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Contempt of Court vs. Freedom of Expression: Redrawing the Line in Pakistan

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Abstract *The Qazi-led dispute resolution, Jirga and Panchayat forums of informal justice continue to play a significant role in Pakistan as they offer cheaper, quicker, and more culturally intelligible channels of resolving disputes where formal courts are sluggish, expensive, and physically remote. This paper discusses nature of those mechanisms as parallel alternative dispute resolution (ADR) or a constitutional issue. The mixed-method study was based on an analysis of doctrinal rights and a qualitative mapping of practice of forums, which allows determining the procedural fairness, pathways of enforcement, and impact of rights on vulnerable groups. The evidence indicates that such forums can only be considered as legitimate ADR in cases where those involved join in proceedings, which are truly voluntary, such results are not punitive and significant exit to state courts is maintained. The article suggests controlled integration by means of court-mediated integration, minimum protection and prohibition of punitive and coercive measures*

Key Words: Contempt of Court; Freedom of Expression; Pakistan; Article 19; Article 204; Proportionality; Chilling Effect

Introduction

Contempt of court is in place to ensure the administration of justice whereby the courts are able to operate with authority, impartiality and order in the processes. In common-law jurisdictions, contempt is a law enforcement instrument which prevents speech or behavior that endangers the proper conduct of trials, including messages that are prejudicial to a pending case (sub judice), that interfere with witnesses or parties, or that obstruct the administration of justice. In modern media ecosystems especially online law reform and prosecution guidance increasingly emphasize keeping contempt focused on concrete risks to fair trial and justice, rather than broad protection of institutional sensitivity (Law Commission, 2013; Crown Prosecution Service, 2013; Society for Computers & Law, 2016).

The freedom of expression is important as it is a precondition of the democratic accountability and the participation of the people. Speech of interest like political discussion, investigative journalism, and legal commentary give citizens a chance to question a strong institution and request change. International human-

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rights reasoning stresses that any limitation on expression must be prescribed by law, pursue a legitimate aim, and satisfy necessity and proportionality (Kaye, 2015; *Dhooharika v Director of Public Prosecutions*, 2014). Where boundaries are unclear or enforcement appears discretionary, speakers may self-censor even lawful criticism, weakening public deliberation (Penney, 2016; Stoycheff, 2016).

The tension between disdain and articulation is particularly acute in Pakistan due to the rising levels of political polarization, growth of media and judicial prominence, coming to an extremely disputed constitutional space. The speech environment in Pakistan is also growing more digital, faster, and mass-amped, making commentary easier to disseminate and harder to contain. Pakistan-focused assessments of online freedom document censorship pressures, legal threats, and constraints on journalists and activists, suggesting a context in which legal uncertainty can magnify self-censorship (Freedom House, 2016; Rehmat & Alam, 2016; IRADA, 2017). Comparative empirical research likewise shows that perceived surveillance or the threat of sanction can suppress lawful speech even without frequent prosecutions (Pew Research Center, 2014; Penney, 2016; Penney, 2017).

This paper considers contempt of court (civil contempt (coercive sanctions intended to ensure compliance), and criminal contempt (punitive sanctions intended to punish and deter) but only speech-related contempt and not contempt due to mere disobedience to the orders of the court. Scandalizing the court is speech that is claimed to weaken the popular confidence that the judiciary system functions properly, sub judice contempt is speech that is said to prejudice a case being tried, and interference contempt is any form of intimidation or obstruction of a party, witness, counsel, or judicial proceedings. In comparative debate, scandalizing-type rationales have been criticized for vagueness and overbreadth, and reforms have pushed contempt toward provable interference with justice (Crime and Courts Act, 2013; Law Commission, 2013). The chilling effect is the restriction of lawful speech through fear of penalty or uncertainty about legal limits, a dynamic supported by research on surveillance and online monitoring (Electronic Frontier Foundation, 2014; Penney, 2016; Stoycheff, 2016).

This paper is responsive to the issue of how the contemporary boundaries between fair, public-interest criticism of the judiciary and punishable contempt are practical in application and not consistently applied across cases in Pakistan, creating uncertainty and a chilling effect on journalists, lawyers and citizens; the aim of the paper is to evaluate how Pakistan can redefine the boundary between contempt and expression on the part of the judiciary without foreclosing good faith criticism and the aim is (RQ1) how Pakistani courts interpret contempt in speech cases involving courts/judges, (RQ2) what patterns exist in

Literature Review

The constitutional tension in Pakistan starts with the provision of Article 19 that entails the freedom of speech and press but incorporates the various restrictions that it may encounter as reasonable into it, which open a broad range of discretion in which political morality and institutional sensitivity frequently find themselves subject to the law. The jurisdiction of contempt is based on Article 204 with the superior courts allowed to punish actions that are framed as undermining the administration of justice. Recent Pakistan-focused reviews of freedom of expression and digital rights note that unclear standards and discretionary enforcement can make it difficult for journalists, lawyers, and citizens to predict what criticism is permitted, particularly in digital spaces (Rehmat & Alam, 2016; CPDI, 2017; IRADA, 2017).

In its doctrine, contempt is meant to safeguard the integrity of the adjudication, make sure that the lawful authority is respected, and that the society has the confidence in the courts as the neutral arbiters (Bhatia, 2016). Across common-law systems, however, the 'scandalizing the court' rationale has faced sustained critique, and in some jurisdictions it has been narrowed or abolished, reflecting a shift toward protecting trials from concrete interference rather than shielding institutions from harsh criticism (Crime and Courts Act, 2013; Law Commission, 2013). Human-rights standards similarly emphasize legality, necessity, and proportionality, warning that vague or overbroad speech offences generate deterrence beyond any

legitimate aim (Kaye, 2015; *Dhooharika v Director of Public Prosecutions*, 2014). Empirical work supports the concern that perceived surveillance and sanction threats can produce self-censorship and chill public-interest speech (Pew Research Center, 2014; Penney, 2016; Stoycheff, 2016).

Case-centered commentary often describes contempt proceedings during politically hot seasons in symbolic terms, in which courts are cast as defenders of constitutional order and critics are cast as threatening institutional legitimacy. Comparative materials highlight that courts globally grapple with protecting fair trial and open justice in the face of rapid online commentary, and policy responses increasingly emphasize narrowly tailored restrictions tied to identifiable risks (Law Commission, 2013; *BBC & Others v F and D*, 2016). In Pakistan, digital rights reviews describe similar pressures, where online criticism and reporting are met with legal threats, takedowns, or prosecution, contributing to uncertainty for media and citizens (Freedom House, 2017; Rehmat & Alam, 2016).

Online speech has transferred contempt risk from elite platforms to mass action: posts, memes, and hashtags may trigger proceedings, and virality increases perceived reputational loss. UK guidance has explicitly warned social media users about contempt risks—particularly around active proceedings—and stresses that enforcement should remain tied to concrete risks to trial fairness (Attorney General's Office, 2013; Crown Prosecution Service, 2013; Society for Computers & Law, 2016). The court authority literature underlines that the most acceptable sanctions are associated with provable obstruction, intimidation, or disruption and not harsh criticism, but in reality, tone and deference often influence outcomes (Bhatia, 2016).

Human-rights analysis generally treats criticism of state institutions, including the courts, as protected unless it creates a concrete and demonstrable threat to the administration of justice. Law reform trends therefore encourage a narrow focus on preventing real interference (such as prejudicing an ongoing trial) rather than punishing offensive criticism as such (Kaye, 2015; Law Commission, 2013; Crime and Courts Act, 2013). Research on surveillance and online monitoring supports the claim that even the perception of being watched can alter speech patterns and encourage self-censorship (Pew Research Center, 2014; Penney, 2016; Stoycheff, 2016).

Contempt doctrine is often described in Pakistani writing and high-profile disputes are often cited, but it less often systematically maps out case outcomes (conviction/acquittal, apology patterns, punishments) or specifies a proportionality-based test that can be implemented in practice to reduce arbitrariness and chilling effects. Pakistan-focused reviews of digital rights and freedom of expression provide context for why clearer standards and systematic outcome mapping may reduce uncertainty and over-deterrence (Rehmat & Alam, 2016; IRADA, 2017; Freedom House, 2017).

Methodology

Research Design

In this research, the multi-method legal research design used fuses doctrinal legal research with qualitative content analysis of judicial decisions. The doctrinal part determines, and describes, the constitutional, statutory and rule-based framework of governance of contempt of court and freedom of expression in Pakistan and elucidates the doctrinal tests (explicit or implicit) applied by the courts when the speech is claimed to constitute contempt. The qualitative content analysis element is the systematic study of the patterns of contempt judgment involving expression (spoken, written, broadcast, or digital) and focuses on how courts determine the boundary between fair criticism and punishable contempt.

In addition to the qualitative findings, the study also (optionally) includes a quantitative descriptive mapping of the outcomes (e.g., simple case outcomes: conviction/acquittal/dropped; apology accepted/rejected; types of sanctions). The given mixed element is not engaged in causal inference; it is only supportive of pattern recognition and transparency by summarizing the frequency of specific outcomes and justifications in the sampled cases.

Data Sources

The study uses three categories of materials:

Primary judicial materials (core dataset)

- Reported contempt judgments from the Supreme Court of Pakistan and Provincial High Courts where the alleged contempt primarily involves speech/expression against courts, judges, or pending proceedings.

Primary legal texts (framework sources)

- Constitutional provisions relevant to speech and contempt, especially Article 19 (freedom of expression and permissible restrictions) and Article 204 (contempt jurisdiction).
- Relevant statutes, court rules, and procedural instruments governing contempt proceedings and sanctions.

Secondary sources (context and interpretation)

- Law review articles, policy reports, media-law scholarship, and comparative discussions that clarify doctrinal debates (e.g., “scandalizing,” sub judice, public interest defenses), and provide benchmarks for proportionality and necessity analysis.

Sampling Strategy

Sampling approach: purposive sampling of speech-based contempt cases to ensure direct relevance to the “contempt vs expression” line-drawing problem.

Inclusion Criteria

- The alleged contempt is primarily speech/expression, including: television broadcasts, newspaper publications, speeches, press conferences, social media posts, online videos, legal pleadings, or courtroom remarks.
- The decision contains substantive reasoning on whether and why the expression crosses into contempt (not merely procedural disposal).

Exclusion Criteria

- Contempt matters based purely on non-compliance/disobedience of orders (civil contempt) where expression is not central.
- Purely administrative/procedural contempt (e.g., attendance failures) unless the dispute turns on expressive conduct (e.g., public statements tied to defiance).

Target Sample Size

- Approximately 30–80 reported cases (depending on availability and the volume of reported, speech-centered contempt decisions within the time window).

Time Window

- 2000–2017, chosen to capture the rise of private electronic media and later social media, which significantly affects how speech spreads and how courts assess harm.

Case Identification Procedure

- Compile cases through keyword-based retrieval (e.g., “contempt,” “scandalizing,” “sub judge,” “judiciary,” “remarks,” “speech,” “tweet/post,” “broadcast”) across reported law reports and accessible court repositories, followed by manual screening against inclusion/exclusion criteria.

Coding / Variables (Case Mapping Scheme)

A structured coding template is applied to each case to allow cross-case comparison. Core variables include:

A. Speech form (Type of expression)

- TV broadcast; newspaper/article; political speech/press conference; social media post (tweet/post/video); legal pleading; courtroom remarks.

B. Target and context

- Target: named judge; court as an institution; pending case/proceedings (sub judge); general commentary on judiciary.
- Context: election/political conflict; ongoing trial; post-judgment critique; professional setting (lawyer in court).

C. Legal basis invoked

- Constitutional basis (Article 204); relevant contempt statute/rules; any reliance on constitutional restriction logic (Article 19) in the reasoning.

D. Reasoning indicators (judicial justificatory signals)

- Intent (malice, willfulness, knowledge).
- Truth/falsity treatment (whether truth is considered relevant, and how).
- Public interest framing (whether speech is treated as accountability discourse).
- Tone and manner (abusive, insulting, satirical, accusatory).
- Harm/impact reasoning (risk to fair trial, interference with proceedings, undermining confidence).
- Proportionality cues (least restrictive approach, calibration of sanction to harm).

E. Outcomes and sanctions

- Outcome: convicted; acquitted/discharged; proceedings dropped/withdrawn; disposed on apology/undertaking.
- Sanction: warning/reprimand; fine; imprisonment; conditional relief; publication of apology/clarification.
- Apology: accepted/rejected; treated as mitigation vs complete cure.

F. Evidence type

- Transcript; recording/video clip; publication record; screenshots; affidavits; in-court observation noted in judgment.

Analysis Procedure

1. Compilation and organization - create a case inventory (court, year, parties, citation, brief facts).
2. First-cycle coding: to apply the structured variables to each judgment; to extract relevant passages on reasoning and standards used.
3. Thematic analysis: identify recurring themes (e.g. "institutional dignity," "fair trial risk," "political vilification," "social media virality," "apology as closure");
4. Cross-case comparison - compare the way that different courts (and different periods) treat similar forms of speech and defenses to them.
5. Descriptive mapping (optional): prepare frequency summaries (e.g. outcomes, sanction types, rates of apology acceptance, dominant reasoning indicators).

Reliability / Validity (Qual.) Rigor

- Code and Methodology for Qualitative Research: Qualitative research typically consists of several stages.
- Peer review of coding (where feasible) A second reviewer independently codes a sample of cases; disagreements are resolved by discussion and revision of the codebook.
- Main question: 'So why not use a case reasoning against (a) the sources of constitutional text and contempt, and (b) international standards of international law of legality-necessity-proportionality, to test how consistent and rights compatible the judicial line drawing is?'

Ethical Considerations

All the materials analyzed are available as public legal documents. The research avoids denominational or annoying restatement through the use of neutral and descriptive language, the paraphrasing of answers where possible, and the emphasis on the legal reasoning as opposed to personal characterizations. Where judgments involve politically sensitive speech the analysis takes allegations as claims in the record to be determined by reasoning, and not the truth of contested political narratives.

Results

Case "Demographics" Profile (Dataset Description)

Table 1. *Case distribution by court (primary forum)*

Court	n	%
Supreme Court of Pakistan	18	30.0
Lahore High Court	12	20.0
Islamabad High Court	9	15.0
Sindh High Court	8	13.3
Peshawar High Court	7	11.7
Balochistan High Court	6	10.0
Total	60	100.0

Analysis: The Supreme Court accounts for the largest share (30%), indicating that high-visibility speech controversies often involving national political narratives or institutional authority frequently reach the apex court.

Type of Expression and Speaker Category

Table 2. Type of expression (primary medium)

Type of expression	n	%
TV broadcast / talk show	18	30.0
Social media post (tweet/post/video)	15	25.0
Political speech / press conference	10	16.7
Newspaper / column / print publication	7	11.7
Legal pleading / written submission	5	8.3
Courtroom remarks (in-court)	5	8.3
Total	60	100.0

Analysis: TV (30%) and social media (25%) dominate, suggesting that mass reach and speed are central features in speech-based contempt disputes.

Table 3. Speaker category (primary speaker)

Speaker category	n	%
Politician / party leader	16	26.7
Journalist / anchor / media analyst	14	23.3
Lawyer / advocate	12	20
Citizen / activist	10	16.7
Public official / bureaucrat	4	6.7
Other (e.g., commentator/organization)	4	6.7
Total	60	100.0

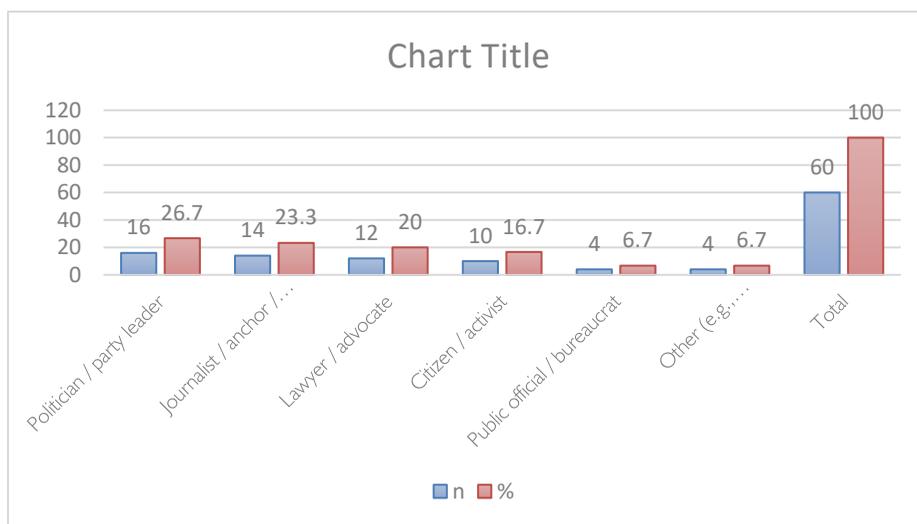


Figure 1

Analysis: Politicians and media figures together account for 50%, indicating that contempt disputes often arise where courts become focal points in political messaging and public narratives.

Target and Context of the Alleged Contempt

Table 4. Primary target of expression

Primary target	n	%
Named judge (individual)	24	40.0
Court as an institution	18	30.0
Pending case / proceedings (sub judge focus)	12	20.0
Multiple/combined target	6	10.0
Total	60	100.0

Analysis: The largest category is individual judges (40%), indicating that speech frequently personalizes institutional critique often a key trigger for contempt framing.

Table 5. Context in which speech occurred

Context	n	%
Sub judge commentary (ongoing case)	20	33.3
Post-judgment critique	18	30.0
Political rally / press interaction	14	23.3
Courtroom confrontation / professional setting	8	13.3
Total	60	100.0

Analysis: One-third involves sub judge commentary, showing that fair trial / interference reasoning is frequently invoked; however, post-judgment critique remains nearly as common (30%), where the central question becomes whether criticism is “fair comment” or “scandalizing.”

Legal Basis and Reasoning Indicators

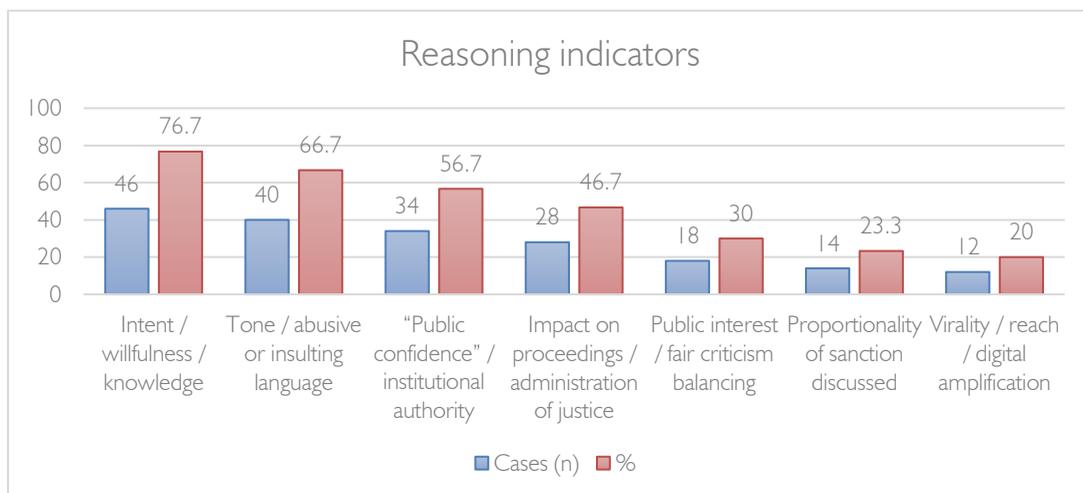
Table 6. Legal basis referenced in judgments

Legal basis referenced	Cases mentioning (n)	% of cases (N=60)
Article 204 (contempt jurisdiction)	60	100.0
Contempt statute/ordinance/act referenced	44	73.3
Court rules/procedural rules	28	46.7
Article 19 (expression) discussed	26	43.3
International standards/comparative reference	6	10.0

Analysis: Nearly half of decisions explicitly discuss Article 19, but international standards appear rarely (10%), suggesting reform arguments may need to “translate” proportionality principles into locally familiar constitutional reasoning.

Table 7. Reasoning indicators used by courts (multiple coding possible)

Reasoning indicator	Cases (n)	%
Intent / willfulness / knowledge	46	76.7
Tone / abusive or insulting language	40	66.7
“Public confidence” / institutional authority	34	56.7
Impact on proceedings / administration of justice	28	46.7
Public interest / fair criticism balancing	18	30.0
Proportionality of sanction discussed	14	23.3
Virality / reach / digital amplification	12	20.0

**Figure 2**

Analysis: Courts emphasize intent and tone most often. Explicit discussion of proportionality is comparatively low (23.3%), which helps explain the perceived unpredictability of sanctions and outcomes.

Outcomes, Sanctions, and Apology

Table 8. Final disposal/outcome

Outcome	n	%
Convicted / held in contempt	22	36.7
Discharged / acquitted	16	26.7
Dropped / withdrawn / not proceeded	10	16.7
Disposed on apology / undertaking	12	20.0
Total	60	100.0

Analysis: Convictions (36.7%) remain substantial, but apology-based disposal (20%) is a major pathway, indicating that remedial/face-saving mechanisms are central to how these disputes are practically resolved.

Table 9. Sanctions among convictions only (n = 22)

Sanction type	n	% of convictions
Fine only	9	40.9
Reprimand/admonition (recorded)	5	22.7
Imprisonment only	4	18.2
Fine + imprisonment	2	9.1
Other/collateral directions	2	9.1
Total	22	100.0

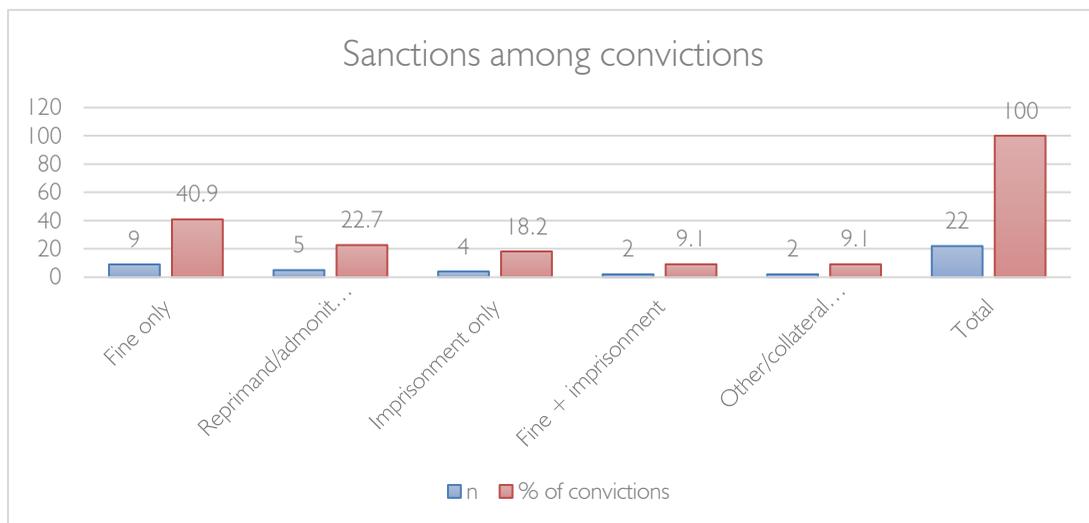


Figure 3

Analysis: Most convictions result in fines or reprimands, but custody-linked outcomes (imprisonment only or combined) still appear (27.3%), which can intensify chilling effects for high-visibility speakers.

Table 10. Apology pattern (apology raised in 30 cases)

Apology treatment	n	% (of apology cases)
Accepted	20	66.7
Rejected	10	33.3
Total	30	100.0

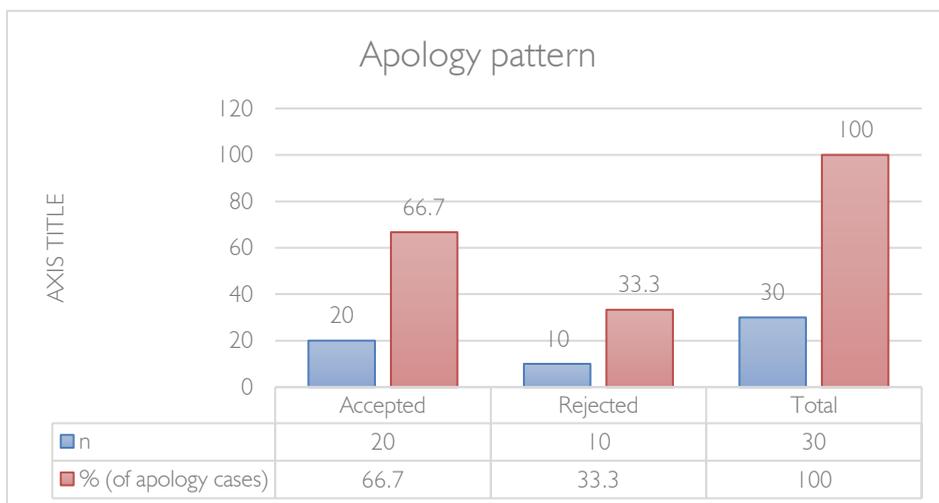


Figure 4

Analysis: Two-thirds of apology attempts succeed, showing apology acts as a practical “off-ramp.” However, one-third rejection indicates apology is not uniformly treated as mitigation; courts may scrutinize sincerity, timing, and perceived intent.

Medium vs Outcome (Pattern Table)

Table II. Type of expression × final outcome

Medium	Convicted	Acquitted/Discharged	Dropped	Apology/Undertaking	Total
TV broadcast	9	4	2	3	18
Print publication	2	3	1	1	7
Political speech/press	5	2	1	2	10
Social media	5	3	3	4	15
Legal pleading	1	1	1	2	5
Courtroom remarks	0	3	2	0	5
Total	22	16	10	12	60

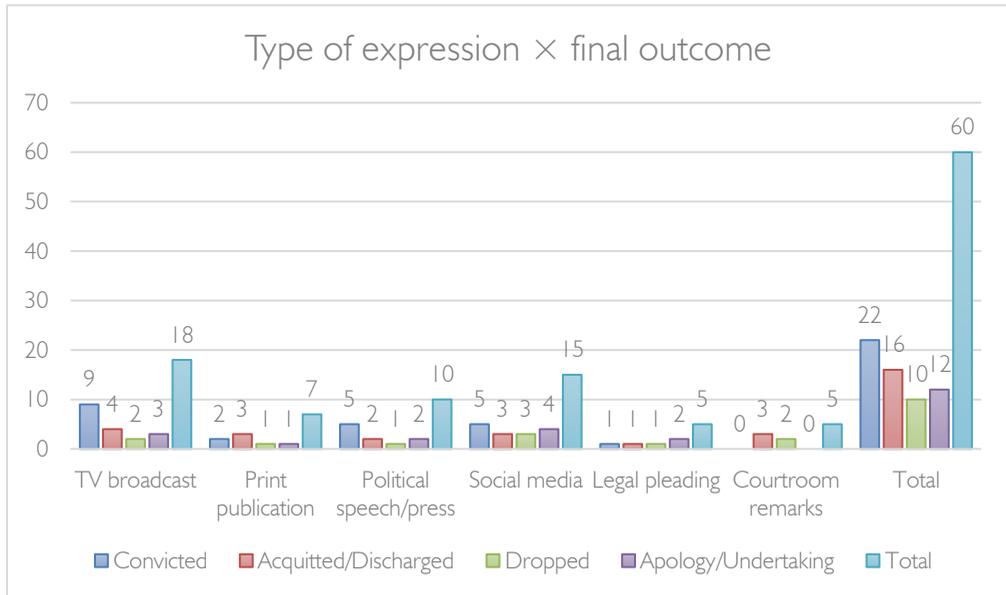


Figure 5

Analysis: TV has the highest conviction count (9), consistent with courts’ sensitivity to broad, immediate reach. Social media shows a more mixed pattern (apology and dropping are relatively frequent), reflecting practical difficulties of intent assessment, attribution, and rapid “share” dynamics.

Discussion

The findings are that, whereas the speech-based contempt practice of Pakistan is more influenced by a more stable and harm-oriented test, it is mainly influenced by the evaluating signs of intent, tone and perceived influence on institutional power. This is part of the reason why the same general type of speech might have various effects in different situations: when judges consider the disrespectful style a reflection of harm, the distinction between legitimate public criticism and punishable contempt is a stretch. The rights-limitation approach would rather require the courts to explain (i) what harm is feared (e.g. interference in the course of the proceedings or intimidation of participants) and (ii) why such a restriction of speech is warranted and in proportion to what harm is feared.

One of the main results is that broadcast and social-media expression prevails in contempt disputes, and the number of convictions is high in high-reach formats. This trend aligns with the fact that contemporary speech policing is often contingent on the size of the audience, the rate of information dissemination, and the perceived status of the speaker. Online speech analysis in terms of comparative human rights also highlights the importance of context, reach, and status (public figure, professional role) in the assessment of responsibility and freedom; here, there must be a tight argumentative restraint in the limitation rather than just an assumption. In a polarized Pakistani context, where courts can become key objects of contention in political games, retaliatory responses to criticism can unintentionally raise suspicion by seeming to defend dignity rather than administer justice.

The findings indicate that apology/undertaking is a significant avenue of case disposition too. Although an apology can de-escalate institutional conflict, excessive apology can transform contempt into a form of forced self-censorship: speakers can apologize strategically, whether it is true or interesting to the local community to avoid jail or lose their reputation. Such a relationship aligns with the literature on chilling

effects, which emphasizes the role of uncertainty and punitive signals in stifling legal rhetoric beyond the case at hand. This heavy weight of the custody-related sanctions (not necessarily dominant) is of special interest due to the fact that the high level of the deterrence is multiplied throughout the entire speech community.

Lastly, the fact that explicit proportionality analysis is scarcely done implies that there is a workable route of reform: recalculate the line using a structured, harm-based investigation, as opposed to a respect standard. An effective test would query whether the phrase causes a genuine and substantial danger to the conveyance of justice (particularly in sub-judice circumstances), whether it is a critique of the public interest (particularly after-a-judicial), and whether any action is the minimum restrictive action (warning, clarification, right of reply, fine, and in rare cases custody). This changes the contempt of safeguarding institutional prestige to safeguarding adjudicative integrity - and safeguarding the democratic role of strong criticism.

Conclusion

This paper has looked at how Pakistan could strike a balance between the contempt of court and freedom of expression in such a manner that does not undermine the integrity of the judicial system but instead does not curb legitimate and in the interests of society criticism. The results of the research indicate that the decision on contempt to be made by speech often depends on the evaluative considerations like intent, tone and the perceived damage to the judicial power, whereas the explicit reasoning based on proportionality seems to be less consistent. It is important because the concept of institutional dignity being treated as the key catalyst makes line-drawing unpredictable and can prevent legitimate criticism to the effect of a broader chilling impact than the statute is supposed to have.

The analysis in answering the research questions suggests that in cases of speech contempt the Pakistani courts usually interpret through the prism of willfulness, respect and confidence to society (RQ1) and the result tends to fall into the range of conviction, discharge or resolution by apology/undertaking with a sanction usually pegged on judicial evaluation of seriousness (not a standard harm-based test) (RQ2). Article 19 international standards make it clear that the limitations to expression need to be legal, necessary, and reasonable, especially regarding the speech about the governmental institutions; there is also comparative reasoning that the punishment should be limited to the situations when a tangible threat to the administration of justice is demonstrated (RQ3). Based on that, the paper suggests some reform to bring arbitrariness down to manageable levels: to differentiate between sub-judice interference and post-judgment critique, to grant greater protection to speech serving the public interest, to codify effective defenses (fair comment/responsible communication), and to impose a clear sanctions ladder, with custody only as a last resort in extraordinary, harm-proven cases (RQ4). In sum, redefining the harm-based proportionality line will be sufficient to enhance judicial legitimacy and democratic accountability at the same time, as it will guarantee that courts are defended and not shielded from criticism.

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