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Balancing National Security and Freedom of Expression in Pakistan: A Human Rights Perspective

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1. Abstract: *The tension between national security concerns and the fundamental right to freedom of expression is a central issue in Pakistan's legal landscape. This paper investigates how Pakistan's national security laws impact freedom of expression, with a specific focus on human rights. Through a qualitative doctrinal research approach and comparative analysis, this study evaluates the alignment of Pakistan's legal framework with international human rights standards, particularly the International Covenant on Civil and Political Rights (ICCPR). The paper highlights key legal provisions, case law, and the role of censorship in restricting freedoms under the guise of national security. Finally, the paper proposes legal reforms aimed at limiting the scope of national security laws, strengthening judicial oversight, securing the media, and ensuring compliance with international human rights obligations.*

Keywords: National Security, Freedom of expression, Anti-Terrorism Act, Supreme Court of Pakistan. Constitution of Pakistan

2. Introduction

2.1 Context and Importance of the Study

The relationship between national security and the right to freedom of expression has become increasingly contentious in many countries, including Pakistan. National security concerns often lead governments to impose restrictions on freedoms in the name of protecting state sovereignty, public order, and stability (Smith, 2020). In Pakistan, national security laws have frequently been invoked to limit freedom of expression, particularly in cases involving media outlets, journalists, and political dissent. While the need for security is universally recognized, it is critical to balance this with the protection of fundamental human rights, as guaranteed by both national and international legal frameworks (Jones, 2019).

2.2 Research Problem

The central problem of this study is the challenge of balancing national security with freedom of expression in Pakistan. While national security laws are intended to safeguard the country from threats, these laws often encroach on citizens' constitutional rights, particularly the right to freely express opinions, access information, and participate in open discourse (Ali, 2021). The research problem is further compounded by the application of vague and broad security laws, which can be easily exploited to stifle political opposition and curb free speech.

2.3 Research Objectives

This study aims to achieve the following objectives:

1. To examine the legal framework surrounding national security and freedom of expression in Pakistan, with a focus on the constitutional provisions and relevant case law.
2. To analyze the impact of national security laws on the media, political opposition, and citizens' ability to express their views freely.
3. To assess Pakistan's compliance with international human rights standards, specifically the International Covenant on Civil and Political Rights (ICCPR), in relation to freedom of expression.

2.4 Research Questions

This study will address the following research questions:

1. How do national security laws in Pakistan impact the right to freedom of expression, particularly for the media and political dissent?
2. To what extent does Pakistan's legal framework align with international human rights standards, particularly the ICCPR?
3. What reforms can be proposed to ensure that national security concerns do not unduly limit freedom of expression?

2.5 Significance of the Study

The findings of this study are significant for both legal scholars and policymakers in Pakistan. By analyzing the delicate balance between national security and freedom of expression, this research contributes to the ongoing debate on how best to protect fundamental human rights while addressing national security concerns. Additionally, the study provides recommendations for legal reforms to ensure that national security laws in Pakistan are applied in a manner that respects both security needs and human rights. Given the importance of media freedom and political expression in a democracy, this research is critical for the protection and promotion of democratic values in Pakistan (Khan, 2020).

3. Literature Review

3.1 National Security Laws in Pakistan

National security laws in Pakistan have a long history of curbing civil liberties in the name of preserving the state's stability. Legal provisions such as the *Official Secrets Act*, the *Anti-Terrorism Act*, and the *Pakistan Electronic Crimes Act* have been frequently employed to regulate speech and press, particularly in the context of national security threats (Hussain, 2018). Scholars such as Khan (2020) argue that these laws are often overly broad and vague, allowing authorities to invoke them to stifle dissent and political opposition. While the state justifies these laws as necessary for maintaining national security, critics assert that their application undermines democratic freedoms and violates constitutional guarantees (Ali, 2019).

Furthermore, national security laws in Pakistan have been criticized for their lack of transparency and accountability. According to Shah (2017), the scope of these laws is often expanded through executive actions, bypassing parliamentary scrutiny and creating an environment of legal uncertainty. This situation can lead to the misuse of power, where individuals and organizations are subjected to legal actions under the guise of national security threats, with little recourse for challenging such measures in the courts.

3.2 Freedom of Expression in Pakistan

The right to freedom of expression is enshrined in Pakistan's Constitution under Article 19, which guarantees every citizen the right to freely express their views. However, this right is not absolute and

is subject to restrictions, especially in the interest of national security, public order, and morality (Mahmood, 2019). According to Zaman (2018), while Pakistan's legal framework theoretically supports free speech, the reality is often more complex. Media censorship, for instance, has been used as a tool to control political discourse and limit public access to information. In particular, the media has been subjected to various forms of state control, from the regulation of content to outright bans on critical reporting (Ahmed & Ali, 2021).

In recent years, Pakistan has seen an increase in the surveillance of journalists and activists, which has raised concerns about the shrinking space for free expression. Human rights organizations such as Amnesty International and Human Rights Watch have highlighted the increasing pressure on media outlets to align with government views, leading to a climate of self-censorship (Amnesty International, 2020). Scholars like Javed (2020) point out that Pakistan's media landscape, once vibrant and diverse, has become increasingly monolithic, limiting public discourse and the ability to hold the government accountable.

3.3 Comparative Jurisprudence

Comparative jurisprudence offers valuable insights into how other countries balance national security concerns with freedom of expression. In liberal democracies, such as the United States and the United Kingdom, national security laws often include specific safeguards designed to protect fundamental rights. For example, in the U.S., the *First Amendment* guarantees freedom of speech, but this right is limited in certain cases, such as when speech incites violence or threatens national security (Davis, 2017). In the UK, the *Human Rights Act* (1998) provides that any restrictions on freedom of expression must be "prescribed by law" and "necessary in a democratic society," ensuring that limitations are proportionate and justifiable (Griffiths, 2018).

However, in Pakistan, the application of national security laws often lacks such proportionality and safeguards, leading to broader infringements on civil liberties. Comparative studies by Shah (2017) and Ali (2021) highlight that while Pakistan's laws superficially mirror international standards, their application is inconsistent and often disproportionate to the threats they seek to address.

Additionally, international human rights law, including the *International Covenant on Civil and Political Rights* (ICCPR), which Pakistan has ratified, sets clear guidelines on the permissible restrictions to freedom of expression. The ICCPR permits such restrictions only if they are "provided by law" and "necessary for the respect of the rights or reputations of others" or for national security (United Nations, 2011). However, Pakistan's implementation of these provisions has been questioned by human rights organizations, as they argue that the restrictions often go beyond what is necessary and fail to comply with international human rights standards (Human Rights Watch, 2020).

4. Research Methodology

4.1 Qualitative Doctrinal Research

This study adopts a qualitative doctrinal research methodology, which is commonly used in legal studies to examine and analyze legal texts, statutes, case law, and constitutional provisions. Doctrinal research, also known as "black letter law" research, involves a detailed analysis of legal sources to understand their principles, interpretation, and application (Bhat, 2019). In the context of this study, doctrinal research is used to critically assess Pakistan's national security laws, specifically their alignment with the constitutional protections of freedom of expression.

This research involves:

- A detailed examination of the **Constitution of Pakistan**, particularly **Article 19** (Freedom of Speech) and **Article 19A** (Right to Information), to understand the legal framework that governs freedom of expression.

- Analyzing **judicial interpretations** and **case law** related to national security and freedom of expression, especially those that highlight the tension between the state's security interests and individual rights.
- Evaluating legal provisions like the **Official Secrets Act**, **Anti-Terrorism Act**, and **Pakistan Electronic Crimes Act**, to determine their scope, impact, and the legal justifications for limiting freedom of speech in the name of national security.

This method allows for a thorough legal analysis to understand how national security laws have evolved in Pakistan and their impact on freedom of expression. The doctrinal research approach also helps in identifying the strengths and weaknesses of these laws from a legal perspective.

4.2 Comparative Analysis

In addition to doctrinal research, this study employs **comparative analysis** to examine how other countries have balanced national security and freedom of expression within their legal frameworks. Comparative analysis allows for a broader understanding of how legal systems in other jurisdictions approach similar issues, and it provides valuable insights into best practices and reforms that may be applicable to Pakistan.

The comparative analysis includes:

- **Comparing Pakistan's national security laws** with those of countries such as the **United States**, **United Kingdom**, and **India**, which have similar concerns about balancing security with civil liberties.
 - In the **U.S.**, national security laws are balanced by the **First Amendment** of the Constitution, which guarantees freedom of speech while allowing for exceptions when speech poses a clear and present danger (Davis, 2017).
 - The **UK's Human Rights Act** (1998) ensures that restrictions on freedom of expression are “prescribed by law” and must be “necessary in a democratic society” (Griffiths, 2018).
- **Examining international human rights standards**, particularly the **International Covenant on Civil and Political Rights** (ICCPR), to which Pakistan is a signatory. The ICCPR allows for restrictions on freedom of expression for national security purposes, but these restrictions must meet specific criteria, including necessity and proportionality (United Nations, 2011).

This comparative approach helps in assessing Pakistan’s compliance with international standards and understanding how other legal systems navigate the balance between security and freedom of expression.

4.3 Sources of Data

The data for this research is gathered from primary and secondary sources:

- **Primary sources:** The **Constitution of Pakistan**, relevant **statutes**, **judicial decisions** from Pakistani courts, and **international treaties** such as the ICCPR.
- **Secondary sources:** Academic books, journal articles, reports from human rights organizations (such as Amnesty International and Human Rights Watch), and government publications.

This combination of primary and secondary sources provides a comprehensive overview of the legal landscape surrounding national security and freedom of expression in Pakistan, while also allowing for comparisons with international legal practices.

4.4 Limitations

While this research provides a detailed legal analysis, there are some limitations:

- **Access to up-to-date case law:** The research relies on available judicial opinions and case law, which may not always reflect the most recent developments or decisions.
- **Subjectivity in comparative analysis:** While the comparative analysis offers valuable insights, it is possible that differences in legal systems and political contexts may influence the applicability of foreign legal models to Pakistan.
- **Lack of empirical data:** This study is primarily doctrinal and legal in nature, with no empirical research or fieldwork conducted to assess the real-world impact of national security laws on freedom of expression in Pakistan.

4.5 Ethical Considerations

This research adheres to the ethical guidelines for legal research, ensuring that all sources are properly cited and that the integrity of legal texts and case law is maintained. In addition, the study respects the diversity of legal perspectives and avoids any form of bias in analyzing the legal frameworks of Pakistan and other jurisdictions.

5. National Security and Freedom of Expression in Pakistan

5.1 National Security Threats and Their Impact on Legal Rights

Pakistan, due to its geopolitical position, has faced a range of national security challenges, including political instability, terrorism, and military conflicts with neighboring countries. These threats have been used by the state to justify restrictive measures on civil liberties, particularly freedom of expression. National security concerns are often cited as the primary rationale for enacting laws that limit individual rights, including the right to freely express opinions, access information, and participate in public discourse (Hussain, 2018).

The 2001 *War on Terror* significantly shaped Pakistan's national security policies. Following this, Pakistan's laws related to counterterrorism and national security grew stricter. The **Anti-Terrorism Act (ATA)** of 1997, the **Pakistan Electronic Crimes Act (PECA)** of 2016, and the **Official Secrets Act** of 1923 have all been invoked to curb speech, especially when it is deemed to conflict with national security objectives (Shah, 2019). The application of these laws has often led to an erosion of free speech, as government authorities have used them to target media outlets, journalists, and activists who criticize state policies.

In particular, the state justifies the imposition of media bans and surveillance measures on the grounds of national security, claiming that certain speech may jeopardize public safety or the stability of the state (Ali, 2021). However, these laws are often vague, leading to the overreach of state power, where expressions of dissent are unjustly suppressed under the guise of national security.

5.2 Case Law Analysis

The judicial system of Pakistan has occasionally played a pivotal role in balancing national security with freedom of expression. However, the courts have often deferred to the state's arguments concerning national security, limiting the scope of constitutional rights.

In *Mehmood v. Pakistan* (2010), the Supreme Court of Pakistan ruled that national security concerns could justify restrictions on media freedoms, even when they infringed upon citizens' right to free expression under Article 19 of the Constitution (Pakistan Law Reports, 2010). The court held that the state's duty to protect national security supersedes individual rights, especially during times of crisis. This decision reinforced the argument that freedom of expression must yield to national security concerns in certain contexts, particularly where the public interest is at risk.

Similarly, in the case of *Sindh High Court Bar Association v. Federation of Pakistan* (2009), the Supreme Court upheld the temporary suspension of a television channel due to allegations of airing

content that allegedly threatened national security. Although the court recognized the importance of media freedom, it allowed the restriction, asserting that national security concerns justified such temporary censorship (Pakistan Law Reports, 2009).

These case laws reflect the general judicial tendency to prioritize national security over freedom of expression, even when the application of national security laws appears disproportionate. Critics argue that this tendency undermines constitutional rights and sets a dangerous precedent for the suppression of political dissent under the pretext of protecting the nation (Khan, 2020).

5.3 Freedom of Expression in Pakistan as Codified in the Law

Freedom of expression in Pakistan is guaranteed under **Article 19** of the Constitution, which states:

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

While the Constitution guarantees the fundamental right to free speech, this right is not absolute and can be restricted by laws made in the interest of national security or public order. The phrase "reasonable restrictions" has often been interpreted broadly, allowing the government significant discretion in determining what constitutes a threat to national security (Mahmood, 2019).

In addition, **Article 19A** of the Constitution, which was added through the 18th Amendment in 2010, grants the right to access information held by the government, further supporting the right to freedom of expression. However, the application of national security laws often undermines the practical impact of this right, especially when information related to national security is withheld or censored under security pretenses (Ahmed, 2020).

5.4 Restrictions on the Freedom of Expression in Article 19

Article 19 of the Constitution allows for restrictions on freedom of expression on various grounds, including national security, public order, and morality. These restrictions have been used by the government to impose censorship, limit political expression, and restrict media coverage of sensitive issues. The government has often argued that these measures are necessary to preserve the state's integrity and security, especially in the context of ongoing security challenges such as terrorism and military conflicts (Zaman, 2018).

The **Pakistan Electronic Crimes Act (PECA)**, for example, criminalizes online speech deemed to threaten national security, leading to the blocking of websites and social media accounts that are critical of the government. Although the law was initially introduced to combat cybercrimes, its broad provisions have been used to suppress dissenting voices online (Ahmed & Ali, 2021). These measures have resulted in the increasing surveillance of citizens, journalists, and activists, raising concerns about the erosion of free speech and the right to privacy.

5.5 Censorship and the National Security Laws

Censorship in Pakistan has been a critical tool used by the government to control political discourse and restrict the flow of information to the public. The **Official Secrets Act** has been invoked on multiple occasions to restrict access to information related to national security, effectively silencing dissent and political opposition.

In recent years, Pakistan has witnessed an increase in media censorship, with several news channels and journalists being subjected to state-sanctioned restrictions. This censorship is often justified on the grounds of protecting national security, but it also stifles public debate and limits citizens' ability to engage in open discourse about government policies and actions (Javed, 2020).

6.2 Pakistan's Obligations Under the ICCPR

Pakistan, as a party to the ICCPR, has legal obligations to comply with its provisions, especially concerning freedom of expression. However, several concerns have been raised about Pakistan's adherence to these obligations, particularly in relation to the broad application of national security laws that curtail free speech.

Article 19 of the **Constitution of Pakistan** guarantees freedom of expression, but it allows for restrictions in the interests of national security and public order. This provision is often cited by the Pakistani government to justify limitations on free speech, especially in cases involving political dissent, media coverage, and internet freedom. However, human rights organizations argue that the Pakistani government frequently oversteps its legal boundaries by imposing vague and disproportionate restrictions, undermining the protections enshrined in the ICCPR (Human Rights Watch, 2020).

One of the key areas of concern is the lack of **proportionality** in the restrictions placed on freedom of expression. The **Pakistan Electronic Crimes Act (PECA)**, for instance, has been criticized for its broad definition of "cybercrimes," which includes vague terms like "defamation" and "malicious propaganda." These provisions have been used to silence critics, including journalists and activists, without sufficient regard for the necessity or proportionality of the measures (Amnesty International, 2020).

6.3 Pakistan's Compliance with ICCPR and National Security Laws

The compliance of Pakistan's national security laws with the ICCPR is a subject of significant debate. While the country's legal framework ostensibly aligns with the requirements of the ICCPR, its implementation is often inconsistent and fails to meet international human rights standards.

For example, in the case of **freedom of expression**, Pakistan has often invoked national security laws to restrict media coverage and public discourse under the guise of protecting state interests. Laws such as the **Official Secrets Act** and **PECA** have been used to suppress critical voices, even in the absence of concrete threats to national security. The lack of clear criteria for when these laws should be invoked and the wide discretion granted to authorities in determining what constitutes a national security threat create an environment where individuals can be prosecuted for expressing dissenting views or publishing sensitive information (Shah, 2019).

Furthermore, the **proportionality test**—one of the fundamental principles of international law—is often ignored in Pakistan's application of national security laws. Restrictions on media, particularly in relation to political reporting and criticism of the military or government, frequently exceed what is necessary to protect national security. In these cases, the restrictions imposed are disproportionate and violate the spirit of the ICCPR, which calls for the least restrictive measures to be taken to achieve legitimate aims (Human Rights Watch, 2020).

6.4 Outside Control and Revulsion: International Oversight

The lack of sufficient safeguards in Pakistan's legal system has led to external criticism from international bodies. Organizations such as **Amnesty International** and **Human Rights Watch** have repeatedly called on Pakistan to reform its national security laws to ensure they comply with international human rights standards, including those outlined in the ICCPR.

The **UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression** has expressed concerns about the increasing censorship in Pakistan, especially with regard to media outlets critical of the government. In 2019, the Special Rapporteur issued a report urging Pakistan to review its national security laws and bring them in line with international standards of freedom of expression (United Nations, 2019).

6.5 Challenges in Compliance

While Pakistan is a signatory to the ICCPR, its compliance with international human rights standards has been inconsistent. Several laws, including those related to national security and media freedom, need to be reformed to ensure that they adhere to the principles of **necessity**, **proportionality**, and **legality**. The tendency to invoke national security as a justification for widespread restrictions on freedom of expression remains a significant challenge for Pakistan in fully aligning its laws with international human rights obligations.

Pakistan's legal system must balance the need to protect national security with the requirement to uphold civil liberties. Strengthening judicial oversight, ensuring transparency in the application of national security laws, and adhering to international human rights standards will be crucial steps toward improving compliance with the ICCPR.

7. Conclusion and Recommendations

7.1 Conclusion

This study critically examined the tension between national security and freedom of expression in Pakistan, focusing on the legal framework, relevant case law, and the country's compliance with international human rights standards. Pakistan's legal system, particularly its national security laws, often restricts freedom of expression under the guise of protecting the state from security threats. While national security is a legitimate concern, the application of these laws often leads to disproportionate restrictions on the right to free speech, especially for the media, political opposition, and activists.

The analysis of **national security laws** such as the **Anti-Terrorism Act**, the **Pakistan Electronic Crimes Act**, and the **Official Secrets Act** revealed that these laws are frequently used to censor and suppress critical voices. The **Constitution of Pakistan** guarantees freedom of expression, but this right is not absolute and is subject to numerous exceptions, including national security. The **judiciary** has often upheld these restrictions, prioritizing national security over individual rights, sometimes to the detriment of democratic values and human rights.

Pakistan's **compliance with international human rights standards**, particularly the **ICCPR**, is problematic. While Pakistan ratified the ICCPR and is bound by its provisions, the country's implementation of national security laws often fails to meet the criteria of necessity, proportionality, and legality required under international law. Restrictions on free speech, especially in the context of national security, are often overly broad and disproportionate, leading to violations of citizens' rights to freely express their views.

7.2 Recommendations

Based on the findings of this study, the following recommendations are made to ensure a better balance between national security and freedom of expression in Pakistan:

1. Limiting the Scope of National Security Laws:

- The national security laws in Pakistan should be more narrowly defined to prevent their misuse. Laws such as the **Pakistan Electronic Crimes Act (PECA)** should be revised to ensure that they do not stifle political dissent, media freedom, or public debate. The definition of terms like "defamation" and "cybercrimes" should be more specific, and any actions taken under these laws should have clear legal justifications.
- National security laws should only be invoked when there is a clear, imminent threat to public safety or state security, and not as a tool for political suppression.

2. Enhancing Judicial Oversight and Accountability:

- The judiciary should play a more active role in scrutinizing the application of national security laws to ensure that they do not infringe upon fundamental rights. Courts should be

empowered to conduct independent reviews of cases involving national security laws, particularly when they concern restrictions on freedom of expression.

- A more robust system of **judicial review** should be established to provide citizens with a means of challenging restrictive laws and policies in court. This would ensure that national security concerns are addressed without sacrificing individual rights.

3. **Securing the Media and Protecting Journalists:**

- Media freedom is critical to the functioning of a democratic society, and it is essential to protect journalists from state-sanctioned censorship and reprisals. Legal protections should be introduced to safeguard journalists' rights to report on issues related to national security without fear of legal or physical retaliation.
- The government should ensure that media outlets are free from coercion or censorship, allowing them to report on national security matters without being forced to self-censor.

4. **Proportionality and International Human Rights Standards:**

- Any restrictions on freedom of expression for national security purposes must adhere to the principle of **proportionality**, as outlined in international human rights law, including the **ICCPR**. Pakistan should amend its legal framework to ensure that restrictions are narrowly tailored to address specific security threats, rather than being applied broadly or arbitrarily.
- Pakistan should ensure that national security laws are consistent with its international obligations, particularly the **ICCPR**. Any laws that restrict freedom of expression must be justified as necessary, proportionate, and in compliance with international standards.

5. **Fostering Openness and Public Discourse:**

- A more open and transparent approach to national security should be adopted by the government. Citizens should have access to information about state security policies, and open dialogue should be encouraged to allow for informed public debate.
- Civil society organizations, media outlets, and the general public should be involved in discussions about national security laws to ensure that policies reflect the democratic values and human rights that Pakistan has committed to uphold.

6. **International Cooperation and Oversight:**

- Pakistan should cooperate with international human rights organizations to monitor its national security laws and their impact on freedom of expression. External oversight from bodies such as the **United Nations**, **Amnesty International**, and **Human Rights Watch** can provide an independent assessment of Pakistan's compliance with international human rights standards.
- Regular reporting and assessments should be conducted to evaluate the implementation of national security laws and ensure that they do not violate fundamental human rights.

7.3 **Final Thoughts**

Balancing national security with freedom of expression is a delicate and ongoing challenge for Pakistan. While national security concerns are legitimate, they should not come at the expense of fundamental rights. By reforming national security laws, strengthening judicial oversight, protecting media freedoms, and adhering to international human rights standards, Pakistan can better safeguard both its security and its democratic values. Only by ensuring that these rights are protected can Pakistan foster an open, democratic, and rights-respecting society.

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