

FREEDOM OF EXPRESSION UNDER PAKISTAN CONSTITUTION

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Abstract: *Constitution of Pakistan expressly protects freedom of expression. Explicit restrictions are also presented under the constitution. The legislature has enacted several laws based on those restrictions. Laws restricting freedom of expression include Pakistan Penal code 1860, Security of Pakistan Act 1952, Contempt of courts ordinance 2003, Anti-terrorism act 1997. This study aims to examine the freedom of expression and restrictions inscribed on it. The doctrinal research method is adopted under this study. The data is collected by constitutional and other legal documents. This study concludes that the laws which regulate freedom of expression have in fact expanded the scope of limitations. This study recommends a comprehensive review of laws related to the regulation of freedom of expression to bring them in harmony with constitutional protection of freedom of expression.*

Keywords: *Freedom of Expression, Limitations, Doctrinal Research, Pakistan Penal code, Contempt of courts ordinance, Anti-terrorism act, Security of Pakistan Act*

Introduction

Expression is a motif of right and liberty. Right to know and liberty of thinking are the foundations of expression (Blasi, 1995). Expression is vital to the development and completion of individual personality (Lingens v. Austria, 1986). Freedom of expression is required to fulfill numerous objectives including, search of truth (On Liberty, 2016), personnel autonomy (Larry, 2000.) and promotion of democracy (Meiklejohn, 2001). Democracy provides an opportunity to the people to rule their countries. Freedom of expression is indispensable in democracy and in making people sovereign rulers (Kent, 1989). Although Freedom of expression the utmost contested fundamental rights but even

than it can be found in almost all parts of the world. Constitutions drawn from all continents, throughout Europe, Asia, America, Africa and Australia have protected freedom of expression. Even freedom of expression is available (by some other ways) in those countries that don't afford a comprehensive constitutional mechanism for protection of freedom of expression (stone, 2010). Freedom of expression and speech is also protected Pakistan under 1973 constitution (Mahmood, 2010). Express limitations are also provided under the constitution. This article briefly studies freedom of expression in Pakistan. It also examines restrictions related to freedom of expression. Article is divided into six parts, first part provide introduction, second part provides research methodology of the study, third part provides brief history of freedom of expression in the country, fourth part article provides brief account of freedom of expression in current constitution and fifth part provides a critical overview of restrictions on freedom of expression. In the last part conclusion of article is provided.

Research Methodology

This article offers theoretical analysis of subject. Anwarul Yaqin book (Yaqin, 2008) has stated that usually legal research involves four diverse methods, namely descriptive, analytical, historical and comparative. Doctrinal legal research with descriptive method is adopted in this article. Doctrinal legal research is a research method with an organized method of investigating, exploring, analyzing and conceptualizing legal problems relating to the enforcement mechanisms and the implication of legal. The primary data as well as secondary data was collected from statutes, published law articles, books, and the decisions of superior judiciary.

Historical Development of Freedom of Expression in Pakistan

Pakistan is an interesting case when it comes to safeguard of fundamental rights and especially with respect to freedom of expression (accessed July 21, 2016). An independent republic ever since the end of British Rule in 1947, Pakistan has a well-developed constitutional jurisprudence and commitment to constitutional values that sits alongside deep rooted cultural, societal, and religious norms that effect freedom of expression (Basil, 2015). It was most remarkable that it took more than 8 years to promulgate first constitution of the country. Till the promulgation of first constitution, Pakistan was administered by the 1935 Government of India Act and by Indian Independence (amendment) act of 1948 (Khan, 2001). The present constitution was amalgamated in 1973. The presence of fundamental rights under Pakistan's constitution have its origin in forces that functioned in the countrywide struggle in British rule. Some indispensable rights alike personal freedoms, protection of one's name and life were derived from common law. During British rule in India there was no such agreement of fundamental rights, and the available protections were confined in the various statutes. They could even be withdrawn by any authority (D.D. Basu, 2010). Moreover, existent laws allowed setting up of special courts regarding subject's rights and liberties. As the independence movement gathered wave after the First World War, clashes with British army in India became gradually frequent. After the publication of the Montague-Chelmsford Report in 1918, the Indian National Congress at its special session (Krishna, 1966) demanded that the new Government of India Act should include a "declaration of the rights of the people of India as British Citizens". The proposed declaration was to contain, among any other things, safeguards of equality before the law, protection of liberty, life and property, freedom of speech and press, and finally the right of association. The Irish Free State in 1921 added fundamental rights in the constitution. This also made a huge impact on the leaders of India. The National Convention in 1925 (Basu, 2011) finalized the

Commonwealth of India Bill. It embodied a detailed “declaration of right” envisaging for everyone in India. It was identical to the provisions of the constitution of Irish Free State Constitution. Those identical fundamental rights included, a) Liberty of person; b) security of property; c) Freedom of conscience and practice of religion; d) Free expression of opinion; e) the right of peaceful assembly; f) Free elementary education; g) Use of roads, public places, courts of justice and the like; h) Equality before the law. The Nehru Committee in its famous Nehru report (1928) also made recommendations regarding important rights. However, The Simon commission (The Indian Statutory Commission) did not support this demand of affording fundamental rights in a Constitution Act. Even in 1935 Government of India act there was no acknowledgment of vital rights in the country. In 1946 The British Cabinet Mission acknowledged the need for fundamental rights under the Indian Constitution. In its 19 and 20 paragraphs presented on May 16, 1946 suggested the setting up an advisory committee for reporting, on fundamental rights. However, this plan of providing fundamental rights was not executed in the Indian Independence act of 1947. Nevertheless when first Pakistan and India came into existence then both countries in their first constitutions explicitly protected freedom of expression and other fundamental rights. Since the inception of Pakistan in 1947 it remained under an interim constitutional plan. Pakistan has had a challenging legislative history since its very existence in 1947 as a nation state. The Objectives Resolution of Pakistan was adopted it on March 12, 1949 presenting the principles which later became operating portion of the Constitution. Constitutional Assembly on the same day formed a Basic Principles Committee which comprised of 24 members. This committee was entrusted with a sacred duty of drafting of first constitution on the guidelines of objective resolution. The draft of the Constitution was prepared in 1954. However, before the draft constitution could be presented in the assembly for formal approval, the constitutional Assembly of the country was dissolved on October 24, 1954. This dissolution of assembly was challenged before Federal court and dissolution was validated in Moulvi Tamizuddin case (Federation of Pakistan Vs. Maulvi Tamizuddin, 1955). The Governor General called the session of new Constituent Assembly in 1955 May, which brought the first ever Constitution of Pakistan on 29 February 1956 (Khan, 2001). That Constitution chose parliamentary form with a single legislature. While new Constituent Assembly of the country adopted the Pakistan’s first constitution in the month of March, 1956, it only continued in force until Major-General Iskander Mirza the then president abrogated the first Constitution of the country and levied Martial Law in all the country in October, 1958 (Khan, 2001). Ayub Khan took the office as the Chief Martial Law Administrator. This was the first time in the history of Pakistan that the Supreme Court was confronted with an extraordinary situation. The Supreme Court was confronted with a difficult question of how to safeguard the country from the whims of a dictator and bring back the train of Pakistan to the constitutional supremacy. The Supreme Court, highest court of Pakistan however miserably failed to deliver and delivered the most astonishing judgment. Supreme Court validated the extra constitutional actions on the doctrine of “state necessity” and the doctrine of “revolutionary legality”. In order to attract revolutionary theory, Kelson theory was invoked and held that, “a victorious revolution was itself a law creating fact. (State v. Dosso, 1958)” However there was also a “positive aspect of the judgment that it declared that the country would continue to be governed as nearly as possible under the Constitution which stood abrogated (Province of East Pakistan v. Muhammad Mehdi Ali Khan). Ayub Khan remained in power until 1969. Zulifkar Ali Bhutto and students’ demonstrations forced Ayyub Khan to leave the office in 1969, however he handed over the power to another military dictator of General Yahya Khan. General Yahya Khan supervised over a catastrophic military operation in East Pakistan, which resulted in the birth of Bangladesh and Pakistan’s loss war with India in 1971 (Khan,

2001). The legality of Yahya Khan martial law again came into question before Supreme Court (Asma Jilani vs Federation of Pakistans, 1972) . However, this time the court declared the martial law illegitimate and dubbed the Chief of Martial Law a usurper. It also revisited the doctrine of Kelsian theory presented in the earlier judgment and declared it null and void. After the loss of East Pakistan, The Chief Martial Law General Yahya Khan Administrator was forced to transfer power to Zulifkar Ali Bhutto party, which attained majority in the West part of Pakistan. Zulifkar Ali Bhutto set about formulating yet another constitution for Pakistan, a hectic task accomplished in 1973. It was a “consensus Constitution” and concerns of all parties concerned seemed satisfied. The Constitution of 1973 guaranteed the right to freedom of speech and expression under Article 19 and it also guaranteed the right to freedom of press (Khan, 2001). The Constitution of Pakistan guaranteed that all citizens of Pakistan shall be free to express opinions and ideas, without being punished for doing so. This means that citizens may speak their mind, put their ideas or opinions in writing, get them published, post them over the internet, or express as they feel in any manner possible. This includes various art forms and any other perceptible statement. This also includes the right to seek, receive and impart information, ideas or opinions, in any form which may be available (Province of East Pakistan v. Muhammad Mehdi Ali Khan).The first constitution of Pakistan was promulgated based on parliamentary system and fundamental rights including freedom of expression were enshrined under that constitution. Later, in 1962 constitution the fundamental rights including freedom of expression were also protected. The same is the case with 1973 constitution. However, press was expressly protected under the 1973 constitution.

Freedom of expression under present constitution of Pakistan

The preamble of Pakistani constitution of 1973 states that the people of Pakistan provided to themselves the constitution of Pakistan with a view to practice the principles of equality, tolerance, freedom, democracy, and social justice as presented by Islam. In democratic system of Pakistan, pride has been afforded to right of expression which is the foundation of all liberties. The liberties of expression, thought, belief, faith and worship are one of the basic conceptions of Pakistan constitution. Freedom of thought is a private freedom while freedom of expression is a shared freedom, whose character develops more and more distinct as the technical approaches of their dispersion multiply and improve life (Basit, 2015.).Part III of constitution of Islamic republic of Pakistan deals with fundamental rights of the people of Pakistan. The right of expression and speech is available in Article 19 of constitution of Pakistan (Mahmood, The Constitution Of Islamic Republic Of Pakistan, 2015). Article 19 states

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

The Pakistani Constitution of 1973 maintains the essentials for a vibrant democracy and pledges freedom of expression. Emphasizes is always made on state’s allegiance to Islam and at the same time the Constitution features the key civil rights intrinsic in a democracy and states that citizens: “Shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality” (Mahmood S. , 2015).Freedom of expression is termed as the cornerstones of fundamental

rights in all democratic institutions. The right of free speech extends from all subjects to all themes. It also affects all parts of life. Freedom of expression includes political, religious, sociological, and economical subjects. The right of expression holds the right to circulate literature to public and the right to receive it. Freedom of expression indicates freedom to communicate by all legitimate means. More ever the right to expression contains the right to present and spread one's opinions, subject to all such restrictions that are legitimately imposed under the clause (Sakal Papers (P) Ltd., And Others vs The Union Of India , 1962).

Restrictions on Freedom of Expression

Fundamental rights taken together may be linked to a rope that anchors the fundamental constitutional protections of the citizens. Fundamental rights are not to be merely considered and applied separately, they must in appropriate cases, be regarded in their totality and applied as such. Freedom is an appropriate terminology to elaborate fundamental rights enshrined in the constitutions. However unqualified freedom, in the manner of freedom to act by undisciplined desires can only belong to the violent cave dwellers or the beast of the jungle. Rights are tied with or counterbalanced by responsibilities of citizenship, which needs as much to be stressed as rights. Absolute and uncontrolled individual freedom do not find place in present time in any state. In any organized society the collective interests, security and peace are of vital importance. If the state itself is disordered and in danger than fundamental rights are irrelevant in that country. Thus, equilibrium must be managed between the fundamental rights and reasonable restrictions (NawabzadaNasrullah Khan v. Government of West Pakistan , 1965). Article 19 of Pakistani constitution in addition to preservation of free expression, present the case of regulation as well. In fact, freedom of expression under Pakistani constitution is a residual freedom. The constitution of Pakistan has presented and regulated the freedom of expression in these words (DG cement vs. Federation of Pakistan, 2013):

“Subject to reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof friendly relations with foreign States, Public order, decency or morality, or in relation to contempt of court, (commission of) or incitement to an offence”

These restrictions are discussed hereinafter.

Glory of Islam

Glory of Islam is a valid reason for controlling freedom of expression in Pakistan. The restriction for glory of Islam was not incorporated in the earlier constitutions of 1962 of 1956. However, it was not thought necessary to include the “Glory of Islam” in the list of restrictions in earlier constitutions of the Pakistan. Former chief justice of Pakistan while commenting on the inclusion of “Glory of Islam” in the part of restrictions observed (Munir, 1999);

“Article 19 of course permits the freedom to speak in favor of or for propagating Islam. If this is the meaning, then the addition was wholly unnecessary. He then raised a question and later answered himself that how does the legislation impose restrictions in the interests of glory of Islam? And offered the following answer ‘the only meaning one can attribute to this part of the article is that no propaganda against Islam can be permitted. On that construction the provision may come in conflict with article 20

which grants the right to propagate one's religion, since the propagators of a religion often compare their religion favorably with others and in the process, are opting to criticize other religions”

Legislation related with the “Glory of Islam” is enacted under the criminal law of the land. Chapter XV of Pakistan Penal Code (PPC) provides the “Offences Relating to Religion”. In this chapter two laws are relevant with “Glory of Islam”. The first part is consisted of section 298-B and 298-C which is related with Ahmadies community. Although these laws are enacted to protect glory of Islam as promised under article 19, however the scope of these laws is much wider. This wider scope affords an opportunity for misuse of the law related with glory of Islam. It also expands the scope of the limitation and adversely affects the right of free expression in the country.

Restrictions Regarding Integrity, Security and Defense of Country

The term ‘integrity of Pakistan’ is presented in article 10 along with article 17 and 19 of the constitution (Basit, 2015.). The fundamental rights enshrined under these articles are conditioned with reasonability constraint executed for integrity of country. The expression ‘integrity of Pakistan’ cannot be separated from the term of ‘ideology of Pakistan’. Ideology of Islam means and includes Islamic ideology and Muslim nationhood. It also means sanctions of Holy Quran and Sunnah and it is a basic aspect in the concept of Muslim nationhood. The ideology became a decisive factor in the independence of sub-continent. It is well identified in two nation theory in sub-continent. Thus, these concepts of Pakistani and Islamic ideology are the foundations of two-nation theory in the region. Therefore the ‘integrity of Pakistan’ contains ideology of Pakistan as well as ideology of Islam and invasion of any of the above will ipso facto lead to invasion of sovereignty of Pakistan (Benazir Bhutto vs Federation of Pakistan, 1988). Questions related to national security as addressed under article 19 can also be discussed under article 10 and article 232 of the constitution. Security means the safety and ‘security of Pakistan’ means Safety of Pakistan. National security hence includes defense and protection of the State’s secrets and instruments of State’s defense. It is also worthy to mention that national security cannot be separated from the foreign policy of the country because foreign policy is deciding factor in the security of the country (Secretary of State v Rehman, 2000).

Deciding the meaning of security of Pakistan is a question of law as it involve question of construction by the courts. However, on the other hand the meaning of “in the interest of security of Pakistan” is a matter of policy and judgment and the executive is responsible to interpret this question according to the needs of the time. The term ‘security or defense of Pakistan’ has been used in article 19 and article 10 clause (4) of the constitution of Pakistan. The term “security of Pakistan” is also explained under article 260 of the constitution in the following words:

“Security of Pakistan includes the safety, welfare, stability and integrity of Pakistan and of each part of Pakistan but shall not include public safety as such”.

This definition is not conclusive as the words includes are used instead of means but one thing is clear from the definition that security of Pakistan is not public safety (Secretary of State v Rehman, 2000). As Supreme Court in the famous case of Benazir Bhutto (Benazir Bhutto vs Federation of Pakistan, 1988) case observed that “Law and order represents the

largest circle, within which is the next circle representing public order and the smallest circle represents security of the state” security of state is often referred to those provoked forms of detrimental activities which threaten the existence of the country itself but those acts are not included which are involving the ordinary breaches of the peace. The Privy Council in Zamora case (THE ZAMORA: PC 1916, 1916) observed “those who are responsible for the national security must be sole judges of what national security requires”. In World War I Schenck was held liable for violation the Espionage Act as he printed leaflets that urged to resist draft. Schenck believed his sentence violated US First Amendment’s guarantee. The Supreme Court of America in the words Justice Holmes said (Schenck v. United States, 1919);

“When a nation is at war things which might be said in time of peace are such a hindrance to its efforts that their utterance will not be endured so long as men fight. No court regards them as protected by any constitutional right”

Article 260 of Pakistan constitution enhance the scope of security of Pakistan for the purposes of article 19. It thereby offers a great room for misinterpretation and extends the scope of restriction to a stage where anything can be prohibited in the name of the security of the state. In this way it adversely affects the freedom of expression principle in Pakistan.

Restrictions regarding Friendly Relations with Other Countries

Article 19 of the constitution also provides that state can impose reasonable restrictions on freedom of expression in the interest of friendly relations with other states. The expression addressed in article 19 “Friendly relations with foreign states” includes international relations. Meaning thereby that constitution permits restrictions for preservation of international relations. International relations and national defense are related with each other. Executive in case of national defense is entrusted with huge powers in the country. As Justice Steward in NEW York Times case mentioned;

“This power largely unchecked by the legislature and judicial branches has been pressed to very hilt since the advent of nuclear missile age” (New York Times Co. v. United States, 1971)

It is for this reason that a press that is alert, aware and free must vitally serve the basic purpose of freedom of expression. However, without free media there will not availability of enlightened people. Justice Steward further stressed:

“It is elementary that the successful conduct of international diplomacy and the maintainer of an effective national defense require both confidentially and secrecy. Other nations can hardly deal with this nation in an atmosphere of mutual trust unless they can be assured that their confidence will be kept. And within our own executive departments, the development of considered and intelligent international policies would be impossible if those charged with their formulation could not communicate with each other freely, frankly, and in confidence. In basic national defense, the frequent need for absolute secrecy is of course self-evident”.

Judge further said:

“I think there can be but one answer to this dilemma if dilemma it be. The responsibility must be where the power is. If the constitution gives the Executive a large degree of unshared power in the conduct of foreign affairs and the maintainer of our national defense, then under the constitution the Executive must have the largely unshared duty to determine and preserve the degree of internal security necessary to exercise that power successfully. It is an awesome responsibility, requiring judgments and wisdom of a high order. I should suppose that moral, political and practical considerations would dictate that a very first principle of that wisdom would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or self-promotion. I should suppose in short that the hall mark of a truly effective security system would be the maximum possible disclosure recognizing that secrecy can best be preserved only when credibility is truly maintained. But be that as it may, it is clear to me that it is the constitutional duty of the Executive- ass a matter of sovereign prerogative and not as a matter of law as the courts know law through the promulgation and enforcement of executive regulations to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and national defense.”

Section 3 of the Security of Pakistan Act 1952 (Mahmood M. , The Constitution Of Islamic Republic Of Pakistan, 1973, 2010) imposed restrictions on the movements of persons who act or are about to act in a manner detrimental to the external affairs of Pakistan, and this provision of the Act has a distinct relation with the preservation of friendly relations with foreign states. Laws exist where citizens of Pakistan are held liable for libel and defamation even if the person defamed is a foreigner, by comity of nations, many states punish libels published by their citizens against the heads of foreign states and their diplomatic representatives because such libels will endanger peaceful relations with foreign countries and lead to open hostilities. Shukla (Singh, 2017) in constitution of India says

“It may be pointed out that it is a recognized principle of international law that states in their relationship with other states are responsible for acts committed by persons within their jurisdiction”

Section 125 of Pakistan Penal Code prescribed a punishment of 7 years with fine when someone wages war against any Asiatic power in alliance or at peace with the Government of Pakistan or has attempted to wage such war will also have the same punishment. It is worthy to note that this provision of Friendly Relations with foreign states is unique in manner as it shows the importance of friendly relations with other states. Pakistan and India both have this unique provision of law to safeguard international relations between different countries. Pakistan and India have also another unique provision of law. The Foreign Relations Act, (XII of 1932) was passed in combined India and later adopted by both states. The law provides punishment for libel by citizens against foreign dignitaries. One important and interesting point was made in Jagan Nath V Union of India (S Jagannath Vs Union Of India, 1997) that members of common wealth countries do not come under the ambit of foreign country. The question of validity of restriction being it detrimental to a commonwealth country came before supreme court of India. The supreme court of India responded to this

that a state may not be viewed as foreign country for the constitution but can be considered a foreign country for different matters. The outcome of the decision was that expression cannot be limited on ground of being averse to the hostile country Pakistan. The Foreign Relations Act of Pakistan also prohibits publication of certain material. It provides that if any publication is made in and provisions of section 99-A to 99-G of criminal procedure Code (Law, 2011) along with sections of Post Office Act 1898 are applied than such publication will be forfeited and person publishing those will be detained. The law will apply in the case any material which contains defamation of a head of a foreign state and tends to prejudice the preserving of friendly relations with foreign states. Security of Pakistan Act, the Foreign Relations Act and The Pakistan Penal Code present restrictions for the protections of friendly relations with foreign states. However, the punishment provide under PPC extends the scope of restrictions to the level of waging war. These restrictions also extend the scope of boundaries of freedom of expression. This extension of scope negatively effects the freedom of expression principle.

Restrictions Regarding Public Order, Decency and Morality

Clinton Rossiter in 'Introduction to the Federalist' (Hamilton, 1961.) concludes that:

“no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality and none of these great goods without stability and order”.

This highlights the importance of public order in a society. In *Walker v Birmingham* (*Walker v. City of Birmingham*, 1967) the US Supreme Court observed that the constitutional civil liberties are the product of public order in an organized society and without the public order, the liberties will be lost by unrestrained abuses. In Pakistan the term Public order is used in various articles, Article 10 Safeguards as to Arrest and Detention, article 17 which protects Freedom of Association, article 19, which protect Freedom of Expression, and article 20 which protects Freedom to profess religion. However, the phrase 'public order' is not defined in the constitution of Pakistan. The phrase 'public order' is identical with safety, public peace and tranquillity. It is of local significance as distinguished from national upheavals like "security of state and law and order". An act prejudicial to public order should affect the public at large (*Benazir Bhutto vs Federation of Pakistan*, 1988). An act which relates to individuals and does not amount to an activity detrimental to the public peace and tranquillity will not fall within the domain of article 10(4) and (7) of the constitution 1973 (*Mrs Arshad Ali v Government of the Punjab*). The expression "public order" or the maintenance of public order is one of the core reasons for perpetrating restrictions on freedom of expression in the country (*Begum Zeb-un-Nisa Hamidullah v Pakistan*., 1958). The words 'decency and morality' are comprehensive words. The word 'obscenity' available under English law is almost identical with the term 'indecent' under the Pakistani constitution. Section 292 to section 294 of the Pakistan Penal Code (Mahmood M. , *The Constitution Of Islamic Republic Of Pakistan*, 1973, 2010) affords grounds of limitations in the interests of decency and morality. However, Pakistan Penal Code does not provide any specific test to define obscenity. The term public order is presented under different parts of the constitution and under Pakistan Penal Code, but the term is not properly defined. It provides an opportunity of misinterpretation and extends the scope of restrictions to unidentified areas.

Restrictions regarding Contempt of Court

Rule of Law is the foundation stone of governance in a democratic and civilized society. The principle of rule of law means the sovereignty of law. It also brings everyone under the principle purview. It also means that “Whoever the person may be, however high he or she is, no one is above the law notwithstanding how powerful and how rich he or she may be.” There can be no applicability of Rule of Law principle unless the concept ‘the Court of Justice’ is implemented and kept alive in the society. No society can survive without laws and laws are useless without their enforcement. The Courts in any country presents the meaningful content of the principle of rule of law. The Rule of Law lies at the foundation of constitution of country. The task of implementation of rule of law principle is assigned to the superior judiciary of the country. The independent or impartial Judiciary is the sine qua non of a healthy society. Therefore, it is crucial for the superior Judiciary to be protected from all types of evils likely to have impact on the administration of justice. For preservation of prestige and dignity of the courts, the contempt of court law has been drafted (Chand).The judiciary is vested with inherent power of penalizing for contempt. To some it may seem to be an arbitrary power. In this matter the role of prosecution and adjudication is vested in one authority. However, it is an important power for the safeguarding the impartial administration of justice.it is also important to maintain the grandeur of the law (Landis, 1924).

The power of the contempt of court is unique in Pakistani constitution as article 19 not only protects the freedom of press and expression but also permits this right to be subject to reasonable restrictions imposed by law in relation to contempt of court. It means that freedom of expression is a general principle, while regulation of expression by contempt laws is an exception to the rule. It is also interesting that article 19 as well as article 204 provides contempt of superior courts. It is a settled provision that

“article 204 of the constitution is to be construed in conjunction with article 19 and 66 thereof in a manner which should deter the commission of contempt of court but at the same time it should preserve and protect the freedom of speech and expression and freedom of press (Masroor Ahsan v.Ardeshir cowasjee , 1988)”.

A balance is to be maintained between the above two objectives. The same idea was presented in State v Sh Shaukat Ali (State v. Sh. Shaukat Ali etc, 1976) in following words

“The right guaranteed by article 19 is itself subject to law of contempt. In other words, the right of freedom of expression don not extend to the grant of license to the citizens to commit contempt of court.in this connection article 19 of the constitution is in a way subject to article 204 which now codifies the law of contempt of superior courts. It contains, if we may say so constitutional safeguards against any attempt to scandalize the court or undermine its dignity in the public interest”

Recently in Pakistan the courts have used this contempt of court power to silence the criticism on it. The political cases were taken up by the courts and politicians were punished and subsequently debarred from contesting elections. This restriction has also increased the scope of restrictions and decreased the application of principle of freedom of expression in the state.

Restrictions Regarding Commission of Offense or Incitement to An Offense

Offense is defined by the General Clause Act 1897 (Basit, 2015.) under section 2(43) as “any act or omission made punishable by any law for the time being in force”. Pakistan Penal Code under section 40 also defines the expression “offence” The principle underlying this restriction is that the right of expression does not reach to a provocation to commit an offense, whether the offense intended to be committed is major or minor, cognizable or non-cognizable. However mere admiration or approval of an offence does not necessarily amount to incitement to commission of an offence or commission of an offence. The question before the court was whether passages in a book which expressed admiration or approval of offence or of any person, tended to incite or encourage the commission of the offence within the meaning of the Press (Emergency Powers) Act 1931. The High Court while deciding the book as historical one stated:

“we have to look to the circumstances in each case in judging such a tendency via the purpose of the work, the time at which it was published, the class of people who would read it, the effect it would produce in their minds, the effect it would produce in their minds, the context in which the objected words appear and the interval of time between the incidents narrated and the publication of the work”

The legislature has the power to impose limitations regarding freedom of expression provided the court holds that the restriction imposed is reasonably necessary to prevent incitement to crime. The decision of this issue is of the very essence of the judicial function and while deciding it what the court should consider is the nature, extent and duration of the restriction and its relationship with the avowed object. However, incitement is not mere advocacy or approval of an abstract doctrine, and where there is no danger that such advocacy will be immediately followed by practice, there is no incitement to the commission of an offense.

Conclusion

Pakistani constitution ensures freedom of expression for all Pakistani citizens under article 19. judiciary, legislature and executive are entrusted with responsibility of ensuring this freedom. constitution also provides express restrictions on the freedom of expression. by reviewing restrictions and laws made based on those restrictions, it is found that the laws restricting freedom of expression has expanded their scope at the expense of freedom of expression principle. Additionally, several of the terms are not properly defined or ambiguous which makes it easy for misinterpretation. This study recommends the overall review of those laws to comply with provisions of freedom of expression.

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