

LIMITATIONS TO THE FREEDOM OF EXPRESSION UNDER THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: THE SCENARIO OF CARTOONS OF THE PROPHET MUHAMMAD (S.A.W.)

**GHULAM MOHAMMAD QANET¹
MOHAMMAD NAQIB ISHAN JAN²
SULTAN AHMAD TARAKI³
ANARGUL MANSURI⁴**

This paper investigates on the limitation of freedom opinion under international law. Therefore, the research examines and evaluates the impact of the religious sensitivity such as, cases of Jyllands Posten and Charlie Hebdo. The method is doctrinal and for this reason, the explored and collected data is qualitatively. The careful examination is thematical, where each connected opinion is discussion to review and assessment of derogatory freedom of expression. Research findings specify that derogatory freedom of expression vis-à-vis religion is not the only case of disagreement about the limitations to freedom of expression. Moreover, from a more recent past, limitations to freedom of expression out of concerns for terrorism and state security have been put in use by a large number of states in the world.

INTRODUCTION

Freedom of expression is a fundamental human right in all documents of international human rights law promulgated by

- 1 Assistant Professor, Public Law Department, Faculty of Laws, Herat University, Email: ghulammohammadqanet@gmail.com
- 2 Professor, Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Email: naqib@iium.edu.my
- 3 Associate Professor, Vice Chancellor for Academic Affairs in Herat University, Email: ahmad_taraki@yahoo.com
- 4 Teaching Assistant, Criminal Law Department, Faculty of Law and Political Science, Herat University, Email: anargul_mansuri@yahoo.com

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Sultan Ahmad Taraki**

the United Nations. It has also become a matter of controversy that is frequently debated, invoked, criticized, attacked and defended. The Universal Declaration of Human Rights of 1948¹ and the International Covenant on Civil and Political Rights of 1966 and 1975² directly point out the significance of the freedom of expression. Yet, precise definition and limitations to this right have been hotly debated from the beginning of their promulgation. The most frequently invoked limitation concerns derogatory expression against particular religion, race and ethnicity.³ This limitation is also mentioned in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, however, due to overemphasis on the rights of the individual and somewhat deficient consideration for the societal consequences of free expression, there have been numerous instances of stark disagreement in views and opinions of freedom of expression in our recent past.⁴

The most glaring instances of this issue can be seen in the cases of Danish daily *Jyllands Posten* and French satirical magazine *Charlie Hebdo's* derogatory and disparaging cartoons of the Messenger Muhammad (*s.a.w.*) that sparked consternation and strong condemnation from Muslim scholars and at times violent protests by Muslims masses.⁵ Derogatory expression vis-à-vis religion is not the only case of disagreement about the limitations to freedom of expression. Blatant forms of racial discrimination in the recent history of Europe and the United States were also hotly debated and the debate occasionally resurfaces even today.⁶ Another limitation to the freedom of expression concerns privacy and personal dignity, and it has resulted in numerous prominent cases of encroachment upon privacy and personal dignity of individuals by journalists, writers, cartoonists and other media people. Many of these cases have ended with a court of law epilogue and paying off hefty compensations to the targeted individuals.⁷ From a more recent past, limitations to freedom of expression out of concerns for terrorism and state security have been put in use by a large number of governments worldwide. Regarding this issue, public security and order are usually mentioned as being more important

than a reckless use and overuse of various types of expression.⁸

**LIMITATIONS PERTAINING TO DEROGATORY
EXPRESSION AGAINST PARTICULAR RELIGION,
RACE AND ETHNICITY**

Both documents, Universal Declaration of Human Rights and International Covenant on Civil and Political Rights place strong emphasis on freedom of opinion and expression.⁹ The first, rather general feature of this right is found in Universal Declaration of Human Rights Article 19, which states: "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."¹⁰ First and foremost this right basically highlights freedom of opinion, which is a more private right. However, it also incorporates in the quoted article a more public right, i.e. the right to freedom of expression.¹¹ It is mostly the second part of this right, its public enunciation that is hotly debated and disagreed on. A large part of disagreement stems from the fact that the first obvious limit to this right can be found in other articles of the same document.¹²

Regarding this, Article 29 states: "1-Everyone has duties to the community in which alone the freedom and full development of his own personality is possible.¹³ 2-In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of a democratic society.¹⁴ 3-These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."¹⁵ Although this limit to the right of expression appears to be formulated in milder form than the right itself (Article 19), it is nonetheless a limit as it clearly mentions the concerns or, 'just requirements of morality, public order and the general welfare of a democratic society'. The second limit is put as totality of purposes and principles of the United Nations being of more

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importance than a single right mentioned in the Universal Declaration of Human Rights.¹⁶

As for the International Covenant on Civil and Political Rights, it also emphasizes the right to freedom of in clear and unequivocal terms in its Article 19: “1. Everyone shall have the right to hold opinions without interference.¹⁷ 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.¹⁸ 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”.¹⁹ “As noted above, article 19(3) of the International Covenant on Civil and Political Rights permits limitations on the rights recognized in article 19(2), but those limitations must be: (1) Provided by law and (2) Necessary for respect of the rights or reputations of others, for the protection of national security, public order, or public health or morals”.²⁰

This article of International Covenant on Civil and Political Rights contains the exposition of the right as well as restrictions or limitations to the right. Both of these aspects are scrutinize and interpreted in large number of ways. Strong supporters and advocates of freedom of expression tend to overemphasize the fundamental nature of this right, while more cautious analysts and critics focus on limitations stated here and their precise meaning.²¹ Proponents and opponents, if they may be called so, frequently hold and exchange arguments and debates, and in the last decade this has mostly happened with regard to religious sensitivity and exercising freedom of expression in critical, negative, and at times, derogatory remarks about religions.

RELIGIOUS SENSITIVITY

Religious sensitivity and the meaning and scope of freedom of

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expression have been the debated issues in a number of recent discussions held by scholars, activists, religious leaders. Concerns about religious sensitivities in pluralist societies have exerted significant impact on the organs of the United Nations and their statements and actions vis-à-vis these issues.²² The whole issue was taken seriously within the organs of the United Nations and the result was quickly seen in the form of “Combating Defamation of Religions” Resolutions which were lately adopted by the General Assembly and the Human Rights Council.²³

The advocates of freedom of expression subsequently noted that such moves, and especially what they see as frequent claims of defamation of religions, have voiced their concern over narrowing down the right to freedom of expression. On the other pole of the debate – religious leaders, scholars and laymen have on numerous occasions protested against reckless use of the freedom of expression in the form of disparaging comments and cartoons against religion and its values in general.²⁴ The heat of the debate, particularly relevant to the Islamic values being derogatorily viewed by journalists and cartoonists, was closely felt by many in the cases of Danish daily *Jyllands Posten* and French satirical magazine *Charlie Hebdo* initiating the spate of publications of caricatures.²⁵

Jyllands Posten Case

This case was brought to public view, scrutiny and response after the Danish newspaper *Jyllands Posten* published a number of caricatures on 30 September 2005, which, as claimed by their authors, depicted Messenger Muhammad (*s.a.w.*) and Muslims in derogatory context, in particular attempting to draw a parallel between Islam and the emerging global problem of terrorism.²⁶ Muslim groups in Denmark were soon to protest against these publications and the worldwide demonstrations quickly broke out which resulted in worsening diplomatic ties of many Muslim countries and subsequent economic embargos against Denmark.²⁷

In this relatively recent incident the differences in the understanding the issues of human rights and freedom of expression between the advocates of very broad interpretation of these rights,

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on one side, and Muslim scholars and believers, on the other side were clearly seen. Muslim scholars and activists claimed that publishing the caricatures of the Messenger Muhammad (*s.a.w.*) and a malicious attempt to relate his blessed character to the mundane issue of terrorism is encroachment against religious feelings and sensitivity, while those who tried to justify this senseless act appealed to the laws of their countries which allegedly grant them the right to free expression. Muslims also stressed in this debate to us the Messenger (*s.a.w.*) is dearer than our parents, thus appealing to the right to protect our public interest and religion.²⁸ Unfortunately, this case did not end at that juncture but exacerbated resurfaced into another hot debate that once again brought at odds proponents and opponents of the unfettered use of freedom of expression in the recent publishing highly derogatory cartoons against Islam and Muslim, this time authored by journalists and artists of the French satirical magazine *Charlie Hebdo*.

Charlie Hebdo Case

The tragic case of French magazine *Charlie Hebdo* republishing derogatory cartoons on several occasions and violent reaction by two French citizens against the cartoonists and journalists by carrying out a terrorist attack and killing almost all journalists yet again sparked a debate, that in immediate aftermath of the incident was more irrational than sensible.²⁹ One of the sensible voices regarding this tragic incident was heard from a famous Muslim scholar Tariq Ramadan: “There are three things we have to bear in mind about the controversy over the cartoons published in the European media depicting the Prophet Muhammad. First, it is against Islamic principles to represent in imagery not only Muhammad, but all the prophets of Islam. This is a clear prohibition. Second, in the Muslim world, we are not used to laughing at religion, our own or anybody else’s. This is far from our understanding. For that reason, these cartoons are seen, by average Muslims and not just radicals, as a transgression against something sacred, a provocation against Islam. Third, Muslims

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must understand that laughing at religion is a part of the broader culture in which they live in Europe, going back to Voltaire. Cynicism, irony and indeed blasphemy are part of the culture.”³⁰

This advice to Muslims, particularly those who live in predominantly Christian European countries by an acclaimed scholar sums up the positions of both opposing camps. On one side is perception of Muslims to whom the idea of derision towards religion, not only Islam but religion in general is completely unacceptable.³¹ On the other pole is contemporary European cultural and legal framework, which, perhaps due to its experience of sacred-profane clash and long lasting aversion towards religious supremacy as well as adoration of reason has a long tradition of using religion and religious symbols as laughing stock.³² There would be far more understanding, if spiteful derision and obstinacy gave way to well-meaning, sincere communication and if desire for co-existence was exhibited.³³

RACIAL AND ETHNIC CONCERNS

One of the clear prohibitions and limitations to the freedom of expression is disapproval of derogatory speech and actions towards particular ethnicity and race.³⁴ This limitation is expressed in direct wording in the International Covenant on Civil and Political Right: “Article 26, All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”,³⁵ and “Article 27, In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.³⁶

Thus, discriminatory speech or any speech that incites discrimination against different ethnicity, race, sex, language,

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religion, national and social origin cannot be justified by freedom of expression and has to be strictly sanctioned by national legislation.³⁷ This is a clear limitation and most countries have forms of it incorporated in constitutions and/or legal act of varying levels. Notwithstanding the clear prohibition of racial and ethnic discrimination, many countries, even developed ones have until just few decades back had laws and practices representing glaring instances of racism and apartheid.³⁸

LIMITS WITH REGARD TO PRIVACY AND PERSONAL DIGNITY

Limitations to the freedom of expression relevant to this section usually include national laws aimed at protecting privacy and personal dignity of individuals and organizations. These laws are normally termed as defamation and libel laws.³⁹ They are invoked by individuals who feel that their privacy and personal dignity have been violated. The possible actions here commonly involve court cases with acquittals or compensation fees paid to those individuals who felt defamed or libelled.⁴⁰

Defamation and libel laws are designed to protect the public reputation of individuals by sanctioning the dissemination of false statements of fact damaging to an individual's reputation. Defamation and libel laws are a widely accepted exception to the right to freedom of expression so long as they are limited to restricting a narrow category of speech and do not impose criminal sanctions or disproportionate civil penalties. In many parts of the world, however, defamation and libel laws are used to prevent open public debate and legitimate criticism of official wrongdoing.

Indeed, according to a recent report, "criminal libel is among the top three laws used to imprison journalists," and not only in countries with poor human rights records and weak rule of law, but in at least forty-seven state signatories to the European Convention on Human Rights.⁴¹ As this report states, defamation and libel laws are frequently invoked even in states signatories to the European Convention on Human Rights that was tailored closely resembling the United Nations documents on human rights

and freedom of speech. This exception is generally accepted if the category of speech is not stretched to protect clear cases of wrongdoing and if the penalties are not too heavy for those who expose these acts in the media.⁴²

LIMITATIONS ARISING FROM TERRORISM AND COUNTER-TERRORISM MEASURES

The spate and intrepidity of terrorist attacks from the beginning of 21st century have been taken as an excuse by many governments to enact laws that limit freedom of expression fearing that free circulation of information may abet terrorists in carrying out further attacks.⁴³ The extent of such measures has been so wide as to encompass United Nations Security Council resolutions that authorize a wide range of activities that, in some instances, severely limit human rights in general, and the right for free expression in particular.⁴⁴ Although the duty of governments to protect its citizens from terrorists and their attacks, there are several points that can be debated pertinent to the anti-terror laws.⁴⁵

The first one is that these laws usually contain either overly broad definition of terrorism, or the provisions are too vague and may be used to stifle legitimate attempts by journalists and researchers to point to wrongdoers in a society. Third, these provisions normally contain harsh penalties that could be instrumental in turning away any publication or expression that comes near the limits and prohibitions.⁴⁶ Because of the heightened danger and fear associated with acts of terrorism, counterterrorism legislation often allows state authorities to bypass typically required legal procedures, suspend otherwise guaranteed individual rights, and in general, to act with reduced judicial oversight. On grounds of necessity and efficiency, and in the name of national security, state officials are often given wide discretion to fight terrorism using any means available.

As a result, counterterrorism legislation is especially vulnerable to governmental overreach. In the absence of strict legal safeguards and clear guidelines within the law, such laws can be, and have been, exploited by state authorities to silence legitimate dissent.⁴⁷

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According to this publication, the tough laws aimed at preventing terrorism have been used by number countries (Egypt, Jordan, Ethiopia, India and the UK).⁴⁸ It is also stated that these laws have come severe criticism by intellectuals from these countries as well as Non-Government Organizations which are following the state of human rights worldwide.⁴⁹

STATE SECURITY AND INTERNAL ORDER

State security and internal order laws that limit freedom of expression have similar intent as those trying to curb terrorist activities. The effects of these legal provisions also resemble counter-terrorism measures.⁵⁰ Most of these measures have negatively affected freedom of religious expressions they seem to target exclusively religious activities and purported extremist individuals and organizations: “Post–September 11 legal provisions that enhance national security threaten to intrude into religious beliefs. There is a need to prevent people from considering that violence can be religiously justified and to break the bond uniting religion and violence once that bond has been established. However, the state’s need to separate religion and violence also endangers religious belief and doctrine. If a religious doctrine advocates the subversion of the state, is tainted with intolerance, and opposes the democratic fundamentals of civil society, can state authorities require it to be changed and enforce this change? Can state authorities outlaw the religious group that upholds a subversive doctrine, although no crime has been committed? Political parties have been banned on this ground. The question is whether the same attitude applies to religious organizations”.⁵¹

A common complaint relevant to this issue has been the inability of law enforcement agencies to differentiate between harmless religious activities and organizations and those that are potentially violent.⁵² The absence of such a yardstick and the urgency of cause provide many possibilities for abuses of human rights and right to expression. These cases have been very common in so-called established democracies. Another problem that arises here is than stringent internal security measures oftentimes harm

vulnerable groups, such as ethnic and religious minorities, thus the violations themselves appear to be deeper and more wide-reaching than might actually be the case.⁵³

CONCLUSION

United Nations human rights documents, such as Universal Declaration of Human Rights Law and International Covenant on Civil and Political Rights do extoll human, perhaps deliberately human rights and freedom. They do so in a way that personal right is more precisely defined than responsibility. There is a long list of rights with rather vague exposition on duties. This facet of contemporary documents on human rights may be one of the reason why there are starkly opposing views of these phenomena. It is perhaps ironical that Western countries whose main authorities on the fields of philosophy and psychology admit that they do not know the meaning of human nature are the most active and the quickest to rebuke others for the violation of human rights. It is illogical as much as it is ironical on the part of Western intellectuals and thinkers that on the one hand there is recognition that as yet human nature is unknown to them and, on the other hand Muslims and other non-Western civilization are oftentimes criticized for disregard and violation of human rights. The confusion over the abuse and understanding of human rights would be atoned if the West does not emphasize the idea of the universality of their notion of human rights.⁵⁴ Moreover, there can be no honest discussion about the issue at hand if it is ignored how other cultures and civilizations conceive of the nature of human being and human rights.⁵⁵

One of the recent incidents that highlight differences in the understanding of human rights is publishing the caricatures of the Messenger Muhammad (*s.a.w.*) and a malicious attempt to relate his blessed character to the mundane issue of terrorism. Those who tried to justify this senseless act appealed to the law of their countries which allegedly grant them the right to free expression. On the other hand, Muslims to whom the Messenger Muhammad (*s.a.w.*) is dearer than their parents, appealed to the

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right to protect their public interest and religion. Islamic concept of freedom does not imply nay choice or any action that is seen as desirable by a person. Freedom, which involves action, is only a choice for the better where there are two alternative: the good and the bad. A choice for what is bad is based on ignorance or lower, animalistic instincts and urges.⁵⁶ When a man is 'compelled' to follow his lower self thereby ignoring his rational soul, he cannot be called free as in actuality hr is a 'servant' to the worst of 'masters'- the one that is dragging him to the servitude of animalistic drives and to the ultimate prolonged feeling of spiritual misery. The opposite of the feeling of misery is the idea of happiness and contentment. Happiness in this world is not only related to temporal psychological state that are attained as a result of satisfaction of needs and wants; it is also inclusive of permanent spiritual aspect which is achieved upon our realization that this world serves the purpose of a test of our conduct and virtuous activity.

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