

Notions of Freedom of Expression and Religion in contemporary world: A Critical Analysis

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Abstract:

Some religions such as Christianity or Islamic organizations and commentators who are embracing both the freedom of expression and the freedom of religion both at the same time taking away this same rights from other individual by displaying discrimination and violent actions, because some laws made are conflicting to their rights. Those this mean the rights of the opposite party should be taken away to please the majority party which is most of the time the people without religion. People contradict some of the foundation upon which the freedom to religion Freedom of expression and religion are based on. For example, there are up rising controversies which continue to become a major issue on the same sex marriages and if they should be provided with the same goods and services as opposite sex marriage. The right to freedom of religion or expression, contradicts other human rights such as freedom of assembly and can become negative and affect individuals such as hate speeches.

Key words: *Freedom of Religion, Freedom of expression, Hate speech.*

Introduction

The European Court of Human Rights held that Turkey abused a writer's rights to freedom when it neglected to end his pre-trial confinement following a Constitutional Court's decision finding that this measure was unlawful. The candidate had been working for the daily paper Zaman which was shut around a law issued under highly sensitive situation on July 27, 2016. He was captured and put in guardianship on doubt of being an individual from the psychological oppressor association FETÖ/PDY "Gülenist Terror Organization/Parallel State Structure" and along these lines put in pre-trial confinement on the ground that the articles distributed by him in Zaman advanced this fear based oppressor association. The

Court contemplated that the candidate's pre-trial confinement was a serious measure that could not be viewed as an important and proportionate obstruction in a democratic society and concurred with the Constitutional Court that so far as his detainment did not depend on any solid proof other than his articles, it could have chillingly affected freedom of expression and of the press. (Barendt, 2012) There has been global violation of one's human rights, when a country violates the rights of a citizen of another country, for example the case of Sahin v turkey. It said that "the presence of an "open crisis undermining the life of the country" must not fill in as an appearance for constraining opportunity of political level headed discussion, which is at the very centre of the ideas of a democratic society. (Evans, 2010)

One of the most treasured right upheld to any citizen of any country and are unique rights that should be respected and unchanged in any treaty, article or convention. As this article critically evaluates the concept of freedom of expression and religion and the foundation upon which the two rights stand. When talking about the contemporary world we come to the Article 10 of the Human Rights Act 1998. Article 10 is about the freedom of expression and hence allows people to hold opinions and to express themselves along with being able to talk about their own views of certain opinions without the interfering of public authorities despite the frontiers. Due to the concerns of territorial integrity, public safety and morality, this article hold some very important duties and responsibilities alongside which concern to subjects like restrictions in certain areas formalities and penalties that are prescribed by the law and very important to uphold. This Article covers areas of political expression which allows peaceful protests and demonstrations, artistic expressions and commercial expressions that raise important platforms for the ability to have legitimate public concern and forms of various debates. Article 10 though is limited in certain circumstances and these various circumstances include limitations that must be covered by the legal rights and have to be necessary and proportionate. (Fitzpatrick v Sterling , 2001)

Article 10 of the Human Rights which Cleary portrays the protection of our freedom of expression. Article 10, Freedom of Expression of the Human Rights Act 1998, which is a qualified right and United Nations 1948 Universal Declaration of Human Rights which holds Article 19, one of the most recognized rights supports freedom of expression, states all

human beings have the privilege of free expression regardless of color, race, ethnic culture and religious background. This privilege incorporates flexibility to hold suppositions or belief and to get and give data and thoughts without obstruction by open specialist and paying little respect to outskirts, keep in mind that the whole notion and objective of human rights and of any right set out in a declaration, treaties, constitution and laws are all based on centuries of experience (war), debates, philosophical discussions on theories and upon this factors is what freedom of expression was created and based on. (Gilani S. R., 2014) Freedom of expression ensures the privilege to pass information to other individuals and to get information that other individuals need to provide for you are not denied in anyway, it additionally ensures the privilege to hold and express conclusions and thoughts. It is prohibited for a public authority to act in a way which is inconsistent with a "convention Right". A person who guarantees that a public authority has acted or proposes to act in a way which is unlawful under the Human Rights Act 1998 may, on the off chance that he or she is or would be a casualty of the unlawful demonstration either brings proceedings in any appropriate court or tribunal against the authority under the Human Rights Act 1998 or rely on the Convention right concerned in any legal proceedings. The right to expression is broad and spreads out to various aspect of a life for example freedom of speech and can include a citizen having the ability to express their views involving the laws of your countries as a citizen. In Europe, citizens can submit Complaints to the European Commission, describing how exactly the national authorities have infringed the union law and what law it is. (Gilani S. R., 2021)

The battle for religious privilege has been progressing for over thousands of years now. however, the production of a legal global human rights commitments to characterize and ensure this right did not happen until the adoption of the 1948 "Universal Declaration of Human Rights, which states in Article 18: "Everyone has the right to freedom of thought, conscience and religion. The Universal Declaration was made in light of the abhorrence of the Holocaust in World War II." (Fitzpatrick v Sterling , 2001) Prior to the Holocaust, majority of people argued that human rights were a domestic concern, to be observed and authorized by the legislature of every nation. This view advanced as the world began to be more educated of the extent of the cruelty of a world without freedom of religion, leading to the development for globally protected human rights

that were all universal and basic. Freedom of religion is a rule that supports the flexibility of an individual or group, in public or private, to show religion or confidence in educating, practice, love, and recognition without government impact or intercession. It likewise incorporates the flexibility to change one's religion or conviction.

“There are similar laws which support freedom of religion. The primary sources of law supporting the order of the Special Rapporteur on freedom of religion or conviction are article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which constitute the basic building blocks of freedom of religion and were inevitably shaped by the issues which faced the original drafters.” (Kapai, 2009)

In the early debates, prominent areas of conflict were protection from an explicit right to change religion, for example, different Islamic nations, and questions about proselytism as a subordinate to one side to hone a religion, and, most notably, ideological restrictions from various socialist nations to the assertion of a person's privileges over the interest of the state. Some other issues that have misplaced concern that the open practice of Islam is a proxy for extremism (eminently France and Switzerland) to respond against conventional Muslim recognition, for example, the wearing of religious headwear in state schools, depending on the obligation of neutrality of the states in the instruction and (on account of Switzerland) denying religious headwear as a religious headwear. A comparable issue takes on a different level in Turkey, where secular values are more broadly implemented. Fears about radicalism, combined with a misunderstanding of Islam's requirements, have resulted in a widespread failure on the part of many European nations to recognize the value of clear religious practice and observance to Muslims. The treaties, conventions, and so on have done much to address this by not only establishing prohibitions banning such actions on individuals, but also by offering a thorough description of many sorts of expressions of religion or belief.. (Shah Gilani, 2021)

The freedom of expression is decreased by conceivable limitations under a few universal guidelines. Additionally, opportunity of articulation and its globally acknowledged confinements can be twisted by government activities through propaganda, control of the media and different measures aimed for limiting the press, e.g. licensing requirements, economic measures or limitations on access to information. The right to freedom of expression has caused a considerable group of case-law, in which both the right itself also its confinements have been additionally characterized. The Human Rights Committee has managed numerous cases managing the right to freedom of expression. It has, for example, found that detaining an exchange pioneer for supporting a strike and sentencing an administration risk to send in troops disregarded his entitlement to opportunity of articulation (*Sohn v. Republic of Korea*), however sentencing a man under a law that criminalized challenging the presence of the Holocaust served an authentic point (*Faurisson v. France*). (Nickel, 2019) For another case, the Committee discovered unacceptable grievance charging an infringement where the scattering of anti-Semitic messages through recorded phone messages were denied. The protestation was discovered prohibited as despise discourse was unmistakably contradictory with the rights ensured in the Covenant (*J.R.T. furthermore, the W.G. Gathering v. Canada*). The Committee has expressed that business articulation, for example, outside publicizing, is secured by opportunity of articulation (see, e.g., *Ballantyne et al. v. Canada*) and that the privilege to get data was disregarded when a columnist was denied full access for no uncovered motivation to parliamentary press offices in his nation (*Gauthier v. Canada*). (Dmitry, 2014)

The previous European commission and the court has experienced many cases opposing the freedom of expression and majority of this cases involve journalists to freedom of expression. In the cases of *Jerslid v Denmark*, the Danish government sentenced a journalist for spreading information on his perspective of others on TV. It was found by the court that privilege to freedom of expression of the defendant was key for the security of the rights and infamy of others as the inventor had made the racist perception as a group of public worries and noted that they were anti-social. In the case of the *Austrian Journalist*, he was found guilty for defamation in a domestic court. The court concluded that politicians and senior ministers were more likely to face more grounded open reactions than private civilians for example, *Oberschlick V. Austria*. (Gilani S. R.,

2014) It was also found by the court that a writer who was accused of leaking information on an unlawful association, thus violating the privilege of freedom of expression. The article was never really scattered (Halis V.Turkey). In another situation, it was found by the court that indicting a guard device for slander for emphatically rebuking an open prosecutor's decision not to charge a potential defendant who would testify against her client and disregarding her entitlement to opportunity of articulation (Nikula V.Finland). (Dmitry, 2014)

In the case of Kudeshkina V Russia, the court of law found that there was a violation adaptability of articulation because of the inventor's dismissal from the legal sector after having made astonishing claims to the media about higher legal authorities. The court also discovered that the state who restrained the infrastructure on communication consists of an obstruction with the right of freedom of expression, an example would include the case of Information's verein Lentia Etal v. Austria ECHR 1 Dec 1993, It was also found out that the restrictions to rights of expression to open representatives for example, the case of Ahmed et al V The United Kingdom. (Dmitry, 2014)

The court also discovered that the Austrian courts had caused infringement to the citizens' rights, their advantage of increase by issuing a directive on an organisation denying it from its deal cost with that of an opponent without likewise specifying contrasts in the presenting styles, for example the case of Krone Verlag GmbH and Co KGB V. Austria (no.3). In the case of Otto-Preminger-Institute V. Austria, when it came about a film which was controversial towards Christian convictions, the court saw to it, that the film be banned. (Fitzpatrick v Sterling , 2001)

In the case of David Miranda, he was helping his work partner journalist Glenn Greenwald who was writing several stories of Snowden surveillance revelations for The Guardian and David was interrogated in Heathrow Airport in August 2013 under Schedule 7 which a "breathtakingly broad power" that let immigration, customs or even the police to detain and question a certain individual without the need for suspicion towards the person. Liberty had intervened in David Miranda's legal case but in 2016 the Court of Appeal had ruled the incompatibility of Article 10 with Schedule & since it didn't have adequate journalist protections. Freedom of Expression is a fundamental human right that is very necessary for the society. In the case of Reynolds v Time Newspaper

(1999) the former Prime Minister of Ireland Albert Reynolds who handed his resignation in 1994 had an article published against him in the Times newspaper that implied certain facts which led the people to believe that the former Prime Minister has misled the Irish Parliament by not providing certain vital information to the parliament. The former Prime Minister Albert had claimed that the serious allegations toward him was not true and claimed that it was defamatory but unfortunately The Time defended themselves by claiming their feature “qualified privilege” that meant that they could make accusations without full proof and that they were allowed the publish the allegations. The House of Lords ruled in the journalists’ favour, finding that “freedom to disseminate and receive information on political matters is essential to the proper functioning of the system of parliamentary democracy cherished in this country.

Sometimes the article of the Human Rights Act 1998 contradicts each other and Article 9 which allows the freedom of religion, thought and conscience. This article allows the freedom to change from one religion to another religion or belief. It allows the freedom to exercise religion and beliefs alone, privately or even publicly and this also lets one to exercise their act of worshiping teaching, practicing and observing. Not only are people allowed pursuing their religious activities, people have the right to have no religion or religious values. They are allowed to practice their non-religious beliefs such as veganism and pacifism. Church is not mandatory for all citizens and participation for its activities or the tax is required to be paid by the people. While maintaining a firm hand at neutrality the State maintains all religions and non-religions while encouraging tolerance towards all of the beliefs. When one has to comply with his or her religious obligations, the right to manifest and exercise upon one’s religious belief will not have been considered to be interfered with unless they have a choice meaning that if it was difficult or almost impossible to exercise the religion or belief there will be interference. Despite the freedom that this article allows there are limitations to it if its prescribed by the law and has to be necessary and proportionate that holds the interests of public safety, public orders, health and rights and freedoms of others. The importance of religion conscious and thought is very widely emphasized in section 13 of Human Rights Act. Nadia Eweida who worked for the British Airways was discriminated because of the fact that she was wearing a cross that breached the airline’s uniform and the cases was taken to The European Court where it was ruled out that the action

that the British Airways took breached the Human Rights Article 9 and Article 14 of the European Convention on Human Rights.

“The Court considers that the refusal by British Airways between September 2006 and February 2007 to allow the applicant to remain in her post while visibly wearing a cross amounted to an interference with her right to manifest her religion ... a fair balance was not struck ... this is a fundamental right: because a healthy democratic society needs to tolerate and sustain pluralism and diversity; but also because of the value to an individual who has made religion a central tenet of his or her life to be able to communicate that belief to others.” was said by Today’s judgement. (Dmitry, 2014)

Politically challenging and complex relationships between hate speech, freedom of expression and freedom of religion and beliefs is known to have an adverse effect on the society. It is a fact that freedom of expression and freedom of religion conflict sometimes and in most cases intimately held religious belief are offended by forms of extreme speech. Starting from the burning of holy Koran to beliefs of Christianity and Judaism show that a conflict exists. Cases have been taken to ECtHR and through the United Nations have caused controversial approaches that tend to las out a violent reaction from different religious groups towards each other. Freedom of expression that is set out in Article 19 of ICCPR and Article 10 of ECHR both state very clearly that freedom of expression also has some limitations to it and has certain special duties and responsibilities. These very limitations are permitted in special duties along with responsibilities and hence it can be said freedom of speech does not give one the right to cause defamation nor the insult a certain religious belief and violence is still out of question. Be it manifestations or expressions, the ground that limit the basis of religion or belief are carefully prescribed by the law and hence ensure the necessity to protect the individual and religious right. (Thompson, 2012) The framework of international human rights makes sure it distinguishes offensive speech towards religion and race while ensuring that criticizing that very religion might cause a public debate towards racial and ethnic group which is unacceptable. In the United Kingdom the Racial and Religious Hatred Act specifically make it an offence for “threatening words or behavior, or display any written material which is threatening, if he intends thereby to

stir up religious hatred”. Which ensures that it protects the believers rather than the beliefs itself? Freedom of expression and freedom of religion do not co-exist in harmony in the society. There have been many cases in which religion and freedom of expression has conflicted and caused the lives of people. (Barendt, 2012) The blasphemous 1988 novel *The Satanic Verses* by British- Indian author Salman Rushdie caused enough problems to get Iran’s Ayatollah Khomeini to convince Muslims to assassinate the publisher and people associated with the book. In this heinous period of time a certain Japanese translator who translated the book was killed and the publisher was shot and wounded. Events related to *The Jewel of Medina*, the caricatures of Prophet Muhammad (PBUH), *Gay News* magazine publishing sexual contents related to Jesus Christ have surfaced in the year causing riot and protests which led to only chaos in the society.

Conclusion

It has been known that freedom of expression and freedom of religion cannot coincide properly amongst society without causing turmoil. Religion holds a specific place and is a sensitive topic for most people out there. The expression of hate crime is a very atrocious act in the society and it must be prevented by introducing patrol and controlling on what gets published and what does not. A mindset of harmonic existence without offending a certain religion or ethnic minority should be applied immediately. A society cannot exist unless these two features co- exist in harmony. The court should force upon such laws because this increases the rate of hate crime and murder by a higher percentile. The society gets torn apart in two different sides constantly fighting and creating more hate crime. As long as the rights of others are not factually harmed the people do not have to get involved, there will be expression of speech but enough before it offends religion or caste. There should be a certain restriction on hate crime but it should be limited enough so that all other is expressed freely except for hate crime and defamation. Topics as such become more and more prevalent. The society grows and it makes sure the destructive actions of citizens do not death threats, bomb threats or suicidal acts. Media and internet platforms should be controlled to make sure that all of it is prevented. There should be certain punishment for people creating controversial article and media outlets so that the rate of crime in these two aspects remains limited. Free speech and freedom of religion can co-exist.

The notion of Freedom of Religion and freedom of expression in the world today is still an ongoing debate. There are several countries and cases as it has been discussed in the article above, that the Universal Declarations of Human Rights and other treaties and conventions are being respected and followed efficiently in the legal system. However, there are still regions of the world today where the situation is alarming.

References

- Barendt. (2012). Freedom of expression. *The Oxford handbook of comparative constitutional law*, 1, , 891-908.
- Dmitry, K. (2014). Freedom of Expression and Freedom of Religion in Russia in comparative perspective. *Russian Law Journal*, 2(2),, 75-100.
- Evans. (2010). From cartoons to crucifixes: freedom of religion and the freedom of expression . *Journal of Law and Religion*, 26(1), 345-370.
- Fitzpatrick v Sterling , 1 AC 27 (HL(E) 2001).
- Gilani, S. R. (2014). Harassment at the workplace: A practical review of the laws in the United Kingdom and the United States of America. *Public Organization Review*, 14(1), 1-18.
- Gilani, S. R. (2021). The Historical Origins of the Proportionality Doctrine as a tool of Judicial Review: A Critical Analysis. . *Research Journal of Social Sciences and Economics Review*, 2(1),, 251-258.
- Kapai. (2009). Hanging in a Balance: Freedom of Expression and Religion. *Hum. Rts. L. Rev.*,, 15, 41.
- Nickel, J. (2019). Who needs freedom of religion. . *U. Colo. L. Rev.*, 931-941.
- Shah Gilani, S. R. (2021). Contextual Analyses of" The Doctrine of a Margin of Appreciation" in the Frameworks of the European Court of Human Rights and the British Legal System. *Journal of European Studies (02589680)*, 37(1).
- Thompson, S. (2012). Freedom of expression and hatred of religion. *Ethnicities*, 12(2),, 215-232.