shell be punished with

²⁶⁵ Please consult the topic 'The Islamic criteria of sacredness'.

²⁶⁶ Prophet Muhammad ﷺ, wives of the holy Prophet, 'Ahl Bay'at, and Companions of the holy Prophet (r.d).

imprisonment of either description for a term which may extend to two years, or with fine, or with both.²⁶⁷

Deliberate and malicious act intended to outrage religious feelings of any class by insulting its religion or religious beliefs:

Section: 295-A. Whosoever, with deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either descriptions for a term which may extend to ten years, or with fine, or with both.²⁶⁸

Defiling, etc., of Holy Qurān:

Section: 295-B. Whosoever, wilfully defiles damage or desecrates a copy of the holy Qurān or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.²⁶⁹

Use of derogatory remarks, etc., in respect of the Holy Prophet ﷺ:

Section: 295-C. Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly defiles the sacred name of the Holy Prophet Muhammad ﷺ shall be punished with death or imprisonment for life, and shall also be liable to fine.²⁷⁰

²⁶⁷ Pakistan, *The Penal Code Act No. XLV of 1860* (October 2013), p. 367, (Muhammad Abdul Basit).

²⁶⁸ Ibid., p. 369.

²⁶⁹ Ibid., p. 370.

²⁷⁰ Ibid., p. 372.

Disturbing religious assembly:

Section: 296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Trespassing on burial places, etc.:

Section: 297. Whoever, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a depository for remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.²⁷¹

Uttering words, etc. with deliberate intent to wound religious feelings:

Section: 298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.²⁷²

²⁷¹ Ibid., p. 375.

²⁷² Ibid., p. 376.

Use of derogatory remarks, etc. in respect of holy personages:

Section: 298-A. Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife ('Umm 'l-Mu'minīn), or members of the family (Ahl-e-Bait), of the Holy Prophet ﷺ, or any of the religious Caliphs (al-Khulafā' al-Rāshidūn) or companions (Ṣaḥābah) of the Holy Prophet ﷺ shall be punished with imprisonment of either description for a term which may extended to three years, or with fine, or with both.²⁷³

Misuse of epithets, descriptions and titles, etc. reserved for certain holy personages or places:

Section: 298-B.

- (1) Any person of the Qadiani group or the Lahori group, (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation,
 - (a) Refers to or addresses, any person, other than a Caliph or Companion of the Holy Prophet Muhammad ﷺ, as "Amīr 'l-Mu'minīn", "Khalīfat 'l-Mu'minīn", "Khalīfat 'l-Muslimīn", "Ṣaḥābī", or "raḍī Allāh 'anhu";
 - (b) Refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad ﷺ, as "'Umm 'l-Mu'minīn";
 - (c) Refers to, or addresses, any person, other than a member of the family "Ahl-e-Bait" of the Holy Prophet Muhammad ﷺ, as "Ahl-e-Bait", or

²⁷³ Ibid., p.377.

(d) Refers to, or names, or calls his place of worship as "Masjid"; shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2) Any person of the Qadiani group or Lahori group (who call themselves 'Ahmadis' or by any other name), who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as "Azan", or recites Azan as used by Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.²⁷⁴

Person of Qadiani group etc. calling himself a Muslim or preaching or propagating his faith: Section: 298-C. Any person of the Qadiani group or Lahori group (who call themselves 'Ahmadis' or by any other name), who, directly or indirectly, poses himself a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.²⁷⁵

2.3 A Brief Analysis of PPC Sections relating Sacredness:

According to above sections of PPC there are some personalities; like in section: 295-C, the sacred personality of the Holy Prophet Muhammad ﷺ and in section: 298-A: anyone of the sacred wives ('Umm 'l-Mu'minīn) of the holy Prophet ﷺ, or his ﷺ family members (Ahl-e-Bait), or anyone of the sacred Caliphs (Al-Khulafā' al-Rāshidūn) or his ﷺ companions (Ṣaḥābah), are legally held holy and most sacred in Pakistan's Penal Code.

²⁷⁴ Ibid., p. 378.

²⁷⁵ Ibid., p. 380.

Likewise, different religions followed by the citizens of the State, religious worships, or religious ceremonies, the places of worship, etc., are held sacred by the people of particular faith have been held sacred in sections: 295, 296, and 297 of PPC.

The religious feelings, in general, in 295-A, 297, 298 and the religious feelings of Muslims particularly mentioned in section: 295-C, the holy Qurān or its copies in section: 295-B, the sacred titles, e.g., "*Amīr 'l-Mu'minīn*", "*Khalīfatul-Mumīneen*", "*Khalīfat 'l-Muslimīn*", "*Sahaabi*" or "*raḍī Allāh 'anhu*" in sub-section: 298-B: 1.a, "*Umm 'l-Mu'minīn*" in the sub-section: 298-B: 1.b, and "*Ahl-e-Bait*" of the Holy Prophet Muhammad ﷺ in 298-B: 1.c, the sacred name or Muslims' place of worship known as "*Masjid*" in section 298-B: 1.d, and prayer call for Muslims' worship known as "*Azan*" in section; 298-B: 2 all are held sacred by the law of the State. Thus having this legally prestigious position all these sacred personalities, places, shrines, objects and rituals must be protected under the responsibility of the State of Pakistan and thus 'their violation by any means of expression is consequently considered as the violation of the State's Law' and therefore the offender will meet the consequences appropriately, to each offence, defined in the sections above.

2.4 Observations:

- The concept of holiness or sacredness has also been acknowledged in the State's law of Pakistan.
- Religious beliefs, holy places, shrines, religious scriptures and religious personalities are being held sacred through this legislation. Therefore, insult or defamation towards these inviolabilities will be considered as criminal act.
- No discrimination or religious hatred is being observed in the obvious representation of the aforementioned sections of chapter XV of Pakistan Penal Code.

- The religious feelings of all citizens living in the State have been given equal importance.
- These are the sections of Pakistan's Penal Code whereby it is supposed by the legal authorities of the State that all the ways, which could be the cause of or give room to defamation of holy personalities, places, objects and sacred titles have been legally shuttered down or systematically covered up but the ground realities are going through opposite direction and gives contrary upshots to that of have expected by the established order. The period, comprising of almost one and half century, from 1860 up to 1986 have remained significantly less controversial than that of the latter from 1986 up to now 2015. Instantly, it would be difficult to put the responsibility, of such a controversial situation, on anyone of the mentioned law of blasphemy and right to freedom of expression. Therefore it is needed to review carefully that, whether the law of blasphemy with its additional sub-sections 295-a 295-b and 295-c especially have distressed and encroached by the right to freedom of expression or whether the right of freedom of expression has bitterly influenced by the particular law. Or whether the blasphemy law and the right to freedom of expression are contrary with each other in their actual text or whether the manipulation of the right and violation of the law makes them controversial. Such are the questions if discussed carefully would be the cause of solvation and renovation of such chaotic and controversial situation. For this purpose these questions will be discussed in the next (fourth) chapter.

2.5 Findings:

- According to Islam, a significant relation lies among man, his/her behaviour and the society therefore, all human beings need to assess their attitude towards society as; what they express, the society will response in reaction thus, if human beings wish the

pleasant response of society towards them then they must bring good behavioral changings in their own expressions they express.

- The religions and the sacred religious personalities, places and objects are held revered and honourable among almost all the religions of the world therefore they must be protected for establishing global peace in the entire universe.
- To maintain the actual respect of divine inviolabilities the Islamic doctrine of holiness should be preferred, as others have almost been eliminated from their actual position and are going to be lost their legal representation just for the sake of temporary interests of man concerning this world.
- The legislation of laws for the sake of these valued inviolabilities and establishment of penalties against insulting or defaming them proves that the concept still present all over the world that there is something that must be protected and there is something that should be controlled. It is therefore, satated in the Cairo Declaration that,
*"Every human being is entitled to inviolability and the protection of his good name and honour during his life and after his death. The state and society shall protect his remains and burial place."*²⁷⁶
- Though, it is considered that, with the legislation of legal sections in chapter 'XV' of PPC almost all other religious inviolabilities including Islam have been protected however, there is a need for some more legal remedies should be done for protection of all religious beliefs and sacred personalities from defamation or at least from illegitimate criticism often made under the mask of freedom of speech or expression.

²⁷⁶ Dr. Mohamed Mattar and Farceda Wael Abou al-Maged, Human Rights in Islām, (Washington) Johns Hopkins, XXIII, p. 32.

Chapter 4:

Blasphemy Law of Pakistan and Freedom of Expression

1.1 Introduction:

Pakistan is not the first and only State on the globe which endorsed the blasphemy laws and have established these laws as a part of its Penal Code and further exercised through a judicial procedure, but, it is observed during this research that, there are many, Islamic as well as non-Islamic, countries all over the world where blasphemy laws or the laws of defamation are not only endorsed but categorically stated under their constitutional articles as well as criminal codes and are practicable in those countries too.

However, having an Islamic foundational structure the particular law always stayed under the strict observation of critiques across the world. Being a mosaic populace country, Pakistan often remained a victim of ethnic, racial as well as religious controversies however the total responsibility of any grave outcome simply set upon the blasphemy law of the State. Though, the misuse of the blasphemy law has never been proved on the legal or judicial level however, violation of the particular law in the form of public vandalizm has been observed to some extent by studying the related cases. Yet, the Islamic legal system (Sharī'ah) does not own such kind of activities that resulted to social disorder. But according to Islamic accountability tool *hisbah* and jurisprudential rule *iftyāt 'al 'l hākīm* the public execution of accused persons is completely prohibited. The defamatory and insulting speech or expressions are the sole subject of the blasphemy law therefore, a dire need to maintain the particular law in the existing position become more crucial in respect of misuse of the particular right to freedom of expression in present time. On the other hand, a massive pressure has been endured by the Pakistani establishment internationally for the abolishment

of or amendment in its blasphemy law which, then again, couldn't seem to be brought about to a stage expected internationally. Since the particular law of blasphemy with its mandatory punishment has been justified legally, religiously and constitutionally. The aforementioned issues and some others of the like sort, (is the blasphemy law discriminative? Does the law meet the international standard) all have been discussed in this chapter comprehensively.

1.2 Human Rights Commission's Objections and Position on Blasphemy Law:

Even though the people of Pakistan had faced the grievous upshots during separation and paid a substantial amount in the form of sacrifices of their owns to run the country through a democratic process in order to achieve the constitutional authority which had been compiled in the light of holy Qurān and the holy *Sunnah* of holy Prophet Muhammad ﷺ, however, an autocratic demand by some democratic countries is often made which purposely force the ruling class of the country to go against the Constitutional supremacy and ruin out the ideological values on which the country bases. Most contentious aspect, in this respect, is the blasphemy law of the country and the sections 295C, 298B and 298C of the law particularly. The criticism recorded by the different national and international organizations, councils and NGOS working in and outside the country mostly based on the allegations which are as follows;

- A particular emphasis has been made concerning the members of Ahmadi community and the blasphemy law of Pakistan in the aforementioned letter therefore, declared as an anti-minorities or discriminative law that targets the particular sects specifically. The atrocities which occur as a result of religious, ethnic as well as social discrimination among different sects or militant groups of people are also considered as a fault of the particular law and further named as legally permissible

discrimination. i.e., “They face increasing social discrimination from militant groups, which have used provisions of the law to force the demolition of Ahmadi mosques...legally permissible discrimination against religious minorities and the failure of Pakistan’s federal and provincial governments to address religious persecution by Islamist groups effectively enables atrocities against these groups and others who are vulnerable.”²⁷⁷ The Human Rights Commission of Pakistan (HRCP) has also adopted a harsh position regarding the blasphemy law of the State and even the Constitution of Pakistan couldn’t be excluded from criticism. The Commission held that, “the discriminatory provisions of law, including some in the constitution, remained unchanged. The government did not at all discuss the issue of blasphemy law reform in 2012.”²⁷⁸

- Instead of appealing for the better law and order situation in the country and signifying the useful tools to culminate the religious or racial hatred from society and to promote tolerance among people of Pakistan an illogical and unsound recommendation, in order to protect the minorities, being held by the UN High Commissioner through this letter that is herein below; “In order to protect religious minorities, the Pakistani government should “repeal laws” that discriminate against minorities “including section 295(C)” of the penal code (the Blasphemy Law) and “section 298”, which targets the Ahmadi community specifically.”²⁷⁹

al-Jazeera, a credible source of print and electronic media reported that the United States Commission on International Religious Freedom in its annual report 2014 stated, “Pakistan’s laws and practice are particularly egregious [with regards to blasphemy], with its constantly-abused law penalizing blasphemous acts with the death penalty or life in prison. In addition to state enforcement, mobs feel enabled,

²⁷⁷ Ibid.

²⁷⁸ Pakistan, State of Human Rights in 2012, (Human Rights Commission), III, p. 100.

²⁷⁹ Ibid.

under the cover of this law, to mete out vigilante justice against individuals deemed to have committed blasphemy.”²⁸⁰

- UNHRC²⁸¹ made an objection that “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the [International Covenant on Civil and Political Rights (ICCPR)].”²⁸² A famous English magazine ‘Pakistan Today’ reported that the Knox Thames the director for commission of policy and research said, “This trend of greater usage of blasphemy laws will surely lead to increased violations of the freedoms of religion and expression.”²⁸³ The Human Rights Watch (HRW) forum of New York said Pakistan’s government should immediately introduce legislation to “repeal” the country’s “blasphemy law” and other discriminatory legislation. The government should also take legal action against Islamist militant groups responsible for threats and violence against minorities and other vulnerable groups.”²⁸⁴ The more mournful thing is that the State’s law has viciously defamed by a senior South Asia researcher at Human Rights Watch Mr. Ali Dayan Hasan by saying that, “The injustice and fear the blasphemy law spawns will only cease when this “heinous law” is repealed.”²⁸⁵
- The blasphemy law of the country is declared the only and single cause of these violations, for example; on November 9, 2012 a letter regarding the “protection of minorities from abuse of blasphemy law of Pakistan” was sent by the United Nations’ to ex-Prime Minister of Pakistan Raja Parvaiz Ashraf. It was mentioned in the letter that, “We continue to be concerned about Pakistan’s “abusive Blasphemy Law”—as

²⁸⁰ <http://www.aljazeera.com/indepth/features/2014/05/living-fear-under-pakistan-blasphemy-law> (accessed 19 March 2015).

²⁸¹ The abbreviation stands for the ‘United Nation’s Human Rights Committee’.

²⁸² <http://www.aljazeera.com/indepth/features/2014/05/living-fear-under-pakistan-blasphemy-law> (accessed 19 March 2015).

²⁸³ <http://www.pakistantoday.com.pk/2014/03/14/national/blasphemy-law-use-on-rise-led-by-pakistan-us-group> (accessed 19 March 2015).

²⁸⁴ <http://www.hrw.org/news/2010/11/22/pakistan-repeal-blasphemy-law> (accessed 20 March 2015).

²⁸⁵ <http://www.hrw.org/news/2010/11/22/pakistan-repeal-blasphemy-law> (accessed 20 March 2015).

section 295-C of the penal code is known—which makes the death penalty mandatory for blasphemy.”²⁸⁶ “In March 2011, UN High Commissioner for Human Rights Navi Pillay urged the Pakistani government to review its Blasphemy Law, saying that such laws are “open to abuse and lead to violations of freedom of expression, freedom of religion and ultimately the right to life.”²⁸⁷

- It is also objected by the HRCP officials that the blasphemy law has become a useful tool to settle personal matters and disputes. People accuse others of blasphemy on fake and unsound grounds. The cases lodged under blasphemy have no genuineness in reality.²⁸⁸

The aforementioned were the objections which can be highlighted briefly as;

- The particular law is legislated to target the non-Muslim minorities in Pakistan so, it is a discriminative law.
- The blasphemy law of Pakistan must be revoked or atleast should be amended.
- The blasphemy law in Pakistan doesn't meet the International standards?
- In Pakistan the right to freedom of expression is severely violated by State's blasphemy law.
- The blasphemy law of Pakistan has become a useful tool to settle personal score.

Now, an impartial and beneficial analysis shall be made here to answer all the abovementioned objections one by one and that is as follows;

²⁸⁶ <http://www.hrw.org/news/2012/11/09/letter-pakistan-its-candidacy-un-human-rights-council> (accessed 20 March 2015).

²⁸⁷ Ibid.

²⁸⁸ <http://www.hrw.org/world-report/2014/country-chapters/pakistan?page=1> (accessed 20 March 2015).

1.3 Religious Minorities and Blasphemy Law in Pakistan:

One of the main reasons has noted for abolishment of the Blasphemy law in Pakistan is the discrimination against non-Muslim minorities of the State. Though, the particular law had never been enacted with the intention of religious discrimination however, a small number of non-Muslims welcomed this law but most of them strictly condemn it. A lot of concerns and reservations have been expressed by the various national and international organizations in and outside the Pakistan.

Briefly, the blasphemy law of Pakistan is repeatedly targeted by the Western world, the condition of criticism can be differed from case to case or can be designed in view of specific concerns they want to be achieved.e.g, sometimes, it is criticised because of discriminatory attitude towards religious minorities, in others the position may be held on the behalf of right to life and death penalty, occasionally, the issue concerning violation of freedom of speech and expression becomes a sound reason for such criticism on blasphemy law of Pakistan. The bad governance or bad situation of law and order in the country can be the cause of criticism even the State's religion (Islam) couldn't be left aside from such censure. In short, all these efforts have been made and, as it can be perceptible, shall be made only for repealing or terminating the Blasphemy law of Pakistan. Does the particular law only attack the non-Muslim minorities in Pakistan? Or is law discriminative? For answering the said questions the particular law should be evaluated from its actual text and that is herein below.

1.3.1 Blasphemy Law and Expressions an Analysis:

The variety of expressions is, no doubt, remained a key issue for determination of the defamatory expressions especially during the legislation of blasphemy law sections in PPC, for that reason, some non-Muslim minorities of the State particularly and some western

scholars too have showed their reservations about the definition of the blasphemy law in Pakistan and the terms which have been used in these sections by declaring them ambiguous and open-ended. However, the conflict has been removed by choosing some brief but comprehensive terms and phrases that obtains sufficiency to enclose such defamatory expressions, e.g.

In the section: 295 the term "insulting" the religion of any class of person' have been used which may supposed ambiguous in its first appearance as the term insulting doesn't particularly specified for some kind of defamatory expressions but in the very next sentence of the same section 295 the ambiguity has been removed with these phrases that, "any class of persons is likely to consider" such destruction, damage or defilement "as an insult to their religion", which, on the one hand gives equal representation to all religious sects of the State while on the other hand, also indicates that the determining value is dependent on the consideration of the offended one. More simply the decision that, whether or not the expressions that have been used by the offender are insulting is up to the consideration of insulted one. Moreover, the terms "destruction, damage or defilement" are also sufficient for the recognition of such an insulting expressions.

likewise, the terms "malicious intention of outraging" used in section 295-A, defiles, damage or desecrates in section 295-B, "defiles" in section 295-C, "causes disturbance" in section 296, "wounding, insulting, trespassing, indignity, causes disturbance" in section 297, "wounding" in 298, "defiles" in 298-A, and "outrages" in 298-C all are the terms which leaves no difficulty and ambiguity for an individual having common sense²⁸⁹ rather of highly qualified legal representative, attorneys, judges and scholars to draw distinctive line between courteous and discourteous expressions. Of course, these legal terms widen the functional grounds for the

²⁸⁹ Under Islamic law it is sufficient to prove that the accused said things which, according to common-sense, could have damaged the reputation and honour of the plaintiff. Abu Ala Maududi, Human Rights in Islam, p. 22.

authorities and provide them a positive opportunity to enclose from an enormous range of expressions only those which are appropriate to the offence. Furthermore, these terms also leave no room for any kind of defamatory expression that should be prohibited, outlawed and chargeable in a civilized society.

1.3.2 Is the Law Discriminative?

It is usually alleged that the blasphemy law of Pakistan is a best example of discrimination in respect of non-Muslim minorities within the State. While the real position of the particular law is totally different from that of the presented by different sects of the State. For example, the first line of the first section: 295, of the blasphemy law of Pakistan starts with wording **“whosoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons”**, which clearly indicates that there is no discriminative behaviour has been held as the term **‘whosoever’** can be assigned to every offender who is citizen of the State and no difference shall be made among Muslims, Jews, Christians, Hindus, Sikhs or any other sect of people. Likewise, the terms **‘any place of worship’** and **‘any object’** are also comprises all types of worship places and objects held sacred by **‘any class of persons’** and not specifically safeguard to Muslim’s worship places and objects that are held sacred by Muslims only.

The same attitude established in the section 295-A in which the terms **‘Whosoever’** and **‘any class of the citizens of Pakistan’** have clearly negated the objection of discrimination adopted by the opposition of the law. Similarly, rest of the sections of blasphemy law in Pakistan comprises of the same common terms for both parties, the offender and the offended one, e.g. 295-B, **‘Whosoever’**, 295-C, **‘Whoever’** 296, **‘Whoever’**, **‘any assembly lawfully engaged’**, 297, **‘Whoever’**, **any place of worship’**, **‘religion of any person, any place of sculpture, or any human corpse’** and section 298, **‘Whoever’**.

Accordingly, all these sections of the law shall be applicable to every citizen of the Pakistan and no distinction or in other words, no discriminative attitude shall be practiced among people of the State regarding their religious affiliations.

However, the namely representation of Islamic Scripture the 'holy Qurān' in section 295-B, the Holy Prophet of Islam 'Muhammad' ﷺ in section 295-C, and the religious feelings of 'Muslims' in the section 298-C are considered discriminatory by the opposing group and said that these sections are held as a part of the blasphemy law of Pakistan only to protect the Islam, the Prophet of Muslims and the dignity and feelings of Muslim community, while other religious minorities have been overlooked.

The objection becomes invalid because Pakistan is an Islamic State and the fundamental principle of an Islamic state is to establish justice in the whole society²⁹⁰ therefore it is the foremost duty of the Pakistani Muslim majority to ensure equal protection to all religious faiths, beliefs and religious figures other than Islam. In addition, all other sections (already discussed above) in which all religious minorities or more simply, all citizens of Pakistan are included, are equally treated as a part of this blasphemy law in Pakistan. Moreover, the namely representation of Islamic sacred figures is to denote Pakistan as an Islamic republic, to declare its religion as Islam and to Muslims as a majority group of the whole population of the country, it, in any sense, doesn't mean that all other religious scriptures, Prophets (p.b.o.t) and religious minorities have no dignity or they shall be insulted or defamed in any manner or shall not be protected by the State's law. However, it should not be arduous or burdensome if the namely representation to all other religious minorities, their religions, religious scriptures, Holy Prophets and their sacred places be given and be added as a part of this law.

²⁹⁰ In other words, the justice to whom Islam invites its followers is not limited to the citizens of one's own country, or the people of one's own tribe, nation or race, or the Muslim community as a whole; it is meant for all human beings. Abu Ala Maududi, Human Rights in Islam, p. 19.

There is another issue often highlights by Human Rights activists that Ahmadi community is being put to the wall in Pakistan and they are scared from exercising their right to freedom of religion and freedom of expression. Whereas, in a report, issued by the Bureau of Democracy, Human Rights and Labor, February 26, 1999, it is accepted by the human rights officials themselves that according to Pakistan's constitution the Ahmadis are no more considered as Muslims but they are still call themselves Muslims and exercise Islamic practices. "A 1974 Constitutional amendment declared Ahmadis to be non-Muslim minority because, according to the Government, they do not accept Muhammad ~~ﷺ~~ as the last prophet of Islam. However, Ahmadis regard themselves as Muslims and observe Islamic practices".²⁹¹ In fact, according to report above the Ahmadi community not just misuses their right to freedom of expression but infringes the State's Constitution as well.

Moreover, as for the terms adopted in the sections 298-B. 1, refers, addresses, names, calls, and in section 298-B. 2, refers to the mode or form of call to prayers followed by his faith as Azan, or recites Azan, and in section 298-C, directly or indirectly, poses, calls, or refers, preaches or propagates, by words, spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims, are more obvious terms in their representation if compared to all above sections of blasphemy law in Pakistan and this significant difference among these terms is only due to their particular objectives for which these sections are held as a part of the State's law. Though, both of the sections (298-B-C) or the terms, used in these sections, are strictly criticised by the non-Muslim community in Pakistan and also by the human rights commission of Pakistan and it is said that these sections curtail the religious freedom and play a discriminatory role within the society, thus, are contrary to the right of freedom of religion.

²⁹¹ Pakistan Country Report on Human Rights Practices for 1998, II, (Bureau of Democracy, Human Rights, and Labor, February 26 1999).

But still, the claim seems unfitting to the situation, because these sections, if studied carefully, were held as safeguard for the State's religion²⁹² and not to bound other religions followed by the people within the State. The prohibition (for the Qadiani or Ahmadis), especially by the terms of propagation, preaching and inviting others, in these sections is the prohibition from calling themselves as Muslims or referring their faith or religion as Islam or inviting other people of the State to their faith on the name of Islam and the reason is the contradictory status of their faith from that of the Islam or Muslims. it is same as; if a person or group of persons do not believe in trinity, deny the prophethood of Jesus Christ (p.b.o.h) or that he (p.b.o.h) was not the son of God²⁹³ but still they claim to be Christians and propagate and invite people to this innovative²⁹⁴ faith by declaring it Christianity, then, for sure, the judgment of human rights commission will further not remained the same as is in the case of Islam. Moreover, these sections, having a tragic background, were held to secure the country from more chaotic situation and not to discriminate a group of people. Keeping the same view, Dr. Muhsin Naqvi stated that, "the matter of Qadianis living in Pakistan is differing as compared to other non-Muslim minorities of the State. The Qadianis are the people who denied the finality of the holy Prophet Muhammad ﷺ and his Prophethood and thus damaged the authenticity of Qurān and challenged the writ of Lordship (of Almighty Allāh) by this denial."²⁹⁵ Thus, all they are doing are, for sure, the rebellious acts against Islamic legal system, against State's Constitution and law and also abusing the right to freedom of expression therefore, prohibiting them from such acts is the foremost duty of the State.

²⁹² See Pakistan, the Constitution of the Islamic Republic (1973), Art. 1.

²⁹³ The example here is given in the perspective of Christianity and its contemporary beliefs.

²⁹⁴ Here I mentioned "innovative" according to the contemporary Christian belief and it is never intended at all to protect or to support the Christian contemporary belief as it is against the Islamic provisions and belief ideology has been held regarding Christianity. It was in the comparative sense with Ahmadis as they have innovated new belief which is not similar to Islamic faith even not in a single article.

²⁹⁵ Dr. Muhsin Naqvi, *Dehshat Gardī, Asbāb, Natāeyj aur Hūl* (Lahore: 2005), p. 183.

1.4 Amendments to the Law of Blasphemy in Pakistan:

The question of amendments to blasphemy laws, as well as, in the Section 295-C of the particular law is a controversial issue among Muslim community and opposition group²⁹⁶. The issue has given intense value internationally. Mostly, the reasons that have been presented by the opposition group for amendments are;

- The law of blasphemy was enacted specifically to target non-Muslims minorities.
- The discriminative attitude of judiciary towards non-Muslim minorities during trials.
- Incompatibility with human rights and inconsistency with the international measures.
- The violative activities of militants and the death penalty as well.

Confronting such objections therefore, many letters calling for amendments in blasphemy law were being sent by different people and organizations to the Ministry of Law, Justice and Parliamentary Affairs, in 2010. Ministry of Interior was also sent a separate letter on December 8, 2010 while, the Ministry of Minorities and the Ministry of Foreign Affairs on November 23, 2010 had also been referred their references calling for amendment in blasphemy law of the State.

The member of PPP Mst. Shehribano Rehman (Sherry Rehman) MNA and Pakistan's ambassador to the United States, was also presented an amendment bill with the title; "the Criminal Law (Review of Punishment for Blasphemy) (Amendment)". While, on January 2013, campaigning the amendments' issue, Mst. Sherry Rehman was alleged for committing blasphemy and the story was also published by the BBC Urdu and Dawn News.²⁹⁷ However, the issue, "amendment to blasphemy law", isn't as easier as it seems in its obvious representation. The reasons that invalidate the bill's admissibility are briefly presented herein below:

²⁹⁶ It is meant by the 'opposition group' here all those governmental or nongovernmental figures working for the abolishment of blasphemy laws or its section: 295-C particularly at national or international level.

²⁹⁷ <http://www.dawn.com/news/750512/timeline-accused-under-the-blasphemy-law> (accessed 19 March 2015).

1.4.1 The Religious Reasoning:

It is wellknown that the Blasphemy law of Pakistan in general and its section. 295-C in particular has been legislated in the light of Holy Qurān and Prophetic *Sunnah* and with the intention of delivering true spirit of Islam that is based on justice. Therefore, there are several Quranic verses and hadiths of the Holy Prophet ﷺ that prevent a Muslim from doing any change to the blasphemy law of the State. Here I present some of those verses²⁹⁸ which are so clear in their exposition and so relevant to the subject that needs no more additional explanationas. These are as follows:

- **Quranic Verses:**

Say (O Muhammad ﷺ): "... I only follow that which is revealed to me ...," (al-Qurān: 46: 09).

*We sent no Messenger, but to be obeyed by Allāh's Leave.*²⁹⁹

"Obey Allāh and the Messenger (Muhammad ﷺ)." But if they turn away, then Allāh does not like the disbelievers". (al-Qurān: 3: 32).

It is not for a believer, man or woman, when Allāh and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allāh and His Messenger, he has indeed strayed in a plain error." (al-Qurān: 33: 36).

The only saying of the faithful believers, when they are called to Allāh (His Words, the Qur'ān) and His Messenger, to judge between them, is that they say: "We hear and we obey..." (al-Qurān: 24: 51). And also (al-Qurān: 6:114).

- **Hadiths:**

The Islamic literature is full of such instances or Prophatic hadiths³⁰⁰ that proves the legitimacy of blasphemy law and its mandatory punishment has held in the PPC now a

²⁹⁸ al-Qurān: 18: 26. Also al-Qurān: 4: 59.

²⁹⁹ al-Qurān: 4:64. Also al-Qurān: 24: 52. al-Qurān: 8: 24.

³⁰⁰ Due to lengthiness of the instance the full version of hadiths is not described here however, each hadith has its complete reference that can be accessed easily for detail.

days.e.g., the instance of a Jew was belonged to Banū Qurayzah tribe and was called as Ka'b bin 'Ashraf had made blasphemy by insulting the Holy Prophet ﷺ and had been killed by Muhammad bin Muslimah following the order was delivered by the Holy Prophet ﷺ himself.³⁰¹

Likewise, the case of 'Abū Rāfi', a Jew, is another example of such occurrences. He had committed blasphemy offence by defaming the Holy Prophet ﷺ and was killed by an Anṣārī Companion 'Abdullāh bin 'Atīk by obeying the order of the Holy Prophet ﷺ.³⁰²

Umm 'l-Walad, a woman was killed by his husband for committing blasphemy.³⁰³

The killing of nine people had been considered lawful by the Holy Prophet ﷺ, at the day of Conquest of Makkah, when the forgiveness was announced generally for all people. They were; 'Ikrimah bin 'Abi Jahl, Muqīs bin Ṣabābah³⁰⁴, 'Abdullāh bin 'Abi Sarrah, Ḥārith bin Nufayl bin Wahāb, Ḥabbār bin al-'Aswad³⁰⁵, Sarah³⁰⁶, 'Abdul 'Uzā bin Khaṭal, and two of his maidservants³⁰⁷. However, only four out of nine³⁰⁸ were sentenced with death penalty submitting the judgement of the Holy Prophet ﷺ under charge of blasphemy (insulting the Holy Prophet ﷺ) and they are; Muqīs bin Ṣabābah, Ḥārith bin Nufayl bin Wahāb, 'Abdul 'Uzā bin Khaṭal and one of his maidservant.³⁰⁹

³⁰¹ Ṣaḥīḥ al-Bukhārī, V, book: al-Maghāzī, H/N. 4037, p. 90-91. Also Ṣafi-ur-Raḥmān Mubārakpūrī, al-Raḥīq al-Makhtūm, I, p. 175.

³⁰² Ṣaḥīḥ al-Bukhārī, V, book: al-Maghāzī, H/N. 4038-4039.

³⁰³ Sunan 'Abi Dā'wūd, IV, book: al-Hudūd, Chap. al-ḥukm fi mann sabba 'l-Nabī ﷺ, H/N. 4361, p. 129.

³⁰⁴ Muqīs bin Ṣabābah was embraced Islam then turned back to disbelief and was being killed latter by Namila bin 'Abdullāh.

³⁰⁵ When the order of killing was issued at the day of Conquest he had fled but latter he embraced Islam.

³⁰⁶ A maidservant was belonged to one of the 'Abi Ṭālib tribe. She had also been embraced Islam and therefore waived later.

³⁰⁷ Both were sentenced with death but one of them was forgiven due to embracing Islam.

³⁰⁸ The other six were being left for embracing Islam though; some of them committed apostasy after oath on Islam, i.e. 'Abdullāh bin 'Abi Sarrah.

³⁰⁹ Mubarakpuri, al-Raḥīq al-Makhtūm, I, p. 345.

• Consensus of Muslim 'Ummah:

All the Muslim 'Ulamā of four (Hanafis, Malikis, Shafis and Hanbalis) leading and major Muslim schools of thought are unanimously held that a blasphemer will be sentenced with death punishment.³¹⁰ Accordingly, no amendments can be made in the particular law itself or to its mandatory punishment or otherwise, it will be supposed as the violation of Islamic injunctions and law of Sharī'ah. Regarding the matter, certain indications have been made by some of the contemporary Muslim scholars;

"Legislation in an Islamic state is to be carried out within the limits prescribed by the law of the Sharī'ah. The injunctions of God ﷻ and His Prophet ﷺ are to be accepted and obeyed and no legislative body may alter or modify them or make any law to them".³¹¹

"However, Islam is the divine law and heavenly revealed law, which words cannot be changed, which rules are not based on any violence and without its obedience the one's faith cannot be complete".³¹² "The 'Ulamā have unanimously treated blasphemy as a separate offence which invokes a heavier punishment than the common offence of insult".³¹³

Therefore, in September 2013 the Council of Islamic Ideology, a constitutional body of Pakistan that advises parliament on the Islamic aspects of laws, has recommended against any amendment to the blasphemy laws.³¹⁴

1.4.2 The Constitutional Reasoning:

Being an Islamic State, the country's constitution does not allow such amendments because according to the Article: 1 (1), of State's Constitution,³¹⁵ Pakistan had been declared as an Islamic state and whole sovereignty belongs to Almighty Allāh alone therefore, authority

³¹⁰ Qādī 'Ayād, al-Shifa bi Ta'rīf Huqūq al-Muṣṭafā, II, p. 214. And 'Ibn Taymīyah, al-Şārim al-Mas'lūl 'alā Shālim 'l-Rasūl, p. 258.

³¹¹ Abu Ala Maududi, Human Rights in Islam, p. 11.

³¹² al-Qardawi, The rights and obligations of non-Muslims in an Islamic society (Islamabad: 2011), p. 23.

³¹³ Kamali, Freedom of Expression in Islām, p. 172.

³¹⁴ <http://www.aljazeera.com/indepth/features/2014/05/living-fear-under-pakistan-blasphemy-law.html> (accessed 19 March 2015).

given to the selected representatives of the people of Pakistan shall be enjoyed within the limits commanded by Almighty Allāh ﷻ and it is known as a sacred trust which can never be breached by amending the blasphemy law of the State.

According to Article: 2,³¹⁶ of the Constitution Islam has been declared as the state's religion therefore, the State is responsible for providing free opportunity to Muslim community to spend their lives in accordance with Islamic ideology. Furthermore, according to Article: 31(1),³¹⁷ the State's Constitution is in control to make Islamic teachings essential and basic Islamic concepts should be exercised and propagated as constitutional command.

Articles: 227-228³¹⁸ oblige the government of Pakistan to bring the existing laws into conformity with the Qurān and Prophetic *Sunnah* and introduce an appropriate legal mechanism through which these laws would be enforced.

According to Article: 203D,³¹⁹ of the State's Constitution, though, every Pakistani has his/her constitutional right to submit a request for amendment in law but, only an honourable court has the right to "examine" and "decide" that, whether or not, the alleged law or its provisions are to be amended. Sometime, it is held by some opposition figures that the issue can be solved in the Parliament but due to external pressure of militant groups the parliamentarians do not take step forward. Though, the Parliament of Pakistan has the power to enact or abolish any law of the State but the law under question is already enacted by the Parliament itself. Therefore, abolishment of or amendment to existing blasphemy law and introducing a

³¹⁵ Pakistan, The Constitution of the Islamic Republic (Modified upto the 28th February 2012), I, I, Article: 1 (1), p. 02.

³¹⁶ Ibid. Art: 2, p. 03.

³¹⁷ Ibid. II, I, p. 17, Article: 31 (1). "Islamic way of life: Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principle and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Qurān and Sunnah."

³¹⁸ Ibid. Art. 227-228.

³¹⁹ It is stated in the Constitution of Pakistan, Part: VII; The Judicature, Chap. 3A, Section: Powers, jurisdiction and functions of the Court, p. 111, under article: 203D, "Powers, jurisdiction and functions of the court—(1) The Court may, [either its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunction of Islam, as laid down in the Holy Qurān and the Sunnah of the Holy Prophet (SAW)..."

new law means that the past decision was being made wrongfully by the Parliament and if it is accepted, then, how a body or committee can enforce a new better law which already has made wrong decision? In addition, the particular law had been properly examined and strictly scrutinized by well-established legislative judicial process under the constitutional court. Therefore, constitutionally the blasphemy laws or its section 295-C of PPC cannot be repealed or even amended.

1.4.3 The Legal Reasoning:

The amendment to particular law is often required for its mandatory punishment but it is explicit that the aforesaid penalty is well founded in both the Qurān and Prophetic *Sunnah* and keeping the Islamic jurisprudence in view the legislature of the particular law was quite aware of the situation therefore, the matter of intention was not overlooked and had been used the words "deliberate and malicious intention" subsequently, no other charge or punishment that would be repugnant to Islamic teachings can be framed by any court except the penalty specified in the law itself and that is death.

Moreover, the Federal Shari'at Court of Pakistan has observed the existing blasphemy law carefully and decided that the particular law is an appropriate and consistent with the commands prescribed in the Quranic provisions and directives of the *Sunnah* therefore, any other punishment, as a charge of blasphemy offence, shall be considered repugnant to Islam.³²⁰ Some of paras of the particular decision that was taken by Federal Shari'at Court upon the validity of section 295C, which was become a part of PPC 1860 through Act No III of 1986, are presented here;

Section: 295C. Use of derogatory remarks, etc., in respect of the Holy Prophet ﷺ

Whoever...defiles the sacred name of the Holy Prophet Muhammad ﷺ shall be 'punished with death' or 'imprisonment for life', and shall also be liable to fine.

³²⁰ Federal Shari'at Court judgment, PLD 1991 FSC P 10.

The Federal Sharī'at Court aptly defined the meaning of *Sub*, *Shatum* and gave an explanation about the issue that is as follows:

33. The words (*Sub*, *Shatum*) and (*Aazi*) have been used for the contempt of the Prophet ﷺ in the Holy Qurān and *Sunnah*. (*Sub*) means to suffer, to harm, to molest, to condemn, to insult, to annoy, to irritate, to injure, to put to trouble, to malign, to degrade, and to scoff. The word (*Shatum*) means to insult, to abuse, to revile, to scold, to curse, to defame."³²¹ 66. Practically, all the Jurisconsults and Scholars agreed that in view of the above verses and the equal status of all the Prophets as such, the same penalty of death as determined above shall apply, in case anyone utters contemptuous remarks or offers insult, in any way, to anyone of them. 67. in view of the above discussion we are of the view that the alternate punishment of life imprisonment as provided in section 295C, Pakistan Penal Code 1860 is repugnant to the injunctions of Islam as given in Holy Qurān and *Sunnah* and therefore, the said words be deleted therefrom."³²²

There are many sound legal reasoning which not only annuls the baseless objections calling for amendment in blasphemy law but also introduces a fair and assured course of law in Pakistan. For example; the Chapter XXIIA of Criminal Procedural Code (CrPC) 1898 requires that all the offences awarding death sentence shall be triable by Court of Session first and the accused if convicted with death sentence by a session court however, wouldn't be executed because the section 374 of CrPC 1898 gives authority to High Court for reviewing the decision taken by Session Court.

The section: 374, states that, "When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed

³²¹ Arabic English Lexicon, E.W. Lane, book: 1, Part-1 page 44, Federal Sharī'at Court judgment: PLD 1991 FSC, 10, p. 26.

³²² PLD 1991 FSC, p. 10, 35.

unless it is confirmed by the High Court".³²³ According to Section: 376 of CrPC 1898, the High Court has the right to confirm the punishment prescribed by the session court or award an additional sentence justified by law, or may totally withdraw the verdict and order a new trial on the similar or an modified charge, or may pass an acquitting order for the accused person.³²⁴

Moreover, the provisions of *Qanun-e-Shahadat* Order 1984 and Part-II of the Constitution of 1973 vid Constitution (Eighteenth Amendment) Act: 2010 are provides a fundamental right of fair trial to every accused person in Pakistan. An accused person in Pakistan also has the right to defend himself with the help of a legal expert and according to article: 10(1) of the Constitution nobody is deprived of the right to consult to, or defended by, any legal expert.³²⁵ Likewise, right to fair trial is also prescribed as one's civil right in the Constitution of Pakistan under Article: 10A.³²⁶ The section 410 of CrPC gives right to an accused to appeal the High Court against the conviction passed by any other court. Likewise, if the accused one is acquitted by the court but the aggrieved party is not satisfied with the decision then the section: 417(2A) offers to aggrieved person to file a petition against that order.³²⁷ Not only this, but there are other doors to be knocked for justice and fair trial, for instance, the apex court of Pakistan is a useful instrument for both the convict and an aggrieved one. Because, the Article: 185(2) paragraph (a)³²⁸ of Constitution 1973 gives power to the Supreme Court of

³²³ Criminal Procedure Code 1898, section. 374.

³²⁴ Criminal Procedure Code 1898, section. 376.

³²⁵ Pakistan, The Constitution of the Islamic Republic (2012), II, 1, Article. 10(1), p. 7,

³²⁶ Pakistan, The Constitution of the Islamic Republic (2012), II, 1, p. 9, Article.10A: Right to fair trial "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.]

³²⁷ CrPC (1898), Sec: 410 - 417(2A).

³²⁸ Pakistan, The Constitution of the Islamic Republic (2012), VII, 1; p. 99, Article. 185(2): "An appeal shall lie to the Supreme Court from any judgment, decree, final order or sentence of a High Court.

(a) If the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to transportation for life or imprisonment for life; or, on revision, has enhanced a sentence to a sentence as aforesaid; or

(b) If High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him as aforesaid; or,

(c) If the High Court has imposed any punishment on any person for contempt of the High Court."

Pakistan of hearing and determining the appeals from rulings and sentences passed by a High Court. The Supreme Court of Pakistan, according to Article: 186A, in the interest of justice and fair trial has the power to transfer any case, appeal or other proceedings to any other court being pending in the High Court.³²⁹

However, there is another option, yet, available after the final judgment if passed by the Supreme Court and that is the Article: 45 of the Constitution of Pakistan³³⁰ which gives power to the President of Pakistan to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

1.5 Do the Procedural Laws in Pakistan Meet the International Standards?

The previous discussion was sufficient to find answer of such question but the particular question is not just a question as it seems in its obvious look but it is a serious allegation usually raised and propagated internationally against Pakistan and its blasphemy laws specifically. Thus, to answer such a grave question it is, therefore, preferred that the former Federal Minister for Law, Justice and Parliamentary Affairs of Pakistan, should be quoted here: He stated that, "I may advert to another aspect of the matter that some propaganda driven minds and agenda driven individuals give a wrong impression that procedural laws in Pakistan do not meet the international standards of human rights or these laws are not recognizable globally. This impression is totally baseless and ill-founded."³³¹ He further proved his claim by arranging a comparative analysis between the provision 366³³² of Indian

³²⁹ Ibid, Power of Supreme Court to transfer cases, Art. 186A, p. 100.

³³⁰ Pakistan, The Constitution of the Islamic Republic (1973), rev. ed., 3rd (1996). Art. 45.

³³¹ Zaheer-ud-Din Babar Awan, Blasphemy Laws in Pakistan: A detailed examination (Pakistan: 2011).

³³² India, Code of Criminal Procedure (1973), Act 2 of 1974, xxviii, proviso: 366. Sentence of death to be submitted by Court of Session—(1): "When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court."

Code of Criminal Procedure (ICrCP) 1973 (Act 2 of 1974) and the provision 374³³³ of the Criminal Procedure Code of Pakistan 1898. Both the provisions discuss the death sentence and transformation of the rulings to High Court were being passed by the Court of Sessions.

He concluded that, "It is evident from the comparative reading of the Pakistan Code of Criminal Procedure 1898 and Indian Code of Criminal Procedure 1974 that even the wording of the law is the same. So in view of this proven analysis, so far as the law in Pakistan is concerned, it meets the international requirements and standards of prosecution, and trials, etc. I may note it sadly that the present Code of Criminal Procedure in Pakistan is an enactment not done after the independence in 1947 rather the law enacted during the British rule is adopted."³³⁴

Moreover, the particular section: 295-C is mostly criticised by the Western World and concerns are being expressed by them regarding its mandatory punishment that, it doesn't meet the Western legal standards and therefore, it should be stopped. Well, no doubt, the death penalty is in the controversial position among western world and so they claim from us to stop such punishments however, for instance, did anyone, of the entire Muslim World, ever claimed or even asked from westerns that their decision of abolishment of the capital punishment should be annulled or even reviewed because, it is not only against the Quranic commandments and the Prophetic *Sunnah* but, in other words, is also a violation of Islamic law exercised by a second majority group of Muslims in the world.

Now, ending the discussion, it is apt to drive out the objection of targeting religious minorities that the law of blasphemy was enacted specifically to target non-Muslims minorities. However, at Pakistan's Universal Periodic Review hearing in 2012, the Adviser

³³³ Pakistan, Criminal Procedure Code of (1898), proviso: 374. Sentence of death to be submitted by Court of Session—(1): "When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court."

³³⁴ Babar Awan, Blasphemy Laws in Pakistan: A detailed examination, 2011.

on National Harmony had stated that “there was a misunderstanding that the blasphemy law provision (Section 295-C of the PPC) was used to target only minorities. He stated that the majority of cases registered under the section had been against Muslims”.³³⁵ The former Minister of Law, Justice and Parliamentary Affairs also dispelled the objection by saying that it is a “false propaganda and baseless proposition that blasphemy law is enacted only in Pakistan and thus it allegedly targets a particular class of people”.³³⁶

Therefore, according to the above discussion, the claim for amendments in blasphemy laws or in section: 295-C of PPC, in particular, is considered as impracticable, unsound and conspiracious, and thus, supposed to be rejected by the Ministry of law, justice and Parliamentary Affairs in 2010.³³⁷

1.5.1 Facts Inquiry of Blasphemy Laws:

The perception, that blasphemy was a part of history which has passed away or it is like an ancient ruin was spoiled down, is nothing but an unrealistic assumption which cannot be held but only by putting the facts aside. According to facts and figures the blasphemy laws are prevailed in dozens of countries across the world even today.

The Pew Research analysis of 2012 shows that, 22% of the world's countries have anti-blasphemy laws or policies and such offences often awarded with the legal punishments that varies from fines to capital punishment.

The anti-blasphemy laws are mostly exercised in the Middle East and North Africa, which can be expressed in figures as 14 out of 20 countries declare it a criminal offence that volume

³³⁵ State of Human Rights in 2012, Human Rights Commission of Pakistan, III, Blasphemy Law, p. 114- 115.

³³⁶ Babar Awan, Blasphemy Laws in Pakistan: A detailed examination, 2011.

³³⁷ The former Minister of law, justice and Parliamentary Affairs, Dr. Zaheer-ud-Din Babar Awan stated that, “in view of the aforesaid resume the Criminal Law (Review of Punishment for Blasphemy) (Amendment) Bill, 2010 moved by Mst. Shehrbano Rahman (Sherry Rahman), MNA is liable to be rejected”.

to 70 per cent. Blasphemy laws are more renowned and enacted universally as compared to apostasy laws. The former are found almost in all regions of the world including, Asia-Pacific, sub-Saharan Africa and even in 16 per cent of European countries and 31 per cent of Americas, while, later exists only in Asia-Pacific and sub-Saharan Africa additionally in Middle East and North Africa.³³⁸

However, according to the Pew report, blasphemy laws of Pakistan have a colonial past, as the laws, for the first time, had been enacted by the British colonial rulers in the form of penalties for defaming religious beliefs and therefore, were being remained a part of the Indian Criminal Code. These laws were later remained operational till the date but have become stricter than before. But, in this respect, Pakistan is not alone, as in 2012, there were 9 out of 50 countries had blasphemy laws in Asia-Pacific region that becomes, approximately, 18% of percentage's valuation and 7 of the 45 countries, nearly 16%, in Europe. While, in America the ratio of enactment of blasphemy laws, was observed as 11 out of 35 countries that amounts to 31% of the total. Though, in United States blasphemy laws are not enacted by federal government yet, however, according to 2012 observations, there were a number of U.S states, particularly Massachusetts and Michigan, still had anti-blasphemy laws. The State of Bahamas also prohibits the publication or sale of any type of blasphemous material. However, the first U.S Constitutional amendment would become preventive shield against such laws or for their enforcement.

Similar condition of blasphemy laws found in South America, where Peru's federal government doesn't officially prohibit blasphemy offences, however, the convicted people under blasphemy offence have been executed by the local establishment or government officials there. In October 2012, due to a hot protest by religious activists of Lima against

³³⁸ Angelina Theodorou, Which countries still outlaw apostasy and blasphemy? (Annual Report 2012), May 28, 2014. Can be accessed on www.pewforum.org

displaying a naked statue of Jesus Christ, a public art gallery was stopped from working with the order of that district's mayor. Likewise, in April 2012, some of anti-slavery activists in Mauritania have burnt some religious text which, in their opinion, were supportive to slavery and therefore, were charged and imprisoned under blasphemy.³³⁹

1.6 Manipulation of the Right and Violation of the Law makes them Controversial:

1.6.1 Misuse of the Right to Freedom of Expression:

No doubt, the right to free speech and expression is recognized by the particular State as a part of the treaty had been signed in the form of UN declaration.³⁴⁰ However, the particular right being misused in different manners one of them is the misuse of right to freedom of expression in respect of religious minorities and Blasphemy law of Pakistan. A country with massive population of 172,800,048 people having different religious associations of 95% to 96% are Muslims of the total population and other including Christian, Hindu, Sikh, Jews etc., are 5% of the aggregate.³⁴¹ The majority group, of Muslims, often goes beyond the limits of their fundamental right of speech and expression especially concerning the non-Muslim minorities within the Pakistan. The basic reason of such enormity can be ethnic, linguistic, political or religious or even, sometimes, it can be shaped by some property or business issues, in any case or sense, it introduces or known as the discriminative, derogative and oppressive expressions. However, most of the time, such behavioral or expressional impact, directly or indirectly, affects the Blasphemy law of Pakistan as well. As it is reported that, "In the wake of Taseer's killing, on 4 March 2011, (Mumtaz) Qadri received "vocal support"

³³⁹ Ibid.

³⁴⁰ The subject has been discussed in the 1st and 2nd, chapters of this research.

³⁴¹ Central Intelligence Agency (CIA) Fact Book (July 2008). www.ciaworldfactbook.us/asia/pakistan.html (accessed 07 May 2015).

from extremist groups and religio-political parties, and his supporters have now reacted “violently” to news of his conviction. Protests and “vandalism” have taken place in Lahore, Rawalpindi and Karachi and “a call” has been made for Justice Shah to be “killed.”³⁴²

The HRCP report shows that, “hate speech continued unchallenged with the Ahmadis being the most common target. “Posters and stickers” exhorting the faithful to at the very least “boycott” the Ahmadis “socially” were not an uncommon sight on the walls of main cities and in public and private intra-city buses. Destruction or desecration of places of worship and graveyards of religious minorities was hardly an anomaly.”³⁴³

CSW has received reports that in the aftermath of the church bombings, local mosques in Youhanabad were “broadcasting messages inciting violence” against the Christian community. This is not uncommon. Influential leaders, from grassroots religious clerics to MPs and federal ministers, have been known “openly to incite violence” against non-Muslim minorities or minority Muslim sects in Pakistan. These expressions of religious hatred, or hate speech are also a factor stoking violence against religious minorities.”³⁴⁴

One, to some extent, may deny such reports or their source origin the reports belongs to, but to be a realistic, one can't refuse it entirely as the official figures released by the Federal Education Ministry of Pakistan the inclusive literacy rate of the country is 46 per cent, whereas, the independent sources and educational experts place it at 26 per cent³⁴⁵ of the total population. Majority of the citizens do not have legitimate conception of the particular right how to be used or either its limits to be held valuable. Therefore, such brutal and ignorant behaviour among religious groups or bodies, which often exposed in different forms of speech and expression, could be expected within the Pakistan.

³⁴² www.csw.uk

³⁴³ Pakistan, State of Human Rights in 2012, (Human Rights Commission), III, p. 100.

³⁴⁴ www.csw.uk

³⁴⁵ www.unesco.org

The majority group (Muslims) is not the only party that could be accused of such an abuse and chaotic situation within Pakistan but the minority division of the country and some of their outsider adherents has also been shared a big part to misuse the particular right of freedom of expression. There are frequent instances of that kind; some of them are as follows:

1.6.1.1 Misuse of the Right outside the Pakistan:

The anti-Islam movie is one of those condemnable examples that naturally have no constructive aim in it to deliver but inaugurated only to put people into uproar and violence. Same role played by some Americans³⁴⁶ in September, 2012 by casting a profane film against Islam and the Holy Prophet ﷺ of Islam which, deliberately hurt the sentiments of 1.5 billion Muslims across the world. The heinous act latter covered under the mask of a fundamental respected right to freedom of expression which, actually and naturally, doesn't permit such an awful act in this way or other of like sort. Consequently, the film had become a serious cause in stoking hatred among Muslim and Christian community.³⁴⁷

During such distressed and anxious circumstances where, because of that insulting film, Islam the world's second largest religion, being defamed, the 1.57 billion Muslims believers making up over 23 per cent of the world's total population were being wounded and 49 Muslim majority countries of the world were amusingly, comically and scornfully insulted on the so-called civilized lands,³⁴⁸ the Youtube website played its acting part by sharing the particular odious video all over the world. The particular website was banned in Pakistan and "the ban was imposed with the condition that it shall stay in place till the video was taken

³⁴⁶ Nakoula Bassely Nakoula is the producer and director while Pastor Terry Jones was the promoter of that profane film.

³⁴⁷ For detail see Pakistan, State of Human Rights in 2012, (Human Rights Commission), III, p. 105.

³⁴⁸ The statistics were released by a nonpartisan American think tank based in Washington known as, Pew Research Center in 2011. www.pewresearch.org

down.”³⁴⁹ Youtube refused the government’s proposal and failed to fulfill that condition which is also a clear sign of pre-planned conspiracy. Whereas, the HRCP officials are well aware of international measures and prohibitive legislation of mass communication which do not allow such content that triggers strife among people. As happened in the Nigel Wingrove Case vs. The United Kingdom, it is held by the European Court of Human Rights (ECHR) that the scenes in which the “venerated objects” have been depicted in challenged film are “extremely offensive” and violent to the “Christian Community”. Therefore, the “ban on its exposition, auction and trade” is considered “justifiable”.³⁵⁰ Since, the ban was associated with an Islamic issue therefore, labeled by HRCP as “a gross violation of the right of freedom of expression and access to information for the citizens of Pakistan.”³⁵¹

After the production of this blasphemous movie a constitutional right of freedom of expression was claimed by many of the people in Western countries and in US particularly. But in fact, there is no constitution or even a single article of any constitution all over the world which allow its citizens to hurt or debase others’ religious feelings and emotions. As for the US Constitution, no doubt, it guarantees the right to freedom of speech and exercise of religion but not with the aim of protecting violative acts of citizens but these freedoms are being held limited and restrained.³⁵² This view can be supported with a judgment held by the United States Supreme Court in the case of Chaplin sky vs New Hampshire wherein the Justice Murphy held that “fighting words” are not enclosed in the spectrum of free speech and therefore, shall not be protected. According to Court’s judgment it includes “all those words” which by their very utterance “inflict injury” or “tend to incite an immediate breach of the peace”, for that reason, such words are no essential part of any exposition of ideas.

³⁴⁹ Pakistan, State of Human Rights in 2012, (Human Rights Commission), III, Social media and the web, p. 128.

³⁵⁰ European Court of Human Rights, Blasphemy Rulings, Nigel Wingrove Case vs. The United Kingdom (Case No. 174190 1995) Judgment dated 25 November, 1996.

³⁵¹ Pakistan, State of Human Rights in 2012, (Human Rights Commission), III, Social media and the web, p. 128,

³⁵² The issue has already been discussed previously please consult second chapter of this research.

Thus the claim of fundamental right to freedom of speech or expression has become wide of the mark or, more clearly, ineffective.³⁵³

Insulting Islam or denigrating Muslims is not so far, limited to the Blasphemous movie, has discussed above, but such defaming attitude has also been exercised latter in most of the European countries beyond the shade of freedom rights. The recent example of such violence is the publication of sacrilegious and profane cartoons in a Danish newspaper named as *Jyllands Posten*. The incident first happened in September 2005 when 12 derogatory and insulting caricatures portraying the Holy Prophet Muhammad ﷺ in a gesture that was inappropriate to his ﷺ esteemed personality. The excuse of such a provocative exercises always ended to the respected right to freedom of speech, expression or press. Whereas, on the other hand, a big difference has been observed in actual legislation of the particular right³⁵⁴ and that of its exercise, the former, with its legal authority, inspires people, whatever recognition they have, to contribute their societies positively and led their countries to progress, advancement and build-up good relations to other civilizations while, the latter goes into opposite direction, provoke people to incite violence and terminate social as well as religious tolerance. Therefore, to maintain the law and order situation in countries and to keep the international relations strong the particular freedom rights have been restricted, to never be abused, in all the civilized societies and democratic countries. For example; Article: 129 (2), of Universal Declaration of Human Rights, article 10 (2) of the Convention of European Court of Human Rights³⁵⁵ and all those laws³⁵⁶ that have been established in all European

³⁵³ See the case of Chaplin sky vs New Hampshire (315 U.S. 568 US Supreme Court (1942).

³⁵⁴ Europe, *European Convention on Human Rights* (Strasbourg cedex: 1 June 2010), European Court of Human Rights Council.

³⁵⁵ Both of the articles have been mentioned in the first chapter of this research.

³⁵⁶ Demark, *The Danish Criminal Act*, 1930 No. 126, Sec. 266 - 266 b(1), *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation* (February 2008), p. 19 (Birgitte Kofod Olsen). See also International Covenant on Civil and Political Rights, Art. 20. Caneda, *Charter of Rights and Freedoms*, Sec. 2b, and Sec. 1). (Canadian law, *hate propaganda*, Sec. 318 (1), Sec. 319 (1) a, b). Croatia, the House of

States to provide protection of life, liberty and dignity to all their citizens as well as Muslims are the laws that restrict the right to freedom of expression and press from ongoing abuses of its unlimited scope.

1.6.2 Violation of the Blasphemy Law in Pakistan:

Pakistan is the State where not only the respected right to freedom of expression is trespassed but the sacred law of blasphemy has also been encroached bitterly. There are several such cases that would be enough to lead this hypothesis to a sound report. In this regard, the most affected section of the particular law is the 295-C, as it is held by the Human Rights report that, "These laws, especially Section 295(c), have been used by rivals and authorities to threaten, punish, or intimidate Ahmadis, Christians, and even orthodox Muslims. No one has been executed by the State under any of these provisions, although religious extremists have killed some persons accused under them".³⁵⁷

Though, the claim, in the Human Rights report above, is not completely factual as the non-Muslim minorities and orthodox Muslims are not specifically targeted by the violators but all the ethnic and religious sects of Muslim community in Pakistan have to face such tyrannical practices. But merging the violative acts of miscreant figures with the misuse of the blasphemy law, or its section 295C, or making it an argument for the failure of the particular law, however, is an improper and unjustifiable assertion been made by most of the national and international forums. Because, a lot of criminal activities are being done by the people that, directly or indirectly, have violated different laws all over the world however, it doesn't mean that all those laws should be annulled. However, speaking legally, Islam doesn't allow to anyone to impinge on, interfere with or takeover the right of an honourable Judge, *Qāḍī* or

Representatives of the Parliament of the Republic, The Official Gazette No. 110/xi, Croatian Penal Code (21 October 1997), p. 33, Art. 107., 107 (2), 174 (Narodne novine).

³⁵⁷ Pakistan Country Report on Human Rights Practices for 1998, Section 2 Respect for Civil Liberties.

Hākim of an Islamic state which is known as “*‘Ifṭi’āt ‘ala ‘l-Hākim*” in Islamic jurisprudential system. Now, before discussing the related cases with the issue of law violations the subject of “*‘Ifṭi’āt ‘ala ‘l-Hākim*” needed to be discussed here briefly.

• **Impingement on the right of *al-Hākim* (*‘Ifṭi’āt ‘ala ‘l-Hākim*):**

According to Islamic law a common citizen has no legal right to indulge him-self with the matters of establishing legal penalties or mandatory punishments but if done so then it will be considered as takeover on the rights of a judge or *Hākim* which is forbidden in Islam. Keeping the same view Imam Qurtubī held that according to ‘*Ulamā*’ commanding of proper by hand (*al-‘amr b ‘l-ma’rūf b ‘l-yad*) is the right of ruling class and by advice (*bi ‘l-lisān*) is the right of ‘*Ulamā*’ and by heart (*bi ‘l-qalb*) is the right of common people.³⁵⁸ According to Qurtubī’s statement using “forcefull authority” for commanding proper or prohibiting evil is the only right that can be used by the law enforcement agencies of a State, even though, some ‘*Ulamā*, in specific circumstances and as preconditions, keeps it permissible with regard to common people however, it couldn’t be taken on obligatory level yet as held for the ruling class. Moreover, Imam Ghazali talking on the subject has been held that, there are no more obligations of individuals except the termination of an evil, however, what has increased above the termination level, either the death penalty on a committed crime or prohibition for the expected one, comes under the obligations or duties of the authorities and not of the common people.³⁵⁹ So, according to this difference has been held by Imam al-Ghazali above one can easily understand the distinctive line between one’s right of *ḥisbah*³⁶⁰ and that of the ‘*Imām*, *Qāḍī* or *Hākim* regarding mandatory punishment (*ḥad*).

³⁵⁸ Tafsīr ‘*l-Qurtubī*, IV, p.48-50.

³⁵⁹ ‘*Ilhyā*’ ‘*Ulūm ‘l-Dīn*, II, p. 331.

³⁶⁰ The subject of *ḥisbah* has already been discussed previously in the first chapter of this research.

While establishing the conditions for enforcement of mandatory punishment the Ḥanafī jurist 'Imām al-Kāsānī cited that, it (*al-ḥad*) must be enforced by al-'Imām himself or by one to whom the authority of al-'Imām has been transferred.³⁶¹ Keeping the same opinion the Mālikī jurists have held that, thematically Sharī'ah requires the general liability of Muslims with regard to the rights of God ﷻ, specifically in such matters (of *ḥudūd*) however, the Sharī'ah just permitted it to the *Imam* (*al-'a'immaḥ*) just because to save the society from tyrannical happenings.³⁶² While the Shafi school of thought held that an apostate must be punished by al-Ḥākim and if killed by anyone other than al-Ḥākim then the killer will be charged of deterrent punishment (*'uzzirah*) because of infringement of the right of al-Ḥākim.³⁶³

Whereas, the Hanbali scholar 'Ibn Qudāmah stated that according to most of the Muslim jurists the killing of an apostate must be referred to al-'Imām, however, 'Imām al-Shāfi'ī showed dissimilarities particularly in case of a servant (*al-'abd*).³⁶⁴ He further stated that an apostate must be punished by al-'Imām and not by anyone from people.³⁶⁵

'Ibn Teymiyyah emphatically stressed on the issue and stated, the holy Prophet ﷺ never enforced mandatory punishments (*al-ḥudūd*) just on the behalf of his ﷺ knowledge, neither upon a single information nor by just revelation and not only by hearing arguments and evidences until and unless the reason for mandatory punishment (*al-mūjib li 'l-ḥad*) proven by eyewitness or by confession.³⁶⁶ Lastly, I quote here 'Ibn Rajab al-Ḥanbalī who stated, it is in any case, not allowed that the 'Imām (*al-'a'immaḥ*) and their legal representatives to be impinged on or overstepped by common people nor they (*al-'a'immaḥ*)

³⁶¹ al-Badā'i' w al-Ṣanā'i', VII, p. 57.

³⁶² 'Abū 'Abdullah Muhammad bin Muhammad bin 'Abdul Raḥmān al-Ṭarāblasī al-Mālikī, Muwāhib 'l-Jalīl fī Sharḥ Mukhtaṣar Khalīl (1992), edit. 3rd, III, p. 358.

³⁶³ 'Uthmān bin Muhammad al-Baḳarī, 'I'ānat 'l-Ṭalībīn 'ala Ḥal 'Alfāz Fath 'l-Mu'in (1997), IV, p. 157.

³⁶⁴ al-Mughnī li 'Ibn Qudāmah, XIV, p. 8.

³⁶⁵ Ibid., VIII, p. 310.

³⁶⁶ al-Ṣarīm al-Maslūl, I, p.356.

have to be opposed. If they are found unjust in any case then they shall alone be the accountable of their unfairness.³⁶⁷

Thus, there must be a legal trial before the execution of culprits. The logical reasoning of particular view is the prevention of society from disorder and serious chaotic situation. Because, if people were left free to settle their issues by themselves they would start killing innocent people with their own estimation and assessment for apostasy, heresy and blasphemy. Similarly, the accused of adultery, murder and theft would be hangedover or shot down as a result of street execution which is contrary to the Sharī'ah interests (*maqāsid 'l-Sharī'ah*) and against the jurisprudential rule of *qiyās 'l-maṣāliḥ w 'l-mafāsīd* also considered as violation of the right of judge while enforcing mandatory penalties (*'Ifī'āt 'ala ḥaq 'l-Hākim fī 'iqāmat 'l-ḥudūd*).

Thus, for that reason, such an important duty has been given to the rulers or head of the state (*Hākim*) alone.³⁶⁸ No one from common people is permitted to execute the accused people on the roads before or even after a legal trial. However, unfortunately several instances have been happened in Pakistan regarding blasphemy cases. Now, I discuss here some of those cases briefly which highlight the violation of the blasphemy law in Pakistan.

• Human Rights Watch Report 2015:

According to HRW report 2015, due to Sawan Masih case a Christian residential colony was targeted in April 2014 at Lahore and quite a lot of houses were set on fire there. On May 7, Rashid Rehman, a representator of the accused people with blasphemy, was murdered by an unknown gun man because, he was defending a university professor, Junaid Hafeez accused of blasphemy.

³⁶⁷ Zayn 'l-Ddīn 'Abdul Raḥmān bin 'Aḥmad bin Rajab al-Ḥanbalī, *Majmū' Rasā'yl al-Ḥāfiẓ 'Ibn Rajab* (2003), edit. 2nd, II, p. 608.

³⁶⁸ 'Abdul Ākhir Ḥammād al-Ghanīmī, *Ḥukm Taghyīr 'l-Munkar bi 'l-Yad li Āḥād 'l-Ra'yah* (Lebnan: 1997), p. 69.

A Christian couple, Shafqat Emmanuel and Shagufta Kausar were sentenced with death penalty for sending blasphemous messages but later they were beaten to death by a mob and their bodies were burned in the factory's furnace they worked for. In July, number of Ahmadis' dwellings was torched in Gujranwala, three people were killed and eight of them were bitterly injured in retaliation of blasphemy offence.³⁶⁹

Mumtaz Qadri Case:

Such revengeful activities aren't being limited to common people of the country but some official and political figures have also been influenced, i.e. according to HRCP report 2012, "two prominent politicians, Punjab's Governor Salman Taseer and Shehbaz Bhatti, federal minister for minorities and the sole Christian member of the federal cabinet, were assassinated for voicing support for reform of the law".³⁷⁰

The only reason for Governor's killing (among the offender party) was his defaming criticism on blasphemy law of Islam. Though, such malicious criticism is condemnable and also a criminal act that should be accountable to State's law and must be completed through certain judicial procedure in the court however, in accordance with Islamic law, the killing of Governor, by an on duty official Mumtaz Qadri, was an illegal act because, Islamic law doesn't permit a security guard or officer to be a judge and then an executioner at the same time.³⁷¹ Moreover, Mumtaz Qadri was not responsible for Taseer's misconduct and his

³⁶⁹ <http://www.hrw.org/world-report/2015/country-chapters/pakistan> (accessed 20 March 2015).

³⁷⁰ State of Human Rights in 2012, III, Fundamental Freedoms, Blasphemy Law, p. 112.

³⁷¹ There are numerous Quranic verses and hadiths of the Holy Prophet ﷺ which are supportive to the stance held above. Almighty Allāh said, "...if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind...". (*al-Qurān*, 05: 32), also (*al-Qurān*, 06: 151). (*al-Qurān*, 25: 68). The Holy Prophet ﷺ said, "The greatest sins are to associate something with God and to kill human beings." *Ṣaḥīḥ al-Bukhārī*, VIV, book: *al-Diyāt*, H/N. 6861, p. 2. Regarding the issue a prominent Scholar 'Abū Ala Maududi stated that, "Islam prohibits all killing except that done in the 'due process of law'. This is referred to in the *Qurān* as *bi'l-haqq* (with the truth)". He also explained the issue in another place of the same book that, "The propriety of taking life in retaliation for murder or for spreading corruption can be 'decided only' by a competent 'court of law'. During a war it can be 'decided only by' a properly established 'government'. In any event, 'no individual' has the right to decide such question by himself". *Abu Ala Maududi, Human Rights in Islam*, p. 15, 21.

accountability, especially, when the Blasphemy law has become a part of the State's law. Though, he had a legal right to file a blasphemy case against Salman Taseer but, by some way or other, he doesn't have the right to kill an accused person about which the State's courts couldn't give any decision yet. However, the Mumtaz's act being supported and appreciated by some '*Ulamā* in Pakistan'³⁷² which leaves another question mark on the Qadri's act because, according to Muhammad Ismail Quraishi the blasphemy law of Pakistan was came into being after a tireless efforts of almost all the prominent '*Ulamā* of the major schools of thought.³⁷³ In this respect, Mumtaz's supportive group shall have to choose anyone of the both and shall have to refuse the other, i.e. if they continuous their support with Mumtaz Qadri's act then they have to refuse all those arguments that had given by the '*Ulamā* for the establishment of blasphemy law in Pakistan Penal Code. This refusal indirectly means to refuse the blasphemy law of the State which is similar to the act of Salman Taseer himself. But if they support blasphemy law of the State as a legitimate and trustworthy law then Qadri's trial in the court should not be criticised.

1.6.3 Cases Regarding Desecration of Qurān and Violation of Blasphemy law:

In Bahawalpur district, an accused person of desecrating the Qurān was grabbed from the police custody and pulled out into street and was beaten until he died, not only this but, his body was set on fire. All this happened when announcements were made over local mosque loudspeakers. Seven police officers were injured and many vehicles were torched there. In June, a similar case was happened in Karachi when people tried to enter a police station to get hold of an accused person who was arrested for desecrating the Qurān. They demanded to

³⁷² Amjid Ali Qadri, al-Sayf 'l-Battār 'alā Shātim Sayyid 'l-Abrār (Lahore: 2011).

³⁷³ The subject has already been discussed in the beginning of this chapter. Otherwise, consult the book Muhammad Ismail Qureshy, Nāmūs e Rasūl aur Qānūn e Tauhīn e Risālat (Lahore. 2010), edit. 4th.

handover the suspicious to them so they could hang him up. In the same month same case of a suspect delivery was happened in Quetta where one person was killed and 19 were bitterly wounded. Violence had vented when police arrested a man was alleged desecrating the Qurān. In December, same incident of desecration of the Qurān was happened in Dadu Sindh, where announcements from mosques had been made for such defilement to make people aggressive. The police station was besieged, cops were held hostages and the accused person was taken out of the prison, inhumanly beaten to death, later his body was set on fire by the protestors.³⁷⁴

1.6.4 Some Curious Cases Regarding Blasphemy Law's Violation:

There are some cases that had remained first-rate stories of Pakistan's renowned newspaper Dawn which highlighted these cases to attain consideration of high authorities of the State. These stories were being reported by the newspaper at length however, without indulging in detail account these cases are discusses here in below:

In 2003, Samuel Masih was arrested for allegedly insulting a mosque by spitting on its wall. While, the accused Samuel due to medical treatment was sent to Gulab Devi Hospital in police protection. But, he was murdered with a hammer by a police officer Faryad Ali himself in the presence of other policemen and confessed his crime and being a Muslim justified it by denoting it as his religious obligations. In 2005, Parvaiz Aslam Chaudhary, a lawyer notorious for defending accused blasphemers was assaulted outside the Lahore High Court. In 2008, Jagdaish Kumar, a Pakistani Hindu was accused of insulting Islam and

³⁷⁴ All these cases have been taken from HRCP Annual Report issued in 2012. State of Human Rights in 2012, Published by, Human Rights Commission of Pakistan (March 2013), III, "Fundamental Freedoms: Freedom of thought, conscience and religion," Blasphemy Law, p. 114- 115.

making derogatory remarks towards the Holy Prophet ﷺ and thus, was beaten to death by Muslim workers of a factory situated in Karachi.³⁷⁵

In 1992, a 43 years old Christian teacher of Faisalabad, Mr. Naimat Ahmar was forfeited on professional greed and prejudice. Naimat's colleagues had purposefully plotted against him and allegedly said to one of his students, was named as Farooq Ahmad, that Naimat uttered derogatory remarks against the Holy Prophet ﷺ and had provoked him to put Naimat to terrible end. As a result, Farooq stabbed the Christian teacher until he died and had to face imprisonment for a long time of 14 years. Two more Christians, Bantu Masih and Mukhtar Masih, had also been arrested for blasphemy offence during the same year. The former was stabbed eight times during police custody and later in the hospital until he died. Whereas, Mukhtar was punished by cops even met to death during police investigation.³⁷⁶

In 1993, an arrestment of three Christians (Manzur Masih, Rahmat Masih and Salamat Masih) had been made for committing blasphemy offence alleged by an 'Imām of local mosque however, in 1994 they were released on bail but, unfortunately, after a case hearing Manzur Masih was leaving District Court when he shot dead outside there while, other two were got serious injuries. In 1995, both were sentenced with death penalty but soon they were acquitted by the Lahore High Court and fled the country for saving their lives. With regret, in 1997, the honourable judge, Justice Arif Iqbal Bhatti, who had made the acquitting judgment in Rahmat Masih and Salamat Masih case was assassinated in his compartment at Lahore High Court. The killer, Sher Khan, was arrested later in 1998, and had made his confession of

³⁷⁵ To study all the above cases in detail please visit; <http://www.dawn.com/news/750512/timeline-accused-under-the-blasphemy-law> (accessed 13 Feb 2015)

³⁷⁶ <http://www.dawn.com/news/750512/timeline-accused-under-the-blasphemy-law> (accessed 19 March 2015).

Justice's killing because he (Justice) had freed the offenders of blasphemy but later Sher Khan secretly escaped from jail.³⁷⁷

1.7 Violation's Impact on Blasphemy Law:

All the described stories above, concerning blasphemy laws' violation, have badly affected the blasphemy law of Pakistan. These violative activities, in fact, not only become a solid reason of criticism on the particular law but also gave an open way to its opponents who reportedly claims for its abolishment. Resonance against such aggressive attitude is being heard within Pakistan and from some international platforms too. For example; it is stated in an article that, "if someone is accused of blasphemy in Pakistan, all too often he or she is brutalized or killed before any trial is held. Or even if acquitted..."³⁷⁸ Keeping in view the situation, Human Rights Commission of Pakistan stated that, "Nothing was done to protect the minority communities from vigilantes whose religious sensitivities did not wait for the law to take its course, nor to confirm if charges such as blasphemy or desecration of holy books were even true".³⁷⁹

Likewise, an Amnesty International researcher Mr. Jan Wetzel stated, "While purporting to protect Islam and the religious sensitivities of the Muslim majority, Pakistan's blasphemy laws have in fact fostered a climate of religiously motivated violence, and are used indiscriminately against both Muslims and non-Muslims".³⁸⁰ In March 2011, UN human rights chief also condemned Pakistan's assassination and urged for changes of blasphemy

³⁷⁷ <http://www.dawn.com/news/750512/timeline-accused-under-the-blasphemy-law> (accessed March 19, 2015)

³⁷⁸ <http://www.pakistanblasphemylaw.com/?p=1748>

³⁷⁹ State of Human Rights in 2012, III, Fundamental Freedoms, p. 100.

³⁸⁰ <http://www.aljazeera.com/indepth/features/2014/05/living-fear-under-pakistan-blasphemy-law.html> (accessed 19 March 2015).

laws.³⁸¹ Such activities also introduced as Muslims' fanaticism that enforces Sharī'ah by vigilant actions.

Though, sometimes purposefully, ambiguous and critical statements are made by some official figures normally to create ambiguity and perplexity among people about the blasphemy law of Pakistan however, it doesn't mean that there were no violations or breach of law being faced by accused people within the State. Numerous killings or assassinations had been served on the name of blasphemy or religious obligations, in other words, such violative activities have also been turned into an active agent that speedily increased the non-Muslim minorities' apprehensions concerning their social integrity and fears about their vulnerable and insecure future in Pakistan. Establishing blasphemy law as a part of PPC doesn't mean to allow anyone to eradicate innocent people or even terminate criminals, convicted under blasphemy offences, but it means to let the rule of law and judiciary play their active and important role to tackle the issues properly and maintain the law, justice and peace within the society. The aforementioned discussion depicts that irreligious or, more clearly saying, non-Islamic activities are being done on the name of Islam which should be stopped by the authorities immediately, otherwise, there will remain no purpose of legislation of such a respected and protected law of blasphemy in Pakistan.

An important point should be mentioned here that, it is observed that usually misuse of freedom of speech or expression gives space to aggressiveness that ends to violative activities such as killing or assassinating the accused people of blasphemy, but, whole responsibility of such occurrences, mostly, set on the blasphemy law of the State and termed as "misuse of blasphemy law" by the opponents. Such baseless and inappropriate criticism that combines criminal acts with misuse of law wouldn't be productive or worthy anymore. Because, misuse

³⁸¹ UN Office of the High Commissioner for Human Rights, for detail visit: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10784&LangID=E> (accessed 27 October 2014).

of law could be in condition if an accused but “innocent” person ever “lynched” after his “judicial trial” in the Court or “deprived” of his “right to defence legally”. Whereas, the ground reality is totally different because most of suspected persons, as observed in previous cases, had been acquitted by the courts but killed latter. Thus, such criminal activities shouldn’t be correlated with blasphemy law of the State.

1.8 Findings:

- Blasphemy law of Pakistan is not a newfangled of the twentieth century but it had been remained a part of the Indian Penal Code of 1857.
- Being a religious as well as the constitutional law the blasphemy law of Pakistan has the dual importance as compare to other laws of the State.
- The blasphemy law of Pakistan is mostly criticised by the minorities and by the different national and international organizations, councils and NGOS which shows their special interest or concern behind this attitude.
- Establishment of a law or its enactment in any society always takes place to close all the doors that give a room to serious crime to be occurred so, keeping this in view, the claim of abolition of blasphemy law from PPC seems illogical and conspiracious.
- Some kind of procedural errors regarding blasphemy law in Pakistan have been observed that must be checked and resolved by the legal authorities of the State.
- It is also observed that the misuse of the right to freedom of expression has become an obvious reason for hurting sentiments of Muslim community of the State that also triggered people to violate the blasphemy law by taking law in their hands.
- According to Islamic ideology of *ḥisbah* and *ifti’āt ‘ala al-ḥākim*, a Muslim with no legal authoritative status has no right to execute a criminal by himself in the presence of State’s law.

- It would be better to say that the blasphemy law of Pakistan is seriously injured by the class conflicts and religious hatred instead of saying that the law itself inflamed the religious clashes. Serious protests have been recorded by the Muslim community all over the world if the holy Messengers Jesus, Christ of Almighty Allāh ever defamed by their followers outside the Pakistan, however, no such favour from Pakistani minorities is being noticed while people tried to malign the esteemed and most honorable status of the holy Messenger Muhammad ﷺ of Almighty Allāh ﷻ.
- For sustainability of the blasphemy law and betterment of the society, no doubt, a massive responsibility has been expected from the legal authorities of Pakistan however, not the same, but at least tolerated behavioral change is required from the Muslim community of the State too.
- With the analysis of blasphemy laws enacted in other countries of the world it is observed that blasphemy law of Pakistan meets the international standard. Therefore, no such claim of its abolition or amendment would be entertained legally.

1.9 Conclusion:

The true liberation doesn't mean the abandonment of religion and modernism cannot be considered as an infinite tool and if ever held so by anyone anywhere, then, such particular thinking should be reviewed carefully by its representatives. Apart from that the freedoms are essential to all progressive civilizations but in fact, the genuine concept of freedom is at the risk now. According to western hate speech conception, the harmful instances regarding Islam which have been happened in the West or in other non-Western countries under cover of freedom of speech and expression all were criminal offences in their actual sense.

The people who claim that we are not insulting Islam or the Prophet ~~ﷺ~~ of Islam but we just use our right to freedom of expression and argues that, according to our cultural or moral standard of defamation, it can't be considered as an insult and therefore, the particular right must not be limited. It's true that abusive words or insulting expression can be different from one society to the other, but the important point here is that, when we talk about freedom of expression it means we are just talking about the law that has been acquired global recognition and being legislated as global law therefore, in the context of global law its measures and standards must be global wise but actually they are not so.

Almost in every law and the representative scholars of those laws have explained the freedom of expression and one thing that observed common themselves is "free from interference and opposition of others" I think these words carries very deep meanings with them, that every person who claims for right to freedom of expression provided to understand these words³⁸² first, these words actually learn every individual that one must use his/her right of freedom in such a way that nobody and no law find him/her a guilty by any means or way to oppose him or interfere in his enjoyment of the particular right by saying that, don't do this, don't say like this, you are denying the rules or you must follow the laws.

Furthermore, surely an illegal act doesn't has any limitation or boundary and it may be done freely but when a legal act or right is going to be exercised then it needs some defined boundaries because every legal act has its prescribed boundaries within which an individual can use his/her right freely and carefully therefore, both laws have described that man had born free, now the representatives of both systems claim that let the people free or people should be free. As I think, these people following both Islamic and non-Islamic laws, have been caught by a perplex condition of their misunderstanding of the sole purpose had been held by their laws and therefore, their claim is unsound and illogical, they actually don't

³⁸² That the right to freedom of expression should be "free from interference and opposition of others".

know what should really they claim for, because they have accepted first, that they had born free, so their claim for freedom again, is not be considered reasonable anymore, because it is like claiming for something that has already been given. Thus, they actually are claiming from their legal authorities for determination of some limitations of freedom of expression within which they would enjoy their freedoms.

In addition, in my opinion, it can also not be a sensible demand to say that some restrictions should be implemented on the right to freedom of expression, because, the restrictions cannot be enforced on rights of the people until and unless, the attainment of these rights is not to be contrary to the rights of others or, enjoyment of these rights is not be a reason of negligence of other obligations. Therefore, it may be more appropriate to say that there should be determined boundaries of freedom of expression as a legitimate right. This estimation can be easily understood in the spectrum of hate speech laws, as a statement, saying or any type of speech when crosses its defined limits and enters to another domain starts with hate speech then the particular statement, speech or expression can be claimed to be stopped and so becomes restricted one. Thus, it may be good for all supportive figures of freedom of expression to hear that, a massive part of the whole humanity who wants the freedom of expression to be restricted actually do not want to restrict legitimate field of their right but the determination of clear boundaries of their right is the sole purpose with the intention that all forms of wrong and evil usage of the particular right to be ward off.

It must be noted that in an Islamic legal system the legal standards or measures of a right are usually not mentioned in a top source however, these standards later derived by the legislatures and judiciary from the existing concepts of public order, qualified customs, and principles of nature, logic, justice and morality as it is also in practice of different legal systems of various countries across the world. This aspect may be left open-ended and undefined as the premature restrictions may not be appropriate to the progressing human

civilizations and thus wouldn't meet the actual demand of the time. Therefore, it has been left for good estimation and consideration of jurisprudential process and the judiciary hopefully that a sovereign, just and an impartial judiciary always stand for legitimate rights and freedoms of people and defend against every kind of violence from anyone whatsoever. Even though, these restrictions cannot be held on the final or absolute level, but are debatable and criticize-able, depending on the religious, cultural, social, political and economic circumstances and development of the Muslim communities. It has also been realized by the Islamic governments and Muslims authorities after the application of *Shari'ah* in several Muslim countries that there are several obstacles and difficulties in a real application of *Shari'ah law* however; no impossibilities could be faced yet. Thus, to meet the contemporary challenges the Islamic verdicts should be reviewed in the perspective of modern times and developments experienced by the world today.

It must be better to understand the circumstances and context of the speech or written to determine the type of offense because sometime it has not been blasphemous. Accordingly, it is not the right of common people to investigate such matters which demand judicial jurisdiction but it is the right and duty of the judiciary to take charge of that speaker, writer, thinker or doer that he/she has done infidel or blasphemous act. Furthermore, a citizen of any state does not has the right to intervene the governmental procedures of execution by executing anyone anywhere. The Islamic law³⁸³ also condemns this attitude of its followers.

³⁸³ Allāh forbids killing with no legitimate reason: "...But let him not exceed limits in the matter of taking life..." (*al-Qurān*, 17: 33) The Holy Prophet ﷺ also said, "the blood of a Muslim who bears witness to ...is not permissible (to be shed) except in three cases: a soul for a soul (i.e., in the case of murder), an adulterer who is married, and a person who leaves his religion and deserts the jama'ah." Ibn Hajar al-'Asqalānī, *Fath 'l-Bārī*, XII, p. 209 and Imam Muslim, *Sahīh Muslim*, III, p.1302. Also, 'Ibn Kathīr, *Tafsīr 'Ibn Kathīr*, V, p. 618. And in another hadith the holy Prophet ﷺ said, "If the world were to be destroyed, it would be of less importance to Allāh than the killing of a Muslim." *Tuhfat 'l-Aḥwadhī*, IV, p. 256. And, *Sunan al-Nisāi*, VII, p. 82 and *Sunan 'Ibn Mājjah*, II, p. 874. It is also forbidden under the Islamic jurisprudential rule *'ifti'āt 'ala 'l-ḥākīm*.

Apart from that, the condemning blasphemy is legal right that should be promoted peacefully but vandalizing and taking such a respected issue to the streets with a worse representation wouldn't bring anything good to Islam and to the Muslims globally. But every Muslim should follow the pattern has been held by *Sharī'ah* itself, the *Almighty Allāh* said, *"Invite (mankind, O Muhammad) to the Way of your Lord (i.e. Islam) with wisdom and fair preaching, and argue with them in a way that is better..." (al-Qurān, 16: 125)*

No doubt, there is need of global legislation of laws against blasphemy offense and such an opinion has also been established by most of the contemporary Muslim scholars. According to the seriousness of issue it would be achieved by mutual respect, changing attitudes and by building up a consensus that will promote the interfaith harmony and will offer an opportunity that such issues must be solved for the global peace. Since, legislation of laws alone, cannot stop such misuse of expressions or insults because, people should do things because they inspire to do those things and do not stop doing things because of fear from consequences therefore, the divine inspiration can only be promoted in the way of mutual respect for others and by consensus building. A Muslim must follow this divine guidance as *Almighty Allāh* said; *"And why should we not put our trust in Allāh while He indeed has guided us our ways. And we shall certainly bear with patience all the hurt you may cause us, and in Allāh (Alone) let those who trust, put their trust."* (*al-Qurān, 14: 12*)³⁸⁴ however, in case of Pakistan, the people must be aware of their rights and duties have set by Islam as well as Pakistan's law and such awareness can only be attained by promoting education among people. Therefore, the basic issue of Pakistan is not the legal but a kind of intellectual or educational. Moreover, the Muslims who examine the blasphemy or want to make some modifications and amendments to blasphemy laws in western perspective are guided by the *Almighty Allāh* ﷻ Himself by saying, *"The likeness of those who choose other patrons than*

³⁸⁴ Taqi-ud-Din al-Hilali and Muhsin Khan, Interpretation of the Meaning of The Noble Qurān.

Allāh is as the likeness of the spider when she taketh unto herself a house, and lo! the frailest of all houses is the spider's house, if they but knew. (al-Qurān, 29: 41)³⁸⁵

Recommendations:

- The discussion over the issue of blasphemy law in Pakistan led me to the point where a logical and sensible question can be chased and that is; why there are demands for making changes to the blasphemy law of Pakistan? It can be a constructive and positive question that represents both of the parties and make them think that why people demanding changes in the particular law. Raising such question, the opposing group becomes enable to think that does their demand is just for seeking space to let the Islamic law down or they are pursuing a big clash among people had sacrificed everything to live together peacefully in a country was came into being on the name of one nation, or their demands are only for seeking justice and equality. Accordingly, if they are chasing the first and the second demands then, no doubt, they are wrong and their demands are considered illegitimate, but, if they are claiming for the third then, they should be and, they have the right to demand their actual representation by adding a same section in the particular law of blasphemy but not by changing or repealing the law already legislated by the responsible authorities.

Similarly, the party which advocates the particular law should think that why the opposing group shouts or yells for changings in blasphemy law of Pakistan. Do they belong to another country or don't have the citizenship of Pakistan where the law exercises, or they are the nationals of Pakistan and they have to face brutality on daily basis. As it is held above, both of the prior assumptions are false because the opposing group is also Pakistani and therefore, facing militancy day by day but it doesn't mean

³⁸⁵ Pickthal, Interpretation of the Noble Qurān.

to put them aside but the issue must be solved by raising awareness among the majority people about the offence of blasphemy, the blasphemy law, its appropriate way of use, the types of its abuse and the legitimate limits of a common citizen to protect his/her religion.

- It is also observed that the blasphemy law of Pakistan often unfairly criticized by the opposing group as it is irregularly, improperly and factionary hypothesized to mislead people that the particular law is legislated against a specific group of people and being enacted only to target a particular sect or a minority group. Whereas, on the other hand, neither the charter nor the sections or any provision of the blasphemy law of Pakistan exempts any sect or even an individual from meeting the consequences if a blasphemous act ever done by him/her. Moreover, it is not mentioned anywhere in this law that defamation, insult or blasphemy can only be possibly occurred by a Jew, Christian, Sikh, Hindu, Parsee or an Ahmadi but the Muslim majority group is also included and also bears the same consequences have declared in the law as can be faced by any other citizen of the Country. Thus, careful and sensible understandings of the blasphemy provisions can easily wipeout the ambiguity.
- An observation is also being made during this research that, the blasphemy law of Pakistan or its particular sections, like 295-C, 298-B and 298-C, do not promote enmity, hostility, rancor or discrimination among people of the State but the particular law and aforementioned sections are playing an important role to protect the society and people belongs to different casts and religions from indulging themselves in a grater chaotic situation for which the special addition of these sections in PPC were being made in the past. Moreover, all the accused persons of blasphemy are properly treated under legal procedure in Pakistani courts therefore; the objection that the blasphemy law often uses militancy to punish the accused persons is totally wrong,

incorrect and imprecise. Therefore, an impartial and productive review of blasphemy laws should be organized by the opposing group.

- Number of killings have happened beyond the legal boundaries in Pakistan³⁸⁶, no doubt, have additional ins and outs³⁸⁷ therefore, instead of calling for the better law and order situation in Pakistan claiming the Country's blasphemy law responsible for such killings or assassinations and making a claim for repealing blasphemy law for this reason is also an unsound and illogical stance. Moreover, developing such a spurious and grave propaganda by Ahmadis or their cliques on blasphemy law of Pakistan is nothing but putting abhorrence and enmity between both the groups (Muslims and Ahmadis) and provoking them against each other only to destabilize the Country.
- The issues like, harassment of Ahmadi students in schools or separate division of Ahmadis in voter lists during election however, are the practices which promote religious prejudices and hatred among the people of one nation and such activities cannot be supported by a civilized society. But, if the Section 298-A-B-C of the Pakistan's blasphemy law are questionable in itself then, this objection is, for sure, a nonsense and extravagant because, these sections were being held as a part of PPC only to secure both communities from a serious clash which could turn into a bloody war.
- This may be true to some extent that the particular law is being misused but most of the time such criticism is often based on misrepresentation. For example; in terms of the law, the arrestment of an underage girl and fabrication of evidence³⁸⁸ seems that the law has been misused but meanwhile, according to facts and circumstances, the

³⁸⁶ Most of the instances have already been discussed above in this chapter under the topic "Violation of the blasphemy law".

³⁸⁷ Different reasons behind the killings of accused people of blasphemy have been reported in Human Rights' as well as other national and international organizations' reports, some of them also been discussed previously.

³⁸⁸ Both the objections are held by HRC report about Rimsha Masih Case.

arrestment of that girl was being made in order to protect her from unlawful killing while, the fabrication of evidence was disclosed by the police and finally the fabricator, a local cleric Khalid Chishti, was himself arrested by the police. Therefore, misuse of the laws doesn't mean to repeal all those laws ever misused because such attitude towards State's laws will lead to dire endings. So, instead of repealing blasphemy law of the State, all the governmental organs and authorities such as police, judiciary and other investigatory organs should be organized properly.

- It is also observed that undefined right to freedom of speech and expression is one of the basic reasons which gives people a free and unlimited spectrum to express themselves whatever they want without caring that whether or not their words or expressions hurt others feelings or whether their actions can be caused of legal violation and put others and also their lives to a serious harm. Besides this, the persistent attitude of westerns to prove the blasphemy law of Pakistan an illegitimate or, at the very least, a controversial issue is another reason which develop an ill impression among the non-Muslim citizens of Pakistan about Islam, Muslims and Islamic laws enacted within the country. Such a collusive and designed attitude towards Pakistan's blasphemy laws is, no doubt, inflaming both the Muslims and non-Muslims against eachother and blaze them up to vent their rage on the roads or in the streets therefore, the western higher authorities and European Union should review their statements carefully that whether their right of free expression not ruined the legal boundaries.
- The right to freedom of speech or expression and blasphemy laws of Pakistan is not erroneous in itself but violation of the particular law and abuse of the right to freedom of expression makes them controversial that must be stopped immediately instead of

repealing the blasphemy laws and right to freedom of expression. Anyhow, a consensus on the limitation of right to free expression must be built globally.

- The most sacred personalities are known as the Messengers and the Prophets of Almighty Allāh (peace be on them all), at the top of them is the holy Prophet Muhammad ﷺ. Their significance and superiority over whole mankind has been proven by all the divine Scriptures, therefore, it is foremost duty of every sensible human being to respect these most sacred personalities and stop himself/herself from all such forms of expressions that, in one or the other way, would be malicious or defaming in respect of these most sacred personalities.
- Lastly, Islam is a religion of tolerance and fraternity, it always replied harshness with patience³⁸⁹ and demands from its followers to live peacefully and respectfully specially in a society where people belong to different religions. Both the qualities cannot be achieved unless the same values are offered to other people of the society. Therefore, Islam has laid a unique principle to respect all other religions, holy Messengers or Envois therefore, to being Muslim alone should not be the criteria to be sacred and honorable because every human being is a sacred entity by creation and therefore, must be respectable, and no implication should be drawn that others' prophets or saints are less reverential in any way of any kind. Thus, hurting or outraging others' religious feelings and insulting or defiling others' religion is essentially as a big crime as we consider it by others against ourselves.

³⁸⁹ Almighty Allāh said, *"Verily, (many) Messengers were denied before you (O Muhammad), but with patience they bore the denial, and they were hurt, till Our Help reached them...."* (al-Qurān, 06: 34).

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