

**Right to Freedom of Expression and Social Governance: Legitimizing Centrality of Foundational Principles and Ensuring Social Stability**

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**Abstract**

This paper focuses on how the modern westernized thrust of having limitless right to freedom of expression disregard of the theological and social context mars social and economic stability, making social governance a difficult task. The research sets to explore that Sharia-based social governance system expostulates all these limits, duties, rights and responsibilities interpreted in the light of the new social governance with a western supported utilitarian ethical argument posited by Mill, presenting an individualistic framework having moral responsibility of the governance system to protect individual rights and social theological centrality of the social figures with the purpose of theological and social legitimacy to bring stability. This research sets out to prove the superiority of the Sharia-based governance system with the moral value of protecting right to freedom of expression and centrality of the theo-social figures to ensure stability. However, there is yet room for further research into the measurability of instability caused by the free speech targeting current theo-social figures and impacts on the legal injunctions linked to freedom of expression.

**Keyword:** Right to freedom of expression, social governance, legitimacy, centrality of social figures, theological figures, legitimacy tools

**Introduction**

Writing succinctly, Mill states that all governments “attempt to control the expression opinion” of the public by “coercion” or otherwise despite the fact that “The best government has no more title to it than the worst.”<sup>1</sup> Interestingly, this freedom has rather assumed the shape of a type of freedom enshrined in the democratic constitutions of all the states across the globe. Yet, it has not won as much popularity in its enforcement as other civil liberties have on account of the political debates it has garnered due to its manipulation in the arena of the international arena. Mills would have thought little that the western hegemony would be using this right to their own ends. And more so, in the case of Muslim societies where theological debates do not

allow full freedom of expression. A US judge's comments come in handy when he states that it is "perfectly logical" yet his comment to "sweep away all the opposition" points to the limits on the power of the arguments.<sup>2</sup> Despite having commented by western political commentators such as Ulla Carlsson<sup>3</sup> discusses limits and differences between hate speech or provocative utterances,<sup>4</sup> Michel Verpeaux debates limits on it with its different categories,<sup>5</sup> or Scalan states that these limits are counted as "canons of rationality"<sup>6</sup> and several others use this freedom as an assertion of the western democratic values. Yet, the same judge also terms this right to have freedom as "irrational" at certain points and mentioned those points.<sup>7</sup> When it comes to Islamic societies and the amalgamation of *Sharia* within western democratic values, it invites criticism from the West disregard of the context. It is, thus, imperative to review the western concept and how it limits other societies, specific Islamic or Sharia-based government structures, to curb full freedom of expression.

### **Western Concept of Freedom of Expression and Its Elemental Components**

Although J. S. Mill is touted as the first western thinker to have clarified the concept of freedom of expression in his phenomenal book, *On Liberty and Other Essays*,<sup>8</sup> it is not without the mention of the government and its control over this expression. However, the thrust of his main argument is on government control<sup>9</sup> and not on the full public expression and its provocative impacts, though, he accepts its "pernicious consequences"<sup>10</sup> associating them with "the immorality and impiety of an opinion,"<sup>11</sup> which is what the western criticism of the eastern societies, specifically, the Islamic ones, ignore. However, his elemental components of this freedom comprise a certain amount of truth. He clarifies the critics who argue to enforce some conditions such as temperate behavior to allow it.<sup>12</sup> His argument of the first, second, third, and fourth grounds with full truth, some truth, little truth, and some relevant truth respectively shows that he has touched on this topic distinctly to draw out a conclusion about its pernicious consequences.<sup>13</sup> Although Mill discusses what he states as "true expressions"<sup>14</sup>. Mark Philip and Frederick Rosen comment, saying it has progressed from his concept of the liberty of conscience to "liberty of expression"<sup>15</sup> which is not subjected to most of the limits arising out of the situations. Skorupski also comments on this right of the people as having no legal restrictions.<sup>16</sup> It invites serious considerations about dialogue, truth, the search for truth, and justifications of conversation.<sup>17</sup> Gradually, this criticism of his concept takes the shape of its elemental components.

Although Mill, too, has pointed out limits to “the legitimate interference of collective opinion,” the concept of his collective opinion is somewhat hazy and ambiguous.<sup>18</sup> Therefore, he has demanded where to place “the limit” and answers that this is to be done through “the operation of law.”<sup>19</sup> Although he discusses social conventions and limitations on human affairs and points out “multifarious causes” that impact opinion and hence freedom of expression, he has not stated the components of elements of this right<sup>20</sup> so that they could be brought under the ambit of the law. The general agreement, however, exists about the government regulations but still the limits of this immunity, too, have not been delineated to curb some of the components, leaving integral ones.<sup>21</sup> Although Harry Wellington, a US legal guru, has categorized the right and general immunity, his main contention lies between individual autonomy and expression or freedom of expression and their political implications. His reference to the proper limits of “expression’s immunity,” however, leads to such elements<sup>22</sup> that could point out how western political processes have brought this right under the ambit of law through elemental curbing yet he turns to majoritarianism and the American democratic system, commenting upon its viability<sup>23</sup> in a contextual setting. Another American scholar, Joshua Cohan, too, has commented upon it through the preview of different regulations that it should not intend to insult, or stigmatize on the basis of “sex, race, color, handicap, religion, sexual orientation, or national and ethnic origin” with the limit on direct address, insulting comments and visceral hatred.<sup>24</sup> Yet, Larry Alexander’s comments about its existence in international law merit consideration when he says that when it has been given in Article 19 of the International Covenant on Civil and Political Rights, it means that it must be defined by the nations themselves and after that, it becomes binding upon them.<sup>25</sup> Yet, he states that it is “not a timeless moral right that preexists the international legal instruments.”<sup>26</sup> However, European Conventions on Human Rights has defined these elements setting them apart from other covenants applied in the international context. Bora Erdem has stated that although it is interconnected with several other freedoms, it has three main components; freedom to have “information, opinion, and declaration of ideas and opinion”<sup>27</sup> Although he has extensively commented upon the freedom to have information, numbers, news, and facts, his main thrust is about the knowledge and education.<sup>28</sup> He has said almost the same about the framework regarding freedom of opinion, the right to have a religion, and the right to declare it.<sup>29</sup> Yet, his context is mostly Europe and not other parts of the world where religion holds sway and where social networks have an antipathy to everything western be it in their well-being or not. The recent document of the European Union titled as Protecting the Right to Freedom of Expression Under the European Convention on Human Rights by Dominika Bychawska-Siniarska

highlights not only elements but also restrictions with reference to public figures and fair criticism.<sup>30</sup> In his book, he refers to Article 10 of this convention citing that “The exercise to these freedoms, since it carries with 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.”<sup>31</sup> The rest of the article stipulates the European standards of keeping public safety, national security, public order, and morals along with an impartial judiciary under consideration.<sup>32</sup> Interestingly, as a legal figure, he has not discussed some hazy ideas of national security and territorial integrity which require governmental intervention, making governments the final arbiter in this connection in which the judiciary plays an important role. Therefore, the consideration of how it would be implemented is based on the criticism against the public figure to see how it works in Sharia-based systems and what is its status in Islamic society.

### **Sharia-based Concept of Freedom of Expression**

In Sharia, the holy Quran and the *Hadiths* are the main sources of legal, theological and political, and social perspectives, their growth, and evolution. Therefore, the holy Quran provides guidance about every right and freedom and asks Muslims to “speak fairly” as Dr. Saeed Riaz of Punjab University refers to his research saying,<sup>33</sup> Sharia-based concept bases its premises on the honor of human beings, fundamental rights<sup>34</sup> with permission of freedom of expression in certain limits<sup>35</sup>, freedom of religion,<sup>36</sup> freedom of association<sup>37</sup>, freedom of consultation<sup>38</sup>, freedom of free writing,<sup>39</sup> and freedom of speech<sup>40</sup> with various limits to safeguard rights of other people living within the *Umma*.<sup>41</sup> Referring to the Quran and Hadith, Dr. Saeed Riaz has presented an exhaustive list of the limitations ranging from fair speaking to adopting truth, avoiding bad speaking, jokes, defamation, sarcasm, abuses, religious conspiracy, blasphemy, concealing truth and pieces of evidence and knowledge.<sup>42</sup> Interestingly, the Quran has provided full guidance about every limit with full details provided by the *Hadiths*. A Thai scholar, too, has approached this topic from Riaz’s point of view by giving Arabic references. However, her other references in English are almost the same with a major thrust on Islamic legal theory<sup>43</sup> with commentary on democratic principles and human rights in Islam.<sup>44</sup> His argument is that “Freedom of expression and speech in the holy Quran is natural, and it supersedes earthly laws and instructions.”<sup>45</sup> However, the rest of the research repeats the same commentary without highlighting the details suggested by Dr. Saeed Riaz.

It is surprising to see that none of them referred to or even cited Dr. Hashim Kamali’s thesis in the shape of the phenomenal book, *Freedom of Expression in Islam*, published by

Islamic Texts Society.<sup>46</sup> Published back in 1997 in Cambridge in the United Kingdom, this book has discussed this political concept and its significance in Islam in exhaustive detail with references to the main Islamic schools of jurisprudence as well as theory, with specific emphasis on commanding good and forbidding evil, sincere advice, consultation, and independence juristic reasonings along with constructive criticism.<sup>47</sup> Expert as he is in Islamic theology, he has also tried to address the issues of loosely defined concepts of sedition, heresy, and disbelief which fall under the western concepts of nationalism, national security, and integrity to relate them to the freedom of expression.<sup>48</sup> The special about his book is that he has dilated upon hurtful and hateful speech<sup>49</sup>, slanderous accusations,<sup>50</sup> libel<sup>51</sup>, insult<sup>52</sup>, cursing<sup>53</sup>, attribution of disbelief<sup>54</sup>, seduction<sup>55</sup>, and blasphemy<sup>56</sup>.

Writing in the conclusion, Hashim Kamali argues;

Freedom of expression is the principal theme in the democratic substance of any constitution and advancement in this area is in many ways seen as a yardstick by which to assess the representative capacity of a government. To articulate an Islamic legislative approach with regard to human dignity and people's rights and immunities, as well as their duties and responsibilities, will undoubtedly require sustained and dedicated effort. But the reward would be that the Muslim personality and culture would have expressed itself in the legislative, judicial and policy-making spheres of the modern nation-state.

Dr. Kamali's argument stipulates fundamental points that could lead to how this Islamic concept impacts modern governance. The first one is that now democratic substance makes up the main thrust of the Muslim political evolution despite its westernized connotations and origin. The second advancement, even if it is legally beyond the materialistic realms, makes up the centrality of governance. Third, the rights, dignity, and immunity of the people fall under the category of legal safeguards, while the culture of the modern nation-states in the Islamic domain becomes the main context.

Despite having cited Quranic and Hadith sources to support his argument that the freedom of expression is Sharia-based, Dr. Kamali confesses that this daunting task has touched boundaries of several other disciplines simultaneously besides theology with "no exclusive study of freedom of expression in Islam<sup>57</sup>." He also admits that the modern challenges have forced new research into Islamic heritage with the prime demand that has

emerged from the demands of “constitutional law<sup>58</sup>.” This, he states is due to the gap that has emerged between the Islamic thoughts or “Sharia and social reality.”<sup>59</sup> He has supported his argument with the same sources that Sharia rules “encourage flexibility and tolerance<sup>60</sup>.” He adds that it is actually a purely Islamic concept that has not evolved over time, and cites Quranic injunctions with clear guidelines on what constitutes good speech and what constitutes evil speech, saying that Quranic injunctions impose serious restrictions on free speech when it is “evil speech<sup>61</sup>.” Despite these earlier misgivings, his final words are in support of the purely Islamic concept on the basis that Sharia has its “own concepts and postulations” and the policy likewise that can “enrich the substance of freedom of expression most effectively<sup>62</sup>.” The issue emerges when the constitutions and governance systems in modern Muslim countries desire to implement Islamic concepts through western orientation.<sup>63</sup> Therefore, it is imperative to see how this Islamic or Sharia-based concept responds to the modern governance systems in Muslim countries.

### **Islamic Freedom of Expression and Modern Governance**

The question is how freedom of expression has become specifically an Islamic concept and how it impacts modern government systems is significant. Khalid Masood, writing in the introduction, states this element of the Islamic perspectives has serious implications in the shape of suppression, the extension of this element beyond the law, and its transnational outreach.<sup>64</sup> Along with his colleagues, he states that there are several permissible limitations “on the freedom to ‘manifest’...beliefs and on the freedom of expression, but only as prescribed by law” and that they are also explicitly listed in the international covenants.<sup>65</sup> On the local level or national level, blasphemy laws curtail freedom of expression used as a tool against political opponents. Although various Muslim countries have included freedom of speech and religion as basic rights in their Islamized democratic dispensations though the original inspirations are western democratic models.<sup>66</sup> Although the citizens enjoy the freedom of expression and speech, they also have necessary restraints to take care of which, Kamali argues, are to stop abuses of this freedom.<sup>67</sup> But the question of how it impacts the governance looms large in this background of the wrangling over blasphemy and freedom of expression that ShugofaDastgeer and Daxton Steward have tried to resolve in their paper taking inclusive freedom of expression and Muslim majority countries as their focus of study. Through their study, they have argued that though religion counts much in this respect, it is history, political regime, and culture that matter the most besides religion.<sup>68</sup> Although they have not stated it explicitly, it seems apparent that besides culture and political system, the freedom of

expression sans restraints impact the governance and political dispensation which, as a result, try to suppress this freedom through different means. There are, however, double perspectives in this connection. The first one is protests or demonstrations about which researchers have suggested that as freedom of expression is valued in the Islamic-based Sharia system, protests are against government dispensations or existing democratic dispensations and not against the religion<sup>69</sup>. Dr.Saeed Riaz, too, has commented upon unbridled freedom of speech or expression saying that it is suitable for the secular world of the west where religion and religious symbols have been relegated to the background, but in the Islamic world, this unbridled freedom brings discomfoting problems.<sup>70</sup> Specifically, when it comes to blasphemy against Islam or its founder, Muhammad (ﷺ), it has impacted international affairs and relations.<sup>71</sup> Although his points are limited to east-west relations, international relations, and damage to Muslim-west relations, the argument that confrontation over this unbridled freedom seriously impacts both “major communities”<sup>72</sup> is quite valid. Concluding his argument, he states that although the ripples in international affairs are due to this unbridled freedom, it also “creates unrest for billions of Muslims<sup>73</sup>.”

However, when it comes to unbridled freedom of expression as it is stated to be in Islamic countries, it is tied to instability, anarchic situation, and chaotic protests. The most interesting part is when all other elements such as national security, territorial integrity, public interest, or public protest are immeasurable and indefinable, blasphemy, too, joins the same ranks of terms that have posed serious issues in its definition and measurability. Therefore, setting limits and restrictions over free speech or freedom of expression becomes even more problematic. Even Dr. Kamali seems helpless except in commenting upon Rushdie’s affair in his phenomenal work.<sup>74</sup> Yet, he is clear that it is a “hostile attack on the fundamentals of religion which offends the sensibilities of its adherents” adding Christianity and Judaism, too, have such restrictions.<sup>75</sup> Therefore, he has suggested numerous definitions and relevant conceptual ideas viable in Islam<sup>76</sup> to conclude that there is a way of repentance even if this is committed in mistake.<sup>77</sup> The issue crops up when this issue does not lead to repentance but anarchy, chaos, and instability. That is the point where free speech becomes highly injurious specifically where Islam is a dominant religion but lately it has become even a dangerous in the western world where blasphemy by the preachers of free speech or freedom of expression and thought has become a cornerstone. Calling Rushdie’s book an “inflammatory publication,<sup>78</sup>” Dr. Kamali has stated that it has caused “offense and outrage beyond measure<sup>79</sup>” exactly like its definitional issue. Despite its emerging role in “identity politics”<sup>80</sup>

Talal Asad is of the view that it is done deliberately to hurt Muslim feelings for emancipatory purposes yet they do not represent western democratic values or norms.<sup>81</sup> It crosses boundaries so bluntly that even Islamic jurists and “theologians are concerned about every possible form of harm that might arise from illicit speech<sup>82</sup>” where it becomes urgent to curtail free speech or put restrictions on it as Andrew March argues. Although he has encouraged multiculturalism and self-restraint<sup>83</sup>, his argument about the blurry lines existing between the liberals and the orthodox religionists does not seem to be a viable option to curtail the ensuing disorder or chaos following blasphemy as opposed to free speech. Therefore, it is more concerned with theo-social figure than with just free speech which specifically falls in the Sharia ambit.

### **Theo-Social Figures and Freedom of Expression in the Sharia Ambit**

Free speech or freedom of expression, if applied freely, has concerns with the types falling under different categories. Some are hurtful utterances,<sup>84</sup> slanderous accusations<sup>85</sup>, libelous remarks<sup>86</sup>, insults<sup>87</sup>, curses<sup>88</sup>, and finally blasphemy<sup>89</sup>. Although Kamali has counted disbelief and sedition among them, they are more concerned with Allah and the state and have nothing to do with theo-social figures. Although different types of utterances, remarks, and speeches fall under a different category, it is blasphemy against religion or the religious head which causes the most controversy as well as anarchy. Kamali has taken much space in defining this type of utterances and categorized them into apostasy, disbelief, and heresy,<sup>90</sup> saying that the primary offense of such type of utterances is “the reviling of God and the Prophet Muhammad (ﷺ) and a contemptuous rejection of their injunctions.<sup>91</sup>” It seems that Kamali has categorized Allah and his Prophet (ﷺ) with consequences for the offenders, adding that when a Muslim commits such an act exercising his right to free speech, his renunciation of Islam is confirmed,<sup>92</sup> while for a non-Muslim there is a different way to deal with it legally.<sup>93</sup> The controversy arises when some other socio-theological or theo-social figures are categorized against whom the free speech uttered is treated as such. Kamali leaves it to the jurists to decide as different opinions exist.<sup>94</sup>

As guided by Sharia, blasphemy laws exist in almost all the Muslim majority countries. However, what punishment is to be meted out to such offenders is based on localized versions of Islam as interpreted by the relevant religious scholars.<sup>95</sup> For example, it is a crime against human rights and is punished as such after the Islamic Revolution and not prior to it<sup>96</sup>. Several other countries have such laws such as Pakistan where it has been applied to several cases.



Even New Zealand has such a law which was repealed in 2019, Villa says, adding some laws interestingly exist from British rules such as in Pakistan, Barbados, and Tobago. She states that anti-blasphemy laws exist in almost all countries in one or the other shape leaving aside a few ones. For example, out of a total of 20 Muslim countries in the Middle East and North Africa, 18 have such laws.<sup>97</sup> It means that in the case of blasphemy against Allah or His Prophet (ﷺ), all Muslim countries have laws, but the case of the companions of the holy Prophet (ﷺ) and other religious figures vary from country to country. In some cases or even interpretations, companions of the holy Prophet (ﷺ) too are equally inviolable through the freedom of expression, and utterances against them also invite the same kind of punishments based on the severity of the crime as it is considered a sin and hence infidelity.<sup>98</sup> However, what is the status of the current theo-social or socio-theological figures in this connection is a controversial question and it has invited a host of criticism that no such holy figure exists at this time that the blasphemy laws could be applied in their cases. Interestingly, such laws exist in Pakistan such as 298-A where “holy personages” have not been properly defined.<sup>99</sup>

Despite these controversies, the blasphemy in freedom of expression leads to marring the very centrality of the central figures in a theo-social or vice versa setting. When seen in the light of Sharia as Kamali’s exegesis shows, it concludes to call it a distinct offense is justified<sup>100</sup>. The reasons, with several others, are, he argues, such acts become “a major threat to the existence and continuity of Islam at a time when neither the new faith nor the nascent Islamic state [are] secure against rampant hostility and challenge<sup>101</sup>.” Kamali’s comments become a cornerstone in that when the centrality of a theological and social framework is jolted, the very bedrock of that framework starts crumbling. That is why the centrality of Allah and the holy Prophet (ﷺ) becomes a sanctity that must not be violated at all costs. The purpose is to provide legitimacy to this framework in the Euro-centric ontology and consequential unbridled epistemic drive.

### **Legitimizing Elements for Freedom of Expression**

However, this legitimacy in western constitutionalism is somewhat very different from that of the Islamic social fabric. In the west, it not only rests on the sociological and moral aspects of society but also on the legitimate decisions made in this connection.<sup>102</sup> However, it is mostly debated in terms of the constitution to provide legal cover to judicial decisions. Besides these social aspects, it also rests on “ideas, beliefs, and behaviors of individual’s exhibit in relation to” the authorities they believe have legitimate authority to apply for legal injunctions.<sup>103</sup> Some

other such elements could be “normative goals, performance, charisma, politically defining moment, and international support.”<sup>104</sup> As legitimacy is a commitment<sup>105</sup>, and in Islam the citizens are committed not to the rulers but to Allah and His Messenger (ﷺ), for Allah “is the only sovereign and the ultimate source of legitimate law” with the Prophet (ﷺ) as the lawgiver<sup>106</sup> after which the law that is based on Sharia “fulfills the criteria of justice and legitimacy and binds the governed and the governor alike<sup>107</sup>.” Although other elements considered integral for legitimacy in western political thought assists the modern Muslim states, the centrality of Allah and His Messenger (ﷺ) as the ultimate sources of law and legitimating authorities have not been lost. Therefore, the freedom of expression directly attacking the centralities of both of these legitimizing powers seems an attack on the very structure of the Islamic notion of the state as well as the government. That is why there is always anger, violent response, and sometimes collective resistance from Muslim countries and the public alike in case there is any blasphemy against these two fundamental legitimizing elements of the Islamic state and Sharia law.

### **Conclusion**

The argument is that although freedom of expression has become the cornerstone of western democratic values, its application, and enforcement in all cultural and social systems. Yet, it varies according to the social norms, cultural mores, and above all theological orientation. The reason is that western democratic values have their origin in the Greco-Roman traditions, while Islamic countries have a Sharia-based legal system at work. Therefore, both orientations define as well as enforce freedom of expression entirely differently, specifically, when it comes to the definitional and enforceable elements of this right. Even the western legitimacy based on its aspects and long-held traditions and conventions does not conform to the Islamic divine legitimacy for the theological foundations and centrality of divine figures or theo-social figures which bless the governments and governance systems legitimacy. Therefore, freedom of expression which is hostile or antagonistic toward such foundations and figures is not freedom of expression but a well-understood plan to erode the very foundations and delegitimize the centrality of these figures. That is why differences crop up and violent reaction emerges from Islamic countries, governments, and public figures in case the freedom of expression is exercised in any country against these foundational principles of Islam. However, how instability caused by any component of free expression or speech against existing or incumbent theo-social persona impact stability and bring instability needs further research from this

perspective to prove how measurability could bring new views about improvement in the legal arena to rein in free speech or freedom of expression.

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- <sup>73</sup>Ibid., 33.
- <sup>74</sup> Kamali, *Freedom of Expression*, 294-295.
- <sup>75</sup>Ibid., 213.
- <sup>76</sup>Ibid., 213-214.
- <sup>77</sup>Ibid., 233.
- <sup>78</sup>Ibid., 294.
- <sup>79</sup>Ibid., 295.
- <sup>80</sup> Muhammad Khalid Masud Kari Vogt, Lena Larsen, and Christian Moe, eds., “Introduction” In *Freedom of Expression in Islam*, 04.
- <sup>81</sup> Talal Asad, “Free Speech, Blasphemy, and Secular Criticism; in Is Critique Secular? Blasphemy, Injury and Free Speech, Townsend Papers in Humanities 2” (Berkeley: University of California, 2009), 39.

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- <sup>83</sup>Ibid., 328.
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- <sup>85</sup>Ibid., 171.
- <sup>86</sup>Ibid., 175.
- <sup>87</sup>Ibid., 177.
- <sup>88</sup>Ibid., 182.
- <sup>89</sup>Ibid., 212.
- <sup>90</sup>Ibid., 213.
- <sup>91</sup>Ibid., 215.
- <sup>92</sup>Ibid., 217.
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