

FREEDOM OF THE PRESS

Justice Qazi Faez Isa

(Supreme Court of Pakistan, Islamabad, Monday, 28 September 2020)

Thank you for inviting me to speak today. You have asked me to administer an oath to your President and the Executive Body. Judges, other constitutional office holders, and the members of the armed forces are required to take the Oath as prescribed in the Constitution of the Islamic Republic of Pakistan ('the Constitution'). Journalists are not required to take an oath, therefore, volunteering to do so is a testament to your integrity. I pray that you have the strength to abide by the oath and withstand outside pressure. How very different this country would have been if Oaths were abided by.

Article 19 of the Constitution guarantees *freedom of speech and expression*, as a Fundamental Right. The Constitution, enacted on 12 April 1973, by the peoples' elected representatives guarantees the enforcement of all Fundamental Rights; a reiteration of the vision of Pakistan envisaged in the 1949 Objectives Resolution¹, which included *freedom of thought* and of *expression*.

The 18th Amendment added another Fundamental Right to the Constitution, Article 19A - *the right to have access to information in all matters of public importance*. This addition made freedom of speech and expression and the freedom of the press more effective. The Federation and each province enacted laws that provide the mechanism enabling citizens to obtain information:

Federal	The Right of Access to Information Act, 2017. Freedom of Information Rules 2004 (made under the repealed Freedom of Information Ordinance, 2002).
Balochistan	The Balochistan Freedom of Information Act, 2005.
Sindh	Sindh Transparency and Right to Information Act, 2016.
Kyhyber Pakhtunkhwa	Khyber Pakhtunkhwa Right to Information Act, 2013. Khyber Pakhtunkhwa Information Commission Conduct of Business, Procedure and Disposal of Complaints Rules, 2019.

¹ The preamble to the Constitution of the Islamic Republic of Pakistan which was made a *substantive part of the Constitution* by Article 2A.

Punjab	Punjab Transparency and Right to Information Act, 2013. Punjab Transparency and Right to Information Rules, 2014.
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*A vigilant and courageous press provides a public service. Chief Justice Evans Hughes of the US Supreme Court, about 90 years ago, said: 'The administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous Press.'*²

Informed citizens, including journalists, can better identify wrongdoing in governance and demand accountability. And, if those exercising power know that they are subject to public scrutiny, they are less likely to abuse power. Without these mechanisms, corruption, and misgovernance can run unquestioned and unchecked.

In 1991, when I was still a lawyer, I wrote an article³ titled, '*Freedom for the thought we hate*' in which I mentioned the recent PTV's *Khabranama*, which broadcast the Minister for Interior's criticism of the leader of Opposition's speech, but whose speech was never broadcast. The title of my article was an extract from the rebuke by the celebrated Justice Oliver Wendell Holmes of the US Supreme Court: '*If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought. Not free thought for those who agree with us but freedom for the thought we hate*'⁴.

Presenting only one side of a story, broadcasting selected messages and controlling the media is not permissible. Mr. Fatehyab Ali Khan, the President of the Pakistan Mazdoor Kissan Party, filed a petition in the Sindh High Court⁵ against two public corporations seeking equal coverage of political parties. Chief Justice Ajmal Mian⁶ wrote, '*It is unfortunate to observe that the broadcasting corporation and television corporation have not been able to establish their credibility as independent organs. ... The respondent corporations, being public functionaries, are expected to act in a fair, just and equitable manner and to treat all alike as enjoined by Article 4 of the Constitution.*' Another significant judgment on

² *Near v Minnesota*, 283 US 697, 719-720 (1931).

³ *Dawn*, 13 December 1991.

⁴ *United States v Schwimmer*, 279 US 644, 654-5 (1929).

⁵ *Fatehyab Ali Khan v PBC/PTV*, NLR 1991 Civil 46.

⁶ Then the Chief Justice of the Sindh High Court, later Chief Justice of Pakistan.

keeping public corporations free from government control and pressure was by a three-member Bench⁷ of the Lahore High Court⁸. The Court held that Pakistan Television Corporation and Pakistan Broadcasting Corporation were 'Public Services' and were '*required by their own Charter to maintain a balance while bringing national activities to public awareness and to present news in relation thereto in an accurate and impartial and balanced manner*'.⁹ The Court also drew a distinction between the Prime Minister addressing the nation in his capacity as Prime Minister and when he spoke as his party's leader. If the Prime Minister spoke as party leader then the opposition was entitled to equal coverage, and if this was not done it would be '*clearly discriminatory*', and not permissible.

A free and robust press is the backbone of a democracy. It serves both as a conscience and as a mirror. Without a free press, democracy quickly descends into an empty word, with its principles reduced to hollow ideas. Throughout history, totalitarian regimes have suppressed the press and imposed censorship. In Pakistan freedom of the press is stipulated as a Fundamental Right. Fundamental Rights enshrined in the Constitution are not favours which may be bestowed on the people. Violating Fundamental Rights is a violation of the Constitution. Obedience to the Constitution is the *inviolable obligation of every citizen*¹⁰; anyone curtailing it is an enemy of the people and of the Constitution, and must be held accountable.

When citizens fight for press freedoms, they fight for their own rights. If the people surrender their right to free speech and expression or permit the censorship of the press it will not be long before other guaranteed freedoms are taken away. A free press is vital to disseminate the voice of the people. It is also necessary to expose injustice, wrongdoing, corruption and highhandedness. Almighty Allah also enjoins that we speak up against injustice, wrongdoing and corruption¹¹; to countenance restrictions on free speech and expression offends an essential article of the Islamic faith.

There may be times when one is absolutely certain of the validity of one's views, but even disagreeable speech and expression of others must not be curbed. The writer and law professor¹² Richard Dooling writes, '*The*

⁷ Aslam Riaz Hussain, CJ, K. E. Chauhan, J and Nasim Hassan Shah, J.

⁸ *Mohammad Aslam Saleemi v Pakistan Television Corporation*, PLD 1977 Lahore 852.

⁹ Ibid, per, Aslam Riaz Hussain, CJ, p. 873M.

¹⁰ Article 5 of the Constitution of the Islamic Republic of Pakistan.

¹¹ *Al Qur'an*, surah Al-Imran (3) verses 104 and 110, surah Al-Maidah (5) verse 79 and surah Al-Aaraf (7) verse 165.

¹² University of Nebraska – Lincoln College of Law.

*more certain you are, the more you should resist the temptation to silence those who disagree*¹³.

During the premiership of Liaquat Ali Khan Pakistan signed and bound itself to the '*Universal Declaration of Human Rights*'¹⁴. Pakistan had the distinction of being amongst the original 48 signatories to the Declaration¹⁵, which has now been signed by 150 countries. Article 19 of this Declaration relates to press freedom: '*Everyone has 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.*' Pakistan made an auspicious beginning, a righteous commitment by Pakistan's first elected Prime Minister 72 years ago. Is this commitment and guarantee of a free press burning bright or is it being extinguished?

*Reporters Without Frontiers*¹⁶ publishes the *World Press Freedom Index* evaluating 180 countries and ranks them according to the prevalence of press freedom. Its rankings reveal that we are not living up to what Pakistan's Founders wanted. In 2017 and 2018 Pakistan stood at the very low 139th position in terms of the *Freedom Index*, it then slipped to 142nd position in 2019 and then took the plunge to a shameful 145th position.

The Hon'ble Mohammad Ali Jinnah as a member of the Legislative Council stood before a foreign occupying power and spoke against the Press Act, which he said, '*was a striking blow at the liberty of the press which we all prize*'. He called to, '*protect those journalists who are doing their duty and who are serving both the public and the Government by criticizing the Government, freely, independently, honestly – which is an education for any Government.*'¹⁷

I wish you every success, for without your voices, we risk losing our way, losing our Constitution and our Nation.

¹³ *Justice Holmes's Free-Speech Lesson*, Richard Dooling, Wall Street Journal (WSJ) Opinion, 12 October 2017.

¹⁴ United Nation's General Assembly Resolution 217 A.

¹⁵ Signed at Paris, 10 December 1948.

¹⁶ An international non-profit organization having consultative status with the United Nations, UNESCO and the Council of Europe.

¹⁷ *Speeches and Statements of the Quaid-i-Azam Mohammad Ali Jinnah*, collected and edited by M. Rafique Afzal, p. 76-7, Research Society of Pakistan, University of Punjab, (1973).