

## Freedom of Expression under the Jordanian Legal System

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**Abstract:** Jordanian Constitution provides for freedom of expression and entrusts to the legislative, executive and judicial powers to ensure this right for all Jordanians. It also authorizes the legislature to regulate practicing the rights and freedoms provided that it does not affect the essence of these rights. The legislature has enacted several laws which include limitations on freedom of expression, most notably; the Penal Code of 1960, the Press and Publication Law of 1998 and Anti-Terrorism Law of 2006. This study aims to examine the freedom of expression under the Jordanian Constitution and the limitations on this freedom in the laws that mentioned. The doctrinal approach is conducted and the data is collected through legal and constitutional texts as well as the secondary sources that illustrate the contribution of other researchers in this area. This study concludes that the laws which regulate freedom of expression in Jordan have expanded the scope of limitations and the scope of protected interests. It recommends a comprehensive review of the laws governing freedom of expression and amending them in order to comply with the provisions of the Jordanian Constitution.

**Key words:** Anti-Terrorism law, constitution, freedom of expression, Jordan, the penal code, the press and publication law

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### INTRODUCTION

Freedom of expression is a fundamental pillar of the democratic system and one of the most prominent of its manifestations (Restrepo, 2013). On the other hand, it is a main requirement for the development and dignity of every person. In addition, it is closely related to the concepts of liberty, autonomy, self-determination and the improvement of human nature (Timothewos, 2010). Freedom of expression is not absolute; it should be regulated under the law so as not to conflict with the legitimate interests, whether the interest of individuals and society or with the other rights and freedom (Ruzi, 2007). Islamic Sharia and international instruments have assured freedom of expression for all people regardless of the means of expression used.

Despite the fact that Islam which is the religion of the Jordanian State guarantees freedom of expression within the limits of the legitimate rules, Jordan is a state party to the International Covenant on Civil and Political rights and Jordanian Constitution provides for freedom of expression in Article 15, however, freedom of expression in Jordan is a topical issue. This is due to the arrest and imprisonment of some people and journalists over the publication of articles, blogs, information or

comments. From the standpoint of the detainees this right is guaranteed under the Jordanian Constitution and international instruments. Whilst, from the perspective of the government authorities, it is regarded as a threat to national security (SNN, 2015). The government adopted legal provisions that include certain limitations stipulated in the Penal Code, Anti-Terrorism Law and the Press and Publication Law.

This study briefly studies freedom of expression in Islam, freedom of expression in the ICCPR 1966 and freedom of expression in the Jordanian Constitution and then examines the limitations on freedom of expression in Jordan stipulated in the Penal Code, Anti-Terrorism Law and the Press and Publication Law.

**Freedom of expression in Islam:** According to Article 2 of the Jordanian Constitution, Islam is the official religion in Jordan. Where, 92% of Jordanians are Muslims. Islam guarantees freedom of expression for everyone within the limits of non-infringement of the freedom and dignity of others or exceeds the principles of Islamic Sharia (Ibrahim, 2013). Furthermore, Islam considers freedom of expression in certain cases a necessity and a duty on Muslims where it forms the basis and fulcrum to some of the legitimate rules such as the consultation (Shura) and the promotion

of virtue and prevention of vice (Madani, 2012). Prophet Muhammad (Peace Be Upon Him) said that telling the truth to a tyrant ruler is the best kind of Jihad. Moreover, he did not only invite his companions to express their views freely but also he encouraged them to express their opinions in public affairs and special interests. The evidence for that is what happened in Badr Invasion when the Prophet PBUH changed the army site to another place based on the opinion of Hubab Ibn Al-Mundhir which was opposite the opinion of the Prophet. The Prophet PBUH praised Hubab Ibn Al-Mundhir's opinion saying Hubab's opinion is the best (Bhat, 2014). Another example can be seen in the succession of the second Caliph, Umar Ibn Al-Khattab. Umar encouraged his fellow companions to express their opinions in different occasions. He said "may Allah bless one who sends me gifts of my shortcomings". As well when a woman condemn what Umar Ibn Al-Khattab said about the Dowry (Mahr); he did not prevent her from expressing her view. However, he said that the woman is correct and Umar is mistaken.

**Freedom of expression in the ICCPR, 1966:** Freedom of expression has been clearly protected and guaranteed as a basic human right under Article 19 of the ICCPR, 1966 which was ratified by the Jordanian State in 1975. The ICCPR has ensured freedom of expression for all people regardless of their political, religious, ethnic affiliations or any other background and regardless of the means of expression used. It has also expanded the scope of this right to include the right to seek, receive and impart information and ideas. Paragraph 2 of this Article states that "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". Furthermore, freedom of expression is not restricted by national boundaries; the states are obliged to allow their citizens to receive and impart information to and from other countries using all the means of media available.

According to ICPPR 1966, practicing freedom of expression is not absolute; it must be governed by certain limitations; however these limitations must be provided by law and are necessary to protect the rights and reputations of others or for protecting public order, national security, public health and morals. Paragraph 3 of Article 19 stipulates that, "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: for respect of

the rights or reputations of others. For the protection of national security or of public order or of public health or morals". This paragraph prohibits imposing vague or excessive limitations on freedom of expression. Therefore, the laws which include limitations on freedom of expression must be formulated precise enough to enable the individuals to organize their behaviour accordingly (European Court of Human Rights, 26 April 1979). Furthermore, the interference in freedom of expression must seek to achieve a legitimate aim as thoroughly identified in Article 19 Paragraph 3 of the ICCPR (Callamard, 2008). As such, it will be prohibited to prevent the dissemination systems from publishing any material merely that it can criticize the government or the social and political system which was adopted by the government. Similarly, the restrictions imposed on the freedom of expression cannot be a pretext used by the government to protect itself from the accountability and detecting its mistakes or to hide information about the functioning of governmental institutions (FWC, 2013).

In addition, Article 20 Paragraph 2 of the ICCPR imposes one distinct positive duty upon states. It asserts that any acts or sayings that constitute incitement to hostility, discrimination or violence, such as advocacy to religious racial and national hatred or propaganda for war must be banned by law (Grossman, 2000).

**Freedom of expression in the Jordanian constitution:** Jordanian Constitution assures the Jordanians' rights and freedoms in Chapter 2 (Articles 5-23) which is titled "Rights and Duties of Jordanians". In Article 15, the Jordanian Constitution provides for freedom of opinion and expression. It stipulates that: "The state shall guarantee freedom of opinion. Every Jordanian shall be free to express his opinion by speech, in writing or by means of photographic representation and other forms of expression, providing that such does not violate the law. The state shall guarantee freedom of scientific research. It shall also guarantee the freedom of literary, artistic and cultural creativity if not contrary to public order and public morals. Freedom of the press, publications and mass media shall be ensured within the limits of the law". Newspaper shall not be suspended from publication nor shall their permits be revoked except by a judicial order in accordance with the provisions of the law.

In the event of the declaration of martial law or a state of emergency, a limited censorship on news studies, publications, books, broadcasts and other means of communication in matters affecting public safety and national defense may be imposed by law.

Paragraph 1 guarantees freedom of opinion for all Jordanians within the limits of the laws where every Jordanian has the right to express his opinion freely using all the means of expression available. Freedom of scientific research, freedom of artistic, literary and cultural creativity which are of the manifestations of freedom of expression, are also guaranteed in accordance with Paragraph 2 provided that they do not conflict with the public order and morality. While Paragraph 3 ensures freedom of the press and media. According to Paragraph 4, news study or media must not be suspended or cancel its license except by judicial order and in accordance with the provisions of the law. Moreover, the Jordanian Constitution in Paragraph 5 does not permit to impose prior censorship on the press and media, except for the case of declaring martial law or emergency. This prior censorship should be limited and in the matters which affecting the national defense and public safety.

Freedom of expression in accordance with Article 15 of the Jordanian Constitution is not absolute; it can be limited under the laws. This study contains some terms that allow restricting freedom of expression such as: "provided that such does not violate the law, not contrary to public order and public morals". However, Article 128 of the constitution does not give the legislature absolute power to restrict the rights and freedoms; it stipulates that the laws which are enacted in accordance with the constitution to regulate the rights and freedoms must not impact the essence of such rights or affect their fundamental.

The Jordanian Constitution authorizes the legislature to regulate the rights and freedoms with a view to achieving a balance between the conflicting interests. Whereas, exercising freedom of expression without any limitations may conflict with the highest interests of the community or with the other rights such as the right to save honor and reputation and the right to privacy (Callamard, 2008). On the other hand, the constitution has restricted the legislature when enacting laws to regulate the rights and freedom so as not to abuse the granted power by the constitution or exceed the borders of the regulation to the violation of the rights and freedom or emptying them of their content (Mohammad, 2010). Therefore, Article 128 of the Constitution considered as the framework that must not be exceeded by the legislature when regulating the rights and freedoms. Moreover; this study is also the basis for invalidating the laws affecting the essence of the rights and freedoms based on the principle of Supremacy of the constitution.

In this sense, Jordanian Constitution has guaranteed freedom of expression for all Jordanian within the limits of

the laws and obliges the state authorities in all its constitutional institutions to ensure this right. However, guaranteeing freedom of expression by the state does not only mean allowing individuals to express their views freely within the borders of the law; it should take a positive attitude which represented in removing all the obstacles that prevent Jordanians from expressing their opinion. Furthermore, it should encourage them to express their opinion freely (Mohammad, 2010).

### **LIMITATIONS ON FREEDOM OF EXPRESSION UNDER THE JORDANIAN LAWS**

Pursuant to the provisions of the Jordanian Constitution, The legislature has enacted several laws include limitations on freedom of expression, most notably; the Penal Code of 1960, the Press and Publication Law of 1998 and Anti-Terrorism Law of 2006.

**Limitations in the penal code:** The penal code is the legal rules which authorize the state authorities to punish for acts that undermine the fundamental interests of the state and individuals that deserve legal protection. It includes provisions defining criminal acts and the penalties for the perpetration of those crimes (Mahmoud, 1989).

The Jordanian Penal Code includes limitations on freedom of expression; these limitations are supposed to aim protecting the higher interests of the state as well as the rights and freedoms of Jordanians (Thoraya, 2015). Article 118 penalizes anyone who subjected the Kingdom of Jordan to the risk of hostile acts or disturbed its relationship with other countries or subjected Jordanians to the acts of reprisals against them or their property through using acts or writing or speeches unauthorized by the government. In addition, Article 130 penalizes anyone who at the time of war or when the war is expected to begin, spread a propaganda that would weaken the national sentiment or incite sectarian strife or racism. Article 150 and Article 152 provide for limitations on freedom of expression in order to protect the national unity and the state financial status. Whereas Article 150 criminalizes any writing or speech that results in or aims to provoke sectarian or racial prejudices or incitement to the conflict between different sects or the elements of the nation. Whilst Article 152 punishes any person who publicizes incorrect information or false allegations in order to weaken the value of the national currency or the trust in the force of the state's currency. In Articles 161 and Article 163 Jordanian Penal Code provides for limitations on freedom of expression in order to protect the public safety. Article 161 punishes anyone who encouraged others, through writing or speaking or in any

other way to do any of the acts that are considered illegal under the Penal Code while Article 163 penalizes on the publication of anything that would support illegal groups or associations. To protect the privacy and reputation of others, the Penal Code has allocated several articles titled "Defamation, Insult and Abasement" which restrict freedom of expression. Article 195 has criminalized whoever dared to insult the King of Jordan, the Queen and the Crown Prince or one of the members of the prosecution body or one of the custodians of the throne. Whereas, Article 196 has criminalized any abasement which directs to a public official while doing their duty or as a result of carrying out their duty. In addition, it criminalizes the abasement that is directed to the judge during his duty in the judiciary. The penal code has also stated limitations on freedom of expression so as to protect the religions and family. Article 273 stipulates that any person dares to publicly scorn or revile any of the Prophets shall be penalized by imprisonment. Article 278 has punished everyone utters in a public place or publishes everything that would insult the religious feelings or religious belief of the other people. Lastly, Article 468 comes to put restrictions on the freedom of expression in order to protect public trust, public morals and public calm.

The limitations on freedom of expression that are stipulated in the Penal Code aim to protect the rights of others and their dignity, the national security, national unity, prestige of the state, public order in all its elements and to preserve the religious values and religious feeling to all individuals regardless of their religion. However, these limitations have expanded the scope of protection to include public officials during the exercise of their functions as well as the politicians and rulers without distinction between what is considered a criticism of their official performance and what is considered a personal defamation.

**Limitations in the press and publication Law:** The Press and Publication Law No. 8 of 1998 has been enacted to regulate the freedom of the press as one of the manifestations of the freedom of expression. It assures in Article 3 that the press is free and the freedom of expression is guaranteed for every Jordanian regardless of the means of expression used, either orally in writing, photography, drawing or in any other means of expression and media. Article 4 has set the framework which must not be exceeded by the press when carrying out its mission in providing news, information and comments as well as its contribution to the dissemination of culture, science and thought. These duties must be practiced within the border of the law and within the

framework of maintaining the other rights and freedoms in addition to respecting the private lives of others and their sanctity. Article 5 has provided for limitations on freedom of the press in order to maintain the principles of liberty, national responsibility, human rights and the values of Arab and Islamic nation. In addition, Article 7 has identified the principles and ethics of the profession of journalism which are binding to the journalists. These principles and ethic include:

- Respecting the public freedoms of others, safeguarding their rights and not to harm the sanctity of their own lives
- Freedom of thought, expression, opinion and access to information must be considered a right of the press and citizens alike
- Balance, objectivity and fairness in the presentation of the material press must be maintained
- Abstaining from publishing anything that would provoke violence or calls to provoke discord among citizens in any way

In restricting freedom of the press, the Press and Publications Law has used vague and loose phrases such as media ethics, the principles of freedom, national responsibility and the values of the Arab and Islamic nation. These terms and phrases could be interpreted differently depending on the circumstances and conditions. Therefore, they cannot be regarded as a legal tool to limit the media and press freedom. Furthermore, the scope of these terms is extensive and vary from time to time which making it incompatible with the stability of the legal rules.

#### **LIMITATIONS IN THE ANTI-TERRORISM LAW**

Anti-Terrorism Law in Jordan includes limitations on freedom of expression in order to protect national security. This law has been issued as a temporary law in 2006 after the terrorist explosions that took place in three hotels in Amman and led to the deaths of 57 persons. (BBCAN, 2005). It was amended in 2014 to broaden the concept of terrorism and the acts that are considered terrorist. Where the terrorism is defined by using non-specific and incomprehensible terms. The terrorist act according to Article 2 of this law is any deliberate act or any refrain from acting or any threat to do act regardless of the goals, objectives and means used that would endanger the safety and security of society or lead to sedition or disturbing the public order or intimidating people or exposing their lives to danger or jeopardize the international facilities and diplomatic missions or

occupying any of them or endanger the national resources or to compel the legitimate authority or international and regional organization to do any act or disrupts the application of the Constitution, the laws and the regulations. Furthermore, Article 3 has listed the acts that are considered in the rule as prohibited terrorist acts including:

- Any action that would jeopardize Jordan to the risk of hostile acts, disturb its relations with other countries or expose Jordanians at risk of reprisals against them or their property
- Using network in order to facilitate terrorist acts or to spread the ideas of groups that perpetrates a terrorist act or exposes Jordanians or their property at risk of hostilities
- Possessing or dealing in any way with hazardous materials or weapons for using them in terrorist acts or illegally
- The attack on the King or his freedom or the Queen or the Crown Prince or a trustee of the throne
- Any act committed with a view to provoking an armed insurgency or to change the constitution illegally
- The formation of a gang for the purpose of committing theft or encroachment on persons or money

Anti-terrorism law has broadened the scope of terrorism so that any action can be interpreted as terrorist act. It also violated the principle of “everyone is presumed innocent until proven guilty”. On the other hand, the law has included some of the provisions that regarded as a circumvention on the Jordanian constitution. The Constitution has limited the Jurisdiction of the State Security Court in five crimes including terrorism offenses. Whereas, this court is a military court to try civilians and its formation does not subject to the principle of independence of the judiciary. However, the Anti-Terrorism Law has expanded the scope of terrorist acts to include some acts unrelated to terrorism but to be incorporated under the jurisdiction of the State Security Court. For instance, there is no relationship between criticism of a foreign country through “Facebook Post” which has been considered as a terrorist act, according to Jordanian Anti-Terrorism Law and the terrorism.

### CONCLUSION

Jordanian Constitution guarantees freedom of expression for all Jordanians and entrusts to the legislative, executive and judicial powers to ensure this right. However, it allows limitations on freedom of

expression under the laws to protect the public safety, public order, public morals and national security as well as the right and freedom of others.

By reviewing the limitations on freedom of expression under the Jordanian laws, it is found that the laws have expanded the scope of limitations and the scope of protected interests at the expense of freedom of expression. Furthermore, they have adopted a strategy of ambiguity through using vague and loose terms that cannot be explained by the regular person standard.

This study recommends a comprehensive review of the laws governing freedom of expression and amending them in order to comply with the provisions of the Jordanian Constitution. Otherwise, the freedom of expression will remain merely a theoretical text in the constitution which lacks realistic application.

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