

Mapping Freedom of Expression Laws in South Asia

Laws on paper and in practice



Constitutional
Guarantees

&

Restrictions



BANGLADESH

39. (2) Subject to any **reasonable restrictions** imposed by law in the interests of the **security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence**–

(a) the right of every citizen to freedom of speech and expression;

and (b) freedom of the press, are guaranteed.

PAKISTAN

Article 19. Freedom of speech, etc. 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 or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.**

BHUTAN

Article 7 Fundamental Rights

(2) A Bhutanese citizen shall have the right to freedom of speech, opinion and expression.

(5) There shall be freedom of the press, radio and television and other forms of dissemination of information, including electronic

22. Notwithstanding the rights conferred by this Constitution, nothing in this Article shall prevent the State from subjecting **reasonable restriction by law**, when it concerns:

(a) The interests of the **sovereignty, security, unity and integrity** of Bhutan;

(b) The interests of **peace, stability and well-being of the nation**;

(c) The interests of **friendly relations with foreign States**;

(d) **Incitement to an offence on the grounds of race, sex, language, religion or region**;

(e) The **disclosure of information received in regard to the affairs of the State or in discharge of official duties**;

or (f) **The rights and freedom of others**

INDIA

Article 19(1)

All citizens shall have the right—

(a) to freedom of speech and expression;

(2) Nothing in sub clause (a) of clause

(1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes **reasonable restrictions** on the exercise of the right conferred by the said sub clause in the interests of the **sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.**

MALDIVES

16. (a) This Constitution guarantees to all persons, in a manner that is **not contrary to any tenet of Islam**, the rights and freedoms contained within this Chapter, subject only to such **reasonable limits** prescribed by a law enacted by the People's Majlis in a manner that is not contrary to this Constitution. **Any such law enacted by the People's Majlis can limit the rights and freedoms to any extent only if demonstrably justified in a free and democratic society.**

(b) The limitation of a right or freedom specified in this Chapter by a law enacted by the People's Majlis as provided for in this Constitution, and **in order to protect and maintain the tenets of Islam**, shall not be contrary to article (a).

Article 27

Everyone has the right to freedom of thought and the freedom to communicate opinions and expression **in a manner that is not contrary to any tenet of Islam.**

Article 28

Everyone has the right to freedom of the press, and other means of communication, including the right to espouse, disseminate and publish news, information, views and ideas. No person shall be compelled to disclose the source of any information that is espoused, disseminated or published by that person.

NEPAL

(2) Right to freedom

Every citizen shall have the following freedoms:

(a) freedom of opinion and expression

Provided that: (1) Nothing in sub-clause (a) shall be deemed to prevent the making of an Act to impose **reasonable restrictions** on any act which may undermine the **sovereignty, territorial integrity, nationality and independence of Nepal** or the **harmonious relations between the Federal Units or the people of various castes, tribes, religions or communities or incite caste based discrimination or untouchability or on any act of disrespect of labour, defamation, contempt of court, incitement to an offence** or on any act which may be **contrary to public decency or morality**.

SRI LANKA

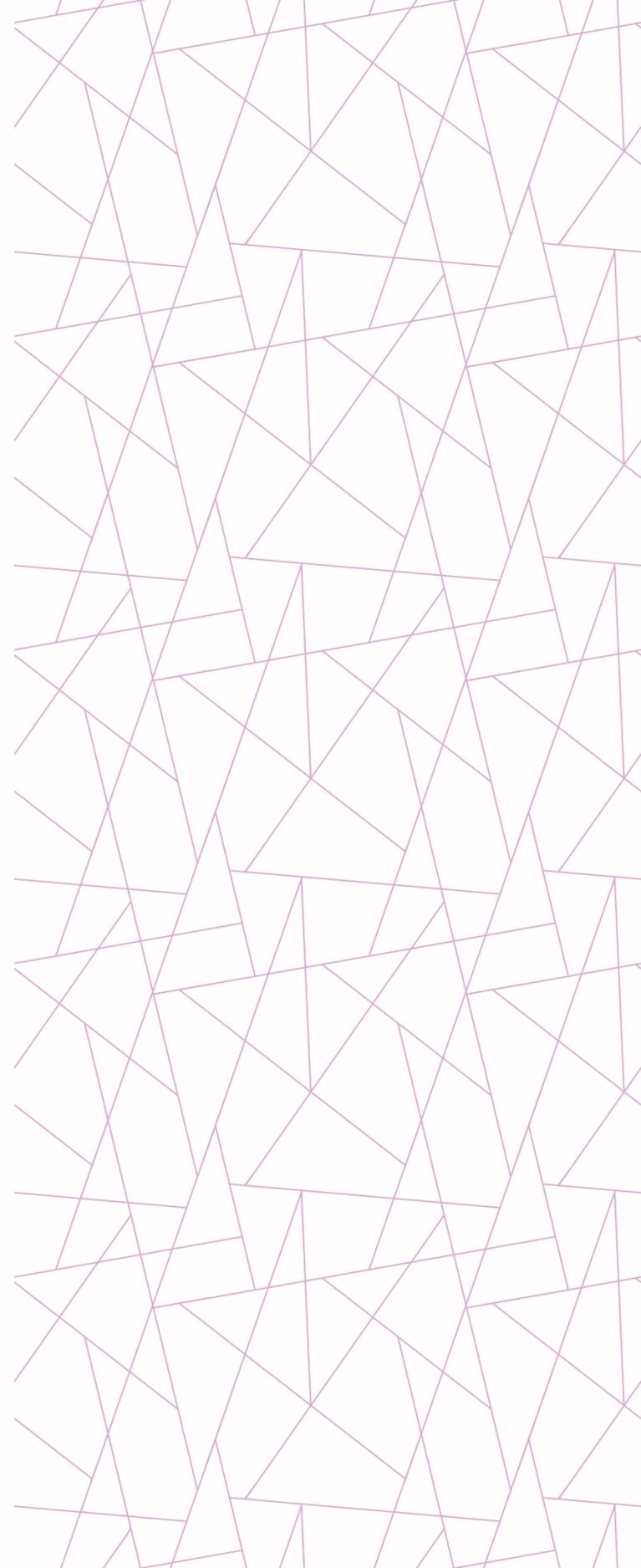
(14) Freedom of Speech, assembly, association, movement, &c. 14.

(1) Every citizen is entitled to –(a) the freedom of speech and expression including publication;

(2) The exercise and operation of the fundamental right declared and recognized by Article 14(1) (a) shall be subject to such **restrictions** as may be prescribed by law in the interests of **racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence**.

A decorative graphic consisting of two overlapping, hand-drawn circles in a dark grey color. Scattered around and inside these circles are numerous small, dark grey dots of varying sizes, creating a starry or particle-like effect.

International Standards



The Universally applicable standards

UDHR

Article 19

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.

ICCPR

Article 19 1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it **special duties and responsibilities**. It may therefore be **subject to certain restrictions**, but these shall only be such as are **provided by law and are necessary**:(a) For **respect of the rights or reputations of others**;(b) For the **protection of national security or of public order** (ordre public), or of **public health or morals**.

Restrictions in ICCPR



Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.



Regional Examples

European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 10

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas **without interference by public authority and regardless of frontiers**. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary



Regional Examples

Resolution 169 on Repealing Criminal Defamation Law in Africa by the African Commission on Human and Peoples' Rights - 24 November 2010

1. Underlines that criminal defamation laws constitute a serious interference with freedom of expression and impedes on the role of the media as a watchdog, preventing journalists and media practitioners to practice their profession without fear and in good faith;
2. Commending States Parties to the African Charter (States Parties) that do not have, or have completely repealed insult and criminal defamation laws;
 - (a) Calls on States Parties to repeal criminal defamation laws or insult laws which impede freedom of speech, and to adhere to the provisions of freedom of expression, articulated in the African Charter, the Declaration, and other regional and international instruments;
 - (b) Also calls on States Parties to refrain from imposing general restrictions that are in violation of the right to freedom of expression;

The Standards

TEST OF LEGALITY

Any restrictions must be outlined by law

Necessary and proportionate to protect a legitimate aim



Do you think the constitutional framework and the laws in your country are in line with the standards set in ICPR?

Three Part Test

Permissible

- Outlined by law, necessary and
- Proportionate to protect a legitimate aim
- Accessible and foreseeable.

Legitimate

The restriction on freedom of expression be based on one of the justifications laid out in Article 19(3) of ICCPR

Necessary & Proportionate

- Restriction be based on a "**pressing social need**"
- Must be placed so as to **fulfil the aims set forth in Article 19**, paragraph 3, ICCPR
- The **least onerous restriction** must be applied to appropriately meet the need.



*Freedom of
Expression Online*
The legal regime



The Right of Freedom of Expression is Protected Online

- THROUGH **ANY** MEDIUM (ICCPR)

- THE SAME RIGHTS THAT PEOPLE HAVE OFFLINE
MUST **ALSO BE PROTECTED ONLINE**, IN PARTICULAR
FREEDOM OF EXPRESSION

(HUMAN RIGHTS COUNCIL, 2012)

INDIA

- Sections of the penal code and code of criminal procedure
- The Information Technology Act, 2000 and the Amendment Act of 2008, as well as the rules framed under the Act
- The **Adhaar Act** (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) 2016
- Criminal Acts like **Protection of Children from Sexual Offences Act, 2012**, **Contempt of Courts Act, 1971**, the **Prevention of Insults to National Honour Act, 1971** etc
- Regulatory Acts - **Telecom Regulatory Authority of India Act, 1997**, Telegraph Act 1885

PAKISTAN

- Various Sections of the **penal code** linked to blasphemy, defamation, sedition etc
- Criminal Acts mainly **Prevention of Electronic Crimes Act, 2016** , **Contempt of Court Act, 2012**, **Defamation Act**
- Anti Terrorism Act
- Sectoral Laws - **Telegraph Act, Pakistan Telecommunication (Reorganisation) Act, 1996**

BANGLADESH

- Various Sections of the penal code linked to Penal Code sedition, causing disaffection towards the state, obscenity, blasphemy, defamation and affecting friendly relations with other states
- Digital Security Act, 2018 (which replaced the Information and Communication Technology Act, 2006)
- Anti Terrorism Act, 2013
- Sectoral Laws - Foreign Donations (Voluntary Activities) Regulation Act, 2016

SRI LANKA

- Various Sections of the penal code linked to to insulting religions, wounding religious feelings, obscenity and causing disaffection against the State.
- Computer Crime Act, 2007
- Prevention of Terrorism (Temporary Provisions) Act 1978
- Sectoral Laws - Sri Lanka Telecommunications Act, 1961, Information and Communication Technology Act, 2003

NEPAL

- Various Sections of National Penal Code 2017 linked to harmonious relationships between different classes, religions or communities, obscenity, defamation and blasphemy
- Sectoral Acts - Electronic Transactions Act, 2006, Individual Privacy Act, 2019, the National Broadcasting Act, 1999
- Draft - Information Technology Bill tabled in the parliament
- Sectoral - Online Media Operation Directive 2017
-

Common Forms of *Criminalised* Expression

RELIGIOUSLY MOTIVATED RESTRICTIONS

Blasphemy, speech against religion & religious figures

SECURITY, SAFETY, DEFENCE

One of the broadest and most subjective restrictions

HATE SPEECH, INCITEMENT

Important, but difficult to legislate

DEFAMATION

Defamation is often criminalised through penal codes or specific laws

DECENCY & MORALITY

Subjective, yet persistently present

MISINFORMATION

Emerging area of legislation, specially post COVID 19

Is there a legal difference between regulation & criminalisation?

REGULATED EXPRESSION

Largely dealt with by

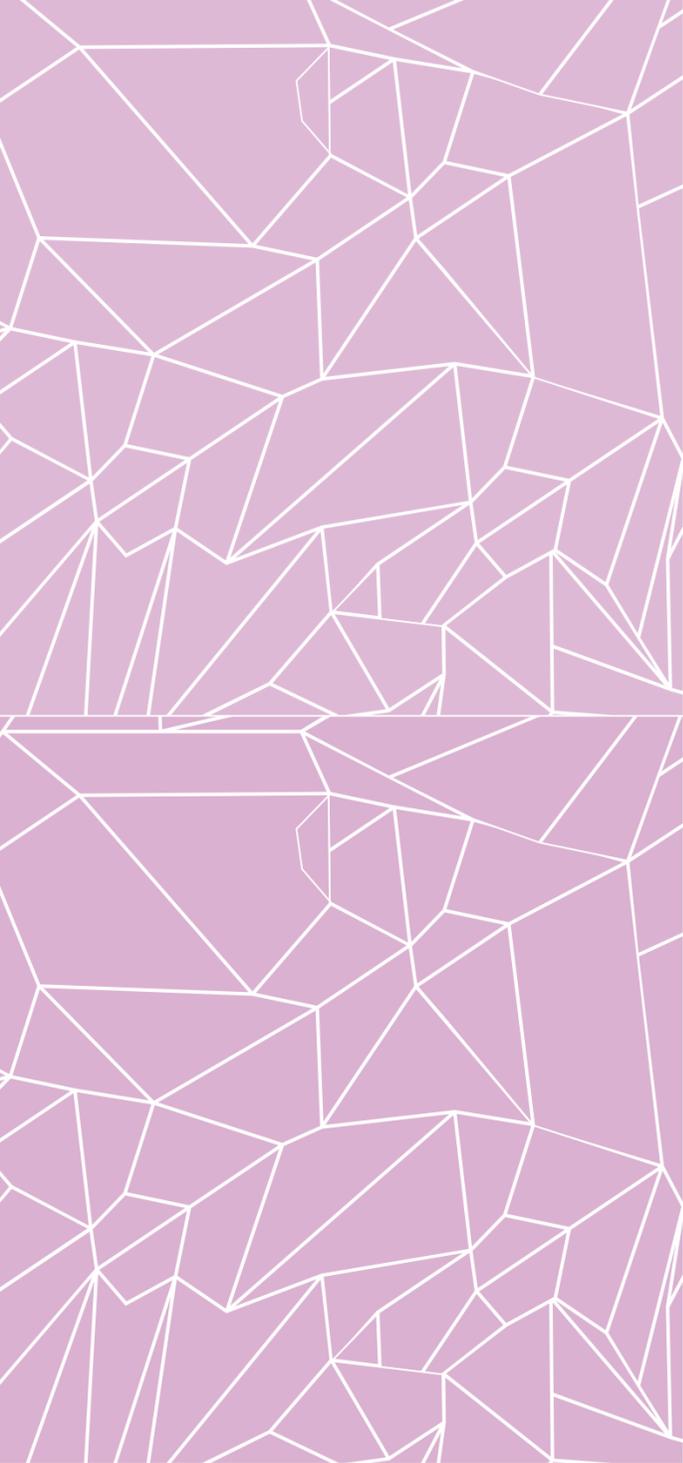
- setting pre-existing standards
- Removal, Blocking and Suspension
- Does not necessarily carry criminal penalties

Common example - content restricted due to decency & morality issues

CRIMINALISED EXPRESSION

In addition to removal & blocking, content creators and at times content distributors may be subject to legal action.

Common examples; blasphemy, sedition, defamation



*Through the eyes of
the courts...*

The law in practice

India



Shreya Singhal v. Union of India

66 - A

66 A of the IT Act, criminalized expression that was "**grossly offensive**", had a "**menacing character**" or were sent "**for the purpose of causing annoyance or inconvenience.**"

Struck down as unconstitutional;

- the law failed to establish a clear proximate relation to the protection of public order
- Left many terms open-ended and undefined, that could be used to target "a very large amount of protected and innocent speech"
- Mere causing of "annoyance, inconvenience, danger etc., or being grossly offensive or having a menacing character are not offences under the Penal Code" of India

India



Shreya Singhal v. Union of India

69 - A

The case challenged the constitutional validity of section 69A of the IT Act and the Information Technology (Procedures and Safeguards for Blocking Access of Information by Public) Rules.

The petitioners argued on a fair trial grounds, saying that the provision were not valid as the author of the content is not guaranteed a hearing before decision for removal is made

Court upheld the constitutionality of Section 69A, referring to some procedural safeguards that are included in the

Pakistan

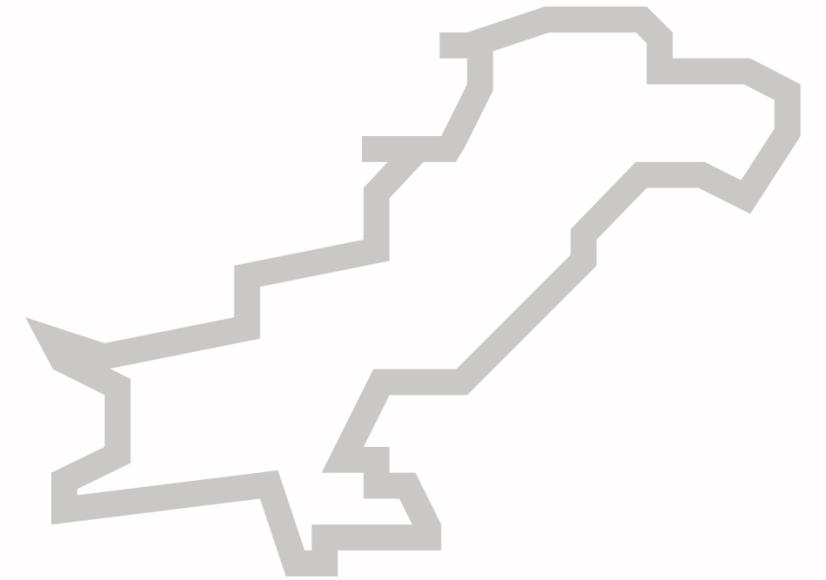
Salman Shahid v. Federation of Pakistan

Muhamad Ayub v. Federation of Pakistan

Both cases deal with websites and online content that is considered blasphemous.

In Salman Shahid Case, the Islamabad High Court directed the government to "take immediate and strict action" to restrict blasphemous content online, including blocking of websites

In Muhammad Ayub case, the Lahore High Court directed government to block social media pages with blasphemous content and additionally said that if Authorities are not successful in blocking, they should amend PECA to allow PTA to block entire websites. Recommended adding a blasphemy offence in PECA.



Pakistan

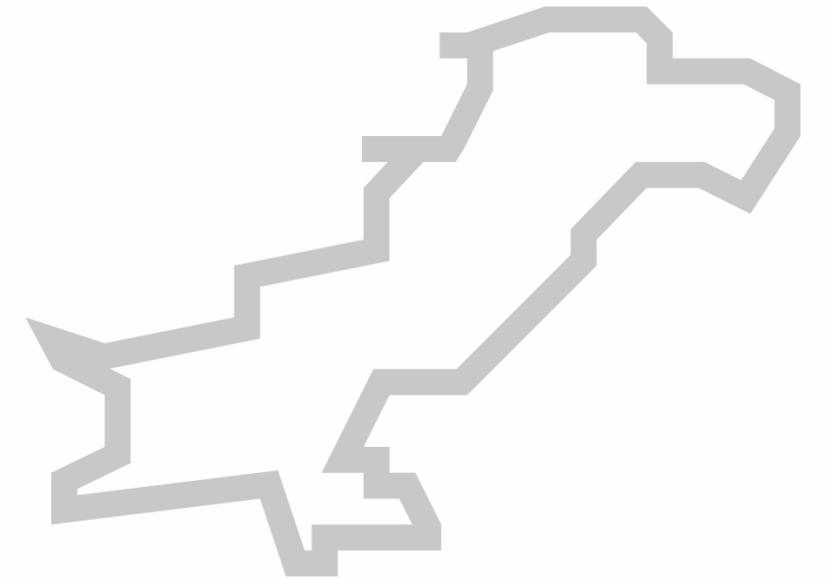
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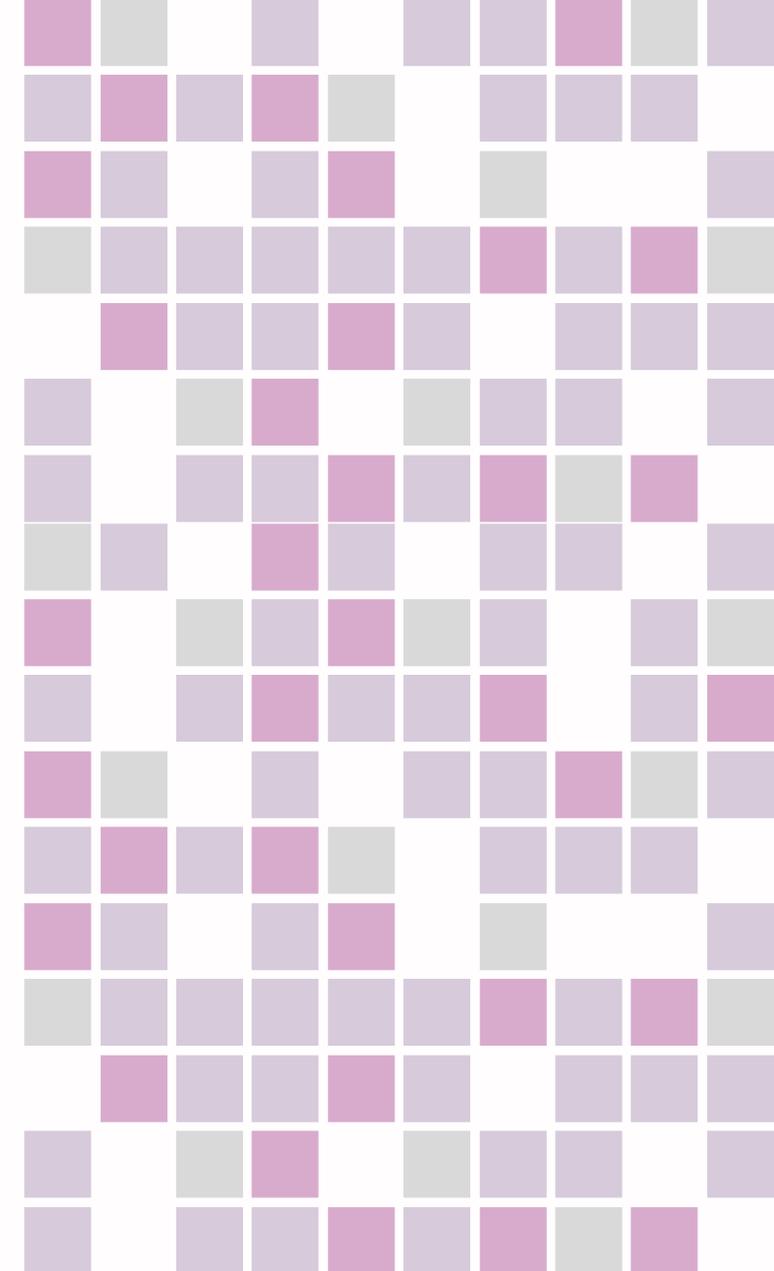
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The law vs. The Reality

Tackling the real challenge with regulation of expression



Sri Lanka



Sunila Abeysekera v. Ariya Rubasinghe

Petitioners challenged the validity of emergency regulations issued by Sri Lankan President during civil war, including regulations prohibiting the publication of matters “pertaining to official conduct, morale, the performance of the Head or any member of the Armed Forces, or the Police Force or of any other person authorised by the Commander in Chief of the Armed Forces, for the purpose of rendering assistance in the preservation of national security”.

Petitioners argued that regulations violated the right of free speech.

Supreme Court upheld the regulations saying that the regulations were not vague, justified in the circumstances, strike fair balance and do not exclude 'predictability'

SC also held that in the circumstances "national security must take precedence over the right of free speech"

Questions to ask



Can a good law **guarantee** the
protection of freedom of speech?