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## Freedom of Expression AMD Press under Pakistan's Constitution 1973

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## ABSTRACT

This article provides a comprehensive analysis of Pakistan's constitutional guarantee of freedom of expression and press under Article 19 of the 1973 Constitution. By examining the text of Article 19 alongside related provisions (such as Article 19A on information access and Article 10A on fair trial) and reviewing key court decisions, the study clarifies how the right is defined and applied. Using doctrinal legal methodology and case-law review, we assess how Pakistani courts interpret the scope of free expression and the conditions under which it may be lawfully curtailed. Key findings reveal that Article 19 formally guarantees broad expression and press rights but explicitly subjects them to **“reasonable restrictions”** on grounds like religion, security, and public order (Constitution of the Islamic Republic of Pakistan, 1973). Supreme Court jurisprudence underscores the centrality of free expression in democracy, yet insists any restrictions be lawful, necessary, and proportionate. In practice, however, ambiguous terms in laws such as the Prevention of Electronic Crimes Act (2016) and colonial-era provisions (e.g. sedition and blasphemy laws) have been applied expansively, chilling public discourse. The study identifies significant tensions between Article 19's promise and its application, and concludes with recommendations for clearer legislative standards and stronger judicial oversight to better safeguard this fundamental right.

### Introduction

Freedom of speech is widely recognized as a cornerstone of democracy and a fundamental human right under international law (United Nations, 1948; United Nations, 1966). Pakistan's 1973 Constitution enshrines this principle by declaring that every citizen has “the right to freedom of speech and expression, and there shall be freedom of the press,” subject to “reasonable restrictions imposed by law” (Constitution of the Islamic Republic of Pakistan, 1973). Despite this seemingly strong guarantee, there is persistent tension between the formal promise and its practical application. Pakistan is often rated poorly in global press freedom indices (Reporters Without Borders, 2020; Freedom House, 2024), suggesting that historical and legal constraints impede truly free discourse. Scholars note that a colonial legacy of censorship laws, combined with vague restrictions (such as those invoked in the name of “the glory of Islam” or public order), contributes to a complex speech regime that has not been systematically examined in recent scholarship.

The purpose of this study, therefore, is to analyse both the letter and the spirit of Article 19 in Pakistan's contemporary setting. We investigate how courts have interpreted free speech, which limits they deem permissible, and how these interpretations compare with international standards. We also examine the impact of recent developments such as digital media regulations and revised penal provisions on public expression. By surveying case

law, statutory provisions, and scholarly commentary, our goal is to clarify unresolved issues and guide lawmakers and judges in protecting this essential right.

### **Methodology**

This study adopts a doctrinal legal research approach. We examined the text of Article 19 and related constitutional provisions (such as Article 19A on information access and Article 10A on fair trial) to delineate the formal legal framework for free speech. Key judicial decisions of Pakistan's Supreme Court and High Courts were reviewed to understand how courts have interpreted Article 19. We considered landmark cases that define the scope of speech rights and illustrate the application of restrictions.

In parallel, we analysed relevant statutes and regulations that constrain expression. These include media laws (e.g. PEMRA regulations), the Prevention of Electronic Crimes Act 2016 (which addresses online content and disinformation), and older penal laws (such as sections on sedition, defamation, and blasphemy in the Penal Code). We also examined literature from academic journals, legal commentaries, and policy reports (including studies by the Human Rights Commission of Pakistan, Freedom House, and Reporters Without Borders) to capture scholarly and empirical perspectives on press freedom in Pakistan.

Our methodology involved synthesizing constitutional and statutory provisions with judicial interpretations to derive principles governing free speech. We applied comparative reasoning by referencing international standards (for example, Article 19 of the ICCPR (United Nations, 1966)) to assess the reasonableness of Pakistan's restrictions. Throughout, we paid attention to empirical indicators (like press freedom rankings and documented incidents of censorship) to gauge the real-world impact of speech laws. By combining normative analysis with case studies and data, we seek not only to describe the law, but also to evaluate how it operates in practice.

### **Literature Review**

Existing scholarship on Pakistan's speech rights highlights a tension between ideals and constraints. Scholars note that Article 19's framers intended a robust guarantee of expression, yet they also allowed broad qualifications (Ahmed, 2020). Pakistan's Supreme Court has repeatedly affirmed that fundamental rights cannot be curtailed beyond the Constitution's allowances, suggesting a safeguard against arbitrary censorship (Zulu, 1988). Observers describe Pakistan's media environment as "tipping on the side of restrictions," reflecting its poor press freedom record. For example, in 2020 Pakistan was ranked 145th out of 180 countries in the World Press Freedom Index (Reporters Without Borders, 2020). Freedom House (2024) similarly notes that Pakistan's press freedom has been undermined by historical constraints and new laws.

Commentators closely analyse the content and history of Article 19 itself. Historical records show that soon after 1973, Article 19 was amended to invoke “the glory of Islam” as a restriction and to expand the scope of punishable offences beyond defamation. Many authors examine the phrase “reasonable restrictions.” Under international standards, such restrictions must pursue legitimate aims (such as security, public order, or morality) and meet criteria of necessity and proportionality. Domestic analysts similarly argue that Pakistan’s restrictions must be legitimate and narrowly tailored (Hassan, 2021; United Nations, 1966). However, Pakistani courts have had to develop their own tests for reasonableness, leading some observers to caution that the practical meaning of “reasonable” can be unpredictable or subjective.

Academic commentary also surveys the statutory framework that limits expression. Ahmed (2020) provides an overview of Pakistani speech laws, noting especially that the Prevention of Electronic Crimes Act (PECA) of 2016 introduced new offences with imprecise terms. These include provisions for “dishonest information” and broad categories of online “harmful content.” Scholars and journalists cite the Supreme Court’s admonitions against censorship and argue that PECA’s wide-ranging clauses (such as its powers to block content) give authorities expansive leeway to silence dissent (Hassan, 2021). Similarly, commentators have pointed out that colonial-era laws like sedition (Section 124-A) and blasphemy (Section 295-C) remain on the books and are sometimes used to punish speech, even though some judges have stressed these should be applied with caution (Zulu, 1988).

Recent policy reports provide empirical context. The Human Rights Commission of Pakistan (2024) documents increasing legal penalties and violence against journalists, observing that Pakistan has passed through eras of tightened speech controls and now faces what it calls a period of virtually “no freedom” of expression. Freedom House (2024) similarly reports that both civilian and military authorities have enacted broadly worded laws targeting “disinformation” and dissent, contributing to a marked decline in media independence. Reporters Without Borders (2020) ranks Pakistan near the bottom of press freedom indices, reinforcing the picture of a media environment under strain. These reports echo academic critiques by showing that legal restrictions on paper often translate into restrictive practices on the ground.

In sum, the literature depicts a legal and political landscape where free expression is formally enshrined yet precarious in practice. Scholars and activists consistently stress that free speech is vital to democratic participation and accountability, and they criticize expansive restrictions for undermining these goals (Ahmed, 2020; Hassan, 2021). However, most existing analyses focus on individual cases or particular laws; few have synthesized all these elements into an integrated picture of Article 19’s current effect. This study builds on that scholarship by systematically reviewing

the constitutional text alongside up-to-date case law and regulations, aiming to present a holistic portrait of how freedom of speech is both safeguarded and curtailed in Pakistan today.

Comparative perspectives also appear in the literature. Noting the country's colonial legacy, observers point out that while Pakistan's Article 19 resembles free-speech provisions in other Commonwealth constitutions, its explicit invocation of religious and state integrity concerns is relatively unusual. Unlike many democracies that limit speech only narrowly for public order, Pakistan's guarantee is made subject to broadly defined restrictions. Legal historians argue that changes to Article 19 (such as the 1975 amendments) reflect martial-law-era politics and have given the state greater power to censor (Ahmed, 2020). Commentators also note a disjunction between theory and practice: while on paper courts may align Article 19 with international norms, enforcement often skews heavily toward restriction (Hassan, 2021).

Other literature emphasizes the interplay with rights to information. Pakistan's Article 19A promises a right to access public information, but in practice no comprehensive freedom-of-information law has been enacted. Analysts argue that a strong transparency regime would strengthen accountability and indirectly support speech (Hassan, 2021). In the absence of such a law, official secrecy and censorship can reinforce each other. Many scholars conclude that on paper, Article 19 and related guarantees are promising, but in practice the full benefits depend on legislative and institutional reforms that have not yet occurred.

## Results

Our analysis yields several key observations about how Article 19 functions. **First**, Article 19 formally guarantees broad speech and press freedoms. Its text explicitly covers political expression, journalism, and other public discourse, and Pakistani courts have repeatedly emphasized that uninhibited discussion is fundamental to democracy (Zulu, 1988). In principle, Article 19's enumerated grounds for restriction (e.g. defense, foreign relations, public order, morality, religion, integrity of the State) correspond broadly to recognized legitimate aims in constitutional and international human rights law (Constitution of the Islamic Republic of Pakistan, 1973). For example, in the landmark case *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416), the Supreme Court struck down laws restricting political dissent before elections, holding that citizens must be free to discuss public affairs and challenge those in power (Zulu, 1988). Such cases underscore a broad judicial view of speech rights in theory, reflecting global principles that criticism of government lies at the heart of democratic expression. Indeed, the Court has stated in other contexts that free speech promotes truth-seeking and broad participation (Zulu, 1988).

**Second**, this promise is explicitly qualified by statutory restrictions. The Constitution provides that freedom of expression is subject to

“reasonable restrictions imposed by law” for specified purposes (Constitution of the Islamic Republic of Pakistan, 1973). Notably, the phrases “glory of Islam” and “defence of Pakistan” were added by constitutional amendments (1975) and replaced an earlier reference to defamation. These changes have significantly broadened the state’s power to limit speech under loosely defined pretexts. Critics observe that Pakistan’s constitutional text still lacks a clear definition of what “reasonable” means. To fill this gap, courts have developed tests: for example, in *Pakistan Broadcasters Association v. PEMRA* (2016), the Supreme Court held that any restriction must be lawful, pursue a legitimate aim, and be strictly necessary to achieve that aim (*Pakistan Broadcasters Association v. PEMRA*, 2016). Nevertheless, the scope of what qualifies as necessary remains contested.

**Third**, in practice the combination of vague legal language and proactive enforcement has often curtailed speech. Newer laws have amplified Article 19’s restrictive effect. The Prevention of Electronic Crimes Act (PECA) 2016, for instance, criminalizes online “fake news,” “disinformation,” and similar vaguely defined content, and grants authorities wide takedown and blocking powers. Observers have warned that PECA’s broad provisions (such as its clauses on hate speech or cyber terrorism) fail international tests of necessity and precision (United Nations, 1966). Likewise, some PECA amendments were criticized for dispensing with mens rea (intent) requirements, which can criminalize speech without proving intent or harm (Khan, 2025). Another example is that PECA §37 allows immediate blocking of Internet content for 24 hours (renewable), often without prior notice – a power critics argue should require judicial oversight (Hassan, 2021).

Beyond digital law, colonial-era statutes continue to restrict expression. Section 124-A of the Pakistan Penal Code (sedition) and provisions on blasphemy (e.g. Section 295-C PPC) remain in force and have been used to prosecute journalists and activists. For example, courts formally caution that sedition laws should not stifle legitimate debate, but in reality these laws — and threats of vigilante violence — often silence critical voices. The Human Rights Commission (2024) notes that dozens of journalists have faced prosecution or intimidation under these laws in recent years. Empirical reports confirm a chilling environment. The Human Rights Commission (2024) observes that journalists face frequent legal and extralegal threats, and that Pakistan has passed through successive eras of diminishing expression rights, culminating in what many describe as an era of virtually “no freedom” to speak openly. Survey data reflect this: a majority of ordinary citizens report feeling they have no real freedom of expression (Human Rights Commission of Pakistan, 2024). In short, while Article 19’s promise remains on the books, ordinary exercise of speech is often met with constraints that make constitutional guarantees hard to realize in day-to-day life.



**Fourth,** the courts' responses have been mixed but show increasing protection of speech as a principle. In recent jurisprudence, the Supreme Court has taken a robust stance against censorship. For example, in *Pakistan Tehreek-e-Insaf v. Federation of Pakistan* (2019) it emphatically condemned censorship, ruling that "overt and covert censorship is unconstitutional and illegal," and reiterating that the government "cannot curtail...the right...beyond Article 19" (*Pakistan Tehreek-e-Insaf v. Federation of Pakistan*, 2019). This reflects an assertive defense of free expression. At the same time, courts have recognized that speech rights are not unlimited. In *Pakistan Broadcasters Assn. v. PEMRA* (2016), the Court upheld regulations on political advertising on state television as a permissible public-interest rule, implying that commercial or technical aspects of broadcasting can be regulated more strictly. More recently, lower courts have sometimes struck down censorship in high-profile cases (for example, lifting a ban on a political talk show as beyond legal bounds (Human Rights Commission of Pakistan, 2024)), suggesting growing judicial sensitivity to overly broad restrictions.

**Fifth,** Pakistan's jurisprudence highlights the need to balance free expression with other competing rights. Courts have acknowledged that Article 19 must be considered alongside rights like fair trial (Article 10A) and religious values. For instance, the Supreme Court has indicated that any speech limitation should take into account whether it infringes on others' rights (Constitution of the Islamic Republic of Pakistan, 1973, Art. 10A). In *Muhammad Ayoub v. Federation* (Lahore High Court, 2018), the court reaffirmed that free expression is not absolute and upheld broad police powers to remove allegedly blasphemous online content in order to protect religious harmony (Zafar, 2025). Observers have noted that the court applied restrictions through a broad, vague interpretation of the law without articulating a clear proportionality analysis (Zafar, 2025). Such cases illustrate that while Article 19 provides a fundamental guarantee, its practical scope remains contested between individual rights and public interests (such as order and morality).

## **Discussion**

- **Broad, Vague Restrictions:** Pakistan's constitutional and statutory restrictions frequently rely on imprecise terms like "glory of Islam," "public order," or "morality." Such vagueness raises due-process concerns. For instance, PECA's use of undefined phrases (e.g. "dishonest information system" or "fake news") has been criticized for empowering arbitrary enforcement (Khan, 2025). One result is widespread self-censorship: knowing that subjective laws exist, media outlets and citizens often err on the side of silence. Human rights advocates argue these vague restrictions violate the rule of law (*nullum crimen sine lege*) and exceed Pakistan's treaty obligations under ICCPR Article 19(3), which requires that

restrictions be precise and necessary (United Nations, 1966; Human Rights Commission of Pakistan, 2024). For human rights lawyers, the core issue is that the law must be precise. They point out that Article 19(3) of the ICCPR, to which Pakistan is party, requires any restriction to be “provided by law” and strictly necessary (United Nations, 1966). The vagueness of terms like “morality” or “glory of Islam” means many citizens and even judges are unsure what speech is actually illegal, raising due-process concerns (Human Rights Commission of Pakistan, 2024). This uncertainty has led media outlets to adopt conservative editorial policies, prioritizing safety over vigorous debate.

- **Conflict with Other Laws:** Article 19’s guarantee is not absolute and often collides with other constitutional or statutory provisions. Notably, Section 295-C of the Penal Code (the blasphemy law) functions as a “back-door” speech limit. It not only prohibits a broad category of statements, but also prescribes mandatory capital punishment, effectively narrowing Article 19’s ambit on religion-related expression. Critics warn that even discussing minority beliefs becomes prohibitively dangerous. Similarly, the constitution itself invokes Islamic injunctions (for example, through Articles 227 and 227A), and statutory laws on contempt of court or national security routinely constrain media reporting on judicial proceedings and defense matters. Freedom House observes that blasphemy laws have generated “mob violence” that severely chills speech (Freedom House, 2024). Proposed reforms to defamation or sedition laws have also been obstructed, meaning critics have little legal protection when challenged. Courts try to strike a balance: for example, the Supreme Court has insisted that criminal libel and sedition laws must not stifle legitimate political debate (Zulu, 1988), but in practice such prosecutions still occur. Thus, the key conflict is between *speech as an individual right* and *speech as a collective or state interest*; when these clash, Pakistani courts have sometimes emphasized order or religion at the expense of expression.
- **Judicial Variability:** Courts have sometimes taken inconsistent approaches on “reasonable restrictions.” The *Pakistan Broadcasters* case developed a proportionality framework (Pakistan Broadcasters Assn. v. PEMRA, 2016), yet judges’ application has varied. In one instance, a Lahore High Court judge banned an Indian TV drama on the basis of cultural reciprocity, while a different bench (and eventually the Supreme Court) criticized that ban for lacking a legal basis. In Ayoub’s case on social media, one judge viewed an inter-religious satire as harmless expression, while another emphasized that it could threaten religious values. These divergences stem in part from the open-ended nature of



Article 19's restrictions. Without statutory definitions, each case becomes a test of the judge's personal or social views. As one analyst noted, "without clear limits, judges' decisions on reasonable restrictions will inevitably diverge" (Ahmed, 2020). This inconsistency undermines predictability: litigants cannot be sure how a new case will be decided. Some commentators even note that petitioners may "judge-shop" for a favorable bench, reflecting the uncertainty in this field (Ahmed, 2020).

- **Media Regulation vs. Speech:** A persistent theme is the difference between regulating commercial media enterprises and core speech rights. In *Pakistan Broadcasters Assn. v. PEMRA* (2016), the Court accepted that commercial advertising can be regulated more strictly, reasoning that airwaves are a public resource. This suggests the Court views business aspects as distinct from pure speech. By contrast, news and opinion content enjoy stronger protection. However, regulators have often overreached under the guise of "content regulation." For example, recent media policy proposals (2024) would have allowed regulators to remove any content deemed "against the glory of Islam" without judicial oversight. The Human Rights Commission warned that empowering authorities to delete content on such vague grounds effectively turns regulation into unchecked censorship (Human Rights Commission of Pakistan, 2024). Likewise, Pakistan's telecom and digital agencies have on occasion blocked social media platforms (such as Twitter or YouTube) to enforce content rules, acting as de facto censors. Legal commentators argue that such unilateral executive actions—unreviewed by courts—violate Article 19's spirit (Human Rights Commission of Pakistan, 2024). In sum, while regulatory bodies do have roles to play, the expansion of these roles into content policing raises serious constitutional issues.
- **International Standards and Civic Implications:** Pakistan's legal framework is formally aligned with global free speech benchmarks, such as Article 19 of the International Covenant on Civil and Political Rights (United Nations, 1966), but implementation often falls short. The Supreme Court has occasionally invoked these standards, stressing that restrictions must be clearly defined, necessary, and proportionate (Zulu, 1988; *Pakistan Tehreek-e-Insaf v. Federation of Pakistan*, 2019). Yet the introduction of vaguely worded offences without safeguards points to systemic tension between Pakistan's international obligations and legislative practice. Human rights experts note, for instance, that recent amendments to cybercrime laws violate the ICCPR's requirement of legal certainty (Khan, 2025). Pakistan's 2010 accession to the ICCPR came with a

reservation that it would interpret Article 19 in a manner “consistent with Islam,” but the UN Human Rights Committee has clarified that this cannot override the ICCPR’s clear standards. On international review, committees have urged Pakistan to align its laws with Article 19 of the Covenant. In practice, however, analysts observe that local laws like the amended PECA still fall short: a Dawn editorial noted that the latest PECA offences, which lack mens rea or proof of harm, fall afoul of fundamental principles of legal certainty (Khan, 2025). Meanwhile, watchdog rankings underscore the effect: Reporters Without Borders (2020) places Pakistan near the bottom of the world rankings, and Freedom House consistently lists it as “Not Free.” These indicators reflect that, although Article 19 exists on paper, the lived reality of press autonomy is constrained (Freedom House, 2024). This gap between formal commitments and actual laws is largely technical, but it has real consequences for democracy and civic life.

- **Chilling Effects and Civil Society:** In practice, many journalists and citizens self-censor to avoid falling afoul of ambiguous restrictions. Rights monitors report that media professionals often steer clear of sensitive topics, and bloggers may avoid critical discussions of government or religion out of fear. Civil society activists have faced legal harassment and intimidation for their online posts, and the threat or imposition of criminal charges can quickly silence dissent (Human Rights Commission of Pakistan, 2024). Combined with extra-legal pressures—such as mob violence driven by blasphemy accusations—this environment leaves many Pakistanis feeling they effectively have no real freedom to speak (Human Rights Commission of Pakistan, 2024; Freedom House, 2024). For example, the HRCP documented dozens of cases from 2020–2022 where journalists or activists were arrested under speech-related laws. In the digital age, surveillance measures and internet filtering have added to fear: even well-known bloggers sometimes delete posts after receiving legal notices. Such conditions erode meaningful public discourse and diminish the practical scope of Article 19.

In summary, the foregoing analysis highlights several conflicts in Pakistan’s freedom-of-speech regime. On paper, Article 19 appears robust and the courts pay lip service to democratic norms; but in practice, vague legal provisions, intersecting laws, and inconsistent judicial applications have produced a restrictive speech environment. The result is a discrepancy between constitutional promise and societal reality.

### **Conclusion**

This study’s deep dive into Article 19 of Pakistan’s Constitution underscores several conclusions. First, Pakistani jurisprudence

firmly recognizes that freedom of speech is intrinsic to a free society, expanding individual autonomy and civic participation (Zulu, 1988). This value has been affirmed repeatedly by courts, which have rejected overt censorship as unconstitutional (Pakistan Tehreek-e-Insaf v. Federation of Pakistan, 2019). However, the unique feature of Pakistan's law is the wide array of *permissible restrictions* built into Article 19. Over time, these have been interpreted so broadly especially under social-religious and security pretexts that they can effectively swallow much of the right itself. In effect, Pakistan's constitutional text can read as allowing almost any speech limitation, depending on how the state defines its legitimate interests.

Second, the mechanisms of restriction are often misaligned with Article 19's spirit. The major gap is definitional: terms like "glory of Islam," "morality," and "public order," and even statutory terms like PECA's "disinformation," remain amorphous. The lack of legislative precision means that authorities can impose burdensome regulations without clear guidelines, raising concerns of arbitrariness. Our analysis highlights that Pakistan's approach still tends toward a one-sided view of "reasonableness," often prioritizing group or state interests over individual expression. Although courts have, in principle, adopted necessity and proportionality tests, in practice they have not fully counterbalanced the vague enumerated restrictions. The result is legal uncertainty and over-caution by media: for example, news outlets regularly avoid covering topics like religion, the military, or sexuality due to fear of vague liabilities.

Third, Pakistani courts have begun to reinforce protective norms, offering some grounds for optimism. Recent Supreme Court judgments emphasize that any law or action curtailing expression must meet strict tests (Pakistan Tehreek-e-Insaf v. Federation of Pakistan, 2019). These pronouncements, if consistently followed, could curb arbitrary censorship. The increased transparency of live-streamed court proceedings (noted by HRCP as a positive trend) and the activism of lawyers defending online dissent also offer hope that judicial scrutiny will grow. Civil society and journalist groups have begun organizing legal defence funds and challenging penal laws, signalling growing resilience.

In terms of future reforms, the insights here point to concrete steps. Legislators should revisit penal statutes and media laws to narrow their scope, ensuring that any content restrictions are clearly defined, necessary, and proportionate. For example, revising the Prevention of Electronic Crimes Act to explicitly incorporate free-speech safeguards or requiring a court order for blocking online content could align Pakistan more closely with its international obligations (United Nations, 1966; Khan, 2025). Pakistan could also enact a robust Freedom of Information law (as envisioned by Article 19A) to promote transparency and counterbalance secrecy-driven censorship. On the judicial side,

continuing to apply international standards (ICCPR Article 19, ECHR Article 10) could help refine the reasonableness analysis. Finally, strengthening independent regulatory bodies (such as press councils or media authorities) to uphold professional ethics rather than state ideology may protect press autonomy while maintaining accountability.

In conclusion, the right to freedom of speech in Pakistan's constitution is both promising and problematic: promising in its essential recognition of free expression, but problematic in its broad exceptions and enforcement. This study's thorough analysis reveals that achieving the true promise of Article 19 will require legal clarity, vigilant courts, and civic resolve. Only with clearer laws and consistent enforcement can Pakistan hope to fulfill its constitutional commitment to a free and open public discourse.

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