



FREEDOM OF SPEECH AND RESPECT FOR RELIGIOUS BELIEFS: MINIMUM CRITERIA FROM A LEGAL PERSPECTIVE

*Dr Mirza Shahid Rizwan Baig
Assistant Professor of Law
Government College University
Faisalabad - Pakistan*

*Hafiz Muhammad Usman Nawaz
Assistant Professor of Law
International Islamic University
Islamabad - Pakistan*

*Lubna Ghulam Sarwar
Lecturer
Political Science
Govt. Girls Degree College
Ali Pur Chattha, District Gujranwala - Pakistan*

Abstract:

This Article deals with an important legal right i.e. freedom of speech, the nature and extent of this right vis-a-vis freedom of religion. Another aspect which has been covered is to know whether there is a right not to be insulted in religious beliefs or not. The legal restrictions acknowledged and imposed by the legal framework of Pakistan, USA and view point of European Court of Human Rights have been discussed. Whether freedom of speech is an absolute right or a right subject to different restrictions imposed by different legal jurisdiction is another dimension which has been discussed. In the end in the interest of world peace what ought to be done and how the Legal Frameworks of the states should be designed about the freedom of speech and freedom of religion.

Keywords: Freedom of Speech, Freedom of Religion, Legal Framework, USA, European Court of Human rights.



Introduction:

The importance of freedom of speech and freedom of religion has become the focus of the jurists all over the world for the last two decades. Publication of Danish cartoons has provided fuel to the fire. Now, it is everywhere discussed what ought to be the nature and scope of freedom of speech and freedom of religion and whether freedom of speech should be an absolute right as it is perceived by US Supreme Court and by some of the Western countries or there should be some restrictions on the freedom of speech as these have been imposed by the various States including Pakistan subject to their peculiar religious, political and social circumstances.

The main purpose of this article is to know whether there should be some restriction on freedom of speech or it should be an absolute right. Whether there is a right on the part of a person not to be insulted in his religious beliefs and feelings. What is the best situation in the interest of preservation and protection of world peace and harmony?

Various Restrictions Recognized by the European Court of Human Rights and Supreme Court of USA:

The European Court of Human Rights has decided various cases on freedom of speech that offended the religious beliefs and sensitiveness of various people. In a famous case of *Otto-Preminger-Institute versus Austria* (Eur. Ct. H. R., 20 September 1994), the court confirmed the order of forfeiture of the film by the Australian government prior to screening of Werner Schroeder's film *Das Liebeskonzil* (1981). God, Christ and Virgin Mary were shown in an unfavorable light in that film. The film was based on the Play of Oskar Panizza who was charged with blasphemy and sentenced to jail for one year.

Another famous case which was decided by the European Court of human rights was about *Otto-Preminger-Institute*. In 1985, a small private cinema Association in Innsbruck announced a series of six showings. Upon payment of a fee the cinema which was known for its progressive thought was preparing to show a series of 6 showings. The lawyer of the Australian Government after this announcement filed an application for the seizure of the film under section 188 of the Australian Penal Code, the manager of the cinema was charged and punished for despairing religious doctrines.



In 1993, the case reached the European Court of human rights. It was held by the court that it is the responsibility of the state to ensure freedom of religion of all the citizens and extreme ways of denying or opposing religious beliefs like provocative portrayals of objects of religious veneration may stop to enjoy freedom of religion (Otto-Preminger-Institut, Para. 47, Similar reasoning figures in the Court's earlier judgement in *Eur. Ct. H. R., Kokkinakis v. Greece*, 25 May 1993, para. 48). Furthermore, the court declared that freedom of speech was not an absolute right, but a right subject to various duties and responsibilities, which include an obligation not to use expressions which are offensive to others and amounts to infringement of religious rights of other people (Ibid., para. 49).

The court declared the purpose of protecting the religious beliefs of people from offensive speech is not only a legal one for limiting speech under Article 10 of European Convention on Human Rights, but it is also part of religious freedom under Article 9, Para 1 of European Convention on Human Rights. The court declared that the government of Australia was in a better place to decide whether it was offensive to the religious feelings of Roman Catholic or not.

In *Wingrove vs United Kingdom*, the decision of the British Board of Film Classification (BBFC) not to allow a certificate for the short film 'Visions of Ecstasy (1989)' was challenged on the ground of violation of freedom of expression. The court acknowledged the English law of blasphemy which was a legal basis to stop the film from being made public. Again, the respondent state was declared to be in a better place to decide what amounts of an offensive religion conviction.

The supreme court of the USA has founded a different jurisprudence on the topic of freedom of speech and freedom of religion. The apex Court has given more importance to freedom of speech and it has preferred it to freedom of religion. The apex Court of USA has rejected content-based restrictions and it has declared balancing as detrimental to free speech (Post, 2007). Freedom of speech can only be restricted in the existence of very specific government interests.

In contrast to the US court the European court has suggested whether the limitation of the right is proportionate to the legitimate being pursued (R. Fallen, 2007). The European Court grants a margin to the respondent state when there is no single agreed upon opinion among the states. The European Court has given a concept of balancing conception of rights. It means each and every state of the world can decide some restrictions to the freedom of speech in each state subject to the peculiar circumstances of each state.



Freedom of Speech and the Legal Framework of Pakistan:

Freedom of speech has been provided under Article 19 of the Constitution of Islamic Republic of Pakistan, 1973. Like USA and European Court of Human Rights, the freedom of speech in the constitution of Pakistan is not absolute but subject to few limitations which includes glory of Islam, integrity, security and defense of Pakistan, friendly relations with other states public order decency or morality in relation to the contempt of court or commission of officer or incitement to an offence (Constitution of Islamic Republic of Pakistan 1973, Article 19).

From the above said Article 19 of the Constitution of Islamic Republic of Pakistan 1973, it is very much clear that there is a comprehensive list of checks and balances subject to which this freedom of speech can be exercised in Pakistan.

Analysis of the Right of Freedom of Speech under Various Jurisdictions:

From the above said discussion it is very much clear that each and every jurisdiction has recognized some restriction or restrictions subject to which freedom of speech can be exercised but in no jurisdiction the freedom of speech is an absolute right.

The restrictions imposed by each jurisdiction vary from state to state depending upon the religious social and political values and preferences of each state.

In the USA, religion is a private matter, so, there is no restriction to offend or insult the religious feelings and beliefs of others in USA. The apex Court of USA has declared that the government of USA can restrict freedom of speech if it is against government interest in USA and what is liked by the General Motors is liked by USA. From the above said discussion it is clear that wealth is the highest value in USA which is to be preferred to other values.

The European Court of Human Rights has put a restriction on this right (freedom of speech) if the respondent State decides it to be against the public interest of the community. From the decisions of the European Court of Human Rights about the freedom of speech it can be concluded that it does not recognize an absolute right of speech but it has left it to the states to impose restrictions on this right keeping in view the peculiar circumstances.



Islamic States including Pakistan have a different value system. In Islamic states religion is not a private matter. Religion is the highest priority over all other values. The Constitution of Pakistan is a good example of it.

Difference between Pakistan and western countries is that the western countries have imposed some restrictions on freedom of speech by keeping in view the law and other, or economic or political interests of only their own States but Article 19 of the Constitution of Pakistan has acknowledged friendly relations with foreign States along with glory of Islam and integrity of Pakistan as restrictions on freedom of speech.

Law has territorial jurisdiction and the physical power of the State can only be used by the State within the territorial jurisdiction of the State only. So, there is one theory that a country being sovereign may allow absolute freedom of speech even if insults the religious feelings and beliefs of others. The recent trend of cartoons (of Prophet Muhammad (PBUH)) in many Western countries which insulted the religious feelings of the Muslims across the world through media is an example of it. Media projected it as a freedom of speech and resultantly restless riots, protests and violence were caused in all the Islamic countries. This bitter experience has proved that unbridled and absolute right of freedom of speech anywhere in the world of modern media can be threat to peace everywhere in the world, so, in order to put the evil in the bud, Article 19 of the Constitution has been designed to put a limit on freedom of speech so that friendly relations with the outside world are not affected.

According to Ronald Dworkin, in a genuinely free society the world of ideas and values belong to no one and to everyone (R. Dworkin, 2006, p.89). From the above-mentioned statement of Ronald Dworkin, it is very much clear that freedom of speech should be controlled in such a manner that in the exercise of this right (freedom of speech) the religious feelings are not hurt. Nobody can claim that it is part of his or her religion to hurt the religious beliefs and feelings of any other religion or sect. In order to bring interfaith harmony, each State should place some restrictions on freedom of speech which can prove helpful to bring peace not only within that State but among all States of the world. So, it is need of the hour to exercise this freedom of speech and expression subject to some reasonable restrictions and in a responsible manner.

Conclusion:



From the above discussion and arguments, it can be concluded that there is no absolute right of freedom of speech. Various States have placed various restrictions on freedom of speech keeping in view the value (priorities) of that State. But today when the world has become a global village it is need of the hour and duty of each State to control the right of freedom of speech in such a way that positive debate and dialogue may be encouraged on the one hand and nobody would be able to injure and insult the religious beliefs and feelings of any other religion on the other hand under the cover of freedom of speech.



References:

- Eur. Ct. H. R., *Otto-Preminger-Institute v. Austria*, 20 September 1994.
- Eur. Ct. H. R., *Kokkinakis v. Greece*, 25 May 1993, para. 48.
- R. Post, "Religion and Freedom of Speech: Portraits of Muhammad," *Constellations* 14(1) (2007), 72–90.
- R. Fallen "Strict Judicial Scrutiny," *UCLA Law Review* 54 (2007), 1267.
- Constitution of Islamic Republic of Pakistan, 1973
- R. Dworkin, *Is Democracy Possible Here? Principals for a New Political Debate* (Princeton University Press, 2006)