

Freedom of Expression in Islam “Is Freedom of Expression in Islam compatible with Article 10 of ECHR?”

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Abstract

A predominated opinion has emerged in the West that Islam disregards Human Rights, especially the Freedom of Expression. Many Western scholars have explicitly expressed their views through literature. This article examines Islam's freedom of expression and its compatibility with Article 10 of ECHR. Some research has been carried out to understand the clear picture of freedom of expression in Islam and its limitations. However, no research has been conducted on the proposed topic of Freedom of Expression in Islam and its compatibility with Article 10 of ECHR. This study, therefore, attempts to fill the gap in this much-debated arett7a. This study is based on theoretical research and uses secondary data. It adopts an explanatory research design based on the literature, articles, books, newspapers, electronic media, and reports of international bodies such as the UN, ECtHR caselaws, Human Rights Watch Reports, Amnesty International and Liberty reports. The research has found that Islam propagates the same views as adopted by the ECHR and the ECtHR, where disturbing the peace of the community has been restricted. Still, on the other hand, the revolt against the dictatorial and tyrant government has been promoted. Therefore, the principles of freedom of expression and its limitations are identical in Islam and ECHR. These findings conclude that the opinion being expressed in the West about Islam is unsubstantiated, therefore making these opinions biased and discriminatory.

Introduction

“Invite (all) to the way of thy Lord with wisdom and beautiful preachings and argue with them in ways that are best and most gracious.”¹. Al-Quran (16:125)

The Bible states, “And ye shall know the truth, and the truth shall make you free.”². (John 8:32).

Over the last couple of decades, a predominated opinion of Islam has emerged in the West that Islam and Human Rights are incompatible.³ It is the common perception of the wider public, especially in the European world, that Islam restricts Human Rights, especially the Freedom of Expression⁴. Many Western scholars have explicitly expressed their opinions through literature. Coulson declared that there is no legal protection of the rights of an individual in Islam⁵, Schacht expressed that Islam has a system of sanctions and authority where moral and legal obligations are under religious command,⁶ and Gibb commented that Islam does not give its citizens any place or function except a submissive subject⁷. The

¹ Surat An-Nahl – The Noble Quran (16:125)

² The Holy Bible _ John (8:32)

³ Philpott, Daniel. "Religious freedom in Islam: A global landscape." *Journal of law, religion and state* 2, no. 1 (2013): 3-21.

⁴ Alzahrani, Saeed Mohammed. "Hate Speech from the Traditional Islamic Perspective." (2017).

⁵ Coulson, Noel James. *A history of Islamic law*. Aldine Transaction, 2011.

⁶ Schacht, Law and Justice in P.M. Holt ed., *The Cambridge History of Islam*.

⁷ Gibb, Constitutional Organisation in M Khadduri & H. Liebensey eds, *Laws in the Middle east*.

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concept of free speech has been widely preached and emphasised on all avenues recently. It has been promulgated by the ECtHR that “[f]ree speech is not merely of fundamental importance for democratic societies, but it is one of the most basic rights of an individual that enables him to form and develop his opinions, and thereby to realise himself⁸”. Boyle expresses “[a] society that respects freedom of expression is not one where there are no restrictions on that freedom. There are always restrictions....[A] healthy society is to be measuredby noting whether there is open public debate and argument about the necessity of restriction in particular cases⁹”.

Hate speech has been severely restricted in all monotheist religions of the world.¹⁰ Prior to the ages we live in, nearly all nations considered their faith the most vital component of their identity. The pagan nations such as the Roman Empire, before and after the adoption of Christianity, the Babylonians and other nations and civilisations were all tied with religions in which hate speech was declared a crime.¹¹ Freedom of Expression has been emphasised in Islam at all venues and in different forms through the Holy Quran, Hadith and later in the lives and actions of five Caliphs of Muslims;¹² however, Islam restricts insult, hatred, defamation and slandering of others¹³. Islam prevents the abuse of the rights of the community and the rights of others in the name of freedom of expression,¹⁴ As is described in the European Convention on Human Rights Article 10(2), which states, “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 for 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.”¹⁵

In the presence of such authentic studies, evaluating the freedom of expression in Islam and its compatibility with Article 10 of ECHR is vital. This research focuses on the limits, if any, imposed by God through the Quran, Prophet Muhammad (PBUH) through Hadith and Sunnah, Shariah and Fiqh. This research will use the “Danish Cartoon” controversy as a case study to evaluate whether such limitation, if any, should be in place and the public should have the right to express every action in any manner they wish.

Methodologies

This study will be based on explanatory theoretical research that advances knowledge. It will use secondary data by analysing materials from literature, articles, books, newspapers, electronic media, reports of international bodies such as the UN, analysis of ECHR and

⁸ *Handyside v United Kingdom*; Application Number 5493/72, promulgated on 7/12/76; <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-57499%22%5D%7D>, accessed on 14 Feb 2020.

⁹ Kevin Boyle, *Freedom of expression and Restrictions on Freedom of Expression* (2002) ; see also Boyle, Kevin. "Hate speech--the United States versus the rest of the world." *Me. L. Rev.* 53 (2001): 487.

¹⁰ Temperman, Jeroen. "Blasphemy, defamation of religions and human rights law." *Netherlands Quarterly of Human Rights* 26.4 (2008): 517-545. He has referred in his article to “the Old Testament prescribes the death penalty by means of stoning: Holy Bible (English Standard Version), Leviticus 24: 10–23. The New Testament speaks of earthly punishments as well as possible repercussions in the afterlife, yet solely with regard to blasphemy against the Holy Spirit: Holy Bible (English Standard Version), Matthew 12: 30–32. See also: Mark 3: 28–29. The Quran speaks of earthly punishments as well as possible repercussions in the afterlife: The Holy Qur’an (transl. Abdullah Yusuf Ali), 9:74. Other Quranic references to blasphemy (including references that render Christian or Jewish doctrine blasphemous deviations from true doctrine) include: 2:88; 4:155; 5:17; 5:64; 5:68; 5:73; 6:19; 9:74; 11:9; 14:28; and: 39:8.”

¹¹ Alalwani, Taha Jabir. *Apostasy in Islam: A Historical and Scriptural Analysis*. International Institute of Islamic Thought (IIIT), 2012.

¹² Kamālī, Muhammad Hāshim. "Freedom of Expression in Islam." *Kuala Lumpur: Berita & Co* (1994).

¹³ *Supra* note 4.

¹⁴ *Supra* note 8.

¹⁵ *Convention for the Protection of Human Rights and Fundamental Freedoms*Rome, 4.XI.1950

ECtHR case laws, Human Rights Watch Reports, and Amnesty International and Liberty reports.

The explanatory research method is adopted for problems not well-researched before and helps close the gaps in previous studies. This method does not provide conclusive evidence but helps to understand the topic more efficiently. One of the main types of explanatory research is literature, archival and documentary research, which this study has adopted.

Discussion

Freedom of Expression in Islam

In the Islamic Perspective of Freedom of Expression, the Quran states:

“God loves not the public utterance of evil speech except by one who has been wronged.”¹⁶. (IV:148)

Further, a Hadith by Prophet Muhammad (PBUH) confirms the freedom of expression by stating:

“Tell the truth even if it is unpleasant,”¹⁷ Another hadith states, “There is no charity more beloved to Allah from speaking the truth.”¹⁸

Another Hadith of the Prophet goes even further and proclaims that:

“The best form of holy struggle (Jihad) is to tell a word of truth to a tyrannical ruler.”¹⁹(Sunan Abu Dawud, II,438)

According to Kamali, the two objectives of free speech are the discovery of truth and upholding human dignity.²⁰ The Shariah entitles individuals to say what they please, provided that the words do not involve blasphemy, backbiting, slander, insult, or lies, nor seek to give rise to perversity, corruption, hostility, or sedition. In the affirmative sense, Shariah encourages freedom of expression in various ways, including promoting good and preventing evil (Hisbah), giving sincere advice, consulting, personal reasoning, and allowing the freedom to criticise government leaders.²¹ The Council of the International Islamic Fiqh Academy defined freedom of expression as:

“[t]he full enjoyment of a person with the ability to express what he sees rightly and beneficial to him and the community with regard to private affairs or public issues. This right is safeguarded under the provisions of Sharia law.”²²

Hassan Al-Eili elaborated on this definition: " Freedom of expression means to be a free man in the formation of his opinion without depending on others and being free to show his opinion and announcement in a manner that he deems.”²³. This definition is short of any explanation about any limitations imposed by Sharia. Other Islamic scholars viewed freedom of expression inside some boundaries of human dignity. Bhat gave a detailed definition of freedom of expression:

"Freedom of speech means the right of an individual to prefer the stance about certain public or private matters and express them before others devoid of delinking

¹⁶ The Holy Quran, Al-Nisa (4:148)

¹⁷ Sahih Muslim Hadith number 4515 : Ahmad from Abu Dharr (Allah be pleased with him) from the Messenger of Allah (Allah bless him and give him peace).

¹⁸ Sahih Muslim Hadith Number 4863: declared rigorously authentic (*sahih*) by Ibn Hibban.

¹⁹ Sunan Abu Dawud book 2 Hadith 438

²⁰ Supra Note 26, p. 8.

²¹ Ibid. p.12.

²² Resolution 176 (2/19) on Freedom of Expression: Its Controls and Provisions, April 2009, The Council of the International Islamic Fiqh Academy, via: <http://www.iifa-aifi.org/2294.html>

²³Saeed, Riaz. "ISLAMIC PERCEPTION OF FREEDOM OF EXPRESSION (AN EXPLORATION OF ISLAMIC THOUGHT)." *IQAN* 1.02 (2019): 35-58. Also : Saeed, Riaz, The Quranic Concept of Freedom of Expression: A Descriptive Study in Modern SocioPolitical Perspective, University of the Punjab, Lahore, Al-Qalam June 2013, p. 72.

themselves from the society. Freedom of speech and expression is the person's right to express his ideas and feelings with his own choice and will, as long as there is no aggression on the rights of others... It is a prerequisite for a Muslim under certain legal conditions so that a person can express freely his thought and religious duty"²⁴.

This definition seems closer to the Quranic Verse and Hadiths cited above, which restrict evil, obscene, immoral or hurtful speech or actions.²⁵ However, such restrictions have been overruled in favour of the victims of the injustice. In other words, the utterance of hateful speech in pursuing justice and truth is permitted.²⁶

According to Islamic law, freedom of expression is a fundamental right for two purposes: exploring the truth and promoting the dignity of human beings.²⁷ Denying dignity is denying a person's right to opinion and judgment. The Quran declares dignity as the natural right of an individual. As is stated in the Quran:

“We bestowed dignity on the progeny of Adam.”²⁸

Islamic law decorates Muslims and non-Muslims living in any state with freedom of expression subject to the conditions and limitations to prevent hostile speech, uphold the dignity of humankind, and enjoy a harmonious world. A prominent scholar of Islam, Ibn Qayyim al-Jawziyyah, expressed that “freedom of expression can be utilised for the realisation of benefit, or the prevention of evil, which may come to light and then be secured through the exercise of this freedom.”²⁹ According to Awdah,³⁰ freedom of expression, if exercised within its limits, leads to harmony, affection and respect among the communities residing side by side or in separate countries³¹. It is also a bridge between the government and the subjects living in the country to benefit from each other and eradicate discrimination and prejudice.³² Mawdudi has quoted Imam Abu Hanifa that “the leadership of a tyrant and profligate was not only illegal, but it was also lawful to rise in the revolt against the ruler.”³³ This stance of Islam on freedom of expression can not be seen in any other religion where the public has been urged to stand for their rights.

It is widely acknowledged in the literature that the first four decades of Islamic Khilafa were excellent regarding freedom of expression and equality.³⁴ The level of equality and freedom of expression standards deteriorated during the middle ages of Islam. Faruq al-Nabhan has observed that non-Muslims living in Islamic countries have suffered severe loss of freedom of expression at the hands of oppressive, dictatorial-styled governments.³⁵ It was also summarised that such practices were ‘politically motivated’, had no connection

²⁴ Bhat, Ali Muhammad. "Freedom of expression from Islamic perspective." *Journal of Media and Communication Studies* 6.5 (2014): 69-77.

²⁵ Supra note 26.

²⁶ Kamālī, Muhammad Hāshim. "Freedom of Expression in Islam." *Kuala Lumpur: Berīta & Co* (1994).

²⁷ Nadeem Siddiq, *Freedom of Conscience and Expression in Islam, The Review of Religions* (2010)

²⁸ The Holy Quran : XVII:70.

²⁹ Ibn Qayyim al-Jawziyyah, *Ilm al-Muwaqqi 'Rabb al-Alamin, Vol 3, p.147*. It has also been quoted by Kamali in the *Freedom of Expression*, p.14.

³⁰ A Saudi Scholar known as Salman al-Awdah (Awdah) who is also a member of International Union for Muslim Scholars has been in the Saudi prison and the Saudi Government is asking the court for his death penalty for challenging the practices of Saudi ruler especially Muhammad Bin Salaman. The UN and many organisations have condemned the detention of the scholar and one of the tweet in favour of the scholar was : "They want to kill the voice of reason to let ignorance prevail". The scholar has been classed as a pro reformist who is a preacher of freedom of expression in Saudi Arabia.

³¹, Awdah, Abd al-Qadir. "Al-Tashri' al-Jina'ii al-Islami fi al-Mazhab al-Khamsa Maqrina bil-Qanun al-Vaz'ii." *Compiled by Seyed Isma'ii Sadr, Tehran: Qism ad-Dirasat al-Islamia*. vol 2, p.34.

³² Ibid.

³³ Sayyid Abul A'la Mawdudi. *Issues in Islam Society & State: The Islamic Foundation* 2019.

³⁴ Supra note 49.

³⁵ Al-Nabhan, Muhammad Faruq. "Nizam al-Hukmfial-Islam." (1988) p.237.

to Islam and could not be substantiated by the principles and norms of Islam.³⁶ However, Islam has put some limits to freedom of expression, which are discussed below.

Limitations of Freedom of Expression in Islam

Traditional Islamic law restricts freedom of expression in certain conditions, contexts and contents, such as prohibiting defamation and sarcasm³⁷, preventing or concealing the truth³⁸, avoiding publishing evil,³⁹ expressing by the knowledge,⁴⁰ not without it, ascertaining the truth before writing or speaking about it⁴¹ and rejecting abuse directed at God and the Prophets.⁴² Islamic perspective towards freedom of expression is to facilitate peace and serenity in society.⁴³ The freedom of expression in Islam is restricted only when the stability of the community is in danger.⁴⁴ Commanding good and forbidding evil (al-amr bil-maruf wa; l-nahi an al-munkar) is the Quranic principle (Hisbah) which lies at the heart of freedom of expression in Islam.⁴⁵

Hisbah (commanding good and forbidding evil is the ‘supreme objective of Sharia’ and ‘the ethical core of governmental power.’⁴⁶ The Quranic principle of Hisbah defines the foundations of rights and liberties and forms the basis of many modern constitutions. Although the principle of Hisbah covers many aspects of society, freedom of expression is the heart and soul of this principle⁴⁷. Through this principle, Muslims are directed to express themselves in the best of manners in their speech and actions and restrain themselves from evil speeches and actions which hurt the members of society.⁴⁸ This principle was explained as follows:

“[A]nd the believers, men and women, are friends one of another. They enjoin good, forbid evil, observe prayer, pay the zakat (alms to the poor), and obey God and His Messenger. It is these whom God will have mercy.”⁴⁹

The Hisbah principle expands on restrictions imposed according to traditional Islamic law, such as violation of “Islamic beliefs in divinity, Islamic belief in the prophethood, the supreme moral that determines man’s relationship with others”⁵⁰. The final restriction, common with the international restrictions on freedom of expression, is for “legitimate aim”⁵¹. Islamic law restricts those expressions that violate fundamental human rights such as life, religion, property, thought, conscience, and liberty to provide a peaceful life for

³⁶ Ibid.

³⁷ The Quranic verse (49:11) states: "Nor defame nor be sarcastic to each other, nor call each other by (offensive) nicknames": also Firas Abdul Jalil, Freedom of Expression in the Holy Quran, p. 166-167, Journal of Anbar University of the Islamic Sciences, Iraq 2009.

³⁸ The Quranic verse (2:42) states: "And cover not Truth with falsehood, nor conceal the Truth when ye know (what it is)." Mohammed Albishir, Freedom of Opinion in Islam and Legal Systems, p. 119, Research Presented to Prince Naif bin Abdulaziz Award for Prophetic Sunnah and Contemporary Islamic Studies, First edition 2009.

³⁹ The Quranic verse (4:148) states: "God loveth not that evil should be noised abroad in public speech, except where injustice hath been done; for God is He who heareth and knoweth all things." Abdullah Alturki, Human Rights in Islam, p. 41, The Ministry of Islamic Endowments & Da'awa & Guidance Affairs, Riyadh, Saudi Arabia.

⁴⁰ The Quranic verse (17:36) states: "And pursue not that of which thou hast no knowledge; for every act of hearing, or of seeing or of (feeling in) the heart will be enquired into (on the Day of Reckoning)." Supra Note 60, p.164. .

⁴¹ The Quranic verse (49:6) states: "O ye who believe! If a wicked person comes to you with any news, ascertain the truth, lest ye harm people unwittingly and afterwards become full of repentance for what ye have done". Supra note 60, p. 174.

⁴² The Quranic verse (33:57) states: "Those who annoy God and His Apostle - God has cursed them in this World and in the Hereafter, and has prepared for them a humiliating Punishment." Noureddine Bocardad, Freedom of Expression in Islam, The Journal of Al Bayan, Indonesia 2012.

⁴³ Bhat, Ali Muhammad. "Freedom of expression from Islamic perspective." *Journal of Media and Communication Studies* 6.5 (2014): 69-77.

⁴⁴ Ibid.

⁴⁵ Supra note 49. Also Supra note 66.

⁴⁶ Kamali, Supra note 49, p.28.

⁴⁷ Mawdudi, Supra note 73.

⁴⁸ Bhat, Supra note 83, p.72.

⁴⁹ The Quran, verse 9:71.

⁵⁰ Bin Bayyah. Abdullah, Islamic Discourse Between The Conclusive and The Variable, Abu Dhabi, UAE: Tabah Papers Series, September 2009, p. 16-21. Also, Abdulaziz Altwaijri, Islamic Discourse between Tradition and Modernity, A Journal of Future Ideology That Shapes Today The World of Tomorrow (2004).

⁵¹ Alzahrani, Saeed Mohammed. "Hate Speech from the Traditional Islamic Perspective." (2017) p. 13.

human beings⁵². According to many scholars, freedom of expression can be curtailed in certain circumstances, resulting in defaming other societies and their sentiments⁵³. The primary offence for which such restriction is justified is blasphemy, which is defined in Islam as “a disgraceful hostile approach against either fundamental of Islam, God, the personality of the Prophet Muhammad or any other prophets”⁵⁴. Despite considering blasphemy an offence, Islam does not approve of direct penalty, and the punishment is in the hands of God in the life hereafter. The Quran affirms it as:

“[v]eerily those who annoy Allah and His Messenger – Allah have cursed them in this world and the Hereafter, and have prepared for them as abasing punishment. And those who malign believing men and believing women for what they have not earned shall bear the guilt of calumny and a manifest sin.”⁵⁵

Many more examples show that during the entire rule of Prophet Muhammad and his companions, human rights, especially the freedom of expression, were their top priority. Therefore, the perceptions of many scholars, such as Coulson, Schachat, and Gibb, have not been substantiated and are based on the interpretation of those Islamic countries that have failed to implement the Islamic model of freedom of expression. The same views as these scholars have been publicised by the Western media, which remains biased about the fundamentals of Islamic teachings and portrays Islam as a religion of suppression⁵⁶.

Freedom of Expression in the West

Different schools of thought believe in different definitions of freedom of expression. Professor David Unterhalter urges, “At the heart of free speech is the right to say things others find offensive. No belief system can claim exemptions from mockery.” He asserts, “Freedom is all or nothing.” Justice Black has taken the same view from the US Supreme Court, which believes that all expressions should be protected with no exceptions, “ without any ifs, buts or whereas.”⁵⁷

The formal definition of freedom of expression can be found in the Universal Declaration of Human Rights, Article 19:⁵⁸

“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.”

As UDHR is not a binding instrument, the legally binding instrument protecting freedom of expression is Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which defines freedom of expression as follows:

- “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 print, in the form of art, or through any other media of his choice.

⁵² Abdulkareem Zidan, *Brief of Jurisprudence Origins (Al Wajiz fi Usul Al-Fiqh)*, p. 378, 6th Edition, Cordoba Corporation, Saudi Arabia (1976)

⁵³ *Supra* note 83 & 88, p.72.

⁵⁴ *Ibid*, p.72.

⁵⁵ The Quran, Verse 3:187.

⁵⁶ *Supra* note 88.

⁵⁷ *New York Times v Sullivan* 376 US254(1964)

⁵⁸ Universal Declaration of Human Rights, 10 December 1948. : <http://www.un.org/en/documents/udhr/>

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”⁵⁹.

As of September 2019, the Covenant has 173 parties and six more signatories without ratification.⁶⁰ The first and the second part of the Covenant grant “everyone” the right to freedom of expression without the boundaries of nationality, race, gender, colour or ethnicity. Similarly, the UN Convention on the Rights of Persons with Disabilities (CPRD)⁶¹, the UN Convention on the Elimination of Racial Discrimination (CERD)⁶² and the UN Convention on the Rights of the Child (UNCROC)⁶³ also stress the importance of freedom of expression. Additionally, many states have implemented optional protocols, which have been signed, making it binding upon these countries to comply with the Conventions. Any breach can be challenged in the relevant committees. All state parties must submit regular reports to the Committees on implementing the rights. States must file reports of compliance with these rights regularly. The Committees examine each report and address its concerns and recommendations to the State party as “concluding observations.”⁶⁴ However, the compliance of such submissions is sloppy and relaxed.

Article 10 of the European Convention on Human Rights

The freedom of expression has been discussed under International Conventions and Treaties. However, this article aims to compare the Islamic model of freedom of expression with Article 10 of the European Convention on Human Rights (ECHR), as it is considered the most comprehensive and practical framework in practice. Article 10 of ECHR states:

“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.

1. 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.⁶⁵”

The contents of Article 10 of ECHR are similar to Article 19 of ICCPR. The first section of Article 10 provides freedom of expression to “everyone” without interference by “public

⁵⁹ Office of the High Commissioner of Human Rights: International Covenant on Civil and Political Rights.

⁶⁰ OHCHR Dashboard: <https://indicators.ohchr.org/>

⁶¹ <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

⁶² <https://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf>

⁶³ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁶⁴ United Nations: Monitoring the Convention and the Optional Protocol – The Optional Protocol to the Conventions : <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-three-monitoring-the-convention-and-the-optional-protocol-3.html>.

⁶⁵ European Convention on Human Rights: https://www.echr.coe.int/Documents/Convention_ENG.pdf

authority”. The second section deals with the limitations imposed on freedom of expression under Article 10, discussed in the following section.

Limitations of Freedom of Expression in the West

The ICCPR Article 19 Part 3 of the Covenant binds everyone who enjoys the freedom of expression with “special duties and responsibilities”. These duties and responsibilities restrict the enjoyment of freedom of expression for “respect of the rights or reputation of others” and for “the protection of national security or public order, or of public health or morals”. The Office of UNHCR, in a general comment on Article 19, expresses that “the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or those of the community as a whole.”⁶⁶ Part 3 of the Article also imposes conditions of such restrictions, which are “provided by law” and “necessary”. This relates to the restrictions subject to national legislation under Article 29 of the Universal Declaration of Human Rights, which states:

“(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(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 and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.”⁶⁷

Article 29/2 of UDHR has determined the necessary limits on the rights and freedoms for the rights and freedoms of others, morality and the general welfare in a democratic society. The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, in his 2010 report, expressed:

“In exceptional circumstances, international human rights law permits certain limitations to freedom of expression. By establishing those limitations, the State is effectively fulfilling its obligation to prohibit certain expressions owing to the serious damage that they cause to the human rights of others, as provided for in Article 20 of the Covenant.”⁶⁸

The Rapporteur, in 2012, expressed his concern by stating:

“There has been a worrying increase in the number of expressions of hate, incitement to violence and discrimination. Such expressions have often been compounded by politicians and the mass media, while the Internet has also facilitated the multiplication and visibility of hate speech in recent years. These trends are of concern, given that every individual human being is entitled to the same dignity and rights, including the right not to be discriminated against, regardless of national origin, social, racial, ethnic or religious background, disability, gender, sexuality or any other grounds. The promotion and protection of

⁶⁶ Office of the High Commissioner for Human Rights, General Comment No. 10: Freedom of expression (Art. 19), para 4, 19th session on 29/06/1983: <https://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo10.pdf>

⁶⁷ Article 29 of UDHR: <https://www.un.org/en/universal-declaration-human-rights/>

⁶⁸ , Mr. Frank La Rue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2010: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/130/49/PDF/G1013049.pdf?OpenElement>

the right to freedom of expression must, however, go hand in hand with efforts to combat intolerance, discrimination and incitement to hatred”⁶⁹.

It is also essential to discuss the 2013 Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred in which three conditions in which the freedom of expression can be restricted have been defined:

“18. Article 20 of the Covenant requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such a threshold must take into account the provisions of Article 19 of the Covenant. Indeed the three-part test (legality, proportionality and necessity) for restrictions also applies to cases involving incitement to hatred, in that such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measure available; are not overly broad, so that they do not restrict speech in a wide or untargeted way; and are proportionate so that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions they authorise.”⁷⁰

The above brief discussion aimed to assess the limitations and restrictions imposed on freedom of expression under international instruments. However, to meet this article's objectives and answer the research question, discussing the limitations and restrictions imposed on freedom of expression under Article 10 of ECHR is imperative.

Paragraph 2 of Article 10 of ECHR provides three measures to restrict freedom of expression. The first condition, “prescribed by law,” restricts freedom of expression based on common law, stipulated rules and case law⁷¹. The second condition of imposing restrictions on freedom of expression is “necessary in a democratic society, “ representing the necessity of restrictions in convincing circumstances and pressing social needs”⁷². The “legitimate aim” is the third condition which can restrict freedom of expression⁷³. Article 10 (2) provides some circumstances in which such rights can be restricted, especially “for the protection of the reputation or rights of others”. It has been widely found that the rights and reputation of others can only be protected by restricting hate speech⁷⁴. It is hard to define hate speech; however, “it covers abusive, denigrating, harassing speech targeting a group’s or individual’s national, racial, religious or ethnic identity”⁷⁵. The European Court of Human Rights (ECtHR) has referred to hate speech on occasions in the light of the definition given by the Committee of Ministers of the Council of Europe, which shall be understood as:

“All forms of expression which spread, incite, promote or justify racial hatred, xenophobic, anti-Semitism or other forms of hatred based on intolerance, including

⁶⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 2012: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/501/25/PDF/N1250125.pdf?OpenElement>

⁷⁰ Annual report of the United Nations High Commissioner for Human Rights: Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, 11 January 2013. https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

⁷¹ Elena Mihajlova, *Freedom of expression and hate speech*, Polyesterday, Skopje (2013 p. 13). Also supra note 92 p.46.

⁷² *The Observer and Guardian v. UK* (App No 13585/88) (1991) Series A 216 § 59.

⁷³ Barendt, Eric. "Freedom of expression in the United Kingdom under the Human Rights Act 1998." *Ind. LJ* 84 (2009): 851.

⁷⁴ Alzahrani, Saeed Mohammed. "Hate Speech from the Traditional Islamic Perspective." (2017).

⁷⁵ . Bakircioglu, Onder. "Freedom of expression and hate speech." *Tulsa J. Comp. & Int'l L.* 16 (2008): 1.

RECOMMENDATION, No R. "of the Committee of Ministers to Member States on" Hate Speech." *Dostopno na: https://rm.coe.int/1680505d5b* (6. junij 2017) (20).

intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.”⁷⁶

The ECtHR, in *Observer and Guardian v UK*, held that “Freedom of expression...is subject to a number of exceptions which ...must be narrowly interpreted and the necessity for any restrictions must be convincingly established.”⁷⁷ Also, in another case, *Sunday Times v UK*, the Court declared that “the right to freedom of expression is the rule and its limitations are the expectations.”⁷⁸

The ECtHR delivered an important decision in the case of *Norwood v. UK*.⁷⁹ The appellant, a BNP member, had displayed a large poster in his bedroom window saying ‘Islam out of Britain’. He was convicted of an aggravated attempt to cause alarm or distress. The offence was established on proof of several matters unless the defendant could establish one of the statutory defences. He argued that these should be read down to impose only an evidential burden.

Held: The district judge justified his findings regarding the poster by saying it was racially directed and insulting. The positioning of the poster was intended to cause alarm and distress. The offence did not infringe on the defendant’s human rights, and his behaviour also threatened the rights of others.

The European Court has provided the states with a wide margin of appreciation when applying Article 10 of the ECHR. Furthermore, the Court has developed a positive obligations doctrine when deciding Article 10 cases.

The Court has declared anti-Semitism an abuse of freedom of expression in many cases. One example is the *Ivanov*⁸⁰ case, in which it was concluded that a generalised and zealous attack on an ethnic group contradicts fundamental values such as social peace, non-discrimination and tolerance. Contrary to *Ivanov*’s case, the Court has concluded differently in *Soulas v France*. This case concerned criminal proceedings brought against the applicants following the publication of a book entitled “The Colonisation of Europe”, with the subtitle “Truthful remarks about immigration and Islam”. The proceedings resulted in their conviction for inciting hatred and violence against Muslim communities from northern and central Africa. The applicants complained, particularly that their freedom of expression had been breached. The Court held that there had been no violation of Article 10 (freedom of expression) of the Convention. It noted, in particular, that, when convicting the applicants, the domestic courts had underlined that the terms used in the book were intended to give rise in readers to a feeling of rejection and antagonism, exacerbated by the use of military language concerning the communities in question, which were designated as the main enemy, and to lead the book’s readers to share the solution recommended by the author, namely a war of ethnic re-conquest. Holding that the grounds supporting the applicants’ conviction had been sufficient and relevant, it considered that the interference in the latter’s right to freedom of expression had been “necessary in a democratic society”. Finally, the Court observed that the disputed passages in the book were not sufficiently serious to justify the application of Article 17 (prohibition of abuse of rights) of the Convention in the applicants’ case⁸¹. In this case, the Court provided a “margin of appreciation” to the government. Similarly, the case of *Le Pen v. France*⁸² found that the

⁷⁶ RECOMMENDATION No. R (97) 20 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON "HATE SPEECH": <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d>

⁷⁷ *Observer and Guardian v United Kingdom*, 14 ECtHR.153, 59 (1992).

[file:///C:/Users/Admin/Downloads/001-45481%20\(1\).pdf](file:///C:/Users/Admin/Downloads/001-45481%20(1).pdf)

⁷⁸ *Sunday Times V United Kingdom*: ECtHR. 245, 65 (1979): <https://hudoc.echr.coe.int/rus#{%22itemid%22:%22001-57584%22}>

⁷⁹ *Norwood v United Kingdom*, 16 November 2004: (2004) 40 EHRR SE 111, [2004] ECHR 730

⁸⁰ *Pavel IVANOV v. Russia* Application no. 35222/04 [file:///C:/Users/Admin/Downloads/001-79619%20\(1\).pdf](file:///C:/Users/Admin/Downloads/001-79619%20(1).pdf)

⁸¹ Hate speech cases in the ECtHR, Fact Sheets, March 2020.

https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

⁸² *Le Pen v. France* (application no. 18788/09): <file:///C:/Users/Admin/Downloads/003-3117124-3455760.pdf>

conviction of the leader of Front National is not contrary to Article 10 because he tried to incite French and Islamic communities against each other. Again, in this case, the Court introduced the margin of appreciation to the state concerned.

Regarding the positive obligation doctrine, the Court has shifted the idea that freedom of expression is no longer a negative obligation.⁸³ The expectations are not only to abstain from interfering in the rights but also to be guaranteed effectively. The Court has emphasised the equal dignity of all human beings and declared *Erbakan v Turkey* and *Feret v Belgique* that:

“As a matter of principle, it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression that spread, incite, promote, or justify hatred based on tolerance.”⁸⁴

In the case of *Aksu v Turkey*, where the book “Gypsies of Turkey” in which certain remarks were made about gypsies, the Grand Chamber of the ECtHR stated:

“In particular, any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group’s sense of identity and the feelings of self-worth and self-confidence of members of the group. In this sense, it can be seen as affecting the private life of members of the group.”⁸⁵

The Court has, therefore, granted a “margin of appreciation” for assigning the responsibility of curbing the misuse of freedom of expression. In addition, the Court has also directed the states to act proactively, considering the positive obligation of freedom of expression by protecting it from abuse.

Findings

Comparison of Islamic model with Article 10 of ECHR

According to Islamic law, freedom of expression is a fundamental right for two primary purposes: exploring the truth and promoting the dignity of human beings, both Muslims and non-Muslims living in any state. The Council of the International Islamic Fiqh Academy defined freedom of expression as the ability of a person to express what he sees as suitable for the full enjoyment of his liberties, and this right is protected under the provisions of Sharia law.⁸⁶ Moreover, the notion of freedom of expression in Islam extends to the privileges a person can freely enjoy through his opinion and its announcement without depending on others.

Similarly, freedom of expression in international or European instruments has been defined as a fundamental right of everyone to have freedom of opinion and expression without interference, regardless of frontiers⁸⁷. From the definitions of freedom of expression in Islamic law and European law, one cannot differentiate between the two. Both definitions declare that freedom of expression is a fundamental right and grant liberties to every human

⁸³ Supra note 143.

⁸⁴ *Erbakan v Turkey* (App No. 59405/00) 2006 ECtHR; *Feret v. Belgique* (App No. 15615/07) 2009 ECtHR.

⁸⁵ *Aksu* (2013) 56 EHRR.4:

⁸⁶ Supra note 66

⁸⁷ Supra note 128

regardless of religion, culture, caste or nationality. Therefore, Islam and the West have the same standards of freedom of expression in terms of its definition.

The next step in this comparison is the limitations imposed by Islam and ECHR. Islam restricts freedom of expression in those circumstances when the peace of the society is in danger.⁸⁸ The famous principle of Hisbah, described in the Quran in many verses, commands expressing in the best of manners in their speech and action and restraining from evil speech and acts which cause grief for the other members of the society⁸⁹ Islamic law restricts expressions that violate fundamental rights such as life, religion, property, thought, conscience, and liberty to provide a peaceful atmosphere in society.

Likewise, both the international instruments and the European Convention stress the duties and responsibilities carried with this freedom, which are necessary in a democratic society to prevent crimes or disorder, protect health or morals, and protect the reputation or rights of others. The principle of Hisbah is precisely what Article 10 of ECHR states in the limitations of freedom of expression. If one notes, all those restrictions imposed by Article 10 are for the serenity and the protection of society. The ‘promotion of good’ and ‘forbidding evil’ in the Hisbah points towards preventing crimes or disorder, protecting health and morals, and protecting the reputation of the rights of others, which is for the smooth running of the democratic society. This aim can be achieved by restricting hate speech to protect the reputation and rights of others. The ECtHR has referred to hate speech in the light of the definition given by the Committee of Ministers of the Council of Europe, which includes restriction of expression which spreads, incites, promotes or justifies racial hatred, intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.⁹⁰ The replicates the Islamic principle of Hisbah and the restrictions imposed by Islam. Therefore, it is concluded that Article 10 of ECHR and the Hisbah principle of Islam are identical and serve the same purpose of a calm and peaceful society. Dozens of cases promulgated by the ECtHR have advocated the concept that the right to freedom of expression is the rule, and its limitations are the expectations.⁹¹ The Court, following this approach, made many decisions granting the states margin of appreciation, especially in those cases where hate speech made against a tense social or political backdrop....in an immediate or more comprehensive context constituting either a direct or indirect call to or justification of violence, hatred or intolerance,sweeping statements attacking or casting in a hostile light entire ethnic, religious or other groups. If, on the other hand....an utterance above all criticises the government or its policies, interference can not easily be justified. The last factor it mentions is the ‘manner in which the statements were made and their capacity – direct or indirect – to lead to harmful consequences which have been utilised by the states freely.’⁹²

Islam propagates the same views as adopted by the ECHR and the ECtHR, where disturbing the peace of the community has been restricted. Still, on the other hand, the revolt against the dictatorial and tyrant government was promoted. Therefore, the principles of freedom of expression and its limitations are identical in Islam and ECHR. The question thus arises: where has the idea of suppression of rights in Islam emerged from the media and the policies of the Western governments who portray Islam as a religion of suppression?

⁸⁸ Supra note 88

⁸⁹ Supra note 89

⁹⁰ Supra note 139

⁹¹ Supra note 141

⁹² Supra note 145.

Therefore, the research question’s findings are affirmative that freedom of expression in Islam is compatible with Article 10 of ECHR.

Conclusion

The literature has found that the origin of fundamental rights can be traced from the works of European writers of the 17th and 18th centuries, such as Locke and Rousseau, who discussed natural law. However, Western Jurisprudence, especially the Blackstones, does not mention freedom of speech in the discussion of personal liberties, and the passage of freedom of the press has been discussed in the section on wrongs and libel. The closest mention of freedom of speech is in the ‘Right of Persons’, discussing the context of seeking the right to petition the king or House of Parliament to redress grievances. Furthermore, in his classic study of the constitution, Dicey acknowledged that English law took little of such concepts as ‘freedom of speech’ and ‘liberty of the press’.

Contrary to this, Islam has had fundamental values of freedom of speech since its inception over 1400 years ago. The concept of Hisbah, as discussed above, is a famous principle of the Quran, and dozens of Hadiths preach unlimited freedom of speech, spreading harmony and peace among society. Islamic scholars have classed six rights essential to becoming a true Muslim: life, religion, intellect, property, lineage, and dignity through freedom of expression. It has been declared that these rights must be protected at all costs, as society cannot afford to be in danger of collapse.

It can, therefore, be concluded that up until the 17th and 18th centuries, the West was not a champion of freedom of expression, as argued by David and Mawdudi. It is fair to say that absolute freedom of expression became evident by the famous declaration of the UDHR. The principles of Article 10 of ECHR are very similar to the Islamic model of freedom of expression, as discussed above. Article 10 of ECHR restricts freedom of expression on the same grounds as Islam in the Hisbah principle. Therefore, freedom of expression, the definition, its application and its limitation, both in Islam and ECHR, are identical and compatible with each other as stated by Montgomery-Watt⁹³ that freedom in Islam and that of its western counterpart, there are some of the differences but concluded that “despite such points, however, it seems likely that there is a combination of ideas somewhere in Islamic thought, which performs much the same function as the concept of freedom does in the West”.⁹³

⁹³ Watt, W. Montgomery. "Islamic political thought." (1968), p. 97.