




## Freedom of Expression in Pakistan and Malaysia: A Comparative Legal Analysis

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ARTICLE INFO	ABSTRACT
<p><b>Article History:</b>            Received: January 03, 2025            Revised: March 09, 2025            Accepted: March 18, 2025            Available Online: March 23, 2025</p>	<p><i>Pakistan and Malaysia have distinct legal and social settings, which have an impact on the ideas and experiences around freedom of expression in both nations. The Pakistani Constitution guarantees the right to freedom of expression, notwithstanding heavy limitations, particularly with regard to national security concerns. Similarly, the Federal Constitution of Malaysia though guarantees freedom of expression, laws related to defamation and sedition are used to impose restrictions. In Pakistan, courts have struggled to find equilibrium between freedom of expression and the state's obligation to uphold morality and public order, frequently leading to controversial decisions. The Malaysian judiciary has also encountered difficulties in striking a balance between the freedom of expression and regulations intended to maintain ethnic and racial peace, which frequently results in the silence of dissenting opinions. Social and cultural aspects are major determinants of this valuable right in both nations. Historical circumstances influence how freedom of expression is understood and applied, such as Malaysia's multicultural society and Pakistan's colonial heritage. The importance of digital platforms and social media, in addition to other recent developments and trends, significantly muddies the landscape of free speech in these nations. In order to shed light on the opportunities and obstacles for advancing this fundamental right in various socio-political situations, this article aims to identify parallels, contrasts, and growing patterns on how Pakistan and Malaysia negotiate the complicated terrain of freedom of expression. The research continues by looking at court rulings and significant cases that have influenced each nation's jurisprudence. The study in this article is based on a library-based method where several books, articles, court cases, internet sources etc are analysed to obtain the data. This research found that much work was yet to be done to improve the right to freedom of expression in Pakistan and Malaysia.</i></p>
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## **Introduction**

Freedom of expression refers to the right to freely express oneself through spoken words, written works, visual arts, or any other form of communication. Freedom of expression not only enables us to fully appreciate the importance of many points of view, but also encourages tolerance for such disparate viewpoints. It is widely seen as an essential concept in the liberal democracies of today. The goal of freedom of expression is not to grant everyone the unrestricted ability to write or publish anything he chooses, publicly or privately, and without any accountability. In this regard, there are instances in which limitations are required to safeguard other competing interests. There have been arguments made for and against restricting the right to free speech based on moral or political grounds. This fundamental right is essential to the development and realization of each person's unique individuality. Democracy gives the people the power to rule their states. In a democratic nation, free speech is essential to elevating individuals to the top of the social hierarchy. Freedom of expression is acknowledged as one of the most important constitutional rights in several international accords and legal frameworks, such as Article 19 of the Constitution of Islamic Republic of Pakistan, Article 10 of the Federal Constitution of Malaysia, the First Amendment to the US Constitution and Article 19 of the Universal Declaration of Human Rights (UDHR).

## **Discussion**

Indeed the right to free speech is much talked about and safeguarded fundamental right (Kent, 1989). Right to Freedom of expression has been protected by almost every international constitution (Stone, 2010). The pursuit of truth, autonomy and democracy serve as the grounds for the right to freedom of expression (Larry, 2000). The search for truth is aided by the marketplace of ideas, which provides unfettered access to a vast array of knowledge. John Stuart Mill is directly linked to the defence of truth-based free speech in his work 'On Liberty' (Gray, 1998). The main thrust of Mill's contention is that the pursuit of truth can result from the full enjoyment of free speech. The liberal perspective values freedom of expression as a means of enhancing individual autonomy (Scanlon, 1972). It is essential to each person's personal growth and fulfillment. One quality of human dignity is the capacity to make independent decisions about one's life (Hirsch, 1986). A democratic society must have the right to freedom of expression. Constitutionally speaking, democracy implies that all citizens have equal standing under the government (Raz, 1991). When there is enough room for freedom of expression without unwarranted restrictions, democratic societies thrive on both the social and political fronts. In Pakistan, the right to free speech is protected in the 1973 Constitution as well as in several previous constitutions. As specific limitations are carved into the same article, this right is not unconditional. Along with Pakistan, Malaysia is a Commonwealth nation where the constitution guarantees the right to free speech. The Malaysian Constitution also stipulates express limitations (Ginsburg et al. (2011).

## **Freedom of Expression in Pakistan**

During the tenure of Liaquat Ali Khan, Pakistan's first elected Prime Minister, Pakistan signed and bound itself to UDHR in 1948 and had the distinction of being amongst the original 48 signatories to the Declaration. The 18th amendment added another Fundamental Right to the Constitution, Article 19A-the right to have access to information in all matters of public importance. This addition made freedom of speech and expression and the freedom of the press more effective. Fundamental Rights described in the Constitution are guaranteed and bestowed on the people without discrimination. Violating fundamental rights is a violation of the Constitution because as per Article 5, obedience to the Constitution is the inviolable obligation of every citizen. As per

Article 19 of the Constitution of Islamic Republic of Pakistan, every citizen can exercise freedom of expression but with certain reasonable restrictions. A right is referred to as a fundamental right when it is protected by a constitutional guarantee, which places restrictions on the ability of the legislature or executive branch of government to act against it. A right like this cannot be restricted, suspended, or taken away unless the Constitution specifically states otherwise. On the other hand, an ordinary enactment has the power to increase, decrease, or eliminate an ordinary right. Therefore, fundamental rights are the inherent freedoms that every man, woman, and child has as a citizen of a free and civilised society. The fundamental feature of fundamental rights is that they restrict public authorities, either explicitly or implicitly, interfering with their ability to execute their authority (Mahmood, 2014).

The most superior and unique rights are those that are unalienable and cannot be violated without strictly following the law, but with restrictions imposed by the exercise of those rights. By virtue of Articles 199 and 184 of the Constitution, superior courts are tasked with giving citizens whose rights have been violated by the State or its agents a remedy (PLD 2004 Lah. 376). It has been mentioned in Article 19 that the restrictions should be reasonable. Ironically the definition of 'reasonable' is not quite clear. It is neither feasible nor wise to establish a theoretical criterion of reasonableness that applies to everyone. Maintaining the constitutional ideals of democracy, freedom, equality, tolerance, and social justice necessitates defining reasonable constraints (PLD 2013 Lah. 693). In order to confirm the legality of the restrictions, it will be determined whether the restrictions are appropriate and if they comply with the justifications given in the article (Basit, 2015). It was ruled that if the restriction was not proportionate to the wrong that the law intended to avert, it would be deemed unreasonable. The final authority to adjudicate regarding the reasonability of restrictions lies with the courts and not the executive because the courts have been vested with the power of judicial review (PLD 1964 SC 673). In order to deny its inhabitants the enjoyment of fundamental rights guaranteed by the constitution, only the authority of the law can put constraints on freedom; the executive branch lacks the authority to do so (Jane, 2014), and the restrictions have to be linked to the goals specified in the article (2012 CLC 714).

In actuality, several of the provisions found in the Universal Declaration of Human Rights are reflected in the fundamental rights guaranteed by the constitution. If there is no contradiction between the two, the Supreme Court of Pakistan may consult the Articles of UDHR when interpreting the Fundamental Rights. The goal is to apply a liberal interpretation that will maximise benefits to the people and ensure consistency with other countries (1999 SCMR 1379). The judiciary is required to look into the legality of legislation if it is found that a law has been passed in contravention of the fundamental rights envisioned in Article 8 of the Constitution, or if any part of a law is declared to be unconstitutional (PLD 2012 SC 870). It is abundantly evident from reading Article 19 that this right is not unqualified, and that reasonable limitations may always be placed on it for justifiable reasons. Certain restrictions on government employees' freedom of speech are required in order to preserve appropriate discipline among public officials and administrative efficiency, as permitted by law and reasonable classification (2004 SCMR 164). The freedoms outlined in the Constitution's Articles 15, 16, 17, and 19 are subject to reasonable limitations rather than being unfettered. Every propagator, printer, and publisher has a fundamental responsibility to ensure that the information they disseminate is founded on reality (PLD 2008 Kar. 558).

One of the key components of a democratic society is the freedom of the press. A check and balance is provided by this freedom to the other branches of government. It is the responsibility of the press to alert the public when any government oversteps its authority. In a democracy, the press is traditionally thought of as the mother of all liberty (2000 CLC 904). The Fourth Amendment Act of 1975 removed the word "defamation" from Article 19 of the Constitution and replaced it with

the phrase "commission of," which expanded the scope of press freedom. However, this did not give the press permission to publish anything that could be construed as harming someone's interests or causing their reputation, honour, or prestige to suffer. Instead, the press's freedom was subject to reasonable restrictions that could be lawfully imposed in the public interest and to uphold Islam's glory. Article 19 of the Constitution requires the press to verify material with relevant parties before publishing it, use due diligence, and adhere to certain guidelines (PLD 2002 S.C. 514).

When determining whether the limitations are appropriate, the circumstances that existed at the time the Act was passed may be taken into account. The powers are extensive, but they should only be used when it is determined that doing so is necessary. There can be no assumption that the powers will be abused in their exercise. A case involving the improper use of authority is always susceptible to court intervention. Without considering the interests of the goals outlined in the article, the government is unable to arbitrarily employ the discretion that has been granted to it (PLD 1965 Dhaka 68).

Truth can be communicated with honorable and beneficial goals by employing respectable and well-known phraseology. It is necessary to avoid and detest intemperate discourse, ironic or sardonic expression, immodest or shameful publications that are simply done with bad intents. The press is not allowed to print anything without appropriate verification, even though article 19 of the constitution guarantees press freedom. It is not required for the press to flout established moral standards and decency guidelines in order to publish any news item (2006 MLD 1462). Every restriction on the right to free expression must be justified and serve the greater good of society. If there is a clear and present threat, restrictions can be put in place and the right to free speech can be restricted (PLD 1993 S.C. 473). Since the state's entire territory is worth more than the freedom of speech and expression enjoyed by any of its people, this freedom cannot be utilised as a democratic means of overthrowing the state that granted it on any social, moral, legal, or political basis. According to court rulings, section 123-A of the P.P.C. imposes limits that are more than reasonable and serve the state's security interests (PLD 1957 Lah. 142). Publications that are lewd or immoral are not covered by the right to freedom of expression. Since morality and decency are dynamic concepts, views on them have evolved over the course of a society's social and ethical history, both within and between societies. Consequently, inquiries concerning these topics must be made in the context of the current, widely acknowledged ideas. Pakistani residents are subject to laws pertaining to libel and defamation, even in cases when the target of the defamation is a foreign national. According to Section 3 of the Security of Pakistan Act (1952), individuals who act or are likely to act in a way that is detrimental to Pakistan's external affairs may have their freedom of movement restricted. When exercising free expression, a citizen must make sure that his remarks regarding the actions of a judge or the court did not break any laws, since this right is subject to reasonable limitations imposed by the law, including those pertaining to court proceedings (PLD 2012 S.C. 923). Syed Yousaf Raza Gillani, the Prime Minister of Pakistan, was removed from office in one of the well-known cases of contempt of court (2012 SCMR 909).

Sometimes the powerful entity in Pakistan stifles any discussion that goes against them in the media or on any other forum in the guise of safety of the country. When they receive criticism, they instill fear in others (Ganon, 2016). They frequently use the constitutional restriction clause to safeguard the interests of the country and retain complete authority over the people's consciousness (Hamdani, 2014). It is said that the misuse of authority, in the name of national security, violates human rights of the citizens (Pervaiz, 2016). Critics say that sometimes terror is caused to the people who question such misuse of power (Hasan, 2014).

It is important to have the freedom to express oneself in order to alter the social status quo. Some argue that in a country like Pakistan where communication is controlled, there is little room for the

creation of individual opinions. Rather, the country is governed by a mob mentality that hinders the emergence of fresh perspectives. A provocative alternative narrative must be disseminated to confront the nation's radical views (Ahmed, 2012).

### **Freedom of Expression in Malaysia**

The freedom of speech and expression is among the indispensable elements of the fundamental liberties delineated in the Malaysian Constitution. However, despite its significance, the right to free speech and expression is not unqualified. As per Article 10 of the Constitution, every citizen has right to freedom of expression but with such restrictions as are necessary or expedient. Malaysia has traditionally had a wide range of regulations that can be used to stifle free expression. The Reid Commission, led by Lord Reid, made recommendations for the inclusion of freedom of expression in the constitution (Ibrahim et al. 1987). One could argue that the Reid Commission's suggestion for speech and expression protection is not based on the idea that these rights are fundamental to democracy. The right is protected because some segments of society have misgivings about it. The Commission, however, felt that this kind of fear is unwarranted (Bari, 1998).

The scope and circumstances in which the right to free speech is exercised are established by the exceptions listed in Article 10(2) (a). Further research is necessary to evaluate the magnitude of executive influence, as the Parliament has the authority to decide the extent of exceptions. It might be argued that Article 10 of the Constitution gives the executive broad authority to decide what constitutes free expression. The executive and the legislature are not clearly separated from one another, despite the concept of separation of power enshrined in the Constitution. The Constitution does not define the right to free speech and expression, despite the fact that it is expressly guaranteed. The clause is sufficiently broad to include all forms of communication. There are two types of speech and expression: verbal and non-verbal communication. It includes verbal exchanges, gestures, signs, and symbols as well as artistic expression through books, magazines, newspapers, films, music, and sculpture (Faruqi, 1992).

The Constitution expressly grants citizens the right to free speech and expression. Article 10 (1) (a) implies that non-citizens are not entitled to constitutional protection. As a result, foreigners in Malaysia are not permitted to use the constitutional clause to assert their claim. Additionally, if they are accused of breaking a speech restriction, they are not permitted to request protection under the Constitution. According to the Constitution, as they are bound by Malaysian law, the government has the right to restrict their freedom of speech and expression. This would imply that non-citizens as well as artificial individuals, such as corporations, would not be able to assert the right, even if they were incorporated in Malaysia. The reason for this is that citizenship is limited to natural persons. Limitations on freedom of expression are mandated by the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR). Article 19(3) of the ICCPR recognizes that the exercise of the right entails specific obligations. Any limitations placed on the right must be compliant with the law.

Concerns about other people's rights and reputations, national security, public order, public health, and morality are given priority when it comes to limiting the scope of freedom of expression. The proportionality doctrine in European jurisprudence specifies these limitations. A handful of Acts such as the Penal Code, the Printing Presses and Publication Act 1984, the Official Secrets Act 1972, the Sedition Act 1948, and the Communications and Multimedia Act 1998 govern this freedom (Tan, 2021). Numerous incidents that have been publicised in the media highlight how the aforementioned Acts can be used to restrict the right to free speech. For instance, in September 2021, a man was accused of creating and sharing derogatory words about the rulers on Facebook. As per section 233 of CMA 1998, the accused person can be awarded sentence upto one year or

fine upto RM 50,000 or both (Free Malaysia Today, 2021). Furthermore, it should be restricted since insulting Yang di-Pertuan Agong is seen as a felony that can cause unrest in the public. As a result of this behaviour, the police detained a person going by the Facebook handle "Iswardy Morni," who was accused of making derogatory remarks and made fun of His Majesty, in violation of Sections 8(2) and 11 of the Sedition Act of 1948 (Zainuddin, 2021).

It is understandable that unchecked freedom of speech could lead to conflict in society. This is especially true in a multicultural community like Malaysia [1994] 1 MLJ 566). For the benefit of the populace, it is the government's duty to foster an atmosphere of harmony and tolerance. Therefore, restrictions on the right to free speech are somewhat required to maintain the norm and standard of living in a pluralistic democratic society. But any misuse of the rationale for limiting one's ability to express oneself compromises that constitutional liberty. While there are limits to the right to free speech and expression, the goal of a constitutional framework's guarantee of this right would be undermined by restrictive regulations (Bari, 1997).

As no such right is unconditional or absolute, the parliament may impose legislative restrictions on the extent of the right under Article 10(2) (a). According to the article, Parliament may by law impose restrictions on the rights granted by paragraph (a) of clause (1), as well as any other restrictions it deems necessary or expedient in order to protect the Federation's security or any part of it, friendly relations with other nations, public order, morality, or the privileges of parliament or any legislative assembly. It may also impose restrictions to prevent contempt of court, defamation, or incitement to any offence.

In *PP v. Param Kumaraswamy*, it was stated that any law that Parliament has decided essential to pass in order to restrict free expression under Article 10(2)(a) is legal and cannot be contested [1986] 1 MU 512. Owing to broad range of restrictions, residual nature of this right is available (Bari, 1998). Whether an activity jeopardises national security is a policy question best left to the executive [1978] 1 MU 30. The executive should make decisions regarding national security since the courts lack the necessary expertise in this field. It was held by the Federal Court in *Loh Kooi Choon v. Government of Malaysia* that it was not for the judges to assess the Act because this is a matter of policy that should be discussed and decided by the parliament [1977] 2 MLJ 187.

The courts have traditionally regarded national security as requiring special consideration. In this sense, Lord Fraser stated in the English case of *Council of Civil Service Unions & Ors v. Minister for the Civil Service* that the only people who can decide what is required for national security are those who oversee national security. Naturally, such materials should not be introduced as evidence in court or in any other public forum (1985) AC 374. This does not mean that the executive branch in Malaysia is above the law, even though it still retains prerogative power over matters of national security. It is entirely up to the courts to decide whether the executive's acts are unlawful. The case of *Mohammed Ezam Bin Mohd Noor v. Ketua Polis Negara & Ors* serves as an example of this. No questions were asked about the appellants' activities or explosive materials, despite respondent's claim that they constituted a threat to national security. Their attorney contended that the executive branch had the authority to decide what constituted national security and that there were other grounds for their detentions [2002] 4 MLJ 449. If the national security aspect of the executive's decision was taken into account, the court would look into it. The executive prerogative is streamlined by the court's practical approach to comply with legal requirements. With this approach, the courts would be able to establish their role in maintaining the preeminence of the constitution, especially with regards to fundamental liberties. The courts can evaluate whether executive activity relates to the need for national security, even though they lack the authority to define what conditions constitute national security. In the case of *Jamaluddin Bin Othman v. Minister for Home Affairs*, it was held that an individual could not be considered a threat to national security simply by attending meetings and seminars [1989] 1 MLJ 418.

Limitations on the right to free speech and expression are acceptable in order to maintain international ties. The foreign policy of the government governs matters relevant to good ties with other foreign nations. The executive will decide the scope and character of ties with foreign nations in this regard. In addition to political goals, bilateral relationships are crucial for economic ones. Regarding this, Malaysia had through a terrible event in 1964 when cordial ties with its neighbour, Indonesia, soured. This resulted in a conflict that put both nations' security at risk. Any restriction that does not fall under the purview of Article 10(2) (a) may be contested as illegal. If the restriction does not fall in Article 10 (2) (a), the courts have the authority to deem it illegal. However, the courts are not very passionate about protecting the right against the government and Parliament. Rather than questioning the purposes and operations of the right, the courts are outspoken about the limitations imposed by Parliament (Adduse, *Fundamental Rights and the Rule of Law: Their Protection by Judges*). This might be the result of the executive giving up the judges' authority by passing laws. The judiciary is immobilised in its attempt to use judicial review to examine and verify the actions of the executive branch. For example, Ordinary court remedies are not available to detainees under the Internal Security Act, 1960. They have the ability to address an Advisory Board that was created by the Constitution and is accountable to the executive. In *Menteri Dalam v. Nasharuddin bin Nasir*, the respondent was taken into custody under Internal Security Act of 1960 (ISA) section 73 (1) and the Federal Court ruled that it was not within the Court's purview to assess the adequacy or applicability of the foundation upon which the Minister arrived at his judgment. It can be considered interfering with the executive branch to investigate the fairness of the restriction [2004] 1 CLJ 81.

Furthermore, the case of *Lau Dak Kee v PP*, brought up restrictions on the right to free speech. In this case, the appellant was found guilty of violating the police-issued permit in accordance with section 27 of the Police Act 1967. The judge stated that any law issued by the parliament may restrict rights to free speech, assembly, and association [1976] 2 MLJ 229. These cases show how the courts view the executive and legislative branches as superior. Given that the Constitution is the ultimate law of the land, this is incompatible (Article 4 (1) of the Federal Constitution). The Constitution's guaranteed positive right to free speech should be upheld by the courts through their judicial activism. Unfortunately, the judiciary shares the executive branch's view of free speech, viewing it as relictual in nature. Consequently, it is argued that in order to prevent the constitutional protection of free expression from becoming obsolete, the courts must address the right both intrinsically and instrumentally.

Moreover, Article 10(4) restricts access to sensitive classified information. Since it cannot be contested in a court of law, the prohibition is absolute. The clause disallows the courts' function, meaning that judicial assessment of the validity of restrictions is not applicable. This clause restricts the right to free speech when it comes to topics that must be kept completely secret in order to maintain public safety or order. Citizenship, national language, Malays' privileges, and Rulers' sovereignty are the topics of discussion. Nonetheless, given Malaysia's pluralistic society, these are delicate subjects that might quickly spark racial strife. These delicate matters are closely guarded in order to preserve security and public order because of the lessons learnt from previous experiences. It is generally acknowledged in Malaysia that inter-ethnic discord poses the biggest threat to socio-political stability, particularly since the late 1960s. Further, the described restrictions are so broad that it is unlikely that many limits could be claimed to fall outside of the categories of limitations allowed by Article 10 (Harding, 1996).

One example of the unique approach taken by Malaysia is the removal of judicial review, a common law mechanism that allows the courts to examine the actions of the executive branch. Lessons from past racial and political unrest may impact Malaysia's decision to impose restrictions on freedom of expression. Since the nation gained its independence in 1957, the majority of efforts

have been focused on its development. The pursuit of advancement and growth instills a sense of urgency in upholding political stability, economic equity, and security (Abraham, 1998). Therefore, the focus on nation building implies that stringent legislation is required to accomplish these objectives. In this regard, it may be claimed that by upholding the human rights principle, Malaysia takes the stance that is best for its people. Racial tensions caused the first racial riot in Malaysia in 1969, which led to the subsequent declaration of a state of emergency in the nation. The speeches delivered during the 1969 general elections were the primary cause of the turmoil. Furthermore, Articles 149 and 150 grant the Parliament broad authority to pass laws intended to enhance security. Even if a law violates a fundamental liberty clause, it is nevertheless lawful because it was passed with the authority of both provisions.

A newspaper article about a well-known Malay politician's speech with the editorial header, "Abolish Tamil or Chinese medium schools in this country," highlights the delicate nature of racial sentiment in *Melan bin Abdullah v. Public Prosecutor*. The chief editor and the author of the subheading were charged under the Sedition Act of 1948. The court imposed fines after finding both of them guilty [1971] 2 MLJ 280. Some critics are of the view that politics of ethnicity shapes Malaysian democracy (Loh, 2002). Ethnic backing is what keeps political parties alive. According to the administration, preserving racial peace and togetherness within the precarious multiracial society is essential. In addition to endangering the peaceful social environment, political instability will have an effect on economic growth.

However, the intention of the Constitution's founders was to give the executive and legislative branches broad authority to impose restrictions on the right to free speech and expression. Since the courts could not challenge any legislation passed on the subject, the power is obvious. The courts are obligated to uphold the law in this sense. One of the framers of the Constitution, Justice Malik, made the case that there could never be certainty if the courts were allowed to challenge the legitimacy of laws based only on their rationality. The main goal is to give Parliament absolute authority. This could be a holdover from the British system, which gave Parliament the utmost power in the Malaysian Constitution. It is evident that the constitutional provisions grant both the government and Parliament a great deal of authority. That being said, this does not imply that Malaysian courts lack the authority to check any violation of the constitution. When judicial review is unavailable, the courts' approach to limiting freedom of speech and expression makes individuals' fundamental liberties appear more like pipe dreams than actual rights. This positivist mindset has the effect of essentially undermining the Constitution's primacy as the supreme law of the land (Bari, 1999).

Nonetheless, there are times when the courts are more likely to take a practical posture when handling matters pertaining to the right to free speech and expression. The courts acknowledge that an environment of surveillance and control is incompatible with the development of a free and open political discourse, but they also recognise that other public interests must be safeguarded and advanced. A relevant interpretation of the Constitution's guarantee of the right to free speech must take into account individual interests while also taking Malaysian society's modern realities into account. The idea of constitutional supremacy has become illusive due to Parliament's immense power. Upholding the constitutional supremacy is necessary for the courts to reconsider their judicial activism and maintain the Constitution's status as the ultimate law of the land, as stated in article 4. Without an impartial body to interpret and uphold a written constitution, consequently, the courts ought to adopt a liberal and practical stance as opposed to a conservative and affirmative one. The judiciary must disassociate itself from the executive branch both materially and philosophically. In accordance with the theory of separation of powers, the courts, as distinct, independent bodies, are required to vigorously uphold the constitutionally guaranteed right to free expression. Positive signs suggest that the courts adopt a practical approach. The ultimate restraints

on legislative authority in Malaysia are legal rather than political, meaning that as outlined in Article 8 (1) of the Federal Constitution, every legislation enacted by Parliament must pass the fairness test [2003] 3 MLJ 1.

### **Way Forward**

Pakistani courts are fully entitled to make the final decision regarding the reasonableness of restrictions and as per Article 189 of the Constitution of Islamic Republic of Pakistan, decisions of the Supreme Court have binding effect. But when it comes to sensitive issues, restrictions are imposed by the executive. On the other hand, no reasonable restriction test is available to the Malaysian courts. Courts should play active role in ensuring that citizens of Pakistan and Malaysia exercise freedom of expression but there should be no room for hate speech. One must make full use of the right to free expression since it is a fundamental human right. However, there may be necessary reasonable restrictions. It is necessary to interpret the law impartially and honestly. Laws are essential for controlling the freedom of speech, but they also penalise law-abiding citizens while granting severe offenders a free pass. The public and social media must hold political authorities accountable in addition to requiring them to obey the law. The media, educational institutions, religious groups, and civil society all have a role to play in preventing hate speech and materials that encourage hatred and prejudice against people based on their race, ethnicity, or religion. Rather than addressing domestic security issues from a national security perspective, the governments of Pakistan and Malaysia should invest in its people in order to reap the benefits of the demographic dividend, eradicate injustice and violations of human rights, and promote peaceful generations through inclusive prosperity. Further, before releasing any information, the media should conduct thorough investigation and research. It is time to ban sensationalism in advertising and ratings. It's critical that journalists get sufficient instruction in objective communication. A balance between the individual's right of the freedom of expression and the state's power to impose reasonable restrictions for maintaining public order in the country is the need of the hour.

### **Conclusion**

In this article, the authors have highlighted that human rights are safeguarded by numerous regional and international treaties, charters, and frameworks, with freedom of expression being acknowledged as their cornerstone on a worldwide scale. If the criterion "necessary and expedient" is met, the Malaysian Parliament would effectively become the final decision-making body. In this regard, Parliament has extensive prerogative jurisdiction. Parliament is not required to demonstrate why a law restricting freedom of speech and expression is necessary or beneficial. When limitations set by Parliament are in compliance with the law, the courts are not permitted to exercise their judicial power. So, the space available to courts for judicial review to safeguard free speech is limited. The government, not the courts, is the true guardian of freedom in this case. As far as Pakistan is concerned, sometimes the state, as a policy, curtails the freedom of expression in negation of the spirit of the law and the fundamental rights enshrined in the constitution, by endangering the lives of the people and causing terror in the society. Owing to such policies, sometimes citizens not only face physical harm but have to go through long lasting psychological harm as well. Democracy would serve no useful purpose if citizens, in negation of true spirit of the constitution, lead their lives in incessant danger.

Nevertheless, there is no such thing as absolute and unfettered liberty, and no modern state recognizes the existence of absolute and unrestricted individual rights. Human rights, including the right to freedom of expression, should be exercised and enjoyed responsibly and not through violating others' rights. In any organized society, the preservation of public order, the state's peace and security, and the interests of the group as a whole are crucial. These fundamental rights are

meaningless if the State is unstable and in danger. The liberties of the subjects are also in jeopardy if the state is in peril. In order to protect society as a whole, the state must strike a balance between the two conflicting interests at stake: the necessity to enforce social control and acceptable restrictions on the exercise of those rights, as well as the individual liberties and positive rights of citizens.

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