

Q: What limits, if any, should we place on the right to freedom of expression?

The right to freedom of expression, which is entitled to every citizen in this country by Article 10(1) ECHR, is one of the fundamental elements of a democratic society, the indispensable premise of critical thinking and the key to drive social changes. Although with the bearing of such significance, as the second section of the same article in the Convention outlined, it must also be restricted in order to preserve, protect or maintain a series of interests including 'national security', 'public safety', 'health and morals', etc. We must acknowledge the necessity of such restrictions as no individual or group should be allowed to use their right to freedom of expression as the justification of their violation of the interests mentioned above, and we must also prevent the government from abusing those restrictions to meet their own interests that contradict with that of the general public. In the United Kingdom, there are already a number of existing legislations in place and since they generally conform to the framework specified above, it can be reasonably inferred that they are practical and hardly need any amendments.

Restrictions on the right to freedom of expression should be designed to achieve two major objectives: protecting national security and preserving individuals' privileges, including one's privilege of not being discriminated and one's privilege of not being mentally abused. Existing laws concerning the former objective include but are not limited to the Terrorism Act 2006 and the Official Secrets Acts 1989 whilst the latter objective is addressed by the Public Order Act 1986, the Communications Act 2003, and the Equality Act 2010. To give a few examples, Terrorism Act 2006 section 2 specified that a person is guilty if he either 'directly or indirectly encourage the commission, preparation or instigation of acts of terrorism', or if he 'distributes terrorist publications' via any manner. Meanwhile, Public Order Act 1986 section 4 prohibits the use of 'threatening, abusive or insulting' words or visual representations 'with the intent to cause another to fear immediate violence'. Furthermore, section 18 and 29B restricts the use of similar expressions but 'with the intent to stir up or potentially stir up racial hatred, religious hatred, or

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hatred on the grounds of sexual orientation'. Besides, the entire chapter 2 of the Equality Act is dedicated to protecting individuals and groups from discriminations based on the list of 'protected characteristics', which includes 'age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation'. All of the enacted legislations mentioned above strive to establish a society free of violence and discrimination and have been proved practical in numerous cases. For example, in *Norwood v UK* [Application No.23131/03, 2005 40 E.H.R.R SE11], having placed a poster on his apartment window which called for the removal of Muslims in the United Kingdom, Norwood was charged for an offence under section 5 of the Public Order Act. Although Norwood attempted to claim that his actions are under the protection of the European Convention of Human Rights section 10 which granted him the right to freedom of expression, the poster was perceived as a malicious attack on the rights and privileges of all Muslims in the country and his appeal came to a fruitless but rightful end.

However, it could also be argued that some of the enacted laws mentioned above, namely the Public Order Act 1986, the Official Secrets Act 1989 and the Equality Act 2010 have extensively restricted and could potentially undermine the right to freedom of expression. The intention of verbal conducts is open to various interpretations as different people react to the same expression differently due to their distinctive individual characters and experiences. Legislating against verbal expressions that are 'insulting' and that can 'potentially provoke violence' or 'potentially stir up racial hatred' would encourage ordinary citizens to deduce that any verbal conducts they receive and that they deem to be offensive or insulting would have been uttered with malicious intentions. Nonetheless, any subjective argument or expression, sometimes even objective ones, would inevitably bear the trait of being offensive and potentially insulting to a certain group of people in our society. Moreover, Law-enforcement departments such as the police could also hold individuals who they deem have violated the legislations mentioned above in custody and exercise certain punishments on them, such as the confiscation of properties, even if they could have misinterpreted their intentions. A prominent example could be *Harvey v*

DPP [2011] EWHC 3992, where Denzel Harvey was arrested for continuously swearing in front of a police officer. Although the court later ruled that the 'f' word Harvey used doesn't conform to the category of 'threatening, abusive and insulting' language, the fact that police officers are allowed to exercise legal power on such trivial cases indicates a serious potential challenge against the right to freedom of expression, not to mention that similar incidents took place frequently in the past two decades, ranging from the prosecution of a 15-year-old teenager who held a sign saying 'Scientology is a dangerous cult' in 2008 to the apprehension of climate change demonstrators in 2021, both of which were supported by the Public Order Act 1986. Such consequences would severely undermine the right to freedom of expression as they act as a firm deterrence against any verbal conducts that could potentially violate the law. In addition, legislations against the right to freedom of expression could also help generate the fear of them being extensively used by the government to achieve their own ends. In R v Shayler [2002] UKHL 11, former secret service officer David Shayler, having revealed classified documents to the press, was charged for violating section 1 and 4 of the Official Secrets Act 1989 even though he claimed that the revelation of those documents is in the public's best interest. This is a leading example where the adjudication aligns itself with the interest of national security instead of the interest of the general public, which could pose a major threat to the future preservation of human rights.

Nevertheless, in terms of misinterpretations of intentions, it is apparent that the specified consequences were not triggered by the legislations themselves but by the mis-execution of those legislations, such as the abusive use of power by police officers. Although it is unquestionable that legislations should be amended constantly as our society develops, it doesn't mean that issues on the other side of the legal system shouldn't be addressed or controversial legislations should be abolished and serve no significance. Moreover, we mustn't overlook the effects brought by the adjudications of the cases mentioned above, such as the acquittal of Denzel Harvey. It is an explicit message which underscores the impartiality of a separated legal system from other branches of the government which could be trusted on

interpreting the intentions of verbal conducts accordingly and correctly. On the other hand, in response to Shayler's case in 2002, the number of exposed documents, which was 29, and the levels at which they are classified were so extensive that its revelation to the public would have jeopardized United Kingdom's international position and posed a serious threat to the stability of the society, and hence the reason why the corresponding adjudication is justified. Besides, even if it is true that Shayler's actions wouldn't induce such consequences, it can be argued that this potentially unfair trial is a result of the interweaving branches of the UK government at that time before substantial reforms were enforced in the following years. With the removal of the Lord Chancellor's title as the judge and head of the judiciary of England and Wales, the establishment of the United Kingdom Supreme Court separated from the House of Lords, and the installation of the Judicial Appointments and Conduct Ombudsman, all of which were brought about by the Constitutional Reform Act 2005, an independent and more efficient legal system is created as it ensured the preservation of the right to freedom of expression and the prevention of the government's extensive use of power in the future.

Ultimately, even though it is true that current legislations are controversial and imperfect, their necessity is beyond doubt as the extensive use of expressions can lead to severe consequences and together with a separated, checked legal system they can be trusted to effectively protect individuals, groups and the nation as a whole from a range of threats and attacks. However, as our society diversifies with the emergence of new ideas and beliefs, those legislations must also be amended constantly and accordingly to carefully safeguard and foster the advancement of mankind.

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