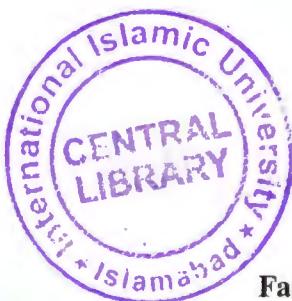


FREEDOM OF SPEECH IN PERSPECTIVE OF MEDIA AND DEFAMATION LAWS IN PAKISTAN

Accession No. 1415460



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A thesis submitted in partial fulfillment of the requirement for the degree of
MASTER OF LAW (LL.M)

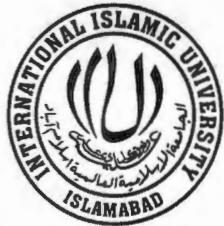
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FINAL APPROVAL

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....	6
TABLE OF CASES.....	8
DEDICATION.....	9
ABSTRACT.....	10
ACKNOWLEDGEMENT.....	12
CHAPTER: 1.....	13
PROPOSAL.....	13
LITRATURE REVIEW.....	19
CHAPTER: 2.....	25
FREEDOM OF SPEECH: A GENERAL OVERVIEW OF FUNDAMENTAL FREEDOMS AND THEIR IMPORTANCE IN EXERCISING OTHER HUMAN RIGHTS.	
2.1. Introduction.....	26
2.1.1 Extensive Concept of Freedom of Speech.....	30
2.1.2 Why Freedom of Speech Matters.....	31
2.2 Theories of Freedom of Speech.....	33
2.2.1Autonomous.....	33
2.2.2 Democratic.....	34
2.2.3 Arguments about Freedom of Speech Principle.....	35
A. Arguments Regarding in Search of Truth.....	35
B. Free Speech is Necessary for Self-Fulfillment and Autonomy.....	36
C. Free Speech as Basis of Democratic Society.....	37

2.3.	Importance of Freedom of Speech.....	39
2.4.	Theories of “MILL” & Thomas in Defence of Freedom of Speech.....	41
2.4.1	Mill’s Defense of Freedom of Expression.....	42
2.5.	Freedom of Speech in Contemporary Legal System.....	42
2.5.1.	United States of America.....	43
2.5.2.	United Kingdom.....	45
2.5.3.	Canada.....	47
2.5.4.	European Union.....	49
2.6.	International and Regional Instruments for Protection and Promotion.....	51
2.6.1.	Universal Declaration of Human Rights.....	51
2.6.2.	International Covenant on Civil and Political Right.....	52
2.6.3.	UN Special Rapporteur Freedom of Expression of Speech.....	52
2.6.4.	Convention on the Elimination of Discrimination against Women..	53
2.6.5.	African Charter on Human and People’s Rights.....	53
CHAPTER: 3.....		55
FREEDOM OF SPEECH AND DEFAMATION LAWS		56
3.1.	Introduction.....	57
2.6.6.	Constitution Protection and Restriction.....	62
3.2.	Freedom of Speech Entails Two Concept.....	64
3.2.1.	Absolute Freedom of Speech.....	64
3.3.	Relative Freedom of Speech.....	64

3.4.	Legitimate Restrictions and Limitations.....	66
3.4.1.	Provided by Law.....	67
3.4.2.	Pursues Legitimate	68
3.4.3.	Necessity and Proportionate.....	69
3.5.	Freedom of Speech and Media.....	70
3.5.1.	Media Laws in Pakistan.....	74
3.5.2.	Pakistan Electronic Media Regulatory Authority	75
3.5.3.	South Asian Free Media Association.....	75
3.4.4	Laws Controlling Media in Pakistan.....	75
3.5	As a Developing State Importance of Media in Pakistan	76
3.6	Defamation Laws.....	79
3.6.1	Definition of the terminology.....	79
3.6.2	The Central Idea of Defamation Law.....	80
3.6.3	Types of Defamation Laws.....	81
3.7	Defamation According to Pakistani Laws.....	82
I.	Pakistan Penal Code 1860.....	83
II.	Elements of Denotation Suits.....	84
III.	Defenses of the Defamation Law Suits.....	87
CHAPTER: 4.....	92	
FREE SPEECH IN ISLAM: REVIEW OF BLASPHEMY LAWS WITH REFERENCE TO CULTURE RELATIVISM		
4.1.	Introduction.....	93
4.2.	Free Speech in Context of Islam.....	95

4.2.1.	Background History.....	95
4.2.2.	Denunciation of Religion on the Basis of Free Speech: (Restrictive Speech).....	97
4.2.3.	Freedom of Speech is a Colonial Tool.....	98
4.3.	Blasphemy Laws and Current Scenario About Free Speech in Pakistan.....	99
4.3.1.	Islamic Provisions of the Constitution of Pakistan 1973.....	100
4.3.2.	Critical Analysis of Blasphemy Laws.....	101
	CHAPTER: 5.....	104
	I. CONCLUSION.....	105
	II.RECOMMENDATIONS.....	109
	BIBBLIOGRAPHY.....	111

LIST OF ABBREVIATIONS

ACHR	American Convention of Human Rights
ACHPR	African Charter on Human and People's Rights
APNA	All Pakistan News Association
COE	Council of Europe
CCRF	Canadian Charts of Rights and Freedom
CSC	Canadian Supreme Court
3 "D"	Developments, Democracy, Dialogue
ECHR	European Convention of Human Rights
EU	European Union
FOE	Freedom of Expression
HRT	Human Rights Treaties
HRD	Human Rights Declaration
HRA	Human Rights Act
IHR	International Human Rights Law
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economics, Social and Cultural Rights
MDA	Media Development Authority
MCC	Media Collaboration Channel
PEMRA	Pakistan Electronic Media Regulatory Authority

PTA	Pakistan Telecom Authority
TOL	Treaty of London
UDHR	Universal Declaration on Human Rights
UNGA	United Nation General Assembly
UNSRFOE	UN Special Reporter on Freedom of Opinion and Expression
CEDAW	Convention on the Elimination of Discrimination against Women
DOP	Defamation Ordinance of Pakistan

TABLE OF CASES

Ramsden v. Peterborough. 1993 2 SCR 1084

Nawabzada Nasrullah Khan v. Government of West Pakistan

Nawaz Sharif v. Government of Pakistan. 1993. SC

DEDICATION

DEDICATED TO MY LOVING FAMILY,

RESPECTED TEACHERS

AND

KIND FRIENDS

ABSTRACT

This work present a plausible approach in an attempt to identified the legal limitations to the guaranteed and exclusive right secured by the Constitution of Pakistan 1973. It will scrutinize the impediments of Freedom of speech which directly affect all other fundamental freedoms. This thesis attempts to highlight the significance of free speech protected by various regional and international documents.

Basically this research aims to look deep into the state of freedom of speech in Pakistan and its analysis under the media laws. I have also attempted to evaluate and discuss in detail the existing defamation laws of Pakistan. This research highlighted that Pakistan as signatory of various international documents is bound to revamp its laws protecting fundamental freedoms. I have presented a critical approach and the possible approach to ferret out the solution.

The very importance of freedom of speech can be noted already in the number of national and international documents that codify it as a freedom or even as a positive right. In my research I will explore the position of free speech in different liberal legal systems. The expression freedom of speech and press has been understood by various persons. My research in this regard will give the clear picture of this above mentioned expression and will end up equivocal interpretations of these very significant human rights. The expression should be understood as meaning to hold opinion, to receive and impart information through the verbal statement and printed

words without any interference from the public authority. I have attempted to explain the cons of freedom of speech in the light of blasphemy laws and presented that how free speech is harmful in context of absolute speech. The critical analysis of Free speech in the light of Islamic laws and cultural relativism. The right can not universalise due to the boundaries of cultural relativism.

The world will have come to a grave dark place when we no longer have the freedom to say what we like.

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First of all I am gratifying to Allah, this research was an uphill task, and it was not possible for me to finish it without the mercy of Allah Almighty.

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CHAPTER NO: 1

1.1 THESIS STATEMENT

It is widely held that the freedom of speech is distinctive and privileged human and social right. Losing the freedom of speech will be one step closer to losing our other rights like freedom of expression and press. This fundamental right mostly interpreted in a wrong way that absolute freedom is myth. This right subject to some limitations placed by law, which is universally accepted, through which you can restrict this right to protect the legitimate interests of others.

1.2 STATEMENT OF THE PROBLEM

As mentioned above that the freedom of speech, expression and press is a gift of the constitution and cannot abridged by the people in authority so long it is not intended to create the chaos and malice to harm the reputation of the person or group of persons. This constitutional liberty should be handled with care and certain mentioned limitations by the law of land.

Green Press Report (2006) highlights working in Pakistan as journalist is a difficult and dangerous.the deplorable press freedom condition can be noticed from the fact that Daniel Pearl , wall street journalist was murdered.Recent example is a Wali khan Baber who gunned down by extremists.his courageous efforts to eradicate the social evils and strengthen the roots of democracy in pakistan was not acceptable by proponents of violence in pakistan.Force was used against journalist who were beaten and inured in the

protest for the restoration of judiciary, and PEMRA used every means to cease criticism against govern terrorism.

Freedom of speech and expression doesn't permit to hurt the religious beliefs and ethos of any community of the world. All international documents and declaration condemn this approach and bound the citizen to act within the ambit of prescribed law.

The scope of these principles is limited to the question of striking an appropriate balance between freedom of speech and expression and injury to reputation.¹

The principles set out an appropriate balance between the human right to freedom of expression, guaranteed UN and regional human rights instruments as well as nearly every national constitution, and the need to protect individual reputation widely recognized by international human rights instruments and the in the law of country around the world. The principles are based on the premise that in the democratic society, freedom of expression must be guaranteed and may be subjected to only narrowly drawn restrictions which are necessary to protect legitimate interests, including reputation. In particular they set out standards of respect for freedom of expression to which legal provisions designed to protect reputations should, at a minimum conform.²

1.3 OBJECTIVES OF RESEARCH

The main objective of my research is to discuss all the limitations to this exclusive and guaranteed right secured by the virtue of Art:19 of the constitution of Pakistan 1973 in the light of all international documents, covenants, and declarations. The

¹. For the purpose of these principles law which purports atleast at a prima facie level, to strike this balance will be referred to as "Defamation laws" recognizing that in different countries these laws go by the variety of other names, including insult, libel, slander, and desacato.

responsibilities and obligations of anchors and other media persons to impart impartial and true informations. The very importance of freedom of speech can be noted already in the number of national and international documents that codify it as a freedom or even as a positive right. In my research I will explore the position of free speech in different liberal legal systems.

The expression freedom of speech and press has been understood by various persons by various persons. My research in this regard will give the clear picture of this above mentioned expression and will end up equivocal interpretations of these very significant human rights. The expression should be understood as meaning to hold opinion, to receive and impart information through the verbal statement and printed words without any interference from the public authority.

The world will have come to a grave dark place when we no longer have the freedom to say what we like. What we like doesn't mean that we have absolute authority to make a fun of other's religious and prestigious personalities as Ahmed Rushidi did.

1.4 FRAMMING OF ISSUES

- I. Why freedom of expression matters?
- II. Freedom of speech and role of media in current scenario of Pakistan.
- III. PEMRA ordinance and major laws curving media freedom in Pakistan.
- IV. Prospect and challenges of media in Pakistan in reference of free speech and government strategies and behavior to curb its freedom.
- V. Limitation on freedom of speech, press, expression, in the light of civil defamation law
- VI. Restriction on these rights to combat racism, religious harm and human dignity.

VII. Analogous provision of international, covenants, declaration and documents and instances of other countries in this regard.

VIII. Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.

1.5 TENTATIVE OUTLINE/CHAPTERIZATION

The study will comprise of an introduction, four chapters and conclusions. In the introductory part, a legal analysis and background of the problem as well as legality of this freedom will be given and issues will be identified. Chapter one will explore the freedom of speech in different prospective and analysis of all international documents which also preserve this right in full totality. Chapter two will examine and analyze the arguments regarding the use of this freedom and defamation laws. Chapter three will look at the freedom of speech in Islamic prospective in relevance to cultural relativism these chapters will be followed by conclusions where the findings and recommendations of the study will be recorded in a precise legal language.

1.6 LITRATURE REVIEW

In the book on the subject “*Defining Defamation*” the author John Steylen explained the principles on freedom of expression and protection of reputation. The principles should neither be taken as forecloser nor as approving restrictions designed to protect other's legitimate interest.

The author Harry M. Bracken has explain the origion of this Doctrine in the book “*Freedom of speech & the words are not deeds*” that the positive speech always has some altruistic motives behind rather than ulterior one because the later has only esoteric interest. freedom of speech is also the one of very significant element of development in democratic countries.

Shariffudine Pirzada explianed in the book “*Fundamental Rights and Constitutional Remedies in Pakistan*” that freedom of speech is indespensible. He discussed the annex of fundamental personal rights, liberties, and social responsibilities. The right of speak freely and promote diversity of ideas and programmes is one of the chief distinction that set democracies apart from totalitarian regimes.

Keith Dixon in the book “*Freedom & Equality*” Discusssed the hated speech and give interpetation of harm to others, no one pretends the actions should be as free as opinions on the contrary the opinion lose their immunity when the circumstances in which it made can not justify it properly.

In the Article “*Fighting Racism Through Freedom of Expression*” by Doctor Agens Callamard. He said that racism can be caombate throgh respecting freedom of speech and freedom of expression. The exective director of Article 19 of UDHR explains

that freedom of expression organizations recognises that freedom of expression is not absolute and some sphhere are not protected under Art:19 of UDHR and ICCPR and states are under obligaions to take actions against incitement to racial, annd religious hatred, as per Art: 20 ICCPR.

“Freedom of speech & media” this book by Simone Chambers, Anne N. Costain stated that freedom of press and journalist is an ordinary part of the freedom of subjects. He stated that freedom of speech and expression with regard to media persons and individual capacity doesn,t restrict to the oral utterence but the freedom of expression to propagation of ideas through printed medium or in written words. There can therefore be no doubt that the freedom of press is fundamental right of the freedom of expression guaranteed to the citizens under constitution of every country.

“Freedom of Speech & Civil Defamation” by James turnor. He is in view that the extent of civil defamation and its use in the country particularly against the media should not be understood as an indicator for the quality of media. In many countries the use of civil defamation is very abusive and an unjustified restriction to the freedom of expression.

Brenna Coleman in a book *“Media Ethics”* explained the social responsibility of anchors to impart true and unbiased reports and information rather than odious, and frivolous, vexatious. In this model, media ethics is automatic because the press is free to serve its purpose for the public, as opposed to special interest groups or advertisers. Another condition of the social responsibility model is that news reporting cannot be dependent on groups that may encourage bias and unethical practices in exchange for financial support. The author gave an example of British BBC news and excellent

examples of Western media outlets which fall into the social responsibility category. They depend on their public audience for compensation, not advertisers, and therefore are not worried about corporate interests. They both share a focus on education, instead of merely trying to entertain their listeners and viewers. They have to focus on social responsibility and respect media ethics in order to satisfy the public.

An Article about “*Benefits of Freedom of Speech*” are that it brings to an individual a certain degree of shared responsibility, frankness, enhanced trust, and improved sense of accountability. Besides, the provision for free speech is an efficient tool in fostering social evolution. However, in order to maximize the benefits of freedom of speech, it is necessary to prevent its misuse by groups that advocate offensive ideas, such as terrorism, racism, sexism, and fascism.

Eric Barent in his book “*Freedom of speech*” underlined another benefit of Freedom of Speech is that it helps the citizens to develop self-confidence to express themselves in public without any fear of being punished or condemned. As a result, people become bold enough to challenge the established laws and rules and fight for their rights. Such emboldened individuals are even crowned as leaders by the masses to stand for a common cause.

Jack M. Balkin, Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society. This book explained that Freedom of Speech not only protects the right to information and expression in war like situations, but also defends the rights of the non-religious individuals within the society. There is

no uncertainty about the numerous benefits of freedom of speech, but with it comes the unfavorable situations that are disadvantageous to the evolution of the human society.

David O. Brink. In book "Millian Principles, Freedom of Expression, and Hate Speech legal theory has discussed powerful claims for freedom of speech, but he argued that we need some rules of conduct to regulate the actions of members of a political community. The limitation he places on free expression is "one very simple principle," now usually referred to as the Harm Principle.

John S. and James L. Knight Foundation; "Public opinion and Freedom of Speech. In his project authors discussed that freedom encourages the exchange of information and ideas necessary for citizens to make political and personal decisions. The public supports political and informative speech more strongly than it does other kinds of speech. It does not consider offensive speech to be core protected speech, perhaps because it believes that offensive speech does not involve a serious exchange of ideas.

Cass R. Sunstein. "Democracy and the problems of Free speech. The author has explained that there must be legitimate in purpose and aim behind restriction on freedom of speech. It is not enough for a provision to have an incidental effect on one of the legitimate aims. If the provision was created for another reason, it will not pass this part of the test. Restriction is distinctive in the sense that it comes into effect when a particular view point is expressed.

Zamir, Niazi in his book "Press in Chains" underlined the reasonable restriction, media persons and their responsibilities in reference to impart truth. All media men

should refrain from causing damage to reputation of a person or an institution. The press is no doubt an industry, a business, but with a difference. Journalists have a social obligation. They must act with a profound sense of responsibility towards the society. The responsibilities of a journalist are many and varied according to circumstances and legal developments.

Mirza, Muhammad Yousaf: Faqih Abbasi. In book “A-One Exploring Journalism” explained the true sense of media issues. The most important part of this book is, that authors highlighted the issues related to free press, free speech and free flow of information with background history of pre and post partition. The defamation laws and responsibility of journalists under law of land.

Pakistan’s Blasphemy Laws: From Islamic Empires to the Taliban by Shemeem, Burney Abbas. This book discussed that right to Freedom of speech is universally accepted right by means of some reasonable restrictions depend upon circumstances. This right is also guaranteed in Islam and teaching of Prophet (PBUH). But right to freedom of religion is not universally accepted it is cultural relative right depends upon the culture, morals, ethics and norms of every society.

“Cultural Relativism: Perspectives in Cultural Pluralism” by Melville, Jean Herskovits has explained. There is only right and wrong as specified by the moral code of Society.

Cultural relativism is the mistaken idea that there are no objective standards by which our society can be judged because each culture is entitled to its own beliefs and accepted practices. Because there is no objective moral truth that suits to all people and for all. One moral code is no better or no worse than any other (i.e. the moral equivalence doctrine).

Erich, Kolig in his book "Freedom of Speech in Islam" explained that Islamic principle of freedom did not come as a result of some sort of development in the society, but it was a heavenly principle that was revealed for the good of people and to make them higher on earth. But this freedom is guaranteed on the condition that religion should not be disrespected, and people's honor and dignity should not be transgressed upon.

The above mentioned books written by prominent authors in the field of media and defamation laws are important and provided complete picture of human rights and fundamental freedoms. But it is felt that these books lack the material specifically mentioning Pakistani Laws regarding freedom of speech. The Islamic concept of free speech is outside the scope of these books. Therefore this research is proposed to fill this gap.

CHAPTER NO: 2

FREEDOM OF SPEECH: A GENERAL OVERVIEW OF FUNDAMENTAL FREEDOMS AND THEIR IMPORTANCE IN EXERCISING OTHER HUMAN RIGHTS

1.1 INTRODUCTION

All rights are very important but fundamental freedoms are more pivotal and above all others human rights in a democratic society to provide safety and rights. Freedom of speech has been one of the most important rights in a constitution of Pakistan along with other freedoms, like freedom of press, freedom of information³. Freedom of speech constitutes a human right that all people should have and one that must be respected. As individuals, everyone is entitled to express his opinions, write, publish or communicate, and such expressions must be respected. Different countries have certain level of tolerance at the moment of executing this right.⁴

Freedom of expression and speech are foundational rights, whose realization is essential for the enjoyment and protection of all human rights. They are also mutually sustaining and reinforcing human rights. It is only when coordinated and focused action is taken to promote all freedoms effectively.⁵

The right to freedom of expression and opinion also has an end result, namely freedom of the press, which is normally perceived as the individual's right to freedom of expression extended to the media. Freedom of expression is a cornerstone of democratic rights and freedoms. In its very first session in 1946, before any human rights declarations or treaties had been adopted, the UN General Assembly adopted resolution 59(I) stating

³Ahmed Hassan, "Freedom of Speech: A Double-edged Sword" (Introduction and emergence of rights in subcontinent), (Lahore: Foundation Press, 2001), 16.

⁴ Nazir Muhammad Rana "Liberty and concept of human rights in Pakistan" (Lahore: A-One publication.2002), vol: 1, 23-24.

⁵ Art:19, *The Camden Principles on Freedom of Expression and Equality*, April 2009, available at: <http://www.refworld.org/docid/4b5826fd2.html> .Last Accessed (09-05-2014)

"Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated."⁶

The constitution of Pakistan 1973 mentioned that, everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Other then Constitution of Pakistan, the treaties, Declarations and conventions also bound Pakistan to protect human rights and fundamental freedoms.⁷

Freedom of speech is a qualified right protecting the right to receive opinions and information and the right to express them. Freedom of expression is a foundation of other democratic rights and freedoms. It enables the public to participate in decision-making through free access to information and ideas. It encourages good governance, as media scrutiny of government and opposition may help to expose corruption or conflicts of interest. The state must not censor artistic, political or commercial expression unnecessarily, and must protect the exercise of the right to freedom of expression by individuals and the media.

Human rights are universal, inalienable and indivisible. Their universality and indivisibility embolden and protect these rights. Their inalienability is their guarantee to every citizen of the world upon birth. These basic human rights, which are non-discriminatory and non-flexible, are the same for all, and give us dignity as individuals.

There is no hierarchy between this rights.UDHR does not suggest any priority among

⁶Ahsan Farooq, "Freedom of Expression: An introduction".Available at

http://www.hrea.org/index.php?base_id=147 Last Accessed. (11-09-2014).

⁷Sarfraz Hina,"Freedom of expression",http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1618168.Last Accessed.(13-02-2015.)

rights, but in a liberal notion of the hierarchy of rights in which free speech and thought came first because they make it possible to obtain redress for violations of the rest. Thus, they exist in a nexus-relationship⁸. Equal respect and adherence to these rights rests with the political, social and religious leadership from the most local level to the heads of state.⁹

Freedom of expression is essential in enabling democracy to work and public participation in decision-making. Citizens cannot exercise their right to vote effectively or take part in public decision-making if they do not have free access to information and ideas and are not able to express their views freely. Freedom of expression is not only important for individual dignity but also to participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violations, in particular the right to freedom of association and assembly.¹⁰

Pakistan got its first constitution, nine years after independence, on March 23, 1956. This constitution guaranteed the right to freedom of expression under Article 8. The new constitution, promulgated in 1962, guaranteed the right to freedom of expression under Article 6, but it too failed to provide for the right to freedom of press. The Constitution of 1973 guaranteed the right to freedom of speech and expression under Article 19 and it

⁸ John D Montgomer, "Is there a hierarchy of Human Rights". Journal of Human Rights.(France: Taylor and France.2002),Vol,1.373-385.

⁹John Desrochers, "Human Rights: Basic Documents, Concept and Perspectives". (USA:Integral Liberation press. 2004),Vol: 8.,261-262.

¹⁰ KennethIra Kersch, "Freedom of Speech: Rights and Liberties under Law" ,(Santa Barbara, California, Denver, Colorado. Oxford, England Press 1998), 106-161.

also guaranteed the right to freedom of press.¹¹ State-institutions are made responsible to protect the freedom of expression.¹²

Government of Pakistan has tried to exercise extensive control over the media, which drastically affected the circulation of news across the country. During President Pervaiz Musharraf's nine year regime the media had a mixed performance despite the government's repeated claims of granting the media unique freedoms.¹³

During the Musharraf regime, freedom of speech was suppressed to such an extent that many journalists were too afraid to voice their opinions.¹⁴ There were censorships, press advice, issuance of government's advertisement to favorite media organizations, forcing off opposition leader's interview on a private television channel, dozens of reporters were beaten and arrested during the tussle between the President's election and the Supreme Court.¹⁵

The citizens of a sovereign state are allowed healthy criticism on the policies of state. But, unfortunately, in Pakistan freedom of expression is always suppressed under the dictator's regime. Media channels have faced severe punitive measures and bitter

¹¹Hassan Naqvi, "*Article 19: Freedom of Speech*". web.July 20, 2013 Available at, <http://tribune.com.pk/story/579466/article-19-freedom-of-speech/> .Last Accessed.(08-07-2014).

¹²Momo Khan, "*Freedom of Speech in Pakistan-A Lost Cause*". Available at <http://muslim-academy.com/pakistan-news-and-freedom-of-speech/> Last accessed. (12-02- 2013).

¹³ Guaging Media Freedom Report by Pakistan Press Foundation, (Islamabad: Pakistan Press Foundation.2006), 23.

¹⁴Irfan Ramzan, "*Analyze and compare the state of Freedom of Mass media during President Zardari's and Musharraf's regime*", (Lahore: Ishaq Publications & Press. 2009), 156.

¹⁵ Zafar Awan, "*freedom of expression of Mass Media in General Musharraf's Era :pre and post judiciary crisis.* ".(M.Phil, diss: 2012), 78.

policies of the successive governments. They can never become a voice of the people. However, this fundamental right must not be misused. Propaganda, exaggeration and misleading information must be avoided which may create chaos in the country and derail the development of process of the state.¹⁶

Information based on biased perceptions and insufficient evidence is always harmful for the peace a society. Same is being done by most of the main stream media channels in Pakistan. Mostly, do not properly investigate the reports and facts, and provide misleading information to the people. For the sole purpose of popularity they exaggerate the facts. All this is, morally and psychologically, weakening the mental capacity of the people and they are more confused than ever. Media channels are backed by the political parties and, reportedly, by some foreign elements. Such a freedom of expression, based on providing superficial and false information, is a social and political evil which must not be protected on the pretext of freedom of expression. Rather, freedom of expression means speaking truth and doing healthy criticism. It gives the people a right to speak of their miseries and sufferings, and invite others to help them out.¹⁷

1.1.1 Extensive Concept of Freedom of Speech

The term “freedom of expression” is a broad category that includes:

- a) Freedom of Press.

¹⁶Tahir Ali Khan, “Media International Media Support, (:Lahore:2009), 34.

¹⁷Irfan Ali, “*Protecting Freedom of Speech not Rights*”, Web. October 20, 2009. Available at <http://www.cssforum.com.pk/css-compulsory-subjects/english-precis-composition/precis/27962-protecting-freedom-expression-not-lies.html>. Last Accessed (11-12-2013).

- b) The right to speak liberally.
- c) The right to suppose what one desires.
- d) The right to communicate with people of his choice.
- e) The right to choose to live in a society where “a free press and the right to fair trial are guaranteed”.¹⁸

1.1.2 Why Freedom of Speech matters?

World war second was ended with lots of destruction and human rights sufferings. This harsh occurrence give rise to new political efforts and comprises the council of Europe by the treaty of London in May 5, 1949. In Art: 1 of the Statute of the Council of Europe, its aim has been determined as “to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress”.¹⁹

In Art: 3 it stated that, in the realization of its aim

Every member of the Council of Europe must accept

The principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively. As indicated, the primary components, to implement “a greater unity”, are to

¹⁸*Eugene Volokh, “The Justice, The Freedom of Speech and Ideology”*[*http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/10/13/the-justices-the-freedom-of-speech-and-ideology/*](http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/10/13/the-justices-the-freedom-of-speech-and-ideology/). Last Accessed (08-09-2013).

¹⁹“This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realization of human rights and fundamental freedoms”.(Statute OF Council of Europe)

accept the Principles of the rule of law, the enjoyment of human rights and fundamental freedoms by all Persons and collaborate sincerely and effectively.

In the 20th century the Europe has faced serious problems about the realization mentioned aim, such as cold war era. All theses upheavals come up with the greater understanding of importance of Human Rights and fundamental freedoms, particularly the requisite of freedom of speech and expression for a democratic society and to live in harmony and peace. In the beginning of the 21th century the world has experienced the terrible side of terrorism. As a result of globalization world has shrink and now everyone can affect the others with his or her thoughts, speeches and behaviours. Therefore the community needed the concept of human rights to be implemented with the strict sense of responsibility.²⁰

The single most important document created in the twentieth century and as the accepted world standard for human rights. The UDHR draws the attention of international community, and is seen as an essential foundation for building a world in which all human beings can, in the centuries to come, look forward to living in dignity and peace.²¹

All national and international documents about human rights and fundamental freedoms (details of these documents will be mention below) plays vital role to make the rights of people more secure with axillaries remedies. Every right has its own importance

²⁰Council of Europe, “Documents Regarding International Human Rights”
http://en.wikipedia.org/wiki/Council_of_Europe#History.Last Accessed (11-24-2013).

²¹Asma Jan, “*What is the role of Freedom of Speech in democratic society*”
[http://www.youthmedia.eu/media/117024-what-is-the-role-of-freedom-of-speech-in-a-democratic-society-and-where-are-its-limits-Last Accessed \(24-09-2014\).](http://www.youthmedia.eu/media/117024-what-is-the-role-of-freedom-of-speech-in-a-democratic-society-and-where-are-its-limits-Last Accessed (24-09-2014).)

and cannot be denied of its implementation, but freedom of speech is more important than other because it makes us able to express ourselves without worrying that the law is going to penalize us for our beliefs. It promotes self-actualization of both imparters and receivers of the ideas. Freedom of speech refers to the right of the individual to express his views about matters of interest to him/her.²²

Most people would agree that in an open, democratic society, free speech is essential. The press, the broadcast media and political opponents must have the freedom to criticize those in power. It is one of the ways that people in such a society hold their leaders accountable and expresses their individuality as free citizens.²³

1.2 Theories of Freedom of Speech

Richard moon has discussed this right based on two theories.

1. Autonomous
2. Democratic

Freedom of expression does not simply protect individual liberty from state interference. It protects the individual's freedom to communicate with others. The right

²²Gearon L, "Freedom of Expression and Human Rights" (Brighton:Sussex Academic Press. 2006),129.

The synonymous term freedom of expression is sometimes used to indicate not only freedom of verbal speech but any act of seeking, receiving and imparting information or ideas, regardless of the medium used, known in United States law as "symbolic speech": available at: http://en.wikipedia.org/wiki/Freedom_of_speech.Last Accessed (24-09-2014).

²³Irfan Ali, "Protecting Freedom of Speech not Rights", Web.October 20, 2009. Available at. <http://www.cssforum.com.pk/css-compulsory-subjects/english-precis-composition/precis/27962-protecting-freedom-expression-not-lies.html> Last Accessed (11-12-2013).

of the individual is to participate in an activity that is deeply social in character that involves socially created languages and the use of community resources.²⁴

There are many arguments for protecting freedom of expression, but all seem to focus on one or a combination of three values truth, democracy and individual autonomy. Freedom of expression must be protected because it contributes to the public's recognition of truth or to the growth of public knowledge, or because it is necessary to the operation of a democratic form of government,²⁵ or because it is important to individual self-realisation, and it is an important aspect of individual autonomy. However, most accounts assume that a commitment to freedom of expression, which extends protection to political, artistic, scientific and intimate expression, must rest on the contribution that freedom of expression makes to all three of these values.²⁶

Freedom of expression is not just an instrument for advancing the goal of democratic or representative government. In a democracy the responsibility of citizens for the governance of their community is actualized in public discussion and deliberation. The members of a self-governing community seek common understandings and work towards shared goals through the exchange of views. Through participation in public discourse,

²⁴ Harry Melkonian, "*Freedom of Speech and Society: Asocial Approach to a Freedom of Expression*", (Amherst, Newyork: Cambria Press.2012), 235.

²⁵ Williams Susan H, "*Feminist Theory and Freedom of Speech, Free Speech Theory*", (Indian Law Journal, 2009), Vol. 84: Iss. 3, 23.

²⁶ Richard Moon, "*The social character of freedom of expression*", (Amerstderm: LR Publications.2006), 234. Available at <<http://amsterdamlawforum.org/article/view/106/190>> Last Accessed (01-24-2013).

the individual becomes a citizen capable of understanding, and identifying with, the concerns and opinions of others.²⁷

A. Arguments about Freedom of speech Principle

These arguments usually used to justify a free speech principle that is principle under which speech is entitled to special protection from regulation, that no immunity cannot defend them. Under this principle any truth about government regulation is entitled to the degree of immunity. The right of free speech must be keeping separate from fundamental liberties which are incorporated in the written constitutions.²⁸ Free speech principle doesn't enjoy full protection for any freedom of expression. It can be restricted in some circumstances, e.g. in case of imminent threat and violence.²⁹

(i) Arguments Regarding in Search of Truth

Principle of free speech is very important in discovering truth. If restriction on speech is tolerated, then impartial opinion with much accuracy can be published.³⁰

a) John Milton said that truth must be regarded as fundamental and autonomous good for the progress and development of the society. Moreover he said
“When complaints are freely heard, deeply considered and speedily reformed, then is the utmost bound of civil liberty attained, that wise men look for.”³¹

²⁷Richard Moon, “*The social character of freedom of expression*”,
<<http://amsterdamlawforum.org/article/view/106/190>> Last Accessed (23-09-2013).

²⁸Eric Barent, “*Freedom of speech*” (United Kingdom:Oxford university press. 2008), 27.

²⁹ *Ibid*

³⁰John Mill, “*Areopagitica; A speech of Mr. John Milton for the Liberty of Unlicensed Printing*”, (London: Ravel Press.1644), 34.

Milton highlights that when the piece of writing, indicating truth is censored the modified form of that truth may hold much more obliteration than before.³²

(b) John Stuart Mill argued that Truth is a coherent concept and that particular truth can be discovered and justified. "Speech does not tend to have a specially protected status and it has to compete with other rights claims for our commitment. John Stuart Mill, one of the great defenders of free speech, where he suggests that a struggle always takes place between the competing demands of authority and liberty. therefore, it is not to argue for an unlimited domain of free speech, such a concept cannot be defended. Instead, we need to decide how much importance we place on speech in relation to other imperative rights such as privacy, security and democratic equality.³³

(ii) Free Speech is Necessary for Self-Fulfillment and Autonomy

At the level of general philosophy it is reasonable to ask why freedom of speech is particularly important to a person's self-fulfillment. Free speech is also important for self-fulfillment. We all benefit from being able to speak our minds, to express our emotions and to understand the emotions of those around us. Novelists and other creative writers depend on their right to freedom of expression to illuminate the human condition.³⁴

³¹Tauriq Moosa, "On the Areopagitica: *Why Milton's Defence of Free Speech Remains Almost Unsurpassed but Not Secular*. Available at <http://www.3quarksdaily.com/3quarksdaily/2012/01/on-the-areopagitica.html> Last Accessed (09-05-2014).

³²*Ibid*

³³Freedom of speech ,(Stanford Encyclopedia of Philosophy), <http://plato.stanford.edu/entries/freedom-speech/> Last accessed (31-01-2013).

³⁴Van Mill David, "Freedom of Speech". Stanford Encyclopedia of Philosophy. <http://plato.stanford.edu/entries/freedom-speech/#JoeFeiOffPri> Last Accessed (04-04-2014).

(iii) Free Speech as Basis of Democratic Society

Freedom of speech and freedom of expression is the indivisible element of a democratic society. Whether the society is democratic or not can be defined by the factor of independent press and mass media. Autonomy in democracy is with respect to freedom of speech.³⁵

Freedom of speech and expression may bring to the control over the state authorities exercised by the society and to the maintenance of the self-controlled society, which is the demand of democracy. The definition of a self-controlled society means that it itself shall make own decisions. And the society can do this in case it is informed in aggregate with the open exchange of opinions.

Abraham Lincoln, generally, expressed this conception as follows:

“Let the people be aware of the facts, and the country will be calm”.³⁶

Hence, mass media as an instrument for the exercising of freedom of speech and expression gains importance for a democratic society.³⁷ Before people can govern themselves, they must be free to express themselves.³⁸

³⁵Cheoljoon Chang, "Autonomy as a foundation for a theory of free speech and adversary system", (Chicago:cornell university.2008), 67.

³⁶ Zafar Rehman, "Independent press: Rights and Obligations,The Role of Mass Media in Democratic Society" available at <http://www.youthmedia.eu/media/117024-what-is-the-role-of-freedom-of-speech-in-a-democratic-society-and-where-are-its-limits-> Last accessed (12-11-2013).

³⁷Democracy depends upon a literate, knowledgeable citizenry whose access to the broadest possible range of information enables them to participate as fully as possible in the public life of their society. Ignorance breeds apathy. Democracy thrives upon the energy of citizens who are sustained by the unimpeded flow of ideas, data, opinions, and speculation.

³⁸Cass Sustein, "Democracy and the problem of free speech", (1995), Ed,1,98.

Freedom of expression is the cornerstone of democratic life. Without free speech, we could not hold the government to account nor could we represent our political views or expose the wrongdoing of those who represent us. This is why MPs claim an absolute privilege to make or repeat defamatory remarks in the Parliament. It enables them to air their constituents' concerns without the fear of a libel action.³⁹ It is by the free exchange of ideas among citizens about how they should live together and how they should be governed that we create and sustain the democratic society. So the rights to free association and expression are scarcely less important than the right to live in peace and free from want.⁴⁰

Freedom of expression is essential in enabling democracy to work and public participation in decision-making. Citizens cannot exercise their right to vote effectively or take part in public decision-making if they do not have free access to information and ideas and are not able to express their views freely. Freedom of expression is thus not only important for individual dignity but also to participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violations, in particular the right to freedom of association and assembly.⁴¹ Progress has been made in recent years in terms of securing respect for the right to freedom of expression. Efforts have been made to implement this right through specially constructed regional mechanisms.

³⁹The Report :balancing free speech and reputation by Libel Reform campaign. Available at <http://www.libelreform.org/the-report?start=3> Last Accessed (27-09-2013) .

⁴⁰John Desrochers, "Human Rights: Basic Documents, Concept and Perspectives", (USA:Integral Liberation Press. 2004), Vol.8,263.

⁴¹"State of Human Rights in Pakistan". Report by Human Rights Commission of Pakistan.(Lahore:Raheem & Son Publications and Press 2011) , 237.

1.3 Importance of Freedom of Speech

The Universal Declaration of Human Rights was adopted by the United Nations in 1948 and in its Preamble "it was proclaimed as a common standard of achievement for all peoples and all nations." The Universal Declaration outlines 30 basic rights for all human beings to achieve their full potential and to live a life free of fear and want. It was the first study on the reorganization of human rights at the international level and has had remarkable influence on the improvement of national and international human rights law. Truly, in the European Convention on Human Rights the member states of the Council of Europe has stated that "Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948.all countries are bound to formulate their regional legal laws which protect all fundamental rights and freedoms.⁴²

It is stated in the preamble of UDHR

"Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people."⁴³

The freedom of expression is one of the rights, declared, as a result of aforementioned motivation, in Universal Declaration which takes place in the Article 19 with the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers." And under the effect of Universal Declaration Article 10 of

⁴²Universal Declaration of Human Rights. Report of Youth for Human Rights. <http://www.youthforhumanrights.org/what-are-human-rights/universal-declaration-of-human-rights/introduction.html>. Last Accessed (04-09-2013).

⁴³Nurullah Yamali, Discussion of Art: 19 of UDHR by general directorate of international laws and foreign affairs by (Ministry of justice, Turkey).

the Convention for the Protection of Human Rights and Fundamental Freedoms is set to one side for freedom of expression. It reads as follows:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontier.”⁴⁴

Freedom of information is a fundamental human right and is the criterion of all of the freedoms to which the United Nations is set apart. Without free speech, no political action is possible and no resistance to injustice or oppression is possible. Without free speech elections would have no meaning at all. Policies of contestants become known to the public and become responsive to public opinion only by virtue of free speech. Thus freedom of speech is the *sine qua non* of a democratic society”⁴⁵.

Right to express one's ideas and opinions freely through speech, writing, and other forms of communication but without deliberately causing harm to others' character and or reputation by false or misleading statements⁴⁶. Freedom of press is part of freedom of expression.⁴⁷

Free speech is simply what is left when many other things are taken out. One of those things is the effect of defamation laws, which seek to protect an individual's reputation.

⁴⁴*Ibid*

⁴⁵M Cooray, “*The Importance of Freedom of Expression*” (An explanation of the importance of freedom of expression and freedom of association and how they are being eroded in Australia in 1996).
<http://www.ourcivilisation.com/cooray/btof/chap211.htm> accessed 04 December 2014. Last accessed (05-07-2014).

⁴⁶Other auxiliary fundamental freedoms to this is Freedom of information .

Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

⁴⁷Asim Raza, “Freedom of speech and constitutional obligation”
<http://www.businessdictionary.com/definition/freedom-of-expression.html> (Last accessed date 19-11-2011).

The central problem is to reconcile this purpose with the competing demands of free speech.⁴⁸

2.4 Theories of “MILL” & Thomas in Defense of Freedom of speech

British philosopher John Stuart Mill underlined the need for free speech mainly for three reasons:

- I. Reveal the truth,
- II. Ensure self-development
- III. Self-fulfillment of citizens and to help ensure participation of the citizens in a democracy.⁴⁹

If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind.

These are powerful claims for freedom of speech, but as it noted above, Mill also suggests that we need some rules of conduct to regulate the actions of members of a political community. The limitation he places on free expression is “one very simple principle,” now usually referred to as the Harm Principle.⁵⁰

⁴⁸Mirza Muhammad Yousaf: Faqihah Abbas, “Exploring Journalism”, (Lahore:A-One Publishers.2011), 167-168.

⁴⁹Van Mill David, “Freedom of Speech”, Stanford Encyclopedia of Philosophy at.
<http://plato.stanford.edu/entries/freedom-speech/#JoeFeiOfflPri>. Last Accessed, (04-10- 2014).

⁵⁰David Brink, “Millian Principles, Freedom of Expression, and Hate Speech. Legal theory”. Vol.7, Issue 02,(2001), 119.

2.4.1 Mill's Defense of Freedom of Expression: Why We Must Protect Free Speech?

Mill is a staunchest supporter of free speech at every level. He stated that if we do not consider the value of speech then:

- I. We might suppress the truth.
- II. We might suppress a part of the truth, which we'll get at only through free discussion.
- III. We might come to know about some true beliefs through strict sense of prejudice.

In this way we might understand and defend our beliefs.

Mill makes an exception for speech that "constitutes a positive establishment to some mischievous act." But on Mill's view, speech cannot be restricted simply to prevent harm. Because Harm justifies Restricting speech only if it consists in a direct and clear violation of rights.⁵¹

2.5 Freedom of Speech in Contemporary Legal Systems

The treatment of Free speech in a number of liberal democracies, where it enjoys considerable protection. Special attention is paid to free speech principles in four national jurisdictions: England, Canada, Germany, and the United States. Principles developed by the European are also considered.

Freedom of speech in the United States is protected by the First Amendment to the United States Constitution and by many state constitutions and state and federal laws. The freedom of speech is not absolute; the Supreme Court of the United States has recognized several categories of speech that are excluded from the freedom, and it has

⁵¹*Ibid*

recognized that governments may enact reasonable time, place, or manner restrictions on speech.⁵²

2.5.1 Constitutional Provision Regarding Freedom of Speech in United States of America

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party, both state that individuals have a right to freedom of expression, this right includes the freedom to seek, receive and impart information and ideas of all kinds.

The United States safeguards this right through the First Amendment to the U.S. Constitution, which provides that⁵³

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”⁵⁴

The U.S. system is built on the idea that the free and open exchange of ideas encourages understanding, advances truth-seeking and allows for the denial of falsehoods⁵⁵.

⁵²Cornell University Law School; (Legal Information institute) http://www.law.cornell.edu/wex/first_amendment.Last accessed. 05-09-2013). Last Accessed (23-08-2014).
⁵³ Freedom of expression in the United States, Published by IIP Digital Library on 17 April 2013. <http://iipdigital.usembassy.gov/st/english/pamphlet/2013/04/20130416145829.html#ixzz2sL8Yjzz5Lat> Accessed(08-12-2014).

⁵⁴*Ibid*

⁵⁵Hand book of free speech issues by office of general counsel:the California State University,(USA:Arminia Press.2009), 23.

The United States believes, and experience has shown, that the best way to counter offensive speech is not with regulation but with more speech and dialogue. History has shown that restrict free expression by banning speech does not advance democracy. The drafters of the U.S. Constitution recognized that when governments forbid citizens from talking about certain topics, it often forces those citizens to discuss such topics secretly. By allowing individuals to express their opinions no matter how much the government and other citizens may disagree with them. The First Amendment promotes transparency and social stability. This competition of ideas means that inferior or offensive ideas give way to better ones⁵⁶.

US are a staunchest ally of freedom of speech and all relevant freedoms which are the core base of liberal democracies.⁵⁷ Therefore, a movie named “Innocence of Muslims” profoundly hurt the Muslims across the globe. Does freedom of speech allow hearting the religious sentiments of any religion bearer? Barak Obama’s stance : “We are home to Muslims who worship across our country. We not only respect the freedom of religion. We have laws that protect individuals from being harmed because of how they look or what they believe.”⁵⁸ Must agree that there is no speech that justifies senseless violence. There are no words that excuse the killing of innocents. We must declare that this violence and intolerance has no place among our United Nations.”⁵⁹

⁵⁶Hustler Magazine, Inc. v. Falwell, (Abrams v. United States, 250 U.S. 616, 630 Holmes, J., dissenting, 1919).486-488.

⁵⁷*Ibid*

⁵⁸Hamid Ahemd, “Fundamental Rights and view of Barak Obama”<http://www.politico.com/story/2015/01/obama-free-speech-paris-attacks-114042.html>.Last accessed (01-01-2015).

⁵⁹ “Obama says anti-islam film cannot be banned due to freedom of speech concerns” punished by daily news and analysis on (12 September 2012 in Washington DC.

2.5.2 Constitutional Provision Regarding Freedom of Speech in United Kingdom

Legal Basis for Free Speech in United Kingdom

The Constitution of the United Kingdom is the set of laws and principles under which the United Kingdom is governed. Unlike many other nations, the UK has no single constitutional document. This is sometimes expressed by stating that it has an uncodified or "unwritten" constitution. The law of United Kingdom is depending upon the treats, judgments of the court. The constitution has other unwritten sources, including parliamentary constitutional conventions.⁶⁰

Article 10: Freedom of expression

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without inference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."

The exercise of these freedoms, is conditional with duties and responsibilities, This subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁶¹

⁶⁰ Freedom of speech, (report) Published by Equality and human rights commission, available at <http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/freedom-of-expression/> Last Accessed(23-09-2013) .

⁶¹ Helmut Weber, "Who Guards the Constitution?" English version of a paper delivered on 22 October at the Centre for British Studies, (Berline:Humboldt University Press.1999), 59.

The right to free speech although practicing in UK but still there is some legal provisions which need to scrutinize.

- I. Unwarranted Free Speech restrictions against harassment and incitement on ground of religion and religious beliefs.
- II. UK libel laws to prevent victimization of scientists, journalists, and human rights campaigners. As those people are working in capacity to perform their duties.
- III. To take legislative measures to make the free speech less restrictive.
- IV. To formulate the law which leads the legal bodies such as Advertising Standards Authority and Advisory bodies to practice free speech in the name of preventing offence.
- V. Protect and secure the right of students to freely criticize religions and other ideas and beliefs without fear of punishment under Student Union or University policies
- VI. Support the work of the European Humanist Federation and International Humanist and Ethical Union, who work on free speech issues globally, including on blasphemy laws.

Although blasphemy is now not an offence in the UK, internationally it remains a big problem, including in democratic countries such as the Republic of Ireland, which recently enacted a new blasphemy law, and at the UN where the Islamic states have been seeking to impose serious restrictions on criticizing of religious beliefs.⁶²

⁶²“Free Speech and Expression”: Article published by British Humanist Association (For the one life we have) <https://humanism.org.uk/campaigns/human-rights-and-equality/free-speech-and-expression/> .Last accessed(23-12-2014).

2.5.3 Constitutional Provision Regarding Freedom of Speech in Canada

Freedom of speech had a limited background in Canada. Free speech has been taken as a criminal legislation. Free speech is primarily considered as a negative right.⁶³

A. Canadian Chart of Rights and Freedoms

Fundamental Freedoms are applying to everyone in Canada, regardless of whether they are a Canadian citizen, or an individual or corporation. These freedoms can be held against actions of all levels of government and are enforceable by the courts.⁶⁴

B. Everyone has the following fundamental freedoms: ⁶⁵

- (a) Freedom of conscience and religion
- (b) Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication
- (c) Freedom of peaceful assembly
- (d) Freedom of association.

It balances free speech with the need to limit hate. Canada is not the United States, with their absolute emphasis on letting anyone say whatever they want. The UN convention on rights protects free speech but goes on to say that you cannot incite hatred.

C. Educating the Public about the Values of Freedom of Speech:

In Canada different programs are designed to promote and educate about the values of freedom of speech. Most of the public is poorly informed about free speech issues. As a result, support for freedom of speech may be uncertain. Free speech rights

⁶³A negative right is a right not to be subjected to an action of another person or group; negative rights permit or oblige inaction. A positive right is a right to be subjected to an action or another person or group; positive rights permit or oblige action.

⁶⁴http://en.wikipedia.org/wiki/Section_Two_of_the_Canadian_Charter_of_Rights_and_Freedoms. Last accessed(30-10-2014)

⁶⁵Canadian Chart of Rights and Freedoms, (Part of a Constitution act, 1982), 23.

could suspend in times of crisis or when interests like national security appear to undermine speech interests. A better understanding of freedom of speech could help to boost and even expand the public's existing commitments to freedom of speech, which, in turn could influence the Court's doctrines.⁶⁶

D. Why the Public and Supreme Court Agree and Disagree about Freedom of Speech:

The public and the Supreme Court agree, in the abstract, that freedom of speech is important. But they disagree about exactly which speech deserves most protection, suggesting disagreement on the principles underlying speech protection.

First, as noted above, the public particularly values speech freedom where that freedom encourages the exchange of information and ideas necessary for citizens to make political and personal decisions. The public supports political and informative speech more strongly than it does other kinds of speech. It does not consider offensive speech to be core protected speech, perhaps because it believes that offensive speech does not involve a serious exchange of ideas.⁶⁷

⁶⁶ John S and James L Knight Foundation; "Public opinion and Freedom of Speech", The information society project at Yale Law School, 23.

⁶⁷ Jack M Balkin, "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society", (New York: Yale Law Press.2004), 167.

2.5.4 The Council of European Union and Freedom of Speech

When addressing freedom of expression, the EU will pay special attention to the following themes, all of which are of equal importance.⁶⁸

- I. Combating violence
- II. Persecution
- III. Harassment and intimidation of individuals, including journalists and other media actors, because of their exercise of the right to freedom of expression, and combating impunity for such crimes.⁶⁹

The European Union will

- a) Publicly condemn the killings, attack, execution, torture, enforced disappearance or other acts of serious violence or intimidation against any individual for exercising his or her right to freedom of opinion and expression, as well as attacks on media outlets and consider suitable additional measures.
- b) Appeal to State authorities to fully abide by their international obligations to effectively, promptly and in an independent manner investigate such crimes and to ensure that both state and non-state perpetrators and instigators of such violence are brought to justice. In promoting and protecting freedom of opinion and expression, the EU is guided by the universality, indivisibility, and interdependence of all human rights, whether Civil, political, economic, social or cultural.

⁶⁸ See EU Guidelines on Human Right Defenders.(2004 updated 2008), 34.

⁶⁹ UNGA Resolution A/RES/68/163 "The safety of journalists and the issue of impunity".

The Guidelines also provide officials and staff with practical guidance on how to contribute preventing potential violations of freedom of opinion and expression, how to analyze actual cases and to react effectively when violations occur in order to protect and promote freedom of opinion and expression in the EU's external action. They also outline how and in what strictly circumstances the freedom of opinion and expression can be limited.

Legislative Restrictions

Any restriction on freedom of expression must be provided by law, may only be imposed for the grounds set out in international human rights law, and must conform to the strict tests of necessity and proportionality.⁷⁰

Inconsistent and abusive application of legislation can be used to censor criticism and debate concerning public issues and to foster a climate of fear and self-censorship among media actors the public at large. Arbitrary regulations and accreditation requirements for journalists, denial of journalistic access, punitive legal barriers to the establishment or operation of media outlets and regulations that allow for the total or partial, ex-ante or post-facto censorship and banning of certain media are examples of legislative restrictions on the right to freedom of expression.

On the Internet, censorship usually takes the form of laws allowing for the total or partial banning of certain WebPages. In certain extreme circumstances, States resort to

⁷⁰On the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic human rights policy(2011/2185(INI). 30 March 2012.Available at http://eeas.europa.eu/delegations/documents/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf, (last accessed, 12-10-2014).Report by committee of foreign affairs.Last Accessed (23-09-2013).

the complete disconnection of the Internet network, thus isolating a whole country or region from the rest of the world. It is important to guarantee that the access to and free flow of information will not be subject to unjustified restrictions regardless of the medium.⁷¹

2.6 International and Regional Instruments for Protection and Promotion of Human Rights and Fundamental Freedoms

The following international instruments determine standards for the protection of the right to freedom of expression.

2.6.1 Universal Declaration of Human Rights.

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations on 10 December 1948 and provides human rights standards accepted by all member states. The UDHR represents the standards for freedom expression. Article 19 states that “Everyone has the right to the freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.⁷²

⁷¹*Ibid*

⁷²A detail Document of Human Rights by Commission on Human Rights
<http://www.un.org/en/documents/udhr/>. Last Accessed (28-05-2013).

2.6.2 International Covenant on Civil and Political Rights.

The International Covenant on Civil and Political Rights, entered into force in 1976. It elaborates the principles laid out in UDHR and is legally binding on all states who have signed and ratified its provisions.

Article 19 of the ICCPR stated that:

“Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

The exercise of the rights provided above coupled with special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary, For respect of the rights or reputations of others; For the protection of national security or of public order, or of public health or morals.”

2.6.3 United Nation Special Rapporteur on Freedom of Opinion and Expression

The guarantees of freedom of expression in the Universal Declaration and ICCPR are very general and the Special Rapporteur has sought to clarify the precise nature of this right, by making a number of statements and declarations, often in conjunction with other human rights mechanisms, containing authoritative interpretations of these articles.

2.6.4 Convention on the Elimination of Discrimination against Women

Article: 3 of the convention laid down the principle of freedom of speech and all fundamental freedoms.⁷³

2.6.5 African Charter on Human and Peoples' Rights

Article 9 of the main African human rights treaty provides for freedom of expression.

Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law.⁷⁴

2.6.6 Council of Europe

The Council of Europe is a regional intergovernmental organization consisting of 45 countries. It aims to defend human rights, parliamentary democracy and the rule of law. All members of the European Union also belong to the Council of Europe.

2.6.7 European Convention on the Protection of Human Rights and Fundamental Freedoms

Freedom of expression is protected by article 10 of the European Convention. Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief and freedom, either alone or in community with others

⁷³Staes of Human Rights in Pakistan.Report by Human Rights Commission of Pakistan.2011

⁷⁴ <http://www.achpr.org/instruments/achpr/#a9>. Last Accessed (17-05-2013)

and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others and has been the subject of a relatively large number of cases before the court.

2.6.8 American Convention on Human Rights

The American Convention on Human Rights, which entered into force in 1978, protects the right to freedom of thought and expression, Art: 13 mentioned everyone has the right to freedom of thought and expression, right to receive and impart information and for restrictions to be imposed on this right only for limited circumstances.⁷⁵

⁷⁵ The legal character of American Convention of Human Rights.<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=25&>. Last Accessed (17-05-2013)

CHAPTER: NO 3

FREEDOM OF SPEECH AND DEFAMATION LAWS

3.1 INTRODUCTION

The right to freedom of expression and opinion also has a effect, namely freedom of the press, which is normally perceived as the individual's right to freedom of expression extended to the media. Freedom of expression is a cornerstone of democratic rights and freedoms.

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.⁷⁶ In This regard media freedom is very pivotal because democracy flourish in presence of free media in a society.

In Pakistan mass media has come a long way. Today Pakistani media has started to exert itself and is well on its way to achieve a more meaningful and its status. Mr. Steffon has acknowledged the fact that:⁷⁷

“The media in today Pakistan is perhaps the freest in the region and many other parts of the world.”⁷⁸

The media in our country having such an influence on our lives, it has both harmful and beneficial effects. Beneficial because it provides us all the information we need from all over the world, it entertain us and at the same time it help us to find the more about the topic we are interested in. From 2002, under General Musharraf, media faced a decisive development that would lead to a boom in Pakistani electronic media and paved the way to it gaining political influence new liberal media laws broke the state's

⁷⁷John Bruschke, “Free press vs. fair trials: examining publicity's role in trial outcomes”. Lawrence Erlbaum Associates, Inc. Mahwa, (London: New Jersey, 2004), 38.

⁷⁸Steffen Cohen, “The Idea of Pakistan”. Lawrence Erlbaum Associates, Inc. Mahwa, (London: New Jersey, 2003), 79.

monopoly on electronic media. TV broadcasting and FM radio licenses issued to private media outlets.⁷⁹ Media situation after the February 2008 election has greatly been improved. Generally, Musharraf government followed a more liberal policy towards the press and media with fewer restrictions and much less manipulation. However, situation on the ground was different. Authorities used violent policy to silence critical voices in the media.⁸⁰

Freedom of Speech encourages good governance, as media scrutiny of government and opposition may help to expose corruption or conflicts of interest. The state must not censor artistic, political or commercial expression unnecessarily, and must protect the exercise of the right to freedom of expression by individuals and the media.

As Milton Stated:

"When complaints are freely heard, deeply considered, and speedily reformed, then is the utmost bound of civil liberty attained, that wise men look for."⁸¹

Violations of freedom of expression often go hand in hand with other violations, in particular the right to freedom of association and assembly.⁸²

Participatory democracy requires citizens to reflect and debate in order to purify public opinion into a clear will of the people that enable the political leadership to absorb these values and translate them into policy.

⁷⁹Ibrahim Nasrullah, ".Musharraf vs Freedom of Media" Available at <http://www.dawn.com/news/865080/musharraf-versus-freedom-of-media>. Last Accessed(05-08-2014).

⁸⁰Pakistan Press Foundation (2006). Journalism in Pakistan: An Overview from <http://pakpressfoundation.wordpress.com/2006/05/05/pakistan-pressfoundation/>. (29-12-2014).

⁸¹Mirza Muhammad Yousaf: faqih Abbasi, "*Exploring Journalism*", (Lahore:A-One Publishers.2011), 128.

Freedom of speech doesn't mean that the person is free to attack personally by using this exclusive right. Freedom of speech is subject to the restrictions which is essential, because without it the society based on the ideas of peace, order or, justice, can't take shape, or can the people who wish to live in freedom be assured of greater security guaranteed to them under the constitution. Constitution of Pakistan enunciates the principle that the citizen can only enjoy this right if it does not transgress the limitations placed by law.⁸³

Defamation law protects an individual' reputation or feeling from unwarranted attacks. This is a little dispute that defamation law can serve a legitimate purpose and it is recognized internationally as valid grounds for restricting freedom of expression and speech. Defamation law gives the proper balance between the protection of individuals' reputation and freedom of speech and expression.⁸⁴

Respect for freedom of expression and respect for religious beliefs and symbols are two inseparable principles and go hand in hand in combating ignorance and lack of understanding with a view to building peace and establishing dialogue among cultures, civilizations, religions and peoples. All societies must comply with international standards advocating human dignity and human rights, including freedom of expression and respect for religious and cultural beliefs and values. Any conflict between the two

⁸³Thomas David Jhones, "Huaman Rights:Group Defamation Freedom of Expression and the Law of Nations". (Netherlands.:Kluwer Law International press.1998), 78.

⁸⁴*Ibid*

must be expressed peacefully and constructively and must give precedence to seeking collective, lasting solutions.⁸⁵

Another difficult case is hate speech. Most European liberal democracies have limitations on hate speech, but it is debatable whether these can be justified by the harm principle as formulated by Mill⁸⁶. One would have to show that such speech violated rights, directly and in the first instance. The gift of speech is the most effective instrument for human communication. This ability to communicate enables us to establish links across time and space, the profound learning and understanding different civilizations and cultures, to extend knowledge both vertically and horizontally, to promote the arts and sciences. It also helps to overpass gaps in understanding between peoples and nations, to put an end to old enmities, to achieve detente, to cultivate new fellowships.

Speech allows human beings to articulate their thoughts and emotions. Words allow us to express our feelings, to record our experiences, to realize our ideas, to push outwards the frontiers of intellectual exploration. If the words are strong then it may help to move hearts. Words can change perceptions; words can set nations and peoples in powerful motion. Words are an essential part of the expression of our humanness. To

⁸⁵State of Human Rights in Pakistan. Report by Human Rights Commission of Pakistan, (Islamabad:Safma Press, 2011), 67.

⁸⁶The issue of hate speech: II. Mill's 'harm principle' available at.
<http://www.skepticink.com/notung/2013/03/15/the-issue-of-hate-speech-ii-mills-harm-principle/>, last accessed,(27-02-2013).

constrain freedom of speech and expression is to cripple the basic right to realize our full potential.⁸⁷

According to Article 29 of the Universal Declaration of Human Rights⁸⁸, the exercise of rights and freedoms of everyone is subject to limitations as are determined by law, in particular „for the purpose of securing due recognition and respect for the rights and freedoms of others. Article 19 (3)⁸⁹ of the International Covenant on Civil and Political Rights reminds that the rights enumerated carry special duties and responsibilities. This shows that the freedom of expression and the media is not an absolute right. The duties and responsibilities are not indicated in the Covenant but usually found in codes of professional ethics or state legislation, which, however, must not infringe upon the content of the human right. Typical duties and responsibilities relate to the duty of objective information, in particular, the obligation to report truthfully and, at a minimum, allow for different opinions.⁹⁰

Freedom of expression is also protected in all three regional human rights treaties, In an Article 10 of the European Convention on Human Rights (ECHR), in Article 13 of the

⁸⁷ Ralph L Holsinger, “*Media Law*”. (New York: Random House. 1987), 245.

⁸⁸ Everyone has duties to the community in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. <http://www.un.org/en/documents/udhr/> Last Accessed(06-04-2014).

⁸⁹ The exercise of the rights provided for in this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

⁹⁰ Freedom of expression and freedom of the media” Available at

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> .Last accessed (09-06-2013).

American Convention on Human Rights and in Article 9 of the African Charter on Human and Peoples' Rights.⁹¹

Ultimately, the protection of the fundamental freedom depends upon the vigilance and determination of each of us to preserve the liberties and freedom of all of us.

3.1.1 Constitutional Protection and Restrictions

A. Art: 19 of Constitution of Pakistan 1973

*"Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, or incitement to an offence."*⁹²

B. The rights granted in Article 19 are further expanded upon in Article 19A

Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

Together Articles 19 and 19A provide a mixed bag of rights and restrictions that are further complicated by other laws.

⁹¹Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law.

⁹² Text of Constitution of Pakistan 1973 <http://www.pakistani.org/pakistan/constitution/part2.ch1.html> (Last accessed date 01-12-2011). Other auxiliary fundamental freedoms to this is Freedom of information Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

C. Article 63(1)(g) of the Constitution of Pakistan 1973

Disqualifies a person from serving in parliament if he,

He has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, unless a period of five years has elapsed since his release.⁹³

In the 1993 Nawaz Sharif case the Court stated:⁹⁴ "The right of citizens to receive information can be spelt out from the freedom of expression guarantee in Article 19. The conditions required for the exercise of the right to information are, therefore, the same as those necessary for the exercise of the right to freedom of expression.⁹⁵ This article of constitution as we can read above give us the right to free speech and expression, but coupled with reasonable restrictions and these restriction made this right a relative right not absolute. But in some circumstances not in all. So, one can enjoy this right keeping in view the above mentioned restrictions. Relative right is relative depends upon culture, situation, and perspective.⁹⁶

⁹³ Pakistan Political Report: Freedom of Speech and the Judiciary." August 20, 2012.web. january 13,2013. <http://americansforpakistan.com/2012/08/20/pakistan-political-report-freedom-of-speech-and-the-judiciary>.Last Accessed(09-12-2014).

⁹⁴Muhammad Nawaz Sharif vs President of Pakistan and others.PLD 1993 SC.p:473

⁹⁵Memorandum on the Federal Government of Pakistan's Freedom of information Ordinance by Art: 19,(London.:Global Campaign for Free Expression.2002), 73.

⁹⁶Amy Gutmann, "*Liberal Equality*", (New York:University of Cambridge.1980), 45.

This right is one of the most important of the fundamental rights. Because it is absolutely necessary for the effective working of the democratic government and also from the expression and growth of ideas. But this freedom can easily misuse to endanger peace and tranquility of the country. That is why this is not unrestricted right, but is subject to several reasonable restrictions.⁹⁷

3.2 Freedom of Speech Entails Two Concepts

As mentioned above that every right is sacred and important until it does not infringe other rights correlated with it. Freedom of speech in this regard carries two concepts.

- 1. Absolute Freedom of speech**
- 2. Relative Freedom of speech**

Freedom of speech has been said to be the foundation of modern democracy, and a fundamental part of the Western civilization. According to statistics everyone claims to support freedom of speech. Their definition of freedom of speech is quite restricted. This is of course something that not only Muslims do, but almost everyone. There is not a single nation that does not “guarantee freedom of speech” in their constitution. It is included in any EU country, in the US, in China and even in North Korea.

A practical example of this would be an internet server that would serve information to anyone who requests it. To define it this way, things like spamming and

⁹⁷ Mirza Muhammad Yousaf : Faqihah ,Abbas. "Exploring journalism", (Lahore:A-One Publishers.2011), 156.

shouting in public are not covered by freedom of speech, since it forces people to receive information.⁹⁸

Absolute freedom of speech is only myth. It is a right one can only enjoy it with restrictions. Everyone tells white lies and spares the feelings of others. Absolute freedom of speech is impossible to imagine because no one could speak out every thought that came into his or her head and expect to live among their social fellows⁹⁹

Relative speech affects decision making at state level. On a more practical plane, freedom of speech serves many functions. One of its most important functions is that decision-making at all levels is preceded by discussion and consideration of a representative range of views. A decision made after adequate consultation is likely to be a better one which less imperfectly mirrors the opinions, interests and needs of all concerned, than a decision taken with little or no consultation. Thus freedom of speech is important at all levels in society. As Voltaire has said

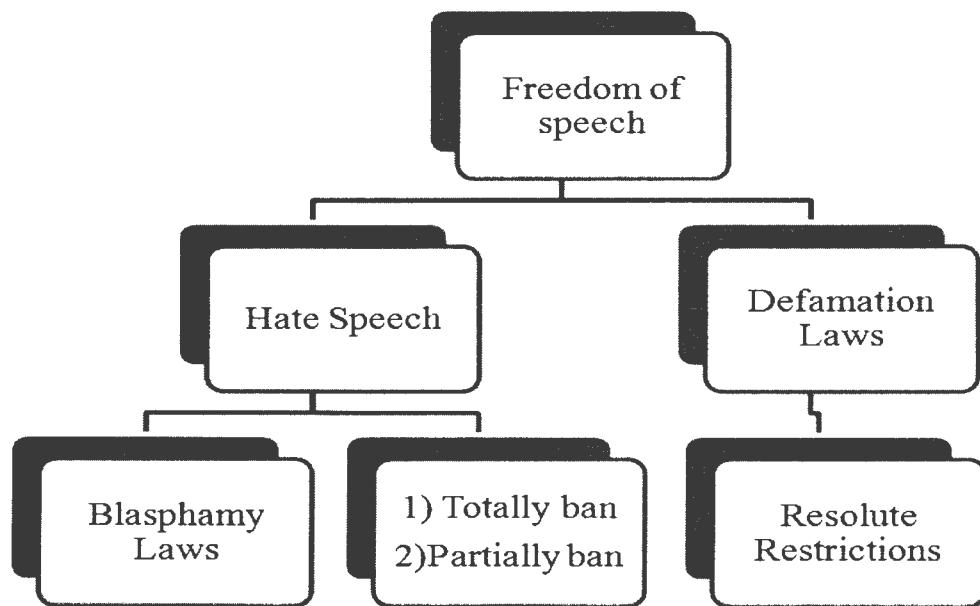
*"I disapprove of what you say, but I will defend to the death your right to say it."*¹⁰⁰

⁹⁸Philosophical Forum,For absolute freedom of speech available on (<http://forums.philosophyforums.com/thread/29421>). Last accessed (12-10 1013)

⁹⁹ Nick Cohen, "Yes words hurt, but that doesn't excuse a punchy pope" (from the Observer), Last accessed (17-01 -2015).available on <http://www.theguardian.com/commentisfree/2015/>.

¹⁰⁰LJM Cooray, "Freedom of speech and expression" from human rights in Australia.

3.3 Legitimate restrictions & limitations¹⁰¹



Most expression is completely harmless and protected under the right to freedom of expression from interference by the state.

However, seeking receiving and imparting information or ideas includes expression which few societies could tolerate, such as incitement to murder or the sale of pornography to children. As a result, freedom of expression is not absolute and can be limited when it conflicts with other rights. International law declares freedom of expression to be the rule. Limitations are the exception, permitted only to protect.¹⁰²

¹⁰¹ Created by Author: Figure, I.

¹⁰²Any restrictions on free speech and freedom of expression must be set out in laws that must in turn be clear and concise so everyone can understand them. People imposing the restrictions (whether they are governments, employers or anyone else) must be able to demonstrate the need for them, and they must be proportionate. http://www.amnesty.org.uk/what-free-speech#.VMibruSw_IU .Last Accessed(26-03-2014).

Although a person has freedom to express your views and beliefs, but have a duty to behave responsibly and to respect other people's rights.

Public authorities may restrict your right to freedom of expression if they can show that their action has a proper basis in law, and is necessary and 'proportionate' in order to¹⁰³

- I. protect national security
- II. prevent disorder or crime
- III. protect health or morals
- IV. protect the rights and reputations of other people
- V. prevent the disclosure of information received in confidence
- VI. Maintain the authority and impartiality of the judiciary
- VII. Blasphemy

Restrictions that do not comply with all these conditions violate freedom of expression.¹⁰⁴ Limitation is legitimate if it falls within the very narrow conditions defined in the *three-part test* in Article 19(3) of the *ICCPR*.

3.3.1 Provided by Law.

The right to freedom of expression cannot be limited at the whim of a public official. They must be applying a law or regulation that is formally recognized by those

¹⁰³ Scott Barbour, "Free Speech". San Diego, CA : (Geneva:Greenhaven Press.2000), 34.

¹⁰⁴ "End repression allows expression". Article published by Amnesty International United Kingdom <http://www.amnesty.org.uk/what-free-speech#.UvHfeLSGPcw>. Last accessed 12-02-2014.

entrusted with law making.¹⁰⁵ The law or regulation must meet standards of clarity and precision so that people can predict the consequences of their actions. For example, vague prohibitions on ‘sowing discord in society’ or ‘painting a false image of the State’ would fail the test.¹⁰⁶

JUSTIFICATION

- I. It is only fair that people have a reasonable opportunity to know what is prohibited, so that they can act accordingly
- II. A situation where officials can make rules on a whim is undemocratic.
- III. Vague laws will be abused. They often give officials discretionary powers that leave too much room for arbitrary decision-making
- IV. Vague laws have a ‘chilling effect’ because they create a situation of uncertainty about what is permitted

3.3.2 Pursues Legitimate Aim

There must be a legitimate aim to limit the right to freedom of expression. The list of legitimate aims is not open-ended.¹⁰⁷ They are provided for in Article 19 of constitution of Pakistan 1973. respect for the rights and reputations of others, and protection of national security, public order, public health or morals’. They are exclusive and cannot be added to.

¹⁰⁵“*Restricting Freedom of Expression: Standards and Principles*”. Center of law and democracy

¹⁰⁶Rahib Raza, “*Defending freedom of expression and information*”<http://www.article19.org/pages/en/limitations.html> . last accessed (23-10-2013).

¹⁰⁷Mark Tunick, “*Balancing Privacy and Free Speech: Unwanted Attention in the age of social media*”, (Oxon: New York Press.2002), 78.

JUSTIFICATION

- I. Not all the motives underlying governments' decisions to limit freedom of expression are compatible with democratic government. For example, a desire to shield a government from criticism can never justify limitations on free speech
- II. The aim must be legitimate in purpose and effect. It is not enough for a provision to have an incidental effect on one of the legitimate aims. If the provision was created for another reason, it will not pass this part of the test. Restriction is distinctive in the sense that it comes into effect when a particular view point is expressed.¹⁰⁸

3.3.3. Necessity and Proportionate

Any limitation of the right to freedom of expression must be justly necessary. Even if a limitation is in accordance with a clear law and serves a legitimate aim, it will only pass the test if it is truly necessary for the protection of that legitimate aim. In the great majority of cases where international courts have ruled national laws to be impermissible limitations on the right to freedom of expression, it was because they were not deemed to be 'necessary'

JUSTIFICATION

A government must be acting in response to a pressing social need, not merely out of convenience. On a scale between 'useful' and '*indispensable*', '*necessary*' should be close to '*indispensable*'.

¹⁰⁸Cass R. Sunstein, "Democracy and the problems of Free speech", (New York: The Free press Adivision of Simon & Schuster.1998), 256.

IV. A government should always use a less interfering measure if it exists and would accomplish the same objective. For example, shutting down a newspaper for defamation is excessive a retraction (or perhaps a combination of a retraction and a warning or a modest fine) would offer the victim of defamation adequate protection. The character, Nature and the scope of restriction is very important.¹⁰⁹

V. The measure must impair free expression as little as possible. It should not restrict in a broad or untargeted way, as that could interfere with legitimate expression. For example, it is too broad to ban all discussion about a country's armed forces in order to protect national security.¹¹⁰

VI. The impact of the measure must be proportionate and the harm that it causes to free expression must not balance its benefits. For example, a limitation that provides only partial protection to someone's reputation but seriously undermines free expression is disproportionate.

VII. A court must take into account all of the circumstances at that time before deciding to limit freedom of expression. For example, it could be legitimate to limit freedom of expression for national security reasons during a conflict but not during peacetime.¹¹¹

¹⁰⁹ Chris Demaske, "Modern Power and free speech: Contemporary Culture and issues of Equality", (United Kingdom: A division of Rowman & Little Publishers.2011), 167.

¹¹⁰ Bruce Riedel, "National Security and Free speech". The intelligence Project. Foreign Policy, Center for Middle East Policy, Center for 21st Century Security and Intelligence. Available at <http://www.brookings.edu/blogs/up-front/posts/2013/05/22-obama-national-security-speech-pakistan-riedel>. Last Accessed.(12-07-2014).

¹¹¹ Chris Demaske, "Modern Power and free speech:Contemporary Culture and issues of Equality", (United Kingdom: A division of Rowman & Little Publishers.2011), 67.

3.4 Freedom of Speech and Media

Media is a very powerful tool, if used appropriately it can do miracles, but if misused it can cause harm like no other thing can. Tools as we know are not harmful or useful, it is their use that categorizes them in a certain way, and so same is the case with media be it of any form, print media or electronic media. The purpose that it fulfills is what makes it either good or bad; freedom of speech is one such issue that came into limelight by media's propagation regarding this issue. Media's approach is very wide and is followed by a large number of populations anywhere, so whatever is portrayed regarding any issue gains hype instantly and leaves a deep impact on the minds of masses. With such powers come great responsibilities as well, and to make sure these responsibilities are met some laws had to be laid down to keep a proper check¹¹²

Freedom of press or the media is the freedom of communication and expression through mediums including various electronic media and published material. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections. Freedom of press underlines democracy and it enhances the other fundamental freedoms. Press freedom is important for media to foster dialogue, challenge violations of human rights

¹¹²Defleur & Dennis, "Understanding Mass Communication", (Islamabad: National Book Foundation.2007), 599-600.

and the rule of law, and expose corruption. Freedom of media is a matter of life and death as it owes the responsibility to impart information to the concern authorities.¹¹³

The Pakistani media is an enthusiastic member of the new warrior clan of the 21st century and despite belonging to war-torn country, is playing active role in keeping with the demands of the modern times. By airing divergent views and engaging in cross questioning on significant national and social issues the media reflects and informs public opinion and practically shares the task of the parliament.¹¹⁴

Investigative reporting and live discussions can undermine the spell of many a magicians. This has facilitated public access to the hitherto unseen workings of the political and bureaucratic set-up while simultaneously highlighting the injustices suffered by the common man as a result of the shady practices of the elite. After a significant role of media in restoring the judicial crisis, media has an unprecedented ability to act as a catalyst in civil society efforts to strengthen democratic polity. The fundamental ingredient making democracy possible is the flow of information. Nowadays everybody believes that the freedom of the media is the prerequisites of the modern democracy.¹¹⁵

Media and Auxiliary Freedoms

A free press can only exist in a free society. A free society cannot flourish without a free and independent press. Each is indispensable to the other. When our fundamental freedoms are threatened by the very government we created to protect them.

¹¹³ Media Freedom Laws and Security. Report by South Asian Free Media Association, Pakistan Media Communication Pakistan.

¹¹⁴ Sadaf, Ijaz. Project Report on Role of Media In Pakistan. 2010. p:23

¹¹⁵ Mukhtar Ahmad Ali, CPDI. "Current Challenges and Initiatives: The Roles of Civil Society and Media in the Fight Against Corruption in Pakistan". Anti corruption resource center.

it is only when the media dares to speak truth to power and to reveal the truth about those who wield that power that it requires the umbrella of constitutional protection.

Though freedom of speech is the baseline of independent media but its impartial working is also depends upon other auxiliary freedoms that is

- I. Freedom of Press
- II. Freedom of information

The guarantee of freedom of expression applies with particular force to the media. The media is an important focus of attention for freedom of expression activists.¹¹⁶ It is the first medium that Governments and other political and economic forces attempt to control, including through seeking their complete and forced silencing. As key vehicles of communication and expression, the ability of the media to function independently is vital to freedom of expression but also to the ability of a society to function and survive.¹¹⁷

There can be no freedom without responsibility, as unlimited freedoms may lead to violation of other human rights, like the right to privacy. But restrictions need to be justified by the government with legitimate reasons. These restrictions should be

¹¹⁶Amending Media Laws, Right to know and express. Report, (Islamabad: SAFMA Press.2004), 12.

¹¹⁷Agnes Calamari", *Expert meeting on the links between Art:19 and 20 of the ICCPR:Freedom of expression and advocacy of religious hatred that constitute incitement and discrimination, hostility and violence.*" Web. 21 Nov.2013. <http://www.article19.org/data/files/pdfs/conferences/iccpr-links-between-articles-19--20.pdf>. Last Accessed 23-07-2014.

according to proportionate principle.¹¹⁸ This can be scrutinized by public opinion and, as a last resort, judicial institutions.

Media should respect the right of people involved in the news, observe the common standards of decency and stand accountable to the public for the fairness and accuracy of their news reports.¹¹⁹

3.4.1 Media Laws in Pakistan

In Pakistan media ethics is unique as it illustrates how Islam tends to reshape the values and ethics of society. The authoritarian regime of Field Marshal Ayub Khan promulgated the Restrictive Press and Publication Ordinance 1963.¹²⁰

Article 19 of the constitution of Islamic Republic of Pakistan besides guaranteeing to the citizens freedom of the speech and expression, also guarantees freedom of the press subject to reasonable restrictions imposed by law in the interest of glory of Islam, of the integrity, security and defense of Pakistan or any part thereof, friendly relations with foreign states, public order decency or morality or in relation to contempt of court defamation or incitement of any offence. The military government of Pervez Musharraf, promulgated PEMRA Ordinance 2002.¹²¹

¹¹⁸The concept of proportionality is used as a criterion of fairness and justice in statutory interpretation processes, especially in constitutional law, as a logical method intended to assist in discerning the correct balance between the restriction imposed by a corrective measure and the severity of the nature of the prohibited act. Within criminal law, it is used to convey the idea that the punishment of an offender should fit the crime.

¹¹⁹Rai Shakeel Akhtar, “*Media, Religion And Politics In Pakistan*”, (Michigan:Oxford University Press.2000), 78.

¹²⁰Evellynne Ellise, “*Principle of Proportionality in the Law of Europe*”.North America (USA & Canada: Hart publishing.2000), 34.

¹²¹Zamir Niazi, “*Press in Chains*”, (United Kingdom: Oxford University Press.2010), 65.

3.4.2 Pakistan Electronic Media Regulatory Authority

PEMRA was established on March 2002 through an ordinance to induct and facilitate the private sectors in the field of electronic media. PEMRA, the regulators for the electronic media in Pakistan, has been made responsible for formulating technical standard and scrutinizing broadcasting services.

The PEMRA ordinance promulgated in 2002 raised many objections from media persons and organizations. The original ordinance was felt to be arbitrary and restrict the flow of information.

3.4.3 South Asian Free Media Association

SAFMA proposed an amended version of ordinance in 2004. The recent amendments to the law in 2005 and 2007 are also considered restrictive and are being used as tools for controlling private news channels.¹²²

3.4.4 Laws Control Media Freedom in Pakistan

The right to know and express are more formally referred to the freedom of opinion and expression. It is valuable for many reasons, including its instrumental function as guarantor of democracy, Asma Jehangir the Former chairperson of HRCP said that all public authorities which exercise the formal regulatory powers over media should be protected against interference particularly of the political and economic nature.¹²³

¹²² Media Freedom Laws and security (National Media Conference) Report by SAFMA, Pakistan.2007.

¹²³ Amending Media Laws. Right to know and Express. Report by SAFMA 2004.

There are number of Laws and Policies in Pakistan which limit both freedom of Expression and right to know. These are:¹²⁴

- I. Official Secret Act 1923
- II. Security Laws
- III. Preventive detention Laws
- IV. Offence of False News Content of Court Laws
- V. Defamation Laws
- VI. Curtailing Free expression of civil savants
- VII. Laws of treason and penalizing collusion with the enemy through speech or exchange of information
- VIII. Control over Electronic Media
- IX. Monopolizing of Media
- X. Control over purchase and sale of media raw materials
- XI. Laws Penalizing discussion on religion
- XII. Laws penalizing scolding of National Heroes

3.5 As a Developing State Importance of Media in Pakistan

Pakistan is a developing country, being in this state media and judiciaries are two important pillars to save the country from any slippage. In Pakistan the responsibility of media is much more than any media in the world. Pakistan needs a change and its impartial media can only act as catalytic. Media can also help in projecting the soft image

¹²⁴Mirza, Muhammad Yousaf: Faqih Abbasi. "A-One Exploring Journalism", (Lahore:A-One Publishers.2011),167.

of nation in all worlds and in this regard relations with other countries can also smoothen.¹²⁵

Gatekeepers of the media i.e. (editors, news editors, and other journalists) they all play central role in shaping the media agenda which becomes public agenda after sometimes.¹²⁶

Journalists are the cutting edge of the civil society's response to the decline of the state. Media cannot work independently if the working conditions for their journalists are not suitable. No society can enjoy freedom of the media when its journalists are being threaten and killed on a mere scale of publishing truth and speak up to the moral standards.¹²⁷

Positive Effects of Media

- I. Political analysis
- II. Economic debate
- III. Social Awareness
- IV. Religious Clarification.

Negative Effects of Media

- I. Political Gimmick
- II. Social Evils
- III. Westernize Culture

¹²⁵ Prospectus of improving Pakistan India Relations through Media. Background Paper. August 2012. By PILDAT, (PILDAT is a non partisan and non profitable indeginous research and training institution with the mission to strengthen democracy and democratic institution in Pakistan).

¹²⁶ Sadaf Ijaz, Project Paper:Role of Media in Pakistan.2010.Faculty of Media and Strategic Study(Quaid-e-Azam University),39.

¹²⁷ Khaled Ahmed.The Media Under Pressure in Pakistan.South Asian Media Moniter(2011),12.

3.6 Responsibilities of Journalists

All media men should refrain from causing damage to reputation of a person or an institution.

The press is no doubt an industry, a business, but with a difference. Journalists have a social obligation; they must act with a profound sense of responsibility towards the society. The responsibilities of a journalist are many and varied which are discussed below.¹²⁹

I. Social

The social responsibility of journalists is of paramount importance. "Journalism is the mirror of society". He must, therefore, provide a truthful, comprehensive, and intelligent¹³⁰ account of the events in a context that gives meaning. The press must serve as a forum for the exchange of comments and criticism.

II. Legal

The publication of baseless, graceless and manipulated material should be avoided at all costs in order to safeguard yourself and your organization from the legal

¹²⁸Mirza, Muhammad Yousaf: Faqih Abbasi. "A-One Exploring Journalism", (Lahore: A-One Publishers. 2011), 167.

¹²⁹Richard Keeble. "Ethics for Journalism". Routledge: Taylor & Francis Group. London. 2001.p:145

¹³⁰Mirza, Muhammad Yousaf: Faqih Abbasi. "A-One Journalism". Lahore. A-One Publishers.2011.p:78

clutches. ‘Defamation’ live wire’ on which a sensible journalist dreads to tread. He must be well aware of the various laws relating to the press.¹³¹

III. Professional

Journalists have certain professional obligations to shoulder and honor. His basic responsibility is to disseminate information in all circumstances. The information provided helps the readers to make up their minds on vital issues and thus shaping their attitudes. He is expected to have his commitment to his profession and thus must strictly adhere to accepted professional norms. He should know the limits within which to operate and must keep his biases at bay. Let news not be distorted or suppressed. One of the most important responsibilities of a professional journalist is to ensure that in hurry and hast; accuracy in the language is not sacrificed¹³²

3.7 Defamation laws

3.7.1 Definition of the Terminology

Defamation as “the act of harming the reputation of another by making a false statement to a third person.”¹³³ Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person.¹³⁴

¹³¹ Muhammad Riaz. Raza, Muhammad Wasim. Akbar, “*Code of ethics and laws for media in Pakistan*”. Gomal University D.I.Khan,Pakistan.2006.p:65

¹³² Hassan M, “*Mass Media in Pakistan*”, (Lahore: Aziz Publishers.2001),154.

¹³³ Black's Law Dictionary Pocket Edition 183 (2d ed. 2001)

¹³⁴ Collins Matthew, “*The Law of Defamation and the Internet*”, (New York: Oxford University Press. 2001), 62.

As mention in Art: 19 of Constitution of Pakistan 1973, that freedom of speech is a right with “reasonable restrictions”. So, all defamation laws come under these reasonable restrictions. This means defamation laws made this right a qualified right which is not absolute.¹³⁵

Defamation is communication about a person that tends to hurt the person's reputation¹³⁶. The act of making untrue statements about another which damages his/her reputation, depends upon the status of the plaintiff.¹³⁷

Defamation is a strict liability tort, which means that the intentions of the defamer are not relevant. The communication must be made to other people, not just to the person it's about. The statement must be false to be classified as defamation.

3.7.2 The Central Idea of Defamation Laws

The basic idea of defamation law is simple. It is an attempt to balance the private right to protect one's reputation with the public right to freedom of speech. Defamation law allows people to sue those who say or publish false and malicious comments. A person who is opponent and says any statement which proves contrary of his reputation also falls under this category.¹³⁸

¹³⁵Brain Martin. “Freedom of Speech and Defamation laws”. Available <http://www.bmartin.cc/dissent/documents/defamation.html> last accessed (25-05-2013).

¹³⁶ Khaled Ahmed, “*The Media Under Pressure in Pakistan.South Asian Media Moniter*” , (Pakistan: Islamabad publisher House.2011), 187.

¹³⁷ William Statesky, “*Torts:Personal injury Litigation*”, (New York: Delmar Cengage Learning Press.2011), 154.

¹³⁸ Aron Larson, “*defamation law:The basis*”. available at <http://injury.findlaw.com/torts-and-personal-injuries/defamation-law-the-basics.html>.last accessed, 02-05-2014).

3.7.3 There are two types of defamation

1. Oral defamation known as *slander* e.g. comments or stories told at a meeting or party.
2. Published defamation known as *libel* e.g. a newspaper article or television broadcast.

Pictures as well as words can be libelous.¹³⁹

Anything that injures a person's reputation can be defamatory. If a comment brings a person into contempt, disrepute or ridicule, it is liable to be defamatory. An allegation harms a person's reputation which in the opinion of others directly or indirectly either:

- I. lowers his moral or intellectual character or
- II. lowers his character in respect of his caste or calling or his credit or
- III. Causes it to be believed that his body is in a loathsome state, or in a state generally considered disgraceful.¹⁴⁰

If a person say on television that a building was badly designed. That's libel due to the imputation that the architect is professionally incompetent, even if he didn't mention any names. One who sells a book that contains defamatory material. That's spreading of defamation. The fact is, nearly everyone makes defamatory statements

¹³⁹ West's Encyclopedia of American Law, edition 2, (The Gale Group. 2008), 36.

¹⁴⁰ Zafar Inam, "Defamation Laws in Pakistan". available at <http://zalp.com/defamation.html> last accessed (21-02-2014).

almost every day. Only very rarely does someone use the law of defamation against such statements.

3.8 Defamation According to Pakistani Law

Defamation Ordinance 2002 covers all matters pertaining to defamation arises in Pakistan:

Section 3 of the Defamation Ordinance 2002 defines defamation and its forms:

- I. 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.¹⁴¹

Defamation is of two forms namely:

- (i) Slander and
- (ii) Libel

Any false oral statement or representation that amounts to defamation shall be actionable as slander.

¹⁴¹Defamation Ordinance 2002, Proposed amendments Act no:IX of 2004.

Any false written documentary or visual statement made either by ordinary form or expression or by electronic or other modern means or devices that amounts to defamation shall be actionable as libel.¹⁴²

Section 499 of the Pakistan Penal Code 1860

Defamation has been described as under:

“Whoever by words either spoken or intended to be read, or by sign or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.”¹⁴³

According to Section 500 of the Pakistan Penal Code, 1860 punishment for defamation has been described here whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.¹⁴⁴

Defamation ordinance has amended in 2004 because words ‘defamation’ and ‘actionable defamation’ have not been clearly defined, and the bill seems to be tilted unduly in favour of shielding an official or institution. However the Word ‘Defamation’ was substituted with the word “Commission” which has widened the scope of freedom of

¹⁴²Zafar. Inam, “*Defamation Laws in Pakistan*”.available at <http://zalp.com/defamation.html> last accessed (21-02-2014).

¹⁴³Paul D Friedman, “*Legal Ethics: Slander or Defamation of character*”.
<http://www.lawofpakistan.com/pakistanpenalcode/500.php> Last accessed (01-04-2013).

¹⁴⁴Jahangir Khan, “*Defamation laws in Pakistan*”. <http://zalp.com/defamation.html> Last accessed (03-02-2013).

press. Now a plaintiff cannot succeed unless an actual malice has been established. This was held recently by the Supreme Court in Sheikh Muhammad Rashid's case.¹⁴⁵

3.8.1 Elements of a Defamation Lawsuit

Defamation law changes as you cross state borders, but there are normally some accepted standards that make laws similar no matter where you are. If you think that you have been the victim of some defamatory statement, whether slander or libel, then you will need to file a lawsuit in order to recover. Generally speaking, in order to win your lawsuit, you must show that:

- I. Someone made a defamatory statement
- II. That statement was published
- III. Statement caused you injury
- IV. Statement was false and
- V. The statement did not fall into a restricted category

Explanation:

The Statement: A "statement" needs to be spoken, written, or otherwise expressed in some manner. Because the spoken word often fades more quickly from memory, slander is often considered less harmful than libel.¹⁴⁶

¹⁴⁵ "Amending Media Laws. Right to know and Express", (Islamabad: SAFMA National Press. 2004), 23.

¹⁴⁶ Friedman, Jessica R. 1995. "Defamation." (*Fordham Law Review* 64) 45.

I. **Publication:** For a statement to be published, a third party must have seen, heard or read the defamatory statement. A third party is someone apart from the person making the statement and the subject of the statement.¹⁴⁷ Unlike the traditional meaning of the word "published" a defamatory statement does not need to be printed in a book. Rather, if the statement is heard over the television or seen illegible on someone's door, it is considered to be published. Thus newspapers, magazines, and broadcasters are liable for republication of libel or slander because they have editorial control over their communications. On the other hand, bookstores, libraries, and other distributors of material are liable for republication only if they know, or had reason to know, that the statement is defamatory. Common carriers such as telephone companies are not liable for defamatory material that they convey, even if they know that it is defamatory, unless they know, or have reason to know, that the sender does not have a privilege to communicate the material. Suppliers of communications equipment are never liable for defamatory material that is transmitted through the equipment they dispatch.¹⁴⁸

II. **Injury:** To succeed in a defamation lawsuit, the statement must be shown to have caused injury to the subject of the statement. This means that the statement must have hurt the reputation of the subject of the statement. As an example, a statement has caused injury if the subject of the statement lost work as a result of the statement.

¹⁴⁷ Collins, Matthew. *The Law of Defamation and the Internet*. New York: Oxford Univ. Press. 2001.p:28

¹⁴⁸ Pakistan Annual Law Digest, Part 2. Publisher: Pakistan Annual Law Digest Office, 1996.p:735-38

- III. **Falsity:** Defamation law will only consider statements defamatory if they are, in fact, false. A true statement, no matter how harmful, is not considered defamation. In addition, because of their nature, statements of opinion are not considered false because they are subjective to the speaker.
- IV. **Unprivileged.** In order for a statement to be defamatory, it must be unprivileged. Lawmakers have decided that you cannot sue for defamation in certain instances when a statement is considered privileged. For example, when a witness testifies at trial and makes a statement that is both false and injurious, the witness will be immune to a lawsuit for defamation because the act of testifying at trial is privileged. Whether a statement is privileged or unprivileged is a policy decision that rests on the shoulders of lawmakers. The lawmakers must weigh the need to avoid defamation against the importance that the people making the statement have the free ability to say what they want.
- V. **Social Media and Defamation:** With the rise of social media, it is now easier than ever to make a defamatory statement. That is because social media services like Twitter and Facebook allow you to instantly “publish” a statement that can reach thousands of people. Whether it’s a disparaging blog post, Facebook status update, or YouTube video, online defamation is treated the same way as more traditional forms. That means you can be sued for any defamatory statements you post online.¹⁴⁹

¹⁴⁹ Shafique.Muhammad Masood, “Social Media and Online defamation”. <http://www.nolo.com/legal-encyclopedia/social-media-online-defamation.html>. Last accessed(02-05-2014)

VI. **Higher Burdens for Defamation: Public Officials and Figures**

Our government places a high priority on the public being allowed to speak their mind about elected officials as well as other public figures. People in the public eye get less protection from defamatory statements and face a higher burden when attempting to win a defamation lawsuit.

When an official is criticized in a false and injurious way for something that relates to their behavior in office, the official must prove all of the above elements associated with normal defamation, and must also show that the statement was made with "*actual malice*".¹⁵⁰

3.9 Defences to the Defamation Law Suits¹⁵¹

If someone sues for defamation, the most common defences are:

- I. Truth
- II. Absolute privilege
- III. Qualified privilege
- IV. Fair comment
- V. Responsible communication on matters of public interest

¹⁵⁰ Ameen. Rana, "Defamation law: The basis". available at <http://injury.findlaw.com/torts-and-personal-injuries/defamation-law-the-basics.html>. last accessed, 02-05-2014

¹⁵¹ Smolla Rodney A, "Law of Defamation". Ed:2nd. (California: West Group. 1999), 56.

Explanation:

1. Truth

A statement may hurt your reputation, but if it is true, anyone who says it has a valid defence if you sue them for defamation.

2. Absolute Privilege

There are two main examples of this defence:

2.1. Statements made in Parliament

2.2. Statements made as evidence at a trial or in court documents

This privilege does not apply if a person repeats their evidence outside a courtroom. This defence also allows the fair and accurate reporting of these statements in the media, such as newspaper reports of a trial. People must be able to speak freely in our justice and political systems without worrying about being sued.

3. Qualified privilege

This defence is where remarks that may otherwise be defined as defamatory were conveyed to a third party with bona fide intention and for an honest and well-motivated reason. Say a former employee of yours gave your name to an employer as a reference and that employer calls you for a reference. You say, "Well, frankly, I found that this employee caused morale problems." As long as you act in good faith and without malice, and your statement is not made to more people than necessary, then the defence of qualified privilege protects you if the former employee sues you for defamation. You gave your honest opinion and the caller had a legitimate interest in hearing it.

4. Fair comment

We all are free to comment even harshly about issues of public interest, as long as our comments are honest statements of opinion, based on fact, and not malicious. For example, a newspaper columnist may write that a Member of Parliament (an MP) says he supports equality and equal rights, but he opposes homo-sex marriages. The columnist writes that the MP is hypocritical. If the MP sues the columnist for defamation, the columnist has the defence of fair comment. Media articles that accurately report what was said at public meetings are also privileged, unless the meeting was not of public concern and the report was not for public benefit.

5. Responsible communication on matters of public interest

Even where a statement of fact on a matter of public concern has been shown to be false, defamation defendants should benefit from a defence of 'reasonable publication'. This defence applies, as its name suggests, if it was reasonable for a person in the position of the defendant to have disseminated the material in the manner and form he or she did.¹⁵²

A rule of this type is necessary to protect the ability of the media to carry out their task of informing the public effectively. When an important news story is developing, journalists cannot always wait until they are completely sure that every fact made available to them is correct before publishing or broadcasting the story. Even the best journalists make honest mistakes; to leave them open to punishment for every false

¹⁵²Muhammad Naeem, "Scope and Application Of Law of Tort in Pakistan, (diss:1991). University of the Punjab. Department of law.

allegation would make their work very risky and so discourage them from providing the public with timely information.¹⁵³

In a December 2009 case, the Supreme Court of Canada established this new defence to a libel claim. The court said that journalists should be able to report statements and allegations even if they are not true, if there's a public interest in distributing the information to a wide audience. This defense, which looks at the whole context of a situation, can apply if:¹⁵⁴

- I. The news was urgent, serious, and of public importance,
- II. The journalist used reliable sources, and tried to get and report the other side of the story.¹⁵⁵

A more appropriate balance between the right to freedom of expression and reputations is to protect those who have acted reasonably and take whatever steps were reasonably possible to check their facts, while allowing plaintiffs to sue those who have not. For the media, acting in accordance with accepted professional standards (for example, those defined in a code of conduct) should normally satisfy the reasonableness

¹⁵³Pakistan Press Foundation (2006). Journalism in Pakistan: An Overview. Derived December 29, 2007 from <http://pakpressfoundation.wordpress.com/2006/05/05/pakistan-pressfoundation/>. Last Accessed(09-11-2014).

¹⁵⁴Jones William K., “*Insult to Injury: Libel, Slander, and Invasions of Privacy*”, (Boulder: Colo University Press of Colorado. 2003), 267-268.

¹⁵⁵Akram Malik, “*defamation : libel and slander*”. Available at http://www.cba.org/bc/public_media/rights/240.aspx .Last accessed. (25-01-2014).

test.¹⁵⁶ The court defined “journalist” widely to include bloggers and anyone else “publishing material of public interest in any medium.”¹⁵⁷

Apology

There are two phases in the process of apology.

1. **Retractions:** It the act of withdrawing something said or promised, and also stands for the statement made in doing this. Usually a journalist or a newspaper offers his retraction which tends to lighten the amount of damages. But does not constitute complete defence.¹⁵⁸
2. **Apology:** An apology means to submit a statement proving absence of any malice on the part of the defendant.¹⁵⁹

¹⁵⁶Smolla Rodney A, “*Law of Defamation*”, (California: West Group Press.1999), 67.

¹⁵⁷Akram. Malik, “defamation : libel and slander”. Available at http://www.cba.org/bc/public_media/rights/240.aspx .Last accessed. (25-01-2014)

¹⁵⁸Rahib Raza, “*Freedom of Speech in Pakistan: Past and Present 1*”. Available at <<http://rahib-raza.blogspot.com/2012/10/freedom-of-press-in-pakistan-past-and.html>>(29-10- 2012).

¹⁵⁹Mirza Muhammad Yousaf, Faqihah Abbas, ”*Exploring Journalism*”, (Lahore: A-One Press.2011), 89.

CHAPTER NO: 4

FREE SPEECH IN ISLAM: REVIEW OF BLASPHEMY LAWS WITH REFERENCE TO CULTURE RELATIVISM

4.1 INTRODUCTION

The previous two chapters of thesis gave a very extensive overlook of fundamental freedoms and importance of them in carrying out other human rights. When we discuss Freedom of speech we cannot pay any heed to Freedom of religion because, this right is very closely related to the former.¹⁶⁰ In other words we can take it as an upshot of Freedom of speech. Freedom of opinion refers to man's total freedom of creed and thinking, as well as his freedom of declaring and expressing his point of view peacefully without using a weapon.¹⁶¹

The right to Freedom of speech is universally accepted right by means of some reasonable restrictions depend upon circumstances,¹⁶² this right is also guaranteed in Islam and teaching of Prophet (PBUH). But right to freedom of religion is not universally accepted it is cultural relative right depends upon the culture, morals, ethics and norms of every society.¹⁶³ Cultural relativism wrongly claims that each culture has its own diverse but equally valid mode of perception, thought, and choice. Cultural relativism, the opposite of the idea that moral truth is universal and there is no such thing as absolute right and wrong.

¹⁶⁰Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. July 2012

¹⁶¹Ahmed Mansoor, "Freedom of Opinion in islam". http://www.ahl-alquran.com/English/show_article.php?main_id=123 Last Accessed (07-08-2014).

¹⁶²Mirza Muhammad Yousaf, Faqiha Abbas, " *Exploring Journalism* ", (Lahore.:A-One Press2011),156.

¹⁶³Shemeem Burney Abbas, " *Pakistan's Blasphemy Laws: From Islamic Empires to the Taliban* ", (United States of Americ.:University of Texas Press.2011), 187.

There is only right and wrong as specified by the moral code of each society.

Cultural relativism is the mistaken idea that there are no objective standards by which our society can be judged because each culture is entitled to its own beliefs and accepted practices.¹⁶⁴ Because there is no objective moral truth that suits to all people and for all. One moral code is no better or no worse than any other (i.e., the moral equivalence doctrine)¹⁶⁵. Thus, we should not impose our values on other societies. It follows that according to cultural relativism we cannot object to Hitler and Nazism, Mayan infant sacrifice China's massacre of students in Tiananmen Square, South Africa's apartheid, genital mutilation (i.e., female circumcision) of young girls in Africa¹⁶⁶, and so on, because each of these practices is justified by the doctrine of culture relative. Nobody could say that one culture is superior to another culture, we would also be prevented from criticizing our own culture's practices such as slavery. Further-more, within the perspective of cultural relativism, there would be no need for, or argument for, social progress.¹⁶⁷

In general, cultural relativists are inclined to endorse the idea that all values and principles are culture-bound and that there are no universal standards by which cultures

¹⁶⁴ Melville Jean Herskovits, "Cultural Relativism: Perspectives in Cultural Pluralism", (Micgigan: The University of Michigan Press,1972), 194.

¹⁶⁵Moral equivalence is a term used in political debate, usually to criticize any denial that a moral hierarchy can be assessed of two sides in a conflict, or in the actions or tactics of two sides. The term originates from a 1906 address by William James entitled The Moral Equivalent of War, William James. (1910). "The Moral Equivalent of War"; retrieved 2013-1-13. http://en.wikipedia.org/wiki/Moral_equivalence.

¹⁶⁶ Between Irua and 'Female Genital Mutilation':Feminist Human Rights Discourse and the culture Divide.[Harvard Human Rights Journal, Vol. 8, No.1, 1-55, 1995](http://www.law.northeastern.edu/journals/hhrj/vol8/1-55/1-55.html). Northeastern University - School of Law.

¹⁶⁷ Ikhlaq Ahmed, "freedom of expression from an islamic perspective". <http://www.onislam.net/english/index.php> .lastAccessed (12-11-2014).

may be judged. Similarly,¹⁶⁸ they deny the legitimacy of using alien values to judge a culture and reject using ideas taken from Western culture to judge the institutions of non-Western cultures. They also tend to oppose the idea that human rights norms are universal.

Fernando Tesón writes:

In the context of the debate about the viability of international human rights, cultural relativism may be defined as the position according to which local cultural traditions (together with religious, political, and legal practices) properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society. A legal or moral standards exist against which human rights practices may be judged acceptable or unacceptable,¹⁶⁹

4.1. Free Speech in Context of Islam.

4.1.1. Background History

This is not to say that Islam does not allow the Muslims to express their opinions freely. It is allowed for a Muslim to express his opinion about anything or any issue, but this opinion must be derived from Quran and Sunnah of Prophet Muhammad (PBUH). There are numerous examples from Islamic history where freedom to express one's opinion not only existed but was also encouraged.¹⁷⁰

¹⁶⁸ Stephanie Lawson, "Culture, relativism and democracy: political myths about 'Asia' and the 'West'", (California: Australian National University Press, 1995), 456.

¹⁶⁹ Human Rights and Culture Relativism: "The Historic Development". Argument and Building a Universal consenses. https://www.academia.edu/2282438/Human_Rights_and_Cultural_Relativism_The_Historical_Development_Argument_and_Building_a_Universal_Consences. Last accessed (04-07-2014).

¹⁷⁰ Naseem Rehman, "Freedom of Expression from an Islamic Perspective". <http://www.onislam.net/english/index.php>. Last accessed (22-01-2015).

This Islamic principle of freedom did not come as a result of some sort of development in the society, but it was a heavenly principle that was revealed for the good of people and to make them higher on earth. But this freedom is guaranteed on the condition that religion should not be disrespected, and people's honor and dignity should not be transgressed upon.¹⁷¹ The application of the prophet of the concept of freedom of opinion was mentioned by verses descended in Makkah and Madina. The freedom of opinion is a principle that was assured by Islam since it emerged, and applied by Muhammad (PBUH) and some of his successors (caliphs).¹⁷²

Islam also guarantees freedom of speech and criticism and even considers it essential when it concerns the interest of the entire Ummah, or affects other Islamic morals or general ethical values. In cases like these Islam makes it mandatory upon every Muslim to speak out, revealing the truth, fearing none but Allah, it is responsibility of a Muslim to speak out for revealing wrongdoer and to encourage whoever does good deeds and blame whoever does evil deeds.¹⁷³

At a time when people were enslaved intellectually, politically, socially, religiously, and economically, Islam came to establish the freedom of belief, freedom of thought, freedom of speech and freedom to criticize. Islam strictly forbids that people be forced to accept or to believe in a particular religion. Allah Almighty says:

¹⁷¹Erich, Kolig, “*Freedom of Speech in Islam*”, (England: Ashgate Publishing Limited. 2014), 34.

¹⁷²Mark Steyn, “*Lights Out: Islam, Free Speech and the Twilight of the West*”. (USA: Stockade Press. 2009), 345.

¹⁷³Saeed Abdullah, Hassan Saeed, “*Freedom of Religion, Apostasy and Islam*”, (Burlington: Ashgate Publishing Company. 2004), 38–39.

"If it had been the Lord's Will, they would all have believed, all who are on earth will though then compel mankind, against their will, to believe"¹⁷⁴

Allah also revealed:

"Let there be no compulsion in religion: truth stands out clear from error."¹⁷⁵

4.1.2. Denunciation of Religions on the Basis of Free speech: (Restrictive Speech)

Islam is a religion of peace and harmony. This is reason that Islam does not advocate the absolute free speech which becomes the rationale to bring chaos and disorder in society. It also prevents hate speech on the account to preserve the religious values and human sentiments.¹⁷⁶

The companions of the Prophets (PBUH) explicitly disagreed with each other on various aspects of Islamic rules. The Caliph Harun al-Rashid provided financial incentives for anyone who would teach, learn, spread or debate issues of the Deen. Islam has given the Muslims the right to express their opinions, even if they contradict the opinions of the ruler or that of the majority of the Muslims. It has made it mandatory upon the Muslims to articulate their opinions and criticize the ruler if he abuses his authority by ordering something that displeases Allah.

¹⁷⁴Surah Yunus: 99. Translation of Holy Quran by Sheikh Abdul Aziz Al Ahmed

¹⁷⁵ Al-Baqarah 2: 256. Translation of Holy Quran by Sheikh Abdul Aziz Al Ahmed

¹⁷⁶ Nina Shea. An Anti-Blasphemy Measure Laid to Rest, National Review (March 31, 2011)

The issue of free speech for the Muslims should be quite clear. Islam does not allow the implementation and promulgation of Freedom of Speech as propagated by the west. Which include the promotion of such ideas that clearly contradict Islam, such as usury, obscenity under the guise of entertainment and separation of Islam from life's affairs.

There is nothing like absolute freedom of speech in Islam and Islam does offer freedom of speech so long as it does not incite blasphemy, discord, violence and immoral behavior. Freedom of speech, as practiced in the west, is in contradiction to the ethics of Islam.¹⁷⁷

Muslim nations have petitioned the United Nations to limit "freedom of speech" because "unrestricted and disrespectful opinion against Islam creates hatred.¹⁷⁸

4.2.3 Freedom of Speech is a Colonial Tool

Everyone in a prevailing society only have freedom of speech to propagate western ideas not Islamic ideas. They believe that In Muslim countries, blasphemy laws are used as a shield to protect the dominant religion (*Islam*), but even more erroneously and dangerously, they are used to silence minority religious believers and prevent Muslims from converting to other faiths, which is still a capital crime in many Muslim countries.¹⁷⁹

¹⁷⁷Saeed Abdullah, Hassan Saeed, " *Freedom of Religion, Apostasy and Islam*", (Burlington: Ashgate Publishing Company.2004), 38–39.

¹⁷⁸*Ibid*

¹⁷⁹ "Combating Defamation of Religions" Submission to the UN Office of the High Commissioner of Human Rights by European Centre for Law and Justice.(2008),65.

Many Muslims are attracted to the concept of freedom of speech since they see it as a means of accounting the oppressive dictatorships they currently live under. Yet when Islamic groups speak out against their rulers and are subsequently tortured and imprisoned by their regimes western governments remain silent. In fact Britain and America openly support these ‘western friendly’ regimes. The west turns a blind eye to this clampdown on political expression because it suits their colonial interests.¹⁸⁰

4.3 Blasphemy Laws and Current Scenario about Free speech in Pakistan

One of the expressions of personal liberty is the freedom of the individual to profess the religion of his or her choice without compulsion. Everyone must also have the freedom to observe and to practice their faith without fear of, or interference from, others. Freedom of religion (*Al Hurriyyah al-Diniyyah*) in its Islamic context implies that non-Muslims are not compelled to convert to Islam, nor are they caught up from practicing their own religious rites. Both Muslims and non-Muslims are entitled to propagate the religion of their following, as well as to defend it against attack or seditious provocation, regardless as to whether such an action is launched by their co-religionists or by others.

The 1973 Constitution of the Islamic Republic of Pakistan, which is currently in force, proclaims in its section (Art.20) on Fundamental Rights and Liberties that:

Subject to law, public order and morality: a every citizen shall have the right to profess, practice and propagate his religion; and every religious denomination and every section thereof have the right to establish, maintain and manage its religious institutions.¹⁸¹

¹⁸⁰Jamal Khalil, “*Islam’s view towards Freedom of Speech*”.web. 7 January 2015. <http://www.caliphate.eu/2009/04/islams-view-towards-freedom-of-speech.html> .Last Accessed (20-01-2015).

¹⁸¹Muhammad Hashim Kamali, “Freedom of speech in Islam”. (Cambridge 1997)

Establishment and protection of religion is pre requisite under Article 20 of the Constitution and its importance is further strengthened by Article 233¹⁸². These imperative articles cannot be suspended in any situation even in the case of emergency.¹⁸³

4.3.1 Islamic Provisions of Constitution of Pakistan 1973

It was noted while studying Islamic traditions that the word *Hurrayat al ra'ay* (Freedom of thought) and *Hurrayat al Qawl* (Freedom to express) are alternative concept. Islam is the State religion of Pakistan according to the Article 2 of the Constitution of Pakistan. According to Article 2A the Objective Resolution became a substantive part of the Constitution that provides that Sovereignty is bestowed to Allah Almighty. Article 227(1) proclaims that the entire active laws should be brought in compliance with the commands of Islam and sources of Shariah. Article 62 requires the members of Parliament not to violate the laws of Islam.¹⁸⁴

4.3.2 Cases of Blasphemy in Pakistan

The Pakistan Penal Code prohibits blasphemy against any recognized religion, providing penalties ranging from a fine to death¹⁸⁵. From 1987 to 2014 over 1300 people

¹⁸²Nothing contained in Articles 15, 16, 17, 18, 19, and 24 shall, while a proclamation of Emergency is in force, restrict the power of the State as defined in Article 7 to make any law or take any executive action which it would, but for the provisions in the said Articles, be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect, and shall be deemed to have been repealed, at the time when the Proclamation is revoked or has ceased to be in force.

¹⁸³*Ibid*

¹⁸⁴Umbreen Iqbal, "Mobile TV:Need for Legal and Regulatory Reforms in Pakistan". (Diss:2012).Faculty of shariah &Law.(International Islamic University Islamabad), 73.

¹⁸⁵Those who are accused of blasphemy may be subject to harassment, threats, and attacks. Police, lawyers, and judges may also be subject to harassment, threats, and attacks when blasphemy is an issue. Those accused of blasphemy are subject to immediate incarceration, and most accused are denied bail to forestall mob violence. It is common for those accused of blasphemy to be put in solitary confinement for their protection from other

have been accused of blasphemy, mostly non-Muslim religious minorities. The vast majority of the accusations were lodged for desecration of the Quran.¹⁸⁶

Over 50 people accused of blasphemy have been murdered before their respective trials were over, and prominent figures who opposed blasphemy laws¹⁸⁷, the former governor of Punjab, and Shahbaz Bhatti, the Federal Minister for Minorities have been assassinated. Since 1990, 62 people have been murdered as a result of blasphemy allegations.¹⁸⁸

The blasphemy laws have become a major source of the oppression of minorities in Pakistan. The unique feature of the Law is its applicability to non-Muslims alone. It does not apply to the Muslims degrading other religions and their personalities. Last year a Law Minister had announced his intention to amend the law to make it applicable to all the religious communities, and soon he had to beat threats. In each case local Mullah has used the Law against Christians to settle their personal scores in private disputes.¹⁸⁹

4.4 Critical Analysis of Blasphemy laws

Protecting Religious Norms at Price of Free Expression

Pakistan's blasphemy laws are notorious for being abused to silence and persecute the country's religious minorities. Although the country's Penal Code has always had a

inmates and guards. Like those who have served a sentence for blasphemy, those who are acquitted of blasphemy usually go into hiding or leave Pakistan.

¹⁸⁶"What are Pakistan's blasphemy laws?".BBC news. 6 November 2014. Retrieved 21 November 2014

¹⁸⁷Hashim Asad, "Living in fear under Pakistan's blasphemy law". *Al Jazeera*. Retrieved 21 November 2014. In Pakistan, 17 people are on death row for blasphemy, and dozens more have been extrajudicially murdered.

¹⁸⁸ *Ibid*

¹⁸⁹Kalim Bahadur, "Democracy in Pakistan: Crises and Conflicts", (New Dehli:Ashok Gosian & Ashish Gosian for Har-Anand Publication.1998), 38.

section on religious offence. These laws, including a possible death sentence for insulting the Muslim prophet Muhammad, have been slammed by civil society inside and outside of Pakistan.¹⁹⁰

India, also has a Penal Code with provisions to protect “religious feelings”, making “acts” or “words” that could disturb religious norms punishable by law. However, while such laws exist to address prevent sectarian violence their vagueness means that they can also be used by groups to shut down free expression. This opens up a question, which is when do states have the right to censor for public order reasons even if the actual piece of writing, art or public display is not a direct incitement to violence.

A report issued in September by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, says that blasphemy laws should be repealed. Controls on free speech in order to protect religious sensibility seem to run parallel to controls on religion.¹⁹¹

Perhaps the biggest problem comes with the central point of cultural relativism: that no culture’s traditions or customs can be criticized by any other state.

Certain societies restrict freedom of speech or deprive minorities of equal treatment, for example. But as cultural relativists, not only would we have to prevent any criticism of such practices. A similar problem arises with respect to judging the

¹⁹⁰ Austin Sarat, “Special Issues: Human Rights:New Possibilities/New Problems”, (United Kingdom: Emerald Group Publishing Limited.2011), 67.

¹⁹¹ Abdullah Ahmed, “Religion and free speech: it’s complicated”. Web.1March, 2013.
<http://www.indexoncensorship.org/2013/03/free-expression-and-religion-overview/>. Last accessed (30-12-2014)

prevailing morals of our own culture. Cultural relativism determines the moral legitimacy of an action based on whether it comports with the overall standard of the society in which it occurs. For example, someone in Afghanistan may question the ethics of barring women from education. If approaching the matter as a cultural relativist, she would have to conclude that there is nothing wrong with this practice, given that it's part of her society's cultural norm. Episodically clash with conservative Islamic values that limit this freedom for the sake of holding religious issues sacrosanct. Recent controversies such as the Danish cartoons, the Charlie Hebdo affair, Quran burnings, and the internet film 'The Innocence of Muslims' which have stirred violent reactions in the Muslim world - have made the West aware of the fact that Muslims' religious sensitivities have to be taken into account in exercising traditional Western freedoms of speech.¹⁹²

¹⁹²Erich. Kolig, "Freedom of Speech and Islam", (New Zealand :University of Otago. 2009), 165.

I. CONCLUSION

Human rights are universal, inalienable and indivisible. Their universality and indivisibility embolden and protect these rights. Their inalienability is their guarantee to every citizen of the world upon birth. These basic human rights, which are non-discriminatory and non-flexible, are the same for all, and give us dignity as individuals. There is no hierarchy between these rights. Equal respect and adherence to these rights rests with the political, social and religious leadership from the most local level to the heads of state.

Governance rests on three pillars that are transparency, accountability and public participation. If the right to express is given, public participation is ensured. If the right to know is given, transparency and accountability are ensured. The right to express cannot be attained unless the rights of the civil society are protected.

Keeping in view the above discussion media can help stabilize and strengthen the country by playing educational and informative role and by imparting knowledge to the masses as knowledge is power and only a well-informed society can develop a positive approach.

The objective of media freedom can be realized only when public trust and confidence reposed in the media is respected and protected by the media itself by acting as a true watchdog, keeping an eye on the government on behalf of the public.

There is a mushrooming growth of print and electronic media in Pakistan which provides all sort of social and psychological gratification to the audience. However, this

proliferation of media is meaningless, particularly, when there is an absence of access to information, and rules and regulations controlling media freedom.

Freedom of the press is very essential if the press has to play a significant and constructive role in the life of a nation, especially in a democratic society. Unless the media itself enjoys freedom, how can it become the defender and protector of the rights and liberties of the citizens? A freedom press signifies an open society where decisions are made according to democratic traditions and not according to dictates of one person. The media can only perform its sacred duties of the fourth estate if it is free and independent in reporting its views and news.

Restrictions must be formulated in a way that makes clear that its sole purpose is to protect individuals holding specific beliefs or opinions, whether of a religious nature or not, from hostility, discrimination or violence, rather than to protect belief systems, religions, or institutions as such from criticism. The right to freedom of expression implies that it should be possible to scrutinize, openly debate, and criticize, even harshly and unreasonably, belief systems, opinions, and institutions, including religious ones, as long as this does not advocate hatred which incites to hostility, discrimination or violence against an individual.

Media in Pakistan is now sharing the burden of parliament as well, because of pointing out the issues which scarcely discussed in parliament. Though Media's role is important for the development of country but it does not mean its limitations are out of question. Restriction of Free speech is always there in circumstances where one tries to tarnish his/her image through words of mouth or through print media. Impartiality of media is a touchstone for successful democratic journey.

Defamation law protects an individual's reputation or feeling from unwarranted attacks. This is a little dispute that defamation law can serve a legitimate purpose and it is recognized internationally as valid grounds for restricting freedom of expression and speech. Defamation law gives the proper balance between the protection of individuals' reputation and freedom of speech and expression.

Islam is a religion which granted a mankind with dignity, respect and recognition. Freedom of speech is also guaranteed in Islam. But the concept of this speech varies due to cultural relativism. In other words, you only have freedom of speech to propagate western ideas not Islamic ideas because Islamic ideas are an "incitement to violence". Europe is increasingly using limits on free speech such as glorification of terrorism, incitement to racial hatred and incitement to violence as ways of clamping down on Islamic expression.

Absolute Freedom of speech is a western concept that completely contradicts Islam. In reality there is no such thing as absolute free speech. What exists is speech within predefined limits that differ between nations. Nowadays freedom of speech is used as a colonial tool in the Muslim world to support the propagation of western ideas and to suppress Islamic ideas. Increasingly this is happening within western societies also as anti-terror policies are used to clampdown on what are deemed as 'extreme' opinions. Allah, the Creator and not human beings decides the limits on speech.

As Muslims we are in no need of any other system of life except the Islamic system, and no other source of legislation except the Qur'an and Sunnah of the Messenger. Therefore when we call for accountability in the Muslim world, this should

not be a call for introducing freedom of speech but a call for introducing the Islamic Shariah which enshrines the right to speech among many other rights.

II. RECOMMENDATIONS

1. Government of Pakistan needs to implement the contents of international conventions, declarations and treaties regarding Human Rights, which it has already been ratified.
2. Media Laws should be reviewed and unreasonable restriction on the right to freedom of speech must be purged.
3. All the principal media laws are blatantly designed to control, manipulating, and harass media institutions. The Pakistan Electric Media Regulatory Authority Ordinance, The Freedom of Information Ordinance, The Press Council Ordinance and the Defamation Ordinance all of them derive their sanctions from the will of ruler. Above mentioned ordinances must be debated by elected representatives so, that more pragmatic approach comes out to implement them with consensus.
4. Pakistan Media Regulatory Authority Ordinance 2007, must be repealed because it places an unconstitutional bar to criticize the state organs, restrict live coverage of events. Section 5 of PEMRA should be amended to cancel the federal government's power to issue directions which it must comply with.
5. PEMRA also took notice of television shows where satire is fast turning into defamation of character of Public figures.
6. The Defamation Ordinance seems to be a special law to targeting media persons. The judicial verdicts that protect journalists against defamation charges should put in practice and universally accepted principals of rejoinder and retraction must be accepted in civil cases.

7. Journalists may need to form their own regulatory bodies to ensure responsible journalism and greater respect for professional ethics.

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