

Morality in Public Broadcast

A Discussion in the Light of Supreme Court Judgment



Issue Brief



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A recent judgment of the Supreme Court of Pakistan on the broadcast laws interpreted the legal procedures for reviewing content and went on to define public morality. The judgment relied on the mention of ‘tolerance’ as a value that appears in the preamble of the Constitution of the Islamic Republic of Pakistan and advised the media regulators to employ this ‘preambular value’ in reviewing any broadcast material. However, the problem with this reliance is that the court severed the word from its context, which suggests a recourse to Islam in practicing this value. Expanding the scope of this value, the judgment subtly mentions certain objectionable distinctions in the constitutional context. This issue brief discusses the judgment in the country’s constitutional framework and suggests that the Supreme Court review it.

Background

A two-member bench of the Supreme Court comprising Justice Syed Mansoor Ali Shah and Justice Ayesha Malik gave a [judgment](#) on April 12, 2023, allowing the petition (CP 3506 of 2020) of a private TV channel, ARY, against Pakistan Electronic Media Regulatory Authority (PEMRA).



The issue pertained to drama serial *Jalan* which aired on ARY and showed some intimacy between a brother-in-law and sister-in-law. This caused an unpleasant reaction from some sections of society and several individuals lodged complaints on the Prime Minister’s online Pakistan Citizen’s Portal. The complaints were referred to PEMRA, which asked the channel to address the viewers’ concerns. The TV channel moved the Sindh High Court, which remanded the matter to PEMRA to follow proper procedure as per PEMRA [Ordinance](#).

PEMRA preferred an appeal and the issue ended up in the Supreme Court. The two-member bench of the apex court explained the proper procedure under the law and asked PEMRA to observe it. The honorable judges then went beyond the procedural aspect to direct about the approach to be taken by PEMRA. This part of the judgment caused concern and review

petitions have already been filed in the Supreme Court to bring these concerns to the forum.¹

Identifying the Fundamental Constitutional Value

The honorable judges advised that the media content “must always be viewed ... through the lens of the constitutional value of tolerance,” terming it as “an essential preambular constitutional value.” The honorable judges were referring to the following text that appears in the Preamble of the Constitution of the Islamic Republic of Pakistan, 1973:

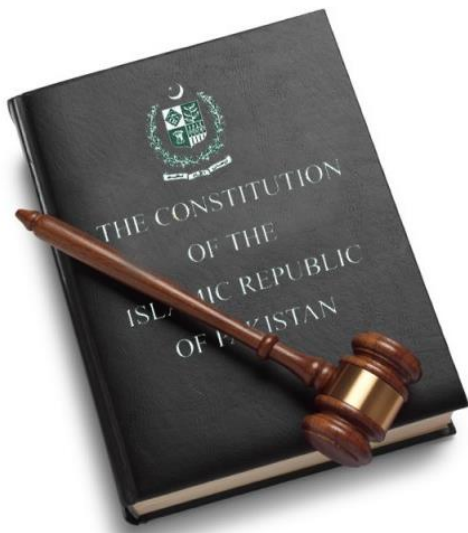
“Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;”

Prior to this statement, the Preamble has unambiguously pronounced that sovereignty over the entire universe belongs to Almighty Allah alone, and that the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust. After the quoted statement, the Preamble goes on to direct that the Muslims in the state of Pakistan shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Qur’an and Sunnah. It assures that the constitution shall guaranty fundamental rights including freedom of thought and expression subject to law and morality.

The court maintained that democratic societies prioritize and uphold tolerance as a fundamental aspect. Despite being correct in its essence, this approach appears to divorce itself entirely from the overall scheme and spirit of the constitution. According to the particular interpretation of the

¹ It is in the writer’s knowledge that review petitions have been filed in the Supreme Court of Pakistan.

current judgment (quoted above), the yardstick for tolerance, as well as the associated notions of decency, morality, vulgarity, and obscenity, are contingent upon public perceptions only.



This suggests that the apex court has subscribed to the post-modernism that maintains that there are no absolute truths and that every value and norm is subject to human will and perception. The post-modern and post-truth interpretation that truth and righteousness are nonexistent fundamentally renounces the very essence of Islam. This perspective disregards the unequivocal claim of Pakistan's [state religion](#) Islam, which asserts that its divine teachings have categorically distinguished between truth and falsehood until the end of time.

In today's post-truth era, the concept of tolerance is frequently misunderstood and misused, leading to potentially harmful consequences. In the post-truth era, objective truth often takes a backseat to subjective opinions and emotions. Tolerance, which should ideally foster understanding, respect, and coexistence, is being distorted and weaponized as a shield to justify and perpetuate falsehoods and harmful ideologies.

The misuse of 'tolerance' undermines the very principles of morality and decency. Individuals or groups with vested interests exploit the ambiguity and exploit tolerance to validate their own perspectives, regardless of their veracity. This enables propagation of derogatory ideas and ideologies. The groups with aberrational motives demand acceptance and equal treatment for their views that are intolerant to others

and revisionist in character. They deliberately conflate tolerance with endorsement, demanding that society accommodate their prejudiced beliefs and actions. Tolerance should not mean blind acceptance of all ideas regardless of their validity or potential harm. Tolerance, in common parlance, is a virtue that upholds social cohesion and stability while preserving cultural and moral values.

The same reflects in the carefully crafted language of the relevant part of the constitution. In this context, tolerance is rooted in a commitment to maintaining societal order and preserving societal norms, which are seen as essential for the well-being and continuity of a community. Russell Kirk² emphasized the role of tolerance as a means of preserving social order and harmony, based on shared moral values and the recognition of societal limits. The shared moral values of Pakistani society lie in the principles and ideology of Islam; and the value of tolerance too is shaped by it.

Article 31 of the constitution asks the state to facilitate the Muslims of Pakistan to order their lives in individual and collective spheres according to Islam through state policies. Article 35 guarantees the protection and preservation of family system. The learned judges clearly avoided to consult these and other Islamic provisions that define the mode and scope of constitutional values.

Tolerance, when misapplied or misunderstood, can be used as a tool to legitimize or condone behaviors that are offensive or contrary to Islamic principles. In Islam, the concept of tolerance is as distinct as its core, promotes understanding and respect for diverse perspectives. It encourages coexistence and acknowledges that individuals may hold different beliefs, lifestyles, and cultural expressions. However, when tolerance is stretched to the point of disregarding or downplaying the values and norms of a particular society, it can inadvertently lead to the acceptance of immorality as a normal feature of society.

Islamic societies have a rich heritage and a set of moral principles that guide and protect the community instead of focusing on individuality as happens in the secular western countries. These principles are deeply rooted in religious teachings and emphasize modesty, decency, and the preservation of moral values. While it is crucial to respect individual freedoms, including

² "Classic Kirk: A curated selection of Russell Kirk's perennial essays," The Russell Kirk Center for Cultural Renewal, <https://kirkcenter.org/kirk-essay-order-the-first-need/>

the right to express oneself, it is equally important to ensure that such freedoms do not infringe upon the boundaries set by cultural and religious norms.

Freedom of Expression and Art

Exercising the constitutional right to freedom of expression comes with responsibilities and limitations to ensure the well-being and integrity of the society. The honorable judges have rightly noted in para 25, “freedom of expression is a fundamental human right, it is not absolute and can be subject to certain limitations. These limitations are usually put in place to balance the rights of individuals with the broader interests of society including against obscenity and pornography to protect public morality and decency.”

The Islamic approach and spirit is so strongly embedded in the national character and priorities that the PEMRA Ordinance requires (Section 20 b) any broadcasting license holder to “ensure preservation of the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan.”



Under the PEMRA rules, the licensee is required to ensure that no content is aired, which “is against the Islamic values”, *inter alia*. Several other laws in the country too protect the religious ethos and social fabric of society. The interpretation and implementation of law should not be based on opinion of a judge (*obiter dicta*) but guided by Islamic injunctions as enshrined in the constitution of the Islamic Republic of Pakistan. Still, we do not find reliance or reference to any Qur’anic verse, prophetic tradition, or Islamic principle in the judgment. This judgment does not demonstrate what it proclaims (para 23) in these words: “Every statute ... must always align and flow with the text and spirit of the Constitution.”

Literature, art, and dramas hold a significant place as forms of freedom of expression to reflect diverse human experiences and fostering creativity. Nevertheless, there has to be a balance between artistic freedom and the preservation of cultural sensitivities. Artistic expressions, including literature, art, and dramas, have the power to inspire, provoke thought, and challenge societal norms. They can be catalysts for cultural and social change. Various cultures interact and derive features from each other but a distinctive culture can only sustain when it maintains its identity, takes only what strengthens itself, and exports what benefits others.

A civilization utilizes its art and literature to promoting, propagating, and preserving the indigenous culture and not for imparting and imposing the incompatible alien ideas and models to the detriment of society. An Islamic society, for which the state should act as a facilitator, encompasses values of modesty, decency, and the preservation of moral values.

The court has gone to the levels of offering impunity to any outrageous thoughts, ideas, and agendas by quoting a 1974 decision of the European Court of Human Rights that “Freedom of expression and right to information are complementary fundamental rights and constitute essential foundations of a democratic society. It is applicable not only to information or ideas that are favorably received but also to those which offend, shock or disturb the State or any other sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.”

The honorable judges should have recalled that their point of reference was supposed to be the constitution of the Islamic Republic of Pakistan.

The Trap of Tolerance

In para 24, the judgment conflates the value of tolerance to explain that, “tolerance refers to the ability or willingness to accept and respect differences in opinions, beliefs, customs and practices among individuals or groups. This can include differences in race, religion, culture, gender, sexual orientation, political ideology and other aspects of human diversity.”

Subtle mention of ‘sexual orientation’ as an aspect of human identity is very disturbing. True that the current western discourse is hell-bent on imposing this

thought on everyone around the globe but do the honorable judges realize that it means being sexually attracted and potentially engaged with any person including those from the same sex. Such a suggestion is utterly appalling and amounts to negation of the whole legal and constitutional framework of the country.

Joseph Massad³ in his article *Re-orienting Desire: The Gay International and the Arab World* explains that terms like ‘sexuality’ and ‘sexual orientation’ were exported through colonialism and are part and parcel of today’s colonial modernity. The apex court should have been very careful in endorsing this outrageous colonial concept.

The Need and Opportunity to Review

The review petitions filed in the Supreme Court offer an opportunity to identify the conceptual problems in the original judgment in Civil Petition No. 3506 of 2020 announced on April 12, 2023. This is an opportunity to rectify internal contradictions of the judgment that oscillate between the traditionally understood constitutional framework of the country and the liberal-secular views being pushed in the



society. The honorable Supreme Court may like to review parts of its decision to delve into the meaning and interpretation of laws through the lens of clearly pronounced constitutional framework in its Preamble, Articles 2-A and 227, and Principles of Policy. The esteemed judges should examine the pertinent Islamic provisions of the constitution of Pakistan in conjunction with the PEMRA laws, while acknowledging that the spirit of the constitution, deeply rooted in Islamic ideology, cannot be dissociated from its core principles.

Prepared by:

Aqib Sattar

Junior Research Officer
Faith, Society and Law
Institute of Policy Studies, Islamabad

For queries:

Syed Nadeem Farhat

Research Fellow/Editor
Institute of Policy Studies, Islamabad
nadeem@ips.net.pk | www.ips.org.pk

³ Joseph Andoni Massad, “Re-Orienting Desire: The Gay International and the Arab World,” *Public Culture* 14, no. 2 (2002): 361-385, muse.jhu.edu/article/26284.



Institute of Policy Studies
Islamabad

Institute of Policy Studies | Nasr Chambers, Plot 1, Commercial Centre, MPCHS, E-11/3, Islamabad.



+92-051-8438391-3



+92-051-8438390



info@ips.net.pk



ips.org.pk | ipsurdu.com



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Institute of Policy Studies, Islamabad