

Freedom of Expression in International Human Rights Law and Challenges from Islamic Law in Pakistan

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Abstract

Having ratified the core instruments, Pakistan has joined, by and large, the International Human Rights Law Regime protecting freedom of expression. The free speech and expression has none the less cross-cutting impact on cultural and political as well as religious practices in the country. While providing this freedom, the Constitution of Pakistan has clearly inserted a caveat that the exercise of such a freedom shall be restricted by law in the interest of the glory of Islam. Hate speech and blasphemy, therefore, stands criminalized in the state. This paper intends to engage with some of the core issues which the state and society face while complying with international commitments vis-à-vis the constitutionally required adherence to Islamic Law.

Keywords: International Human Rights Law, Freedom of Expression, Pakistan, Islamic Law

1. Introduction to International Legal Framework Protecting Freedom of Expression

Freedom of expression is not merely one of the fundamental human rights but is also regarded as an essential and integral part of almost every human rights. The most significant rationale and manifestation of this right has appeared in the context of individuals' response against the administrative and arbitrary prerogative of the government. The right to freedom of expression has deep historical roots, evolving through political philosophy, national Constitutions, and international legal frameworks. Philosophers such as John Milton¹ and John Stuart Mill² argued for free speech as essential to democracy, progress, and truth-seeking.

The struggle for freedom of expression intensified in the 18th and 19th centuries, leading to its recognition in national Constitutions, such as the First Amendment of

the U.S. Constitution 1791. After the atrocities of World War II, international efforts aimed at protecting human rights led to the establishment of some of the key legal instruments. Similarly, various regional system has developed jurisprudence on the limitations and protections of this right. Pakistan, like other states, is bound by various international human rights treaties and conventions that require it to respect and protect the right to freedom of expression and avoid unjust censorship. An overview of primary international legal instruments relevant to Pakistan's obligations in this area is given below.

Universal Declaration of Human Rights (UDHR) serves as a foundational text in international human rights law. The Declaration provides everyone the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.³ The States are, therefore, expected to respect and protect these rights under international law

Although the UDHR is not legally binding, The Declaration is also regarded as customary international law, to which Pakistan is expected to adhere. Moreover, it has significantly influenced binding treaties like the International Covenant on Civil and Political Rights (ICCPR). The Covenant expressly and comprehensively provides the right to freedom of expression⁴. According to the ICCPR, everyone shall have the right to hold opinions without interference⁵ and right to freedom of expression, which includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers.⁶ However, the Covenant allows restrictions on this freedom only when necessary for the protection of national security, public order (ordre public), public health, morals, or the rights of others. These restrictions must be provided by law and must be proportionate to the aim pursued. This means that censorship and limitations should not be arbitrary.⁷ Thus, Pakistan is obliged under the ICCPR to allow freedom of expression while ensuring that any limitations or restrictions on speech must be lawful, necessary, and proportionate to achieving the stated aims.

1.1 Privacy and Surveillance

The right to privacy is a fundamental human right recognized in various international legal instruments. It protects individuals from arbitrary or unlawful interference with their personal life, communications, and data. An overview of the key international legal frameworks governing the right to privacy is given below.

The Universal Declaration of Human Rights (UDHR) (1948) ensure, no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”⁸ Though non-binding, the UDHR serves as an international custom and remains a foundational document influencing global human rights law.

The International Covenant on Civil and Political Rights (ICCPR) (1966) protects individuals from arbitrary or unlawful interference with privacy, family, home, or correspondence and provides the right to legal protection against such intrusions.⁹ Herein the Covenant obligates the State Parties to ensure privacy protections. The

Human Rights Committee (HRC), which monitors ICCPR implementation, has emphasized the broad interpretation of privacy, including digital privacy.¹⁰

1.2 Right to Information and Secrecy

Right to information is integral part of freedom of expression, which is generally prescribed as including right to seek, receive and impart information and ideas through any media. As provided under the Universal declaration of Human Rights and incorporated in the International Covenant on Civil and Political Rights 1966, 'everyone shall have the right to hold opinion without interference and right to freedom of expression and this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers though any media'. Additionally, Sustainable Development Goals also include to "ensuring public access to information and protecting fundamental freedoms".¹¹ The right to information is, therefore, aimed at the promotion of open government and transparency, especially in public institutions. The scope of this right expands to the access to government-held information, especially on public health and safety, environmental matter, budgetary allocations, policies and laws. This right is substantially significant in relation to some of other rights such as political participation, accountability and democratic governance.

Other regional instruments like the European Convention on Human Rights¹², American Convention on Human Rights¹³ and African Charter on Human and Peoples' Rights¹⁴ also includes protections for access to information. Similarly UN Convention against Corruption also encourages transparency and access to information in the public administration to fight corruption.¹⁵ Some of the soft Law and other global standards like UNESCO and UN Special Rapporteurs have also emphasized on the role of access to information in democratic governance and the importance of transparency, accountability, and participation.

The scope of the subsequent obligations is further clarified and enhanced by the Human Rights Committee while declaring that the right to information includes a positive obligation of states to make information accessible. The concerned public bodies within the States parties are accordingly responsible to ensure individuals' access to the official documents.¹⁶ The General Comment clarifies the scope, content, and limitations of Article 19 ICCPR, emphasizing that the right to information is a key component of the freedom of expression. The General Comment further prescribed that the right to information applies to information held by public bodies and States have positive obligations to ensure access, especially on matters of public interest. The individuals may not need to prove a personal interest to access public information. It required from the States parties to enact the access to information laws and ensure effective implementation thereof. The subject laws must fairly and clearly define the procedures and timeframe to ensure effective access to information. The requisite legislation must also include right appeal and related procedures in case of denial the subject access. The Committee also urged the states to proactively disclose the information involving public interest.¹⁷

Furthermore, the Committee emphasized the protection of journalists and Media, bloggers, and others who disseminate information.¹⁸ It required that the licensing systems should not restrict freedom of expression and States must investigate attacks against media actors.

It is expressly maintained by the Committee that the right to information and expression also fully applies online and Internet access and digital expression should be protected. The restrictions on access to online content (e.g., blocking websites), therefore, must meet strict criteria.¹⁹

Accordingly the states have to avoid arbitrary restrictions on the right to access information e.g., censorship, blocking websites. They have to ensure that private actors or other third parties do not unduly restrict individuals' access to information.

Secrecy, which is apparently a crosscutting theme and is usually used to restrict the free flow of information. On other hand, the Covenant itself has regulated the scope of restrictions on freedom of expression and right to information. It maintained, '*the exercise of this right carries with it special duties and responsibilities and it may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary*'.²⁰ Some of the specific restrictions spelled out therein include the limitations defined to ensure the respect of the rights or reputations of others and for the protection of national security or of public order, or of public health or morals.²¹ Moreover, the succeeding article of the Covenant required the prohibition by law of any propaganda for war, incitement to national, racial and religious hatred.²² The Human Rights Committee in its General Comment though protected the general criticism of public figures or institutions. A substantial analysis of the standards, provided in the above mentioned international instruments, as to how the right to information may be restricted, suggests that the right can be restricted but only strict conditions. Such restrictions must be provided by law for a legitimate aim (e.g., national security) and must be necessary and proportionate. Blanket restrictions (e.g., on state secrets, national security) are not allowed unless they meet strict conditions.

1.3 Right to Information Disorder / Disinformation

While right to information is understood as part of the broader right to freedom of expression, the issue of disinformation and information-disorder is a crosscutting theme emerging on the legal landscape of the freedom of expression and right to information. This results into the evolving legal tension between disinformation and the right to information in international human rights law. The right to information includes access to accurate information held by public bodies and protection from arbitrary restrictions, however, most of the administrative control on free expression is defined in the pretext of restricting disinformation. Here's a comprehensive overview, breaking it down by legal instruments and thematic interpretation. Disinformation challenges the right to information in two key ways: Firstly, as a violation of the right to information and widespread disinformation, especially from state sources or during elections, can distort the public's access to truthful, reliable, and diverse information. Secondly, as justification for limiting expression or censoring the content falling within the scope of "disinformation."

The state has a positive obligation to ensure an information environment that enables democratic participation, which includes promoting media pluralism and ensuring transparency by countering false narratives that undermine rights. However, under Article 19(3) of the ICCPR, any restriction must meet the prescribed test. Such as, the restriction must be based in law for a legitimate aim including national security, public order, or public health etc. Similarly it must fulfil the criterion of necessity and proportionality. This clearly means that vague or overly broad anti-disinformation laws can violate the right to information and expression. UN Special Rapporteurs on freedom of expression (e.g., David Kaye & Irene Khan) has warned against criminalizing disinformation, while urging states to promote media literacy and support independent journalism by avoiding vague laws that enable state censorship.²³ The European Court of Human Rights also protected publication of controversial views despite their potentially misleading nature. The Court emphasized that access to a range of views even false or exaggerated ones is part of a democratic society.²⁴

The Inter-American Court has also stressed that truth is often plural, and journalists should not be punished for failing to verify every detail, especially when acting in good faith.²⁵

There does not exist any legally binding international Convention applicable in Pakistan regarding the regulatory framework for disinformation, however, the Budapest Convention²⁶ on Cybercrime (officially the Convention on Cybercrime, ETS No. 185), adopted by the Council of Europe in 2001, is the first international treaty seeking to address Internet and computer crime by harmonizing national laws, improving investigative techniques, and increasing cooperation among nations. The core focus of the Convention mainly targets offenses against the confidentiality, integrity, and availability of computer systems and data, content-related offenses (notably child pornography) and offenses related to infringements of copyright and related rights.

The Convention does not explicitly address disinformation (i.e., false or misleading information spread with intent to deceive). However, some aspects may indirectly relate to combating disinformation, especially when disinformation involves illegal content or actions, such as hate speech or incitement to violence (depending on national laws). It also includes fraud or impersonation, use of malware or bots to manipulate public opinion, tools of disinformation involving cyber offenses, e.g. unauthorized access to systems to plant false information and data interference.²⁷ The second Additional Protocol to the Convention, adopted in 2022, focuses on enhanced cooperation and disclosure of electronic evidence. While not about disinformation *per se*, it's relevant when tackling international cyber-enabled disinformation operations. Disinformation poses a real threat to the right to receive information, especially in contexts like public health, elections, or conflict. But international human rights law strongly disfavors punitive, state-led restrictions on speech unless they pass strict scrutiny. Instead, the focus is on positive state duties (promoting accurate info) for safeguarding open debate and avoiding censorship in the name of truth.

2. Status of Compliance and Concerns with Regards to the Domestic Legal Framework

While international law recognizes freedom of expression, it allows restrictions under conditions including hate speech and incitement to violence²⁸, defamation and privacy rights, national security concerns, blasphemy laws and issues like digital censorship, misinformation, and online surveillance have posed new challenges to this right in the modern era.

In order to ensure its compliance with above mentioned international obligations, Pakistan has its own legal framework governing freedom of expression. The Constitution of Pakistan guarantees the right to freedom of speech, subject to restrictions in the interest of the sovereignty and integrity of Pakistan, public order, decency or morality, contempt of court, defamation, or incitement to an offense.²⁹ In purview of such a wide and discretionary limitations and restrictions, Pakistan's media, both print and electronic, have faced significant governmental constraints in the form of censorship and regulatory oversight by institutions such as the Pakistan Electronic Media Regulatory Authority (PEMRA). Laws governing media content and press freedom sometimes conflict with international norms related to free speech.

Despite the country's obligations under international law, concerns about freedom of expression and censorship in Pakistan have been raised by international human rights organizations and media watchdogs. These concerns include the censoring of critical reporting, especially concerning government policies and security related actions. Moreover, Pakistan's blasphemy laws have been criticized by the liberal quarters for being used to suppress freedom of expression, particularly in cases involving individuals expressing opinions about religion. Journalists in Pakistan, particularly those reporting on sensitive political issues, often face threats, violence, and harassment. This has resulted in self-censorship among media professionals. The government has been known to block websites, shut down social media platforms, or enforce stringent content moderation practices, particularly during times of political unrest.

Pakistan's obligations under international human rights law, particularly the ICCPR, require it to uphold the right to freedom of expression and avoid arbitrary censorship. However, in practice, there are significant challenges and limitations, with concerns about media freedom, the use of censorship laws, and the harassment of journalists. Pakistan must ensure that any restrictions on freedom of expression align with international standards, are based on clear, transparent laws, and are necessary and proportionate to protect legitimate public interests such as national security or public order.

Pakistan, being a state party to the Covenant since June 23, 2010, has also accepted to submit its periodical compliance reports to be reviewed by Human Rights Committee.³⁰ The country, however, is yet to accept the jurisdiction of the Committee pertaining to individual complaints and state parties' communications. Initially Pakistan attached its Reservations on a number of Articles of Covenant including article 19.³¹

In November 2024, the United Nations Human Rights Committee, aka Committee on Civil and Political Rights (CCPR), issued its concluding observations on Pakistan's adherence to the International Covenant on Civil and Political Rights (ICCPR). The Committee expressed significant concerns regarding the state of freedom of expression in Pakistan and provided several recommendations,³² as analysed below.

The Committee highlighted the misuse of laws such as the Pakistan Penal Code and the Prevention of Electronic Crimes Act (PECA) to criminalize defamation, which can suppress free speech. It recommended that defamation be decriminalized to prevent the stifling of legitimate expression. Concerns were raised about the Pakistan Electronic Media Regulatory Authority (PEMRA) exceeding its mandate by censoring journalists and media outlets. The Committee pointed to the PEMRA Amendment Bill, noting its vague definition of "misinformation," which could be exploited to justify undue censorship.

The committee also noted, despite the enactment of the Protection of Journalists and Media Professionals Act in 2021, the Committee noted its weak implementation. It emphasized the need for establishing the necessary commission to oversee enforcement and called for investigations into threats, harassment, abductions, and violence against journalists and human rights defenders.

It expressed concern over internet blackouts, such as the four-day shutdown during the May 2023 protests, followed by disruptions leading up to the general elections. It urged Pakistan to cease undue measures that restrict online freedom of expression.

The Committee recommended the following measures to Pakistan for an immediate action:

- a. Ensure the right to freedom of expression both online and offline by repealing restrictive legislation and ending undue measures like internet shutdowns.
- b. Establish an independent body to oversee censorship decisions.
- c. Decriminalize defamation and prevent the misuse of sedition and counter-terrorism laws to silence dissent.
- d. Investigate and prosecute cases of enforced disappearances, torture, or killings of journalists and activists, ensuring victims receive reparations.
- e. Guarantee the safety and independence of journalists, human rights defenders, and civil society actors.
- f. Foster a pluralistic media landscape by implementing the Protection of Journalists and Media Professionals Act 2021 and establishing its associated commission.

The CCPR requested that Pakistan provide an update by November 8, 2027³³, on priority issues, including freedom of expression and the safety of journalists and human rights defenders. The government is yet to report back.

These observations underscore the urgent need for Pakistan to undertake comprehensive reforms to protect and promote freedom of expression, ensuring alignment with its international human rights obligations. It is pertinent to note that freedom of expression is a cornerstone of democratic societies and international human rights law. However, balancing this right with other societal interests remains a dynamic legal challenge, influenced by evolving political, technological, and cultural contexts.

2.1 International Concerns on Journalists Safety

Pakistan is legally bound by several international treaties, conventions, and resolutions that establish obligations to protect journalists, prevent attacks, and combat impunity. International Covenant on Civil and Political Rights (ICCPR) (1966) which was ratified by Pakistan in 2010 while comprehensively providing freedom of expression³⁴ protects individuals including journalists from arbitrary killings or extrajudicial executions.³⁵ The Covenant also ensures prohibition of torture, physical abuse, enforced disappearances, or intimidation of journalists.³⁶ Right to liberty and security and prevention against arbitrary arrests or detention of journalists is also guaranteed.³⁷ Accordingly Pakistan is under an obligation to repeal laws that restrict press freedom while stifling scope of journalism.

Secondly, the Convention against Torture 1984 (CAT) which was also ratified by Pakistan in 2010 prohibits torture, inhumane, or degrading treatment of journalists, including in police custody. Accordingly the country was required to effectively criminalize torture under domestic law. The subject law in Pakistan³⁸ is deficient of investigating allegations of abuse against journalists by security apparatus. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is not ratified by Pakistan but bound by customary international law also protects journalists from abduction or forced disappearances by state or non-state actors. Pakistan is a party to all four Geneva Conventions wherein the prohibitions against the attacks on civilians, including journalists, during non-international armed conflicts is ensured.³⁹

UN Plan of Action on the Safety of Journalists & the Issue of Impunity (2012), to which Pakistan is a member specifically requires protection mechanisms for journalists at risk and calls for independent investigations into journalist killing. However, a number of legal barriers such as defamation, sedition, and anti-terrorism laws used to silence journalists (e.g., Prevention of Electronic Crimes Act, 2016). Moreover, there is no explicit law criminalizing attacks on journalists.

It is, therefore noted with concern that Pakistan ranks among the worst countries for journalist impunity.⁴⁰ According to reports, over 50 journalists killed since 2002 with few prosecutions. Intelligence apparatus, militant groups, and political actors have been implicated in journalist harassment, abductions, and killings in Pakistan, which is also bound under the relevant provisions of IHRL and IHL treaties to protect journalists, prevent attacks, and end impunity. However, weak enforcement, legal restrictions, and high impunity rates undermine compliance. Strengthening national legislation, investigative mechanisms, and judicial accountability is critical for Pakistan to fulfill its international obligations on journalist safety.

Despite these obligations, many states fail to comply due to high impunity rates for journalist killings as UNESCO reports are evident over 85% of cases remain unresolved. Moreover, there exists lack of political will to prosecute state-backed attacks within the weak national protection mechanisms for journalists. The relevant and reliable indexes also show an increased digital surveillance & harassment by state actors for the recent years. The key Challenges and Gaps in protection of journalists include a high levels of impunity for crimes against journalists and weak enforcement of international frameworks at the national level. The digital threats, surveillance, and online harassment of journalists continue to exist.

While an international legal framework exists to an extent, its implementation remains a major challenge. Many states fail to prosecute attacks against journalists, leading to high impunity rates. Strengthening national laws and enforcement mechanisms, coupled with international pressure, is crucial for ensuring journalists' safety.

2.2 Impact on Right to Privacy

Pakistan's compliance with the aforementioned international obligations concerning the right to privacy, data protection, and surveillance presents a complex landscape marked by constitutional provisions, legislative developments, and ongoing challenges. Pakistan being a state party to international instruments such as Universal Declaration of Human Rights and International Covenant on Civil and Political Rights recognizes the right to privacy in general and under Convention on the Rights of the Child, particularly safeguards children's privacy rights. These commitments obligate Pakistan to align its domestic laws and practices with international human rights standards.

Accordingly, Pakistan's Constitution enshrines the right to privacy as a fundamental right,⁴¹ emphasizing the inviolability of the dignity of individuals and the sanctity of home. The Supreme Court has reinforced this by declaring unauthorized surveillance activities, such as phone tapping, as illegal and unconstitutional,⁴² yet the data localization and regulatory independence pose serious challenges to states international commitments to safeguard citizens' right to privacy.

Pakistan's surveillance framework includes laws such as Investigation for Fair Trial Act, 2013 which permits access to various forms of communication with judicial authorization.⁴³ Prevention of Electronic Crimes Act (PECA), 2016 empowers authorities to block or remove online content and allows real-time data collection with court approval.⁴⁴

The international legal framework on privacy consists of binding treaties and soft law instruments (UDHR, UN resolutions) that shape national laws and judicial interpretations. With increasing digitalization and surveillance, privacy protections are evolving, requiring a balance between security concerns and fundamental rights. Despite these legal structures, concerns persist about oversight and accountability. The effectiveness of judicial and parliamentary oversight mechanisms is debated.

Broad powers granted under these laws may lead to misuse and infringement on individual privacy rights.

In January 2025, Pakistan's parliament passed a controversial bill granting the government extensive control over social media, including provisions for imprisoning users for spreading disinformation. Critics argue that this law suppresses freedom of speech and lacks transparency, raising further concerns about privacy and surveillance practices.

The European Union has linked Pakistan's favorable trade status under the Generalized Scheme of Preferences Plus (GSP+) to progress in human rights, including privacy and freedom of expression. Recent legislative actions perceived as threats to these rights may impact Pakistan's trade benefits.

While Pakistan has made strides in recognizing and attempting to legislate the right to privacy and data protection, significant gaps remain in fully complying with its international obligations. Addressing these challenges requires enacting comprehensive data protection laws that align with global standards and implementing robust oversight mechanisms to prevent misuse of surveillance powers.

By undertaking these measures, Pakistan can better fulfill its commitments to upholding privacy rights and safeguarding individual freedoms.

2.3 Status of Compliance with International Obligations on Right to Information

Pakistan, being a state party to the Covenant and member of the UNESCO is bound to comply with and implement the above mentioned obligations. The Constitution of Pakistan⁴⁵ and subordinate enabling legislation⁴⁶ covers a large part of the scope of such obligations, however, there are areas of non-compliance invoking international concerns for further measures to be undertaken.

In November 2024, the UN Human Rights Committee issued its Concluding Observations on Pakistan's second periodic report under the International Covenant on Civil and Political Rights (ICCPR). These observations addressed various human rights issues, including the right to freedom of expression and access to information. Key Recommendations⁴⁷ Concerning the Right to information required from Pakistan to ensure access to information. The Committee urged Pakistan to end undue measures such as internet shutdowns. It further urged for establishing an independent body to oversee censorship decisions. The country was required to avoid further adoption of restrictive Laws.

Pakistan was advised to refrain from enacting laws like the E-Safety Authority Bill 2023 and from implementing measures such as a nationwide firewall. The Committee emphasized the importance of broad consultations with stakeholders before adopting such measures.⁴⁸

The Committee urged to guarantee the safety and independence of Media Professionals for an effective exercise of the right to access information. This includes implementing the Protection of Journalists and Media Professionals Act 2021 and establishing its associated commission.

These recommendations highlight the Committee's concerns regarding Pakistan's adherence to its obligations under Article 19 of the ICCPR, which guarantees the right to freedom of expression and access to information. The Committee's observations underscore the necessity for Pakistan to align its domestic laws and practices with international human rights standards to ensure the protection and promotion of these fundamental rights.⁴⁹

During Pakistan's fourth Universal Periodic Review (UPR) by the UN Human Rights Council in January 2023, several recommendations were made concerning the right to freedom of expression and access to information. While the official UPR report does not detail each recommendation, key points highlighted by human rights organizations include the protection of Journalists and human rights defenders, safeguarding them from harassment, intimidation, and violence. The Council required from Pakistan to refrain from imposing internet shutdowns and to ensure that any restrictions on internet access are in line with international human rights law.⁵⁰

These recommendations reflect the international community's concerns regarding Pakistan's adherence to its obligations under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of expression and access to information. The Human Rights Council's observations underscore the necessity for Pakistan to align its domestic laws and practices with international human rights standards to ensure the protection and promotion of right to information in the country.

3. Hate Speech, Blasphemy and Regulatory Framework

Hate speech may be explained as abusive or intimidating speech or writing that expresses prejudice on the basis of ethnicity, religion, sexual orientation or other similar grounds. Blasphemy literally means and includes the acts of speaking sacrilegiously about God and other sacred personalities and things. The international human rights law expressly requires from the states to prohibit /criminalize hate speech. However, the governmental and administrative regulatory framework has to be essentially within the framework of limitations as provided in the international instruments such as ICCPR.⁵¹ The Covenant ensures that the exercise of this freedom of expression must not include 'any propaganda for war, or any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility and violence'.⁵² The Human Rights Committee has emphasized that such limitations should necessarily be justified as reasonable and legal.⁵³ The regulatory capture or even criminalization of expression falling within the ambit of such limitations remains subject to necessity justified through law only.⁵⁴

Accordingly, the Constitution of Pakistan has provided for limiting the freedom of expression to the extent it does not affect the glory of Islam.⁵⁵ The subordinate law to this end exists in the country's general penal code.⁵⁶ Blasphemy and hate speech is, therefore, criminalized in Pakistan and the culprits may be penalized with fines, simple and rigorous imprisonments and death. The severity of the punishments is often highlighted by the advocates of human rights from within and outside the

country. The quantum of criminal liability in this regard, however, falls within the ambit of Islamic Law.

3.1. The Status of Islamic Law in Pakistan

Pakistan is also one of many Muslim States, which accord Islamic Law (*Shariah*) the Constitutional status in their legal system. The Constitution expressly provides that the all existing laws in Pakistan shall be brought in conformity with, and no law may be enacted in Pakistan against, the injunctions of Quran and Sunnah.⁵⁷ The Constitution has also established a Federal Shariat Court whose jurisdiction can be invoked by any citizen to have its verdict on any law if it is found repugnant to the injunctions of Islam.⁵⁸ Moreover, according to *Shariat* Application Act, the courts of the country are required to interpret laws in the light of *Shariah*.⁵⁹ The Islamic Law has, therefore, a significant impact on law and legislation in the country.

As mentioned in one of the previous sections, the Constitution has provided for restricting, through law, the freedom of expression if it goes to an extent which may affect, *inter alia*, the glory of Islam. Defilement of holy personage or derogatory remarks regarding the sanctity the essential articles of faith, accordingly, constitutes blasphemy which is criminalized through the substantial peal law of the land. The blasphemy as criminalized under the Pakistan Penal Code ranges from an act of defiling the religious place or sacred object to the extent of using derogatory remarks against the name or person of the Prophet Muhammad (peace be upon him). The convict of the former may undergo an imprisonment of a period up to two years⁶⁰ whereas the culprit of the later will be liable to capital punishment.⁶¹ The western champions of the free expression in liberal democracies who generally sceptics of criminalizing hate speech in general do object the severity of such punishments. The Human Rights Bodies like the Human Rights Council and Human Rights Committee has often urged Pakistan to review its blasphemy laws for an optimal revision. The established Muslim jurists are in an overwhelming consensus as regards the death penalty is considered for the convict of blasphemy against Prophet Muhammad (peace be upon him). It is, therefore, under the Constitutional protection of the supremacy of Islamic Law in the country, the religious hate speech is prohibited by law. The above mentioned blasphemy laws are also protected under the international Covenant on Civil and Political Rights, 1966, wherein, the Instrument expressly requires from the state parties to prohibit, *inter alia*, religious hatred which may result in violence and incitement.⁶²

4. Conclusion

In nutshell, the fundamental maxims of Islamic Law value the human dignity through the protection of religion to achieve social harmony and condemn hate, mockery, and incitement.⁶³ Shariah also forbids sowing discord (*fitnah*) and insulting religion (*salbb all-mIazhab*). Classical Jurists of Islamic Law considered blasphemy and insulting sacred figures as serious crimes to be penalized with heavy criminal liability. Islamic law, accordingly, required restrictions on speech that causes *fitnah*, incites sectarianism, or threatens communal peace. Contemporary Islamic scholarship also support criminal sanctions for speech that incites hatred or sectarian violence.

Criminalizing hate speech is also provided under International Human Rights Law especially when it threatens public order or inter-communal harmony. States are obliged to prohibit hate speech that incites discrimination, hostility, or violence. Such prohibition or the criminalization, as the case may be, must therefore be balanced with the provisions of Article 19 of the Covenant. Article 20 explicitly requires a clear intent and causal link between speech and the consequent harm. The broad and vague laws, punishing mere insult or offense, may, however, be violative of Article 19.

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- ⁴⁰ Committee to Protect Journalists. <https://cpj.org/features-and-analysis/asia/pakistan/>
- ⁴¹ Constitution of Pakistan 1973. Article 14.
- ⁴² Zahid Sarfraz Gill vs. State. Supreme Court of Pakistan Criminal Petition No. 1192 of 2023.
- ⁴³ Ibid
- ⁴⁴ Ibid.
- ⁴⁵ See for instance, Constitution of Pakistan 1973, Article 19A.
- ⁴⁶ See *inter alia* Right of Access to Information Act 2017.

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- ⁴⁷ Human Rights Committee. Review of the 22nd Periodical Report of Pakistan on ICCPR. December 2024.
<https://digitallibrary.un.org/record/4068203>
- ⁴⁸ Ibid.
- ⁴⁹ Ibid.
- ⁵⁰ Human Rights Council. Fourth Cycle. UPR-Pakistan.
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- ⁵¹ See for instance, ICCPR 1966. Article 20 (1) and (2).
- ⁵² Ibid.
- ⁵³ Human Rights Committee. General Comment No. 34 of 2011.
<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>
- ⁵⁴ ICCPR, 1966. Article 19 (3).
- ⁵⁵ Constitution of Islamic Republic of Pakistan, 1973. Article 19
- ⁵⁶ Pakistan Penal Code, 1860. Sections 295 – 298C.
- ⁵⁷ Constitution of Pakistan, 1973. Article 227.
- ⁵⁸ Constitution of Pakistan 1973. Article 203A - 203J.
- ⁵⁹ Shariat Application Act of 1991. Section 4.
- ⁶⁰ Pakistan Penal Code. Section 295.
- ⁶¹ Pakistan Penal Code, Section 295 C.
- ⁶² ICCPR. Article 20.
- ⁶³ See for Instance Quran. 49:11.